MAINE PROBATE AND TRUST LAW ADVISORY COMMISSION
Report to Maine Legislature
Joint Standing Committee on Judiciary
Re: L.D. 1322; Resolve 2015, Chapter 73, Section 2

Resolve, Directing the Probate and Trust Law Advisory Commission
To Study and Make Recommendations Regarding Supported Decision Making

Introduction

The Probate and Trust Law Advisory Commission (“PATLAC”) hereby reports to the Maine Legislature, Joint Standing Committee on Judiciary, on Resolve 2015, chapter 73 entitled, “Resolve, To Direct Legislative Staff To Recodify and Revise the Maine Probate Code and To Direct the Probate and Trust Law Advisory Commission and the Family Law Advisory Commission To Study and Make Recommendations on Related Issues.”

By Resolve 2015, Chapter 73, Section 2, dated March 29, 2016, the Joint Standing Committee on Judiciary directed PATLAC to examine the concept of supported decision making, consult with interested parties and make recommendations concerning inclusion of supported decision making in the Probate Code, including any proposed legislation, in a report to the Joint Standing Committee on Judiciary no later than January 15, 2017.

Discussion

As directed by Resolve 2015, Chapter 73, Section 2, PATLAC has examined the concept of supported decision making. In fulfillment of its charge to examine the concept of supported decision making PATLAC, among other things, undertook the following:

1. On September 23, 2016 the Chair of PATLAC met with the Maine Probate Judges at their annual assembly to discuss the concept of supported decision making.

2. On August 17, 2016 PATLAC invited representatives of the following identified interested groups to provide comment on the concept of supported decision making:

   - Maine Probate Judges Assembly
   - Family Law Advisory Commission
   - Maine State Bar Association Elder Law Section
   - Maine State Bar Association Trusts and Estates Section
   - Equality Maine
   - Maine Legal Services for the Elderly
   - Maine Association of Area Agencies on Aging
   - NAMI Maine
The August 17, 2016 invitation from PATLAC requested that organizations share their comments in writing or to share their comments in person at a public forum to be conducted by PATLAC on Wednesday September 28, 2016 at 9:00 a.m. in the Multi-Purpose room of the Capital Judicial Center at 1 Court Street in Augusta. Representatives of Disability Rights Maine and Maine Parent Federation attended the September 28 forum. Disability Rights Maine made an extensive, well organized, and extremely helpful presentation at September 28 forum and followed up with cogent written materials.

3. PATLAC has reviewed the current draft of the Uniform Law Commission’s extensive revisions to the Uniform Guardianship and Protective Proceedings Act. The Uniform Guardianship and Protective Proceedings Act is the basic blueprint of Article V of the Maine Probate Code. Among the Uniform Law Commission’s proposed revisions to the Uniform Guardianship and Protective Proceedings Act is the inclusion of provisions, including definitions, concerning supported decision making. The Chair of PATLAC has had conversations (most recently on January 13, 2017) with Syracuse University College of Law Professor Nina A. Kohn, who serves as the Uniform Law Commission’s Reporter for the revision of the Uniform Guardianship and Protective Proceedings Act. Professor Kohn reports that the Uniform Law Commission has received extensive input from the disability rights community on the proposed revisions to the Uniform Guardianship and Protective Proceedings Act, including the proposed provisions on supported decision making, and Professor Kohn expects the Uniform Law Commission to adopt the updated and revised Uniform Guardianship and Protective Proceedings Act at the meeting of the Uniform Law Commission in July 2017.

Based on its examination of supported decision making, PATLAC supports the adoption of legislation that includes the concept of support decision making in the Maine Probate Code.

PATLAC recommends that the enactment of Title 18-C be deferred until the second regular session of the 128th Legislature, which commences in January 2018, to provide PATLAC the opportunity to present extensive revisions to Article V of the Maine Probate Code, including provisions for supported decision making, that conform to the Uniform Law Commission’s updated draft of the Uniform Guardianship and Protective Proceedings Act, which updated draft is expected to approved by the Uniform Law Commission in July 2017.
PATLAC additionally recommends that the new Title 18-C, after enactment during the second regular session of the 128th Legislature, have an effective date of January 1, 2019 to provide ample opportunity during calendar year 2018 for the Maine Bar and Judiciary to become familiar with the provisions of the revised Maine Probate Code. The proposed time frame will permit Maine to adopt the most recent extensive uniform revisions to Article V of the Probate Code, including uniform provisions governing supported decision making.

Conclusion

The Probate and Trust Law Advisory Commission therefore recommends:

i. That the Maine Probate Code be amended to include provisions for supported decision making;

ii. That the enactment of Title 18-C be deferred until the second regular session of the 128th Legislature, which commences in January 2018, to provide PATLAC the opportunity to present extensive revisions to Article V of the Maine Probate Code, including provisions for supported decision making that conform to the Uniform Law Commission’s updated draft of the Uniform Guardianship and Protective Proceedings Act; and

iii. That the new Title 18-C have an effective date of January 1, 2019 to provide ample opportunity during calendar year 2018 for the Maine Bar and Judiciary to become familiar with the provisions of the new Title 18-C.

Dated: December 15, 2017

Respectfully submitted,

Probate and Trust Law Advisory Commission

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