

**IN THE SUPREME COURT OF TEXAS**

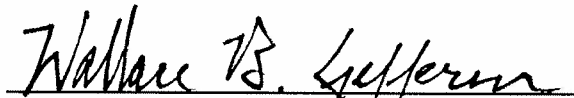
Misc. Docket No. 07- 9106

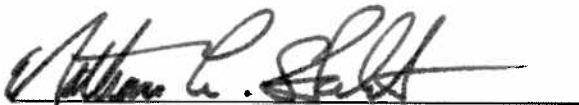
**APPROVAL OF LOCAL RULES FOR THE  
PROBATE COURTS OF HARRIS COUNTY**

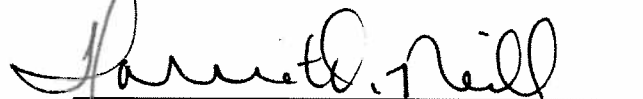
**ORDERED** that:

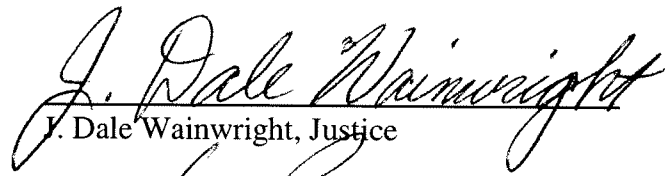
Pursuant to Texas Rule of Civil Procedure 3a, the following Local Rules for the Probate Courts of Harris County are approved.

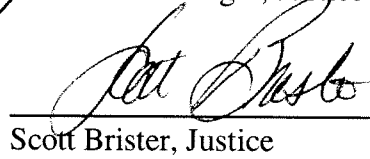
In Chambers, this 25<sup>th</sup> day of June, 2007.

  
Wallace B. Jefferson, Chief Justice

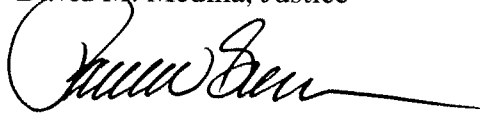
  
Nathan L. Hecht, Justice

  
Harriet O'Neill, Justice

  
J. Dale Wainwright, Justice

  
Scott Brister, Justice

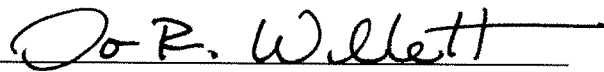
David M. Medina, Justice



Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice

# STATUTORY PROBATE COURTS



STATE OF TEXAS

Guy Herman, Presiding Statutory Probate Judge

P.O. Box 1748, Austin, TX 78767  
1000 Guadalupe Street, Room 217  
Phone: (512) 854-9258  
Fax: (512) 854-4418

June 20, 2007

The Supreme Court of Texas  
P.O. Box 12248  
Austin, TX 787811

Attention: Jody Hughes, Rules Attorney

Re.: Proposed amended Local Rules for Harris County Probate Courts

Dear Mr. Hughes:

I have read the proposed amended Local Rules for Harris County Probate Courts that were submitted to you on April 18, 2007, with a copy sent to my attention.

As Presiding Statutory Probate Judge, I have reviewed the rules, and they meet with my approval. Harris County has complied with Rule 3a of the Texas Rules of Civil Procedure, including the required posting of the rules. It is my understanding that no objections were made to the rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy Herman", followed by a long horizontal line extending to the right.

Guy Herman  
Presiding Statutory Probate Judge



# BEVERLY KAUFMAN COUNTY CLERK

April 18, 2007

The Supreme Court of Texas  
P.O. Box 12248  
Austin, Tx 78711

Attention: Jody Hughes

Re: Local Rules for Harris County Probate Courts

Dear Mr. Hughes:

Please find enclosed the **Local Rules for the Harris County Probate Courts**.  
The rules have been posted for 30 days as required and there have been no objections  
filed.

Sincerely,

A handwritten signature in cursive script that reads "Beverly B. Kaufman".

Beverly B. Kaufman  
County Clerk, Harris County, Texas

BBK/nmj

Cc: Judge Guy Herman, Presiding Judge of Statutory Probate Courts  
Enclosure

**RULES OF THE PROBATE COURTS  
OF HARRIS COUNTY, TEXAS**

**RULE 1: OBJECTIVE**

1.1 The objective of these rules is to establish procedural and administrative rules to assist the courts, litigants and attorneys to resolve pending cases in a fair, just and efficient manner.

**RULE 2: REPORTS AND NUMBERING SYSTEM**

2.1 Reports. The County Clerk shall supply to each Probate Judge of Harris County, on a monthly basis, information concerning the number of filings, dispositions, trials and other judicial activities, including mental health proceedings, in each Harris County Probate Court. With the exception of the County Clerk's report, these rules to not apply to mental health matters.

