

**LOCAL RULES
FOR
PROBATE COURT OF JEFFERSON COUNTY**

1. GENERAL RULES

Rule 1.1: Title, Scope, Authority and Application of Local Rules

- (a) These rules are the Local Rules of County Court of Jefferson County, Texas. They shall govern proceedings in matters of Probate for the purpose of securing uniformity and fairness in those proceeding and in order to promote justice and efficiency.
- (b) These rules are standing orders of the Jefferson County Court. Knowing or intentional violation of these rules may be sanctioned as authorized by law or by rules of procedure as the judge may deem appropriate.

Rule 1.2: Jurisdiction

County Court of Jefferson County hears:

- (a) all applications, petitions and motions regarding probate or guardianship matters;
- (b) all matters incident or appertaining to such estates or guardianships;
- (c) all matters regarding mental health commitments;
- (d) all actions by or against a person in the person's capacity as a personal representative;

County Court of Jefferson County does not hear:

- (a) actions to interpret and administer testamentary trusts which are heard by the District Courts;
- (b) parental notification proceedings in accordance with Chapter 33 of the Texas Family Code which are heard by the District Courts and County Courts at Law.

Rule 1.3: Parties and Parties Proceeding Pro Se

- (a) When these rules refer to "Counsel", the term shall include attorneys and parties representing themselves pro se.
- (b) Any natural person proceeding on their own behalf without an attorney shall be expected to read and follow these Local Rules and the Rules of Civil Procedure, the

Rules of Civil Evidence, the Texas Estates Code, and the Rules of Appellate Procedure as may be appropriate in the particular case. Failure to comply may be sanctioned, fined or punished as in other cases.

- (c) All counsel shall be responsible for providing the court with physical addresses and phone numbers of personal representatives in all proceedings. Addresses and phone numbers shall be updated as necessary to provide current information at all times.
- (d) Failure to keep the Court apprised of the current addresses and phone numbers of personal representatives shall be grounds for removal of the personal representative.

Rule 1.4: Assignment of Causes

- (a) All cases filed in the County Court of Jefferson County, Texas, shall be assigned a number. Once a case number has been assigned and docketed, all matters relating thereto shall remain in that Court using the same cause number.
- (b) If a case includes an ancillary matter as that term is defined herein, the cause number of all pleading relating to the ancillary matter shall be followed by the letter “A” or the number “1”, whichever is applicable. If a case contains more than one ancillary matter then each subsequent matter shall be designated by sequential letters or numbers. The style on all ancillary matters shall include the names of the party bringing the action and the opposing party, as well as the name of the estate. A form of the style is set forth in Appendix B.
- (c) “Ancillary matters” shall include any lawsuit brought by or against a personal representative, or brought on behalf of an estate, and which lawsuit does not relate to or concern the routine administration of an estate. Ancillary matters include, but are not limited to, suits concerning note collection, foreclosure, personal injury (but not wrongful death), and breach of contract. “Contested matters” shall include all other litigated matters, for which there are opposing parties.

Rule 1.5: Appointment of Attorney or Guardian Ad Litem

- (a) An attorney or guardian ad litem may be appointed pursuant to the Estates Code or the Rules of Civil Procedure.
- (b) An Attorney Ad Litem shall be appointed in all Applications for Guardianship.
- (c) An Attorney Ad Litem shall be appointed to represent unknown heirs, and heirs whose whereabouts are unknown, in all Heirship Determinations and all Small Estates Affidavits.
- (d) All Attorney Ad Litem shall be randomly appointed by the Court from a list of Certified Probate Ad Litem. Certified Attorney Ad Litem shall submit a current copy of their certificate in order to be placed on the appointment list. Attorneys will be removed from the list when they no longer have on file a current Certificate.
- (e) Until an order is signed dismissing an ad litem, the ad litem shall be notified of all hearings and/or conferences with the Court, and shall be served with all pleadings.

- (f) The ad litem shall make a written report as directed by the Court of the result of the ad litem's investigation concerning the purpose of the ad litem's appointment.

2. CASES

Rule 2.1: Filing Papers

- (a) All pleadings, motions, notices, briefs, proposed orders, proposed judgments, and any other paper, document or thing made a part of the record shall be filed (and all applicable fees paid) with the Clerk before being presented to the Court.
- (b) All proposed judgments and orders shall be e-filed to the Court after the presenting Counsel has either obtained signature approval from all other Counsel, or has provided the Court with a copy of a letter mailed to all Counsel notifying them that the proposed order or judgment was filed with the Court. The Court will act immediately on proposed orders and judgments on which all Counsel have approved by signature. On all other proposed orders and judgments the Court will act after twenty (20) days from the date of notification, if the Court receives no written objections or oppositions, or unless the Texas Rules of Civil Procedure require a specific period after citation.
- (c) Amendments to pleadings shall be filed in accordance with the Texas Rules of Civil Procedure and shall be filed only with notice to all other parties, and subject to any docket control orders.

