

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

Potential Models & Issues To Address

Commission Duties:

(1) Create a plan for a probate court system with full-time judges; and (2) Describe how the system will be funded.

Per the resolve, this plan **may** include features to promote:

- Timely, convenient and meaningful access to justice
- Adherence to the code of judicial responsibility
- Qualified, full-time judges
- Adequate professional staff
- Efficient practices in scheduling and case management
- Convenient, consumer-friendly processing of uncontested matters
- Economies of scale in operations, where appropriate.

Court Structure - Options	Judges (<i>presume full-time</i>)	Registries & Registers	Funding & Transition
<p>A. Retain county Probate Courts and their jurisdiction</p>	<ul style="list-style-type: none"> • Elected or appointed? • Prohibit private practice of law? • Same qualifications as current? • Maintain one judge per county or reduce number of judges by combining lower-caseload counties (<i>e.g.</i>, Maine’s prosecutorial districts)? • Increase central administration by state Judicial Branch (<i>e.g.</i>, CT, SC)? 	<ul style="list-style-type: none"> • Maintain registries and Registers as currently structured? • If combine counties for judges, also combine for Register? • Registers elected or appointed and, if the latter, by whom? • If judges are appointed and Registers remain elected, should judicial supervision of Registers be adjusted in any way? 	<p><u>Funding:</u> Probate Courts/Registries:</p> <ul style="list-style-type: none"> • Maintain county funding and county retention of filing fees? • Add any state funding? (<i>e.g.</i>, CT) • If create multi-county Probate Judges or Registers, allocate costs by: population? filings? property value (<i>e.g.</i>, WA)? <p><u>Transition:</u> If reduce number of probate judges/registers, must allow incumbents to finish their terms.</p>

Additional notes/information needed for Option A:

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<p>B. Transfer specific matters to the Superior or District Courts, but retain Probate Court jurisdiction over remaining matters</p> <p>Identify the matters transferred and retained. <i>See attached list of matters within Probate Court Jurisdiction.</i></p> <p>Possibilities suggested to date:</p> <ul style="list-style-type: none"> • Transfer protective proceedings, adoptions, name changes, support, etc. to District Court? • Transfer will/estate/trust matters to Superior Court? 	<p>Probate Courts:</p> <ul style="list-style-type: none"> • Elected or appointed? • Prohibit private practice of law? • Same qualifications as current? • Maintain one judge per county or reduce number of judges given reduced workload? • Keep separate from Judicial Branch or establish more central administration (<i>e.g.</i>, CT, SC)? <p>Superior Court and District Court:</p> <ul style="list-style-type: none"> • How many new Superior Court justices and/or District Court judges are needed? 	<p>Registries and Registers:</p> <ul style="list-style-type: none"> • What functions are retained? <ul style="list-style-type: none"> ○ Recordkeeping ○ Quasi-judicial role in informal probate matters—<i>i.e.</i>, only transfer such matters to District or Superior Court if they become contested? ○ <i>See attached list of Register authority.</i> • If combine counties for judges, also combine for Registers? • Registers elected or appointed and, if the latter, by whom? • If Probate Judges are appointed and Registers remain elected, should judicial supervision of Registers be adjusted in any way? <p>Judicial Branch court clerks:</p> <ul style="list-style-type: none"> • May clerks perform quasi-judicial role in informal probate matters (if Registers do not)? • May clerks assist with forms? • If so, may clerks assist with forms in <u>all</u> matters or have separate clerks, procedures and spaces? 	<p><u>Funding:</u> Probate Courts/Registries:</p> <ul style="list-style-type: none"> • Who establishes the fees? • Maintain county funding and county retention of filing fees? • Add any state funding? (<i>e.g.</i>, CT) • If create multi-county Probate Judges or Registers, allocate costs by: population? filings? property value (<i>e.g.</i>, WA)? • If informal matters remain with Registers, how are state costs offset if those matters are later transferred to state court? <p>Judicial Branch:</p> <ul style="list-style-type: none"> • How much will the new judges, court clerks, courtroom time, building space, security, technology, court-appointed professionals, etc. cost? • To what extent is this cost offset by increased court fee revenue? <p><u>Transition:</u> If reduce number of probate judges/registeres, must allow incumbents to finish their terms.</p>

Additional notes/information needed for Option B:

