

SENATE BILL 248

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO COURTS; CLARIFYING PROBATE COURT ADMINISTRATION AND JURISDICTION; PROVIDING PROCEDURES FOR DESIGNATING A DISTRICT JUDGE OR OTHER PROBATE JUDGE WHEN A PROBATE JUDGE HAS RECUSED OR BEEN DISQUALIFIED; PROVIDING FOR CLERKS OF THE PROBATE COURT AND THEIR DUTIES; SPECIFYING EACH COUNTY'S FINANCIAL OBLIGATION FOR SUPPORT OF THE PROBATE COURT; SPECIFYING RECORDS RETENTION; PROVIDING A FILING FEE; PROVIDING WHEN CERTAIN CASES ARE TRANSFERRED TO DISTRICT COURT; ALIGNING THE TERMS OF PROBATE

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JUDGES STATEWIDE; REPEALING OUT-OF-DATE PROBATE COURT STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 34-7-1 NMSA 1978 (being Laws 1865, Chapter 21, Section 1, as amended) is amended to read:

"34-7-1. PROBATE COURT--PROBATE JUDGE [AUTHORIZED].--

SHPAC → ~~A. In accordance with Article 6, Section 23 of the constitution of New Mexico, a probate court is established in each county. The probate courts shall operate under the direction and control of the supreme court and the district court of the judicial district in which the probate court is located. The district court shall provide administrative support to the probate courts.~~ ← SHPAC

SHPAC → ~~B.~~ ← SHPAC SHPAC → ~~A.~~ ← SHPAC There shall be a probate judge in each county of this state, and each county is a probate court district.

SHPAC → ~~C.~~ ← SHPAC SHPAC → ~~B.~~ ← SHPAC The position of probate judge [~~shall be deemed~~] is a part-time position."

SECTION 2. Section 34-7-2 NMSA 1978 (being Laws 1851-1852, p.198, as amended) is amended to read:

"34-7-2. PROBATE JUDGE--ELECTION.--[~~Sec. 184.~~] A probate judge shall be elected at each general election [held in this state, there shall be elected in each county a probate judge and a sheriff] at which the governor is elected."

SECTION 3. Section 34-7-3 NMSA 1978 (being Laws 1865,

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Chapter 93, Section 1, as amended) is amended to read:

"34-7-3. PROBATE COURTS--SEAL.--~~[Sec. 70.]~~ The probate courts shall procure and keep a seal with ~~[such]~~ emblems and devices as the ~~[courts shall think proper]~~ supreme court determines."

SECTION 4. Section 34-7-4 NMSA 1978 (being Laws 1869-1870, Chapter 51, Section 1, as amended) is repealed and a new Section 34-7-4 NMSA 1978 is enacted to read:

"34-7-4. [NEW MATERIAL] PLACE OF HOLDING COURT--  
QUARTERS--SALARY.--

A. The probate court shall be located at the county seat unless another location is designated by ordinance of the board of county commissioners.

B. The board of county commissioners shall provide adequate quarters for the probate court, including necessary furnishings, equipment, books, supplies, utilities, upkeep and maintenance.

C. Except as otherwise specifically provided by law, all expenses of the probate court, including salary and benefits of the judge, shall be paid from the county general fund in accordance with the court budget approved by the board of county commissioners."

SECTION 5. Section 34-7-7 NMSA 1978 (being Laws 1865-1866, Chapter 41, Section 2, as amended) is repealed and a new Section 34-7-7 NMSA 1978 is enacted to read:

"34-7-7. [NEW MATERIAL] CUSTODY OF RECORDS.--

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SHPAC→~~A.~~←SHPAC The records, archives, documents and books of the probate court shall be under the charge of the clerk of the probate court in accordance with standards established by the supreme court. The records, archives and documents shall be kept in a separate book maintained for that purpose and may be kept in physical or electronic form.

SHPAC→~~B. The judge of the probate court shall review the decedent's death certificate and enter an affidavit of death into the record.~~←SHPAC"

SECTION 6. Section 34-7-8 NMSA 1978 (being Laws 1935, Chapter 63, Section 1, as amended) is amended to read:

"34-7-8. PROBATE [COURTS] COURT--HOURS OF BUSINESS-- [NOTICE].--

A. The probate [~~courts of the state~~] court shall be [~~in session and~~] open SHPAC→[~~at such~~]←SHPAC SHPAC→at such←SHPAC SHPAC→during the same days and←SHPAC times SJC→as←SJC [~~are needed for the transaction of any business matters which may properly come before the courts under the laws of the state and upon notice thereof given as required under the laws of the state~~] SHPAC→county administrative offices.←SHPAC SHPAC→as determined by the clerk of the probate court and published on the county's website.←SHPAC

B. The probate judge in each county shall conduct business during those times as necessary for the proper discharge of duties and may set regular hours."

