

## Ask the Probate Judge—Death Certificates

By Merri Rudd, appeared May 29, 2008, Albuquerque Journal, Business Outlook  
Reprinted with permission

**Q: We were visiting the web site for the Bernalillo County Probate Court and noticed that you require the decedent's death certificate when we file a case there. The death certificate has a lot of personal information on it. Can you explain why you require it and what happens to it? Thanks.**

The law allows a judge to require proof of death, usually a death certificate or letter from the Office of Medical Investigator (OMI). The death certificate provides important information for a judge who is examining a newly filed case. I know it is hard to believe, but we have had a few instances of people trying to open a case for someone who has not actually died. Others have not been truthful about the existence of a surviving spouse.

Requiring the death certificate allows the judge to verify that a decedent has died. It also contains evidence of the decedent's residence or domicile, so that the judge can determine whether the case is being filed in the correct court. Information about the marital status of the decedent helps the judge identify who the heirs of a decedent are and whether the initial application is accurate. By knowing the exact date and time of death, the judge knows whether five days have elapsed (a judge cannot appoint a personal representative until at least five days after death).

Sometimes if the death certificate is unavailable, the judge may accept obituaries, funeral home documentation, or other proof of death.

The Bernalillo County Probate Court (and other probate courts around the state) requires death certificates in all probates filed, including cases submitted by attorneys and *pro se* applicants, who do not have attorneys. It is up to each probate judge to decide whether his or her court will require a death certificate as part of the probate case.

However, death certificates also contain private information such as a decedent's social security number and cause of death. Federal and state laws protect the disclosure of certain protected health information and social security numbers.

With limited exceptions, state law prohibits the public from inspecting vital records such as birth or death certificates. The law says, "It is unlawful for any person to permit inspection of or to disclose information contained in vital records or to copy or issue a copy of all or part of any record except as authorized by law."

The New Mexico Administrative Code contains provisions for probate case files. Our records must be permanently retained, but the regulations state that "Social security numbers shall not be released to the public per supreme court order ... and federal Privacy Act of 1974...."

Because of the above laws and rules, the Bernalillo County Probate Court no longer includes death certificates in the court record that is available to the public. While it is appropriate for a judge to request and review a decedent's death certificate, we believe it is inappropriate to allow the general public to view a decedent's death certificate.

As Bernalillo County Probate Judge, I review the death certificate in each case. I then sign a "Certificate Acknowledging Receipt and Review of Death Certificate" that is

filed in the court record instead of the death certificate, and we return the death certificate to the attorney or personal representative for the estate.

This approach seems a reasonable compromise because it allows me to obtain useful information about the decedent while protecting the decedent's social security number and health information from public view.

Rest assured, when you file a case in our court, only my staff, who are well-trained in court protocol, and I will see a decedent's death certificate. The death certificate will then be returned to you for your records.

© 2008, Albuquerque Journal, All Rights Reserved