



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

PROBATE COURT 5 POLICIES AND PROCEDURES

Please review the policies and procedures of Probate Court 5. Additionally, all parties and litigants should become familiarized with the Harris County Probate Court Local Rules, which can be found on the Harris County Probate Court’s website:

<https://probate.harriscountytexas.gov/Portals/probate/Documents/07Local%20Rules.pdf>

1. COURT LOCATION

We are located at 1115 Congress, 5th Floor, Houston, TX 77002.

2. CONTACTING THE COURT

- A. To check the status of agreed applications and motions, submission orders, unopposed orders, and orders from uncontested dockets submitted to the Court, contact the Court at 832-927-1405.

To determine whether the Court has ruled on a motion please check the County Clerk’s website or contact the Court for status.

- B. All contested matters including Temporary Guardianships, Temporary Administrations, TROs, Injunctions, and Pro Se Matters must be set through the Court Coordinator/Chief of Staff, Christopher Bown at Christopher.Bown@prob.hctx.net. Emails should include the Cause Number, Case Name, Title of the Application/Motion you are trying to set, and amount of time anticipated. As a reminder, please include all parties involved.

Please note that contested matters will be held in person unless prior approval of Zoom/Teleconference has been obtained from the Court.

- C. To set hearings on the Probate of Will and Heirship/Administration Dockets, visit <https://probate.harriscountytexas.gov/Probate-Court-No-5/Online-Docket-Settings> to request a hearing online. Requirements must be met prior to scheduling a hearing.

Please note that Probate of Will and Heirship/Administration Dockets may be held via Zoom, in-person, or hybrid.

- D. To schedule hearings for Guardianships, 1301 Trusts, the Ancillary Docket or Trial Docket, please contact the court at 832-927-1405.

Please note that Guardianship Hearings and 1301 Trusts can be held via Zoom or in person and Ancillary will be held in person unless prior approval of Zoom/Teleconference has been obtained from the Court.

- E. To set a hearing on the submission docket, visit <https://probate.harriscountytexas.gov/Probate-Court-No-5/Online-Docket-Settings> to request a hearing online. As a reminder, per rule 10.3 of the Local Rules of the Harris County Probate Courts, notice shall be filed at least 10 days prior to the submission date.
- F. For information relating to transcripts, contact Breanna Schwart, PB5 Court Reporter, at 832-927-4093 or Breanna.Schwart@prob.hctx.net

3. E-FILING

By order of the Supreme Court of Texas all courts are now mandatory E-File Courts. All documents must be filed electronically with the Harris County Clerk's Office. Documents should not be hand-delivered or faxed directly to the Court. If documents are delivered directly to the court for filing, the staff will not accept the documents. **Parties should visit the Probate Clerk's office at 201 Caroline St # 800, Houston, TX 77002 to file documents in person.** The staff of Probate Court 5 is not responsible for ensuring that any documents sent directly or by fax become part of the Court's file. It is counsel's responsibility to ensure that documents which they intend to become part of the court's record are e-filed with the County Clerk's Office.

Please note that original wills and other testamentary documents shall be delivered to the Probate Clerk's office at 201 Caroline St # 800, Houston, TX 77002.

3.1 E-FILING INSTRUCTIONS

Type the **entire title** of your pleading. Do not abbreviate parts of the title. The clerks need the full and complete title of the pleading to ensure proper filing and posting. For example, if probating a copy of a Will (Will Not Producing in Court), ensure "copy" is mentioned in the title, body, and prayer. Additionally, please ensure the Decedent's name matches the name as written (including any a/k/a or f/k/a) in the testamentary instrument for proper citation and posting.

4. PROBATE

Prior to setting a hearing with the Court, the following requirements must be met. Additionally, please refer to the "Submissions Review" under the General Information tab to find a list of submissions that do not require a hearing.

4.1 PROBATE OF WILLS

A. **Prior to setting a hearing** on the Probate of Will docket, **ALL** unsigned, proposed hearing documents must have been e-filed for the Court's review prior to setting a hearing.

