

MAINE STATE LEGISLATURE

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CHAPTER 7
PROBATE COURT

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SUBCHAPTER I

GENERAL PROVISIONS

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 203. Rights of claimants under heir.

§ 201. Courts of record; seal; punishment for contempt

Courts of probate are courts of record. Each shall have an official seal, of which the register shall have the custody. They may issue any process necessary for the discharge of their official duties and punish for contempt of their authority.

R.S.1954, c. 153, § 1.

§ 202. Oaths and acknowledgments; nominations of guardians

All oaths required to be taken by executors, administrators, trustees or guardians, and all oaths required of commissioners of insolvency, appraisers and dividers of estates, or of any other persons in relation to any proceeding in the probate court, or to perpetuate the evidence of the publication of any order of notice, or of any notice of the time and place of sale of real estate by license of a judicial or probate court, may be administered by the judge or register of probate, by any justice of the peace or notary public. A certificate thereof, when taken out of court, shall be returned into the registry of probate and there filed. When any person of whom such oath is required, including any person making an affidavit in support of a claim against an estate, or any

parent acknowledging consent to an adoption, or any child over 14 years of age nominating his guardian, resides temporarily or permanently without the State, the oath or acknowledgment may be taken before and said nomination may be certified by a notary public without the State, a commissioner for the State of Maine or a United States Consul.

R.S.1954, c. 153, § 19.

§ 203. Rights of claimants under heir

Any person claiming under an heir at law has the same rights as the heir in all proceedings in probate courts, including rights of appeal.

R.S.1954, c. 153, § 38.

SUBCHAPTER II

JURISDICTION

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253. Jurisdiction in court where proceedings originate.

§ 251. General jurisdiction

Each judge may take the probate of wills and grant letters testamentary or of administration on the estates of all deceased persons who, at the time of their death, were inhabitants or residents of his county or who, not being residents of the State, died leaving estate to be administered in his county, or whose estate is afterwards found therein; and has jurisdiction of all matters relating to the settlement of such estates. He may grant leave to adopt children, change the names of persons, appoint guardians for minors and others according to law, and has jurisdiction as to persons under guardianship, and as to whatever else is conferred on him by law.

R.S.1954, c. 153, § 9; 1961, c. 395, § 53.

§ 252. Equity jurisdiction

The courts of probate shall have jurisdiction in equity, concurrent with the Superior Court, of all cases and matters relating to the administration of the estates of deceased persons, to wills

and to trusts which are created by will or other written instrument. Such jurisdiction may be exercised upon complaint according to the usual course of proceedings in civil actions in which equitable relief is sought.

R.S.1954, c. 153, § 2; 1961, c. 317, § 490.

§ 253. Jurisdiction in court where proceedings originate

When a case is originally within the jurisdiction of the probate court in 2 or more counties, the one which first commences proceedings therein retains the same exclusively throughout. The jurisdiction assumed in any case, except in cases of fraud, so far as it depends on the residence of any person or the locality or amount of property, shall not be contested in any proceeding whatever, except on an appeal from the probate court in the original case or when the want of jurisdiction appears on the same record.

R.S.1954, c. 153, § 16.

SUBCHAPTER III

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- 309. Judge not to counsel or draft documents.
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§ 301. Terms; salary

Judges of probate are elected or appointed as provided in the Constitution. Only attorneys at law admitted to the general practice of law in this State and resident therein may be elected or appointed as judges of probate. Their election is effected and determined as is provided respecting county commissioners; and they enter upon the discharge of their duties on the first day of

January following; but, when appointed to fill vacancies, their terms commence on their appointment.

Judges of probate in the several counties shall receive annual salaries as set forth in Title 30, section 2.

The fees to which judges of probate are entitled by law shall be taxed and collected and paid over by the registers of probate to the county treasurers for the use of their counties with the exception of the fees provided in section 304, which shall be retained by the judge who collects the same in addition to his salary.

R.S.1954, c. 153, § 3; 1959, c. 372, § 9; 1963, c. 351, § 11.

§ 302. Officers execute processes and attend courts

Sheriffs, their deputies and constables shall execute all legal processes directed to them by any such judge of probate who may, when necessary, require such officer, when not in attendance upon any other court, to attend during the sitting of the probate court, for which he shall be paid as in other courts for similar services.

R.S.1954, c. 153, § 4.

§ 303. Continuous session; return day for matters requiring public notice

Probate court shall always be open in each county for all matters over which it has jurisdiction, except upon days on which by law no court is held, but it shall have certain fixed days and places to be made known by public notification thereof in their respective counties to which all matters requiring public notice shall be made returnable. In case of the absence of the judge or vacancy in the office at the time of holding any court, the register or acting register may adjourn the same until the judge can attend or some other probate judge can be notified and attend.

R.S.1954, c. 153, § 5.

§ 304. Equity and contested cases; time and place of hearing

Judges of probate may hold hearings for matters in equity and contested cases at such time and place in the county as the judge of probate may appoint and make all necessary orders and decrees relating thereto, and when hearings are held at other places than those fixed for holding the regular terms of court, the judge shall be allowed, in addition to his regular salary, \$5 per day and actual expenses which shall be paid by the State unless otherwise provided by law.

