HUNT COUNTY COURT AT LAW NO. 2

JUDGE JOEL D. LITTLEFIELD

POLICIES

&

PROCEDURES

The information contained herein constitutes the policies & procedures for the Hunt County Court at Law No.2. Where these policies and procedures include pleading tips, the pleading tips should not be considered a substitute for your legal expertise. Where these policies and procedures include references to case law or statute, it is your responsibility to verify the citied case law or statute. These policies and procedures are subject to change, it is your responsibility to make sure you that you are aware of any changes thereto.

Effective Date: 03-15-2022

TABLE OF CONTENTS

A. GENERAL 1

1. DECORUM 1
2. PARTIES PROCEEDING PRO SE 1
3. ATTORNEY APPEARANCES AND AUTHORITY 2
4. CONFLICT SETTINGS 2
5. FAILURE TO APPEAR/UNPREPARED FOR HEARING 3
6. EX-PARTE & EMERGENCY ORDERS 3
7. WHEN JUDGE IS UNAVAILABLE 3
8. REQUEST FOR SETTINGS 4
9. MOTION PRACTICE 5
10. DOCKET CONTROL/SCHEDULING ORDER 7
11. MEDIATION 7
12. DEPOSTIONS 8
13. DISCOVERY 8
14. SUSPENSE DOCKET 9
15. DISMISSAL DOCKET 9
16. PRETRIAL (CIVIL CASES) 10
17. SUBMISSION OF JUDGMENTS, DECREES, ORDERS 10
18. APPEALS FROM JUSTICE COURT 11
19. JURY TRIALS 12
20. INTERPTRETERS 12

B. CRIMINAL 13

1. INDIGENT REPRESENTATION 13
2. RETAINED COUNCIL 13
3. SETTINGS & RESETS 13
4. DISCOVERY 15
5. MOTIONS 15
6. CONTINUANCES 16

C. PROBATE: 17

I. WILLS, MUNIMENT OF TITLE & SMALL ESTATE AFFIDAVIT 17

1. PRO SE REPRESENTATION NOT PERMITTED 17
2. AD LITEM APPOINTMENTS 17
3. FILING OF ORIGINAL WILL 17
4. PLEADINGS & APPLICATION 17
5. PROOF OF DEATH AND OTHER FACTS (POD) 21

6. THE ORDER 22
7. PROBATING A COPY OF A WILL (OR CODICIL) OR A LOST WILL (OR CODICIL) 24
8. PROBATING WILL MORE THAN FOUR YEARS AFTER DEATH OF TESTATOR 25
9. APPOINTMENT OF RESIDENT AGENT 26
10. SAFEKEEPING AGREEMENT 26
11. COURT'S GENERAL INFORMATION SHEET & INSTRUCTIONS 26
12. UNCONTESTED HEARING FOR THE PROBATE OF A WILL 27
13. INVENTORY, ANNUAL ACCOUNT, & ACCOUNT FOR FINAL SETTLEMENT 27

II. HEIRSHIPS 28

1. PRO SE REPRESENTATION NOT PERMITTED 28
2. AD LITEM APPOINTMENTS 28
3. APPLICATIONS 28
4. REDUCE EXPECTED TESTIMONY TO WRITING 29
5. JUDGMENT DECLARING HEIRS (COMBINED WITH ORDER FOR ADMINISTRATION IF APPLICABLE) 31
6. APPOINTMENT OF RESIDENT AGENT 32
7. SAFEKEEPING AGREEMENT 32
8. COURT'S GENERAL INFORMATION SHEET & INSTRUCTIONS 32
9. UNCONTESTED PROVE UP OF A DETERMINATION OF HEIRSHIP 33
10. INVENTORY, ANNUAL ACCOUNT, & ACCOUNT FOR FINAL SETTLEMENT 33

III. GUARDIANSHIPS 34

1. PRO SE REPRESENTATION NOT PERMITTED 34
2. AD LITEM APPOINTMENTS 34
3. APPOINTMENT OF RESIDENT AGENT 34
4. SAFEKEEPING AGREEMENT 34
5. COURT'S GENERAL INFORMATION SHEET & INSTRUCTIONS 35
6. UNCONTESTED PROVE UP OF A GUARDINSHIP 35
7. INVENTORY, ANNUAL REPORT ON CONDITION OF WARD, ANNUAL ACCOUNT, & ACCOUNT FOR FINAL SETTLEMENT 36

D. MENTAL COMMITMENT CASES 37

1. PRIORTY OF SETTING 37
2. APPLICATION FOR COURT ORDERED MENTAL HEALTH SERVICES 37

A. GENERAL

1. DECORUM

1.1 **Attorney responsibility**. All attorneys shall be responsible for advising their clients, witnesses and staff of appropriate courtroom decorum as contained herein.

1.2 **Telephones.** Telephones shall be turned on silent while inside the courtroom and shall not be operated while inside the courtroom, unless specially authorized by the Court.

1.3 **Clothing.** Hats and other headgear, slippers, shorts, bare midriffs, tank tops or clothing depicting obscene material shall not be acceptable inside the courtroom.

1.4 **Food or drink.** There will be no food, drinks, gum, candy or tobacco products inside the courtroom unless the court has expressly stated otherwise.

1.5 **Unsolicited communications.** There will be no outbursts, disturbances, threats, obscene language or gestures inside the courtroom. No person may, by facial expression, shaking or nodding of the head or by any other conduct, express approval or disapproval of any testimony, statement or transaction in the courtroom.

1.6 **Communication with inmates prohibited**. No person shall be permitted any verbal or physical contact with an inmate without the prior approval of the bailiff.

1.7 **Children**. No children shall be permitted in the courtroom during any court proceeding without prior approval of the court.

1.8 **Promptness.** Attorneys, parties and witnesses shall be prompt for all proceedings. Properly subpoenaed witnesses shall be available when called.

1.9 **Sanctions.** Violation of courtroom decorum may result in immediate removal of the person who is in violation, a finding of contempt, a fine or any other sanction allowed by law.

2. PARTIES PROCEEDING PRO SE

2.1 **Requirement to understand rules and procedure**. All requirements applicable to attorneys apply with equal force to pro se litigants. Any natural person proceeding on their own behalf without an attorney shall be expected to read and follow the local rules of the Court, the policies and procedures of the Court, all standing and administrative orders of the Court, the Texas Rules of Civil Procedure, Rules of Evidence, the Code of Criminal Procedure and the Rules of Appellate Procedure as

may be applicable in a particular case. Wherever "counsel" or "attorney" is used herein it includes a party not represented by an attorney. Failure to comply may result in the party being sanctioned, fined or punished as in other cases.

2.2 **Notice.** Pro se litigants are required to provide a mailing address, telephone number, and email address for where they may be reached by court personnel and opposing counsel. Failure to accept or to pick up mail sent to the mailing address or email address provided by a pro se litigant will be considered constructive receipt of the mailed or delivered document and may be established by a postal service receipt for certified or registered mail or comparable proof of delivery.

3. ATTORNEY APPEARANCES AND AUTHORITY

3.1 **Attorney of record.** All hearings, scheduling conferences and pretrial conferences shall be attended by the attorney-in-charge or counsel who is familiar with the case and who is fully authorized to: (1) state the client's position on the law and the facts; (2) make agreements as to scheduling; (3) enter into stipulations; (4) stipulate to the admissibility and/or authenticity of exhibits; and (5) negotiate settlement.

3.2 **Unauthorized persons to represent attorney**. Under no circumstances may an attorney be represented at any hearing, scheduling conference or pre-trial conference by any secretary, paralegal or other non-lawyer personnel.

3.3 **Seating of non-lawyer personnel.** Under no circumstances may any secretary, paralegal or other non-lawyer personnel be in front of the bar during a hearing or trial, unless the Court gives prior authorization.

4. CONFLICT SETTINGS

4.1 **Attorney already in trial in another court.** When informed that an attorney is presently in trial, the court will determine where and when assigned. This information will be verified upon request of opposing counsel. The case will be placed on "hold" or reset depending on when the attorney will be released. If the attorney is not actually in trial as represented by the attorney, or their agent, the case will be tried without further notice.

4.2 **Duty to notify court of conflicts.** It is the duty of the attorney to call the judge's attention to all dual settings as soon as they are known. All attorneys having conflicts with other court settings who will be late for court settings, hearings or conferences shall notify the court coordinator and opposing counsel of said conflict as soon as it becomes apparent. Failure to timely notify the court may result in sanctions.