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SECTION 7. Section 34-7-9 NMSA 1978 (being Laws 1889, Chapter 132, Section 1, as amended) is amended to read:

"34-7-9. PROBATE JUDGE DISQUALIFICATION--TRANSFER.--

A. Whenever [the] a probate judge shall, for any reason, be interested or disqualified from acting in any proceeding coming within the jurisdiction of the probate court, [he] the judge shall, upon [his] the judge's own motion or that of any interested party, [forthwith] immediately enter an order transferring [such] the proceeding [to the district court having jurisdiction in that county and directing the probate clerk to deposit forthwith within the office of the clerk of said district court a certified copy of said order together with all original papers and records or certified copies of all original papers and records in the probate court relating to said proceeding] and file the order with the clerk of the probate court.

B. Upon receipt of an order of recusal or disqualification, the clerk of the probate court shall give written notice to the district court of the county in which the probate court is situate, and the district court shall transfer the case to the district court or designate another probate judge to conduct further proceedings. If designating another probate judge, the district court shall give preference to probate judges serving within the same judicial district. Upon receipt by the clerk of the probate court of a district court designation, the clerk of the probate court shall send a copy

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of the designation to the parties or their counsel, to the designated district or probate judge and to the recused or disqualified judge.

C. A probate judge who has accepted a designation by the district court has jurisdiction to sit in any action arising in any other probate district when designated for a specific case or for a specific period of time. A probate judge acting in another probate district by designation shall include the cases heard by designation in the probate judge's own reports to the district court, indicating on the reports that the Sfl1→**probated**←Sfl1 Sfl1→**probate**←Sfl1 court's jurisdiction is by designation.

D. The board of county commissioners of the county of the recused or disqualified probate judge shall reimburse the district judge or probate judge sitting by designation for expenses incurred pursuant to the Per Diem and Mileage Act."

SECTION 8. Section 34-7-10 NMSA 1978 (being Laws 1933, Chapter 102, Section 2) is amended to read:

"34-7-10. PROCEEDINGS IN DISTRICT COURT.--

A. All proceedings [thus] transferred from the probate court to the district court shall be docketed as other causes in [the district] that court, which court shall [thereupon] exercise the same authority and take the same steps and proceedings as would have otherwise [have] been taken in the probate court.

B. If a case was properly filed within the

jurisdiction of the probate court and later transferred to the district court, no filing fee shall be charged in the district court."

SECTION 9. Section 34-7-11 NMSA 1978 (being Laws 1933, Chapter 101, Section 1, as amended) is amended to read:

"34-7-11. PROBATE JUDGE ABSENT OR UNABLE TO ATTEND TO DUTIES.--

A. Whenever ~~[the]~~ a probate judge ~~[shall be]~~ is absent ~~[from the county wherein he was elected or shall be]~~, incapacitated or unable to attend to ~~[his]~~ the probate judge's duties from any cause whatsoever, ~~[any]~~ the probate judge shall enter a notice of unavailability and file the order with the clerk of the probate court; provided that if the judge is unable to prepare the notice due to incapacity, the clerk of the probate court shall prepare and file a notice of incapacitation.

B. Upon receipt of a notice of unavailability or after preparing a notice of incapacitation, the clerk of the probate court shall give written notice to the district court of the county in which the probate court is situate and the district court shall designate a district judge ~~[of said county]~~ or ~~[any other district]~~ another probate judge ~~[designated]~~ to hold court in ~~[said]~~ the county ~~[for him]~~ and ~~[may]~~ do ~~[any and]~~ all things that could otherwise be done by ~~[said]~~ the probate judge of that county, without the necessity of having the matters or proceedings transferred from the

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docket of the probate court to the docket of the district court  
~~[The fact of such absence or incapacity shall be recited in every order of the district judge entered in accordance with this act]~~ or the other probate court. If designating another probate judge, the district court shall give preference to probate judges serving within the same judicial district. Upon receipt by the clerk of the probate court of the designation by the district court, the clerk of the probate court shall send a copy of the designation to the parties or their counsel, to the designated district or probate judge and to the unavailable or incapacitated probate judge.

C. A probate judge acting in another probate district by designation as provided in this section shall include the cases heard by designation in the probate judge's own reports to the district court, indicating on the reports that the probate court's jurisdiction is by designation.

