MAINE PROBATE LAW REVISION COMMISSION

REPORT TO THE LEGISLATURE

AND

RECOMMENDATIONS CONCERNING PROBATE COURT STRUCTURE

February 21, 1980

MAINE PROBATE LAW REVISION COMMISSION

February 21, 1980

The Hon. Richard H. Pierce
Chairman
Legislative Council
State House
Augusta, ME 04333

Dear Senator Pierce:

As Chairman of the Maine Probate Law Revision Commission, I am transmitting to you the Commission's Report to the Legislature with recommendations concerning reform of the Maine Probate Court system. This report and the recommended legislation is transmitted to the Legislature pursuant to P. & S.L. 1973, c. 126, P.L. 1975, c. 147, and P.L. 1977, c. 712.

With best regards,

Very truly yours,

John B. Roberts
Chairman

JBR/jaa

MAINE PROBATE LAW REVISION COMMISSION

REPORT TO THE LEGISLATURE AND RECOMMENDATIONS CONCERNING PROBATE COURT STRUCTURE

February 21, 1980

Attached: Proposed Bill To Transfer Probate Jurisdiction To The Superior Court

MAINE PROBATE LAW REVISION COMMISSION

REPORT TO THE LEGISLATURE AND RECOMMENDATIONS CONCERNING PROBATE COURT STRUCTURE

February 21, 1980

The Maine Probate Law Revision Commission, pursuant to its charge from the Legislature in 1973, submitted a report and a proposed bill for reforming the substantive law of probate in the State of Maine. This bill, recommended to the Legislature in September, 1978, was subsequently enacted as P.L. 1979, c. 540. This present report is responsive to the second legislative charge to the Commission -- to study and make recommendations concerning the structure of the Probate Courts.

It is the conclusion of the Commission that the most logical, efficient, and otherwise desirable manner of dealing with probate matters and of structuring the probate court system for the State of Maine, is to transfer the jurisdiction of the present probate courts into the state trial court of general jurisdiction -- the Superior Court. Attached to this report, therefore, is a proposed bill which would achieve this result and would make the adjustments that would be necessary in the present statutes in order to make a smooth and complete transition to the proposed system.

The factors leading to the Commission's conclusion are various, and all seem to lead most logically to the same result. A discussion of these considerations is included in this Report.

I. The Appropriate Court For Probate Matters In Maine

a. The Jurisdiction and Procedures of Courts Dealing with Probate Matters Under the New Probate Code. While the primary concern of the newly enacted Probate Code is substantive, several procedural and structural changes are included. The role of the Superior Court as the

Supreme Court of Probate was eliminated. Connected with this, the unnecessary and wasteful practice of allowing de novo appeals from the probate to the Superior Court was abolished. As part of the effort to treat probate matters the way other matters of the law are treated, direct appeals were provided from the probate court to the Law Court.

A second, and very basic, change is related to the objective of judicial efficiency. Concurrent jurisdiction with the Superior Court was given to the probate court over all matters related to the primary subjects of the probate court's jurisdiction. Because jury trials are not provided within the probate court, provisions are made for the removal of probate cases to the Superior Court in matters where there is a right to a jury trial.

In addition, the new Probate Code extends the rule making power of the Supreme Judicial Court to promulgate rules of probate procedure. While the nature of the probate court's procedural rules is within the discretion of the Supreme Judicial Court, it is to be expected that the probate procedures will be logically consistent with the general rules of civil procedure operative within the Superior Court with appropriate allowance made for any differences required by the nature of probate matters. This is especially true in light of the extended concurrent jurisdiction of the probate courts over matters related to their area of primary jurisdiction.

While these changes within the presently existing separate probate court system are helpful, the ultimate achievement of their objectives can best be completed by merely transferrring the jurisdiction of the present probate court into the Superior Court, which already has all of the powers which have been granted the probate courts, and would avoid the problems arising from the lack of a jury in the probate courts and avoid the need for

any removal provisions. Such a transfer of jurisdiction would also be consistent with the objective of treating the law of probate as other areas of law are treated.

Any questions that might arise in the area of the newly-extended concurrent jurisdiction of the probate courts with the Superior Court would be reduced to questions of procedure and administration. Matters that might under a dual court system have to be brought and tried as separate proceedings, in separate courts, could under a single court system be joined at the outset subject to later severance for trial. Where actions had been brought separately they could be consolidated for trial when appropriate. Claims of creditors, or wrongful death actions either on behalf of or against the estate, could be heard in the same court in a single proceeding regardless of the form in which the claims were brought. Issues appropriate for jury trial could be so assigned without a separate procedure and without any need for removal. Even where it may be appropriate to keep such proceedings separate in form, they could be heard by the same judge. Procedural provisions freely allowing for amendment would enhance this flexibility by allowing a proceeding to be framed in the proper posture for trial regardless of how it was originally brought.

In short, vesting of the probate jurisdiction in the Superior Court would give maximum access to the flexible procedural devices of the Maine Rules of Civil Procedure. These devices can be made only partially effective in a dual court system.

b. The Superior Court and Probate Law. The transfer of probate jurisdiction to the Superior Court is made particularly appropriate by the traditional connection in Maine between that court and both the law and the present courts of probate. Under present law the Superior Court acts as

the Supreme Court of Probate. In appeals from the probate courts the Superior Court has always acted as a de novo trial court. In matters concerning the construction of wills and of testamentary trusts the Superior Court has traditionally exercised concurrent jurisdiction with the Probate Courts. In short, in matters such as these the Superior Court has always been in part a court of probate. The expansion of the probate court's concurrent jurisdiction under the new code is a recognition both of this fact and of its appropriateness.

In contrast to this traditional connection between probate and Superior Courts, almost all of the provisions specifying the limited jurisdiction of the District Courts provide for concurrent jurisdiction with the Superior Court rather than with the probate court. See 4 M.R.S.A. §152 (civil actions in which neither damages exceeding $20,000 nor equitable relief is demanded; actions to quite title; actions premised on breach of implied warranty and covenant of habitability; actions to foreclose mortgages; actions for divorce or annulment and non-payment of support or alimony; and guilty pleas in felony cases); 4 M.R.S.A §165 (crimes not punishable by imprisonment in the State Prison); 7 M.R.S.A. §1027 (violations of laws governing the licensing and regulation of potato sales); 7 M.R.S.A §2206 and 4 M.R.S.A. §152 (violations of laws governing the sale of nursery stock); 7 M.R.S.A. §1703 (actions brought under the livestock disease control provisions); 7 M.R.S.A. §15 (violations of laws concerning agriculture and animals); 7 M.R.S.A. §2907 (laws involving the licensing, labeling and manufacturing of milk products); 12 M.R.S.A. §676 (regulations concerning the Allagash Wilderness Waterway); 19 M.R.S.A. §275 (paternity actions); 22 M.R.S.A. §252 (violations of laws concerning health inspections); 22 M.R.S.A. §3754 (enforcement of child support obligations); 23 M.R.S.A.

§3253 (actions concerning the obstruction of public ways); 29 M.R.S.A. §2302 (prosecution for violations of Title 29, other than prosecutions for traffic infractions which are within the District Courts' exclusive jurisdiction). In only three cases does the present law provide for concurrent jurisdiction between the District and probate courts. See 19 M.R.S.A. §588 (separation actions); 19 M.R.S.A. §301 (a husband's obligation to support his wife and minor children); and 22 M.R.S.A. §3792 (protective custody of minors). Because of the closer connection between the subject matter of the District and Superior Courts the newly enacted Probate Code will eliminate one of these three items by providing for concurrent jurisdiction in separation actions between the District and Superior Courts under 19 M.R.S.A. §588, instead of between the District and probate courts.

Indeed, an examination of the nature of the District Courts' subject matter jurisdiction reveals a marked contrast with the primary subject matter of probate court jurisdiction.

c. Other Alternatives. The objectives of the new Probate Code may be realized in a variety of different kinds of court systems. As pointed out before, the two characteristics that are inherent in a court system for the new Probate Code are that it have jurisdiction over all matters related to the handling of probate estates, and that it have full power within those areas. These characteristics have been enacted into the new code and, as a matter of substantive law, the new code can operate adequately within the present system.

To do so, however, would leave unresolved several problems that will be addressed later in this report, and would fail to achieve the kind of procedural efficiency that has previously been mentioned. These reforms

can best be achieved by the proposed transfer of probate court jurisdiction into the Superior Court.

One of the results that can reasonably be expected under the new code is a drastic reduction in the routine paper work presently required of probate judges. This reduction of unnecessary work and the resulting increase in judicial efficiency has been experienced by other states which have adopted the Uniform Probate Code. The retention of the present probate court structure would thus result in an underutilization of probate judges. For reasons discussed more fully later in this report it is highly desirable that the office of probate judge be a full time position. Such a change would make this underutilization of probate all the more extreme.

