

# INSTRUCTIONS TO APPROVE SETTLEMENT AND DISTRIBUTION OF WRONGFUL DEATH AND SURVIVAL CLAIM

These instructions are intended as a guideline only and should not be relied upon as a comprehensive list of duties in the approval of wrongful death and survival claim.

In all cases where the gross distribution is going to a minor and is in excess of \$25,000, there must be a guardianship of the estate established for the minor prior to the settlement hearing.

When the proceeds will be distributed to a wrongful death trust the Judge will hear the Application to Approve Wrongful Death Settlement, Application to Create the Trust and the Application to Appoint Trustee.

If the proceeds to be distributed in a wrongful death trust are in the form of an annuity, the parties must comply with Hamilton County Local Rule 68.2.

The forms may be obtained from the Issue Desk on the 9<sup>th</sup> floor of the Probate Court, 230 East 9<sup>th</sup> Street, Cincinnati, Ohio or by downloading the forms from the web site.

| <b>Step 1: COMPLETE THE FOLLOWING FORMS</b>   |
|---|
| Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims (Form 14.0) <ul style="list-style-type: none"><li>- Complete Form.</li></ul>   |
| Entry Setting Hearing and Ordering Notice (Form 14.01) <ul style="list-style-type: none"><li>- Fill in the name of the decedent only, the magistrate will fill in the hearing date &amp; time, if the matter will be heard by the magistrate or;</li><li>- The form must be taken to the Assignment Desk on the 10<sup>th</sup> floor of the Probate Court to obtain a hearing date of the Judge's calendar is if he is going to hear the settlement.</li></ul> |
| Waiver and Consent Wrongful Death and Survival Claims (Form 14.1) <ul style="list-style-type: none"><li>- Obtain waivers from all interested parties.</li><li>- If waivers cannot be obtained, notice of the hearing may have to be perfected by certified mail or publication.</li></ul>   |
| Application and Entry to Appoint Guardian Ad Litem (No Standard Probate Form) <ul style="list-style-type: none"><li>- If a minor is involved with the settlement then the magistrate may require a guardian ad litem.</li><li>- Forms must be prepared by attorney and presented to the magistrate at the time of filing.</li></ul>   |
| Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims (Form 14.2) <ul style="list-style-type: none"><li>- Complete form.</li><li>- Present day of hearing for magistrate's approval.</li></ul>  |
| Report of Distribution of Wrongful Death and Survival Claims (Form 14.3) <ul style="list-style-type: none"><li>- Complete form.</li><li>- Form due within 30 days of Entry Approving Settlement (14.2)</li></ul>  |
| Entry Approving Report of Distribution (Form H.C. 14.4) <ul style="list-style-type: none"><li>- Complete form.</li><li>- Take to assigned magistrate for approval.</li><li>- Canceled checks and/or receipts must be displayed to the magistrate as proof of distribution.</li></ul>  |

**STEP 2: REVIEWING and FILING OF FORMS**

When all forms have been reviewed by the assigned magistrate on the 9<sup>th</sup> Floor of Probate Court and after the magistrate has set the hearing take the forms to the cashier for filing.

**STEP 3: DAY OF HEARING**

At the date and time of the hearing, you should report to the 9<sup>th</sup> Floor of the Probate Court to the assigned magistrate or the 10<sup>th</sup> Floor Courtroom A before the Judge (The Judge or magistrate will already have the file with the papers you already filed).

**Note: The fiduciary of the estate must appear at the hearing.**

**PROBATE COURT OF HAMILTON COUNTY, OHIO  
RALPH WINKLER, JUDGE**

ESTATE OF \_\_\_\_\_, DECEASED

CASE NO.: \_\_\_\_\_

**APPLICATION TO APPROVE SETTLEMENT AND DISTRIBUTION OF  
WRONGFUL DEATH AND SURVIVAL CLAIMS**

[R.C. 2117.05, 2125.02, Civ. R. 19.1 and Sup. R. 70]

The fiduciary states:

[Check whichever of the following are applicable, strike inapplicable words, and incorporate all attachments into a single statement.]

