

1 AN ACT

2 RELATING TO COURTS; CLARIFYING PROBATE COURT ADMINISTRATION
3 AND JURISDICTION; PROVIDING PROCEDURES FOR DESIGNATING A
4 DISTRICT JUDGE OR OTHER PROBATE JUDGE WHEN A PROBATE JUDGE
5 HAS RECUSED OR BEEN DISQUALIFIED; PROVIDING FOR CLERKS OF THE
6 PROBATE COURT AND THEIR DUTIES; SPECIFYING EACH COUNTY'S
7 FINANCIAL OBLIGATION FOR SUPPORT OF THE PROBATE COURT;
8 SPECIFYING RECORDS RETENTION; PROVIDING A FILING FEE;
9 PROVIDING WHEN CERTAIN CASES ARE TRANSFERRED TO DISTRICT
10 COURT; ALIGNING THE TERMS OF PROBATE JUDGES STATEWIDE;
11 REPEALING OUT-OF-DATE PROBATE COURT STATUTES.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

16 "34-7-1. PROBATE COURT--PROBATE JUDGE.--

17 A. There shall be a probate judge in each county
18 of this state, and each county is a probate court district.

19 B. The position of probate judge is a part-time
20 position."

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

23 "34-7-2. PROBATE JUDGE--ELECTION.--A probate judge
24 shall be elected at each general election at which the
25 governor is elected."

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

3 "34-7-3. PROBATE COURTS--SEAL.--The probate courts
4 shall procure and keep a seal with emblems and devices as the
5 supreme court determines."

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8 repealed and a new Section 34-7-4 NMSA 1978 is enacted to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

10 "34-7-4. PLACE OF HOLDING COURT--QUARTERS--SALARY.--

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

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

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

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25 repealed and a new Section 34-7-7 NMSA 1978 is enacted to

1 read:

2 "34-7-7. CUSTODY OF RECORDS.--The records, archives,
3 documents and books of the probate court shall be under the
4 charge of the clerk of the probate court in accordance with
5 standards established by the supreme court. The records,
6 archives and documents shall be kept in a separate book
7 maintained for that purpose and may be kept in physical or
8 electronic form."

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

11 "34-7-8. PROBATE COURT--HOURS OF BUSINESS.--

12 A. The probate court shall be open at such times
13 as determined by the clerk of the probate court and published
14 on the county's website.

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

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

20 "34-7-9. PROBATE JUDGE DISQUALIFICATION--TRANSFER.--

21 A. Whenever a probate judge shall, for any reason,
22 be interested or disqualified from acting in any proceeding
23 coming within the jurisdiction of the probate court, the
24 judge shall, upon the judge's own motion or that of any
25 interested party, immediately enter an order transferring the

1 proceeding and file the order with the clerk of the probate
2 court.

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

16 C. A probate judge who has accepted a designation
17 by the district court has jurisdiction to sit in any action
18 arising in any other probate district when designated for a
19 specific case or for a specific period of time. A probate
20 judge acting in another probate district by designation shall
21 include the cases heard by designation in the probate judge's
22 own reports to the district court, indicating on the reports
23 that the probate court's jurisdiction is by designation.

24 D. The board of county commissioners of the county
25 of the recused or disqualified probate judge shall reimburse

1 the district judge or probate judge sitting by designation
2 for expenses incurred pursuant to the Per Diem and Mileage
3 Act."

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

6 "34-7-10. PROCEEDINGS IN DISTRICT COURT.--

7 A. All proceedings transferred from the probate
8 court to the district court shall be docketed as other causes
9 in that court, which court shall exercise the same authority
10 and take the same steps and proceedings as would have
11 otherwise been taken in the probate court.

12 B. If a case was properly filed within the
13 jurisdiction of the probate court and later transferred to
14 the district court, no filing fee shall be charged in the
15 district court."

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

18 "34-7-11. PROBATE JUDGE ABSENT OR UNABLE TO ATTEND TO
19 DUTIES.--

20 A. Whenever a probate judge is absent,
21 incapacitated or unable to attend to the probate judge's
22 duties from any cause whatsoever, the probate judge shall
23 enter a notice of unavailability and file the order with the
24 clerk of the probate court; provided that if the judge is
25 unable to prepare the notice due to incapacity, the clerk of

1 the probate court shall prepare and file a notice of
2 incapacitation.

3 B. Upon receipt of a notice of unavailability or
4 after preparing a notice of incapacitation, the clerk of the
5 probate court shall give written notice to the district court
6 of the county in which the probate court is situate and the
7 district court shall designate a district judge or another
8 probate judge to hold court in the county and do all things
9 that could otherwise be done by the probate judge of that
10 county, without the necessity of having the matters or
11 proceedings transferred from the docket of the probate court
12 to the docket of the district court or the other probate
13 court. If designating another probate judge, the district
14 court shall give preference to probate judges serving within
15 the same judicial district. Upon receipt by the clerk of the
16 probate court of the designation by the district court, the
17 clerk of the probate court shall send a copy of the
18 designation to the parties or their counsel, to the
19 designated district or probate judge and to the unavailable
20 or incapacitated probate judge.

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

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

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

9 "34-7-13. ADMINISTRATION--SUPREME COURT RULES.--

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

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

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

22 "34-7-14. FEES OF PROBATE COURT.--Clerks of the probate
23 courts shall receive a filing fee of thirty dollars (\$30.00)
24 for each probate case."

25 SECTION 12. Section 34-7-17 NMSA 1978 (being

1 Laws 1860-1861, p. 80, as amended) is amended to read:

2 "34-7-17. PROBATE COURT TO KEEP ACCOUNTS.--The clerk of
3 each probate court shall keep the accounts of the probate
4 court and a record of all warrants issued against the county
5 treasury and for what purpose."

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

9 "34-7-18. PUBLIC MONEY--WHEN CASES TRANSFERRED TO
10 DISTRICT COURT.--

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

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

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

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

1 "34-7-22. CLERK OF THE PROBATE COURT--DEPUTY CLERKS--
2 POWERS.--

3 A. Unless otherwise provided by law, the county
4 clerk of each county is designated as the clerk of the
5 probate court in that county and shall have power to appoint
6 deputy clerks of the probate court who shall have full power
7 to perform all the duties of the clerk of the probate court.
8 The fees received by the probate court shall be deposited in
9 the county clerk recording and filing fund.

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

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

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

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

23 (2) enable more effective training for new
24 judges.

25 B. The term of a probate court judge that was set

1 to expire on December 31, 2024 shall expire on December 31,
2 2026.

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

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