



Harris County Probate Courts

The Ad Litem Manual for Heirship Proceedings

Prepared by

The Honorable Steve M. King
Tarrant County Probate Court Number One

Tarrant County Courthouse
100 West Weatherford, Rm. 260-A
Fort Worth, Texas 76196-0241

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The Honorable Christine Butts
Harris County Probate Court Number Four

Adapted for Harris County Probate Courts

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A. Introduction

All heirship determinations require (1) the appointment of an Attorney Ad Litem and (2) citation by publication. Tex. Prob. Code 53(c); Tex. R. Civ. Proc. 244.

If you are appointed as an Attorney Ad Litem in an heirship proceeding in Harris County, you should become familiar with the Courts' guidelines, "When There is No Will Key Points for Filing an Heirship and/or Administration," available on the Courts' website. Although designed for the applicant's attorney, the document covers information that every Attorney Ad Litem in this court should know.

The following materials are designed to assist you, the practitioner acting as Attorney Ad Litem, in adequately representing your clients, even though you (in most instances) will never meet them and (in some instances) they won't "exist," except in legal fiction.

Two general situations will be addressed: Proving Up the Obvious vs. Solving an Old Mystery. In many cases, you merely will be verifying otherwise straightforward family history facts. In other cases, the existence of heirs will not be disclosed, either from ulterior motives or honest ignorance. In yet other situations, the existence of heirs "on the other side of the family" is simply a mystery.

1. The "Plain Jane" Case

If your principal job is to confirm (a) that the application is correct, (b) that there appears to be no controversy in the proceeding, and (c) that the applicant has carried his/her burden of proof, your checklist is relatively simple. These are by far the most common cases; and for these cases, your fee should be in the range of \$400 to \$600.

2. The "Mystery" Case

If it appears that there are heirs whose very existence as well as whereabouts are unknown, your job is much harder. The applicant may need to hire a genealogist or skip tracer. Keep your time, and understand what resources will be available to pay your fee. Your checklist is constrained by your imagination, the size of the estate, and what the judge considers to be a reasonable effort to locate the "missing" heirs.

B. Statutory Bases for Heirship Proceedings

Heirship is the relationship between a decedent (a person who dies owning or entitled to property and who leaves no will, or whose will fails to effectively dispose of all of that person's property) and an heir (the person designated by the applicable Laws of Descent and Distribution to receive the property). Tex. Prob. Code §48.

1. Application. Tex. Prob. Code §49.

A representative, a person claiming part of the estate, or a secured creditor can apply to determine heirship. The application should contain the information listed in Tex. Prob. Code §49(a)(1)-(8), and shall be supported by an affidavit stating that all facts are true and that nothing has been omitted.

2. Citation. Tex. Prob. Code §50.

This citation is different from service required for an administration.

(a) Harris County Probate Courts require personal service on, or an appropriate waiver from, all distributees whose names and addresses can be found with reasonable diligence. A parent, managing conservator, guardian, Attorney Ad Litem, or Guardian Ad Litem of a distributee may waive service of citation for an heir under the age of twelve (12).

(b) Publication service on all unknown heirs and heirs whose addresses cannot be found in the county of the proceeding and the county of the decedent's last residence.

(c) Posted citation in the county where proceedings are commenced and where the decedent last resided, except where publication is used as in (b).

3. Appointment of Attorney Ad Litem

A court must appoint an Attorney Ad Litem for all unknown heirs. Tex. Prob. Code §53(c). A court may appoint an Attorney Ad Litem for all the living heirs whose names or whereabouts are unknown or who are incapacitated if, in the court's discretion, it finds that the appointment is necessary to protect the interests of the living heir or incapacitated person. Tex. Prob. Code §53.

Each Attorney Ad Litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding. Tex. Prob. Code §34A.

4. Evidence in Heirship Proceedings

As a general rule in an heirship hearing, Harris County Probate Courts require the live testimony of two disinterested witnesses with personal knowledge regarding the family history of the decedent and the heirs. This includes information regarding identity and relationship of the family members, births, deaths, and marriages, as well as the order of deaths and marriages.

Harris County Probate Courts require all evidence from an heirship hearing to be reduced to writing and subscribed and sworn to by the witnesses. Tex. Prob. Code §53(a).