D. The board of county commissioners of the county of the unavailable or incapacitated probate judge shall reimburse the district judge or probate judge sitting by designation for expenses incurred pursuant to the Per Diem and Mileage Act."

SECTION 10. Section 34-7-13 NMSA 1978 (being Laws 1887, Chapter 66, Section 1, as amended) is repealed and a new Section 34-7-13 NMSA 1978 is enacted to read:

"34-7-13. [NEW MATERIAL] ADMINISTRATION--SUPREME COURT RULES.--

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A. The supreme court shall promulgate rules to regulate pleading, practice and procedure in the probate courts to simplify and promote the speedy determination of probate. The rules shall not abridge, enlarge or modify the substantive rights of any party.

B. The supreme court shall cause all rules to be printed and distributed to all probate judges and to all members of the bar, and no rule shall become effective until thirty days after the rule has been printed and distributed."

SECTION 11. Section 34-7-14 NMSA 1978 (being Laws 1923, Chapter 29, Section 1, as amended) is repealed and a new Section 34-7-14 NMSA 1978 is enacted to read:

"34-7-14. [NEW MATERIAL] FEES OF PROBATE COURT.--Clerks of the probate courts shall receive a filing fee of thirty dollars (\$30.00) for each probate case."

SECTION 12. Section 34-7-17 NMSA 1978 (being Laws 1860-1861, p. 80, as amended) is amended to read:

"34-7-17. PROBATE COURT TO KEEP ACCOUNTS.--~~[Sec. 93.]~~ The clerk of each probate ~~[clerks of the different counties of this state are hereby required to keep a separate book for the sole purpose of keeping an exact account, which shall show in a clear and distinct manner all the money received, specifying the object for which it was received and that the same book shall also contain a distinct and clear list]~~ court shall keep the accounts of the probate court and a record of all warrants issued against the county treasury and for what purpose."

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SECTION 13. Section 34-7-18 NMSA 1978 (being Laws 1860-1861, p. 80, as amended) is repealed and a new Section 34-7-18 NMSA 1978 is enacted to read:

"34-7-18. [NEW MATERIAL] PUBLIC MONEY--WHEN CASES TRANSFERRED TO DISTRICT COURT.--

A. All money collected by a probate court in connection with any probate case is public money of the county held in trust until disbursed in accordance with law.

B. If a party informs the probate court that distribution to a decedent's estate is required by federal law or other regulatory provision and there is no other account of the estate established to receive the money, the probate judge shall transfer the case to the district court.

C. If a will requires a bond to be deposited with the court, the probate judge shall transfer the case to the district court."

SECTION 14. Section 34-7-22 NMSA 1978 (being Laws 1866-1867, Chapter 24, Section 1, as amended) is repealed and a new Section 34-7-22 NMSA 1978 is enacted to read:

"34-7-22. [NEW MATERIAL] CLERK OF THE PROBATE COURT--DEPUTY CLERKS--POWERS.--

A. Unless otherwise provided by law, the county clerk of each county is designated as the clerk of the probate court in that county and shall have power to appoint SHPAC→a←SHPAC deputy SHPAC→clerk←SHPAC SHPAC→clerks←SHPAC of the probate court who shall have full power to perform all the

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duties of the clerk of the probate court. The fees received by the probate court shall be deposited in the county clerk recording and filing fund.

B. The board of county commissioners of a county may by ordinance provide for a separate clerk of the probate court SHPAC→who shall have the power to appoint deputy clerks←SHPAC , and the fees received by that probate court shall be deposited in the county general fund."

SECTION 15. TEMPORARY PROVISION--ADJUSTMENT OF TERMS OF OFFICE.--

A. Pursuant to Article 20, Section 3 of the constitution of New Mexico, the legislature finds that the probate judge term adjustments provided for in Section 34-7-2 NMSA 1978 as amended by this act are necessary to:

(1) align the election of all thirty-three probate judges throughout the state; and

(2) enable more effective training for new judges.

B. The term of a probate court judge that was set to expire on December 31, 2024 shall expire on December 31, 2026.

SECTION 16. REPEAL.--Sections 34-7-5, 34-7-6, 34-7-15, 34-7-16, 34-7-19 through 34-7-21, 34-7-23 through 34-7-25 and 45-1-307 NMSA 1978 (being Laws 1869-1870, Chapter 51, Section 2, Laws 1887, Chapter 66, Section 3, Laws 1923, Chapter 29, Sections 2 and 4, Laws 1860-1861, page 80, Laws 1889, Chapter

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90, Sections 42 and 43, Laws 1866-1867, Chapter 24, Sections 2 through 4 and Laws 1975, Chapter 257, Section 1-307, as amended) are repealed.

SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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