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SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. 19-0803

In the Supreme Court of Texas

IN RE ESTATE OF JANET AMANDA MAUPIN,
Deceased

BRIEF OF AMICUS CURIAE
TEXAS ACCESS TO JUSTICE COMMISSION
IN SUPPORT OF PETITION FOR REVIEW

On Petition for Review from the
Thirteenth Court of Appeals at Corpus Christi-Edinburg, Texas
No. 13-17-00555-CV

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September 24, 2019

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Texas Access to Justice Commission (the "Commission") respectfully submits this amicus brief in support of Petitioner Patrick Maupin. In accordance with Texas Rule of Appellate Procedure 11(c), the Commission states that no fee was charged or paid for the preparation of this amicus brief.

The Texas Supreme Court created the Commission by unanimous order in 2001. Misc. Dkt. No. 01-9065, Order Establishing the Commission. In that Order, the Texas Supreme Court recognized the following deficiencies, among others, in the then-existing framework for the provision of legal services for low-income Texans:

- Many gaps exist in developing a comprehensive, integrated statewide civil legal-services delivery system in Texas;
- Inadequate funding and well-intentioned but uncoordinated efforts stand in the way of a fully integrated civil legal-services delivery system;
- While many organizations throughout the state share a commitment to improving access to justice, no single group is widely accepted as having ultimate responsibility for progress on the issues; and
- Texas needs leadership that is accepted by the various stakeholder organizations committed to achieving full access, and empowered to take action.

Id. at 1. The Court's solution was the Commission. *Id.* at 2.

To call attention to important access-to-justice issues, the Commission has regularly filed amicus briefs, including in (1) *Highland Homes Ltd. v. State*, 448

S.W.3d 403 (Tex. 2014) (propriety of cy pres disposition of unclaimed class funds); (2) *McDonald v. Sorrels*, No. 19-cv-219 (W.D. Tex., filed Mar. 6, 2019) (constitutional challenge to funding for access to justice); and (3) *Abrigo v. Ginez*, No. 14-18-00280-CV, 2019 WL 2589877 (Tex. App.—Houston [14th Dist.] June 25, 2019, no pet.) (construction of Texas Rule of Civil Procedure 145 relating to indigent litigants).

Maupin's petition for review concerns judicial policies that prevent independent executors—including those who are the sole beneficiaries of a will—from proceeding pro se to administer estates. Those restrictive policies harm low-income Texans by (1) undermining Texas's long-standing probate framework that promotes the independent administration of wills, (2) restricting access to the courts, and (3) unnecessarily increasing the costs of administering estates.

For these reasons and those outlined below, the Commission files this amicus brief in support of Petitioner Maupin.

INTRODUCTION

The Travis County probate court denied Maupin the opportunity to obtain letters testamentary to administer his deceased wife's will simply because an attorney did not sign his court filings. It did so under a local policy that bars individuals from probating wills pro se, even where the independent executor is the estate's sole beneficiary. On appeal, the court of appeals upheld this policy without analysis and simply noted that a handful of other appellate courts had upheld similar restrictions. The court of appeals' opinion and the restrictive policy it sanctioned are wrong and require reversal.

The court of appeals' opinion is the latest in an unfortunate trend over the past decade that has prohibited independent executors—most of them administering small and uncontested estates—from proceeding pro se except in the rarest of circumstances. Virtually all statutory probate courts now have issued policies prohibiting executors from proceeding pro se. *See* App., Ex. A.[1] Texas probate courts have applied these policies such that—even where an independent executor

[1] A few statutory probate courts have incorporated these policies into their local rules, *see, e.g.*, Dallas County Probate Court Local Rule 4.05; Denton County Probate Court Local Rule 1.3, but most (including the Travis County probate court) simply have "policies" preventing executors from proceeding pro se. These policies, unlike local rules, do not require this Court's approval. The chart attached as Exhibit A does not include reference to the many county courts, which impose similar restrictive policies. *See* Pet. at 9.

is the sole beneficiary of an estate—he or she must retain counsel to obtain letters testamentary to administer the estate.

These restrictive policies affect thousands of Texans each year and unnecessarily increase the costs associated with independently administering estates. Last year, over 4,000 Texans filed a probate or guardianship proceeding pro se, and that number would undoubtedly be higher but for these policies that prohibit individuals from continuing pro se after filing. *See* Tex. Jud. Council & Off. Ct. Admin. Tex. Jud. Sys. Ann. Statistical Rep. at 32-33 (2018) (noting that 3.8% of the 105,697 probate and guardianship cases were filed pro se).

