

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 96-9010

**APPROVAL OF LOCAL RULES OF THE STATUTORY PROBATE COURT
OF DENTON COUNTY, TEXAS**

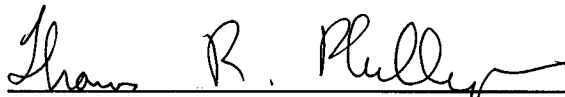
ORDERED:

Pursuant to Rule 3a of the Texas Rules of Civil Procedure, the Supreme Court approves the following local rules, which have been submitted to this Court:

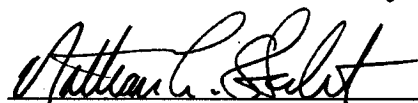
Local Rules of the Statutory Probate Court of Denton County, Texas, dated November 1, 1995

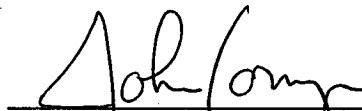
The approval of these rules is temporary, pending further orders of the Court.

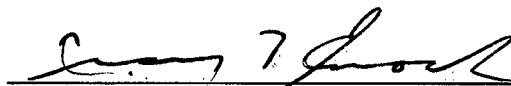
SIGNED AND ENTERED this 3rd day of January, 1996

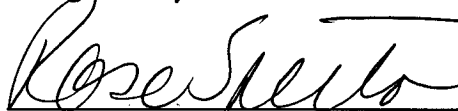

Thomas R. Phillips, Chief Justice


Raul A. Gonzalez, Justice


Nathan L. Hecht, Justice

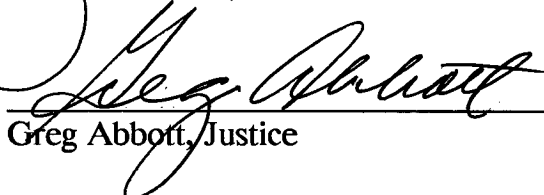

John Cornyn, Justice


Craig Enoch, Justice


Rose Spector, Justice


Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice

Lee P.



**DON R. WINDLE
JUDGE
PROBATE COURT
DENTON COUNTY, TEXAS**

(817) 565-8639 Judge
(817) 565-8640 Reporter
(817) 565-8641 Bailiff
(817) 565-8636 Auditor
(817) 565-8629 Investigator
(817) 565-8638 Administrator
(817) 565-8636 T.A.B.C.
(817) 565-8629 Mental Health
(817) 565-5505 Fax

Court Clerks
(817) 565-8637 Supervisor
(817) 565-8518 Civil/T.A.B.C.
(817) 565-8519 Probate/M.H.

Sixth Floor
Joseph A. Carroll Courts Bldg.
401 W. Hickory
Denton, Texas 76201

November 6, 1995

Honorable Thomas R. Phillips
Chief Justice
Supreme Court of Texas
201 West 14th T., Room 104
Austin, TX 78711

Attn: Joe Parsley, Rules Attorney
Re: Submission of Local Rules for Practice in Probate Court of Denton County for review and approval on November 13 or 14, 1995

Dear Chief Justice and Staff Counsel:

Enclosed herewith are three counterpart original sets of Local Rules of the Statutory Probate Court of Denton County, Texas together with an Order approving and adopting same subject to appropriate approvals. Please be advised that these rules are substantially based on Tarrant County's rules which have been previously approved.

It is my request that these rules be reviewed and considered for approval at the next meeting of the Justices for such purposes which I am advised will occur on November 13 or 14, 1995. Hopefully, these rules can be on the agenda for that date.

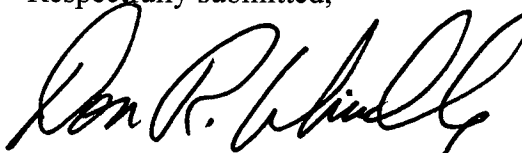
Please note that the rules have been approved by the undersigned as the Judge of the only Statutory Probate Court in Denton County and were subsequently submitted to the Hon. Nikki DeShazo, Presiding Judge of Statutory Probate Courts of Texas and approved at the annual meeting of Statutory Probate Courts on November 4, 1995. (See Page 19 - rules)

The Statutory Probate Court of Denton County exists by virtue of S.B. 240, 74th Legislature which converted former County Court at Law No. 3 of Denton County, Texas to Probate Court of Denton County, Texas and changed its status and jurisdiction.

I did not send a proposed Order for Supreme Court approval since I assumed the Supreme Court would have its own form of Order. If a proposed ORDER should be submitted, please contact me by telephone and it will immediately forwarded by Courier.

As you will note by a review of the Local Order of Adoption, I anticipate signing a separate Local Standing Order attaching evidence of Presiding Judge approval as reflected on page 19 of Rules and Supreme Court approval by attachment of a Supreme Court Order. If some other format is required, please advise me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Don R. Windle". The signature is fluid and cursive, with a large initial "D" and "W".

