



Hon. Fransheneka “Fran” Watson

Associate Judge Lily U. Leal

HARRIS COUNTY PROBATE COURT FIVE

1115 Congress St, 5th Floor | Houston, TX 77002 | (832) 927-1405 Phone

Depositions on Written Questions –Uncontested Matters

IMPORTANT CAVEATS

This guide is not intended as a substitute for legal expertise. For example, although this guide includes tips for conducting depositions on written question in general, it doesn’t address what questions to specifically ask for the type of probate you are pursuing. Additionally, this guide is not a substitute for the Estates Code. Everything in this guide is consistent with the Estates Code, but it makes no pretense of being comprehensive.

I. STATUTORY AUTHORITY

In an uncontested probate matter, such as the probate of a will or the determination of heirship, the testimony of a witness who is unable to appear in court may be taken by deposition *in accordance with Estates Code §51.203*:

§51.203. Service of Notice of Intention to Take Depositions in Certain Matters.

- (a) *If a will is to be probated, or in another probate matter in which there is no opposing party or attorney of record on whom to serve notice and copies of interrogatories*, service may be made by posting notice of the intention to take depositions for a period of 10 days as provided by Section 51.053 governing a posting of notice.
- (b) When notice by posting under Subsection (a) is filed with the county clerk, a copy of the interrogatories must also be filed.
- (c) At the expiration of the 10-day period prescribed by Subsection (a):
 - (1) the depositions for which the notice was posted may be taken; and
 - (2) the judge may file cross-interrogatories if no person appears.

II. GENERAL STEPS

A. Draft Your Questions (Carefully!)

- Depending on what type of witness you are deposing, your questions may vary. For example, if you are deposing a proof of death witness, then draft questions that will elicit the information needed for the complete proof of death testimony. If you’re deposing an heirship witness, be sure that you cover all necessary heirship information.
- Remember—**the simpler the questions, the better!** Don’t try to cover more than one topic within a single question and beware of double negatives. Unlike in a live hearing, there’s no way to clarify what your witness means by their answer, so reducing the questions to their simplest form reduces the chance of errors.
- The questions should be formatted in a “question and answer” format, with lines underneath each question for your witness’s answer.

B. Loop in the Attorney Ad Litem

- If an attorney ad litem has been appointed to the case, be sure to send your questions to them before you e-file and ask them if they would like to add any questions. This ensures that the ad litem has had the opportunity to “question” that witness as well, just as they would do in a hearing.

C. Check the Docket

- Under §51.203, the judge may file cross-interrogatories. The Court currently does not look at depositions during the posting period, but don’t take a deposition without checking the docket to be sure no cross-interrogatories have been filed.

D. File and Post Notice of Intent

- Once the questions have been finalized, e-file a Notice of Intent to Take Deposition by Written Question. In the same document, include a copy of the blank questions, the Will (if appropriate) and any other material that you want the witness to reference while they fill out the questions.
- Be sure to pay the “issuance of citation” and posting fees in order to post the Notice.

E. Wait Out the Posting Period, then Instruct Your Witness to Answer the Questions

- The notice period for Depositions on Written Questions under the Estates Code expires on the **first Monday following 10 days from posting**. Once that period expires, instruct your witness to print out and bring the questions to a notary, where they will answer them.
- You’ll want to ensure that the witness understands each question, as you’ll have to redo the process if the witness is confused and doesn’t answer a question (or answers it incorrectly). Therefore, feel free to walk the witness through the questions over the phone.
- Once they are done answering the questions, your witness will send the completed and notarized document to you. Review it, and then e-file it.

F. Attend Hearing

- You will need to appear in person at the hearing. However, if your witness has answered all of your questions and given sufficient testimony, they will not have to appear themselves.
- Different judges prefer to handle DWQs in different ways, but Judge Watson prefers to read the answers into the record during the hearing herself.

III. COMMON MISTAKES AND PITFALLS

A. Overly Complicated Questions. Be sure to simplify your questions as much as possible. Asking complex questions increases the likelihood that you will have to redo the process, which would cost additional time and money.

