

1 SENATE BILL 248

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO COURTS; CLARIFYING PROBATE COURT ADMINISTRATION AND
12 JURISDICTION; PROVIDING PROCEDURES FOR DESIGNATING A DISTRICT
13 JUDGE OR OTHER PROBATE JUDGE WHEN A PROBATE JUDGE HAS RECUSED
14 OR BEEN DISQUALIFIED; PROVIDING FOR CLERKS OF THE PROBATE COURT
15 AND THEIR DUTIES; SPECIFYING EACH COUNTY'S FINANCIAL OBLIGATION
16 FOR SUPPORT OF THE PROBATE COURT; SPECIFYING RECORDS RETENTION;
17 PROVIDING A FILING FEE; PROVIDING WHEN CERTAIN CASES ARE
18 TRANSFERRED TO DISTRICT COURT; ALIGNING THE TERMS OF PROBATE
19 JUDGES STATEWIDE; REPEALING OUT-OF-DATE PROBATE COURT STATUTES.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

24 "34-7-1. PROBATE COURT--PROBATE JUDGE [AUTHORIZED].--

25 A. In accordance with Article 6, Section 23 of the

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1 constitution of New Mexico, a probate court is established in
2 each county. The probate courts shall operate under the
3 direction and control of the supreme court and the district
4 court of the judicial district in which the probate court is
5 located. The district court shall provide administrative
6 support to the probate courts.

7 B. There shall be a probate judge in each county of
8 this state, and each county is a probate court district.

9 C. The position of probate judge [~~shall be deemed~~]
10 is a part-time position."

11 SECTION 2. Section 34-7-2 NMSA 1978 (being Laws
12 1851-1852, p.198, as amended) is amended to read:

13 "34-7-2. PROBATE JUDGE--ELECTION.--[~~Sec. 184.~~] A probate
14 judge shall be elected at each general election [~~held in this~~
15 ~~state, there shall be elected in each county a probate judge~~
16 ~~and a sheriff] at which the governor is elected."~~

17 SECTION 3. Section 34-7-3 NMSA 1978 (being Laws 1865,
18 Chapter 93, Section 1, as amended) is amended to read:

19 "34-7-3. PROBATE COURTS--SEAL.--[~~Sec. 70.~~] The probate
20 courts shall procure and keep a seal with [~~such~~] emblems and
21 devices as the [~~courts shall think proper~~] supreme court
22 determines."

23 SECTION 4. Section 34-7-4 NMSA 1978 (being Laws
24 1869-1870, Chapter 51, Section 1, as amended) is repealed and a
25 new Section 34-7-4 NMSA 1978 is enacted to read:

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1 "34-7-4. [NEW MATERIAL] PLACE OF HOLDING COURT--
2 QUARTERS--SALARY.--

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

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

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

15 SECTION 5. Section 34-7-7 NMSA 1978 (being Laws
16 1865-1866, Chapter 41, Section 2, as amended) is repealed and a
17 new Section 34-7-7 NMSA 1978 is enacted to read:

18 "34-7-7. [NEW MATERIAL] CUSTODY OF RECORDS.--

19 A. The records, archives, documents and books of
20 the probate court shall be under the charge of the clerk of the
21 probate court in accordance with standards established by the
22 supreme court. The records, archives and documents shall be
23 kept in a separate book maintained for that purpose and may be
24 kept in physical or electronic form.

25 B. The judge of the probate court shall review the

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1 decedent's death certificate and enter an affidavit of death
2 into the record."

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

5 "34-7-8. PROBATE ~~[COURTS]~~ COURT--HOURS OF BUSINESS--
6 [NOTICE].--

7 A. The probate ~~[courts of the state]~~ court shall be
8 ~~[in session and]~~ open ~~[at such]~~ during the same days and times
9 as ~~[are needed for the transaction of any business matters~~
10 ~~which may properly come before the courts under the laws of the~~
11 ~~state and upon notice thereof given as required under the laws~~
12 ~~of the state]~~ county administrative offices.

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

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

18 "34-7-9. PROBATE JUDGE DISQUALIFICATION--TRANSFER.--

19 A. Whenever ~~[the]~~ a probate judge shall, for any
20 reason, be interested or disqualified from acting in any
21 proceeding coming within the jurisdiction of the probate court,
22 ~~[he]~~ the judge shall, upon ~~[his]~~ the judge's own motion or that
23 of any interested party, ~~[forthwith]~~ immediately enter an order
24 transferring ~~[such]~~ the proceeding ~~[to the district court~~
25 ~~having jurisdiction in that county and directing the probate~~

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1 ~~clerk to deposit forthwith within the office of the clerk of~~
2 ~~said district court a certified copy of said order together~~
3 ~~with all original papers and records or certified copies of all~~
4 ~~original papers and records in the probate court relating to~~
5 ~~said proceeding]~~ and file the order with the clerk of the
6 probate court.

7 B. Upon receipt of an order of recusal or
8 disqualification, the clerk of the probate court shall give
9 written notice to the district court of the county in which the
10 probate court is situate, and the district court shall transfer
11 the case to the district court or designate another probate
12 judge to conduct further proceedings. If designating another
13 probate judge, the district court shall give preference to
14 probate judges serving within the same judicial district. Upon
15 receipt by the clerk of the probate court of a district court
16 designation, the clerk of the probate court shall send a copy
17 of the designation to the parties or their counsel, to the
18 designated district or probate judge and to the recused or
19 disqualified judge.

