

DIVISION 22

PROCEDURES FOR APPROVAL OF SETTLEMENTS FOR MINORS OR OTHER INCOMPETENT PERSONS

In order for a settlement affecting the rights of a minor or other incompetent person to become effective, the Court must examine the claim, the proposed distribution of proceeds, and how the corpus of the settlement funds will be protected. Consequently, multiple factors must be addressed by counsel before the Court will consider a proposed settlement for the benefit of a minor or ward.

REQUIREMENT OF COURT APPROVAL

Section 768.25, Florida Statutes, requires Court approval of any settlement affecting a minor or incompetent ward. The statute also requires the Court to approve “apportionment among the beneficiaries.” Finally, the Court is charged with providing protection for any amount awarded for the benefit of a minor child or incompetent ward. *See* § 744.387, Fla. Stat. (authorizing the Court to “determine whether an additional bond is required”).

APPOINTMENT AND REPORT OF GUARDIAN AD LITEM

The Court may appoint a guardian ad litem before approving a gross settlement exceeding \$15,000. § 744.3025(1)(a), Fla. Stat. The Court must, however, appoint a guardian ad litem when the gross settlement equals or exceeds \$50,000 unless a legal guardian “has previously been appointed *and* that guardian has no potential adverse interest to the minor.” § 744.3025(1)(b), (e), Fla. Stat. (emphasis added). Even when the exception to the required appointment exists, the Court retains discretion to appoint a guardian ad litem. *See* § 744.3025(1)(e) Fla. Stat. (stating permissively that the Court “need not” appoint a guardian ad litem when the requirements are satisfied).

ITEMS REQUIRED BY THE COURT

The party(ies) requesting the Court’s approval of a proposed settlement must provide the following:

1. A petition stating:

- the facts of the claim, question, or dispute giving rise to the proposed settlement;

- the identity and relationship to the minor or ward of the legal guardian or parent requesting that the Court approve the proposed settlement;
- the terms and gross amount of the proposed settlement;
- the proposed distribution of settlement proceeds among all persons, estates, and other entities entitled to recover a portion of the settlement proceeds;
- the justification for the proposed distribution of settlement proceeds;
- the reason(s) the proposed settlement serves the best interests of the minor or ward;
- how the funds will be invested or protected, including identification, rating, and stability of proposed financial institution(s), fund(s), or other financial products. *See* § 69.031(1), Fla. Stat. (authorizing the Court to designate a financial institution to hold the property in safekeeping, subject to actions “authorized by order of the court directed to the financial institution”);
- the attorney’s fees and costs proposed to be deducted from the settlement proceeds; and
- the identity and qualifications of any proposed guardian ad litem or, if no guardian ad litem is requested, the reason(s) no guardian ad litem is requested; and

2. When required by statute or order:

- a Motion to Appoint Guardian ad Litem;
- a proposed Order Appointing Guardian ad Litem; and
- a Guardian ad Litem report analyzing the proposed settlement and distribution, stating the position(s) of the natural parent(s) or guardian, analyzing the position(s) or claims of any Personal Representative or other survivors, particularly those that are potentially adverse to the minor or ward, and stating the Guardian ad Litem’s opinion and the bases for the Guardian ad Litem’s opinion; and

3. Required attachments:

A. Medical records:

- the History and Physical showing the presenting condition;
- the Admission and Discharge and Summary Resume, if hospitalized;
- final reports from each primary treating physician, including statement of the need for, or lack of need for, future care and

the approximate costs of future care, if the treating physicians have a basis on which to estimate costs;

- explanation of the treatment plan and the estimated cost of the treatment plan, if not contained in the final reports of the primary treating physicians; and
- identification of the source(s) of payment for future treatment, including, but not limited to, medical insurance, Medicaid, or Medicare; and

B. Photographs of the child or ward, if the injury or treatment involves scarring or disfigurement:

- before the incident;
- after the incident; and
- present condition

The Court may also require that the child appear at the hearing to allow the Court to observe the condition(s); and

C. Settlement and Release Agreement(s):

- copies of all release and settlement agreements that the legal guardian or parent will be required to sign;
- if any required agreement(s) contain(s) provision for a duty to defend, to indemnify, or to hold harmless:
 - the agreement(s) must specify whether the parties intend for the provision to bind the minor or ward child or only to the parent or legal guardian, and
 - if the parties intend to bind the minor or ward to a duty to defend, to indemnify, or to hold harmless, legal authority holding that a minor or ward can be bound to defend, indemnify, or hold harmless must also be attached;
- if any required agreement(s) contain provision for confidentiality:
 - the agreement(s) must specify whether the parties intend for the provision to bind the minor or ward or only the parent or legal guardian, and
 - if the parties intend to bind the minor or ward:
 - the agreement(s) must unequivocally state the consequence to the minor or ward for violation of the confidentiality provision, and

legal authority holding that a minor or ward can be bound to a confidentiality provision must also be attached; and

All agreements must specify which party is responsible for obtaining an order sealing limited documentation in the court file pursuant to Florida Rule of General Practice and Judicial Administration 2.420(d); and

D. Certifications:

by plaintiff's counsel that all required release and settlement agreements have been personally reviewed and approved by plaintiff's counsel; and

by counsel for all parties that the settlement is intended to release only the settling party and their insurer(s) and that the settlement is not intended to release any other defendant or nonparty; and

E. Annuity(ies), if contemplated by the proposed settlement:

identification of the company issuing the annuity;

documentation of the issuing company's rating;

identification of the owner of the annuity;

identification of the relationship(s) between annuity's owner and the party(ies) or entity(ies) being released;

documentation of the annuity's cost;

documentation of the annuity's present value; and

documentation of the annuity's payment schedule; and

F. Closing statement:

itemizing all attorney's fees and the identity of each lawyer and law firm receiving all or part of the fees;

itemizing all costs expended or to be expended;

identifying all recipients of the settlement proceeds and the proposed allocation among them;

itemizing all resolved and unresolved liens, including outstanding balances owed; and

itemizing all claims, including unresolved claims, that will be paid with proceeds from the proposed settlement.

The closing statement should not be filed in the record but should be submitted directly to Chambers under seal.