2.2 Case Numbering - New Matters. All new estate administrations, guardianships, trust matters (including testamentary trusts when the underlying estate has been closed) that are filed in the Probate Courts of Harris County shall be assigned to a court in accordance with Section 25.1034 of the Government Code. Each case shall be assigned a docket number sequentially. All matters relating or appertaining to an estate or guardianship that has not been closed as provided in the Probate Code, including proceedings upon trusts created by a decedent's will, shall remain in such court subject to an order of transfer as with any case, and shall retain the original docket number with an appropriate sub-file number. Each subsequent matter filed involving the same decedent or proposed ward shall be filed in the original file, under the same docket number and in the same court as the original filing. If wills are filed for probate at the same time for a husband and wife, both cases shall be filed in the court in which the lowest numbered case is assigned. If a decedent's estate is filed in which the decedent was a ward of a Harris County probate court, the decedent's estate shall be filed in the court in which the guardianship was pending.

2.3 Case Numbering - Closed Matters. All matters relating or appertaining to an estate, trust, guardianship or other matter that has been closed shall remain in the original court and shall retain the original docket number with an appropriate sub-file number as provided by these rules. The Clerk shall retrieve the closed files and maintain them with the new matter until the new matter is closed.

2.4 Sub-File Numbers. All matters relating to an estate or guardianship administration shall have only the sequential docket number. All ancillary matters shall be assigned the original docket number plus a suffix commencing with 4. For example, the Estate of Mary Doe, Deceased, shall be assigned number 123,456. An ancillary matter shall be assigned cause number 123,456-401. The Clerk shall maintain separate files for each sub-file number.

2.5 Core Matters that belong in the principal file. Those matters that are principally concerned with the administration of the estate are "core matters" and should be filed under the main cause number:

- 2.5.1 Probate of wills, issuance of letters testamentary, administration and guardianship;
- 2.5.2 Determination of heirship;
- 2.5.3 Contest to will, heirship, administration (before and after the grant of letters);
- 2.5.4 Contest or objection to actions during administration (sales, fees, accounting, etc.)
- 2.5.5 Construction and interpretation of wills and testamentary trusts;
- 2.5.6 All claims pursuant to the claims-presentation process;
- 2.5.7 Removal of personal representative;
- 2.5.8 § 5B/§ 608 motions to transfer an ancillary case (but if the transfer comes in, it will go to an ancillary-case file);
- 2.5.9 Heirship determination within an administration or guardianship;
- 2.5.10 Release of Independent Executor pursuant to § 149E, which may include an action pursuant to C.P.R.C. Chapter 37;
- 2.5.11 Heirship determination or declaratory judgment as part of a Muniment of Title proceeding;
- 2.5.12 Testamentary Trust Actions involving court interpretation or construction of the trust.

Any of the proceedings described as “core matters” may be severed as an ancillary proceeding at the Court’s discretion.

2.6 Ancillary Matters that belong in a different file with an ancillary or related case designation. Those contested matters that bear no direct relationship to the administration of the estate and that would have the possibility of becoming an independently-tried lawsuit (each potentially with its own docket control and discovery schedules, etc.):

- 2.6.1 Foreclosure of preferred debt and lien;
- 2.6.2 Action for the trial of title to land and enforcement of liens thereon;
- 2.6.3 Actions for the right of trial to property;
- 2.6.4 Testamentary Trust Actions (other than construction issues);
- 2.6.5 Intervivos Trust Actions (settlor is decedent in probate pending in subject court);
- 2.6.6 Declaratory judgments (after the will is admitted to probate);
- 2.6.7 Interpleader actions (funds tendered into registry during administration);
- 2.6.8 Divorces, child custody, paternity actions
- 2.6.9 Claims such as personal injury claims or suits on a claim that was rejected in its entirety or in part.

2.7 New Filings. Those matters which are within the jurisdiction of the probate court but which are not part of a pending matter will be designated new files and assigned to a court and given a cause number as in Rule 2.2. Examples include, by description and not by way of limitation:

- 2.7.1 Intervivos Trust Action (where settlor is still living);
- 2.7.2 Motion to appoint successor custodian;
- 2.7.3 Sale of a ward’s interest in property;

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*Bonnie B. Johnson*  
 COUNTY CLERK  
 HARRIS COUNTY, TEXAS

2.7.4 Testamentary trust actions (where the original probate is in another jurisdiction).

2.8 Duplication. In the event a docket number has been previously assigned to an estate, guardianship or trust matter, all matters shall be filed under such previously assigned number. When such a situation is disclosed for the first time after a hearing begins, the judge of the court presiding over the hearing shall terminate the hearing and order the case transferred to the court in which the case first originated.

