PROBATE: PRACTICING IN COUNTY COURT AT LAW # 1

HON. CHRISTOPHER G. MORALES, JUDGE
FORT BEND COUNTY COURT AT LAW NO. 1
FEBRUARY 28, 2022

Brief Overview

- Today we will discuss how CCL 1 handles:
  - Scheduling A Probate/Guardianship Hearing in CCL1
  - Video Conferencing Basics
  - The Basics of Independent/Dependent Administrations/Heirships/MOT
  - Guardianship Proceedings
  - Changes for CCL1
  - Ad Litem Requirements

Probate Hearings: Time to Prove Up the Matter

THE PROPER METHOD TO SCHEDULE A HEARING IN CCL1



CCL 1 Probate Calendar

- **THE FOLLOWING SCHEDULE IS SUBJECT TO CHANGE AT ANYTIME…** the court has little control over the current trial calendar, which dictates the rest of the dockets.
  - **UNCONTESTED MATTERS** are heard on designated Monday mornings at *9:00 a.m*. Dates may be added on other days of the week, but that will be determined on a month-to-month basis.
  - **CONTESTED MATTERS** are heard on designated *Wednesdays*. Hearings that are anticipated to last more than *3* hour will be scheduled as the Court's calendar permits.
  - **TRIALS**, whether bench or jury, are heard on designated Tuesdays or Thursdays at 9:00 a.m. The Court will hold a Pre-trial conference at least 7 days prior to trial. The parties shall be ready to resolve all exhibit disputes and Motion in Limine at the Pre-trial conference.
    - A Docket Control Order will be entered by the Court in all cases set for trial.

Don’t call unless Everything is in Order!

Prior to Scheduling a Hearing, you Must:

- **DECEDENT’S ESTATES:** Original Will (or a copy if the original Will cannot be produced) must be filed with the County Clerk’s office.
- **GUARDIANSHIPS:** Applicant attorneys must e-file a copy of his/her certification along with the application; AND all criminal background checks must be completed through JBCC.
- **AD LITEM DEPOSIT:** $525.00 must be paid into the registry of the Court, pursuant to Standing Administrative Order.

Once Completed, Email the Auditor

- **HEARING DATES:** She will provide you with TWO available dates via email.
- **CONFIRMATION OF DATES:** Annie will Confirm all scheduled hearings via *email*.
- **IF AN AD LITEM IS INVOLVED IN THE MATTER:** Verify the date works for the Ad Litem. *Do Not* schedule a hearing prior to conferring with the Ad Litem.

The Hearing is Scheduled, Now What?

- **E-FILE AND EMAIL Proposed ORDERS/JUDGMENTS** to the probate auditor no later than 7 days *prior* to the scheduled hearing.

NOTICE

The Court may postpone or cancel a hearing if an attorney fails to comply with posted guidelines for submitting uncontested docket paperwork

- **THE FINAL ORDER MUST BE E-FILED AND SIGNED BY THE ATTORNEY**, and if the order is agreed between the parties, all parties must sign the order.

- **E-FILE ALL ANCILLARY DOCUMENTS** at least 7 days prior to the scheduled hearing date. This means everything except testimony and oaths that will be signed at the time of hearing.
  - This includes: Ad Litem Reports and death certificates

- **PERSONAL REPRESENTATIVE GENERAL INFORMATION SHEET** needs to be completed by each individual appointed in a fiduciary role (Executor, Administrator, Guardian) and returned to the probate auditor (DO NOT E-FILE).

Miscellaneous Rules

COURT'S POLICY ON THE USE OF INTERPRETERS

- If a client or witness cannot communicate in English during a hearing, whether due to a hearing impairment or inability to speak or comprehend the English language or you are in need of a document to be translated into a foreign language, the attorney should complete the Interpreting Services Request Form or Translation Services Request Form, which can be found on the County's Language Access page, and submit the form(s) to Annie Ayala at least ten (10) business days prior to the hearing.
- The Court will pay for all interpreting and translation services associated with the matter set before the Court.
- The interpreter assigned will be Master Licensed Certified. If a Master Licensed Interpreter is unavailable for the hearing date you have requested, your hearing *will* be rescheduled until one can be located.

CODICILS

- Make sure you reference a codicil in the title of your document
- We are having issues with the codicil being posted
- The Clerks generally do not review pleadings

MEETINGS WITH ANNIE

- Schedule ahead of time
- Meetings are limited to a maximum of 30 minutes

Video Conferencing Basics

ARE YOU REALLY DOING IT RIGHT?



