

Probate Impacts on PI Cases

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There are several probate requirements that can trap an unwary personal injury attorney. These most often arise in wrongful death cases, and the most frequently encountered issues are:

Estate Rep as a Party

An estate is not a legal entity and therefore cannot sue or be sued except through the personal representative of the estate. The estate executor or administrator, formally appointed by the probate court, must be a party to any suit by or against an estate. Embrey v. Royal Ins. Co., 22 S.W.3d 414, 415 n. 2 (Tex. 2000).

Court Approval for Settlements

Any settlement involving an estate must be approved in writing by the probate court, even if the personal representative is conducting an independent administration. In other words, the independent executor or administrator does not have authority to compromise and settle suits, absent probate court approval. Probate Code § 234 (a) (4).

Court Approval for Contingent Fees

Contingent fee contracts for the recovery of funds due to an estate require probate court approval. The percentage for the contingent fee is usually limited to one third, but it can be increased in certain circumstances. Failure to obtain court approval can result in the fee contract being voided. Probate Code § 233.

There are other probate issues that can arise in personal injury cases, and the best practice for personal injury attorneys handling claims involving an estate is to consult with a probate specialist to help detect potential problems.

If you have questions, click [here](#) to contact Steve Spitzer.

Your Probate Litigation Resource



Cowles & Thompson's probate litigation section has a web site at www.TexasEstateDisputes.com. The web site provides current information on disputed probate, heirship and trust issues, including the latest on statutory changes made by the Texas Legislature.

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