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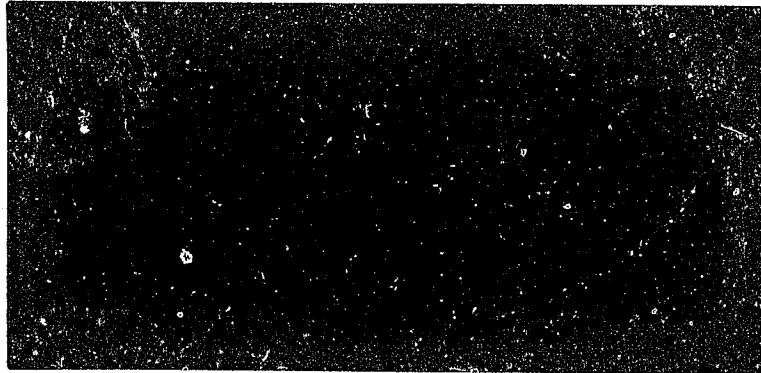
Institute for Studies in Justice and Social Behavior

The American University Law School

Washington, D.C.

A Program of the
Office of Regional Operations
(Adjudication Division)
Law Enforcement Assistance Administration
U.S. Department of Justice

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CITIZENS' HANDBOOK ON MAINE COURTS

November 1976

Consultants

The American Judicature Society
National Center for State Courts

Editor
Edward J. Schoenbaum
Director
Programs and Services
American Judicature Society

Under the Auspices of:

The Criminal Courts Technical Assistance Project
Institute for Advanced Studies in Justice
The American University Law School
Washington, D.C.

Citizens' handbook on Maine courts



Citizens for modern courts



CITIZENS' HANDBOOK ON MAINE COURTS

November, 1976

Prepared for:

The Office of the State Court Administrator
Supreme Court of Maine

By:

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National Center for State Courts

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LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
CONTRACT NUMBER: J-LEAA-013-76

This report was prepared in conjunction with The American University Law School Criminal Courts Technical Assistance Project, under a contract with the Law Enforcement Assistance Administration of the U.S. Department of Justice.

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INTRODUCTION

On September 25th through 27th, 1975, a citizens conference on the Maine Court System was held in Portland and attended by 120 representatives of numerous civic and lay groups. The conference was called by the Maine State Bar Association and financed by the Maine Criminal Justice Planning and Assistance Agency for the purpose of discussing state judicial system operations with citizen representatives, and to elicit citizen comments and suggestions for future planning work. As a result of this conference, an ad hoc citizens committee was formed, chaired by Thomas Hedley Reynolds, President of Bates College to pursue the issues raised at the conference.

One of the needs identified during the conference and explored by the committee, was the development of educational resources regarding Maine state court operations. Essentially, two types of information were desired: informational and orientation materials for the lay public; and more substantive technical materials for those more closely involved with court operations. It was decided to attempt to develop a comprehensive document which would serve both purposes, when appropriate consultative services were requested by Betsy Belshaw, Maine State Court Administrator, through LEAA's Criminal Courts Technical Assistance Project at the American University. The project designated two court-related organizations - the American Judicature Society and the National Center for State Courts-to work with Mrs. Belshaw and President Reynolds to develop the preliminary design and format for the document and then to prepare the handbook. Each of these organizations was familiar with Maine's judicial system operation as well as with the issues which the citizens handbook should address, and both of them have worked to promote court improvements in a number of states. No state, however, had yet developed a citizens court handbook as comprehensive as that contemplated for the state of Maine.

Between March and October 1976 representatives of the two organizations met with Mrs. Belshaw and President Reynolds to design and develop this handbook. The materials presented focus primarily upon the structure and functions of the Maine court system. Relevant statutory and constitutional references are provided for those seeking additional information. Brief commentary is also included on the interrelationships of the judicial branch with the executive and legislative branches of Maine's government as well as the relationship of the Maine state court system to the federal judicial structure. In describing Maine's system of judicial operations, reference is also made, where appropriate, to the organization and functions of other state court systems.

This handbook is submitted to the citizens of Maine with the hope that it will assist them in better understanding their courts and in working to improve the administration of justice in their state. Printing and distribution have been made possible by the Maine Criminal Justice Planning and Assistance Agency.

ACKNOWLEDGEMENTS

In addition to acknowledging the leadership of Elizabeth Bellamy and William Hedley English, we would like to express our appreciation to Caroline Cooper, Deputy Director of Criminal Courts Technical Assistance Project of American University.

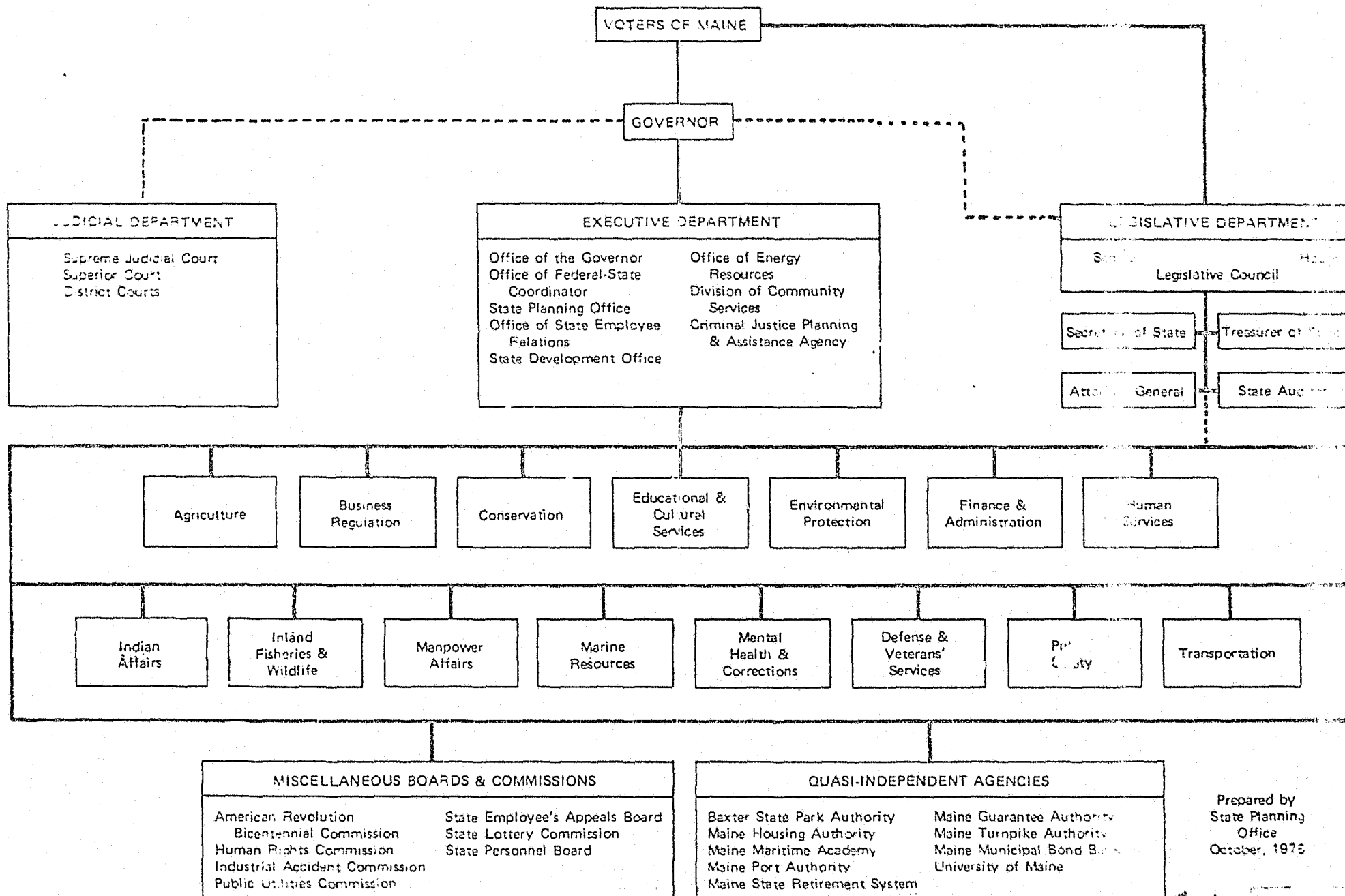
The National Center for State Courts Regional Office personnel in Boston completed extensive research of Maine's statutes and court rules. Samuel D. Conti is the regional director of the Boston office, David C. Steelman, staff attorney had primary responsibility for the work on this project. Others working on the project from that office are Ernest Tobias Dalivet, Claudia L. Chadwick and Jeanie Helms.

Ellen Gurney who served an internship at the American Judicature Society this past summer wrote the first draft of the handbook. Ellen has now received her Master of Science in Judicial Administration degree from the University of Denver College of Law. Barbara R. Schulert, editor of Judicature, the Journal of the American Judicature Society, James J. Alfini, Assistant Director of Research, Joan Palenchar, American Judicature Society Librarian, Brenda Bogan, Administrative Assistant, and Susan Mauer, Secretary, assisted with editing, organization and typing.

CITIZENS HANDBOOK ON MAINE COURTS

STATE OF MAINE
ORGANIZATION CHART OF STATE GOVERNMENT
Based on Elective or Appointive Line of Authority

Major State Agencies



Prepared by
State Planning
Office
October, 1973

MAINE STATE GOVERNMENT

The government of the state of Maine is composed of the same three branches as the federal government: executive, legislative and judicial.

THE LEGISLATURE

The legislature is in many respects the strongest and most central institution in Maine. The secretary of state, auditor, state treasurer and attorney general are all elected by the legislature. In addition, the legislature must approve the governor's appointments of judicial officers. It has the constitutional authority to make policy and enact laws.

Maine's is a "citizen legislature." Its members are not full-time, professional politicians. Salary is low and there is a high turnover every two years.

The House of Representatives has 151 members, and the Senate has 33. Two Indian Representatives, elected by the Passamaquoddy and Penobscot tribes, may participate in floor debate in the Senate but may not vote on bills.

All legislators are elected to two year terms, and the legislature meets annually beginning in early January. The governor may call a special session in an emergency.

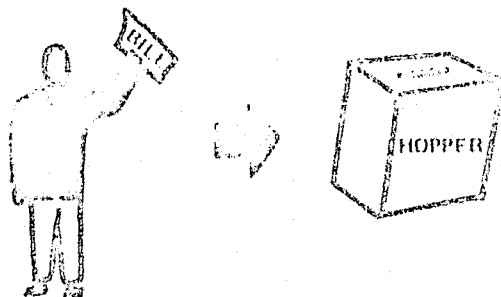
The presiding officers are the speaker of the house and the president of the senate. Officially these officers are elected by their respective houses; in practice, however, they are selected in advance by the majority party. Presiding officers name chairpersons and members of standing and conference committees, and they preside over floor activities of their chambers. Each house also has four party officers: majority and assistant majority leaders, and minority and assistant minority leaders, who are responsible for the daily managing of bills.

The chief responsibility of the legislative committees is the screening of bills. Maine is one of the few states which makes recommendations to joint standing committees even though each house acts separately. Generally there are about 23 standing committees, each made up of three senators and ten representatives. The 107th session (1975) had the following committees: Agriculture, Appropriations and Financial Affairs, Business Legislation, Local and County Government, Education, Election Laws, Energy, Fisheries and Wildlife, Health and Institutional Services, Human Resources, Judiciary, Labor, Legal Affairs, Liquor Control, Marine Resources, Performance Audit, Natural Resources, Public Utilities, State Government, Taxation, Transportation, and Veterans and Retirement.

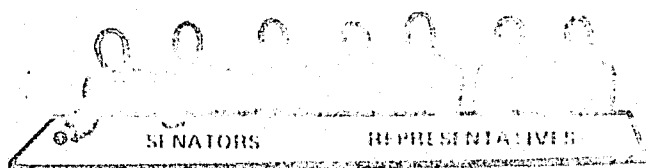
(see flow chart on How a Bill Becomes a Law)

HOW A BILL BECOMES A LAW IN MAINE

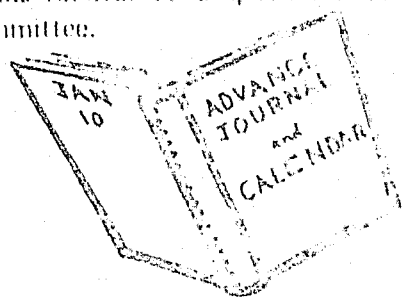
Governor, citizen groups, etc. may suggest, but only a Legislator may introduce a Bill. (He may introduce it "by request" indicating that he desires the committee's report.)



A Legislator, with the assistance of the Legislative Research staff, drafts the Bill so it will accomplish the purpose for which it is intended.



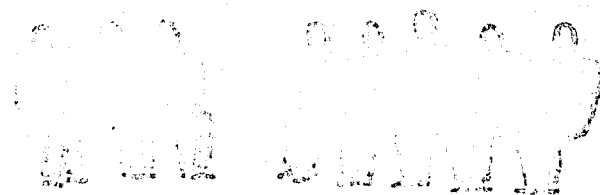
Reference of Bills Committee, which is comprised of the President of the Senate and 4 Senators, the Speaker of the House and 4 Representatives, receives all bills and recommends referral to a specific Joint Standing Committee.



A Bill is recorded on "Advance Journal and Calendar" which is placed on the desks of members of both houses before the day's session begins.

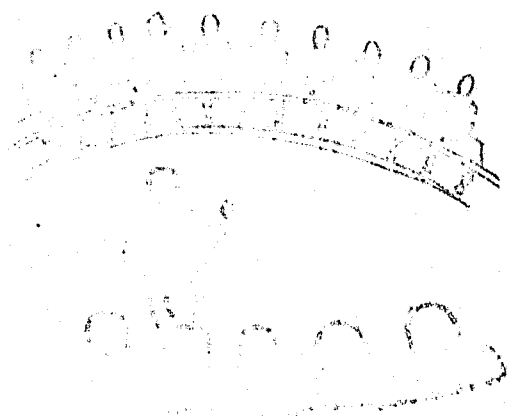


Each house votes on Reference of Bills Committee recommendations, and may refer the Bill to a different Joint Standing Committee than recommended.



Appropriate Joint Committee receives Bill, sets date, and publishes notice for a public hearing in newspapers under Legislative Notices.

Every citizen may attend a public hearing and comment on the Bill.



Proponents and Opponents of the Bill. Proponents and Opponents are heard. Paid Lobbyists must register with the Secretary of State.

Reprinted with permission of the Maine League of Women Voters. For further information, contact Mrs. Dolores Vail, President, 157 High Street, Portland, Maine 04101.



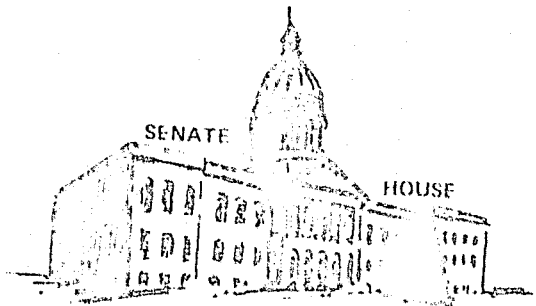
A Joint Committee considers the Bill in Working Session.

The Joint Committee then files a report on the Bill making a recommendation to the Legislature as follows:

1. Ought to Pass,
2. Ought not to pass if this recommendation is unanimous, it is placed in the legislative files with no further action. A 2/3 vote of both houses is required for the Bill to be recalled for reconsideration;
3. Divided Joint Committee passes the Bill on to the Legislature with a majority and a minority report. If the report is evenly divided, both reports are submitted, designated the "A B" report;
4. Ought to Pass with Joint Committee's amendment;
5. Ought to Pass in new draft;
6. Leave to withdraw Joint Committee recommends that the Legislator who introduced the Bill withdraw the Bill;

Bill is read first before the legislative body in which it originated. Two readings are required in the House and two in the Senate. First and second readings are on successive legislative days.

