

# The Lincoln County News™

## Lincoln County Probate Judge Will Not Seek Re-Election

By Abigail W. Adams

The Lincoln County Probate Court is a smooth-running operation that rarely gets publicity, Probate Judge Tom Berry said. The low-profile court, however, has a big impact and is oftentimes tasked with deciding contentious issues at the heart of family disputes, or guardianship cases that limit individuals' constitutional rights.

For the past 28 years, Berry has presided over the probate court, an elected position he was initially encouraged by colleagues to run for. Come November, Lincoln County will elect a new probate judge - Berry has announced that he will not seek re-election.

Berry intends to maintain his private law practice in Boothbay Harbor for a while longer before formally retiring from the field of law - a discipline he has practiced since the early 1970s.

He leaves a legacy of respecting individuals' constitutional rights by rarely assigning full guardianships, instead opting for a less restrictive option. It is a position Berry said he hopes future probate judges will maintain.

As an intern with the Maine Attorney General's Office while in law school, Berry was asked to prosecute misdemeanor cases for the personnel-strapped office.

The experience was oftentimes comical, Berry said, but it helped him master his studies at law school and prepared him not only for his work with the attorney general's office, the district attorney's office, and his private practice, but also his future role as probate judge.

Berry's knowledge of running a courtroom during trial was foremost among the skills that enabled him to smoothly transition into the role of probate judge, he said.

Berry worked for the attorney general's office upon graduation from law school and transitioned to work for the district attorney's office when the office was first created in the mid-1970s. Berry was Maine Prosecutorial District 6's first assistant district attorney and was responsible for all cases in Lincoln and Sagadahoc counties.

Berry was encouraged to run for probate judge after former Probate Judge Hadley Miller resigned. Berry won the position in the November 1988 election. For a month, Berry was appointed to the position by then-Gov. John McKernan before his term as an elected official began on Jan. 1, 1989.

"The transition was a lot more comfortable than I expected," Berry said. "I expected (the probate court) to be a foreign language, but the probate code makes sense."

Berry's trial experience proved invaluable as he presided over the probate court every Wednesday, the one day a week the court is in session.

The probate court presides over wills, trusts, estates, guardianships, and conservatorships. Almost 95 percent of the work done by the probate court is informal and requires no court action, Berry said. The Lincoln County Probate Court is known statewide as a smooth-running operation, Berry said, which he considers a testament to the work of the register of probate, now Catherine Moore, and the registry's staff.

"It's because of them," Berry said. "They're the best. We found the right people."

Moore, Deputy Register of Probate Karen Robbins, and Clerk Susan Hodgdon expressed an equal amount of affection and respect for Berry. "He's been a fantastic judge," Moore said, "and he's been very supportive my first year as register of probate."



Tom Berry at his Boothbay Harbor office Jan. 22. After 28 years as Lincoln County's probate judge, Berry has announced he will not seek re-election. (Abigail Adams photo)

"It's been a pleasure to watch him work," Robbins said. "He's very thoughtful in how he approaches each case. It's been very educational."

While the lion's share of work is handled outside the courtroom, the work of the probate judge extends far past the hours the probate court is in session. Berry is also responsible for writing opinions and orders for the court and is called upon at irregular hours, sometimes the middle of the night, to sign "blue papers," which authorize emergency commitments of individuals experiencing mental-health crises.

The late-night phone calls do not bother him, he said. "If it's inconvenient for me, all I have to do is think about what they're going through. It's a lot worse for them," Berry said.

The constitutional rights involved in guardianship cases, whether for minors or for adults, weigh heavily on Berry. The probate court handles guardianship of minor cases, a responsibility the Legislature is debating changing.

Minor guardianships are the area where the drug epidemic is the most apparent in the probate court, with some parents choosing drugs over their children, Berry said. In minor guardianship cases, another family member may be appointed to assume guardianship.

The probate court also works with families on transitional agreements geared toward reintegrating children with their parents.

Berry works hand-in-hand with the district court to ensure the cases filed in the probate court are not an effort to side-step the district court's authority. The district court presides over most proceedings related to children, such as child support and parental rights and responsibilities.

The Legislature is debating a bill that would take minor guardianships out of the probate court's jurisdiction and assign them to the district court, which Berry feels would be a mistake. "These are hard, expensive cases," Berry said, which the "swift-moving" probate court is better equipped to handle more efficiently than the already backlogged district court system.

Minor guardianships interfere with "soft constitutional rights," such as the right to parent, Berry said. Adult guardianships reduce adults to the legal status of an unemancipated child, Berry said. "The person's full civil rights are suspended," he said.

In his 28 years as probate judge, one experience remains at the forefront of Berry's memory. Berry remembered a retired military colonel who was under a full guardianship, but objected to it, and was constantly pushing to get out of it. The man had a grating voice and tended to annoy court officials, Berry said.

Weeks before the man passed away, he apologized to Berry for being such a pain in the neck. Berry was struck by it. "I don't think I quite grasped how important it was to him. If had been more attentive, maybe I would have recognized how important maintaining an independent status was for him," Berry said.

In 2006, Berry participated in a conference in Colorado Springs and attended a workshop on a standard set of protocols to determine if a full guardianship is necessary. "I'm not sure what it was about Colorado Springs, but the bell rang," Berry said.

The Lincoln County Probate Court has home visitors who visit individuals when a guardianship case is filed and run through the protocols to see if guardianship is required.

Two requirements have to be met for a full guardianship, Berry said - the person has to be incapacitated and the guardianship needs to be necessary. Berry has found that after certain tasks regarding housing, medical, and financial decision-making are assigned through limited guardianships, power of attorney, or conservatorships, there is very little need for a full guardianship.

In the past seven years, Berry has not authorized a full guardianship, which is something he takes pride in. "We have to be concerned about the dignity of the people that come before us," Berry said.

While approaching retirement, Berry is not yet willing to announce his plans. "There's an old saying," Berry said. "Do you know how to make God laugh? Tell him your plans." For the next elected probate judge, however, Berry has offered to have them come into the probate court and shadow him to ensure a smooth transition.