Don R. Windle, Judge
Probate Court of Denton County

enclosures: Original Sets of Local Rules
Local Order of Approval and Adoption

cc: Hon. Nikki DeShazo
Presiding Judge
Statutory Probate Courts

IN RE:
APPROVAL AND
ADOPTION OF LOCAL
RULES OF PROBATE COURT
OF DENTON COUNTY

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§
§

IN THE PROBATE COURT
OF
DENTON COUNTY, TEXAS

ORDER APPROVING AND ADOPTING
LOCAL RULES TO BE PROMULGATED AND EFFECTIVE
IMMEDIATELY SUBJECT TO APPROVAL OF STATE
PRESIDING JUDGE OF PROBATE COURTS AND
SUPREME COURT OF TEXAS

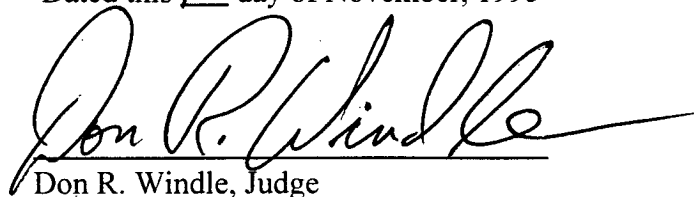
On this date the undersigned presiding Judge of the Denton County Probate Court, having considered the needs of the Court and practitioners before the Court regarding efficient administration of cases on the docket and uniformity of procedure, hereby adopts, publishes, and promulgates, subject to the review and approval of the presiding Judge of Statutory Probate Courts of Texas and the Texas Supreme Court; the Local Rules of the Probate Court of Denton County **ORDERED** attached hereto as Exhibit "A".

It is **ORDERED** that said rules shall be effective pursuant to applicable law immediately upon approval by the above referenced supervising judicial authorities

It is further **ORDERED** that a true and correct copy of said rules evidencing above referenced subsequent approval by said supervising judicial authorities and the dates of said approvals with any amendments shall be published with a separate Standing Order which shall be conclusive evidence of the effective date and final adoption of same and promulgation of same.

It is further **ORDERED** that copies of said ORDER and RULES shall be available after final adoption and promulgation as above referenced through the office of the Denton County Clerk, Civil and Probate Division for a nominal charge to defray costs of reproduction and processing..

Dated this 1st day of November, 1995



Don R. Windle, Judge
Probate Court of Denton County



(817) 565-8639 Judge
(817) 565-8640 Reporter
(817) 565-8641 Bailiff
(817) 565-8636 Auditor
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DON R. WINDLE
JUDGE
PROBATE COURT
DENTON COUNTY, TEXAS

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(817) 565-8637 Supervisor
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Sixth Floor
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Denton, Texas 76201

Local Rules of the Statutory Probate Court

Of

Denton County, Texas

**STATUTORY PROBATE COURT OF DENTON COUNTY
LOCAL RULES**

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**STATUTORY PROBATE COURT
OF
DENTON COUNTY
Local Rules**

**PART 1.
General Rules**

Rule 1.01: Title, Scope, Authority of Local Rules

(a) These rules are the Local Rules of the Statutory Probate Court of Denton County, Texas. In conjunction with the Texas Rules of Civil Procedure and other applicable law, they shall govern proceedings in the Statutory Probate Court of Denton County, Texas, for the purpose of securing uniformity and fairness in those proceedings and in order to promote justice.

(b) These rules are adopted by the judge of the probate court pursuant to the inherent power of courts to control and guide the trial and disposition of causes, and pursuant to the provisions of the Supreme Court's order of February 4, 1987, as amended, adopting Rules of Judicial Administration and to the provisions of the Court Administration Act, Sec. 74.093, Government Code, as amended.

(c) These rules are standing orders of the Probate Court of this County, now existing or as may be created hereafter. Knowing or intentional violation of these rules may be punished by contempt or other sanction authorized by law or by rules of procedure as the trial judge may deem appropriate.

(d) "Counsel" as used in these Rules includes attorneys, attorneys ad litem and parties representing themselves pro se.

(e) All counsel are expected to have carefully read and conduct themselves in compliance with the provisions of the Texas Lawyer's Creed.

Rule 1.02: Parties Proceeding Pro Se

Any natural person proceeding on his or her own behalf without an attorney shall be expected to read and comply fully with these Local Rules and the Rules of Civil Procedure, the Rules of Civil Evidence, the Texas Probate Code, Civil Practice and Remedies Code, and the Rules of Appellate Procedures as may be appropriate in the particular case. Failure to comply may be sanctioned, fined or punished as in other cases. Pro se parties shall be responsible for providing and maintaining with the Clerk current addresses and telephone numbers. The address so provided shall be used as the address for serving all pleadings and any other notices on the pro se party. Failure to keep a current address with the clerk and opposing counsel or pro se party, may result in a dismissal for want of prosecution or proceedings before the court on the merits where an attempt to notify an absent party was made to the last known address of that party in the record of the Court and rendered ineffective. Pro se parties will be held to the same standards of compliance with all rules and knowledge of substantive law as attorneys before the Court.

Rule 1.03: Assignment of Cases

(a) All matters filed in the Probate Court of Denton County, Texas, shall be assigned a number. Ancillary and contested matters shall be assigned a subsidiary number under the main number of the probate or guardianship matter to which the ancillary or pendent matter relates. Once a case number has been assigned and docketed in Probate Court, all matters relating thereto, including but not limited to, any subsequent proceedings such as an ancillary or contested case shall be identified with the number of the main probate or guardianship matter followed by -01; (e.g. PR - 96 - 250 -01). If a case contains more than one Ancillary matter, then

such subsequent matter shall be designated by sequential numbers (i.e. - 02, - 03, - 04). The style on all Ancillary matters shall include the names of the parties bringing the action and the opposing party, as well as the name of the estate. An acceptable form of the style is set forth in Appendix A. All uncontested matters within an administration as herein defined shall use the original cause number without the designation of a letter.

