

LAW OFFICE OF DAVID S. BOUSCHOR II., P.C.

Attorney and Counselor at Law

Office Policies and Procedures Statement for Probate/Guardianship Matters

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Office Hours

The office of DAVID S. BOUSCHOR II, P.C., Attorney and Counselor at Law ["Law Firm"] is open from **9:00 a.m. to 5:00 p.m. Monday through Friday**. We understand the need for after-hours appointments, telephone calls, and document delivery/pick-up, each of which are discussed below.

Appointments

The only sure means of meeting with your Attorney is to *schedule an appointment rather than dropping in*. Appointments are scheduled when necessary to the case. If something unexpected arises, call to see if you need to come in. Appointments are usually set during regular office hours, but may be scheduled at other times if necessary. Appointments are scheduled by each Attorney's legal assistant. **Notify us in advance if you are going to be late or unable to keep your appointment**; failure to do so may result in billing of ½ hour to cover preparation time and loss of office time.

Telephone Policies

Our policy is to return calls the same day a call is received; however, we may be prevented from returning your call until later because we are in Court, depositions, or meetings. Clients usually have never been involved in litigation and litigation is emotional and stressful; as a result we receive many calls from Clients. It is not unusual for the Attorney to have 20 to 30 calls to return if the Attorney is out of the office all day. There are also times that the Attorney must concentrate on a case without interruption from the phone. If the Attorney is in trial, they probably won't be able to return your call until the trial is over since trials may require 16 hours per day of undivided attention.

Telephone Guidelines

- (1) *During Office Hours:* Ask the receptionist to direct your call to your Attorney's legal assistant. The legal assistant can answer many questions and take most action required at a lower billing rate.
- (2) *After Office Hours:* If you call before or after office hours, or the office is closed for any reason, our phones are answered 24 hours by an answering machine that will be checked the next business day morning.
- (3) *Messages:* When you leave a message, **ALWAYS:**
 - ✓ give your **name and telephone number**; while your phone number is in our records, returning your call will be expedited if you always provide the number.
 - ✓ Be **very specific** about the subject matter; don't assume that we know what your call is about.
- (4) *Limits on Information:* Don't attempt to give or request lists of items, numbers, etc. over the phone; conserve time and expense by putting them in writing and send to us.
- (5) *Organization:* Organize your thoughts and questions in writing before calling; this will ensure a

- more effective communication that will save you money.
- (6) *Costs Savings:* Savings can be realized if you save up and ask several questions in one call rather than calling each time you have a question. However, **do not delay emergency or significant questions.**
 - (7) *Frequency of Calls:* If your call is not returned when you expected it, call again the next day -- calling many times during the same day will only delay the process.
 - (8) *Status:* We welcome your inquiries about the status of your case; however, frequent calls about status take up time to repeatedly locate, pull, and review your file, look up information, ascertain if other documents are located somewhere other than in the file, and then answer your question; you will necessarily be billed for all time expended.
 - (9) *Billing:* Billing for phone calls includes the **total time involved** in handling your call, not just the time on the phone and is subject to minimum billing for 2/10ths of an hour.
 - (10) *EMERGENCIES:* If your telephone call pertains to an emergency, call immediately. If you reach the voice mail, please leave a specific message **advising that you have an emergency** and someone will return your call as soon as possible.

E-mail Policies

Our policy is to return E-mails within 24 hours of an E-mail being received if applicable; however, we have the same constraints on our time as have been discussed above regarding Phone Policies. In addition E-mails can be an efficient way of transferring information in text or through attachments. If you would like a response to your E-mail please make it clear so that there is no confusion as to whether you are asking for information or transferring it to us.

E-mail Guidelines

- (1) *Frequency of E-mails:* You need to determine if your communication with this office would be more efficiently handled by phone or by E-mail. If you have questions that may lead to other question you will find that a phone call will be more efficient than an E-mail. This office cannot constantly monitor the E-mail boxes; therefore, it could be the next day before a second E-mail (question) is answered.
- (2) *Format of E-mail:* Most E-mail and attachments are in a format that is readable by this office, however in cases where the format is not comparable, there may be a delay responding to at least the first E-mail until the problem can be corrected.
- (3) *Viruses:* Unfortunately viruses are a common problem that cause many E-mail messages to fail to be delivered. This firm has an anti-virus program and a fire wall program that will not let infected E-mails be received. If you have an E-mail message that we not been responded to, please call so that the problem can be corrected.

