March 3, 2020

Sen. Michael Carpenter, Chair
Rep. Donna Bailey, Chair
Joint Standing Committee on Judiciary
Maine State Legislature
100 State House Station
Augusta, ME  04333

Re: LD 657, An Act To Reorganize the Probate Courts

Dear Sen. Carpenter, Rep. Bailey, and Members of the Judiciary Committee:

On behalf of the Maine State Bar Association, we appreciate the opportunity to provide comments “neither for nor against” a proposed committee amendment to LD 657 dated February 27, 2020. Maine’s Probate Courts provide important services to a wide range of Maine people, and our comments are focused on ensuring that these services are maintained – or enhanced -- if Maine decides to modify our current system. Our Association felt it was important to provide comments given our mission to promote access to justice, and given the comments we received from members on both sides of this issue.

About us. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 3000 attorneys in the State in both public service and private practice. The Association maintains 27 separate sections covering nearly every field of law practiced in Maine, from Administrative Law to Workers’ Compensation Law.

The 2/23/20 amendment. Turning to the amendment itself, it would eliminate the current system of elected probate judges, as well as the system of county-run probate courts. In its place, the bill would call for the addition of eight more District Court judges, and permit – but not require – the Judicial Branch to develop a separate Probate Court. We have several comments regarding this proposal, which are goal-oriented rather than positional with respect to the 2/27/20 amendment.

Appointed vs. elected judges. Our Association was divided on the question of appointed versus elected judges. Some members believe appointed judges are more likely to be qualified and less likely to be partisan in approach, and these members preferred movement towards appointed probate judges as well. Others members believe that our system of elected probate judges is working fine, including that the overwhelming number of current and former judges in Maine’s Probate Court are both fair and qualified.

Ensuring specialization and statewide access. Second, Maine’s Probate Courts do a very good job of offering specialized services to Maine people in locations throughout the State based on county government. Probate matters are complex and specialized, and our current system has done a good job in delivering quality services. Our current system also has physical presence in the majority of Maine’s counties throughout the State. Both of these are important qualities that should be maintained if a new system is developed. In this regard, if Maine does proceed to centralize Probate Court functions in the Judicial Branch, as proposed in the 2/27/20 amendment, we believe several key prerequisites should be in place to ensure sufficient access to justice:
The Probate Court should remain a separate system within the Judicial Branch with dedicated judges who specialize in probate matters;

2. The Probate Court should remain located within the counties where they currently exist in order to ensure sufficient access.

Ensuring continuity of financial support. Third, we are concerned about the shift in funding from the local and county level to the State level. State funding as proposed in the 2/23/20 amendment helps relieve municipal property taxpayers from the burden of funding Probate Courts. At the same time, there is substantial competition for resources at the State level, which can create challenges to funding important programs within State government. Ultimately, this is a policy question for the Maine Legislature to consider, but we urge the Legislature to give this funding concern due consideration as part of any decision to modify Maine’s Probate Courts.

Conclusion. Once again, we thank you for the opportunity to register our comments on the pending amendment on this bill, and we look forward to the opportunity to assist the State of Maine with regard to the provision of quality probate services for Maine residents.

Sincerely,

Thaddeus V. Day
President, Board of Governors