Should a witness not be able to provide live testimony, the testimony of the witness may be by deposition, written or oral, taken in accordance with the Texas Rules of Civil Procedure, except as modified by the Probate Code. *If depositions are used, the Attorney Ad Litem must participate in the deposition process so that the opportunity to cross-examine the witnesses is preserved.* The methods for using depositions in a probate proceeding are summarized in the Courts' guidelines, "When

There is No Will Key Points for Filing an Heirship and/or Administration."

Affidavits of heirship and judgments concerning heirship or family identity, as authorized by Tex. Prob. Code §52, are prima facie evidence of such matters, but only if they have been of record in the records of a county or district court for at least five years by the time the instant heirship proceeding is commenced.

Any errors contained in such recorded instruments may be proved by interested parties during the heirship proceeding. Id. This provision is not exclusive of any other methods of proof available under other rules or laws. Id.

What this means is:

- (a) Affidavits of heirship filed expressly for the current proceeding are inadmissible and essentially a waste of time. *Compton v. WWV Enterprises*, 679 S.W.2d 668 (Tex. App.—Eastland 1984, no pet.)
- (b) Recorded documents such as birth, marriage, and death certificates are admissible because of Tex. Evid. Rule 902(1) ("Domestic Public Documents Under Seal").
- (c) Written statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts or tombstones, etc. are specifically excepted from the hearsay rule, Tex. Evid. Rule 803(13), but are subject to the twenty-year authentication requirement of Tex. Evid. Rule 901(b)(8).
- (d) On the other hand, oral statements of reputation concerning personal or family history, Tex. Evid. Rule 803(19), are hearsay exceptions without any authentication requirement other than a demonstration of personal knowledge. Tex. Evid. Rule 901(b)(1).

The lack of specifics regarding testimony in the heirship provisions of the Probate Code would indicate that, beyond requiring “that level of proof which would create in the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established,” *Transportation Ins. Co. v. Moriel*, 879 S.W.2d 10, 31 (Tex. 1994), the judge (or jury) in an heirship proceeding is guided by their own sense of what is right, just, and true.

5. Heirship Judgment. Tex. Prob. Code §54.

To be a final judgment, the order declaring heirship must include:

- (a) The names and places of residence of the heirs;
- (b) The respective shares and interests in the real and personal property of the estate. NOTE: No heirship judgment of the Harris County Probate Courts will reflect only community property and no separate property, nor will it reflect only personal property and no real property. It is extremely common for additional property to be discovered. If the new property is not addressed in the judgment, another heirship hearing will be necessary. Make sure the suggested form of judgment categorically includes the division of every type of property; and
- (c) Whether the proof is deficient in any respect.

If all of the above elements are present, the judgment is final and may be appealed. Tex. Prob. Code §55. However, an heirship judgment that does not include all the elements required by Tex. Prob. Code §54 is not a final judgment. *Estate of Loveless*, 64 S.W.3d 564, 570 (Tex. App.—Texarkana 2001), subsequent appeal after remand, 2003 Tex. App. Lexis 676 (Tex. App.—Texarkana 2003).

C. Scope of “Heirship Determinations”

In Harris County Probate Courts, “heirship determinations,” for purposes of Tex.

Prob. Code §53(c) and requiring ad litem appointments, will include:

- 1. Heirship determinations incident to either a dependent or an independent administration;
- 2. Heirship determinations where no administration is sought or pending; and
- 3. Heirship determinations pursuant to declaratory judgment actions where it is necessary to determine heirs because of intestacy under a will, trust or other instrument, etc.

D. Duty and Standing of the Attorney Ad Litem

It is the duty of the Attorney Ad Litem to defend the rights of his involuntary client(s) with the same vigor and astuteness he would employ in the defense of clients who had expressly employed him for such purpose. *Estate of Tartt v. Harpold*, 531 S.W.2d 696, 698 (Tex. App.—Houston [14th Dist.] 1975, writ ref’d n.r.e.) (quoting *Madero v. Calzado*, 281 S.W. 328 (Tex. Civ. App.—San Antonio 1926, writ dism’d)); *Estate of Stanton*, 2005 Tex. App. Lexis 10901 (Tex. App.—Tyler 2005, pet. denied) (dependent administration and heirship).

