

HOUSE BILL 216

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

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AN ACT

RELATING TO COURTS; PROVIDING THAT IN THE ABSENCE OF A PROBATE JUDGE, A PROBATE JUDGE OF ANOTHER COUNTY MAY HOLD COURT; REQUIRING THE COUNTY TO PROVIDE REIMBURSEMENT FOR PER DIEM AND MILEAGE.

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

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

"34-7-11. DISTRICT JUDGE--PROBATE POWERS.--

A. Whenever the probate judge ~~[shall be]~~ is absent from the county ~~[wherein he]~~ in which the probate judge was elected or ~~[shall be]~~ is incapacitated or unable to attend to ~~[his]~~ the probate judge's duties from any cause ~~[whatsoever]~~, any district judge of ~~[said]~~ the county, or any other district judge designated to hold court in ~~[said]~~ the county for ~~[him]~~

underscored material = new
[bracketed material] = delete

1 the judge, may do [~~any and~~] all things that could otherwise be
2 done by [~~said~~] the probate judge, without the necessity of
3 having the matters or proceedings transferred from the docket
4 of the probate court to the docket of the district court. The
5 fact of [~~such~~] the absence or incapacity of the probate judge
6 shall be recited in every order of the district judge entered
7 in accordance with this [~~act~~] section.

8 B. Whenever the probate judge is absent from the
9 county in which the probate judge was elected or is
10 incapacitated or unable to attend to the probate judge's duties
11 from any cause, a probate judge of another county may do all
12 things that could otherwise be done by the absent probate judge
13 with approval by the board of county commissioners of the
14 county of the absent probate judge. Pursuant to this
15 subsection, the probate judge fulfilling the duties of the
16 absent probate judge shall hold court in the court designated
17 in the county seat of the county of the absent probate judge.
18 The fact of the absence or incapacity of the probate judge of
19 the county shall be recited in every order of the helping
20 probate judge entered in accordance with this section. The
21 county of the absent probate judge shall reimburse the helping
22 probate judge for per diem and mileage pursuant to the Per Diem
23 and Mileage Act.

24 C. A probate judge that is absent shall determine
25 whether a district judge or probate judge fulfills the absent

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1 probate judge's duties. When the probate judge is
2 incapacitated and absent, the board of county commissioners of
3 the county of the absent and incapacitated probate judge shall
4 determine whether a district judge or probate judge fulfills
5 the absent probate judge's duties. Any appointment of a
6 district judge or probate judge of an absent probate judge
7 pursuant to this subsection shall comply with the provisions of
8 Subsections A and B of this section."

9 SECTION 2. Section 45-1-307 NMSA 1978 (being Laws 1975,
10 Chapter 257, Section 1-307) is amended to read:

11 "45-1-307. PROBATE COURT--POWERS.--If for any reason the
12 probate judge is unable to act, the acts and orders [~~which~~]
13 that the Uniform Probate Code specifies as performable by the
14 probate court may be performed [~~either~~] by a probate judge from
15 a separate county, a judge of the district court or by a person
16 designated by the district court by a written order filed and
17 recorded in the office of the clerk of the district court. The
18 county of the absent probate judge shall reimburse the probate
19 judge fulfilling the duties of the probate judge of the county
20 for per diem and mileage pursuant to the provisions of the Per
21 Diem and Mileage Act."

22 SECTION 3. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2020.