

**Delaware Estate Administration:
Policy, Procedures & Case Law
from the
Office of the New Castle County
Register of Wills**

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IV. OPENING AN ESTATE: THE PETITION

IV.A. Guiding Precepts

A petition to open an estate (Form No. 1) is a pleading before the Register of Wills in its quasi-adjudicative authority to grant letters to the petitioner who seeks to serve as the personal representative of the estate.¹ Because the petition is a verified pleading, it must include at least the following necessary exhibits to verify the statements set forth in the petition: (1) the death certificate, (2) all original testamentary documents (the will, codicils, and tangible bequest memorandums), (3) trust inquiry form, (4) the Rule 190 petition and affidavit, (5) designation of the Register of Wills as agent for service of process (if the petitioner is not a Delaware resident), and (6) the case information sheet.

1. Death Certificate. The death certificate is fundamental to opening an estate because it provides official documentary proof of the decedent's death. An estate cannot be opened without the filing of a death certificate; however, in special (and rare) circumstances the Register may allow an obituary or other reliable document to provisionally substitute for the death certificate until a death certificate can be filed. Allowance of a provisional substitute is the exception and not the rule.

Because the death certificate is a confidential record of the Office of Vital Statistics and the Register of Wills is a mere custodian of that confidential record for the limited purpose of administering decedents' estates, the death certificate in the custody of the Register of Wills must be sealed at all times.² Absent a court order, the death certificate will be shown to no member of the public—repeat, *no one*—not even the attorney who originally filed the death certificate.

2. The Will, Codicil, and the Tangible Bequest Memorandum. For a more detailed discussion of the Will, Codicil, and Tangible Bequest Memorandum, please see Section I. As related to contemporaneous filings with the opening petition (Form No. 1), please note the following requirements of filing testamentary documents.

a. Necessity of Original Testamentary Documents. Only **original** testamentary documents can be accepted for filing with the Register of Wills. Copies of Wills cannot be accepted in lieu of original Wills because the absence of the original Will imposes a rebuttable presumption that the testator destroyed the original Will as means of revocation of that

¹ Del.Const., Art. IV, § 31 (“The Registers of Wills of the several counties shall respectively hold the Register's Court in each County.”); 12 Del.C. § 1501 (“No one shall act as the executor or administrator of a domiciliary decedent's estate within this State without letters testamentary or of administration being granted in accordance with this title.”).

² 16 Del.C. § 3110(a) (“To protect the integrity of vital records, to ensure their proper use and to ensure the efficient and proper administration of the system of vital statistics, the records and files of the Office of Vital Statistics shall be considered confidential matter and shall not be open to inspection, except as authorized by this chapter, and regulations adopted hereunder or by order of a court of competent jurisdiction.”).

Will.³ To rebut the presumption of revocation, the proponent of the copy of the Will must petition the Court of Chancery for an Order admitting the copy in lieu of the original Will.⁴ See Sample Chancery Petition: Admitting a Copy of a Will to Probate at Appendix B.

b. Republication by Codicil. By statutory definition, an original codicil is an original Will.⁵ Delaware law recognizes the common law doctrine of republication by codicil.⁶ Therefore, when an original codicil is filed along with only a copy of the Will identified in the original codicil, the Register of Wills accepts the original codicil along with the copy of the Will, as the original codicil's republication of the copy of the earlier Will, but only if the codicil expressly and unambiguously states an intent to republish the Will identified in the codicil (i.e., "I hereby amend my Will dated January 1, 2014" as opposed to "I hereby amend my last Will" without any further context to confirm which Will was the "last" Will).

3. Trust Inquiry Form. Completion of the Trust Inquiry Form is necessary because the Register of Wills must notify the Register in Chancery of the name and address of the trustee of any testamentary trust in which there will be funds available upon closing the estate.⁷

a. When there is a Will, the Trust Inquiry Form inquires whether the Will creates a trust.

b. If the Will does create a trust, the Trust Inquiry Form further inquires as to whether there will be funds available for the trust upon the closing of the estate.

c. If the Will does create a trust and there will be funds available for that trust upon the closing of the estate, the Trust Inquiry Form requires the name and address of the trustee of that trust, so that the Register of Wills may fulfill its obligation to the Register in Chancery.

³See *Putney v. Putney*, 487 A.2d 1125, 1127 (Del. 1984)(recognizing that a missing original will is presumed to have been destroyed *animo revocandi* by the testator).

⁴ *In Re Estate of Heigle*, 2007 WL 1532287, at * 1 (Del.Ch. May 7, 2007) M. Glasscock ("To overcome the presumption of revocation, the party seeking to establish the validity of the missing will must show that: (1) a valid will was executed by the decedent; (2) the terms of the missing will; and (3) the will was lost or unintentionally destroyed and that the decedent's testamentary intent was not altered prior to his death.").

⁵ 1 Del.C. § 301(22)("Will" means "last will and testament" and includes "codicil").

⁶ *Sloan v. Segal et al.*, 2009 WL 1204494, at * 12 n. 67 (Del.Ch. Apr. 24, 2009) V.C. Strine.

⁷ 12 Del.C. § 3538(a) provides:

When a will from any part of the estate of the testator to or for the benefit of a person other than the person named as trustee and the will requires the filing of accounts with 1 of the Registers in Chancery, the Register of Wills before whom the probate is made shall, within 10 days after the closing of the estate, deliver to the Register in Chancery for that county a certificate setting forth the name and last address of the testator, the date of the probate of the testator's will, the name and address of the trustee appointed thereby and the provisions of the will relating to said trust or trusts. This section shall apply only in those instances:

- (1) Where the documents closing the estate show a balance in the hands of the personal representative that can be distributed to the trust in order to fund it; and
- (2) That terms exist, as stated in the will, for the creation of the trust.

4. Rule 190 Appearance. For a detailed discussion of Chancery Court Rule 190, please see Section II.A. With regard to inclusion of the Rule 190 petition and affidavit with the opening petition, please take notice that there are two components: (1) the application of the Delaware attorney requesting that the personal representative be excused from personally appearing at the office of the Register of Wills, and (2) the affidavit of the personal representative stating under oath that the contents of the opening petition are true and correct and that he/she will carry out the duties of administering the estate with honesty and integrity (i.e., executing the oath that he or she would have taken if appearing in person at the office of the Register of Wills). **Please note that as of January 1, 2015, Rule 190 has been amended to eliminate the longstanding requirement that the attorney's application must attest that there is good cause for why the personal representative should not appear in person.**

5. Non-resident Designation of the Register of Wills as Agent for Service of Process. If the petitioner resides outside of Delaware (including any entity personal representative incorporated outside of Delaware), the petitioner must appoint the Register as his or her irrevocable power of attorney to accept service of process, including accepting of all notices and process issued by any court in the State of Delaware in relation to any suit, matter or cause affecting or pertinent to the estate in which the letters are issued.⁸ Thereafter, all process served on the Register of Wills will be forwarded by certified mail to the personal representative. **Please note that creditors' claims will not be forwarded to non-resident personal representatives, because the procedure for creditors' claims is separately prescribed by 12 Del.C. § 2104(a) and Chancery Court Rule 191, which are uniformly applicable to all decedent's estates in Delaware, without regard to the residence of the personal representative.**

6. Case Information Sheet & Fees. While not an exhibit per se, the opening petition must include a case information sheet that provides all necessary information that will enable the prompt processing of the opening petition. Because the Register of Wills is a clerk of the Court of Chancery,⁹ this requirement is modeled upon the requirement of the similar case information sheet that is filed for each new matter initiated with the Register in Chancery. The case information sheet is also the document by which the Register of Wills determines and docketes statutory fees. As to fees, it is the general policy that all fees, except closing costs, are to be paid up front at the time the petition is filed.

