

Materials from the Travis County Probate Court No. 1 Program for Legal Assistants, Paralegals, & Assistants

February 19 & February 26, 2020

We hope these materials will be helpful. Many other materials are available on the Court's website. The most relevant for legal assistants, paralegals, and assistants may be the two "hints" documents for the uncontested probate docket: "The Uncontested Docket: When the Decedent Dies With a Will" and "The Uncontested Docket: When the Decedent Dies Without a Will" – both available on the Probate page of the website.

Page(s)	Topic
1-2	Court Contacts
3-4	Some hints for contacting the Court
	Setting hearings in Travis County Probate Court No. 1
5	Travis County Probate Court Hearing Schedule (non-jury weeks)
6	Setting hearings: an overview
7-8	Setting request forms for uncontested and regular docket heirships
9	Setting request form for uncontested guardianships
10	Regular docket hearing request form: <ul style="list-style-type: none"> • Use a regular docket Hearing Request Form for everything except uncontested will prove-ups, the uncontested guardianship docket, and all heirships. • For uncontested will prove-ups, you won't use any setting request form. After the original will has been filed, simply email probate.hearings@traviscountytx.gov, and ask to set the case. Do let us know if it's a copy, if the application was filed more than 4 years after decedent's death, or if you're seeking to have a successor (not an alternate) executor appointed. Those cases are typically heard on Thursdays at 9:15 a.m.
	How do you get documents to the Court for review?
11-12	Overall information on how to get documents to the Court for review
13-14	Submitting paperwork for will prove-ups and heirships: when and how?
15-18	Submitting paperwork for annual and final accounts
	Preparing documents
19-20	Some miscellaneous hints
21-23	Some suggestions about heirships
24-33	Some suggestions for will probates, including 10 key points to check in the will
34-36	Related / ancillary cases – filing and captioning
37-38	Compliance procedures



Travis County Probate Court No. 1

Guy Herman, Presiding Judge

Court Contacts

The strategic goals of the Travis County Probate Court are (1) to thoughtfully and expeditiously handle our incoming caseload of whatever type (probate, guardianship, mental health, civil litigation, or condemnation) and (2) to carefully monitor our ongoing guardianships and dependent administrations. We also want to help those who interact with the Court understand the processes of the Court so that hearings and other interchanges with the Court can be as efficient and pleasant as possible for everyone involved.

Set out below and on the next page is a list of Court contacts, along with notes about when to contact the Travis County Clerk's Office instead. **Please contact the Court Coordinator when you're not sure about the right person to call.**

Note that Court staff can tell you about the services of the Court and can answer questions about how the Court works. But Court staff cannot give legal advice or answer legal questions. If you need someone to research the law and give you legal advice, you should hire an attorney.

When to call the Travis County Clerk instead of the Court?

Call the County Clerk at (512) 854-9188 with questions about fees or filing (including questions about e-filing or the status of filings) or to order new letters of guardianship or letters testamentary. Inventories, attorneys' fees, and routine applications are held at least 10 days before review, so wait at least 11 days before calling the Clerk's Office to ask if an order has been signed. For a small estate affidavit, please wait at least 3 weeks.

Court Coordinator: Emma Caballero

probate.hearings@traviscountytexas.gov

emma.caballero@traviscountytexas.gov

(512) 854-9258

Contact the Court Coordinator —

- when you're not sure about the right person to contact
- with questions about . . .
 - Judge Herman's or Judge Prashner's calendar
- to contact Judge Herman (when allowed by the rules)

Email probate.hearings@traviscountytexas.gov to schedule or change a hearing or jury-trial setting

Associate Judge/Court Administrator:

Tom Ruffner

tom.ruffner@traviscountytexas.gov

(512) 854-9559

Contact the Court Administrator —

- before you set a hearing for a temporary administration
- with questions about general Court policy, the Court's website, or a County-paid service
- with questions about ad litem appointments

Probate Staff Attorney: Michael Jones

mike.jones@traviscountytexas.gov

(512) 854-9283

Contact the Probate Staff Attorney with questions about:

- the Uncontested Probate Docket
- hearings/applications *for topics **not** on someone else's list* (but don't ask substantive or strategy questions – or procedural questions if contested)
- applications for successor trustees (except for court-created trusts)

• For all heirship-related emails, use heirships@traviscountytexas.gov

Probate Paralegal: Judith Dale

judith.dale@traviscountytexas.gov

(512) 854-4355

Court Reporter: Melissa Voigt

melissa.voigt@traviscountytexas.gov

(512) 854-9086

Contact the Court Reporter for hearing transcripts

Court Investigator (Attorney):

Victoria Seybold

victoria.seybold@traviscountytexas.gov

(512) 854-4978

Contact Court Investigator with questions about:

- the uncontested guardianship docket
- anything involving potential guardianships / current guardianship investigations
- before you file for a temporary guardianship
- applications for management trusts & payment of claims without guardianship
- applications for successor trustees, court-created trusts
- show cause for guardians of the person
- any other issues in ongoing guardianships of the person **except** annual reports

Guardianship Coordinator:

Al Benedict, BSW

al.benedict@traviscountytexas.gov

(512) 854-4359

Contact the Guardianship Coordinator regarding:

- any issues in ongoing guardianships of the person **except** annual reports
- the volunteer Court Visitor program
- Probate Court visits in ongoing guardianships

Guardianship Legal Assistant (Paralegal):

Monica Limón

monica.limon@traviscountytexas.gov

(512) 854-9359

Contact the Guardianship Legal Assistant with all questions about annual reports, such as:

due dates, needed forms, how to answer a question on the form, bond issues, compliance docket for annual reports

Business Analyst/Senior Planner:

Michelle Auwae-Lapilio, BAII

[Uh-why Lapa-Leo]

michelle.auwae-lapilio@traviscountytexas.gov

(512) 854-4354

Kirby Hernandez, SP

kirby.hernandez@traviscountytexas.gov

(512) 854-9579

Probate Auditors:

probate.auditors@traviscountytexas.gov

Alesia Henderson (Senior Probate Auditor)

(512) 854-4358

alesia.henderson@traviscountytexas.gov

Justin Schaumburg – (512) 854-9755

justin.schaumburg@traviscountytexas.gov

The probate.auditors@traviscountytexas.gov email address is the email to use when submitting back-up or when contacting the Probate Auditors unless you're replying to an email from an individual email address.

Attorneys (and their staff) may contact the Probate Auditors with questions about:

- accountings, including management-trust accountings
- bonds
- safekeeping agreements
- commissions
- reimbursements
- applications and orders to close and discharge

Associate Judge Dan Prashner

(512) 854-9258

Attorneys only may email Judge Prashner

(dan.prashner@traviscountytexas.gov) with questions about the following matters:

- inventories
- attorneys' fees
- monthly allowances
- the sales docket
- emergency funeral and burial expenses
- access to safety deposit boxes
- settlement agreements
- applications to partition
- applications for partial distribution
- miscellaneous motions sent to the Court on submission including motions to substitute or withdraw

*Note that in contested cases, the Court can answer **only uncontested procedural questions, not strategy questions***

Mental Health Public Defenders for Civil Commitment Proceedings

Melissa Ferrell – Phone: (512) 850-5915

Jamie MacLean – Phone: (512) 419-2720

Questions about a compliance letter?

The show cause docket? The dismissal docket?

- If you received a compliance or dismissal letter, please follow the instructions on the letter.
- Also please read the procedures on the Court's "Compliance and Show Cause" website page.
- Still have questions? Email the Court at probate.compliance@traviscountytexas.gov.

When shouldn't you call or email the Court?

1. To see if orders have been signed or filings have been approved, first check online. Click on the link at <http://traviscountyclerk.org/eclerk/Content.do?code=P.13>. Next check with the Clerk: (512) 854-9188. *If the Clerk doesn't have any information, you can then contact the Court. But . . .*
 - Don't contact the Clerk or the Court if a statutorily mandated waiting period has not run.
 - Don't contact the Clerk or the Court if it's not at least several days after the order would have been signed. If there is an *unusual* situation, and you need to get an order right after it's signed, please make arrangements beforehand. It's much easier to keep track of an order than to track one down. But note the emphasis on "unusual" – no one at the Court has time to routinely contact people when orders are signed.
 - Don't contact the Clerk or the Court to find out whether the Court has approved an account unless you *know* that the accounting and all necessary back-up have been delivered to the Court in electronic format and hard copy, **and** all necessary waivers have been filed (or citation served).
2. Don't ask Court staff questions that may come before the Court in a contested case. Ethical rules prohibit such ex parte communications. Staff can answer uncontested procedural questions – but not strategy questions.
3. If your office receives a compliance letter, do not call the Court. If you think the Court made a mistake in sending the compliance letter, **email** probate.compliance@traviscountytx.gov. See compliance procedures on the last page of this handout and on the compliance page of the Court's website, <https://www.traviscountytx.gov/probate/compliance>.
4. Question about filing fees? First, check the posted list of fees on the Clerk's website. If you still have a question, call the Clerk, not the Court, with your question: (512) 854-9188.
5. If you have questions or issues relating e-filing, or need further clarification about a pleading that was rejected when you attempted to e-file it, please contact the Clerk's Office for guidance. In most situations, court staff will not know the reason for the rejection or be able to help you navigate the e-file system.

When should you call or email?

1. If it's been 10 days since you paid an ad litem deposit, and you haven't received an email about an ad litem appointment, please email tom.ruffner@traviscountytx.gov.
2. If it's been 4 weeks since you filed a small estate affidavit, and an order hasn't been signed **and** you haven't heard anything from the Court about a problem, email mike.jones@traviscountytx.gov.
3. If you filed an application to sell property, and you haven't received notice of the hearing date by **Tuesday following the Thursday posting date**, please contact probate.hearings@traviscountytx.gov.

An aside about posting day math: Though the Clerk’s Office now posts every day, posting more frequently does not change the earliest date a hearing could be held because no hearing can be held before 10:00 a.m. **on the first Monday following 10 days after the posting.**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					Earlier posting day?	①
②	③	④	⑤	Posting day ⑥	1 ⑦	2 ⑧
3 ⑨	4 ⑩	5	6	7	8	9
10	THIS is the “next Monday” – whether posted on the Thursday posting day or any of preceding 6 days					

Other hints related to contacting the Court

1. **Who in your office should be contacting the Court?** *The person actually doing the work is the person who should be talking to the Court with any questions.*
2. Before calling the Court with a question, read the relevant materials we have posted on our website. We work hard to prepare helpful documents; please use them.
3. Do not talk about the same issue to multiple people at the Court without full disclosure. And don’t leave the same message for multiple people at the Court without full disclosure. (And if you leave multiple messages and get an answer, *please* call back the others you left a message with!)
4. If you send an email or leave a message about a case, give both the cause number and the name of the case.
5. Please promptly return all phone calls from Court personnel.

Travis County Probate Court Hearing Schedule (non-jury weeks)

(Four things change with a Monday holiday: Sales docket moves to Wednesday, no Tuesday uncontested probate docket, but longer one on Thursday, and uncontested guardianship docket shifts to 11am.)