Bill which receives unanimous ought to pass Committee report is placed on Special House Consent Calendar for two legislative days and considered passed to be engrossed (or printed in legal form) unless a majority of the House wishes to take it from the Calendar.

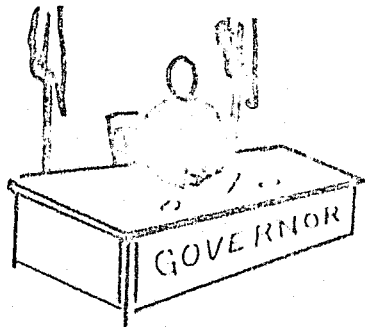


Each house votes on Bill after last reading. If Senate & House disagree, Bill is either returned to Committee or to a Conference Committee set up to compromise differences. Bill is then returned with amendments, if needed, for further consideration by both houses. (Both houses must give assent to each step in the procedure.) If both houses approve Bill, it is sent to Engrossing Department to be printed as it would appear as a State Law.

The Bill, now in its final form, is returned to each house for final passage by the Legislature. This process is called Enactment.

The Bill must be signed by both the Speaker of the House and the President of the Senate.





The Bill is then sent to the Governor who may:

1. Sign it into law,
2. Allow it to become law without his signature (after 5 days),
3. Veto it, or
4. If the Legislature adjourns before he acts, the Governor may sign or refer the Bill to the next session of the same Legislature or the Bill dies.

A 2/3 vote of members present in each house may override a veto.

Definitions:

Bill - draft of a proposed act

Constitutional resolution - proposed Constitutional amendment.

Engross - to print in legal form

Hopper - The box in the House or the Senate where Legislators deposit Bills.

Legislative act - complete formally declared will of the Legislature (act, law and statute are used synonymously).

Public law - law that relates to public matters and concerns the public at large or segments of it.

Private and special law - law that relates to one or more specified persons, corporations, institutions, municipalities, etc.

Referendum - referral of a measure passed by the Legislature to the electorate for approval or rejection.

Resolve - formal expression of Legislative opinion concerning a temporary matter (has the force and effect of Law).

Notes:

At any time during consideration of a Bill by either house, a motion may be made to table it for future consideration, to indefinitely postpone it, or to recommit it to Committee for reconsideration.

All Bills and Resolves become effective 90 days after the adjournment of the Legislature, unless another date is specified. (Resolves are usually temporary in nature).

Emergency legislation becomes effective immediately. It requires a 2/3 vote of the entire elected membership of both houses.

Constitutional amendments require a 2/3 vote of members present in each house and must be submitted to referendum. They do not require approval by the Governor.

From introduction of a Bill to its enactment or defeat, a Legislator is exposed to pressures from paid lobbyists representing businesses, etc., public and private interest groups, and individual citizens.

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Illustrations by Louie R. Aggor

THE EXECUTIVE BRANCH

Governor: The governor of Maine is the chief of state and represents the people. As the chief executive officer, he is responsible for appointing key state officials such as judicial officers (except judges of probate) medical examiners, notaries public, heads of departments, members of boards and commissions, etc. with the advice and consent of the legislature.

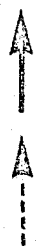
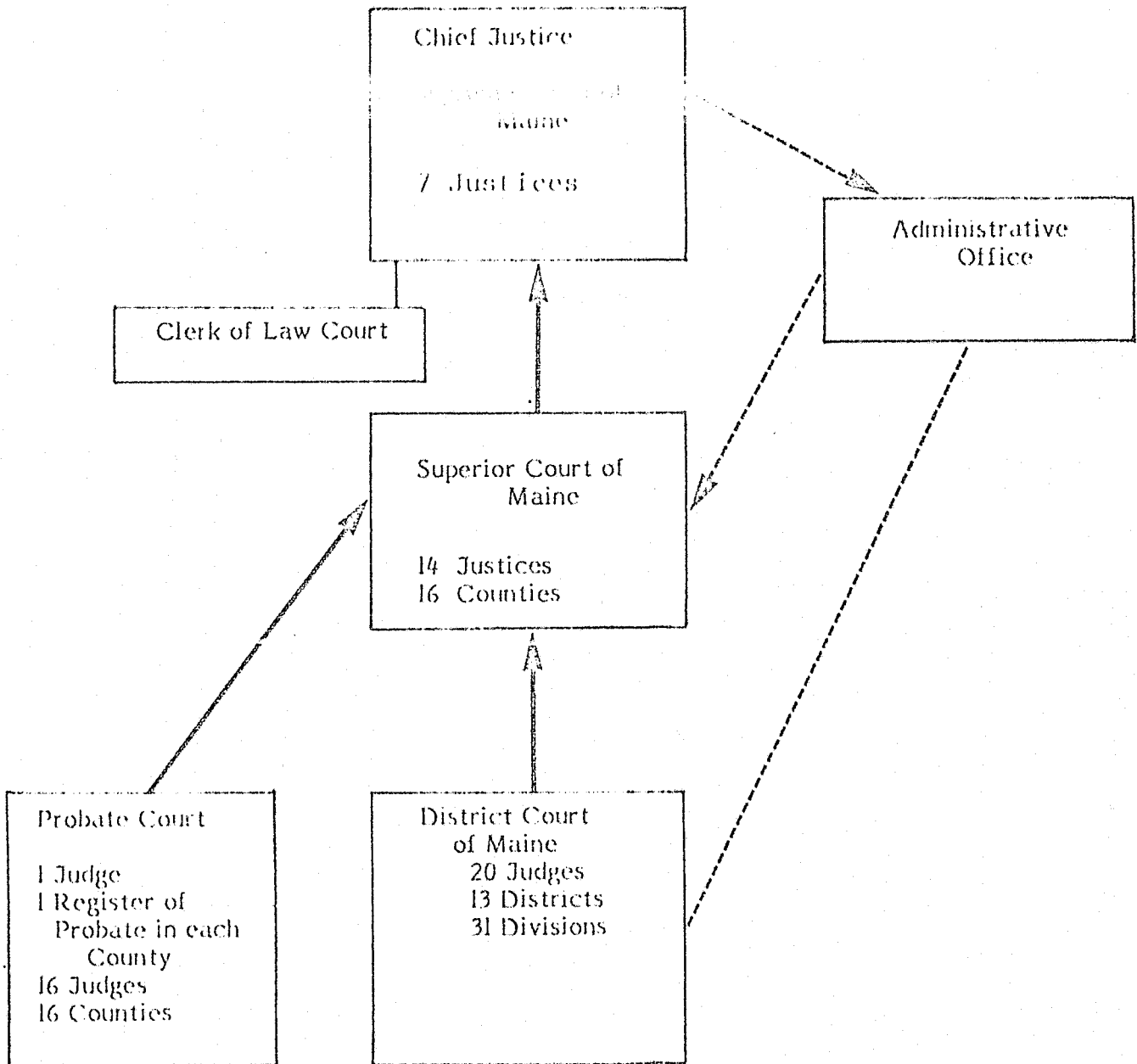
He also recommends measures to the legislature, including budgetary and legislative programs and bills, and he may call special sessions of the legislature. The governor's powers are fully executed and, as stated earlier, may call special sessions of the legislature.

The governor's office includes his personal staff who serve as liaisons to other government and external agencies, handle general administration, federal-state-municipal coordination, handle press relations and relations with Washington, handle Canadian affairs and operate Blaine House, the official residence of Maine governors.

There is also an extended staff of agencies prescribed either by state statute or executive order. These agencies include the State Planning Office, Office of Energy Resources, Office of State Employee Relations, Division of Economic Opportunity, Maine Criminal Justice Planning and Assistance Agency, Youth Services Planning, Manpower Planning and Training, and the Governor's Committee on the Status of Women.

Administrative bureaucracy: Administrative agencies provide services, regulate expenditures under the state's budget and enforce state laws. Because these agencies employ thousands of employees, staff agencies are used for financial control and supervision of employees. The Department of Finance and Administration is the primary agency responsible for managing the Maine budget, including spending and revenues. Executive branch employees have a merit personnel system modeled after the federal government's civil service system. Most government employees in the state are covered by the Maine State Retirement System.

The service and regulatory agencies make up the majority of the "bureaucracy." Their functions are divided into four areas. Education and Culture includes the State Board of Education, the Maine Teachers Association, Maine State Library, State Archives, State Museum, etc. These account for over half of the state's appropriations. Social Services, the second largest category, includes the Departments of Mental Health and Corrections, Health and Welfare, Indian Affairs, State Housing Authority, and the Bureau of Veterans Service. Third largest is Economic Activities handling Agriculture, Marine Resources, Conservation, Inland Fish and Game, Manpower Affairs, Transportation, and the Office of Development. Finally, Maine, like most states, has numerous Regulatory commissions and licensing boards. The primary regulatory agencies are the Department of Business Regulations, the Department of Environmental Protection, and the Department of Public Safety.



Route of Appeal

Route of Administration

THE HISTORY OF THE MAINE COURT SYSTEM

Article VI, Section 1 of the Maine Constitution states, "The judicial power of this state shall be vested in a Supreme Judicial Court and such other courts as the legislature shall from time to time establish." The judiciary derives its powers from the constitution. It is a separate and co-equal branch of government, and it should not be lightly tampered with by the legislature or the executive.

The court system in Maine was part of the Massachusetts court system until Maine became a separate state in 1820. Even after 1820, the two systems continued to develop along parallel paths.

The Maine legislature, at its first session in 1820, passed an act creating the Supreme Judicial Court. The lower courts inherited from Massachusetts---the Court of General Sessions of the Peace and the Justices of the Peace---were allowed to continue largely unchanged until the Court Reorganization Act of 1852.

In 1852, the Maine legislature increased the jurisdiction of the Supreme Judicial Court to take in virtually every case, whatever the size or subject matter and increased the number of justices from five to six. The court conducted trials and heard appeals from the lower courts.

The court divided Maine into three districts and it travelled to each district to hear appeals. Terms of court held in the districts became known as "law terms," and the court sitting in them was called the "law court." That name is still used for the Supreme Judicial Court, even though the three appellate districts were abolished in 1901.

As the caseload grew beyond the capabilities of the Supreme Judicial Court, there arose a demand for an intermediate court to share the load. The first Superior Court was established in Cumberland County in 1868, modeled after the Superior Courts of Massachusetts. It had full criminal and limited civil jurisdiction over appeals from local courts. By the early 1920's Superior Courts were operating in all of Maine's sixteen counties.

In 1961, the local court system consisting of part-time justices of the peace, municipal courts and others, was reorganized with the creation of the Maine District Court. It, too, was modeled after the District Court of Massachusetts. The District Court has jurisdiction in misdemeanor criminal cases as well as limited civil jurisdiction and conducts preliminary hearings in felony cases.

COURT ORGANIZATION AND ADMINISTRATION

Maine's present judicial system consists of four courts; the Supreme Judicial Court, the Superior Court, the District Court and the Probate Court. The court administrator oversees the operation and administration of the entire judicial branch.

The American Bar Association Standards and the National Advisory Commission Standards relating to court organization recommend that for maximum efficiency, state court systems should be unified in structure and administration. This means that the court structure should be simple, consisting of one or at most two appellate courts and one trial court with jurisdiction over all cases. It also means that there should be centralized rulemaking, budgeting and financing. The entire system should be administered by the chief justice with the aid of a judicial conference.

Maine conforms to many but not all of these standards. In June 1975, the Maine legislature passed a bill charging the chief justice with the management of the entire court system and establishing the position of state court administrator to assist the chief justice and a Judicial Conference to advise him.

But Maine still retains two levels of trial courts -- the lower level District and Probate Courts, and the Superior Court. A citizen must use the Superior Court if he wants a trial by jury; the District Court cannot give him one. And a citizen must use the Superior Court if the amount in dispute in his case exceeds \$20,000; the District Court can decide only lesser claims.

Maine's Supreme Judicial Court has overlapping civil jurisdiction with the Probate and Superior Courts. This means that in many civil cases, litigants can choose which court and which judge will hear their cause. This sort of court-shopping and judge-shopping can lead to many abuses.

Supreme Judicial Court

The Supreme Judicial Court is the court of final appeal in Maine⁴. The court itself determines the number, times and places of its sessions depending on need and volume of cases. The court sat only in Portland during the last five years.

A justice of the Supreme Judicial Court may preside over a jury trial to decide the facts of a case, but the whole court must sit to decide questions of law on appeal. The Supreme Judicial Court has original jurisdiction, concurrent with the Superior Court, to hear and determine any issue in a non-jury civil action, except divorce or annulment of marriage.

(Concurrent jurisdiction means that either court may hear these cases. The litigants may decide in which court or before which judge they would prefer their cases to be tried.)

The full Supreme Judicial Court hears final appeals from the lower courts or from a single justice of its court.

The Supreme Judicial Court has seven members -- a chief justice and six associate justices. The number of members was raised from six to seven by statute effective July 1, 1976. They are appointed by the governor with the advice and consent of the senate⁶ and serve seven year terms. These justices - and all other Maine justices and judges - are customarily reappointed at the end of each term until they reach retirement age.

Justices of the Supreme Judicial Court are required to be "learned in the law" and to demonstrate "sobriety in manner." Active retired justices may be assigned by the chief justice to serve a term of the Supreme Judicial Court or of the Superior Court when the need arises.

The authority of the justices of the Supreme Judicial Court to receive cases at their beginning, hold trial, and pass judgment on both law and facts is sharply limited by the state constitution and by statute, though the court may punish contempt and may review the decisions of the lower courts. The jurisdiction of the court is derived from the state constitution and statute, and is not that of the Superior Court. The chief justice of the Supreme Judicial Court may assign individual justices of the Supreme Judicial Court to do what is called "single justice" work, hearing matters brought in Superior Court. They have all the powers of justices of the Superior Court, except that they do not hold jury trials.¹⁰ This "single justice" work is done to help the Superior Court with its caseload. The Supreme Judicial Court is from time to time called on to give advisory opinions on important matters to the governor, senate, or house of representatives.

If a question of misconduct by an attorney is properly raised, any justice of the Supreme Judicial Court may require that attorney to appear and defend against possible removal of his or her license to practice law.¹²

The court has extensive authority to sit in review of judgments in cases begun in other courts.

Sitting as the Law Court, the Supreme Judicial Court is given broad appellate powers by its basic statutory sources of jurisdiction:¹³ cases on appeal from the Superior Court or from a single justice of the Supreme Judicial Court; questions of law arising in a case for which trial in a lower court has not been completed, where the trial court on its own initiative has reported the case to the Law Court for determination of what legal principles apply to the facts of the case; questions of law in a case for which trial in a lower court has not been completed, where the parties submit an agreed statement of facts to the Law Court for determination of what legal principles apply to those facts; cases presenting a question of law; all questions arising in cases in which equitable relief is sought (for example, a court judgment ordering an act to be done, or property to be restored or transferred, as distinguished from a judgment for money damages); motions to dissolve certain injunctions; unresolved questions of Maine law arising in federal courts, where federal courts seek instruction by the Supreme Judicial Court.