B. Failure to Wait the Full Posting Period. Be sure to wait the full 10 days (plus a Monday) before instructing your witness to fill out the DWQ. If the DWQ is improperly noticed, you will have to start over.

C. Having the Witness Sign Pre-Typed Answers. Although witnesses who testify during uncontested probate hearings do sign testimony that was prepared in advance, depositions are different. The DWQ witness must fill out the DWQ themselves with the notary, not just sign and attest to pre-typed answers that you have given them.

- D. Not Allowing Enough Time.** When you're setting your hearing, be aware of the posting period and the time it may take your witness to answer the DWQ in front of a notary. If you do not allow you and your witness enough time, you can find yourself having to reschedule your hearing.

- E. Affidavits Aren't Depositions.** It is never sufficient to file written affidavits in place of depositions or testimony in open court.

- F. Q&A, Q&A, Q&A – not QQQ & AAA.** The Court *strongly* prefers that the witness record each answer immediately following the question asked, rather than having answers refer to questions that are on some previous page.

Questions? Please email our Staff Attorney.

Kimmie Bennett

kimmie.bennett@prob.hctx.net

No. _____

In the Estate of	§	Probate Court
	§	
Jane Doe,	§	No. 5
	§	
Deceased	§	Harris County, Texas

NOTICE OF INTENT TO TAKE
DEPOSITION ON WRITTEN QUESTIONS

To all persons interested in the Estate of Jane Doe, Deceased:

Notice is hereby given that pursuant to Section 51.203 of the Texas Estates Code, the Applicant, **John Doe**, intends to take the deposition on written questions of the following witness at the following date and time:

Witness Name:	Jackson Doe
Witness Address:	123 Main Street
Date of Deposition:	After _____, 2023 (10 days following the posting date)
Deposition officer:	Any notary public or other person authorized to take oaths in the State of Texas

This deposition is to be used in the above-numbered and -entitled proceeding. A copy of the deposition questions to be served upon the witness, and the exhibit to such questions, is attached hereto.

Respectfully submitted,

By: _____
Attorney Signature Block

No. _____

In the Estate of

§

Probate Court

Jane Doe,

§

No. 5

Deceased

§

§

§

Harris County, Texas

INTERROGATORIES AND ANSWERS OF WITNESS
JACKSON DOE

Question No. 1. What is your name and address?

Answer:

Question No. 2. Why are you unable to appear personally in the Probate Court for the hearing?

Answer:

(Continue asking your questions in this fashion)

Signed this _____ day of _____, 2024.

Jackson Doe, Witness

Upon the appearance of the Witness, I proceeded to take the above answers of the Witness to the attached interrogatories, reduced such answers to writing, and caused the same to be signed and sworn to by the Witness, and such answers were signed and sworn to by the Witness before me, to certify which witness my hand and seal of office, on the date above specified.

Notary Public, State of _____

No. _____

In the Estate of	§	Probate Court
	§	
Jane Doe,	§	No. 5
	§	
Deceased	§	Harris County, Texas

INTERROGATORIES AND ANSWERS OF WITNESS

JACKSON DOE

(Proof of Death Testimony—Letters Testamentary)

Question No. 1. What is your name and address?

Answer:

Question No. 2. Why are you unable to appear personally in the Probate Court for the hearing?

Answer:

Question No. 3. Did Jane Doe die on January 1, 2023?

Answer:

Question No. 4. Has it been four (4) years since Jane Doe died?

Answer:

Question No. 5. Was Jane Doe living at 123 Main Street, Houston, Harris County, Texas at her death?

