

# **PROCEEDING PRO SE IN PROBATE COURT**

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

*Presented As A Public Service By:*

*PROBATE COURT OF  
GLYNN COUNTY  
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*Debra G. Howes, Judge*

*(Credit for this brochure is given to William J. Self, II., Judge of Bibb County Probate Court)*

## **GEORGIA PROBATE COURT STANDARD FORMS**

Many of the usual land 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 re-created forms must contain a certificate that the content is identical in all material 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**

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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 are 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 become 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 proper return of service on all such persons, to assure the publications of any notices not performed by the court or its staff, and to secure the presence of or interrogatories from any witnesses 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, ETC.

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 parts, 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 request.

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. The fees are required at the time of filing of every proceeding. 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 the payment of other debts and 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 brochure 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 this office. We do hope that you will understand these limitations. With this in mind, please let us know if we may be of further service to you. Thank you.

The Judge and Staff  
of the Probate Court

### Getting Free Legal Help

Bar associations and legal aid programs help people who need legal help but can't afford to pay. Generally, only people who can establish financial need (within the federal poverty guidelines) are eligible. Some programs, however, serve the elderly, military service members and their families, or people in other special circumstances regardless of their income. This information was taken from The American Bar Association's web site (<http://www.abanet.org/legalservices/findlegalhelp>). If you are contemplating proceeding as your own attorney or if you are looking for legal help, you would be well served to visit this site. You will find a wide array of information from "Handling Legal Matters Yourself" to "Legal Information Sources" and from "Hiring a Lawyer" to "Resolving Difficulties with Your Lawyer".

### Frequently Asked Questions For filing a Petition on Your Own Behalf And Helpful Legal Terms

#### **Questions and Answers**

**Question:** Can I file a case on my own behalf without an attorney?

**Answer:** Yes, filing a case on your own behalf without an attorney is referred to as filing "Pro Se," You should be aware that if you proceed pro se, you will be required to follow the same Court rules as an attorney.

**Question:** How do I file a case on my own behalf (Pro Se)?

**Answer:** A case is started by filing a complaint or petition. You must also either pay the filing fee or request the Court to allow you to file the case without paying the filing fee. This is referred to as proceeding *in forma pauperis* ("IFP").

**Question:** What is an "IFP"?

**Answer:** This is a form that you submit to the Judge of this Court in which you will tell the court about your income and other financial information. These forms are available from the Probate Court.

**Question:** After filing my case, how do I go about getting facts and information from the interested parties so that I can prepare for court?

**Answer:** The process of getting facts and information is called discovery. Ga. Uniform Probate Rules, Rule 5 and Appendix A controls discovery and you should refer to this rule for the methods you can use to obtain facts and information.

**Question:** I tried to file a motion with the Court but it was returned to me because it did not contain a certificate of service. What is a certificate of service?

**Answer:** Each document that you file with the Court must contain your signature and a certificate of service. A certificate of service indicates to the Court that you have delivered a copy of the document to the other parties. The certificate of service states the name and address of the attorney or party served with the document, the manner of service, and the date of service.

**Question:** Can the Probate Clerks answer legal questions or provide legal advice?

**Answer:** No, Probate Court personnel may not give legal advice. The Probate Court personnel will not be able to advise you on such things as:

- explaining the meaning of rules
- answering questions as to whether this is the proper Court in which to file your complaint/petition
- commenting on your case
- recommending how you should proceed
- predicting a decision a judicial officer might make
- answering questions as to how long you have to file a complaint in this Court.

**Question:** Can you provide me with the names of attorneys who could help me?

**Answer:** NO, the staff cannot provide you with the name of an attorney. You can, however, contact the local bar association. You will also find many listings in the local phone book.

**Question:** Can I get a copy of this Court's Local Rules?

**Answer:** Yes, copies are available from the local law library and from the official Ga. Probate Court's web site [www.gaprobate.org](http://www.gaprobate.org).

**Question:** Where can I find legal material such as case law and rules of civil procedure?

**Answer:** You can find legal materials at local law and public libraries. This library is open to the public. Please check with the library for its policies regarding public use. You can also find links on the official Ga. Probate Court's web site listed above and at the Administrative Office of the Court's web site at [www.georgiacourts.org/aoc](http://www.georgiacourts.org/aoc).

