

Draft of Ch. VI, Pt. C, § 1(c) discussing judicial administration actions during the tenure of Chief Justice Robert B. Williamson (1956 – 1970). This is part of a draft of a book by Donald G. Alexander, *The Maine Supreme Judicial Court and the Maine Judiciary: Prepared in Recognition of the 200th Anniversary of the Creation of the State of Maine and the Maine Supreme Judicial Court.*

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(c) Probate Court and Practice Reform – Considered

Like the Court of Common Pleas, the county Probate Courts transitioned to Maine in essentially the same form and function as they had existed when the counties were part of Massachusetts. But unlike the other Maine courts, a 1967 study concluded: “There evidently has been very little change since 1820 in the operation of the probate courts except perhaps in terms of procedures, and forms used, and method of selection of judges.”¹

Probate Judges were originally appointed by the Governor with review by the Executive Council.² In 1855 the method of selection was changed to county elections, Resolves 1855, ch. 273, with four year terms. Me. Const. Art. VI, §6. The 1855 Resolve also made Registers of Probate and County Sheriff’s elective offices with four year terms.

Within the county, the Probate Courts had jurisdiction to probate wills, grant letters for administration of estates of deceased persons who were residents of the county or who, not being Maine residents, died leaving an estate to be administered in the county, and of all matters relating to the settlements of estates. 4 M.R.S.A. § 251 (1964). The Probate Courts also had jurisdiction to approve adoptions, grant name changes of persons, appoint guardians for children and certain adults, and oversee guardianships. *Id.* The Probate Courts in Kennebec and Penobscot Counties were authorized to

¹ Bureau of Public Administration, University of Maine, Report to the Probate Court Revision Committee of the Maine Legislature, *Report of Preliminary Analysis of the Feasibility of a Probate District Court System for Maine*, (Report No. 67-1, May 10, 1967) at 1.

² *Id.*

commit persons to the State mental hospitals.³ The Kennebec County Probate Court also was authorized to commit persons to the Veterans Administration Hospital at Togus.⁴

When a Probate Court could be called upon to act in equity, its jurisdiction over equitable actions was concurrent initially with the Supreme Judicial Court, and then with the Superior Court after the 1930 creation of the statewide Superior Court. See 4 M.R.S.A. § 252 (1964). See also *In re Neely's Estate*, 136 Me. 79, 1 A.2d 772 (1938) (noting that Probate Court's equity jurisdiction is limited to matters in the court's original jurisdiction); *Norris v. Moody*, 120 Me. 151, 113 A. 24 (1921) (addressing jurisdiction in equity concurrent with the Supreme Judicial Court before creation of the statewide Superior Court).

After the 1855 change in the method of judicial selection, not much changed regarding the Probate Courts. In 1952 a study of *County Government in Maine*, conducted by Edward F. Dow for the Legislative Research Committee presented several recommendations for change in the Probate Courts.⁵

First, the study recommended that Probate Judges be appointed "on the same basis as the proposed district court judges." (The Probate Court study was apparently conducted at the same time as studies of the Municipal Courts that led, in 1961, to creation of the District Court.)

Second, that the number of Probate Judges "should be reduced, and the position made a full time, well paid job."

Third, that Registers of Probate should become appointed positions placed under the State classified service, with appointments made by the Probate Judges.

Fourth, that the number of Register of Probate offices "should be reduced to conform to the number of Probate Courts as reorganized." This recommendation likely caused considerable consternation, as, for many

³ 1967 *Report of Preliminary Analysis of the Feasibility of a Probate District Court System for Maine*, at 8.

⁴ *Id.*, at 20.

⁵ Edward F. Dow, *County Government in Maine*, study for Legislative Research Committee (October, 1952) at 17-18, as quoted in 1967 *Report of Preliminary Analysis of the Feasibility of a Probate District Court System for Maine*, at 1-2.

counties, it could have caused probate records regarding property transfers and ownership to become physically separated from the county Registries of Deeds, greatly complicating title research.

