

APPROVAL OF MINOR'S/ INCOMPETENT'S SETTLEMENT

ITEMS NECESSARY FOR THE COURT'S APPROVAL OF 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, 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/ Incompetent'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 incompetent or 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.

- 6- If an annuity is to be purchased, the Court will need a copy of the information setting forth the cost, commission to be paid, present value, payment schedule, the name of the company that will be used, the name of the owner of the annuity and its relationship to those companies being released, as well the rating of the company.
- 7- Copies of the initial medical records including the history and physical showing the presenting condition, if hospitalized the admission and discharge and summary resume will be necessary. A final report from each primary treating physician with an indication of the need for, or the lack of need for, future care and, if possible the approximate costs.
- 8- If the injury or treatment involves resulting scarring or disfigurement, photographs of the child after the incident and photographs of the present condition will be required. *The Court may require that the child appear at the hearing in order to allow the Court to observe the condition(s).* The above mentioned medical reports should contain an estimate of the cost of and an explanation of the treatment plan for these injuries.
- 9- The existence of medical insurance, Medicaid, Medicare or other sources of payment, or lack thereof, for future treatment that has been projected.

Effect of Release and/or Settlement Agreement:

- 10- A copy of the release, and any settlement agreements to which the minor, or his guardian on behalf of the minor, will need to sign and assurances that it has been reviewed by counsel and that all parties agree, in writing, that it is only intended to release the settling party and their insurers as insurers of this particular settling party, and is not intended to release any other defendant or non-party.
- 11- If the release and/or settlement agreement contain a duty to defend, indemnify and hold harmless, is such agreement intended to bind and apply to the minor child or just the guardian. If it is intended to apply to the minor child, by what legal authority can the minor child be bound to defend, indemnify and hold harmless this party.

- 12- If the release and/or settlement agreement require a confidentiality agreement, is the minor child meant to be bound by such agreement and by what authority? What is the anticipated consequence to the minor child for violation of this confidentiality agreement? Which party will take responsibility to seek, and obtain, the appropriate measure to seal the limited documentation in the Court file pursuant to *Florida Rules of Judicial Administration, Rule 2.420(d)* ?