

# IN THE SUPREME COURT OF TEXAS

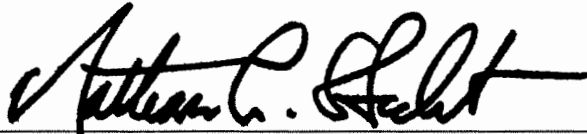
Misc. Docket No. 15- **9075**

## APPROVAL OF LOCAL RULES FOR THE EL PASO COUNTY STATUTORY PROBATE COURTS

**ORDERED** that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court approves the following local rules for the El Paso County Statutory Probate Courts.

Dated: April 28, 2015.



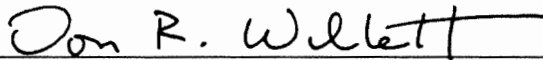
Nathan L. Hecht, Chief Justice



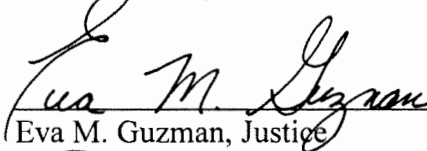
Paul W. Green, Justice



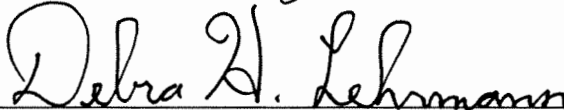
Phil Johnson, Justice



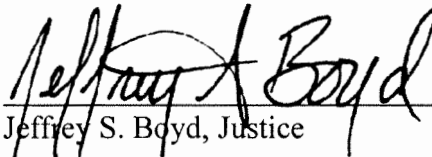
Don R. Willett, Justice



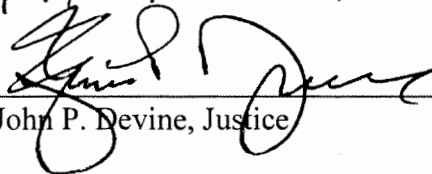
Eva M. Guzman, Justice



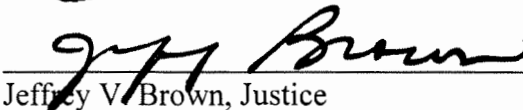
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

# LOCAL RULES FOR THE EL PASO COUNTY STATUTORY PROBATE COURTS

## **Rule 1 Title, Scope, Authority and Application of Local Rules**

- a. These rules are the Local Rules of the Statutory Probate Courts of El Paso County, Texas. Unless otherwise stated they shall govern proceedings in both Probate Courts in El Paso County, Texas.
- b. These rules are adopted by the Statutory Probate Judges of El Paso County, Texas pursuant to Rule 3a of the Texas Rules of Civil Procedure.
- c. These rules are standing orders of the El Paso County Probate Courts. Knowing or intentional violation of these rules may be punished by contempt or other sanction authorized by law or by rules of procedure as the trial judge may deem appropriate.
- d. If any provisions of these rules are found to conflict with any statutes or other statewide rules, the statute or statewide rule shall prevail.

## **Rule 2. Motion Practice**

### a. Settings

All motions must be filed before they can be set for a hearing. All motions are specially set. The court coordinator sets all hearings.

### b. Notice

A minimum of 3 business days' notice of hearing to all opposing counsel/parties shall be given unless a greater length of time is required by the rules, other specific statutory provision or court order.

### c. Confirmation

The Court typically faxes a notice of hearing to all parties; **however, it is the responsibility of the party requesting the setting to notify, in writing, all opposing counsel/parties of the setting.**

### d. Deadline for Filing Responsive Pleadings

To be considered, all amended pleadings or responsive pleadings must be filed 3 business days prior to the scheduled hearing time except upon specific leave of court. It is the responsibility of the party filing the document to get the document to the court's file.

**9075**

e. Orders

A party seeking affirmative relief at a hearing should bring an appropriate proposed order to the hearing in a form which allows the judge to grant or deny the relief requested.

f. Disputes Regarding Discovery, Motions, Objections, or Special Exceptions

The Court requires all attorneys to attempt resolution of disputes regarding discovery, motions, objections or special exceptions prior to hearing. The Court will not conduct the hearing unless a good faith effort was put forth by all attorneys to resolve the contested issues prior to hearing. (See rules pertaining to certificate of conference below.)

