

## **COURT POLICY REGARDING PRO SE APPLICANTS** **PROBATE MATTERS**

Under Texas law, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney. The rule follows from the requirement that only a licensed attorney may represent the interests of third-party individuals or entities. The only time a *pro se* applicant may proceed in court is when truly representing only himself or herself.

### **Frequently Asked Questions**

**Q: What is a *pro se*?**

**A:** A *pro se* is an individual who has not retained a lawyer and appears in court to represent himself and no other person or entity.

**Q: Can I still serve as an executor, administrator, or guardian even though I'm not a lawyer?**

**A:** Yes. One need not be a lawyer to serve as an executor, administrator, or guardian. **However, the executor, administrator, or guardian must be represented by counsel.**

**Q: But I'm the only one that needs letters testamentary. As executor, how would I be representing the interest of others?**

**A:** As executor of a decedent's estate, you don't represent only yourself. An executor represents the interest of beneficiaries and creditor's. This responsibility to act for the benefit of another is known as a fiduciary relationship. It gives rise to certain legal obligations and responsibilities that require legal expertise. The attorney you hire represents you in your capacity as executor and assists you in representing those for whom you are responsible.

**Q: If I get the paperwork from a law library or the Internet, can I fill it out and file it? Isn't that what lawyers do?**

**A:** Lawyers don't just fill out forms. Lawyers (1) determine what method of probate or guardianship is appropriate in a particular situation, (2) create or adapt any necessary paperwork, and (3) advise the client about the ongoing responsibilities of a fiduciary. Unless you are a lawyer, you're creating legal pleadings while acting as a fiduciary would constitute the unauthorized practice of law.

**Q: As a *pro se*, what proceedings can I do on my own?**

**A:** The only proceedings that you can handle as a *pro se* are those in which you truly would be representing only yourself. For example, a *pro se* may apply to probate a will as a muniment of title when he or she is the sole beneficiary under a will and there are no debts against the estate other than those secured by liens against real estate. This procedure can be a viable option in some situation, but not in others. **Whether a muniment of title is the correct probate procedure for a particular situation is a legal decision that is best made by a lawyer.** Note that anyone falsely swearing that the estate has no creditors is subject to a perjury charge