Video Conferencing Differences

Harris County

- Repeating Zoom docket schedule where attorneys can check in and out of a hearing. They may "approach" the judge when needed.
  - Pros – efficiency
  - Cons – security concerns, lack of decorum, little structure for the court, lack of control

Fort Bend County

- Attorneys log in and are placed in a Zoom waiting room. The attorney and client are brought into the Zoom courtroom when their case is called.
  - Pros – security, easier for the court to control
  - Cons – Attorneys may wait around for a significant period of time for a 3-minute hearing

Basics of Video Conferencing

What is Needed:	-Computer, Camera and Microphone; or -Smartphone; or -Telephone
Software:	-Zoom -Cisco Webex -Microsoft Teams -Etc.
Logging in to Zoom	-Click on the Link in the Court produced email -Open the application, Select Join Meeting. -Select Join with Computer Audio (Test your Audio)
Once in Zoom	-You will enter the virtual waiting room -Be patient

Dos and Don'ts in Court Proceedings



Test Your Technology

-Update your program

-Make sure your camera/mic works

-Do this prior to the day of the hearing and once you have logged into the hearing



Video and Audio Preparation for Zoom Court

-Do you know how to mute?

-Turn off your video? Turn it on?



Practice Before Zoom Court

-Don’t let court be your first time to Zoom

-Take 10 minutes the day before and make sure everything works

-Practice with your client and witnesses – it pays off!

Test Your Equipment/Know How to Use It



My Court's Rules for Zoom

Some of the More Important Requirements are as Follows:

- Recording of a Remote Zoom Proceeding is strictly forbidden and subject to contempt of court;
- The scheduling Party is responsible for noticing all parties of a hearing or cancellation;
- Exhibits must be submitted to the Court Reporter three (3) days prior to the hearing;
- The Court will assist with displaying exhibits during a hearing;
- You may not use the chat feature to communicate with a witness;
- You may not use the chat feature to communicate with your client, when they are testifying;
- Participants should minimize outside noise and distractions during the hearing;
- All participants should enter the waiting room at least 10 minutes prior to the hearing start time;
- Technical difficulties that are not timely resolved, may result in a hearing being passed; and
- All of the usual in-person courtroom decorum, demeanor, and dress code rules shall apply.

My policy and procedures may be found on my Court's website, along with a how-to video.

Dos and Don’ts in Court Proceedings Cont.

Choose a Location for Zoom Court

-Quiet location with minimal background noise

-Do not drive while zooming

-Make sure you have a strong Wi-Fi signal

-Blank, non-distracting background

Behavior During Zoom Court

-Mute yourself whenever you are not speaking

-Do not talk over people

-Do not lay down in a bed while Zooming

-Do not photograph or record anything on Zoom

How to Dress

-Professionally, this is COURT!

-Wear pants

Don’t Be This Guy!



The Basics of Independent/Dependent Administrations/Heirships/MOT

COUNTY COURT AT LAW NO. 1- ISSUES WE SEE ON A REGULAR BASIS

Independent Administrations

SOCIAL SECURITY AND D.L. NUMBERS ON APPLICATIONS - Estates Code requires applications to probate a will and applications for letters of administration to include the last three digits of the applicant's social security number and driver's license number *and, if known, the last three digits of the* ***decedent's*** *social security number and driver's license number*.

EXACT NAMES AND ALIASES – The Court requires all pleadings to begin with the exact names as they appear in the will for the decedent and executor, even if the person is now known by another name. (a/k/a or f/k/a/ name)

ALTERNATE EXECUTOR – If anyone other than the first-named executor in the will is being appointed, be sure to include the name of the first-named executor and why he/she cannot serve. Do this for all other named executors who will not serve but who have priority over the executor(s) who will serve.

EXECUTOR- The Court will require the Executor/Applicant to personally appear before the Court to prove up the Will, unless the attorney drafted the will. If you are proving up the will, please let the Court know ahead of time.

Independent Administrations

PROBATING A WILL THAT IS NOT SELF-PROVED – The Court requires all necessary witnesses to be present in court to give testimony. All witness testimony shall be reduced to writing.

PROBATING A COPY OF A WILL OR CODICIL OR A LOST WILL OR CODICIL - Reference "copy" in the title and body of the application, order, proof, and oath. Physically file the copy of the will or codicil that is being offered for probate with the County Clerk as if it were an original document. This allows the Court to properly evaluate the copy of the will or codicil that is being offered for probate.

- **FORM** – All heirs and devisees under the Will must be personally served with citation, or in the alternative, file an "Affidavit Waiving Citation for Probate of a Copy of a Lost Will or Codicil or Probate of a Lost Will or Codicil without a Copy"

- **WAIVERS**– Make sure all waivers include: (1) waiver of citation; (2) waiver of notice; (3) consent to the agreed upon appointee; and (4) reference the waiver of bond.