g. Telephonic Appearances

Telephonic appearances at hearings requiring the introduction of evidence in contested cases are prohibited. Otherwise, the Court does not permit telephonic hearings unless absolutely necessary. Telephonic hearings and/or telephonic appearance by an individual party or witness must be requested by motion pre-approved prior to a hearing. The attorney who requested the conference should first get all other counsel on the phone and then connect with the Court at the scheduled time. An individual attorney who has been given permission by the Court to appear telephonically should call the court coordinator at the scheduled time of the hearing. A judge may at, any time, determine that a hearing by telephone is not sufficient and may require a hearing in court upon notice to all parties. As an alternative to telephonic appearances by witnesses, the Court encourages the use of depositions on written questions. Witnesses may also appear via videoconference through Skype or a similar application; however, the requesting attorney must provide the means and technology for the witnesses' appearance. The use of affidavits signed by witnesses in lieu of live testimony or depositions on written questions is prohibited by the Court.

h. Matters Resolved Prior to Hearing

If a matter or issue is resolved prior to the hearing, advise the court coordinator immediately so that the hearing slot may be otherwise used and the Court can avoid the waste of time reviewing resolved matters.

i. Hearings by Submission

Hearings on dispositive motions may be conducted by submission with agreement of all parties. Please notify the court coordinator to specify the submission and response date(s).

j. Certificate of Conference

The certificate of conference rule is strictly enforced. Except for dispositive motions, do not file a motion nor request a hearing on a contested matter or disputed issue, including a Docket Control Plan or Scheduling conference, without a good faith effort to resolve the contested

matter or disputed issue. Fax and/or letter communication and exchange of messages are not a good faith effort to resolve a contested matter or disputed issue. A statement that opposing counsel was “unavailable” is also not a good faith effort to resolve a contested matter or disputed issue. Your certificate of conference should have the following information to be set for a hearing: the date of the conference, the name of the individual attorney you spoke with, and the outcome of the conference. The sentence “a reasonable effort has been made to resolve the dispute without the necessity of Court intervention and the effort failed” must be in all certificates of conferences. The conference must have occurred within 30 days prior to requesting a hearing. A certificate of conference must be filled out by the attorney and signed by the attorney, and will not be valid if made by, or accepted by, other staff members. The form for a certificate of conference is available on the court’s website.

k. Rulings on Matters Taken Under Advisement

If the judge takes a case under advisement, a copy of the ruling will be transmitted to all parties. Within 15 days of being notified of the ruling, the designated party shall provide to the Court and opposing parties an order representing the ruling. Telephone conference may be utilized by the Court to resolve objections to the proposed order.

l. In Camera

After a ruling on materials presented in-camera the following rules will apply. If production of the materials is denied the materials will be returned to the party seeking to deny production of the materials. If the materials are ordered to be produced the original materials will be given to the party requesting production of the materials who shall copy and distribute the materials to all other parties. Thereafter the original materials will be delivered to the court reporter for safekeeping. Once a case is resolved the parties shall immediately advise the court reporter as to what to do with said materials. If no instructions are received within 105 days, said materials will be destroyed.

m. Ex Parte Relief/Certificates of Service

Other than original petitions and accompanying requests for ex-parte relief, any request for ex-parte relief must be accompanied by proof of notice to all parties who have made an appearance in the cause and all counsel known to represent parties in the matter. In contested cases, all pleadings, including but not limited to inventories and accountings, must contain a certificate of service in accordance with Rule 21 of the Texas Rules of Civil Procedure.

n. Decorum

No food or beverages will be allowed in the courtroom. Water is permitted at counsel tables. Other beverages are not permitted. Appropriate professional attire for attorneys and their staff is required. All parties, attorneys and legal staff at the bar should wear business attire. Please caution your clients on their attire. NO ONE will do business with the Court wearing cutoffs, shorts, tank tops, swim wear, obscenity on clothing, house slippers, halter tops, dirty clothing, micro-mini skirts, workout garments, midriff shirts, etc. Shirts shall be appropriately buttoned.

Witnesses will not appear before the bench with their hands in their pockets. Attorneys are responsible for informing their clients of the Court's dress code. Cell phones and pagers will be turned off prior to entering the courtroom or be subject to impoundment. No conferences are to be held in the courtroom while the judge is on the bench. If attorneys who are waiting for a hearing need to confer they should step outside of the court room. No chewing gum is allowed in the courtroom.

o. Uncontested Matters

All uncontested matters shall be heard at the bench unless a request is made by counsel.

p. MERP Certificates

MERP certificates are required to be filed in all cases, including muniments of title, heirship determinations and all applications for administration or probate of a will.

q. Social Security Numbers

All social security numbers shall be redacted on all pleadings including MERP Certificates.

