



DENTON COUNTY PROBATE COURT

Judge Bonnie J. Robison  
David W. Jahn, Associate Judge

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COURT POLICY CONCERNING REQUIRED RETENTION OF  
ATTORNEY AND “PRO SE” APPLICANTS

1. Required Retention of Attorney

Consistent with requirements of applicable law, including the statutes prohibiting the unauthorized practice of law, the Denton County Probate Court does not permit “Pro Se” litigants to represent estates or other persons in Probate and Guardianship cases. Named Executors, Administrators or persons applying as such will be required to act through legal counsel. Additionally, individuals applying for guardianships of persons, estates or both will also be required to obtain legal counsel. Although an individual may present documents to the clerk of the Court for filing, the Court will take no action on the documents unless there is an attorney of record in the case.

Generally, only an attorney licensed in the State of Texas may represent a third person or entity in a judicial proceeding in the State of Texas. In most probate or guardianship cases, an individual is not truly representing himself or herself. He or she is attempting to represent another person or persons such as beneficiaries, heirs or creditors or the estate of another person. Unless the individual is a licensed attorney, this constitutes the unauthorized practice of law and will not be allowed by the Court.

An individual who has retained counsel may open a probate or guardianship proceeding and thereafter discharge their attorney. If this occurs and the representative fails to comply with all the requirements of the Texas Probate Code, that individual will be required to once again employ legal counsel for subsequent hearings related to such non-compliance. It is recommended that a representative NOT discharge the originating or subsequent attorney until such time that the case is closed or all the business of the case has been completed.

2. “Pro Se” Applicants (Applicants without an Attorney)

People who represent themselves in court are called “pro se” or “self-represented” litigants. A person is not required to have a lawyer to file papers or to represent only his individual interest in a case in court. You have a right to represent yourself. **However, a pro se may not represent the interest of others. Under Texas law, only a licensed attorney may represent the interests of another individual or entity, such as a Ward in a guardianship matter or an Executor of a probate estate.** See *In re: Guetersloh*, 326 S.W.3d 737 (Tex. App. – Amarillo, 2010) and *Steele v. McDonald*, 202 S.W.3d 926 (Tex. App. – Waco, 2006), and the authorities cited in those opinions. Therefore, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney. Further, a person who is appointed as a guardian of

an estate or as an executor or administrator of a probate estate serves as a fiduciary for the entity, the estate. As such, those appointees must be represented by counsel. The only time a pro se applicant may proceed in court is when truly representing **only** himself or herself.

Denton County Local Rules Section 1.3 provide that a pro se will be expected to read and follow the Local Rules and the Rules of Civil Procedure, the Rules of Civil Evidence, the Texas Probate Code and the Rules of Appellate Procedure as may be appropriate in the particular case. A pro se who fails to comply with the applicable rules may be subject to fine or other punishment.

The following are examples of when a person may represent themselves:

1. A sole beneficiary in a Muniment of Title action
2. A non-corporate creditor of a probate or guardianship estate
3. A non-corporate party in an ancillary civil action
4. Probate Code §743(j) permits the guardian of the person to complete and file the §743 annual report of the person without the assistance of an attorney

## Frequently Asked Questions

Q: What is a pro se?

A: A pro se is an individual who has not hired a lawyer and appears in court to represent himself and no other person or entity.

Q: Can I still serve as an executor, administrator, or guardian even though I'm not a lawyer?

A: Yes. One need not be a lawyer to serve as an executor, administrator, or guardian. **However, the executor, administrator, or guardian must be represented by counsel.**

Q: But I'm the only one that needs letters testamentary. As executor, how would I be representing the interests of others?

A: As executor of a decedent's estate, you don't represent only yourself. An executor represents the interests of beneficiaries and creditors. This responsibility to act for the benefit of another is known as a fiduciary relationship. It gives rise to certain legal obligations and responsibilities that require legal expertise. The attorney you hire represents you in your capacity as executor and assists you in representing those for whom you are responsible.

Q: If I get the paperwork from a law library or the Internet, can I fill it out and file it? Isn't that what lawyers do?

A: Lawyers don't just fill out forms. Lawyers (1) determine what method of probate or guardianship is appropriate in a particular situation, (2) create or adapt any necessary paperwork, and (3) advise the client about the ongoing responsibilities of a fiduciary. Unless you are a

lawyer, your action of creating legal pleadings while acting as a fiduciary would constitute the unauthorized practice of law.


Q: As a pro se, what proceedings **can** I do on my own?

A: The only proceedings you can handle as a pro se are those in which you truly would be representing **only** yourself. For example, a pro se applicant may probate a will as a muniment of title when he or she is the sole beneficiary under the will, and there are no debts against the estate other than those secured by liens against real estate. This procedure can be a viable option in some situations, but not in others. **Whether a muniment of title is the correct probate procedure for a particular situation is a legal decision best made by a lawyer.**

Q: What procedures should I follow if I want to probate a will as a muniment of title as a pro se applicant?

A: As stated above, whether a muniment of title is the correct probate procedure for a particular situation is a legal decision best made by a lawyer; Court staff cannot guide you or advise what you should do in your case. If you decide to proceed with your case without an attorney, the County Law Library has reference materials that may be helpful.

Thank you for your cooperation in this matter.

  
BONNIE ROBISON  
Presiding Judge  
Denton County Probate Court

  
DAVID JAHN  
Associate Judge  
Denton County Probate Court

Date: July 16, 2013

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