Dependent Administrations

Minor Heirs

- The Court will *require* a dependent administration if a decedent dies intestate and any heirs are minors, unless extraordinary circumstances are brought to the Court's attention. Please note that adults under a Court Ordered Guardianship are considered minors under this section.

HEIRSHIP DETERMINATIONS IN DEPENDENTS

- The Court will require that heirship of the decedent be determined at the time a dependent administrator is appointed, unless extraordinary circumstances are brought to the Court's attention. If a dependent administrator is appointed without an heirship determination, the Court will set a deadline whereby the heirship determination will occur.

Heirship Proceedings

HEIRS

- Adult Heirs must waive citation, be personally served citation (no private process), or receive citation by certified mail. Citations are issued AND SERVED via the County Clerk's Office.
  - Return Receipts will not be accepted from attorneys.
- *Court Policy*: Minor heirs (younger than age 12) – Citation can be served on the parent, managing conservator, or guardian.
- Court Policy: Minor heirs (aged 12-17) – Must be personally served with citation or attend the hearing. No Waivers!

AFFIDAVIT OF SERVICE OF CITATION

- Must be filed 7 days prior to the scheduled hearing date
  - A sworn affidavit from the applicant or a certificate signed by the applicant's attorney stating that all required citation was served, including names of person who were served or who waived citation
  - It shall include copies of all required citations along with proof of service. Affidavits without the proper proof of service will not be considered.

DISINTERESTED WITNESSES

- Applicant must appear with TWO disinterested witness to prove up an heirship.
- All witness testimony shall be reduced to writing.

JUDGMENTS

- must comply with intestate distribution laws. Even if the applicant is claiming the estate consists of only community property, the Judgment must address distribution of separate property as the Court is *not* making a finding as to the character of property.
- The Judgment *CANNOT* be combined with an Order Appointing Administrator.

Ad Litems in Heirship Proceedings

ATTORNEY AD LITEM FEES

- Shall be addressed by a separate order provided by the Court
- The fee shall be paid out the registry of the Court
- If you are seeking a fee greater than $525, attach your billable hours to the order provided by the Court
- The Judgment shall discharge the ad litem from their duties

AD LITEM REPORTS

- The Court requires a report from all ad litems in heirships
- It must be filed 7 days prior to the hearing date

AD LITEM DUTIES AT A HEARING

- **ASK QUESTIONS!!**
- **DON'T DO THIS:** *"If I asked you the same question that you were just asked, would your answers be any different?"*
- If you are directly examining a corroborative (second) witness, then it saves time to ask: *"You have just heard the questions that were asked of the other witness. If I asked you the same questions that I just asked the first witness, would your answers be the same?"*

AD LITEM MANUAL

- Familiarize yourself with the ***Ad Litem Manual***.

Muniments of Title

MEDICAID ESTATE RECOVERY PROGRAM (MERP) – If the decedent applied for and received Medicaid benefits on or before March 1, 2005, but there is no Medicaid claim against the estate, a MERP certification that the decedent's estate is not subject to a MERP claim is required to be filed.

ATTORNEY AD LITEM (AAL) – An AAL shall be appointed to represent the interest of any heirs whose addresses are unknown in a proceeding to probate a will as a Muniment of Title *after* four years.

AFFIDAVIT OF FULFILLMENT OF TERMS ("AFFIDAVIT") – The Affidavit will not be waived unless the Applicant is the sole heir under the will or all beneficiaries join in the application, file a waiver, or appear in court. Waivers must include language that the beneficiary is requesting that the requirement of the filing of an Affidavit be waived.

PROBATING A WILL MORE THAN FOUR YEARS AFTER DECEDENT'S DEATH – Reference "more than four years after death of testator" in the title and body of the application and order.

Guardianship Proceedings

COUNTY COURT AT LAW NO. 1 PROCEDURES

Guardianship Proceedings

CERTIFICATION

- All applicant attorneys filing a new guardianship proceeding after September 1, 2015, must e-file a copy of his/her 4 hour certification along with the application.
- Common Knowledge by NOW!

LESS RESTRICTIVE ALTERNATIVES AND SUPPORTS AND SERVICES

- Make sure both are addressed in the application, order and at the hearing
- I want to hear testimony on this!

CRIMINAL BACKGROUND CHECK

- Except for attorney's who are applying to serve as a guardian, all other individuals are required to undergo a criminal background check with the JBCC before a hearing will be scheduled.