	Monday	Tuesday	Wednesday	Thursday	Friday
8:00-9:00					
9:00-10:00	<p style="text-align: center;">All yellow = "Regular Docket"</p> <p><i>The Court's regular docket is for all contested cases, and all hearings in uncontested cases that don't fit on one of the Court's uncontested dockets.</i></p> <p><i>To set cases on the regular docket, see instructions to the right of the star in the yellow box below.</i></p>	<p>Uncontested Probate Docket 8:30, 8:45, & 9:00: = non-record cases <i>No form needed to set uncontested will prove ups. File the original will & request a hearing date by emailing probate.hearings@traviscountytx.gov</i></p> <hr/> <p>9:15 = uncontested-docket heirship cases <i>To set, use the Uncontested-Docket Heirship Setting Request Form</i></p>	<p>Mental Health Docket: Commitment Hearings at Austin State Hospital</p>	<p>Uncontested Probate Docket 8:30, 8:45, & 9:00: = non-record cases 9:15 = uncontested non-heirship record cases, (copies, over 4 years, successors) <i>No form needed to set uncontested will prove ups. After you file the original will (or the copy of a will you are seeking to probate), simply email probate.hearings@traviscountytx.gov</i></p>	
10:00-11:00	<p style="text-align: center;">Sales Docket</p>				
11:00-noon					
noon-1:00	The Court is closed for lunch				
1:00-2:00					
2:00-3:00					
3:00-4:00					
4:00-5:00					
★	<p>The times marked in yellow above are used for the Court's "regular docket": hearings for everything except uncontested probate, uncontested guardianship, and mental health. To set any hearing on the regular docket other than an heirship, email a Regular Docket Hearing Request Form to probate.hearings@traviscountytx.gov. For an heirship, email the Regular Docket Heirship Setting Request Form to heirships@traviscountytx.gov.</p>				
5	<p>For uncontested applications to sell property, the Court will email counsel an order setting the hearing: 1st Monday after 10 days (or Wednesday if Monday holiday)</p>				
	<p>Except during jury trials, the times marked in white above are normally used for hearing preparation and not for hearings. The Court is open.</p>				

Overall points to keep in mind about setting hearings:

- **Use the Court's Regular Docket Hearing Request Form to request available hearing dates and times for everything *except* uncontested will prove-ups, uncontested guardianships, and all heirships.** Email the completed form to probate.hearings@traviscountytx.gov. The form is available on the Court's website. See below for how to set heirships, uncontested will prove-ups, and uncontested guardianships.
- **The Court requires that all hearings be specifically set; no Court dockets are "drop in" dockets.** See procedures on this page for how to set different types of hearings.
- **Please consult with others before setting a hearing** – any ad litem, other attorneys, witnesses, etc.
- **Calling or emailing to find out possible times for a hearing is not the same as setting a hearing.** Until you have a confirmation, no hearing is set. A different hearing may have been set at a time that had been available when you first emailed or called about available dates and times.
- **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. **Only the person who set the hearing may cancel it.**

Establishing a Guardianship	<ul style="list-style-type: none"> • Before setting a hearing on – or even filing – a request for temporary guardianship, talk with Victoria Seybold, Court Investigator, at 512-854-4978. • Before scheduling <i>any</i> hearing to establish a guardianship, read the Court's <u><i>Uncontested Guardianship Docket Procedures</i></u>, and consult with the ad litem to decide whether the case should be heard on the Court's uncontested guardianship docket. <p>The uncontested guardianship docket is reserved for those few cases in which</p> <ol style="list-style-type: none"> (1) there are no issues regarding the incapacity of the proposed ward, the scope of the guardianship, the admissibility of the physician's certificate, or the suitability of the applicant to serve as guardian, (2) the physician's certificate has been filed and clearly supports the scope of the guardianship being sought, (3) nothing in the file suggests less restrictive alternatives might be available, and (4) the proposed Ward was the only person who needed to be served (everyone else signed a waiver). • To schedule a hearing on the uncontested guardianship docket, email or fax an <i>Uncontested Guardianship Docket Setting Request Form</i> to the Court. (See procedures.) • To schedule a hearing on the regular docket, follow the "Regular Docket" procedures in the far right column.
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Declaring Heirs or Probating a Will	<ul style="list-style-type: none"> • Before setting a hearing on a request for temporary administration, talk with Tom Ruffner, the Court Administrator, at 512-854-9559. <p>Setting a Hearing to Declare Heirs</p> <ul style="list-style-type: none"> • First decide whether the heirship case should be set on the uncontested probate docket or on the regular docket. Schedule an heirship case on the regular docket not only if a contest (or any answer that could be construed as a contest) has been filed, but also if there are unusual circumstances that need to be addressed – even if there is no contest about these issues. For example, schedule an heirship on the regular docket if there is a common-law marriage, an adoption, a declaratory judgment, a settlement agreement, DNA evidence, or expert testimony. Heirship cases should be scheduled on the uncontested probate docket only if there is no contest and no unusual circumstances to be addressed by <i>any</i> extra testimony. • Once you – and the ad litem – have decided which docket the heirship case should be set on (uncontested or regular), email the appropriate heirship setting request form to heirships@traviscountytx.gov (strongly preferred) or fax to 512-854-4418. Do not call the Court to schedule an heirship hearing. <p>Setting a Hearing to Probate a Will</p> <ul style="list-style-type: none"> • "Uncontested probate docket" or "regular docket"? If there's any issue about the will's validity or if the court will need to construe the terms of a will, follow the "Regular Docket" procedures at the right to set a hearing. If it's a simple will prove-up with no declaratory judgment required: (1) file the will and (2) <i>after</i> the will has been filed, email probate.hearings@traviscountytx.gov and ask to set the case on the uncontested probate docket – no setting form needed. But see below: <ul style="list-style-type: none"> • If you decide that a probate case should be on the uncontested probate docket, there's a second question to ask before you email or call for a setting: Does the case need to be on the record? The answer is "yes" if there will be any heirship or related testimony. <i>Thus all of the following must be on the record, even when on the uncontested docket:</i> copy of a will, muniment of title when testator died more than four years before the will was filed for probate, and appointment of a successor (but not an alternate) executor. Normal time: Thursdays at 9:15 a.m.
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Jury Trials	To schedule a jury trial, call the Probate Court Coordinator, at 512-854-9258 or email probate.hearings@traviscountytx.gov .
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All Other Hearings: "Regular Docket"	<ul style="list-style-type: none"> • Schedule all other types of hearings on the Court's "regular docket" by emailing a completed Regular Docket Hearing Request Form to probate.hearings@traviscountytx.gov. • For emergency settings, first contact either <ul style="list-style-type: none"> ✓ Court Investigator Victoria Seybold at 512-854-4978 for temporary guardianships or TROs related to guardianships, or ✓ Court Administrator Tom Ruffner at 512-854-9559 for Temporary Administrations or other TROs. • All hearings on <i>accountings</i> must be arranged with the Probate Auditor. Do not contact the Court Coordinator directly to set a hearing on an accounting. (People often call to set hearings on accountings when it is too early for a hearing or there is no need for a hearing.) • On the Regular Docket Hearing Request Form, indicate every matter to be heard so the Court can allocate sufficient time for the hearing. To ensure the docket runs on time, the Court cannot hear additional matters not previously set with the Court. • You cannot add an additional matter to someone else's hearing. Only the person who set a hearing originally can contact the Court and ask that a matter be added – and that can be done only if the Court has sufficient time to hear the additional matter.
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TRAVIS COUNTY PROBATE COURT NO. 1

1000 Guadalupe Street, Travis County Courthouse, Room 217

Uncontested-Docket Heirship Setting Request Form; use for:

- (1) Hearing to Determine Heirship (with or without administration) or
- (2) Hearing to appoint Dependent Administrator (and to set later hearing for Determination of Heirship)

To set a hearing, fill out this form and email to heirships@traviscountytexas.gov (preferred) or fax to 512-854-4418. It may take up to a week for the Court to check the file and get back to you. *No heirship hearing will be set until **all** boxes have been checked or marked as not applicable. If you want a hearing to appoint a dependent administrator with a later heirship determination, not all boxes need to be checked, but tell us this is what you are requesting.*

Today's date: _____ Estate of: _____

Cause No.: C-1-PB-_____ - _____ Ad Litem's name: _____

Email address where the Court can reach you: _____

*If, after review, the Court determines the case is ready to be set, we will contact you with the next available hearing dates and times. **Note that no hearing has been set until the Court contacts you with a confirmed date and time; please don't give witnesses an expected hearing date until after you've heard from the Court.***

I have completed service on or filed waivers from all non-applicant heirs and have filed the required affidavit or certificate:
 (Remember that a surviving spouse is not the sole heir unless Decedent was an only child and an orphan)

- Waiver in lieu of citation: I have filed a waiver of citation from all non-applicant heirs that are not being served
- Personal service: I have verified that the Sheriff/Constable has filed the officer's return of citation for all non-applicant heirs that were personally served
- For all non-applicant heirs aged 12 to 17: I have verified that the Sheriff/Constable has filed the officer's return of citation for all non-applicant heirs aged 12 to 17, **OR** I certify that the minor(s) will be present at the hearing
- For all non-applicant heirs under the age of 12: I have filed waiver(s) of citation from the minors' parent or guardian
- I have filed the affidavit or certificate required by Estates Code § 202.057.** (Always required, whatever service needed)
- Citation by Publication: I have filed the required publisher's affidavit for citation by publication. (Always required)
- If my applicant is seeking independent administration without bond, I have filed an express consent from all non-applicant heirs agreeing to the appointment of an independent administrator without bond (and from the applicant unless expressly included in the application)
- I have verified that the Attorney ad Litem (1) has filed or is ready to file a report and (2) is ready to proceed with a hearing

I verify that this case **does not involve** any issues that would require it to be heard on the Court's regular docket, including – but not limited to – the following. **Please verify every statement:**

- This case does not involve an informal or common-law marriage
- This case does not involve either a declaratory judgment or a settlement agreement
- This case does not require evidence/testimony proffered by an expert such as an investigator and/or DNA evidence
- No contest (or answer that could be construed as a contest) has been filed
- Check one: This case does not involve an adoption **OR**
 This case involves an adoption, but it is a formal (not equitable) adoption, and no one questions the adoption
- Check one: Decedent had no will **OR**
 Decedent had a will or a copy of a will, and that will is being offered for probate
- I will email proposed hearing documents to the Court in editable format right after the hearing date is confirmed
- Check one: I do not need an interpreter **OR**
 I need an interpreter and will arrange for a licensed court interpreter at the hearing

Certification of Applicant's Attorney: *By my signature below, I certify to the Court and its staff that, before submitting this request, I completed all of the checked items as indicated above, and I verified all of the checked items as indicated above.*

Applicant's Attorney (Printed Name)

Applicant's Attorney (Signature)

State Bar No. _____

Revision date: 2/13/2017



TRAVIS COUNTY PROBATE COURT NO. 1

1000 Guadalupe Street, Travis County Courthouse, Room 217

Regular Docket Heirship Setting Request Form (not the uncontested heirship docket); use for:

- (1) Hearing for Determination of Heirship (with or without administration) or
- (2) Hearing to appoint Dependent Administrator (and to set later hearing for Determination of Heirship)

To set a hearing, fill out this form and email to heirships@traviscountytx.gov (preferred) or fax to 512-854-4418. It may take up to a week for the Court to check the file and get back to you. *No heirship hearing will be set until **all** boxes have been checked or marked as not applicable. If you want a hearing to appoint a dependent administrator with a later heirship determination, not all boxes need to be checked, but tell us this is what you are requesting.*

Today's date: _____ Estate of: _____

Cause No.: C-1-PB-_____ - _____ Ad Litem's name: _____

Email address where the Court can reach you: _____

I have completed service on or filed waivers from all non-applicant heirs and have filed the required affidavit or certificate:

(Remember that a surviving spouse is not the sole heir unless Decedent was an only child and an orphan)

- Waiver in lieu of citation: I have filed a waiver of citation from all non-applicant heirs that are not being served
- Personal service: I have verified that the Sheriff/Constable has filed the officer's return of citation for all non-applicant heirs that were personally served
- For all non-applicant heirs aged 12 to 17: I have verified that the Sheriff/Constable has filed the officer's return of citation for all non-applicant heirs aged 12 to 17, **OR** I certify that the minor(s) will be present at the hearing
- For all non-applicant heirs under the age of 12: I have filed waiver(s) of citation from the minors' parent or guardian
- If there is a copy of a Will that is not being offered for probate, I filed the Will copy and have also completed service on or received appropriate waivers from all Will devisees so they have an opportunity to rebut the presumption of revocation
- I have filed the affidavit or certificate required by Estates Code § 202.057. (*Always* required, whatever service needed)
- Citation by Publication: I have filed the required publisher's affidavit for citation by publication. (*Always* required)
- If my applicant is seeking independent administration without bond, I have filed an express consent from all non-applicant heirs agreeing to the appointment of an independent administrator without bond (*and* from the applicant unless *expressly* included in the application)
- I have verified that the Attorney ad Litem (1) has filed or is ready to file a report and (2) is ready to proceed with a hearing

I verify that this case involves the following issue(s) that make it appropriate for setting on the Court's regular docket:

- This case involves an informal or common-law marriage
- This case involves (1) a formal adoption about which there is a question or (2) an equitable adoption
- This case involves a declaratory judgment, a settlement agreement, or both
- This case involves DNA evidence and/or expert evidence/testimony (e.g., from a private investigator)
- A contest (or an answer that could be construed as a contest) has been filed
- Decedent had a Will or a copy of a Will, and that Will is not being offered for probate. (*File Will, etc. See above.*)
- Other: _____

I will email proposed hearing documents to the Court in editable format right after the hearing date is confirmed

Check one: I do not need an interpreter **OR**
 I need an interpreter and will arrange for a licensed court interpreter at the hearing

Certification of Applicant's Attorney: *By my signature below, I certify to the Court and its staff that, before submitting this request, I completed all of the checked items as indicated above, and I verified all of the checked items as indicated above.*

Applicant's Attorney (Printed Name)

Applicant's Attorney (Signature)

State Bar No. _____



Setting Request Form, Uncontested Guardianship Docket

To set a hearing, fill out and email to Victoria.Seybold@traviscountytx.gov, or fax to Victoria Seybold at (512) 854-4418. After checking the file, she will contact you about setting the case on the docket.

