



**Hon. Patrick C. Davis  
Presiding Judge**

**Judge's Annotated Checklists ("JAC")**  
"Before you come to court, you better know JAC!"

**Probate of Wills Checklist**  
(Updated September 25, 2022)

**I. Filing the Applications**

**A. Jurisdiction & Procedural Matters**

**Probate Matters [Chapter 31]**

- Scope of Probate Proceeding [§ 31.001]
  - Probate of a Will
  - Issuance of Letter Testamentary and of Administration
  - Heirship Determination, Small Estate Affidavit, Community Property Administration, and Homestead and Family Allowances
  - An Application, Petition, Motion, or Action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent
  - Claims arising from administration and any action on the claim
  - Will Construction
  - Will Modification or Reformation
- Matters Related to a Probate Proceeding [§ 32.002]
  - Actions against a current or former Personal Representative (PR) based on their performance in such role.
  - Action on Surety of current or former PR
  - Claim brought by a PR on behalf of estate
  - Action against PR in their capacity as PR
  - Trial for Title to Real Property in Estate, including Liens

- Trial of the Right of Property that is estate property
- In Counties where there is no Statutory Probate Court, but there is a County Court at Law exercising Original Probate Jurisdiction, then the following in addition to the above listed matters:
  - Interpretation and Administration of a Testamentary Trust if the will creating it was admitted to probate in the court; and
  - Interpretation and Administration of an Inter Vivos Trust created by a decedent whose will has been admitted to probate in the court.
- For Statutory Probate Courts, the following in addition to all above matters:
  - Any cause of action in which a PR of an estate pending in the Statutory Probate Court is a party in their capacity as PR.

### **Jurisdiction [Chapter 32]**

- Probate matters must be filed in courts exercising original probate jurisdiction [§ 32.001]
- Original Jurisdiction
  - **County Court** where there is no Statutory Probate Court or County Court at Law Exercising original probate jurisdiction
    - If there are both a County Court and a County Court at Law, then both have concurrent original jurisdiction, unless otherwise provided by law.
  - **County Court at Law** where there is no Statutory Probate Court
  - Counties with **Statutory Probate Courts**, the Statutory Probate Court has original jurisdiction (10 counties, 19 courts, soon to be 11 counties and 20 courts)
  - **Statutory Probate Courts** jurisdiction over Trusts and Powers of Attorney [§ 32.006]
    - Actions by or against a trustee
    - Actions involving inter vivos trusts, testamentary trusts, or charitable trusts
    - Actions by or against a current or former agent under a power of attorney (POA) arising from their performance as such.
    - Actions to determine the validity of a POA or of an agent's rights, duties, or powers.
  - Statutory Probate Courts have **Concurrent jurisdiction with District Courts** over [§ 32.007]

- Personal Injury, Survival, or Wrongful Death by or against a person in their capacity as a PR
- Actions by or against Trustees
- Actions involving inter vivos trusts, testamentary trusts, or charitable trusts
- Actions involving PR in which each other party aligned with the PR is not an interested person of the estate.
- Actions against former agents under a POA arising out of their performance as an agent.
- Actions to determine the validity of a POA or to determine an agents rights, powers, or duties.

#### Jurisdiction of Contested Probate Matters

- **County Courts** – On Motion of either Judge or Party, judge may
  - Request assignment of Statutory Probate Judge (SPJ) [§ 32.003]
  - Transfer to the District Court [§ 32.003]
    - District Clerk may perform any duty of a County Clerk while the case is pending in the District Court
  - If a party requests a SPJ before the County Judge transfers to a District Court, then the Judge shall grant the motion and may not transfer to a District Court.
  - SPJ or District Court Judge may hear only the contested matter, or the entire case.

