

CHAPTER 2200. ACTIONS FOR WRONGFUL DEATH

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Rule 2201. Definitions.

As used in this chapter

“action” means any civil action or proceeding brought in or appealed to any court of record which is subject to these rules;

“action for wrongful death” means in the case of rules 2202, 2203 and 2206, an action arising under the laws of this Commonwealth and in the case of rules 2204 and 2205, an action arising under the laws of this Commonwealth or any other jurisdiction;

“personal representative” means the executor or administrator of the estate of a decedent duly qualified by law to bring actions within this Commonwealth.

Source

The provisions of this Rule 2201 adopted February 14, 1939, effective September 4, 1939; amended March 27, 1956, effective July 1, 1956; amended April 18, 1975, effective immediately, 5 Pa.B. 1820; amended December 16, 2003, effective July 1, 2004, 34 Pa.B. 9. Immediately preceding text appears at serial page (255307).

Rule 2202. Parties entitled to bring action for wrongful death.

(a) Except as otherwise provided in clause (b) of this rule, an action for wrongful death shall be brought only by the personal representative of the decedent for the benefit of those persons entitled by law to recover damages for such wrongful death.

(b) If no action for wrongful death has been brought within six months after the death of the decedent, the action may be brought by the personal representative or by any person entitled by law to recover damages in such action as trustee ad litem on behalf of all persons entitled to share in the damages.

(c) While an action is pending it shall operate as a bar against the bringing of any other action for such wrongful death.

Official Note: Adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820.

Rule 2203. Procedure to remove plaintiff.

(a) Any person entitled by law to recover damages in an action for wrongful death may petition the court in which an action for such wrongful death is pending to remove the plaintiff and to substitute as a new plaintiff any person entitled by law to recover damages in the action or a personal representative of the decedent.

(b) After hearing, of which due notice shall be given to the plaintiff in the action and to all persons entitled by law to recover damages, the court may remove the plaintiff and order the substitution prayed for, if it deems the same advisable.

Official Note: This rule has the effect of making the plaintiff in the wrongful death action accountable to the court in which the action is brought for his or her conduct therein. In addition, it permits the parties beneficially interested in the damages recovered in the action to exercise some supervisory control over the conduct of the action by enabling them to obtain the assistance of the court if the action is not properly conducted on their behalf.

Source

The provisions of this Rule 2203 adopted February 14, 1939, effective September 4, 1939; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial pages (220915) to (220916).

Rule 2204. Averments in plaintiff's pleading.

In addition to all other facts required to be pleaded, the initial pleading of the plaintiff in an action for wrongful death shall state the plaintiff's relationship to the decedent, the plaintiff's right to bring the action, the names and last known residence addresses of all persons entitled by law to recover damages, their relationship to the decedent and that the action was brought in their behalf.

Source

The provisions of this Rule 2204 adopted February 14, 1939, effective September 4, 1939; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3010; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial page (220916).

Rule 2205. Notice to persons entitled to damages.

When an action for wrongful death has been instituted, the plaintiff shall give notice, by registered mail or in such other manner as the court shall direct by local rule or special order, to each person entitled by law to recover damages in the action, that an action has been instituted for wrongful death, naming the decedent and stating the court, term and number of the action.

Official Note: Adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820. The form of notice and method of proof of service are left for regulation by local rule or order.

Source

The provisions of this Rule 2205 amended November 14, 1978, 8 Pa.B. 3410. Immediately preceding text appears at serial page (22339).

Rule 2206. Settlement, compromise, discontinuance and judgment.

(a) No action for wrongful death in which a minor or an incapacitated person has an interest shall be discontinued nor shall the interest of a minor or an incapacitated person in any such action or in a judgment for damages recovered therein be compromised or settled until the court, upon petition of any party in interest, shall allow the discontinuance or approve the compromise or settlement as being fair and equitable.

(b)(1) When as the result of a verdict, judgment, compromise, settlement or otherwise it has been determined that a sum of money is due the plaintiff in an action for wrongful death, the court, upon petition of any party in interest, shall make an order designating the persons entitled to share in the damages recovered and the proportionate share of the net proceeds to which each is entitled. If a share shall be payable to a minor or incapacitated person, the court shall designate as the person to receive such share a guardian of the estate of the minor or incapacitated person qualified to receive the fund if there is one or one is to be appointed. The share to be received by the guardian of the estate may include a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments or a trust as described in subdivision (b)(4)(iii) of this rule.

(2) If the minor has no such guardian, and none is to be appointed, the court upon petition may order an amount not more than twenty-five thousand dollars (\$25,000.00) to be paid for the benefit of the minor to the guardian of the person or to the natural guardian or to the person or agency by whom the minor is maintained or to the minor.

