

NO. 2015-01-26

IN THE PROBATE COURT OF
BANDERA COUNTY, TEXAS

FILED
AT 11:50 O'CLOCK 1 M. ON

JAN 28 2015

CANDY WHEELER, COUNTY CLERK
BANDERA COUNTY, TEXAS
BY [Signature] DEPUTY

**AMENDED ORDER REQUIRING SPECIFIC NOTICE OF APPLICATION TO
PROBATE A COPY OF A LOST WILL OR A LOST WILL WITHOUT A COPY**

Comes now the Probate Court of Bandera County, Texas, and finds that there is need for a administrative order regarding notice to all parties interested in an estate of the application to probate a copy of a lost will or codicil, or to probate a lost will or codicil without a copy (i.e., a written will or codicil that cannot be produced in court.)

WHEREAS, under S258.002 of the Texas Estates Code, when a will or codicil cannot be produced in Court, the Clerk shall issue citation to all parties interested in the estate, which citation shall contain substantially the statements made in the application for probate and the time when, place where, and the court before which such applications will be acted upon; and

WHEREAS, under S256.054 of the Texas Estates Code, an application for the probate of a will or codicil which cannot be produced in court must state additional information concerning the reason for the original's non-production and the names of the individuals who would inherit by intestacy or devise if the copy of the instrument were not admitted to probate; and

WHEREAS, under S51.151 of the Texas Estates Code, the Court finds that the current form of citation by the Clerk is insufficient or inadequate to advise heirs or devisees of their right to object to an application to probate a copy of a lost will or codicil, or a lost will or codicil without a copy (i.e., a written will or codicil that cannot be produced in court), and that a specific notice of such right to object should be given in all such cases, either attached to the citation prepared by the Clerk, or included with waivers of Citation,

IT IS THEREFORE ORDERED that:

Upon the filing of an application to probate a copy of a lost will or codicil, or an application to probate a lost will or codicil without a copy (i.e., a written will or codicil that cannot be produced in court), the Clerk shall attach to each citation issued under S258.002 the notice attached to this Order informing all persons interested in such estate of their right to object to such probate. When a party executes a waiver in lieu of citation, the waiver shall include the attached notice, or the waiver itself may contain substantially the same contents as the attached notice.

Signed on the 26th day of Jan, 2015

[Signature]
RICHARD A. EVANS, JUDGE PRESIDING

ATTACHMENTS:

- Exhibit "A" - Notice of Application
- Exhibit "B" - Sample Affidavit Waiving Service

**Notice of Application to Probate Copy of Lost Will or Codicil
or Lost Will or Codicil without a Copy**

You are notified that an application has been filed in the Decedent's estate to probate a written will or codicil even though the applicant cannot produce the original will. The application filed in this estate seeks either to probate a copy of a lost will or codicil or to probate a lost will or codicil without a copy (all referred to below as "lost will").

When an original will cannot be produced, the law presumes that the testator (the person who wrote the will) revoked the will before the testator's death. The Court will not grant the application in this case unless the applicant offers sufficient evidence to rebut that presumption and proves to the Court that the will was not revoked, even though only a copy has been filed.

If no will is admitted to probate, Decedent's property will pass to Decedent's heirs. If a lost codicil to a valid original will is not admitted to probate, Decedent's property will pass to the devisees (beneficiaries) named in the valid will. Therefore, your rights to inherit property may be affected by the probate of the lost will either (1) as an heir of the Decedent, or (2) as someone who is named as a devisee in the lost will or (3) as a devisee in a valid will when there is a lost codicil to that will.

If you want to object to the probate of the lost will, you must file a written objection with the Clerk. The Clerk's citation, which is attached to this notice, indicates the date by which you should file a written objection. Note that the citation does not indicate a specific hearing date.

If you sign an affidavit waiving citation, you are indicating to the Court that you do not object to the probate of the lost will.

You should consult an attorney if you have any questions about your rights in this probate matter.

Exhibit "A"

No. _____ - _____

Estate of

Deceased

**Affidavit Waiving Citation for Probate
Of a Copy of a Lost Will or Codicil or Probate
of a Lost Will or Codicil without a Copy**

STATE OF _____

COUNTY OF _____

I, _____, am an heir or devisee
(beneficiary) of _____, the "Decedent" in this case.

I have been given (1) a copy of the **Application for Probate a Copy of a Will** that has been filed in this case and (2) a copy of the lost will dated [insert date of will] that the applicant is seeking to have probated.

I understand that in this case, an application has been filed in Decedent's estate to probate a written will even though the applicant cannot produce the original will.

I understand that when an original will cannot be produced, the law presumes the testator (the person who wrote the will) revoked the will before the testator's death.

I understand that the Court will not grant the application to probate the lost will in this case unless the applicant offers enough evidence to rebut that presumption and prove to the Court that the will was not revoked even though only a copy of the will may exist.

I understand that as one of Decedent's heirs – or as one of the people who is named as a devisee (beneficiary) in the lost will – my rights to inherit property may be affected if the lost will is probated. If no will is admitted to probate, Decedent's property will pass to Decedent's heirs.

Although I understand I have a right to object to the probate of a lost will, with or without a copy, I do not object to the probate of the lost will.

I know that the person who sent me this affidavit (along with a copy of the application and the will) is the applicant's attorney. And I know that the applicant's attorney does not represent me in this matter. I am aware that before I sign this affidavit waiving citation, I may consult my own attorney to advise me regarding this estate or the affidavit.

By signing this affidavit waiving citation, I enter my appearance in this case for all purposes, and I waive the issuance and service of process. I agree that the case may be considered by the Court without further notice to me.

I have signed this affidavit voluntarily, without fraud, duress, or threat by any person.

Signed and sworn to on _____, 201__.

Signed and sworn to under oath before me on _____, 201__.
by _____.

Notary Public, State of _____

My commission expires: _____