This includes, but is not limited to, documents such as:

- Proposed Proofs of Death
- Proposed witness affidavits/testimony
- Proposed orders
- Proposed oaths.

B. Additionally, the original will (or physical copy of the purported will, in the case of a will not produced in Court - NPC) or other testamentary instrument must be delivered to the Probate Clerk and be on file.

C. All required citations must be issued and the return date is prior to the hearing date.

1.1.1 ADDITIONAL STEP FOR PROBATE OF WILL AS A MUNIMENT OF TITLE

Prior to setting a hearing on the Probate of Will as a Muniment of Title docket, the following items must be filed:

1. Sworn (Verified) Application that includes the statement that the Decedent did not apply for or receive Medicaid benefits on or after March 1, 2005, **OR**
2. a MERP certification; **AND**
3. Sworn Oath of No Debts (Signed).

The Texas Medicaid Estate Recovery Program (MERP) Certification Form can be found on the Health and Human Services website:

<https://www.hhs.texas.gov/sites/default/files/documents/services/aging/txmerpcertificationform.pdf>

4.2 HEIRSHIP AND ADMINISTRATION

Prior to setting a hearing with the Court, the following requirements must be met. Additionally, please refer to the "Submissions Review" tab to find a list of submissions that do not require a hearing.

This includes, but is not limited to, documents such as:

1. Proposed Proofs of Death;
2. Proposed disinterested witness affidavits/testimony; and
3. Proposed orders.
 - a. For Proposed Judgments Declaring Heirs the following is required:

- i. Shares should be stated in fractions
- ii. The Proposed Order must be signed by **both** the Attorney of Record **and** AAL.

4. Proposed oaths.

B. For Heirship Determinations, an Attorney Ad Litem (AAL) must be appointed and the AAL's answer filed prior to the hearing date

C. All required citations must be issued and the return date is prior to the hearing date.

D. The Affidavit of Service of Citation (TEC 202.057) must be on file with the Court.

4.3 UNSWORN DECLARATIONS

Per Section 132.001 of the Tex. Prac. Civ. Rem. Code, Probate Court 5 accepts unsworn declarations in lieu of notarized signatures for the following documents:

- Oaths of Executors; Oaths of Administrators
- Proof Of Death and Other Facts
- Witness statements for Estates
- Witness statements for Heirships
- Inventories, Annual Reports and Annual Accounts

5. GUARDIANSHIP

5.1 REQUIREMENTS FOR SETTING A GUARDIANSHIP HEARING

Prior to setting a hearing with the Court, the following items must be on file:

- Application (Sworn to by Applicant)
- Designation of Resident Agent (only for each out-of-state Applicant)
- Affidavit Containing Contact Information of Certain Persons pursuant to TEC 1101.003
 - o This document will be provided by the Guardianship Coordinator, and **must** be returned via email (**NOT E-FILED**).
- Valid Physician's Certificate of Medical Examination ("PCME")
- Court Investigator's Report
- Citation by Posting on the Application to be heard
- Personal Citation by Peace Officer on Proposed Ward
- JBCC or FBI Fingerprinting Criminal Background Check for Proposed Guardian(s)
- JBCC Guardian Training Certificate
- JBCC Guardianship Registration

- Attorney Ad Litem has been appointed (Answer o/b/o Proposed Ward need not be on file to set hearing)
- Guardian Ad Litem has been appointed (if applicable)
- Proposed Order Appointing Guardian(s)
- Affidavit of Compliance with TEC 1051.104(b) regarding Notice
 - o This will include your list of all parties who must have been served with Notice or Citation; and state whether each was served or waived Notice/Citation
 - o Any Proofs of Notice or Citation must be attached
 - o Any Waivers must be attached
- Attorney Ad Litem Answer o/b/o Proposed Ward
- Attorney Ad Litem/Guardian Ad Litem Fee Order (if seeking standard \$700 fee or less; if seeking more, an Application for Appointee's Fees may be filed following the hearing with proper billing statement and an affidavit of attorney's work experience)
- Guardian Ad Litem Report (if applicable, also may be provided less than 7 days prior to hearing upon consultation with the Court).