Fifth, that the court clerks within the Probate Court offices should be placed in the State classified service to be appointed by the Chief Justice.⁶

While the issues raised in the 1952 study were apparently the subject of discussions among policy makers, the next formal legislative action regarding the Probate Courts was a November 1966 report by the Intergovernmental Relations Commission, *County Government Report*, which recommended that the “probate courts be placed in districts and that the judges and registrars be appointed” with the process and organization for implementing the recommendations to be studied.⁷ Following up on this recommendation, the Legislature in early 1967 authorized a study of the feasibility of establishing a Probate District Court system.

The Bureau of Public Administration at the University of Maine was retained in late March 1967 and completed its *Report of Preliminary Analysis of the Feasibility of A Probate District Court System for Maine*, (Project Report No. 67-1) on May 10, 1967. The Director of the Bureau of Public Administration at the time was Dana R. Baggett who, in the early 1980s, became State Court Administrator. The principal field work, interviews, and collection of materials to support the study was done by William S. Cohen, an attorney then less than two years out of law school. Cohen would go on to become Second District Congressman, United States Senator, and Secretary of Defense.

Summarized,⁸ the 1967 Report, at III, indicated that:

- The problem of securing competent judges “may be pronounced” in a few counties, but the problem was not pervasive;
- Members of the Bar generally appear satisfied with Probate Court operations;
- Most Probate Judges believed having full time judges was desirable to provide the appropriate quality of administration of justice. Full time judges, it

⁶ *Id.*

⁷ 1967 *Report of Preliminary Analysis of the Feasibility of a Probate District Court System for Maine*, at 3.

⁸ The recommendations appear at pp. III-IV, and are discussed in more detail at pp. 21-36 of the 1967 *Report*.

was thought would stimulate more interest among qualified persons to seek the position and provide more time for legal research and greater professionalism among the probate judges.

With this background, the Report recommended that:

-- A district system with full time judges be created, with between five and seven districts, using combinations of counties, but with court space in each county to "continue the present system for handling probate records within easy access of the registry of deeds."

-- The full time judges should be selected by Governor's appointment rather than by county elections.

-- The District Court system should not be utilized as "the probate function would not be well attached to another type of court."

The Report recognized that financial arrangements, specific judicial selection processes and relationships to other State, county and judicial offices needed more study and resolution. To address these issues, the Report, at pp. 7-20, included an extensive cost and workload analysis for the Probate Courts, separated by county and case types.

The Report noted that one advantage of full time judges would be the elimination of ethical concerns and the potential appearance of abuse of position when the part time judges engaged in the practice of law. "Instances of the above described conflicts may be isolated or rare; nevertheless, the mirror of justice that is held up to reflect our judicial system should be removed, as far as practicable, from any stones of imputation. The judges of our other courts are not permitted to engage in the practice of law and it seems undesirable that probate judges should be allowed, or forced by circumstances, to do so."⁹

Responding to the Report, in July 1967 the Legislature approved a Concurrent Resolution, S.P. No. 710 (July 8, 1967), directing the Legislative Research Committee to "study the feasibility of establishing a Probate District Court System with full-time judges to be appointed by the Governor, with the advice and consent of the Council." The Concurrent Resolution included an appropriation of \$10,000 and authorized the hiring of consultants to support

⁹ 1967 *Report*, at 23.

completion of the study and report recommendations to the 104th Legislature that would convene in 1969. *Id.*

Anticipating the study and recommendations to change the Probate Courts to a regional system with appointed, full-time judges, the Legislature also approved and sent to the voters Resolves 1967, ch. 77, a Constitutional Amendment to authorize the Legislature to repeal the offices of Judge and Register of Probate as constitutional officers. The Constitutional Amendment was approved by the voters, 41,850 in favor, 34,454 opposed, on November 7, 1967.¹⁰

As a result of the Constitutional Amendment, Article VI, § 6 of the Maine Constitution authorizing county election of Judges and Registers of Probate for four year terms remained in effect, but with a Note: “Section 6 of Article VI has been repealed by Amendment which by virtue of Chapter 77 of the Resolves of the One Hundred and Third Legislature, 1967 ‘shall become effective at such time as the legislature by proper enactment shall establish a different Probate Court system with full-time judges.’”

