

Opinion No. 65-180

September 14, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Roy G. Hill, Assistant Attorney General

TO: Mr. Raymond E. Keithly, District Attorney, County Court House, Truth or Consequences, New Mexico

QUESTION

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Where a party attempts to file proceedings in the Probate Court without representation of an attorney and is unlicensed himself and is making the filing in behalf of a minor as his guardian or next friend, may he file the proceedings notwithstanding Section 18-1-26 N.M.S.A., 1953 Compilation (P.S.)?

CONCLUSION

No, because of Section 30-2-7 N.M.S.A., 1953 Compilation.

OPINION

{*296} ANALYSIS

Section 18-1-26 N.M.S.A., 1953 Compilation (P.S.) provides that no person shall practice law in any of the courts of this state except courts of justices of the peace unless he has been admitted to the Bar of New Mexico or issued a temporary license as provided in the section. This section has no bearing on the situation you present.

Sections 30-2-1 through 30-2-23 N.M.S.A., 1953 Compilation, pertain to probate of wills and Section 30-2-7 N.M.S.A., 1953 Compilation provides specifically as follows:

"If it shall appear that any of the heirs-at-law, devisees or legatees are minors, or persons of unsound mind, the court shall, after service of such notice being made upon such minor or incompetent person and prior to examining the attesting witnesses to any will or hearing any objections to such will or the probate of the same, appoint some attorney as guardian ad litem for such minors or persons of unsound mind, to appear in the probate court in their behalf in connection with the probate of such will, and to represent them at such hearing, and all subsequent hearings on appeal, and in all matters in connection with the administration of said estate. The guardian of the person or next friend of any such minor, or person of unsound mind, shall have the preferential right to apply for the appointment of a guardian ad litem, if application is made for such appointment within five [5] days after service of such notice upon the minor or person of

unsound mind. If no such application is made within said five-day period, then the appointment of such guardian ad litem may be made upon the motion of any other interested party or by the court upon its own motion."

As you can see from this it is mandatory that a minor have an attorney as his guardian ad litem in any matter involving the probate of wills. The only right a guardian or next friend has under this section is the preferential right to name the guardian ad litem if an application for such a preferential appointment is made five (5) days after the minor received notice of the probate. The answer, therefore to your question is no, but not because of the section you cited, but because of Section 30-2-7, supra.