

The Intersection of Texas Probate and Personal Injury Law: Understanding Authority, Standing, and Capacity

By Kaitlin R. Goddard, JD

The Blum Firm, P.C. | kgoddard@theblumfirm.com



When a personal injury or medical malpractice matter involves a client who is incapacitated or has passed away, the legal landscape becomes significantly more complicated. Determining who may file suit, who may continue the litigation, and who ultimately receives the proceeds requires a nuanced understanding of both Texas probate law and the rules governing survival and wrongful death claims. These intersecting bodies of law often work together, and misunderstandings can result not only in procedural missteps but also in lost claims, dismissed cases, or improper distribution of settlement proceeds.

This article aims to provide an explanation of how probate administration intertwines with personal injury litigation in Texas, with a particular focus on standing, capacity, and the proper parties in both survival and wrongful death actions.

Standing and Capacity: Differentiating the Concepts

Personal injury litigation involving deceased or incapacitated individuals requires a clear understanding of standing and capacity, which are distinct but equally essential.

Standing concerns whether an actual injury exists, whether that injury was caused by the defendant, and whether courts can redress it. Texas courts require an injury in fact, causation, and redressability. Standing addresses whether a valid claim exists.

Capacity concerns who may bring that claim. In the context of deceased individuals, only the personal representative has the authority to pursue survival claims. Courts treat capacity as a procedural matter, but one that must be established at the outset. A potential client may have a meritorious claim yet lack capacity to bring it; for example, a grandchild may contact an attorney for an injury their grandparent suffered, but if the grandchild's parent is still living, the grandchild has no authority to bring or benefit from the case. Similarly, if a sibling of an injured party contacts an attorney for a wrongful death claim, the sibling has no capacity under Texas Law to file such a claim.

Understanding the interplay between standing and capacity is critical because both must exist at filing to avoid dismissal.

Why Probate Matters in Personal Injury Cases

The most fundamental rule in this area is simple but often misunderstood: a deceased person cannot bring a lawsuit, and neither can an "Estate" standing alone. Only the court-appointed personal representative, either an executor or administrator, has capacity to bring a survival action.

Because of this, probate is not a mere administrative

formality for personal injury attorneys as it determines the following:

- Who has authority to file suit (capacity)
- Who may sign settlement agreements on behalf of the Estate
- Whether recovery is subject to creditor claims
- Which family members must be included in litigation or settlement

Properly identifying the correct plaintiff is essential to a successful claim. Filing suit under the wrong party's name can lead to dismissal, and if limitations have run in the interim, the claim may be completely lost.

To ensure proper authority, attorneys should always request a death certificate and any available estate planning documents at the intake phase when the injured party is deceased. The informant named on the death certificate often provides insight into the family relationships, while a will—if one exists—may identify the intended executor and the decedent's family structure. The intake phase of a personal injury suit for a deceased injured party is incredibly important and ensures that you engage the proper client with authority to file suit. Remember, until the probate court makes an appointment of an Executor or Administrator, however, the client lacks the authority to formally pursue the litigation.

Understanding the Foundation: Texas Probate Administration

Texas estate administration serves as the formal legal process by which the property of a deceased person is managed and distributed. Whether an individual dies testate, with a valid will, or intestate, without one, has profound implications on who may ultimately serve as the estate representative and therefore who has the authority to bring claims on behalf of a deceased individual.

When a valid will exists, the probate process is generally smoother, but numerous pitfalls can complicate even the most straightforward estate. Poorly drafted wills can omit residuary clauses, fail to name an executor, fail to provide for an independent administration, or inadequately identify family members. In some cases, the original Will cannot be located and must be admitted as a copy which may require additional service and evidentiary proof. Others involve interested subscribing witnesses or ineffective execution as a whole which can cause the Will to fail entirely. Even a will

Continued on page 22

that appears valid on its face has no legal effect until it is admitted to probate, meaning that the named executor has no authority to act—including filing litigation—until a court validates the document.

In intestate estates, the first critical step is determining the legal heirs. Texas Estates Code § 202.004 identifies who may initiate an heirship proceeding, and this often becomes the gateway for identifying the appropriate estate representative to bring your claim. Family circumstances can complicate matters significantly: adoption by estoppel, common law marriages, presumptions of paternity under Family Code § 160.204, and the presence of full- or half-blood siblings all affect the final determination of heirs. Community property rules also become especially important when the decedent leaves children from outside the marriage, and lineage issues may extend even further when heirs have themselves pre-deceased the decedent, creating multiple layers of probate considerations.

Once the heirs are known, the question becomes who may serve as the personal representative. Texas Estates Code § 304.001 provides an order of priority. Executors named in a will receive the highest preference (if there is a Will), followed by a surviving spouse, principal devisees, other devisees, and next of kin. In the absence of agreement, intestate estates can become challenging because independent administration requires unanimous written consent from all heirs. Even one resistant heir may force the estate into dependent administration, significantly raising costs and procedural burdens.

These probate determinations are the gateway to determining who has the legal capacity to bring a survival claim on behalf of a deceased personal injury victim so that the claim does not fail and also determine the proper statutory wrongful death beneficiaries.

Survival Actions and Wrongful Death Actions: Separate Claims with Distinct Purposes

Texas recognizes two separate causes of action when injuries result in death: survival claims and wrongful death claims. Though frequently plead together, they serve different purposes, involve different authorized plaintiffs, and compensate different harms.