⁸ 12 Del.C. §1506.

⁹ 12 Del.C. § 2501.

IV.B. Domiciliary Jurisdiction in New Castle County

Because the domicile of the decedent at the time of death will determine which jurisdiction will be the primary jurisdiction in the event that an estate is administered in more than one jurisdiction,¹⁰ the Register of Wills evaluates domiciliary/primary jurisdiction to open an estate in New Castle County based on the following guidelines:

- Whether the decedent resided in New Castle County¹¹
- Whether the decedent owned personal property in New Castle County
- Whether the decedent owned real property in New Castle County
- Whether the decedent was involved in some cause of action that gives rises to a tort in Delaware (such as an automobile collision or toxic tort suit in which the corporate defendant is incorporated in Delaware)
- Whether the decedent was present in New Castle County for a short time, but ample evidence exists indicating that the decedent wanted to reside in New Castle County

¹⁰ *New York Trust Co. v. Riley*, 16 A.2d 772, 785-86 (Del. 1940), aff'd 315 U.S. 343, reh. den., 315 U.S. 829 (“While there may be two [or more] administrations in the same estate, the one domiciliary, the other ancillary, the principal administration or appointment must be that place where the deceased had her last domicile [and] the administration had at the domicile of the decedent is to be regarded as the principal administration, and that all other administrations, granted by reason of personal assets found in a state foreign to that of the domicile, are regarded as subordinate or ancillary.”).

¹¹ The Delaware Supreme Court has explained the fine distinction between domicile and residency as follows:

The essentials of domicile of choice are the fact of physical presence at a dwelling place and the intention to make that place home. There must be a concurrence of fact and intent. The absence of either precludes the change. There must be an actual abandonment of the first domicile coupled with an intention not to return to it, and the acquisition of a new domicile by actual residence in another place with the intention of making that place a permanent home. Whether one has changed his domicile from one place to another must depend largely on his intention. The intention must be of permanent or indefinite living at a given place, not for mere temporary or special purposes, but with a present intention of making that place home unless or until something uncertain or unexpected shall induce the adoption of some other permanent home; or, negatively expressed, there must be an absence of any present intention of not residing at the place permanently or for an indefinite time. It follows that absence from one's place of residence, even for a long time on business, pleasure, reasons of health, education of children, or other special purpose, will not effect a change of domicile if, all the while, the person intends to be absent only for the accomplishment of the temporary purpose and to return to his former place of residence upon the fulfillment of the purpose.

Id. at 786.

- Whether the decedent had some nexus in Delaware that in light of the specific circumstances is approved by the Register. This last category is not a catch-all category that allows a non-domiciliary decedents' estate to be opened in Delaware by default, but instead applies when opening an estate in Delaware does not usurp jurisdiction that rightfully lies within the probate office of another state. In such instances, it is imperative that Paragraph IV of the opening petition ("Basis of Qualification") should provide enough information to confirm that opening the estate in Delaware will not deprive the another state of any interest in assessing fees and taxes, maintaining an orderly system of title to real estate within its geographic borders, providing redress to creditors of decedents domiciled therein, or enforcing any other public policies unique to that other jurisdiction.

A "best practice" technique is to include a letter explaining all of the relevant details, substantiated with attached exhibits.

IV.C. Special Issues with the Petition

Although 12 Del.C. § 1505(d) confers to the Register of Wills the discretion to grant letters to any interested party upon the expiration of 60 days from the decedent's death, such discretion must be exercised with care. The careful exercise of such discretion presents special issues in two common instances: (1) when there is a Will that names a designated personal representative who has not applied for letters testamentary after the lapse of 60 days, and (2) when there is no Will but the decedent has a surviving spouse who has not applied for letters of administration after 60 days.

1. There is a Will but the Petitioner is Not the Designated Personal Representative. When the petitioner is not the designated personal representative in the Will, but the designated personal representative in the Will has not applied for letters testamentary as of 60 days from the decedent's death, the Register of Wills has to carefully balance three competing public policies of probate administration: (1) prompt opening and settlement of estates,¹² (2) fulfilling the testator's intent in choosing a specific person to administer the estate, and (3) providing a fair opportunity for the designated personal representative in the Will to apply for letters testamentary or knowingly forfeit the right to do so.

With regard to the last of these policies, the bedrock of American jurisprudence is due process,¹³ and with due process comes notice and an opportunity to respond.¹⁴ If the petitioner is not the designated personal representative in the Will, then notice and an opportunity to respond must be given to the designated personal representative (and alternates). Notice must include disclosure of not only the right to apply for letters testamentary, but also a warning of the consequences of forfeiting that right.

Toward that end, notice is required to be sent via letter by the petitioner—and not sent by the Register of Wills. Generally, three weeks should be given for the recipients to take action or thereby forfeit their right. The duration of three weeks is intended to encourage prompt settlement of estates while giving the designated personal representative sufficient time to make an informed decision whether to apply for letters testamentary or forfeit the right to do so.

¹² *IMO Estate of Yost*, 1997 WL 907996, at *1 (Del.Ch. 1997)(citing *Criscoe v. Derooy*, 384 A.2d 627 (Del.Ch. 1978))("[T]here is a special public policy favoring prompt settlement of estates.")

¹³ THE FEDERALIST PAPERS: NO. 84 (Hamilton)("To bereave a man of life or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole nation[.]").

¹⁴ *Matthews v. Eldridge*, 424 U.S. 319, 340 (1976)(alteration in original)("The essence of due process is the requirement that 'a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.'").

A sample letter is provided in Appendix A. The letter should be sent by certified mail, with the letter and certified mail receipt (or other documentation of attempted service) to be filed as an exhibit to the petition. The Register of Wills will accept certified mail receipt, or proof of mailing, or a certificate of mailing as documentation of attempted service.

2. An Intestate Decedent Has a Surviving Spouse but the Petitioner is Not the Spouse. As with granting letters to someone other than the designated personal representative in a testate decedent's estate, the surviving spouse of an intestate decedent is entitled to special consideration before letters can be granted to someone other than the surviving spouse. Beginning with the first written law and continuing today as codified in the testimonial privilege codified in the Delaware Rules of Evidence (to name just one contemporary example),¹⁵ law and society have recognized the special relationship of a married couple. Because of the importance of marriage, the law has always given (and continues to give and expand) special protection to the rights and well-being of the spouse.

Toward that end, if (a.) there is no Will and (b.) the decedent is survived by a spouse, then notice and an opportunity to respond must be given to the surviving spouse, before someone other than the surviving spouse can be granted letters of administration.

By means of illustration but not precedent, consider the following two examples of the importance of providing a surviving spouse with notice and an opportunity to be heard in appropriate circumstances.

