

## COURT POLICIES

The Court and court staff understand that the probate process arises from the loss or incapacity of family members and that the members of the public coming before it are grieving. These rules and procedures are intended to assist in the disposition of probate and guardianship matters without undue expense or burden.

### 1. Motion Practice

#### a. Schedule

Uncontested Matters are heard by the judge on Mondays 10:00-12:00 and 2:00-4:00. Every other Thursday, the court administrator hears uncontested applications for Probate of Wills, both as Muniments of Title and for Letters Testamentary.

Guardianship Prove-ups are set for Monday afternoons at 3:00 following Guardianship training at 2:00.

Contested Matters are specially set. (see below)

#### b. Settings

All motions must be filed before they can be set for a hearing. All matters are specially set.

The court coordinator sets all hearings. Setting requests must be in writing, but not contained in the pleadings. See the attached procedure for requesting settings.

#### c. Notice

A minimum of 3 business days' notice of hearing shall be given unless a greater length of time is required by the rules or other specific statutory provision.

#### d. Confirmation

It is the responsibility of the party requesting the setting to notify all parties and officers of the court.

#### e. Courtesy Copies

When filing a motion or response, please deliver a courtesy copy of the motion to the court with applicable references to case law and statute. Please do not attach copies of the references (for storage space reasons).

#### f. Deadline for Filing Responsive Pleadings

To be considered, all amended pleadings or responsive pleadings must be filed 3 business days prior to the scheduled hearing time except upon specific leave of Court. It is the responsibility of the party filing the document to get the document to the court's file.

#### g. Orders

A party seeking affirmative relief at a hearing should bring an appropriate proposed order to the hearing (or

have it filed with the motion) in a form which allows the judge to grant or deny the relief requested.

#### h. Discovery Disputes

The Court requires all attorneys to attempt resolution of discovery disputes prior to hearing. The Court will not conduct the hearing unless a good faith effort was put forth by all attorneys to resolve the contested issues prior to hearing. (see Docket Control procedures below)

#### i. Telephonic Appearances

The Court does not permit telephonic hearings unless absolutely necessary. Telephonic hearings and/or telephonic appearance by an individual party must be pre-approved through the court coordinator. The attorney who requested the conference should first get all other counsel on the phone and then connect with the Court at the scheduled time. An individual attorney who has been given permission by the Court to appear telephonically should call the court coordinator at the scheduled time of the hearing.

#### j. Matters Resolved Prior to Hearing

If a motion is resolved prior to the hearing, advise the court coordinator immediately so that the hearing slot may be otherwise used and the Court can avoid the waste of time reviewing resolved matters.

#### k. Hearings by Submission

Hearings may be conducted by submission with agreement of all parties. Please notify the court coordinator to specify the submission and response date(s).

#### l. Certificate of Conference

The certificate of conference rule is strictly enforced. Do not file a motion nor request a hearing, including a Docket Control conference, without good faith compliance with conference requirements. Fax and/or letter communication and exchange of messages are ***not*** good faith compliance with the conference requirements. Your certificate of conference should have the following information to be set for a hearing: the date of the conference, the name of the individual attorney you

spoke with, and the outcome of the conference. The sentence "a reasonable effort has been made to resolve the dispute without the necessity of Court intervention and the effort failed" must be in all certificates of conferences. The conference must have occurred within 30 days prior to requesting a hearing. Conferences must be made by the attorney and signed by the attorney, and will not be valid if made by, or accepted by, other staff members.

#### m. Fax Rulings

If the judge takes a case under advisement, a copy of the ruling will be transmitted to all parties. Within 15 days of the fax ruling, the designated party shall provide to the Court and opposing parties an order representing the ruling. Telephone conference may be utilized by the Court to resolve objections to the proposed order.

#### n. In Camera

After a review of matters presented in-camera, a fax ruling will be made and the materials reviewed will be delivered to the court reporter for safekeeping. The parties shall immediately advise the court reporter as to what to do with said materials. If no instructions are received within 30 days, said materials will be discarded.

#### o. Ex Parte Relief

Other than original petitions and accompanying requests for ex-parte relief, any request for ex-parte relief must be accompanied by proof of notice to all parties who have made an appearance in the cause and all counsel known to represent parties in the matter. (see local rule requiring 4 hour notice).

#### p. Decorum

No food or beverages will be allowed in the courtroom. Water will be furnished at counsel tables. Other beverages are not permitted.