(b) (1) “Ancillary matters” shall include any lawsuit brought by or against a personal representative, or brought on behalf of an estate, and which lawsuit does not directly relate to or concern the routine administration of an estate. Ancillary matters include, but are not limited to, suits concerning note or debt collection, personal injury, wrongful death, or breach of contract, civil actions in which a personal representative in an estate has been named as a party in any capacity..

(2) “Contested matters” shall include all other litigated or adversary matters within an administration, for which there are opposing parties but which are not ancillary matters by definition. Such matters include but are not limited to contested motions to expend funds, sell or lease property, actions to remove personal representative, etc.

Rule 1.04: Transfer of Cases

Pursuant to Section 5B of the Texas Probate Code and other applicable law a statutory probate judge has the authority and jurisdiction to transfer to the probate court from a district or

statutory court in any county, any cause of action appertaining to or incident to an estate pending in the Probate Court. It is the responsibility of the Counsel representing the party seeking a transfer pursuant to this section to timely 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. It is the further responsibility of said Counsel to submit proper documentation regarding the transfer to the court from which the action or case is transferred.

Rule 1.05: Jury and Non-Jury Weeks

(a) The probate court shall generally follow the District Courts of Denton County regarding which weeks shall be jury or non-jury. However, the Trial Court Administrator of the Probate Court shall publish in December of each year a schedule for the operations of the Probate Court which will designate specifically the jury and non-jury weeks for the Probate Court for each following year.

(b) Non-Jury matters will routinely be set and tried in jury weeks subject to the jury docket.

Rule 1.06: Bankruptcy

(a) Notice of Filing

(1) Whenever any party to litigation in this court files for protection under the bankruptcy laws of the United States, it shall be the responsibility of that party's Counsel in this court: (I) to promptly notify the affected court by immediately telephoning the Court Administrator; and (ii) within five days of any bankruptcy filing, to provide written notice to the affected court(s) and all counsel, that a bankruptcy filing has occurred by filing a

suggestion of bankruptcy giving the name and location of the bankruptcy court, the bankruptcy cause number and style, the date of filing and the name and address of Counsel for the bankrupt.

- (2) Compliance with this rule will enable the courts to timely pass over cases affected by bankruptcy and avoid delay of other cases on the docket which would result from untimely or late notice.
- (3) Failure to comply with this rule may be punished by sanctioning Counsel and/or, in appropriate cases, the party once the bankruptcy is concluded, if failure to comply results in an otherwise unnecessary delay in another case on the docket.

(b) Conclusion of Bankruptcy

Once a bankruptcy has been concluded or the automatic or any other stay of State Court proceeding vacated, whether by final plan approval, denial, discharge, dismissal order lifting stay or otherwise, Counsel shall promptly notify the Court Administrator so that the affected cases may be restored to the active docket or be dismissed as may be appropriate.

Rule.1.07: Filing Papers and Section 33(a) Notice Requirements

(a) All pleadings, motions, notices, briefs, proposed orders, proposed judgments, and any other paper, document, or thing made a part of the record shall be filed with the Clerk, unless otherwise Ordered by the Court. "In Camera" submissions should be properly marked, identified and protected from unintentional disclosure. Copies shall be furnished pursuant to Rules 21 & 21a Texas Rules of Civil Procedure.

(b) All proposed orders and judgments shall be presented to the court by the Trial

Court Administrator after filing, and the presenting Counsel shall either (1) obtain approval of said proposed order or judgment by all other Counsel, or (2) shall send a copy of the proposed order of judgment to all Counsel. If the second method is used, then the presenting Counsel must notify the court of the delivery of the proposed order of judgment to all other Counsel.

Notification may be accomplished by sending the court a copy of the letter mailed to all counsel which letter contained a copy of the proposed order or judgment. It is not necessary to prove that all Counsel actually received the proposed order or judgment, only that it was mailed to the last known address of each. If the court receives no objection within ten (10) days after notification or such other time period as may be specified by the Court, the court may act on such proposed order or judgment.

(c) Pursuant to the provisions of Sec. 33(a) Texas Probate Code and other applicable law, the Judge of the Probate Court requires specific notices in addition to posting citation to be given prior to the hearing at which a Counsel or Applicant seeks to have a will admitted to probate or an administration established, to the following persons.

- (1) all persons who are beneficiaries named in a will,
- (2) all heirs at law of the Decedent in an intestate administration,
- (3) surviving spouse of Decedent, if any, regardless of status of estate, and
- (4) surviving issue of Decedent, if any, regardless of status of estate.

Notice may be given or evidenced in any of the following manners:

- (I) Delivery of a copy of any will and/or codicil and all citations issued in the case to each above named person evidenced by certified mail delivery receipt (green card) copy of letters describing contents sent to each party informing said person of the

time and place of scheduled hearing, filed with the Court not later than the date of hearing with certificate of Counsel or Applicant of compliance herewith,

- (ii) Personal appearance of person or persons entitled to said notice at hearing,
- (iii) Sworn affidavit from said person or persons acknowledging notice and receipt of documents and date, time, and place of hearing,
- (iv) Joinder of said person or persons as a party to the application before the Court, or
- (v) appearance of said person or persons by Parent, Guardian, or Attorney, where applicable.