The Attorney Ad Litem in an heirship proceeding appointed under Tex. Prob. Code §34A was found to have both standing and authority to oppose the appointment of a temporary administrator and apply for the appointment of an independent third-party administrator, to the same extent as if his clients had been present. *Estate of Stanton*, 2005 Tex. App. Lexis 10901 (Tex. App.—Tyler 2005) (dependent administration and heirship); Tex. Prob. Code §§3(r), 76(c), 131A(h)(1).

E. Pointers on Different Types of Cases

1. The “Plain Jane” Case

Pigeonhole the situation: if it is simple to start with, it should end up that way. If it is complicated, learn how to chart your findings and explain the complications so even the judge can understand it. It is not your job to duplicate

all efforts made by the attorney for the Applicant. You simply check the other guy's homework, not do it all over yourself.

2. The "Mystery" Case

On the other hand, if there is an allegation or any indication that there are heirs whose identities are unknown, you must investigate further.

The only known surviving heirs may be from only one side of the family and there may be literally no one who can easily tell you who the other heirs might be. While it is nigh impossible that there are no heirs on a particular side of a family, it may not be possible, given the constraints of the information, your abilities, or the available resources of the estate, to track down the whereabouts of those heirs who are unknown within a billable timeframe that is reasonable.

The secret is determining where the "tipping point" is in devoting billable time to the search versus the hope of discovering the answers. When in doubt, schedule a conference with the court and all other counsel and get your marching orders in a clear fashion.

Caveat: Anyone trying to suppress information regarding the "black sheep" of the family will, of course, present you with a straightforward picture of a happy family – minus the black sheep.

In complicated cases, a fair amount of deductive reasoning and intuition (or genealogical research experience) must sometimes be employed.

Using appropriate forms to record your data, obtain as much additional information as possible to build a "family tree," including identity and location information on all family members (not just heirs), with dates and references to documentation.

Having every little scrap of information recorded and easily available can be invaluable. If the record keeping gets too cumbersome,

specialized genealogy programs such as *Family Tree Maker* © can be a lifesaver.

In an appropriate situation (and on prior approval by the court), professional forensic genealogists may be retained.

F. Due Diligence

As with all ad litem appointments, common sense must be employed, given the size of the estate and the apparent simplicity or complexity of the facts. The Attorney Ad Litem in an heirship proceeding, at a minimum, should do the following.

1. Before the Day of the Hearing

(a) Contact the applicant's attorney to get the following:

1. Copies of the pleadings;
2. The death certificate and any other "official" documentation affecting descent and distribution (divorce decrees, judgments of adoption, termination orders, etc.) (you don't need to get certified copies but you might look at them for comparison purposes);
3. The names and contact information of family members and disinterested witnesses who might be knowledgeable of the facts of heirship.

(b) Verify with the clerk's office that the decedent did not have a will on deposit. (rare, but not impossible, and the clerks have a different index.)

(c) Review all relevant pleadings, documents, waivers, and citations, including the order appointing you and the published citation.

(d) File an answer on behalf of your clients. Doing so "joins the issues" and properly gets you in court.

(e) Personally interview the applicant to verify the heirship facts and obtain the names and whereabouts of persons knowledgeable of the heirship facts.

(f) Contact at least two disinterested persons, if not all of the persons known to

have knowledge of the heirship facts – not just the one(s) you may be referred to by the family – and verify the information provided. Telephone interviews are okay as long as you can determine to whom you are really speaking. If possible, try to get someone who has no particular reason to try to please the Applicant.

(g) After about three hours of billable time are spent, you may want to check back with the court for guidance as to how much time should be spent, even in a complicated case.

(h) Make an independent determination whether the information provided is sufficient, whether there are heirs not listed in the application, whether intentionally or unintentionally omitted, who may be minors, otherwise incapacitated, or whose identity or whereabouts may be unknown. It is always necessary for the ad litem to ask the impolite questions: whether there were any other marriages, whether there were any other children (born in or out of wedlock), etc.

(i) If the issue of common law marriage or the lack thereof presents itself, the ad litem should look for affidavits of “single-hood” by the alleged common-law spouse to obtain or retain public assistance, health insurance, life insurance, military benefits, social security. Note that if there is an alleged common law spouse, the hearing needs to be on the regular docket, not the uncontested docket – even if everyone seems to agree.

(j) If you have located a Tex. Prob. Code §53(c) heir, the applicant should prepare an amended application to determine heirship. If they are unwilling to do so, consider seeking security for costs, Tex. Prob. Code §12, or setting a conference with the court. You must inform any newly discovered heirs that you do not represent them other than to make their presence known to the court.