Date: _____ Preferred hearing dates:** _____

Cause No.: C-1-PB-____-_____, Guardianship of: _____
Guardianship sought: Person only Estate only Person & Estate

Phone number where the Court can call to give you the hearing date and time: _____

**** Note that no hearing has been set until the Court contacts you with a confirmed date and time.**

Ad Litem's name: _____

Applicant's Attorney: My signature below indicates my certification to the Court and its staff that I am verifying all of the checked items as indicated below after conferring with the attorney ad litem.

- The proposed guardian has submitted the registration information to the Judicial Branch Certification Board.
- The proposed guardian has submitted the criminal background check to the Judicial Branch Certification Commission.
- The proposed guardian has completed the training, and I have filed the guardianship training certificate of completion.

I have conferred with the attorney ad litem and we agree that this case should be set on the uncontested guardianship docket because of the following. Please verify each statement, or set the case on the regular docket.

- The case does not have any contested issues regarding the incapacity of the proposed ward.
- The case does not have any contested issues regarding the scope of the guardianship.
- The physician's certificate (1) *has already been filed* and (2) *clearly supports the scope* of the guardianship being sought. In addition, (3) the attorney ad litem will not object to the admissibility of the physician's certificate.
- There is nothing in the file that suggests less restrictive alternatives might be available. *(If less restrictive alternatives might be available, the Court will not be able to investigate within the timeframe required by uncontested guardianship docket procedures.)*
- The case does not have any contested issues regarding the suitability of the applicant(s) to serve as guardian(s).
- Except for the proposed ward, everyone required to be served under Texas Estates Code § 1051.103 has filed a waiver.
- The case can be heard in no more than 15 to 20 minutes.
- I have considered the following in determining that this case is appropriate for the uncontested guardianship docket:
the nature and extent of the proposed ward's general intellectual and physical functioning;
the extent of the proposed ward's incapacity;
the ability of the proposed ward to make responsible and informed decisions and to manage personal and financial affairs prudently;
the impact of the proposed ward's incapacity on his or her ability to carry out daily living activities;
the type and scope of guardianship necessary to promote and protect the proposed ward's best interests;
the ability of the proposed ward to participate meaningfully in the guardianship proceeding; and
the desire of the proposed ward to appear at the hearing.
- Before the requested hearing date, we will have (1) personal service on the ward and (2) waivers from or notice to all parties as required by Texas Estates Code §§ 1051.103 and 1051.104. *(If anyone other than the proposed ward will require personal service under § 1051.103 rather than signing a waiver, the case must be heard on the regular docket.)*
- I read the Court's uncontested guardianship-docket procedures effective 6/1/2018, and I understand that the proposed guardian must complete all required paperwork before the scheduled hearing time. I also understand that the Court prefers I submit the proposed guardian's paperwork to the Court at least a day before the hearing.
- I have verified that the Attorney ad Litem can attend the hearing on the preferred hearing date(s).

Check one: The proposed ward will attend the hearing. **OR** The proposed ward will not attend the hearing.

Check one: I do not need an interpreter. **OR** I will arrange for a licensed court interpreter at the hearing.

Applicant's Attorney (Printed Name) & Texas State Bar No.

Applicant's Attorney (Signature)



Travis County Probate Court No. 1 Hearing Request Form

Instructions: Fill out the following form completely to request hearing dates and times on the regular docket. Add this form as an attachment and e-mail to probate.hearings@traviscountytexas.gov.

Do not use this form if you want to request hearing dates and times for an heirship or for a case on the uncontested probate docket or uncontested guardianship docket.

Cause Number:

Amount of Time Required:

Case Style:

Case Type:

List Attorneys for **ALL** parties:

Attorney Ad Litem:

Pleading(s) to be Heard:

Date(s) Filed:

*Before submitting a hearing request to appoint a guardian (temporary, permanent, or successor), each person who is seeking to be appointed guardian must have submitted his or her registration information to the JBCC and, if applicable, completed the criminal background check and the guardianship training (and you filed the training certificate of completion). **The Court will not set a hearing to appoint a guardian until those requirements are completed.**

The Court will provide you with the next available dates for the requested hearing. Indicate in the box below any specific requests you and any other attorneys involved have as to the day of the week or as to the week or month, etc., for which you would like available dates and times. Note that the Court strongly prefers that all counsel agree to the date and time of a scheduled hearing.

DO NOT FILL OUT - FOR COURT STAFF ONLY

Hearing Date & Time:

Initials

Date:

Comments:

How do you get documents to the Court for review?

Before the Travis County Clerk's Office implemented its current document management system, the Clerk's Office printed pleadings and forwarded them to the Court. Now the Clerk's Office no longer prints pleadings for the Court or for a physical file – and that changes the dynamic of how you need to get documents to the Court for review. See below and the next page for the typical procedures for getting pleadings or proposed orders to the Court for review in the following situations:

1. Procedures for **all will prove-ups and heirships** (whether on the uncontested probate docket or on the regular docket). See #1 below.
2. Procedures for **annual and final accounts**. See #2 below.
3. Procedures when you think a proposed order **can be signed without a hearing**. See #3 below and on the next page.
4. Procedures for pleadings and proposed orders **when there will be a hearing** (except for will prove-ups and heirships). See #4 on the next page.

1. Procedures for all will prove-ups and heirships (uncontested probate docket or regular docket)

For information about how to get documents to the Court for all will prove-ups and heirships – on the uncontested probate docket or on the regular docket – please see the Court's detailed handout: *Submitting Paperwork for Will Prove-ups and Heirships: When & How*. The handout is available at the Court or online at https://www.traviscountytexas.gov/images/probate/Docs/will_prove-ups_heirships.pdf.

2. Procedures for annual and final accounts

For information about how to get to the Court everything that must be submitted before the Court can review an annual or final account, please see Administrative Order 2019-4, available at the Court or online at <https://www.traviscountytexas.gov/images/probate/Docs/admin-order-annual-final-accounts.pdf>.

3. Procedures when you think a proposed order can be signed without a hearing

With the Clerk's current system, the clerks have no way to electronically forward an application or motion to the Court, but they can electronically forward a related proposed **order**. Therefore, when you file a pleading that you think can be acted on **without** a hearing, you need to e-file a proposed order using the procedures set out immediately below. **If you don't e-file a proposed order, the Court won't even know the pleading has been filed.**

- E-file ***in the same e-filing envelope*** both (1) the motion/application that seeks to have the Court sign an order and (2) the proposed order, attached to a cover letter:
 - (1) E-file the motion or application as the first lead document in the e-filing envelope.
 - (2) E-file the cover letter – with the proposed order attached to the cover letter – as another lead document ***in the same e-filing envelope***.
 - (3) ***Do not include substantive information on the cover sheet.*** The cover sheet is simply a means of getting the proposed order to the Court given the e-filing and document management systems.
- Because these orders will be electronically signed if there is no need for a hearing, please follow the guidelines below and on the next page when drafting the e-filed order:
 - (1) *When an order will be electronically signed*, don't add a date line before the signature at the end of the proposed order; the date will be automatically added. (Do include date line on other orders.)

(Guidelines for drafting an e-filed order are continued on the next page.)

3. Continued: procedures when you think a proposed order can be signed without a hearing

- (2) Do not leave a blank to be filled in with the date the order is signed at the beginning of a proposed order. If you want to begin an order by referring to the date the order will be signed, put “On this day” instead of “On _____,” since the signature date will provide the needed information.
- (3) When you have a proposed order that includes a **necessary** blank – for example an attorney fee order – be sure to leave enough vertical and horizontal space for the blank to be filled in electronically. (Not single spaced, and not too short a line.)
- If the Court needs to change an order, the Court may later ask you to email the proposed order to the Court.

When Can an Order Be Signed Without a Hearing?

There is no comprehensive list of orders that can be signed without a hearing, nor is there a comprehensive list of orders that can never be signed without a hearing. But the lists below may give you a better sense of what types of pleadings typically do and don't require a hearing before an order can be signed.

Note the “usually” in both lists below; there are exceptions. For example, even if it's a type of pleading that can usually be acted on without a hearing, the Court will require a hearing if someone has filed an objection to the pleading. Exceptions to the “usually require a hearing list” are less common, but they do occur. For example, if the Court is very familiar with a case from previous hearings – including hearings on similar pleadings – the Court might decide to act on a pleading without a hearing if no objection has been filed.

Examples of pleadings that can usually be acted on without a hearing:

- Inventories
- Inventory extensions
- Attorney fee requests
- Agreed motions for withdrawal & substitution
- Decree confirming sale
- Application to examine safe deposit box
- Small estate affidavits
- Application to Require Financial Institution to Release Information under Estates Code Chap. 153

Examples of pleadings that *usually* require a hearing, even when it's not a contested proceeding:

- Application to sell property
- Application by a PR to purchase estate property
- Application to hire counsel for contingent fee cases where more than 1/3 is sought as a fee
- Application for allowance
- Applications for distribution
- Motion to set aside exempt property
- Motions to withdraw where no attorney substituting in
- Motion for substituted service
- Motion to ratify

4. Procedures for pleadings and proposed orders when there will be a hearing

(For will prove-ups and heirships, see #1 above instead of what follows.)

Pleadings. Now that the Clerk's Office is neither printing pleadings nor keeping a complete paper file, the Court appreciates getting courtesy copies of relevant pleadings **IF** it's a hearing where many pleadings will be heard – or where especially long pleadings will be heard. For courtesy copies to be helpful, the Court does need them in advance – but **not** before a hearing is set! Clearly mark as a courtesy copy, and **include date and time of the hearing.**

Orders. **When there will be a hearing, the Court prefers that you email proposed orders to the Court,** even if you also follow the e-filing procedures in #3 above:

- Email in editable format (preferably Word or rtf).
- Put the date of the hearing in the subject line.
- Email to the appropriate person at the Court, depending on the type of hearing:

For hearings related to accountings, reimbursements, or fees	probate.auditors@traviscountytx.gov
For hearings related to guardianships and management trusts (except for accountings, reimbursements, or fees)	victoria.seybold@traviscountytx.gov
For heirships (please see #1 on previous page)	heirships@traviscountytx.gov
For all other hearings	mike.jones@traviscountytx.gov

Submitting Paperwork for Will Prove-ups and Heirships: When & How?

