

## LEGAL MOJO

### Be Prepared: What to Ask When You are Before a Probate Judge

By Lindsay Owens



Any time an attorney goes before a judge, whether in person or virtually, it is of the upmost importance that the attorney be prepared. Fortunately for probate attorneys, we are typically before the same judges and cover the same facts. That said, it is easy to leave out details during a hearing, which could come across unfavorably to the judge and your client. The purpose of this article is to provide attorneys who are new to probate with a checklist of what to cover during a formal probate hearing in which you are seeking to probate a will and issue letters testamentary.

Before I get to the hearing checklist, however, I want to emphasize the importance of reviewing your file at least one day prior to the hearing. You want to ensure that any necessary waivers have been signed and filed; that the testimony and oath have been prepared; that you have provided the judge with the order; and that a resident agent has been appointed, if one is needed. You also want to make sure that you are familiar with all of the facts because it may have been several weeks since you prepared and filed the probate application.

Also, prior to the hearing, you may want to make sure you are familiar with the judge's protocols. Every judge will conduct his or her hearing a little differently. That said, below is what I cover during every hearing, no matter what judge I appear before.

Once the hearing begins, the person giving testimony – in this instance, the applicant -- will be sworn in by the judge. After the judge swears in your client, you will begin to ask your client questions. To help clients throughout a hearing, I typically ask leading questions that cover everything that needs to be on record.

#### **Who is before the judge?**

I always ask my clients to state their name on record after they are sworn in.

1. *Please state your name for the Court.*

#### **Why are we here?**

2. *Is it true that we are here today to probate the Last Will and Testament of Jane Doe and appoint you as executor of Jane Doe's estate?*

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**Does the court have jurisdiction and is venue proper in the county?**

3. *Is it true that Jane Doe died on January 1, 2021, at 100 years of age in Midland, Midland County, Texas?*
4. *Did Jane Doe reside in Midland, Midland County, Texas on the date of her death?*
5. *Is it true that four (4) years have not lapsed since the date of decedent's death?*

**Prove up the will.**

6. *Here is a copy of Decedent's will. Is it true that the will was executed on December 31, 2000 and attested to by two disinterested witnesses?*
7. *To your knowledge, is it true that this will was never revoked by Decedent?*
8. *Is it true that no state, governmental agency or charitable organization is named in the will?*
9. *Does this signature appear to be Jane Doe's signature?*

**The "ask."**

10. *Are you asking the Court to admit Jane Doe's will to probate?*
11. *Are you also asking the Court to appoint you as independent executor of Jane Doe's estate?*
12. *Are you qualified to serve as independent executor of Jane' Doe's estate? Specifically, you are not incapacitated? You are not a convicted felon? And you are a resident of this state?*

Please note that each probate hearing will be a little different, which is natural because each of your clients is unique and different. Our job is to make sure our clients feel comfortable during one of the most difficult times in their lives. To do this, be prepared.

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