

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

**Recommendations Regarding: Current Statutory Jurisdiction of Probate Courts**

Type of Matter	Cite	Does any other court share jurisdiction?	Recommendation
<b>Wills/Estates/Trusts</b>			
Probate of wills, estate administration and related proceedings (for example, to order the perpetual care of a cemetery lot with estate funds). <sup>i</sup>	<a href="#">4 M.R.S. §251; §252;</a> <sup>ii</sup> <a href="#">18-C M.R.S. §1-302; §1-306.</a>	<ul style="list-style-type: none"> <li>Register has jurisdiction over informal probate proceedings. <i>See</i> Register's duties in chart below.</li> <li>Superior Court has concurrent jurisdiction over equitable relief and exclusive jurisdiction over jury trials.</li> </ul>	
Trusts	<a href="#">18-B M.R.S. §203;</a> <a href="#">18-C M.R.S. §1-302(1)(C).</a> <sup>iii</sup>	Superior Court has concurrent jurisdiction, except: <ul style="list-style-type: none"> <li>Superior Court has exclusive jurisdiction over jury trials.</li> </ul>	
<b>Adoptions and Name Changes</b>			
Adoptions (and associated terminations of parental rights)	<a href="#">4 M.R.S. §251;</a> <a href="#">18-C M.R.S. §9-103 &amp; §9-205;</a> and <a href="#">22 M.R.S. §4051.</a>	<ul style="list-style-type: none"> <li>District Court has exclusive jurisdiction if Home Court Act applies, <i>see</i> <a href="#">4 M.R.S. §152(5-A).</a></li> <li>District Court concurrent jurisdiction to conduct reviews if Probate Court adoption is not final within 18 months.</li> </ul>	
Minor name changes	<a href="#">4 M.R.S. §251;</a> <a href="#">18-C M.R.S. §1-701; §9-308(3).</a>	<ul style="list-style-type: none"> <li>District Court has exclusive jurisdiction if Home Court Act applies, <i>see</i> <a href="#">4 M.R.S. §152(5-A).</a></li> <li>District Court has jurisdiction to change minor's name as part of an adoption decree</li> </ul>	
Adult name changes	<a href="#">4 M.R.S. §251;</a> <a href="#">19-A M.R.S. §1051.</a>	District Court has jurisdiction to change spouse's name in a divorce judgement	
<b>Protective Matters Involving Minors</b>			
Minor guardianships	<a href="#">4 M.R.S. §251;</a> <sup>iv</sup> <a href="#">18-C M.R.S. §1-302; §5-104(1).</a>	District Court exclusive jurisdiction if Home Court Act applies, <i>see</i> <a href="#">4 M.R.S. §152(5-A).</a>	
Minor conservatorships	<a href="#">4 M.R.S. §251;</a> <sup>v</sup> <a href="#">18-C M.R.S. §1-302(3).</a>	District Court exclusive jurisdiction if Home Court Act applies, <i>see</i> <a href="#">4 M.R.S. §152(5-A).</a>	
Issue or deny PPOs in child protection proceedings	<a href="#">22 M.R.S. §4031(1)(B).</a>	District and Superior Court have concurrent jurisdiction to issue/deny a PPO, but: <ul style="list-style-type: none"> <li>After the PPO petition is decided, District Court has exclusive jurisdiction.</li> </ul>	
Petitions for protection and care of unmarried noncitizens who are minors	<a href="#">18-C M.R.S. §5-104(1-A);</a> <a href="#">22 M.R.S. §4099-I.</a>	District Court has concurrent jurisdiction, except: <ul style="list-style-type: none"> <li>District Court has exclusive jurisdiction if Home Court Act applies, <i>see</i> <a href="#">4 M.R.S. §152(5-A).</a></li> </ul>	
Maine Uniform Transfers to Minors Act proceedings	<a href="#">33 M.R.S. §1652(5);</a> <a href="#">4 M.R.S. §252.</a>	<ul style="list-style-type: none"> <li>Superior Court has concurrent jurisdiction over equitable relief</li> <li>District Court has exclusive jurisdiction if Home Court Act applies<sup>vi</sup></li> </ul>	