The Law Court also has appellate jurisdiction in other matters: appeals from any of the judges of probate, but only by agreement of the parties, since most probate appeals are to the Superior Court;¹⁴ appeals from the Superior Court by any aggrieved party in any civil case;¹⁵ appeals by defendants in criminal cases;¹⁶ appeals on questions of law only by the state in criminal cases;¹⁷ appeals from the Superior Court on questions of law in juvenile cases;¹⁸ appeals on questions of law from final decisions of the Public Utilities Commission;¹⁹ review of the justness or reasonableness of a Public Utilities rate, toll, or charge, or of the constitutionality of a ruling or order by that Commission;²⁰ appeals from certain orders of the Board of Environmental Protection;²¹ appeals from decisions of the Workmen's Compensation Commission;²² appeals on questions of law from Superior Court review of actions by governmental agencies.²³

The chief justice is the head of the judicial department. In accordance with the rules, regulations and orders of the Supreme Judicial Court, he is responsible for the efficient operation of the judicial department, for the expeditious dispatch of litigation, and for the proper conduct of business in all courts. He may require reports from all courts, and he may make orders and regulations necessary for the efficient operation of the judicial department and the prompt and proper administration of justice.²⁴

In keeping with this general authority, the chief justice has authority and responsibility in specific areas, which include: arrangement of the state constitution every ten years under appropriate titles, articles, parts and sections;²⁵ prescription of regulations for expense statements submitted by justices of the Supreme Judicial Court;²⁶ assignment of cases and other matters to active retired justices of the Supreme Judicial Court;²⁷ appointment of his own administrative assistant;²⁸ appointment of the state court administrator and approval of assistants and other employees of the state court administrator;²⁹ creation of judicial regions in the State for administrative and venue purposes, designation of regional court centers, and appointment of regional presiding justices;³⁰ setting the times and places for sessions of the Law Court;³¹ appointment of the clerk of the Law Court and designation of persons to act as additional clerks of the Law Court;³² assignment of justices and active retired justices of the Superior Court to hold its trial sessions;³³ assignment of justices of the Superior Court to judicial regions, as required by the Court's caseload, with simultaneous and special sessions as required;³⁴ appointment of law clerks;³⁵ for the Supreme Judicial Court, and determination of their compensation;³⁶ appointment of official and temporary court reporters;³⁷ and service as the chairman of the Judicial Council.

Superior Court

The present Superior Court of Maine was established by statute in 1929. It sits in each of Maine's sixteen counties, and the judges rotate among the counties, rather than being permanently assigned to one county, as has become traditional in midwestern and western states.

The Superior Court has original jurisdiction over felonies and civil cases at law, and original jurisdiction, concurrent with the Supreme Judicial Court, in equity. (Equity is an area of law which is distinct from statutory or common law. In general, it covers those cases where the plaintiff cannot be compensated by money.)

The Superior Court also hears de novo criminal and civil appeals from the District Court. (The term de novo means that there is a completely new trial, rather than a review for error on the basis of the record of the original trial.)

The Superior Court has appellate jurisdiction in all matters determined in the Probate Court. Jury trials are available in both civil and criminal cases.

Superior Court decisions may be appealed to the Supreme Judicial Court. In cases where there is an appeal, the record which is sent to the Supreme Judicial Court contains the history of the proceedings of the trial of the action (including the pleadings, objections to evidence, rulings with the court, exceptions, the charge to the jury) and a transcript of the trial along with the appellate briefs.

There are fourteen justices of the Superior Court.³⁸ They are appointed by the Governor. The Governor may also appoint a justice of the Superior Court to act as a referee in civil cases. Occasionally, when the volume of work demands it, a justice of the Superior Court may appoint an attorney or, more often, an active retired justice to serve as a referee to hear civil cases. Also, active retired justices of the Superior Court may be directed by the chief justice of the Supreme Judicial Court to serve in the Superior court in any county.⁴²

The Superior Court's jurisdiction is so broad that it is defined by statute more in terms of what it cannot do than by what it can. The court exercises original (trial) and appellate jurisdiction over all matters, either exclusively or concurrently with other courts, which are not either within the jurisdiction of the Supreme Judicial Court, sitting as the Law Court or within the exclusive jurisdiction of the District Court.⁴³

The State Constitution provides a right to trial by jury in all criminal offenses.⁴⁴ The District Court was created without authority to try jury cases.⁴⁵ Thus, all felonies and many misdemeanors are heard in Superior Court, even if the defendant waives his right to a jury trial.⁴⁶ The Court's criminal jurisdiction is substantial and the procedures required to insure justice are often elaborate and time consuming. There is a right to trial by jury in all civil cases except those for which there was not a jury right at the time the Maine Constitution was first enacted in 1821.⁴⁷ This means there is a right to jury trial only when the judgment sought is payment of a sum of money, as distinguished from one directing an act to be done or property to be restored or transferred. Generally, there is a right to trial by jury in civil actions by law, but not in equity. Civil jury cases must be tried in Superior Court.

Superior Court has jurisdiction over a wide range of cases when a simple money judgement will not adequately resolve the differences between the parties, and a more flexible remedy is desired. Among the most important of these remedies is the power to issue an injunction, which usually is an order prohibiting a person or organization from doing a specific act.

Injunctive relief is one of a number of special powers which include supervising of mortgage foreclosures, compelling parties to perform their contracts, and settling partnership disputes.⁴⁸

It also has jurisdiction in other areas requiring special powers. Among the most important of these are its jurisdiction over divorce and other matters involving domestic relations, a power it shares with District Court, and over actions to quiet title or to settle property disputes.⁵⁰

The Superior Court has appellate jurisdiction over each of the other trial courts. It sits as the Supreme Court of Probate when hearing appeals from the Probate Courts.⁵¹ It hears appeals from District Court criminal cases;⁵² and from the District Court sitting as the Juvenile Court.⁵³

Another important responsibility of the Superior Court is its responsibility to review administrative agency decisions when individual citizens aggrieved by the decisions challenge them in court. The Superior Court hears appeals from all agencies whose procedures are governed by the Administrative Code⁵⁴ (see also page 29 on the Administrative Courts).

Probate Courts

The Probate Courts are authorized by the Maine Constitution⁵⁵ (the only court besides the Supreme Judicial Court to be so authorized) and are located in each county. The Probate Courts have a very specific, limited, civil jurisdiction over matters related primarily to the family structure. They have original concurrent⁵⁶ jurisdiction with the District Court over actions for marital separation; general jurisdiction to probate wills and to authorize executors or administrators of estates to perform their duties; jurisdiction over all matters relating to settlement of estates; adoptions of children; change of name;⁵⁷ appointment of guardian; jurisdiction of persons under guardianships;⁵⁸ and jurisdiction (shared with the Superior Court) to direct specific acts to be done or property to be restored or transferred, but not to award money damages, in all matters and cases relating to administration of estates.

There is one judge of probate in each of the sixteen counties. He or she is elected by the voters of the county on a partisan ballot to a four-year term.⁵⁹ Probate judges, like all Maine judges, must be attorneys admitted to practice law in Maine.

Registers of probate (the clerks who keep the records in probate matters) are also elected on partisan ballots to four year terms.⁶⁰ Registers of probate need not be attorneys.

District Court

Municipal and justice courts were replaced by the District Courts in 1961. The state is divided into thirteen districts and thirty-one divisions, each consisting of two or more towns. There is at least one court location in each division.⁶¹

The District Courts have original criminal jurisdiction over misdemeanors and ordinance violations and conduct preliminary hearings in felony cases. (A preliminary hearing is the hearing given to an accused person to determine whether the evidence justifies going ahead to trial or whether the charges should be dismissed. It does not determine guilt or innocence.)

The District Courts have original jurisdiction, concurrent with the Superior Court, over civil actions involving less than \$20,000 and over divorce proceedings. Small claims⁶² and juvenile matters including delinquency, dependency and neglect⁶³ can only be filed in the District Court.

In District Court, the defendant has the right to a jury trial, and the jury must be sworn. If a defendant is convicted in District Court, the defendant has the right to appeal. If a defendant who appeals his conviction must begin the proceedings anew in Superior Court in a de novo trial.

Until recently, a defendant who demanded a jury trial stood trial first in District Court, which does not provide juries. If he were convicted, he could appeal his case to the Superior Court, where he would receive a trial by jury. Only eight states besides Maine have a system of trials de novo.

Since 1973, defendants seeking jury trials have been able to get their cases transferred immediately, without trial, to the Superior Court.⁶⁴ Many of these cases are misdemeanors punishable by fine only. It has been recommended that the constitution be amended to limit jury trials to criminal cases in which a penalty of incarceration may be imposed.

There are nineteen District Court judges and a chief judge. Judges are appointed by the governor for seven year terms and must be qualified lawyers. The chief judge is appointed by and responsible to the chief justice of the Supreme Judicial Court.⁶⁵

The Judicial Council

The Judicial Council was created by state statute in 1935. Its purpose, as set forth in the statute, is to "conduct continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the state".⁶⁶

The Council has four ex-officio members: the chief justice of the Supreme Judicial Court who serves as chairman, the attorney general, the chief judge of the District Court, and the dean of the University of Maine Law School.

The governor appoints eleven members to the Judicial Council: an active or retired justice of the Supreme Judicial Court, two Superior Court justices, one District Court judge, one Probate Court judge, a clerk⁶⁷ of the court, two members of the state bar and three non-lawyer citizens. Members receive no compensation but are allowed any actual and necessary expenses for clerical services and travel.⁶⁸

The Judicial Council meets four times a year. It has conducted several limited studies of the Maine court system, one of which led to the system's administrative unification in 1975.

The Judicial Council's effectiveness is necessarily limited by the fact that the administrative aspects of the court system are not the first responsibility of any of its members. The executive secretary of the Council is not a full time staff person but a practicing attorney.

Judicial Conference

The Judicial Conference is composed of justices and judges in the court system. The members of the Judicial Conference advise and consult with the Supreme Judicial Court and the chief justice on matters affecting the administration of the judicial department.

State Court Administrator

The office of the state court administrator was established by statute in 1975. The administrator is appointed by the chief justice of the Supreme Judicial Court. The administrator's office is charged by statute to carry on "a continuous survey and study of the organization, operation, condition of business, practice and procedure of the Judicial Department."

The court administrator's staff consists of a fiscal director, two accountants, a secretary, four regional administrators, and the chief clerk of courts. The administrator and staff supply reports and documents to the legislature, appear before legislative committees, and obtain sponsors for legislation. The fiscal director prepares the court's budget. The court administrator's office also develops a uniform set of accounting and budgetary accounts for all courts and serves as auditor of judicial accounts.

The court administrator conducts long and short term planning for the courts and serves as secretariat to the Judicial Conference. The court administrator's office offers various general services to the court system. These include research assistance relating to court administration, management assistance, data processing, investigation of complaints concerning court operation, court facility management, and educational and training programs for court personnel.

Rulemaking Power

The Supreme Judicial Court's authority to make rules governing its own practice and procedure is a most important tool for improving our system of justice. This power is generally considered an inherent power of the courts, according to the common law, but in most states it is also specifically granted by the state constitution or by state statute.

In the past eighteen years, the Maine legislature has made three significant grants of rulemaking authority to the judiciary in the areas of civil and criminal procedure and evidence. This expanded rulemaking power has made the administration of justice more efficient, because it allows the judiciary rather than the legislature to adopt changes in highly technical areas in the operation of the judicial branch.

In 1958, the legislature enacted a bill giving the Supreme Judicial Court the power to promulgate rules of civil procedure.⁷² This was significant because it meant that every change in court procedure would no longer have to go through the laborious process of legislative approval.

The court promulgated the present rules of civil procedure, which are based on the federal rules of civil procedure of 1938. The rules give provided forms of process, pleadings, and discovery, and may be amended as required.

Before the new rules of civil procedure were instituted, the procedure for filing a civil case was governed by strict, numerous, archaic common law forms of action. (The common law is based on precedent and not defined by statute.) The new rules eliminate these and substitute simpler procedures.

In 1963, the court was empowered to prescribe new rules of criminal procedure.⁷³ These were drafted and promulgated effective December 1, 1965. These, too, have been amended as experience and new law requires. For example, a new criminal code became effective in 1976, necessitating some revisions of rules.

In 1973, the court was empowered to prescribe new rules of evidence.⁷⁴ The Maine Rules of Evidence went into effect on February 2, 1976.

Funding

The Supreme Judicial Court is funded by the state. The state court administrator, subject to approval by the chief justice of the Supreme Judicial Court, prepares and submits the judicial department operating budget to the state budget officer. The governor and the state budget officer review all state budgets, and the governor transmits the final state budget to the legislature for approval.⁷⁵

The Superior Court is funded by the state, with support from the counties.⁷⁶ The state pays the salaries and expenses, including clerical expenses, of the justices.⁷⁷ The counties provide space for the courtrooms and necessary offices.⁷⁸

The District Court is funded by the state. All bail forfeitures, fees and fines collected by the District Court are deposited in the general fund. \$3,000 per year is appropriated to the District Court for the "District Court Building Fund" for construction, remodelling and refurbishing of District Court facilities.⁷⁹

Expenses of the Probate Courts, including salaries of judges, are paid by the counties.⁸⁰

Federal funds from the United States Justice Department, Law Enforcement Assistance Administration (commonly abbreviated L.E.A.A.) are available to the judicial department and law enforcement agencies through grants from the Maine Criminal Justice Planning and Assistance Agency.

Court Reporting and Records Management

The chief justice of the Supreme Judicial Court appoints not more than sixteen court reporters for the Supreme Judicial Court and the Superior Court. He may also appoint temporary court reporters when necessary.

The chief judge of the District Court prescribes what records are to be kept and what reports are to be made⁸².

The Chief Judge must provide for the electronic sound recording of proceedings in the District Court by the use of recording equipment to be procured and installed in the manner directed by the chief judge. He may order that certain or all proceedings be recorded without special request or order. Any proceeding not routinely recorded is to be recorded at the request of either party or the presiding judge⁸³. The chief judge shall designate authorized operators and transcribers.

The court reporter of the Court of Probate, appointed by the probate judge, does all necessary court reporting⁸⁴.

The Supreme Judicial Court has control of all records and documents in the custody of its clerks⁸⁵. The Superior Court has general authority over all matters necessary to performance of its duties (presumably including records management)⁸⁶. The chief judge of the District Court prescribes all records to be kept and reports to be made⁸⁷. The register of probate has care and custody of all files, papers and books belonging to the probate office⁸⁸.

Records no longer possessing sufficient administrative, legal, or fiscal value to warrant their further retention for current business are held in the Maine State Archives⁸⁹.

JUDICIAL PROCESS

This section discusses some of the important procedures in Maine courts.

The Adversary System

The adversary system is basic to American justice. It is based on the assumption that two lawyers arguing opposite points of view will lead the court to a right decision based on the facts and the law. The judge is an impartial referee, making sure the rules are followed.

For the adversary system to work well, both sides of a case must be adequately presented. One lawyer's ability should not vastly overshadow his opponent's; each lawyer should perform adequate investigations to build a strong case. Obviously, this ideal is not always achieved.

The Jury System

Americans charged with a crime have a constitutional right to trial before an impartial jury of their peers.

The trial (adversary) jury is a group of men and women who decide the facts in a criminal or a civil case. In a criminal case, the jury determines the guilt or innocence of the defendant. In a civil case, they decide in favor of the plaintiff or the defendant. In a civil case, the jury may set the amount of damages to be awarded.

In rare civil cases, if a judge believes the facts of the case to be so clear that no reasonable jury could decide otherwise, he may direct a verdict in favor of one party in a civil case. In even rarer cases, he may set aside a jury's verdict after it has deliberated.

In a criminal case, the judge may not find a defendant guilty when the jury has found him not guilty. He may, however, find a defendant not guilty if he believes no reasonable jury could find him guilty.

