

RULES OF THE PROBATE COURTS OF HARRIS COUNTY, TEXAS

RULE NO. 1

CASE ASSIGNMENTS: All matters filed in the Probate Courts of Harris County, Texas, shall be assigned a number and court in accordance with the case assignment and docketing procedures of Section 25.1034 of the Government Code. Once a case number has been assigned and docketed to a particular Probate Court, all matters relating thereto including subsequent proceeding upon testamentary trust shall remain in such court unless an Order of Transfer signed by the judge of said court transferring the case is filed with the clerk of the court.

RULE NO. 2

PREVENTING DUPLICATION: In order to prevent the duplication of docketing and assignment of estates, all attorneys for applicants are required in review the estate index records in the probate division of the County Clerk's office prior to the filing of any estate. In the event a docket number has been previously assigned to an estate, all subsequent matters shall be filed under such previously assigned number.

RULE NO. 3

TRANSFER BETWEEN PROBATE COURTS: A request to transfer between Probate Courts in Harris County shall be made by the attorney in charge for the party who is seeking a transfer. It shall be the responsibility of the attorney representing the party desiring a transfer to obtain the agreement of the Judges of the Courts from which the transfer is sought and to which the case will be transferred. The appropriate court personnel of the court to which the case has been requested to be transferred shall notify the court from which the case is requested to be transferred indicating that a case transfer will be accepted. All case transfers are subject to the discretion of the judge in which the case has been filed.

RULE NO. 4

TRANSFERS FROM OTHER STATUTORY COURTS: Pursuant to Section SB of the Texas Probate Code a statutory Probate Judge has the power to transfer to the Probate Court from a district or statutory court any cause of action appertaining to or incident to a pending estate. It is the responsibility of the attorney representing the party seeking a transfer pursuant to this section to submit a proper motion and order for the transfer of any causes of action filed in any district, county or statutory court to the probate court for further proceedings.

RULE NO. 5

VACATIONS: The Probate Courts of Harris County, Texas, will normally honor vacation periods of the Attorney in Charge in any pending probate matter where vacation notices have been properly and timely filed with the District Clerk of Harris, County, Texas, in conformity with the existing Rules of the District Courts of Harris County, Texas. The Judges of the Probate Courts of Harris County, Texas, however, reserve the right to require any attorney in charge regardless of said vacation letter to proceed with any probate matters where a failure to proceed with such pending matter will cause injustice to any parties or the estate.

RULE NO. 6

CONFLICTING TRIAL SETTINGS: The Probate Courts of Harris County, Texas, will honor the Rules of Procedure for the Second Administrative Judicial District and the District Courts - Civil Division of Harris County, Texas, in the event of a conflicting trial setting as to parties and attorneys in charge in the Probate Courts. Where a party or attorney in charge is previously assigned to trial in a different Probate Court, County Civil, County Criminal, or District Court, a matter that is subsequently assigned to trial in the Probate Court shall be held in abeyance but will proceed to trial as soon as practical after the party or attorney in charge ceases to be engaged in the prior proceeding. The Attorney in charge shall notify the Probate Court immediately of his or her availability.

RULE NO. 7

DISMISSAL DOCKETS: Each Probate Court in Harris County, Texas, shall set for dismissal on the first Monday in April and in October of each year, all contested cases or matters which are not set for trial and which have been on file for more than three (3) years. The Clerk of the Probate Courts shall furnish notice to all parties and their counsel that any contested case or matters will be dismissed for want of prosecution pursuant to the provisions of Rule 165a of the Texas Rules of Civil Procedure. The procedures for notice of dismissal and retention shall be in compliance with Rules 165a and 306a of the Texas Rules of Civil Procedure.