Especially where executors either lack the funds to hire an attorney or recognize that the costs of fighting these restrictive policies will be prohibitive, most Texans encountering these restrictive policies capitulate. But these policies are not correct just because they are not often (or ever) challenged. They restrict an individual's Rule 7 right to proceed pro se, are in tension with this Court's precedents, and are based on an inapt attempt by courts to analogize estates to corporations. The prevalence and perniciousness of these policies—which are important to the state's jurisprudence—warrant granting review here.

ARGUMENT

A. This Court should grant the petition for review because the restrictive probate court policies undermine Texas's independent administration system, unnecessarily siphon funds from estates, and, until now, have evaded review.

The Texas probate system has long been designed to allow non-lawyers to administer an estate. *See* Michael Hatfield, *Pro Se Executors—Unauthorized Practice of Law, or Not?*, 59 Baylor L. Rev. 329, 333 (2007) (hereinafter "*Pro Se Executors*"). In the 1800s, the Texas legislature implemented a probate system that was intended to allow executors to administer an estate without entangling a court. *See Minter v. Burnett*, 38 S.W. 350, 354 (Tex. 1896) ("We think that the legislature intended, by the enactment of the law of 1876, to make plain and definite rules to govern administrators and executors in the discharge of their duties, because it is not unfrequently the case that they must perform those duties without having the instruction of the court with reference thereto."). Because of Texas's system of independent administration, lawyers are warned not to compare Texas's probate system to those systems in other states "because the Texas probate system is much different and typically much simpler." Comm. on Advert., State Bar of Tex., Interpretive Cmt. 22: Advertisement of Living Trusts, https://www.texasbar.com/AM/Template.cfm?Section=Rules_Comments_and_Opinions&Template=/CM/ContentDisplay.cfm&ContentID=13435.

Despite Texas's unique and fiercely independent administration system, its statutory probate courts have implemented policies that do not allow individuals to probate a will pro se except in the most limited of circumstances, such as presenting a will as muniment of title. *See* App., Ex. A. None of these policies allows a pro se executor to receive letters testamentary,[2] even when the named executor is the sole beneficiary of the will. *Id.*

It has not always been this way. Before 2006, Texas's statutory probate courts generally did not restrict executors from proceeding pro se. But, in late 2006, the Waco Court of Appeals held, in a split decision, that an independent executor could not probate a will pro se because it concluded that "he [wa]s litigating rights in a representative capacity rather than on his own behalf." *See Steele v. McDonald*, 202 S.W.3d 926, 928 (Tex. App.—Waco 2006, no pet.).

By 2007, *Steele* had created a split among the then-seventeen statutory probate courts, with only eight courts permitting executors to proceed pro se. *See Pro Se Executors* at 331 & n.3. Then, when other appellate court decisions, such as *In re Guetersloh*, 326 S.W.3d 737, 739-40 (Tex. App.—Amarillo 2010, orig. proceeding), adopted *Steele* without much analysis, additional statutory probate courts have

[2] Under Texas law, a muniment of title allows the transfer of estate property to the beneficiaries without the need for estate administration. *See* Tex. Estates Code, ch. 257. Letters testamentary, on the other hand, are issued by a probate court and permit an estate's executor to administer the will and act on behalf of a deceased person's estate. *See id.*, ch. 351.

restricted pro se representation. In just over a decade, executors have seen the right to proceed pro se vanish.

Despite this series of events, these restrictive policies have not been challenged in Texas courts. But that has little to do with the correctness of these restrictions and everything to do with the costs associated with such a challenge. Consider the options for executors who wish to proceed pro se. When they are told they cannot proceed pro se, they could spend hours doing legal research and argue the issue before a probate court. Then, when they lose, they could spend more time and money to file an appeal. Or, if they can afford it, they could just pay the attorneys' fees and move on.

