

**RULE 6.1 - FILE FOLDER ESTABLISHED:**

The clerk shall establish a case file for each of the estate types listed below. All original documents shall be placed in the appropriate folder and secured in place with document fasteners.

- a. When a will is probated before the clerk.
- b. When there is no will and the clerk appoints a personal representative.
- c. (REPEALED EFFECTIVE JULY 6, 2015; see u below)
- d. (REPEALED EFFECTIVE JULY 6, 2015; see u below)
- e. When the clerk receives payment of money owed intestate, (*e.g.*, an electric utility wishes to reimburse an estate). (see G.S. §28A-25-6.)
- f. When a guardianship of a minor or incompetent is established, including an ancillary or standby guardianship, and when any order is entered pursuant to G.S. 35A-1121. If there are two or more minors to be covered by guardianship, the clerk should set up a separate estate file for each minor. Upon the death of an incompetent person, including a minor ward, a new estate file should be opened for any decedent's estate administration and collect the appropriate fee.

**COMMENT:**

When a guardian of the person or guardian of the estate is appointed, and a separate order is entered on a request for a special fiduciary or temporary guardian to carry out a single protective arrangement or single transaction for an incompetent person, a single estate file folder shall be established for the guardian of the person or guardian of the estate and the order authorizing a special fiduciary or temporary guardian to carry out a single protective arrangement or single transaction. When an estate file folder already exists for a minor or incompetent adult, orders authorizing a special fiduciary or temporary guardian to carry out a single protective arrangement or single transaction shall be filed in the existing estate file folder.

- g. Powers of Attorney:
  1. When a power of attorney is filed.
  2. No other power of attorney estate proceeding has been established and a petition is filed initiating a power of attorney estate proceeding before the Clerk. These



proceedings (as set forth in NCGS Chapter 32C) could include, but are not limited to the following:

- Compel accounting/evidence of expenditures by an agent;
- Terminate power of attorney;
- Suspend or terminate agent's authority where a guardian of the estate or general guardian has been appointed;
- Determine agent compensation under G.S. §32C-1-112(b);
- Determine agent's authority and powers;
- Construe power of attorney terms;
- Determine whether/to what extent an agent holds a specific grant of authority under G.S. §32C-2-201;
- Approve/authorize agent to make gift of principal's property under G.S. §32C-2-217 or G.S. §32C-2-218;
- Authorize agent to do an act described in G.S. §32C-2-201(a) other than to make a gift under G.S. §32C-2-219;
- Determine whether acceptance of power of attorney shall be mandated under G.S. §32C-1-120(f);
- Any other matter under G.S. §32C-1-116(a)(4).

Power of attorney matters not heard by the Clerk are filed as civil court actions specified in G.S. §32C-1-116(b) (see RRK 3.1).

COMMENT:

Upon the death of a principal for whom a power of attorney estate file has previously been created, a new estate file should be opened for any decedent's estate administration and collect the appropriate fee.

3. Petitions to suspend the authority of a health care agent filed pursuant to G.S. §32A-22(a).
  - h. When a year's allowance is awarded, and no estate file exists.
  - i. When a collector is appointed under G.S. §28A-11-1.
  - j. When a trust is established under a will and the trustee must qualify and file accountings. When there are two or more beneficiaries of a trust only one file needs to be set up. However, all of the beneficiaries of the trust are to be entered into the estate index. If more than one trust is established under a will where the trustee is required to qualify and file accountings, a separate file folder should be established for each individual trust.