5. FAILURE TO APPEAR/UNPREPARED FOR HEARING

5.1 **Duty to appear prepared for hearing.** When counsel for either party, after notice, and without good cause, fails to appear or is unprepared for a hearing, scheduling conference or pre-trial conference, the court may: (1) make all scheduling decisions and rule on all motions, exceptions or other matters; (2) declare any motions or exceptions that have been prepared as having been waived; (3) alter the trial setting or other scheduling matters, decline to set the case for trial, cancel the setting previously made, or take such other action that is deemed just and proper; and/or (4) pass and reset the hearing or conference in which case the party represented may be entitled to recover reasonable attorney's fees and expenses.

6. EX-PARTE & EMERGENCY ORDERS

6.1 **Emergency filings**. No application for action or relief of any kind shall be presented to the judge before the application or case has been filed with the appropriate clerk, unless it is impossible to do so. If it is impossible to file an application or case before it is presented to the judge, then it shall be filed as soon thereafter as possible and the clerk notified of all actions taken by the judge.

6.2 **Notice.** Counsel presenting any application for a temporary restraining order or other ex parte relief shall notify the opposing party's counsel, or the opposing party if unrepresented by counsel in the present controversy, and provide opposing counsel or party with a copy of the application and proposed order at least two (2) hours before the application and proposed order are to be presented to the Court for decision.

6.3 **Exception to notice**. Compliance with notice is not required if a verified certificate of a party or a certificate of counsel is filed with the application stating:

a. That irreparable harm is likely imminent and there is insufficient time to notify the opposing party or counsel; or

b. That to notify the opposing party or counsel would impair or annul the Court's power to grant relief because the subject matter of the application could be compromised or property removed, secreted or destroyed, if notice were given.

7. WHEN JUDGE IS UNAVAILABLE

7.1 **Signature by another judge.** Any judge of a district court or county court at law may hear, decide and sign any necessary orders or other documents in cases involving hearings on applications for temporary restraining orders, issuance of writs of sequestration, garnishment and attachment, whether such matters shall be heard ex-

parte or otherwise, entries of default judgment, writs and process, and/or any other emergency matter while the judge is unavailable.

8. REQUEST FOR SETTINGS

8.1 **Request for hearing / setting in pleading insufficient.** Merely requesting a hearing or setting in your pleading will not be effective to notify the Court that you want a hearing and none will therefore be set.

8.2 **Request for hearing / setting by telephone or email is not permitted.** Although you may contact the court coordinator by telephone or email to get information on possible court dates and times, the court coordinator will not set any matter for hearing or setting by telephone or email.

8.3 **Request for hearing / setting shall be made by filing (e-filing) request with county clerk**. All requests for hearings or settings shall be made by filing (e-filing) the appropriate request for hearing or setting form (as set out in *8.5* and *8.6* below*)* with the county clerk.

8.4 **Conference required.** All court appearances, hearings and trials may only be scheduled after conference with opposing counsel. Failure to attempt to confer may be brought to the attention of the court without the necessity of a motion for continuance and may result in the court resetting the appearance, hearing or trial.

8.5 **Trial settings**. Cases (other than criminal cases) shall be set for trial by completing and filing (e-filing) with the county clerk the Court's *Trial Setting Request and Order Setting Trial*. Criminal cases may be set for trial by completing and filing (e-filing) with the county clerk the Court's *Criminal Case Setting Request and Order Setting Hearing*. Within seven (7) days of service of a notice of trial, any party having an objection to the setting shall inform the court and all parties of the objection in writing and obtain a hearing on the objection.

8.6 **Settings other than trial.** Cases shall be set for hearing by completing and filing (e-filing) with the county clerk the appropriate hearing or setting request form found on the Court's website (*Civil Case Setting Request and Order Setting Hearing*, *Probate Setting Request and Order Setting Hearing*, *Guardianship Setting Request and Order Setting Hearing*, and *Criminal Case Setting Request and Order Setting Hearing*).

8.7 **Required notice of hearing.** It shall be the responsibility of the party setting a hearing, and not the responsibility of the court coordinator, to immediately give written notice to the opposing party of such setting, including date, time and subject matter.

8.8 **Submission.** Parties may set matters for ruling by the court without personal appearance or oral presentation by requesting that the matter be set for submission.

Matters set for submission must provide at least seven (7) days' notice to all parties. A party that opposes submission, must notify, in writing, all parties and the court of its opposition to submission at least three (3) days before the submission date. A party that has filed an objection to submission is required to personally appear on the date and time the matter is set for submission. The party that requested submission may appear but is not required to appear. A party that has filed objections to submission and fails to appear may be sanctioned by the court.

8.9 **Pretrial hearing.** A party seeking affirmative relief must announce "ready" or "not ready" at the pretrial hearing. A party should not announce "not ready" unless a motion for continuance has been filed.

8.10 **Resets.** No setting shall be passed or reset except by: (1) settlement agreement announced in open court or in writing complying with Rule 11 of the Texas Rules of Civil Procedure; (2) written agreement of all parties with Court approval; or (3) a Motion for Continuance granted by the Court. All cases set for trial, whether jury or non-jury may not be passed by agreement of counsel. Such cases may only be reset upon the granting by the Court of a Motion for Continuance, unless the Court removes such from the trial docket on its' own motion.

8.11 **Failure to appear.** Failure of a party seeking affirmative relief to appear at any scheduled trial or hearing shall result in a dismissal of the case or waiver of the matters presented in the motion scheduled for hearing.

9. MOTION PRACTICE

9.1 **Resolution**. Parties are directed to use all reasonable means to resolve pretrial disputes to avoid the necessity of judicial intervention.

9.2 **Form.** Motions and responses shall be in writing and shall be accompanied by a proposed order both granting and denying the relief sought.

9.3 **Response.** Responses shall be in writing. Responses shall be filed at least three (3) days before the hearing/submission date. Failure to file a response may be considered a representation of no opposition.

9.4 **Unopposed motions.** If any motion is unopposed by all counsel of record, counsel shall state so conspicuously on the face of the motion. In such event, the motion will be submitted by the clerk to the judge for approval and will be granted routinely without a hearing unless the judge is of the view that the granting of such motion is not in the interest of justice. A separate proposed order granting the relief sought shall accompany the motion and shall be signed by all attorneys.

9.5 **Agreed motions.** If any motion is agreed by all counsel of record, counsel shall state so conspicuously on the face of the motion. In such event, the motion will be submitted by the clerk to the judge for approval and will be granted routinely without a hearing unless the judge is of the view that the granting of such motion is not in the interest of justice. A separate proposed order granting the relief sought shall accompany the motion and shall be signed by all attorneys.

9.6 **Motion for summary judgment.** Motions for Summary Judgment will be heard by submission only, unless a hearing is ordered by the Court.

9.7 **Motions for default judgment**. Prior to requesting a setting on a Motion for Default Judgment, the Court's *Default Judgment Checklist for Personal Service or Certified Mail* or *Default Judgment Checklist for Alternative or Substituted Service* must be completed and filed (the checklists may be found on the Court's website). Default judgments asking for liquidated damages may be set by submission or oral hearing. Default judgments seeking unliquidated damages require an oral hearing. When proving damages in a motion for default judgment, show the Court how you calculated the damage figure and provide evidence to support your calculation.

9.8 **Motion for substituted service (Rule 106).** All motions for substituted service under Rule 106 must be accompanied by an affidavit that describes the efforts taken to verify that the defendant actually lives or works at the subject address, at least three attempts of service at different time of day with the specific dates and times, the identity of person(s) present at the subject address and what was said, the identity of the owners of any cars in the driveway, or other indications that the defendant resides at the subject address. All Rule 106 motions must be filed with a proposed order.

9.9 **Conference requirement.** No counsel for a party shall file any motion unless accompanied with a "certificate of conference" signed by counsel for movant. Prior to the filing of a motion, counsel for the movant shall personally attempt to contact counsel for the respondent to hold or schedule a conference to resolve the disputed matter(s). Counsel for the movant shall make at least three (3) attempts to contact counsel for the respondent. The attempts shall be made during regular business hours on at least two (2) business days. The "Certificate of Conference" shall state one of the following:

a. Counsel for movant and counsel for respondent have personally conducted a conference at which there was a substantive discussion of the issues raised in this motion and despite best efforts the counsel have not been able to revolve those matters presented.

b. Counsel for movant has personally attempted to contact the counsel for respondent to resolve the matters presented, but

counsel for respondent has failed to respond or attempt to resolve the matters presented.

c. Counsel for movant has conferred with opposing counsel on the merits of the issues contained in this motion, and opposing counsel has indicated that the motion is unopposed.

9.10 Sanctions for failure to confer. Counsel who refuse to confer, or who ignore attempts to confer, as required by this rule may be sanctioned by the court.

