

Common Probate Questions for County Clerks



Question 1

You are presented with an application for appointment of an Independent Executor and Issuance of Letters Testamentary along with the proper filing fee. The will is not signed by the deceased or any witnesses. Do you accept it?

- a. Yes
- b. No
- c. I take it to my judge for direction and hope he knows the answer.

Question 2

How long does a party have to present a will for probate after the testator is deceased?

- a. 2 years
- b. 4 years
- c. Within 60 days
- d. There is no deadline
- e. Not my problem

Question 3

An Application for Muniment of Title is filed. The Application includes the last three numbers of the SSN of the Applicant. What do you do?

- a. Redact the numbers on the filing
- b. Reject the filing
- c. Accept the filing
- d. Call TAC and ask

Question 4

A local Police Officer who is married to a county employee was killed in the line of duty. The spouse files an Application for Administration of the Estate. (He did not leave a will). What filing fee do you charge?

- a. Standard filing fee for a probate
- b. Standard filing fee for a probate plus a deposit for the ad litem
- c. Discounted filing fee because the spouse is a county employee and does not make much money
- d. Nothing.

Question 5

An Executor files an Affidavit in Lieu of Inventory, Appraisement and List of Claims on the 91st day after they received their letters testamentary. What do you do?

- a. Accept it
- b. Reject the filing
- c. Accept the filing but present it to the Judge for consideration
- d. Call the attorney for the Executor and ask the attorney to file a Motion for Extension of Time to File the Affidavit.

Question 6

An Executor timely files an Affidavit in Lieu on Inventory, Appraisement and List of Claims. What do you do?

- a. Accept the filing and move on.
- b. Accept the filing and present it to the Judge
- c. Accept the filing and publish it in the local newspaper
- d. Accept the filing and issue citation.

Question 7

An attorney appears with their client who has filed an Application to Probate Will. The attorney has e-filed the oath of the Executor prior to the hearing. The oath is signed. What do you do?

- a. Accept it – we appreciate the attorney being so efficient
- b. Reject the filing and ask them to bring an unsigned oath to court with them
- c. Call the attorney laughing and ask what law school they went to
- d. Reject the filing and ask the attorney to bring the signed oath to court with them.

Question 8

Court orders the administrator of the estate to post a \$500,000 surety bond. The attorney requests you to issue letters of administration on the day of the hearing because there is pressing business to be taken care of and it will take a couple of days to get the bond secured and “we all know that lazy judge will sit on the bond for days if not weeks before he approves it.” What would you do?

- a. Tell the lawyer you cannot issue letters at this time but you will stay on the judge to get the bond signed as soon as it is presented
- b. Issue the letters that day because the lawyer is correct
- c. Issue the letters that day as long as the attorney gets the judge to sign an order authorizing you to.
- d. Tell the attorney that is not your problem, you only have three months until retirement.

Question 9

You receive a closing report from an Independent Administrator. On the 30th day after the report was filed the Administrator runs frantically in your office and asks for 5 additional copies of the letters of Administration. What do you do?

- a. Give them the letters.
- b. Tell the Administrator you will have to check to see if the Judge has signed the Order Closing the Estate.
- c. Refuse to issue the letters.
- d. Notify the heirs that the Administrator is “up to something”

Question 10

You receive an Application for Probate of Will for the estate of Vee Oter on November 3rd. You prepare the abstract but hold it with the intent of filing it in early December after the craziness of the election dies down. When canvassing the election you see Vee Oter's name listed as a person who voted in the election. Further inspection shows that Vee Oter's name was signed on the roster at the polling place. What do you do?

- a. Call the Secretary of State to report obvious voter fraud
- b. Do a google search to see if there are two Vee Oters and check the Will to see if there is a child named Vee Oter.
- c. Beg the Commissioners Court for an Elections Administrator
- d. Not my problem, my county has an Elections Administrator, let them deal with it.
- e. Take other action

Question 11

Which of the following must be done before an estate in an Independent Administration can be closed?

- a. An accounting is filed and approved
- b. A closing report is filed
- c. A notice of closing estate is filed
- d. None of the above

Question 12

Where can an attorney, business entity or other person in possession of a testator's will deposit the will?

- a. Address of last known family member
- b. County clerk in county where will was executed
- c. County clerk in county of testator's birth
- d. County clerk in county of testator's last known residence
- e. Post it on Facebook, it is sure to get to the right person that way.