As one example, on the near eve of the expiration of the statute of limitations for a civil suit, a litigator sought to open an estate for the purpose of suing the decedent. Despite the impending deadline, the Register nonetheless required notice to be given to the spouse, who in turn retained an attorney and opened the estate.¹⁶

As a contrary example, a child of the decedent applied to become the personal representative, stating under oath in an affidavit that the decedent's spouse had been absent from the decedent's life for years and the spouse's whereabouts were completely unknown. Relying upon the statements in that sworn affidavit, the Register did not require notice to the spouse.¹⁷

Notice should be given to the surviving spouse via letter sent by the petitioner—and not sent by the Register of Wills. Generally, three weeks should be given for the surviving spouse to take action or thereby forfeit the right to do so. The duration of three weeks is intended to encourage prompt opening and settlement of estates while giving the surviving spouse sufficient time to make an informed decision whether to apply for letters of administration or forfeit that right.

¹⁵ Delaware Rule of Evidence 504(a).

¹⁶ Folio 157487 (2013).

¹⁷ Folio 159809 (2014).

A sample letter is provided in Appendix A. The letter should be sent by certified mail, with the letter and certified mail receipt (or other documentation of attempted service) to be filed as an exhibit to the petition. The Register of Wills will accept a certified mail receipt, or proof of mailing, or a certificate of mailing as documentation of attempted service.

3. Next of Kin. The decedent's surviving spouse and next of kin must be listed on the opening petition. Such information is necessary whether the decedent died intestate or testate (even if the next of kin have been omitted as beneficiaries in the Will).

The question invariably is raised: who should be listed on the opening petition as next of kin? At a minimum (and in addition to the surviving spouse), the children and parents should be included of the decedent should be included as next of kin.¹⁸ A complete list of the next of kin enables the Register of Wills to (a.) ascertain who has standing to challenge a Will, (b.) assure notice to all possible beneficiaries in the event of per stirpeal descendancy for lineal descendants who pre-decease the intestate decedent or inherit a lapsed testate bequest, (c.) confirm the identity and number of class members of class gifts (e.g., "divided among all of my nephews"), and (d.) provide a reliable cross-reference of consanguinity for the genealogical community.

If there is a Will, please name all of the surviving family members who would have standing to challenge the Will.

If there is no Will, please remember that the office of the Register of Wills must still reference the next of kin on the opening petition when reviewing the list of beneficiaries (Form 5) at the time of closing.

4. Felony Conviction. A convicted felon can become a personal representative under very narrow circumstances. Such narrow circumstances are guided by the statutory prohibition against issuing letters to anyone convicted of a crime that disqualifies from taking an oath.¹⁹

The Delaware Court of Chancery held that "[t]he kind of crime that disqualifies one from taking an oath is an infamous crime."²⁰ A felony conviction per se is not necessarily an infamous crime.²¹ Rather, the following two-prong inquiry guides the determination of whether a felon's crime is infamous, and therefore, a disqualification from administering an estate: (1) the purpose

¹⁸ See 1 Del.C. § 301(9) ("Kin' and 'kindred,' as applied to the descent of estates, signify kin or kindred by signify kin or kindred by blood[.]").

¹⁹ 12 Del.C. § 1508.

²⁰ *In Re Estate of Jackson*, RW Folio 99783, 1992 WL 1368644, *2 (Del.Ch. Jan. 18, 1993) Kiger, M. (internal citations omitted).

²¹ *State ex rel Wier v. Peterson*, 369 A.2d 1076, 1076 (Del. 1976) ("Not every felony is necessarily a crime of infamy; on the contrary, the totality of the circumstances in each case must be examined before a determination may be made that a specific felony is infamous.").

of excluding those convicted of the crime at issue, and (2) the type and circumstances of the crime committed.²²

The balance of equities must overwhelmingly be in the petitioner's favor. It is incumbent upon the petitioner to present a justification for why the petitioner's criminal conviction does not involve a crime that should disqualify from administering an estate. Such justification shall include all of the circumstances of the crime that was committed.

The following is a list of some of the factors that the Register will consider (with the caveat that these are just factors for consideration and should not be relied upon as binding precedent to necessarily justify the grant of letters to any petitioner who favorably meets most or all of these factors):

- The felon is the designated personal representative in the decedent's Will.
- The felony is not the type which undermines honesty and integrity (for example, the felony was not forgery or perjury).
- The felony is not the type determined as an infamous crime by case law (felonious sodomy, assault with intent to ravish, indecent assault, aggravated assault, battery, grand larceny, and forgery).
- The felony was committed years earlier (the "10 year rule" for witness impeachment in Delaware Rule of Evidence 609(b) guides the policy of the Register of Wills when considering whether the lapse of time since the conviction has any bearing on the felon's currently suitability to administer an estate).
- The felony was not committed against the decedent.
- The petitioner has been pardoned.
- The decedent made her Will after the felony was committed (supporting an inference that the decedent knew about the petitioner's felony but still chose the petitioner as her personal representative).
- The beneficiaries have written to the Register asking that the petitioner be appointed, despite the felony conviction.
- The petitioner takes the lion's share of the decedent's estate.
- The petitioner was married to the decedent.
- The petitioner is the guardian of the decedent's children.
- The petitioner is willing to accept the appointment contingent on retaining Delaware counsel throughout the entire estate administration.

²² *IMO Estate of Trammell*, RW Folio 271-S, 2010 WL 692328, at *1 (Del.Ch. Feb. 9, 2010)(Glasscock, M.), *affirmed* sub nom., 7 A.3d 485 (Del. 2010)(table).

IV.D. Appointment of an Administrator

1. Guiding Precepts

a. Within the first 60 days. If there is no Will, there is a finite statutory list of interested persons who have priority to petition the Register for appointment as administrator during the first 60 days from the date of the decedent's death. Briefly summarized, 12 Del. C. §1505 provides that priority will be hierarchically given to the following classes: (i) spouse of the decedent; (ii) children of the decedent; (iii) parents of the decedent; (iv) siblings of the whole blood and half-blood of the decedent. If there is more than one individual in the class, letters will be granted to all in the class who do not renounce and are not incapacitated.

b. After the first 60 days. If no petition for letters of administration is filed within 60 days of death, 12 Del. C. §1505(d) confers discretion to the Register to appoint any interested person. Though the Register has this discretion upon the lapse 60 days from death, the Register will carefully exercise this discretion with consideration of the following factors (with the caveat that these are just factors for consideration and should not be relied upon as binding precedent to necessarily justify the grant of letters to any petitioner who favorably meets most or all of these factors):

- What is the connection of the petitioner to the estate?
- Whom do the beneficiaries wish to be appointed?
- Who takes the lion's share of the decedent's estate?
- Is the petitioner willing to accept the appointment contingent on retaining counsel throughout the entire estate administration?

2. The Race to File After 60 Days.

An observable trend of a race to file for letters after 60 days is motivated by the common misperception that the first filing after the lapse of 60 days from the decedent's death confers an automatic and indefeasibly vested right to serve as the administrator. The text of 12 Del.C. § 1505(d) confers no such right, but merely confers to the Register of Wills the discretion to determine who should be granted letters if no one has qualified for the grant of letters after the lapse of 60 days.

If the petitioner does not qualify to be appointed as administrator before 60 days have lapsed, **the petitioner should nonetheless file a petition before the lapse of 60 days. In this way, the Register is on notice that the petitioner seeks serious consideration once the 60-day window expires.**

Because the grant of letters after 60 days is an exercise of discretion (as opposed to an execution of a ministerial act), the Register must weigh all relevant factors affecting the petitioner's suitability to serve as the administrator, along with any other competing petitions for letters (regardless of the sequence in which such petitions were filed). Therefore, being the first to file after 60 days does not automatically entitle a petitioner to the grant of letters of administration. Contemporaneous with a receiving a petition, the Register may well give unsolicited notice to all of the heirs, asking those interested in serving to also file a petition. This will assure that other interested heirs may have an opportunity to serve as administrator or to share information as to why other interested parties should (or should not) administer the estate. Ideally, as a "best practice" the petitioner should reach out to all heirs before submitting a petition to open the estate, so as to determine as early as possible whether any other heirs will have objections to the petitioner serving as administrator.