**ALL ITEMS LISTED ABOVE MUST BE ON FILE
BEFORE HEARING CAN BE SET**

5.2 REQUIREMENTS FOLLOWING THE GUARDIANSHIP HEARING

- Sign & Sworn Oath of Guardian(s) (Unsworn Declarations are not accepted for Oath of Guardian(s))
- Post Surety Bond for Court Approval OR Deposit Cash Bond with County Clerk (as applicable)
 - o Bonds due by 20th day following Appointment.
- Newly Appointed Guardian must complete and return to the court the "Guardian Contact Sheet" to the Court (this will be provided by the Court)
- Following Appointment, Filing of Oath, and any Bond, (Qualification of Guardian) you may request Letters of Guardianship from the County Clerk's Office
- Guardianship of Estates:
 - o Inventory due by 90th day following Appointment.
- Upon each Anniversary of Qualification Date, Guardian(s) must submit a Report on Location & Well-Being of Ward to the Court; failure to do so may result in removal proceedings.
- Guardianship of Estates:
 - o Upon each Anniversary of Qualification Date, Guardian(s) must submit an Annual Accounting for Court review and approval; failure to do so may result in removal proceedings.
- Continued Representation by Counsel

- Guardians of Estates must maintain representation with a Guardianship-Certified Attorney for so long as they serve in this capacity and are filing Annual Accountings
- Guardians of Person Only are not required to maintain representation with an attorney following their appointment and any obligations to their attorney but may find such a relationship to be helpful.

6. MOTION PRACTICE

Every motion must be set for consideration either by submission or by oral hearing unless it is an agreed or unopposed motion. Unopposed means that either opposing counsel or party was contacted and stated that they were not opposed to a particular motion. (An attorney's motion to withdraw is an exception to this. See Rule 9.1 of the Probate Court Local Rules)

The Court follows the Texas Estates Code, local rules, and Texas Rules of Civil Procedure. When preparing motions please leave jury argument, hyperbole and personal criticism of your opponent out of the motion. Just state the requested relief and reasons for such.

Always attach a proposed order whether Applicant/Respondent or Movant/Nonmovant.

6.1 ORDERS

All motions and responses must be filed with a corresponding order. The Court may not proceed on a Motion without proposed orders. Occasionally, the Court may require the parties to submit modified orders following a hearing or communication from the Court.

When submitting a proposed order after a hearing, ensure the order is signed by all parties with respect to approval of form.

6.2 AGREED MOTIONS

The Court may hear agreed or unopposed motions by submission. All unopposed or agreed motions should be titled as such. All agreed motions and proposed orders must contain the signatures of all those in agreement. If the Court denies an agreed or unopposed motion, a litigant may request a subsequent oral hearing on that motion.

6.3 MOTION RESPONSES

E-File responses to motions at least 72 hours prior to the hearing and include a proposed order.

6.4 NOTICE

A minimum of 3 business days' notice of hearing shall be given unless a greater length of time is required by the rules or other specific statutory provision.

6.5 MATTERS RESOLVED PRIOR TO HEARING

If a motion is resolved prior to the hearing, advise the court coordinator immediately so that the hearing slot may be reassigned, and it allows the Court to review other matters.

6.6 MOTION FOR SUMMARY JUDGMENT

Motions can be set on the submission docket at 10:00 a.m. on the first Tuesday following 21 days following filing the motion. If the Court deems an oral hearing necessary, the Court will schedule an oral hearing and notify the parties. If the movant would like an oral hearing, please inform the Court and one will be scheduled. If a non-moving party would like an oral hearing, then a motion for continuance of the submission date should be filed. Follow the procedures as outlined above in section 2(B). Parties are not permitted to change an opposing party's setting from submission to oral hearing without an order from the Court.

When proving damages in a motion for summary judgment, show the court how damage figures were calculated and provide evidence to support such calculations.