20 C. A probate judge who has accepted a designation
21 by the district court has jurisdiction to sit in any action
22 arising in any other probate district when designated for a
23 specific case or for a specific period of time. A probate
24 judge acting in another probate district by designation shall
25 include the cases heard by designation in the probate judge's

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1 own reports to the district court, indicating on the reports
2 that the probated court's jurisdiction is by designation.

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

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

9 "34-7-10. PROCEEDINGS IN DISTRICT COURT.--

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

16 B. If a case was properly filed within the
17 jurisdiction of the probate court and later transferred to the
18 district court, no filing fee shall be charged in the district
19 court."

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

22 "34-7-11. PROBATE JUDGE ABSENT OR UNABLE TO ATTEND TO
23 DUTIES.--

24 A. Whenever [the] a probate judge [shall be] is
25 absent [from the county wherein he was elected or shall be],

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1 incapacitated or unable to attend to ~~[his]~~ the probate judge's
2 duties from any cause whatsoever, ~~[any]~~ the probate judge shall
3 enter a notice of unavailability and file the order with the
4 clerk of the probate court; provided that if the judge is
5 unable to prepare the notice due to incapacity, the clerk of
6 the probate court shall prepare and file a notice of
7 incapacitation.

8 B. Upon receipt of a notice of unavailability or
9 after preparing a notice of incapacitation, the clerk of the
10 probate court shall give written notice to the district court
11 of the county in which the probate court is situate and the
12 district court shall designate a district judge ~~[of said~~
13 county] or ~~[any other district]~~ another probate judge
14 ~~[designated]~~ to hold court in ~~[said]~~ the county ~~[for him]~~ and
15 ~~[may]~~ do ~~[any and]~~ all things that could otherwise be done by
16 ~~[said]~~ the probate judge of that county, without the necessity
17 of having the matters or proceedings transferred from the
18 docket of the probate court to the docket of the district court
19 ~~[The fact of such absence or incapacity shall be recited in~~
20 ~~every order of the district judge entered in accordance with~~
21 ~~this act]~~ or the other probate court. If designating another
22 probate judge, the district court shall give preference to
23 probate judges serving within the same judicial district. Upon
24 receipt by the clerk of the probate court of the designation by
25 the district court, the clerk of the probate court shall send a

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1 copy of the designation to the parties or their counsel, to the
2 designated district or probate judge and to the unavailable or
3 incapacitated probate judge.

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

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

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

17 "34-7-13. [NEW MATERIAL] ADMINISTRATION--SUPREME COURT
18 RULES.--

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

24 B. The supreme court shall cause all rules to be
25 printed and distributed to all probate judges and to all

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1 members of the bar, and no rule shall become effective until
2 thirty days after the rule has been printed and distributed."

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

6 "34-7-14. [NEW MATERIAL] FEES OF PROBATE COURT.--Clerks
7 of the probate courts shall receive a filing fee of thirty
8 dollars (\$30.00) for each probate case."

9 SECTION 12. Section 34-7-17 NMSA 1978 (being Laws
10 1860-1861, p. 80, as amended) is amended to read:

11 "34-7-17. PROBATE COURT TO KEEP ACCOUNTS.--~~[Sec. 93.]~~ The
12 clerk of each probate ~~[clerks of the different counties of this~~
13 ~~state are hereby required to keep a separate book for the sole~~
14 ~~purpose of keeping an exact account, which shall show in a~~
15 ~~clear and distinct manner all the money received, specifying~~
16 ~~the object for which it was received and that the same book~~
17 ~~shall also contain a distinct and clear list]~~ court shall keep
18 the accounts of the probate court and a record of all warrants
19 issued against the county treasury and for what purpose."

20 SECTION 13. Section 34-7-18 NMSA 1978 (being Laws
21 1860-1861, p. 80, as amended) is repealed and a new Section
22 34-7-18 NMSA 1978 is enacted to read:

23 "34-7-18. [NEW MATERIAL] PUBLIC MONEY--WHEN CASES
24 TRANSFERRED TO DISTRICT COURT.--

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

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

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

11 SECTION 14. Section 34-7-22 NMSA 1978 (being Laws
12 1866-1867, Chapter 24, Section 1, as amended) is repealed and a
13 new Section 34-7-22 NMSA 1978 is enacted to read:

14 "34-7-22. [NEW MATERIAL] CLERK OF THE PROBATE
15 COURT--DEPUTY CLERKS--POWERS.--

16 A. Unless otherwise provided by law, the county
17 clerk of each county is designated as the clerk of the probate
18 court in that county and shall have power to appoint a deputy
19 clerk of the probate court who shall have full power to perform
20 all the duties of the clerk of the probate court. The fees
21 received by the probate court shall be deposited in the county
22 clerk recording and filing fund.

23 B. The board of county commissioners of a county
24 may by ordinance provide for a separate clerk of the probate
25 court, and the fees received by that probate court shall be

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1 deposited in the county general fund."

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

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

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

10 (2) enable more effective training for new
11 judges.

12 B. The term of a probate court judge that was set
13 to expire on December 31, 2024 shall expire on December 31,
14 2026.

15 SECTION 16. REPEAL.--Sections 34-7-5, 34-7-6, 34-7-15,
16 34-7-16, 34-7-19 through 34-7-21, 34-7-23 through 34-7-25 and
17 45-1-307 NMSA 1978 (being Laws 1869-1870, Chapter 51, Section
18 2, Laws 1887, Chapter 66, Section 3, Laws 1923, Chapter 29,
19 Sections 2 and 4, Laws 1860-1861, page 80, Laws 1889, Chapter
20 90, Sections 42 and 43, Laws 1866-1867, Chapter 24, Sections 2
21 through 4 and Laws 1975, Chapter 257, Section 1-307, as
22 amended) are repealed.

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