



## COUNTY COURT AT LAW NO. 3 SMITH COUNTY

CLAY WHITE, JUDGE

### Court Policy Regarding “Pro Se” Applicants (Applicants without an Attorney)

People who represent themselves in court are called “pro se” or “self-represented” litigants. You are not required to have a lawyer to file papers or to participate in a case in court. You have a right to represent yourself. **However, a pro se may not represent others. Under Texas law, only a licensed attorney may represent the interests of third-party individuals or entities, including guardianship wards and 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. 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. The only time a pro se applicant may proceed in court is when he or she is truly representing only himself or herself.

### 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 an attorney.**

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

**OR**

But I am the only beneficiary under the will and/or all the beneficiaries will agree that I can do this. Isn’t that enough?

**A:** As executor of a decedent’s estate, you do not represent only yourself. An executor represents the interests of beneficiaries and creditors. The 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 do not 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, you are 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/devisee under the will, and there are no debts against the estate other than those secured by liens against real estate. Note, though, that probating a Will as a muniment of title is not always a good option even if there are no debts and the applicant is the sole beneficiary. **Whether a muniment of title is the correct**

**probate procedure for a particular situation is a legal decision best made by a lawyer.** Note that anyone falsely swearing that the estate has no creditors is subject to a perjury charge.

As another example, all of a decedent's heirs may work together without a lawyer to file a small estate affidavit in the limited situations in which a small estate affidavit might be appropriate. For further information, see Texas Estates Code Chapter 205 and the Smith County Court at Law No. 3's Small Estate Affidavit Checklist. As the checklist notes, the complexity of the Code poses many pitfalls for non-lawyers attempting to comply with the requirements for a small estate affidavit. An attorney's assistance in drafting a small estate affidavit may prevent the denial of an Affidavit where it would have been an appropriate probate procedure if the Affidavit had been prepared correctly.

- Q:** What procedures should I follow if I decide 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 best 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 a lawyer, the County Law Library has reference materials that may be helpful.

**If you proceed with an application to probate a Will as a muniment of title, note the following:**

**All beneficiaries.** In a pro se application to probate a Will as a muniment of title, **all** beneficiaries under the Will **must** be applicants, and **all** beneficiaries **must** testify at the hearing.

**Must swear no debts.** To probate a Will as a muniment of title, each applicant must be able to swear on personal knowledge that there are no debts against the estate other than those secured by liens against real estate -- that includes credit card balances, doctor's bills, utility bills, Medicaid estate recovery claims, etc. -- *anything* owed by decedent and not paid off. Anyone falsely swearing that the estate has no creditors is subject to a perjury charge.

**Needed documents.** The Court reviews all documents for Will prove-ups before the hearing. By reviewing the documents before the hearing, the Court can ensure that hearings go more smoothly for participants. Please see the Court's document titled "Submitting Paperwork for Will Prove-Ups and Heirships: When & How" for more information about when and how to submit documents.

Note there are additional procedural requirements with additional necessary documents in the following cases:

- (1) the Will is not the original Will,
  - (2) the Will is not self-proved, or
  - (3) you are probating the Will more than four years after the decedent's death.
- ***At the time you file the application in the Clerk's Office***, also file (1) the Will and (2) email the death certificate. Rule 57 of the Texas Rules of Civil Procedure requires that you include the following information for each applicant in the application: name, address, phone number, email address, and fax number (if available).
  - ***Within 24 hours after you set the hearing:***
    - ✓ File the proposed order and the proposed (unsigned) proof of death and other facts.
    - ✓ If you have additional proposed *testimony* that is required because the Will is a copy, is not self-proved, or is being probated more than four years after decedent's death, also file that proposed (unsigned) testimony.
  - ***A hearing will not be set until*** all additional documents -- the Will is a copy, the Will is not self-proved, or the Will is being probated more than four years after decedent's death -- have been filed with the **Clerk's Office**. See "Submitting Paperwork for Will Prove-Ups and Heirships: When & How".