



**JUDGE BARBARA L. MOLINA
CALDWELL COUNTY COURT AT LAW**

Caldwell County Justice Center
1703 S. Colorado, Box 11
Lockhart, Texas 78644

January 2, 2019

County Court-At- Law (Probate) Policy Regarding - “Pro Se” Applicants (Applicants without a Lawyer)

Under Texas law, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney. The only time a pro se applicant may proceed in court is when truly representing only himself or herself. People who represent themselves in court are called “pro se” or “self-represented” litigants. Individuals have a right to represent themselves. 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.

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, and you prepare or create 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. 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; **the clerk and court staff cannot guide you or advise what you should do in your case.**

If you proceed with an application to probate a Will as a muniment of title, note the following:

Restriction for Applicants for Fiduciary Appointments

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

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. The Court reviews all documents for Will prove-ups before the hearing. By reviewing the documents before the hearing, the Court can ensure that hearings go more smoothly for participants. Note there are additional procedural requirements with additional necessary documents in the following cases:

- (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.

If you proceed without an attorney, at the time you file the application in the Clerk's Office, also file (1) the Will, (2) the required Civil 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).

Within 24 hours after you set the hearing:

Deliver to the Court - the proposed order and the proposed (unsigned) proof of death and other facts. The clerk will place the proposed documents in the file to be reviewed.

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, also deliver to the Court that proposed (unsigned) testimony.

Deliver all these documents to the Court, with the date of the hearing and decedent's name on a cover sheet or Post-It note.

At least one week before the scheduled hearing, file with the **Clerk's Office** any additional signed pleadings required because the Will is a copy, the Will is not self-proved, or the Will is being probated more than four years after decedent's death.

Please note that the Court **will not hear** a case without proper pleadings filed or proposed Orders delivered within the times set herein. The court may dismiss the pleadings or application of the pro se individual for failure to prosecute the case with due diligence.