A second alternative is to institute a separate probate court system on a district basis. Such a plan, however, would not fit well with the county based system of probate and of probate record keeping.

A third alternative is to make probate law a part of the district court's business. The use of the district court for probate work would raise the same problem as that of a separate district court probate system -- it is not consistent with the county based system of probate record keeping. In addition, the basic differences between the subject matter of district court jurisdiction and the primary concern of probate courts has been pointed out before.

Proposals have been made from time to time for the creation of a special court, or a special division within the courts, to handle family related matters. It has been thought that such a court system would develop special expertise in the area of family matters and be able to render particularly appropriate assistance in resolving problems that arise in that area of basic human and social concern.

A number of issues seem to make the creation of such a family court system, as part of the general probate court reform, inappropriate at this particular time. First, there is a considerable question as to the actual and meaningful relationship between matters of probate law and matters such as divorce, marriage, and child custody and support that are usually more directly thought as being appropriate for family court treatment. Probate law raises problems and legal issues that are separate and of a different nature. They do not involve the same kind of judicial discretion that is often required in determining such things as custody and equitable property settlements upon dissolution of a marriage.

Secondly, the primary concern in light of the basic changes recently enacted in the substantive probate law should be to formulate a probate court system that is most appropriate in carrying out the purposes of the recent substantive reform. The proposal to transfer probate jurisdiction into the Superior Court in no way precludes subsequent consideration of the desirability and the nature of a family court system. A family court system could well be achieved, if it is found to be desirable, by creating such a division within the Superior Court. This would avoid any undesirable further fragmentation in the judicial system while still achieving the purposes of a family court.

Attempts at this time to formulate the adjustments in the various courts within the present judicial system in order to implement a family court system would involve a major re-adjustment of the entire judicial structure including not only the Probate and Superior Courts, but also the District Courts. Questions would arise as to budgetary considerations for supportive services that would help the family court concept become more meaningful. For all of these reasons it does not seem appropriate to

attempt to deal with or implement a system of family courts or a family court division of the Superior Court at this time.

II. The Nature Of The Judicial Position

a. Full Time Judges. One of the issues that has been present for many years is the question of the appropriateness of the part time nature of the judicial office in the probate court system. The ethical problem that is raised by the existence of a part time judge who maintains an active probate practice was twice brought to the attention of the Commission by the chairman of the Bar Association's Ethics Committee. While there has never been any significant problem of actual abuse of the part time nature of the probate judge's position, the fact that a person who is a judge part of the time and at other times is a lawyer dealing with lawyers who appear before him in his position as a judge has bothered a number of people.

The problem is centered around 4 M.R.S.A. §307, which provides for the transfer of probate cases to an adjoining county in situations where the probate judge has an interest in the case. This section has been used as a means for allowing the probate judges to continue to practice probate law without being in the position of ruling on their own cases -- a situation which would obviously be intolerable. So long as the position of the probate judge is part time, with the relatively low salary that accompanies such a part time position, it is understandable that an accommodation must be made to allow an attorney to practice law if there is to be any chance of attracting competent attorneys to the judicial position. That need, and the accommodation that has necessarily been made to it, raises an appearance of conflict of interest. Two lawyers who are both also judges of probate in their adjoining counties cannot appear alternately before each other as advocates and as judges, or even deal with each other in cases where both

are in the position of attorneys, without raising such an appearance. While this state has lived under this kind of accommodation for many years, and while the Commission is aware of no specific complaints that have been raised about judicial conduct within this accommodation, the situation is ethically uncomfortable and undesirable.

The difficulty in resolving this situation by making the judicial office full time rests largely in the fact that the work load of a probate judge in most counties would not justify a full time position. This particular fact is made even more true by the enactment of the new Probate Code which will further substantially reduce the judicial work load in the probate area.

The transfer of probate court jurisdiction to the Superior Court would clearly eliminate this ethical problem. The justices of the Superior Court, unlike the judges of probate, are subject to all of the regulations governing judicial conduct.

Transferring of probate jurisdiction to the Superior Court once again solves several problems simultaneously. The ethical problem would be resolved. The lack of a full time probate work load would be resolved by having the judges of the court of general jurisdiction handle probate matters as well as other cases. The basic unit of the judicial system dealing with the probate law would still be on a county basis. As pointed out before, the present involvement of the Superior Court with probate matters illustrates the overlap of subject matter jurisdiction that already exists under present law.

The change in the character and status of probate law and the court's role in resolving questions of probate under the new Code make such a resolution even more appropriate. As probate law is begun to be seen as one more part of the general substantive law, involving the judges only in

cases of actual controversy among parties, the apparent need for a separate probate court system decreases and the need to handle the probate court matters in the court of general jurisdiction increases.

b. Appointive Or Elective Judges. Another aspect of Maine's Probate Court system that has often been criticized is the fact that the judges of probate are elected rather than appointed in the manner of all other judicial offices.

There has always been a strain of thought in this country that the judiciary should be above the ordinary elective process in order to help assure that the judiciary is sufficiently insulated from more temporal political concerns, and thereby more free to apply the law in an impartial manner. This idea is gradually gaining more acceptance at the various state levels. As the course of judicial reform has gradually progressed in Maine, it is particularly anomolous that only one catagory of judicial officers -- probate judges -- still remain elective while all other judges in the state are appointed.

This anomaly becomes even less appropriate as the preception and, in fact, the character and nature of the substantive probate law changes with the newly enacted code. If probate matters are now to be treated as legal matters in the same manner as other issues in the law, and as the role of the court in probate matters becomes the same as the role of the courts in other substantive legal areas, the judges deciding issues in probate should be selected as other judges are selected.

Once again, this would be achieved by transferring the probate jurisdiction into the Superior Court. There would be a court with full power and general jurisdiction, with full time judges appointed in the accepted way in Maine, which would deal with probate matters in the context contemplated by the new Probate Code.

c. The Number Of Justices. The proposed bill provides for increasing the number of justices on the Superior Court by three (3) -- from fourteen (14) to seventeen (17) -- in order to provide for the additional work resulting from the transfer of probate court jurisdiction into the Superior Court.

In an attempt to determine as concretely as possible how many additional justices would be required in the Superior Court, the Commission undertook a study of the work load of the probate court in Cumberland County, particularly as it related to the changes that can be anticipated because of the new probate code. An examination was made of the court docket books and the judge's court calendar for particular periods of time in order to obtain a representative sample of the kinds and number of determinations that were made by the probate judge during those time periods. These kinds of determinations were compared to the kind of actions that a probate judge would be likely to take under the new Code. For example, an order probating a will or appointing a personal representative would be needed under the new Code only when formal proceedings were instituted. In the ordinary situation, informal proceedings would be used which would not involve the probate judge.

The court calendar's recording of hearings should furnish some indication of how many of the matters before the court were in fact contested rather than routine. Since the new code contemplates that the probate judge will be involved only when there is actual controversy before the court, the court's hearing calendar -- showing the seriously contested matters -- should give an idea of the judicial work load that can be expected under the new code.

In the study that was undertaken, the docket entries were checked for all of the cases that were filed during the first six months of 1977.[1] Notation was made of each kind of filing and judicial action made in those cases. It should be noted that the resulting figures do not represent the filings and judicial actions that were taken during that time period, since many or most of them would have occurred beyond that time -- several months or years after the case is first filed. The figures represent, instead, the filings and actions taken in cases that were filed during the first six months of 1977. However, on the reasonable assumption that similar kinds of filings and judicial actions were occurring during those six months in cases filed before 1977, it is fair to assume that these figures represent something close to the kind and amount of activity that was taking place during the first six months of 1977.

The Commission's study revealed that the total number of separate filings which required judicial action in cases filed during the first six months of 1977 in the Cumberland County Probate Court totalled more than 1,860. The total number of actual hearings scheduled on the court's calendar during that same period was ten (10). Based on the court's calendar, there were a total of 26 hearings conducted in 1977, 20 hearings conducted in 1978, and 48 hearings conducted in 1979.

While the number of hearings does not alone represent all of the non-routine work that probate judges presently do, these statistics confirm what the probate judges already know -- the probate judge at the present

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1 The first six months of 1977 were chosen as the most appropriate time period because the cases filed then would be relatively recent and thus reasonably close to the kind and number of filings occurring currently, but would also have been in process long enough to have allowed them to go through the average time required for handling most probate cases. The time period was chosen with these criteria in consultation with probate registry and court personnel.

time is burdened with an almost unbelievable amount of routine paper work which is essentially unnecessary. It is this problem of the inefficient use of judicial resources that the new Probate Code addresses and can be expected to relieve.

