



## **CHECKLIST FOR ATTORNEYS AD LITEM FOR UNKNOWN HEIRS IN DETERMINATIONS OF HEIRSHIP**

### **Judge Sheila Garcia Bence, County Court at Law No. 4**

You have been appointed by this Court pursuant to sections 53.104 & 202.009 of the Texas Estates Code (TEC) to represent various parties in an heirship determination. Please read these two sections so that you have an understanding of your duties and responsibilities. TEC 201.001-201.003 describe those persons entitled to intestate inheritance. Any proper determination of the parties you represent requires an understanding these sections, so please read and thoroughly understand TEC 201.001 – 201.003. Finally, the other sections in Chapter 201 of the Texas Estates Code can change the heirs in certain specific situations, so you should at least be familiar with those situations in which they apply.

As an attorney ad litem appointed to represent unknown heirs, you should perform at least the following tasks:

1. Review the pleadings and call the applicant's attorney to obtain contact information for the applicant and two disinterested persons who are knowledgeable of the facts of heirship. In general, this Court wants an heirship to be heard within six weeks of filing. Consequently, if you are not able to obtain the necessary information within 28 days of your appointment, please contact Court Administrator, Melissa R. King, at 956-574-8116 or melissar.king@co.cameron.tx.us
2. Contact the applicant and at least two disinterested persons who have knowledge of the facts of heirship, preferably back to the decedent's adolescence. **Attorneys for applicants must present three live witnesses at the hearing including two disinterested witness.**
3. Determine if there are any heirs of the decedent who were not listed in the application filed by the applicant (unknown heirs) or any heirs of the decedent who may or may not be listed in the application but who are minors or who suffer from incapacity (incapacitated heirs) or any heirs of the decedent who you and the applicant's attorney have not been able to locate (missing heirs). **Check decedent's obituary to verify heirship listing.**
4. File an answer on behalf of the potential unknown heirs, incapacitated heirs or missing heirs.
5. Send a letter by certified mail, return receipt requested, to any potential unknown heir(s) you have located that informs them that they may have an interest in the decedent's estate and that they should hire an attorney to protect their interest.
6. File a report with the court. This report should:
  - a) list the persons you contacted to verify your findings;
  - b) state that you have filed an answer; and EITHER
  - c1) confirm the application facts; OR
  - c2) list the name, address and phone number of any additional potential unknown heir(s) you have located, attach a copy of your letter to them, and provide a brief description identifying any additional potential missing or incapacitated heir(s) you did not locate, with a proposed share of the estate to be provided to all heirs, OR

c3) if you agree to the heirs listed in the application, but not in the division of the estate provided by the applicant, list the shares that you believe each heir should receive. TEC Section 201.101 describes how an inheritance is split if not all heirs are from the same generational level, so please read that section.

\*\* A word version of a draft report is provided at County Court at Law No.4's page of Cameron County's Website: <https://www.cameroncountytexas.gov/cameron-county-courts-at-law/#1588790450357-76ac34ac-0d10> click on "Probate & Small Estate Affidavit Forms, look in "Determination of Heirships."

7. Send a copy of your report to the applicant's attorney when you have completed your investigation and have complied with the steps listed above. Confer with applicant's attorney as to an appropriate date for the hearing on the application.
8. Appear at the hearing, cross-examine the applicant's witnesses as necessary, and make an oral report to the court at the close of the applicant's testimony. At this hearing, you represent incapacitated heirs, missing heirs, and any unknown heirs that you have not been able to locate. You do not represent unknown potential heirs that you have located and that you have instructed to obtain their own counsel.
9. Prepare an Appointee Fee Order on the attached form and submit it to the Court at your hearing.

**You will receive a flat fee of \$500.00 unless, prior to any hearing, you file an application to be paid on an hourly basis and obtain the Court's permission to be paid based upon itemized time.**

**In particular, this Court does not want to pay attorneys ad litem or their staff to conduct complex genealogical work without prior determination of qualifications. If you determine that your heirship needs more than a modest internet search, please include in your report that the applicant's attorney should employ a genealogist to locate missing heirs.**