(k) Confer with applicant’s attorney as to an appropriate date for the hearing on the application. Cases that may need extra

testimony should normally be set on the regular docket. As noted above, for example, heirships with an alleged common-law spouse should be set on the regular docket, not the uncontested docket. If there is any other reason that you think the case might need to be heard on the regular docket, please talk to the applicant’s attorney, the court, or both. If you uncover an unusual fact situation – or the situation is not what it appears – find some way to plead it.

(l) Confer with applicant’s attorney about your fees. The judge will decide how much to award, but applicant’s attorney should not be surprised by your request. More will follow about fees.

(m) If you have never attended an heirship hearing in the Harris County Probate Courts, go and watch several heirship hearings on the uncontested docket to get an idea of the flow and procedure.

2. Hearing Day – Before the Hearing

(a) While you are still out in the hall before your hearing, review the proposed order that is in the file to make sure it accurately reflects the names and locations of the heirs and correctly calculates the distribution. Compare the judgment with your notes.

(b) Introduce yourself in person to the witnesses. Please arrive early so that you may visit with them briefly before the hearing (obviously, you should have spoken with them before).

(c) If you are running late, call the court coordinator or the applicant’s attorney, or both. The hearing cannot proceed without you.

3. Hearing Day – In the Hearing

(a) While in a hearing, the best attorneys are aware of the court reporter and how to make it easier for the court reporter to hear them and the witnesses. Be aware, however, that some courts do not use a court reporter in uncontested heirship

proceedings. Please do not turn your back to the court reporter, speak up and do not speak while someone else is speaking.

(b) When the attorney for the applicant passes the witness, NEVER simply say: “No questions.” If nothing else, ask: “Since we last spoke, is there anything that you recall regarding the decedent that you did not tell me at that time?” But even in straight forward cases, that is not enough if the applicant’s attorney has not asked sufficient questions to prove the heirship facts – if that happens, you need to fill in the record.

(c) If you have anything but a straight forward case, you need to ask questions. For example, ask about relationships that might have lasted more than a few months. Ask about any claims of paternity or court proceedings for paternity or legitimization. Ask about any direct knowledge of children put up for adoption or about deceased siblings who had children. See the following suggested cross-examination questions. Obviously, the relevance of particular questions will depend on the specifics of the case.

1. Are you aware of any relationships the Decedent had for more than one year?
2. Do you know if any of these relationships resulted in the birth of a child?
3. Are you aware of any claims of paternity or paternity actions brought in court against the decedent?
4. Are you aware of any legitimization claims or court proceedings for legitimization brought against the decedent?
5. Do you have any direct knowledge of paternity /or marriage/ of children?
6. Do you recall any discussions or have any direct knowledge regarding deceased siblings, nieces and nephews?
7. Do you recall any discussions or have any direct knowledge of the decedent admitting to being the father of a child?

8. Since we last spoke, is there anything that you recall regarding the decedent that you did not tell me at that time?

(d) Train Wrecks. If something unexpected happens and the order is not going to be signed at the hearing, or the hearing otherwise turns into a train wreck, try to think fast and see if some of the work can be salvaged. For example, maybe the court will hear early testimony and rule on the application “subject to “ whatever curative matters still need to get done. Maybe the court can hear some of the testimony, have it reduced to writing, and not have to repeat that testimony in the future.

G. Time Records and Fee Applications

1. Fee Standards

It is the court’s duty to ensure that estates of decedents pay only for “reasonable and necessary” attorney’s fees and expenses. See Probate Code §242. Many courts, including the Harris County Probate Courts, have adopted a written policy regarding attorney fees. The Harris County Probate Courts’ fee standards are available on the Courts’ website and in the court coordinator’s offices.

2. Typical Fees

Determine early on whether you have a “Plain Jane” or a “Mystery” case. If it is a Plain Jane case, you should expect to receive between \$400 and \$600 as a fee unless the Court determines that additional time is required due to the circumstances of the particular matter.

3. Complex Cases

If you have a “Mystery” case, schedule a conference with the court and all other counsel to get some idea of how far you can go (time-wise) and any procedural suggestions you might get.

