

COURT POLICIES

1. Hearings

a. Schedule

The majority of the Court's hearing docket is dedicated to uncontested will prove-ups and intestate administrations and heirships. These dockets are held, primarily, on Mondays and Thursdays. Contested hearings, and other matters, may be set on Tuesdays or Wednesdays. For contested matters it is imperative that the Court be informed of the length of time necessary for the hearing.

b. Request

The most efficient way to request a hearing is to email the Court at probatecourt1@tarrantcounty.com. In your email you should indicate what the hearing is for, how long will be needed, and whether a court reporter is necessary. The Court will respond with proposed dates and times. It is important to note that those proposed dates and times may be given in response to multiple requests and they are awarded on a first-come, first-served basis.

c. Notice and Confirmation

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

The Court requires a confirmation letter be e-filed with copies to all parties.

d. Documents for the Hearing

Every will probate, heirship, and administration requires paperwork for the hearing. This includes proposed proofs (for the testimony given by witnesses), proposed oath (to be taken by the personal representative following completion of the hearing), and a proposed order. These documents must be e-filed at least 5 days before the hearing, or your hearing may be cancelled.

e. Court Reporter

Because the court's standing court reporter attends proceedings of the presiding judge and associate judge of the Court, additional consideration is required if a court reporter will be necessary at the hearing. Notice of the need for a court reporter should be made at the time of scheduling, but in no event less than 5 business days from the date of the hearing.

Note that merely including a request for a court reporter in the hearing confirmation letter, without more, is insufficient. The Court is unlikely to see the request if it is merely included at the end of the confirmation letter.

f. Discovery Disputes

The Court requires a genuine attempt at resolution of discovery disputes prior to hearing. The Court will not conduct the hearing unless a good faith effort was put forth by all attorneys to resolve the contested issues prior to hearing.

g. Video & Telephonic Appearances

Generally, all hearings are to be conducted in person. The Court will accommodate requests for proceedings via Zoom, but this should only be requested when absolutely necessary.

h. Matters Resolved Prior to Hearing

If a motion is resolved prior to the hearing, advise the Court immediately so that the hearing slot may be otherwise used and the Court can avoid the waste of time reviewing resolved matters.

i. Hearings by Submission

Hearings may be conducted by submission with agreement of all parties. Please notify the court to specify the submission and response dates.

j. Certificate of Conference

The certificate of conference rule is strictly enforced. Do not file a motion nor request a hearing without good faith compliance with conference requirements.

k. In Camera

After a review of matters presented in-camera, a ruling will be made and the reviewed materials will be retained for no more than 10 days from the date of the ruling. Any desire to retrieve the tendered documents should be made as soon as possible after the ruling.

l. Ex Parte Relief

Other than original petitions and accompanying requests for ex-parte relief, any request for ex-parte relief must be accompanied by proof of notice to all parties who have made an appearance in the cause.

m. Decorum

Appropriate professional attire for attorneys and their staff is required. All parties, attorneys, and legal staff should wear business attire. Please caution your clients on their attire. Attorneys are responsible for informing their clients and witnesses of the Court's desire to have appropriate attire in the courtroom.

Cell Phones should be turned off while in Court.

No client meetings should be held in the courtroom while the judge is on the bench.

2. Ad Litem Appointments

Ad litem appointments in heirship determinations and other matters involving the estates of decedents are made from a list maintained by the court administrator.

Ad litem appointments in guardianship matters are made from a list maintained by the court investigator.

To be placed on either list, it is necessary for the applicant to furnish to the Court a resume, any statutorily required certification from the State Bar of Texas, and to have a conference with the judge prior to any appointments. Ad litem fees for “county-pay” guardianships are set from time to time by the probate judges. Ad Litem fees for heirship determinations are normally paid from the deposit paid to the clerk by the applicant. Other ad litem fees are calculated based upon the factors set forth in Rule 1.04 of the STATE BAR RULES.

File a prompt application and order for fees and expenses and be prepared to report to the Court at the hearing on any continued need for your appointment or whether you should be discharged.

