

# Ellis County Court at Law No. 1

JUDGE JIM CHAPMAN  
Ellis County Courts Building  
109 S. Jackson  
Waxahachie, TX 75165



Updated September 2025

## **Special Pleading Considerations in Probate/Heirship cases involving Common Law Marriages, Adoptions by Estoppel, Property Characterization and other Issues that necessitate Separate Petitions**

Counselors,

Welcome to Ellis County Court at Law No. 1. Pleading considerations in Probate and/or Heirship matters where a Common Law Marriage, Adoption by Estoppel, Property Characterization or other issues are involved are procedurally tricky and are handled differently in different courts throughout the state. We want you to understand how this Court handles such matters as Separate Petitions so that the ensuing process is as smooth as possible for you and your client. *Please read this Guide carefully as it is designed to help you navigate the process and doing so will save you and your client time, trouble and money.*

Jim Chapman, Judge Presiding

### **Special Pleading Considerations in Probate/Heirship cases**

**A. Probate/Heirship Core Issues.** The core issue in a Probate case is whether a Will should be admitted to probate and any Will Contest thereof. The core issue in an Heirship case is who are the Decedent's heirs. Requests for Administration, also a core issue in an estate, should always be accompanied by either an Application for Probate or Heirship. Collectively these "Core Issues" are typically the initial filings in a Probate/Heirship case and require the standard Estates Code notice/posting provision encapsulated within the Code.

Motions for the appointment of a successor Executor or Administrator or removal of an Executor or Administrator may be filed within the probate case. Other motions for administrative matters within an Estate, such as setting aside the Homestead or Family Allowances, may also be filed within the probate case. None of these Motions require the Separate Petitions described below.

**B. Issues Peripheral to the Core Issues which necessitate a Separate Petition.** Common Law Marriage, Adoption by Estoppel, Property Characterization (separate or community), actions to Construe the Will and a request for the Court to approve a Family Settlement Agreement are issues that are commonly encountered within Probate/Heirship proceedings and relate to who has standing to claim a portion of the Estate, what property constitutes the Estate and/or who receives it. *The Court requires that these issues be plead in separate stand-alone actions, "Separate Petitions", which are typically in the form of Declaratory Judgments actions. These are civil actions and are subject to the Texas Rules of Civil Procedure and will have different and longer answer dates than the underlying Core Issue actions.* In any Separate Petition all beneficiaries and/or heirs must be served with personal citation. If any beneficiary or heir is incapacitated by age or infirmity an ad litem will be appointed to represent them regarding the Separate Petition.

- C. How to file the Separate Petitions within the Probate Case.** Any Separate Petition mentioned in B. above should be filed into the probate case. *These must be filed as stand-alone pleadings as the Texas Rules of Civil Procedure will apply to the citations issued for these causes of action rather than Estates Codes notice/posting provisions.* If multiple issues mentioned in B. above are plead for, they may be combined into one Separate Petition.
- D. Other Petitions in a Separate Civil Case.** All other civil petitions initiated by or against the administrator or executor should not be filed in the probate case but rather filed in their own stand-alone civil case. Creditor claims, while initially filed as a claim in the probate case, will require a separate civil case if the claim progresses to litigation.
- E. Timing of Hearings on Separate Petitions.** In a Will Contest the issues of Common Law Marriages and Adoptions by Estoppel are standing issues which should be addressed prior to trial of the Will Contest if the alleged spouse or child are not named in the Will. If any other party files a Motion in Limine to contest standing and its underlying facts, such motion will be heard by the Court, without a jury, prior to proceeding to the Will Contest. If there are no undisputed facts, and the standing issue is purely a question of law, a motion for partial summary judgment on standing may be brought; however, standing almost always involves contested underlying facts. If a Motion in Limine is sustained the Will Contest will be dismissed for lack of subject matter jurisdiction. If a Motion in Limine is overruled the Will Contest will proceed to trial.

In a contested Heirship Determination case the issues of Common Law Marriages and Adoptions by Estoppel may be heard at the same time as the Heirship Determination as it does not present the same standing issues as a Will Contest.