**Rule 3. Ad Litem**

a. Attorney ad Litem Appointments

Ad litem appointments in heirship determinations and other matters involving the estates of decedents, guardianship matters and mental commitment matters are made from a list maintained by each court. To be placed on the list, it is necessary for the applicant to furnish to the court administrator a resume and business card and any statutorily required certification from the State Bar of Texas.

b. Duration of Appointment

Until an order is signed dismissing an ad litem, the ad litem shall be notified of all hearings and/or conferences with the court, and shall be served with all pleadings.

c. Attorney Ad Litem Fees

All requests for fees shall be presented to the court within 90 days of a hearing.

d. Security for Costs

In any contested case for which an attorney has been appointed, the ad litem should consider filing an application for security for costs pursuant to Rule 143 of the Rules of Civil Procedure and Section 53.052 of the Estates Code.

#### **Rule 4. Management of Contested Case Docket**

##### a. Scheduling Conferences/Docket Control Plans

The Court requires that a scheduling order/docket control plan be entered in all contested cases, unless otherwise determined by the Court. The Court has a standard form which is completed at the scheduling conference. After all responses/answers have been filed and a certificate of conference regarding the scheduling conference has been filed, the court coordinator will schedule a scheduling conference or issue the applicable scheduling order. In lieu of a scheduling conference, attorneys may submit their own agreed scheduling order for approval by the court. Prior to submitting their own scheduling order, attorneys must obtain a pretrial date and trial date from the Court. The form for the scheduling order is available on the court's website. Trials and hearings cannot be postponed or changed without the consent of the court. The Court is not prone to change an agreed upon trial date. A motion for continuance signed by all attorneys does not guarantee that the Court will approve such request.

##### b. Certificate of Conference

Prior to requesting a setting for a scheduling conference/docket control plan, the party requesting the conference, or the party designated by the court, must certify to the court that the parties have personally met, discussed the positions of their clients in the case and have exchanged initial information to allow counsel to evaluate and be familiar with the claims of each party prior to the scheduling conference. (See the form Certificate of Conference on the court's website).

##### c. Mediation

Parties are highly encouraged to **MEDIATE** all issues in controversy as soon as practical. Mediation is required prior to final trial on the merits, except upon good cause shown.

##### d. Pre-Trial Conferences/Exchange of Materials

The pre-trial conference date will be specified in the scheduling order, approximately 10 days prior to trial. Each party is requested to provide to the court coordinator a courtesy copy of its most recent pleading, witness and exhibit lists, motion in limine, Daubert motions, other pre-trial motions, and proposed jury charge. Parties shall exchange these items with each other prior to the pretrial conference and shall attempt to reach agreement regarding issues of admissibility and pre-trial motions. At or prior to the pre-trial conference, counsel will deposit the following items with the court reporter (not filed with the clerk):

1. Exhibit Lists in a form which allows the Court to mark each exhibit "offered" and "admitted/denied" on the list.
2. Witness Lists.
3. Proposed Charge of the Court, or Findings of Facts/Conclusions of Law, as appropriate. Requested jury questions or findings and conclusions should be submitted at the pre-trial

conference on diskette or CD (Microsoft Word or generic text document format) and in hard copy. The proposed charge should include desired instructions (including conditional submissions); instructions and questions should be arranged in the order that the party desires that they be presented to the jury.

4. Motions in Limine/Other Pretrial Motions. Any matters upon which the parties cannot reach agreement will be heard at the pre-trial conference and not on the day of trial, except upon leave of Court. Daubert/Robinson motions MUST be heard before trial. (See website for form of Order on Motion in Limine for matters that should be included in all orders on motions in limine.)

5. Deposition Excerpts. At the pre-trial conference, the Court requires identification or designation of specific deposition excerpts intended for trial usage. Prior to the reading, a copy of the excerpt must be made available to the Court, the court reporter and opposing counsel.

6. Original Exhibits. All original exhibits should be brought to the pre-trial conference and, to the extent possible, contained in one Original Exhibit Notebook for the jury. They should be pre-marked, stapled, and numbered to coincide with the exhibit list. A Court copy of the notebook is not required. Documentary/photo exhibits must not be larger than 8 1/2" x 11", except by permission of the Court. If three-hole punching the original exhibit will destroy a part of the exhibit, such exhibit may be placed in a plastic sheet protector in the exhibit notebook.

7. Large Exhibits. Exhibits exceeding 8 1/2" x 11" shall be accompanied by a 8 1/2" x 11" copy. The court reporter will retain the smaller copy for the record, and the original will be returned to the offering party after trial.