Rule 2.2: The Setting of Cases

- (a) Uncontested matters involving the probate of a will for the appointment of an Independent Executor or Independent Administrator, or the probate of a will as a Muniment of Title, may be set for a hearing on the "Will Docket". The attorney will need to file the Application to Admit the Will to Probate along with the death certificate, the original Will, the Order Admitting the Will to Probate, an unexecuted Proof of Death and Other Facts, and an unexecuted Oath. Upon the filing of these documents, the Attorney must contact a member of the Probate Court Administrative Staff of the filing and request that the file be retrieved from the County Clerk's office, and that the case be set on the "Will Docket". Uncontested hearings on the Will Docket are held on Tuesdays of each week at 8:30 am in the Commissioners Courtroom on the 4th floor of the Courthouse in Beaumont.
- (b) Uncontested matters not eligible for the will docket and routine matters of very short duration may be set on the "Administration, Heirship, and Guardianship Docket" by calling the Court Administrative Staff. This docket consists generally, but is not limited to, issuance of letters of administration, judgments of heirship, and guardianships. All documents to be presented and signed at the hearing must be e-filed at least three (3) days prior to the hearing. The Administration, Heirship, and Guardianship hearings are held on Wednesdays of each week at 8:30 am in the Commissioners Courtroom on the 4th floor of the Courthouse in Beaumont.

- (c) The Court Master hears a mental health docket twice each week on Mondays and Thursdays at a regularly scheduled time and based on applications prepared by the Mental Health clerk and filed with the probate clerk's office.
- (d) All requests for settings on contested matters with a duration of less than two (2) hours shall be made by calling the Court Administrative Staff of the County Judge's office and follow up with a written confirmation of hearing. The hearings will be set on the contest docket. Contested hearings are held on Wednesdays at 9:30 am in the Commissioners Courtroom on the 4th floor of the Courthouse.
- (e) All requests for jury and non-jury trials with a duration of greater than two (2) hours shall be made in writing and addressed to the County Judge, Attention: Probate Court Administrative Staff, and are subject to Texas Rules of Civil Procedure requiring minimum periods of notice. Any party setting a case shall be responsible for timely notifying all other parties in the case.
- (f) Contested cases will be set for trial by the County Court upon written request and representation of any counsel that the case will be ready for trial. The request may ask for a setting on a specific trial week, but no sooner than 45 days from the date of request, unless leave of court is obtained, or all Counsel agree to an earlier setting. The request must be sent to all Counsel. Any counsel may file a written response to the request within 7 days after receipt stating any objection to the request for setting. The objecting Counsel must then request a hearing and, after the hearing, unless the Court determines that the case is not ready for trial, the case will be set for trial on the date requested or the nearest date that the docket of the Court will permit.
- (g) At the time of making a request for setting, Counsel shall inform the Court personnel of the estimated time for trial. Counsel shall make a good faith estimate of the time required after consulting all Counsel and considering the following:

Proper examination of witnesses;

Introduction of exhibits;

Cross-examination and rebuttal of witnesses reasonably anticipated to be called by all of the parties.

In the event that the time requested is not sufficient, the Court may continue the matter until such date and time as the court's docket allows. If the court finds that the counsel requesting the trial setting has misrepresented the reasonable time required in bad faith, the Court may impose appropriate sanctions, including attorneys fees occasioned by any delay in trial and costs and expenses for travel of witnesses and parties who are required to return at a later date as a result of the continued setting.

Rule 2.3: Alternative Dispute Resolution

On its own motion or by agreement of the parties and counsel, the court will refer a case for resolution by an alternate dispute resolution procedure under Chapter 154, Civil Practice and Remedies Code. Any party or Counsel may move for such referral if agreement cannot be reached.

Rule 2.4: Pre-Trial

- (a) Pre-trial hearings or orders will not be required in each case, but upon the request of any Counsel or on its own motion the Court may set a hearing under Rule 166, Texas Rules of Civil Procedure, to consider such matters as might aid in the disposition of the action, including the entering of a docket control order.
- (b) The Court may, at its discretion, order a pre-trial conference to take care of preliminary matters.
- (c) Counsel will be expected at pre-trial to advise the Court which issues will be disputed and to be familiar with the authorities applicable to the questions of law raised at pre-trial. Failure to conform to this rule shall be grounds for postponement of the trial, setting of further pre-trial hearing, or other appropriate sanction.