Rule 1.08: Resolution of Conflicting Settings

(a) Where a Counsel has settings in two or more courts which conflict preference shall be as follows:

- (1) Trials on the merits in any court take precedence over hearings, motions and other temporary matters in any other court;
- (2) All proceedings in any court take precedence over depositions and other out of court discovery activities; and
- (3) All other conflicts in trial settings shall be resolved as provided in the Rules of the Eighth Administrative Judicial Region, Rule 10. Mental Health cases shall be treated as preferentially set cases as referred to in Rule 10 (b)(2)(III), Rules of the Eighth Administrative Judicial Region.

(See Appendix B)

(b) For the purposes of applying the Rules of the Eighth Administrative Judicial District, settings in any Statutory Probate Court, the State or Federal District Courts or

Bankruptcy Courts of the United States or in a general jurisdiction trial court of any sister State will be treated as settings in a District court of Denton County.

(c) Any Counsel having a previously scheduled oral argument in any appellate court shall be given a reasonable time to travel to and from that court and make argument provided the attorney advises the trial judge of the scheduled argument before the commencement of the trial.

Rule 1.09: Vacations of Counsel

Counsel shall not request a trial date for any period which Counsel has previously been informed by other Counsel is a scheduled vacation. If a case is set for trial by the court on a date for which Counsel has planned a vacation, Counsel will notify the court as soon as the notice of trial setting is received and the case will be reset for a different time, unless there is a clear showing of abuse or unreasonable delay. If plans for a vacation are made by a Counsel after a trial setting notice has been received, Counsel will immediately notify the court and other parties with a request that the case be reset for a different time. The court will rule on such request after giving all parties to the lawsuit an opportunity to respond to the request.

Rule 1.10: Judicial Absences

Whenever the judge of the Probate Court anticipates an absence of more than five business days due to vacation, illness, national or state service, attendance at legal education courses, attendance at meetings of judicial or bar committees, or otherwise, then that judge shall so inform the presiding judge of the Statutory Probate Courts of Texas so that necessary arrangements may be made for the docket of the Court during such absence.

Rule 1.11: Dismissal Dockets

The Probate Court in Denton County may set for dismissal from time to time, all pending matters, including Ancillary matters , contested matters, and general civil cases which are not set for trial or hearing, and which have been on file for a least a one (1) year. The staff of the Probate Court shall furnish notice to all parties and their Counsel that any such matter may 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 1.12: Appointment of Attorney Ad Litem

(a) An attorney ad litem may be or shall be appointed pursuant to the Probate Code or the Rules of Civil Procedure.

(b) Until an order is signed dismissing or discharging an attorney ad litem the ad litem shall be notified of all hearing and/or conferences with the court, and shall be served with all pleadings.

(c) The attorney ad litem, unless directed by the Court otherwise, shall file a written report with the Court of the result of the ad litem's investigation concerning the purpose of the ad litem's appointment.

(d) In any case for which an attorney ad litem has been appointed, the ad litem should consider filing an application for security for costs pursuant to Rule 143 of the rules of Civil Procedure and Section 12 of the Probate Code.

(e) An attorney ad litem serves at the pleasure of the Court. The Court may remove or substitute attorneys ad litem in any given cause if in the discretion of the Court such action is

in the best interest of the estate or ward.

(f) An Officer of the Court may serve in a dual capacity as attorney ad litem and guardian ad litem in a case so long as the facts of the particular case do not present a conflict in the two roles. If such conflict develops the attorney ad litem must inform the Court and other counsel in a timely manner and seek the appointment of a separate guardian ad litem. In a case where only an attorney ad litem is appointed, it is the intent of the Court that the attorney ad litem serves in the dual role until the Court orders otherwise.

(g) In order to be eligible for appointment as attorney ad litem by the Probate Court, Attorneys must provide evidence of completion of specified training which is or may be required from time to time by law or applicable order or rule of the Supreme Court of Texas.

Part 2.

Rules for Disposition of Contested And Ancillary Matters and General Civil Cases within the Jurisdiction of the Probate Court

Rule 2.01 Disposition of Contested and Ancillary Matters

(a) On its own motion or by agreement of the parties an Counsel, the court will refer a case for resolution by an alternate dispute resolution procedure under Chapter 154, Civil Practice and Remedies Code. Any party or Counsel may move for such referral if agreement cannot be reached.

(b) Pre-trial hearings or orders will not be required in every case, but upon request of any Counsel or on its own motion the court may set a hearing under Rule 166, Texas Rules of Civil Procedure, to consider such matters as might aid in the disposition of the action, including, if necessary, the entering of a docket control or scheduling order. Examples of a pre-trial order and docket control order are attached to hereto as Appendix C.

(c) Cases will be set for trial by the court upon written request and representation of any Counsel that the case will be ready for trial. In oral request is made, the Counsel making such request must immediately follow up such request in writing to all Counsel with a copy to the court. The request may ask for a setting on a specific trial week, but no sooner than 45 days from the date of request, unless leave of court is obtained, or all Counsel agree to an earlier setting. The request must specify that either a particular date is requested or the nearest date that the docket of the court will permit. If a specific requested date cannot be accommodated, the Trial Court Administrator will assign an alternative date.