Answer:

Question No. 6. **Is it true that Jane Doe signed and executed her Last Will and Testament on January 1, 2000?**

Answer:

Question No. 7 **To the best of your knowledge, did Jane Doe ever revoke this Will?**

Answer:

Question No. 8 **Were any children born to or adopted by Jane Doe after January 1, 2000?**

Answer:

Question No. 9 **If your answer to Question No. 8 was “Yes,” what are the names and birthdates of the children who were born to or adopted by Jane Doe after January 1, 2000?**

Answer:

Question No. 10 **Were any marriages of Jane Doe’s ended by divorce, annulment, or any other reason after January 1, 2000?**

Answer:

Question No. 11 **If your answer to Question No. 10 was “Yes,” what are the names of Jane Doe’s former spouses?**

Answer:

Question No. 12 **If your answer to Question No. 10 was “Yes,” when did Jane Doe’s marriage to these former spouses end?**

Answer: _____

Question No. 13. **Is it true that Jane Doe’s Will, dated January 1, 2000, names John Doe as Independent Executor, to serve without bond?**

Answer: _____

Question No. 14. **Is it true that John Doe is qualified, not disqualified, and entitled to serve as Independent Executor of Jane Doe’s estate?**

Answer: _____

Question No. 15. **Is it true that no state, government agency, or charity is named in the Will as a beneficiary?**

Answer: _____

Signed this _____ day of _____, 2024.

Jackson Doe, Witness

I, _____, a Notary Public in and for the State of _____, do hereby certify that the foregoing answers of the witness were made by the said witness and sworn to and subscribed before me. The records attached hereto are exact duplicates of the original records.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this _____ day of _____, 2024.

Notary Public, State of _____

No. _____

In the Estate of	§	Probate Court
	§	
Jane Doe,	§	No. 5
	§	
Deceased	§	Harris County, Texas

INTERROGATORIES AND ANSWERS OF WITNESS

JACKSON DOE

(Proof of Death Testimony—Muniment of Title)

Question No. 1. What is your name and address?

Answer:

Question No. 2. Why are you unable to appear personally in the Probate Court for the hearing?

Answer:

Question No. 3. Did Jane Doe die on January 1, 2023?

Answer:

Question No. 4. Has it been four (4) years since Jane Doe died?

Answer:

Question No. 5. Was Jane Doe living at 123 Main Street, Houston, Harris County, Texas at her death?

Answer:

Question No. 6. Is it true that Jane Doe signed and executed her Last Will and Testament on January 1, 2000?

Answer:

Question No. 7 To the best of your knowledge, did Jane Doe ever revoke this Will?

Answer:

Question No. 8 Were any children born to or adopted by Jane Doe after January 1, 2000?

Answer:

Question No. 9 If your answer to Question No. 8 was “Yes,” what are the names and birthdates of the children who were born to or adopted by Jane Doe after January 1, 2000?

Answer:

Question No. 10 Were any marriages of Jane Doe’s ended by divorce, annulment, or any other reason after January 1, 2000?

Answer:

Question No. 11 If your answer to Question No. 10 was “Yes,” what are the names of Jane Doe’s former spouses?

Answer:

Question No. 12 **If your answer to Question No. 10 was “Yes,” when did Jane Doe’s marriage to these former spouses end?**

Answer: _____

Question No. 13. **Is it true that Jane Doe did not apply for and receive Medicaid benefits on or after March 1, 2005?**

Answer: _____

Question No. 14. **Is it true that there are no unpaid debts owed by Jane Doe’s estate, other than debts secured by liens on real estate?**

Answer: _____

Question No. 15. **Is it true that no state, government agency, or charity is named in the Will as a beneficiary?**

Answer: _____

Signed this _____ day of _____, 2024.

Jackson Doe, Witness

I, _____, a Notary Public in and for the State of _____, do hereby certify that the foregoing answers of the witness were made by the said witness and sworn to and subscribed before me. The records attached hereto are exact duplicates of the original records.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this _____ day of _____, 2024.

Notary Public, State of _____

No. _____

In the Estate of	§	Probate Court
	§	
Jane Doe,	§	No. 5
	§	
Deceased	§	Harris County, Texas

INTERROGATORIES AND ANSWERS OF WITNESS
JACKSON DOE
(Proof of Death Testimony—Determination of Heirship)

Question No. 1. What is your name and address?

Answer: _____

Question No. 2. Why are you unable to appear personally in the Probate Court for the hearing?