9.11 Exceptions to conference requirement. Conference requirement does not pertain to dispositive motions, motions for summary judgment, motions for default judgment, motions for voluntary dismissal or nonsuit, post-verdict motions, and motions involving service of citation.

10. DOCKET CONTROL/SCHEDULING ORDER

10.1 Docket control/scheduling order. The court may (in cases other than criminal cases) on its own motion and shall, upon timely request, issue a docket control/scheduling order which shall set appropriate deadlines and settings for the case. The *Scheduling Order* is promulgated by the Court, and is found on the Court's website.

10.2 Final pretrial submission. In all jury trials and bench trials (other than criminal cases) of more than a half day, each party, either jointly or separately, shall complete and file the Court's *Final Pretrial Submission,* which is promulgated by the Court and is found on the Court's website.

11. MEDIATION

11.1 Policy. It is the policy of the court to encourage the peaceful resolution of disputes and the early settlement of pending litigation. To enforce this policy, all cases set for hearing which are expected to take two (2) hours or more are automatically referred to mediation and shall not be heard by the court until the conclusion of mediation.

11.2 Objection to automatic referral. Any party receiving notice of a setting that automatically refers the case to mediation has ten (10) days from the receipt of said notice to file a motion objecting to the automatic referral. Failure to file such motion waives the objection to the referral. If any party files a motion objecti0ng to the automatic referral to mediation and the court finds that there is a reasonable basis for the objection, the case may be excused from the automatic referral.

11.3 Referral by agreement or by court's motion. On written agreement of the parties or on the court's own motion, the court may at any time refer a suit to mediation.

11.4 Attendance at mediation. Except upon leave of court, only the parties, an authorized agent, corporate representative, insurance company representative, accountant/CPA and attorneys may attend. All parties with the authority to settle the case shall be present.

11.5 Irrevocable mediated settlement agreement. A meditated settlement agreement shall be binding on the parties if the agreement states that it is not subject to revocation, it is signed by each party, and by each party's attorney who is present at the time the agreement is signed.

12. DEPOSTIONS

12.1 Motion to quash. Any party who files a motion to quash depositions must comply with the TRCP. Upon receipt of the motion, the respondent may ask for a hearing to be heard within 72 hours but not less than 24 hours, subject to the court's discretion.

12.2 Unreasonable time for notice of depositions. Notice of less than ten (10) calendar days under TRCP Rules 21a and 199.2(a) shall be presumed to be unreasonable.

12.3 Attempt to agree to schedule. The party initiating a deposition shall attempt to communicate with opposing counsel to determine whether an agreement can be reached as to date, time, place and material to be furnished at the time of deposition.

12.4 Written notice of deposition. A written notice of deposition on a date, time or place that is not agreed shall state as follows:

> "A conference was held (or attempted) with the counsel for opposing party to agree to a time, date, place and materials to be furnished. Agreement could not be reached (or counsel will not respond) and the deposition is therefore being taken pursuant to this notice."

12.5 Failure to hold/attempt conference. Failure to hold a conference prior to noticing a deposition shall be grounds to quash the deposition.

13. DISCOVERY

13.1 Objections to discovery. Frivolous objections to discovery are subject to sanctions by the court, including objections to identification of persons having knowledge of relevant facts and identification of testifying expert witnesses.

13.2 Time period for discovery. All parties shall complete discovery not less than thirty (30) days prior to the date the case is set for trial unless otherwise ordered by the court, agreed upon by parties or required by statute.

14. SUSPENSE DOCKET

14.1 Notice of bankruptcy. Whenever a party in this court files for protection under the bankruptcy laws of the United States, it shall be the responsibility of that party's counsel to, within three (3) days of any bankruptcy filing, provide written notice to the court and all counsel that a bankruptcy has occurred, stating the name and location of the bankruptcy court, the bankruptcy cause number and style, the date of filing and the name and address of counsel for the bankrupt party, as well as the name and address for the trustee. The court shall transfer the case to the suspense docket.

14.2 Conclusion of bankruptcy. Once a bankruptcy has been concluded, whether by discharge, denial of discharge or otherwise, counsel shall within three (3) days notify the court and all counsel. The case may be restored to the active docket or be dismissed as may be appropriate.

15. DISMISSAL DOCKET

15.1 Dismissal for want of prosecution. A case may be dismissed for want of prosecution for any of the following reasons:

- **a.** Failure of the Plaintiff/Petitioner to request a setting or take other appropriate action after notice that the case has been pending without action for more than sixty (60) days.
- **b.** Failure of the Plaintiff/Petitioner's counsel to appear for pretrial, docket, conference, or other preliminary hearing, especially where there has been a previous failure to appear or where no amendment has been timely filed to meet expectations previously sustained.
- **c.** Failure of Plaintiff/Petitioner to make an announcement of "ready" when a case is called for trial or hearing of any preliminary matters.
- **d.** Six (6) months has elapsed since the initial responsive pleading in the case and the parties have not requested a trial date.
- **e.** For any other reason provided by the Local Rules, Texas Rules of Civil Procedure, or the general law.

15.2 Notice. When a case has been placed on the dismissal docket, the court shall promptly send notice of the court's intention to dismiss for want of prosecution to each attorney of record and pro se party whose address is shown in the clerk's file. A copy of such notice shall be filed with the papers of the cause.

15.3 **Motion to retain.** Unless a motion to retain has been filed and granted by the Court prior to the dismissal date, as set forth in the notice of intention to dismiss, counsel shall appear and show good cause why the Court should not dismiss the case. Notice of the signing of the order of dismissal shall be given as required by Rule 165(a) of the Texas Rules of Civil Procedure. Failure to mail notices as set out above shall not affect any of the periods mentioned in Rule 306 (a) of the Texas Rules of Civil Procedure except as provided in that rule.

15.4 **Motion for reinstatement.** A motion for reinstatement after dismissal shall follow the procedure and be governed by the provisions of Rule 165(a) of the Texas Rules of Civil Procedure relating to reinstatement.

16. PRETRIAL (CIVIL CASES)

16.1 **Pretrial conference required**. Prior to all jury trials there shall be a pretrial conference. If a pretrial conference is not scheduled by the court the plaintiff/petitioner shall be responsible for requesting a pretrial conference.

16.2 **Exchange of documents and things.** Unless otherwise specifically ordered, at least ten (10) days prior to the pretrial conference, the parties shall serve or exchange the following: (1) exhibit lists (parties are required to make their exhibits available for inspection on the date of the pretrial conference or on a date prior with reasonable notice and request); (2) witness lists; (3) deposition excerpts by page and line; (4) motions in limine; and (5) proposed jury charge.

16.3 **Objections to documents and things.** Any objections to the items in 16.2 above and/or cross-line page and line designations shall be filed five (5) days before the pretrial conference. Any objections that have been timely filed and served in compliance with these rules will be addressed at the pretrial conference.

16.4 **Attendance mandatory.** Trial counsel is ordered to attend the pretrial conference and shall be prepared to make an announcement of "ready" or "not ready". Announcements of "not ready" shall be accompanied by a motion for continuance.

16.5 **Failure to comply.** Failure to comply with the foregoing may result in sanctions pursuant to the TRCP, and without limitations, may include exclusion of exhibits, witnesses or waiver of objections.

17. SUBMISSION OF JUDGMENTS, DECREES, ORDERS

17.1 **Reduction to writing in contested matters.** Within seven (7) days of the Court's ruling on contested matters the prevailing party shall submit a proposed order to the

opposing party and the Court. If opposing party objects to entry of the proposed order, opposing party shall, within seven (7) days of receipt of the proposed order, file written objections with the court and obtain a hearing on the objections to the entry of the proposed order. If no objections are filed and/or a hearing has not been obtained on objections to entry of the proposed order, the Court will presume that there are no objections as to form, or any and all objections have been waived and may sign the proposed order.

17.2 Reduction to writing in uncontested matters. All judgments or orders in uncontested matters (except for settlements made pursuant to T.R.C.P. 11) and in default matters (where citation has been served and there has been no answer filed or other general appearance) must be presented at the time of hearing on the uncontested or default matter.

17.3 Dismissal if written order not furnished. Upon failure to furnish the Court with a judgment, order or decree the Court may place the case on the next regularly scheduled dismissal docket, whereupon the case may be dismissed and costs may be taxed at the Court's discretion.

17.4 Court may prepare its own order. Nothing herein prevents the Court from making and signing its own order at any time after the hearing in accordance with the Texas Rules of Civil Procedure.