## **B. Venue**

### **Probate of Wills and Granting Letters Testamentary and of Administration [§ 33.001]**

- County where Decedent resided
- If no residence in this state, then
  - If Decedent died in this state, then County in which
    - Principal estate located, or
    - County where Decedent died
  - If Decedent died outside of this state, then
    - Any County in Texas where Decedent's nearest of kin reside, or

- If no next of kin, then County where principal estate located
- For Statutory Probate Courts
  - Venue for any cause of action related to a Probate Proceeding pending in a Statutory Probate Court is proper in the Statutory Probate Court in which the Decedent's estate is pending.

## **C. Citation & Notice**

### **Citation**

- Court Action Prohibited before Service of Citation [§ 2528.003]
- Original Will**
  - by Posting [§ 258.001]
- Wills not Producible**
  - Personally Served on all heirs who are residents of Texas and their addresses are known [§ 258.002(b)]
  - By publication if heirs are not residents of this state or cannot be found [§ 258.002(c)]

### **Notice to Heirs**

- Wills offered for probate after the fourth anniversary of the Decedent's Death [§ 258.051(a)]
  - Heir can waive notice by affidavit filed with the court [§ 258.051(b)]

## **D. Application Contents**

### **Original Wills [§ 256.052]**

- Each applicant's name and domicile
  - if outside of Texas, will need Resident Agent [§ 56.001]
- Last three numbers of each applicant's driver's license and Social Security Number
- Testator's name, domicile, and age on the date of Testator's death
- Last three numbers of Testator's driver's license and Social Security Number
- Fact, date, and place of Testator's death
- Facts showing Venue (and Jurisdiction)
- That Testator owned property, including general description of property and value
- The date of the Will

- Name, state of residence, and physical address where service can be had of the executor named in the will or other person applicant desires letters be issued.
- Name of each subscribing witness, if any
- Whether one or more children were born to or adopted by the Testator after making the will
  - Pretermitted children, see § 255.051-.056
- Whether a marriage was dissolved after the will was made.
  - Effect of divorced spouse, see § 123.001-.002
- Whether a state or governmental agency of the state, or a charitable organization is named in the will as a devisee.
  - Necessary party to a will contest or will construction suit, see § 55.052;
  - Notice to Attorney General involving a Charitable Trust excluding an uncontested application to probate a will that is not a second will (TEC 256.101) [Tex. Prop. Code § 123.003]
- Executor named in the will, or other person whom applicant desires Letters Testamentary be issued, is not disqualified.
- Will shall be filed with the Application to Probate Will [256.053]

**Additional Requirements for Will not Producible [256.054]**

- The reason the will cannot be produced
- The contents of the will, as far as known; and
- The name, address, whether the person is a minor or adult, and the relationship to the Testator of
  - Each devisee
  - Each person who would inherit as an heir of the Testator if the absence of a valid will, and
  - In the case of partial intestacy, each heir of the Testator

## II. Pre-Hearing Checklist

- Will is on file with the Clerk
  - On receiving notice of Testator's Death, custodian of Will shall deliver the Will to the Clerk of the Court with jurisdiction. [§ 252.201]
  - Will shall be filed with Application if it is in the applicant's control. [§ 256.053]
- Determine whether the Will is:
  - An original or copy (Court's discretion)
  - Valid – that it is written, signed, and attested [§ 251.051]
  - Self-Proved [251.101-1045]
- Citation by posting [§ 258.001]
  - Hearing date is after the return date (10 days) [§ 51.053(b)]
- Application contains all necessary elements, including:
  - Last three digits of Driver's License and SSN of Applicant and Decedent
  - Address of Applicant and Decedent
- If Person receiving Letters Testamentary is a resident of another State**
  - Appointment or Designation of Resident Agent on file if person to receive Letters Testamentary is domiciled outside of Texas [§ 56.001]
- If Will does not name an Independent Executor or named Independent Executor(s) is (are) not serving**
  - Consent to Independent Administration on file [§ 401.002]
- If Probate is more than 4 years after Decedent's Death**
  - Proof of Notice to Heirs or Waivers if Probate is more than 4 years after Decedent's death [§ 258.051]
- If Will is a Copy**
  - Citation or waivers of citation from heirs [§ 258.002]