2.9 Clerk's Duties. The County Clerk of Harris County shall file, docket, transfer and assign cases as directed by these rules. Neither the administrative judge nor the Presiding Judge may direct the County Clerk to do otherwise, except upon the consent of the majority of the probate judges in Harris County.

### RULE NO. 3. ADMINISTRATIVE JUDGE

3.1 Administrative Judge. The local administrative statutory probate court judge (the "administrative judge") shall be elected to serve for a term of not more than two years. The first term of the administrative judge shall commence upon his or her election after the enactment of these rules and the approval hereof by the Supreme Court. The administrative judge may not be elected or appointed upon the basis of rotation or seniority, and may not succeed himself in office.

3.2 Duties of Administrative Judge. The administrative judge shall have the following duties and no other:

- 3.2.1 Implement these local rules;
- 3.2.2 Recommend to the Presiding Judge of the Statutory Probate Courts any needs for assignment from outside the county to dispose of court caseloads;
- 3.2.3 Provide to the office of court administration or the Presiding Judge any requested statistical and management information;
- 3.2.4 Coordinate and cooperate with any other local administrative court judge in the county in the assignment of cases in the courts' concurrent jurisdiction for the efficient operation of the court system and the effective administration of justice; and
- 3.2.5 Perform other duties as may be directed by the Presiding Judge with the approval of a majority of the statutory probate judges of Harris County.

### RULE NO. 4: CASE TRANSFERS

4.1. Transfers. All case transfers between probate courts in Harris County shall be done on the written order of the transferring and receiving courts. 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.

4.2. Prior Filings. Any matter filed after a non-suit, dismissal for want of prosecution, or other disposition of a previous case involving the same decedent, proposed ward, or

substantially related parties and claims shall be assigned by the administrative judge to the court where the prior matter was pending.

4.3. Recusal and Disqualification. If a judge voluntarily recuses himself, or if a motion to recusal or disqualification is granted by any judge, the case shall be re-assigned by the Harris County Clerk by random assignment to another Harris County probate court.

#### RULE 5: CONFLICTING TRIAL SETTINGS

5.1 Inter-County. The Regional Rules of Administration of the Second Administrative Judicial Region of Texas and the Civil Trial Division of the Harris County District Courts shall control conflicting engagements in the event of a conflicting trial setting as to parties and lead counsel in the probate courts. When a party or lead counsel is previously assigned to a trial in a different 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 lead counsel ceases to be engaged in the prior proceeding. The lead counsel shall notify the probate court immediately of his or her availability.

5.2 Intra-County. Among the trial courts sitting in Harris County, including the probate courts:

(A) Trial/Non-Trial. Trial settings take precedence over conflicting non-trial settings.

(B) Trial/Trial. A trial setting that is assigned takes precedence over a conflicting trial setting that is not assigned.

5.3 Waiver. The court with precedence may yield.

5.4 Lead Counsel. This rule operates only when lead counsel, as defined by Rule 8, Texas Rules of Civil Procedure, is affected unless the court expands coverage to other counsel.

#### RULE 6: VACATIONS

6.1 Vacations. Attorneys will be allowed the same vacations as provided by the Rules of the Civil Trial Division of the Harris County District Courts. Vacation notices properly and timely filed for lead counsel with the District Clerk of Harris County will be honored. This rule operates only when lead counsel, as defined by Rule 8, Texas Rules of Civil Procedure, is affected, unless the court expands coverage to other counsel.

#### RULE 7: DISMISSAL DOCKETS

7.1 Want of Prosecution. All contested cases which are not set for trial and which have been on file for more than three (3) years are subject to dismissal. Upon request of the court, the Court staff shall furnish notice to all parties and their counsel that any contested case 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 8: ANCILLARY AND/OR EMERGENCY PROCEEDINGS

8.1 Emergency Proceedings. All proceedings for restraining orders, temporary injunctions, writs of habeas corpus, receiverships, temporary administrations, temporary guardianships, small estates, or matters involving the payment of small claims without guardianships pursuant to Sections 133 through 137 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 36B and 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 the judge of the court to which the matter is assigned and docketed is not available, then by any available probate court in Harris County. If such emergency proceeding is a new matter, it will first be assigned a case number and court as provided in Rule 2, and may be heard by any available probate judge if the judge of the assigned court is not available.

## RULE 9: SUBSTITUTION OR WITHDRAWAL OF COUNSEL

9.1 Motions to Withdraw or Substitute Counsel. All motions for withdrawal and/or substitution of counsel shall conform to the provisions of Rule 10, Texas Rules of Civil Procedure.

## RULE 10: MOTIONS

10.1 Form. Motions and applications shall be in writing on letter sized paper and shall be accompanied by a proposed order granting the relief sought. The proposed order shall be a separate instrument but may be attached to the back of the motion or application.