18. APPEALS FROM JUSTICE COURT

18.1 General rules. Appeals from the Justice Courts are heard in the County Courts at Law. The procedures in the County Courts at Law are different than those in Justice Courts. The County Court at Law No. 2 does not set your case for you. If you wish to set your case for hearing you must follow the procedures contained herein. Appeals from Justice Court are de novo, meaning everything that is done in Justice Court is set aside and retried at the County Court at Law level. The original plaintiff is still called the plaintiff (not the appellant or the appellee). The style of the case is the same as what it was in Justice Court with a new cause number.

18.2 Eviction appeals. Eviction appeals are given preference and are set expeditiously on request. These cases may be set any time after they have been on file with the county clerk for eight (8) days.

18.3 Forcible entry and detainer appeals (non-payment of rent). Even if the tenant appeals and files an affidavit of inability to pay costs the tenant must still pay rent while the appeal is pending under TRCP 510.9. If rent is not paid as required, the landlord may file for a writ of possession. To obtain a final judgment for all past due rent, the case must be set for a trial.

19. JURY TRIALS

19.1 Selection of jury and testimony. Juries will be selected on Monday morning and testimony will begin on Tuesday morning, unless otherwise directed by the Court.

20. INTERPTRETERS

20.1 Interpreters not provided by court in civil cases. If you have a client or a witness who cannot communicate in English during a hearing, whether due to a hearing impairment or inability to speak and/or comprehend the English language, then you must procure the services of a state-certified interpreter as defined by Government Code § 57.001. The Court does not provide interpreters.

B. CRIMINAL

1. INDIGENT REPRESENTATION

1.1 **Appointment**. Appointment of counsel to represent indigent defendants is governed by the Hunt County Court Plan which can be located by a link on the Court's website. The judge will administer the plan. Counsel appointed to represent indigent defendants will adhere to the rules of the plan. Failure of counsel to adhere to the requirements of the plan may result in counsel's removal from the list as provided for in the plan.

2. RETAINED COUNCIL

2.1 **Notice.** Immediately upon employment, the defense attorney shall give written notice of said employment to the prosecutor and the county clerk stating the name of the defendant, the date of and the offense(s) charged and cause number, if known.

2.2 **Attorney bail bonds.** Any attorney who executes a bail bond as a surety will be deemed to be the attorney of record for the person for whom the bond was made. An individual released from jail under such a bond will not ordinarily be assigned a court appointed attorney. If a court appointed attorney has previously been assigned to the person for whom an attorney bond has been posted, the court appointed attorney will, ordinarily be removed from the case. A letter of representation shall be required of the attorney posting the attorney bond.

3. SETTINGS & RESETS

3.1 **First appearance.** If Defendant is unrepresented, Defendant will be given an opportunity to: (1) apply for a court appointed attorney, (2) reset the case to hire an attorney, or (3) waive the right to representation by an attorney and represent him/herself. At the conclusion of the hearing, the case will be rest for Arraignment, or in the event Defendant has waived the right to representation by an attorney, Defendant will be arraigned and the case will be reset for Confirm Discovery Offer. If Defendant is represented by an attorney, Defendant will be arraigned or waive formal arraignment and the case will be reset for Confirm Discovery Offer.

3.2 **Arraignment.** Defendant will be formally arraigned, or if represented by an Attorney, may waive formal arraignment. At the conclusion of the hearing, the case will be reset for Confirm Discovery Offer.

3.3 **Confirm discovery offer.** Defendant must acknowledge whether or not discovery and an offer has been received. If there is an issue with discovery and/or offer, it must be

addressed with the Court at this setting. At the conclusion of the hearing, the case will be rest for Announcement.

3.4 **Announcement (plea or trial).** Defendant must announce whether a plea-bargain offer (if one was conveyed) has been accepted or rejected. If Defendant rejects the plea-bargain offer, or if no plea-bargain was offered, the matter will be set for trial. If a plea-bargain offer is accepted, the plea will be completed at the announcement setting (cases will not be reset to plea).

3.5 **Plea bargain paperwork/process**. Once your client has notified you that he/she has accepted a plea bargain offer, you shall *immediately*:

a. notify the prosecutor's office that the plea has been accepted so that the prosecutor's office can prepare the plea paperwork, and

b. submit to the court clerk a completed *Attorney Fee Voucher* if appointed, or *Request for Bill of Cost*, if retained. These forms are promulgated by the Court and are found on the Court's website.

3.6 **MTR/MTA.** Motions to Revoke or Adjudicate will generally follow the same order of setting listed above.

3.7 **Class C appeals:** Class C appeals will have only two setting prior to trial: First Appearance and Announcement. The Defendant, if represented by an attorney, is not required to appear at either of the above settings. At the announcement setting a plea will be finalized or the Court will set the matter for trial. Any and all monetary obligations involved in the plea of a Class C appeal shall be paid at the time of the plea (no exceptions).

3.8 **Resets.** The time period between resets, up to the announcement setting, will be 2-4 weeks. Trial settings (or final hearings on MTR/MTA) will be set 4-8 weeks from the announcement setting.

3.9 **Pretrial setting/hearing.** It is the requirement of the parties to request any pretrial setting/hearing. The court on its on motion may set a matter for a pretrial setting/hearing.

3.10 **Additional setting.** Additional settings will only be granted on a specific request based on specifically articulated need. An unspecified statement of more time needed is not sufficient.

3.11 **Presence required.** The presence of Defendant is required at all hearings unless excused by the court.

3.12 Failure to appear. Upon Defendant's failure to appear the Court will issue a capias/warrant for the arrest of Defendant, and a judgment nisi without delay. Once issued, the Court will not consider reinstatement of the original bond until and unless:

a. the attorney representing Defendant (if Defendant is represented by an attorney), Defendant, and the surety, personally appear before the Court and show good cause as to why the bond should be reinstated, and

b. present the Court with a fully executed *Agreed Order Recalling Capias*. This form is promulgated by the Court and is found on the Court's website.

4. DISCOVERY

4.1 Discovery. Discovery shall be conducted in accordance with Article 39.14 of the Texas Code of Criminal Procedure & any standing or administrative order of this court.

5. MOTIONS

5.1 Pretrial motions. All pretrial motions, including pleadings of the defendant, special pleas, exceptions to the form or substance of the information, motions to suppress, motions for change of venue, discovery motions, entrapment motions and motions to appoint an interpreter, must be filed at least seven (7) days prior to the pretrial setting. If any such preliminary matter is not raised or filed seven days before the pretrial setting it will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown. In order to set a pre-trial motion for hearing, the motion must:

a. succinctly state the relief sought;
b. state the facts pertinent to the motion;
c. state supporting argument with authorities;
d. be signed by counsel and, where required, by the defendant;
e. be sworn to when required;
f. contain a certificate of service; and
g. contain a proposed order granting or denying the motion in full or in part.

The Court may refuse to consider any pretrial motion that fails to comply with this Rule.

6. CONTINUANCES

6.1 **Approval of judge**. No trial setting shall be passed by agreement of counsel without prior approval by the judge.

6.2 **Motions and timing.** Motions for continuance, whether by the state or the defendant, must comply with the provisions of Chapter 29 of the Code of Criminal Procedure. Motions for continuance for trial must be filed at or before docket call.

6.3 **Emergency motions**. Only matters arising subsequent to the time period specified in 6.2 above will be considered as grounds for filing a motion for continuance for trial after docket call.

6.4 **Motions on trial date.** Except for good cause shown, the court shall not consider any motion for continuance on the scheduled trial date.

C. PROBATE

I. WILLS, MUNIMENT OF TITLE & SMALL ESTATE AFFIDAVIT

1. PRO SE REPRESENTATION NOT PERMITTED

1.0 Representation by licensed attorney required. Under Texas law, only a licensed attorney may represent interests of third-party individuals or entities, including probate estates. Therefore, individuals applying for letters testamentary, or letters of administration must be represented by a licensed attorney.

2. AD LITEM APPOINTMENTS

2.1 Lost will, copy of a will or a will offered for probate more than four years after death of testator. In every probate involving a Lost Will, Copy of a Will or a Will offered for probate More than Four Years after the Death of the Testator, the Court will appoint an attorney ad litem to represent the decedent's unknown heirs (and, if any, known heirs whose whereabouts are unknown and known heirs suffering legal disability). Therefore, an order for the appointment of an attorney ad litem for unknown heirs must accompany any probate involving a Lost Will, Copy of a Will or a Will offered for probate More than Four Years after the Death of the Testator. Applicant shall use the *Order Appointing Attorney Ad Litem* promulgated by the Court, which is found on the Court's website.

3. FILING OF ORIGINAL WILL

3.1 Original Will. When a party electronically files an application to probate a document as an original will, the original will must be filed with the clerk within three (3) business days after the application is filed and be on file at least ten (10) days prior to any hearing.

