

**RULE 7
PROBATE CASES**

RULE 7.10

Probate Courts/Session

The County Courts at Law of Fort Bend County, Texas setting as Probate Courts shall be deemed in session at all times regarding probate cases as set forth in the Texas Probate Code.

RULE 7.11

Case Assignment

All matters filed in the Courts of Fort Bend County, Texas, shall be assigned a number and court as provided for under assigned of civil cases in these Rules. Once a case number has been assigned and docketed to a particular Probate Court, all matters related 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 and the Judge of the Court to whom it is being transferred.

RULE 7.12

Preventing Duplication

In order to prevent the duplication of docketing and assignment of estates, all attorneys for applicants are required to 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 7.13

Transfer Between Probate Courts

A request to transfer between Probate Courts in Fort Bend County shall be made by the attorney in charge of 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 Court Coordinator 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 7.14**Dismissal Dockets**

Each Probate Court in Fort Bend County, Texas shall set for dismissal all contested cases or matters which are not set for trial and which have been on file for more than three (3) years. The County Clerk 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 7.15**Ancillary and/or Emergency Proceedings**

All proceedings for restraining orders, temporary injunctions, writs of habeas corpus, receiverships, temporary administration, temporary guardianships, small estates, or matters involving the payment of small claims without guardianships pursuant to ' ' 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 ' ' 36(B) through 36(F) 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 any judge having probate jurisdiction in Fort Bend County, Texas.

RULE 7.16**Citation, Service and Return**

All original, amended, or supplemental citations, notices, writs, process, applications, petitions, and motions shall be served in compliance with the 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 contracting 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 County Clerk's office where issued or within ninety (90) days from the date of service was issued. Failure to return citation within ninety (90) days shall not void a subsequent service under such citation.

RULE 7.17

Guardianship Hearings

No guardianship of an alleged incompetent person will be heard by the Probate Courts of Fort Bend County, Texas before the expiration of ten (10) days from the date that service of citation has been returned to the Clerk.

RULE 7.18

Ad Litem

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.

RULE 7.19

Temporary Guardianships and Administration

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 sixty (60) days or on temporary administrations that are over one hundred eighty (180) days after the date of their inception regardless of the date when such proceeding began.

RULE 7.20

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 served must be filed with the court and must have citation issued in compliance with ' 22 of the Texas Probate Code. In addition, all such interrogatory and deposition answers must be filed with the Clerk of the Court prior to the date of any hearing for admission of any will to probate or the presentation of such other matters to the Court.

RULE 7.21

**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 action 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 and deceased persons, and all suits, actions and applications filed against or on behalf of any guardianship, heirship 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 Fort Bend County, Texas, who will simultaneously therewith assign the proceeding to a Court in accordance with the assignment and docketing procedures of Rule 7.11 hereof.

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 thereof, all actions for trial of the right to property incident to an estate, all actions to construe wills, the interpretation and administration of testamentary trusts, intervivos trusts, and the applying of constructive trust and generally all matters relating to the settlement, partition, and distribution of estates of wards and 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 are then pending, shall be filed with the County Clerk's office of Fort Bend County, Texas, docketed by the Clerk under the number of the pending probate proceeding and assigned to the Court in which the pending probate proceedings have 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 administrators.

RULE 7.22

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 Probate Auditor 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. 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. Any trial setting may be continued only by written agreement of all parties 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 7.23

Jury Settings

Any party, or his counsel, desiring trial by a jury of six persons shall make application therefor and deposit a jury fee with the County Clerk's office of Fort Bend

County, Texas, as specified by Rule 216 of the Texas Rules of Civil Procedure.

RULE 7.24

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 filed 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 7.25

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 Probate Auditor of the Court in which the matter is pending.