

Opinion No. 59-43

April 27, 1959

BY: FRANK B. ZINN, Attorney General

TO: Mr. George T. Reynolds District Attorney Eighth Judicial District Taos, New Mexico

All bonds by executors, administrators and guardians, all wills admitted to probate and all orders of the Probate Court must be recorded in a separate record with a reference to volume and page of court record where a complete record may be found.

OPINION

{*65} This is in reply to your recent request for an opinion on the following question:

What particular papers filed in Probate Court should be recorded?

It is the opinion of this office that all bonds given by executors, administrators and guardians, all wills admitted to probate and all orders of the Probate Court must be recorded in a separate record book with a reference to the volume and page of court record where a complete record thereof may be found.

Section 16-4-29, N.M.S.A., 1953 Comp., reads as follows:

"The clerk shall also record at length in books kept for that purpose, all bonds given by executors, administrators and guardians, and all wills admitted to probate."

The above statute specifically provides for the recording in books kept for that purpose, all bonds given by executors, administrators and guardians and all wills admitted to probate. See also Section 30-2-20, N.M.S.A., 1953 Comp.

Section 16-4-28 reads as follows:

"The county clerk shall keep a record or docket additional to the other records required by law, showing as follows:

First. The name of every deceased person whose estate is administered and the date of his death.

Second. The names of all the heirs-at-law, devisees, legatees and widow of such deceased person, and their ages and places of residence, so far as the same can be ascertained.

Third. A note of every sale of real estate made under the order of the probate court or district court, with a reference to the volume and page of the court record where a complete record thereof may be found.

Fourth. A brief minute of every step taken, or proceeding had in the course of the administration, with a reference to the volume and page thereof may be found."

The legislative intent of the above statute is that the clerk should keep a minute record or docket book setting forth appropriate notations on every step of the proceeding, showing by reference to volume and page where the complete court record of that particular phase of the case may be found. These minute entries should also show the date required by the first two sections of the statute.

Your attention is further directed to Sections 31-1-17 and 16-1-5 of N.M.S.A., 1953 Comp., which provide respectively for the recording of

"All letters testamentary, and of administration, and all bonds and affidavits of executors and administrators * * *".

and

"* * * judgments, rules, orders and other proceedings of the respective courts * * *".

Section 31-1-17, as quoted, is free from doubt and needs no interpretation. The intent of the first three words of the quoted portion of Section 16-1-5 is equally clear. The phrase "and other proceedings of the respective courts" is somewhat more troublesome but when read in connection with the decision in **In re Montano's Estate**, 38 N.M. 355, 33 P. 2d 906, the interpretation is more clear. The Court therein stated:

"* * * a decision of an issue by the probate court is not {*66} completely and effectively rendered until it has been entered of record." supra 357

In view of this decision and the language of the statute, I am of the opinion that it is incumbent upon the clerk to record any writing expressing a decision of the court upon any matter.

This sets forth the minimum requirement relative to the recording of instruments, documents or other writings relating to the administration of estates. It is obviously permissible to record others. To this end, see the provision made for fees for recording set forth in Sections 71-1-10, N.M.S.A., 1953 Comp., (P.S.), and 71-1-11, N.M.S.A., 1953 Comp. May I suggest that you also refer to the standards relative to title examinations prescribed by the State and local bar associations. These may require material additional to that required by the statutes and, of course, the clerk may find it desirable to cooperate and facilitate their purpose by recording the additional material.

All the other papers enumerated in your letter of February 14, 1959 and filed with Probate Court and not specifically covered by this opinion will not have to be recorded.

Hilario Rubio

Assistant Attorney General