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OCT 02 2015

OPINION COMMITTEE

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October 2, 2015

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, TX 78711

RQ-0058-KP
FILE # RL-47830-15
I.D. # 47830

Re: Request for an Attorney General Opinion

Dear A.G. Paxton,

The Rusk County Clerk's Office maintains the records for probate proceedings occurring within the County. The Rusk County Judge typically presides over these probated proceedings. A question has arisen as to the interpretation of § 202.052 of the Texas Estates Code as it relates to the necessity of Citation by Publication. The Rusk County Clerk, Trudy McGill, has asked this office to request an Attorney General Opinion with the hope of resolving this question.

The Rusk County Judge has interpreted the statute to require Citation by Publication in all actions to declare heirship. The Estates Code addresses service of Citation by Publication in § 202.052. It reads as follows:

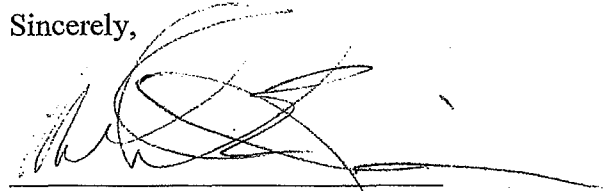
Sec. 202.052. SERVICE OF CITATION BY PUBLICATION WHEN RECIPIENT'S NAME OR ADDRESS IS NOT ASCERTAINABLE.

If the address of a person or entity on whom citation is required to be served cannot be ascertained, citation must be served on the person or entity by publication in the county in which the proceeding to declare heirship is commenced and in the county of the last residence of the decedent who is the subject of the proceeding, if that residence was in a county other than the county in which the proceeding is commenced. To determine whether a decedent has any other heirs, citation must be served on unknown heirs by publication in the manner provided by this section.

The County Judge relies on the last sentence of § 202.052 in his interpretation that every action to declare heirship requires citation by publication in case unknown heirs exist. This interpretation stands in conflict with that of a well-respected local attorney who contends that citation by publication is only necessary when Court comes to a determination, based on credible evidence, that an unknown heir may exist.

The question for your deliberation is "Does § 202.052 of the Texas Estates Code require citation by publication in all actions to determine heirship or is citation by publication only required when credible evidence is presented that raises the possibility of an unknown heir?"

Sincerely,



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