In a criminal case, the jury consists of twelve persons and no more than four alternates. In a civil trial, the parties most often agree to use only six jurors. There may be a twelve member jury, however, if one of the parties insists on it.

The move toward six-member juries in civil cases appears to be a national trend. Proponents of this trend claim six-member juries save time and money. Critics contend, however, that inequities may arise and that verdicts may not be as carefully reasoned when there are fewer than twelve jurors.

The entire practice of trial by jury has been criticized as time consuming and expensive at a time when court dockets are overcrowded and court systems are under-financed. Civil juries in particular have come under attack. Supporters maintain however, that the right to a trial by jury is essential to our system of justice.

Persons who are called for jury duty are called "veniremen." Jury commissioners are appointed (two in each county) by the chief justice⁹⁸ of the Supreme Judicial Court for the purpose of selecting people for jury duty. The process of selection is a random process carefully prescribed by the legislature under a constitutional mandate to insure that the jurors represent a cross section of the citizens of Maine. Jurors must be United States citizens; over eighteen years of age; residents of the county; able to read, speak and understand English; be capable, physically and mentally, of performing satisfactory jury service. Certain persons,⁹² because of the nature of their occupations, are exempt from jury service. Otherwise, a juror may only be excused upon a showing of undue hardship, extreme inconvenience, or public necessity, for a period that the court deems necessary, at the conclusion of which the person must reappear for jury service in accordance with the court's direction.⁹³

In any five-year period, a person cannot be required to attend court as a traverse juror for more than fifteen court days (except if necessary to complete service on a particular case), cannot be required to serve on more than one grand jury, and cannot serve both as a grand juror and as a traverse juror. Jurors are notified by mail of their assignment, and they report to the court on their first day in the court, and return. Jurors also receive compensation of \$20 a day for required attendance at sessions of the court.

The veniremen are assigned at random to be considered for selection to a jury for a particular case. In the courtroom, lawyers ask the veniremen questions about their background, whether they have any prior information about the case, whether they feel they are capable of evaluating the case fairly, and other questions designed to test for impartiality.

Each side may dismiss as many prospective jurors as necessary "for cause," because they demonstrate a possible bias. Each side may also exercise a set number of peremptory challenges for which it need not show cause. (The number of peremptory challenges varies from two per side in civil cases to ten for the state and twenty for the defendant in cases of criminal homicide.) When a juror is dismissed, a new name is drawn from the jury pool until the jury is complete.

In some instances, when trials have been widely publicized and community feelings run high, the jurors may be sequestered (forced to remain isolated) during the case and denied access to newspapers, television, radio and other influences which might prejudice their judgment.

Criminal Cases

A criminal case is initiated by a police arrest followed by booking of a defendant accused of violating a law and filing of a complaint by the prosecutor. A great deal of discretion is exercised by the police and the prosecutor at these and succeeding stages of the process, and many accused offenders are released.

Due process: To understand the purpose of many criminal justice procedures, it is important to first understand the concept of "due process" in American law. The Fourteenth Amendment to the U.S. Constitution provides that no state shall "deprive any person of life, liberty or property without due process of law."

"Due process" means that a person can be held in jail only on a specific charge; that he may have counsel if imprisonment would result from his conviction; that if he is indigent, the state will provide counsel; that he has the right to remain silent, to produce witnesses on his behalf and to appeal his case. "Due process" also includes the right to a trial by jury, although this is frequently waived by the defendant.

"Due process" means, further, that evidence must have been obtained legally, that a person is presumed innocent until proven guilty beyond a reasonable doubt, and that the burden of proof is on the prosecution.

Prosecution and defense: In criminal cases, the "state" or the prosecution, represented by a district attorney or an attorney from the attorney general's office, attempts to demonstrate that the defendant is guilty as charged. He may call upon the investigatory powers of the local or state police.

Prosecution's duty: The prosecutor has a duty to seek justice, not just to win. He should disclose all evidence, and he may not suppress or withhold evidence favorable to the defendant.

Recent U.S. Supreme Court decisions (Gideon v. Wainwright in 1963 and Argersinger v. Hamlin in 1972) guarantee an indigent defendant's right to counsel in any case where the sentence may be loss of liberty. (Gideon applies to felony cases, and Argersinger extends the right to defendants in misdemeanor cases.)

Bail hearing and bail bonds: At the next court session after his arrest, the defendant must be brought before a judge for a bail hearing. There he is advised of his rights and of the charges against him and bail is set. Counsel is generally appointed for an indigent defendant at this time.

Traditionally, bail is a sum of money paid by the defendant which he would forfeit if he did not appear for trial. Its sole purpose is to ensure appearance at trial. Authorities on American courts (such as Vera Institute in New York and the President's Commission on Law Enforcement and the Administration of Justice) generally agree that too many persons are kept in jail simply because they cannot make bail.

A judge may set a high bail to keep a defendant he deems dangerous from being released. Bail may also be improperly used as a punitive measure. The U.S. Constitution forbids "excessive bail." In Maine, a bail review hearing can be requested in the Superior Court.

If the defendant cannot raise the amount of his bond, a bail bondsman may post it for him for a fee varying from 10 per cent for a bond of \$1,000 or more to \$25 for a \$100 bond. The bondsman may refuse to post bond for any defendant he considers a poor risk.

The defendant pays the fee when the bond is posted. If the defendant fails to appear at trial, the bondsman forfeits the full bail although he may recover it by finding the defendant and turning him in. If the defendant appears, the bondsman still keeps his fee.

A judge may release a defendant who is awaiting trial on the defendant's personal recognizance; that is, on the basis of the defendant's promise to return for trial. This decision is usually based on the defendant's community ties and personal reputation for trustworthiness.

The practice of requiring money bail as a condition for pretrial release has been criticized because:

1. Bail acts as a fine which only the poor pay, since the rich can pay their full bail.

2. A long pretrial confinement for those unable to raise bail puts these defendants at a greater disadvantage at trial. They have not had an opportunity to seek out witnesses. Juries may be less favorably disposed to defendants who have come from jail than those who have been released.

3. Since the jailed defendant often loses his job, the state must frequently support his dependents.

4. Being confined to jail before trial is very much like serving a prison sentence without being proven guilty.

Preliminary hearings: After bail has been set, defendants come before a judge of the District Court for a preliminary hearing. There the prosecution tries to demonstrate that there is sufficient evidence to warrant going ahead to trial. The defendant has the opportunity to confront witnesses, introduce evidence, and he may, but usually does not, testify on his own behalf.

If the judge determines that there is probable cause (reason to believe that the defendant has committed the crime), a trial date is set. The judge also can reduce or dismiss the charges, if he believes probable cause has not been established. A ruling of probable cause must be based on admissible evidence. That is, the evidence must have been obtained without violating a defendant's rights.

Grand jury: In felony cases, after probable cause is found, the defendant is bound over to the Superior Court. At this point, the grand jury reviews the prosecution's evidence and decides whether it is sufficient to justify trial, unless the defendant waives the grand jury indictment. The defendant is not allowed to confront witnesses or present evidence before the grand jury.

A grand jury is made up of from thirteen to twenty-three citizens, chosen randomly from voter registration lists, whose main function is to decide whether "probable cause" exists that a defendant has committed a felony. One grand jury sits in each of Maine's sixteen counties. Each grand jury sits for twelve months before a new one is chosen.

If the grand jury believes it has found sufficient evidence to warrant the defendant standing trial, it returns a "bill of indictment" or a "true bill". This bill does not have any bearing on the question of guilt or innocence. It only means the grand jury believes the defendant should stand trial. If the grand jury does not find probable cause, they will issue a "no bill" and the complaint is dropped.

Grand juries also may conduct investigation where a crime appears to have been committed, even if the identity of the offender is not known. They may reach a conclusion on whether a crime has been committed, what the formal charge should be, and whether to indict.

The grand jury is also empowered to conduct investigations of the prison system or public officials on its own initiative. In some states, this power has been used effectively against corruption in government. An attempt was made in 1975 to revise the statute to do away with the need for a grand jury indictment, and use the direct method of the district attorney filing an information.

Plea bargaining: Plea bargaining or plea negotiation is an arrangement between the prosecutor and the defendant or his attorney whereby the defendant agrees to plead guilty to a lesser charge in exchange for a lighter sentence. Nationally, more than 90 per cent of criminal cases are settled in this manner. Both prosecution and defense participate in plea bargaining because they are interested in limiting the risks inherent in adversary proceedings. It has been compared to the civil practice of settling a case out of court. Plea bargaining saves time for the court and for the prosecutor. Without plea bargaining, courts would have to try many more cases. The judge should not participate in plea discussions.

The practice of plea bargaining must be surrounded by careful guarantees, since its abuse erodes popular respect for law. When plea bargaining is overused and unsupervised, defendants are often penalized for exercising their constitutional right to trial.

The American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals take conflicting positions on the practice of plea bargaining. The American Bar Association standards seek to minimize the risk of unfair results, while the National Advisory Commission standards recommend that plea bargaining be abolished.

The criminal trial: In a criminal trial, the state tries to show that a person (the defendant) broke the law and deserves punishment. The defendant has certain rights. He is innocent unless proven guilty beyond a reasonable doubt, he is allowed the assistance of counsel, he can compel others to come and testify, he need not testify himself, and many more. These rights have been defined over the centuries out of the basic philosophy of fairness, and the feeling that no person should stand unprotected before the full force of the government.

The trial itself reflects these ideas of fairness. The trial is conducted by certain rules. Both the government and the defendant are represented by certain people (lawyers) who are supposed to be expert in these rules. These rules are enforced by a judge who presides over the trial. The defendant's innocence or guilt is determined by a group of the defendant's fellow citizens (the jury). The jury is allowed to consider only fair and relevant facts introduced at the trial (evidence).

The trial begins with the government's attorney (prosecutor) explaining what he will attempt to prove (opening statement). This statement is not evidence. It is a roadmap showing what course the trial will take. After the prosecutor is finished, the defense attorney has the right to make an opening statement. If he chooses, he may save this statement for later in the trial.

After the opening statements, the state presents witnesses to try to prove its case. After a witness swears to tell the truth, the prosecutor extracts the witness' story through questions. If the defendant's attorney thinks that any question is unfair or asks for unfair or irrelevant information, he can ask the judge to stop the witness from answering the question (objection). Usually the judge will decide the objection immediately, but if it raises a difficult point of law, he may ask the lawyers to discuss the objection with him. If this discussion is very long or complicated, the judge, fearing that the jury may be influenced, may ask the jury to leave the courtroom or hold the discussion in the judge's chambers.

After the prosecutor finishes examining the witness, the defendant's attorney has the right to question the witness (cross-examination). While the defendant's attorney is examining the witness, the prosecutor may object to any questions he thinks are unfair or ask for unfair or irrelevant information. When the defendant's attorney finishes the cross-examination, the prosecutor may question the witness again (redirect examination). This sequence of examination and cross-examination continues until both lawyers are ready to excuse the witness.

After the prosecutor examines all his witnesses, he informs the judge that he is finished proving his case (rests his case). The defendant's attorney may then ask the judge to rule that the prosecutor has not proved the defendant guilty (motion for a directed verdict). If the judge agrees with this request, the defendant is acquitted. If the judge disagrees, the defendant may either present his own case or stand mute and let the prosecutor's case go to the jury uncontradicted.

If the defendant's attorney does decide to present a case, he operates under exactly the same rules as the prosecutor. The defendant's attorney extracts testimony by questioning witnesses. The prosecution may object to questions. The prosecution may cross-examine the defendant's witnesses. When the defendant's attorney finishes presenting his case, he rests his case.

After both sides have rested, they make closing arguments before the jury. Closing arguments are similar to opening statements. They are not evidence. They are each side's view of what has been proved. After closing arguments, the judge tells the jury what law they are to apply and explains what that law means (instructions to the jury). The jury then retires into a private jury room and decides whether the defendant is guilty or innocent.

Sentencing: Sentencing is generally the final step in the criminal court process. The judge has the power to sentence the defendant within minimum and maximum limits prescribed by the legislature. The judge is assisted in his decision by a presentence report supplied by a state probation officer based in that particular county. The report contains information about the defendant's background, his family, his employment, his previous criminal record, and his attitude towards his crime. The judge also considers how good a risk the defendant would be on probation.

The sentence is apt to reflect the judge's perception of the severity of the crime, the defendant's prior record, and the danger the defendant represents to the community. Sentences, and the limits within which they are set down, also reflect public attitudes towards various types of crime and the availability of institutional and other community resources for dealing with convicted offenders.

Some people feel that judges have been given too much sentencing discretion. There is a movement in some states to replace judicial discretion with strictly limited "mandatory" sentencing set down by the legislature. Maine adopted "flat time" sentencing on May 1, 1976. This means that the prisoner serves his full term with no possibility of parole.

The most frequently imposed sentence is probation; the release of a convicted offender under the supervision of a probation officer for a period of time set by the court. Probation is revocable. Failure to fulfill its conditions (which may include holding a job, not leaving the state, refraining from drug abuse and excessive alcohol) may mean commitment to a correctional institution for the original sentence. Most experts agree that probation is preferable to imprisonment in many cases. Three justices of the Supreme Judicial Court are assigned to serve as the appellate division to review sentences to the state prison when appealed.

Habeas corpus: A convicted defendant who exhausts his legal appeals in the Maine court system may apply for post-conviction habeas corpus to the Supreme Judicial Court or a writ of habeas corpus to the federal district court. (Habeas corpus is a challenge on constitutional grounds to the legality of the detention. It is not a challenge to the finding of guilt or innocence. It is a plea for release from unlawful imprisonment.) By taking a case to the federal district court, cases can be appealed all the way up through the federal court system.

The Civil Litigation Process

A civil action begins when the plaintiff files a complaint (a written statement of the facts) with a clerk of court. If the court has jurisdiction in the case, a summons with a copy of the complaint must be served upon the defendant. A summons is a document that tells the defendant to appear in court and answer the complaint. The summons may be in person or, if the defendant cannot be reached in person, by mail or publication.

The defendant may appear by filing a written pleading or motion which questions the legal sufficiency of the complaint. If the motion is granted, the plaintiff must file an amended complaint or the case will be dismissed. If the motion is denied, the defendant must file an answer in which he admits or denies the allegation of the complaint and alleges facts to justify his conduct. He may also file a counter claim which the plaintiff must answer.

When the pleading is finished, the case is said to be "at issue". Then discovery proceedings take place. The parties obtain more complete information concerning the claims and evidence of the opposing party. This activity takes place out of court. It may include taking depositions from sworn witnesses and taking interrogatories from the parties. Additional motions may be filed, including a motion for summary judgment, which is a request for judgment before the trial.

After discovery is completed, a pretrial conference is held by the court and both counsel. Here, issues are discussed and simplified, stipulations of uncontested fact are made, the methods of proof are explored, and orders are prepared to expedite the trial. A date is set for trial.

If the case is to be tried before a jury, a jury is chosen. The plaintiff's attorney must make an opening statement. The defendant's attorney may make an opening statement, if he chooses. The plaintiff presents his case first. The opposing attorney may cross-examine the plaintiff's witnesses.

When the plaintiff has presented his case, the defendant's counsel may make a motion to dismiss, stating the plaintiff has not proved his case, or for a directed verdict in which the judge instructs the jury to find in favor of the defendant. If these motions are denied, the defendant must present his case. The burden of proof is on the plaintiff, who is given a chance for rebuttal.

After the closing argument, the judge instructs the jury (if there is one) on the law. The jury is the sole judge of the facts, but it must follow the instructions of the judge on the law governing the case. If there is no jury, the judge rules on both the facts and the law in the case.