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<b>Protective Matters Involving Adults</b>			
Adult guardianships	<a href="#">4 M.R.S. §251</a> ; <sup>vii</sup> <a href="#">18-C M.R.S. §1-302</a> ; <a href="#">§5-104(2-3)</a> .	Superior Court has concurrent jurisdiction to determine the validity of a claim against the respondent or respondent's property or to resolve questions of title to the property	
Adult conservatorships	<a href="#">4 M.R.S. §251</a> ; <a href="#">18-C M.R.S. §1-302</a> ; <a href="#">§5-104(2-3)</a> .	Superior Court has concurrent jurisdiction to determine the validity of a claim against the respondent or respondent's property or to resolve questions of title to the property	
Issue writ of habeas corpus to release debtor with mental illness who is arrested for contempt in civil action	<a href="#">14 M.R.S. §5546</a> .	Justices of the Supreme Court or Superior Court have concurrent jurisdiction to issue the writ	
<b>Other matters involving real estate</b>			
Appointment of trustee to sell real property subject to contingent remainder or executory devise	<a href="#">33 M.R.S. §153-§155</a> .	Concurrent w/District & Superior Court <ul style="list-style-type: none"> <li>• After trust created, exclusive (?)<sup>viii</sup> jurisdiction lies in Probate Court</li> </ul>	
<b>Other matters involving domestic relations or protection of persons</b>			
Issuance of marriage license when caution has been filed	<a href="#">19-A M.R.S. §653</a> .	Exclusive to Probate Court	
Issuance of marriage license to a minor	<a href="#">19-A M.R.S. §652(7)</a> .	District Court has exclusive jurisdiction if Home Court Act applies <sup>vi</sup>	
Parentage (when part of another probate proceeding, <i>e.g.</i> , estate administration or guardianship)	<a href="#">19-A M.R.S. §1834(3)</a> ; <a href="#">§1838(4)</a> ; <a href="#">§1839(1)</a> .	District Court has exclusive jurisdiction if Home Court Act applies <sup>vi</sup>	
Petition for spousal or child support (by spouse, other parent, guardian or State)	<a href="#">19-A M.R.S. 1652(1)</a> ; <a href="#">§1654</a> .	District Court has exclusive jurisdiction if Home Court Act applies <sup>vi</sup>	
Approval of contracts for support for life (persons not related w/in 3 <sup>rd</sup> degree)	<a href="#">4 M.R.S. §311</a> .	District Court has exclusive jurisdiction if beneficiary of contract is a minor and if the Home Court Act applies <sup>vi</sup>	
Emergency involuntary hospitalizations (blue papers) and Emergency dangerous weapon restriction orders	<a href="#">34-B M.R.S. §3863(3)</a> ; and <a href="#">§3862-A(3)</a> .	Concurrent w/District Court, Superior Court and justices of the peace—after emergency order issues, the case proceeds in District Court	
Consent to minor's abortion	<a href="#">22 M.R.S. §1597-A(2)(D)</a> .	District Court has exclusive jurisdiction if Home Court Act applies <sup>vi</sup>	
Order for access to original birth certificate after adoption or parentage action	<a href="#">22 M.R.S. §2765(2-A)(C)</a> ; <a href="#">§2766(3)</a> .	District Court has exclusive jurisdiction if Home Court Act applies <sup>vi</sup>	
Enforcement of DHHS subpoena to investigate abuse or neglect of an adult	<a href="#">22 M.R.S. §3480(1)(2)</a> .	Concurrent with District Court.	
<b>Miscellaneous Matters</b>			
Actions or proceedings on probate bonds of any kind payable to State of Maine or the Probate Court	<a href="#">18-C M.R.S. §8-209</a> .	Concurrent with Superior Court.	