- k. When the clerk administers an estate for a minor or incompetent, (*e.g.*, lawsuit, SP sale, life insurance payment, inheritance). (see G.S. §7A-111.)
- l. When a cemetery trust is established.
- m. (REPEALED EFFECTIVE APRIL 29, 2019. see RRK 7.1, Comment A, 12.)
- n. When a renunciation of a property interest or renunciation of fiduciary powers is filed pursuant to NCGS Chapter 31B, and there is no existing estate file.
- o. When a supplemental proceeding is filed under G.S. §28A-15-12.
- p. (REPEALED EFFECTIVE JULY 6, 2015)
- q. (REPEALED EFFECTIVE APRIL 29, 2019. see RRK 3.1, #40).
- r. (REPEALED EFFECTIVE JULY 6, 2015; see u below)
- s. When a petition or complaint is filed initiating a trust proceeding to be heard by the Clerk. Trust proceedings before the clerk concern the internal affairs of a trust. These proceedings include but are not limited to the following:
- Removal/resignation/appointment of trustee;
  - Appoint special fiduciary for decanting;
  - Trustee fees;
  - Review/settle accounts;
  - Conversion of total return trust/unitrust;
  - Transfer principal place of administration;
  - Bond;
  - Animal care trust;
  - Noncharitable trust without ascertainable beneficiary;
  - Ascertain beneficiaries;
  - Trust administration/distribution;
  - Construe trust;
  - Create trust (including special needs trust); and
  - Any other matters under G.S. §36C-2-203(a)
- Trust matters not heard by the Clerk are filed as civil superior court actions specified in G.S. §36C-2-203(f) (see RRK 3.1).
- t. An Estate of an unborn fetus may be opened with a Health Department Certificate of Fetal Death in lieu of the Death Certificate.



- u. When a will which has not been offered for probate is filed for recordkeeping purposes only.
- v. When certified or exemplified copies of any decedent's (testate or intestate, resident or non-resident) estate proceedings are filed. Oftentimes, a copy of the probated will along with the certificate of probate will be filed.
- w. Upon filing of an Affidavit for removal of personal property of deceased residential tenant (AOC-E-450); collect the fee as set forth in G.S. §28A-25-7.
- x. Petitions requesting the issuance of a certificate of validity (aka Living Probate) NCGS Chapter 28A, Article 2B. (see Comment 9)
- y. When a guardianship is transferred to NC from another state or foreign country pursuant to G.S. §35B-31.
- z. When an out-of-state order is registered pursuant to NCGS Chapter 35B, Article 4.
- aa. Documents formerly treated as Estate Other or "EO" filings (see RRK 6.4).
  - If a document previously classified as an "EO" filing is received then the document shall be placed in an existing E file for the Decedent, Trust, Ward or Principal/Agent. If there is not an existing E file for the Decedent, Trust, Ward, or Principal/Agent, then an E case file shall be established pursuant to this rule for the document with any subsequent filings related to the Decedent, Trust, Ward, or Principal/Agent being placed in that existing file. A document previously classified as an "EO" filing may not constitute the administration of an estate of a decedent for the purposes of determining which filing fees are required. Should documents that constitute the administration of an Estate under G.S. §7A-307 be filed later in the now established E file then appropriate filing fees are to be collected. Any other statutorily authorized filing fees should be collected. (*e.g.*, Lock Box Inventory, MVR-317, etc.)
  - Those documents previously filed as "EO" included but are not limited to the following:
    - a. Inheritance Tax Certificates.
    - b. Lock Box Inventory where no estate case has yet been established (both in and out of county).
    - c. Copy of Form MVR-317, Authority to Assign Title.
    - d. Renounced Estates where no case has yet been established. See NCGS Chapter 31B and Clerks Procedures Manual Chapter 84.5.



- e. A record of communication between courts pursuant to G.S. §35B-5 when no adult guardianship or incompetency proceeding exists in NC. The record may be limited merely to the fact that the communication occurred.
- bb. Settlement of a deceased partner's interest in a partnership pursuant to NCGS Chapter 59, Article 3. Enter the case into the VCAP system as:
- E1: [Partnership Name]  
F1: [Surviving Partner(s) or Name of Petitioner]  
B1: Estate of [Decedents Name]  
B2: Personal Representative of Estate (if one exists)

COMMENTS:

1. Provided below is a list of common actions for which the clerk should not establish an estate file.
  - Any claim on an estate where no official estate has yet been established.
  - Wills held for safekeeping.
  - Trusts Under Will where the will exempts qualification.
  - Interim Guardianships (see RRK 7.1, Comment A, #5)
2. Estates of missing persons are not subject to administration under NCGS Chapter 28A until a judge renders a "final finding and decree" that the absentee is a decedent. After a final reading and decree, the estate is subject to the same rules as the estate of any other decedent. For direction in dealing with the estates of missing persons see G.S. §28C-1 through -22.
3. When a guardian of the person is appointed, and a separate guardian of the estate is also appointed a single file shall be established for both guardianships.
4. Creditor's claims filed with the clerk prior to the establishment of an E file should be returned to the creditor with a note that as of that date there is no estate on record. Only when an estate file has been established should the clerk accept a claim.
5. When a year's allowance or other small estate administration is filed prior to the filing of a full estate administration, the full estate administration shall be made under the same file number as the year's allowance or small estate administration. All filings related to that decedent's estate shall be placed in one file in each county for which there is a file dealing with the estate of that decedent.



6. If any documents are filed for a decedent in an EO file and an E file is subsequently opened for the same decedent, the original documents in the EO file shall be transferred to the E file with a non-certified copy remaining in the EO file for recordkeeping purposes.
7. A petition to transfer a guardianship out of the state of NC pursuant to G.S. §35B-30 the petition should be filed in the existing estate file.
8. Estate Proceedings (NCGS Chapter 28A, Article 2):
  - a. Contested estate proceedings brought against adverse parties shall be commenced by petition in the existing estate administration file. The clerk of superior court shall issue the estate proceeding summons to all respondents. Collect appropriate filing fees per G.S. §7A-307.
  - b. Uncontested Estate Proceedings before the clerk of superior court may be decided without hearing according to practice and procedure provided by law and shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily. Collect appropriate filing fees per G.S. §7A-307.
9. Upon the filing of a verified petition requesting an order declaring that a petitioners will and/or codicil is valid the clerk shall proceed as a contested estate proceeding under NCGS Chapter 28A, Article 2. If the court determines that a will or codicil is valid, a certificate of validity shall be issued by the court (*e.g.*, AOC-E-306). If the court determines that a will or codicil is not valid they shall enter an order to that effect. Any party to the proceeding may move that the contents of the record be sealed upon entry of the judgment. Upon the death of the petitioner a new estate file should be opened for the decedent's estate administration and collect the appropriate fee.
10. The original bond of a previously appointed interim guardian who has, after adjudication of incompetency, been appointed the guardian of the estate or general guardian shall be moved from the special proceedings file to the newly established estate file and a photocopy of the bond shall be retained in the special proceedings file.

**RULE 6.2 - FILE NUMBERS:**

The clerk shall use one sequential number series for all estate cases established. Each case filed will be assigned the next available number from that series.

The format for the estates series is: Year of filing and case type designator (*i.e.*, 03E); and the unique sequence number that begins with "1" at the beginning of each calendar year, (1, 2, 3, 4, etc.). Examples of complete file numbers are; 03E1, 03E2, 03E3, etc.



Where an old estate/trust file experiences activity which needs to be entered in the VCAP system the old number must be converted to a new system number. For example, convert 68E101A to 03E12345. This may occur when a file opened prior to court reform is reopened.

**RULE 6.3 - DATE STAMP ON FILINGS:**

The clerk shall record the date of filing on all documents received for filing.

**COMMENTS:**

- A. Where possible the clerk should use a time clock stamping machine to record both the date and time of filing. A manual date stamp is acceptable.
- B. The best practice is for the clerk who stamps the date and time of filing to place his or her initials by the date and time stamp. While initialing the date and time is not required, it is useful in tracking errors in filing and in preventing the filing of papers without the clerk's control or knowledge.
- C. The clerk should not date stamp a summons when it is issued but should wait until returned by the sheriff.

**RULE 6.4 - ESTABLISH "EO" FILE FOLDER: (REPEALED EFFECTIVE JANUARY 1, 2018)**

**RULE 6.5 - INDEX:**

The clerk shall maintain an Index to Estates and Devises in the manner and form approved by the NCAOC Director. This index shall be part of the Civil Case Processing System (the VCAP system).

