



LD 1766 – An Act to Incorporate Probate Judges into the Maine Judicial Branch

Testimony of John Brautigam, Esq. for Legal Services for Maine Elders
Joint Standing Committee on Judiciary

January 7, 2026

Good afternoon, Senator Carney, Representative Kuhn, and members of the Joint Standing Committee on Judiciary.

My name is John Brautigam, and I'm here on behalf of Legal Services for Maine Elders. Since 1974, LSE has provided free civil legal help to economically or socially needy Mainers who are over sixty. A significant portion of our work involves guardianship and conservatorship matters in Maine's probate courts, often representing people who are trying to reduce or end a guardianship, ensuring counsel is appointed when required, and connecting others to reduced-fee private counsel through our referral service.

LSE supports LD 1766 because it addresses a longstanding structural problem in Maine's probate court system that affects fairness, consistency, and public confidence. In 1967, Maine voters approved a constitutional amendment repealing the county probate judge provision, but they made that repeal effective when the Legislature created a different probate court system. The Legislature never completed that work, so the repeal has remained pending for decades. LD 1766 finally activates that amendment by modernizing the probate judiciary while preserving the functions that are working well.

The core problems have been smoldering for decades. Maine has sixteen county probate courts that operate as independent bodies. They are funded through county budgets, which ultimately come from local property taxes. Probate judges are elected, not appointed through the same screening, confirmation, and evaluation systems that apply to judicial branch judges. There is no Chief Judge with supervisory authority over the probate courts. Schedules, practices, and training vary widely by county. The result is that Maine people can face very different experiences of justice depending on where they live.

Most importantly, the current structure creates an ethical and public confidence problem. Probate judges are paid at levels set by county budgets and are permitted to practice law when they are not acting as judges. For many, continuing to practice is a financial necessity. Even when everyone acts in good faith, this arrangement creates appearances that undermine confidence in impartiality. In rural counties especially, it is not hard to imagine a probate case where one party's attorney is a probate judge from a neighboring county. The public cannot realistically be expected to sort out

LEGAL SERVICES FOR MAINE ELDERS, INC.

5 Wabon Street, Augusta, Maine 04333

(207) 621-0087 Fax (207) 621-0742

Offices in Augusta, Bangor, Lewiston, Biddeford and Presque Isle

LSE Helpline 1-800-750-5353 (Voice/TTY)

www.maineelders.org

whether a person is a part-time judge or a part-time lawyer, and the appearance of unfairness can be as damaging as actual unfairness. The Maine Code of Judicial Conduct calls for a judiciary that is independent, fair, competent, and impartial, and that avoids impropriety and the appearance of impropriety. This bill helps bring probate judging in line with that standard.

LD 1766 addresses these problems by transitioning probate judges into the judicial branch. Current elected judges would finish their terms. They would be replaced by nine appointed, full-time judicial branch probate judges, including a Chief Probate Judge, aligned with the state's judicial regions. As judicial branch judges, they would receive the same salary and benefits as other judges and would not practice law. This advances equal justice, improves consistency, and strengthens impartiality across the state.

At the same time, the bill preserves what works. Registers of Probate play a critical role in informal probate and public-facing assistance. They help people navigate forms and processes, and many families can complete uncontested matters without hiring a lawyer. LD 1766 keeps the Registers' functions intact and confirms their county role.

Finally, the proposed amendment is important. It recognizes that the Judicial Branch supports this transition and that successful implementation requires planning. The Chief Justice has requested a project manager to develop the task list and blueprint for the change. The amendment provides that position and adjusts timelines to make implementation realistic. Without that capacity, there is a real risk that this long-overdue reform will stumble.

The Joint Standing Committee on the Judiciary sits in a unique position. You are not only responsible for shaping substantive law affecting housing, civil rights, and legal process, but also for legislative oversight of the Judicial Branch itself.¹ This bill is not primarily about adjusting private rights or remedies; it is about how Maine structures and operates one of the foundational branches of government. This Committee holds the institutional responsibility to consider how court design affects fairness, access to justice, and public confidence. This bill is a matter of core institutional integrity and not solely a policy dispute.

The Legislature has studied probate court reform for more than half a century. The problems have been identified with remarkable consistency. The solutions have been proposed repeatedly. The constitutional authority has been in place since 1967.

What has been missing is action.

For these reasons, LSE urges the Committee to adopt the amendment and vote the amended bill ought to pass.

Thank you.

¹ The Legislature's description of committee jurisdictions is found at <https://legislature.maine.gov/committee-jurisdiction>. For the Joint Standing Committee on Judiciary, the first topic of jurisdiction is "Judicial system organization and budget"