4. Time Records

Keep your time in all cases. Only the ad litem is appointed, not the law firm. When an

ad litem is appointed, the appointing court's intent is that the appointed attorney acts personally as an officer of the court. The attorney's law firm is not the appointee. An ad litem may not be compensated for time expended by other attorneys, unless the court has made a specific finding that the other attorney's services were reasonable and necessary under a particular extenuating circumstance. *Goodyear Dunlop v. Gamez*, 151 S.W.3d 574, 588 (Tex. App.—San Antonio 2004, no pet.) After you have spent about three hours on the case, unless you can see the light at the end of the tunnel, check signals with the court.

5. Application for Payment of Fees

Unless the fee is under \$500, you must file an itemized Application for Payment of Fees with a narrative of time expended and services rendered.

H. Dealing with the Clerk's Office and the Court

1. The Clerk's Office

Remember, the clerk is a separately-elected public official and is not an employee of the courts. Just because you tell something to someone in the clerk's office that does not mean the courts automatically know about it – and vice versa. By the same token, when you file something with the clerk (which is the only place you can file it), if you want the court handling the matter to know about it immediately, be sure to send such court a courtesy copy.

2. Court Staff

If you get to know the Courts' personnel and their functions, you will know where to go to get a problem addressed. Please see the Court's website for this information.

3. Paperwork

Applicants should refer to the Courts' guidelines, "When There is No Will Key Points for Filing an Heirship and/or Administration," which is posted on the Courts' website.

Because the Courts review all documents prior to the hearing in uncontested matters, it is desirable that all paperwork be in the file prior to the hearing. This policy ensures that hearings go more smoothly for participants who are already dealing with the stress of someone's death. Attorneys benefit as well from smoother hearings and can avoid having errors pointed out to them in front of their clients.

An Attorney Ad Litem should be familiar with the court's paperwork guidelines and, ideally, should follow them. At a minimum, an Attorney Ad Litem should file an answer soon after being appointed.

I. Distribution of the Estate: Specific Concerns

1. Listing and Proving Beneficial Interests

Shares of the Estate should be noted as fractional interests ("1/3") rather than a percentage ("33.33%"). Fractional listings are more definite than decimal listings. How did we get here? Like your junior high math teacher told you, you should "show your work" in your distribution chart. If one set of cousins gets 1/5 each and another set gets 1/10 each, indicate the predeceased ancestor that made it be that way. Don't make the judge guess.

2. Imbedded Heirships

If you are running down the list of heirs and determine that one of the heirs has survived the Decedent, and then subsequently died, the trail ends there for this proceeding. For purposes of this case, the relevant determination is whether that deceased heir has had an estate administration opened or not. If so, any distributive share is payable to the personal representative of the estate. If not, the distributive share of the deceased heir is payable to the estate of the deceased heir.

Do not attempt to "double-up" and go on to determine the heirship of an heir who survived, but then died unless a separate heirship

proceeding has been filed on that heir's behalf. The court can act only within its jurisdiction, and that jurisdiction (for these purposes) is determined by the pleadings and citation for the person whose heirship is being determined. An attempt by the court to act outside of or beyond its jurisdiction produces a void result. *Kowalski v. Finley*, 2004 Tex. App. Lexis 8393 (Tex. App.—Houston [14th Dist.] 2004, no pet.).

3. Half-Blood Heirs

High divorce rates and serial marriages make encountering half-blood heirs a real probability. See Tex. Prob. Code §41(b), and consider carefully the interest of half-blood heirs.

4. Effect of Disclaimers

The order showing the identity of the heirs and their respective shares of the estate should not reflect the effect of any disclaimers or transfers executed pursuant to Tex. Prob. Code §37A. *Welder v. Hitchcock*, 617 S.W.2d 294 (Tex. Civ. App.—Corpus Christi 1981, Writ Ref'd n.r.e.).

(a) A declaratory judgment action is the proper vehicle to determine if a disclaimer or transfer is effective for estate planning, tax purposes, or for creditor avoidance. *Tate v. Siepielski*, 740 S.W.2d 92, 93 (Tex. App.—Fort Worth 187, no writ). Such an action may be validly joined with the heirship proceeding to properly place before the court the legal effect of the disclaimer (in which case, make sure the case is set on the regular docket, not the uncontested docket). Otherwise, it is asking the court to render judgment on the legal effect of the disclaimer by taking several shortcuts – without sufficient citation, pleadings, testimony, and evidence.