## **Helpful Legal Terms**

### **AFFIDAVIT**

*A written statement of facts made under oath.*

### **AMEND**

*To change an existing petition, pleading, or motion that is already before the Court.*

**ANSWER**

*A document filed by the interested party in response to the complaint.*

**CASE**

*Another word for petition.*

**CERTIFICATE OF SERVICE**

*Every pleading, correspondence, or other document, subsequent to the original complaint shall be served upon each of the parties who have appeared in the case. Each pleading must contain a certificate of service, which shall state the name and address of the attorney or party served, the manner of service, and the date of service. This lets the Court know that the other parties have been served a copy of the same document filed with the Court. If you attempt to file something that does not contain a certificate of service, the Court may return it to you without filing.*

**COUNSEL**

*One who has been admitted as an attorney at law to assist his/her client with advice, and pleads for him/her in open court.*

**DEPOSITION**

*A discovery (formal pre-trial investigation) tool in which a party (or his/her attorney) asks a series of oral questions of another party or witness, who answers under oath. The proceeding is recorded by a court reporter.*

**DISCOVERY**

*Formal investigation that parties conduct before trial in order to obtain information from each other about the case and to prepare for settlement or trial. The primary tools in most cases are depositions and interrogatories.*

**DOCKET NUMBER (CASE NUMBER)**

*The civil case number assigned to a case by the Court when a new complaint is filed.*

**ESTATE**

*Interest, right, or ownership in land; technically, the degree, quantity, nature, and extent of a person's interest or ownership of land. In its broad sense, "estate" applies to all that a person owns, whether real or personal property*

**HEIRS**

*Strictly, those whom statutory law would appoint to inherit an estate should the ancestor die without a will. The term is often applied indiscriminately to those who inherit by will or deed as well as by operation of law.*

**IN FORMA PAUPERIS (IFP)**

*To proceed without prepayment of costs or fees for filing a complaint.*

**INTERROGATORIES**

*A set of written questions submitted by one party to another party to answer under oath as part of the pre-trial investigation of a lawsuit.*

**JUDGMENT**

*A final Court ruling resolving the claims at issue and determining the rights and obligations of the parties.*

**JURISDICTION**

*(1)The power or legal authority of the Court to hear and decide a case. (2)The geographic area over which the court has authority to decide cases; (3) The territory, subject matter, or persons over which lawful authority may be exercised by a court.*

## **MOTION**

*A request made to the Court for the purpose of obtaining a ruling or order directing an act to be performed in favor of the applicant or movant. The Court may either hold a hearing on the motion requiring the parties to appear **OR** the Judge may decide the motion without a hearing.*

## **ORDER**

*A ruling issued by a Judge that usually directs the plaintiff or the defendant to do something. An order may also be issued to grant or deny a motion.*

## **PERSONAL REPRESENTATIVE**

*A person who manages the affairs of another, either under a power of attorney or due to the incapacity of the principal either through death, incompetency, or infancy; for example, the executor appointed under the will of a decedent or the committee of an incompetent.*

## **PETITIONER**

*One who presents a petition to a court or other body either in order to institute an equity proceeding or to take an appeal from a judgment. The adverse party is called respondent.*

## **PETITION**

*A formal written request or prayer for a certain thing to be done. As related to equity procedure, the petition is the functional equivalent of a complaint at law. It “connotes an application in writing addressed to a court or judge, stating facts and circumstances relied upon as a cause for judicial action, and containing a prayer [formal request] for relief.”*

## **PROBATE**

*The act of proving that an instrument purporting to be a will was signed and otherwise executed in accordance with legal requirements, and of determining its validity thereby the combined result of all the procedural acts necessary to establish the validity of a will. In some jurisdictions a **PROBATE COURT** is a special court having jurisdiction of proceedings incident to the settlement of a decedent’s estate. Some states give probate courts jurisdiction over the estates of juveniles and those persons determined unable to take proper care of their property or themselves. In such situations the court may appoint a committee, conservator, or guardian.*

## **PRO SE**

*If you are filing a petition on your own and will represent yourself, you are proceeding pro se.*

## **PRE-TRIAL CONFERENCE**

*A conference held between the parties and the Judge. The conference is held after the parties have been served, and its purpose is to develop an appropriate pre-trial plan that meets the needs of the individual case. At the conference, parties discuss issues affecting the case, and a hearing date is usually set.*

## **RESPONDENT**

*In equity, the party who answers a bill or other pleading. “Any one who answers or responds may properly be called a ‘respondent’.” The term also refers to the party against whom an appeal is brought.*

**SERVICE OF PROCESS**

*The delivery of legal documents to an opposing party.*

**STATUTES**

*Laws enacted by legislatures*

**SUBPOENA**

*An order for a person to appear in Court or at a deposition, or to produce documents.*

**VENUE**

*The geographic area over which a Court has authority.*

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