

§307. Conflict of interest; transfer of case

When a judge or register of probate is interested in that judge's or register of probate's own right, trust, or in any other manner, or is within the degree of kindred, by which in law that judge or register of probate may, by possibility, be heir to any part of the estate of the person deceased, or is named as executor, trustee or guardian of minor children in the will of any deceased resident of the county, such estate must be settled in the probate court of any adjoining county, which has as full jurisdiction thereof as if the deceased had died in that adjoining county. If the judge's or register of probate's interest arises after jurisdiction of such estate has been regularly assumed or existed at the time of the judge's or register of probate's appointment to office, and in all cases where an executor, administrator, guardian or trustee, whose trust is not fully executed, becomes judge or register of probate for the county in which that judge's or register of probate's letters were granted, further proceedings in that county must be transferred to the probate court in any adjoining county and there remain until completed, as if such court had had original jurisdiction thereof, unless said disability is removed before that time. Whenever in any case under this section the disability of the judge or register is removed before the proceedings have been fully completed, the proceedings must then be transferred to the probate court in the county of original jurisdiction or to the probate court that otherwise would have had jurisdiction. In all such cases the register in such adjoining county shall transmit copies of all records relating to such estate to the probate office of the county where such estate belongs, to be there recorded. If there are fewer than 4 counties adjoining the county of a probate court that is required to transfer proceedings to an adjoining county under this section, the proceedings must be transferred to a probate court in one of the 4 counties nearest to the transferring probate court, as measured by the shortest distance along paved roads between the building in which the registry of probate is located in the transferring county and the building in which the registry of probate is located in the other county. [PL 2023, c. 4, §1 (AMD).]

This section may not be construed to require removal to another county by reason of the judge or register of probate having been named as executor, trustee or guardian of minor children in a will, as long as the judge or register of probate does not receive a benefit from the will and the record of the court discloses the filing of the judge's or register of probate's declination to act as such executor, trustee or guardian, if no objection is raised by any interested party at the hearing on the petition for probate of the will. [RR 2021, c. 1, Pt. B, §11 (COR).]

A judge is considered to be interested in an estate or other probate proceeding, including adoptions, if the judge or a person with whom the judge practices law represents a party in the proceeding. When such representation begins, the judge shall transfer the matter as provided in this section, after which transfer the judge or the person with whom the judge practices law may continue such representation, except that, after a formal probate proceeding has been initiated before a judge, that judge is forever barred from assuming representation of a party in that same proceeding without regard to whether or not the proceeding has been transferred. A petition requesting a transfer and the petition related to the matter being transferred filed simultaneously are not considered formal probate proceedings for the purposes of this paragraph. [PL 1991, c. 697, §1 (NEW).]

SECTION HISTORY

PL 1991, c. 697, §1 (AMD). RR 2021, c. 1, Pt. B, §11 (COR). PL 2023, c. 4, §1 (AMD).

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