Appropriate professional attire for attorneys and their staff is required. All parties, attorneys and legal staff at the bar should wear business attire. Please caution your clients on their attire. NO ONE will do business with the Court wearing cutoffs, shorts, tank tops, swim wear, obscenity on clothing, house slippers, halter tops, dirty clothing, micro-mini skirts, workout garments, midriff shirts, etc. Shirts shall be appropriately buttoned. Witnesses will not appear before the bench with their hands in their pockets. Attorneys are responsible for informing their clients of the Court's dress code.

Cell Phones and pagers will be turned off prior to entering the courtroom or be subject to impoundment.

No conferences are to be held in the courtroom while the judge is on the bench.

No chewing gum is allowed in the courtroom.

## **2. Ad Litem Appointments**

An exhaustive manual regarding the service of ad litem is available on the court's website.

Ad litem appointments in heirship determinations and other matters involving the estates of decedents are made from a list maintained by the court administrator.

Ad litem appointments in guardianship matters are made from a list maintained by the court investigator.

To be placed on either list, it is necessary for the applicant to furnish to the Court a resume, any statutorily required certification from the State Bar of Texas, and to attend a training session with the judge and court staff prior to any appointments.

Ad litem fees for "county-pay" guardianships are set from time to time by the probate judges. Ad Litem fees for heirship determinations are normally paid from a \$350.00 deposit paid to the clerk by the applicant. Other ad litem fees are calculated based upon the factors set forth in Rule 1.04 of the STATE BAR RULES.

File a prompt application and order for fees and expenses with the Probate Clerk and be prepared to report to the Court at the hearing on any continued need for your appointment.

## **3. Management of Contested Case Docket**

### **a. Docket Control Conferences**

The Court requires that a scheduling order be entered in all contested cases, unless otherwise determined by the Court. The Court has a standard form which is completed at the Docket Control conference.

After all responses/answers have been filed and a certificate of conference regarding the Docket Control Conference has been filed, the court coordinator will schedule a docket control conference or issue the applicable scheduling order form. Attorneys are asked to complete the form by a date certain or attend the scheduled hearing. Attorneys are encouraged to contact the court coordinator prior to the docket control conference to obtain the necessary forms for early submission.

The Court is not prone to change an agreed upon trial date. A Motion for Continuance signed by all attorneys does not guarantee that the Court will approve such request.

### **b. Certificate of Conference**

Prior to requesting a setting for a Docket Control conference the party requesting the conference, or the

party designated by the court, must certify to the court that the parties have personally met, discussed the positions of their clients in the case and have exchanged initial information to allow counsel to evaluate and be familiar with the claims of each party prior to the Docket Control conference. (See attached)

#### c. Mediation

Parties are highly encouraged to **MEDIATE** all issues in controversy as soon as practical. Mediation is required prior to final trial on the merits, except upon good cause shown.

Although settlement of a contest in the probate court resolves the procedural obstruction in administering the estate of a decedent or ward, it rarely resolves the family disputes and wounded relationships that led to the contest. If the proposed ward is at the center of an emotional tug-of-war between family members, mediation can provide a level playing field for the family to resolve the issues behind the guardianship fight. The various players in the drama can all participate in mediation without the necessity of separate counsel for each of the various factions. Longstanding “burrs under the saddle” that so often give rise to family disputes can be aired and often resolved.

If mediation is not attempted, the underlying issues (perceived favoritism, sibling rivalry, jealousy, unresolved grief, etc.) may never be addressed. While a trial may settle the legal questions that present themselves on the surface, the deeper, more serious family dynamics may only be worsened.

Mediation allows family members to fashion their own resolution of family dynamics to head off a vicious cycle of family feuding among the same family members as the different members of the family come to require a guardianship or upon the probate of their wills.

#### d. Referrals to Associate Judge

The associate judge may hear final trials on the merits. Requests may be made at the Docket Control conference or to the court coordinator. Upon approval by the Court, an agreed order of referral will be entered.

#### e. Pre-Trial Conferences/Exchange of Materials

The pre-trial conference date will be specified in the Docket Control Order, usually on a Friday approximately 10 days prior to trial. The responsibilities of the parties at the pre-trial conference are detailed in the Docket Control Order. Refer to this Order for specific instruction regarding the Court’s pre-trial requirements.

Each party is requested to provide to the court coordinator a courtesy copy of its most recent pleading, witness and exhibit lists, motion in limine, other pre-trial motions, and proposed jury charge. Parties shall exchange these items with each other prior to the pre-trial conference and shall attempt to reach agreement regarding issues of admissibility and pre-trial motions. At or prior to the pre-trial conference, counsel will deposit the following items with the court reporter (not filed with the clerk):

1. Exhibit Lists in a form which allows the Court to mark each exhibit "offered" and "admitted/denied" on the list.

2. Witness Lists

3. Proposed Charge of the Court, or Findings of Facts/Conclusions of Law, as appropriate. Requested jury questions or findings and conclusions should be submitted at the pre-trial conference on diskette or CD (Microsoft Word or generic text document format) and in hard copy. The proposed charge should include desired instructions (including conditional submissions); instructions and questions should be arranged in the order that the party desires that they be presented to the jury.

