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Commission to Create a Plan to
Incorporate the Probate Courts into the Judicial Branch
c/o Janet A. Stocco, Esq.
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Office of Policy and Legal Analysis
Maine State Legislature
2 State House Station
Augusta, ME 04333

Email to: Janet.Stocco@legislature.maine.gov

RE: Public Comment

Dear Commission Members:

I am a partner at the firm of Brann & Isaacson in Lewiston, Maine, where I have practiced estate planning, probate and trust administration and probate litigation since 1985. I have experience practicing in all but a few of the Maine Probate Courts. I am in favor of incorporating the Probate Courts into the Judicial Branch because application of the Maine Probate Code and Maine Trust Code differs in each county.

Reasons for the ad hoc interpretation and enforcement of Maine law include:

- Elected Probate Judges are generally practitioners who did not specialize in probate law before assumption of their judicial responsibilities. Their pay differs by county; the amount of time devoted to serving as probate judge differs with the pay and the individual. In some counties the Probate Judge is in the office one day a week, regardless of the number of cases pending on the probate docket.
- Elected Registers of Probate are not required to have prior knowledge of the law or skills required for the position. I am not aware of required training or education to ensure that Maine law and procedure are applied consistently between all counties. In practice, the interpretation of Maine probate procedure and law is remarkably inconsistent between counties. On more than one occasion we have had the same fact pattern handled very differently between counties because the law was interpreted differently by each county.

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I now inform all clients that I have no idea how each county will interpret the law or how long it will take to obtain a decision. I am sure that delay in the Probate Courts caused by inconsistent and irregular schedules, and failure to consistently interpret and implement the law, is costing Maine residents much in unnecessary legal fees. The Maine Probate Courts are not a place in which the wheels of justice are working as they should.

Incorporation of the Probate Courts into the Judicial Branch should address the above issues. The system of having judicial screening panels, appointment by the Governor, and confirmation by the legislature is a system that has worked very well for the district, superior, and law court, as opposed to elected judges, which many states have with numerous potentially adverse consequences. Ongoing training and continuing legal education of all Registers and staff should result in consistent interpretation and application of Maine law, particularly the newer laws and practices that have recently been enacted and are quite different from past practice. And, systematic scheduling and calendaring funded by the Judicial Branch should ensure that cases do not linger, and linger, depending on a particular county's budget and staffing. In short, incorporation into the Judicial Branch should provide all Maine residents with confidence that the myriad personal and property issues for which the Probate Courts hold exclusive responsibility will be resolved in conformity with the Maine Probate and Trust Codes as approved by the Legislature.

Sincerely,

BRANN & ISAACSON



Martha E. Greene