

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 789

1 AN ACT TO PROVIDE FOR NOTICE AND REPRESENTATION RULES
2 REGARDING ADMINISTRATIVE OR JUDICIAL PROCEEDINGS INVOLVING ESTATES
3 OF DECEDENTS OR TRUSTS; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** In the administration of or in judicial
6 proceedings involving estates of decedents or trusts under Title
7 91 of the Mississippi Code of 1972, the following apply:

8 (a) Persons are bound by orders binding others in the
9 following cases:

10 (i) Orders binding the sole holder or all
11 coholders of a power of revocation or a general, special, or
12 limited power of appointment, including one (1) in the form of a
13 power of amendment or revocation to the extent that the power has
14 not become unexercisable in fact, bind all persons to the extent
15 that their interests, as persons who may take by virtue of the
16 exercise or nonexercise of the power, are subject to the power.

17 (ii) To the extent there is no conflict of
18 interest between them or among the persons represented:

19 1. Orders binding a guardian of the property
20 bind the ward.

21 2. Orders binding a trustee bind
22 beneficiaries of the trust in proceedings to probate a will, in
23 establishing or adding to a trust, in reviewing the acts or
24 accounts of a prior fiduciary and in proceedings involving
25 creditors or other third parties. However, for purposes of this
26 section, a conflict of interest shall be deemed to exist when each

27 trustee of a trust that is a beneficiary of the estate is also a
28 personal representative of the estate.

29 3. Orders binding a personal representative
30 bind persons interested in the undistributed assets of a
31 decedent's estate, in actions or proceedings by or against the
32 estate.

33 (iii) An unborn or unascertained person, or a
34 minor or any other person under a legal disability, who is not
35 otherwise represented is bound by an order to the extent that
36 person's interest is represented by another party having the same
37 or greater quality of interest in the proceeding.

38 (b) Orders binding a guardian of the person shall not
39 bind the ward.

40 (c) In proceedings involving the administration of
41 estates or trusts, notice is required as follows:

42 (i) Notice as prescribed by law shall be given to
43 every interested person, or to one who can bind the interested
44 person as described in paragraph (a)(i) or paragraph (a)(ii).
45 Notice may be given both to the interested person and to another
46 who can bind him or her.

47 (ii) Notice is given to unborn or unascertained
48 persons who are not represented pursuant to paragraph (a)(i) or
49 paragraph (a)(ii) by giving notice to all known persons whose
50 interests in the proceedings are the same as, or of a greater
51 quality than, those of the unborn or unascertained persons.

52 (d) If the court determines that representation of the
53 interest would otherwise be inadequate, the court may, at any
54 time, appoint a guardian ad litem to represent the interests of an
55 incapacitated person, an unborn or unascertained person, a minor
56 or any other person otherwise under a legal disability, or a
57 person whose identity or address is unknown. If not precluded by
58 conflict of interest, a guardian ad litem may be appointed to
59 represent several persons or interests.

60 (e) When a sole holder or coholder of a general,
61 special, or limited power of appointment, including an exercisable
62 power of amendment or revocation over property in an estate or
63 trust, is bound by:

64 (i) Agreements, waivers, consents or approvals; or

65 (ii) Accounts, trust accountings, or other written
66 reports that adequately disclose matters set forth therein,
67 then all persons who may take by virtue of, and whose interests
68 are subject to, the exercise or nonexercise of the power are also
69 bound, but only to the extent of their interests which could
70 otherwise be affected by the exercise or nonexercise of the power.

71 **SECTION 2.** This act shall take effect and be in force from
72 and after July 1, 2005.