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

Comments of Maine County Commissioners Association

November 12, 2021

Chair Carney, Chair Cardone, and members of the Commission to Create a Plan to Incorporate the Probate Courts into the Judicial Branch, my name is Stephen Gorden, and in addition to serving as chair of the board of commissioners for Cumberland County, I am writing today in my role as board president of the Maine County Commissioners Association. We appreciate the opportunity to provide public comment to the Commission.

About MCCA. Briefly, the Maine County Commissioners Association was established in 1890 to assist Maine's county government in providing vital services to Maine citizens in a responsive, efficient, and credible manner. The Association is based in Augusta and currently represents 15 of Maine's 16 counties and is governed by a board with representation from each participating county.

Discussion. First, let us say that we appreciate the process in which this Commission is engaged and the goal of continuing to improve our Probate Court system. We share in this goal. That said, we do not think embarking down the road of moving the Probate Courts into the Judicial Branch, or taking incremental steps in that direction, will serve the people of Maine well. As our Association stated during the public hearing on the legislation that formed this Commission, our members continue to believe – as a general matter -- that it would be a mistake to reorganize the Probate court system to be part of the Judicial Branch. We also have significant concerns about a current proposal that would keep the Probate Court system within county government but move the Probate Judges themselves into the Judicial Branch.

With regard to this latter proposal, keeping the Probate Court system within county government is appropriate as our current system works well to ensure that services are timely and in close proximity to residents. However, moving this system to include full-time Probate Judges within the Judicial Branch goes in the wrong direction. In our view, the county-based system with part-time Probate Judges has proven adept at flexible scheduling for handling emergency hearings and meetings, and we are not convinced that full-time judges with larger caseloads will have similar flexibility. Making Probate Judges full-time Judicial Branch employees would be a costly undertaking for the State and would make the system subject to the ups and downs of legislative appropriations, which would place at risk the ability of the system to remain fully funded.

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Page 2

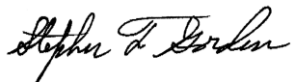
By way of example, when security for the court system was provided by county sheriffs, there was adequate staffing to enable courts to be open full time. However, now that the system has moved to having security provided by marshals within the Judicial Branch, we have recently seen staff shortages that have prevented our courts from being open full time.

In addition, if Probate Judges become State employees, but all other aspects of the Probate Court system remain as is, we will then have appointed State judges overseeing elected county officials, which raises a number of questions that need to be answered. Can an appointed official oversee an elected official, and can a State employee oversee a county official? Additionally, integrating databases at the state and county level, as would be necessary for this plan to succeed, would be a costly and complicated undertaking.

Many of our courts are overwhelmed and understaffed as it is. Changes along the lines of what is being considered by this Commission may further overwhelm the system, without the guarantee of any tangible benefits to Maine people who come into contact with our Probate Courts.

Conclusion. We hope this information is helpful to the Commission as it considers how to move forward. We are happy to provide additional information, as needed, upon request.

Respectfully submitted,



Stephen Gorden
President

cc: Commissioner Brian Hobart, Chair, MCCA Legislative Committee
James I. Cohen, Verrill Dana, LLP, MCCA Legislative Counsel