- A. This index shall indicate:
  1. the file number of the estate;
  2. the name of the estate;
  3. the date of death (decedent), or date of birth (incompetent adult, principal in power of attorney, minor estate, and living probate petitioners);
  4. the name and title of the fiduciary(s);
  5. date of qualification of the fiduciary;
  6. heirs, beneficiaries and/or devisees, and interested persons;
  7. the fiduciary's address;
  8. estate attorney name and address, if represented;
  9. addresses of any heirs, beneficiaries and/or devisees, and interested persons;
  10. the microfilm number(s);
  11. the filing and issue type of the estate, including but not limited to the following pleading and issue types:



- a. affidavit for Collection, both intestate and testate;
  - b. ancillary Administration;
  - c. appointment of a Collector;
  - d. appointment of a Guardian of the Person, both incompetents and minors;
  - e. appointment of a Guardian of the Estate, both incompetents and minors;
  - f. Letters of Administration;
  - g. probate of a will;
  - h. filing of a will without probate;
  - i. trust under a will, qualification, accounting required;
  - j. The clerk shall also indicate on the index the name of the deceased party from each of the documents filed in the "Estates Other" folder, and the names of the deceased persons, trustees and beneficiaries of all trusts set up under will, including trusts where the will exempts qualification.
  - k. Where a will exempts qualification, the trusteeship must be indexed in the index to estates as a separate issue from the probate or administration of decedent's estate but using the same "E" number. In other words, index the decedent, each beneficiary of the trust and the trustee.
  - l. Petitions and certificates of validity of living probate (AOC-E-306).
- B. Where there are co-fiduciaries, the clerk shall index the co-fiduciaries on separate lines.
- C. This index shall indicate the names of all heirs, beneficiaries, and/or devisees, and interested persons.
- D. Where a will that has been probated in another state and is only recorded with the clerk in North Carolina, the clerk shall not index the beneficiaries. Where a will is probated in North Carolina and a certificate of probate is entered but there is no qualification, the beneficiaries shall be indexed.

#### **RULE 6.6 - APPEAL TO SUPERIOR COURT:**

Upon notice of an appeal from the clerk to the superior court, the clerk shall transfer the case to the civil division. Once the appeal is heard in superior court the case shall be returned to the estate's division. These estates shall retain the "E" number throughout this process. Every Notice of Appeal will be recorded in the VCAP system. Upon return of the appeal to the Estate Division enter the results of the appeal in the VCAP system.

#### **COMMENTS:**

If the case file is removed from the estate's division during the appeal process, a placeholder should be put on the shelf in the estates file area to indicate the temporary transfer.



**RULE 6.7 - CAVEAT TO A WILL:**

Upon the filing of the caveat the clerk shall transfer the case to the civil issue docket for trial. The case shall retain its "E" number throughout this process.

**RULE 6.8 - TRANSFERS:****I. DECEDENTS ESTATE (G.S. §28A-3-2):**

Questions concerning venue shall be referred by the clerk of superior court for a hearing and determination by the senior resident superior court judge or any judge assigned to hold the superior courts of the district which includes the county where the proceedings were first commenced. Upon the filing of a motion or petition to determine venue, the superior court judge should determine the proper county for administration of the estate and stay proceedings in all other counties. The judge will make such orders as are necessary to transfer the entire proceedings to the proper county. Each county in which proceedings are stayed shall retain a true copy of the entire file and transmit the original documents to such county as the judge directs.

Any fees paid pursuant to G.S. §7A-307 to the original county remain with that county.

**II. GUARDIANSHIPS:**

A. TRANSFER TO ANOTHER COUNTY (G.S. §35A-1205): allows that at any time before or after appointing a guardian for a minor or incompetent person the clerk may, on motion filed in the cause or on the court's own motion for good cause, order that the matter be transferred to a different county. The transferring clerk shall enter a written order directing the transfer under such conditions as the clerk specifies. The clerk in the transferring county shall transfer all original papers, documents and orders from the guardianship and the incompetency proceeding, if any, to the clerk of the transferee county, along with the order directing the transfer. The clerk in the transferee county shall docket and file the papers in the estate's division as a basis for jurisdiction in all subsequent proceedings. The clerk in the transferring county shall close his file with a copy of the transfer order and any order adjudicating incompetence or appointing a guardian. The fees paid to the original county remain there even after the transfer.

