

County Court at Law #3

Smith County, Texas

Local Rules **Probate/Guardianship** **(adopted February 23, 2023)**

Presiding Judge
Honorable Clay White

Preface

The primary goal of the Smith County Court at Law #3 is to accomplish the business of the parties and counsel who have matters in our Court as quickly, pleasantly and economically as possible, within the limits imposed by Texas law.

These rules set forth some policies and guidelines that I believe will assist in accomplishing those goals. The following rules are as complete as possible, but they are not totally comprehensive nor are they completely inflexible, and may be amended from time to time. It is my intent that all of us, the judge, each staff member of the court, and counsel should strive to achieve the objective of these rules.

Clay White, Judge

Table of Contents

Preface

Chapter 1: General Rules	1
Rule 1.1 Title, Scope, Authority, and Application of Local Rules.....	1
Rule 1.2 Jurisdiction	1
Rule 1.3 Parties and Parties Proceeding Pro Se	1
Rule 1.4 Assignment of Cases.....	2
Rule 1.5 Transfer	2
Rule 1.6 Vacations of Counsel.....	2
Rule 1.7 Judicial Absences	3
Rule 1.8 Appointment of Attorney or Guardian Ad Litem	3
Rule 1.9 Miscellaneous Requirements	3
Chapter 2: Cases	4
Rule 2.1 Filing Papers	4
Rule 2.2 Setting of Cases	4
Rule 2.3 Submission Docket.....	4
Chapter 3: §145 (c), (d) and (e) Independent Administrations	5
Rule 3.1 Applications	5
Rule 3.2 Heirship.....	5
Rule 3.3 Notice.....	5
Chapter 4: Guardianship Procedures	5
Rule 4.1 General	5
Rule 4.2 Notice Procedures	6
Rule 4.3 Physician Statements	6
Rule 4.4 Orders Appointing Guardians	6
Rule 4.5 Annual Accounts	6
Rule 4.6 Annual Reports on the person	6
Chapter 5: Dismissal for Want of Prosecution	7
Rule 5.1 Case Selection	7
Rule 5.2 Notice.....	7
Chapter 6: Rules of Decorum.....	7
Rule 6.1 General Rules of Courtroom Conduct Rule.....	7
Rule 6.2 Conduct of Attorneys	8



COUNTY COURT AT LAW NO. 3 SMITH COUNTY, TEXAS

CLAY WHITE, JUDGE

Chapter 1: General Rules

Rule 1.1 Title, Scope, Authority, and Application of Local Rules

- (a) These rules are the Local Rules of the County Court at Law No. 3 of Smith County, Texas. They shall govern proceedings in the County Court at Law No. 3 of Smith County, Texas for the purpose of securing uniformity and fairness in those proceedings and in order to promote justice.
- (b) Matters not specifically addressed shall comply with the requirements of the Texas Estates Code.

Rule 1.2 Jurisdiction (§§32.001 and 1022.001 of the Texas Estates Code)

The County Court at Law No. 3 of Smith County, Texas hears:

- (a) All applications, petitions, and motions regarding probate or guardianship matters;
- (b) All matters incident or appertaining to such guardianship or estate matters;
- (c) Criminal Matters;
- (d) Civil Cases with concurrent jurisdiction with the district courts; and
- (e) Family Law Cases.

Rule 1.3 Parties and Parties Proceeding Pro Se

- (a) "Counsel" as used in these Rules includes attorneys and parties representing themselves pro se.
- (b) Any natural person proceeding on their own behalf without an attorney shall be expected to read and follow these Local Rules and the Rules of Civil Procedure, the Rules of Evidence, the Texas Estates Code, and the Rules of Appellate Procedure as may be appropriate in the particular case. Failure to comply may be sanctioned, fined or punished as in other cases. Pro se parties shall be responsible for providing the clerk with current addresses, phone numbers, and email addresses. The address so provided shall be used as the address for serving all pleadings and any other notices on the pro se party.

Rule 1.4 Assignment of Cases

All matters filed in the County Court at Law No. 3 of Smith County, Texas shall be assigned a number. Once a case number has been assigned and docketed, all matters relating thereto, shall remain in that court using the same number.

Rule 1.5 Transfer

Pursuant to Sections 34.001 and 1022.001 of the Texas Estates Code "In those counties in which there is no statutory probate court, but in which there is a county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions, and motions regarding probate and administrations shall be heard in those courts and the constitutional county court, rather than in the district courts, unless otherwise provided by law. The judge of a county court may hear any of those matters regarding probate or administrations sitting for the judge of any other county court. In contested matters, the judge of the constitutional county court may on the judge's own motion, and shall on the motion of a party to the proceeding, transfer the proceeding to the county court at law or a statutory court exercising the jurisdiction of a probate court other than a statutory probate court. The court to which the proceeding is transferred may hear the proceeding as if originally filed in the court."