Earlier recent studies of Maine's Probate Courts indicate that Cumberland County represents slightly less than 25% of the probate court work load. Based on this fact, and using the 1979 total number of hearings in Cumberland County, it can be reasonably estimated that the sixteen probate courts in Maine conducted approximately 200 actual hearings last year. While some hearings might last as long as two or three days, most of them are short hearings of a few hours or less. The amount of hearing time can very conservatively be estimated at 100 hearing days for the entire state.

Some adjustment may be needed in this figure. For instance, some of the hearings held in the probate courts are already duplicated in the Superior Court under the present law's provision for de novo appeals from the probate to the Superior Court. While the actual number of such duplicate probate hearings already occurring in the Superior Court is not readily available, it is clear that as to those cases the transfer of probate jurisdiction would not increase the work load of the Superior Court.

In addition, and cutting the other way, it may well be that certain matters now treated quite informally in most probate courts in Maine would be treated more formally if heard in the Superior Court. The primary examples include the appointment of guardians and the hearing of adoption petitions. Based on the 1977 Cumberland County figures it is estimated that there are approximately 800 to 900 guardianship petitions in a year and approximately 800 to 1,000 adoption petitions. The provisions of the new

Probate Code for testamentary appointment of guardians can be expected to reduce that figure by a small number. The growing use of the durable power of attorney will have a similar effect. While the hearings on such applications might be treated more formally in the Superior Court than they are now treated in most of the probate courts, and while they deal with important matters that require judicial action, they are typically brief hearings that, in ordinary cases, do not require a great deal of judicial time.

As pointed out before, the hearings calendar of the present probate courts does not reflect all of the work that the courts do. As shown by the previous statistics, a vast amount of the probate court work presently consists of routine and essentially unnecessary signing of papers. The probate judge would be relieved of almost all of that work under the new Probate Code. Uncontested wills and appointments of personal representatives would be handled informally by the register of probate. The huge number of accounts and inventories that are presently filed in the probate court and require judicial approval would not be a part of the probate judge's concern under the new Probate Code unless there was some controversy concerning those accounts or inventories that was formally brought before the judge.

In addition to this routine paper work, many of the part time probate judges currently find themselves called upon by attorneys for advice concerning the handling of the attorney's probate matters -- a situation that often amounts to the judicial performance of an attorney's work for him. Aside from the existence of this habit which arises from the separate nature of the present probate court system -- a practice that amounts to a form of judicial hand holding --there would seem to be no more reason for a

judge to do an attorney's work for him in the probate area than in any other area of law. Such a practice does not exist in other areas of law, and undoubtedly would not be allowed to take up the time of justices in the Superior Court.

According to the State Court Case Load Statistics; Annual Report, 1976, published by the U.S. Department of Justice, the Superior Court case load in Maine in 1976 was 12,384. This includes both civil and criminal cases that were filed during that year. It does not include matters already pending at the beginning of 1976, which totalled 12,032. In general, it can be assumed that these cases in the Superior Court are generally far more complicated and time consuming than the cases that would be transfer to the Superior Court under probate jurisdiction. They also do not represent the full number of matters presented for judicial determination by those cases, since each such case may well call for judicial action in several different instances -- pre-trial matters must be heard and disposed of in both civil and criminal matters. Based on these figures, however, the fourteen Superior Court justices each handled approximately 885 newly filed cases during 1976. An addition of three justices would allow the handling of an additional 2,653 cases at the same rate of efficiency. The total number of actual hearings that would be required as a result of transfering probate jurisdiction, including adoptions and guardian appointments, would be fewer than 2,000. These 2,000 hearings, it should be remembered, would undoubtedly be less time consuming than are the cases currently being handled by the Superior Court.

Based on these statistics and considerations it is the judgment of the Commission that three additional justices of the Superior Court would be more than adequate to handle the additional probate jurisdiction work load

under the proposed bill. The transition provisions of Section 86 of the Bill, allowing incumbent probate judges to remain in office until the expiration of their term, would also help to ease any burden that may arise at the beginning of the transition to the new Probate Code. As attorneys became more familiar with the various informal proceedings for probating wills, appointing personal representatives, administering estates and closing them without judicial decree, the probate work load would continue to decrease. At the same time, anticipated increases in the other areas of Superior Court work would, in the future, justify the existence of the additional Superior Court justices.

d. Costs. One of the features of the new Probate Code is the increased efficiency in the use of judicial resources in the probate court system. The proposed bill to transfer probate jurisdiction to the Superior Court takes advantage of those increased efficiencies. At the same time, it seeks to resolve other problems that have been perceived in the present probate court structure -- primarily the problem of the part time nature of the probate judge position and the present selection of judges in a manner inconsistent with the selection process used for other judicial officers.

As a result, the proposed change in the probate court structure should be accomplished at no additional cost. The present probate judge's salaries, without allowing for any increases in 1981, total $142,561. The salaries for three justices of the Superior Court, based upon the statutory amounts provided for 1981 and thereafter, total $108,192. Thus, in salaries alone, there would be a savings of $34,369. Allowing for a 7 percent inflationary increase in probate judges' salaries for next year under the present system, that savings would be increased to $44,348. Once the transition for incumbent probate judges has passed, this entire savings

would either be realized or could be used for increases in salaries of other judicial personnel which would occur in any event. While it is impossible to estimate how many of the incumbent probate judges would chose to continue in office, this savings would be available to fund either all or part of the costs during that period of time. It can reasonably be expected that some of the present probate judges may resign upon the effective date of the change in court structure. The terms of others would expire concurrently with the effective date of the new Probate Code and the proposed bill.

Other costs of operation of the probate court system would be covered by Section 6 of the proposed bill, which provides for passing the counties' savings through to the state in the case of present direct county expenditures on the present probate court system, and for continuing the use of any space and facilities currently being used for the probate court and registry. As can be seen from the first paragraph of Section 6, this is the same system which was used in 1976 upon the assumption of Superior Court costs by the State.

III. Registers Of Probate

The proposed probate court structure bill preserves the separateness of the probate registries and their records, and preserves them on a county basis -- both of which are essential to their primary use as land title records. It also preserves the registries' autonomy from the Superior Court clerk's office, while intergrating them into the state wide judicial system under the Chief Justice of the Supreme Judicial Court. Aside from the transition provisions for incumbent registers of probate under Section 86 of the proposed Bill, the Chief Justice would be authorized to appoint the registers of probate and determine their salaries. Ultimate authority in supervision of the register would be given to the Chief Justice. The

amounts of filing fees would be determined by rule prescribed by the Supreme Judicial Court, as is provided under present law for the fees in other courts.

Under the proposed bill, the Chief Justice would have discretion to appoint either full or part time registers. While it is contemplated that there would be a need for full time staffing of the registry office during business hours on business days, as is currently the case, the Commission considered it desirable to provide the Chief Justice with the necessary flexibility to deal with individual situations in particular registries.

This flexibility is also related to the discretion given to the Chief Justice in Section 5 of the Bill to assign justices for probate work -- in effect providing for the possibility of a separate probate division within the Superior Court. This provision would give him the flexibility to determine and provide for separate probate divisions, as appropriate, within the various counties. The separate assignment of a justice to probate work may be appropriate in some counties, but not in others -- e.g., less populated counties where fewer Superior Court justices are available and where the amount of probate work would not require or justify it. This provision would, in effect, allow the Chief Justice the necessary discretion to designate justices of the Superior Court for probate work and use the judicial resources in their most efficient and logical manner, depending upon the circumstances varying from one county to another and from time to time.

IV. Conflicts Of Interest

Section 307 of Title 4 has given rise to questions concerning both the interpretation and the ethical problems which were discussed in Part II(a)

of this Report. The transfer of probate jurisdiction to the Superior Court eliminates those problems insofar as judges are concerned. Conflict of interest problems may still arise, however, to the extent that registers of probate in particular counties are appointed to a part time position. Section 33 of the proposed Bill deals with this problem.

Section 307's provisions prohibiting the register from counseling or drafting documents is carried over into Subsection (a). The register and deputy register are also prohibited from practicing law while holding those positions. The last clause of that Subsection, however, makes clear that these prohibitions do not preclude the register or deputy register from rendering the kind of general assistence that is part of the ordinary duties of such an official.

This last clause of Subsection (a) attempts to address a problem that has been raised by a number of registers of probate. That problem is the difficulty of drawing a line between improper counseling of persons filing papers in the probate registry, and the carrying out of the normal managerial duties of the register of probate. It is clear that the registers should not give legal counsel to persons in a manner that constitutes the practice of law; however, it seems equally clear that a public official in that position should be allowed and encouraged to be helpful in the ordinary ways that reasonable members of the general public would expect. To prevent the first and allow the second of these things is the goal of this last clause of Subsection (a).