In reality, most pro se litigants probably do not consider the notion that a court would have an illegal policy. So, for pro se executors who can afford to hire a lawyer, they just hire a lawyer and move on. For pro se executors who cannot afford to hire a lawyer, their only option is to comply with these policies and proceed in a manner that limits their rights as an executor, such as having the court probate the will as a muniment of title. *See supra* note 2. Maupin's petition for review presents the Court with a rare opportunity to consider and correct these restrictive policies.[3]

[3] The court of appeals mistakenly framed the policy at issue as a local rule promulgated under Texas Rule of Civil Procedure 3a. *See Estate of Maupin*, No. 13-17-00555-CV, 2019 WL 3331463, at *2 (Tex. App.—Corpus Christi-Edinburg July 25, 2019, pet. filed). But, unlike a handful of statutory probate courts that have adopted these

The Court's review is desperately needed because these misguided policies unnecessarily burden Texas estates, harming low-income Texans most of all. One national survey found that 11% of probate estates were valued at less than $10,000. *See* Estate Settlement Statistics, EstateExec, https://www.estateexec.com/Docs/General_Statistics (last visited Sept. 17, 2019). Despite those estates' small value, they faced average legal and accounting fees that exceeded $15,000—more than the entire value of the estate. *Id.* Costly probate court policies put thousands of Texans' inheritance at risk.

Maupin's petition for review provides this Court with an excellent vehicle to address this issue. This Court should not let this opportunity pass it by.

B. Both the court of appeals' opinion and the restrictive probate court policies rely on an erroneous comparison between corporations and estates.

The court of appeals' opinion and the restrictive probate court policy it protects wrongly analogize estates to corporations. The central tenet of this analysis is that the executor "is litigating rights in a representative capacity rather than on his own behalf." *Steele*, 202 S.W.3d at 928; *see also Maupin*, 2019 WL 3331463, at *2. That view, initially espoused in *Steele*, has caused pro se executors to lose rights and has led a handful of courts to conclude (wrongly) that an executor's administration

restrictive policies as local rules, *see supra* note 1, the Travis County policy restricting executors from proceeding pro se is only an off-the-rulebook notice on its website.

of an estate pro se would constitute the unauthorized practice of law. 202 S.W.3d at 928; *Maupin*, 2019 WL 3331463, at *2; *cf. In re Guetersloh*, 326 S.W.3d at 739-40 (addressing issue in trust context).

The practice of law is limited to legal work done "on behalf of a client." Tex. Gov't Code § 81.101. That is why Texas Rule of Civil Procedure 7 grants individuals the right to proceed pro se so long as they are prosecuting or defending their own rights. *See, e.g.*, Tex. R. Civ. P. 7 ("Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.") (App., Ex. B); *Ayres v. Canales*, 790 S.W.2d 554, 557 (Tex. 1990) (noting that Rule 7 precludes a court from "[o]rdering a party to be represented by an attorney"). Therefore, the central question raised in Maupin's petition for review is whose rights are executors representing when they attempt to probate a will.[4]

In *Pro Se Executors*, Professor Hatfield suggests three potential answers to this question: (1) the executor represents the estate, (2) the executor represents the beneficiaries, or (3) the executor represents himself or herself. *Pro Se Executors* at 348. He then reviews each of these possible answers and concludes that, under Texas law, an executor represents himself or herself. *Id.* at 370.

[4] To be clear—because the statutory probate courts have not been—the question is not whether probating the will may ***affect*** others' rights. Anytime individuals sue, they attempt to affect others' rights by imposing legal liability. If the practice of law were measured by whether others' legal rights are affected, then individuals could never represent themselves pro se.

That conclusion is correct, as explained below. But even if an executor were held to represent an estate's beneficiaries, the court of appeals' opinion cannot stand because Maupin is the sole beneficiary of his deceased wife's estate, Pet. at 17, and was attempting to represent only his own interests.

1. An executor does not "represent" the estate.

An executor does not represent an estate like an individual lawyer represents a corporation. In fact, an estate is not a legal entity, and cannot be represented like a corporation. *See Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005) (quoting *Price v. Estate of Anderson*, 522 S.W.2d 690, 691 (Tex. 1975)). Moreover, estates, unlike their executors, cannot be sued, and—under Texas law—estates are nothing more than the property owned by decedents at their death. *See Henson v. Estate of Crow*, 734 S.W.2d 648, 649 (Tex. 1987). Instead of creating a separate legal entity (like corporations), Texas law permits executors to bring the estate's claims themselves. *See Belt v. Oppenheimer, Blend, Harrison & Tate, Inc.*, 192 S.W.3d 780, 786 (Tex. 2006). There is simply no legal entity (called an "estate") for an executor to represent for the purposes of "practicing law."