32.002 In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of probate proceedings.

32.004 (a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

Rule 1.6 Vacations of Counsel

Counsel shall not request a trial date for any period which counsel has previously been informed by other counsel is a scheduled vacation. If a case is set for trial by the court on a date for which a counsel has planned a vacation, counsel will notify the court as soon as the notice of trial setting is received and the case will be reset for a different time, unless there is a clear showing of abuse or unreasonable delay. If plans for a vacation are made by a counsel after a trial setting notice has been received, counsel will immediately notify the court and other parties with a request that the case be reset for a different time. The court will rule on such request after giving all parties to the lawsuit an opportunity to respond to the request. The court will not recognize "generic vacation letters" when setting cases

for trial.

Rule 1.7 Judicial Absences

- (a) Whenever a judge anticipates an absence day due to vacation, illness, national service, attendance at legal education courses, attendance at the meetings of judicial, bar committees, or otherwise, then that judge may, at his or her discretion, request that the administrative judge assign a visiting judge to his or her court; or
- (b) The Judge may appoint a retired judge as a special judge when he or she is absent from the county. (*§26.023 Texas Government Code*)

Rule 1.8 Appointment of Attorney or Guardian Ad Litem

- (a) An Attorney or guardian ad litem shall be appointed pursuant to the Texas Estates Code or the Rules of Civil Procedure;
 - (1) Ad litem appointments are handled by the court from a list of certified attorneys as required by §§1054.001 and 1054.051 of the Texas Estates Code.
- (b) Until an order is signed discharging an ad litem, the ad litem shall be notified of all hearings and/or conferences with the court, and shall be served with all pleadings.
- (c) The ad litem shall make a report of the results of the ad litem's investigation concerning the purpose of the ad litem's appointment.

Rule 1.9 Miscellaneous Requirements

- (a) Personal Representative/Applicant General Information sheets are required to be filed by all personal representatives/applicants. (*These forms are available online at www.smith-county.com*)
- (b) Court Instruction sheets are required to be filed by all personal representatives. (*These forms will be provided by the Court and can also be found online at www.smith-county.com*)
- (c) Applications/pleadings shall be verified by personal representatives as required by the Texas Estates Code.
- (d) Affidavits of compliance required by §257.103 of the Texas Estates Code will only be waived when there is a sole devisee in the will and the order includes such language.
- (e) The Court will not approve personal surety bonds in excess of \$1,000.00.
- (f) Oaths dated and signed prior to appointment date will not be accepted.
- (g) Letters Testamentary, Letters of Administration, Letters of Independent Administration, Letters of Guardianship, Temporary Guardianship Certificates

of Compliance, or Letters of Temporary Administration shall not be issued until the personal representative has complied with the statutes and the local rules of this court.

- (h) All pleadings filed in estate/guardianships that are not current will be held in a “suspension status” until the inventories, annual accounts, etc. are filed and approved.
- (i) Generally, pleading forms are not provided by the court. The forms that are required by the court are available online at www.smith-county.com.

Chapter 2: Cases

Rule 2.1 Filing Papers

- (a) All pleadings, motions, notices, briefs, proposed orders, proposed judgments, and any other paper, document or thing made a part of the record shall be filed with the clerk.
 - (1) Pleadings must be verified by personal representatives where required by the Texas Estates Code.
- (b) All proposed orders and judgments shall be presented to the court after the presenting counsel has either obtained approval of said proposed order or judgment by all other counsel or pro se parties, or sent a copy of the proposed order or judgment to all counsel or pro se parties via e-file and/or mail to their last known address. If the court receives no objection within ten (10) days after notification, the court may act on such proposed order or judgment.

Rule 2.2 Setting of Cases

- (a) Probate and guardianship cases are heard every Monday unless otherwise notified.
 - (1) At the time a probate case is filed and the original will has been delivered to the clerk’s office, contact the court to obtain available hearing dates. Hearings will not be set until all required documents have been filed.
 - (2) Guardianship cases are set on request. Counsel shall file a request for setting using the form required by the court (form is available online at www.smith-county.com).
 - (3) Applications for Determination of Heirship are set on request. Counsel shall file a request for setting using the form required by the court (form is available online at www.smith-county.com).

Rule 2.3 Submission Docket

- (a) The Court reviews and considers the submission docket every Wednesday and every Friday of each week.

Chapter 3: §401 Independent Administrations

Rule 3.1 Applications

- (a) All of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for the independent administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the County Court at Law No. 3 in relation to the settlement of the decedent's estate other than the return of an inventory, appraisalment, and list of claims of the decedent's estate. If the distributees are requesting the court to waive the bond, that language must be included in the application.
- (b) Each distributee must sign the application for independent administration. Consents or Waivers may be accepted, provided the statutory language is included in same.

Rule 3.2 Heirship

- (a) An Application for Determination of Heirship must accompany the Application for §401.003 Independent Administration, and heirship must be determined before a §401.003 Independent Administration is considered by the court.
- (b) An Attorney Ad Litem shall be appointed by the court to represent the unknown heirs as required by §202.009 of the Texas Estates Code.

Rule 3.3 Notice

- (a) In addition to posting notice on an Application for §401.003 Independent Administration, citation by publication to the unknown heirs is required and must be completed before the case is set for hearing.