R.S.1954, c. 153, § 6.

§ 305. Term of Fort Kent probate court

The judge of probate in and for the County of Aroostook shall hold a court of probate once in each year at Fort Kent in said county. The time for holding said court shall be appointed by said judge and made known by public notification as provided in section 303.

R.S.1954, c. 153, § 7.

§ 306. Interchange of judicial duties; expenses

During the sickness, absence from the State or inability of any judge of probate to hold the regular terms of his court, such terms, at his request or that of the register of the county, may be held by the judge of any other county. The judges may interchange service or perform each others' duties when they find it necessary or convenient, and in case of the death of a judge, all necessary terms of the probate court for the county may, at the request of the register, be held by the judge of another county until the vacancy is filled. The orders, decrees and decisions of the judge holding such terms have the same force and validity as if made by the judge of the county in which such terms are held.

When any judge of probate holds court or a hearing in any probate matter, or in equity, in any county other than the one in which he resides, such judge shall be reimbursed by the county in which such court or hearing is held for his expenses actually and reasonably incurred, upon presentation to the county commissioners of said county of a detailed statement of such expenses.

R.S.1954, c. 153, § 8.

§ 307. Conflict of interest; transfer of case

When a judge or register of probate is interested in his own right, trust, or in any other manner, or is within the degree of kindred, by which in law he 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 shall be settled in the probate court of any adjoining county, which shall have as full jurisdiction thereof as if the deceased had died therein. If his interest arises after jurisdiction of such estate has been regularly assumed or existed at the time of his 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 his letters were granted, further pro-

ceedings therein shall be transferred to the probate court in any adjoining county and there remain till completed, as if such court had had original jurisdiction thereof, unless said disability is removed before that time. Whenever in any case within this section the disability of the judge or register is removed before the proceedings have been fully completed, the proceedings shall then be transferred to the probate court in the county of original jurisdiction or to the probate court which 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.

Nothing in this section shall be deemed 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, provided he receives no benefit from the will and the record of the court discloses the filing of his 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.

R.S.1954, c. 153, § 17; 1961, c. 256.

§ 308. Certification of unfinished acts of predecessor judge

Every judge, upon entering on the duties of his office, shall examine the records, decrees, certificates and all proceedings connected therewith which his predecessor left unsigned or unauthenticated. If he finds them correct, he shall sign and authenticate them and they shall then be as valid to all intents and purposes as if such duty had been done by his predecessor while in office.

R.S.1954, c. 153, § 18.

§ 309. Judge not to counsel or draft documents

No judge of probate shall have a voice in judging and determining nor be attorney or counselor in or out of court in any civil action or matter which depends on or relates to any sentence or decree made by him in his office, nor in any civil action for or against any executor, administrator, guardian or trustee under any last will and testament, as such, within his county. Any process or proceeding commenced by him in the probate court for his county in violation of this section is void, and he is liable to the party injured in damages. No judge of probate shall draft

or aid in drafting any document or paper which he is by law required to pass upon.

R.S.1954, c. 153, § 20.

§ 310. Perpetual care of cemetery lots by order

Judges of probate, in any case in which an estate is under their jurisdiction for probate, shall have the power to order that an appropriate amount out of the estate be set aside for perpetual care and suitable memorials for the cemetery lot in which the deceased is buried, and to order special care of such lots when the conditions and size of the estate seem to warrant such order.

R.S.1954, c. 153, § 21.

SUBCHAPTER IV

RULES OF PRACTICE

Sec.

351. Procedural rules; blanks; revision; approval.

352. Blanks and records provided.

§ 351. Procedural rules; blanks; revision; approval

The rules of practice and procedure in the courts of probate and insolvency, approved by a majority of the Justices of the Supreme Judicial Court June 17, 1916, and as thereafter revised and approved, are in force in all courts of probate and insolvency. The blanks for use in said courts approved by the Supreme Judicial Court September 30, 1916, and as thereafter revised and approved, shall be used in all courts of probate and insolvency, and no other blanks shall be used therein. The Governor shall appoint a Commission on Probate Rules and Blanks consisting of 3 judges and 2 registers of probate. Each member of the commission shall serve for 4 years and until his successor is appointed and qualified, but membership on the commission shall terminate when he ceases to be a judge or register of probate. The commission may make new rules and blanks or amendments to existing rules and blanks as changes in statutes or convenience requires. Such new rules and blanks or amended rules and blanks shall, when approved by the Supreme Judicial Court or a majority of the justices thereof, take effect and be in force in all courts of probate and insolvency.

The commission shall elect a chairman and a secretary, and shall receive no compensation for meetings of the commission but

shall be reimbursed for their necessary traveling expenses. Compensation for services rendered by the secretary by direction of the commission and necessary clerical assistance and expense of printing reports of the commission shall be paid from any appropriation made therefor.

R.S.1954, c. 153, § 50; 1955, c. 323, § 1.