3. Creditor / Claimant as Administrator. A creditor is permitted to serve as an administrator, with the accepted understanding that a creditor must be very careful not to place its own pecuniary interest above its obligations to the estate and the stewardship required thereof. A creditor who serves as an administrator remains bound by the statutory order of preference of creditors' claims, as codified in 12 Del.C. § 2105. The grant of letters to a creditor is not a license to end run the statutory order of preference, nor should such grant of letters be misused to augment a commission that compensates the creditor for any shortfall that might arise if the creditor's claim is otherwise subordinated to other creditors in the statutory order of preference.

IV.E. Speed Docket

There is a speed docket for short certificates when exigent circumstances exist.

For example, the personal representative of the decedent has arrived in town for the funeral and wants to open an estate bank account before her flight back home.

Under such circumstances, the attorney should put **SPEED** in the e-file caption box. See illustration below.

Moreover, the attorney should briefly explain the emergency in a cover letter, so our Office can mark our records appropriately.

To reiterate: **The Speed Docket is for exigent circumstances only.**

Any lawyer who abuses this privilege will have it revoked.

be an originating or subsequent document; document types with no asterisk are va

Type: Letter

File: Browse... or Check

Access: Public Public - These documents are electronically filed

Title: SPEED -- Cover letter, opening the estate of Jack Benny

Maximum length of text is 510 characters



IX. RECEIPTS TO THE ACCOUNTING

IX.A. Guiding Precepts

To understand the duty of the Register of Wills with regard to settling accounts of estates, some brief consideration of the State Constitutional history of the Register of Wills is necessary. Section 32 of Article IV of the Delaware Constitution provides: “An executor or administrator shall file every account with the Register of Wills for the County, who shall, as soon as conveniently may be, carefully examine the particulars with the proofs thereof[.]” Receipts to the accounting are the documentation of what has been spent during the course of administering the estate. Hence, receipts are the “proofs thereof” that the Register of Wills must carefully examine.

In order for the Register of Wills to carefully examine the proofs thereof, each deduction on the accounting must include a two-part receipt: (1) the invoice or bill paid and (2) proof of actual payment, such as a cancelled check or like bank statement.

IX.B. Affidavit in Lieu of Receipts (Under \$100,000)

In carrying out its function as an accounting officer, the Register of Wills will accept an affidavit in lieu of receipts for estates in which deductions do not exceed \$100,000.

The requirements for the affidavit are as follows:

(1.) the sum total of deductions for administrative expenses, debts of the estate, and funeral expenses must be less than \$100,000;

(2.) personal representative’s sworn statement (a.) vouching that the deductions listed on the accounting correspond to the paid invoices, bills on hand, cancelled checks, and bank statements on hand, and (b.) promising to retain custody of all underlying invoices, bills, cancelled checks, and bank statements until formal written notification by the Register of Wills that the estate is closed; and

(3.) an accompanying statement of the attorney of record attesting that the deductions listed on the accounting correspond to the paid invoices, bills, the cancelled checks, and bank statements, based on the attorney’s separate personal examination thereof (**not mere reliance on personal examination by paralegals or support staff**).²³

Remember that the Delaware Constitution confers to beneficiaries the right to take exception to the settlement and adjustment of accounts.²⁴ Such exceptions are filed with the

²³ See D.R.P.C. 5.3(b)(“[A] lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer[.]”).

²⁴ Del.Const., Art IV., § 32, ¶2.

Register of Wills but heard by the Court of Chancery.²⁵ Given that the hearing on the exceptions will be an evidentiary hearing in which the personal representative bears the initial burden of proof,²⁶ it is incumbent upon the personal representative to retain all underlying documentation of the proofs and particulars of the accounting until the estate is closed by the Register of Wills and the time to file exceptions has expired.

When an affidavit of receipts is utilized, the Register of Wills nonetheless retains its right to require proof of any deduction so listed on the accounting. In addition, the Register retains its right to challenge any deduction that is not valid.

A template of the affidavit in lieu of receipts is provided at Appendix A.

²⁵ Compare 12 Del.C. § 2302(d)(emphasis supplied)(“Within 3 months of the mailing of such notice, any beneficiary entitled to share in the distribution of the estate who has not waived the notice of the filing of the account pursuant to subsection (c) of this section, *may file in the office of the Register of Wills exceptions* in writing to the account of an executor or administrator.”) with Del.Const., Art IV., § 32, ¶2 (emphasis supplied)(“Exceptions may be made by persons concerned to both sides of every such account, either denying the justice of the allowances made to the accountant or alleging further charges against him or her; and the *exceptions shall be heard in the Court of Chancery for the County[.]*”).

²⁶ *In Re Estate of Gedling*, 2000 WL 567879, at *11 (Del.Ch. 2000).

XIII.A. REFUNDS ON CLOSING COSTS (UP TO \$250)

1. Limited Exercise of the Register’s Discretion to Issue Refunds on Closing Costs

As understood herein, a “refund” is a check issued by the office of the Register of Wills to the estate for the overpayment of closing costs. The office of the Register of Wills will not issue a “refund” of the statutory fees for forms, such as an inventory or spousal allowance, nor for the overpayment of fees in the issuance of letters. For example, if Sherlock Holmes lists the personal assets of decedent John Watson as \$110,000 in filing the opening petition and correspondingly pays \$75 in fees for letters, but discovers later that Watson’s personal assets amounted to only \$15,000, which would have correspondingly equaled just \$25 in fees, no refund of the overpaid \$50 will be issued to Holmes.

When circumstances warrant, the office of the Register of Wills may (but does not guarantee to) exercise discretion to issue **a refund for the overpayment of closing costs between \$50 and \$250**. All amounts greater than \$250 will require an application by the personal representative directly to either the Chief Financial Officer or to County Council, as warranted.

2. Legal Justification for Limitation on Issuance of Refunds of Overpaid Closing Costs

The Delaware Supreme Court has concluded that the closing cost (the fee imposed on the net personal estate by County Code Section 2.03.006(P)) is a tax.²⁷ More than a century ago, the U.S. Supreme Court in *Chesebrough v. United States*²⁸ articulated the common law rule that “taxes voluntarily paid cannot be recovered back, and payments with knowledge and without compulsion are voluntary.”²⁹ Consistent with *Chesebrough*, then-Judge Del Pesco’s opinion in *Division of Revenue v. Fierro*,³⁰ confirmed that “[t]here is no right to recovery of taxes voluntarily paid, even by mistake, in the absence of statutory authorization.”³¹

County Code Sections 14.03.001 and 14.03.006 confer statutory authorizations for limited recovery of taxes voluntarily paid in error.³² The former authorizes the Chief Financial

²⁷ *In Re Estate of Zoller*, 171 A.2d 375, 376 (Del. 1962).

²⁸ 192 U.S. 253 (1904).

²⁹ *Id.* at 259.

³⁰ 1998 WL 109306 (Del.Super. Oct. 13, 1988).

³¹ *Id.* at *2.

