

SUGGESTIONS FOR LAWYERS PRACTICING IN THE PROBATE COURT

Employees of the Probate Court are dedicated to providing attorneys and the public with the most efficient, equitable and helpful service possible. Attorneys would make the Court's work easier and more efficient if they would comport with the following suggestions from Court employees:

Guy Herman, Presiding Judge:

PLEASE schedule a pre-trial hearing for jury trials so that the Court can rule on evidentiary motions and the Court Reporter can pre-mark exhibits before the jury is impaneled. This shortens the trial and saves wear and tear on the jury, who must otherwise endure the delays inherent in marking each exhibit before it is introduced and of being excused repeatedly for the argument of evidentiary motions.

PLEASE consult the Court before setting a jury trial by agreement of the parties. The Court has certain weeks set aside to hear jury trials and needs to ensure that it sets cases in an orderly and fair manner. The Court cannot honor agreements to set cases on the jury docket unless pre-approved by the Court.

PLEASE notify the Court as soon as the parties agree to cancel a hearing or jury trial setting. Sufficient advance notice of cancellations allows the Court to schedule hearings on other matters during that passed setting, which expedites the Court's docket.

Susan Whitman, Associate Judge:

PLEASE specify in your inventories whether the property is separate or community. Regardless of whether the application states that the decedent was single or married, or alleges that the property is separate or community, the inventory must specifically provide this information (T.P.C. Section 250). Also, if the decedent owned property in common with others, please list the co-owners and their relationship to the decedent (T.P.C. Section 250).

PLEASE fax me a draft copy of the Small Estate Affidavit prior to filing. It is much easier for attorneys to fix potential problems the Court identifies with the Affidavits before they are filed, than afterwards (requiring distributees and witnesses to execute Amended Affidavits). Also, make sure that you file a copy of the death certificate with the Affidavit.

PLEASE identify by name and occupation (attorney, paralegal, law clerk, etc.) those employees included in attorney fee applications. If it is the first time an attorney, or one of his/her employees, has submitted a fee application to the Court, please attach a copy of that person's resume to the application. This will help the Court determine a reasonable billing rate for that person according to our "Standards for Court Approval of Attorney's Fee Petitions." If an attorney feels that the attorney or one of his/her

employees should be approved at a higher rate, do not just submit a bill at the higher rate. Instead, attach a letter to the fee application detailing the reasons for the rate increase (board certification, significant experience in a particular area, etc.). Judge Whitman will require such a letter when she reviews the application; providing it up front speeds approval.

PLEASE acquaint yourselves with the Probate Court's Local Rules, which impose time deadlines and other requirements for motion and discovery practice before the Court. In particular, please note the deadlines for filing motions for continuance, and the requirement that all counsel and the client agree in writing to an attorney's withdrawal for such withdrawal to be approved without a hearing.

PLEASE do not expect the Court to approve applications for fees or other requests for relief if the Court has notified you of a problem with an accounting. Once the accounting problems are resolved, the Court will consider any pending applications.

Mike Kilgore, Court Administrator:

PLEASE check with the Clerk first before contacting Court personnel to see if filings have been approved, or to request information on filing fees. It is the Clerk's job, not the Court's, to provide this information. Answering such questions from attorneys takes time away from the Court's own duties and responsibilities, and delays the Court in responding to other appropriate communications from counsel.

PLEASE abide by the rules of decorum in the courtroom and communicate these rules to your clients. The judges cannot hear testimony if you and your clients are conversing in the courtroom.

PLEASE submit proposed documents by 5:00 p.m. on the Wednesday before the uncontested docket so that the Court can review them. This gives the Court time to contact the attorney before the hearing, rather than at the bench, if there is a problem.

PLEASE do not ask Court personnel (even attorney personnel) legal questions that may come before the Court in a contested case. Ethical rules prohibit such ex parte communications.

Jana Cotton, Court Auditor:

PLEASE:

- 1.) File back up information with annual accounts (cancelled checks, receipts, bank statements, verifications of funds on deposit, etc.)
- 2.) Don't call the Court to find out whether the Court has approved a final account before all the waivers or proof are filed with the Court (since the Court will not review accounts without such waivers or proof).

3.) Tell your clients (guardians and administrators) NOT to call or write the Court seeking information. Ethical rules prohibit us from talking to clients - that's the attorney's job.

4.) Ad Litem - File your report promptly with the Court if you are appointed to review an accounting. Many ad litem take too long to finish their review, delaying action to correct the accounting or sanction the representative.

5.) Don't file your accountings late, and then call the Court requesting that the representative's letters be renewed "right away".

6.) Show on the accounting what actions were Court-approved and the dates of such approval.

7.) Request an allowance when the guardianship is instituted. This prevents the need for later applications to ratify the guardian's expenditures for the health, education and maintenance of the ward.

8.) Include the amount of the approved allowance on the accounting.

9.) Track "no cash" and "cash" items separately on the accounting and separate the stocks/bonds from the cash accounts

10.) Don't charge to prepare the annual report of the person, since the Probate Code does not require that a lawyer prepare or file it, and a guardian should be able to do so without legal assistance.

Aries Solis, Court Investigator:

PLEASE attach a copy of the physician's certificate to the ad litem's copy of the guardianship application. If the certificate is not available when the application is filed, the applicant's attorney should provide it to the ad litem as soon as it is available.

PLEASE list on the guardianship application the value and source (government funds, community property, etc.) of the guardianship estate. This information can affect whether a guardianship of the estate is needed.

PLEASE, when drafting guardianship orders, follow the provisions of Texas Probate Code §684, as to the necessary elements and the burden of proof for each such element (whether by "clear and convincing" or by a "preponderance" of the evidence).

PLEASE remind your clients to file their annual reports annually.

Tanya Scanlon, Court Coordinator:

PLEASE have all necessary information available (case name, cause number, and type of case - letters, muniment, heirship etc.) before calling to set a hearing. The Court's phone is very busy, and delays in providing the Court with this information lead to delays in our response to other calls.

PLEASE, attorneys for applicants in heirship cases, make sure that you have contacted the ad litem before you set a hearing or pass a setting, so that the ad litem has sufficient notice.

PLEASE notify the Court of each matter to be heard at a particular setting so that the Court can allocate sufficient time for the hearing. To ensure that the docket runs on time, the Court cannot hear additional matters not previously set with the Court Coordinator.

PLEASE notify the Court ASAP of any change of attorney address or phone number so that we can update our records and ensure that you receive timely communications from the Court.

Melissa Voigt, Court Reporter:

PLEASE make sure that the Court Reporter can hear you and your witnesses. Attorneys and witnesses should not stand with their backs to the Court Reporter, as this makes transcription very difficult.

PLEASE tell your witnesses not to talk when another witness or attorney is talking because the Court Reporter cannot accurately transcribe the simultaneous testimony of two witnesses.

Joe Marrs, Law Clerk:

PLEASE return all phone calls from Court personnel promptly. If the Court calls you before the uncontested docket, there might be a problem with your proposed orders or proofs. Better to know these problems before and not at the hearing.

PLEASE include your phone number on your pleadings. It makes contacting you much easier (and it is required by the Civil Rules).

PLEASE express all interests in heirship property in fractions, not decimals.

PLEASE, ad litem, contact the heirship witnesses before the hearing, and PLEASE, applicants' attorneys, provide sufficient information to the ad litem so that they can contact your witnesses before the hearing.