

FILINGS

1. SPF 14.0: Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims. A Statement of Facts and other supporting documents should be attached pursuant to [SupR. 70](#).
2. SPF 14.0 (*Bottom*) or Local Form: Entry Setting Hearing and Ordering Notice
3. SPF 14.1: Waiver and Consent Wrongful Death and Survival Claims
4. SPF 14.2: Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims
5. SPF 14.3: Report of Distribution of Wrongful Death and Survival Claims
6. SPF 14.3 (*Bottom*) or Local Form: Entry Approving Report of Distribution

JURISDICTION & VENUE

A personal representative appointed by a probate court may settle with a defendant in a wrongful death case with the consent of the court making the appointment. [\[R.C. 2125.02\(C\)\]](#)

NOTE

The underlying civil action is not filed in the probate court. However, the approval of a settlement of the case is heard in the probate court which appointed the fiduciary.

TIME FRAME

A civil action for wrongful death shall be commenced within two (2) years after the decedent's death, subject to certain statutory exceptions. [\[R.C. 2125.02\(D\)\]](#) There is no time frame for filing of an application to approve a wrongful death settlement. However, the existence of a wrongful death action is grounds to extend the administration of the decedent's estate beyond 6 months. [\[R.C. 2109.301\(B\)\(1\)\(d\)\]](#); (SPF 13.10)

NOTICE/SERVICE

1. Notice of the hearing should be served upon those persons rebuttably presumed to have suffered damages as a result of the wrongful death, i.e. the surviving spouse, children and parents of the deceased. [\[R.C. 2125.02\(A\)\(1\)\]](#) Other "relatives" who suffered damages should also be given notice (e.g. siblings or grandparents). [\[R.C. 2125.02\(A\)\(1\)\]](#)

NOTE

The persons listed as next of kin on SPF 1.0 are not necessarily the only persons to be served notice of an application to approve a wrongful death settlement.

2. Notice should be served pursuant to [Civ.R. 73\(E\)](#).
3. Notice may be waived. (SPF 14.1)

HEARING

1. The court must consider whether to approve the proffered settlement. [\[R.C. 2125.02\(C\)\]](#); [\[Sup.R. 70\]](#) Compensatory damages on a wrongful death claim include loss of support, loss of services, loss of society, loss of inheritance and mental anguish. [\[R.C. 2125.02\(B\)\]](#)
2. The court must consider whether the claim is entirely for wrongful death (e.g. the decedent died instantly in a car crash) or for a survival claim (e.g. the decedent was injured but died from an unrelated illness) or a hybrid of both (e.g. decedent was injured and died as result of the injuries one month later). Payment on the wrongful death component is not included in the probate estate of the decedent. Payment on the survival claim component is part of the probate estate.

3. The court shall adjust the share of each beneficiary in an equitable manner, taking into consideration the injury and loss each beneficiary suffered due to the death as well as taking the age and condition of each beneficiary into account. [R.C. 2125.03(A)(1)] However, if all beneficiaries are adult, competent, and on the same plane of consanguinity, they may adjust the shares among themselves without court involvement. [R.C. 2125.03(A)(1)]
4. The burden of proof to approve the amount of the settlement is upon the personal representative. Each beneficiary of the wrongful death action has the burden to prove the injury and loss they suffered as a result of the wrongful death.
5. The standard of proof is by preponderance of the evidence.
6. The statute expressly allows for the award of funeral and burial expenses incurred as a result of the wrongful death. [R.C. 2125.02(A)(2)]. Outstanding medical bills and subrogation claims may be ordered paid from the settlement proceeds.

MINORS

1. If the decedent was a minor, a parent who abandoned the minor can be ordered by the court not to recover any damages from the wrongful death action. The personal representative or other wrongful death beneficiary may file the motion. [R.C. 2125.02(A)(1) and (E)(1)]
2. If a minor is a beneficiary of the wrongful death action as defined in R.C. 2125.02(G)(4), a Guardian ad litem should be appointed to represent the interest of the minor in the proceedings if the personal representative is the minor's surviving parent or who otherwise has a conflict with the minor's interest.
3. The court may create a trust for any beneficiary of the wrongful death action who is under 25 years of age. [R.C. 2125.03(A)(2)] The trustee of such a trust shall be approved by each adult beneficiary and by the guardian of each minor beneficiary before being appointed. [R.C. 2125.03 (A)(2)]

OTHER CONSIDERATIONS

Removal of Executor or Administrator [R.C. 2113.18(B)]