(d) At the time of making a request for setting, Counsel will inform the court of the estimated time for trial. Counsel shall make a good faith estimate of the time required after consulting all Counsel and considering the following: proper examination of witnesses, introduction of exhibits, cross-examination and rebuttal of witnesses reasonably anticipated to be called by all of the parties. In the event that the time requested is not sufficient, the court may continue the matter until such date and time as the court's docket allows. If the court finds that the Counsel requesting the trial setting has misrepresented the reasonable time required in bad faith, the court may impose appropriate sanctions, including attorney's fees occasioned by any delay in trial costs and expenses for travel of witnesses and parties who are required to return at a later date as a result of the continued setting.

Rule 2.02: Motion for Continuance, Agreed Passes and Settlements

A trial or hearing date cannot be postponed or changed without the consent of the court.

(a) Except as herein provided, any motion for continuance will be filed no later than five (5) days preceding the trial or hearing date. Any motion for continuance based upon facts which occur on or after the fifth day preceding the trial or hearing date will be filed as soon as possible and will be heard at a time to be set by the court.

(b) First Motions for Continuance are routinely granted if a sworn motion is filed pursuant to applicable rules and the case has been pending for less than 12 months. Second and subsequent motions for continuance by any counsel or party are strongly disfavored and customarily denied.

(c) In the event Counsel agree to continue any trial or other hearing, Counsel initiating the request for continuance shall immediately notify the court of such continuance. If

such Counsel fails to notify the court within a reasonable time before the scheduled trial or hearing, the court may impose appropriate sanctions against such Counsel or the party represented by such Counsel. If the parties reach a settlement, Counsel representing the plaintiff, movant or party seeking affirmative relief, shall notify the court of such settlement, and that the trial or hearing date is no longer needed. If such Counsel fails to so notify the court within a reasonable time before the trial or hearing, the court may impose appropriate sanctions against such Counsel or the party represented by such Counsel.

Rule 2.03: Trial Procedure

(a) Any party or Counsel filing special exceptions, pleas in abatement, venue, or other dilatory pleas shall request and obtain a hearing on them at least 30 days prior to the trial date or as soon as possible after the pleading is filed if the pleading is filed within 30 days of the trial date. Any such matters not timely presented are waived.

(b) All contested and ancillary matters are set by the Trial Court Administrator in accordance with time of request, length and type of proceeding, age of case, availability of jury panels, vacation letter filed by opposing Counsel, and other considerations.

(c) Unless ordered otherwise, in all cases including general civil (non-probate related) cases, (save and except appeals from Justice Court and original or concurrent cases within the jurisdictional limit of a Constitutional County Court) at the time the parties and Counsel report for trial they will deliver to the court and other Counsel a witness list, exhibit list, any motion in limine and any requested instructions and questions if a jury trial. It is also recommended, although not required, that Counsel submit proposed findings of fact and conclusions of law if a non-jury trial. Any witnesses or exhibits not shown on such list can be used at the trial only

upon leave of the court. Prior to commencement of trial all exhibits will be marked, exchanged and examined by Counsel so that the trial will not be delayed by such examination. This paragraph does not apply to appeals from Justice Court or original or concurrent cases within the jurisdictional limit of the constitutional county court. Such cases are handled as informally as possible based on economic considerations.

(d) Counsel intending to offer videotaped depositions or other films at trial, except those offered solely for impeachment, must make such tapes and films as finally edited available to opposing Counsel sufficiently in advance of trial so that a hearing on any objections can be held before commencement of trial. Any tapes or films not so rendered will not be permitted into evidence at the trial without leave of court. All Counsel must timely examine any tendered tapes or films and request a hearing immediately if there are objections to the admissibility of any part of the tapes or films. Any objections not presented prior to trial will be waived. This paragraph does not apply to appeals from Justice Court or cases within jurisdictional limit of a constitutional county court.

(e) It is the responsibility of each Counsel practicing before the Probate Court of Denton County to stipulate to all facts which are not reasonably in dispute and to waive formal proof as to any documents to be introduced about which there is no reasonable dispute as to authenticity.

Rule 2.04: Motion Practice

(a) Counsel are directed to use all reasonable means to resolve pre-trial disputes to avoid the necessity of judicial intervention.

(b) No motions, objections or special exceptions will be set for hearing unless the

moving Counsel shall have certified in such motion or in a letter substantially the following:

A conference was held on (date) with [name of opposing Counsel] on the merits of this motion. Agreement could not be reached. Therefore, it is presented to the court for determination.”

Or

“A conference was not held with (name of opposing Counsel) on the merits of this motion because (explanation of inability to confer).”

(c) The Trial Court Administrator of the Probate Court is responsible for scheduling the dates and times for all hearings before the court. Upon receiving notice of the date and time of hearing, the moving Counsel shall immediately notify all Counsel in writing as to date, time and subject matter of the hearing. A copy of this communication shall be provided to the Trial Court Administrator.

(d) On request of Counsel and with consent of the Judge, a motion or similar matter may be conducted by telephone. The moving Counsel shall be responsible for advising all Counsel of the method and time of hearing and shall be responsible for arranging the conference call.

