

VICTIM COMPENSATION FUND FREQUENTLY ASKED QUESTIONS
(Updated January 26, 2004)

Section 3 – Personal Representative

3.1 Why is the Special Master requiring that only one claim be permitted for each Victim?

The statute created by Congress requires this.

3.2 Who is the personal representative of a deceased Victim?

The Personal Representative is the individual authorized to submit a claim on behalf of an eligible deceased Victim. The Personal Representative is normally the individual who is **appointed by a court of competent jurisdiction** – such as a State surrogate or probate court – as one of the following:

- The Personal Representative of the Victim's will or estate;
- The Executor of the Victim's will; or
- The Administrator of the Victim's estate.

In many or most cases, the identity of the "Personal Representative" will not be in dispute. In very limited circumstances, the Special Master has the authority to appoint a Personal Representative for the Fund where a court has not done so. See FAQ 3.6.

Note: The determination of the Personal Representative is not the same question as the determination of who ultimately will receive the award. The Personal Representative shall distribute the award in a manner consistent with the law of the decedent's domicile or any applicable rulings made by a court of competent jurisdiction. However, in order to assure that the families of needy Victims receive adequate compensation, the regulations further provide that the Personal Representative shall, before payment is authorized, provide to the Special Master a plan for distribution of any award received from the Fund. Notwithstanding any other provision of these regulations or any other provision of State law, in the event that the Special Master concludes that the Personal Representative's plan for distribution does not appropriately compensate the Victim's spouse, children, or other relatives, the Special Master may direct the Personal Representative to distribute all or part of the award to such spouse, children, or other relatives.

3.3 How do I get appointed Personal Representative by a State court?

Since State law governs the designation of Personal Representatives, the Special Master generally advises claimants to work with the probate or surrogate court in the State or country where the Victim lived to become the Victim's Personal Representative. The process varies by State and country.

In general, to be designated as the Personal Representative when there is a will, you will be required to bring the Victim's will to court. If there was no will, you may need to provide other relevant documentation to prove your relationship to the Victim.

3.4 Who should apply the rules and resolve the dispute over who should be the Personal Representative?

Disputes between relatives, former spouses and other interested parties can be exceptionally fact-intensive and time-consuming. Indeed, State courts often spend considerable time and resources resolving such matters. The Special Master cannot accomplish his statutory duties if he is engaged with these types of complex disputes. Nor would it be advisable for the Special Master to attempt to step in and supplant State court practice or the testamentary intent of decedents. Consequently, the rule provides that the Special Master has no obligation to arbitrate, litigate or otherwise resolve disputes as to the identity of the Personal Representative.

Instead, to ensure that funds are not needlessly tied up due to disputes regarding the identity of the Personal Representative, the regulations provide that the disputing parties may agree in writing to the identity of a Personal Representative to act on their behalf, who may seek and accept payment from the Fund while those disputing parties work to settle their dispute. In appropriate cases, the Special Master may determine an award, but place the payment in escrow until the dispute regarding the Personal Representative is finally resolved.

3.5 How can someone challenge the identity of a Personal Representative?

You can object to the authority of an individual to file as the Personal Representative of a decedent by filing an objection with the Special Master. To file an objection, call the Helpline at [removed] and tell the Claimant Service Representative that you want to submit an objection. An Objection Form will be sent to you to complete and return.

3.6 How do I show that I am the proper Personal Representative of the deceased Victim for filing a claim with this Fund?

In most cases, if you have been appointed as the Personal Representative, executor, or administrator by a court, you should provide copies of relevant legal documents, such as court orders, letters testamentary, letters of administration, or similar documentation.