Travis County Probate Court No. 1

Note to pro se applicants. If you are probating a Will as a muniment of title and do not have an attorney, you are not required to e-file. When the instructions here say to **e-file** a document, you may deliver the document to the **County Clerk**. When the instructions say to **email** a document, follow the email instructions or deliver the document to the **Court**.

It is the Court's policy to review, before the hearing, documents for probate prove-up hearings – not only for uncontested-docket hearings, but also for most regular-docket probate prove-ups. By reviewing documents in advance, the Court can ensure that hearings go more smoothly for participants who are already dealing with the stress of someone's death. Attorneys also benefit from smoother hearings and can avoid having errors pointed out to them in front of their clients. Because the Court hears 40-60 probate prove-ups every week, we ask that you help by submitting documents timely, which will enable us to review the file and get back to you timely.

1. Do when you e-file the application.

- E-file Decedent's death certificate (Social Security Number redacted) as a separate document, or deliver an original to the Clerk's Office along with the original Will. If you do not have the death certificate yet, please file right after you set the hearing – or definitely no later than a week before the hearing.
- For a Will probate, the Court recommends (but does not require) that you file a pdf of the Will with your application as a separate document.

2. Do within 3 business days after e-filing application to probate a Will.

- TRCP Rule 21(f)(12) requires that any original Will must be **physically filed in the Clerk's office** within three business days after the application is electronically filed.
- If you are probating a copy of a Will or there is a copy of a Will that you are not offering for probate, this Court requires by Administrative Order that the actual copy of the Will being offered for probate (or filed and not offered for probate) must be **physically filed in the Clerk's office** within three business days after the application is electronically filed. Having the copy helps the Court in its evaluation.

3. Do before setting an heirship hearing.

- To set an heirship hearing, you must submit an heirship setting request form. The current forms are always available on the Court's website.
- There are two versions of the form – one to request a hearing on the uncontested probate docket and the other to request a hearing on the regular docket. The forms will help you determine which docket to request. Bottom line: even if no contest, heirships belong on the regular docket if there will be *any* extra testimony.
- An heirship setting request form must be filled out completely before an heirship hearing is set, so consider using the form as a checklist of basic things that must be done before you send in the setting request form.
All of the following need to be completed and e-filed before you send in a request to set an heirship hearing:
 1. Service of citation on – or waiver from – all non-applicant heirs and other persons requiring notice under Texas Estates Code § 202.008.
 2. Consents from all heirs if seeking independent administration.
 3. Affidavit of citation by publication. (Clerk prepares citation; you publish and then file affidavit.)
 4. Section 202.057 affidavit or certificate. See the statute; don't forget 202.057(a)(2)(**A**)!

4. Do as soon as you set a probate prove-up hearing.

For ALL probate prove-ups:

- **As soon as you set the hearing, please email all proposed hearing documents to the Court.** This helps the Court enormously – and getting it out of the way means you don't need to calendar a future deadline.
- We prefer Word or rtf in case modifications are needed. Other editable formats are okay. Don't email only scanned pdfs, etc.; emailing back and forth about changes takes time. We'll clean up formatting if needed.
- Put the hearing date and estate name in the subject line of the email. We keep track of docs by hearing date.
- NEVER E-FILE documents that will be signed *after* a hearing such as testimony, oaths, and orders. With the clerk's document management system, the Court will not see *proposed* documents that are e-filed for probate prove-ups. TRCP 21(f) doesn't apply since these documents aren't actually "filed" before the hearing.

For Will probates (with no intestacy or partial intestacy):

- Email all proposed documents to be signed after the hearing to Mike.Jones@traviscountytexas.gov.
- For letters testamentary or letters of administration with will annexed, email the following *at a minimum*:
 1. Proof of death and other facts
 2. Order (with exact title)
 3. Oath (with exact title)
- For muniment of title, email the following *at a minimum*:
 1. Proof of death and other facts (include testimony about no debts; don't use separate oath of no debts)
 2. Order (with exact title)
- **Additional documents are needed for (1) wills that are not self-proved, (2) copies of wills, and (3) wills being probated more than four years after death.** See Estates Code and the Court's website for more information.

For heirships (or dependent administration with heirship to follow):

- Email all proposed documents to heirships@traviscountytexas.gov.
- Email the following documents at a minimum. If DA with heirship to follow, you do not need #2 or #4 yet.
 1. Proof of death and other facts
 2. Statement of facts concerning the identity of heirs for each of two disinterested witnesses
 3. Oath (if seeking administration)
 4. Electronic version of heirship chart (the Court prepares the Judgment, but the chart makes it easier)

5. Do at least one week before the hearing date. (*Earlier is helpful!*)

- **E-file** everything else the Estates Code or the Court requires before an order could be signed. **For example:**
 1. Death certificate if not e-filed when the application was first e-filed (earlier definitely preferable)
 2. Motion for Alternate Proof (with proposed order) if you plan to prove up a non-self-proved Will by (1) the deposition of a subscribing witness or by (2) the testimony of two disinterested witnesses
 3. Declinations of executors with priority
 4. Proof of reason other executors with priority can't serve (e.g., death certificate or letter from physician)
 5. Consents or waivers (for example, if the Will does not name an independent executor without bond)
 6. Appointments of resident agents
 7. Deposition answers
- If you haven't done it yet, **email** the Court all proposed documents to be signed after the hearing. When documents are late for even a handful of those 40-60 weekly prove-ups, we're already behind on our review.

If you have questions about Will probate prove-ups, please email the Probate Staff Attorney at Mike.Jones@traviscountytexas.gov, or call him at (512) 854-9283.

For heirship questions, email heirships@traviscountytexas.gov.

C-1-PB-19-000002

Administrative Order	§	In the Probate Court
	§	
2019-4	§	Number One
	§	
[Amending Administrative Order 2013-2, signed December 2013; Administrative Order 2014-5, signed May 14, 2014; and Administrative Order 2017-1, signed February 3, 2017]	§	
	§	Travis County, Texas

**Administrative Order Regarding the Filing of Annual and Final Accounts
following the Texas Supreme Court’s Adoption of
Texas Rule of Civil Procedure 21c**

In December 2013, this Court found there was need for an Administrative Order regarding the filing of annual and final accounts following the Texas Supreme Court’s adoption of Texas Rule of Civil Procedure 21c. In May 2014, this Court signed an amended Administrative Order that required attorneys to submit to the Court in two formats (hard copy and electronic) **both** an unredacted copy of the accounting **and** an unredacted copy of all necessary back-up. In February 2017, this Court signed an amended Administrative Order updating the contact information referred in this Order. The Court now finds there is need to amend the Administrative Order again to update contact information referred in this Order.

On December 13, 2013, the Supreme Court of Texas adopted Texas Rule of Civil Procedure (TRCP) 21c, Privacy Protection for Filed Documents, effective January 1, 2014. Rule 21c defines sensitive data as follows:

- (1) a driver’s license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;
- (2) a bank account number, credit card number, or other financial account number; and
- (3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

Unless sensitive data is specifically required by a statute, court rule, or administrative regulation, a document containing sensitive data may not be filed unless the sensitive data is “redacted by using the letter ‘X’ in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted.” **The filing party is required to retain an unredacted version of the filed document while the case is ongoing.**

Given Rule 21c, the undersigned presiding judge of Travis County Probate Court No. 1 finds there is need for an administrative order setting out new procedures to be followed when annual and final accounts are required in guardianship and probate estates. **The Court cannot audit an accounting without access to both an unredacted accounting as well as unredacted back-up.**

It is therefore ordered that the following procedures must be followed when any annual or final account is filed in Travis County Probate Court No. 1, effective immediately.

- File the accounting in compliance with TRCP 21c, redacting sensitive data as needed (for example redacting sensitive data in the required verifications of deposit, confirmations of safekeeping, and tax affidavits).
- File the accounting electronically as required by Texas Supreme Court Order and TRCP Rule 21.
- **No financial statement, check copy, or other back-up to an annual or final accounting shall be filed with the Clerk, whether or not any sensitive data is redacted.**
- Within 7 business days of filing the accounting, deliver the following to the Court:
 1. An **unredacted paper copy of the filed accounting. On the first page, clearly indicate the date the accounting was filed.** Deliver by mail or by hand-delivery to the office of the Court Coordinator.
 2. **Unredacted paper copies of all required back-up** including financial statements (for example, all bank statements, copies of returned checks, brokerage statements, etc.). Copies or originals are acceptable, as long as they are unredacted. Deliver by mail or by hand-delivery to the office of the Court Coordinator.

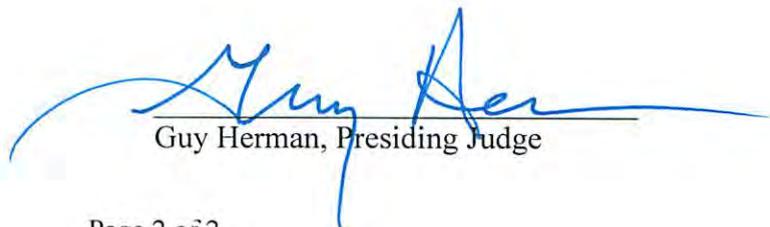
The Court will not file the back-up. Counsel has 30 days after an accounting is approved to pick up the hard-copy back-up that was delivered to the Court. If the back-up is not picked up within 30 days, the Court will destroy it.

3. An **electronic version of all required back-up** (see #2 above). This electronic version may be submitted on a flash drive delivered with the paper back-up to the office of the Court Coordinator or may be emailed to probate.auditors@traviscountytexas.gov.

The Court will retain an electronic version of the back-up in its internal files. Counsel may arrange to pick up a submitted flash drive after the electronic version of the back-up has been saved.

4. **If it is a first annual accounting, an unredacted copy of the inventory.**
5. **In a probate, the names and birth dates of all minor heirs, if any.**

Signed February 25, 2019.


Guy Herman, Presiding Judge

Things to consider when submitting an accounting

#1: Read and follow the Court's Administrative Order Regarding the Filing of Annual and Final Accounts (found on previous two pages).

Some specific hints:

1. Accountings are audited within 60 days *from receipt of backup* – *not* from the e-filing of the account.
2. E-file a Proposed Order with the Final or Annual Account. The Court will not be alerted to the filing otherwise.
3. Within 7 business days after an account is **e-filed** (with sensitive data redacted):
 - a. Deliver to the Court a **hard copy** of the *unredacted* accounting **and** all *unredacted* backup. If it is the first accounting, you must also include a copy of the Inventory.
 - b. Deliver to the Court an **electronic copy of all of the unredacted hard copy documents**, submitted via email, flash drive, or disc.
4. When emailing about an accounting, email probate.auditors@traviscountytexas.gov. However, if you are replying to an email from an individual email address, please reply to that specific address rather than to probate.auditors@traviscountytexas.gov.
5. When delivering hard copies, flash drives, or discs related to an accounting, deliver to the Court Coordinator's office, clearly indicating the date the accounting was e-filed.
6. What back-up is required? You must include **all pages of all Bank/Trust statements for the entire accounting period.**
7. If the Court needs to continually ask for complete backup, the completion of the accounting will be delayed.
8. Applications for Attorney's Fees and Applications for Reimbursement should be e-filed separately, not included as part of the accounting. Combined pleadings will delay the process.
9. If it's a final account, ensure that everyone interested has waived service or has been served. The accounting won't be approved until all service is complete.