(b) In *Welder*, supra, the appellants argued the language of the disclaimer statute created a legal fiction (“as if the person disclaiming had predeceased the decedent”) requiring a different distribution – one showing the effect of the disclaimer

as a part of the heirship determination. The Corpus Christi Court of Appeals rejected this argument, holding such an argument would require: (1) a finding that the Legislature intended to partially alter the order of descent and distribution set out in Tex. Prob. Code §43 by the enactment of the disclaimer statute; and (2) a finding that the effect of the disclaimer was to reorder and affect the distribution of the entire estate rather than “the property subject thereof,” referring only to the property over which the disclaimant had authority by inheritance. The court in *Welder* held that, by enacting Tex. Prob. Code §37A, the Legislature intended to affect only to whom a disclaimed share descends, and not the manner in which an entire estate is to be distributed.

5. The Slayer's Rule

Heirs convicted (or in a wrongful death suit, found by a civil court) of “willfully bringing about the death of the decedent” do not forfeit their right to inherit under Tex. Prob. Code §41(d). However, under Tex. Ins. Code §21.23, there is statutory exception to this rule, imposing a forfeiture. In addition, the courts of Texas have recognized the equitable right of a family member to seek the imposition of a constructive trust against the ownership interest of one who willfully brings about the death of a family member. See Branyon, *The Slayer's Rule Revisited*, 1996 Advanced Estate Planning and Probate Course, State Bar of Texas, and *Bounds v. Caudle*, 560 S.W.2d 925, 1977 Tex. Lexis 302, 21 Tex. Sup. Ct. J. 92 (Tex. 1977); *Medford v. Medford*, 68 S.W.3d 242 (Tex. App. – Fort Worth 2002, no pet.); *Mowbray v. Avery*, 76 S.W.3d 663 CC 041102, and *Admin. Comm. for the H.E.B. Inv. & Ret. Plan v. Harris*, 217 F. Supp. 2d 759, 2002 U.S. Dist. Lexis 16889 (E.D. Tex. 2002) (ERISA discussion).

6. DNA Evidence

A whole new world of proof is out there, but it is inaccessible if you do not follow the right procedures. Twenty-first century genetic

testing is available for use in heirship proceedings, but it must be accessed by instituting a Uniform Parentage Act proceeding under Tex. Fam. Code Chap. 160 with the heirship proceeding. Otherwise, you are stuck with the nineteenth century evidentiary standards of the probate code. For an extended discussion (and forms), see King, *Blood Will Out: The Use of DNA Evidence in Texas Estate Proceedings*, 30th Annual Advanced Estate Planning and Probate Course, State Bar of Texas.

J. Miscellaneous Practice Pointers

1. Understand the Intestacy Chart

Really understand the intestacy chart. See the Descent and Distribution chart located on Harris County Probate Courts' website.

2. Collect Information

Have the applicant's attorney furnish you with all necessary documentation and information. The applicants must bear the burden of proof; let them do the heavy lifting.

3. Collect Proof

Ask for documentation – get the best proof at the most reasonable expense.

4. Trust but Verify

Feeling a lack of cooperation? Get a feeling they are hiding something? Ask for a conference with the court and all other counsel. Do not just go along to get along. On the other hand, don't contest something just because you are unsure as to how to proceed. Be professionally skeptical. As President Reagan quoted to Gorbachev during the U.S.-Russia disarmament talks in the 1980s: "Doveray, no proveryay" (trust, but verify). See through prejudice and ignorance of the law. People are often defensive about what they perceive to be embarrassing family situations or lifestyles. The children of a deceased "black sheep" of the family may have been emotionally "written off" by the other family members with the rationalization "we were never close to them." Adopted-out children born out of wedlock are sometimes conveniently forgotten.

Appendix A – Answer of Attorney ad Litem in Heirship Proceeding

NO. _____

IN THE ESTATE OF

§
§
§
§
§

IN THE PROBATE COURT

NO. _____ OF

DECEASED

HARRIS COUNTY, TEXAS

ANSWER OF ATTORNEY AD LITEM

NOW COMES _____, appointed by this Court as attorney ad litem for the unknown heirs of the above-referenced Decedent, and denies each and every allegation in the Application to Determine Heirship and demands strict proof thereof.

The undersigned prays that the applicant take nothing and that all costs of court be adjudged against the applicant.

DATED: _____

Attorney Ad Litem for Defendants
[Attorney data]

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served upon the following counsel by certified mail and/or by facsimile transmission on this the ____ day of _____, 20__.

