

Testimony of James B. Haddow, Esq. in support of  
**LD 1766, An Act to Incorporate Probate Judges into the Maine Judicial Branch**  
submitted to the Joint Standing Committee on Judiciary, January 7, 2026

Chair Carney, Chair Kuhn, and Members of the Committee,

My name is James Haddow. I live at 42 Flaggy Meadow Road in Buxton. I have been a member of the Maine Bar since 1986, and I am a partner in the Portland law firm of Petruccelli, Martin & Haddow. I have been actively engaged in the private practice of law for almost 40 years. While my practice crosses a wide range of subject areas, civil litigation has been a common thread throughout my career. I have tried cases in the Maine District Courts, the Maine Superior Courts, and the United States District Court for the District of Maine. I have argued cases on appeal in both the Maine Law Court and the United States First Circuit Court of Appeals. I have also practiced in Maine Probate Courts, where I have represented litigants and served as a court-appointed special administrator and as personal representative of estates.

This range of experience has allowed me to observe the similarities and differences between the Probate Courts and all the other courts in which I have been privileged to practice, and it is from that perspective that I offer my testimony in support of LD 1766.

As I am sure the members of this Committee are aware, the current system of Probate Courts in Maine dates to 1855, when Probate Judges became elected part-time county officials by virtue of an amendment to the Maine constitution. Maine voters reversed that change in 1967, conditioned on the Maine Legislature's establishment of a probate court system staffed by full-time judges.

Since 1967 there have been numerous studies conducted with the goals of identifying more precisely the problems with the current system and proposing recommendations for legislative solutions. Legislators have proposed bills in prior sessions aimed at effectuating the change voters called for in 1967. To date, however, no solution has come about. The passage of LD 1766 is an important step in the process of carrying out the change the people of Maine demanded almost 60 years ago.

I hasten to add that the elapsed time since the 1967 constitutional amendment is neither the only nor the most compelling reason for passage of LD 1766.

Maine Probate Courts are similar to Maine's other courts in that they routinely decide critically important issues of personal liberty, as well as property rights of significant magnitude. The rights and responsibilities at issue every day in Maine's Probate Courts are

not, in other words, of any less magnitude or importance than the rights and responsibilities being adjudicated in any other court, state or federal, in the State of Maine.

The primary difference between the Probate Courts and Maine's other courts is the judges. Whereas every other court in the State of Maine has appointed full-time jurists whose only job is to serve as neutral decision-makers, that is not the case in Maine's Probate Courts.

That difference matters because, in my experience, on the whole, both the actual and the perceived quality of the judicial process as administered by full-time appointed judges is higher than that administered by elected part-time judges who are also engaged in the practice of law. The differences can be attributed to a number of factors, including:

- Elected judges are not vetted in the same way as appointed judges. For example, a first-year lawyer with no courtroom experience could be elected as a judge of probate in Maine under the current system. This results in far less consistency in legal ability and judicial demeanor in the Probate Courts than in other courts.
- Part-time judges are not able to devote the same time and attention as full-time judges to the process of making decisions in complicated contested matters. This regularly results in much longer resolution times for matters litigated in probate court than matters of similar complexity in other Maine courts.
- The inherent tension between the fundamental nature of a lawyer's job (zealous, partisan advocate - See Maine Rules of Professional Conduct (for Attorneys) 1.3, comment 1) and a judge's job (actual and apparent independence, integrity, and impartiality - See Maine Code of Judicial Conduct, Canon 1, Rule 1) interferes with the ability of part-time judges to perform their judicial duties with the same appearance of impartiality as their full-time counterparts. Among other consequences, this often results in Probate Judges advocating inappropriately for unrepresented litigants, of which there are many in probate proceedings.
- Knowing that an opposing lawyer in a probate matter is a Probate Judge in another county and therefore a colleague of the presiding judge creates doubt in the minds of litigants, and sometimes lawyers, about the capacity of the presiding judge to be impartial. See, e.g., *Estate of McCormick*, 2001 ME 24, ¶¶15, 16, 765 A.2d 552.
- Lawyer A, who practices in multiple Probate Courts, may have legitimate concern that their appropriate advocacy on behalf of a client in one county against a lawyer who is a judge of probate in another county may result in a lack of impartiality on the part of the opposing lawyer/judge when Lawyer A

subsequently appears on behalf of a client in the Probate Court where the opposing lawyer/judge presides.

These are all real-world problems with the way Maine's existing system of Probate Courts is constituted. Confidence among lawyers, litigants, and the public at large in the legal acumen and integrity of the judiciary, including our Probate Courts, is essential to a functioning system of justice. Our current structure/system presents a serious risk to that confidence.

For all these reasons, I urge the Committee to report to the full legislature that LD 1766 ought to pass.