Subsection (b) of this section prevents potential conflicts of interest between a register's exercise of his oficial duties and his position as a fidiciary. That subsection prohibits a register or deputy register from serving as a personal representative, guardian, or conservator except for a

person who is a member of his family. The register and deputy register are also forbidden to serve as a trustee whenever a matter concerning the trust comes before the court in the county where he is the register or deputy register. When the register or deputy register serves as a fidiciary in the family situation, or as a trustee in a matter which is or may come before the court in the county where he holds office, provision is made for transferring or bringing the action or the case in a different county.

Similar provision is made in subsection (c) for transferring or bringing a matter in a different county whenever the register or deputy register has or may have a beneficial interest in any estate or any other matter before the court in the county where he holds office.

V. Constitutionality

The Bill proposed by the Commission provides that the transfer of probate jurisdiction to the Superior Court would become effective on January 1, 1981, the date upon which the newly enacted Probate Code takes effect.

The previous report to the legislature by the Commission, dated January 24, 1980, deals with a possible constitutional problem in enacting a change in the probate court structure. Part II of that report proposes a constitutional resolution to be submitted to the people of the state at the next November election.

The possible need for a constitutional amendment as a prerequisite to legislative change in the probate court system stems from an inadvertent omission in the 1967 constitutional amendment process. At that time a constitutional amendment was ratified which repealed the provisions of Article VI, Section 6 of the Maine Constitution which provides that judges and registers of probate shall be elected. That amendment was not to

become effective until "such time as the Legislature by proper enactment shall establish a different Probate Court system with full time judges." Not included in that amendment process, however, was the elimination of language in Article V, Part 1, Section 8 which excludes the judges of probate from the category of judicial officers which shall be appointed by the governor. An advisory opinion of the justices of the Supreme Judicial Court indicates that this inadvertent omission precludes the legislature from enacting a system of probate courts which includes the appointment of judges of probate without further amendment of that language.

It is the judgment of the Commission and its counsel that such an amendment should not be necessary in order to enact the Commission's proposed bill. The transfer of probate jurisdiction to the already existing Superior Court -- whose justices are constitutionally appointive -- is not the creation of a probate court system with appointive "judges of probate". The bill would do just the opposite. Rather than providing for appointive judges of probate, it would eliminate the system of separate probate courts and thus of "judges of probate". Whatever reasons may exist for electing the judges of a separate probate court to act uniquely in the capacity as judges of probate do not apply to the appointment of constitutionally appointive justices of the state's trial court of general jurisdiction -- the Superior Court.

In order to clarify whether or not there is a need for a constitutional amendment, and thus possibly avoid the expensive and time consuming process of seeking such ratification, the Commission recommends that the legislature seek an Opinion of the Justices of the Supreme Judicial Court on the validity of the proposed bill if enacted without the proposed constitutional amendment.

Should such amendment be necessary in order to enact this bill, a further problem may arise. Previous Opinions of the Justices of the Supreme Judicial Court, although with an eloquent dissent by Justice Sidney Thaxter, indicate that the legislature may not be authorized to pass legislation concurrent with an amending process which is necessary to enable it to so act. It is the judgment of the Commission and its counsel that this principle does not properly apply to the proposed bill. Once again, the Commission therefore recommends that the legislature seek an Opinion of the Justices on a second question in order to clarify the legislature's authority to simultaneously enact this legislation and to seek ratification of a constitutional amendment to make clear that provisions can be made for appointive judges of probate. This proposed legislation would not, of course, become effective until after any required constitutional amendment was ratified and took effect.

For these reasons the Commission recommends that the legislature seek an Opinion of the Justices of the Supreme Judicial Court on the following two questions, which would be submitted to the justices along with both the proposed constitutional resolution recommended to the legislature in the Commission's January 24, 1980 report and the Bill proposed by the Commission in this report:

Question 1

Would the attached pending bill, if enacted, constitute a violation of the language in Article V, Part First, Section 8 of the Constitution of the State of Maine which excludes the appointment of "judges of probate" from the governor's authority to appoint all judicial officers?

Question 2

If the answer to the first question is in the affirmative, would the attached pending bill, if enacted in the present session of the 109th Legislature, be invalid as unconstitutional if the attached pending constitutional resolution is passed by the legislature and ratified by the People at the next statewide election in November, 1980?

The submission of these two questions to the court, and the answers of the justices, would serve to clarify whether a constitutional amendment is necessary in order to pass this legislation, and whether the legislature has the authority to pass both the proposed bill and the proposed constitutional resolution in this session. Past precedents seem to establish that the prerequisites for seeking and receiving Opinions of the Justices are present in this situation. The matter involves an important question of law and presents a solemn occasion. Based upon the past dispatch of the justices in responding to such questions, there should be sufficient time to follow this procedure while the Bill is under consideration.

Respectively submitted,

MAINE PROBATE LAW REVISION COMMISSION

PROPOSED BILL

TO TRANSFER PROBATE JURISDICTION TO THE SUPERIOR COURT

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED EIGHTY

AN ACT to Transfer Probate Jurisdiction to the Superior Court

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Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 4 MRSA §9-A, first paragraph, is amended to read:

The Supreme Judicial Court shall have the power and authority to prescribe, repeal, add to, amend or modify rules of evidence with respect to any and all civil actions or other proceedings, and any and all proceedings in criminal cases before complaint justices, District Courts, ~~probate courts~~, Superior Courts and the Supreme Judicial Court.

Sec. 2 4 MRSA §57, first sentence, as amended, is amended to read:

The following cases only come before the court as a court of law: cases on appeal from the Superior Court or a single Justice of the Supreme Judicial Court ~~or from the probate courts~~; questions of law arising on reports of cases, including interlocutory orders or rulings of such importance as to require, in the opinion of the justice, review by the law court before any further proceedings in the action; agreed statement of facts; cases presenting a question of law; all questions arising in cases in which equitable relief is sought; motions to dissolve injunctions issued after notice and hearing or continued after a hearing; questions arising on habeas corpus, mandamus and certiorari and questions of state law certified by the federal courts.

Sec. 3. 4 MRSA §101, first sentence, is amended to read:

The Superior Court, as heretofore established, shall consist of 17 ~~14~~ justices and such Active Retired Justices as may be appointed and serving on said court, learned in the law and of sobriety of manners.

Sec. 4 4 MRSA §105 is amended to read:

The Superior Court, exclusive of the Supreme Judicial Court, shall have and exercise jurisdiction and have and exercise all of the powers, duties and authority necessary for exercising the jurisdiction in any and all matters either original or appellate, which were, prior to January 1, 1930, within the jurisdiction of the Supreme Judicial Court or any of the Superior Courts, whether cognizable at law or in equity, except as concurrent or exclusive jurisdiction is vested in the District Court, and except as provided in Title 14, section 5301, provided that it shall have and exercise none of the jurisdiction, powers, duties and authority of the Supreme Judicial Court sitting as a law court. The Superior Court shall have and exercise the jurisdiction vested in it by Title 18-A, section 1-302, and shall have and exercise jurisdiction and have and exercise all of the powers, duties and authority necessary for exercising the jurisdiction in any and all matters which were, prior to January 1,1981, within the jurisdiction of the courts of probate, whether cognizable at law or in equity, including the probate of wills, the granting of letters testamentary or of administration, the adoption of children, the changing of names of persons, and the appointment of guardians for minors and others according to law, except as concurrent or exclusive jurisdiction is vested in the District Court. A single Justice of the Supreme Judicial Court shall have and exercise all of the powers, duties and authority necessary for exercising the same jurisdiction as the Superior Court, to hear and determine, with his consent, any issue in a civil action in the Superior Court as to which the parties have no right to trial by jury or in which the right to trial by jury has been waived, except actions for divorce, annulment or separation.

Sec. 5. 4 MRSA §110 is amended to read:

The Chief Justice of the Supreme Judicial Court shall assign the Justices of the Superior Court to each of the judicial regions as the case load requires. The Chief Justice of the Supreme Judicial Court may assign one or more of the Justices of the Superior Court in any county to hear all cases in which jurisdiction is based upon 18-A MRSA §1-302 and those cases which were within the jurisdiction of the courts of probate prior to January 1, 1981.

The regional presiding justices shall establish the times and places for holding court within their respective regions, shall schedule the business to be conducted and shall specify when the grand jury shall be summoned. A grand jury may be specially summoned at any time by order of a Justice of the Superior Court.

