

# Judge Guy Herman

TRAVIS COUNTY PROBATE COURT NO. 1

1000 Guadalupe Street – P.O. Box 1748

Travis County Courthouse, Room 217

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**For decedents who die with a will on or after September 1, 2007, notice must be given to all beneficiaries.** Texas Probate Code § 128A outlines the procedures for a personal representative, and Administrative Order 2007-3 of this Court requires that applicants for probate of a will as a muniment of title also comply with the § 128A requirements.

## **Orders: Letters Testamentary or Letters of Administration with Will Annexed**

When a decedent died on or after September 1, 2007, the Court requires that attorneys modify their proposed order forms to include something like the following, unless the personal representative or the applicant is the sole beneficiary:

It is ORDERED that no bond or other security is required and that, upon the taking and filing of the oath required by law, Letters Testamentary shall issue to JOHN DOE, who is appointed as Independent Executor of Decedent's will and estate, and that no other action shall be had in this Court other than the return of an inventory, appraisal, and list of claims as required by law, **and the filing of an affidavit or certificate concerning notice to beneficiaries as required by § 128A of the Texas Probate Code.** (Emphasis added only to designate the new language.)

## **Orders: Muniment of Title**

When a decedent died on or after September 1, 2007, the Court requires that attorneys add language similar to the following to any proposed order admitting a will to probate as a muniment of title, unless the applicant is the sole beneficiary:

As required by local administrative order, the applicant shall comply with Texas Probate Code § 128A.

## **Notice or waivers**

Subsections (a) through (f) of § 128A outline who must receive notice and how.

## **Affidavit or certificate**

When it comes to compliance, the Court will check **the sworn affidavit or certificate** that is required to be filed – see subsections (g) and (h) of § 128A – and not the actual waivers or the notices that personal representatives send to the beneficiaries. (The filing copies of notices, waivers, green cards, etc., is not, by itself, compliance with the statute.) **Attorneys should be sure that the required affidavit or certificate includes all of the information required by the statute; if it does not, the Court will require an amended affidavit or certificate.**

Although § 128A does not waive the requirement of an affidavit or certificate when the applicant is the sole beneficiary, this Court will not monitor the filing of an affidavit or certificate in those cases.