If errors of law occurred in the trial or for some other reason, the court, upon motion of one of the parties, may grant a judgment notwithstanding the verdict or it may amend or alter the judgment or grant a new trial. If the losing party does not comply with the judgment, he may be held in contempt of court or he may be granted a proceeding in another jurisdiction. If no new trial is granted, the losing party may appeal to a higher court. On appeal, usually only points of law are at issue and there is no jury. In Maine, however, an appeal of a District Court decision can result in a new trial in the Superior Court (trial de novo).

THE JUDICIARY

Selection and Tenure

All Maine judges except probate judges are appointed by the governor with the advice and consent of the senate. The judges are appointed to seven year terms, and they are reappointed until they reach retirement age.

Probate judges are elected to four year terms by the voters of their county in partisan elections. Registers of probate, the clerks of the Probate Courts, must also run for election.

The governor with the advice and consent of the senate may appoint new judges to fill any mid-term vacancy, including a vacancy on the Probate Court. Appointed probate judges must run in the next November election.

In Maine, a screening commission composed of lawyers advises the governor informally on the qualifications of proposed judicial appointees. This method has been rated inferior to the merit plan by the U.S. Department of Justice. The Department of Justice has also rated the Maine Judicial Nominating Commission as Criminal Justice Standards and Goals.

The merit plan operates in whole or in part in twenty-six states. Three basic features of the merit plan are: first, the nomination of a list of qualified candidates, usually three, by a non-partisan commission with lawyer and non-lawyer members; second, the appointment of the judge from the list of nominees by an elected state official; and third, the election of the judge in a yes-no retention election after a short probationary period (see page 38)

Education

Maine judges are offered one opportunity to broaden their knowledge and improve their skills after they are appointed or elected to the bench.

The justices of the Supreme Judicial Court are encouraged to attend the Appellate Judges Seminars sponsored by New York University in New York City. New judges of the Superior Court are sent to the National College of the State Judiciary in Reno, Nevada, for a basic four-week course. District Court judges attend educational programs at the New England Center in Durham, New Hampshire or the National College, in Reno.

Maine has no statutory provisions or court rule requiring mandatory judicial education, nor does it have any in-state program for educating judges. Today the court systems of forty states provide some form of entry training or orientation for new trial judges, and forty-six states and the District of Columbia have instate programs for continuing judicial education.

The American Bar Association Standards Relating to Court Organization recognize that continuing training and education are essential if judges are to establish and maintain a satisfactory level of professional competence.

Compensation

The salaries of Maine judges range from \$27,500 paid to the chief justice down to \$4,050 paid to some Probate judges. The justices of the Supreme Judicial Court are paid \$26,000; judges of the Superior Court are paid \$22,000; judges of the District Court are paid \$12,020. Probate judges' salaries range from \$4,500 to \$12,020.

Maine falls well below the national average for judicial compensation. It ranks fiftieth in highest appellate court salaries and forty-seventh in general trial court salaries.

Inadequate levels of compensation should be of concern not only to judges but to citizens as well. Adequate levels of compensation help to maintain the prestige, morale and high ethical standards of the judiciary. Furthermore, adequate compensation is necessary to encourage the most qualified individuals to seek, accept and hold judicial office. Adequate compensation is also a condition of compensation paid to judicial officers and institutional judicial independence from the legislative and executive branches.

A number of states have followed the federal government in establishing judicial compensation review commissions. The American Bar Association Standards Relating to Court Organization recommend that such commissions be composed of "persons familiar with compensation levels in the executive branch of government, among the legal profession, and among professionals and executives in other disciplines."

Tables 4 and 5 in the appendix compare Maine's judicial salaries with those of other states.

Retirement and Removal

If a Maine justice or judge retires after age seventy and before age seventy-one, and if he has served at least seven years, he will receive a life pension of 75 per cent of the current salary of an active justice or judge. If a judge is forced by physical disability to retire before age seventy, he will still receive benefits, and if he dies in office, his wife and children will receive benefits. In the event, however, that a judge is not reappointed by the governor, whether he has served one or many terms, he receives no retirement benefits at all.

A procedure exists whereby any justice or judge may be retired involuntarily if he is unable, by reason of failing health, to perform his duties. If there is reason to believe that a judge is disabled to the point where he cannot act effectively as a judge, the Supreme Judicial Court may appoint a commission of three disinterested doctors to inquire into the situation. The Supreme Judicial Court makes the final determination based on the doctors findings. If they recommend that the judge be involuntarily retired, the governor may appoint a replacement with the advice and consent of the senate.

If a judge dies in office, his life insurance is equal to two years' salary. The moment he retires, this benefit is cut in half. For this reason, the courts are reluctant to involuntarily retire judges who are seriously ill or dying.

Any justice or judge may be removed for misconduct or for any cause by impeachment or legislative address. Impeachment is a difficult and formal procedure consisting of a trial before the legislature. Legislative address is a two-thirds vote of the legislature. There have been no impeachments in Maine, but there have been three attempts at removal by legislative address in 1865, 1891 and 1907. In 1865 a justice of the Supreme Judicial Court was removed for political reasons, and the governor successfully reappointed him the next year. In 1891 a judge of the Municipal Court was permanently removed. In 1907, an attempt at address against a Municipal Court judge was rejected by the legislature.

Impeachment and address are cumbersome and uncertain remedies for judicial misconduct and unfitness.

In the past thirty years, forty-six states have developed more effective alternatives to maintain public confidence in the judiciary. Most of these jurisdictions have judicial disciplinary commissions composed of judges, lawyers and lay members. These commissions are responsible for the selection, discipline, integrity, pay and retirement of the judiciary and professional competence.

Disciplinary actions such as removal, reprimand, censure and suspension may be taken. Retirement may be recommended for physical or mental disability. The majority of commissions have been established by constitutional amendment, although some exist by statute or court rule enacted pursuant to broad constitutional language authorizing discipline other than by impeachment.

Restricted Activities

No judge of any court is permitted at the same time to be a member of the state legislature or the United States Congress. No one may hold more than one of the following offices at the same time: attorney general, county attorney, treasurer of the state, adjutant general, judge of probate, register of probate, register of deeds, sheriff or deputy sheriff, clerk of the judicial court, or justice of the Supreme Judicial Court or any inferior court. ¹⁰¹

No justice of the Supreme Judicial Court or any other court is permitted to hold an office of the United States or any other state, nor of the State of Maine, except as a justice of the peace or as a member of the Judicial Council. ¹⁰²

No person holding a place of trust in any state office or public institution of the State of Maine is permitted to be financially interested (directly or indirectly) in any contracts made in behalf of the state or the institution in which he or she holds that place of trust, and a contract made in violation of this is void. ¹⁰³

No court employee may hold public office or an office in a political party. Court employees may not take an active part in the campaign or management of any political party or candidate for political office. They are prohibited from wearing campaign buttons and distributing campaign literature within the courthouse. Employees at the higher management levels are prohibited from participation in public political functions and from making political contributions.

ADMINISTRATIVE COURT

The Administrative Court was recently re-constituted by the 1976 Second Special Session of the 152th Maine Legislature. ¹⁰⁴ It is a special court with limited jurisdiction and originally created by Maine Statutes under title 3, "Administrative Procedures and Services," while statutory law regarding the courts described in preceding pages here is grouped under title 4, "Judiciary."

Under the Administrative Code¹⁰⁵ the Administrative Court conducts hearings on complaints and appeals from certain administrative agencies of the State of Maine.¹⁰⁶ The agencies involved are only those specifically listed¹⁰⁷ and include boards, commissions, departments or officers authorized by law to make rules or to adjudicate contested cases, such as the State Liquor Commission and a large number of state boards and commissions.

Judges of the Administrative Court also have jurisdiction to issue declaratory rulings, stating whether or how any rule or statute enforceable by one of the above agencies is applicable to any person, property, or situation.¹⁰⁸

The Administrative Court judge is authorized to adopt, amend, or repeal rules of procedure for contested cases as well as any appropriate forms for processing cases.¹⁰⁹

The Administrative Court may address the operations of administrative agencies only on written complaint or petition for a declaratory ruling, and then only within the context of the specific matter before it.¹¹⁰

The Court has two judges, an administrative court judge and an associate administrative court judge.¹¹¹ Each must be a United States citizen,¹¹² a lawyer authorized to practice law in Maine, and must devote full time to his duties, without any private practice of law or formal connection with a law firm during their term of office.¹¹³ They are selected the same as other judges with the same term.

THE FEDERAL JUDICIARY

Another set of courts exists alongside the state court system, in Maine, the federal courts. Just as the state courts operate as the judicial arm of the state government, the federal courts operate as the judicial arm of federal government.

District Courts

There are ninety-three Federal District Courts: eighty-eight in the fifty states and one each in the District of Columbia, The Canal Zone, Guam, Puerto Rico, and the Virgin Islands. There is at least one District Court in every state. Some of the districts are divided into divisions. In Maine, the southern division of the U.S. District Court convenes in Portland, and the northern division in Bangor. The number of judges is determined by the population and caseload of the district.

There are some situations, where the federal district court is the only court in which a litigant can bring his case. This exclusive jurisdiction includes:

1. admiralty and maritime cases
2. bankruptcy proceedings
3. cases arising under the patent or copyright laws
4. cases involving a fine, penalty or forfeiture under federal law
5. proceedings against consuls or vice consuls of foreign states
6. seizures on land or upon the waters.

Original jurisdiction exists also in cases in which the United States or a national bank or the Internal Revenue Service is a party, and in cases involving civil rights and election disputes.

In some cases, a litigant may sue in either a federal or a state court. This concurrent jurisdiction includes:

1. Where the controversy arises under the Constitution, laws or treaties of the U.S. and more than \$10,000 is involved. This is referred to as "federal question" jurisdiction.

2. Where more than \$10,000 is in controversy and the dispute is between:

- a. citizens of different states
- b. citizens of one state and foreign states
- c. citizens of different states and a foreign state.

This is called "diversity" jurisdiction.

If a plaintiff sues in a state court and he could have sued in a federal district court originally, the defendant may remove the case to the federal district court. "Removal jurisdiction" includes:

1. "diversity" cases
2. "federal question" cases
3. cases against United States officials
4. cases in which a state court is not properly enforcing a law providing for equal civil rights
5. cases against members of the armed forces.

The federal district court, exclusive of the state courts, over all offenses against the laws of the United States.

Courts of Appeal

Currently there are eleven different courts of appeal organized on a regional basis. Maine is included in the First Circuit along with Massachusetts, New Hampshire, Puerto Rico, and Rhode Island. The Courts of Appeal sit in major cities prescribed by statute, and other places designated by court rule.

Unless a direct review by the United States Supreme Court is provided for, the Court of Appeals reviews cases from the following tribunals:

1. District Courts in the United States and its territories;
2. Certain federal administrative agencies -- e.g., Securities and Exchange Commission, National Labor Relations Board.

The Supreme Court

The United States Supreme Court is the only federal court specifically created by the constitution. Presently, it consists of a Chief Justice of the United States and eight associate justices. The Supreme Court sits in Washington, D.C., in an annual term that begins on the first Monday in October and usually ends in late June. It is not authorized to sit in divisions and must have a quorum of six. The Supreme Court is the court of last resort in the United States. As the late Justice Robert Jackson observed: "we are not final because we are infallible, but we are infallible only because we are final."¹¹⁴

CITATIONS

1. 4 M.R.S.A. § 1.
2. 4 M.R.S.A. § 15.
3. 4 M.R.S.A. § 471.
4. M.R.S.A. Const. art. VI, §1.
5. 4 M.R.S.A. §1.
6. M.R.S.A. Const. art. V, pt. 1,
§8; 3 M.R.S.A. §§151-52.
7. M.R.S.A. Const. art VI, §4.
8. 4 M.R.S.A. §6.
9. 4 M.R.S.A. §7.
10. 4 M.R.S.A. §105.
11. M.R.S.A. Const. art. VI, §3.
12. 4 M.R.S.A. §851.
13. 4 M.R.S.A. §57.
14. 4 M.R.S.A. §401.
15. 14 M.R.S.A. §1851.
16. 15 M.R.S.A. §2115.
17. 15 M.R.S.A. §2115-A.
18. 15 M.R.S.A. §2667.
19. 35 M.R.S.A. §303.
20. 35 M.R.S.A. §305.
21. 38 M.R.S.A. §487.
22. 39 M.R.S.A. §103.
23. M.R.C.P. 80(b).
24. 4 M.R.S.A. §1.
25. M.R.S.A. Const. art. X, §6.
26. 4 M.R.S.A. §11.
27. 4 M.R.S.A. §6.
28. 4 M.R.S.A. §11.
29. 4 M.R.S.A. §§15, 16.
30. 4 M.R.S.A. §19.
31. 4 M.R.S.A. §53.
32. 4 M.R.S.A. §54.
33. 4 M.R.S.A. §101..
34. 4 M.R.S.A. §§110, 111.
35. 4 M.R.S.A. §551.
36. 4 M.R.S.A. §§651, 652.
37. 4 M.R.S.A. §451.
38. 4 M.R.S.A. §101.
39. M.R.S.A. Const. art. VI, §4.
40. M.R.S.A. Const. art. V, Pt. 1, §8.
41. 4 M.R.S.A. §110.
42. 4 M.R.S.A. §104.
43. 4 M.R.S.A. §105.
44. M.R.S.A. Const. art. I, §20.
45. 15 M.R.S.A. §2114;
4 M.R.S.A. §165.
46. 15 M.R.S.A. §2114.
47. M.R.S.A. Const. art. I, §20.
48. 14 M.R.S.A. §6051.

49. 4 M.R.S.A. \$152.
50. 14 M.R.S.A. \$6651.
51. 4 M.R.S.A. \$401.
52. 15 M.R.S.A. \$\$2111,
2115-A.
53. 15 M.R.S.A. \$2661.
54. 5 M.R.S.A. \$2401.
55. M.R.S.A. Const. art. VI, \$6.
56. 4 M.R.S.A. \$152.
57. 4 M.R.S.A. \$251.
58. 4 M.R.S.A. \$252.
59. M.R.S.A. Const. art. VI, \$6.
60. M.R.S.A. Const. art. VI, \$6.
61. 4 M.R.S.A. Const. art. VI, \$6.
62. 14 M.R.S.A. \$7452.
63. 15. M.R.S.A. \$\$2551-553.
64. 15 M.R.S.A. \$2114.
65. 4 M.R.S.A. \$157.
66. 4 M.R.S.A. \$451.
67. 4 M.R.S.A. \$451.
68. 4 M.R.S.A. \$471.
69. 4 M.R.S.A. \$471.
70. 4 M.R.S.A. \$15.
71. 4 M.R.S.A. \$17.
72. 4 M.R.S.A. \$8.
73. 4 M.R.S.A. \$9.
74. 4 M.R.S.A. \$9-A.
75. 5 M.R.S.A. \$\$1665, 1666.
76. 4 M.R.S.A. \$118.
77. 4 M.R.S.A. \$103.
78. 30 M.R.S.A. \$252.
79. 4 M.R.S.A. \$163.
80. 30 M.R.S.A. \$2.
81. 4 M.R.S.A. \$651.
82. 4 M.R.S.A. \$164.
83. D.C.C.R. 76; D.C.C.R. 39(a)
84. 4 M.R.S.A. \$751.
85. 4 M.R.S.A. \$7.
86. 4 M.R.S.A. \$114.
87. 4 M.R.S.A. \$164.
88. 18 M.R.S.A. \$253.
89. 5 M.R.S.A. \$95(7)(c)
90. 14 M.R.S.A. \$1251.
91. M.R.S.A. Const. art. I, \$7;
14 M.R.S.A. \$\$1254,1255.
92. 14 M.R.S.A. \$1211.
93. 14 M.R.S.A. \$1213.
94. 14 M.R.S.A. \$1216.
95. 14 M.R.S.A. \$1215.
96. 4 M.R.S.A. \$1; 4 M.R.S.A.
\$101; 4 M.R.S.A. \$157.