1. When incompetency has been adjudicated in another county, but transfer happens prior to the appointment of a guardian, the clerk establishes an E file with the copy of the incompetency petition/application for appointment of guardian (AOC-SP-200), order and transfer order (*e.g.*, AOC-SP-202).
2. When incompetency has been adjudicated in another county and transfer happens after the appointment of a guardian (see RRK, 7.1, Comment B, #5).



Notwithstanding the creation of an E file pursuant to G.S. §35A-1205, the transferee county should also establish a SP file using the incompetency order to allow that county to accept the transfer in NICS as well as any motions to restore competency.

- B. TRANSFER TO ANOTHER STATE (G.S. §35B-30): Upon the entry of a final order for transfer to another state (G.S. §35B-30(g)), the Clerk shall make certified copies of the entire guardianship file and the entire incompetency file and shall forward the same to the appropriate court by a secure method. The clerk will close any file using the final order of transfer.
- C. TRANSFER FROM ANOTHER STATE (G.S. §35B-31): The Clerk shall establish a new case file for the filing of a petition for acceptance of the transfer of a guardianship from another state (see RRK 6.1(y)). Upon the entry of the final order to accept the transfer from another state, and not later than 90 days after issuance of a final order accepting transfer, the court shall determine whether the general guardianship, guardianship of the person, or guardianship of the estate needs to be modified to conform to the law of this State.

#### **RULE 6.9 - WILLS DEPOSITED FOR SAFE KEEPING:**

Where a will is deposited with the clerk for safekeeping the clerk shall issue a receipt to the depositor, index the will name in the Index to Wills Held for Safekeeping in the manner and form approved by the Director of the NCAOC, and file the will in a secure area within the clerk's office.

#### **COMMENT:**

The clerk of each county shall be required to keep a receptacle or depository in which any person may file that person's will for safekeeping. The clerk shall, upon written request of the testator or the duly authorized agent or attorney for the testator, permit the deposited will or testament to be withdrawn at any time prior to the death of the testator. The contents of wills filed for safekeeping shall not be made public or open to the inspection of anyone other than the testator or the testator's duly authorized agent until such time as the will shall be offered for probate (G.S. §31-11). G.S. §31-11 does not exclude the index being made public if one is maintained.

Wills deposited for safekeeping is a separate procedure from Living Probate (see RRK 6.1, Comment I).

#### **RULE 6.10 - SCANNING:**

- A. All documents in an Estates case shall be scanned by the Active Method described in RRK 2, Scanning Procedures, with all microscan numbers being entered into the VCAP system.
- B. The clerk shall note the scan numbers assigned to all the documents on the lead document.



- C. (REPEALED EFFECTIVE JANUARY 1, 2018)
- D. When a sealed case or a case file containing sealed documents is eligible for destruction pursuant to the Records Retention Schedule, the clerk should request a judge with appropriate jurisdiction to unseal the documents/file, so they may be scanned. If the judge denies the request, the clerk shall retain the entire file in paper form. This includes Guardianship Status Reports.
- E. Wills deposited for Safekeeping shall not be scanned until they are removed from safekeeping and an estate file is established.
- F. Wills submitted with petitions seeking issuance of a certificate of validity shall not be scanned until the final judgment is entered. If an order to seal the file has been entered the will shall not be scanned.
- G. Bank or Financial Statements should not be scanned.

**RULE 6.11 – INVENTORY, ACCOUNT AND STATUS REPORT SUSPENSE FILE:** The clerk shall maintain a suspense file to track the elapsed time since the personal representatives, affiants, and/or general guardians and guardians of the estate have qualified.

**NOTE:** Any motions to extend time to file shall be documented by placing a copy of the order allowing the extension of time in the estates file. (AOC-E-516)

- A. Decedent Estate Administrations
1. Administrations involving a personal representative or collector
    - a. Inventories. Pursuant to G.S. §28A-20-1, a personal representative or collector must file an inventory within three months after the qualification of the personal representative or collector. The filing fee shall be collected in accordance with G.S. §7A-307(a)(2).