4. PLEADINGS & APPLICATION

4.1 Titles of documents should be specific. Specific titles make the clerk's docket sheet and the indexed documents in the clerk's databases more usable. For example, "Order Admitting Will and First Codicil to Probate and Authorizing Letters Testamentary" . . . "Oath of Independent Executor" . . . "Testimony of Subscribing Witness."

4.2 In all pleadings, always begin with the exact names as they appear in the will. In your pleadings begin with the exact name of the testator, executor, and any beneficiaries mentioned in the pleadings. Then, if needed, put "a/k/a," "n/k/a," or "f/k/a" depending on the circumstances, followed by the additional or corrected

name(s) that you need to include (a/k/a = also known as; n/k/a = now known as; f/k/a = formerly known as). Be sure to watch for spelling errors made in either the will or the documents your office prepares. If the testator misspelled a name, then all other documents must carry that mistake with an "a/k/a" to correct the typo that the testator missed. Alias problems and spelling errors that you miss in the application can require reposting (depending on the circumstances), which could increase your cost and delay your hearing. If you need to use a/k/a or similar acronyms in the application and order, you might also need to put on appropriate testimony about the different names unless the differences are self-explanatory.

4.3 **Executor, not executrix.** The Court requires the use of "executor" or "administrator" rather than "executrix" or "administratrix."

4.4 **Will executed outside of Texas.** To establish that a will was self-proved according to the laws of the state or foreign country of the testator's domicile at the time of execution you must, in your application or in a separate motion:

- **a.** state the jurisdiction where the testator was domiciled at the time the will was executed,
- **b.** ask the Court to take judicial notice of the laws regarding self-proof of that jurisdiction (with a statutory citation),
- **c.** allege that the will is self-proved according to that law, and
- **d.** attach as an exhibit a copy of the statute regarding self-proof for that jurisdiction. The statute must indicate on its face that it is from the jurisdiction; in other words, it is not sufficient to simply type the text of the statute into a document. It would be sufficient to print the statute from Westlaw, Lexis, or another legal database or to photocopy a printed statute that includes reference to the jurisdiction.

In your Proof of Death and Other Facts, prove that the testator was domiciled in the alleged jurisdiction at the time the will was executed. (As with all Proofs, do not have the witness state that the will was self-proved; the Court will make that determination. Also do not request in the Proof that the Court take judicial notice of the laws regarding self-proof of foreign jurisdiction.)

4.5 **Independent executor.** Before pleading that the will names someone to serve as independent executor, be sure it does. Some wills make the first-named executor independent, but do not make alternate executors independent. Whether the difference is intentional or caused by sloppy drafting, the end result in such a case is that an alternate executor will be independent only through consents filed according to the appropriate subsection of TEC Ch. 401. If the will does not make your executor independent and you're requesting independent administration, collect the appropriate sworn consents and indicate the statutory basis of your request in your

application, proof, and order. See TEC Ch. 401. In the event the will names beneficiaries by a class such as "children" without naming the children anywhere in the will and an independent administration under TEC Ch. 401 is sought, it will be necessary to have two disinterested witnesses testify at the hearing about who the children are for purposes of ensuring that all requisite consents have been obtained.

4.6 Does the will waive bond? Before pleading that the will names an executor to serve without bond, be sure it does. If the will does not waive bond for the person for whom you are seeking letters, consents alone will not fix the problem because § 401.005 applies only to an independent administration created under subsections 401.002 or 401.003. Therefore, if the will doesn't waive bond, the only way to have bond waived is for all of the executors named in the will to decline to serve and then to seek Letters of Independent Administration with Will Annexed without Bond. In that case, you will need to modify the application, proof, and order, in addition to getting the necessary declinations and sworn consents.

4.7 Is there a partial intestacy? If there is a partial intestacy in the will, mention the intestacy in your pleadings. What else you need to do depends on the situation:

a. ***When the will creates an independent administration for the executor who will serve,*** you can decide whether to seek an heirship to determine the heirs for the property that does not pass under the will. Of course, if there is no heirship proceeding, the independent executor assumes the risk that the intestate property will be distributed incorrectly.

b. ***When you are requesting independent administration under § 401.002 or 401.003,*** the Court requires that you combine the will probate with an heirship proceeding to determine who receives the property that does not pass under the will and to determine the heirs who will need to join the beneficiaries in the request(s).

c. ***When there will be a dependent administration***, the Court requires an heirship proceeding for the intestate property. The Court prefers to hear the heirship proceeding and the will probate at the same time, with a combined order. The will can be probated first if there's a need for administration before the heirship can be completed, but in that case the Court requires that the heirship proceeding be filed before the administration is granted and completed within 60 days of the date letters are granted.

d. ***When you are probating the will as a muniment of title****,* the Court requires a declaratory judgment.

4.8 Person who will serve as executor isn't the first-named executor in the will. Your documents and your proof for the Court – must explain what happened to the first-named executor and all others who will not serve but who have priority over the executor(s) who will. Examples of proof when named executor with priority will not serve:

a. *Person is declining to serve:* person's notarized declination in the file.

b. *Person is dead:* proof of the death. The Court prefers a copy of the Death Verification for the executor with priority, with sensitive information redacted. If the Death Verification is not available, you must provide either: (1) the cause number and jurisdiction where the executor with priority died; or (2) a published obituary.

c. *Person is convicted felon:* sentencing order or other proof of conviction.

d. *Person is incompetent:* guardianship cause number, if any, or letters from one or two doctors. (Only one letter is required if the letter is sufficiently specific.)

e. *Person was divorced from decedent after the date of the will:* divorce decree.

f. *Person is a minor:* birth certificate.

g. *For all of the above, except in the declining to serve scenario:* if the preferred documentary proofs listed above are not available, a disinterested witness with knowledge may appear at the hearing to testify to provide the necessary proof.

4.9 Applicant to probate the will as a muniment of title isn't named as the first and sole named executor of the will. When the Applicant to probate the will as a muniment of title isn't named as the first and sole named executor of the will you must obtain written declinations to serve by all executors named in the will who are named co-executors or who have priority over the applicant, or have them personally served or show proof that they are deceased.

4.10 When the named executor is not the applicant. Under TEC § 256.051 and 301.051, the applicant must be an executor named in the will or an "interested person." If your Applicant is not the executor named in the will, it's helpful if your application explicitly indicates why the applicant is "an interested person." See TEC § 22.018 for the definition of "interested person."

4.11 Muniments of title and declaratory relief. If a person who is entitled to property under the provisions of the will cannot be ascertained solely by reference to the will or if a question of construction of the will exists the Court will not admit the will into probate as a muniment of title unless a request for declaratory judgment has been made upon proper application and notice. TEC § 257.101. One requirement is that the application with the declaratory judgment must be posted for twenty (20) days before the Court can act upon it. Therefore, if you're probating a will as a muniment of title, check to see if the will itself sufficiently identifies both the distributees and the property. For example, if the will devises property to a "trustee" or to "my children," but then is silent in identifying the "trustee" or "my children," you will need to seek declaratory relief as provided by Chapter 37, Civil Practice & Remedies Code to identify the "trustee" or "my children." If there is a partial intestacy, you will need to seek a declaratory relief as provided by Chapter 37, Civil Practice & Remedies Code, seeking both: (1) a declaration that there is a partial intestacy, and (2) a declaration of the heirs that will take the property that passes by intestacy. In this case, an attorney ad litem will need to be appointed to represent unknown heirs.

5. PROOF OF DEATH AND OTHER FACTS (POD)

5.1 Testimony reduced to writing. As required by the Estates Code a witness needs to testify in open court, unless testimony is offered by deposition. §256.157 also requires that testimony taken in open court during the hearing be reduced to writing. Therefore, written testimony needs to be prepared in advance, either in question-and-answer form or in the form of an affidavit. Although the testimony must be prepared and submitted in advance, the witness will not sign the written testimony until immediately after the hearing, when the witness signs the testimony before the judge.

5.2 MEPR requirements. Before the Court will probate a will as a muniment of title, the court requires that the oral testimony, written proof of facts, and order include a statement concerning Medicaid status. The statement shall assert:

- **a.** No Medicaid benefits were received after March 1, 2005,
- **b.** Medicaid benefits were received after March 1, 2005 and have been repaid, or
- **c.** Benefits were received and not repaid.

If benefits were received and not repaid, Applicant must include an additional statement in the oral testimony, written proof of facts, and order that states there is a:

- **a.** Spouse who is still alive,
- **b.** Child who is under 21 years of age,

c. Child who is blind or permanently and totally disabled under social security requirements, or

d. Unmarried adult child who lived full-time in the Medicaid person's home for at least one year before the death of Medicaid recipient.