Sec. 6 4 MRSA §118 is amended to read:

Effective July 1, 1976, each county shall pay annually to the State for the support of the Supreme Judicial and Superior Courts an amount equal to the direct expenditures by that county during the calendar year 1975 for the support of the Superior and Supreme Judicial Courts in all categories of expense assumed by the State as of July 1, 1976, less the amount received by that county from fines, fees, forfeitures, and other revenues from the District, Superior and

Supreme Judicial Courts during 1975. Such payments shall be made in equal semiannual installments on July 1st and January 1st of each year. The amount of direct expenditures by the counties during the year 1975 shall be fixed and confirmed by the Treasurer of State.

In addition, effective January 1,1981, each county shall pay annually to the State for the support of the probate court and registry an amount equal to the direct expenditures by that county for the calendar year 1980, for the support of that court and registry, less the amount received by the register of probate of that county from fees and other revenues from the probate court during 1980. Such payments shall be made in equal semiannual installments on July 1st and January 1st of each year. The amount of these direct expenditures by each county for the calendar year 1980 shall be fixed and confirmed by the Treasurer of State. The counties shall continue to make available the space and facilities provided for the probate court and registry that they provided on December 31, 1980 as needed pursuant to the determination of the Chief Justice of the Supreme Judicial Court.

Sec. 7 4 MRSA §§201-203, as amended, are repealed.

Sec. 8. 4 MRSA §§251-253, as amended, are repealed.

Sec. 9 4 MRSA §§301-311, as amended, are repealed.

Sec. 10. 4 MRSA §352 is repealed.

Sec. 11. 4 MRSA §451, 2nd sentence, is amended to read:

The council shall be composed of the Chief Justice of the Supreme Judicial Court, who shall also serve as chairman, the Attorney General, the Chief Judge of the District Court, and the Dean of the University of Maine School of Law, each to serve ex officio, and an Active or Retired Justice of the Supreme Judicial Court, two Justices of the Superior Court, one Judge of the District Court, ~~one judge of a probate court~~, one clerk of the judicial courts, two members of the bar and six laymen, to be appointed by the Governor.

Sec. 12. 4 MRSA §§751-756 are repealed.

Sec. 13. 4 MRSA §555, as amended by P.L. 1979 ch. 541, is repealed and the following enacted in its place:

§555. Fee Schedule

The Supreme Judicial Court shall have the authority to prescribe rules establishing the fees of clerks of the judicial courts and registers of probate.

Sec. 14. 9-B MRSA §625 is amended to read:

An administrator, executor, assignee, guardian, conservator, receiver or trustee; any court, including courts of ~~probate and~~ insolvency; officers and treasurers of towns, cities, counties; and savings banks of this State may deposit any moneys, bonds, stocks, evidences of debt or of ownership in property or any personal property with a trust company; and any of said courts may direct any person deriving authority therefrom to so deposit the same.

Sec. 15. 13 MRSA §3062, last paragraph, is amended to read:

No transfer of such funds or conveyance of any other kind of property shall be made without the approval of a Justice of a Superior Court ~~or the judge of probate~~ for the county in which the donor resides or resided at the time of his decease, if the property was acquired by gift or under any trust agreement or testamentary provision.

Sec. 16. 14 MRSA §1211, last sentence, is amended to read:

The following persons are exempt from serving as jurors and their names shall not be placed on the list: The Governor, councilors, judges, clerks and deputy clerks of common law courts, Secretary and Treasurer of State, all officers of the United States, ~~judge of probate~~, physicians and surgeons, dentists, sheriffs, counselors and attorneys at law.

Sec. 17. 14 MRSA §7561 is amended to read:

If such executor or administrator, being heir or devisee, commits such trespass or waste, on proof thereof before a Justice of the Superior Court ~~the judge of probate~~, he shall be liable to the same extent as the heirs or devisees. In both cases, the damages, when recovered by the personal representative or adjudged against him by a Justice of the Superior Court ~~the judge of probate~~, shall be accounted for in the administration acount.

Sec. 18. 16 MRSA §551, first sentence, is amended to read:

In trials before ~~probate courts~~, arbitrators, referees under Title 14, Chapter 303, and county commissioners, depositions may, upon order of the tribunal before which the matter is pending and on good cause shown, be taken and used in the manner provided by rule for depositions in the Superior Court.

Sec. 19. 16 MRSA §651, as amended, is amended to read:

The rules of evidence in special proceedings of a civil nature, such as before referees, auditors, and county commissioners, are the same as provided for civil actions. ~~The rules of evidence in courts of probate are as provided in Title 18-A, section 1-109~~.

Sec. 20. 18-A MRSA §1-201(5) is amended to read:

(5) "Court" means the Superior Court ~~any one of the several courts of probate~~ of this State established as provided in Title 4, Section 101 ~~sections 201 and 202~~.

Sec. 21. 18-A MRSA §1-201(21-A) is amended to read:

(21-A) "Judge" means a Justice of the Superior Court ~~the judge of any one of the several courts of probate~~ as defined in paragraph (5).

Sec. 22. 18-A MRSA §1-305, second sentence, is amended to read:

The register shall be subject to the supervision and authority of the Chief Justice of the Supreme Judicial Court ~~judge of the court in which such register serves~~.

Sec. 23. 18-A MRSA §1-306 is repealed and the following enacted in its place:

§1-306. Jury trial

There is no right to trial by jury in any matter within the jurisdiction of this Code except as provided by the Constitution and laws of this State and the United States.

Sec. 24. 18-A MRSA §1-309 is repealed.

Sec. 25. 18-A MRSA §1-311 is enacted to read:

§1-311. Oaths and acknowledgments

All oaths required to be taken by personal representatives, trustees, guardians, conservators, or of any other persons in relation to any proceeding under this Title, or to perpetuate the evidence of the publication of any order of notice, may be administered by the judge, register of probate, or any justice of the peace or notary public. A certificate thereof, when taken out of court, shall be returned into the registry of probate and there filed. When any person of whom such oath is required, including any parent acknowledging consent to an adoption, resides temporarily or permanently without the State, the oath or acknowledgment may be taken before and be certified by a notary public without the State, a commissioner for the State of Maine or a United States Consul.

Sec. 26. 18-A MRSA §1-501 is repealed and the following enacted in its place:

§1-501. Appointment; bond; salaries; copies

For each county, the Chief Justice of the Supreme Judicial Court shall appoint a suitable person to act as register of probate for that county. If the business of any county does not require the full-time service of a register of probate, the Chief Justice may appoint a part-time register of probate for such county.

Registers of probate in the several counties shall receive annual salaries as determined by the Chief Justice.

The salaries of the registers of probate shall be in full compensation for the performance of all duties required of register of probate. They may make copies of wills, accounts, inventories, petitions and decrees and furnish the same to persons calling for them and may charge a reasonable fee for such service, which shall be deemed a fee for the use of the State. Exemplified copies of the record of the probate of wills and the granting of administrations, guardianships, and conservatorships, copies of petitions and orders of notice thereon for personal service, appeal copies and the fees for abstracts and copies of the waiver of wills and other copies required to be recorded in the registry of deeds shall be deemed to be official fees for the use of the State.

Nothing in this section shall be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge.

Sec. 27. 18-A MRSA §1-502 is repealed and the following enacted in its place:

§1-502. Condition of bond

The register of probate shall faithfully perform all the duties of his office, pay over all moneys and safely keep and immediately deliver all records, files, papers, muniments in said office and property of the county or state as required by law.

Sec. 28. 18-A MRSA §1-503 is amended to read:

Registers of probate shall have the care and custody of all files, papers and books belonging to the probate office; and shall duly record all wills proved, letters of administration or guardianship granted, bonds approved, accounts allowed, all petitions for distribution and decrees thereon and all petitions and decrees ~~and licenses~~ relating to the sale, exchange, lease or mortgage of real estate, all petitions and decrees relating to adoption and change of name, and such orders and decrees of the judge, and other matters, as he directs. They shall keep a docket of all probate cases and shall, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding so that at all times the docket will show the exact condition of each case. ~~Any register may act as an auditor of account when requested to do so by the judge and his decision shall be final unless appeal is taken in the same manner as~~

~~other probate appeals~~. The records may be attested by the volume, and it shall be deemed to be a sufficient attestation of such records, when each volume thereof bears the attest with the written signature of the register or other person authorized by law to attest such records. The registers of probate may bind in volumes of convenient size original inventories and accounts filed in their respective office, and when so bound and indexed, such inventories and accounts shall be deemed to be recorded in all cases where the law requires a record to be made, and no further record shall be required.