Name
Address
CMRRR #

[Attorney Name]

Appendix B – Application for Ad Litem Fees

NO. _____

IN THE ESTATE OF

§

IN THE PROBATE COURT

§

§

NO. _____ OF

§

DECEASED

§

HARRIS COUNTY, TEXAS

APPLICATION FOR PAYMENT OF APPOINTEE FEES AND EXPENSES

NOW COMES _____ (“Applicant”), and files this Application for Payment of Appointee Fees and Expenses, and in support thereof would respectfully show the Court the following:

1. Applicant was appointed as Attorney ad Litem to represent the unknown heirs of _____, Deceased, by Judge _____ of Probate Court No. ____ of Harris County, Texas, on _____, 20__.

2. Applicant has rendered necessary legal services and has advanced necessary expenses on behalf of this heirship proceeding, for the period of _____, 20__, through the date hereof, in the amount of \$_____. These services are described in Exhibit “A,” and in the affidavit of the attorney incorporated herein by reference for all purposes.

3. Such fees and expenses were necessary and reasonable. Sufficient funds will be available from the Decedent’s estate to pay the fees and expenses.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that the Court, after review and consideration, enter an Order authorizing Applicant to be paid such fees and expenses.

Respectfully submitted,

By: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served upon the following counsel by certified mail and/or by facsimile transmission on this the ____ day of _____, 20__.

Name
Address
CMRRR #

[Attorney Name]

Appendix C – Judgment Declaring Heirship

NO. _____

IN THE ESTATE OF _____, § IN THE PROBATE COURT
 DECEASED § NO. _____ OF
 § HARRIS COUNTY, TEXAS
 §

JUDGMENT DECLARING HEIRSHIP

On this day came on to be heard the sworn Application to Determine Heirship of the Estate of _____, Deceased, wherein _____ is the Applicant and is heir to Decedent’s Estate, and Decedent’s living heirs whose names are unknown are Defendants, and it appears to the Court, and the Court so finds that all parties interested in the Estate of Decedent have been duly and legally served with citation as required by law; that the Court appointed an Attorney ad Litem to appear and answer and to represent Defendants and such Attorney ad Litem did so appear and filed an answer for Defendants; that this court has jurisdiction of the subject matter and all persons and parties; that the evidence presented and admitted fully and satisfactorily proves each and every issue presented to the court; that Decedent died intestate and that the heirship of Decedent has been fully and satisfactorily proved and the interest and shares of each of the heirs therein.

The Court finds and it is **ORDERED** and **DECREED** by this court that the names and places of residence of the heirs of Decedent and their respective shares and interests in the property of Decedent are as follows:

Example 1:

Identification of Heir ¹	Community (Decedent’s one-half)	Separate Real Property	Separate Personal Property
Name Address Spouse	All	1/3 Life Estate	1/3
Name Address Child 1 Married Adult	None	1/4 Subject to life estate	1/6

¹ All children belong to Decedent and spouse

Name Address Child 2 Single Adult	None	1/4 Subject to life estate	1/6
Name Address Child 3 Predeceased Decedent	None	None	None
Name Address Grandchild 1 Adult Child of Deceased Child	None	1/8 Subject to life estate	1/12
Name Address Grandchild 2 Adult Child of Deceased Child	None	1/8 Subject to life estate	1/12
Name Address Child 4 Died after Decedent	None	1/4 Subject to life estate	1/6

Example 2

Identification of Heir²	Community (Decedent's one-half)	Separate Real Property	Separate Personal Property
Name Address Spouse	None	1/3 Life Estate	1/3
Name Address Child 1 Married Adult	1/8	1/4 Subject to life estate	1/6
Name Address Child 2 Single Adult	1/8	1/4 Subject to life estate	1/6

² Decedent's children from a prior marriage

Name
Address
Child 3 Predeceased Decedent

None

None

None

Name
Address
Grandchild 1
Child of Deceased Child

1/16

1/8
Subject to life
estate

1/12

Name
Address
Grandchild 2
Child of Deceased Child

1/16

1/8
Subject to life
estate

1/12

Name
Address
Child 4
Died after Decedent

1/8

1/4
Subject to life
estate

1/6

SIGNED on the ____ day of _____, 20__.

JUDGE PRESIDING

APPROVED AS TO FORM:

Attorney for Applicant

Attorney Ad Litem