If applicant is unable to do so, Applicant must file a Medicaid Estate Recovery Program (MERP) certification that decedent's estate is not subject to a MERP claim.

5.3 Statement regarding self-proven & citation. Do not include in the POD any language regarding citation or whether the will is self-proved. Seldom does a witness have knowledge about the requirements of a self-proving affidavit or about whether citation has been properly served. The Court will check to see whether a will is self-proved and citation is proper.

5.4 Additional information required. There are times when additional information is needed in a POD. You should review the case and determine whether any extra information needs to be included. The following are some of the situations when additional information is needed*:*

a. a first-named executor is unable to serve
b. a resident agent needs to be appointed
c. a will is being probated more than four years after the decedent's death
d. a copy of a will is being probated
e. a name was spelled incorrectly in the will
f. a party is now known by a different name
g. the decedent's name on the Death Verification varies significantly from the name in the will

5.5 Signature block. For the POD and any other testimony that witnesses will sign at the hearing, you will streamline the process if your signature block for the Court includes the following information:

Hunt County Court at Law #2

_____

Judge Presiding

6. THE ORDER

6.1 Explicit findings. Do not include a finding in the order that "the allegations contained in the application are true." The Court will make all of its findings explicitly, rather than by reference to another document, especially since applications sometimes include allegations that will not be proved up during the hearing.

6.2 **Extra information.** Unless you have also requested a declaratory judgment upon proper application and notice, do not include extra information such as property descriptions, the names of distributees, or the family history of distributees. This type of information can be determined only in a declaratory judgment action.

6.3 **Exact names and aliases**. You must begin with the exact names used in the will for the decedent and the executor, even if the executor is now known by another name. The Court requires that the "now known as" name – or any other a/k/a or f/k/a/ name – follow the executor's name as the name is given in the will.

6.4 **Alternate executor.** If the order appoints an executor other than the first-named executor in the will, be sure to refer to the first-named executor and indicate, in the findings section, why he or she cannot serve. Do the same for all other named executors who will not serve but who have priority over the executor(s) who will serve. To be precise, use the term "alternate" executor – not "successor" executor– unless a court has previously appointed someone else as executor.

6.5 **Power of sale.** Do not include language in the order regarding the personal representative's power to sell real property unless:

- **a.** The decedent died on or after September 1, 2011.
- **b.** The personal representative will be appointed as independent executor or independent administrator with will annexed.
- **c.** The will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority.
- **d.** All of the beneficiaries who are to receive any interest in the real property have consented to the general or specific authority regarding the power of the independent executor to sell real property to be included in the order. Consents must be included in a verified application, in verified written consents, or in testimony in open court that is reduced to writing.

6.6 **Orders for Muniment of title.** The order must indicate that the effect of the order is to transfer property to those named in the instrument. The order cannot waive the requirement of the affidavit of fulfillment of terms unless: (1) the applicant is the sole distributee or (2) there are multiple distributees, and all of them are applicants who have signed a verified application or who appear in court. The Court will not waive the § 257.103 requirement otherwise.

7. PROBATING A COPY OF A WILL (OR CODICIL) OR A LOST WILL (OR CODICIL)

7.1 **Attorney ad litem.** The Court will appoint an attorney ad litem under TEC § 53.104. The ad litem will represent the interests of decedent's unknown heirs, known heirs whose whereabouts are unknown and known heirs having a legal disability – who would collect if the presumption of revocation is not overcome.

7.2 **Application.** TEC § 256.054 and § 257.053 require that the application state (1) the reason the original will cannot be produced, (2) the contents of the will, as far as known, (3) the date of the will and the executor appointed in the will, if any, as far as known, and (4) the name, age, marital status, and address, if known, of each devisee named in the will and of each of decedent's heirs.

7.3 **Proof.** The proof of death and other facts (POD) must include sufficient information to prove to the Court: (1) the cause of the will's non-production, (2) that reasonable diligence has been used to locate the original will, and (3) that the testator did not revoke the will. *See In re Estate of Wilson*, 252 S.W.3d 708, 712-714 (Tex. App. – Texarkana 2008, no pet. h.). If applicant seeks to probate a lost will without a copy, testimony obviously will also need to prove the contents of the will.

7.4 **Disinterested-witness heirship testimony.** In addition to the POD testimony discussed in *7.3* above, the Court requires the testimony of one disinterested witness who can identify the decedent's heirs-at-law. This witness will testify in open court, and the applicant's attorney needs to prepare a written statement of the witness's testimony, phrased as court testimony. Parts of § 203.002 of the Texas Estates Code provide some useful ideas about the testimony necessary for establishing a testator's heirs; see the following parts of the sample affidavit set out in § 203.002: Numbers 1-5, and then 6-8 as needed. Include testimony that the witness does not take under the will or by intestacy.

7.5 **Order.** The order must include a finding that the applicant has overcome the presumption that the original will has been revoked.

7.6 **Special form of posting, plus either personal service or waivers of service.** TEC § 258.002 requires citation to all parties interested in the estate, which for lost wills includes both heirs who would take if the lost will is not probated and devisees named in the will.

7.7 **Hearing on the record.** The hearing for probating a copy of a will must be on the record because of the testimony of the disinterested witness regarding the testator's family history and the extra proof required in the POD.

8. PROBATING WILL MORE THAN FOUR YEARS AFTER DEATH OF TESTATOR

8.1 **Attorney ad litem.** The Court will appoint an attorney ad litem under TEC § 53.104 to represent the interests of decedent's unknown heirs, known heirs whose whereabouts are unknown and known heirs having a legal disability, *unless* the application indicates another will of the testator has previously been admitted to probate.

8.2 **Application and proof.** Both the application and the proof of death and other facts (POD) must state the reason the applicant was not in default for failing to probate the will sooner. The POD needs to prove that applicant was not in default. It's not enough, for example, that the applicant didn't have money to probate the will earlier or that the heirs had previously agreed not to probate the will. The application and proof of death also each need to list the decedent's heirs, their names, addresses, age and relationship to the decedent.

8.3 **Disinterested-witness heirship testimony.** In addition to the POD testimony discussed in 8.2 above, the Court requires the testimony of one disinterested witness who can identify the decedent's heirs-at-law. This witness will testify in open court, and the applicant's attorney needs to prepare a written statement of the witness's testimony, phrased as court testimony. Parts of § 203.002 of the Texas Estates Code provide some useful ideas about the testimony necessary for establishing a testator's heirs; see the following parts of the sample affidavit set out in § 203.002: numbers 1-5, and then 6-8 as needed. Include testimony that the witness does not take under the will or by intestacy.

8.4 **Order.** The order must include a finding that the applicant was not in default for failing to probate the will within four years of decedent's death.

8.5 **Special form of posting plus either personal service or affidavit waiving citation and waiving objection.** TEC § 258.051 requires personal service upon all of the decedent's heirs who are not applicants or affidavits from such individuals (or, if another will of decedent has previously been admitted to probate, service on or affidavits from all beneficiaries of that will). § 258.051 requires that the notice or the affidavit must contain: (1) a statement that the testator's property will pass to the testator's heirs if the will is not admitted to probate (or, if another will of decedent has previously been admitted to probate, to those beneficiaries), (2) a statement that the person offering the testator's will for probate may not be in default for failing to present the will for probate during the four- year period immediately following the testator's death and (3) if the affidavit option is chosen, that the heir does not object to the offer of the testator's will for probate.

8.6 **Hearing on the record.** The hearing for probating a will more than four years after a testator's death must be on the record because of the heirship testimony and the extra proof required in the POD.

9. APPOINTMENT OF RESIDENT AGENT

9.1 Non-Texan disqualified to serve as executor or administrator. Under TEC § 304.003, a non-Texas executor or administrator is disqualified to serve until the executor or administrator has appointed a resident agent to accept service of process and the appointment has been filed with the Court. The sworn appointment must be filed before the hearing because no one can testify that the executor or administrator is qualified until the appointment is on file.

9.2 Resident agent required for muniment of title. The Court requires that non-Texas applicants appoint a resident agent when probating a will as a muniment of title. The Court requires the appointment of a resident agent in this situation in case there is a creditor who files suit.

9.3 Notary required for appointment. Note that an *Appointment of Resident Agent* must be signed before a notary, not a deputy clerk.

10. SAFEKEEPING AGREEMENT

10.1 Safekeeping agreement. If it is contemplated that your client may prefer a Safekeeping Agreement in lieu of some portion of the required bond you will need to bring an Order Authorizing Safekeeping Agreement to the prove-up hearing. The Order and Safekeeping Agreement are promulgated by the Court and are available on the Court's website. The Court will establish a full bond amount at the prove-up hearing and if the signed Safekeeping Agreement is ultimately approved the bond will be reduced at that time to reflect the assets kept in safekeeping. Please note that Safekeeping Agreements may only be put in place with "financial institutions" as defined by Texas Finance Code §201.101.