(e) By agreement, Counsel may submit matters for ruling by the Judge without a personal appearance or oral presentation. The Judge should be advised in writing when such procedure is desired.

(f) At the time of making a request for setting on a motion, Counsel shall inform the

court of the estimated time for hearing. Counsel shall make a good faith estimate of the time required after consulting all Counsel and considering the following: proper examination of witnesses, introduction of exhibits, cross-examination and rebuttal of witnesses reasonably anticipated to be called by all of the parties. In the event that the time requested is not sufficient, the court may continue the matter until such date and time as the courts docket allows. If the court finds that the Counsel requesting the hearing has misrepresented the reasonable time required in bad faith, the court may impose appropriate sanctions, including attorney's fees occasioned by any delay in the hearing, costs and expenses for travel of witnesses and parties who are required to return at a later date as a result of the continued setting.

Rule 2.05: Deposition Guidelines

(a) In an attempt to have uniformity and save time and expense resulting from hearings or discovery matters, the following guidelines will generally be followed by the courts in matters pertaining to oral depositions.

- (1) A party filing a lawsuit in Denton County must give their deposition in Denton County, if requested,
- (2) A party properly sued in Denton County must give their deposition in Denton County, if requested
- (3) The party initiating a deposition may elect to take the deposition orally or on written questions and all Counsel may elect to cross-examine orally or on written questions
- (4) Unless the parties through their Counsel otherwise agree, reasonable fees charged by an expert for giving of deposition testimony shall be paid by

the party requesting the deposition. The fee shall be considered reasonable if the fee is calculated at the same hourly rate which is being charged to the party by whom the expert is employed. If Counsel cannot agree to a reasonable fee the Counsel requesting the deposition may ask the court to set a reasonable fee. The fee for the preparation of an expert's report, not previously reduced to writing and sought under Rule 166b(2)(e)(4), Texas Rules of Civil Procedure, shall be paid by the party by whom the expert is employed.

- (5) Notice of less than ten (10) days under Rules 21a and 200, Texas Rules of Civil Procedure shall be presumed to be unreasonable. Said presumption shall be rebuttable.

Although, these matters are best handled by agreement of the parties, Counsel are not precluded from submitting disputes as to such matters to the court for determination by proper motion and hearings.

(b) Counsel initiating an oral deposition shall first attempt to communicate with all Counsel to determine whether agreement can be reached as to date, time, place and materials, to be furnished at the time of deposition. Any written notice of deposition shall state as follows:

“A conference was held (or attempted) with opposing Counsel to agree on a date, time, place and materials to be furnished. Agreement could not be reached (or Counsel will not respond) and the deposition is therefore being taken pursuant to this notice (or agreement was reached and this notice complies with the agreement).”

Failure to hold such conference or to make adequate attempt to hold such conferences prior to

noticing a deposition shall be grounds to quash the deposition.

Rule 2.06: Matters Requiring Immediate Action

(a) An application for ex parte action or relief, including but not limited to, restraining orders, writs of habeas corpus, receivership, temporary administration, temporary guardianship, proceedings for examination and delivery of the contents of safe deposit boxes or any papers of a decedent pursuant to Sections 36B through 36F of the Texas Probate Code, shall not be presented to a judge until the application or case has been filed with the clerk, unless it is impossible to do so. If it is impossible to file an application or case before it is presented to a judge, then it shall be filed as soon thereafter as possible, and the clerk notified of all actions taken by the judge.

(b) Every application for relief ex parte shall contain a certificate signed by Counsel that:

- (1) **To the best of their knowledge whether or not the party against whom relief is sought ex parte is represented by Counsel in the matter made the basis of the relief sought; or,**
- (2) **If the party against whom relief is sought ex parte is represented by Counsel, the certificate shall state the name, address, and telephone of such Counsel, if know.**

Rule 2.07: Private Service of Process

(a) For purposes of supervision and discipline the court deems those persons authorized to serve citations and other notices by order pursuant to Rule 103, Texas Rules of Civil Procedure, to be officers of the court. Any such person filing a false return or engaging in service contrary to law or rule may be subject to punishment by an order of contempt. Such sanction order may prohibit such person from serving citations and notices from or related to

proceeding in the Probate Court of Denton County.

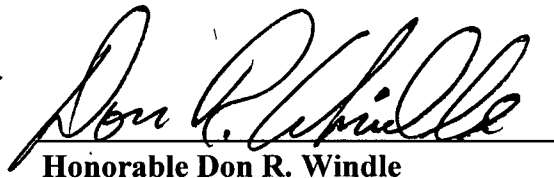
(b) Any proposed order authorizing private service for a single case or pleading, subpoena, etc. under Rule 103 will not be signed by the judge unless accompanied by a certificate signed by Counsel requesting such an appointment. Such certificate shall set out the name and address of the person to be so authorized and affirm that such person is not less than eighteen years of age, is not a party, and has no interest in the outcome of the suit in which the authorization is sought.

(c) The Court has established and maintains a procedure whereby persons may be authorized to serve process in accordance with law in any case pending in the Probate Court on a Standing basis. Any person so appointed must be familiar with and comply with all requirements of law to obtain or maintain standing authority to serve process for the Probate Court. Subparagraph (a) hereof shall also apply to persons so appointed.