Thus, the way was paved for the elected, part-time Probate Judge system to be replaced by an appointed, full-time Probate Judge system as soon as the Legislature approves such a system, without the need for further constitutional amendment. Fifty-four years later, the system remains unchanged.

In January 1969, as contemplated by the 1967 Concurrent Resolution, the Institute of Judicial Administration presented a report to the Legislative Research Committee on *The Desirability of Integrating Activities of The Probate Courts of Maine Into The Superior Court*. This report recommended, as suggested by its title that (i) the part-time judges be replaced with ultimately five full-time judges as vacancies in the Probate Courts occur, (ii) these judges and Probate Court business become part of the Superior Court, (iii) probate registries continue to be maintained in each county, and (iv) registers of probate be appointed in the same manner as clerks of court are appointed. *Id.*, 20, 25-26. These recommendations, or any variant of them, were not adopted.

¹⁰ See The History of Resolves Approving Constitutional Amendments, appearing on the Law and Legislative Library website (viewed 02-25-2021).

In 1979, the Legislature adopted the Probate Code, Title 18-A M.R.S., effective January 1, 1981, making great changes in process and procedure for the Probate Courts.¹¹ The great changes in the law necessitated a major revision of the Rules of Probate Procedure. In the following year, 1980, the Maine Probate Law Revision Commission presented to the Legislature a recommendation,¹² similar to the 1969 recommendation, to transfer jurisdiction of the Probate Courts to the Superior Court with the addition of judges to address the added workload. Again, no legislation making any significant change was adopted.

In 1993, the Commission to Study the Future of Maine's Courts presented a report recommending major changes in the structure of the trial courts. The recommendations included proposals that (1) the part-time Probate Judges be replaced with four full-time Probate Judges who would be part of the Judicial Branch and assigned to Probate Court regions, and (2) the offices and staffs of the Probate Courts become part of the Judicial Branch.¹³ As had the 1967 report, the 1993 report stated concern that; "The Probate Court system in Maine has been challenged for the appearance of impropriety conveyed by the presence of part-time judges who are not restricted from practicing law in the communities in which they serve."¹⁴ Again, no legislation making any significant change was adopted.

In the years since 1993, legislation has been proposed from time to time to make major reforms in the Probate Courts, but no significant changes have been adopted. This may be because, as the 1967 report noted, the bar who regularly practice in the Probate Courts appear relatively satisfied with the courts' accessibility and operations, and the Probate Courts and staffs are generally available and helpful to the many unrepresented members of the public who must deal with the Probate Courts, often at very difficult times in

¹¹ The Probate Code, based on the Uniform Probate Code, was originally enacted by P.L. 1979, ch. 540, as Title 18-A of the Maine Revised Statutes, effective January 1, 1981. The original Probate Code, Title 18-A, was repealed and replaced by Title 18-C, effective September 1, 2019, PL 2019, ch. 417, Pt. A, § 103.

¹² Maine Probate Law Revision Commission, *Report to the Legislature and Recommendations Concerning Probate Court Structure* (February 21, 1980).

¹³ *New Dimensions for Justice*, Report of the Commission to Study the Future of Maine's Courts (1993) at 72.

¹⁴ *Id.*

their lives. Sacrifice of some efficiency and professional precision to achieve more available and accommodating service to the public is not necessarily a bad thing.¹⁵

¹⁵ The recent case *In re Nadeau*, 2018 ME 18, ¶ 14, 178 A.3d 495, is one of the few ethics cases involving a conflict between a Probate Judge's judicial responsibilities and personal interests that has arisen in the years since the 1952 report. Other ethics cases involving Probate Judges that have reached the Supreme Judicial Court have generally involved judicial election related issues, not conflicts of judicial responsibilities and personal interests.