Written Communications and Documents

Copies of all documents prepared in your case will be mailed to you the same day they are filed with the Court, mailed, or received. Keep all papers and documents about your case in a confidential, readily accessible location. When you are requested to gather documents, be **thorough** and act **without delay**. If you need to deliver items to the office after hours or the door is locked, please use the mail slot in the front door.

Retention of File

It is the policy of this office that your file will be maintained in our storage facility for a period of seven (7) years from the date your file is closed. Thereafter, it will no longer be maintained by this office and the contents destroyed.

Legal Fees and Costs

- *Agreement with Law Firm:* You will be required to sign an "Agreement for Professional Legal Services" prior to engagement, and is a contract between you and the LAW OFFICE OF DAVID S. BOUSCHOR II, P.C. The Agreement specifies the matter for which the Law Firm is retained, the fee arrangement, and other aspects of the contractual relationship. This "Policies and Procedures" statement is an important part of the Agreement, together which form your contract with the Law Firm. Read both documents carefully; ask if you have any questions about your rights and obligations.
- *Fees:* All professional legal services are rendered on an hourly fee basis in minimum increments of 1/10th of an hour with established minimum fees for certain documents and activities. Your responsibility for paying legal fees and expenses and costs incurred in representing you will be discussed in your initial conference with your Attorney and specifically stated in the "Agreement for Professional Legal Services". **Only the Attorney is authorized to establish or modify fee arrangements; fee agreements/arrangements are binding only if in writing.** If you have any questions about how fees are earned, expenses are incurred, or the amount you owe, ask as soon as possible.
- *Retainer:* Almost without exception, you will be required to prepay a retainer, and may be required to deposit additional retainers depending on your case. Retainers are deposited into a "Client Trust Account", a separate account where clients' funds are maintained separate from the firm's operating funds. Professional fees will be deducted from your retainer as earned and expenses and costs deducted as incurred. By law we cannot pay interest on these funds.
- *Payment of Retainers and Invoices:* You will be mailed monthly invoices specifying services rendered, fees earned, costs incurred, deductions from your retainer, and a current balance on your retainer or account. **All outstanding unpaid balances and additional retainers are due and payable at the Law Firm office within 10 days of receipt of the invoice. Unpaid account balances will be subject to interest on the unpaid amount at the rate of 12% per annum [1.0% monthly].**
- *How Fees Are Set:* Every legal matter is different from every other legal matter. Your Attorney will draw upon experience in establishing an initial retainer and any subsequent retainer; however, we cannot and will not warrant that your case can be handled for a fixed fee or fee cap except in only the most limited, uncontested cases. Fees for professional services rendered are based on many factors, including time and labor required, novelty and difficulty of issues involved, skill requisite to perform the services properly, likelihood that acceptance of this particular employment will preclude other employment of your Attorney, fees customarily charged for similar services in this locality, the values and relationships involved and results obtained, time limitations imposed by the client or courts or circumstances, and the Attorney's experience, reputation, and ability.
- *Fee Disputes:* This lawfirm is committed to rendering quality legal services for a reasonable fee. If you believe that the fees charged are unreasonable, this firm participates in the Denton County Bar Association Fee Arbitration procedure, which allows you and the firm to present information about any fee dispute. The decision of the Fee Arbitration Committee is binding upon both the attorney and the client.

Conflict or Disagreement

In the event that any disagreement, dissatisfaction, or conflict of interest arises between you and the Law Firm, you must notify us immediately and employ every good faith effort to resolve any problem, just as we will. Without notification, we will not be able to resolve the conflict.