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Allowance of claim against a county sheriff (to institute suit against sheriff's bond)	<a href="#">30-A M.R.S. §431.</a>	Probate Court may “allow[ the] claim” or the injured party may bring a civil action, presumably in District or Superior Court	
<b>Other Probate Judge Duties</b>			
Supervise register and report to county commissioners: <ul style="list-style-type: none"> <li>breach of register's bond; or</li> <li>register's inability to perform duties or neglect of duties.</li> </ul>	<a href="#">18-A M.R.S. §1-305</a> ; <a href="#">§1-507</a> ; <a href="#">§1-508.</a>	Exclusive duty of Probate Judge.	
Name someone to perform register's duties in case of register's breach of bond or inability or neglect of duties	<a href="#">18-C M.R.S. §1-507</a> ; <a href="#">§1-508.</a>	Exclusive authority of Probate Judge.	
Name a deputy register of probate <b>if</b> the office of register is vacant and no deputy register has yet been appointed	<a href="#">18-C M.R.S. §1-506.</a>	Exclusive authority of Probate Judge (but, as noted, only if the register has not appointed a deputy and there is a vacancy in the office of register).	

<sup>i</sup> Statutes granting Probate Courts jurisdiction over estate-related matters include: [4 M.R.S. §310](#) (perpetual cemetery lot care); [13 M.R.S. §1222](#) (same); [14 M.R.S. §7561](#) (trespass or waste to real estate by executor or administrator); [22 M.R.S. §2843-A](#) (custody and control of deceased's remains); [36 M.R.S. §112\(3\)](#) (order compelling witnesses to testify before State Tax Assessor regarding estate taxes); [36 M.R.S. §4046](#) (remission orders); [36 M.R.S. §4118](#) (ordering PR bond to secure payment of estate taxes); [36 M.R.S. §943](#) (order granting devisee a 60-day period to redeem municipal property tax lien); [36 M.R.S. §3922](#) (order for payment of expenses of interstate arbitration board, which determines domicile state of decedent). *See also* [36 M.R.S. §559](#).

<sup>ii</sup> Other statutes granting Probate Courts jurisdiction over decedent's estates include: [22 M.R.S. §4065](#) (petition to settle estate of child who dies in DHHS custody); [29-A M.R.S. §108\(3\)](#) (petition by county public administrator where Title 29-A action is pending for administration of estate of deceased nonresident defendant); [34-B M.R.S. §1409\(10\)](#) (claims against patient's estate by state institutions); [36 M.R.S. §4116](#) (State Tax Assessor petition for appointment of PR 6 months after death).

<sup>iii</sup> *See also* [9-B M.R.S. §476\(1\)\(A\)](#) (petition to Superior Court or Probate Court transfer fiduciary capacity to new financial institution); [22 M.R.S. §1819](#) (hospital petition to Superior Court or Probate Court to approve accounting of trust funds).

<sup>iv</sup> *See also* [23 M.R.S. §154](#) (Dept. of Transp. petition in Probate Court to appoint guardian of minor who owns property subject to condemnation; the condemnation matter is separately heard in Superior Court); [30-A M.R.S. §5108\(9\)](#) (Probate Court approval of appointed guardian's or conservator's settlement of eminent domain case brought by urban renewal authority); [30-A M.R.S. §5204\(8\)](#) (same for municipal eminent domain proceedings).

<sup>v</sup> *See also* [22 M.R.S. §3765](#) (Probate Court appointment of conservator to receive TANF payments on behalf of a child).

<sup>vi</sup> The District Court jurisdictional provision of the Home Court Act, [4 M.R.S. §152\(5-A\)](#), grants the District Court exclusive jurisdiction of actions in Probate Court *brought under Title 18-C* if there is a proceeding involving parental rights involving the same minor child pending in District Court. Yet, [4 M.R.S. §251-A\(2\)](#) of the Home Court Act, directs judges of probate to “notify the District Court and take appropriate action to facilitate a transfer” to the District Court if “a matter,” a phrase not limited to matters brought under Title 18-C, “concerning a minor child” is pending in Probate Court and a proceeding involving parental rights to the same minor child is pending in District Court.