- There is an offer of (full) (partial) settlement without suit being filed.
- There is an offer of (full)(partial) settlement after suit was filed. The style of the case, the court, and case number being \_\_\_\_\_.
- A judgment has been recovered for damages for the decedent's wrongful death (and personal injury and property damage arising out of the same act and which survive the decedent.)
- The amount of the settlement or judgment is \$\_\_\_\_\_.
- There is a partial settlement and therefore the estate must remain open pending final disposition of the claims.
- The offer includes, or the judgment sets forth separately, reasonable funeral and burial expenses in the amount of \$\_\_\_\_\_.
- Reasonable compensation for the fiduciary for services rendered is \$\_\_\_\_\_ and an itemization of such services is attached.
- Outstanding hospital and medical bills in the amount of \$\_\_\_\_\_ and an itemization of such bills is attached.
- Outstanding claims to a right of subrogation for the payment of hospital and medical bills in the amount of \$\_\_\_\_\_ and an itemization of such is attached.
- A reasonable attorney fee for the attorney's services is \$\_\_\_\_\_ and reimbursement to the attorney for case expense is \$\_\_\_\_\_. A copy of the attorney's fee contract that (has)(has not) received prior approval of the Court, subject to modification, and itemization of the case expenses are attached.
- Other: \_\_\_\_\_
- The net proceeds of \$\_\_\_\_\_ should be allocated \$\_\_\_\_\_ to the wrongful death action and \$\_\_\_\_\_ to the survival action. A statement in support thereof is attached.

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- A statement in support of the proffered settlement is attached.
- Supplemental forms required by local rule of court are attached.
- All of the beneficiaries of the wrongful death action are on equal degree of consanguinity, are adults, and have agreed how the net proceeds allocated to the wrongful death claim are to be distributed.
- The beneficiaries of the wrongful death action are not all on equal degree of consanguinity, or one or more of the beneficiaries is a minor, or the beneficiaries have not agreed how the net proceeds are to be distributed.
- The surviving spouse, children, and parents of the decedent and the other next of kin who have suffered damages by reason of the wrongful death are as follows and the distribution should be as follows:

| Name | Residence Address | Relationship to Decedent | Birthdate of Minor | Amount |
|------|-------------------|--------------------------|--------------------|--------|
|      |                   |                          |                    |        |
|      |                   |                          |                    |        |
|      |                   |                          |                    |        |

- The survival claim beneficiaries are as follows:

| Name | Residence Address | Relationship to Decedent | Birthdate of Minor | Amount |
|------|-------------------|--------------------------|--------------------|--------|
|      |                   |                          |                    |        |
|      |                   |                          |                    |        |
|      |                   |                          |                    |        |

The fiduciary requests that the Court approve the application and authorize the fiduciary to execute a (complete) (partial) release which upon payment of the settlement shall be a (complete) (partial) discharge of the claim.

\_\_\_\_\_  
Attorney for Fiduciary

\_\_\_\_\_  
Fiduciary

Attorney Registration No. \_\_\_\_\_

**PROBATE COURT OF HAMILTON COUNTY, OHIO  
RALPH WINKLER, JUDGE**

ESTATE OF \_\_\_\_\_, DECEASED

CASE NO. \_\_\_\_\_

**ENTRY SETTING HEARING AND ORDERING NOTICE**

The Court sets \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_ M.  
as the date and time for hearing on the application to approve settlement and distribution  
of wrongful death and survival claims and orders notice be given by the fiduciary, as  
provided in the Rules of Civil Procedure, to the wrongful death and survival claim  
beneficiaries who have not waived notice.

\_\_\_\_\_  
Ralph Winkler, Probate Judge

**PROBATE COURT OF HAMILTON COUNTY, OHIO  
RALPH WINKLER, JUDGE**

ESTATE OF \_\_\_\_\_, DECEASED

CASE NO. \_\_\_\_\_

**WAIVER AND CONSENT  
WRONGFUL DEATH AND SURVIVAL CLAIMS**

The undersigned waive notice of the hearing and consent to and approve the settlement and distribution as set forth in Form 14.0, Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims, a copy of which I have received.

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**PROBATE COURT OF HAMILTON COUNTY, OHIO  
RALPH WINKLER, JUDGE**

ESTATE OF \_\_\_\_\_, DECEASED

CASE NO. \_\_\_\_\_

**ENTRY APPROVING SETTLEMENT AND DISTRIBUTION OF  
WRONGFUL DEATH AND SURVIVAL CLAIMS**

Upon hearing the application to approve settlement and distribution of the wrongful death and survival claims, the Court:

- Approves the proffered settlement of \$ \_\_\_\_\_.
- Orders payment of \$ \_\_\_\_\_ to be applied to decedent's funeral and burial expenses.
- Orders payment of \$ \_\_\_\_\_ to the fiduciary for services rendered with respect to the wrongful death and survival claims.
- Orders payment of \$ \_\_\_\_\_ to the attorney for reimbursement of case expenses and \$ \_\_\_\_\_ for attorney fees for services rendered with respect to the wrongful death and survival claims.
- Orders that the net proceeds of \$ \_\_\_\_\_ be allocated \$ \_\_\_\_\_ to the wrongful death claim and \$ \_\_\_\_\_ to the survival claim. The amount allocated to the survival claim shall be considered an asset of the estate and shall be reflected in the fiduciary's account of the administration of the estate.
- Finds all of the beneficiaries of the wrongful death claim are on an equal degree of consanguinity, are adults, and have agreed how the net proceeds allocated to the wrongful death claim are to be distributed.
- Orders distribution of the net proceeds allocated to the wrongful death claim to the surviving spouse, children, parents and other next of kin, in the equitable shares shown below, fixed by the Court having due regard for the injury and loss to each beneficiary resulting from the death and for the age and condition of the beneficiaries.

| Name | Residence<br>Address | Relationship<br>to Decedent | Birthdate<br>of Minor | Amount |
|------|----------------------|-----------------------------|-----------------------|--------|
|      |                      |                             |                       |        |
|      |                      |                             |                       |        |
|      |                      |                             |                       |        |
|      |                      |                             |                       |        |
|      |                      |                             |                       |        |
|      |                      |                             |                       |        |

CASE NO. \_\_\_\_\_

Orders that the share of:

- \_\_\_\_\_ a minor(s) be deposited in lieu of bond pursuant to R. C. 2111.05.
- \_\_\_\_\_ a minor(s) be paid to the guardian of the estate of such minor.
- \_\_\_\_\_ a child(ren) be deposited in a trust for the benefit of the child(ren) until twenty-five years of age.

Authorizes the fiduciary to execute a release which, upon payment, shall be a discharge of the claim.

Orders the fiduciary and the attorney to report the distribution of the proceeds within thirty days of the date of this Entry.

Further orders \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Approved:

\_\_\_\_\_  
Attorney for Fiduciary

\_\_\_\_\_  
Ralph Winkler, Probate Judge

Attorney Registration No. \_\_\_\_\_

\_\_\_\_\_  
Date



**PROBATE COURT OF HAMILTON COUNTY, OHIO  
RALPH WINKLER, JUDGE**

ESTATE OF \_\_\_\_\_, DECEASED

CASE NO. \_\_\_\_\_

**REPORT OF DISTRIBUTION OF  
WRONGFUL DEATH AND SURVIVAL CLAIMS**

Pursuant to Entry filed \_\_\_\_\_, \_\_\_\_\_, the proceeds have been paid as shown below and on the accompanying vouchers.

|   |          |          |
|---|----------|----------|
| Gross proceeds                          |          | \$ _____ |
| Funeral and burial expenses             | \$ _____ |          |
| Fiduciary fees to _____                 | \$ _____ |          |
| Reimbursement of case expenses to _____ | \$ _____ |          |
| Attorney fees to _____                  | \$ _____ |          |
| Survival claim to the estate            | \$ _____ |          |
| Total deductions                        | \$ _____ |          |
| Net proceeds                            |          | \$ _____ |
| Net proceeds to beneficiaries.          |          |          |
| To: _____                               | \$ _____ |          |
| To: _____                               | \$ _____ |          |
| To: _____                               | \$ _____ |          |
| To: _____                               | \$ _____ |          |
| To: _____                               | \$ _____ |          |
| To: _____                               | \$ _____ |          |
| To: _____                               | \$ _____ |          |
| Total payments to beneficiaries         |          | \$ _____ |
|   | Balance  | -0-      |

- The fiduciary states that there are no other assets remaining in the estate.  
 The fiduciary states that there are assets remaining in the estate.

\_\_\_\_\_  
Attorney for Fiduciary

\_\_\_\_\_  
Fiduciary

Attorney Registration No. \_\_\_\_\_

**PROBATE COURT OF HAMILTON COUNTY, OHIO  
RALPH WINKLER, JUDGE**

ESTATE OF \_\_\_\_\_, DECEASED

CASE NO. \_\_\_\_\_

**ENTRY APPROVING REPORT OF DISTRIBUTION**

The report of the distribution of the proceeds is hereby approved.

- There being no further assets to administer, the fiduciary and surety, if any, are discharged.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ralph Winkler, Probate Judge