

## LOCAL RULE 26.1

## RECORD RETENTION

(A) The Probate Division adopts Ohio Rules of Superintendence 26.04 as its rule on record retention.

### **Sup. R. 26.04 Probate Divisions of the Courts of Common Pleas--Records Retention Schedule.**

(A) Definitions. As used in this rule:

- (1) “Docket” means a reference record that provides the dates and a summary of all hearings, pleadings, filings, orders, and other matters that are essential to an action, proceeding, or other matter in the Probate Division.
- (2) “Probate record” means a record that pertains to the duties of the Probate Division including, but not limited to, adoptions, marriage licenses, name changes, birth records, orders of civil commitment, the resolution of civil actions, and the appointment and supervision of fiduciaries.
- (3) “Record of documents” means a collection of single or several page documents in which each document represents the Probate Division’s action in a single incident of the same duty of the Probate Division, such as the issuance of marriage licenses.

(B) Closed probate record or case file. For purposes of this rule, a probate record or case file of an estate, trust, or other fiduciary relationship shall be considered closed when a final accounting has been filed and, if required by law at the time of the filing, the account has been approved and settled. All other probate records and case files shall be considered closed when the Probate Division orders the matter closed or there is a final disposition of the action or proceeding for which the probate record or case file is kept.

(C) Required records.

- (1) Dockets.
  - (a) The Probate Division shall maintain all of the following dockets:
    - (i) An administration docket showing the name of the deceased;
    - (ii) A guardian’s docket showing the name of each ward and, if the ward is a minor, the ward's age and name of the ward's parents and any limited powers or limited duration of powers;
    - (iii) A civil docket in which the names of the parties to actions and proceedings shall be noted;
    - (iv) A testamentary trust docket showing the names of the testator and trustee(s);
    - (v) A change of name docket showing the name of the petitioner and the present and proposed names of the person whose name is to be changed;

- (vi) A birth registration and correction docket showing the name of the person whose birth certificate is being registered or corrected;
  - (vii) A civil commitment docket showing the name of the prospective patient;
  - (viii) A separate adoption docket, in accordance with Section 3107.17 of the Revised Code, showing the name of the child as it would exist after finalization of the adoption and the name(s) of the adoptive parent(s);
  - (ix) A paternity docket showing the birth name of the child who is the subject of the petition, the name of the father, the name of the mother, and the name of the child after adjudication;
  - (x) A miscellaneous docket showing the names of parties or petitioners and the nature of the action or proceeding. The miscellaneous docket shall be limited to actions within the Probate Division's jurisdiction that are not kept in one of the other dockets described in division (C)(1) of this rule. If the number of filings warrants, a miscellaneous docket may be subdivided or grouped into sections containing files or records of similar content.
- (b) All dockets of the Probate Division shall contain the dates of filing or occurrence and a brief description of any bond and surety, letter of authority, and each filing, order, or record of proceeding related to the case or action, with a reference to the file or record where the bond and surety, letter of authority, filing, order, or record of proceeding is to be found, and such other information as the court considers necessary.
- (2) Records of documents.
- (a) The Probate Division shall maintain both of the following records of documents:
    - (i) A record of wills, if wills are not copied and permanently retained as part of an estate case file under division (D)(2) of this rule, in which the wills proved in the court shall be recorded with a certificate of the probate of the will, and wills proved elsewhere with the certificate of probate, authenticated copies of which have been admitted to record by the court;
    - (ii) A marriage record, in which shall be entered licenses, the names of the parties to whom the license is issued, the names of the persons applying for a license, a brief statement of the facts sworn to by the persons applying for a license, and the returns of the person solemnizing the marriage.
  - (b) Records of documents of the Probate Division shall contain documents, applications or affidavits, either original or copies, and information pertaining to those documents, as found in division (C)(2)(a) of this rule or as considered necessary by the court.

(3) Journal.

The Probate Division shall maintain a journal for orders, entries, or judgments pertaining to the business and administration of the division, and other miscellaneous orders, entries, or judgments which the court may consider necessary to journalize, including all of the following:

- (a) Orders of appointment and oaths of office pursuant to Section 2101.11 of the Revised Code of court personnel and other nonfiduciary appointees;
- (b) Orders of reference to magistrates;
- (c) Changes of the local rules of the Probate Division;
- (d) Orders changing the hours for the opening and closing of the probate court.

(4) Indexes.

The Probate Division shall maintain an index for each docket, record of documents, and journal described in division (C) of this rule. Each index shall be kept current with names or captions of proceedings in alphabetical order and references to a docket, record or documents, journal, or case file where information pertaining to those names or proceedings may be found.

- (5) Upon the filing of any paper or electronic entry permitted by the Probate Division, a stamp or entry shall be placed on the paper or electronic entry to indicate the day, month, and year of filing.

(D) Destruction and preservation of probate records.

- (1) The vouchers, proof, or other evidence filed with the Probate Division in support of the expenditures or distribution slated in an account, after review and reconciliation with the accounting and notation of reconciliation in the record or file, may be returned to the fiduciary or retained in accordance with divisions (D)(2) and (E) of this rule.
- (2) All records, vouchers, inventories, accounts, pleadings, applications, petitions, records of adoptions, marriages, and mental health commitments, wills, trusts, journals, indexes, dockets, records or documents related to estate or inheritance taxes, and other papers and filings of the Probate Division, may be preserved using any nationally accepted records and information management process in accordance with Sup. R. 26(D).
- (3) In the Probate Division's discretion, any nonessential note, notice, letter, form, or other paper, document, or memorandum in a case file that is not essential to providing a record of the case and by the judgment of the Probate Division may be destroyed prior to, or after, the case is closed. For purposes of division (D)(3) of this rule, evidence of service of notice of the initial complaint, petition, or application that establishes the Probate Division's jurisdiction is essential to providing a record of a probate case.

- (4) Judge, magistrate, investigator, and clerk notes, drafts, and research prepared for the purpose of compiling a report, opinion, or other document or memorandum may be kept separate from the case file, retained in the case file, or destroyed at the discretion of the preparer.
- (E) Case file and probate record retention schedule.
- (1) Adoption records. Adoption records shall be retained permanently.
  - (2) Birth and death registrations. Birth and death registrations dated prior to 1908 shall be retained permanently.
  - (3) Civil commitment records. Civil commitment records shall be retained for three (3) years after the case is closed.
  - (4) Dockets, records of documents, journals and indexes. Dockets, records of documents, journals, and indexes shall be retained permanently.
  - (5) Evidence filed in support of expenditures or distributions. Vouchers, proof, or other evidence filed in support of expenditures or distributions stated in an account shall be retained for three (3) years after the date of filing.
  - (6) Marriage license records. Marriage license records shall be retained permanently.
  - (7) Trust accountings. Trust accountings shall be retained for twelve years after the date the accounting was approved.
  - (8) All other records. All other records shall be retained for twelve years after the date the case, cause, proceeding, or matter is closed or completed.
- (F) Temporary estate tax orders. Divisions (D) and (E).