**COMMENT:** The Clerk may issue a courtesy notice (*e.g.*, AOC-E-501) before the date the inventory is due to inform the personal representative or collector of the due date of the inventory.

1. If the personal representative or collector fails to file the inventory within three months, then pursuant to G.S. §28A-20-2 the Clerk must issue an order (*e.g.*, AOC-E-502) requiring the personal representative or collector to file the inventory within the time specified in the order, not less than 20 days.



2. If after due service of the order, the personal representative or collector fails to comply with the order or to obtain further time in which to file the inventory, the Clerk may issue an order to show cause (*e.g.*, AOC-E-503) or otherwise proceed in accordance with G.S. §28A-20-2(a).
3. On each anniversary of the date of qualification of a personal representative the clerk should verify that an annual or final accounting was filed. If an annual or final accounting was not filed, or an unsatisfactory account is filed, the clerk shall order the personal representative to render a full and satisfactory account within the time prescribed by law. If the personal representative fails to file the accounting as ordered, the Clerk may commence contempt proceedings.
4. Each Notice to File may be entered as a service document.
5. The clerk should record the payment of the report fee in the case file by placing a copy of the receipt in the folder.
6. Guardianship Estates (involving general guardians or guardians of the estate, hereafter referred to as guardians):
  - a. Inventories. A guardian must file an inventory within three months after the qualification of that guardian. The Clerk may extend the time for filing the inventory up to six months for good cause shown G.S. §35A-1261. Filing fees should be collected in accordance to G.S. §7A-307(a)(2).
  - b. If the guardian fails to file the inventory within three months of the date of qualification, or as extended by the Clerk, the clerk must issue an order (AOC-E-502) requiring the guardian to file the inventory or account within the time specified in the order.
  - c. If after due service of the order the guardian does not, within the time specified in the order, file such inventory or account, or obtain further time to file the same, the clerk may remove him from office or hold him in civil contempt as provided in NCGS Chapter 5A, Article 2, or both.
  - d. Status Reports:
    1. The Clerk may order any guardian to submit status reports.
    2. Any corporation or disinterested public agent serving as guardian of the person for an incompetent person shall file



an initial status report within six months after being appointed, a second status report one year after appointment, and a status report annually thereafter.

3. When a guardian required to file a status report fails to do so, the Clerk shall order the guardian to render a full and satisfactory report within 20 days after service of the Clerk's order.
4. If the status report is not filed within the time specified, or the guardian does not obtain additional time to file the report, the clerk may remove the guardian from office or may issue an Order to Show Cause setting a date and time for hearing as to why the guardian should not be held in contempt.
5. Status Reports shall remain sealed and not open to public inspection (G.S. §35A-1242). (see RRK 6.10, D for scanning requirements.)

#### **RULE 6.12 - NOTICE TO STATE BAR:**

The clerk shall transmit to the NC State Bar a certified copy of an order holding a NC licensed attorney in contempt of court or adjudging an attorney incompetent within 10 days of entry of such judgment or order. This requirement applies to any estate subject to the Clerk's jurisdiction including decedent's estates, guardianships, and trusts. (G.S. §84-36.1)

#### **COMMENT:**

The clerk may notify the North Carolina State Bar when a Show Cause Order is issued to an attorney acting as fiduciary or co-fiduciary for failure to file an inventory or accounting. The Clerk may also notify the North Carolina State Bar of any second or subsequent notice or other written communication to file an inventory, annual or final account.

#### **Rule 6.13 – REMOVAL OF JUDICIAL PROCEEDING BEFORE THE CLERK TO AN ADJOINING COUNTY:**

When a clerk of superior court is disqualified and a superior court judge orders a proceeding removed to the clerk of superior court in an adjoining county in the district or set of districts pursuant to G.S. 7A-104(b), the clerk in the county to which the proceeding is removed shall not establish a file and shall not index the case in VCAP.

