

STATUTORY PROBATE COURTS OF TARRANT COUNTY, TEXAS
UNIFORM STANDING ORDER
REGARDING PRO SE APPLICANTS

I. Basic Policy

Because an estate (whether a decedent's estate or a guardianship estate) can only appear in a court proceeding by or through its personal representative, an individual attempting to represent "himself" or "herself" is necessarily also attempting to represent others such as the estate beneficiaries, the heirs or the ward. This responsibility to act for the benefit of another is known as a fiduciary relationship. It gives rise to certain legal obligations and responsibilities that require legal expertise.

Under Texas law, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney. This rule follows from the requirement that only a licensed attorney may represent the interests of third-party individuals or entities and follows case law that fiduciaries must be represented by an attorney.

An individual attempting to represent himself or herself without an attorney is referred to a party proceeding *pro se*, *in propriam personam* or *pro per*. Unless the *pro se* applicant appearing as a fiduciary is also a licensed attorney, this constitutes the unauthorized practice of law and will not be allowed by the Court.

While "[a]ny party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney," TEX. R. CIV. P. 7, only those persons who are members of the State Bar of Texas may practice law in Texas. TEX. GOV. CODE ANN. §81.102(a) (Vernon 1988). The Texas Supreme Court may promulgate rules allowing others to practice law, but that power is limited to the practice by 1) attorneys licensed in foreign jurisdictions, 2) bona fide law students, and 3) unlicensed graduate students who attend or attended a law school approved by the Supreme Court. TEX. GOV. CODE ANN. §81.102(b).

Other instances where this policy applies include: attempting to appear as "next friend" pursuant to TEX. R. CIV. P. 44 without an attorney; individually pursuing claims assigned by others without retaining counsel; appearing as a trustee without trust counsel; and non-attorneys appearing, intervening or filing matters as an *amicus curiae* ("friend of the court").

Courts have the inherent power to inquire into the qualifications of those persons practicing law therein. This power is essential to the fair administration of justice and an orderly discharge of the judicial function.

However, in certain defined instances (*see below*), a person has the right to represent himself or herself in court. These are proceedings in the individual is truly representing **only** one's self.

II. Appointed Counsel

It is the policy of this court that counsel will be appointed for litigants only where mandated by state law, such as guardianship, trust and mental health proceedings. The court does not appoint counsel for litigants because of indigency.

III. Restriction for Applicants for Fiduciary Appointments

Although the clerk is required to accept documents for filing by *pro se* applicants, the court will take no action on the documents unless there is an attorney of record in that case.

IV. Permitted Instances of *Pro Se* Representation: In limited situations, a person may represent himself or herself. These are situations in which that person is representing **only** himself or herself.

Examples:

1. An individual applying to probate a will as a muniment of title when the applicant is the sole beneficiary under the will and there are no debts against the estate other than debts secured by liens against real estate.

NOTE: Whether a muniment of title is the correct probate procedure for a particular situation is a legal decision that is best made by an attorney. One falsely swearing that the estate has no creditors, including Medicaid estate recovery, is subject to a perjury charge.

2. An individual contesting the application of another where the contestant is not seeking to be appointed as a personal representative.
3. A non-corporate creditor making a claim against an estate under administration in the probate court.
4. A non-corporate party in a civil action ancillary to a proceeding in the probate court.

V. Subsequent Discharge of Attorney

In certain cases, an individual may become a personal representative in a probate or guardianship proceeding with the help of an attorney and thereafter discharge that attorney or the attorney may seek to withdraw from representing the individual. Should this occur, and the personal representative has not yet complied with all the requirements of the Texas Probate Code to fully administer that estate, that individual will be required to retain other legal counsel to complete the administration. It is recommended that a representative NOT discharge the originating or subsequent attorney until such time that the case is closed or all the business of the case has been completed.

In hearing a *Motion for Counsel to Withdraw* pursuant to TEX. R. CIV. P. 10, if no counsel is to be substituted in at the time of the hearing, the court will hear the motion and take it under advisement for thirty (30) days. This will give the personal representative sufficient time to retain counsel. The order allowing the withdrawal of counsel shall also order the personal representative to retain counsel within thirty (30) days of the order allowing such withdrawal or be subject to citation and show cause for removal pursuant of TEX. PROB. CODE §§149C(a)(5)&(6) and 761(c)(3).

VI. Contested Matters: Pro Se Appearance

In a contested proceeding, if a party appears *pro se*, whether filing an answer or making an appearance, and it is a situation other than those above listed as exceptions, the court may continue any pending matter by written order, to a date certain, not to exceed sixty (60) days, to enable the individual to retain counsel. Once retained counsel has made an appearance, the matter may proceed.

If the *pro se* individual fails to retain counsel, or if no counsel makes an appearance by the date in the order of continuance, the court may dismiss the pleadings or application of the *pro se* individual for failure to prosecute the case with due diligence.