When proving attorney's fees in a motion for summary judgment, in your affidavit provide the court with evidence to support your claim for attorney's fees. At a minimum the motion should show (1) experience, (2) work completed (3) time taken to complete and (4) hourly rate. Additionally, an invoice shall be submitted as an exhibit.

6.7 DISCOVERY MOTIONS

The Court expects all litigants to make an effort to cooperate and resolve disputes prior to seeking court intervention. If the parties must seek assistance with respect to discovery matters, the movant should file a motion outlining the discovery dispute, the effort made to resolve that dispute, and the relief requested from the Court. The parties should conference on all discovery motions prior to a hearing and be prepared to address these efforts with the Court. If you are requesting the Court to rule on objections, present a motion and order that contains the specific requests made along with the objections made and a blank to either overrule or sustain the objection.

6.8 SANCTIONS

Do not request sanctions unless there has been sanctionable conduct that is serious in nature. Do not request "death penalty" sanctions unless the Court has issued some prior award of sanctions. Sanctions are not favored and are only used as necessary to get a party to comply with the orders of the Court.

6.9 CONTINUANCES

Motions for continuance should be filed and discussed with the Court Coordinator. The Court will grant the first agreed motion for continuance without the need for an oral hearing. Any subsequent motion for continuance will require additional explanation. The movant must demonstrate the need for the continuance and indicate that the clients have been informed.

6.10 DEFAULT JUDGMENTS

The parties shall file a motion for default judgment and set the same as a motion on the Court's submission docket. If an oral hearing is required to present evidence, please inform the court clerk and an oral hearing will be scheduled. Please include all exhibits demonstrating service, non-military affidavit, certificate of last known address, and damages. To obtain certificates of service or non-service under the Servicemembers' Civil Relief Act, you may access the public website: <https://scra.dmdc.osd.mil/scra/#/home>. This website will provide the current active military status of an individual.

6.11 SUBSTITUTED SERVICE

If a party is seeking substituted service pursuant to 106 please provide a motion along with an affidavit that establishes that the person to be served can be found at the service address.

6.12 MOTION TO WITHDRAW

Motions to withdraw as attorney of record must contain the parties' telephone number, address, email address, current deadlines, and trial settings. Orders on motions to withdraw **MUST** include contact information for the pro se party including: name, address, telephone number and email address. Failure to include the required contact information will result in the motion being denied. Please refer to Texas Rules of Civil Procedure 10 to ensure all requirements are met before the motion can be granted.

6.13 SPECIAL EXCEPTIONS

Special exceptions should specifically state the language objected to and the reasoning for the objection. The language excepted should be stated verbatim in the motion and the order.

6.14 IN CAMERA DOCUMENTS

After a review of matters presented in-camera and a ruling is made, the materials reviewed will be delivered to the court reporter for safekeeping. The parties shall immediately advise the court reporter as to what to do with said materials. If no instructions are received within 30 calendar days, said materials will be discarded.

7. CONTESTED CASE MANAGEMENT

7.1 Scheduling Conference/Docket Control Orders

The Court requires that a docket control order be entered in all contested cases, unless otherwise determined by the Court. The Court has a standard form which is completed at the Scheduling Conference.

After initial answers/responses have been filed, the parties may contact the Court Coordinator to set a scheduling conference. The Court may on its own reach out to the parties. However, the Court encourages the parties to contact the Court to set the conference.

7.2 Mediation

Parties are highly encouraged to **MEDIATE** all issues in controversy as soon as practical. Mediation **is required** prior to final trial on the merits, except upon good cause shown.

7.3 Pre-Trial Conferences/Exchange of Materials

The pre-trial conference date will be specified in the Docket Control Order, usually on a Friday approximately 10 days prior to trial. The responsibilities of the parties at the pre-trial conference are detailed in the Docket Control Order. Refer to this Order for specific instructions regarding the Court's pre-trial requirements.