Chapter 4: Guardianship Procedure

Rule 4.1 General

- (a) Ad litem appointments are handled by the court from a list of certified attorneys as required by §§1054.001 and 1054.051 of the Texas Estates Code.
- (b) Ad litem shall personally meet with the proposed ward or minor and file a report/recommendation prior to the date of the hearing.
- (c) Orders for guardianships must be submitted three (3) days prior to the hearing date.
- (d) Counsel must agree, on the record, to waive the proposed ward's presence at the hearing and evidence of the ward's inability to be present at the hearing must be presented to the Court.

Rule 4.2 Notice Procedures

- (a) Proposed ward or minor, if applicable, shall be personally served and the personal citation shall remain on file in the County Clerk's office for 10 days before a hearing will be set.
- (b) All of the requirements of §1051.101 of the Texas Estates Code shall be met before a hearing is set by the court.

Rule 4.3 Physician statements

- (a) Physician statements must be filed using the court's form and shall not be dated earlier than the 120th day before the date of the filing of the application as required by §1101.103 of the Texas Estates Code, (*no exceptions* - form is available online at www.smith-county.com).

Rule 4.4 Orders Appointing Guardians

- (a) Must comply with §1101.151 of the Texas Estates Code.
- (b) Bonds will not be waived and bonds must have corporate sureties if over \$1,000.00. Personal sureties will be accepted for bonds under \$1,000.00, but must comply with §§1105.101, 1105.102, and 1105.201 of the Texas Estates Code.
- (c) If safekeeping agreements are requested, language for said safekeeping accounts shall be included in the order, (*safekeeping agreement* form is available online at www.smith-county.com).
- (d) Letters of Guardianship will not be issued without an oath, proper bond, information sheet, instruction sheet, and when applicable, inventories and annual accounts.

Rule 4.5 Annual Accounts - (*Texas Estates Code §1163.001*)

- (a) Must comply with the code.
- (b) Must comply with format required by the court, (*no exceptions* - form is available online at www.smith-county.com).

Rule 4.6 Annual Reports on the person of the ward/minor - (*Texas Estates Code §1163.101*)

- (a) Guardians of the person are required to report annually on the condition and well-being of the ward/minor.
- (b) Must comply with format required by the court, (*no exceptions* - form is available online at www.smith-county.com).

Chapter 5: Dismissal for Want of Prosecution

Rule 5.1 Case Selection

The following cases are eligible for dismissal for want of prosecution under this chapter pursuant to T.R.C.P. 165 a:

- (a) Cases on file for more than 180 days in which no answer has been filed.
- (b) Cases which have been on file for more than twelve (12) months and are not set for trial and have had no filings or settings within 180 days.
- (c) Cases in which a party or the party's attorney has failed to take any action as required by the Court.
- (d) Any other case designated by the court.

Rule 5.2 Notice

Pursuant to Rule 165a, Texas Rules of Civil Procedure, the court shall give notice that certain cases will be dismissed for want of prosecution. Such matters will be dismissed on the date indicated in the notice of dismissal.

Chapter 6: Rules of Decorum

Rule 6.1 General Rules of Courtroom Conduct

- (a) All officers of the court except the Judge and jurors, and all other participants, except witnesses who have been placed under the rule, shall promptly enter the courtroom before the scheduled time for each court session. When the court is called to order, complete order shall be observed.
- (b) In the courtroom, there shall be:
 - (1) no tobacco use;
 - (2) no chewing gum use;
 - (3) no reading of newspapers or magazines;
 - (4) no bottles, cups, or beverage containers except water pitchers and cups, used by jurors;
 - (5) no edibles of any kind;
 - (6) no propping of feet on tables or chairs;
 - (7) no noise or talking that interferes with court proceedings, including but not limited to cell phones.
- (c) The Judge, attorneys, and other officers of the court will refer to and address other court officers or participants in the proceedings respectfully and impersonally, by using appropriate titles and surnames rather than first names;
- (d) The oath will be administered in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth; and

- (e) All officers of the court and participants shall dress appropriately for court sessions:
 - (1) Absolutely No shorts, Capri pants, Tank Tops, or Mini-skirts;
 - (2) No Inappropriate T-Shirts;
 - (3) Men shall remove hats or ball caps before entering the courtroom.

Rule 6.2 Conduct of Attorneys

- (a) Attorneys should always observe the letter and spirit of all canons of ethics, including those dealing with discussion of cases with representatives of the media and concerning *ex parte* communications with the Judge;
- (b) Attorneys should advise their clients and witnesses of local rules of Decorum and dress code;
- (c) All objections, arguments, and other comments by counsel shall be directed to the Judge, or jury and not to opposing counsel;
- (d) While another attorney is addressing the Judge, or jury, an attorney should not stand for any purpose except to claim the right to interrupt the attorney who is speaking;
- (e) Attorneys should not approach the bench without leave of the court and must never lean on the bench;
- (f) Attorneys shall remain seated at the counsel tables at all times except:
 - (1) when the Judge enters and leaves;
 - (2) when addressing the Judge or jury; and
 - (3) whenever it may be proper to handle documents, exhibits, or other evidence.
(*leave of court is not required*)