



# COUNTY COURT SMITH COUNTY

JOEL P. BAKER, JUDGE

March 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 estate.** 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 he or she is 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. The 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/devisee 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.**

**Please be advised Court staff is prohibited from giving legal advice and therefore can only answer procedural questions pertaining to probate and guardianship matters.**