

1 SENATE BILL 134

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Crystal R. Diamond

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10 AN ACT

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

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

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

19 "34-7-11. DISTRICT JUDGE--PROBATE POWERS.--

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

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

9 B. Whenever the probate judge is absent from the
10 county in which the probate judge was elected or is
11 incapacitated or otherwise unable to attend to the probate
12 judge's duties for any cause, a probate judge of another county
13 may do all things that could otherwise be done by the
14 unavailable probate judge when designated by the unavailable
15 probate judge in accordance with the provisions of Subsection C
16 of this section or with approval by the board of county
17 commissioners, or the equivalent governing body if a different
18 form of county governance is in place, of the county of the
19 unavailable probate judge. The visiting probate judge
20 fulfilling the duties of the unavailable probate judge shall
21 hold court in the location designated in the county seat of the
22 county of the unavailable probate judge. The fact of the
23 absence or incapacity of the probate judge of the county shall
24 be recited in every order of the visiting probate judge entered
25 in accordance with this section, and the visiting judge shall

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1 sign the order as the visiting probate judge. The county of
2 the unavailable probate judge shall reimburse any visiting
3 probate judge for per diem and mileage pursuant to the Per Diem
4 and Mileage Act.

5 C. A probate judge that is anticipating an extended
6 absence may designate whether a district judge or visiting
7 probate judge will fulfill the absent probate judge's
8 responsibilities during the judge's absence. When the probate
9 judge is incapacitated and absent or when the probate judge
10 fails to designate a judge to fulfill the judge's
11 responsibilities during an absence, the board of county
12 commissioners of the county of the unavailable and
13 incapacitated probate judge, or the equivalent governing body
14 if a different form of county governance is in place, shall
15 determine whether a district judge or visiting probate judge
16 will fulfill the unavailable probate judge's duties. Any
17 selection of a district judge or a visiting probate judge by an
18 unavailable probate judge pursuant to this subsection shall
19 comply with the provisions of Subsections A and B of this
20 section."

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

23 "45-1-307. PROBATE COURT--POWERS.--If for any reason the
24 probate judge is unable to act, the acts and orders [which]
25 that the Uniform Probate Code specifies as performable by the

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underscoring material = new
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1 probate court may be performed [~~either~~] by a visiting probate
2 judge from another county, a judge of the district court
3 serving the county of the unavailable probate judge or by a
4 person designated by the district court [~~by~~] as the probate
5 judge pro tem in a written order filed and recorded in the
6 office of the clerk of the district court. The county of the
7 unavailable probate judge shall reimburse any visiting probate
8 judge for per diem and mileage pursuant to the provisions of
9 the Per Diem and Mileage Act."

10 SECTION 3. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2021.

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