RULE NO. 8

ANCILLARY AND/OR EMERGENCY PROCEEDINGS: All proceedings for restraining orders, temporary injunctions, writs of habeas corpus, receivership, temporary administration, temporary guardianship, small estates, or matters involving the payment of small claims without guardianships pursuant to Sections 137 through 144 of the Texas Probate Code, and proceedings for the examination and delivery of the contents of safe deposit boxes or any papers of the decedent pursuant to Sections 3GB through 36F of the Texas Probate code will be heard by the judge of the probate court to which the matter has been assigned and docketed, or if said judge of the court to which the matter is assigned and docketed is not available, then by the Presiding Judge or the Judge of any Probate Court in Harris County, Texas.

RULE NO. 9

CITATION, SERVICE AND RETURN: All original, amended, or supplemental citations, notices, writs, process, applications, applicable provisions of the Texas Probate Code and, unless otherwise inconsistent, in compliance with the applicable Texas Rules of Civil Procedure. Where the Texas Probate Code does not specify a specific manner of citation and service that may be issued or where the Probate Judge has discretion as to the type of citation and service that may be instituted then the required notice shall be by posting unless the judge of said court requires another type of citation and notice. It shall be the responsibility of the attorney in charge in this instance, to ascertain the required citation and service by contacting the appropriate court personnel and when necessary submit to the court an order for notice or citation other than by posting. All citations issued in matters pending before the probate Courts shall be returned upon execution of service to the Probate Clerk's office where issued or within ninety (90) days from the date the service was issued. Failure to return citation within ninety (90) days shall not void a subsequent service under such citation,

RULE NO. 10

GUARDIANSHIP HEARINGS: No guardianship of an alleged incompetent person will be heard by the probate courts of Harris County, Texas before the expiration of ten (10) days from the date that service of citation has been returned to the clerk.

RULE NO.11

AD LITEMS: In all guardianships of incompetent persons and heirship proceedings a motion and order appointing an attorney ad litem shall accompany the application at the time of its filing. It shall be the responsibility of the attorney for the applicant to determine whether the judge of the court to which the matter is docketed will waive the necessity for appointment of an attorney ad litem and to submit an appropriate waiver order to the court.

RULE NO. 12

TEMPORARY GUARDIANSHIPS AND ADMINISTRATIONS: all letters of temporary guardianship and administration shall reflect the expiration date and/or the date that the temporary guardianship or administration was originally granted. No letters shall be issued by the clerk on any temporary guardianships that are over 60 days or on temporary administrations that are over 90 days after the date of their inception regardless of the date when such proceeding began.

RULE NO. 13

WRITTEN INTERROGATORIES AND DEPOSITIONS: All written interrogatories and/or depositions of witnesses concerning testimony as to the execution of a will or on any matters where there is no party or attorney upon whom notice may be serviced must be filed with the court and must have citation issued in compliance with Section 22 of the Texas Probate Code. In addition, all such interrogatory and deposition answers must be filed with the clerk of court prior to the date of any hearing for admission of any will probate or the presentation of such other matters to the court.

RULE NO. 14

ASSIGNMENT OF MATTERS APPERTAINING TO AND INCIDENT TO AN ESTATE: All proceedings regarding the probate of wills, the issuance of letters testamentary and of administration, the determination of heirship and all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon, all actions for trial of the right of property incident to an estate, all actions to construe wills, the interpretation and administration of testamentary trusts, intervivos trusts, and the applying of constructive trusts, and generally all matters relating to the settlement, partition and distribution of estates of wards an deceased persons, and all suits, actions and applications filed against or on behalf of any guardianship, heirship proceeding, or decedent's estate, including estates administered by an independent executor, where probate proceedings involving a matter or estate are not then pending, shall be commenced by filing an appropriate application, petition or motion with the Probate Department of the County Clerk's Office of Harris County, Texas, who will simultaneously therewith assign the proceeding to a Court in accordance with the assignment and docketing procedures of Section 25.1034 of the Government Code.