§ 352. Blanks and records provided

Each county shall provide all necessary printed blanks and record books for its probate courts and courts of insolvency, and said record books may be printed to correspond with the printed blanks.

R.S.1954, c. 153, § 51.

SUBCHAPTER V

APPEALS

Sec.

- 401. Appellate jurisdiction; special guardians; appeal to law court.
- 402. Bond on appeal; service of reasons for appeal.
- 403. Allowance of appeal accidentally omitted.
- 404. Failure to prosecute appeal.
- 405. Stay of proceedings on appeal.
- 406. Hearing on appeal.

§ 401. Appellate jurisdiction; special guardians; appeal to law court

The Superior Court is the supreme court of probate and has appellate jurisdiction in all matters determinable by the several judges of probate. Any person aggrieved by any order, sentence, decree or denial of such judges, except the appointment of a special administrator, or any order or decree requiring any administrator, executor, guardian or trustee to give an additional or new official bond, or any order or decree under Title 18, section 1705, or any order or decree removing a guardian from office, may appeal therefrom to the supreme court of probate to be held within the county, if he claims his appeal within 20 days from the date of the proceeding appealed from; or if, at that time, he was beyond sea, or out of the United States and had no sufficient attorney within the State, within 20 days after his return or the appointment of such attorney.

When an appeal is taken on any ground to the appointment of a guardian of a minor or an adult person by the judge of probate under Title 18, chapter 501, the judge of probate may, notwithstanding such appeal, appoint a special guardian with or without further notice, if he decides that such appointment is necessary or expedient. Such special guardian shall give the same bond, have the same powers and perform the same duties as regular guardians until the appeal is disposed of.

By agreement of parties only, appeal may be taken to the law court either on agreed statements of facts or upon evidence reported by the judge of probate, in all matters determinable by the several judges of probate, as in the Superior Court. The law court shall have the same jurisdiction of all questions of law arising on said appeals as if they had come from the supreme court of probate. All provisions of law and rules of court relative to appeals from the Superior Court shall apply to such cases. Decisions of the law court in all such cases appealed directly from the probate court to said law court shall be certified to the register of probate of the county from which such appeal originated, with the same effect as if said appeal had originated in the supreme court of probate of said county.

R.S.1954, c. 153, § 32; 1959, c. 317, § 285.

§ 402. Bond on appeal; service of reasons for appeal

Within the time limited for claiming an appeal, the appellant shall file in the probate office his bond to the adverse party or to the judge of probate for the benefit of the adverse party, with sufficient sureties resident in the State or with a surety company authorized to do business in the State as surety, in such sum as the judge approves, conditioned to prosecute his appeal with effect, and to pay all intervening costs and damages and such costs as the supreme court of probate taxes against him, and he shall file in the probate office the reasons of appeal; and, within 34 days from the date of the proceeding appealed from, he shall serve all the parties who appeared before the judge of probate on the case that have entered or caused to be entered their appearance in the docket of said court, with a copy of such reasons, attested by the register. When a party appears by an attorney residing in this State before the judge of probate in any case and an appeal is taken, the service of a copy of the reasons of appeal upon such attorney shall be sufficient. In case of controversy between a person under guardianship and his guardian, the supreme court

of probate may sustain an appeal on the part of the ward without such bond.

R.S.1954, c. 153, § 33; 1959, c. 317, § 286.

§ 403. Allowance of appeal accidentally omitted

If any such person from accident, mistake, defect of notice or otherwise without fault on his part omits to claim or prosecute his appeal, the supreme court of probate, if justice requires a revision, may, upon reasonable terms, allow an appeal to be entered and prosecuted with the same effect as if it had been seasonably done; but not without due notice to the party adversely interested nor unless the petition therefor is filed with the clerk of said court within one year after the decision complained of was made.

R.S.1954, c. 153, § 34; 1959, c. 317, § 287.

§ 404. Failure to prosecute appeal

If the appellant fails to enter and prosecute his appeal, the supreme court of probate, upon complaint of any person interested, may affirm the former sentence, assess reasonable costs for the complainant and make such further order thereon as law and justice require.

R.S.1954, c. 153, § 35.

§ 405. Stay of proceedings on appeal

After an appeal is claimed and the bond and reasons of appeal are filed, all further proceedings, in pursuance of the matter appealed from, cease until the determination of the supreme court of probate thereon. The register shall transmit to the appellate court all depositions relating to the matter appealed from filed in the probate court, and the same may be used in the appellate court.

R.S.1954, c. 153, § 36.

§ 406. Hearing on appeal

Such appeal to the supreme court of probate shall, unless the court otherwise directs, be in order for hearing at the first term of court held not less than 10 days after the service of the notice of appeal, and said appellate court may reverse or affirm, in whole or in part, the sentence or act appealed from, pass such

decree thereon as the judge of probate ought to have passed, remit the case to the probate court for further proceedings or make any order therein that law and justice require. If, upon such hearing, any question of fact occurs proper for a trial by jury, an issue may be framed for that purpose under the direction of the court and so tried.

R.S.1954, c. 153, § 37; 1959, c. 317, § 288.