³² Though the fee imposed on the net personal estate by County Code Section 2.03.006(P) is a tax, according to *In Re Estate of Zoller*, 171 A.2d at 376, it is not ascertainable from text of County Code Sections 14.03.001 or 14.03.006 whether those sections were legislatively intended to apply only to real estate assessment taxes or generally to any payment to the County government that falls within the ambit of a “tax”. Those sections simply refer to “taxes” without any further distinction or limitation, and therefore, the Register of Wills relies on the expansive construction of those Sections (in harmony with the *Zoller* decision) to apply to fees imposed on the net personal estate.

Officer (“CFO”) to issue a refund of up to \$5,000.00.³³ The latter authorizes County Council to issue a refund of up to the full amount paid in error.

The CFO’s discretion is restricted only when (1) the refund is requested more than three years after the taxes were paid (in which case County Council approval is needed unless the requested amount is less than \$1,000.00)³⁴ and/or (2) the taxpayer requesting the refund is delinquent on other County taxes or sewer charges.³⁵

Notwithstanding these statutory limitations on the CFO’s discretion, County Council, by its Ordinance 98-050 (codified at County Code Section 14.03.006), has reserved unto itself the exclusive authority to issue refunds of taxes paid in error, up to the full amount and with no restrictions on eligibility. Accordingly, the Register of Wills defers to the respective authority of the CFO or the County Council to issue refunds of any overpayment of closing costs.

³³ N.C.Co. § 14.03.001(C).

³⁴ N.C.Co. § 14.03.002(A).

³⁵ N.C.Co. § 14.03.002(B).

Appendix A – IV.C.1 Letter (Petitioner of testate decedent’s estate is not the named executor)

EXAMPLE: Jack Benny wishes to petition to open the estate for the decedent, Rochester. Rochester has a Will, naming Mary Livingstone as executrix and Don Wilson as the alternate. Jack Benny must send a certified letter to Mary Livingstone and Don Wilson. In this example, Jack Benny is sending the letter on March 1, so the deadline for Mary Livingstone and Don Wilson to act is March 22.

March 1, 2015

Mary Livingstone and Don Wilson:

Please be advised that Rochester died on December 1, 2014. No estate has been opened for him.

Jack Benny intends to petition the New Castle County Register of Wills to open the estate on March 22, 2015.

Rochester had a Will. Mary Livingstone, you were named as executrix. Don Wilson, you were named as the alternate executor.

As such, Mary Livingstone and Don Wilson, you have first right to become the executor of Rochester’s estate.

If you wish to exercise this right, please do so at the Office of the New Castle County Register of Wills by March 22, 2015, when again Jack Benny will petition to open the estate.

Appendix A – IV.C.2 Letter (Petitioner of intestate decedent’s estate is not the surviving spouse)

EXAMPLE: Fred Flintstone has died, leaving a widow, Wilma Flintstone. Barney Rubble intends to open the estate of Mr. Flintstone. Barney Rubble must send a certified letter to Wilma Flintstone. In this example, Barney Rubble is sending the letter on March 1, so the deadline for Wilma Flintstone to act is March 22.

March 1, 2015

Wilma Flintstone:

Please accept our condolences for the loss of your husband, Fred Flintstone. As you know, Mr. Flintstone died on December 1, 2014. No Will has been filed, and no one has opened his estate.

Barney Rubble intends to petition the New Castle County Register of Wills to open the estate on March 22, 2015.

Mrs. Flintstone, you have first right to become the administratrix of Mr. Flintstone’s estate.

If you wish to exercise this right, please do so at the Office of the New Castle County Register of Wills by March 22, 2015. Otherwise, Mr. Rubble’s petition to open the estate will be granted.

If Mr. Flintstone did have a Will, please submit an original copy as soon as possible to the New Castle County Register of Wills.

Appendix A – IX.B Affidavit in Lieu of Receipts

AFFIDAVIT IN LIEU OF RECIEPTS

STATE OF DELAWARE)
) SS
COUNTY OF NEW CASTLE)

BE IT REMEMBERED that on this ____ day of _____ A.D. 20____,
personally appeared before me, the subscriber, a Notary Public for the state and county aforesaid,
_____(Personal Representative)____ known by me to be the same, Personal Representative of
the Estate of (Decedent) and who, being by me duly sworn according to law, deposes and says:

That all administrative expenses, debts of the estate and funeral expenses as listed on the____(First, Second, First & Final, etc.)____ Accounting have been paid in full. The deductions listed on the Accounting correspond to the paid invoices, bills on hand, cancelled checks, and/or bank statements on hand.

That I will retain all underlying documentation of the proofs and particulars (invoices, bills, cancelled checks, and bank statements) of the Accounting until I have received written notice from the Register of Wills that the estate is closed.

SWORN TO AND SUBSCRIBED before me the day and year aforesaid.

Notary Public
My Commission Expires: _____

I, _____, am the attorney of record for the Estate of _____(Decedent)_____.

I have personally reviewed the proofs and particulars of the accounting. All appears in order.

(Attorney Signature Legend)

IN THE COURT OF CHANCERY
OF THE STATE OF DELAWARE

IN RE THE MATTER OF :
THE LOST WILL OF : Folio No. _____
[DECEDENT’S NAME], :
DECEASED. :

VERIFIED PETITION TO PROBATE COPY OF DESTROYED WILL

The Petitioner, [PETITIONER’S NAME] (“Petitioner”), through her attorney, _____, hereby petitions to probate a copy of the will of [DECEDENT’S NAME] (“Decedent”), and in support thereof states as follows:

1. Petitioner is the [SPECIFY RELATIONSHIP TO DECEDENT], who died on _____. [INCLUDE ANY OTHER RELATIONSHIPS BETWEEN THE PETITIONER AND THE DECEDENT THAT CLARIFY THE PETITIONER’S CONNECTION TO THE DECEDENT] [INCLUDE ANY INFORMATION TO SHOW THAT THE PETITIONER HAS STANDING]

2. Decedent’s last original will was prepared on _____ and [EXPLAIN ALL RELEVANT CIRCUMSTANCES SURROUNDING THE EXECUTION AND THE SOURCE OF KNOWLEDGE OF THOSE CIRCUMSTANCES] A copy of the last original will is attached hereto as Exhibit “A”. [ALSO ATTACH ANY AFFIDAVITS ATTESTING TO THE EXECUTION OF THE ORIGINAL WILL]

3. The attached copy of the original will was discovered [DESCRIBE AND ATTACH SUPPORTING AFFIDAVITS EXPLAINING HOW AND BY WHOM THE COPY OF THE WILL WAS DISCOVERED]

4. The following efforts were made to locate the original will [DESCRIBE AND ATTACH SUPPORTING AFFIDAVITS EXPLAINING EFFORTS TO RETRIEVE THE ORIGINAL WILL AND WHY THOSE EFFORTS WERE UNSUCCESSFUL, INCLUDING BUT NOT LIMITED TO CONTACTS WITH ATTORNEY WHO PREPARED THE WILL AND ATTESTING WITNESSES]

5. Petitioner contends that the attached copy is an accurate copy of the last original will of Decedent because [EXPLAIN WHY THE COPY IS ACCURATE AND WHY IT IS UNLIKELY THAT THE TESTATOR PURPOSEFULLY DESTROYED OR OTHERWISE REVOKED THE ORIGINAL WILL]

Appendix C – Obtaining a Death Certificate

Death certificates are obtained from the Delaware Office of Vital Statistics. In order to obtain a death certificate without delay, Delaware attorneys should put the following boilerplate language on their legal letterhead:

By this letter, I am hereby requesting a certified death certificate for John Smith, late of 1234 Main Street, Manhattan, Delaware 19988, who died on or about February 30, 2013.