Question 13

The claim docket for an estate must be ruled in ___ columns from top to bottom with a short note of the contents at the top of each column?

- a. 4
- b. 8
- c. 16
- d. 24



Are You Smarter Than a County Judge?



....NO, IT IS NOT A RHETORICAL QUESTION...

OR IS IT?



Question 1

Do I need a citation for posting when filing a Muniment of Title?

Question 2

Does the Applicant to probate a will need to appear in person or can they appear by telephone or some other form of communication?

Question 3

A will is presented for probate but is not signed. The attorney who drafted the will appears at the hearing and testifies that it is the will he drafted, but he has lost the signed copy. The wife of the Decedent cannot find the original. Do you accept the will for probate?

Question 4

An Application to Probate a Will and Issue Letters Testamentary is filed. The will is attached. The will is a form that is typed with blanks that are completed in the Decedent's handwriting. The will is signed by two witnesses and notarized. Is this a valid will?

Question 5

Son files an Application to Probate Will of his mother who has been deceased two months. He discovers that his father's will was never probated (father and mother were married at time of father's death). His father passed away 7 years ago. There is a homestead that was community property and remains in both of their names. Can the father's will be probated? What steps need to be taken to dispose of the community homestead?

Question 6

An Executor is named for an estate. Executor files an Affidavit in Lieu of Inventory 120 days after the date he is named as executor. Should the County Clerk accept the Affidavit for filing since it is not timely? Should the County Judge take any action regarding the Affidavit?

Question 7

An Application for Administration of an Estate is filed. There is one minor child born out of wed-lock. The child is only identified in the Application by his initials. Is this a proper pleading?

Question 8

An Application to Probate a Will is filed, an Independent Executor is appointed. An Inventory is timely filed. When is the case closed?

a. Same facts as the previous scenario, but 2 years later (after the case was closed) it is discovered that a piece of real estate that Decedent owned was never deeded to the beneficiary under the Will while the case was open. Can the Executor still sign a deed even though the probate case is closed?

Things that make you go hmmm....

Question 9

Decedent was married twice. First wife, with whom he had two children who are now adults, predeceased him. Decedent remarried at some point, then later was diagnosed with Alzheimer's. In November 2015, son filed for guardianship of person and estate of his father (now the decedent). In March 2016, son states in Application for Probate of Will that Decedent was divorced from second wife (which is during the time that son was guardian of his incapacitated father). Decedent died in May 2016.

a. With a Guardianship of Person & Estate in place, can Guardian “legally” divorce the second wife? If so, should the Judge request proof of that divorce at the hearing since none was provided? The “local talk” indicates that the second wife may have requested the divorce because she did not want to be responsible any longer for the care of the husband. Should the Judge request the now ex-wife to appear in court to attest to any of this as a way of covering all bases? (For information, in the process to obtain Guardianship both the daughter & the ex-wife signed waivers of Citation.)

b. The Will provided to the Court has two strikethroughs/alterations, neither of which has any kind of initialing from the Decedent or others, nor are these changes explained in the Application.

Is this allowed?

Question 10

Background: Two sisters are seeking guardianship of their mother. Both sisters are bat crap crazy (not a legal term). In the hearing both testified to sleeping with each other's husband, trying to hire a hitman to kill one another, voodoo, devil worshipping, and so forth. (This is not an exaggeration of sworn testimony.) Neither was appointed as guardian and no other family member would touch the case, so a private guardian was appointed.

Ward died in a nursing home in another county. One sister files for probate in the other county, the other sister files for probate in my county. No will can be found, so she passes intestate....or so we thought.

The sister who filed in my county finds a Will. The Will is unsigned and unwitnessed. It was allegedly done at the same time as the father's Will which was properly signed and witnessed. (As an aside, one sister claimed the other killed the dad.)

At the hearing, the attorney who drafted the father's Will was called as a witness. He testified that he drafted the father's Will. The attorney's notary book indicated that he had notarized a document for both the mother and father on the day the father's will was executed in his office, but was unsure if it was a Will for the mother.

a. As the Judge in this case, what do you do? (The value of the estate is approximately \$350,000)



But wait, there is more....

After the Final Account for the guardianship is filed and accepted, the guardianship is closed. The sister who filed in the other county now files an application to probate the will in my county....and has copy of a Will that was signed and dated the same day as the father's Will. The Will names both sisters as co-executors of the estate.

b. As the Judge, what do you do?



Aftermath:

The sisters can agree on nothing and the attorneys have withdrawn.

