

Authority to File a Kentucky Wrongful Death Lawsuit

The person who files the wrongful death case must first be appointed or authorized by the court. This person is known generally as a “Personal Representative” or specifically as the “Executor” or the “Executrix” or the “Administrator” or “Administratrix” (An Executor is appointed if there is no will. An Administrator would be named in the will). Essentially, this person acts on behalf of the deceased person’s estate and is given authority by the court to file suit for the purpose of recovering damages as a result of decedent’s wrongful death.

There are two separate claims in a wrongful death lawsuit. The wrongful death action is brought to recover damages on behalf of the estate (see Chapter 5 on placing a value on a case for details).

In a separate action, a lawsuit is brought to recover damages for a spouse or a child for loss of consortium. For example, a surviving spouse may recover separate damages for the destruction of the marital relationship. Or a surviving child may recover separate damages for the loss of the parent-child relationship. The damages claimed by these beneficiaries are usually distinct and separate from the damages claimed by the estate.

The person who brings the wrongful death case will have a fiduciary obligation to the other interested parties in the action (like other beneficiaries). This means that he or she has an obligation to protect the interests of the estate and all beneficiaries who may have a legal right to recover damages in the case.

Although the cause of action is brought by the estate any recovery is distributed to beneficiaries pursuant to the statute of distribution.