Accounting Backup Documentation

Mail: Attn: Probate Auditors
Travis County Probate Court
Room 217
1000 Guadalupe
Austin, TX 78701

Drop Off: Travis County Probate Court
Room 217

- **Date:** _____
 - **Name of the Estate:** _____
 - **Cause Number:** _____
 - **Attorney:** _____
 - **Email:** probate.auditors@traviscountytexas.gov
-

Preparing documents: some miscellaneous hints

1. Change your forms to put the cause number as the header of proposed orders and hearing testimony. It's always helpful to have the cause number on every page, and your adding that information as a header will save us from needing to add cause numbers to the tops of signature pages of orders, etc.
2. If you change your forms to put the case style in a table, you'll never need to fiddle with tabs again to make everything line up correctly. (Formatting marks and lines included below to show the differences.)

Estate of¶	§¶	In Probate Court No. 1¶
¶	§¶	¶
Ronald Andrew Stephenson, a/k/a¶	§¶	of¶
R.A. Stephenson,¶	§¶	¶
¶	§¶	¶
Deceased	§	Travis County, Texas

Estate of	→	→	→	→	→	→	§	→	In Probate Court No. 1¶
→	→	→	→	→	→	→	§¶		
Ronald Andrew Stephenson, a/k/a	→	→	→	→	→	→	§	→	of¶
R.A. Stephenson,	→	→	→	→	→	→	§¶		
→	→	→	→	→	→	→	§¶		
Deceased	→	→	→	→	→	→	§	→	Travis County, Texas¶

3. **The titles of all of your documents should be specific** because specific titles make the clerk's docket sheet and the indexed documents in the clerk's databases more usable. For example, not "Order," but "Order Approving Annual Account from May 15, 2015 to May 14, 2016" . . . "Oath of Independent Executor" . . . "Testimony of Subscribing Witness."

Instruments the application seeks to have probated. In the *title* of the application, be sure to specify accurately which instruments are being filed for probate. For example, if you are seeking to probate a copy of a will and a codicil, specify *all* of that information in the title as well as in the body of the application. Otherwise, there is a risk that the application will be posted incorrectly, which will require reposting – with resulting costs and delay.

4. **Don't leave unnecessary blanks that will need to be filled in the day of the hearing.** A few things in a proposed document might need to be left as a blank until the hearing is held, but you can make the uncontested probate docket go more smoothly and more quickly if you draft your proposed documents so there aren't any unnecessary blanks. Two *examples*:

Put "On this day" instead of "On _____," since the signature date will provide the needed information.

In a proposed order, don't refer to an "application filed on _____." By the time you're sending in a proposed order, you should be able to add that filing date.

For the Proof of Death and Other Facts and any other testimony that witnesses will sign after the hearing, you will streamline the process if your signature block for the deputy clerk includes *all* needed information. Here's what the clerk's signature block should include

Dana DeBeauvoir County Clerk, Travis County, Texas By _____ Deputy
--

Continued: preparing documents

5. Remember that **every document must stand on its own**. For example, inventories must specifically indicate whether 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.
6. To the extent you're involved, **never bury a request** in a pleading. If you're asking the Clerk or the Court to do something, make sure the request is obvious. For example, if you're asking for personal service or asking for attorney's fees to come out of the registry of the Court, don't bury the request at the bottom of page 3.
7. **Proofread pleadings** – including titles – and pay attention to details such as the numbering of amended applications or amended motions.
8. All pleadings should be signed with **name, address, bar number, phone number, fax number, email address, and a reference to whom the attorney represents** – making life easier for the Court, the Clerk, and other attorneys (and following the Civil rules, for some of the information – including emails now!).
9. Certificates of service should include information about what party each attorney represents – again making life easier for the Court, the Clerk, and other attorneys. Do not ever simply state that “service was given to all parties of record.”

Sec. 202.005. Application for Determination of Heirship.	Sec. 301.052. Application for Letters of Administration. (4 years)
1. DECEDENT'S: <ul style="list-style-type: none"> name date of death place of death if not definitely known to the applicant, all the material facts and circumstances that might reasonably tend to show the time or place of the decedent's death or the name or residence of the heir 	1. DECEDENT'S: <ul style="list-style-type: none"> name date of death (less than 4 years before filing date) place of death last 3 digits of SSN last 3 digits of DL # (if known)
2. APPLICANT'S: <ul style="list-style-type: none"> name domicile relationship, if any, to the decedent 	2. APPLICANT'S: <ul style="list-style-type: none"> name and last 3 digits of SSN and DL# domicile relationship, if any, to the decedent
3. VENUE: facts necessary to show that the court with which the application is filed has venue	3. VENUE: facts necessary to show that the court with which the application is filed has venue
4a. HEIRS (for each): <ul style="list-style-type: none"> names physical addresses (no P.O. boxes) where service can be had on heirs (if not definitely known to applicant, all material facts & circumstances that might reasonably tend to show address for service) whether adult or minor relationship to the decedent true interest of the applicant and each of the heirs 	4b. HEIRS (for each): <ul style="list-style-type: none"> names adult or minor physical address of heir if known (not a P.O. box) (or state that address is not known) relationship to the decedent
5a. CHILDREN: All children born to or adopted by the decedent have been listed	5b. CHILDREN – also: (if known by applicant at time files the application) <ul style="list-style-type: none"> state whether one or more children were born to or adopted by decedent; if so: <ul style="list-style-type: none"> name, date, and place of birth of each child
6a. MARRIAGE: <ul style="list-style-type: none"> each of decedent's marriages has been listed the date of the marriage the name of the spouse date & place of termination if the marriage was terminated other facts to show whether a spouse has had an interest in the decedent's property 	6b. MARRIAGE – also: (if known by applicant at time files the application) <ul style="list-style-type: none"> whether decedent was ever divorced if so, when and from whom
7. INTESTATE <ul style="list-style-type: none"> whether the decedent died testate if so, what disposition has been made of the will 	7. INTESTATE <ul style="list-style-type: none"> that decedent died intestate
8a. PROPERTY: <ul style="list-style-type: none"> general description of property belonging to decedent's estate or held in trust for the benefit of the decedent 	8b. PROPERTY – also: <ul style="list-style-type: none"> whether decedent owned property if so, statement of the property's probable value
9. OMISSION OF REQUIRED INFORMATION? explanation for omission from application of any information required by section	
10. MEDICAID. If no administration requested then Application must include language regarding not receiving Medicaid benefits	10. NEED FOR ADMINISTRATION: <ul style="list-style-type: none"> that a necessity exists for administration of estate <i>allegation of facts</i> that show that necessity
	11. APPLICANT NOT DISQUALIFIED by law from acting as administrator and is entitled [or whoever seeking to serve]
Heirship request in the prayer?	Administration request in the prayer?
§202.007 Verification?	
If you are not seeking administration and the applicant is not an heir, the Court requires that the application include a physical address (no P.O. Box) for service on the applicant	If the proposed administrator is not an heir, the Court requires that the application include a physical address (no P.O. Box) for service on the administrator

CAUSE NO. C-1-PB-_____

ESTATE OF § IN PROBATE COURT NO. 1
JOHN DOE, § OF
DECEASED § TRAVIS COUNTY, TEXAS

PROOF OF DEATH AND OTHER FACTS

On this day, _____ (“Affiant”) personally appeared in open court and, after being duly sworn, deposed and said:

1. My name is _____ and [indicate relationship to Decedent]. John Doe “Decedent”) died on _____ in _____, at the age of _____ years, and four years have not elapsed since the date of Decedent’s death.
2. Decedent was domiciled in Austin, Travis County, Texas, on the date of [his/her] death.
3. To the best of my knowledge, Decedent died intestate.
4. A necessity exists for the administration of this estate because [Allege facts as to why administration is necessary. If no administration, state that and allege facts as to why no administration is needed, including required Medicaid statement.]
5. [If applicable] All of the Distributees have agreed on my being appointed to serve as Independent Administrator without bond.
6. [If applicable] I am qualified and not disqualified by law from accepting letters of independent administration.

Affiant

SUBSCRIBED AND SWORN TO BEFORE ME by _____ on the _____ day of _____, to certify which witness my hand and seal of office. [Fill in hearing date]

DANA DEBEAUVOIR
County Clerk of Travis County, Texas

By: _____
Deputy

Other notes:

- Do not include heirship facts except for Affiant’s relationship to Decedent.
- If seeking Dependent Administration, give information about assets of the estate so the Court can set an appropriate bond.
- If seeking Independent Administration, do not include estate values or details about debts or assets

Heirship Example

CAUSE NO. C-1-PB-_____

ESTATE OF § **IN PROBATE COURT NO. 1**
JOHN DOE, § **OF**
DECEASED § **TRAVIS COUNTY, TEXAS**

STATEMENT OF HEIRSHIP FACTS

On this day, _____ ("Affiant"), personally appeared in open court and, after being duly sworn, deposed and said:

1. My name is _____. I am over 21 years of age and reside at _____.
2. I am well acquainted with the family history of John Doe, a resident of Austin, Travis County, Texas, who died on _____, in _____ at the age of [number] years. I knew him/her for _____ years.
3. To the best of my knowledge, Decedent died intestate.
4. [Track **heirship facts** from 4a, 5a, 6a on the *Checklist of Information that the Estates Code Requires be Included in Heirship Applications*. Don't include non-heirship facts like addresses that must be in the application, but not the testimony. **Hints:** If Decedent had no children, include information about parents living or deceased. If no children and one parent or both parents predeceased, include information about all siblings and indicate which siblings were living at the time of Decedent's death. If any siblings predeceased, include information on the sibling's descendants. Using "was survived by" when referring to siblings can lead to gaps if you're not careful – might be better to avoid.]
5. Each marriage, if any, of the Decedent and all children, if any, born to or adopted by Decedent are stated in this Affidavit.
6. I am not interested in the probate estate of the Decedent, and I am not an heir of Decedent's estate under the laws of descent and distribution of the State of Texas.

[In this heirship testimony, do not include testimony about the estate values, debts, qualifications of Administrator – even though some probate forms do.]

_____, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME by _____ in open court on the ___ day of _____, 2017, to certify which witness my hand and seal of office. [Include date of hearing]

DANA DEBEAUVOIR
County Clerk of Travis County, Texas

By: _____
Deputy

No. C-1-PB-17-000000

Comment [MS1]: Make cause number a header so it shows up on every page.

IN THE ESTATE OF § IN THE PROBATE COURT
FRED FLINTSTONE, §
DECEASED § NO. ONE
§ TRAVIS COUNTY, TEXAS

**ORDER PROBATING WILL AND
AUTHORIZING LETTERS TESTAMENTARY**

On this day the Court considered the Application for Probate of Will and Issuance of Letters Testamentary filed by Wilma Flintstone (“Applicant”) in the Estate of Fred Flintstone, Deceased (“Decedent”).

The Court heard the evidence and reviewed the documents filed in this cause and finds the following:

Comment [MS2]: Compare numbers 1-7 with the one-sentence paragraph in the box on the next page. The numbered list is easier to read and edit – for us and for you! (And if you add “the following” as it is here, all of the numbered paragraphs can be full sentences instead of “that” clauses.)

1. This Court has jurisdiction and venue of Decedent’s Estate, the subject matter, and all persons and parties.
2. Notice and citation have been given in the manner and for the length of time required by law.
3. Decedent died on December 1, 2016, and four years did not elapse between the date of Decedent’s death and the filing of the Application.
4. Testator executed a valid Will on November 1, 2010.
5. Decedent never revoked the Will.
6. All the necessary proof required for the probate of the Will has been made.
7. Decedent’s Will named Wilma Flintstone to serve as Executor without bond.

Comment [MS3]: Don’t switch between “Testator” and “Decedent.”

Comment [MS4]: If you use this language, you don’t have to change your forms based on whether the will is self-proved or not.

Comment [MS5]: “Executor” without “independent” refers to a dependent executor. If you are seeking to have an Independent Executor appointed, change to “Independent Executor.”

It is therefore **ORDERED** that Decedent’s Will is admitted to probate and that the Clerk of this Court shall record the Will in the probate minutes of the Court.

Comment [MS6]: The Estates Code was amended to get rid of “probate minutes.” Change to “in the Judge’s probate docket.”