Because estates are not entities and have no legal rights, they cannot be analogized to corporations, making the analysis conducted in *Steele* and adopted by other courts incorrect. A review of *Steele* confirms this error. The *Steele* court only cited to out-of-state cases, 202 S.W.3d at 928, but those states (unlike Texas) have

concluded an estate is a legal entity. 202 S.W.3d at 928 (citing cases). Texas law is to the contrary, and the *Steele* majority failed to consider this Court's binding precedent confirming that principle. *See infra* Sections B.2 & B.3.

2. An executor does not "represent" the beneficiaries of the estate, and even if he did, Maupin should still prevail here.

As Maupin notes in his petition for review, some states—most notably, Minnesota—have held that executors represent the interests of beneficiaries of estates. *See* Pet. for Rev. at 16; *see also In re Otterness*, 232 N.W. 318, 319-20 (Minn. 1930). In essence, the "Minnesota Rule" treats executors as legally transparent agents of the beneficiaries. But that conclusion cannot be right under Texas law, which gives executors special, specific, and statutory rights and duties above and beyond those of the beneficiaries. *See* Tex. Estates Code §§ 351.051, .052, .054. For example, the executor can decide whether to bring a malpractice claim against the testator's estate-planning attorney, but a beneficiary has no such right. *See Belt*, 192 S.W.3d at 789.

The "Minnesota Rule" also cannot apply in Texas because this Court's precedents are to the contrary. This Court has already concluded that an executor may appear pro se. *See Ex parte Shaffer*, 649 S.W.2d 300, 302 (Tex. 1983). This Court also has expressly held that the attorney-client relationship is between the executor and his or her attorney—not between the attorney and the estate or the beneficiaries. *Huie v. DeShazo*, 922 S.W.2d 920, 924, 925 (Tex. 1996). In light of

these precedents, there is no basis for the Court to conclude that executors are simply transparent legal actors that do nothing other than represent the interests of beneficiaries.

Even if the Court altered its precedents and reached that conclusion, the court of appeals' opinion cannot stand here because Maupin is the sole beneficiary. *See* Pet. at 17. Accordingly, if an executor represents the interests of beneficiaries, there is no reason why Maupin cannot proceed pro se because he would, as executor, simply be representing his interests as the sole beneficiary. That is why states that have adopted the Minnesota Rule have permitted executors to proceed pro se when they are the sole beneficiaries. *See, e.g.*, *State ex rel. Falkner v. Blanton*, 297 So.2d 825, 825 (Fla. 1974) (concluding that an individual executor would have pro se rights so long as the executor was the sole beneficiary of the estate); *cf. Nat'l Indep. Theatre Exhibitors, Inc. v. Buena Vista Distribution Co.*, 748 F.2d 602, 610 (11th Cir. 1984) (concluding a sole proprietorship could proceed through pro se representation). And even some of Texas's statutory probate courts used to employ a similar rule. *See Pro Se Executors* at 331 n.3.

3. Because an executor "represents" his or her own interests, Maupin must be permitted to proceed pro se.

In light of the rights and duties that Texas law places on executors, executors represent their own interests in administering an estate. That is the only answer consistent with this Court's decisions in *Ex Parte Shaffer* and *Huie*.

In *Ex Parte Shaffer*, an executor was sued by a beneficiary for breach of a fiduciary duty, and the probate court held the executor in contempt for failing to retain an attorney. 649 S.W.2d at 301. On appeal, however, this Court held that the probate judge's contempt order was void because "[c]ounsel cites no authority, and indeed we can find none, which allows a court to . . . require any party to retain an attorney. . . . [O]rdering a party to be represented by an attorney abridges that person's right to be heard by himself." *Id.* at 302. Thus, far from taking the position that an executor represents the estate or its beneficiaries, this Court has made clear that, in Texas, executors represent their own interests.

More recently, this Court confirmed that view when it decided *Huie*. In that case, which involved a trust,[5] this Court rejected the view that the attorney-client privilege belongs to the trust or its beneficiaries, and instead, held that the privilege belongs to the trustee. 922 S.W.2d at 925 ("We conclude that, under Texas law at least, the trustee who retains the attorney to advise him or her in administering the trust is the real client, not the trust beneficiaries.").