Termination of Employment

- Sometimes it is necessary to conclude the Attorney-Client relationship. Therefore, please be aware of the

following terms and conditions of termination:

- *By Law Firm:* The Law Firm may withdraw from representation at any time if (a) representation will result in violation of rules of professional conduct; (b) you persist in or use the Law Firm's services to accomplish a course of action reasonably believed to be criminal or fraudulent; (c) you insist upon pursuing an objective the Attorney considers repugnant or imprudent or with which the Attorney has fundamental disagreement; (d) you substantially fail to fulfill an obligation to the Law Firm, including payment of fees as agreed, after you have been given reasonable warning; (e) representation will result in an unreasonable financial burden on the Law Firm or has been rendered unreasonably difficult by you; or (f) other good cause.
- *By Client:* The Law Firm will immediately undertake withdrawal from representation if discharged by you. You must communicate the discharge in writing to the Law Firm. Notwithstanding your desires, an Attorney's withdrawal from a suit requires Court approval.
- *Results of Termination:* In the event of termination, the Law Firm will take steps reasonably practicable to protect your interests, including giving reasonable notice to you, allowing time for employment of other counsel, surrendering papers and property to which you are entitled, and refunding unearned fees. However, the Law Firm may retain papers relating to you and the matter undertaken to the extent permitted by law.
- *Contractual Obligation:* In the event of termination, whether by you or the Law Firm, you remain obligated to pay then-earned professional fees and incurred expenses and costs and must pay same pursuant to the terms of the Agreement. In the event of non-payment, any action to enforce payment or collection of amounts dues will be maintained in Denton County, Texas and you will be responsible for attorney's fees and costs incurred in enforcement and collection.

No Representation of Results

Because every legal matter is different, and since many human factors are involved, neither your Attorney nor the Law Firm can or will warrant or represent results of representation nor recovery or reimbursement of fees or costs. Statements by anyone in the Law Firm on these matters are opinions only.

Applicable Professional Rules

All aspects of the Attorney-Client relationship are subject to the Texas Disciplinary Rules of Professional Conduct. Therefore, we must sometimes decline to take certain steps that you may request. Further, although not every complaint against or dispute with an Attorney involves professional misconduct, the State Bar Office of General Counsel, which investigates and prosecutes professional misconduct, will provide information about how to file a complaint by calling 1-800-932-1900.

Client Information on Attorney-Client Relationship

Our Handling of your Case

You are retaining the "Law Firm" of DAVID S. BOUSCHOR II, P.C., Attorney and Counselor at Law, comprised of an Attorney, a legal assistant, secretaries, and office manager. While your case will be handled primarily by your Attorney, it is unusual for only one person to do everything in your case. Therefore, professional services are rendered and work is assigned, as appropriate and reasonable, to the Attorney or a competent legal assistant according to the level of expertise and experience required, familiarity with your case, and work and trial schedules. Because we draw upon the experience and expertise of every member of the Law Firm, please feel free to speak with the Attorney or legal assistant if you cannot reach your Attorney.

Relationship of Attorney and Client

- *Loyalty:* You are assured of your Attorney's and the Law Firm's complete loyalty. The opposing party, whether a present/former spouse or family member, is not our client and we will do nothing for or on account of anyone else except upon your instructions after consultation. Don't misunderstand your Attorney's dealing with other lawyers on a friendly basis. Professional and common courtesy dictates that we maintain good relations with other lawyers. You will find that good lawyers are perfectly capable of zealously representing their client in court or in negotiations, then resuming a more friendly demeanor when the controversy is over. Your interests and our loyalty are always paramount.
- *Confidentiality:* **Every communication between Attorney and Client is confidential.** Confidentiality is our professional obligation, enforced by law and the Texas Disciplinary Rules of Professional Conduct. Because legal assistants and office staff will be handling your file and discussing your case with you and your Attorney, you should rely upon their confidentiality and cooperate with them just as though you were dealing directly with your Attorney. Anything your Attorney tells you should also remain confidential. **Do not disclose to anyone any communication with your Attorney, verbal or written.** Discussing your case with family or friends waives the confidentiality protection afforded to these communications.
- *Honesty and Completeness:* You must be **totally and completely honest** with your Attorney and provide full information on anything pertaining to your case. Clients often think that some little fact is insignificant; however, that fact may be crucial and possibly the turning point in your case. Remember, the laws are complex and intertwined; don't leave any details out. Your Attorney will be in a poor position to help you if they don't know all the relevant facts, **including any facts which may be embarrassing or hurt your case.** Your Attorney can do something about harmful facts if they know about them in advance and therefore not be as harmful as you think; failing to disclose the full truth will usually give rise to a worse result
- *Current Personal Information:* You must keep this Law Firm informed on your most current address, phone numbers, and E-mails if applicable. Failure to do so makes your representation by this Law Firm considerable harder and more expensive. In the most extreme cases, if the failure to keep personal information current renders representation impossible, the Law Firm will have to withdraw from representing a client.