I am a member in good standing of the Delaware Bar, number 190905, and I bond my license that my request is for a proper purpose.

In conjunction with 16 *Del. C.* § 3110 and DHSS Reg. 4.1, I am authorized to be a custodian of a certified death certificate by virtue of my membership in the Delaware Bar.

I understand that the contents of the certified death certificate shall be safeguarded.

I also understand that I am subject to discipline if my request is not for a proper purpose and or if I do not safeguard the contents of the certificate.

Appendix D – What to File When: Scenarios Examined

Below is an analysis of what to file with the Register of Wills when certain circumstances present themselves. In the following examples, the Decedent has died in 2012, and “FET” means federal and Delaware estate tax.

- A. Where the estate is opened for probate, no FET due, and no joint property, then file:
 - 1. AFFIDAVIT OF NO ESTATE TAX
 - 2. When an estate is opened, all real property matters should be addressed on the INVENTORY, schedules A and D.

- B. Where the estate is opened for probate, no FET due, and joint property, then file:
 - 1. AFFIDAVIT OF NO ESTATE TAX
 - 2. When an estate is opened, all real property matters should be addressed on the INVENTORY, schedules A and D.

- C. Where the estate is opened for probate, FET due, and no joint property, then file:
 - 1. When an estate is opened, all real property matters should be addressed on the INVENTORY, schedules A and D.
 - 2. Be sure to mark page 3 of the ACCOUNTING accordingly.
 - 3. When FET is due, we cannot close an estate until we receive a tax clearance letter from the Delaware Division of Revenue.

- D. Where the estate is opened for probate, FET due, and joint property, then file:
 - 1. When an estate is opened, all real property matters should be addressed on the INVENTORY, scheduled A and D.
 - 2. Be sure to mark page 3 of the ACCOUNTING accordingly.
 - 3. When FET is due, we cannot close an estate until we receive a tax clearance letter from the Delaware Division of Revenue.

E. Where an estate is not opened for probate, no FET due, and no joint property, then:
No documents need to be filed.

F. Where an estate is not opened for probate, no FET due, and joint property, then file:

1. CERTIFIED DEATH CERTIFICATE
2. COMBINED AFFIDAVIT OF JOINT PROPERTY / NO ESTATE TAX
3. ORIGINAL WILL, if any

G. Where an estate is not opened for probate, FET due, and no joint property, then:
No documents need to be filed.

H. Where an estate is not opened for probate, FET due, and joint property, then file:

1. CERTIFIED DEATH CERTIFICATE
2. AFFIDAVIT OF JOINT PROPERTY
3. ORIGINAL WILL, if any

Appendix E – E-filing Guidelines

Overview. As of December 1, 2012, all matters filed in the Office of Register of Wills for New Castle County (“RO”) have been done so via e-filing.

Electronic filing shall be via File & ServeXpress (formerly known as LexisNexis File & Serve).

These Special Instructions supplement the standard practices and procedures of Chancery Court in regard to e-filing.

No instructional manual can account for all circumstances all the time. Common sense shall reign with an eye ever on the collective goal—efficient and diligent estate administration.

Collegiality. E-filing is a method of delivery to the RO, akin to using the Post Office or a runner service. It does not create a vacuum, displacing the goodwill and collegial relationship between the RO and attorney practitioners. Please use all available methods—phone calls, letters, emails and in-person appointments—to maintain open communication.

Accepting Documents. Indicative of our collegial relationship, the RO will exercise a strong dose of common sense in reviewing documents. In general, we will accept all documents, EXCEPT:

- The opening of an estate where no Case Information Sheet is filed.
For a more complete explanation, see page 8.
- An inventory where the math does not add up correctly.
- An inventory where the real property information is not completely filled out.
- An accounting where the math does not add up correctly.
- A document which is misfiled, incomplete or so entirely wrong as to have no relevance to the folio.

Example: An inventory is filed for the Estate of Jane Smith, when the inventory involves the Estate of John Jones.

Because the Register of Wills is a Clerk of the Court of Chancery, 12 Del.C. § 2501, the filing of documents with the Register of Wills should be done with the same level or care and attention as any filing with the Prothonotary or Register in Chancery.

Paper Filing. In addition to e-filing, the following documents **must** be conventionally filed via paper-copy delivery to the RO:

CERTIFIED DEATH CERTIFICATE

WILL

CODICIL

MEMORANDUM

EXEMPLIFIED GOVERNMENT / COURT DOCUMENTS

CERTIFIED GOVERNMENT / COURT DOCUMENTS

ALL ORIGINAL DOCUMENTS MUST BE FILED CONVENTIONALLY IN PAPER FORM WITHIN 10 BUSINESS DAYS AFTER THE DOCUMENTS HAVE BEEN E-FILED TO THE RECORD. WHEN NOT TIMELY FILED IN PAPER FORM, THE E-FILING WILL BE REJECTED. (New policy as of October 6, 2015.)

Sealed Documents. The only document which should be sealed is the Certified Death Certificate. In general, all other documents are unsealed and can be viewed by any member of the public at the RO library. If you wish for a document to be sealed, the RO must grant permission. Please contact the RO *before filing the document* if you wish for it to be sealed.

Forms. All forms are available on the RO website.

Page Size. File & ServeXpress converts legal-sized documents (8.5”x14”) into letter format (8.5”x11”), without cutting off the bottom three inches.

Many Wills are legal-sized. With such a Will, create a PDF document using the 8.5”x14” parameters. When you e-file the document, File & ServeXpress will convert same to letter format.

Excel Documents. Do not e-file an Excel document. File & ServeXpress cannot properly docket it. Instead, file a PDF version of your spreadsheet.

DOCUMENT TYPE

When you file a document, you must designate a document type. All of the document types are listed below, with a rule of thumb guideline on when to file.

The key to successful e-filing is to become familiar with this list. Each of document types is explained in further detail throughout the remainder of these Special Instructions.

Look for this symbol: §. It means a document type is being discussed.

<u>Document Type (listed alphabetically)</u>	<u>When to Use (rule of thumb)</u>
Accounting (Form 30)	Closing
Beneficiary Notice (Form NC1)	Closing
Beneficiary Waiver - Incapacity (Form 3)	Closing
Beneficiary Waiver (Form 2)	Closing
Brief	Exceptions / Litigation
Case Information Sheet (Worksheet)	Opening
Certificate of Service	As needed
Codicil	Opening
Combined Affidavit (Jointly Held + No Estate Tax)	Opening
Commission Acknowledgement Letter- PR	Closing
Death Certificate (Certified)	Opening
Demand for Surviving Spousal Allowance	As needed
Disclaimer	As needed
Envelope for Form NC1	Closing
Exceptions	Exceptions / Litigation
Exceptions to Masters Report	Exceptions / Litigation
Exhibits	As needed
Extension Request	As needed
Inventory (Form RW600)	After Opening, Before Closing
Jointly Held Affidavit	Opening
Letter	WITH EVERY FILING
Letter - Additional Fees	As needed
Life Estate Termination	As needed
List of Beneficiaries (Form 5)	Closing
Memorandum (Tangible Property)	Opening
Motion	Exceptions / Litigation

<u>Document Type (listed alphabetically)</u>	<u>When to Use (rule of thumb)</u>
No Assets or Debts (Form 651/650)	Closing
No Estate Tax Affidavit	As needed
Notice	As needed
Obituary	Opening
Opening Petition (Form 1)	Opening
Order of Appearance-Entry, Withdrawal, Substitution	As needed
Petition	As needed
Power of Attorney (linked to Opening Petition)	Opening
Proposed Order	Exceptions / Litigation
Publication Request (Search for Heirs)	As needed
Receipts to Accounting	Closing
Release	Closing
Renunciation (Form 23, linked to Opening Petition)	Opening
Request for Issuing Affidavit for Domicile	As needed
Rule 190 Petition and Affidavit for Closing	Closing
Rule 190 Petition and Affidavit for Opening	Opening
Settlement Agreement	Exceptions / Litigation
Statement of Claim (Form 4)	As needed
Stipulation	Exceptions / Litigation
Trust Inquiry	Opening
Will	Opening



CONFUSED OR FACING AN UNUSUAL PROBLEM?