It is further **ORDERED** that the Clerk shall issue Letters Testamentary to Wilma Flintstone, who is appointed Independent Executor, when qualified according to law, and that no other action shall be had in this Court other than the return of an Inventory, Appraisement, and List of Claims or an affidavit in lieu thereof, as required by law, and the filing of an affidavit or certificate concerning notice to beneficiaries, as required by Chapter 308 of the Texas Estates Code.

Signed this ____ day of _____, 2017.

Comment [MS7]: Fill in blanks with date of hearing.

Judge Presiding

The Court, after having heard and considered the evidence, finds that legal notices of the filing of said Application have been issued and posted in the manner and for the length of time required by law, and no one came to contest same; and it further appearing that said Will was executed on November 1 2010 with the formalities and solemnities and under the circumstances required by law to make it a valid Will, was self-proved according to law during the lifetime of said Decedent; that such Will has not been revoked by Decedent; that Decedent died at his residence, in Travis County, Texas on December 1, 2016; that this Court has jurisdiction and venue over the estate because Decedent was domiciled in Texas and had a fixed place of residence in Travis County, Texas at the time of his death; that four years have not elapsed since the death of Decedent or prior to the said Application; that a necessity exists for the administration of this estate; that no state, governmental agency of the state, nor charitable organization is named by the Will as a devisee; that Decedent's Will named Wilma Flintstone to serve as Independent Executor to act independently without bond or other security, and the said Wilma Flintstone is not disqualified by law from serving as such or from accepting Letters Testamentary, and is entitled to such letters.

Check 10 key points *in the Will* to get all the paperwork right for letters testamentary

Key Points to Check	How to Check & How it Affects Paperwork, Related Testimony, etc.
<p>1. Was the will <u>validly executed</u>?</p>	<p>Don't forget to check the obvious question of whether the will was validly executed.</p> <p>Attested Will. See requirements in Texas Estates Code (“EC”) §251.051):</p> <div style="border: 1px dotted black; padding: 5px;"> <p>Except as otherwise provided by law, a last will and testament must be:</p> <ol style="list-style-type: none"> (1) in writing; (2) signed by: <ol style="list-style-type: none"> (A) the testator in person; or (B) another person on behalf of the testator: <ol style="list-style-type: none"> (i) in the testator’s presence; and (ii) under the testator’s direction; and (3) attested by two or more credible witnesses who are at least 14 years of age and who subscribe their names to the will in their own handwriting in the testator’s presence. </div> <p>Remember that according to EC §251.105, “[a] signature on a self-proving affidavit is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses or both, <i>except that, in that case, the will may not be considered a self-proved will.</i>” Emphasis added. See #4 below about self-proved wills.</p> <p>In addition, a will could be valid with only one “witness” <i>plus a notary who witnessed the signing of the will</i>. In that case, the Court strongly prefers that the notary be the subscribing witness in court. If the notary cannot appear in court, the court requires both (1) that the notary sign an affidavit with typical subscribing-witness information (modified to accurately state the notary’s role) and <i>with an attached copy of the relevant log book</i> and (2) that the one subscribing witness testify in court (or two disinterested handwriting witnesses testify in court, with a motion & order for alternative proof). See #4 below about self-proved wills.</p> <p>Holographic will. “Notwithstanding Section 251.051, a will written wholly in the testator’s handwriting is not required to be attested by subscribing witnesses.” EC §251.052.</p> <p>What if the “will” is <u>not</u> validly executed? If a purported will was not validly executed – either as a valid attested will or as a valid holographic will – none of the rest of this list is relevant because an invalidly executed will cannot be probated. In that case, if probate is necessary, there will need to be a determination of heirship, or a small estate affidavit, or a probate of an earlier will, depending on the circumstances. Note that if there’s <i>any</i> possible argument that a purported will was validly executed, the Travis County Probate Court requires that the beneficiaries have notice so they have an opportunity to argue the will is valid.</p>
<p>2. Is the will (and any codicil) an <u>original</u> and not a copy?</p>	<p>How do you know? In these days of good copiers – including color copiers – and notary stamps instead of raised seals, it’s not always easy to tell whether a will is the original will. Do take time to look at <i>all pages</i> of the will and see whether all pages of the will are originals. As you see more originals and copies, you can develop a pretty good eye. Don’t simply take the client’s word; in Travis County, it’s not unusual for clients to swear a will is an original – but then find the actual original elsewhere after being told that what they thought was an original is a copy.</p> <p>Some hints follow below, but no checklist will always lead you to a definitive answer:</p> <ul style="list-style-type: none"> • A raised notary seal is proof for that page of the will, at least! • Most stamped notary seals will smear with a careful spit test, but be sure to check whether everything else smears, too: <ul style="list-style-type: none"> ✓ If <i>only</i> the seal smears, it’s probably an original (or at least that page is). ✓ If <i>everything</i> smears or if <i>nothing</i> smears, there’s a pretty good chance it’s a copy – so carefully check the other hints. • Original signatures often can be felt on the front or back side of the paper (slightly raised or slightly indented – or both). • If all signatures are in black, take a second look. • Blue ink is more likely an original, but not definitely given color copiers.

Check 10 key points *in the Will* to get all the paperwork right for letters testamentary

Key Points to Check	How to Check & How it Affects Paperwork, Related Testimony, etc.
<div style="border: 1px dashed black; padding: 5px; margin-bottom: 10px;"> <p>2. Continued: Is the will (and any codicil) an <u>original</u> and not a copy?</p> </div>	<ul style="list-style-type: none"> • Copied signatures can look somewhat spotty– but that can also happen with different pens. • If different pages are on different types of paper, take a second look. <p>What if the will or a codicil is a copy? When the will or a codicil is a copy, you will need to do a variety of things differently (unless an original codicil specifically republishes the will of which there is only a copy).</p> <ol style="list-style-type: none"> a. Additional information required in application, proof, and order. See EC §256.054 (applications) and EC §256.156 (proof). <ul style="list-style-type: none"> • <i>The application</i> must state (a) the cause of the will’s non-production, (b) that reasonable diligence has been used to locate the original will, and (c) that the testator did not revoke the will. • <i>The proof of death and other facts</i> must include testimony that proves each of the above three points. See <i>In re Estate of Wilson</i>, 252 S.W.3d 708 (Tex. App. – Texarkana 2008, no pet. h.), where evidence was insufficient to rebut the presumption of revocation. In addition, “the contents of the will must be substantially proved by the testimony of a credible witness who has read either the original or a copy of the will, has heard the will read, or can identify a copy of the will.” EC § 256.156(b)(2). • <i>The order</i> must include a finding that the applicant has overcome the presumption that the original will has been revoked. b. “Copy” mentioned in all paperwork. The text and the title of the application and the order must indicate that a copy of a will (or codicil) is being probated. For example, “Order Admitting Original Will and Copy of First Codicil to Probate and Authorizing Letters Testamentary.” The text of the proof and the oath also needs to mention the copy. c. By administrative order, the Court requires that, within three business days of filing the application, you <i>physically file the will copy your client brought in to you.</i> Having the actual document being offered for probate helps the Court properly evaluate the will copy. <i>The Court will not set a hearing until you file the will copy.</i> d. Special form of Posting, plus either Personal Service or Waivers of Service. EC §258.002 requires citation to all parties interested in the estate when there’s a copy of a will, <i>which includes both heirs who would take if the lost will is not probated and devisees named in the will.</i> e. By administrative order, the Court requires (1) a special form of posting and (2) a special form of personal service on all of the decedent’s intestate heirs and all devisees under the will who are not applicants or waivers from such individuals. The posting and personal service are special because the Clerk must attach to each citation a copy of the Court’s special notice form, along with the copy of the application. (The notice is attached to the administrative order you can find on the Court’s website.) If you are having some or all of the decedent’s intestate heirs sign waivers, we recommend that you use the Court’s notice form as a guide when drafting waivers since all waivers must clearly show that the heir signing the waiver knows about <u>all</u> of the points addressed in the notice. f. Attorney ad Litem. The Court will appoint an attorney ad litem to represent the interests of decedent’s unknown heirs or heirs having a legal disability if any intestacy will result if the lost will is not admitted to probate. g. Heirship testimony. In addition to the testimony contained in the proof of death and other facts discussed above, the Court requires the testimony of one disinterested witness who can identify the decedent’s heirs-at-law. This witness will testify in open court, and the applicant’s attorney needs to prepare a written statement of the witness’s testimony. Parts of EC §203.002 – phrased as testimony

Check 10 key points *in the Will* to get all the paperwork right for letters testamentary

Key Points to Check	How to Check & How it Affects Paperwork, Related Testimony, etc.
	<p>rather than as an affidavit – provide ideas for the type of testimony necessary to establish a testator’s heirs; see numbers 1-5, and then 6-8 as needed given the facts. Also include a statement that the witness does not have an interest in the estate.</p> <p>h. Hearing time. When you schedule a hearing, tell the Court you are probating a copy of a will or codicil. Uncontested hearings for probate of a copy of a will or codicil are heard with other record cases on Thursdays at 9:15 a.m.</p>
3. Are there any <u>codicils?</u>	<p>If there are any codicils:</p> <p>a. Is anything in this checklist affected by what is in the codicil(s)? If so, follow the suggestions given.</p> <p>b. You must mention “Codicil” in both the text <u>and</u> the title of the application and the order. For example, “Order Admitting Will and Two Codicils to Probate and Authorizing Letters Testamentary.” You also need to mention the codicil(s) in the text of the proof and the oath.</p> <p>c. The posted citation must mention all codicils. In the title of the application, be sure to specify accurately which instruments are being filed for probate. Otherwise, there is a risk that the clerk will not see the documents being filed and will post them incorrectly, which will require reposting – with resulting costs and delay.</p>
4. Is the will <u>self-proved?</u>	<p>How do you know if the will is self-proved?</p> <p>Before pleading a will is self-proved, be sure it is. The answer can depend on the date of decedent’s death or the date of the will. Whatever the dates, a will is self-proved if it includes a self-proving affidavit in substantial compliance with EC §251.104. The following are common flaws that make wills not self-proved <i>under §251.104</i>:</p> <ul style="list-style-type: none"> ✓ Blank lines for the names of the testator and/or witnesses have not been filled in by the notary <i>in the notary’s statement at the end of the affidavit.</i> ✓ The witnesses have not actually <i>signed</i> or otherwise subscribed the affidavit. (The notary cannot print their names on the signature line.) ✓ The witnesses have not <i>sworn</i> to the statement, thus preventing it from being an affidavit. ✓ The affidavit does not carry a notary seal. (Often a problem if you are probating a copy of an older will.) <p>Even if a will is not self-proved under §251.104, it still might be self-proved depending on the date of the will (in all cases) and on the date of decedent’s death (if the will was executed outside of Texas).</p> <p><u>If the will was executed on or after September 1, 2011</u>, a will is also self-proved if it was simultaneously executed, attested, and made self-proved as provided by §251.1045 – the “one step” will execution procedure. Substantial compliance with the form set out in §251.1045 is required for the will to be self-proved under this section.</p> <p><u>If the decedent died on or after September 1, 2011 AND the will was executed outside of Texas</u>, there are two other ways a will can be considered self-proved:</p> <p>(1) Under the above facts, a will is considered self-proved under §256.152(c) if the will or an affidavit attached to the will provides everything set out in §256.152(c) – which tracks the Uniform Probate Code requirements. A few of the <i>differences between §251.104 and §256.152(c)</i>:</p> <ul style="list-style-type: none"> ✓ §256.152(c) does not require <i>witness</i> ages ✓ §256.152(c) does not require a statement that the testator asked the witnesses to sign ✓ §256.152(c) requires the witnesses to state that the testator was under no

**Check 10 key points *in the Will*
to get all the paperwork right for letters testamentary**

Key Points to Check	How to Check & How it Affects Paperwork, Related Testimony, etc.
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4. Continued:
Is the will self-proved?

constraint or undue influence

- ✓ §256.152(c) requires the *testator* to state that he was 18 or over, of sound mind, and under no constraint or undue influence

(2) Under the above facts, a will is considered self-proved if the will is self-proved according to the laws of the state or foreign country of the testator’s domicile *at the time of execution*. See §256.152(b). *To show that a will is self-proved under this provision, you must do all of the following:*

- *In your application or in a separate motion,*
 - ✓ state the jurisdiction where the testator was domiciled at the time the will was executed,
 - ✓ ask the Court to take judicial notice of the laws regarding self-proof of that jurisdiction *on the relevant date* (with a statutory citation),
 - ✓ allege that the will is self-proved according to that law, and
 - ✓ attach as an exhibit a copy of the statute regarding self-proof for that jurisdiction *on the date the will was executed*. The statute must indicate on its face that it is from the jurisdiction; in other words, it is not sufficient to simply type the text of the statute into a document. It would be sufficient to download the statute from Westlaw, Lexis, or another legal database or to photocopy a printed statute that includes reference to both the jurisdiction *and* the relevant date.
- *In your proof of death and other facts,* prove that the testator was domiciled in the alleged jurisdiction at the time the will was executed. (As with all proofs, do **not** have the witness state that the will was self-proved; the Court will make that determination. Also do not request in the proof that the Court take judicial notice of the laws regarding self-proof of foreign jurisdiction.)
- *In your proposed order,* make sure there isn’t any inaccurate boilerplate language.

