

Opinion No. 71-70

May 24, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Honorable Scott A. Mabry Probate Judge Bernalillo County 415 Tijeras NW
Albuquerque, N.M. 87101

QUESTIONS

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May a non-member of the New Mexico State Bar Association (not an executor or administrator) probate an estate in the probate court?

ANSWER

No.

OPINION

{*102} ANALYSIS

Section 18-1-26, N.M.S.A., 1953 Comp. dealing with the practice of law states that:

"No person shall practice law in any of the courts of this state, except courts of justice of the peace, nor shall any person commence, conduct or defend any action or proceeding in any of said courts unless he be an actual and bona fide resident of the state of New Mexico, and unless he shall have first obtained a temporary license as herein provided, or shall have been granted a certificate of admission to the bar under the provisions of this chapter."

This language clearly prohibits individuals who are not licensed to practice law from doing so in **any** court except the "justice of the peace" court (Magistrate Court). See Section 36-1-38, N.M.S.A., 1953 Comp.; Opinion of the Attorney General No. 69-12, dated February 19, 1969. Thus, an individual who is not licensed to practice law may not probate an estate in a probate court unless he is the administrator or {*103} executor of the particular estate.

Prior to 1957, Section 18-1-26 read as follows:

"No person shall practice law in any of the courts of this state, **except probate courts and** courts of justice of the peace. . . ." (Emphasis added)

The emphasized portion of the above cited statute was deleted in Chapter 106, Section 1, Laws of 1957.

Through this amendment the legislature positively asserted its determination to remove probate courts from the exemption of Section 18-1-26, **supra**. This expression of legislative intent, coupled with the clear statutory language quoted above, forces the conclusion that only those licensed to practice law in this state may probate an estate in probate court. See **State ex rel. Patton v. Marron**, 22 N.M. 632, 167 P.9, L.R.A. 1918B, 217 (1917).

By: Leila Andrews

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