97. M.R.S.A. Const. art VI, §6.
98. 4 M.R.S.A. §5.
99. 4 M.R.S.A. §2.
100. M.R.S.A. Const. art IX, §5.
101. M.R.S.A. Const. art. IX, §2.
102. M.R.S.A. Const. art. VI, §5.
103. 17. M.R.S.A. §3104.
104. Public Laws 1976, Ch. 780.
105. 5 M.R.S.A. Pt. 6.
106. 5 M.R.S.A. §2401.4.
107. 5 M.R.S.A. §2301.
108. 5 M.R.S.A. §2402.
109. 5 M.R.S.A. §2403.5.
110. 5 M.R.S.A. Ch. 305.
111. 5 M.R.S.A. §2401.7.
112. 5 M.R.S.A. §556.
113. 5 M.R.S.A. §2401.2.
114. Brown v. Allen, 1953, 73 S. Ct. 397.

Table 1. Number of Courts, by Level of Jurisdiction, by State
January 31, 1975

	Total Courts	Courts of Appellate Jurisdiction	Courts of General Jurisdiction	Courts of Limited & Special Jurisdiction
ARIZONA	161	3	14	144
CONNECTICUT	175	1	14	160
DELAWARE	38	1	6	31
IDAHO	45	1	45	--
MAINE	64	1	16	47
MARYLAND	73	2	24	47
MASSACHUSETTS	107	2	14	91
NEBRASKA	296	1	93	202
NEVADA	76	1	17	58
NEW HAMPSHIRE	87	1	10	76
NEW MEXICO	144	2	21	121
OREGON	213	2	36	175
RHODE ISLAND	56	1	4	51
UTAH	120	1	29	90
VERMONT	48	1	14	33
WYOMING	89	1	23	65

Table 2. Courts of General Jurisdiction, Ratio of Judges to Population

	<u>1970 Population</u>	<u>No. of Judges 1975</u>	<u>Ratio of Judges to Population</u>
ARIZONA	1,772,482	75	1/23,633
CONNECTICUT	3,532,217	45	1/67,383
DELAWARE	548,104	10	1/54,810
IDaho	713,008	26	1/27,428
MAINE	993,663	15	1/66,244
MARYLAND	3,922,399	78	1/50,287
MASSACHUSETTS	5,689,170	57	1/99,810
NEBRASKA	1,483,791	56	1/26,496
NEVADA	448,738	26	1/17,259
NEW HAMPSHIRE	737,681	14	1/52,691
NEW MEXICO	1,016,000	30	1/33,867
OREGON	2,091,385	67	1/31,215
RHODE ISLAND	949,723	15	1/63,315
UTAH	1,059,273	20	1/52,964
VERMONT	444,732	18	1/24,707
WYOMING	332,416	13	1/25,570

Table 3. Organization of the District Court

<u>District</u>	<u>Division</u>	<u>Court Sites</u>
I	Eastern Aroostook Western Aroostook	Caribou Madawaska Fort Kent (criminal only) Van Buren (criminal only)
II	Central Aroostook Southern Aroostook	Presque Isle Houlton
III	Southern Penobscot Western Penobscot	Bangor Newport
IV	Northern Washington Southern Washington	Calais Machias
V	Central Hancock Southern Hancock Waldo	Ellsworth Bucksport Bar Harbor Belfast
VI	Sagadahoc Lincoln Knox	Bath Wiscasset Rockland
VII	Northern Kennebec Southern Kennebec	Waterville Augusta
VIII	Southern Androscoggin Eastern Cumberland	Lewiston Brunswick
IX	Southern Cumberland Northern Cumberland	Portland Bridgton
X	Eastern York Western York Southern York	Biddeford Sanford Kittery
XI	Northern Androscoggin Northern Oxford Southern Oxford	Livermore Falls Rumford South Paris
XII	Somerset Franklin	Skowhegan Farmington
XIII	Piscataquis Northern Penobscot Central Penobscot	Dover-Foxcraft Millinocket Lincoln

Table 4. HOW JUDGES ARE SELECTED

<u>State</u>	<u>Merit Selection</u>	<u>Retention Elections</u>
Alabama	Constitutional merit selection for some trial judges. Partisan election for the rest	Partisan election
Alaska	Constitutional merit selection for all judges	Constitutional merit retention for all judges
Arizona	Constitutional merit selection for appellate and trial judges of Maricopa and Pima counties and non-partisan elections in in other 12 counties	Constitutional merit retention for appellate court judges and trial court judges in two counties
Arkansas	Partisan elections	Partisan elections
California	Appellate judges appointed by governor with a commission on judicial appointments to screen nominees	Constitutional merit retention election for appellate; non-partisan election for trial judges
Colorado	Constitutional merit selection for all judges	Constitutional merit retention for all judges
Connecticut	Legislature elects from governor's nominees. Governor uses a screening commission	
Delaware	Governor appoints with consent of senate	Governor reappoints with consent of senate
District of Columbia	Statutory merit selection for all judges (appointment by President)	Statutory (reappointment by President) after evaluation by judicial disciplinary commn.
Florida	Constitutional merit selection for all appellate judges. Constitutional merit selection for trial judge vacancies. Non-partisan elections for trial judges.	Constitutional merit retention for appellate court judges. Non-partisan elections for trial judges.
Georgia	By Atlanta City Charter, merit selection for Atlanta Municipal Court judges and voluntary merit selection for all state judges. Partisan elections	Partisan election

Prepared by Edward J. Schoenbaum
Revised November 15, 1976

Hawaii	Governor appoints supreme court and circuit court with consent of senate. Chief justice appoints district magistrates.	
Idaho	Constitutional merit selection for all judges, for vacancies only. Non-partisan election	Non-partisan election
Illinois	Supreme court appoints to fill vacancies. Partisan elections for for appellate and circuit associate judges appointed by circuit judges.	Constitutional merit retention after a judge has won one regular campaign
Indiana	Constitutional merit selection for appellate and trial judges in 6 counties. Partisan elections	Constitutional merit retention for appellate court judges and for those in counties with merit selection
Iowa	Constitutional merit selection for all judges	Constitutional merit retention for all judges
Kansas	Constitutional merit selection for appellate court judges and judges of 23 of the judicial districts. Non-partisan election in 6 districts	Constitutional merit retention for all courts with merit selection
Kentucky	Constitutional merit selection for all judges, for vacancies only. Non-partisan election for appellate and circuit judges	Non-partisan election
Louisiana	Non-partisan elections	Non-partisan election
Maine	Governor appoints with legislative approval. Uses screening commission	Governor reappoints
Maryland	Constitutional merit selection for district & appellate court judges and voluntary merit selection to fill vacancies on circuit court.	Constitutional merit retention for district court judges and appellate judges. Non-partisan election for circuit court judges.
Massachusetts	Voluntary merit selection by executive order; governor appoints with consent of executive council	Life appointment, mandatory retirement at 70
Michigan	Non-partisan election	Non-partisan election
Minnesota	Non-partisan election	Non-partisan election
Mississippi	Partisan election	Partisan election
Missouri	Constitutional merit selection for appellate court judges and judges of 5 circuits. Partisan election for rest	Constitutional merit retention for all courts with merit selection

Montana	Constitutional merit selection for all judges, vacancies only	Non-partisan election
Nebraska	Constitutional merit selection for all judges	Constitutional merit retention for all judges
Nevada	Merit selection to fill all district & appellate court vacancies.	Non-partisan election
New Hampshire	Governor appoints with consent of executive council	Life tenure-mandatory retirement at age 70
New Jersey	Governor appoints with consent of senate	Mandatory retirement at age 70
New Mexico	Partisan election	partisan election
New York	Executive Order- Voluntary merit selection to fill vacancies. Partisan election	Partisan election
North Carolina	Partisan election	Partisan election
North Dakota	Constitutional merit selection to fill vacancies	Non-partisan elections
Ohio	Non-partisan election	Non-partisan election
Oklahoma	Constitutional merit selection for appellate court judge and voluntary merit selection for trial court judges	Constitutional merit retention for appellate court judges. Non-partisan election for trial judges
Oregon	Non-partisan election	Non-partisan election
Pennsylvania	Voluntary merit selection by executive order to fill vacancies. Partisan elections	Constitutional merit retention after a judge has won one regular partisan election
Rhode Island	Legislature elects supreme court. Governor appoints rest with consent of senate	Life tenure
South Carolina	Voluntary merit selection. Legislature elects	Life tenure
South Dakota	Non-partisan election	Non-partisan election
Tennessee	Constitutional merit selection for judges of Intermediate Court of Appeals. Partisan elections	Constitutional merit retention for judges of Intermediate Court of Appeals
Texas	Partisan election	Partisan election
Utah	Constitutional merit selection for all judges	Constitutional merit retention for all judges, unless opposed in non-partisan election

Vermont	Constitutional merit selection for all judges	Retained by legislative election
Virginia	Elected by legislature	
Washington	Non-partisan election	Non-partisan election
West Virginia	Partisan elections	Partisan election
Wisconsin	Non-partisan election	Non-partisan elections
Wyoming	Constitutional merit selection for all judges	Constitutional merit retention for all judges
Guam	Governor appoints Merit selection	Merit retention
Puerto Rico	Voluntary merit selection Governor appoints with consent of senate	

Table 5. RANK ORDER OF JUDICIAL SALARIES, POPULATION, AND
PER CAPITA INCOME IN THE 50 STATES

The salaries reported for the highest appellate court refer to the salaries paid to associate justices. The general trial court salaries refer to the standard state paid salary for ranking purposes. The Commonwealth of Puerto Rico, District of Columbia and United States courts are ranked relative to the states, but did not figure in the initial numbering. An asterisk means that another state has the same rank.

JUDICIAL SALARIES

State	Highest Appellate Court	General Trial Court	Per Capita Income	Population
Alabama	34	48*	48	21
Alaska	3	2	5	51
Arizona	23	19	28	33
Arkansas	46	38*	49	32
California	2	3	9	1
Colorado	30*	37	13	30
Connecticut	26*	15	1	24
Delaware	12	10	4	46
Florida	16*	14	19	9
Georgia	16*	21*	33	15
Hawaii	13	9	8	40
Idaho	42*	41	36	42
Illinois	4*	12	6	5
Indiana	47	42*	20	11
Iowa	26*	25	23	25
Kansas	36*	38*	18	28
Kentucky	41	44*	43	23
Louisiana	4*	4	46	20
Maine	50	47	42	38
Maryland	9	8	10	18
Massachusetts	15	13	12	10
Michigan	10	42*	11	7
Minnesota	24	23	24*	19
Mississippi	33	30*	50	29

Reprinted from Quarterly Survey of Judicial Salaries in State Court Systems, Vol. 2,
No. 2, September, 1975, p.1.

Table 5 (cont.)

State	Highest Appellate Court	General Trial Courts	Per Capita Income	Population
Missouri	24	27	26	13
Montana	49	48*	31	43
Nebraska	28	21*	21	35
Nevada	30*	30*	7	47
New Hampshire	32	18	30	41
New Jersey	7	6*	3	8
New Mexico	39*	34	45	37
New York	1	1	2	2
North Carolina	21	29	34	12
North Dakota	39*	30*	37	45
Ohio	16*	17	14	6
Oklahoma	42*	48*	35	27
Oregon	29	24	27	31
Pennsylvania	4*	5	17	3
Rhode Island	35	28	15	39
South Carolina	22	11	47	26
South Dakota	48	44*	39	44
Tennessee	20	20	40	17
Texas	8	6*	32	4
Utah	42*	38*	38	36
Vermont	45	46	41	48
Virginia	14	26	24*	14
Washington	19	16	44	22
West Virginia	36*	36	44	34
Wisconsin	11	35	29	16
Wyoming	36*	30*	22	49
Commonwealth of Puerto Rico	39a*	44		
District of Columbia	21a	14		
United States	1a	6a*		

* Another state has the same rank

a After all the states were ranked, these courts were ranked relative to the states.

Table 6. JUDICIAL SALARIES IN APPELLATE AND TRIAL COURTS

State	Supreme Court	Intermediate Appellate Court	General Trial Court	Date of Last Salary Change
Alabama	\$ 33,500	\$ 33,000	\$ 25,000 (35,000)	12/1/75
Alaska	52,992		48,576	6/1/75
Arizona	37,000	35,000	33,000	1/6/75
Arkansas	31,189		29,913	7/1/75
California	57,275	55,000	55,000	7/1/75
Colorado	40,000	37,000	33,000	7/1/76
Connecticut	36,000		34,500	1/3/73
Delaware	42,000		39,000	7/1/75
Florida	40,000	38,000	36,000	1/1/75
Georgia	40,000	39,500	32,500 (44,600)	7/1/75
Hawaii	45,000		42,500	1/1/76
Idaho	31,500		28,500	7/1/76
Illinois	50,000	45,000	37,000	7/1/75
Indiana	38,100	38,100	26,500- 31,500	6/1/75
Iowa	39,000		33,072	7/1/76
Kansas	32,500		27,500 (30,032)	7/1/75
Kentucky	39,000	37,000	35,000	6/30/76
Louisiana	50,000	47,500	42,500	8/1/75
Maine	26,000		25,500	4/1/74
Maryland	44,100	41,400	39,200	7/1/75
Massachusetts	40,788	37,771	36,203	1/1/74
Michigan	43,500	41,961	26,500 (41,759)	1/1/76
Minnesota	36,500		32,000	7/1/73
Mississippi	34,000		30,000	7/1/74
Missouri	36,500	34,000	31,000	7/1/75
Montana	27,000		25,000	7/1/75
Nebraska	35,500		32,500 (34,000)	2/1/76
Nevada	35,000		30,000	1/1/75
New Hampshire	34,060		33,956	1/1/76
New Jersey	48,000	45,000	40,000	6/28/74
New Mexico	33,500	32,000	31,000	7/1/76
New York	60,575	51,627	48,998	7/1/74
North Carolina	39,816	37,224	32,016	7/1/76
North Dakota	32,000		30,000	7/1/76
Ohio	40,000	37,000	34,000	11/16/73
Oklahoma	38,000	35,000	21,000- 32,000	7/1/76
Oregon	38,720	37,510	35,000	7/1/75
Pennsylvania	55,000	53,000	45,000	12/1/72
Rhode Island	36,300		34,100	6/20/76
South Carolina	39,272		39,272	7/1/76
South Dakota	28,000		26,000	4/1/75

Reprinted from Judicial Salaries in State Court Systems, July, 1976, National Center for State Courts, p. 3.

State	Supreme Court	Intermediate Appellate Court	General Trial Court	Date of Last Salary Change
Tennessee	\$ 47,629	\$ 43,659	\$ 39,690	9/1/75
Texas	45,600	40,000	31,000	9/1/75
Utah	30,000	(44,600)	(43,600)	
Vermont	29,900		27,500	7/1/75
Virginia	44,000		25,800	7/1/74
Washington	39,412	36,325	41,000	7/1/76
West Virginia	35,000		34,250	7/1/75
Wisconsin	44,160		31,500	7/1/76
Wyoming	32,500		29,940	7/1/75
District of Columbia	40,140		(38,036)	
Federal System	63,000		30,000	7/1/75
Commonwealth of Puerto Rico	32,000	44,600	37,800	10/1/75
National Avrg.	39,321 ^a	40,317 ^b	42,000	10/1/75
			26,000	7/31/74
			34,310 ^a	N/A

Note: Salaries including supplements are shown in parenthesis immediately beneath the figures for state-paid salaries.

