

ADMINISTRATIVE ORDER
NO. 07-93-43-02

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE AND OSCEOLA
COUNTIES, FLORIDA

**AMENDED ADMINISTRATIVE ORDER RE: STANDARDS AND PROCEDURES
FOR THE PROTECTION OF MINORS IN THE SETTLEMENT OF PERSONAL
INJURY, WRONGFUL DEATH AND MEDICAL MALPRACTICE
LAWSUITS AND CLAIMS**

WHEREAS, there is a need to establish uniform standards and procedures for the protection of minors in the settlement of personal injury, wrongful death and medical malpractice lawsuits wherein minors are among the claimants; and in settlements which have not involved the filing of a lawsuit;

NOW, THEREFORE, I, Belvin Perry, Jr., pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.050, do hereby order that the following procedures and standards are hereby adopted in all matters involving the settlement of personal injury, wrongful death and medical malpractice lawsuits (“filed action”) or claims not the subject of a lawsuit (“unfiled actions”) arising wherein one or more minors are involved:

Part I

Petitions for Approval of a Settlement of a Minor shall be filed in a pending action in the **Civil Division** or independently in the **Probate Division** when no pending action exists in the Civil Division, pursuant to **Florida Probate Rule 5.636 & the Uniform Administrative Policies and Procedures of the Civil Division**. If a **Legal Guardianship** preexists the filing of the **Petition for Approval of Settlement of a Minor**, and the Petition was filed in a pending action within the Civil Division, the Civil Division judge may transfer the Petition to the division

where the Legal Guardianship exists.

Part II

A. When the amount involved in the claim on behalf of the minor does not exceed \$15,000.00, the natural guardian or guardians may settle and consummate a settlement of a minor without court approval, pursuant to section 744.301(2), Florida Statutes. However, if a party requests court approval, and the amount involved is \$15,000 or less, then the **Probate Division** shall have jurisdiction to authorize disbursements, determine the need for a depository, or take any necessary action to protect the minor's interests. The Court shall consider the appropriateness of requiring the natural guardian or guardians to establish a designated financial institution/depository to receive the minor's funds, pursuant to section 69.031, Florida Statutes.

B. When the gross settlement for the claim of the minor exceeds \$15,000.00 but is less than \$25,000.00, then a **Guardian Ad Litem** may be appointed, pursuant to **section 744.301(4)(a), Florida Statutes**. Counsel for the natural guardian(s) should determine if the Civil Division Judge before which the case is pending chooses to have a Guardian Ad Litem appointed to represent the minor's interests and if so, the Court will appoint a Guardian Ad Litem to represent the minor's interest.

C. In a case where the amount of the gross settlement involving the minor equals or exceeds \$25,000.00, a **Guardian Ad Litem shall** be appointed, pursuant to section **744.301(4)(a), Florida Statutes**. The Guardian Ad Litem shall represent the interest of the minor or minors with respect to the petition and shall file a report, pursuant to Florida Probate Rule 5.636(f).

D. If a Legal Guardianship preexists the filing of the Petition for Approval of Settlement of a Minor and the judge finds that the existing **Legal Guardian** has no potential adverse interest to the minor, the Court need not appoint a Guardian Ad Litem to represent the minor's interest, unless the Court determines the appointment is otherwise necessary, pursuant to **section 744.301(4)(a), Florida Statutes**. The Court may require the **Legal Guardian** to file the same report that is required of a guardian ad litem, pursuant to Florida Probate Rule 5.636(f).

Part III

A. If the net settlement to the minor exceeds \$15,000.00, said order shall require the establishment of a **legal guardianship** and the appointment of a **Guardian of the Property** to receive the minor's settlement share, pursuant to **section 744.387, Florida Statutes**. After the guardianship is established and the attorney's trust account is in receipt of the funds, the **Probate Division Judge** shall then direct further disbursement of the minor's funds from the attorney's trust account to the guardianship.

B. The Civil Division Judge may consider the appropriateness of waiving the establishment of a **legal guardianship** for settlements when recommended by the Guardian Ad Litem and when:

(a) a structured settlement or binding annuity is requested by the natural guardians and the structured settlement is recommended by the Guardian Ad Litem or

(b) the net proceeds are to be deposited in a financial institution/depository pursuant to section 69.031, Florida Statutes, and subject to release only upon order of the court. A receipt from the depository is to be filed with the court.

Counsel should be prepared to demonstrate to the Court why waiving a **legal**

guardianship would be in the best interest of the minor.

C. Upon entry of the order appointing a Guardian of the Property and directing payment of the settlement proceeds to the guardianship, the responsibilities of the **Guardian Ad Litem** shall be considered completed. Upon petition served on all interested persons, the Civil Division Judge shall enter an order discharging the **Guardian Ad Litem**.

Part IV

Upon approval of the settlement amount and the apportionment thereof, the Civil Division Judge shall enter an appropriate order which shall authorize the payment of the gross settlement proceeds into an interest-bearing trust account under the control and supervision of the attorney for the Plaintiff with directions as to its disbursement.

Part V

A. Matters to be considered in determining if settlement is in the best interest of the minor:

1. Liability aspects;
2. Damages-evaluation;
3. Insurance coverage and/or individual assets;
4. Apportionment among the beneficiaries - section 768.25, Florida Statutes;
5. Attorney fees and costs - reasonableness - Nixon v. Bryson, 488 So. 2d 607 (Fla. 3d DCA 1986);
6. Consider if future withdrawals from depository would be handled by attorney without charge where no guardianship exists;
7. Relevant statutes and rules to consider: **Florida Statutes, sections 744.301**,

744.387, 69.031, 768.23, and 768.25, and Florida Probate Rules 5.636 and 5.555.

This Administrative Order amends Administrative Order No. 07-93-43-1 and is effective immediately.

DONE AND ORDERED at Orlando, Florida, this 18th day of August, 2005.

/s/ Belvin Perry, Jr.
Belvin Perry, Jr.
Chief Judge

Copies provided to:

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Clerk of Courts, Osceola County
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