Survival Actions

Under Texas Civil Practice & Remedies Code § 71.021, a decedent's personal injury claim survives their death and may be brought by the estate representative. These claims encompass pain and suffering prior to death, medical expenses, lost wages, and other damages the decedent could have recovered had they lived.

Because the claim “belongs” to the decedent, any recovery becomes an estate asset. As a result, creditors may pursue these funds, and agencies such as the Medicaid Estate Recovery Program (MERP) may impose reimbursement claims. This makes the financial feasibility of survival claims an important consideration, especially when the estate is burdened by significant debt.

Survival claims always require some form of probate proceeding. Even when a will exists, it has no operative effect until admitted to probate; when no will exists, determining the heirs and appointing an administrator becomes unavoidable as the Court appointed Representative is the only person with legal capacity to file suit and sign a settlement agreement.

Wrongful Death Actions

Wrongful death claims, governed by Texas Civil Practice & Remedies Code §§ 71.002 and 71.004, compensate statutory beneficiaries—being exclusively the surviving spouse, children, and parents—for their emotional and financial losses resulting from a loved one's death. These claims may be brought by any one beneficiary on behalf of all. If no such action is filed within three months of death, the personal representative may file the claim but it is important to note that even when the Estate representative files the claim, the claim is still for the exclusive benefit of the surviving spouse, children and parents and not the Estate beneficiaries or heirs as a whole.

Crucially, wrongful death proceeds do not pass through the estate and are not subject to estate creditors. They belong directly to the statutory beneficiaries.

The separation between these two actions means that the same lawsuit may involve both types of claims and that the individuals entitled to recovery under each may differ. A grandchild, for example, may be an heir for purposes of a survival action but is not a statutory beneficiary for wrongful death purposes.

Because these distinctions can lead to confusion—and even improper payments—many attorneys explicitly allocate settlement proceeds between survival and wrongful death claims within the settlement agreement to remove ambiguity.

When the Injured Party Is Alive: Authority Through Powers of Attorney and Guardianship

If the injured party is still living at the time of intake, the question becomes one of continuing authority rather than probate. Two types of powers of attorney are typically necessary for personal injury investigation and litigation: a Medical Power of Attorney, which allows the firm or designated agent to obtain necessary medical records, and a Durable Power of Attorney, which should include explicit authority to pursue litigation. Attorneys must review these documents carefully. Not all Powers of Attorney authorize litigation powers.

Time is often critical. Victims of personal injury claims or medical malpractice may decline rapidly. If the injured person still has capacity, helping them execute these documents promptly is essential. If capacity is already lost, the firm will need to pursue a guardianship—an intensive judicial process—to establish the needed authority to file suit and appoint an individual to accept and manage funds from any settlement or verdict.

Importantly, powers of attorney terminate automatically upon the principal's death. If the client dies mid-litigation, the attorney must file a suggestion of death and initiate the

probate process to appoint a personal representative who can continue the case.

Practical Considerations for Attorneys Handling Deceased or Incapacitated Clients

Navigating cases involving deceased individuals requires both legal precision and practical foresight. Establishing a clear understanding of the decedent's family structure is essential, particularly when dealing with common law marriages, adopted children, deceased children leaving issue, or situations where a child has been adopted by others. Texas permits an adopted child to inherit from both biological and adoptive parents, yet biological parents who relinquished rights cannot inherit from the child—an important distinction when evaluating potential beneficiaries. This is just one example of the intricacies of probate law that can change the landscape of a personal injury claim involving a deceased injured party.

Attorneys should also assess the decedent's debts early, as large liabilities may diminish or negate the value of pursuing a survival claim. In wrongful death cases, even though probate is not required to bring the action, many practitioners still request a determination of heirship coupled with an order of no administration to provide a judicial confirmation of the family structure. This prevents the late discovery of previously unknown beneficiaries and ensures all proper parties are before the Court and included in any settlement agreement.

When no probate proceeding exists, a family settlement agreement signed by all statutory beneficiaries serves as a valuable risk-management tool. It clarifies the individuals entitled to wrongful death proceeds and can help prevent disputes following distribution.

Conclusion

Cases involving deceased or incapacitated personal injury victims require attorneys to understand both the procedural mechanics of probate and the statutory distinctions defining survival and wrongful death actions. The “bookends” of such litigation—determining who may file suit and who may receive the recovery—are governed not only by tort law but by Texas probate law as well. Mastery of these principles ensures that claims are filed correctly, settlements are distributed lawfully, and the rights of both the injured and their families are fully protected. ■

Kaitlan presented at November's Brown Bag Seminar Series: Wills & Estate.

Watch the recorded session and earn 3 hours of CLE at www.tarrantbar.org/bb-wills-estate-2025.

TARRANT COUNTY BAR ASSOCIATION

BROWN BAG SEMINAR SERIES



St. John

REALTY ADVISORS

If you are an attorney going to trial, a lender with a complex loan or a business contemplating an acquisition, you need qualified real estate professionals you can trust.

You can depend on our credible valuation, *and defend it*, in the boardroom or the courtroom. Let us help you make confident real estate decisions.

Joel H. St. John, MAI,
CCIM, R/W-AC



www.stjohnrealtyadvisors.com

Fort Worth, Texas



LET IT SHINE
DENTAL

MARIE A.
HOLLIDAY,
DMD, FICD

OUR SERVICES

- ✓ Dental Cleaning
- ✓ Cosmetic Dentistry
- ✓ Oral Surgery
- ✓ Orthodontics
- ✓ Zoom Whitening

CONTACT US

- 817-877-1872
- www.dochollidayfw.com