Rule 2.5: Continuances, Agreed Passes and Settlements

Except for uncontested hearings, a trial or hearing date cannot be postponed or changed without the consent of the Court.

- (a) Except as hereinafter provided, any motion for continuance will be filed no later than 5 days preceding the trial or hearing date. Any motion for continuance based upon facts which occur on or after the fifth day preceding the trial or hearing date will be filed as soon as possible and will be heard at a time to be set by the Court.
- (b) In the event Counsel agree to continue any trial or other hearing, counsel initiating the request for continuance shall immediately notify the Court and the Court will decide whether to grant such continuance. If such counsel fails to notify the court within a reasonable time before the scheduled trial or hearing, the court may impose appropriate sanctions.
- (c) If the parties reach a settlement, Counsel representing the plaintiff, Movant or party seeking affirmative relief, shall notify the Court of such settlement, and that the trial or hearing date is no longer needed. If such counsel fails to so notify the court within a reasonable time before the trial or hearing, the Court may impose appropriate sanctions.

Rule 2.6 Motion Practice

- (a) Counsel are directed to use all reasonable means to resolve pre-trial disputes to avoid the necessity of judicial intervention.
- (b) No motions, objections or special exceptions will be set for hearing unless the moving Counsel shall have certified in such motion or in a letter substantially the following:

“A conference was held on (date) with (name of opposing Counsel) on the merits of this motion. Agreement could not be reached. Therefore, it is presented to the Court for determination.”

or

“A conference was not held with (name of opposing Counsel) on the merits of this motion because (explain why no conference was held).”

Every effort to confer should be made.

- (c) Court personnel are responsible for scheduling the dates and times for hearings. Upon receiving the date and time of hearing, the moving Counsel shall immediately notify all Counsel in writing as to the date, time and subject matter of the hearing. A copy of this communication shall be provided to the Court personnel.
- (d) By agreement, Counsel may submit matters for ruling by the Judge without a personal appearance and oral presentation. The Judge should be advised in writing when such agreement is made.
- (e) At the time of making a request for setting, Counsel shall inform the Court of the estimated time for trial. Counsel shall make a good faith estimate of the time required after consulting all Counsel and considering the following:

Proper examination of witnesses;

Introduction of exhibits;

Cross-examination and rebuttal of witnesses reasonably anticipated to be called by all of the parties.

In the event that the time requested is not sufficient, the Court may continue the matter until such date and time as the court’s docket allows. If the court finds that the counsel requesting the trial setting has misrepresented the reasonable time required in bad faith, the Court may impose appropriate sanctions, including attorneys fees occasioned by any delay in trial and costs and expenses for travel of witnesses and parties who are required to return at a later date as a result of the continued setting.

Rule 2.7: Matters Requiring Immediate Action

- (a) An application for action or relief, including but not limited to, restraining orders, writs of habeas corpus, receivership, temporary administration, proceedings for examination and delivery of the contents of safe deposit boxes or any papers of a decedent pursuant to Sections 151.001 through 151.005 of the Texas Estates Code, shall not be presented to a judge until the application or case has been filed with the Clerk (and all fees paid).
- (b) Every application for relief *ex parte* shall contain a certificate signed by Counsel that:
 - (i) To the best of their knowledge whether or not the party against whom relief is sought *ex parte* is represented by Counsel in the matter made the basis of the relief sought; or
 - (ii) If the party against whom relief is sought *ex parte* is represented by Counsel, the certificate shall state the name, address, and telephone of such counsel, if known. Movant is strongly urged to give counsel notice of at least 2 hours that the Movant

intends to present the application to the Court at a given time and place, unless otherwise directed by the court.

- (c) There is no provision for an *ex parte* temporary guardianship. The proposed Ward must receive prior notice and have an Attorney Ad Litem appointed to represent him at the hearing. The hearing is to be held within 10 days of the filing of the Application for Temporary Guardianship. The Attorney Ad Litem must be given enough time to visit the Ward and file a written report.

Rule 2.8: Motions to Withdraw as Attorney of Record and Motions to Substitute Attorneys

A motion to withdraw as attorney of record will be granted without a hearing only if the moving attorney:

- (a) files written consents to the withdrawal signed by attorneys for all parties; and
- (b) files a written consent to the withdrawal signed by the client, or includes in the motion a specific statement of the circumstances that prevent the moving attorney from obtaining the client's written consent; and
- (c) files certificate stating the last known mailing address of the client.