Each party is requested to provide to the court coordinator a courtesy copy of its most recent pleading, witness and exhibit lists, motions in limine, other pre-trial motions, and proposed jury charge. Parties shall exchange these items with each other prior to the pre-trial conference and shall attempt to reach agreement regarding issues of admissibility and pre-trial motions.

At or prior to the pre-trial conference, counsel will deposit the following items with the court reporter (not filed with the clerk):

1. **Exhibit Lists** in a form which allows the Court to mark each exhibit "offered" and "admitted/denied" on the list.
2. **Witness Lists**
3. **Proposed Charge of the Court, or Findings of Facts/Conclusions of Law**, as appropriate. Requested jury questions or findings and conclusions should be submitted at the pre-trial conference by emailing a shared drive link (i.e., Google Drive, Dropbox), a thumb drive, and in hard copy. The proposed charge should include desired instructions (including conditional submissions); instructions and questions should be arranged in the order that the party desires that they be presented to the jury.

4. **Motions in Limine/ Other Pretrial Motions** Any matters upon which the parties cannot reach agreement will be heard at the pre-trial conference and not on the day of trial, except upon leave of Court. Daubert/Robinson motions MUST be heard before trial.

5. **Deposition Excerpts** At the pre-trial conference, the Court requires identification or designation of specific deposition excerpts intended for trial usage. Prior to the reading, a copy of the excerpt must be made available to the Court, the court reporter and opposing counsel.

6. **Original Exhibits** All original exhibits should be brought to the pre-trial conference and, to the extent possible, contained in one Original Exhibit Notebook for the jury. They should be pre-marked, stapled, and numbered to coincide with the exhibit list. A Court copy of the notebook is not required. Documentary/photo exhibits must not be larger than 8 1/2" x 11", except by permission of the Court.

If three-hole punching the original exhibit will destroy a part of the exhibit, such exhibit may be placed in a plastic sheet protector in the exhibit notebook.

7. **Large Exhibits** exceeding 8 1/2" x 11" shall be accompanied by an 8 1/2" x 11" copy. The court reporter will retain the smaller copy for the record, and the original will be returned to the offering party after trial.

8. **Demonstrative Exhibits/Trial Aids** Demonstrative exhibits and trial aids used by a party may be used by all counsel. Opposing counsel should not mark on or in any way alter offering counsel's demonstrative exhibit, without Court's permission.

7.4 DWOP Docket

When a case is set for dismissal by the Court, the parties are expected to appear at the time and date specified in the notice sent by the Court. If an agreement is reached by the parties that the case should not be dismissed, an agreed order removing the case from the dismissal docket should be submitted to the Court prior to the scheduled dismissal hearing.

8. MISCELLANEOUS GUIDELINES

8.1 Court Decorum (In Person or ZOOM)

- No food or beverages will be allowed in the courtroom except for bottled water.
- Appropriate professional attire for attorneys and their staff is required. All parties, attorneys and legal staff at the bar should wear business attire. Please caution your clients on their attire. NO ONE will do business with the Court wearing hats/ballcaps, cutoffs, shorts, tank tops, swim wear, obscenity on clothing, house slippers, halter

tops, dirty clothing, micro-mini skirts, workout garments, midriff shirts, etc. Shirts shall be appropriately buttoned. Attorneys are responsible for informing their clients of the Court's dress code.

- Cell phones are to be turned off or remain on silent in the Courtroom. Attorneys may use their cellphone for texting and emailing if necessary.
- No conferences are to be held in the courtroom while the Judge is on the bench.
- No chewing gum or candy is allowed in the courtroom.

8.2 Addressing the Court/ Approaching the Witness

- Counsel are expected to stand when addressing the Court or making an objection so that the witness knows to stop talking until the Court rules on the objection. This requirement also allows the court reporter to identify for the record the person making the objection.
- Counsel may remain seated to examine witnesses.
- Counsel shall treat opposing counsel, parties, and all witnesses in a courteous and professional manner.
- Counsel shall request the Court's permission to approach the bench or a witness.

For questions, contact Probate Court 5's main line at 832-927-1405.