

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 Information Desk on the 9th floor of the Probate Court, 230 East 9th Street, Cincinnati, Ohio or by downloading the forms from the web site.

Step 1: COMPLETE THE FOLLOWING FORMS
Self-Representation Form (270.01) - Sign and Complete information if you do not have legal representation
Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims (Form 14.0) - Complete Form.
Entry Setting Hearing and Ordering Notice (Form 14.01) - Fill in the name of the decedent only, the magistrate will fill in the hearing date & time, if the matter will be heard by the magistrate or; - The form must be taken to the Assignment Desk on the 10 th floor of the Probate Court to obtain a hearing date of the Judge’s calendar is if he is going to hear the settlement.
Waiver and Consent Wrongful Death and Survival Claims (Form 14.1) - Obtain waivers from all interested parties. - If waivers cannot be obtained, notice of the hearing may have to be perfected by certified mail or publication.
Application and Entry to Appoint Guardian Ad Litem (No Standard Probate Form) - If a minor is involved with the settlement then the magistrate may require a guardian ad litem. - Forms must be prepared by attorney and presented to the magistrate at the time of filing.
Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims (Form 14.2) - Complete form. - Present day of hearing for magistrate’s approval.
Report of Distribution of Wrongful Death and Survival Claims (Form 14.3) - Complete form. - Form due within 30 days of Entry Approving Settlement (14.2)
Entry Approving Report of Distribution (Form H.C. 14.4) - Complete form. - Take to assigned magistrate for approval.

- Canceled checks and/or receipts must be displayed to the magistrate as proof of distribution.

STEP 2: REVIEWING and FILING OF FORMS

When all forms have been reviewed by the assigned magistrate on the 9th 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 9th Floor of the Probate Court to the assigned magistrate or the 10th 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.

A CITIZEN’S GUIDE TO COMMUNICATING WITH THE JUDGE AND MAGISTRATES

Why can’t I communicate directly with the judge or magistrate on my case?

If the matters are contested, judges and magistrates are not allowed to communicate with individual parties. This is what the law calls an *ex-parte* communication (this is when a judge or magistrate only communicates with an individual party, on their own, without the knowledge of all parties to a case). In order to keep the court process as fair, equal and as transparent as possible, *ex-parte* communication is strictly forbidden. It is unfair for the court to share information without all of the parties present.

You cannot email the judge or magistrate, as the email is considered an *ex-parte* communication. In addition, emails are not pleadings (motions.) You cannot write a personal letter to the judge or magistrate as this may be considered an *ex-parte* communication.

How can I speak to the judge or magistrate on my case?

Typically, to speak to the judge or magistrate on your case, you must file a written motion with the court explaining what you want the court to do and all motions become part of the public record. You also have to send a copy of whatever you file to the other parties, or their attorney if they are represented by an attorney (this is called “service”). A motion is not considered an *ex-parte* communication because all parties are officially notified. You may be required to pay a filing fee when you file your written motion. Please note, there is no fee if you wish to speak to the magistrate in an uncontested matter, on their assigned walk-in days.

I’ve heard there’s always a magistrate on duty to hear arguments immediately – what does that mean?

There is a magistrate on duty every business day. The on-duty magistrate may answer generic procedural questions. The on-duty magistrate may also discuss matters in an uncontested case. For all other matters, the on-duty magistrate is prohibited from speaking with you. To address the court for these matters, you must file a written motion. The on-duty magistrate will set the matter for hearing before the magistrate assigned on your case or the judge.

What if I need to tell the judge or magistrate something I don’t want the other party to know about?

Unfortunately, you cannot withhold information from another party to your case. In order to keep the case fair to everyone involved, as soon as you tell the judge or magistrate something, you must also tell the other parties. All sides must have an opportunity to respond to the information that you have shared with the court.

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

IN THE MATTER OF: _____

CASE NO. _____

SELF-REPRESENTATION ACKNOWLEDGMENT

I acknowledge that I have read, understand and agree with all of the following statements:

1. The Court has recommended that I hire an attorney to represent me in this case. However, I have chosen to proceed with this case without the assistance of an attorney.
2. The Court and its Deputy Clerks are prohibited by law from providing legal advice. I will follow the instructions provided in the form packets and on the Court's website, www.probatect.org.
3. I am responsible for understanding and correctly applying any statutes, case law, rules, regulations, policies, and procedures that relate to this case, including, but not limited to, the Ohio Revised Code, Rules of Superintendence for the Courts of Ohio, Hamilton County Probate Court Local Rules of Practice, and the Ohio Rules of Civil Procedure.
4. The same standards that apply to attorneys and persons represented by attorneys in similar probate hearings will apply to myself.
5. If I do not fulfill my responsibilities in this case as required by law, I may be subject to sanctions or penalties as provided by law, which may include removal as fiduciary or being required to be represented by an attorney.
6. I may be personally liable to any person or entity that suffers damages as a result of anything I do or fail to do in this case that does not comply with the legal requirements.

Fiduciary/Applicant/Guardian

Typed Printed Name

Address

City/State/Zip

Telephone Number (include area code)

Email

**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.

CASE NO. _____

- 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. in
Room _____ 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.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**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 Address	Relationship to Decedent	Birthdate of Minor	Amount

CASE NO. _____

Orders that the share of:

- _____ a minor(s) be deposited 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