Scope of Representation

Your "Agreement for Professional Legal Services" specifies the particular legal matters for which you have retained the Law Firm, and representation is confined to that matter. If you wish your Attorney to address or handle another legal matter, you must separately retain the Attorney for that purpose. "Professional Legal Services" in the "Agreement for Professional Legal Services" and this Guidelines and Policies and Procedures Statement mean services rendered to you or on your behalf by the Law Firm and its attorneys, legal assistants, and staff in the preparation, prosecution, and defense of your legal claims, rights, and causes of action specified in the Agreement, including but not limited to telephone calls, conferences, meetings, settlement negotiations, court appearances, depositions, legal and factual research and discovery, acquisition and preparation of evidence, pleadings, documents, discovery, and correspondence, and preparation for court appearances, conferences, and meetings.

Time Pressures and Constraints

We fully understand that your legal matter is one of the most important focuses in your life right now. At the same time, the Attorney's other clients likewise are singularly focused on their legal matter. As a result, the Attorney must effectively manage each Client's legal matter while endeavoring to provide the best and fullest legal services to each client. Please remember that **an Attorney's time is usually controlled by others** (i.e. Courts, Judges, docket calls, trial settings, depositions, and client conferences). An Attorney is often required to be in Court for long periods on very short notice or in a trial that lasts several days.

Coordination with Other Professionals

It is often necessary to obtain information from and work with other professionals that have rendered services to you, including accountants, tax preparers, doctors, psychologists, counselors, or others. Please let us know of each professional with whom you have worked or that has relevant information. If the employment of a professional becomes necessary during your case, please let us know your preferences.

Views on Litigation

Today's society, business arrangements, and resulting legal rights and obligations are complex and often a difficult proposition for anyone, regardless of the circumstances. We have no bias for or against any particular legal position. Our only biases are in favor of assisting our clients in making decisions that are right for their own well-being and diligently advocating their rights after we and our clients are sufficiently apprised of all the facts as well as our clients' rights.

Settlement Negotiations

Unless you are specifically instructed by your Attorney, we strongly advise that you limit communications with the opposing party. **Under no circumstances should you communicate with the other attorney, the Judge, or court personnel.**

If you feel that settlement is best for you, or that you wish to undertake settlement discussions on your own, please advise your Attorney immediately. Not only must we not work at cross purposes, but even settlement has significant legal consequences.

General Probate/Guardianship Guidelines

These are guidelines for general information only and are not intended as a substitute for specific legal advice.

Jurisdiction and Venue

Almost invariably, the court and county in which your case must be filed will be determined by the county of residence of the deceased or proposed ward or the county in which the principal estate is located. Your attorney will advise you about these factors.

Phases of Litigation

- (1) *Presentation of Claim:* The attorney must formally present the claim in writing to the party against whom recovery is sought. This presentation is subject to time limitations and other requirements, and the opposing party must be given sufficient time to respond.
- (2) *Commencement of Suit:* Lawsuits are commenced by filing a petition (a general statement of cause of action, i.e. how you were harmed, who is liable, and remedies/ damages sought). The party filing the petition is called 'Plaintiff'; the other party is the 'Defendant'.
- (3) *Notice to Opposing Party:*
 - (a) *Generally:* The Defendant must be given proper and timely notice of suit, allegations against them, and the time and place for responding. Failure to give required notice prevents continuation of suit or entry of judgment. There are several ways to do this, as noted below.
 - (b) *Citation and Service:* The usual procedure for giving notice of a lawsuit is by "Service of

Process", where the Attorney requests the Clerk to issue a citation and have the Sheriff or other agent "serve" the citation and a copy of the petition upon the Defendant. It is simply delivery of papers and does not require the Defendant's signature or response.