If a motion to withdraw and to substitute another attorney includes an appearance by another attorney pursuant to Rule 10 and Rule 57, Texas Rules of Civil Procedure, that appearance will satisfy the requirements of subparagraphs (b) and (c) above, but such an appearance will not satisfy the requirement that the movant must file written consents to the withdrawal signed by attorneys for all parties.

If all requirements of this Local Rule are not satisfied, a motion to withdraw or to substitute another attorney must be presented at a hearing after notice to the client and to all other parties.

3. DISMISSAL FOR WANT OF PROSECUTION

Rule 3.1: Case Selection

The following cases are eligible for dismissal for want of prosecution under this chapter pursuant to Rule 165a, Texas Rules of Civil Procedure:

- (a) Cases on file for more than 180 days in which no answer has been filed.
- (b) Cases which have been on file for more than twelve months and are not set for trial and have had no filings or settings within 180 days.
- (c) Cases in which a party or the party's attorney has failed to take any action specified by the Court.
- (d) Any other case designated by the Court.

Rule 3.2: Notice

Pursuant to Rule 165a, Texas Rules of Civil Procedure, the Court shall give notice that certain cases will be dismissed for want of prosecution. Such matters will be dismissed on the date indicated in the notice of dismissal.

4. SPECIFIC EVIDENCE AND NOTICE REQUIREMENTS

Rule 4.1: General Requirements

- (a) All names on applications must match names on wills and other documents. If a person goes by more than one name, his AKA (“also known as”) must be referred to in all instruments and signatures must be the usual signature of that person from the initial filing throughout the proceedings and must be one of the AKA’s.
- (b) All applications for probate must have the last three (3) digits of the applicant’s social security number and the last three (3) digits of the applicant’s driver’s license number.
- (c) An Application for Probate of Will as a Muniment of Title shall be accompanied by a Medicaid Estate Recovery Program (MERP) Certification, certified by the State of Texas indicating there is no intention of filing a MERP Claim filed against the decedent’s estate.
- (d) An Affidavit of Assets is required in all Dependent Administrations and Guardianships and is the basis on which bonds are set. Affidavits of Assets must be filed prior to the hearing.
- (e) Minimum Bonds for Dependent Administrations and Guardianships of the Estate are \$8,500 and must be made by a corporate surety. Bonds will not be waived by the Court, except in extremely rare instances. Personal bonds may be granted for Guardians of the Person, only.
- (f) If a personal representative fails to qualify by posting the required bond within 20 days from the date the order is signed, the order appointing the personal representative shall be rescinded without further notice.
- (g) Appointment of Resident Agent shall be filed as a separate instrument.
- (h) Application for Payment of Attorney fees in Dependent Administrations and Guardianships must be approved by (signed by) the Personal Representative and include an itemized statement.

Rule 4.2: Application to Determine Heirship

- (a) Application and Judgment of Heirship is required when
 - (i) Application is filed for Independent Administration pursuant to Section 401.003 of the Texas Estates Code;
 - (ii) Application to make distributions from or to close intestate Decedent's Estate is filed;
 - (iii) Application to close deceased intestate ward's Guardianship Estate is filed and no administration is necessary.
- (b) An Application to Determine Heirship must always request appointment of Attorney Ad Litem to represent unknown heirs. Counsel must include an Order appointing an Attorney Ad Litem leaving a blank space for the Court to enter the appointed Attorney's name. Attorneys are appointed on a rotation basis by the County Judge.
- (c) An Application to Determine Heirship must request proper Citation including Citation by publication to unknown heirs and heirs whose whereabouts are unknown.
- (d) Applications to Determine Heirship are scheduled for hearing without exception and generally requires testimony from three (3) witnesses (the applicant and two disinterested witnesses).
- (e) The applicant must testify to the elements contained in Section 202.004 et. seq., Texas Estates Code. Testimony must be reduced to writing before the hearing, and the witness must swear to the truth of the writing at the hearing.
- (f) Two (2) disinterested witnesses (those who are not heirs and are outside the second degree of kinship to the decedent) who have known the decedent for at least fifteen (15) years must testify regarding relevant family genealogy of the decedent, not conclusory statements of heirship. The testimony shall be in substantially the same form as the Section 203.002, Affidavit of Facts Concerning the Identity of Heirs. Testimony must be reduced to writing before the hearing, and the witnesses must swear to the truth of the writing at the hearing.
- (g) If the Decedent was married on the date of death, the Judgment of Heirship must address ownership of both Community and Separate Property. The Attorney Ad Litem shall review the Judgment for correctness prior to hearing and approve the Judgment by signing it.
- (h) The Attorney Ad Litem must interview the witnesses and submit a written report to the Court prior to the hearing and attend the hearing.
- (i) Counsel must submit Proofs of Death, Affidavit of Facts Concerning the Identity of Heirs, Death Certificate, and Ad Litem approved Orders to Court personnel at least three (3) days **before** the hearing date. If the hearing is Wednesday, Court personnel

must have the required documents on Friday before. Failure to timely provide the documents to Court personnel will result in cancellation of the hearing.

