

LAWSUIT SETTLEMENT APPROVAL PROCEDURE DECEDENT'S ESTATE CASES

The following requirements/procedures will be followed to process a petition to approve a litigation settlement in decedent's estate cases:

1. A sworn petition providing details of the proposed settlement must be filed.
 - A. *If the Court has not previously determined the heirs and next of kin of the decedent*, the heirs at law and next of kin of the decedent must be identified with address and their status (adult or minor) and mental capacity (if adult) in either the petition or an Exhibit A attached to the petition. *If the Court has previously determined the heirs and next of kin of the decedent, only the details of the proposed settlement are requested.*
 - B. *If the Court has not previously determined the heirs and next of kin of the decedent*, the petition should be executed by someone having first-hand information and knowledge about the heirs and next of kin and said persons' relationship to the decedent. Alternatively, this information can be furnished in a separate affidavit submitted with the petition.
 - C. If approval of attorney's fees and expenses are requested, the petition should address the 12 *Peebles* factors (as appropriate in the given case) and include an itemization of the time expended - as required by decisions of the Alabama Supreme Court.
 - D. If another court has approved the settlement (and attorney's fees and expenses) a copy of said order should be attached to the petition and there is no need to address the 12 *Peebles* factors (as appropriate) or furnish an itemization of the time expended.
 - E. The terms of a settlement can be kept confidential by submitting the terms in *separate* correspondence (not a pleading) addressed to the Court and noting in the petition that the terms of the settlement are confidential. In such instances the material will be returned to the petitioner's lawyer after review by the Court.
2. If all of the distributees are adults and of sound mind the Court will consider the petition without a hearing.
3. If one or more of the distributees is a minor or an adult with unsound mind, the Court will appoint a guardian ad litem to represent the interests of said minor or adult. *If a guardian ad litem was utilized in the other court handling the litigation, if we are furnished the name of said guardian ad litem we will attempt to use the same person as the guardian ad litem in the matter before the Court.* The Court will afford

the guardian ad litem(s) two weeks to complete their assigned task(s). If the guardian litem(s) consents in writing to the petition being granted, the Court will consider the petition without a hearing. If the guardian ad litem(s) does not complete the assigned task(s) within two weeks, the petition will be set for a hearing.

4. If one or more of the distributees is on active military duty status, a special attorney will be appointed to represent said distributee(s). If the special attorney consents to the petition being granted in writing, the Court will consider the petition without a hearing. The Court will afford the special attorney a reasonable period of time to complete their assigned task. If the special attorney does not communicate with the Court within two weeks of the assignment, the Court will contact the special attorney to ascertain the status of the matter and how much time the special attorney needs to complete the assigned task. If necessary, a hearing will be scheduled.
5. If a distributee or a guardian ad litem objects to the proposed settlement, the petition will be set for hearing. At such hearing appropriate testimony should be offered in support of the petition, approval of attorney's fees and expenses (if requested) and to establish the heirs at law and next of kin. Affidavits will be accepted in lieu of in-court testimony if there is no objection by a distributee or guardian ad litem.
6. Typically, if the litigation settlement is approved, legal counsel for the personal representative will be directed to oversee consummation of the settlement agreement, hold the settlement proceeds in the legal counsel's trust account until such time that disbursement can be made, and file a report of compliance within 30 to 60 days. If the personal representative will be receiving, holding and disbursing the settlement proceeds, the personal representative's bond will have to be reviewed and may have to be increased before the order approving the litigation settlement is issued.
7. The ruling of the Court approving a litigation settlement will be mailed by United States First Class Mail to all heirs at law, next of kin reflected in the Court's file and legal counsel, with such mailings noted in the Court's docket.
8. The person receiving, holding and distributing the settlement proceeds will be required to furnish a report of compliance with copies of appropriate documentation to support said report. A tracking date of 60 days will be set to monitor compliance.
9. Unless there is an objection to a proposed litigation settlement, there will be no appeal time applicable. If the Court is required to rule upon an objection a 42 day appeal time will apply.