CALL THE REGISTER’S OFFICE. LET’S WORK TOGETHER TO TURN AN OBSTACLE INTO A STEPPING STONE, TOWARD BETTER ESTATE ADMINISTRATION.

OPENING FORMAL PROBATE / ADD A CASE

Case Name. Style the case name, following this example:

IMO Jones, John (DOD 1/6/12)

§ **Letter.** Utilize a cover letter as a means to communicate, specifically:

You are petitioning to open an estate.

Name the documents that you are e-filing.

Is there a Will? If so, is the Will being e-filed, or is the original Will already in possession of the Register's Office?

Is the Will self-proving? If not, what arrangements are being made to prove (probe) the Will?

Are you e-filing a Rule 190 petition and affidavit, or would you like an appointment to swear in the personal representative?

How many short certificates are being ordered? Will you pick up the short certificates, or would you like the RO to mail them?

Are there any issues or special circumstances that the RO should be aware of?

§ **Death Certificate (Certified).** File & ServeXpress has designed the framework so that you cannot add a case without e-filing a certified death certificate (or an obituary, pending submission of the death certificate). Remember to e-file the death certificate as a **sealed** document. The certified death certificate must be delivered in paper format to the RO.

§ **Obituary.** Given our collegial relationship with attorney practitioners, the RO will accept an obituary in lieu of a certified death certificate. However, the RO expects that the attorney will follow up by docketing the death certificate into the case with all due speed and diligence.

§ **Case Information Sheet (Worksheet).** The RO will reject a case where no Case Information Sheet (Worksheet) is filed. See below for an extensive discussion on the Worksheet.

§ **Will.** The Will should be e-filed separately from the Codicil and Memorandum. The Will must be delivered in paper format to the RO. A Will not valid on its face (e.g., only one witness) will be ACCEPTED BUT NOT DOCKETED by the RO.

§ **Codicil**. The Codicil should be e-filed separately from the Will and Memorandum. The Codicil must be delivered in paper format to the RO. A Codicil not valid on its face (e.g., only one witness) will be ACCEPTED BUT NOT DOCKETED by the RO.

§ **Memorandum (Tangible Property)**. The Memorandum should be e-filed separately from the Will and Codicil. The Memorandum must be delivered in paper format to the RO. A Memorandum not valid on its face (e.g., cash bequests) will be ACCEPTED BUT NOT DOCKETED by the RO.

§ **Rule 190 Petition and Affidavit for Opening**. In lieu of utilizing Rule 190, attorneys may prefer to make an appointment and have the personal representative sworn in. This is perfectly acceptable and welcomed.

§ **Trust Inquiry**. Remember, if there is a Will, you must file a Trust Inquiry form.

§ There are no special instructions for the following document types: Opening Petition, Power of Attorney (linked to Opening Petition), and Renunciation.



§ **What if I can't scan the Will without taking it apart and what if I don't want to take it apart?**

Utilize the SUBMITTED CONVENTIONALLY feature on File & ServeXpress. The Submitted Conventionally feature gives notice to the folio that there is a Will, but that the attorney has chosen not to e-file a scanned copy. When the RO receives the paper form of the original Will, the RO will take the Will apart and docket it into File & ServeXpress.

File & ServeXpress[®] Welcome: Poppiti, Ciro Poppiti, Ciro [Resource Center](#) | [File & ServeXpress Preferences](#) | [Sign Off](#)

Home Filing & Service Alerts Search

Start A Transaction Saved Transactions Scheduled Transactions

11/24/12 10:47 PM EST Case Documents Case Parties Review & Submit

Attach Documents Transaction ID: 34378395 Cancel Save & Close

IMO DE New Castle County Register of Wills

For each document, complete each field and click **Attach Document**. A (*) indicates a document type that may be an originating document; a (***) indicates a document type that may be an originating or subsequent document; document types with no asterisk are valid subsequent document types for this court.

Type: Will or Check here to fax your document **Statutory Transaction Fee: \$0.00**

File:

Access: Submitted conventionally Submitted conventionally - These documents are submitted to the court in paper form and the submitting firm provides transaction information through LexisNexis File & Serve.

Title: 8 Page Will, dated 1/10/1992, Self Proving, Submitted Conventionally Maximum length of text is 510 characters

Attached Documents List:
No Documents have been attached to this transaction.

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§ Case Information Sheet (Worksheet). The following areas must be filled out on the Worksheet, as appropriate:

Name of the Estate

Last address of the Decedent

Type of letters (drop down menu)

A screenshot of a software interface showing a dropdown menu. The label 'Type of Letter:' is on the left. The dropdown list is open, showing the following options: Testamentary, Administration, Administration With Will Annexed, Ancillary Administration With Will Annexed, Ancillary Administration, Successor Administration With Will Annexed, and Successor Administrator. The 'Testamentary' option is currently selected and highlighted in blue.

Names of all Personal Representatives

Addresses of all Personal Representatives

Best telephone numbers of all Personal Representatives

Best email addresses of all Personal Representatives

Newspaper publication (drop down menu)

A screenshot of a software interface showing a dropdown menu. The label 'Publication:' is on the left. The dropdown list is open, showing the following options: New Castle Weekly = \$25.25, Middletown Transcript = \$30.00, Newark Weekly Post = \$57.50, and Post Only Notice = \$0.00. The 'New Castle Weekly = \$25.25' option is currently selected and highlighted in blue. Below the dropdown, there are labels for 'Attorney:', 'Law Firm:', and 'Address:' with corresponding input fields.

Attorney of record / paralegal contact

Law firm

Law firm address

Person-in-charge telephone number

Person-in-charge email address

Dollar value of personal assets

Dollar value of real estate

Personal Assets:	<input type="text"/>	Real Property:	<input type="text"/>
Litigation:	<input type="radio"/> YES <input type="radio"/> NO	Shorts #:	<input type="text"/>
Date of Death:	<input type="text"/>	Death Certificate:	<input type="radio"/> YES <input type="radio"/> NO
<input type="text"/>			

Is there litigation? (yes-or-no button)

Short certificates desired

Date of death

Is a certified death certificate being e-filed? (yes-or-no button)

Remarks (text box)

Fees. The fee section **does not** have to be filled in.

The Worksheet must be filed to open formal probate. The reason is that the RO will charge all of the opening costs of probate against the Worksheet. Thus, if there is no filed Worksheet, the RO has no mechanism to collect opening costs.