Official Note: The amount payable under paragraph (2) conforms to the amount set forth in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary.

(3) If the incapacitated person has no such guardian, and none is to be appointed, the court upon petition may order an amount not more than twenty-five thousand dollars (\$25,000.00) to be paid for the benefit of the incapacitated person to the guardian of the person or to the person or agency by whom the incapacitated person is maintained.

Official Note: The amount payable under paragraph (3) conforms to the amount set forth in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary, incorporated by reference into Section 5505 of the Code, 20 Pa.C.S. § 5505.

(4) If the minor or the incapacitated person has no such guardian, and none is to be appointed, the court may order

(i) any amount in cash of a resident or nonresident minor or incapacitated person to be deposited in one or more savings accounts in the name of the minor or the incapacitated person in banks, building and loan associations, savings and loan associations or credit unions, deposits in which are insured by a Federal governmental agency provided that the amount deposited in any one such savings institution shall not exceed the amount to which such accounts are thus insured, or in one or more accounts in the name of the minor or the incapacitated person investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions. Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains majority or unless the incapacitated person is adjudicated to have capacity, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record;

Official Note: The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account, see Rule 76.

The rule contemplates the deposit of money in an account investing in federally guaranteed securities, withdrawals from which may be blocked, and not the direct investment in a particular security.

(ii) an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during minority or incapacity shall be paid into a restricted account as provided by subdivision (b)(4)(i) of this rule;

(iii) a trust agreement be executed with a corporate fiduciary which is independent from the minor or incapacitated person and anyone acting on behalf of the minor or incapacitated person and is lawfully authorized to engage in trust business in Pennsylvania or the state of the minor's or incapacitated person's domicile, which trust

(i) is designated to receive the fund;

(ii) contains such terms for investment, disbursement and distribution of the fund as the court deems proper; and

(iii) expressly provides that it is subject to the court's continuing jurisdiction, including the court's right to modify or terminate, for cause shown, although the trust may be otherwise irrevocable.

Official Note: This rule permits the use of a trust, including a special needs trust.

(c) In approving a compromise or settlement, or making any order under Subdivision (b) of this rule, the court may also approve an agreement for the

payment of counsel fees and other proper expenses out of the share of damages to which the minor or incapacitated person is entitled.

(d) When an order designating the persons entitled to share in the damages has been entered, the defendant may pay the amount due under the verdict, judgment, compromise or settlement to the plaintiff who shall hold the money as trustee for the persons designated in the order and shall mark the action discontinued or the judgment satisfied as the case may be.

Explanatory Note

The amendments to Rules 2039, 2064, and 2206 conform the Rules to the recent amendments to the Probate, Estates and Fiduciaries Code made by Act 293 of 1974, 20 Pa.C.S. 5101, 5103, 5505.

The Rules governing Actions for Wrongful Death in force prior to the present amendments omitted any reference to the possible incompetency of a beneficiary. They referred only to shares payable to a minor. Although no problem appears to have arisen, Rule 2206 has further been amended to cover this point specifically.

Source

The provisions of this Rule 2206 adopted February 14, 1939, effective September 4, 1939; amended May 17, 1950; amended September 25, 1956, effective forthwith; amended April 2, 1962, effective forthwith; amended, effective July 22, 1970; amended June 25, 1975, effective immediately, 5 Pa.B. 1817; amended June 3, 1994, effective July 1, 1994, 24 Pa.B. 3019; amended October 3, 1996, effective January 1, 1997, 26 Pa.B. 4985; amended April 12, 1999, effective July 1, 1999, 29 Pa.B. 2274. Immediately preceding text appears at serial pages (220917) to (220919).

Rule 2207. Actions arising under foreign law.

When an action to recover damages for wrongful death is brought in this Commonwealth to enforce rights arising under the laws of some other jurisdiction it shall be brought by the person authorized to bring the action by the law of the jurisdiction where the cause of action arose.

Official Note: Adopted February 14, 1939, effective September 4, 1939; amended April 18, 1975, effective immediately, 5 Pa.B. 1820.

Rule 2224. Effective date; pending actions.

These rules shall become effective on the fourth day of September, 1939, and shall apply to actions pending at that time.

Official Note: Adopted February 14, 1939, effective September 4, 1939.

Rule 2225. [Rescinded].

Official Note: See Rule 133 governing the suspension of inconsistent Acts of Assembly.

Source

The provisions of this Rule 2225 adopted February 14, 1939, effective September 4, 1939; rescinded June 3, 1994, effective July 1, 1994, 24 Pa.B. 3010. Immediately preceding text appears at serial pages (22341) to (22342).

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