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## Supreme Court of Texas Probate Forms Task Force

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### *Chair*

Hon. Polly Jackson  
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Ms. Barbara Anderson

Ms. Julie Balovich

Mr. Craig Hopper

Ms. Cathy Horvath

Mr. Jerry Jones

Hon. Steve M. King

Ms. Trish McAllister

Ms. Christy Nisbett

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### *Supreme Court of Texas Liaison*

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### *Supreme Court of Texas Staff Representative*

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June 27, 2023

Justice Brett Busby  
The Supreme Court of Texas  
Supreme Court Building  
201 West 14<sup>th</sup> Street, Room 104  
Austin, Texas 78701

**RE: Report to the Supreme Court of Texas, Misc. Docket No. 16-9003**

Dear Justice Busby and Justices of the Supreme Court of Texas:

The members of this task force appointed by the Supreme Court on January 21, 2016, are Judge Polly Jackson Spencer as chair, Carlos Aguinaga, Barbara McComas Anderson, Julie Balovich, Craig Hopper, Cathy Horvath, Jerry Frank Jones, Judge Steve M. King, Trish McAllister, Christy Nisbett, and Arielle M. Prangner. Of our original group, Christy Nisbett retired. Julie Balovich and Cathy Horvath both took different jobs but remained actively involved in the second phase of our assignment, the preparation of Muniment of Title Forms and Small Estate Affidavit Forms. We have continued to meet almost monthly either in person or by Zoom to work on this project, although the pandemic did interfere with our work as it did with basically everyone else's work. We also experienced quite a bit of turnover in the support people who have worked with us with a resulting loss of some of our work.

The process continues to be interesting, challenging, and educational but also much more difficult and time-consuming than any of us anticipated. Our committee consists of very detail-oriented people from different backgrounds – estate planning attorneys, Legal Aid attorneys, judges, and clerks – all of whom see problems relating to the use of these forms from different perspectives. We have tried to accommodate the concerns raised by each of us in drafting this second set of forms while keeping in mind our mandate to write forms in “plain language” for people to complete without the assistance of an attorney.

Preparation of the Muniment of Title Forms was perhaps the easiest of our assignments. We developed an application which we believe meets the statutory requirements and several affidavits that might be required at the time of a hearing with instructions regarding when those affidavits would be used. In the Instructions, we tried to explain and guide people to places where they could make determinations about the types of wills they might be trying to have probated, such as handwritten, witnessed, and/or self-proved wills. We also tried

to point people to some pitfalls they might encounter in doing this without an attorney, such as some other need for administration (a reason that probate as a muniment might not be appropriate), the fact that a MERP claim might exist and constitute a debt of the estate, and certain local rules which might have different requirements from those of other courts.

The Small Estate Affidavit forms were quite a bit more challenging. Trying to explain to lay people the differences between separate and community property as well as the nuances of Texas intestacy laws regarding the disposition of such property when there are children from more than one relationship, children who have been adopted by another, children for whom parental rights have been terminated, inheritance rights for half-siblings as opposed to full blood siblings and the potential overlay of homestead rights along with exempt property and associated rights is very difficult. Rather early into the development of these forms, we simply decided that the adopted child and half-sibling issues along with the concept of dividing property into paternal and maternal moieties was beyond anything that should be addressed by *pro se* people and referred them to an attorney. We initially developed some demonstrative charts as visuals for division of intestate property, but the charts became so complicated that even we could not understand them. They were discarded and simpler ones were developed by two members of the committee – Julie Balovich and Cathy Horvath. In our Instructions, we tried to include examples of how to complete the forms in a variety of family situations with different types of property, both separate and community and exempt and non-exempt.

We are pleased to present these forms to the Court as a product into which much time, thought and effort has gone. We recognize that the forms will be reviewed and likely revised by the Court. We also recognize that no form will be perfect and that they will probably be revised from time to time as the public uses them and provides information about their ease of use and general value. I speak for all of us when I say we would like to discuss any revisions the Court makes. I know I speak for all of us when I say that it has been an honor for us to be asked to be a part of this important work and this task force. We are now working on the final part of our assignment – development of TODD forms - and hope to provide those to the Court within the next few months.

Very truly yours,



Hon. Polly Jackson Spencer  
Chair