If you have not been appointed by a court as the Personal Representative of the decedent or as the executor or administrator of the decedent's will or estate, and you believe you cannot get such an appointment, you may ask the Special Master to appoint you as the Personal Representative for the Fund. To do so, you will need to show why you were unable to get a court appointment, and you will need to provide additional documents showing you satisfy one of two additional requirements. If you were named as the executor in the Victim's will, you will need to provide the will. If there is no will, you

will need to demonstrate you were next in line of succession under the laws of the Victim's domicile governing intestacy. Documents demonstrating proof of your relationship to the decedent may include:

- For a **spouse**, a copy of the marriage certificate or joint tax return;
- For a **child**, a copy of the child's birth certificate or Victim's tax return;
- For a **parent**, a copy of the Victim's birth certificate;
- For a **brother or sister**, a copy of the brother's or sister's birth certificate and the Victim's birth certificate.

3.7 Does the Personal Representative keep the entire award?

Awards will generally be made to the qualified Personal Representative, who **must** distribute the award in a manner consistent with the law of the decedent's domicile, a ruling by a court of competent jurisdiction, or a direction from the Special Master. In some cases, the Special Master may make provision for separate distributions to comply with a court approved distribution plan. An example would be payments to a minor that may need to be paid as an annuity.

In order to assure that the families of Victims receive adequate compensation, the Personal Representative must provide a proposed distribution plan in the Compensation Form. Notwithstanding any other provision of these regulations or any other provision of State law, in the event that the Special Master concludes that the Personal Representative's plan for distribution does not appropriately compensate the Victim's spouse, children, or other relatives, the Special Master may direct the Personal Representative to distribute all or part of the award to such spouse, children, or other relatives.

3.8 What if my court papers restrict the amount of money I can collect as Personal Representative or limit my ability to waive the claims of others?

Some courts may issue what are called "limited letters of appointment" in which the dollar amounts that can be received are restricted and/or the right to waive the rights of others to sue is not given to the Personal Representative. If you have already been appointed Personal Representative and your appointment is limited in either of these ways (assuming the dollar limitation is less than the presumed award on the loss tables), you should consult with an estate lawyer about obtaining court orders which permit you to collect an award (including Advance Benefits, if applicable) and to file a claim.

3.9 What if I cannot get appointed as the Personal Representative in the relevant court or I cannot get relief from the restrictions placed on my appointment?

In limited circumstances, the Special Master may consider the claims of those who cannot get appointed or who cannot get court orders overriding their limited letters of appointment. However, these cases will be rare and detailed documentation and description of the extenuating circumstances will need to be provided. Also see FAQ 3.6.

3.10 How will the New York law signed by the Governor on May 23, 2002 affect the Letters of Administration I received from the surrogate court appointing me Personal Representative?

The New York statute removes many of the limitations from the Letters of Administration issued by surrogate courts in the State of New York. The new law says that a Personal Representative appointed by the surrogate courts can file and prosecute a claim and compromise the claim even if there are restrictions in the letters. The new law states, " Notwithstanding any other provision of law to the contrary, or any restrictions set forth in letters relating to any decedent who dies as a result of wounds or injury incurred as a result of the terrorist attacks on September eleventh, two thousand one, a duly appointed personal representative is authorized to file and prosecute a claim with the fund, and the filing of such a claim for an award from the fund, and the resulting compromise of any cause of action pursuant to the act, shall not violate any restriction on the powers granted to the personal representative relating to prosecution or compromise any action, the collection of any settlement, or the enforcement of judgment." The Fund will process claims submitted by Personal Representatives who have letters with restrictions.

3.11 If two people have been appointed as co-Personal Representatives of a Victim's will or estate, do both people have to sign the compensation form?

Yes. While only one claim can be filed for each Victim, in some cases, two people may be appointed to act as "co-Personal Representatives" of the Victim's will or estate by a court of competent jurisdiction. The term "co-Personal Representatives" includes both co-Executors of a will and co-Administrators of an estate, when there is no will. If co-Personal Representatives are appointed, both co-Personal Representatives must sign the certifications of the compensation form (all sections in Part III, and Part 1.b if applying for Advance Benefits). A claim will not be deemed "filed" until the signatures of both co-Personal Representatives have been received.