All applications, petitions and motions regarding the probate of wills, the issuance of letters testamentary and of administration, the determination of heirship and all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon, all actions for trial of the right of property incident to an estate, all actions to construe wills, the interpretation and administration of testamentary trusts, inter vivos trusts, and the applying of constructive trusts and generally all matters relating to the settlement, partition, and destruction of estates of wards and deceased persons, and all suits, actions, and applications filed against or on behalf of any guardianship, heirship proceeding, or descendent's estate, including estates administered by an independent executor where probate proceedings involving a matter are then pending, shall be filed with the Probate Department of the County Clerk's Office of Harris County, Texas, docketed by the clerk under the number of the pending probate proceeding and assigned to the court in which the pending probate proceeding has been filed.

The provisions of this rule shall apply to actions by or against an estate or the personal representative thereof, including, but not limited to, independent executors, community guardians and qualified and unqualified community administrators.

RULE NO. 15

TRIAL ASSIGNMENTS: All contested matters may be set for trial by any party, or the attorney in charge, by requesting a docket setting from the proper personnel of the court in which the matter is pending and serving notice of the date and time of such docket setting upon all opposing party or parties or their attorneys in charge. At the docket hearing the court shall hear announcements from the parties and shall assign a date and time for trial of the matter on its merits. In addition, the court may at any time require the entry of docket control orders, as well as the filing of a pre-trial order where such is determined advisable by the court. The court in its discretion may not sooner than three (3) days from the date of the docket hearing set such matters for trial, or, if the court is otherwise then occupied, the matter shall be continued from day to day until the court is able to hear and determine the matter. Any trial setting may be continued only by written agreement of all parties subscribed by all parties, or their attorneys in charge, and filed among the papers in the probate proceeding at least one day prior to the day upon which the matter is assigned for trial, or by a written application for continuance that is heard by the court prior to the date that the matter has been assigned for trial.

RULE NO. 16

JURY SETTINGS: Any party, or his counsel, desiring trial by a jury of six persons shall make application therefore and deposit a jury fee with the Probate Department of the County Clerk's Office of Harris County, Texas as specified by Rule 216 of the Texas Rules of Civil Procedure and Section 51.604 of the Texas Government Code.

RULE NO. 17

WITHDRAWAL AND/OR SUBSTITUTION OF COUNSEL: All motions for withdrawal and/or substitution of counsel shall conform to the provisions of Rule 10, Texas Rules of Civil Procedure. In addition, where the attorney in charge has been requested to withdraw by a qualified personal representative, and such attorney refuses either in writing or by failing to execute or approve a proper motion for substitution of counsel, a motion for substitution of counsel may be presented by new counsel for the personal representative. Such substitution of counsel shall be presented upon motion and order showing good cause: notice that said motion has been tiled must be provided by certified mail to the present attorney in charge; the personal representative must show that the attorney sought to be removed has been furnished written notice that his or her services were terminated at least thirty (30) days prior to the filing of such motion; the new attorney seeking to be substituted shall acknowledge his or her agreement to assume responsibility as attorney in charge, together with his or her address, bar number, and telephone number. The Court when presented with such motion may require a formal hearing or may act upon said motion without hearing. When a hearing is not required, the court shall sign no orders of removal and substitution until ten (10) days following the date such motion was filed.

RULE NO.18

ANCILLARY DOCKET SETTINGS: All uncontested matters and hearings on matters of an ancillary nature may be heard at any time at the convenience of the court. Requests for settings on such matter shall be made to the proper personnel of the court in which the matter is pending.

ADOPTED and ENTERED on the 12th day of May, 1988, and ORDERED EFFECTIVE on the 1st day of May, 1988, or upon their approval by the Supreme Court of the State of Texas pursuant to T.R.C.P. 3a, whichever comes later.

JOHN A. HUTCHISON, III, Judge
Probate Court No. 1, Harris County, Texas

JIM SCALAN, Judge
Probate Court No. 3, Harris County, Texas

PAT GREGORY, Judge
Probate Court No. 2 Harris County, Texas

WILLIAM C. MCCULLOCH, Judge
Probate Court No. 4, Harris County, Texas