These precedents are consistent with Texas's statutory framework for the independent administration of estates. Nothing in the Estates Code forces an executor to retain an attorney and, instead, the Estates Code places duties of good

[5] *See Humane Soc'y of Austin & Travis Cty. v. Austin Nat'l Bank*, 531 S.W.2d 574, 577 (Tex. 1975) (noting the fiduciary duty of an executor in the administration of an estate is the same as that of a trustee).

faith, fidelity, loyalty, fairness, and prudence on executors in administering the estate. *See* Tex. Estates Code §§ 101.003, 351.101; *see also Humane Soc'y of Austin & Travis Cty.*, 531 S.W.2d at 577, 580. These duties protect the beneficiaries of estates and expose executors—to the extent they act contrary to these duties—to the risk of liability because (unlike estates) executors can be sued. Although the Texas Estates Code is designed to protect beneficiaries and the assets of estates, Texas law does not provide that an executor is representing the rights of the estate or its beneficiaries. To the contrary, the executor—in performing his or her duties—has all of the rights that belonged to the decedent, *Steele*, 202 S.W.3d at 930 (Gray, C.J., dissenting), and thus can only be representing himself or herself in administering the estate. Executors, as the living agent of the decedent, should be able to proceed pro se under Rule 7 in the same way that the decedent would have been entitled. *See McKibban v. Scott*, 114 S.W.2d 213, 216 (Tex. 1938) ("We have shown enough [statutory provisions] to demonstrate that our probate laws recognize the right of a person to name in his will his own executor, and, further, to show that the person so named, barring any disqualification, has the right, by virtue of the will itself to act as executor as named."). This Court should clarify these issues and provide guidance to statutory probate and other lower courts so Rule 7 rights are not unnecessarily restricted and estates are not saddled with unnecessary expenses.

* * *

In sum, the court of appeals' opinion must be reversed:

- *First*, under *Ex Parte Shaffer* and *Huie*, Texas law provides that an executor is the living agent of the decedent, has all of the rights the decedent had, and thus is representing himself or herself in administering the estate. Rule 7 therefore permits an executor to proceed pro se. Permitting executors to proceed pro se will keep estates' assets from being depleted by unnecessary legal fees and expenses.

- *Second*, even if this Court were to adopt the "Minnesota Rule" and hold that executors represent the estate's beneficiaries, reversal is still required because Maupin is the sole beneficiary of his deceased wife's estate, and therefore was attempting to represent his own interests in administering the estate.

PRAYER

For these reasons and those in Maupin's petition for review, amicus curiae Texas Access to Justice Commission respectfully requests that the Court grant the petition for review, reverse the judgment of the court of appeals, and remand this case so that Maupin can proceed before the Travis County probate court pro se.

September 24, 2019

Respectfully submitted,

/s/ Thomas S. Leatherbury

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CERTIFICATE OF COMPLIANCE

I certify that this document contains 3,233 words, except the portions excluded by Texas Rule of Appellate Procedure 9.4(i)(1). It was prepared in Microsoft Word using 14-point typeface for body text and 13-point typeface for footnotes. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/ Stephen S. Gilstrap
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CERTIFICATE OF SERVICE

I certify that, on September 24, 2019, the foregoing document was filed with the Texas Supreme Court and served on Petitioner Patrick Maupin, as indicated below. There are no other parties to be served in this case.

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APPENDIX

Exhibit A: List of Pro Se Policies by Statutory Probate Court

Exhibit B: Texas Rule of Civil Procedure

Exhibit C Court of Appeals' Opinion

EXHIBIT A

List of Pro Se Policies by Statutory Probate Court

Court	Status	Link
Bexar County Probate Court No. 1	Pro se under limited circumstances	https://www.bexar.org/3074/Probate-a-Will
Bexar County Probate Court No. 2	Pro se under limited circumstances	https://www.bexar.org/DocumentCenter/View/22499/Court-Policy-Regarding-Pro-Se-Applicants
Collin County Probate Court	Pro se under limited circumstances	https://www.collincountytx.gov/probate/Pages/general.aspx
Dallas County Probate Court No. 1	Pro se under limited circumstances	https://www.dallascounty.org/government/courts/probate/prose-policy.php
Dallas County Probate Court No. 2	Pro se under limited circumstances	https://www.dallascounty.org/government/courts/probate/prose-policy.php
Dallas County Probate Court No. 3	Pro se under limited circumstances	https://www.dallascounty.org/government/courts/probate/prose-policy.php
Denton County Probate Court	Pro se under limited circumstances	https://dentoncounty.gov/-/media/Departments/County-Courts/Probate-Court/Forms/PDFs/General/Pro-Se-Memo.pdf
El Paso County Court No. 1	Pro se under limited circumstances	https://www.epcounty.com/courts/probatefaq.htm
El Paso County Court No. 2	Pro se under limited circumstances	https://www.epcounty.com/courts/probatefaq.htm
Galveston County Probate Court	Pro se under limited circumstances	http://www.galvestoncountytx.gov/ja/pb/Documents/Rules%20of%20the%20Court/adminorder02-2007.pdf
Harris County Probate Court No. 1	Pro se under limited circumstances	https://probate.harriscountytx.gov/Documents/pro_se.pdf
Harris County Probate Court No. 2	Pro se under limited circumstances	https://probate.harriscountytx.gov/Documents/pro_se.pdf
Harris County Probate Court No. 3	Pro se under limited circumstances	https://probate.harriscountytx.gov/Documents/pro_se.pdf
Harris County Probate Court No. 4	Pro se under limited circumstances	https://probate.harriscountytx.gov/Documents/pro_se.pdf

Court	Status	Link
Hidalgo County Probate Court	Does not address the issue explicitly	https://www.hidalgocounty.us/1345/Probate
Tarrant County Probate Court No. 1	Pro se under limited circumstances	http://www.tarrantcounty.com/content/dam/main/probate-courts/probate-court-2/ProSePolicy.pdf
Tarrant County Probate Court No. 2	Pro se under limited circumstances	http://www.tarrantcounty.com/content/dam/main/probate-courts/probate-court-2/ProSePolicy.pdf
Travis County Probate Court	Pro se under limited circumstances	https://www.traviscountytx.gov/images/probate/Docs/pro_se.pdf

EXHIBIT B

Texas Rule of Civil Procedure 7

RULE 7. MAY APPEAR BY ATTORNEY

Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

EXHIBIT C

NUMBER 13-17-00555-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI–EDINBURG

ESTATE OF JANET AMANDA MAUPIN, DECEASED

On appeal from Probate Court No. 1
of Travis County, Texas.

MEMORANDUM OPINION

Before Justices Benavides, Hinojosa, and Perkes
Memorandum Opinion by Justice Perkes

Patrick Evan Maupin (Patrick) appeals the trial court's order admitting his wife's will to probate as a muniment of title. *See* TEX. EST. CODE ANN. § 31.001. Patrick argues that the trial court erred when it enforced a local rule prohibiting individuals acting pro se from administering estates and denied his pro se application for letters testamentary, instead issuing sua sponte a muniment of title. We affirm.[1]

[1] Pursuant to a docket-equalization order issued by the Supreme Court of Texas, the appeal has been transferred to this Court from the Third Court of Appeals in Austin, Texas. *See* TEX. GOV'T CODE ANN. § 73.001.

I. BACKGROUND

Janet Amanda Maupin (Janet) died on June 22, 2017, at her home in Travis County, Texas. Janet left a self-proved will dated November 28, 1988. The will named Patrick as independent executor and sole beneficiary. On July 11, Patrick filed an application pro se to probate Janet's will and issue letters testamentary.

On August 7, the trial court held a hearing. Patrick appeared unrepresented and provided proof of Janet's death and residency in Travis County. When asked by the trial court why an administration was necessary, Patrick stated there were "a few assets" located out of state, "some balances on some accounts and credit cards and things," and "also a possible cause of action."

Pursuant to the Travis County Probate Court's pro se policy,[2] the court informed Patrick that he would need an attorney in order to apply for letters testamentary. In the interim, the trial court signed an order admitting the will to probate as a muniment of title sua sponte. The court decreed, in relevant part, as follows:

> that all of the necessary proof required for the probate of such will has been made; that such Will is entitled to probate; that there are no unpaid debts owing by this Estate, exclusive of any debt secured by liens on real estate; that there is no necessity for administration of this estate . . . .

Patrick appealed.

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[2] The Travis County Probate Court No. 1 observes a pro se policy whereby individuals representing the interests of third parties must be represented by a licensed attorney. This includes executors applying for letters testamentary and prohibits individuals acting pro se from administering estates. Specifically, the policy provides:

> [A] pro se may not represent others. Under Texas law, only a licensed attorney may represent the interests of third-party individuals or entities, including guardianship wards and probate estates. *See In re Guetersloh*, 326 S.W.3d 737 (Tex. App.—Amarillo 2010, no pet.) and *Steele v. McDonald*, 202 S.W.3d 926 (Tex. App.—Waco 2006, no pet.), and the authorities cited. Therefore, individuals applying for letters testamentary, letters of administration, determinations of heirship, and guardianships of the person or estate must be represented by a licensed attorney.

II. APPLICABLE LAW AND ANALYSIS

A trial court's ruling on a probate application is reviewed under an abuse of discretion standard. *In re Estate of Gaines*, 262 S.W.3d 50, 55 (Tex. App.—Houston [14th Dist.] 2008, no pet.). A trial court abuses its discretion when it acts arbitrarily, unreasonably, or without regard to guiding legal principles. *Elliott v. Weatherman*, 396 S.W.3d 224, 228 (Tex. App.—Austin 2013, no pet.). A trial court, however, does not abuse its discretion in complying with a local rule that has not been previously challenged or found to contradict the Texas Rules of Civil Procedure. *See* TEX. R. CIV. P. 3a(1); *see also Kenley v. Quintana Petroleum Corp.*, 931 S.W.2d 318, 320–21 (Tex. App.—San Antonio 1996, writ denied).

Generally, if an independent executor named in a will comes forward within the statutory period for probating a will, offers it for probate, and applies for letters testamentary, the court has no discretionary power to refuse to issue letters to the named executor unless he is otherwise disqualified under the provisions set out in the Texas Estates Code. *See* TEX. EST. CODE ANN. § 304.003; *see also Alford v. Alford,* 601 S.W.2d 408, 410 (Tex. App.—Houston [14th Dist.] 1980, no writ).

Appellant's primary contention on appeal is that the trial court abused its discretion when the court, in accordance with its local rules, denied his application for letters testamentary based on his pro se status. *See* TEX. EST. CODE ANN. § 257.001. Specifically, Patrick argues that the court's policy is invalid under Rule 3a(1)[3] of the Texas Rules of Civil Procedure because it violates his right to self-representation under Rule 7. *See* TEX. R. CIV. P. 7; *see also Ex parte Shaffer*, 649 S.W.2d 300, 302 (Tex. 1983)

[3] "[A]ny proposed rule or amendment shall not be inconsistent with these rules or with any rule of the administrative judicial region in which the court is located." TEX. R. CIV. P. 3a(1).

("Ordering a party to be represented by an attorney abridges that person's right to be heard by himself.").

However, our sister courts have established that Rule 7 only applies when a person is litigating his rights on his own behalf, as opposed to litigating certain rights in a representative capacity. *See Steele v. McDonald*, 202 S.W.3d 926, 928 (Tex. App.—Waco 2006, no pet.) (holding that a non-lawyer cannot appear pro se on behalf of an estate as an independent executor); *see also Kaminetzky v. Newman*, No. 01-10-01113-CV, 2011 WL 6938536, at *6 (Tex. App.—Houston [1st Dist.] Dec. 29, 2011, no pet.) (mem. op.). The law distinguishes between a person in his individual capacity and the same person in his representative or fiduciary capacity. *See McMahan v. Greenwood*, 108 S.W.3d 467, 487 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (providing that an executor is synonymous with administrator and legal representative); *see generally Elizondo v. Tex. Nat. Res. Conservation Comm'n*, 974 S.W.2d 928, 931 (Tex. App.—Austin 1998, no pet.) (addressing individual versus representative capacity in the context of standing). An executor of an estate serves in a representative capacity of the estate, thereby requiring an attorney to represent the interests of the third-party at the outset. *See Steele*, 202 S.W.3d at 928; *McMahan*, 108 S.W.3d at 487.

In compliance with the local rule and supported by precedence, the trial court was unable to determine Patrick's suitability as an executor for his wife's estate absent attorney representation. *See Elliott*, 396 S.W.3d at 228; *Steele*, 202 S.W.3d at 928; *Kenley*, 931 S.W.2d at 320–21. Therefore, we hold that the trial court did not abuse its discretion in denying Patrick's pro se application. *See Elliott*, 396 S.W.3d at 228.

III. CONCLUSION

We affirm the trial court's order.

GREGORY T. PERKES
Justice

Delivered and filed the
25th day of July, 2019.