8. Demonstrative Exhibits/Trial Aids. Demonstrative exhibits and trial aids used by a party may be used by all counsel. Opposing counsel should not mark on or in any way alter offering counsel's demonstrative exhibit, without Court's permission.

#### e. Dismissal Docket

When a case is set for dismissal by the Court, the parties are expected to appear at the time and date specified in the notice sent by the Court. If an agreement is reached by the parties that the case should not be dismissed, an agreed order removing the case from the dismissal docket should be submitted to the Court prior to the scheduled dismissal hearing.

#### f. Compliance Hearings

When a case is set for a compliance hearing, the parties or their attorneys are expected to appear at the time and date specified in the notice provided by the court. Failure to attend a compliance hearing will result in the case being placed on the dismissal docket. Attorneys will not be released or allowed to withdraw, absent special circumstances, until all notices and pleadings listed on the compliance notice have been filed.

#### g. Deposition Guidelines



In an attempt to have uniformity and save time and expense resulting from hearings on discovery matters, the following guidelines will generally be followed by the probate courts on matters pertaining to oral depositions:

1. A party filing a lawsuit in this County must give their deposition in this County, if requested.
2. A party properly sued in this County must give their deposition in this County, if requested.
3. The party initiating the deposition may elect to take the deposition orally or on written questions.
4. Unless the parties through their counsel agree otherwise, reasonable fees charged by an expert, not retained by either party, for giving of deposition testimony shall be paid by the party requesting the deposition. If counsel and the non-retained expert cannot agree to a reasonable fee the counsel requesting the deposition may ask the court to set a reasonable fee. The fee for the preparation of an expert's report, not previously reduced to writing and sought under Rule 195.5, Texas Rules of Civil Procedure, shall be paid by the party who has employed the expert.
5. Notice of deposition less than fifteen (15) days under Rules 21a and 202.3(a), Texas Rules of Civil Procedure is presumed unreasonable.
6. Although, these matters are best handled by agreement of the parties, counsel are not precluded from submitting disputes as to such matters to the court for determination by proper motion and hearing.

#### h. Miscellaneous Trial Guidelines

##### 1. Requests for Jury Trial.

A request for a jury trial to be set on the court's calendar shall be made in writing with a copy to all other attorneys and the court coordinator of the court in which the case is filed, at any time after a jury demand has been filed with the county clerk, the jury fee has been paid, and the certificate of readiness has been filed in the case. The letter shall contain information with respect to the nature of the case, estimated date of completion of discovery, and that counsel has conferred with the other counsel with regard to the scheduling of trial, when the case will be ready for trial, and the estimated length of trial.

The court may order a scheduling conference(s) or pretrial conference(s) pursuant to Rule 166, Texas Rules of Civil Procedure, if the court deems necessary. In cases where a bench trial has already been scheduled a request for jury trial must be made at least thirty days prior to the scheduled bench trial.

##### 2. Jury List and Seating Chart

A copy of the jury list and a seating chart will be provided to counsel on the morning of trial.

##### 3. Voir Dire

Voir dire consists of discussion with the panel as well as discussion with an individual panel member at the bench. The panel session includes the Court's introduction and the parties' usual voir dire. During the voir dire of the panel, counsel shall not challenge for cause nor allow the

panel to be tainted by individual panel member responses. After the conclusion of voir dire of the panel, attorneys may call a panel member to the bench for individual voir dire to establish grounds to excuse, address areas of concern raised by a response during the panel voir dire, or for like reasons. Challenges for cause shall be made outside of the presence of the panel.

#### 4. Addressing the Court/ Approaching the Witness

Counsel are expected to stand when addressing the Court or making an objection so that the witness knows to stop talking until the Court rules on the objection. This requirement also allows the reporter to identify for the record the person making the objection. Counsel may stand or remain seated to examine witnesses. Counsel shall treat opposing counsel, parties and all witnesses in a courteous and professional manner. Counsel shall request the Court 's permission to approach the bench or a witness.

#### 5. Witnesses

If the Court permits counsel to approach a witness, counsel should then approach the witness box so as to be face-to-face with the witness; counsel may not enter the witness box for any reason. If the witness steps down from the witness stand to explain an exhibit, the questioning counsel should arrange the witness so that the witness is facing the court reporter. All parties and other counsel may move to a position in the courtroom to observe the exhibit's explanation.

#### 6. Note Taking by Jurors

Jurors are allowed to take notes during the trial. Appropriate instructions will be given to the jury by the Court.