11. COURT'S GENERAL INFORMATION SHEET & INSTRUCTIONS

11.1 General information sheet required. The Court will not sign any order granting letters of administration, until and unless the proposed executor/administrator has completed the general information sheet promulgated by the Court, which can be found on the Court's website.

11.2 Court instructions required. The Court will not sign any order granting letters of administration, until and unless the proposed executor/administrator has executed the applicable instructions promulgated by the Court, which can be found on the Court's website.

12. UNCONTESTED HEARING FOR THE PROBATE OF A WILL

12.1 Scheduling an uncontested prove up. To schedule a hearing for the uncontested probate of a will follow the procedures set out in *Chapter A. Section 8*.

12.2 Submission of required documents prior to hearing. All required documents must be filed no later than 10:00 a.m. seven (7) days prior to the hearing. If the required documents are not filed, the court may cancel the hearing without notice. Required documents include:

- **a.** Proof of Death *(unexecuted)*
- **b.** Waivers, Declinations, Consents *(if applicable)*
- **c.** Ad litem report *(if applicable)*
- **d.** Appointment of Resident Agent *(if applicable)*
- **e.** Proposed Order

12.3 Submission of required documents at the hearing. At the hearing, and not before, the Court shall be presented with the following required documents (*a-c do not apply if you are seeking a muniment of title or small estate affidavit*):

- **a.** General Information Sheet *(completed)*
- **b.** Court's Instructions *(completed)*
- **c.** Oath *(unexecuted)*
- **d.** Safekeeping Agreement & Order *(if applicable)*
- **e.** Proposed Order

13. INVENTORY, ANNUAL ACCOUNT, & ACCOUNT FOR FINAL SETTLEMENT

13.1 Court approved form required. The court will not accept nor approve any inventory, annual account, or account for final settlement that is not completed and submitted on the form promulgated by the Court, which is found on the Court's website.

II. HEIRSHIPS

1. PRO SE REPRESENTATION NOT PERMITTED

1.1 Representation by licensed attorney required. Under Texas law, only a licensed attorney may represent interests of third-party individuals or entities, including probate estates. Therefore, individuals applying for a determination of heirship must be represented by a licensed attorney.

2. AD LITEM APPOINTMENTS

2.1 Heirships. An attorney ad litem shall be appointed for unknown heirs (and, if any, known heirs whose whereabouts are unknown and known heirs suffering legal disability). An order for the appointment of an attorney ad litem for unknown heirs must accompany any application for heirship. Applicant shall use the *Order Appointing Attorney Ad Litem* (for heirships) promulgated by the Court, which is found on the Court's website.

2.2 Written report. In all heirship cases the attorney ad litem shall file a written report with the Court. The attorney ad litem shall use the form promulgated by the Court, which is found on the Court's website.

3. APPLICATIONS

3.1 If administration needed. The Court prefers that an application for the determination of heirship also contain an application for administration, either independent or dependent, and that all applications for administration be accompanied by an application for determination of heirship. Under TEC § 401.003, a hearing for an independent administration cannot be held before an heirship hearing. If it is necessary to begin administration before a determination of heirship proceeding can be held, the only option given TEC § 401.003 is a dependent administration; *however, the Court will only grant administration without a completed heirship determination in emergency circumstances or where the estate is clearly insolvent*. In all solvent administrations the Court requires an heirship determination be completed concurrently with the appointment of an administrator.

3.2 If any heirs are minors. The Court will only permit an independent administration under exceptional circumstances. A dependent administration is the preferred option when minor heirs are involved and an administration is needed.

3.3 If the decedent died more than four years before the application will be filed. The applicant cannot request an administration (except in rare cases). See TEC §§ 202.006 & 301.002.

3.4 **For a determination of heirship plus administration.** File one application titled "Application for Determination of Heirship and Letters of [Independent, if applicable] Administration." The requirements for an application for letters of administration are found in TEC § 301.052. Combine the requirements in § 301.052 with the requirements for the heirship application in § 202.004 & 202.005. If applicable in an independent administration, the application should also request that bond be waived.

3.5 **Required consents.** If the applicant requests an independent administration, the consent of all the distributees is required. TEC § 401.003. The distributees must also consent to any waiver of bond. TEC § 401.005. The Court encourages lawyers to incorporate the consents of non-applicant distributees into the waivers of service, thereby reducing the number of documents that must be executed and filed. Each consent should:

a. specifically consent to an independent administration, requesting that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the return of an inventory, etc.,

b. designate "x" as independent administrator (and waive own right to serve), waive bond, if that's what the application requests, and

c. if combined with the waiver of service, include that language as well.

3.6 **Characterization of property when the decedent leaves a surviving spouse.** Absent a declaratory action, the Court will not decide what types of property an heir owned. Consequently, the Court's judgment will indicate each heir's interest in every possible type of property. Therefore, an application should indicate each heir's interest in each type of property for which the shares are different: separate personal property, separate real property, and community property.

4. REDUCE EXPECTED TESTIMONY TO WRITING

4.1 **Testimony reduced to writing.** Under TEC § 202.151, this Court requires all oral evidence admitted in a proceeding to declare heirship to be reduced to writing and subscribed and sworn to by the witnesses following the hearing. Therefore, you should prepare written testimony in advance. The witnesses will sign their testimony before the Judge at the hearing.

4.2 MEPR requirements. Before the Court will sign an heirship determination with no administration, the Court requires that the oral testimony, written proof of facts, and order include a statement concerning Medicaid status. The statement shall assert:

- **a.** No Medicaid benefits were received after March 1, 2005,
- **b.** Medicaid benefits were received after March 1, 2005 and have been repaid, or
- **c.** Benefits were received and not repaid.

If benefits were received and not repaid, Applicant must include an additional statement in the oral testimony, written proof of facts, and order that states there is a:

- **e.** Spouse who is still alive,
- **f.** Child who is under 21 years of age,
- **g.** Child who is blind or permanently and totally disabled under social security requirements, or
- **h.** Unmarried adult child who lived full-time in the Medicaid person's home for at least one year before the death of Medicaid recipient.

If applicant is unable to do so, Applicant must file a Medicaid Estate Recovery Program (MERP) certification that decedent's estate is not subject to a MERP claim.

4.3 Proof of death and other facts. The POD should prove-up the allegations in the application that will not be proved by the disinterested witnesses who will testify as to the identity of the heirs. This information is usually provided by the applicant, but it can be presented by anyone with personal knowledge of the facts presented. *The following information is required for the heirship:*

- **a.** State the name of the decedent and indicate when and where the decedent died.
- **b**. State the underlying facts that show why the Court has jurisdiction and venue. Usually this requirement is fulfilled because the decedent was domiciled and had a fixed place of residence in Hunt County. TEC § 33.001.
- **c.** State whether the decedent had a lawful will and, if so, what disposition has been made of the will.
- **d.** Give a general description of the property belonging to the estate of the decedent.
- **e.** State whether a necessity exists for administration. Obviously, the allegation should match what you're seeking. If the application requests letters of administration, then the POD should state a need for administration. However, if you

are applying for a determination of heirship only, then the POD should indicate that there is no need for administration.

Add the following information if also requesting administration (the proof required for the granting of letters of administration is found in TEC §256.151, 301.151, 301.153):

a. The application was filed within four years after decedent's death.

b. The proposed administrator is entitled to letters and is not disqualified.

c. DO NOT include in the POD any language regarding citation. Seldom does a witness have knowledge about whether citation has been properly served. The Court will decide on its own whether citation is proper.

4.4 Statement of facts concerning identity of heirs, for each of two disinterested witnesses. The Court requires the testimony of two disinterested witnesses regarding the identity of decedent's heirs. Written testimony should be prepared in advance in the form of an affidavit phrased as court testimony. Parts of § 203.002 of the Texas Estates Code provide a useful format for the testimony necessary for establishing a testator's heirs.

4.5 Signature block. For the POD and any other testimony that witnesses will sign at the hearing, you will streamline the process if your signature block for the Court includes the following information:

Hunt County Court at Law #2

_____
Judge Presiding

5. JUDGMENT DECLARING HEIRS (COMBINED WITH ORDER FOR ADMINISTRATION IF APPLICABLE)

5.1 Declaratory-Judgment information. Unless you have applied for a declaratory judgment and have met the posting and evidentiary requirements, DO NOT include in an heirship order any information that requires the Court to make a declaratory judgment. Such information that cannot be in a routine heirship order includes description of specific items of property, whether the decedent owned separate real property, etc.