Sec. 29. 18-A MRSA §1-505, last sentence, is amended to read:

Beneficiaries in a will shall, upon application to the register of probate, be furnished with a copy of so much of any probated will as relates to them, upon payment of a fee in an amount determined under rules prescribed by the Supreme Judicial Court ~~of one dollar provided the copy does not exceed 10 lines of legal cap paper of not less than 10 words in each line, and 10 cents for each additional line of 10 words~~.

Sec. 30. 18-A MRSA §1-506 is amended to read:

The Chief Justice of the Supreme Judicial Court ~~Any register of probate in this State~~ may appoint a deputy register of probate for the county, ~~with the approval of the county commissioners~~. The deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as the deputy shall have the same force and effect as the signature of the register. ~~The deputy shall give bond for the faithful discharge of his duties in such sum and in the same manner as the register of probate~~. The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes his duties or another is qualified as register. The deputy register shall receive an annual salary as determined by the Chief Justice. ~~as established by the register and approved by the county commissioners~~.

In the case of the absence of the register in any county where no deputy has been appointed as above authorized, or a vacancy in the office of register of probate due to death, resignation or any other cause, the Chief Justice ~~the judge~~ shall appoint a suitable person to act as register pro tempore until the register resumes his duties or another is qualified as register. ~~He shall be sworn and, if the judge requires it, give bond as in the case of the register~~.

Sec. 31. 18-A MRSA §1-507 is repealed and the following enacted in its place:

§1-507. Inspection of register's conduct of office

The Chief Justice of the Supreme Judicial Court may cause the records of each register of probate to be examined and when found deficient, direct them to be immediately made or corrected, and when such order is not obeyed, the fact of such deficiency shall be certified to the Treasurer of State, who shall cause the register's bond to be sued. The money recovered in such action shall be applied under

direction of the court, to complete the deficient records. If not sufficient, the balance may be recovered by the Treasurer of State in an action founded on the bond and facts.

Sec. 32. 18-A MRSA §1-508 is amended to read

When a register is unable to perform his duties or neglects them, a Justice of the Superior Court shall certify such inability or neglect to the Chief Justice of the Supreme Judicial Court ~~county treasurer~~, the time of its commencement and termination, and what person has performed the duties for the time. Such person shall be paid ~~by the treasurer~~ in proportion to the time that he has served and the amount shall be deducted from the register's salary.

Sec. 33. 18-A MRSA §1-510 is repealed and the following enacted in its place:

§1-510. Counseling; Conflict of Interest

(a) No register or deputy register of probate may engage in the practice of law. Nor shall he act as a counselor in or out of court in the drafting of any document or paper which he is by law required to record; provided, however, that nothing in this section shall be deemed to preclude any register or deputy register of probate from rendering assistance of a general nature to the bar or public in the ordinary course of his duties.

(b) No register or deputy register of probate shall serve as personal representative, guardian, or conservator of the estate, person or property of any person unless such person is a member of his family; nor shall he commence or conduct, either personally or by an agent, any matter in, or serve as trustee of any trust which comes before, the Court in the county where he is register or deputy register. The phrase "member of his family," as used herein, includes a spouse, child, grandchild, parent, grandparent, or other relative with whom the register or deputy register maintains a close personal relationship. Whenever a register or deputy register serves as personal representative, guardian or conservator for a member of his family, or as a trustee of any trust which comes or might come before the Court in the county where he is register or deputy register, the matter shall be transferred to, or brought in, the Court in any county other than the county where he is register or deputy register.

(c) If any register or deputy register of probate has or may have any beneficial interest in any estate or other matter instituted in the court in the county in which he is register or deputy register, the proceedings shall be conducted in the Superior Court in any adjoining county.

Sec. 34. 18-A MRSA §1-511 is amended to read:

For all approved blanks, forms or schedule paper required in probate proceedings, the register shall charge fees which shall be set

in an amount determined under rules prescribed by the Supreme Judicial Court ~~by the register and approved by the county commissioners so as not to incur a loss to the county for such services.~~ Such fees shall be payable by the register to the Treasurer of State ~~county treasurer~~ for the use and benefit of the State ~~county~~.

Sec. 35. 18-A MRSA §1-601, first sentence, is amended to read:

§1-601. Costs in contested cases in probate court

In contested cases under this Code ~~in the original or appellate court of probate~~, costs may be allowed to either party, including reasonable witness fees, cost of depositions, hospital records or medical reports and attorney's fees, to be paid to either or both parties, out of the estate in controversy, as justice requires.

Sec. 36. 18-A MRSA §1-602 is repealed.

Sec. 37. 18-A MRSA §1-603 is amended to read:

Registers of probate shall account monthly ~~for each calendar quarter~~ under oath to the State Auditor ~~county treasurers~~ for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount of the same ~~for each calendar quarter~~ to the Treasurer of State ~~treasurers of their respective counties~~ at such times and in such manner as the Chief Justice of the Supreme Judicial Court or his designee shall from time to time specify ~~not later than the 15th day of the following month~~.

Sec. 38. 18-A MRSA §1-604, first sentence, is amended to read:

When a partition of real estate is made by order of a judge ~~of probate~~, the expenses thereof shall be paid by the parties interested in proportion to their interests; but where such expenses accrue prior to the closing order or statement of the personal representative of the deceased owner of such real estate, having in his hands sufficient assets for the purpose, he may pay such expenses and allow the same in his account.

Sec. 39. 18-A MRSA §§1-605 and 1-606 are repealed.

Sec. 40. 18-A MRSA §3-105 is repealed and the following enacted in its place:

§3-105. Proceedings affecting devolution and administration; jurisdiction of subject matter

Persons interested in decedents' estates may apply to the register for determination in the informal proceedings provided in this Article, and may petition the court for orders in formal proceedings wihin the court's jurisdiction including but not limited to those described in this

Article. The court may hear and determine formal proceedings involving administration and distribution of decedents' estates after notice to interested persons in conformity with Section 1-401. Persons notified are bound though less than all interested persons may have been given notice.

Sec. 41. 18-A MRSA §3-106 is repealed.

Sec. 42. 18-A MRSA §5-611, first sentence, is amended to read:

The public guardian or conservator shall not be required to file bonds in individual guardianships or conservatorships, but shall give a surety bond for the joint benefit of the wards or protected persons placed under the responsibility of the public guardian or conservator and the State of Maine with a surety company or companies authorized to do business within the State, in an amount not less than the total value of all assets held by the public guardian or conservator, which amount shall be computed at the end of each state fiscal year and approved by a Justice of the Superior Court ~~the judge of the probate court for Kennebec County~~.

Sec. 43. 18-A MRSA §5-612 (b), last sentence, is amended to read:

Claims for services rendered by State agencies shall be submitted to the ~~probate~~ judge for approval before payment.

Sec. 44. 18-A MRSA §7-201, first sentence, is amended to read:

The court has jurisdiction ~~concurrent with the Superior Court~~ of proceedings initiated by interested parties concerning the internal affairs of trusts.

Sec. 45. 18-A MRSA §7-502, first sentence, is amended to read:

Unless ordered by decree of the court ~~Superior Court~~, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it, as accountant, may by petition to the court ~~Superior Court or the probate court~~, in the county where the accountant has its principal place of business, secure approval of such accounting on such conditions as the court may establish.

Sec. 46. 18-A MRSA §8-101 is amended to read:

If a person entitled to or having an interest in property within the jurisdiction of the State has disappeared or absconded from the place within or without the State where he was last known to be, and has no agent in the State, and it is not known where he is, or if such person, having a spouse or minor child dependent to any extent upon him for support, has thus disappeared or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is know that he is without the State, anyone who would

under the law of the State be entitled to administer upon the estate of such absentee if he were deceased, may file a petition under oath in the ~~probate~~ court for the county where such property is situated or found, stating tha name, age, occupation and last known residence or address of such absentee, the date and circumstances of the disappearing or absconding, and the names and residences of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, and containing a schedule of the property, real and personal so far as known, and its location within the State, and praying that such property may be taken possession of, and a receiver thereof appointed under this Part.

Sec. 47. 18-A MRSA §8-304 is amended to read:

Except as otherwise provided by section 3-603 through 3-606, 4-204, 4-207, 5-411, 5-412, 5-432, and 7-304, no bond required to be given to the judge ~~of probate~~ or to be filed in the probate office is sufficient until it has been examined by the judge and his approval written thereon.

Sec. 48. 18-A MRSA §8-308 is amended to read:

If a surety company becomes surety on a bond given to a judge ~~of probate~~, the court may, upon petition of any party in interest and after due notice to all parties interested, reduce the penal sum in which the principal and surety shall be liable for a violation thereafter of the conditions of said bond.

