BELL COUNTY COURT AT LAW NO. 1
1201 HUEY ROAD
BELTON, TEXAS 76513

Administrative Order Regarding Applications to Probate a Will More Than Four Years after the Testator's Death

This Court found there was need for an administrative order regarding applications to probate a will more than four years after the testator's death, Texas Estates Code § 256.003(a).

The Court finds as follows:

1. When an applicant seeks to probate a will more than four years after the testator's death, Texas Estates Code §§ 258.051 & 258.053 require that specified notice by service of process must be given or affidavits waiving notice must be delivered to the Court before the probate of testator's will:

- The notices or affidavits are required (1) for each of the testator's heirs whose address can be ascertained by the applicant with reasonable diligence or (2) if another will of the testator has already been admitted to probate, for each beneficiary of the testator's previously probated will instead of the testator's heirs.
- The notices or affidavits must contain a statement that the testator's property will pass to the testator's heirs if the will is not admitted to probate (or, if another will of the testator has already been admitted to probate, to the beneficiaries of that will).
- The notices or affidavits must contain a statement that the person offering the testator's will for probate may not be in default for failing to present the will for probate during the four-year period immediately following the testator's death.
- Affidavits must also include a statement that the heir (or beneficiary) does not object to the offer of the testator's will for probate.
- If the address of any of the testator's heirs cannot be ascertained by the applicant with reasonable diligence, § 258.052 requires the court to appoint an attorney ad litem to protect the interests of the unknown heirs.

2. In *all* cases when an applicant seeks to probate a will more than four years after the testator's death – except when another will of the testator has already been admitted to probate – an attorney ad litem should be appointed to ensure that all heirs are identified and noticed as well as to protect the interests of any heirs who cannot be located and any heirs with a legal disability.

3. When an applicant seeks to probate a will more than four years after the testator's death, all citations prepared by the Clerk, including the citation by posting, should include the "Notice of Application to Probate a Will More than Four Years after the Testator's Death" that is attached to this Order.

IT IS THEREFORE ORDERED that, when an applicant seeks to probate a will more than four years after the testator's death:

1. The Court will appoint an attorney ad litem under Estates Code § 53.104 to represent the interests of testator's unknown heirs or heirs having a legal disability, *except when the application indicates that another will of the testator has previously been admitted to probate.* If an attorney ad litem needs to be appointed:

- When an attorney ad litem will be appointed, the applicant must deposit funds toward the services of the attorney ad litem as required by Administrative Order.
- When an attorney ad litem will be appointed, the applicant must provide the Clerk with copies of the application and the will to be sent to the attorney ad litem.

2. The Clerk must attach to each citation issued the "Notice of Application to Probate a Will More than Four Years after the Testator's Death" that is attached to this Order.

3. All persons who would inherit as an heir of the testator if the will is not admitted to probate must either (1) be personally served with citation or (2) deliver to the Court an affidavit waiving citation and indicating that the heir does not object to the offer of the testator's will for probate. If another will of the testator has previously been admitted to probate, all beneficiaries of the testator's probated will – instead of the testator's heirs – must be personally served with citation or must deliver to the Court an affidavit waiving citation and indicating that the beneficiary does not object to the offer of the testator's will for probate.

4. When an heir or a beneficiary executes an affidavit waiving citation and waiving objection, the affidavit itself must explicitly include all of the points addressed in the "Notice of Application to Probate a Will More than Four Years after the Testator's Death" attached to this Order. *It is not sufficient for the affidavit to refer to an attached notice.*[1]

SIGNED THIS 25 DAY OF SEPTEMBER, 2023.

Paul A. Motz
Presiding Judge

[1] A sample affidavit waiving citation and waiving objection is attached to this Order. The Court does not require the use of this specific form, but the Court prefers that attorneys adapt this form affidavit to ensure all necessary information is included.

Notice of Application to Probate a Will More than Four Years after the Decedent's Death

You are notified of the filing in this Decedent's estate of an application to probate a will or codicil ("will") more than four years after the Decedent died.

You must understand the following:

1. The testator's property will pass to the testator's heirs if the will is not admitted to probate. (Or if this will is not admitted to probate, but another will of Decedent was previously admitted to probate, Decedent's property will pass to the beneficiaries in that previously probated will.)
2. The person offering the testator's will for probate may not be in default for failing to present the will for probate during the four-year period immediately following the testator's death.

Therefore, the Court will not grant the application in this case unless the applicant offers sufficient evidence to prove that he was <u>not</u> in default for failing to probate the will within four years of Decedent's death.

As an heir of the Decedent – or as a beneficiary in Decedent's previously probated will – your rights to inherit property may be affected by the probate of a will more than four years after Decedent's death.

If you want to object to the probate of the will more than four years after the Decedent's death, you need to file a written objection with the Clerk. The Clerk's citation, which is attached to this notice, indicates the date by which you should file a written objection. Note that the citation does not indicate a specific hearing date.

If you sign an affidavit waiving citation, you are indicating to the Court that you do not object to the probate of the will that has been filed by the applicant more than four years after the Decedent died.

You should consult an attorney if you have any questions about your rights in this probate matter.

Sample affidavit.

Cause No. _____

Estate of	§	**In the County Court at**
	§	
_____,	§	**Law No. 1**
	§	
Deceased	§	**Bell County, Texas**

Affidavit Waiving Citation and Waiving Objection for Probate of a Will More than Four Years after the Decedent's Death

STATE OF _____

COUNTY OF _____

I, _____, am an heir or beneficiary of _____, the "Decedent" in this case.

I have been given (1) a copy of the **Application for Probate of a Will More than Four Years after the Decedent's Death** that has been filed in this case and (2) a copy of the will dated **[insert date of will]** that the applicant is seeking to have probated.

I understand that in this case, an application has been filed in Decedent's estate to probate a will more than four years after the Decedent died.

I understand the following:

1. The testator's property will pass to the testator's heirs if the will is not admitted to probate. (Or if this will is not admitted to probate but another will of Decedent has already been admitted to probate, Decedent's property will pass to the beneficiaries in that previously probated will.)
2. The person offering the testator's will for probate may not be in default for failing to present the will for probate during the four-year period immediately following the testator's death.

I understand that the Court will not grant the application to probate the will in this case unless the applicant offers enough evidence to prove he was not in default for failing to probate the will sooner.

I understand that as one of Decedent's heirs – or as one of the people who is named as a beneficiary in Decedent's will that has already been probated – my rights to inherit property may be affected if the will dated **[insert date of will]** is probated.

Although I understand I have a right to object to the probate of a will more than four years after Decedent's death, I do not object to the probate of the will.

I know that the person who sent me this affidavit (along with a copy of the application and the will) is the applicant's attorney. And I know that the applicant's attorney does not represent me in this matter. I am aware that before I sign this affidavit waiving citation and waiving objection, I may consult my own attorney to advise me regarding this estate or the affidavit.

By signing this affidavit waiving citation and waiving objection, I enter my appearance in this case for all purposes, and I waive the issuance and service of process. I agree that the case may be considered by the Court without further notice to me.

I have signed this affidavit voluntarily, without fraud, duress, or threat by any person.

Signed and sworn to on _____, 202__.

_____

_____

Signed and sworn to under oath before me on _____, 202__by _____.

_____

Notary Public, State of _____

My commission expires: _____