

# COUNTY JUDGE MARK ALLEN

JASPER COUNTY COURTHOUSE

121 North Austin, Room 106

Jasper, Texas 75951



July 13, 2011

## Court Policy Regarding "Pro Se" Applicants (Applicants without an Attorney)

People who represent themselves in court are called "pro se" or "self-represented" litigants. You are not required to have a lawyer to file papers or to participate in a case in court. You have a right to represent yourself. However, a pro se may not represent others. Under Texas law, only a licensed attorney may represent the interests of third-party individuals or entities, including guardianship wards and probate estates. See *Steele v. McDonald*, 202 S.W.3d 926 (Tex. App. – Waco, 2006), and the authorities cited in that opinion. Therefore, 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 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 hired 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 interests of others?

A: As executor of a decedent's estate, you don't represent only yourself. An executor represents the interests of beneficiaries and creditors. 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, your 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 you can handle as a pro se are those in which you truly would be representing only yourself. For example, a pro se applicant may probate a will as a muniment of title when he or she is the sole beneficiary under the 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 situations, but not in others. **Whether a muniment of title is the correct probate procedure for a particular situation is a legal decision best made by a lawyer.**

Q: What procedures should I follow if I want to probate a will as a muniment of title as a pro se applicant?

A: As stated above, whether a muniment of title is the correct probate procedure for a particular situation is a legal decision best made by a lawyer; Court staff cannot guide you or advise what you should do in your case. If you decide to proceed with your case without an attorney, the County Law Library has reference materials that may be helpful. Note the following: (1) To probate a will as a muniment of title, each applicant must be able to swear on personal knowledge that there are no debts against the estate other than those secured by liens against real estate. Anyone falsely swearing that the estate has no creditors – including Medicaid estate recovery – is subject to a perjury charge. (2) In a pro se application to probate a will as a muniment of title, **all beneficiaries under the will must be applicants, and all beneficiaries must testify at the hearing.** (3) The will being offered for probate must be the signed original, or you will need to follow the additional procedural requirements for probating a copy of a will. (4) The will must be "self-proved," or you will need to follow additional procedural requirements for proving up a will in court. You will need to research what's required for a self-proved will at the Law Library. If you discover that the will is a copy or is not self-proved, Court staff can give you information about what the additional **procedural** requirements are, but you will need to create all additional documents.