Sec. 49. 18-A MRSA §8-309 is amended to read:

Actions or proceedings on probate bonds of any kind payable to the judge may be commenced by any person interested in the estate or other matter for which the bond was given, ~~either in the probate court in which the bond was filed or~~ in the Superior Court of that county.

Sec. 50. 18-A MRSA §8-313, first sentence, is amended to read:

The judge ~~of probate~~ may expressly authorize or instruct a personal representative or other fiduciary, on the complaint of himself or any interested person, to commence an action on the bond for the benefit of the estate.

Sec. 51. 19 MRSA §301, first paragraph, is amended to read:

Whenever a man, having a wife, a minor child or children, residing in this State and being of sufficient ability or being able to labor and provide for them, willfully and without reasonable cause, refuses or neglects to provide suitable maintenance for them, the Superior Court, ~~the probate court~~ and the District Court in the county where the wife or such minor child or children reside, or in the county where the husband or father may be found on petition of the wife for herself and for such child or children, or of such child or children by their guardian or by the municipality that is providing suitable maintenance, after such notice to the husband or father as it

may order, and hearing, may order him to contribute to the support of his wife and such minor child or children or either of them such sums payable weekly, monthly or quarterly as are deemed reasonable and just, and may enforce obedience by appropriate decrees. Pending petition hereunder, the court may order the husband to pay to the court for the wife sufficient money for the prosectuion thereof, upon default of which order execution may issue as in civil actions. Execution may issue for said sums when payable, and for costs, and when the husband is committed to jail on execution the county having jurisdiction of the process shall bear the expense of his support. Any party aggrieved by any order or decree authorized by this section and made by ~~a probate court or~~ the District Court may appeal from said order or decree in the same manner as provided for appeals from such court in other causes, and appeal may be taken from the Superior Court to the law court. Pending the determination of such appeal, the order or decree appealed from shall remain in force and obedience thereto may be enforced as if no appeal had been taken. No continuance of such appeal shall be had without the consent of the appellant or without legal cause shown therefor to the justice of said court to which appeal is had.

Sec. 52. 19 MRSA §531, first two sentences, is amended to read:

Any husband and wife jointly, or any unmarried person, resident or non-resident of the State of Maine, may petition the Superior Court ~~probate court~~ to adopt a person, regardless of age, and for a change of his or her name. The fee for filing such petition shall be determined by rules prescribed by the Supreme Judicial Court ~~$5~~.

Sec. 53. 19 MRSA §532 (4) is amended to read:

4. Consent given before a Justice of the Superior Court ~~probate court~~. Except as provided in subsection 5, consent shall be given in front of a Justice of the Superior Court ~~judge of probate~~. Before consent is given, the judge shall fully explain the effect of that consent, and shall make a determination that the consent is freely and knowledgeably given.

Sec. 54. 19 MRSA §532-A is amended to read:

The parents or surviving parent of a child, or, if the child is illegitimate, the mother or the mother and putative father if the judge so requires under section 532-C, with the approval of a justice ~~the judge~~ of the Superior Court ~~probate~~ of any county within the State and after a determination by such judge ~~of probate~~ that a surrender and release is for the best interest of all parties, may surrender and release all parental rights or interests in and to such child and the custody and control thereof to a child placing agency duly licensed in Maine or to the State Department of Human Services for the purpose of enabling such licensed child placing agency or State Department of Human Services to have such child adopted by some suitable person, and its name changed when a change is desirable, and the child made an heir at law under this chapter. The effect of this surrender and release shall be fully explained by the judge ~~of probate~~ to the parent

or parents executing the same. The surrender and release approved as aforesaid shall be filed with the petition of adoption of the child in the Superior Court ~~probate court~~. The surrender and release shall be executed in triplicate; one of the copies shall be filed in the court in which it is executed and the original and other copy shall be given to the transferee thereunder.

Sec. 55. 19 MRSA §532-C, first paragraph, is amended to read:

When the mother of an illegitimate child wishes to consent to the adoption of the child or execute a surrender and release for the purpose of adoption of the child and the putative father has not consented to the adoption of the child or joined in a surrender and release for the purpose of adoption of the child, or waived his right to notice, the mother must first file an affadavit with a justice of the Superior Court ~~judge of probate~~ so that the Justice ~~judge~~ may determine whether the putative father of the child must be given notice of the proceedings.

Sec. 56. 19 MRSA §532-C, first sentence of the third paragraph, is amended to read:

If the judge finds that the putative father has waived his right to notice in a document acknowledged before a justice of the peace, notary public or a justice of the Superior Court ~~judge of probate~~, which document must indicate that the putative father understands the consequences of the waiver of notice, the judge shall rule that only the mother of the illegitimate child must consent to the adoption of the child or execute a surrender and release for the purpose of adoption of the child.

Sec. 57. 19 MRSA §532-C, first sentence of the fourth paragraph, is amended to read:

If after notice, the putative father of the child wishes to establish parental rights to the child, he must, witin 20 days after notice has been given or within such longer period as the judge may require by order, petition a justice of the Superior Court ~~judge of probate~~ to grant him the exclusive care and custody of the illegitimate child.

Sec. 58. 19 MRSA §532-C, seventh paragraph, is amended to read:

If the judge ~~of probate~~ finds that the putative father of the child has not petitioned or appeared within the required period as set out in this section, he shall rule that the putative father has no parental rights and that only the mother of the child must consent to the adoption of that child or execute a surrender and release for the purpose of adoption of that child.

Sec. 59. 19 MRSA §532-C, ninth paragraph, is amended to read:

An appeal shall lie from any ruling under this section, as in other civil cases ~~to the supreme court of probate~~, and no consent to the adoption of, or surrender and release for the purpose of adoption of, the illegitimate child shall be approved pending such appeal.

Sec. 60. 19 MRSA §534 is amended to read:

All Superior Court and probate court records relating to any adoption decreed on or after August 8, 1953, are declared to be confidential. The Superior Court ~~probate courts~~ shall keep records of such adoptions segregated from all other court records. Such adoption records may be examined only upon authorization by a Justice ~~the judge~~ of the Superior Court ~~probate court~~. In any case where it is considered proper that such examination be authorized, a Justice ~~the judge~~ may in lieu of such examination, or in addition thereto, grant authority to the register of probate to disclose any information contained in such records by letter, certificate or copy of the record.

Sec. 61. 19 MRSA §538, first sentence, is amended to read:

Any justice of the Superior Court ~~judge of probate~~ may, on petition of two or more persons, after notice and hearing and for good cause shown, reverse and annul any decree of the Superior Court or probate court in his county, whereby, any child has been adopted under this chapter.

Sec. 62. 19 MRSA §781 is amended to read:

If a person desires to have his name changed, he may petition a Justice of the Superior Court ~~the judge of probate~~ in the county where he resides; or, if he is a minor, his legal custodian may petition in his behalf, and the Justice ~~judge~~, after due notice, may change the name of such person and shall make and preserve a record thereof. The fee for filing such petition shall be determined by rules prescribed by the Supreme Judicial Court ~~$5~~.

Sec. 63. 22 MRSA §1182, first sentence, is amended to read:

Because of emergency or other cause shown by affidavit or other proof, any Justice of the Superior Court ~~judge of probate~~ or Judge of a District Court, if satisfied that the public health and welfare will not be injuriously affected thereby, may make an order, in his discretion, on joint application of both of the parties desiring the marriage license, dispensing with the requirements of section 1181 as to either or both of the parties, including the laboratory statement, or, if the statement or statements provided for by such section have been filed, extending the 30-day period following the examination and test and extending the 60-day period of validity of any certificate to not later than a day specified, which shall be not more than 90 days after the examination and test.

Sec. 64. 22 MRSA §1354 is amended to read:

Before any restraint shall be imposed under the authority of section 1353, a voluntary agreement shall be made in writing by the person suffering from the effects of the use of an opiate, cocaine, chloral hydrate, other narcotic or barbiturate, to the imposition of restraint upon his actions, if necessary, and such agreement must be witnessed by the husband, wife or parent of the person aforesaid, or

one of the municipal officers of the city or town in which the person, so suffering, is a resident, and approved, after reasonable notice, by a Justice of the Superior Court ~~or the judge of probate~~ in the county where the patient resides.

Sec. 65. 22 MRSA §1355 is amended to read:

Any Justice of the Superior Court ~~or the judge of probate~~ in the county where the patient resides may, at his discretion, require the department or one of the county examiners of insane criminals, to investigate as to the progress of any such case, and, upon his or its certificate that further restraint is unnecessary, may annul the agreement and the person restrained shall be immediately released upon the order of said Justice.