What if the will is not self-proved? If the will is not self-proved, you need to do several things differently:

- a. Modify your standard forms to indicate that the will (or codicil) is not self-proved, but is validly executed (assuming, of course, that it is).
- b. In the application, also set out how you’re going to prove up the will – either the live testimony of one subscribing witness to the will, or, if a subscribing witness is unable to attend the hearing, either the deposition of a subscribing witness or the testimony of two disinterested witnesses who are familiar with the signature of the decedent. ***If you won’t have live testimony of a subscribing witness, you also need to e-file a motion for alternative proof and proposed order (unless it’s a holographic will). The Court’s website has templates for motions and orders.***
- c. As soon as you set the hearing, email the Court your proposed testimony for proving up the will:

A subscribing witness must prove the following:

 1. What happened when the will was signed that proves the will was duly executed. (See EC §251.104 or EC §251.1045.)
 2. At the time the will was executed, the testator was of sound mind.
 3. At the time the will was executed, the testator was at least 18 years old (or had been lawfully married or a member of the armed forces).
 4. At the time the will was executed, the witnesses were each at least 14 years old.

Check 10 key points *in the Will* to get all the paperwork right for letters testamentary

Key Points to Check	How to Check & How it Affects Paperwork, Related Testimony, etc.
	<p><i>Disinterested witnesses must prove the following:</i></p> <ol style="list-style-type: none"> 1. At the time the will was executed, the testator was of sound mind. 2. At the time the will was executed, the testator was at least 18 years old (or had been lawfully married or a member of the armed forces). 3. The signature on the will was the decedent's. 4. The witness does not have an interest in the estate. <p>d. Have the necessary witnesses testify at the hearing.</p>
5. Is any devisee a state , a governmental agency of the state, or a charitable organization ?	Again, modify your forms: don't use standard boilerplate when it's not accurate. If you list any such devisees, make sure to state there are no <i>other</i> such devisees other than the one(s) listed. It is helpful to also indicate whether the charity, etc., is named as contingent or direct devisee and, if a contingent devisee on the face of the will, whether the charity, etc., takes given the circumstances. (Absent a declaratory judgment, information about whether a contingent devisee takes cannot be included <i>in the order</i> .)
6. Is the person who will serve as executor the first-named executor in the will? If not, what happened to the executor(s) with priority?	<p>When the person who will serve as executor is not the first-named executor in the will, your application and your proof must explain what happened to the first-named executor and all others who will not serve but who have priority over the executor(s) who will (and the order should include the information). If any executor is declining to serve, you need to have that person's notarized declination in the file before the hearing. For example, if you are seeking letters for the fourth-named executor, you might state that "X," the first-named executor, died on ___ date, with his will probated in Travis County Cause No. _____; "Y," the second-named executor, lacks capacity (which you'll need to prove at the hearing); and "Z," the third-named executor, will file a notarized declination to serve.</p> <p>The following are examples of the types of proof Travis County requires when any named executor with priority will not serve:</p> <ul style="list-style-type: none"> • Person is declining to serve: need person's <i>filed</i> notarized declination. • Person is dead: The court prefers a copy of the death certificate of the named executor with priority. If the death certificate is not available, the applicant must provide either (1) the cause number and jurisdiction where the executor with priority died or (2) a published obituary. • Person is convicted felon: need sentencing order or other proof of conviction. • Person is incompetent: need guardianship cause number, if any, or letters from one or two doctors. (Only one letter required if the letter is sufficiently specific.) • Person was divorced from decedent after the date of the will: need divorce decree. • Person is a minor: need birth certificate.
7. As set out in the will, what, exactly , are the names of <ul style="list-style-type: none"> • the decedent? and <ul style="list-style-type: none"> • the executor who will serve? 	<p>In all pleadings, always begin with the exact names as they appear in the will for the testator, executor, and any beneficiaries mentioned in the pleadings. Then, if needed, put "A/K/A," "N/K/A," or "F/K/A" depending on the circumstances, followed by the additional or corrected name(s) that you need to include. Even in the order, the executor's name as it is given in the will must come first, with even "now known as" names following.</p> <p>Watch for spelling errors made in either the will or the documents your office prepares. If the testator misspelled a name, then all other documents must carry that mistaken name <i>first</i> with an "A/K/A" to correct the typo that the testator missed. Alias problems and spelling errors that you miss in the application can require reposting (depending on the circumstances), which could increase your cost and delay your hearing.</p> <p>Note that if you need to use A/K/A or similar acronyms in the application and order, you might also need to put on appropriate testimony about the different names unless the differences are self-explanatory.</p>

Check 10 key points *in the Will* to get all the paperwork right for letters testamentary

Key Points to Check	How to Check & How it Affects Paperwork, Related Testimony, etc.
<p>8. Does the will indicate that the executor seeking letters should be <u>independent</u>?</p>	<p>Does the will make the executor seeking letters independent?</p> <p>Check to see if the will indicates that the executor <i>for whom you are seeking letters</i> should be independent for <i>all</i> purposes (not just for some specific listed actions):</p> <ul style="list-style-type: none"> • “no court action” • “independent” • “least possible court involvement” • etc. <p>Definitely look at what the will says <i>about the executor who will serve</i>. It is not uncommon that a will makes the first-named executor independent, but does not make alternate executors independent (whether intentionally or not).</p> <p>What if it doesn’t?</p> <p>If the will does not indicate that the executor who is seeking letters should be independent, start by modifying your forms so you are not using inaccurate boilerplate.</p> <p>If you are seeking independent administration when the will does not state that the executor who will serve should be independent, indicate the statutory basis of your request in your application, proof, and order. See EC Chapter 401. Then be sure to get sufficient sworn requests from all of the distributees. <i>If there’s an intestacy, you’ll also need an heirship determination to identify all the distributees.</i></p> <p>If there is a minor distributee, the Court will not approve an independent administration under EC §401.002.</p>
<p>9. Does the will indicate that the executor seeking letters should serve <u>without bond</u>?</p> <p>“§ 305.101. Bond Generally Required; Exceptions.</p> <p>(a) Except as otherwise provided by this title, a person to whom letters testamentary or of administration will be issued must enter into a bond before issuance of the letters.</p> <p>(b) Letters testamentary shall be issued without the requirement of a bond to a person named as executor in a will probated in a court of this state if:</p> <p>(1) the will directs that no bond or security be required of the person; and</p> <p>(2) the court finds that the person is qualified.</p> <p>(c) A bond is not required if a personal representative is a corporate fiduciary.”</p>	<p>Does the will waive bond for the executor seeking letters?</p> <p>Here, too, definitely look at what the will says about bond <i>for the executor who will serve</i>. It is not uncommon that a will waives bond for the first-named executor independent, but does not waive bond for alternate executors (again, whether intentionally or not).</p> <p>What if it doesn’t?</p> <p>When the will does not waive bond, the statute that allows the Court to waive bond when the testator did not is EC §401.005. For applications filed before September 1, 2019, § 401.005 allows the Court to waive the bond only when an independent administration is created under 401.002 or 401.003 – and not when the independent administration is created <i>by the testator under 401.001</i>. However, in 2019, the law was changed to allow the Court to waive bond in both circumstances for all applications filed on or after September 1, 2019. Here’s what that means if you have a will that does not waive bond for the personal representative who will serve:</p> <p>A. When the will names an executor, but does not create an independent administration and does not waive bond, proceed under EC § 401.002(a) & 401.005.</p> <p>Under 401.002(a), the court can appoint someone as an independent executor when all the distributees of the estate agree on the advisability of having an independent administration and consent to the nomination of the person named in the will. Under 401.005, the court can waive bond when an independent administration is created pursuant to 401.002(a).</p> <p>The procedure: All of the distributees of the will must consent to the named executor serving as the Independent Executor under 401.002(a). In the same consents, also have the distributees request a waiver of bond under 401.005. The consent must be in the form of a notarized affidavit. Don’t forget to include waiver of citation language in this affidavit, see 401.004.</p>

Check 10 key points *in the Will* to get all the paperwork right for letters testamentary

Key Points to Check	How to Check & How it Affects Paperwork, Related Testimony, etc.
<div style="border: 1px dashed black; padding: 5px; margin-bottom: 10px;"> <p>#9 Continued: Does the will indicate that the executor seeking letters should serve <u>without bond?</u></p> </div>	<p>B. When the will does not name an executor and does not waive bond, proceed under EC § 401.002(b) & 401.005.</p> <p>Section 401.002(b) applies “where no executor is named in the decedent’s will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent’s estate his inability or unwillingness to serve as executor.”</p> <p><i>The procedure:</i> All of the distributees of decedent may collectively designate “a qualified person, firm, or corporation” to serve as independent administrator without bond under EC §§401.002(b) & 401.005. <i>If you proceed under 401.002(b), you will be requesting “independent administration with will annexed.”</i> All of the paperwork should reflect the “will annexed” language.</p> <p>C. When the will names an independent executor, but does not waive bond, it gets more complicated – at least for applications filed before 9/1/2019. The law was recently changed to simplify this process, but this change applies only to applications filed on or after 9/1/19.</p> <p><u>For applications filed before September 1, 2019, the following applies:</u></p> <p>EC §401.005 does not allow the Court to waive bond when an independent administration is created <i>by the testator</i> under the will (401.001). Under 401.005, <i>the Court</i> may waive the bond only when an independent administration is created pursuant to one of the following sections:</p> <ul style="list-style-type: none"> 401.002(a) – will names executor, but does not create independent administration 401.002(b) – will names no executor who can serve, and does not create independent administration 401.003 – intestacy <p>To get bond waived here, therefore, you’ll need to take steps so you fall within 401.002(b), since that is the only one of the three sections that could apply in this situation.</p> <p><i>The procedure, step 1:</i> Have <i>all</i> named executors decline to serve. The declinations to serve must be in the form of a notarized affidavit. These declinations will take you to a blank slate so you are able to proceed under 401.002(b).</p> <p><i>The procedure, step 2:</i> As with “B” above, all of the distributees of the will can then consent to someone serving as <i>the Independent Administrator with Will Annexed</i> under 401.002(b) and also request the person to serve without bond under 401.005. The distributees can choose anyone they want, including the person who was named in the will to serve as the independent executor. If they do choose the person who was named in the will, that person would simply decline to serve as executor <i>as named in the will</i> but would accept the appointment as independent administrator with will annexed. The consent must be in the form of a notarized affidavit. Do not forget to include waiver of citation language in this affidavit, see 401.004.</p> <p><u>For applications filed on or after September 1, 2019, the following applies:</u></p> <p>Newly revised EC §401.005 allows the Court - unless the court finds that it would not be in the best interest of the estate - to waive bond when the will fails to do so if all distributees agree to the waiver of the bond. As a result, you no longer need to</p>