5.2 Ordering issuance of letters of administration. If an administration is sought in conjunction with the declaration of heirship, the attorney should submit one order

that incorporates the issuance of letters of administration and the judgment declaring heirship.

6. APPOINTMENT OF RESIDENT AGENT

6.1 Non-Texan disqualified to serve as executor or administrator. Under TEC § 304.003, a non-Texas executor or administrator is disqualified to serve until the executor or administrator has appointed a resident agent to accept service of process and the appointment has been filed with the Court. The sworn appointment must be filed before the hearing because no one can testify that the executor or administrator is qualified until the appointment is on file.

6.2 Resident agent required for determination of heirship with no order of administration. The Court requires that non-Texas applicants appoint a resident agent when seeking to determine heirship with no order of administration. The Court requires appointment of a resident agent in this situation in case there is a creditor who files suit.

6.3 Notary required for appointment. Note that an Appointment of Resident Agent must be signed before a notary, not a deputy clerk.

7. SAFEKEEPING AGREEMENT

7.1 Safekeeping agreement. If it is contemplated that your client may prefer a Safekeeping Agreement in lieu of some portion of the required bond you will need to bring an Order Authorizing Safekeeping Agreement to the prove-up hearing. The Order and Safekeeping Agreement are promulgated by the Court and fillable pdf versions of these documents are available on the Court's website. The Court will establish a full bond amount at the prove-up hearing and if the signed Safekeeping Agreement is ultimately approved the bond will be reduced at that time to reflect the assets kept in safekeeping. Please note that Safekeeping Agreements may only be put in place with "financial institutions" as defined by Texas Finance Code §201.101.

8. COURT'S GENERAL INFORMATION SHEET & INSTRUCTIONS

8.1 General information sheet required. The Court will not sign any order granting letters of administration, until and unless the proposed executor/administrator has completed the general information sheet promulgated by the Court, which can be found on the Court's website.

8.2 Court instructions required. The Court will not sign any order granting letters of administration, until and unless the proposed executor/administrator has executed

the applicable instructions promulgated by the Court, which can be found on the Court's website.

9. UNCONTESTED PROVE UP OF A DETERMINATION OF HEIRSHIP

9.1 Scheduling an uncontested prove up. To schedule an uncontested determination of heirship follow the procedures set out in *Chapter A. Section 8*.

9.2 Submission of required documents prior to hearing. All required documents must be filed no later than 10:00 a.m. seven (7) days prior to the hearing. If the required documents are not filed, the court may cancel the hearing without notice. Required documents include:

- **a.** Affidavit of Service of Citation pursuant to § 202.057
- **b.** Proof of Death *(unexecuted)*
- **c.** Disinterested-Witness Heirship Testimony *(unexecuted)*
- **d.** Waivers, Declinations, Consents *(if applicable)*
- **e.** Attorney Ad Litem Report
- **f.** Appointment of Resident Agent *(if applicable)*
- **g.** Proposed Order

9.3 Submission of required documents at the hearing. At the hearing, and not before, the Court shall be presented with the following required documents *(a-c only apply if you are seeking an administration in conjunction with a declaration of heirship)*:

- **a.** General Information Sheet *(completed)*
- **b.** Court's Instructions *(completed)*
- **c.** Oath *(unexecuted)*
- **d.** Safekeeping Agreement & Order *(if applicable)*
- **e.** Proposed Order

10. INVENTORY, ANNUAL ACCOUNT, & ACCOUNT FOR FINAL SETTLEMENT

10.1 Court approved form required. The court will not accept nor approve any inventory, annual account, or account for final settlement that is not completed and submitted on the form promulgated by the Court, which is found on the Court's website.

III. GUARDIANSHIPS

1. PRO SE REPRESENTATION NOT PERMITTED

1.1 Representation by licensed attorney required. Under Texas law, only a licensed attorney may represent interests of third-party individuals or entities, including guardianships. Therefore, individuals applying for guardianship of the person, the estate or both the person and the estate must be represented by a licensed attorney.

2. AD LITEM APPOINTMENTS

2.1 Attorney ad litem. In every guardianship case the Court will appoint an attorney ad litem to represent the proposed ward. An order for the appointment of an attorney ad litem must accompany any application for guardianship. Applicant shall use the *Order Appointing Attorney Ad Litem* (for guardianships) promulgated by the Court, which is found on the Court's website. If the guardianship estate or management trust created cannot bear the cost, the non-indigent applicant will bear the cost rather than the county treasury. §1155.151.

3. APPOINTMENT OF RESIDENT AGENT

3.1 Non-Texan disqualified to serve as executor or administrator. Under TEC § 1104.357, a non-Texas guardian is disqualified to serve until the guardian has appointed a resident agent to accept service of process and the appointment has been filed with the Court. The sworn appointment must be filed before the hearing because no one can testify that the guardian is qualified until the appointment is on file.

3.2 Notary required for appointment. Note that an Appointment of Resident Agent must be signed before a notary, not a deputy clerk.

4. SAFEKEEPING AGREEMENT

4.1 Safekeeping agreement. If it is contemplated that your client may prefer a Safekeeping Agreement in lieu of some portion of the required bond you will need to bring an Order Authorizing Safekeeping Agreement to the prove-up hearing. The Order and Safekeeping Agreement are promulgated by the Court and fillable pdf versions of these documents are available on the Court's website. The Court will establish a full bond amount at the prove-up hearing and if the signed Safekeeping Agreement is ultimately approved the bond will be reduced at that time to reflect the assets kept in safekeeping. Please note that Safekeeping Agreements may only be put in place with "financial institutions" as defined by Texas Finance Code §201.101.

5. COURT'S GENERAL INFORMATION SHEET & INSTRUCTIONS

5.1 General information sheet required. The Court will not sign any order granting guardianship until and unless the proposed guardian has completed the general information sheet promulgated by the Court, which can be found on the Court's website.

5.2 Court instructions required. The Court will not sign any order granting guardianship until and unless the proposed guardian has executed and filed the applicable instructions promulgated by the Court, which can be found on the Court's website.

6. UNCONTESTED PROVE UP OF A GUARDINSHIP

6.1 Conference with attorney ad litem. A conference has been had with the attorney ad litem and there is an agreement that the case can be set for an uncontested hearing because:

- **a.** the case does not have any contested issues regarding incapacity of the ward
- **b.** the case does not have any contested issues regarding the scope of the guardianship
- **c.** the physician's certificate has been filed and clearly supports the scope of the guardianship sought
- **d.** the attorney ad litem will not object to the admission of the physician's certificate
- **e.** less restrictive support and services (alternatives) were considered but are not appropriate or available
- **f.** the case does not have any contested issues regarding the suitability of applicant to serve as guardian.

6.2 Scheduling an uncontested prove up. To schedule the uncontested prove up of a guardianship, follow the procedures set out in *Chapter A. Section 8*.

6.3 Submission of required documents prior to hearing. All required documents must be filed no later than 10:00 a.m. seven (7) days prior to the hearing. If the required documents are not filed, the court may cancel the hearing without notice. Required documents include:

- **a.** Notice & Affidavit pursuant to §1051.104(b)(1)&(2)
- **b.** Waivers, Declinations, Consents *(if applicable)*
- **c.** Physician's Certificate of Medical Examination
- **d.** Criminal History Report

e. Training Certificate
f. Guardian Ad Litem Report *(if applicable)*
g. Appointment of Resident Agent *(if applicable)*
h. Proposed Order

6.4 Submission of required documents at the hearing. At the hearing, and not before, the Court shall be presented with the following required documents (which have been previously reviewed, completed, and executed [except for the Oath]):

a. General Information Sheet
b. Court's Instructions
c. Oath *(unexecuted)*
d. Safekeeping Agreement & Order *(if applicable)*
e. Investment Plan *(if applicable)*
f. Proposed Order

7. INVENTORY, ANNUAL REPORT ON CONDITION OF WARD, ANNUAL ACCOUNT, & ACCOUNT FOR FINAL SETTLEMENT

7.1 Court approved form required. The court will not accept nor approve any inventory, report on the condition of the ward, annual account, or account for final settlement that is not completed and submitted on the form promulgated by the Court, which is found on the Court's website.

D. MENTAL COMMITMENT CASES

1. PRIORTY OF SETTING

1.0 Priority of setting. Attorneys that accept appointments to involuntary mental commitment cases shall give priority to all involuntary mental commitment case settings and hearings.

2. APPLICATION FOR COURT ORDERED MENTAL HEALTH SERVICES

2.1 Deadline to present to court. All applications/request for court ordered mental health services must be presented to the Court before 2:30 p.m. to enable the Court and the county clerk sufficient time to review and process the application/request.