Once the RO is ready to docket the opening documents into the estate folio, the RO will write/type in the correct fees to the Worksheet as well as any changes, comments or notes. The RO will then charge all opening costs to the Worksheet. The law firm will receive an email back from the RO indicating that the Worksheet has been ACCEPTED WITH EDITS.



Before you open a case, remember to search the Register's website to make sure that an estate for the Decedent has not already been opened.

OPENING DOCUMENTS BUT NOT FORMAL PROBATE **/ ADD A CASE**

Case Name. Style the case name, following this example:

IMO Jones, John (DOD 1/6/12)

§ **Letter.** Utilize a cover letter as a means to communicate, especially naming the documents that you are e-filing.

§ **Death Certificate (Certified).** File & ServeXpress has designed the framework so that you cannot add a case without e-filing a certified death certificate (or an obituary). Remember to e-file the death certificate as a **sealed** document. The certified death certificate must be delivered in paper format to the RO.

§ **Combined Affidavit (Jointly Held + No Estate Tax) or Jointly Held Affidavit.** E-file the applicable document.

As appropriate, a Will, Codicil and Memorandum should also be e-filed and delivered in paper format.



Before you submit a transaction, please remember to double check that you have uploaded the correct documents. Remember to also double check that if you have intended to e-file six documents, you have in fact uploaded six documents.

Please also double check the math calculations on inventories and accountings. Math errors will result in the document being rejected, which is a loss of time and money for all involved.

Finally, please double check that you are sending the inventory and accounting as separate documents.

INVENTORY

§ **Inventory.** An inventory will be REJECTED when the math does not add up correctly.

An inventory will also be REJECTED when the real property information is not completely filled out. Be sure to follow the directions listed on the inventory, especially giving the names and **addresses** of the heirs to the property.

SCHEDULE A SOLELY OWNED REAL ESTATE

Include tax parcel number, deed record number and a description adequate to identify all real estate. List the full names and addresses of persons entitled to each parcel and share (percentage) for each person. Also, please specify the name and address to whom the tax bills should be sent in the area provided below.

ITEM NO.	DESCRIPTION	VALUE AT DATE OF DEATH
		\$

Also be sure to specify the name and address to whom the tax bills should be sent.

	PLEASE SPECIFY THE NAME & ADDRESS TO WHOM THE TAX BILL SHOULD BE MAILED:	
	TOTAL (Also enter on the Recapitulation page)	\$

ACCOUNTINGS / CLOSE A CASE

Estate Close Document. Take Note: An estate is not officially closed until the Estate Close Document is signed and docketed by the RO.

§ **Letter.** Utilize a cover letter as a means to communicate, specifically:

You are e-filing an accounting. Is this a final accounting?

Name the documents that you are e-filing.

How are you submitting the receipts—via e-filing or paper format.

Are you e-filing a Rule 190 petition and affidavit, or would you like an appointment to swear off the personal representative?

Have all the stakeholders signed a Beneficiary Waiver, or will the RO be mailing Beneficiary Notices?

Are there any issues or special circumstances that the RO should be aware of?

§ **Accounting (Form 30).** An accounting will be REJECTED when the math does not add up correctly.

§ **Receipts to Accounting.** A law firm may submit receipts through e-filing **or paper filing.** If the receipts are less than ten pages in total, the law firm may email the receipts directly to the deputy. Remember, however, that if the receipts are e-filed, the receipts are then **permanently accessible** by the public as any other docketed document would be.

Best practice: Be sure that the receipts are **ordered and in a logical sequence** so the RO can follow.

§ **Rule 190 Petition and Affidavit for Closing.** In lieu of utilizing Rule 190, attorneys may prefer to make an appointment and have the personal representative sworn off. This is perfectly acceptable and welcomed.

§ **List of Beneficiaries (Form 5).** The List of Beneficiaries should be e-filed separately from Beneficiary Waivers and Beneficiary Notices.

§ **Beneficiary Waiver (Form 2) or Beneficiary Waiver – Incapacity (Form 3).** Beneficiary Waivers can be e-filed as a batch. However, Beneficiary Waivers should be e-filed separately from the List of Beneficiaries and Beneficiary Notices.

§ **Beneficiary Notice (Form NC1).** The date that the RO ACCEPTS the Beneficiary Notice is the date that the RO has mailed the Notice. The 90-day notice period begins on the ACCEPTANCE date. **BENEFICIARY NOTICES MAY BE E-FILED IN BATCH (AND NOT SEPARATELY.) (New policy as of October 6, 2015.)**

§ **Envelope for Form NC 1.** Envelopes will be delivered to the RO in paper format. However, e-file envelopes as a document type using the SUBMITTED CONVENTIONALLY option. List all the addressees in the TITLE box.

Consider this BEST PRACTICE: Submit in paper format to the RO the accounting receipts together with the NC1 envelopes.

The screenshot shows the File & Serve Xpress web interface. At the top, it says 'Welcome: Poppiti, Ciro' and 'Poppiti, Ciro'. There are navigation links for 'Resource Center', 'File & ServeXpress Preferences', and 'Sign Off'. The main navigation bar includes 'Home', 'Filing & Service', 'Alerts', and 'Search'. Below this is a red bar with 'Start A Transaction', 'Saved Transactions', and 'Scheduled Transactions'. The current page is 'Attach Documents' for 'IMO DE New Castle County Register of Wills'. The transaction ID is 34378396. The form includes fields for 'Type' (Envelope for Form NC1), 'File' (with a 'Browse...' button and a checkbox for 'Check here to fax your document'), 'Access' (Submitted conventionally), and 'Title' (3 envelopes for Jack Jones, June Jones and Tom Jones). There is an 'Attach Document' button and a 'Statutory Transaction Fee: \$0.00'.

Fees. Closing costs over \$1,000 are to be paid by check—and not through File & ServeXpress. This is a safeguard policy by the County and dovetails with the general payment policies of File & ServeXpress.

§ There are no special instructions for the following document types: Commission Acknowledgement Letter – PR, No Assets or Debts (Form 651/650), Publication Request (Search for Heirs) and Release.



What if I am not the attorney of record but in possession of the Decedent's Will, does the Will need to be e-filed?

No. The current practice remains. An attorney, not necessarily the attorney of record but any attorney in possession of the Decedent's Will, must turn in the Will. S/he may do so through conventional filing with the RO.

OTHER DOCUMENT TYPES

§ **Letter – Additional Fees.** This document type is a mechanism by which a law firm can pay any miscellaneous costs due. Suppose, for example, that there is a miscellaneous fee outstanding, perhaps a complex case assessment of \$25. The attorney practitioner would then e-file a letter, communicating that \$25 is due on the estate and that same should be charged by the RO against the letter. Utilizing this document type alerts the RO that monies are being paid; it also helps the RO audit the estate in total before formally closing the estate.

§ **Order of Appearance – Entry, Withdrawal, Substitution.** As with other Delaware courts, please be conscientious to advise the RO of any change to the attorney in charge of the estate, *after the estate has been opened.*

§ There are no special instructions for the following document types: Brief, Certificate of Service, Demand for Surviving Spousal Allowance, Disclaimer, Exceptions, Exceptions to Master’s Report, Exhibits, Extension Request, Life Estate Termination, Motion, No Estate Tax Affidavit, Notice, Petition, Proposed Order, Request for Issuing Affidavit for Domicile, Settlement Agreement, Statement of Claim, and Stipulation.

**DID YOU
KNOW?**

Delaware patriot Caesar Rodney served as Register of Wills.

However, e-filing was not available in Colonial times.

==END OF DOCUMENT==