

# TRAVIS COUNTY PROBATE COURT NO. 1

Travis County Courthouse, Room 217  
1000 Guadalupe Street – P.O. Box 1748  
Austin, Texas 78767



September 25, 2014

## Court Policy Regarding “Pro Se” Applicants (Applicants without a Lawyer)

People who represent themselves in court are called “pro se” or “self-represented” litigants. You are not required to have a lawyer to file papers or to participate in a case. You have a right to represent yourself. **However, a pro se may not represent others. Under Texas law, only a licensed attorney may represent the interests of third-party individuals or entities, including guardianship wards and probate estates.** See *In re: Guetersloh*, 326 S.W.3d 737 (Tex. App.–Amarillo, 2010) and *Steele v. McDonald*, 202 S.W.3d 926 (Tex. App.–Waco, 2006), and the authorities cited. Therefore, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney. The only time a pro se applicant may proceed in court is when truly representing **only** himself or herself.

### Frequently Asked Questions

Q: What is a pro se?

A: A pro se is an individual who has not hired a lawyer and appears in court to represent himself and no other person or entity.

Q: Can I still serve as an executor, administrator, or guardian even though I’m not a lawyer?

A: Yes. One need not be a lawyer to serve as an executor, administrator, or guardian. **However, the executor, administrator, or guardian must be represented by a lawyer.**

Q: But I’m the only one that needs letters testamentary. As executor, how would I be representing the interests of others?

A: As executor of a decedent’s estate, you don’t represent only yourself. An executor represents the interests of beneficiaries and creditors. This responsibility to act for the benefit of another is known as a fiduciary relationship. It gives rise to certain legal obligations and responsibilities that require legal expertise. The lawyer you hire represents you in your capacity as executor and assists you in representing those for whom you are responsible.

Q: If I get the paperwork from a law library or the Internet, can I fill it out and file it? Isn’t that what lawyers do?

A: Lawyers don’t just fill out forms. Lawyers (1) determine what method of probate or guardianship is appropriate in a particular situation, (2) create or adapt any necessary paperwork, and – importantly – (3) advise the client about the ongoing responsibilities of a fiduciary. If you are not a lawyer, your creating legal pleadings while acting as a fiduciary would constitute the unauthorized practice of law.

Q: As a pro se, what proceedings **can** I do on my own in Probate Court?

A: In Probate Court or any other court, the only proceedings you can handle as a pro se are those in which you truly would be representing **only** yourself. For example, a pro se applicant may probate a will as a muniment of title when he or she is the sole beneficiary under the will, and there are no debts against the estate other than those secured by liens against real estate. Note, though, that probating a will as a muniment of title is not always a good option even if there are no debts and the applicant is the sole beneficiary. **Whether a muniment of title is the best probate procedure for a particular situation is a legal decision best made by a lawyer.**

As another example, all of a decedent’s heirs may work together without a lawyer to file a small estate affidavit in the limited situations in which a small estate affidavit might be appropriate. For further information, see Texas Estates Code Chapter 205 and the Travis County Probate Court’s Small Estate Affidavit Checklist. As the checklist notes, the complexity of the Code poses many pitfalls for non-lawyers attempting to comply with the requirements for a small estate affidavit. An attorney’s assistance in drafting a small estate affidavit may

prevent the denial of an Affidavit where it would have been an appropriate probate procedure if the Affidavit had been prepared correctly.

Q: What procedures should I follow if I decide to probate a will as a muniment of title as a pro se applicant?

A: As stated above, whether a muniment of title is the best probate procedure for a particular situation is a legal decision best made by a lawyer; Court staff cannot guide you or advise what you should do in your case. If you decide to proceed with your case without a lawyer, the County Law Library has reference materials that may be helpful. If you proceed with an application to probate a will as a muniment of title, note the following:

**All beneficiaries.** In a pro se application to probate a will as a muniment of title, **all** beneficiaries under the will **must** be applicants, and **all** beneficiaries **must** testify at the hearing.

**Must swear no debts.** To probate a will as a muniment of title, each applicant must be able to swear on personal knowledge that there are no debts against the estate other than those secured by liens against real estate – that includes credit card balances, doctor’s bills, utility bills, Medicaid estate recovery claims, etc. – *anything* owed by decedent and not paid off. Anyone falsely swearing that the estate has no creditors is subject to a perjury charge.

**Needed documents.** It is the Court’s policy to review all documents for an uncontested probate matter before the hearing. We must receive all documents no later than 10:00 a.m. on the Tuesday the week before the hearing, or the hearing is subject to cancellation. By reviewing the documents before the hearing, the Court can ensure that hearings go more smoothly for participants.

- ***At the time you file the application***, also file (1) the will, (2) the required case information sheets, and (3) the death certificate (cross out the social security number). Rule 57 of the Texas Rules of Civil Procedure requires that you include the following information for each applicant in the application: name, address, phone number, email address, and fax number (if available).
- ***Before the deadline indicated above***, also file (1) the proposed order and the (2) proof of death and other facts (which will be signed after the hearing). *See the Court’s policy on addressing Medicaid in the proof.*
- There are additional procedural requirements, with additional necessary documents, if (1) the will is not the original will, (2) the will is not self-proved, or (3) you are probating the will more than four years after the decedent’s death. Court staff can give you a handout with information about what the additional procedural requirements are, but you will need to obtain all additional documents.

### **How to get documents to the Court.**

- ***File with the clerk’s office:*** File your application, the will, the case information sheets, and the death certificate in the clerk’s office. Also file with the clerk any additional *signed pleadings* required because the will is a copy, is not self-proved, or is being probated more than four years after decedent’s death.
- ***Get the proposed order and the proof to Court in any of the ways listed below.*** Follow **any** of the same procedures if you have additional proposed *testimony* that is required because the will is a copy, is not self-proved, or is being probated more than four years after decedent’s death.
  - When you file your application, give the unsigned documents to the clerk.
  - After you have set a hearing, email the unsigned documents to the Court any time preferably in Word format. *In the subject line, indicate both (1) the hearing date and time, and (2) the cause number.* Send the emailed documents to [Emily.Meisgeier@traviscountytexas.gov](mailto:Emily.Meisgeier@traviscountytexas.gov).
  - After you have set a hearing, bring the unsigned documents to the Court. *Indicate the hearing date and time on a Post-It note or cover sheet attached to the documents.* Drop them off in room 217, Travis County Courthouse.
  - After you have set a hearing, mail the unsigned documents to the Court. *Indicate the hearing date and time on a Post-It note or cover sheet attached to the documents.* Mail documents to Emily Meisgeier Staff Attorney, Travis County Probate Court No. 1, PO Box 1748, Austin, TX 78767.