^a Arithmetic average figures for the 50 states.

^b Arithmetic average figures for the 25 states that have intermediate appellate courts.

TABLE NO. 7

STATE	NAME OF BOARD, COMMISSION OR COURT	DATE OF ESTABLISHMENT	DATE OF CONSTITUTIONAL PROVISION	CONSTITUTIONAL PROVISION	OTHER METHODS OF REMOVAL
Alabama	Judicial Inquiry Comm'n	12/22/71	None	None	None
Alaska	Ch. of the Judiciary	12/22/71	None	None	None
Arizona	Comm'n. Jud. Qualifications	8/27/68	2/13/71	None	None
Arkansas	Comm'n. Jud. Qualifications	11/1/70	None	None	Recall, Impeachment
California	Comm'n. Jud. Qualifications	11/20/68	5/22/61	1961	Impeachment, Address
Colorado	Comm'n. Jud. Qualifications	1/12/67	None	1976	Impeachment, Recall, Election
Connecticut	Comm'n. of the Judiciary	11/2/71	None	None	Elect. by Representative
Delaware	Sup. Ct. of the State	1/1/71	None	None	Impeachment, Recall
D.C.	Comm'n. Jud. Qualifications and Tenure	6/6/71	7/1/71	None	Impeachment by Congress
Florida	Jud. Qualifications Comm'n	1966	None	Twice	R.R.
Georgia	Gov. Jud. Qualification Commission	1/30/72	None	None	None
Hawaii	Comm'n. Jud. Qualification	None	7/14/69	None	None
Idaho	Judicial Council	11/5/68	4/8/61	None	None
Illinois	Judicial Inquiry Board	7/1/71	None	None	None
Indiana	Ill. Courts Commission	7/1/71	None	None	None
Iowa	Comm'n. Jud. Qualification	1/1/72	1/1/72	None	None
Kansas	Comm'n. Jud. Qualifications	11/1/72	1/1/74	None	None
Kentucky	Comm'n. on Retirement and Removal	11/4/75	None	None	None
Louisiana	Judiciary Commission of La.	11/5/68	11/5/68	1974	Membership enlarged; censure/suspension added.
Maine	None	None	None	None	None
Maryland	Comm'n. Jud. Disqualification	11/8/66	7/1/65	1969, 1970, 1974	Each amendment strengthened the Commission.
Massachusetts	Adv. Commission of Mass. Bar	None	Inherent power of Sup. Ct.	None	None
Michigan	Judicial Tenure Comm'n	8/6/68	None	None	None
Minnesota	State Board on Judicial Standards	None	7/1/71	1973, 1974	Expanded powers of judicial officer membership composition.
Mississippi	None	None	None	None	None
Montana	Comm'n. Retirement, Removal, & Discipline of Judges	1/1/72	1/1/72	None	None
Nebraska	Jud. Standards Comm'n	6/6/72	7/1/71	None	None
Nevada	Jud. Comm'n. Judicial Qualifications	1966	5/17/67	None	None
Nevada	Comm'n. on Jud. Discipline	11/2/76	None	None	None
New Hampshire	None	None	Inherent Power of Sup. Ct.	None	None
New Jersey	Advisory Comm. on Judicial Conduct	None	7/23/76	None	None
New Mexico	Jud. Standards Comm'n	11/7/61	1/68	None	None
New York	Temp. State Commission on Judicial Conduct	9/1/76	6/6/74	None	None
N.C.	Jud. Standards Comm'n	1/1/71	1/1/71	None	None
N.D.	Comm'n. Jud. Qualifications	11/5/74	1/22/75	None	None
Ohio	Ad. of Comm'n. on Grievances and Discipline	Not established by the Constitution	None	None	None
Oklahoma	Ch. on the Judiciary	5/1/66	8/6/66	None	None
Oregon	Judicial Tenure Comm'n	None	1967	Elect. by assembly	None
Pennsylvania	Jud. Inquiry Review Bd.	4/21/68	None	None	None
Rhode Island	Comm'n. on Judicial Tenure and Discipline	None	5/8/74	None	None
S.C.	Jud. Standards Comm'n	10/1/76	Inherent Power of Sup. Ct.	None	None
S.D.	Comm'n. Jud. Qualifications	11/2/72	7/1/71	None	None
Tennessee	Jud. Standards Comm'n	None	4/22/71	None	None
Texas	Jud. Qualifications Comm'n	11/19/65	6/14/67 amended 8/2/71 and 9/1/75	11/70	Put all etc. under Comm'n's granted power of censure
Utah	Comm'n. Jud. Qualifications	11/5/68	5/13/69	None	None
Vermont	Vermont Supreme Court	None	None	4/9/74	None
Virginia	Jud. Inquiry and Review Commission	7/1/71	2/16/71	None	None
Washington	Jud. Inquiry Comm'n	11/7/74	None	None	None
West Virginia	Judicial Rev. Board	None	None	None	None
Wisconsin	Judicial Commission	1/1/72	None	None	None
Wyoming	Jud. Supervisory Comm'n	1/11/71	1/31/71	None	None

1. (Alabama) Appeal may be taken to Alabama Supreme Court.
2. (California) Six year statute of limitations.
3. (Idaho) Suspension in applicable to county judges only must be confirmed by Senate.
4. (Michigan) For reasonable cause not sufficient for impeachment.
5. (Minnesota) Supreme Court Rule Procedure.
6. (New Jersey) Supreme Court Rule.

ABSTRACT - Synopsis or summary of facts, rather than table of contents of transcript.

ACCUSATION - A formal charge against a person that he is guilty of a punishable offense.

ACQUITTED - A verdict or finding of not guilty by a jury, or a judge in the case of a bench trial.

ADDRESS - A process of the legislature requesting the Governor to remove a judge from office. In some states the legislative vote alone is sufficient for removal. The type of conduct which justifies address is usually broader than that which justifies impeachment.

ADJOURNMENT - Postponement or rescheduling a new date for the continuation of a case.

ADJUDICATE - To hear (or try) and determine a matter before the court.

ADMINISTRATIVE OFFICE OF THE STATE COURTS - The business office of state courts, established in several states, which supplies information on judicial business and court personnel to the highest court, or to its chief justice. Powers and duties of these offices are not uniform.

ADVISORY OPINION - An opinion rendered by a court to a lower court or, in some cases, to the legislative or executive branch of government which is not binding nor decisive of a controversy.

AFFIDAVIT - A written statement under oath declaring certain facts to be true.

ALIMONY - Allowance which (husband) (wife) by court order pays (wife) (husband) for maintenance while they are separated or after they are divorced.

ALLEGATION - The assertion, declaration or statement of a party to an action, made in a pleading, setting out what he expects to prove.

ANNULMENT - Act of making void. "Annulment" destroys existence of void or voidable marriage and everything pertaining to it from the beginning.

ANSWER - Defense in writing made by a defendant to the allegation contained in a bill, indictment or complaint filed against him by a plaintiff.

APPEAL - To ask for review by the higher court of the bail, the sentence, a decision, a motion or the verdict handed down by the lower court.

APPEAL BOND - The bond given on taking an appeal, by which the appellant is bound to pay damages and costs if he fails to win his appeal.

APPELLANT - The party who takes an appeal from one court or jurisdiction to another.

APPELLATE JURISDICTION - The authority of a court to review a case that has been tried in a lower court.

APPELLEE - The party in a cause against whom an appeal is taken.

APPEARANCE - A coming into court as a party to a suit, whether as a plaintiff or defendant.

ARRAIGNMENT - In criminal practice, to bring a prisoner to court to answer to a criminal charge after being advised of his constitutional rights.

ASSIGNMENT - A transfer of the interest in property by one person or corporation to another.

AT ISSUE - Whenever the parties to a suit come to a point in the pleadings which is affirmed on one side and denied on the other, they are said to be "at issue".

ATTACHMENT - The process whereby, on the authority of a court, property is brought within the custody of the court.

ATTESTATION - The act of witnessing an instrument in writing at the request of the party making the same, and subscribing it as a witness.

BAIL - The deposit of money with a court to permit the release of a person from legal custody. Return of the deposit is conditioned upon the person's appearance at the time and place designated.

BAIL BOND - An obligation to pay the amount of bail if the person fails to appear in court when requested.

BAIL COMMISSIONER - Officer appointed to take recognizance of bail.

BAR - Refers to attorneys, counselors and advocates of the court collectively.

BENCH WARRANT - A court order directing that a defendant who has failed to appear for a scheduled court appearance be arrested and brought to court.

BILL OF INDICTMENT - A formal written document accusing a person of having committed a felony or misdemeanor, laid before a grand jury for their action upon it.

BOUND OVER - The action whereby a lower court requires a person to appear for trial in a higher court after cause has been found.

BRIEF - The written document used by counsel to convey to the appellate court the essential facts of the client's case, a statement of the questions of law involved, the law he would have applied, and the application he desires made of it by the court.

CALENDAR - A list of cases which are to be heard by a court during the court term.

CAPIAS - A writ or order by the court directing an officer to take into custody the person named in the writ or order.

CASE or CAUSE - A suit in law or equity; in appellate procedure, the trial record made in the lower court, including the papers and testimony.

CASE LAW - Non-statutory law based on past decisions, opinions, interpretations, and traditions.

CERTIFY - To testify in writing; to make known or establish as a fact.

CERTIORARI - A writ issued by a higher court requiring the record of a case in the court below to be sent up to itself for re-examination.

CHANCERY - The system of jurisprudence administered in courts of equity; general principles of fairness and justice generally administered by certain tribunals, distinct from other courts, when common and statutory law proves inadequate for just settlements.

CHANGE OF VENUE - The removal of a suit begun in one court and the placing of it in another for trial.

CHARGE - In criminal law, the accusation made against a person. In civil and criminal law, it also refers to the instructions on law that the court gives the jury at the end of a trial.

CHATTELS - All property except real property; personal property.

CHIEF JUDGE or CHIEF JUSTICE - The presiding judge of a court.

CIRCUIT - A division or territory for judicial business.

CIVIL ACTION - An action which seeks the establishment, recovery, or redress of private and/or civil rights and distinguished from criminal prosecutions involving public wrongs.

COMMON LAW - As distinguished from statutory law enacted by legislatures, the body of principles which derive their authority from customs or judgments of courts. See CASE LAW.

COMMITMENT HEARING - A hearing before a judicial officer to determine whether there is probable cause to hold an accused person in custody to be tried for a crime.

COMPLAINT - The document prepared by the plaintiff to set forth his or her claims in a civil action. In a criminal action, the charge.

CONCURRENT JURISDICTION - When two courts have the power to determine the same issues.

CONSECUTIVE - Successive; succeeding one on another in regular order.

CONSTITUTIONAL PROVISIONS - Those established directly by the constitution as opposed to statutory provisions which are those established by the legislature or governing body.

CONTEMPT - Willful disobedience of the order of a court or administrative tribunal.

CONTEMPT OF COURT - Any act which is calculated to embarrass, hinder, or obstruct court in administration of justice.

CONTINUANCE - The postponement of a legal proceeding to another set date.

CONVICTION - The result of a criminal trial which ends in a judgment or sentence that the prisoner is guilty as charged.

COSTS - Monetary allowance, made to the successful party from the losing party for his expenses in prosecuting or defending a suit.

COUNTERCLAIM - A claim presented by a defendant in opposition to the claim of the plaintiff.

COURT ADMINISTRATOR - An officer concerned with the day to day management and administrative aspects of running a court system.

COURT OF APPEALS - A court which reviews procedure and the law applied to correct any errors of a trial court.

COURT OF FIRST INSTANCE - A court in which a case must originally be brought, usually a trial court.

COURT OF GENERAL JURISDICTION - A trial court with unlimited original jurisdiction in civil or criminal cases.

COURT OF INTERMEDIATE APPEAL - A court of appeal established in several states (not Maine) to lessen the workload of the highest reviewing tribunal. Ultimate review can still be had in the highest court by its permission; in limited cases, as a matter of right.

COURT OF LIMITED or SPECIAL JURISDICTION - A court restricted to hear matters within a particular class of cases (juvenile, probate, etc.) or cases where the amount in controversy is below a prescribed sum.

COURT OF LAST RESORT - A court from which no appeal lies to a higher court in the same jurisdiction. This may sometimes not be the highest court in the jurisdiction.

COURT OF RECORD - A court which is required to make and keep a permanent record of its proceedings.

COURT REPORTER - A stenographer who records verbatim the proceedings in open court.

COURT SESSION - The time during which a court sits and may exercise its judicial power.

COURT TERM - A division of the year during which the court holds its sessions.

CRIME - An act in violation of a statute making the act an offense against the public.

CROSS-CLAIM - A claim by one party to an action against a co-party, as by defendant against co-defendant.

CROSS-COMPLAINT - An action brought by a defendant in a suit against the plaintiff in that suit. Or an action by one party to a suit against a co-party to the suit such as defendant against co-defendant.

CROSS-EXAMINATION - The questioning of the opponent's witness by a party or attorney.

CUSTODY - With respect to parental rights over children, includes the rearing of a child, including its care. A person in custody implies that he is detained on authority or kept in control of another in some sort of restraint, so that he is not free to come and go at will.

DAMAGES - A monetary compensation which may be recovered in the courts by any person who has suffered loss, injury, whether to his person, property or rights, through the unlawful act or omission or negligence of another.

DECLARATION - An unsworn statement or narrative of facts.

DECLARATORY JUDGMENT - A judgment which establishes the legal scope of the rights and duties of the parties.

DECREE - Judgment in a civil case in certain specialized courts, such as equity.

DEFAULT - Failure to fulfill a duty, fulfill a promise, discharge an obligation or perform an agreement.

DEFAULT JUDGMENT - A judgment in favor of one party to a civil action based on the failure of the other party to appear and defend.

DEFENDANT - A person who is being sued in a civil action or is prosecuted in a criminal action.

DEPOSITION - A written statement made under oath taken outside of the court but to be used at trial.

DESIGNATION - An addition to a name, as of title, profession, trade or occupation, to distinguish the person from others.

DIRECT APPEAL - An appeal as of right from a lower court to an appellate court.

DISCIPLINE or REMOVAL COMMISSION - The body, frequently composed of lawyers, judges and laymen, which investigates and considers claims against judges, and then either disciplines wrongdoers or recommends actions, usually to the state supreme court. Also known as Judicial Qualifications Commissions.

DISCOVERY - A proceeding whereby one party to an action may be informed as to facts known by other parties or witnesses.

DISMISSAL - An order disposing of an action by sending it out of court without trial of the issues involved. A dismissal may bar a new suit on the same grounds (Dismissal with Prejudice) or may permit a new suit on the same grounds (Dismissal without Prejudice).

DISPOSITION - The completion of court processing of a given case. Typical dispositions include dismissal, guilty plea, conviction after trial, acquittal, and transfer to another court.

DISSENTING OPINION - An opinion by a judge of an appellate court indicating his reason for disagreeing with the result reached by the majority.

DIVORCE - The legal separation of husband and wife by the judgment of a court.

DOCKET - The formal record maintained by the clerk of the court, listing all cases to be heard in a particular part each day. It often contains the defendant's name, docket number, charge, date of arrest, and outcome of the case.

DOCTRINE OF INHERENT POWERS - The right, ability, and power of a court to do what is reasonably necessary in order to administer justice.

DOUBLE JEOPARDY - Charging an accused with a crime for which he has already been tried.

DUE PROCESS - Regular and orderly administration of justice by a court in accordance with established rules.

EN BANC - A judicial bench. The term is usually applied to a court of appeal when all of its judges sit together and jointly issue a decision or opinion.