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<p>#9 Continued: Does the will indicate that the executor seeking letters should serve <u>without bond</u>?</p>	<p>have all named executors decline to serve in order to get an independent executor appointed to serve without bond.</p> <p>The procedure: All of the distributees of the will must request a waiver of bond under 401.005(a-1). The waiver must be in the form of a notarized affidavit or in the application to probate the will.</p> <p>If you proceed under any of the above scenarios, be sure that the requests you prepare for the distributees include everything necessary. If any of the distributees are dead, or are minors, you may want to confer with the Court about how to proceed.</p>
<p>10. Will the probated will dispose of all property?</p> <p>Is there a partial <u>intestacy</u> because there is no residuary clause?</p> <p><i>The partial-intestacy problem is more common with holographic wills, but we have seen it even with lawyer-prepared wills.</i></p>	<p>If there is a partial <u>intestacy</u>, the best practice is to mention the intestacy. What you do next depends on the situation.</p> <ul style="list-style-type: none"> • When the will creates an independent administration for the executor who will serve, the Travis County Probate Court allows the applicant to decide whether to seek an heirship to determine the heirs for the property that does not pass under the will, unless there is a total intestacy. Of course, if there is no heirship proceeding, the independent executor assumes the risk that the intestate property will be distributed incorrectly, and the lawyer assumes the risk of a malpractice action for not having done the heirship. If there is a total intestacy, the Travis County Probate Court requires that the applicant combine a determination of heirship with the will probate. • When the applicant is requesting independent administration under EC §401.002, the Travis County Probate Court requires that the applicant combine the will probate with an heirship proceeding to determine who receives the property that does not pass under the will <u>and</u> to determine the heirs who will need to join the beneficiaries in the §401.002 request(s). • When there will be a dependent administration, the Travis County Probate Court requires an heirship proceeding for the intestate property. The court prefers to hear the heirship proceeding and the will probate at the same time, with a combined order. The court will allow the will to be probated first if there's a need for administration before the heirship can be completed, but in that case the court requires that the heirship proceeding be heard within 60 days of the date letters are granted. In insolvent estates, an heirship may not need to be done, but the Travis County Probate Court will not waive the heirship until the insolvency is proved during the dependent administration. • When you are probating the will as a muniment of title, the Travis County Probate Court requires a declaratory judgment as provided by Chapter 37, Civil Practice & Remedies Code because the "person who is entitled to property under the provisions of the will cannot be ascertained solely by reference to the will." EC §257.101. The applicant needs to seek both (1) a declaration that there is a partial intestacy and (2) an heirship proceeding to determine the heirs that will take the property that passes by intestacy. An attorney ad litem needs to be appointed to represent unknown heirs. The return date for a declaratory judgment application is twenty days, not ten days.

Instructions for Filing Probate and Guardianship Proceedings, Related Matters, and Ancillary Proceedings

The purpose of these instructions is to describe which actions should be filed in a principal probate or guardianship file and which other actions are ancillary and should be placed in a new file. While any stage of a probate or guardianship proceeding can be contested, it is usually the contested matters *that bear no direct relationship to the administration of the estate* that are “ancillary” and must be given a new cause number. (To ensure the new case is linked to the principal file, follow the instructions on the following pages on “how to style an ancillary case.”) By way of illustration and not definition, the following lists are examples of matters that belong in the principal file and examples of matters that belong in an ancillary file:

A. Core matters that belong in the principal file (“base case”). Matters that are principally concerned with the administration of the estate are “core” matters and should be filed under the main cause number.

Examples include:

1. Appointment of guardian; probate of will; determination of heirship (with or without request for administration).
After the death of a ward, any probate proceedings must be filed in a new cause and cannot be filed in the guardianship case, whether the ward died testate or intestate.
2. **Contest to will, heirship, administration, or guardianship – *before or after* grant of letters.**
3. **Contest or objection to actions during administration (sales, fees, accountings, etc.).**
4. **Declaratory Judgments to construe/interpret provisions of a will *before* the will is admitted to probate.**
In a Muniment of Title proceeding, the following actions *must* be filed as part of the base case and heard contemporaneously with the admission of the will to probate: A Declaratory Judgment to construe who the distributees under the will are, and any Heirship Determination to resolve a partial intestacy under the will.
5. An action to construe and interpret provisions of a Testamentary Trust *before* will has been admitted to probate.
6. All claims pursuant to claims-presentation process.
7. Removal of personal representative.
8. §34.001/§1022.007 motions to transfer an ancillary case (but if the transfer comes in, it will go in an ancillary-case file).
9. Release of the Independent Executor pursuant to Estates Code §405.003 (declaratory judgment).

Any of the proceedings described as belonging in the “base case” may be severed as an ancillary proceeding at the court’s discretion. This severance would be appropriate for proceedings that are potentially voluminous, for example.

B. Ancillary matters that belong in a different file with a new cause number (“ancillary case”).

Contested matters that bear no direct relationship to the administration of the probate estate and that would have the possibility of becoming an independently-tried lawsuit (each potentially with its own docket control and discovery schedules, etc.) should be filed in a new cause number.

Examples include:

1. **Declaratory Judgments to construe/interpret provisions of a will *after* the will is admitted to probate.**
2. An action to construe and interpret provisions of a Testamentary Trust *after* the will has been admitted to probate.
3. Any action involving a Testamentary Trust *other than* construction issues (e.g. removal of a trustee).
4. Intervivos Trust Action (settler is decedent in probate pending in subject court).
5. All applications to establish a court-created trust (under Estates Code Chapter 1301 or otherwise) must be filed in a new cause number, whether or not the trust is related to a base case.
6. All applications to establish a constructive trust.
7. Foreclosure of preferred debt and lien, as well as expedited foreclosures.
8. Actions for the trial of title to land and enforcement of liens thereon.
9. Actions for the trial of right to property.
10. Interpleader actions (funds tendered into registry during administration).
11. Divorces, child custody, paternity actions.
12. Claims such as personal injury claims or suits on a claim that was rejected in its entirety or in part.
13. In addition, a Bill of Review should be filed in an ancillary cause number (even though it has a direct relationship to the administration).

Inventory Compliance FAQs

1. What if I think I received a compliance letter by mistake?

If you think you received a compliance letter by mistake, please let us know by emailing the Court at probate.compliance@traviscountytx.gov. Our goal is to catch mistakes in Court or Clerk coding before we send out compliance letters, but we realize we might miss something. Let us know if you think we did.

*Note: If you already filed an inventory or an extension request that has **not** been approved, please check two things before emailing the Court to say a mistake was made:*

- *please be sure you filed a cover sheet with a proposed order, **and***
- *if the Court asked you to fix problems, please be sure you took care of them.*

Before resolving compliance issues, the Court does need to make sure these pleadings have been approved.

2. What if my client files an Inventory or Affidavit in Lieu of Inventory before the compliance hearing?

What you'll need to do if your client files an inventory (or affidavit or extension) before the compliance hearing depends on the filing date and time:

(1) If the inventory (or affidavit or extension) is file-stamped no later than noon on the day before the compliance hearing:

- Email probate.compliance@traviscountytx.gov to let us know.
- The Court will investigate and let you know whether the case has been taken off the compliance docket.

(2) If the inventory (or affidavit or extension) is file-stamped before the compliance hearing, but later than noon on the day before:

- Email probate.compliance@traviscountytx.gov to let us know.
- ***Expect that you will need to show up at the compliance hearing.*** We will try to investigate in time to let you know whether the case has been taken off the compliance docket, but we cannot promise we will have time to do so with a filing this late. ***If you don't hear from us, you do need to show up.***

3. What if I have a compliance issue I want to bring to the Court's attention?

What if I file a motion to withdraw?

If you're having problems that you want to discuss with the Court, the compliance hearing is the place to discuss those issues. **Once a compliance letter goes out, discussions about compliance issues cannot take place until the hearing, so do not email or call the Court to discuss any issues before then.**

If you file a Motion to Withdraw, the motion will automatically be scheduled to be heard at the compliance hearing. Please email probate.compliance@traviscountytx.gov to let us know the motion has been filed. Note that the Court is unlikely to grant a withdrawal motion before a non-compliant executor or administrator has been removed.

4. Do I really have to come to the compliance hearing?

Yes, you are required to come to the compliance hearing if your case is on the posted docket and the Court hasn't sent you an email stating that the case has been taken off the docket. Judge Herman expects you to be there to discuss issues that led to your client's failure to comply with the statutory requirement to file an inventory (or affidavit if appropriate).

To double-check whether you are required to attend, check the list of "compliance-docket cases" that will be posted on the Court's Compliance and Show Cause web page no later than 3:00 p.m. on day before the compliance hearing. See <https://www.traviscountytx.gov/probate/compliance>. If this case is listed and you think it's listed by mistake, email probate.compliance@traviscountytx.gov, and we'll double-check. **If this case is listed, and you don't get a confirmation that it was listed by mistake, you must show up.**

Annual Account Compliance FAQs

1. What if I think I received a compliance letter by mistake?

If you think you received a compliance letter by mistake, please let us know by emailing the Court at probate.compliance@traviscountytexas.gov. Our goal is to catch mistakes in Court or Clerk coding before we send out compliance letters, but we realize we might miss something. Let us know if you think we did.

*Note: If you already filed an annual account that has **not** been approved, please check two things before emailing the Court to say a mistake was made:*

- *please be sure you filed a cover sheet with a proposed order, **and***
- *if the Court asked you to fix problems, please be sure you took care of them.*

Before resolving compliance issues, the Court does need to make sure these pleadings have been approved.

2. What if my client files an Annual Account before the compliance hearing?

What you'll need to do if your client files an annual account before the compliance hearing depends on the filing date and time:

(1) If the annual account is file-stamped no later than noon on the day before the compliance hearing:

- Email probate.compliance@traviscountytexas.gov to let us know.
- The Court will investigate and let you know whether the case has been taken off the compliance docket.

(2) If the annual account is file-stamped before the compliance hearing, but later than noon on the day before:

- Email probate.compliance@traviscountytexas.gov to let us know.
- ***Expect that you will need to show up at the compliance hearing.*** We will try to investigate in time to let you know whether the case has been taken off the compliance docket, but we cannot promise we will have time to do so with a filing this late. ***If you don't hear from us, you do need to show up.***

3. What if I have a compliance issue I want to bring to the Court's attention?

What if I file a motion to withdraw?

If you're having problems that you want to discuss with the Court, the compliance hearing is the place to discuss those issues. **Once a compliance letter goes out, discussions about compliance issues cannot take place until the hearing, so do not email or call the Court to discuss any issues before then.**

If you file a Motion to Withdraw, the motion will automatically be scheduled to be heard at the compliance hearing. Please email probate.compliance@traviscountytexas.gov to let us know the motion has been filed. Note that the Court is unlikely to grant a withdrawal motion before a non-compliant guardian or administrator has been removed.

4. Do I really have to come to the compliance hearing?

Yes, you are required to come to the compliance hearing if your case is on the posted docket and the Court hasn't sent you an email stating that the case has been taken off the docket. Judge Herman expects you to be there to discuss issues that led to your client's failure to comply with the statutory requirement to file an annual account.

To double-check whether you are required to attend, check the list of "compliance-docket cases" that will be posted on the Court's Compliance and Show Cause web page no later than 3:00 p.m. on day before the compliance hearing. See <https://www.traviscountytexas.gov/probate/compliance>. If this case is listed and you think it's listed by mistake, email probate.compliance@traviscountytexas.gov, and we'll double-check. **If this case is listed, and you don't get a confirmation that it was listed by mistake, you must show up.**