Sec. 66. 22 MRSA §1819, last sentence, is amended to read:

Unless ordered by decree, the hospital so investing said funds is not required to render a court accounting with regard to such funds, but it, as accountant, or any interested person, may by petition to the Superior Court ~~or the probate court~~ in the county where said hospital is located secure approval of such accounting on such conditions as the court may establish.

Sec. 67. 22 MRSA §3792, first sentence, is amended to read:

Whenever a duly authorized agent of the department, sheriff or police officer, or 3 or more citizens of any municipality believe that a minor child under the age of 18 years is living in circumstances which are seriously jeopardizing the health, welfare or morals of that child, he or they may petition ~~the probate court or~~ the District Court in the county where the minor child resides, alleging that the child is living in circumstances which are seriously jeopardizing the health, welfare or morals of that child and that that child is in need of protective custody, and praying that suitable and proper provisions be made for the care, custody, support and education of the child named in the petition.

Sec. 68. 22 MRSA §3792, first sentence of the fourth paragraph, is amended to read:

The ~~probate court or~~ District Court shall have jurisdiction to hear such a petition in all cases involving the alleged need for protective custody of a minor child, without regard to the existence of a valid decree of custody in any other court and notwithstanding the provisions of the Uniform Child Custody Jurisdiction Act, Title 19, Sections 801 to 825.

Sec. 69. 29 MRSA §1911, fifth sentence, is amended to read:

When service is made upon the public administrator, he shall forthwith petition the Superior Court ~~probate court~~ of his county for probate of the defendant's estate, any other statutory requirements for probate of estates notwithstanding.

Sec. 70. 30 MRSA §2 (1), as amended, is amended by striking all references to judges of probate and registers of probate that appear therein.

Sec. 71. 30 MRSA §65 (1), first sentence, is amended to read:

The county commissioners shall set the amount to be charged by ~~the register of probate and~~ the register of deeds for the publication of notices required by law.

Sec. 72. 30 MRSA §703 is amended to read:

§702. Annual statement of financial standing.

Each treasurer shall, at the end of each year in connection with the commissioners, make a statement of the financial condition of the county showing in detail all moneys received into and paid out of its treasury, including a statement in detail of all sums received under ~~Title 18, Section 2351~~, Title 33, Chapter 27, and other facts and statistics necessary to exhibit the true state of its finances, including the number of weeks' board and expense of clothing furnished prisoners, and shall publish in pamphlet form a reasonable number of copies for distribution among its citizens.

Sec. 73. 33 MRSA §1001 (4) is amended to read:

4. Court. "court" means the Superior Court ~~probate court.~~

Sec. 74. 33 MRSA §353, seventh sentence, is amended to read:

In all cases in which a personal representative, an executor, administrator, guardian or conservator or trustee, master or receiver or similar officer has been authorized or ordered by a court ~~of probate or other competent court~~ to sell or exchange real estate and has sold or exchanged such real estate, or any interest therein in accordance with such authority, without first having filed a bond covering the faithful administration and distribution of the avails of such sale when such bond is required by law or has failed to comply with any other prerequisite for the issuance of the license authorizing such sale or exchange, and has given a deed thereof to the purchaser of the same or to the person with whom such exchange was authorized or ordered; or where such personal representative, executor, administrator, guardian, conservator, trustee, master or receiver, or other similar officer, appointed as aforesaid, has acted in such capacity under a decree of any such court appointing him to such office, but which such decree of appointment erroneously or by inadvertence excused him from giving bond in such capacity when such bond is required by law and not in fact given, such deeds and acts heretofore done are validated.

Sec. 75. 33 MRSA §1216 is amended to read:

Nothing in this chapter shall preclude the rights of the State to title to property under Title 18-A ~~18~~, Section 2-105 ~~1001, subsection 8~~ or in any action brought to quiet title with respect to island property.

Sec. 76. 34 MRSA §2465, third sentence, is repealed.

Sec. 77. 34 MRSA §2515, third sentence, is amended to read:

The State of Maine shall have a claim against the estate of any patient and against the estate of any person legally liable for care and treatment under this chapter, for any amount due and owing to the State of Maine at the date of death of such patient or such person, including any claim arising under an agreement entered into under this chapter, enforceable in the Superior Court ~~probate court~~.

Sec. 78. 36 MRSA §559 (2), second sentence, is amended to read:

Such tax shall be charged against the estate and shall be allowed by a Justice of the Superior Court ~~the judge of probate~~; but when the personal representative notifies the assessors that he has no funds of the estate to pay such tax and gives them the names of the heirs or devisees, and the proportions of their interests in the real estate to the best of his knowledge, the real estate shall no longer be taxed to him.

Sec. 79. 36 MRSA §943, eighth paragraph, first sentence, is amended to read:

Whenever the person against whom the tax is assessed shall have died after the tax has been committed and prior to the expiration of the 18-month period of foreclosure and such person shall have left a will affixed for probate, a Justice of the Superior Court ~~the probate judge~~ of the county wherein said will is offered upon petition of any devisee of the real estate on which said tax is unpaid may grant a period of redemption not to exceed 60 days following the final allowance or disallowance of said will.

Sec. 80. 36 MRSA §3526, last paragraph, as amended, is amended to read:

Any ~~judge of probate and any~~ Justice of the Superior Court upon application of the State Tax Assessor may compel the attendance of witnesses and the giving of testimony before the State Tax Assessor in the same manner, to the same extent and subject to the same penalties as if before said court.

Sec. 81. 36 MRSA §3527, first sentence, is amended to read:

If, upon the decease of a person leaving an estate which may be liable to pay an inheritance tax, a will is not offered for probate or an application for administration is not made within six months after the

date of death, or if the executor or administrator does not qualify within said period, the Superior Court ~~probate court~~, upon application by the State Tax Assessor, may appoint an administrator.

Sec. 82. 36 MRSA §3581 is repealed and the following enacted in its place:

Every personal representative or trustee, in addition to any inventory otherwise required, shall within three months of the date of his appointment file with the State Tax Assessor on blanks to be furnished by the State Tax Assessor an inventory upon oath containing a complete list of all the property of the estate or trust within his knowledge.

Trustees, grantees or donees under conveyances or gifts made during the life of the settlor, grantor or donor, and persons to whom beneficial interests shall accrue by survivorship, shall within six months of the date of death of the decedent file with the State Tax Assessor on blanks to be furnished by the State Tax Assessor an inventory upon oath of all property subject to tax within his knowledge.

The State Tax Assessor may, for cause, extend the time for filing an inventory. If a person required to file an inventory under this section neglects or refuses to file the inventory, he shall be liable to a penalty of not more than $500. On complaint of the State Tax Assessor, a Justice of the Superior Court may remove any person appointed by the court from his position as personal representative or trustee for neglect or refusal to file an inventory.

Sec. 83. 36 MRSA §3584, first sentence, is amended to read:

Except as otherwise provided, no account of a personal representative or trustee showing any payment except debts, funeral expenses, expenses of administration and legacies or distributive shares wholly exempt from inheritance taxes shall be allowed by the Superior Court ~~probate court~~ unless with the consent of the State Tax Assessor or unless such account shows, and a Justice ~~the judge~~ of said court finds, that all inheritance taxes already payable have been paid and that all taxes which may become due have been secured as provided.

Sec. 84. 36 MRSA §3686, third sentence, as amended, is amended to read:

Whenever no administration bond is otherwise required, the Justice of the Superior Court ~~judge of probate~~, notwithstanding any provision of Title 18-A, Sections 3-603 through 3-606, may, and unless he shall find that any inheritance or estate tax due and to become due the State is reasonably secured by the lien upon real estate hereinbefore provided, shall require a bond payable to him or his successor sufficient to secure the payment of all inheritance taxes and interest conditioned in substance to pay all inheritance and estate taxes due to the State from the estate of the deceased with interest thereon.

Sec. 85. 36 MRSA §3922 is amended to read:

The compensation and expenses of the members of the board and its employees may be agreed upon among such members and the personal representative ~~executor or administrator~~ and if they cannot agree shall be fixed by the ~~probate~~ court of general jurisdiction of the state determined by the board to be the domicile of the decedent. The amounts so agreed upon or fixed shall be deemed an administration expense and shall be payable by the personal representative ~~executor or administrator~~.

Sec. 86.

(a) This Act shall take effect on January 1, 1981.

(b) Registers of probate holding office at the time this Act becomes effective shall continue to serve in their respecttive counties until their terms expire, subject to the direction of the Chief Justice and the provisions of Title 18-A.

(c) Judges of probate holding office at the time this Act becomes effective shall continue to serve until their terms expire and shall sit in the Superior Court on probate matters by assignment of the Chief Justice.

(d) The salary of any such judge of probate continuing in office after the effective date of this Act shall be paid by the State from the General Fund.