

**ARTICLE 10: SETTLEMENTS AND JUDGMENTS INVOLVING PROCEEDS FOR MINORS AND WARDS**

**10.00 RESERVED**

**10.01 SETTLEMENTS: MINORS, WARDS AND DISABLED PERSONS**

(a) Only a personal representative authorized by law may seek court approval of settlement of a claim for personal injury, property damages or otherwise on behalf of a minor, a ward or a disabled person.

(b) Personal representative includes a guardian appointed under 755 ILCS 5/11a-3 and 755 ILCS 5/11-5, a next friend as recognized under 735 ILCS 5/1-1008(c), 755 ILCS 5/11-13(d) or 755 ILCS 5/11(a)-18(c) and a guardian ad litem appointed by the court.

(c) The personal representative must file a Verified Petition in Probate Court except: where the proposed settlement relates to a pending case the Verified Petition may be filed before the Judge assigned to that case unless that Judge determines that due to the complexity and expected duration of the matter it would be better supervised in a guardian estate.

(d) The personal representative must provide a bond two times the amount likely to come into the hands of the personal representative as proceeds of the judgment or settlement (or 1 ½ times if a surety company acts a surety) provided that upon request and upon good cause shown surety on the bond may be waived.

(e) Prior to representation of the Verified Petition, notice should be sent to the following entities with regard the minor, ward or disabled person:

- (1) the spouse, parents and adult siblings if any or, if none,
- (2) any appointed guardian if any or, if none,
- (3) any person or facility with which the minor, ward or disabled person resides unless a consent signed by the entity entitled to notice is filed with the Court or unless notice is excused by the Court upon good cause shown.

(f) The Verified Petition must contain, if known, the following:

- (1) the Petitioner's name, address and relationship to the minor, ward or disabled persons;
- (2) a brief description of the occurrence giving rise to the claim;
- (3) a brief description of the injuries, damages or relief claimed;
- (4) the name and address of each entity against whom the claim has been asserted;
- (5) the name and address of each liability insurance carrier, if any, affording coverage to any of the entities named above and the coverage limits;
- (6) a list of bills, expenses and liabilities incurred as a result of the occurrence;

- (7) a statement whether or not the proposed settlement is fair, is recommended and should be approved;
- (8) where appropriate, a current medical report executed by the attending physician stating the nature and extent of the injuries, the current condition of the minor, ward or disabled person as regards to those injuries and the prognosis;
- (9) the proposed place where any portion of settlement funds due to the minor, ward or disabled person is to be deposited.

(g) In cases where no independent attorney has been employed by the personal representative of a minor, ward or disabled person, the Court may appoint an attorney as guardian ad litem to investigate the merits of the proposed settlement and to report findings and recommendations to the Court.

(h) In the event the attorney appointed as guardian ad litem does not recommend approval of the proposed settlement, neither that attorney nor any member of that attorney's firm shall represent any parties having an interest in the claim as a private attorney for any matter pertaining to the claim. The guardian ad litem shall have no right, title or claim to proceeds realized from an eventual settlement.

(i) The Court may, at its discretion, allow the guardian ad litem reasonable compensation to be paid either from the proceeds of the settlement or otherwise.

(j) Attorneys fees will not be awarded or approved unless the attorney representing the claim of the minor, ward or disabled person sets forth in a separate sworn statement the following:

- (1) an itemization of the hours expended, the work performed and the hourly rates charged; or
- (2) if the fees sought are based upon a contingent fee agreement, an account of the work performed, the result realized (together with a copy of the fee agreement) and a statement justifying any amount in excess of 25% of the gross settlement amount.

(k) The order approving settlement, in addition to other provisions appropriate to the specific case, will require the following:

- (1) a statement of distribution of settlement funds;
- (2) a designation of the place where those funds due the minor, ward or disabled person will be deposited;
- (3) a date for the filing of vouchers signed by the recipient of any portion of the settlement funds;
- (4) in the case of a lump sum settlement the appointment of a guardian of the estate of the minor, ward or disabled person (if none has been previously appointed) for the sole purpose of receiving the proceeds of the settlement, distributing same and filing vouchers demonstrating the distribution;
- (5) the approval of an oath and bond to be filed by the above referenced guardian;

- (6) in the case of a structured settlement, the approval of the company providing the annuity, which must have a rating of “A” or better by the Best Insurance Guide;
- (7) in the case of a structured settlement where annuity payments are payable to a minor before the age of majority, a requirement that the funds be paid to the estate of the minor and shall not be withdrawn, expended or transferred until the minor attains majority unless by order of the Court.

(l) Any proceeds due a minor from a settlement approved hereunder shall be deposited in a restricted account in an institution approved by the Court and the voucher secured by the personal representative must contain the express language: “No withdrawals, expenditures or transfers shall be made of these monies at any time prior to (assert the date that the minor attains majority) unless same has been authorized by order of Court.”

(m) If the portion of the settlement funds due a minor, ward or disabled person is \$15,000 or less, the Court may in its discretion order the amount to be distributed by the guardian of the estate directly to the parent or guardian with whom the minor, ward or disabled person resides to be used solely for the benefit of the minor, ward or disabled person.

(n) In the event a waiver of surety on the bond of the guardian of the estate appointed hereunder is sought and granted, it shall become the personal responsibility of the attorney seeking entry of a settlement order to deposit and disburse the funds in accordance with the order and to present proof of the same. The order approving the settlement shall set out this responsibility.

(o) Upon filing of the proper vouchers and upon proof of disbursement, the bond of the guardian of the estate appointed for the purposes of settlement may be discharged, that guardian may be dismissed and the case in which settlement is sought may be dismissed.

*Amended UPR 23, eff. May 4<sup>th</sup>, 1976 ; Rules of the Circuit Court of the 16<sup>th</sup> Judicial Circuit eff. October 5, 1988; Gen. Order 06-03 eff. November 18<sup>th</sup>, 2004; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*

## **10.02 JUDGMENTS: MINORS, WARDS AND DISABLED PERSONS**

(a) That portion of funds realized from any judgment payable to a minor, ward or disabled person shall be distributed consistent with Local Rule 10.01

*Amended UPR 24, eff. May 4<sup>th</sup>, 1976 ; Rules of the Circuit Court of the 16<sup>th</sup> Judicial Circuit eff. October 5<sup>th</sup>, 1988 ; Gen. Order 06-03 eff. November 18<sup>th</sup>, 2004; Gen. Order 08-04, eff. May 5<sup>th</sup>, 2008*