BEXAR COUNTY PROBATE COURT NO. 3

Judge Barbie Scharf-Zeldes
Bexar County Courthouse
100 Dolorosa, Ste. 1.20
San Antonio, Texas 78205

December 6, 2024

CHECKLIST FOR PROBATING AN ORIGINAL WILL/CODICIL (FOR LETTERS TESTAMENTARY, LETTERS OF ADMINISTRATION WITH WILL ANNEXED, OR AS A MUNIMENT OF TITLE)

Procedures: Please note that this checklist is for the probate of an original Will. If you are trying to probate a Copy of a Will, or you are probating a Will as a Muniment of Title More than 4 Years after Decedent's death, please see the separate checklists addressing those requirements. **Once the checklist is fully completed, the applicant's attorney will contact the Court's paralegal to review and approve. Upon approval, the attorney may set this matter for hearing with the Court Coordinator.**

A FIAT is required. Please use the template on the Probate Court 3 website. The case will be reviewed by a staff attorney after it has been set for hearing. If there are concerns with the case, the staff attorney will make every effort to contact the filing attorney in a timely fashion, but if the issue is not resolved prior to the hearing, the case will have to be re-set.

Please cross through actions that do not apply

Note: This court uses the following explanation of "disinterested witness" for purposes of determining heirs: A disinterested individual is a person who has no interest in the estate, no interest in the outcome of the proceeding, and is familiar with the decedent's family history. In the event a disinterested witness is simply not available, please state the circumstances in a Motion/Order.

Case Number _____ Estate of _____

Checklist for Probating a Will or Codicil

□ Application:

- Title of document must reflect what you are probating, e.g. *Application for Probate Will and for Issuance of Letters Testamentary* or *Application to Probate Will as Muniment of Title* or *Application to Probate Will and for Letters of Independent Administration with Will Annexed*…Prayer must reflect the same.

- Application includes all requirements set forth in *§256.052, Estates Code.*

- If the applicant is not the original independent executor named in the Will, please address why the original independent executor is not serving (e.g. "they died on ____ (date)," or "they are declining to serve and will sign a Waiver & Declination, which will be filed into this case"). If the original independent executor or any successor executors named in the Will are alive, but are not going to serve, they must either sign a Waiver & Declination or they will have to be served notice by personal service issued by the sheriff or constable if

the recipient is located in Texas (*§51.051, Estates Code*). The reason this Court requires that notice be given or waivers signed by the first and any successor ahead of your applicant is that they have priority to serve - this goes to the general proof requirement that the applicant is entitled to Letters and is not disqualified (*§256.151(5), Estates Code)*.

- If none of the executors named in the Will are willing or able to serve, please describe the circumstances surrounding their failure to serve and follow the instructions above about waivers/notice as applicable. Please note that if your applicant is not an executor named in the Will, the title of your application will read, "Application for Independent Administration and for Letters of Independent Administration with Will Annexed." Please ensure that notice is posted this way. Please state in the application how your applicant has standing to file (*§301.051 & §304.001, Estates Code*). Please note that to have an "Independent Administration" all beneficiaries of the Will must sign Waivers & Consents. Otherwise, it will be a dependent administration.
- For a Muniment of Title - Any interested person may file a muniment; however, if the applicant is not the original independent executor named in the Will, the original independent executor and any successor independent executor, who is ahead of your applicant, must be noticed or sign waivers because they have priority to serve as applicant. In this case, if the executor or successor executor is unwilling/unable to sign a waiver of notice, they will have to be served notice by personal service (*§258.051, Estates Code*) issued by the sheriff or constable if the recipient is located in Texas (*§51.051, Estates Code*).

- If Will is not self-proved, file either (*§256.153 and §256.154, Estates Code*):
  - Proof of execution of attested Will by sworn testimony from one (1) subscribing witness signed, notarized, and e-filed into case prior to hearing, and testimony provided in open court; or
  - Two (2) handwriting/signature proofs signed by disinterested witnesses, notarized, and e-filed into case prior to hearing, and testimony provided in open court.

□ Posting by the Probate Clerk with correct title - Please ensure that both the Decedent's and the Applicant's names match EXACTLY in the Application/Notice/Order as they are stated in the Will. If the Decedent and/or Applicant use(d) other names, name variations, middle initial v. entire middle name, etc. we ask that you include all applicable variations in your application using an AKA, FKA, or NKA. Applications and notices that do not include the Decedent's and Applicant's names exactly as they are stated in the Will will be dropped until an amended application and new notice are e-filed and posted.

- All names (Decedent, Applicant(s), etc.) need to match exactly in *all* documents filed.

□ E-file signed and notarized Proof of Death prior to requesting hearing date.

- For Letters Testamentary – In addition to the language required under *§256.151 & 256.152, Texas Estates Code*, please include the language that the Applicant is not a convicted felon.
- For Muniment of Title – Please include language that no administration is necessary, that there are no debts of the estate, and that the decedent did not receive Medicaid on or after March 1, 2005.
- Typically, the Applicant signs the Proof of Death, but it is acceptable for the attorney to sign the Proof, assuming that the attorney is personally familiar with the facts and willing to sign it. Whomever signs the Proof is the one who will need to attend the hearing.

□ Tender the original Will offered for probate to the Clerk within 3 days of filing application, *§21(f)(12), Texas Rules of Civil Procedure.*

□ E-file proposed Order, prior to requesting hearing date, that includes proper title and language on probating a Will. Double check that both Applicant's and Decedent's names match in the Order as in the Will/Application/Notice posted.

□ E-file blank Oath.

□ Email an Original or Copy of the Death Certificate to both staff attorneys and paralegal.

□ Attorney has provided their client with the Court Instructions pertaining to their application, as well as any applicable guides. Forms are located on the PC3 Website.

□ Anyone who signs a Proof, Affidavit, or Statement of Facts must appear at the hearing to testify.

Attorney Verification

I, _____ *confirm that all required documents for the hearing I am requesting in Cause No.* ***-PC3-*** *are correct and have been e-filed and accepted by the Bexar County Probate Clerk's office.*

Signed: _____ Date: _____