<sup>vii</sup> *See also* [5 M.R.S. §19507\(4\)\(D\)](#) (protection and advocacy organization Probate Court petition to represent person under a public guardianship); [22 M.R.S. §3481\(2\)](#) (DHHS petitions for removal or appointment of guardian if current guardian or caretaker refuses to allow consented-to adult protective services); [23 M.R.S. §154](#) (DOT petition in Probate Court to appoint guardian of incompetent person who owns property subject to condemnation); [30-A M.R.S. §5108\(9\)](#) (Probate Court approval of appointed guardian's or conservator's settlement of eminent domain case brought by urban renewal authority); [30-A M.R.S. §5204\(8\)](#) (same for municipal eminent domain proceedings); *cf.* [22 M.R.S. §3473\(3\)](#) & [22-A M.R.S. §207\(5\)](#) (DHHS appearance in Probate court through non-attorneys in certain uncontested or emergency guardianship or conservatorship proceedings); [4 M.R.S. §807\(3\)\(H\)](#) (same).

<sup>viii</sup> After appointment of the trustee, [33 M.R.S. §155](#) provides that the Probate Court “shall have jurisdiction of all matters thereafter arising in relation to such trust.” *But see* [18-B M.R.S. §203\(1\)](#) (“The Probate Court and the Superior Court have concurrent jurisdiction of all proceedings in this State involving a trust.”).

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**Recommendations regarding: Statutory Authority of Register of Probate**

Task	Cite	Recommendation
Maintain probate court records and files, including docket of probate cases and the recording of wills	<a href="#">18-C M.R.S. §1-305;</a> <a href="#">§1-503.</a>	
Grant or deny application for informal probate after making statutory findings	<a href="#">18-C M.R.S. §1-307;</a> <a href="#">§3-102;</a> and <a href="#">§3-301</a> to <a href="#">§3-305.</a>	
Grant or deny application for informal appointment of personal representative after making statutory findings	<a href="#">18-C M.R.S. §1-307;</a> <a href="#">§3-103;</a> and <a href="#">§3-307</a> to <a href="#">§3-309.</a>	
Provide copies of wills, accounts, inventories, petitions and decrees (and remit all fees paid to the county)	<a href="#">18-C M.R.S.</a> <a href="#">§1-501(5).</a>	
Act as “an auditor of accounts” when requested by Probate Judge	<a href="#">18-C M.R.S.</a> <a href="#">§1-503(2).</a>	
Certify wills, PR appointments and elective share petitions involving real estate to Registry of Deeds	<a href="#">18-C M.R.S. §1-504.</a>	
Notify all beneficiaries within 30 days after a will has been probated	<a href="#">18-C M.R.S. §1-505.</a>	
Discretion to appoint a deputy register of probate	<a href="#">18-C M.R.S. §1-506.</a>	
Assist parties in drafting applications, petitions or sworn statements: <ul style="list-style-type: none"> <li>• for informal probate proceedings;</li> <li>• to close an uncontested decedent’s estate;</li> <li>• for change of name; and</li> <li>• for guardianship of minors.</li> </ul>	<a href="#">18-C M.R.S.</a> <a href="#">§1-510(2).</a>	
Establish, with approval of county commissioners, fees for approved blanks, forms and schedules	<a href="#">18-C M.R.S. §1-511.</a>	
Account for all fees received and transfer them to the county monthly	<a href="#">18-C M.R.S. §1-603.</a>	
Mail to the PR a copy of a demand for notice of filings or orders related to an estate	<a href="#">18-C M.R.S. §3-204.</a>	
Determine sufficiency of a PR bond and authorize reduced bond amount in certain circumstances	<a href="#">18-C M.R.S. §3-604</a>	
Informal appointment of a special administrator prior to appointment of a PR or if PR is terminated	<a href="#">18-C M.R.S. §3-614</a>	
Issue certificate that PR appears to have fully administered an estate	<a href="#">18-C M.R.S.</a> <a href="#">§3-1007</a>	
Filing certificate of adoption with State Registrar of Vital Statistics after judge issues adoption decree	<a href="#">18-C M.R.S.</a> <a href="#">§9-304(9)</a>	
File certificate of annulment with State Registrar of Vital Statistics after court annuls an adoption decree	<a href="#">18-C M.R.S.</a> <a href="#">§9-315(3)</a>	

*Note:* The table above lists the statutory duties and authorities of the register but does not include any statutes requiring other persons or entities to file specific types of documents with the register unless the statute also affirmatively impose a duty or grants an authority to the register.