Answer: _____

Question No. 3. Did you know Jane Doe personally?

Answer: _____

Question No. 4. How long did you know Jane Doe?

Answer: _____

Question No. 5. What was your relationship to Jane Doe?

Answer: _____

Question No. 6. Did Jane Doe die on January 1, 2023?

Answer:

Question No. 7. Has it been four (4) years since Jane Doe died?

Answer:

Question No. 8. Was Jane Doe living at 123 Main Street, Houston, HarrisCounty, Texas at her death?

Answer:

Question No. 9. Did Jane Doe have a Will? Did she ever discuss having a Will?

Answer:

Question No. 10. If Jane Doe had made a Will, would you have known about it and where it was located?

Answer:

Question No. 11. Is it true that there is a need for administration of this estate because Jane Doe's assets need to be collected and distributed to her heirs?

Answer:

Question No. 12. Is it true that John Doe is qualified, not disqualified, and entitled to serve as Independent Administrator of Jane Doe's estate?

Answer:

Signed this _____ day of _____, 2024.

Jackson Doe, Witness

I, _____, a Notary Public in and for the State of _____, do hereby certify that the foregoing answers of the witness were made by the said witness and sworn to and subscribed before me. The records attached hereto are exact duplicates of the original records.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this _____ day of _____,
2024.

Notary Public, State of _____

No. _____

In the Estate of	§	Probate Court
	§	
Jane Doe,	§	No. 5
	§	
Deceased	§	Harris County, Texas

INTERROGATORIES AND ANSWERS OF WITNESS

JACKSON DOE

(Heirship Testimony—Determination of Heirship)

Question No. 1. What is your name and address?

Answer:

Question No. 2. Why are you unable to appear personally in the Probate Court for the hearing?

Answer:

Question No. 3. Did you know Jane Doe personally?

Answer:

Question No. 4. How long did you know Jane Doe?

Answer:

Question No. 5. What was your relationship to Jane Doe?

Answer:

Question No. 6. Are you personally familiar with Jane Doe’s family and marital history?

Answer: _____

Question No. 7. Is it true that Jane Doe died on January 1, 2023?

Answer: _____

Question No. 8. Were any children born to or adopted by Jane Doe?

Answer: _____

Question No. 9. If your answer to Question No. 8 was “Yes,” what were the names of Jane Doe’s children?

Answer: _____

Question No. 10. If your answer to Question No. 8 was “Yes,” did any of Jane Doe’s children die before January 1, 2023? If so, who?

Answer: _____

Question No. 11. Did Jane Doe ever hold herself out as the parent of any other children? If so, who?

Answer: _____

Question No. 12. Do you know of anyone who claims to be a child of Jane Doe who you haven’t already mentioned in the previous questions? If so, who?

Answer: _____

Question No. 13. Was Jane Doe married on her date of death? If so, to whom?

Answer:

Question No. 14. To the best of your knowledge, had Jane Doe ever been divorced? If so, when was she divorced? What was the name of her former spouse(s)?

Answer:

Question No. 15. What were the names of Jane Doe's parents?

Answer:

Question No. 16. Did either of Jane Doe's parents die before January 1, 2023? If so, who?

Answer:

Question No. 17. What were the names of Jane Doe's siblings?

Answer:

Question No. 18. Did any of Jane Doe's siblings die before January 1, 2023? If so, who?

Answer:

Question No. 19. If your answer to Question 18 was "Yes," did the deceased sibling(s) of Jane Doe have any children? If so, what were the children's names?

Answer:

Question No. 20. To the best of your knowledge, have all of the heirs of Jane Doe been identified?

Answer: _____

Question No. 21. Are you going to inherit anything from the Estate of Jane Doe?

Answer: _____

Signed this _____ day of _____, 2024.

Jackson Doe, Witness

I, _____, a Notary Public in and for the State of _____, do hereby certify that the foregoing answers of the witness were made by the said witness and sworn to and subscribed before me. The records attached hereto are exact duplicates of the original records.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this _____ day of _____, 2024.

Notary Public, State of _____