



Probate Court

County Judge Kyle Kutscher

Guadalupe County Justice Center
211 W Court Street
Seguin, Texas 78155

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 in those opinions. Therefore, individuals applying for letters testamentary and letters of administration 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. **Although the Clerk may accept documents for efileing, the court will take no action on the documents unless there is an attorney of record in the case.**

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 or herself 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 attorney 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, you’re 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*. 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. See the section on our probate page regarding "Small Estate Affidavits".

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 a court date/setting will be provided to ensure that the hearing goes more smoothly for participants.

At the time you e-file or file the application, also file (1) a copy of the will; and (2) the required case information sheet. 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). The original will must be filed within three (3) days of e-filing in accordance with Rule 21, Texas Rules of Civil Procedure.

You must also e-mail in word format or pdf: (1) the proposed order and the (2) proof of death and other facts (which will be signed after the hearing) (3) oath of no debts against the estate; to the Court Coordinator:

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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. It is your responsibility to obtain all necessary, additional documents.

How to get documents to the Court:

E-File or file with the clerk's office: E-file or file your application, the will and the case information sheet with 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. The original will must be filed within three days within 3 days of the e-filing in accordance with Rule 21, Texas Rules of Civil Procedure.

Once the court coordinator has provided you a hearing date, please bring one set of the unsigned documents to the hearing along with an original Death Certificate (Judge Kutscher will review at the hearing and immediately return to you).