#### 7. Court's charge

Each juror will be given a copy of the Court's Charge prior to its reading.

#### 8. Trial Equipment

The Court can provide a television, a VCR and an easel. With the Court's permission, counsel may use such other's equipment as they elect. Trial equipment should not be duplicated by counsel, and counsel should cooperate in the use of all equipment. If a party is in need of audio or video aids, requests for such should be made to the court administrator at the pre-trial conference. Please be advised that there may be times when such aids cannot be supplied by the Court.

### **Rule 5. Miscellaneous Matters**

#### a. Gratuities

No gratuities may be accepted by the Court or by any staff member.

## b. Resolution of Conflict Settings

1. Where an attorney has settings in two or more courts the conflict preference shall be as follows:

- (a) Trials on the merits in any court take precedence over hearings, motions and other temporary matters in any other court;
- (b) All proceedings in any court take precedence over depositions and other out of court discovery activities.
- (c) Attorneys shall notify the Court of conflicting settings as soon as possible.

2. Any attorney having previously scheduled oral argument in any appellate court shall be given a reasonable time to travel to and from that court and make argument provided the attorney advises the trial judge of the scheduled argument before the commencement of trial.

3. Failure of an attorney ad litem or guardian ad litem to notify the probate court of a conflict in settings within 48 hours of the hearing in the probate court may result in the appointment of a new attorney ad litem or guardian ad litem. Fees for an attorney ad litem or guardian ad litem who has been replaced will not be approved by the probate court.

## c. Pro Se Parties

Any natural person proceeding on their own behalf without an attorney shall be expected to read and follow these Local Rules, Texas Rules of Civil Procedure, Texas Rules of Evidence, Texas Probate Code, and Texas Rules of Appellate Procedure as may be appropriate in the particular case. Failure to comply may be sanctioned, fined or punished as in other cases. Pro se parties shall be responsible for providing the Clerk with current addresses and phone numbers. The address so provided shall be used as the address for serving all pleadings and any other notices on the pro se party.

## d. Judicial Absences

Whenever a judge anticipates an absence of more than five court days, that judge may at his or her discretion request that the presiding judge assign a visiting judge to his or her court.

## e. Attorney Vacations

An attorney wishing to avoid assignment during a vacation period (not to exceed four weeks during the calendar year) may advise the court coordinators of each of the courts and the office of court administration of the attorney's proposed vacation at least 60 days prior to the beginning of the vacation on the suggested vacation form. Nothing herein shall preclude the filing of a motion for continuance and other circumstances regarding vacation. The filing of a vacation certificate shall not be grounds for resetting cases already set. In the event an attorney already has a setting at the time the vacation notice is filed, it shall be the attorney's responsibility to notify opposing counsel and the court coordinator and file a motion for continuance and obtain a ruling by the court.

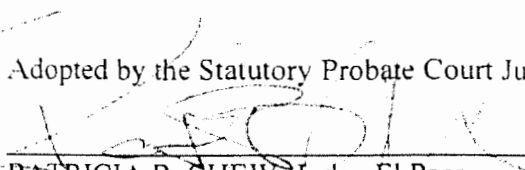
f. Use of Interpreters


Any party that will need an interpreter or plans to call a witness who needs an interpreter should, to the extent possible, notify the Court in writing, in advance of the setting, that an interpreter will be needed.

g. Form of Pleadings

1. A pleading, motion, or other submission shall be typed or printed in 12 point or larger font (including footnotes), double-spaced, on paper sized 8 1/2" x 11" with one-inch margins on all sides and shall be endorsed with the style of the case and the descriptive name of the document. Headings, footnotes, and quotations more than two lines long may be single-spaced.
2. A pleading, motion, or other submission filed by a represented party shall contain the mailing address, e-mail address, signature, state bar card number, and telephone and fax numbers, including area code, of the attorney.
3. A pleading, motion, or other submission filed by an unrepresented party shall contain the party's mailing address, e-mail address, signature, and telephone and fax numbers, including area code.
4. An unrepresented party and any attorney representing a party must timely inform the court of any change in the party's or attorney's mailing address, e-mail address, signature, or telephone or fax number. The court may sanction a party for the party's or the attorney's failure to do so.

Adopted by the Statutory Probate Court Judges of El Paso County, Texas on January 16, 2013.

  
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PATRICIA B. CHEW, Judge El Paso  
County Statutory Probate Court No. 1

  
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EDUARDO A. GAMBOA, Judge El Paso  
County Statutory Probate Court No. 2

15- 9075