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

Potential Models & Issues To Address

Court Structure - Options	Judges (<i>presume full-time</i>)	Registries & Registers	Funding & Transition
<p>C. Eliminate Probate Courts and allocate their jurisdiction between the Superior Court and District Court</p> <p>Identify to which court each matter is transferred. <i>See attached list of Probate Court Jurisdiction.</i></p> <p>Possibilities suggested to date:</p> <ul style="list-style-type: none"> • Transfer all will/estate/trust matters to Superior Court and all other matters to District Court? 	<ul style="list-style-type: none"> • How many new Superior Court justices and District Court judges are needed? 	<p>County registries and Registers:</p> <ul style="list-style-type: none"> • Merge into Judicial Branch? • If not, what functions retained? <ul style="list-style-type: none"> ○ Recordkeeping? ○ Quasi-judicial role in informal probate matters—<i>i.e.</i>, only transfer such matters to District or Superior Court if they become contested? ○ <i>See attached list of Register authority.</i> <p>If retain Registers:</p> <ul style="list-style-type: none"> • Registers elected or appointed and, if the latter, by whom? • Do state judges have supervisory authority over Registers? For what purposes? If not, what supervision exists? <p>Judicial Branch court clerks:</p> <ul style="list-style-type: none"> • May clerks perform quasi-judicial role in informal probate matters (if Registers do not)? • May clerks assist with forms? • If so, may clerks assist with forms in <u>all</u> matters or have separate clerks, procedures and spaces? 	<p><u>Funding:</u> If retain county registries:</p> <ul style="list-style-type: none"> • Who establishes the fees? • Maintain county funding supplemented by filing fees? • Provide any state funding? • If informal matters remain with Registers, how are state costs offset if those matters are later transferred to state court? <p>Judicial Branch:</p> <ul style="list-style-type: none"> • How much will the new judges, court clerks, courtroom time, building space, security, technology, court-appointed professionals, etc. cost? • To what extent is this cost offset by increased court fee revenue? <p><u>Transition:</u> Incumbent Probate Judges and Registers must be allowed to finish their terms.</p>

Additional notes/information needed for Option C:

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Potential Models & Issues To Address

Court Structure - Options	Judges (<i>presume full-time</i>)	Registries & Registers	Funding & Transition
<p>D. Eliminate Probate Courts (transfer all jurisdiction to state trial courts) and create a:</p> <ol style="list-style-type: none"> 1. Create special trial court division to handle some or all probate matters (e.g., a “Probate Division” in the Superior Court or “Family and Probate Division” in the District Court); or 2. Separate state Probate Court to handle some or all probate matters. <p>Identify where each matter is transferred. <i>See attached list of Probate Court Jurisdiction.</i></p> <ul style="list-style-type: none"> • What matters are in the general Superior Court jurisdiction? • What matters are in the general District Court jurisdiction? • What matters are in the jurisdiction of the special division or Probate Court? 	<p><i>Option D1: Special division:</i></p> <ul style="list-style-type: none"> • How many division judges needed? • How select and assign? <ul style="list-style-type: none"> ○ Appoint specifically to the special division? (e.g., MA) ○ Elected by each county (e.g., VT) or other geographic district? ○ Trial chief specially assigns certain judges to the division? ○ All of the relevant trial court’s judges may hear division cases on a separate docket? (e.g., NH) <p><i>Option D2: State Probate Court:</i></p> <ul style="list-style-type: none"> • How many Probate Judges needed? • Appointed or elected by each county or other geographic district? • Prohibit private practice of law? <p><i>Both options:</i></p> <ul style="list-style-type: none"> • Allow cross-assignments? • How many (if any) new Superior Court justices and District Court judges are needed outside of the special division or Probate Court? 	<p>County registries and Registers:</p> <ul style="list-style-type: none"> • Merge into Judicial Branch? • If not, what functions retained? <ul style="list-style-type: none"> ○ Recordkeeping? ○ Quasi-judicial role in informal probate matters—<i>i.e.</i>, only transfer such matters to District or Superior Court if they become contested? ○ <i>See attached list of Register authority.</i> <p>If retain Registers:</p> <ul style="list-style-type: none"> • Are the elected or appointed and, if the latter, by whom? • Do state judges have supervisory authority over Registers? For what purposes? If not, what supervision exists? <p>Judicial Branch court clerks:</p> <ul style="list-style-type: none"> • May clerks perform quasi-judicial role in informal probate matters (if Registers do not)? • May clerks assist with forms? • If so, may clerks assist with forms in <u>all</u> matters or only in division or state Probate Court matters? 	<p><u>Funding:</u> If retain county registries:</p> <ul style="list-style-type: none"> • Who establishes the fees? • Maintain county funding supplemented by filing fees? • Provide any state funding? • If informal matters remain with Registers, how are state costs offset if those matters are later transferred to state court? <p>Judicial Branch:</p> <ul style="list-style-type: none"> • How much will the new judges, court clerks, courtroom time, building space, security, technology, court-appointed professionals, etc. cost? • To what extent is this cost offset by increased court fee revenue? <p><u>Transition:</u> Incumbent probate judges and registers must be allowed to finish their terms.</p>

Additional notes/information needed for Option D:

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Court Structure - Options	Judges (<i>presume full-time</i>)	Registries & Registers	Funding & Transition
E. Other Option?			

Additional notes/information needed for Option E: