

TO: Commissioners' Court of Hidalgo County, Texas
FROM: JoAnne Garcia, Presiding Judge of the Hidalgo County Probate Court
DATE: January 1, 2023
RE: Expansion of the Hidalgo County Probate Court

The Hidalgo County Probate Court respectfully requests a court expansion. This expansion proposal requests that the Commissioners' Court create and fund two positions: (1) a Statutory Probate Court Associate Judge, and (2) an Assistant Court Auditor. The estimated 2023 budgetary impact of the expansion will be \$215,341.86, inclusive of salary and benefits.

Statutory probate courts exist in ten of Texas's largest metropolitan areas and have original and exclusive jurisdiction over their counties' probate matters, guardianship cases, and mental health commitments. Hidalgo County is one of the largest counties in Texas, ranking 8th in population density according to 2020 United States Census Bureau Data. As such, in 2001, the Texas Legislature re-designated Hidalgo County Court at Law No. 3 as a Statutory Probate Court. More than twenty years later, the Probate Court of Hidalgo County remains the sole court in our fast-growing county with original and exclusive jurisdiction over these serious matters. Not only has it remained the sole Probate Court, it has burdened the growing docket with the same number of staff.

In a comparative analysis of Denton and El Paso Counties, two counties most similar in population size to Hidalgo County, each county has two full statutory probate courts and one associate judge, totaling three judges for each county to preside over the original and exclusive probate docket. In addition to the presiding judges, the Denton and El Paso probate courts have more than twelve staff members to assist in the administration of the active cases, which is

double the staff size of Hidalgo County's Probate Court. Relative to population size, the Hidalgo County Probate Court trails in number of judges and staff size.

In addition to the continued growth of Hidalgo County, the Probate Court has seen an exponential rise in the filing of new probate and guardianship cases. Prior to the COVID-19 pandemic, the rise in filings showed an average increase of 1% year to year from 2016 to 2019; however, the pandemic precipitated the exponential rise in filings with a 52% increase in filings in 2020 and another 27% increase from 2020 to 2021. This correlation between COVID-19 deaths and probate filings was most apparent in the months following death toll surges in Hidalgo County. This rise in filings will continue not only because of general population growth of the county but also due to the residual effects of pandemic deaths. While the worst of the pandemic appears to be over, delayed filings continue to occur and the Court's oversight of pending administrations of estates continues beyond the initial hearing and appointment of an administrator. Therefore, cases filed in 2020 and 2021, at the height of the pandemic, continue to require the Court's supervision.

Furthermore, in addition to the rise in probate and guardianship filings, there has also been a steady rise in filing of mental health commitments. The average rate of growth in increased filings for the years 2016 to 2021 is 13%.

These increases strain the resources of the Court overall; however, the most significant impact has been on the ability of the public to have their case heard in a timely fashion. The Court's calendar has stretched to accommodate the increased caseload; however, any further accommodation requires a second judge to assist in hearing cases. The second most significant impact has been on the oversight and audit of active cases. More filings equate to more cases to audit. The Court's single auditor has more than 1200 active guardianships to audit for

compliance, and he reviewed more than 330 inventories and accountings filed in 2021. The auditor's job is central to preventing abuse, fraud, and neglect in both the estates and guardianships pending in the Court.

A Statutory Probate Associate Judge would perform a variety of judicial duties to assist in docket management, including deciding the merits of cases, hearing and evaluating evidence and witness credibility, analyzing laws and rules, making findings of fact and conclusions of law, and issuing oral or written decisions and orders to resolve matters. Examples of the work to be performed are:

- Coordinating the judicial process of mental health commitments to ensure that cases proceed in a timely manner;
- Presiding over probable cause hearings in mental health commitment cases;
- Conducting hearings;
- Hearing evidence;
- Compelling the production of relevant evidence;
- Ruling on the admissibility of evidence;
- Issuing summons for the appearance of witnesses;
- Examining witnesses;
- Swearing in witnesses for a hearing;
- Making findings of fact on evidence;
- Formulating conclusions of law;
- Ruling on pretrial motions;
- Recommending the rulings, orders, or judgment to be made in a case;
- Regulating all proceedings in a hearing before the associate judge; and

- Taking action as necessary and proper for the efficient performance of the duties required by the order of referral.

See generally TEX. GOV'T CODE ANN. § 54A.209.

An Assistant Auditor would provide support to the Court Auditor by conducting most of the compliance auditing, giving the Court Auditor more time to audit the financials, such as inventories and accountings, submitted by the court-appointed fiduciaries. Examples of the work to be performed by the assistant auditor are:

- Assisting in audits and analyzing all submitted accounting for all assets in each guardianship and estate under the Court's supervision;
- Verifying the existence of sufficient documentation in support of reported transactions and depreciation methods;
- May assist in determining compliance with state reporting requirements;
- May review internal control structure to identify and correct potential weaknesses;
- May consult with attorneys and other outside parties in troubleshooting discrepancies in reports;
- Performing special projects under specific direction of management; and
- Performing all other related duties involved in the operation of the Court as assigned or required.

In conclusion, the Probate Court serves some of the most vulnerable populations of Hidalgo County, such as the elderly, orphans, special needs individuals, widows, and the mentally ill. Proper staffing is crucial to ensure the efficient administration of justice and to prevent fraud, abuse, and neglect. The expansion of the Probate Court serves this purpose and is long overdue. Since the designation of the Probate Court in 2001, six additional county courts have been created to serve the people of Hidalgo County; however, only one Probate Court exists with one judge presiding and the same number of staff. This expansion is a conservative

proposal to address the growth of the county and is necessary to usher Hidalgo County into the future.