EQUITY - That part of the law of England which is derived not from the custom of the realm nor the enactments of Parliament, but from the decisions of the old courts of chancery.

EVIDENCE - Proof or probative matter legally presented at the trial by the parties and through the use of witnesses, records, documents, concrete objects, etc., to convince the court or jury.

EXECUTION - An order directing an officer to fulfill the order of the court, either by imprisonment or release of an accused (in criminal cases), or by seizure of property to satisfy an order to pay money (in civil cases).

EXHIBITS - Documents or other tangible evidence used in a trial.

EXPERT WITNESS - Person examined as a witness who testifies in regard to some professional or technical matter to give his opinion on account of his special training, skill or familiarity with it.

EXPUNGE - To blot out; to obliterate; to strike out completely.

EXTRAJURISDICTION - The act of a court state to convict of an individual accused or convicted of an offense outside its own territory.

FACSIMILE - An exact copy, preserving all the marks of the original.

FEE - A charge fixed by laws for service of public officers or for a privilege under government control.

FELONY - A crime for which the offender is punishable by death or imprisonment in the penitentiary.

FILING - Initiation of a case in court, sometimes used synonymously with "arraignment" when referring to a count of new cases.

FINDINGS - The result of the deliberations of a jury or court.

FINE - A sum of money paid at the end of a suit or prosecution imposed as a form of punishment.

GARNISHMENT - A proceeding whereby a person's property or money controlled by another (such as wages or a bank account) are applied as payment of a debt owed to a third party.

GOOD BEHAVIOR - An office held during good behavior is one from which the incumbent may not be removed except on proved charges of misconduct.

GRAND JURY - A body of people, the number of whom varies in different jurisdictions, sworn to inquire into crimes within the jurisdiction of the county or district. In Maine the grand jury consists of not less than 12 nor more than 23 persons.

GUARDIAN - A person with the power and duty of taking care of another person, who is considered incapable of administering his own affairs.

GUARDIAN AD LITEM - A person appointed by a court to prosecute or defend for an infant in any suit at which he may be a party.

HABEAS CORPUS - "You have the body." The name given a variety of writs whose object it is to bring a person before a court or judge so the court may determine if such person has been denied his liberty without due process of law.

HEARING - Formal public proceeding with definite issues to be tried, in which parties proceeded against have a right to be heard.

HEARSAY EVIDENCE - Testimony that is brought out by the witness which is based not on his personal knowledge, but rather on information he received from someone else. Generally it is not acceptable because the informant is not available for cross examination.

IMPEACHMENT TRIAL - The hearing of charges of misconduct against a public official conducted by a legislative body.

INCOMPETENT PERSON - The phrase "incompetent person," "incompetent" or "mentally incompetent" refers to any person, whether insane or not, who is unable to manage one's own affairs or one's property and is likely to be deceived.

INDETERMINATE - Uncertain or not particularly designated.

INDICTMENT - A formal accusation made by a grand jury charging a person with having committed a crime.

INDIGENT - poor or needy.

INFERIOR COURTS - Courts of limited jurisdiction.

INFORMATION - A formal accusation of crime which differs from an indictment only in that it is made by a competent public officer; for example, a prosecutor, instead of a grand jury.

INJUNCTION - A court order prohibiting a certain named party from performing certain acts.

INTEGRATED BAR - In which all members of the bar in a state are required to be members of the state bar association.

INTERROGATORIES - A series of written questions directed by one party to another which seek out potential evidence and call for written answers.

JOINDER - The unification of two or more parties (joinder of parties) or of two or more demands for judicial action (joinder of causes) for legal action in a single proceeding.

JUDGMENT - The decision by a court upon its respective rights of the parties in a civil case or the guilt or innocence of the accused in a criminal case.

JUDGMENT N.O.V. ("non obstante veredicto") - A judgment in favor of one party notwithstanding the finding of a verdict in favor of the other party.

JUDICIAL ADMINISTRATION - The organization and procedure of the judicial branch of government.

JUDICIAL COUNCIL or JUDICIAL CONFERENCE - The judicial council is usually an official continuing body for increasing the collection of statistical data, and sometimes for the drafting of recommended court rules. A judicial conference is an official organization of judges within a judicial system, established by the legislature to meet periodically to study existing problems of the courts and propose remedies with the purpose of making the court system more effective.

JUDICIAL POWER - The power of a court to decide and pronounce a judgment and to carry it into effect between parties who bring a case before it for decision.

JUDICIAL STATISTICS - Data which reveal the actual work of a court for a given period. This information includes number and types of cases filed in a court and disposed of by the court, time intervals for obtaining a trial, operation expenses of the courts, and workload of individual judges.

JUDICIARY - The branch of government which has judicial power. Also the name for all the courts, or the body of judges, of a jurisdiction taken collectively.

JURISDICTION - The geographical area and the type of cases over which a court has authority.

JURISPRUDENCE - The formal science of law.

JURY - A group of people sworn to hear the evidence and inquire into the facts in a law case, and to give a decision in accordance with their findings.

JUSTICE OF THE PEACE - A public official with jurisdiction of minor civil cases and authority to issue criminal warrants and hold commitment hearings.

JUVENILE COURT - Court having jurisdiction over those young persons legally defined as juveniles.

LEGISLATIVE COURT or STATUTORY COURT - A court created by the legislature pursuant to constitutional power.

LIEN - A charge or security upon property.

LIS PENDENS - A pending suit; jurisdiction, power or control which courts acquire over property in a suit pending action and until final judgment.

LITIGANT - A party to a lawsuit; one engaged in litigation.

LOCAL COURT - A court whose jurisdiction is limited as to a specific place.

MAGISTRATE - Title of a judge of an inferior court with limited criminal and sometimes limited civil jurisdiction.

MAJORITY DECISION - A decision by an appellate court by more than one-half of the judges hearing a case.

MANDAMUS - A writ which issues from a court of superior jurisdiction commanding the performance of a particular act restoring the rights and privileges to the complainant.

MERIT SELECTION - A common name for a plan of selection of judges wherein a nominating commission of lawyers and laymen accepts and screens applicants for judicial vacancies and forwards a list of names (usually 3) from which the Governor or other officer must appoint.

MINOR - Under the age of legal competence (under 21 years of age).

MISDEMEANOR - Offense lower than felony, punishable by fine or imprisonment other than in a penitentiary.

MISTRIAL - A trial which is invalid because of some error in procedure, law or fact.

MOTION - Procedural move made by either attorney and submitted to the court. Motions help to define and set the ground rules for the proceedings of a particular case.

MUNICIPAL COURT - In the judicial organization in some states, courts whose territorial authority is confined to the city or community.

NEXUS - The one or more things which a reasonable man would do, or the doing of something which a reasonable man would not do.

NEW TRIAL - A re-examination of an issue at fact in the same court after a trial and decision by a jury or court. Same as trial de novo.

NISI PRIUS - Courts held for the trial of issues of fact before a jury and one presiding judge.

NOLLE PROSEQUI - A formal entry upon the record by the plaintiff in a civil suit or the prosecutor in a criminal case by which he declares he will "no further prosecute" the case.

NOLO CONTENDERE - "I do not wish to contest." A plea made by defendant; while not an admission of guilt, it means the defendant will not challenge the charges but will submit to the court-imposed punishment.

NOMINATING COMMISSION - A body, usually composed of lawyers, laymen, and sometimes judges, that reviews and recommends to the appointive power candidates qualified to hold judicial office.

NOTICE - Legal Notice. Notification of a person of the initiation of legal proceedings against him, or of some matter relating to legal proceedings to which he is a party.

NOTICE OF LIS PENDENS - A notice filed for the purpose of warning all persons that the title to certain property is in litigation.

NULLITY OF MARRIAGE - The entire invalidity of a marriage.

OATH - Any form by which a person signifies that he is bound to perform an act faithfully and truthfully.

OBJECTION - A protest made to record one party's disapproval of a question asked by their opponent.

OFFENSE - the violation of any criminal ordinance or statute.

ORDINANCE - A regulation established by local government.

ORIGINAL JURISDICTION - The authority of a court to hear cases of the first instance, as opposed to appellate jurisdiction.

PARDON - An order releasing a person convicted of a crime from the punishment imposed by the court. Only the Governor has that power in the state.

PAROLE - Release from jail or prison on the condition that if the prisoner performs well he will receive an absolute discharge from the balance of his sentence; otherwise he may be returned to serve the remainder of the unexpired term.

PARTIES - The persons who take part in the prosecution or defense of any legal proceeding.

PARTNERSHIP - A voluntary contract between two or more competent persons to join in commerce or business, with the understanding that there shall be a sharing of the profits and losses between them.

PENDING CASE - A case in which the defendant has been arraigned and is awaiting further court action.

PEREMPTORY CHALLENGE - A challenge to a potential juror by a party to a case where the challenging party need show no reason.

PERJURY - The legal offense of testifying falsely and deliberately under oath.

PETIT JURY - So called to distinguish it from the grand jury. A body of 12 citizens or less, selected from a larger panel to hear and find the facts in a trial at law. In Maine, called "traverse jury."

PETITION - A written application requesting the court to exercise its authority in the redress of some wrong or requesting from the court some favor, privilege or license.

PETITIONER - One who presents a petition to a court, officer, or legislative body. In legal proceedings begun by petition, the person who opposes the petition is called the "respondent."

PLAINTIFF - A person who brings a civil suit in law or equity.

PLEA - The first pleading on part of defendant; the answer which defendant makes to the plaintiff's declaration.

PLEADINGS - Successive statements by which litigants set forth the grounds upon which they base their own claims or challenge the claims of their opponents.

POLICE COURT - A court for the trial of minor criminal offenses, and which may hold for trial by a higher court persons accused of more serious crimes.

POLLING THE JURY - A practice whereby the jurors are asked individually whether they assented, or all assent to the verdict.

PRELIMINARY HEARING - A hearing given a person charged with a crime by a magistrate or judge to determine whether he should stand trial.

PRESENTENCE INVESTIGATION - A report on the defendant done by the Probation Department and submitted to the judge for consideration before sentencing.

PRETRIAL PROCEDURE - A device which consists of conferences between the attorneys for the parties to a law suit and a judge of the court. The chief purpose of this is to prepare the case for an effective trial by formulating the issues and stating them in a pre-trial order which then, in effect, becomes the chart for the trial.

PROBABLE CAUSE - An apparent state of facts found to exist in a criminal case that the accused is guilty of the crime charged, or, in a civil case, that a cause of action existed.

PROBATE COURT - A court which administers the estates of decedents, and which controls the guardianship of minors and insane persons.

PROBATION - A sentence under which a person convicted of a crime is not imprisoned, but released subject to certain conditions under the supervision of a court officer.

PROCEDURAL RULES - Rules which regulate the formal steps in a law suit or other judicial proceeding.

PROCEEDING - The name given the whole of the judicial business relating to a given case or controversy before a court.

PROCESS - The means of compelling the defendant in an action to appear in court.

PROMULGATE - To officially order a law to be executed.

PUBLIC DEFENDER - The attorney representing a defendant who cannot afford private counsel.

REAL PROPERTY (Realty) - Land and structures erected on land and so attached to the land as to become part of it.

RECIPROCAL SUPPORT - The process by which a husband or wife pays alimony through the court.

RECOGNIZANCE - An obligation of record to do some particular act; as to appear at criminal court, to keep the peace, to pay a debt, or the like.

RECORD - A written account of some act, transaction or action, drawn up under authority of law.

RECORDER - An official presiding in a court with jurisdiction, within the limits of a municipal corporation, comparable to that of a justice of the peace.

REMAND - The act of a higher court, after an appeal, in sending a case back to a lower court for action consistent with the decision and order of the higher court.

REMOVAL - In a broad sense, the transfer of a person or thing from one place to another. More specifically, in law it means the transfer of a cause from one court to another.

REMEDY - The relief given by a court to secure to an injured party his rights.

REPLEVIN - A personal action brought by one person to recover possession of property rather than money unlawfully held by another.

RESPONDENT - In appellate practice, the party who contends against an appeal.

RETAIN OR RECOGNIZE - A proceeding whereby a person accused of a crime is released prior to his trial without having to post bail.

RULE-MAKING POWER - Power to make rules pertaining to the administration of the courts, practice, procedures, and evidence in the courts.

SEARCH WARRANT - A written order issued by a judge directing a police officer to search a person or place for particular articles specified in the warrant.

SENTENCE - The judgment formally pronounced by the court or judge upon the defendant after his conviction in a criminal prosecution. In civil cases the terms judgment, decision, award or findings are used.

SERVICE - The delivery of a writ, notice, injunction, etc. officially notifying that person of some action or proceeding in which he is concerned.

SHOW CAUSE - An order to appear and present to the court reasons why it should not be confirmed, take effect, be executed, etc.

STATUTORY PROVISIONS - Provisions established by the legislature, as opposed to constitutional provisions.

STAY OF EXECUTION - A temporary delay of the enforcement of sentence after the defendant has been found guilty.

STIPULATION - An agreement between the parties or their attorneys.

SUBPOENA - A court order requiring a witness to attend; it may also order him to bring books or records with him.

SUBSTANTIVE LAW - Those rules which define and regulate rights and obligations between individuals and between individuals and government; as distinguished from procedural law.

SUMMARY JUDGMENT - A judgment on the basis of the pleadings and, if any, affidavits of the parties where there is no dispute regarding the facts material to the case.

SUMMONS - The process by which a defendant is advised that there is a claim against him or her. It may also be a notification to a witness or juror to appear in court.

SUPREME COURT - An appellate court; the court of last resort in the federal system and in most states.

SUBJECT - One who has been found to be liable for the payment of a sum of money for another.

SUSPENDED SENTENCE - Following the imposition of sentence in a criminal case, the court may suspend execution of the sentence and release the accused conditionally, subject to good behavior, for a fixed time.

TESTIMONY - Words heard from a witness in court, as distinguished from evidence derived from writings.

THEFT - Legal recognition of the taking of property.

TRANSCRIPTS - An official record of proceedings recorded by the court stenographer.

TRANSFER - The removal of a cause from the jurisdiction of one court or judge to another.

TRAVERSE JURY - A trial jury; a jury impaneled to try an action or prosecution, as distinguished from a grand jury.

TRIAL - A proceeding in court where the charge and facts in question are viewed and the guilt or innocence of the defendant is determined.

TRIAL DE NOVO - A new trial or retrial in an appellate court in which the whole case is gone into as if no trial had been held in a lower court.

TRUE BILL - The endorsement by a grand jury upon a bill of indictment, when they find it sustained by the evidence and are satisfied with the truth of the accusation.

TRUSTEE - A person appointed to execute a trust; one in whom an estate, interest or power is vested to administer it for the benefit of another.

UNIFIED COURT - State courts consolidated into a single system with distinct levels; for example, trial, intermediate appellate and appellate and with centralized administration and budgeting.

VENUE - The county in which a prosecution or action is brought to trial.

VERDICT - The formal decision or finding made by a jury.

VICTIMLESS CRIMES - Crimes involving an offense inflicted on oneself or on society as a whole rather than to another person; for example, drug addiction, drunkenness.

VOIR DIRE - "To speak the truth." This phrase denotes the preliminary examination which the court may make of one presented as a witness or juror, as to his qualifications.

WAIVE - Voluntary surrender of a right, claim or privilege.

WARD - A person, especially a minor, placed under the care of a guardian.

WARRANT - A written order issued and signed by a magistrate, directed to a peace officer or some other person specially named, and commanding him to arrest the person named in it, who is accused of an offense.

WRIT - An order issued by a court or judge directing a public officer or private person to do a specific act.

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