3. Attorney Fee Applications

It is the Court’s duty to ensure that estates of decedents and incapacitated persons are used to pay only “reasonable and necessary” attorney’s fees and expenses. *See* Tex. Estates Code § 352.051 and §1155. In determining the compensation of reasonable and necessary attorneys’ fees, the Court considers the unique circumstances of each case, the factors set forth in Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct, and case law. Attorneys should be familiar with the requirements set forth by the Texas Supreme Court in *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3rd 469 (Tex. 2019).

4. Management of Contested Case Docket

a. Docket Control Orders

The Court requires that a scheduling order be entered in all contested cases, unless otherwise determined by the Court. The Court has a standard form which is completed for each pre-trial hearing.

After all responses/answers have been filed, the court administrator will provide the form to all attorneys for completion. If the parties are unable to come to an agreement for submission, a hearing will be scheduled.

The Court is not prone to change an agreed upon trial date. A Motion for Continuance signed by all attorneys does not guarantee that the Court will approve such request.

b. 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.

Although settlement of a contest in the probate court resolves the procedural obstruction in administering the estate of a decedent or ward, it rarely resolves the family disputes and wounded relationships that led to the contest. If the proposed ward is at the center of an emotional tug-of-war between family members, mediation can provide a level playing field for the family to resolve the issues behind the guardianship fight. The various players in the drama can all participate in mediation without the necessity of separate counsel for each of the various factions. Longstanding “burrs under the saddle” that so often give rise to family disputes can be aired and often resolved.

If mediation is not attempted, the underlying issues (perceived favoritism, sibling rivalry, jealousy, unresolved grief, etc.) may never be addressed. While a trial may settle the legal questions that present themselves on the surface, the deeper, more serious family dynamics may only be worsened.

Mediation allows family members to fashion their own resolution of family dynamics to head off a vicious cycle of family feuding among the same family members as the different members of the family come to require a guardianship or upon the probate of their wills.

c. Referrals to Associate Judge

The associate judge may hear any matter before the court, with the exception of jury trials.

d. Pre-Trial Conferences/Exchange of Materials

The pre-trial conference date will be specified in the Scheduling 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 Scheduling Order. Refer to this Order for specific instruction regarding the Court’s pre-trial requirements.

e. Dismissal 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.

5. Miscellaneous Trial Guidelines

a. Juror Questionnaire

A request for use of a juror questionnaire (with the proposed questionnaire attached) shall be submitted to opposing counsel and to the Court no later than 30 days prior to trial.

b. Jury List and Seating Chart

The court will make every attempt to deliver a copy of the jury list to the attorneys in advance of the trial. It is possible, however, that the court may not receive the list until the morning of trial.

c. Voir Dire

Voir dire consists of discussion with the panel as well as discussion with an individual panel member at the bench. The panel session includes the Court's introduction and the parties' usual voir dire. During the voir dire of the panel, counsel shall not challenge for cause nor allow the panel to be tainted by individual panel member responses. After the conclusion of voir dire of the panel, attorneys may call a panel member to the bench for individual voir dire to establish grounds to excuse, address areas of concern raised by a response during the panel voir dire, or for like reasons. Challenges for cause shall be made outside of the presence of the panel.

d. Reported Voir Dire and Argument

Unless requested, the court reporter does not record voir dire, opening statements, or closing arguments.

e. Standing/Approaching 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 reporter to identify for the record the person making the objection. Counsel may stand or 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.

f. Witnesses

If the Court permits counsel to approach a witness, counsel should then approach the witness box so as to be face-to-face with the witness; counsel may not enter the witness box for any reason. If the witness steps down from the witness stand to explain an exhibit, the questioning counsel should arrange the witness so that the witness is

facing the court reporter. All parties and other counsel may move to a position in the courtroom to observe the exhibit's explanation.

g. Note Taking by Jurors

Jurors are allowed to take notes during the trial. Appropriate instructions will be given to the jury by the Court.

h. Court's charge

Each juror will be given a copy of the Court's Charge prior to its reading.

i. Trial Equipment

If a party is in need of audio or video aids, requests for such should be made to the court at the pre-trial conference. Please be advised that there may be times when such aids cannot be supplied by the Court.

6. Miscellaneous Matters

a. Gratuities

No Gratuities may be accepted by the Court or by any staff member.