- (j) Order for payment of Ad Litem fees must be submitted in a separate order for Reporting to the State. The Order that must be used is located on the Probate Court's website. It must be completed and e-filed along with a Motion for Payment.

Rule 4.3: Letters Testamentary

- (a) Letters Testamentary are issued only to persons named by the testator in the will, except when a successor pursuant to Section 404.005, Texas Estates Code is appointed.
- (b) An inventory as required by law, shall be filed within 90 days from qualification of the independent executor, unless the court after application is filed, enters a written order extending the time for filing.
- (c) An independent executor who fails to timely file the inventory shall be removed without notice.
- (d) The Court shall not approve any actions of the independent executor unless such approval specifically and expressly pertains to **independent** executors as provided for in the Texas Estates Code.

Rule 4.4: Letters of Independent Administration

- (a) If the decedent died intestate, Judgment of Heirship must be obtained to determine those heirs who may agree on Independent Administration pursuant to 401.003 et. seq., Texas Estates Code. The Heirship hearing may be heard prior to or at the same time as the hearing for the Independent Administration.
- (b) Unless Counsel wants an Independent Administration with the necessity of a bond, the heirs/devisees shall request and the Order shall state that bond is waived.
- (c) An inventory as required by law, shall be filed within 90 days from qualification of the independent administrator, unless the court after application is filed, enters a written order extending the time for filing.
- (d) An independent administrator who fails to timely file the inventory shall be removed without notice.

Rule 4.5: Letters of Administration

- (a) If it doesn't specify "Independent" the Court and the Clerk interprets the term "Administration" to mean "Dependent". Citations and Notices will be for "Dependent" proceedings, and must be re-posted and noticed before an Independent Administration can be granted.

- (b) All Dependent Administrations require a bond be set.
- (c) An inventory as required by law, shall be filed within 90 days from qualification of the administrator, unless the court after application is filed, enters a written order extending the time for filing.
- (d) Annual Accountings shall not be waived in dependent administrations. All annual accountings shall have a year end date 12 months from the date of qualification of the administrator, unless the Court enters a written order providing for a different year-end date.
- (e) Annual Accountings shall be filed within 60 days from the year-end date, unless after application the Court enters a written order extending the date for filing.
- (f) All annual accountings shall begin with the preceding inventory or annual accounting as the case may be, and shall be concluded with a recapitulation and reconciliation, all cash accounts shall be confirmed by the depository, and supporting vouchers shall be provided upon request of the Court.
- (g) Distributions to beneficiaries without prior Court order shall be a basis for removal of administrators.

Rule 4.6: Letters of Guardianship

- (a) All guardianships require a bond be set.
- (b) The Attorney Ad Litem must personally visit with the proposed ward at the proposed ward's place of residence.
- (c) The Attorney Ad Litem must appear at the hearing to create the guardianship.
- (d) If the proposed Ward, for whom the Attorney Ad Litem has been appointed, is unable to attend the hearing, the Attorney Ad Litem shall file a Motion and Order to Waive the Ward's Appearance.
- (e) An Inventory, Appraisal and List of Claims, as required by law, shall be filed within 30 days from qualification of the Guardian of a ward's Estate, unless the court, after application is filed, enters a written order extending the time for filing.
- (f) An Initial Report of Guardian of a Person shall be submitted to the County Judge within 30 days after qualification of the guardian.
- (g) Annual Accountings and Annual Reports of the Person shall not be waived in guardianships. All annual accountings and annual reports shall have a year end date 12 months from the date of qualification of the guardian, unless the Court enters a written order providing for a different year-end date.

- (h) Annual Accountings shall be filed within 60 days from the year-end date, unless after application the Court enters a written order extending the date for filing.
- (i) All annual accountings shall begin with the preceding inventory or annual accounting as the case may be, and shall be concluded with a recapitulation and reconciliation, all cash accounts shall be confirmed by the depository, and supporting vouchers shall be provided upon request of the Court.
- (j) Expenditures and Investments without prior Court order shall be a basis for removal of guardians.