



**ELLIS COUNTY COURT AT LAW NO. 1
JUDGE JIM CHAPMAN**

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**CONDEMNATION CASES – PROCEDURAL REQUIREMENTS
for Objections to Special Commissioners’ Award
and Withdrawal of Funds from the Court Registry**

Objections to Special Commissioners’ Award

It is the experience of this Court that a disproportionately high percentage of condemnation cases where an Objection to Special Commissioners’ Award has been filed end up on the Court’s DWOP docket. To alleviate this logjam of cases on the DWOP docket, and to ensure that the cases are timely resolved within the 18 months as set forth in Rule 6.1 of the Rules of Judicial Administration, the Court has adopted the following procedures when an objection to the Special Commissioners’ Award is filed.

The filing of an objection in accordance with Prop. Code §21.018 effectively vacates the Special Commissioners’ Award and transforms the administrative case into a pending civil matter and vests the Court with full jurisdiction over the case. §21.018 requires that adverse parties be cited. **The Court requires that the objecting party personally serve all other parties that are named in the condemnation petition upon filing of the objection.** A waiver of citation, in lieu of personal service, will suffice.

The Court will set a Scheduling Conference approximately 90 days after the filing of the objection. At that hearing the Court will make sure all parties have been served and proceed to enter a Scheduling Order for the case designating a trial date and setting all necessary deadlines. A copy of the Court’s required standard Scheduling Order may be obtained on the Court’s website.

Withdrawal of Funds from the Court Registry

When a Condemning Authority petitions in an eminent domain proceeding it will typically name, as a party in interest, every person or entity that may potentially hold an interest of any type in the real property it is seeking to condemn. As a result, when a Condemning Authority places funds into the Registry of the Court there are typically several potential claimants of those funds. Once the Condemning Authority has deposited funds, the Court must ensure that every potential claimant listed has an opportunity to assert a claim for any share of the funds they/it may be entitled to. To claim funds from the Registry of the Court, a claimant will need to obtain the agreement of, waiver from, or provide appropriate notice to the other potential claimants of the action to withdraw the funds.

The following is the Court's Policy for the withdrawal of funds from the registry of the Court in condemnation cases so that each potential claimant is presented an opportunity to present a claim to the funds if so desired. Determine which Scenario your case falls within from the Scenarios below:

Scenario A – Agreed Order by all Awardees/Parties

1. File a Motion for Apportionment and Withdrawal of Funds specifically stating the amount of funds sought to be withdrawn; and
2. Submit an Agreed Order for Withdrawal of Funds which **all named Awardees** (if no objection to the Special Commissioners' Award has been filed) **or all Parties** (where an objection to the Special Commissioners' Award has been filed) have signed. Any non-signors must have filed a waiver of interest with the Court; and
3. Provide a no taxes owed certificate or a taxes due statement and designate in the Order that all taxes due should be paid from the funds in the Registry of the Court prior to disbursement of the requested withdrawal.
4. In these agreed cases, no hearing will be required.

Scenario B – No Agreement but all Awardees/Parties are known and can be personally served

1. File a Motion for Apportionment and Withdrawal of Funds specifically stating the amount of funds sought to be withdrawn; and
2. Obtain a hearing date for the Motion; and
3. Personally serve **on all Awardees** (if no objection filed) **or all Parties** (if objection has been filed, but note that if that Party has been already been personally served with the objection then a mailed copy of the Motion for Apportionment and Withdrawal of Funds is sufficient) the Motion for Apportionment and Withdrawal of Funds, Award of Special Commissioners, and a Notice of Hearing on the Motion at least twenty days in advance of the hearing; and

4. Provide a no taxes owed certificate or designate in the Order that all taxes due should be paid from the funds in the Registry of the Court prior to disbursement of the requested withdrawal; and
5. Conduct a hearing on the record, with a live witness, to prove up the Movant's interest in the property for which funds are on deposit in the registry.
6. If there is a dispute as to the apportionment, it will be necessary to file a Trespass to Try Title cause of action.

Scenario C – No Agreement and there are Unknown Heirs, Awardees/Parties with Unknown Addresses or Unknown Entity Owners

1. File a Motion for Apportionment and Withdrawal of Funds specifically stating the amount of funds sought to be withdrawn; and
2. File a Motion for the Appointment of an Ad Litem to represent the Unknown Heirs, Awardees with an unknown address and/or Unknown Entity Owners of any forfeited entity, if such appointment has not already been done earlier in the case; and
3. Obtain a hearing date for the Motion at least 30 days out, such date will need to be 60 or more days out to allow time for Citation by Publication to be accomplished if it has not already been done; and
4. If not already done, Accomplish Citation by Publication in accordance with TRCP 109, 115 and 116, making sure it is also published on the State's Public Information Internet Website. The hearing date obtained in #3 above should be listed in the Citation; and
5. Personally serve **on all Awardees** (if no objection filed) **or all Parties** (if objection has been filed, but note that if that Party has been already been personally served with the objection then a mailed copy of the Motion for Apportionment and Withdrawal of Funds is sufficient) the Motion for Apportionment and Withdrawal of Funds, Award of Special Commissioners, and a Notice of Hearing on the Motion at least twenty days in advance of the hearing; and
6. Provide a no taxes owed certificate or designate in the Order that all taxes due should be paid from the funds in the Registry of the Court prior to disbursement of the requested withdrawal; and
7. Conduct a hearing on the record, with a live witness to prove up the Movant's interest in the property for which funds are on deposit in the registry.
8. If there is a dispute as to the apportionment, it will be necessary to file a Trespass to Try Title cause of action.

JUDGE PRESIDING