The foregoing Local Rules of the Statutory Probate Court of Denton County, Texas are hereby approved by:

Dated

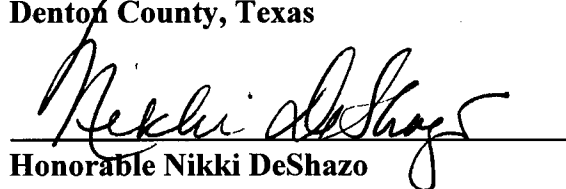
November 1, 1995



Honorable Don R. Windle
Probate Court
Denton County, Texas

Dated

November 4, 1995



Honorable Nikki DeShazo
Presiding Judge
Statutory Probate Courts of Texas



(817) 565-8639 Judge
 (817) 565-8640 Reporter
 (817) 565-8641 Bailiff
 (817) 565-8636 Auditor
 (817) 565-8629 Investigator
 (817) 565-8638 Administrator
 (817) 565-8636 T.A.B.C.
 (817) 565-8629 Mental Health
 (817) 565-5505 Fax

DON R. WINDLE
JUDGE
PROBATE COURT
DENTON COUNTY, TEXAS
MEMORANDUM

Court Clerks
 (817) 565-8637 Supervisor
 (817) 565-8518 Civil/T.A.B.C.
 (817) 565-8519 Probate/M.H.
Sixth Floor
 Joseph A. Carroll Courts Bldg.
 401 W. Hickory
 Denton, Texas 76201

TO: All Attorneys handling probate, guardianship, mental health, civil, civil appeals (J.P. Courts), civil bond forfeitures, eminent domain, and other real estate or land title cases and/or civil occupational drivers license or T.A.B.C. applications

FROM: Don R. Windle, Judge

DATE: July 12, 1995

RE: Implementation of provisions of S.B.240, 74th Legislature amending Sec. 25.0631, Sec. 25.0632 and adding 25.0633, 25.0634 Govt. Code

As many of you know already, the above referenced legislation and local rules enacted in accordance with said legislation has a material impact on the assignment and disposition of all cases filed in the County or Probate Court levels.

Effective immediately, please use the following case style for all matters filed in Probate Court except probate administration, ancillary probate litigation, mental health or guardianships.

CASE NO. CV (YR)-(NUMBER)

PLAINTIFF	§	IN THE PROBATE COURT
	§	
v	§	of
	§	
DEFENDANT (or other applicable case name)	§	DENTON COUNTY, TEXAS

The above style will apply to civil cases (files with the civil clerks - 6th floor) including civil Justice of the Peace appeals, civil bond forfeitures, eminent domain, civil drivers license cases, or any other general (non-probate related) civil case. This would include all cases filed under the jurisdiction of a constitutional county court or statutory county court now vested in Denton County

in the Probate Court.

In cases arising under the Probate jurisdiction of the Court, effective immediately, please style cases as follows:

I.

DECEDENTS ESTATE OR GUARDIANSHIP (application files)

CAUSE NO. PR (YR)-(NUMBER)

IN RE:	§	IN THE PROBATE COURT
ESTATE OF _____	§	
OR	§	OF
GUARDIANSHIP OF PERSON OR	§	
ESTATE OR PERSON & ESTATE	§	DENTON COUNTY, TEXAS
OF _____	§	

II.

ADVERSARY/ANCILLARY CASES AND CONTESTS

CAUSE NO. PR (YR)-(NUMBER)

IN RE:	§	IN THE PROBATE COURT
ESTATE OF _____	§	
OR	§	OF
GUARDIANSHIP OF PERSON OR	§	
ESTATE OR PERSON & ESTATE	§	DENTON COUNTY, TEXAS
OF _____	§	

CAUSE NO. PR (YR)-(NUMBER)(01)

JOHN DOE	§	IN THE PROBATE COURT
	§	
V.	§	OF
	§	
SAM SMITH, EXECUTOR	§	DENTON COUNTY, TEXAS

**III.
MENTAL HEALTH CASES**

CAUSE NO. MH (YR)-(NUMBER)

THE STATE OF TEXAS	§	IN THE PROBATE COURT
FOR THE BEST INTEREST	§	
AND PROTECTION OF	§	OF
	§	
(INITIALS ONLY)	§	DENTON COUNTY, TEXAS

The above types of cases are filed with the Probate Clerks located on the 6th floor.

**IV.
BOND FORFEITURE CASES (CIVIL)**

CAUSE NO. BF (YR)-(NUMBER)

STATE OF TEXAS,	§	IN THE PROBATE COURT
PLAINTIFF	§	
V.	§	OF
PRINCIPAL AND SURETY,	§	
DEFENDANTS	§	DENTON COUNTY, TEXAS

The above pleadings are filed with the civil clerks on the 6th floor.

The specifics of the jurisdiction of the Probate Court as amended are contained in S.B.240, 74th Legislature signed by Gov. Bush on June 13, 1995. The legislation will be codified in Tx Gov't Code Sec 25.0632 through 25.0635.

APPENDIX B

Eighth Administrative Judicial Region

Rule 10: Conflicting Engagements.

- (a) Attorney already in trial in another court:
 - (1) When an attorney is presently in trial, said attorney shall inform this court's administrator of the court and cause number of the conflicting trial. This information will be verified upon request of opposing counsel. The case will be placed on "hold" or reset, depending on when the attorney will be released.
 - (2) If the attorney is not actually in trial as represented by the attorney or his or her agent, the case will be called and may be tried without further notice.