- (c) *Alternative Service*: If the Defendant has left the jurisdiction, is not subject to service in Texas, or difficult to locate, it is possible to proceed by having citation served in an alternate manner. There are, however, certain special problems and exceptional expenses involved in this procedure which will be discussed if appropriate and applicable to your case.
- (4) *Appearance and Answer*: After receiving notice of suit, the Defendant files an "Answer", which is usually a 'general denial'. This simply states they are appearing in the case and requires the Plaintiff to prove the basis for liability and damages sought. A Defendant's failure to timely file an answer results in Plaintiff obtaining a default judgment.
- (5) *Discovery*: No legal matter can be resolved without obtaining accurate and complete information regarding the subject matter. This information is obtained informally and formally and usually involves obtaining information from you, from the opposing party, and from other persons or entities that have knowledge or information. This is commonly referred to as the "**Discovery Phase**" of a case. Throughout the case you will be requested to provide your attorney with as much information in as much detail as possible that you have in your possession or to which you have access. You will be provided with certain forms to aid you in this task. **Always be diligent and thorough.** Provide as much information as you have, even if you don't have all of the requested information. In many cases your Attorney will send formal requests for information to the opposing attorney. These are often in the form of 'Interrogatories' (questions the other party must answer under oath) and 'Requests for Production' (specific documents and other tangible items required to be produced). Another form of formal discovery is a 'Deposition' (a party or witness gives testimony under oath before a court reporter). You should expect to be on the receiving end of these types of discovery requests.
- (a) Barring agreement with opposing counsel or by order from the Court, Texas law requires counsel to retain discovery responses for a period of two (2) years from the date your case is finalized.
- (6) *Negotiation/Settlement Process*: When your Attorney is thoroughly informed about the case and understands your objectives and preferences, a conference will be scheduled to discuss initial settlement. While your Attorney is guided by your objectives and preferences, you will also be advised regarding realistic expectations and possible results. It is invariably preferable to avoid having your legal matter become a bitter conflict or drag on in contested hearings. In most situations it is possible to negotiate an agreement settling all issues and briefly appear in Court at the end of the negotiation process to obtain court approval of the settlement. We attempt to handle our cases this way whenever reasonably possible. Remember that compromise lies at the core of negotiations. A good negotiator begins the process by asking for more than what they would actually settle for and seldom reveals the "bottom line" or minimum acceptable position. Therefore, unless directed by your Attorney, **we strongly recommend that you not discuss settlement of any issues with the opposing party nor tell the opposing party what you are willing to settle for. You should bear in mind that the results that can be obtained in a negotiated settlement depend in large part on the results that would probably be obtained as the result of a contested hearing or trial if the issues were presented to the Court to decide.** This means two things: First, your Attorney's advice will be based in large part on what your Attorney reasonably believes would be the result ordered by the Court; Second, you must be prepared to go to Court if the opposing party is unwilling to agree to what you and your Attorney believe is the proper settlement or if you are unwilling to agree to the opposing party's settlement offer.
- (7) *Settlement Agreements and Agreed Judgments*: If an agreement is reached through negotiation, it will be reduced to writing in the form of a settlement agreement. Many times the parties will agree to dismiss the case and not enter a judgment as a condition of the settlement agreement. The words and terms used in settlement agreements and judgments are always an important part of the case since they will be in force for a very long time. Sometimes the parties have a very different perception of the agreement when it is reduced to black and white; therefore, be patient while these documents are

being prepared.

- (8) *Contested Hearings and Trial:* If negotiations do not produce a settlement, whether temporary matters or final resolution of all issues, your only recourse is to present the evidence and arguments in support of your position to the Court for ultimate determination. Most trials are heard by a judge sitting alone without a jury. However, you have a right to request a jury trial in some cases to decide certain questions. Your Attorney will advise you about this decision.

(a) Although our Law Firm is committed to saving clients the time and expense of contested hearings by successfully negotiating a desirable agreement, you should not be afraid of the experience of a contested hearing or trial. Contested hearings and trials seldom have the tension or spectacle of the trials seen on "L.A. Law" or "Perry Mason". Moreover, your Attorney will work with you in fully preparing your testimony. Your best preparation for any contested hearing is to relax and tell the truth when called to testify.

- (9) *Final Judgments:* Your legal matter will be final on the date the Court signs the judgment. However, a new trial may be requested or an appeal may be filed if significant grounds exist for setting aside or overturning the final judgment.

IF THERE ARE OTHER ISSUES THAT YOU FEEL SHOULD BE SPECIFICALLY ADDRESSED, DISCUSS THEM IN DETAIL WITH YOUR ATTORNEY.

9/04