4. Motions in Limine/ Other Pretrial Motions Any matters upon which the parties cannot reach agreement will be heard at the pre-trial conference and **not** on the day of trial, except upon leave of Court. *Daubert/Robinson* motions **MUST** be heard before trial.

5. Deposition Excerpts At the pre-trial conference, the Court requires identification or designation of specific deposition excerpts intended for trial usage. Prior to the reading, a copy of the excerpt must be made available to the Court, the court reporter and opposing counsel.

6. Original Exhibits All Original exhibits should be brought to the pre-trial conference and, to the extent possible, contained in one Original Exhibit Notebook for the jury. They should be pre-marked, stapled, and numbered to coincide with the exhibit list. A Court copy of the notebook is not required. Documentary/photo exhibits must not be larger than 8 1/2" x 11", except by permission of the Court. If three-hole punching the original exhibit will destroy a part of the exhibit, such exhibit may be

placed in a plastic sheet protector in the exhibit notebook. The Court will provide such plastic sheet protectors if needed.

7. Large Exhibits Exhibits exceeding 8 1/2" x 11" shall be accompanied by a 8 1/2" x 11" copy. The court reporter will retain the smaller copy for the record, and the original will be returned to the offering party after trial.

8. Demonstrative Exhibits/Trial Aids Demonstrative exhibits and trial aids used by a party may be used by all counsel. Opposing counsel should not mark on or in any way alter offering counsel's demonstrative exhibit, without Court's permission.

#### f. Dismissal Docket

When a case is set for dismissal by the Court, the parties are expected to appear at the time and date specified in the notice sent by the Court. If an agreement is reached by the parties that the case should not be dismissed, an agreed order removing the case from the dismissal docket should be submitted to the Court prior to the scheduled dismissal hearing.

### **4. Miscellaneous Trial Guidelines**

#### a. Juror Questionnaire

A request for use of a juror questionnaire (with the proposed questionnaire attached) shall be submitted to opposing counsel and to the Court no later than 30 days prior to trial.

#### b. Jury List and Seating Chart

A copy of the jury list and a seating chart will be provided to counsel on the morning of trial.

#### c. Voir Dire

Voir dire consists of discussion with the panel as well as discussion with an individual panel member at the bench. The panel session includes the Court's introduction and the parties' usual voir dire. During the voir dire of the panel, counsel shall not challenge for cause nor allow the panel to be tainted by individual panel member responses. After the conclusion of voir dire of the panel, attorneys may call a panel member to the bench for individual voir dire to establish grounds to excuse, address areas of concern raised by a response during the panel voir dire, or for like reasons. Challenges for cause shall be made outside of the presence of the panel.

#### d. Reported Voir Dire and Argument

Unless requested, the court reporter does not record voir dire, opening statements or closing arguments.

#### e. Addressing the Court/ Approaching the Witness

Counsel are expected to stand when addressing the Court or making an objection so that the witness knows to stop talking until the Court rules on the objection. This requirement also allows the reporter to identify for the record the person making the objection. Counsel may stand or remain seated to examine witnesses.

Counsel shall treat opposing counsel, parties and all witnesses in a courteous and professional manner.

Counsel shall request the Court's permission to approach the bench or a witness.

#### f. Witnesses

If the Court permits counsel to approach a witness, counsel should then approach the witness box so as to be face-to-face with the witness; counsel may not enter the witness box for any reason. If the witness steps down from the witness stand to explain an exhibit, the questioning counsel should arrange the witness so that the witness is facing the court reporter. All parties and other counsel may move to a position in the courtroom to observe the exhibit's explanation.

#### g. Note Taking by Jurors

Jurors are allowed to take notes during the trial. Appropriate instructions will be given to the jury by the Court.

#### h. Court's charge

Each juror will be given a copy of the Court's Charge prior to its reading.

#### i. Trial Equipment

The Court can provide a television, a VCR and an easel. With the Court's permission, counsel may use such other equipment as they elect. Trial equipment should not be duplicated by counsel, and counsel should cooperate in the use of all equipment.

If a party is in need of audio or video aids, requests for such should be made to the court administrator at the pre-trial conference. Please be advised that there may be times when such aids cannot be supplied by the Court.

### **5. Miscellaneous Matters**

#### Gratuities

No Gratuities may be accepted by the Court or by any staff member.