### III. Hearing & Orders

#### □ Evidence & Contents of Order

##### ○ **General Proof [§ 256.151]**

- Testator is dead
- Four years have not elapsed since the date of Testator's death and the date the application was filed
- Jurisdiction [Ch. 32] and Venue [Ch. 33]
- Citation served and returned [§ 258.001]
- Person seeking letters is not disqualified

##### ○ **Additional Proof [256.152]**

- Testator did not revoke will
- If will is not self-proved, the Testator
  - Executed will with formalities and solemnities and under circumstances required to make it a valid will
  - At the time of the will, the Testator was of sound mind and
    - 18 years of age or older
    - If under 18, Was or had been married; or
    - A member of the armed forces of the United States, and auxiliary of the armed forces, or the United States Maritime Service

##### ○ **Attested Will that is not self-proved [§ 256.153]**

- May be proved by the sworn testimony or affidavit of one of the subscribing witnesses to the will taken in open court.
- If no subscribing witnesses live outside the county or are unable to testify court, then by
  - Sworn testimony of one or more witnesses by written or oral deposition; or
  - If no opposition is filed, by the sworn testimony or affidavit of two witnesses taken in open court (or by written or oral deposition) to the signature or the handwriting evidenced by the signature of
    - One or more of the attesting witnesses
    - The Testator, if the Testator signed the will; or

- By one witness to the signature if it is shown that, after due diligence, no other witness can be found.
- **Holographic Will [§ 256.154]**
  - The Will is wholly in the handwriting of the Decedent
    - By sworn testimony or affidavit taken in open court; or
    - By written or oral deposition
  - Witness may be deposed using a certified copy of the holographic will without the judge requiring the original will to be removed from the court's file.
- **Will not Producible in Court [§ 256.156]**
  - Must be proved in the same manner as an attested will [§ 256.153] or a holographic will [§ 256.154]
    - But see *Bracewell v. Bracewell*, 20 S.W.3d 14 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2000, no writ). A photocopy of a will admissible to probate as self-proved will even though self-proving affidavit was apparently a photocopy.
  - The cause of the non-production sufficient to satisfy the court that the will cannot by any reasonable diligence be produced; and
  - The contents of the will must be substantially proved by testimony of a credible witness who has read the will or a copy of the will, has hear the will read, or can identify a copy of the will.
- **Bond**
  - Unless waived, bonds are generally required [ §§ 401.005 & 305.151]
  - Amount of bond must be sufficient to protect the estate and its creditors [§ 305.151(a)]
  - Evidence to determine Bond [§ 305.152]
    - Amount of cash on hand.
    - Amount of cash estimated to be needed for administrative purposes (including for businesses, factory, farm, or ranch owned by the estate) and expenses of administration for one year.
    - Revenue anticipated to be received in succeeding 12 months.
    - Estimated value of certificates of stock, bonds, notes, or other securities.
    - Face value of life insurance and other policies payable to the decedent's estate.



- Estimated value of other personal property
- Estimated amount of debts due and owing by the estate.
- Reduced by amount in safe-keeping [§ 305.156]

## IV. Audits

- Date Order Signed
- Date of Qualification of Personal Representative
  - Oath and Bond (if required) by 21<sup>st</sup> day after order signed [ §§ 305.002 & .003]
- Notice to Beneficiaries [308.001 et seq.]
  - By the 60<sup>th</sup> date after the order admitting will to probate is signed
  - Affidavit or Certificate Filed with the Court not later than the 90<sup>th</sup> day after the Order Admitting Will to Probate is signed.
    - NOTE: Slightly different due date than the Inventory, which is due 90 days after the *personal representative qualifies*.
- Date Inventory or Affidavit In Lieu of Inventory is Due
  - 91<sup>st</sup> day after personal representative qualifies [ § 309.051]
- Date Annual Accounting Due (for dependent administrations)
  - 60<sup>th</sup> day after the anniversary of the date Personal Representative qualified [§359.001]