10.2 Responses. All responses shall be in writing and shall be accompanied by a proposed written order. The proposed order shall be a separate instrument but may be attached to the back of the motion or application.

10.3 Submission. Motions and applications may be heard by written submission. All uncontested motions and applications (except applications for probate of will, for appointment of administrator, and for appointment of guardian) shall be heard by written submission, unless the court directs otherwise. While a case is on submission and remains undecided for 30 days or more any party may request and obtain an oral hearing before the Court.

10.4 Oral Hearings. Settings for uncontested hearings on applications for administration, muniments of title, guardianships and heirships shall be requested from the staff of the court or the County Clerk. Settings for oral hearings on all other matters should be requested from the staff of the applicable court. Notices of hearings shall include the date, time and identity of the court. An order tendered to the court after a contested hearing shall be approved as to form by counsel for all parties present at the hearing.

10.5 Certificates. All certificates required by the Texas Rules of Civil Procedure are required in all contested matters before the probate courts.

## RULE 11: TRIALS

11.1 ADR. Except for good cause shown, only cases that have undergone a previously ordered ADR procedure will be tried.

11.2 Manner of Setting. All trials may be set by any party, lead counsel, or the court, by requesting a docket setting or scheduling conference from the proper personnel of the court in which the matter is pending and serving notice of the date and time of such scheduling conference upon all opposing parties or their lead counsel. At the scheduling conference, the court shall hear announcements from the parties and shall assign a date and time for trial of the matter on its merits and may enter a docket control order or scheduling order.

11.3 Date of Setting. Contested cases shall be set for trial for a date certain. More than one case may be set for the same time or day and, if so, the cases will be heard in the order established by court. If a case is not assigned to trial within 10 days of its setting date, the court shall conduct another scheduling conference, set a new trial date, or sign a new docket control order.

11.4 Agreed Continuances. Any trial setting may be continued by written agreement of all parties or their lead counsel, with the approval of the court.

11.5 Assigned to Trial. A case is assigned to trial when counsel are called to court to commence trial on the merits of the case. For purposes of engaged counsel, no court may have more than one case assigned to trial at any one time.

11.6 Dead Weeks. Except with the consent of all parties, no court will assign cases to trial on the merits, or set oral hearings on motions, during:

11.6.1 The week of the spring state or regional judicial conference;

11.6.2 The week of the State Bar Convention;

11.6.3 The week of the Conference of the Judicial Section of the State Bar of Texas;

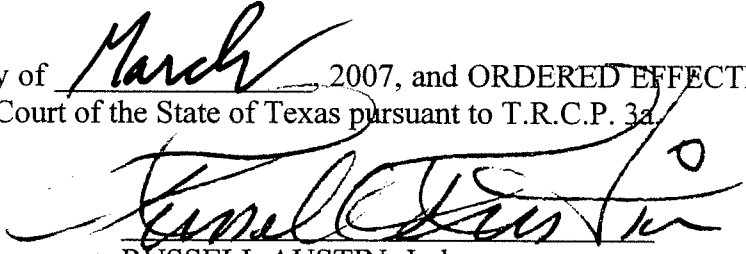
11.6.4 Any December week or weeks in which the Monday of that week begins with the dates December 22-31.

## RULE 12: APPOINTEES

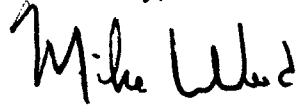
12.1 Appointee Defined. An appointee, for purposes of the Supreme Court order effective April 1, 1994 is a person chosen by the judge who takes his or her position by virtue of an order signed by the judge. An appointee does not include an attorney hired by a personal representative or guardian whose fees must be approved by the court pursuant to the probate code.

12.2 Appointee Fee Order. Each person appointed by a judge of a probate court to a position for which any type of fee may be paid shall be paid pursuant to a separate order before any judgment, dismissal or nonsuit is signed by the court. This order is required for every appointment wherein a fee is awarded of Five Hundred Dollars (\$500.00) or more. The title of an appointee fee order shall include the word "Appointee".

ADOPTED on the 8 day of March, 2007, and ORDERED EFFECTIVE upon the approval by the Supreme Court of the State of Texas pursuant to T.R.C.P. 3a.



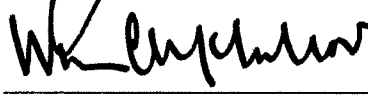
RUSSELL AUSTIN, Judge  
Probate Court No. 1  
Harris County, Texas



MIKE WOOD, Judge  
Probate Court No. 2  
Harris County, Texas



RORY OLSEN, Judge  
Probate Court No. 3  
Harris County, Texas



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