PHYSICIAN'S CERTIFICATE OF MEDICAL EXAMINATION (PCME)

- Make sure to provide the doctor with the most recent form.
- We will accept your own form/letter, but make sure it complies with the code.

REGISTRATION AND TRAINING

- The Training must be completed with the JBCC prior to scheduling a hearing.

Guardianship Proceedings

GUARDIANSHIP ORDER

- If a full guardianship: address the rights of the Ward to vote, drive, and make personal decisions regarding residence (Be Prepared to Explain to the Court why less restrictive alternatives will not work).
- Do not include *Attorney Ad Litem fees* in the Order, as they will be paid by separate Order.
- Include language in the Order discharging the attorney ad litem from further duties in the case.
- Include notice regarding peace officers displayed in boldface type and in capital letters or underlined.

ANNUAL REPORT

- Advise clients to use the most recent Annual Report Form.
- The Court will send out a reminder 30 days before the due date
- Failure to file timely will result in a *Show Cause Hearing*
- The Court will not hesitate to remove guardians

TEMPORARY GUARDIANSHIPS

- You must show there is a clear and present danger to the ward or ward's estate.
- You have a high bar!

GENERAL TIP

- Withdraw from the case once you are done, if you do not want to be show caused later.

Practice Tips for Ad Litems in Guardianships

PRACTICE NOTES

- The role of the Attorney Ad Litem is to advocate for the proposed ward. The words "best interest" or "I Agree" should *NOT* be part of your vocabulary for purposes of this proceedings.

HEARING

- Prior to starting the hearing, *explain to the Court why your client (proposed ward) is not present and ask the Court to waive his/her appearance.*
- If your client is present, introduce him/her to the Court.
- Ask the Court to take judicial notice of the PCME on file if the Applicant has failed to do so.

CROSS EXAMINATION QUESTIONS

- ASK QUESTIONS!!
- *See Heirship Proceedings Ad Litem Duties*.

Changes for County Court at Law No. 1

I EXPECT NOTHING LESS THAN EXCELLENCE

There is Always Room For Improvement

INTERNAL AUDIT

- The Court is conducting an internal audit of all guardianship cases
- Last done in 2017
- Dozens of cases are out of compliance
- Show Cause Orders are going out NOW!

WHAT TO EXPECT AT SHOW CAUSE HEARINGS

- Explain to the Court why you are out of compliance
- You will receive 7 days or less to become compliant
- Failure to become compliant will result in removal and appointment of a GAL
- No second chances; No additional time; No excuses

NEW SOFTWARE

- zConnect
- It will not impact you
- It will make Zoom smoother for the Court, which will result in faster hearings

COURT'S WEBSITE

- Refer to the Court's website before calling the Court with questions
- Most questions can be answered on the website

Ad Litem Requirements

THE NEW REQUIREMENTS FOR COUNTY COURT AT LAW NO. 1

Ad litem Requirements for CCL#1

Standing Administrative Order on Fort Bend County Court at Law No. 1 Attorney & Guardian Ad Litem Appointment Lists

- A letter addressed to the Court on the attorney's letterhead, requesting placement on either the Probate Attorney/Guardian Ad Litem List 1, 2, or both; the Guardianship Attorney/Guardian Ad Litem List 1, 2, or both; or all lists.;
- A current State Bar of Texas Certified Attorney Ad Litem Certificate obtained by completion of the Texas Estates Code 1054.201 mandated four hours of guardianship training;
- A resume or curriculum vitae;
- A completed Fort Bend County Courts at Law No. 1 and 2 Application and Attorney Profile Form;
- *Waived*: View "Practicing in Fort Bend County" video in the law library;
- Attend the Courts' annual Practicing Probate in County Court at Law No. 1 CLE once in the last 3 years; and
- Schedule and attend a probate docket of each court.

REMEMBER - Pay close attention to the section requiring notification of changes to your contact information. Keep your certificate current with the Court. *Failure to do so **will** result in removal*.

ORDER AUTHORIZING APPOINTEE FEES – use the one the Court provided upon appointment. All Fees are set at a flat $525.00, unless agreed upon by the parties or testimony on why you should be awarded more.

Court Contacts

If you have a questions, just email or call the Court!

- Anita “Annie” Ayala– Probate Auditor
  - Telephone: (281) 633-7413
  - Email: anita.ayala@fortbendcountytx.gov
- Regina Green – Court Coordinator
  - Telephone: (832) 471-2822
  - Email: regina.green@fortbendcountytx.gov
- Sarah Toler– Admin. Clerk
  - Telephone: (281) 633-7415
  - Email: sarah.toler@fortbendcountytx.gov
- County Court at Law No. 1 Website

QUESTIONS