- (b) An attorney assigned to more than one court for the same date:
 - (1) It is the duty of an attorney to call the affected judge's attention to all multiple settings as soon as they are known,
 - (2) Insofar as practicable, judges should attempt to agree on which case has priority; otherwise, the following priorities shall be observed by the judges of the respective courts:
 - (I) Criminal Cases
 - (II) Cases given preference by statute
 - (III) Preferentially set cases
 - (IV) Case with earliest filing date
 - (V) Case set at earliest date by court official
 - (VI) Courts should yield to courts in rural counties in an instance of conflicting setting where necessary to utilize a called jury panel.

Adopted by Denton County Probate Court via Local Rules.

APPENDIX C

STYLE

JOINT PRE-TRIAL ORDER

APPEARANCE OF COUNSEL

(List the parties, their respective counsel and the address and telephone numbers of counsel in separate paragraphs)

STATEMENT OF THE CASE

(Give a brief statement of the case for the information of the Court)

MOTIONS\PRE-TRIAL RULINGS

(State if there are any pending motions or requested pre-trial rulings, e.g., limine matters)

CONTENTIONS OF THE PARTIES

(State concisely in separate paragraphs what each party claims.)

ADMISSIONS OF FACT

(List all facts which have been stipulated and admitted and require no proof.)

CONTESTED ISSUES OF FACT

(List all factual issues in controversy necessary to the final disposition of this case.)

AGREED APPLICABLE PROPOSITIONS OF LAW

(Delineate those legal propositions not in dispute.)

CONTESTED ISSUES OF LAW

(State briefly the anticipated issues of law in dispute, with a memorandum of authorities supporting each issue.)

EXHIBITS

1. Each counsel will attach to the JOINT pre-trial order a copy of the list of all exhibits to be offered and will make all such exhibits available for examination by opposing counsel. This rule does not apply to rebuttal exhibits, which cannot be anticipated.
2. Any counsel contesting authentication of an exhibit must so notify in writing the offering counsel within five (5) days after the exhibit is made available to opposing counsel for examination. FAILURE TO DO So is an ADMISSION of authenticity.
3. Any other objection to admissibility of exhibits must, where reasonably anticipated, be made at least three (3) business days before trial, and the Court notified in writing with copies to all counsel accompanied by supporting legal authorities on copies of the exhibits in duplicate.
4. The offering party will MARK ITS OWN EXHIBITS.
5. All uncontested exhibits will be OFFERED and RECEIVED in evidence as the FIRST ITEM OF BUSINESS at the trial.

WITNESSES

1. List the names and addresses of witnesses who will or may be used with a brief statement of the subject matter and substance of their testimony.
2. Include in this section the following:

“In the event there are any other witnesses to be called at the trial, their names, addresses and the subject matter of their testimony shall be reported to the opposing counsel as soon as they are known. This restriction shall not apply to rebuttal or impeaching witnesses, the necessity of whose testimony cannot be

reasonably anticipated before the time of the trial.

SETTLEMENT

(Include a statement that all settlement efforts have been exhausted that the case cannot be settled, and will have to be tried.)

TRIAL

Include in this paragraph the following:

1. Probable length of trial; AND
2. Availability of witnesses, including out-of-state witnesses.

ATTACHMENTS

Include the following REQUIRED attachments;

- | | | |
|-----|----------------------|--|
| I. | For a jury trial: | Proposed Jury Questions, including instructions or definitions. |
| II. | For a non-jury trial | Proposed findings of fact and conclusions of law, with supporting authorities in a memorandum of law |

(Judge)

Attorney for

Attorney for

DOCKET CONTROL ORDER

1. _____ NEW PARTIES shall be joined and served by this date. The party causing such joinder will provide copies of this order to the new parties.
2. _____ EXPERTS for all moving parties shall be designated by this date. Experts for all other parties shall be designated, 30 days after this date. No additional experts will be permitted to testify except for good cause shown.
3. _____ DISCOVERY shall be completed by this date. Counsel may by agreement to continue discovery beyond this deadline by Rule 11 stipulation; such continued discovery, however, shall not constitute grounds for any delay of the trial date.
4. _____ AMENDMENTS to the moving parties' pleadings shall be filed by this date. Where responsive pleadings are necessary or appropriate, all responding parties must be filed within ten (10) days of this date.
5. _____ JOINT PRE-TRIAL ORDER shall be filed by this date in the form enclosed [with the notice of this order].
6. _____ PRE-TRIAL CONFERENCE will be held. Trial counsel are ordered to attend and be prepared to discuss all aspects of the suit and trial.
7. _____ SPECIAL ORDERS: _____

SIGNED THIS _____ DAY OF _____, 19_____

(JUDGE)



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

January 8, 1996

Hon. Don R. Windle
Denton County Probate Court
401 W. Hickory, Ste. 612
Denton, Texas 76201

Dear Judge Windle,

Please find enclosed, a copy of the order of the Supreme Court that approved local rules for the Denton County Probate Court.

Sincerely,

SIGNED

John T. Adams
Clerk

Encl.

cc: Hon. Nikki DeShazo
Statutory Probate Courts

County Clerk

District Clerk

Supreme Court Adv Committee

Mr. Jerry Benedict
Office of Court Admin

State Law Library