

APPROVAL OF MINOR'S SETTLEMENT

ITEMS NECESSARY FOR THE COURT'S APPROVAL OF A MINOR'S PROPOSED SETTLEMENT

Multiple issues need to be addressed prior to the Court considering the potential approval of a proposed settlement. Florida law requires that the Court act as a "final check" before an attorney, guardian, or parent settles a claim and discharges a child's rights. The claim and the distribution of the proceeds must be examined as well as what protections are afforded the corpus of the funds.

REQUIREMENT OF COURT APPROVAL

Florida Statute 768.25 requires Court approval of any settlement of a minor or incompetent while an action is pending. This statute also requires the Court to approve "apportionment among the beneficiaries". "The Court is also specifically charged with "provid(ing) protection for any amount awarded for the benefit of a minor child or incompetent" See also, *Fla. Stat. 744.387*.

APPOINTMENT AND REPORT OF GUARDIAN AD LITEM

In performing its duties with regard to evaluation of, and possible approval of, a settlement for a minor, the Court may appoint a Guardian ad litem before approving a settlement if "... the gross settlement of the claim exceeds \$15,000. *Fla. Stat. 744.3025 (1) (a)*. [Underlining supplied] However, "... before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds \$50,000", the Court must appoint a guardian ad litem. *Fla. Stat. 744.3025 (1) (b)* [Underlying supplied] A guardian ad litem need not be appointed if "the guardian has no potential adverse interest to the minor." *Fla. Stat. 744.3025(e)*

ITEMS REQUIRED BY THE COURT

The Court will need the following information in most cases:

Amount of Settlement:

- 1- The specific amount of the gross settlement in this proposed offer and Motion for Approval.

Distribution of the net proceeds:

- 2- The itemized proposed distribution amongst the beneficiaries and/or survivors, the Estate, or other entities with claims and costs and attorney's fees.

Guardian Ad Litem Report:

- 3- The appointment of, and report from, a Guardian Ad Litem regarding the proposed settlement. The dollar amount, as noted above may require the appointment of a GAL. Special attention will be necessary where the Personal Representative is representing the entire Estate and all the survivors and appears to have "potential adverse interest(s) to the minor(s)." The GAL should present the position of the natural parent or guardian as to the settlement and distribution and whether it comports with the GAL's recommendation or that it does not.

Closing Statement:

- 4- A copy of a detailed closing statement showing the attorney's fees and the recipients, costs expended or to be expended, anticipated distribution of funds and to whom, liens resolved and unresolved, outstanding balances owed, as required by The Rules Regulating The Florida Bar and specifically Rule 4-1.5, and unresolved claims against the Estate, as well as any other claims being compensated from these proceeds. *The closing statement should NOT be filed with the Court and should be submitted to the Court directly under seal or be brought to the hearing if one is held.*

Protection of Minor's net proceeds:

- 5- The Court will need to know how the funds will be invested or protected and in what institution(s) or through which vehicle(s). This would include the rating or stability of the institution(s) or fund(s). A designated financial institution can be used under Florida Statute 69.031 to protect the assets of the minor until he or she reaches the age of majority. Disbursement of the funds deposited to the account can only occur with an order from the court.