

Proceeding *Pro Se* in Probate Court

**Please read this
BEFORE
“Representing Yourself in Probate Court without an Attorney”**

Presented as a Public Service by:

**David W. Lindsey, Judge
50 North Main Street
Jasper GA 30143
706-253-8755**

NOTICE: Before proceeding without an attorney, you are required by this court to receive and review this information. Please read carefully before asking the assistance of court staff with the filing of forms or pleadings.

GEORGIA PROBATE COURT STANDARD FORMS

Many of the usual and ordinary proceedings filed in probate court require the use of standard forms approved in accordance with the Uniform Probate Court Rules established by law.

The Probate Court gladly provides to citizens of this County and to others desiring to file proceedings in this Court copies of the Georgia Probate Court Standard Forms as required by law. These forms are printed or reproduced at taxpayers' expense; therefore, unless a true need is demonstrated, only one set of a requested form will be provided. Georgia Probate Court Standard Forms may be reproduced on copy machines, and exact reproductions are acceptable for filing in any probate court. The forms may also be re-created in computer word processors, but re-printed or recreated forms must contain a certificate that the content is identical in all materials aspects to the standard form except for additions and deletions as noted.

The standard forms are primarily for use in the initial filing of new proceedings. There is not a standard form for every possible proceeding or pleading which may be filed in probate courts. In particular, there are no standard forms for the filing of most objections, caveats, answers or responses or for the many motions and discovery pleadings which may be filed.

REPRESENTATION BY AN ATTORNEY AT LAW

While you are not generally required to have an attorney, you are encouraged to seek legal advice on all matters of legal importance. It is suggested that you seek advice in probate matters from an attorney who practices probate or estate law. The attorney can assist you in determining which proceeding is the most appropriate for your particular situation and can discuss fully with you the benefits, if any, in considering alternative proceedings. Very often, there are other matters related to probate proceedings (e.g. tax returns, preparation of deeds, title transfers, benefit claims, creditor notices, debtor demands, etc.) which may also make it appropriate or necessary to seek the services of an attorney.

PROCEEDING WITHOUT AN ATTORNEY "PROCEEDING PRO SE"

If you proceed without an attorney, i.e. pro se (a Latin phrase meaning "for one's self"), it will be your responsibility to determine or select the proceeding appropriate to your situation. The staff of the Probate Court may not make the determination or selection for you, since to do so may constitute the unauthorized practice of law, a misdemeanor crime under Georgia law. Neither the Court nor the County can accept responsibility for incorrect decisions made by the staff, and they have been directed to refrain from giving that kind of advice.

It will also be your responsibility to properly complete all forms, which must either be typed or legibly printed, and to assure the sufficiency and accuracy of all required information. The staff is not permitted to perform clerical tasks for the public and cannot accept responsibility for

determining the legal sufficiency of the information required for any proceeding or form. The staff will be able to answer any basic questions about the standard forms and about any deadlines for the filing of proceedings. They will also be able to schedule uncontested hearings and tell you how other matters are scheduled by the Court.

The Probate Judge is required by law to remain impartial to all parties. The Judge must treat every case as though it may be contested. Therefore, the Judge also may not advise you on which proceeding is the most appropriate to your case. The Judge is prohibited from discussing the facts or evidence in any contested case with one party unless all parties are present or represented. You should not ask to discuss your case privately with the Judge, and you should understand if the Judge stops any discussion which appears to require the presence of others.

Furthermore, if you proceed without an attorney, it will be your responsibility to make arrangements for personal service on all persons upon whom personal service is required, to assure the filing of a proper return of service on all such persons, to assure the publication of any notices not performed by the court or its staff, and to secure the presence of or interrogatories from any witness whose testimony is necessary under law or desired by you for the presentation of your case. If the matter is contested, it will be your further responsibility to prepare yourself and your case for trial, including the pursuit of and response to discovery. It is the responsibility for all such matters which would be assumed by an attorney employed to represent you, and you are again encouraged to consult first with an attorney before deciding whether to proceed pro se.

PENALTIES FOR FILING FRIVOLOUS PLEADINGS

Caution is particularly given to persons representing themselves in court that there are provisions under Georgia law for the assessment of penalties against anyone who files false, frivolous, vexatious or groundless pleadings. These penalties may include the dismissal of such pleadings, the assessment of costs of court and attorney's fees against the offending party, and other remedies appropriate to the particular case. Additionally, there are similar penalties for the failure or refusal, without just cause, to respond to proper discovery requests.

Generally, one must have "legal grounds" for objecting to or for filing a caveat to a probate proceeding. Because of the penalty provisions briefly discussed above, it is especially recommended that legal advice be sought before the filing of an objection or caveat to a pending probate proceeding.

COURT COSTS

There is a cost set by law for the filing of every new probate proceeding, as well as for most pleadings filed after the initial filing, including objections, caveats and claims.... Unless otherwise ordered or directed by the court, costs are the responsibility of the person filing the original proceeding, and full payment of any balance due may be required prior to issuance of a

final order. A party filing an objection or caveat to a pending proceeding or a creditor filing a claim must pay the fee for the filing of same before the court is required to accept it for filing.

Court costs are considered an expense of administration under law, having a priority over other debts and claims, and must be paid by the personal representative of the estate prior to distribution to heirs or beneficiaries. The failure or refusal to pay court costs may result in the dismissal of proceedings, the removal of the personal representative or other actions by the court to assure and receive payment.

THANK YOU

While we want to be of service to the public, there are restrictions on and limits to what the staff and Judge of the Probate Court may properly do. This information is intended to help the public understand these restrictions. It is never our intent to seem unhelpful or uncooperative. Within these restrictions and limitations, it is our desire to be of assistance to all who come into our office. We do hope that you will understand these limitations. With that in mind, please let us know if we may be of further service to you.

Regards,

Judge David W. Lindsey and the Staff of the Pickens County Probate Court