

**THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA**

**CASE NO. 08-1
(Court Administration)**

**ADMINISTRATIVE ORDER
NO. 08-18
(Rescinding AO No. 06-04 and
AO No. 08-05)**

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

WHEREAS, in view of certain recent statutory amendments, there is a need to re-establish uniform standards and procedures for the protection of minors in the settlement of personal injury, wrongful death and medical malpractice lawsuits; and

WHEREAS, in the event that there is a pending civil action in the General Jurisdiction Division of the Circuit Court, the petition for approval of a minor's settlement should be filed in the pending civil action; or if there is no civil action pending in the General Jurisdiction Division, the petition for approval of settlement should be filed in the Probate Division of the Circuit Court. See committee notes to Fla. Prob. R. 5.636;

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Eleventh Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, the following procedures and standards are hereby re-established and adopted in all matters involving the settlement of personal injury, wrongful death and medical malpractice lawsuits ("filed action") or claims that are not the subject of a lawsuit ("unfiled actions"), arising wherein one or more minors are involved:

Part I Where Petition for Approval is filed.

1. Petitions for Approval of a Settlement of a Minor shall be filed in a pending action in the General Jurisdiction Division; or, in the absence thereof, the Petition for Approval of Settlement of a Minor ("Petition") shall be filed in the Probate Division of the Circuit Court. If a Legal Guardianship preexists, the filing of the Petition, and said Petition is filed in a pending action of within the General Jurisdiction Division, the General Jurisdiction

Division Judge may transfer the Petition to the Probate Division. Motions to transfer a guardianship to another jurisdiction shall be made in the Probate Division.

2. The Guardian Ad Litem shall represent the interest of all plaintiffs under the age of 18 years with respect to the Petition and he/she shall file a written report with respect to the Petition and he/she shall file a written report with respect to the proposed apportionment of the settlement proceeds, and with respect to the determination of attorney's fees and costs and the apportionment thereof. Said written report shall be served on all interested parties. The Order approving the Petition may also award costs to the Guardian Ad Litem. The Guardian Ad Litem should serve on a pro bono publico basis, unless the Court determines that the matter is unusually time consuming or complex, or the Court finds that other extraordinary circumstances warrant a fee being allowed. If a fee is to be awarded, the Court may consider the reasonably anticipated remaining services to be performed by the Guardian Ad Litem. The Guardian Ad Litem shall be given an opportunity to testify at the hearing or telephonically at the discretion of the Court.

Part II Re: Court approval and appointment of the Guardian Ad Litem.

1. The court may appoint a Guardian Ad Litem to represent the minor's interest before approving a settlement of a minor's portion of the claim in any case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claims exceeds \$15,000.00. See §744.3025(1)(a), Fla. Stat. (2006).
2. The court shall appoint a Guardian Ad Litem to represent the minor's interest before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds \$50,000.00. See §744.3025(1)(b), Fla. Stat. (2006).
3. The appointment of the Guardian Ad Litem must be without the necessity of bond or notice. See §744.3025(1)(c), Fla. Stat. (2006).
4. The duty of the Guardian Ad Litem is to protect the minor's interests as described in the Florida Probate Rules. See §744.3025(1)(d), Fla. Stat. (2006), Fla. Prob. R. 5.636.
5. A court need not appoint a Guardian Ad Litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor. A court may appoint a Guardian Ad Litem if the court believes a Guardian Ad Litem is necessary to protect the interests of the minor or the court determines that representation of the

minor's interest is otherwise inadequate. See §744.3025(1)(e), Fla. Stat. (2006), Fla. Prob. R. 5.636(d).

6. Unless waived, the court shall award reasonable fees and costs to the Guardian Ad Litem to be paid out of the gross proceeds of the settlement. See §744.3025(2), Fla. Stat. (2006).
7. A proposed settlement is deemed to exceed \$50,000.00 if the gross amount payable exceeds \$50,000.00, without reduction to reflect present value or fees and costs. See Fla. Prob. R. 5.636(e).
8. A Guardian Ad Litem appointed with respect to a proposed settlement affecting the interests of a minor shall, not later than 5 days prior to the hearing on a petition for order authorizing settlement, file and serve a report indicating the Guardian Ad Litem's determination regarding whether the proposed settlement will be in the best interest of the minor. See Fla. Prob. R. 5.636(f) for details of what the report must contain.

Part III Re: Disbursement of settlement proceeds and Legal Guardianship.

1. Upon approval of the petition for settlement of the minor's claim including attorney's fees and costs the Judge before whom the civil action is pending in the General Jurisdiction Division 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. Said order shall authorize such attorney to disburse to all plaintiffs, other than the minor(s) plaintiff(s) who are subject of a guardianship proceeding, the settlement proceeds which have been apportioned to such persons, and shall further authorize the disbursement of the approved attorney's fees and costs attributable to the minor's settlement. However, as to any net settlement proceeds which will be used to fund a tax-free structured settlement for the benefit of the minor, upon agreement of the parties, said proceeds may be held by the Defendant pending the funding of the structured settlement and a court order approving such. (See attached form order) The attorney's fees spent for the opening of the guardianship shall be included as a general rule in the attorney's fees in the personal injury case. When there is minimum compensation to the attorney in the personal injury case, then the Court may exercise its discretion and award additional attorney's fees.
2. If the net settlement to the minor exceeds \$15,000.00, the settlement may be approved by the General Jurisdiction Judge, subject to the establishment of a legal guardianship in the Probate Division and the appointment of a Guardian of the Property to receive the minor's net settlement share, pursuant to §744.387, Florida Statutes (2002). (See attached form order). No settlement after an action has been commenced

by or on behalf of a ward shall be effective unless approved by the court having jurisdiction of the action. §744.387(3)(a), Fla. Stat. (2002).

3. After the guardianship is established by the Probate Division Judge and the attorney's trust account is in receipt of the minor's net settlement share of the settlement, the Probate Division Judge shall have the sole discretion to direct further disbursements of the minor's funds from the attorney's trust account to an appropriate financial institution/depository; whether disbursements are structured settlements, special needs trust, or the like. Disbursements are only to be made pursuant to a court disbursement order. Copies of the signed closing statement, Guardian Ad Litem's report, and the Final Order from the General Jurisdiction Division shall be served on all interested persons. Any costs involved with the purchase of an annuity shall be included in the closing statement.
4. Copies of the Guardian Ad Litem's report, the closing statement, and final order of the General Jurisdiction Judge, and any other orders of disbursement, shall be promptly filed in the Probate guardianship file. After an order designating a restricted depository is entered by the Court, and after an order authorizing disbursement into a restricted depository is entered by the Court, the original depository receipt of assets shall be promptly filed into the Probate Division file. *See generally* §69.031, Fla. Stat. (1967).
5. Upon entry of the order appointing a Guardian of the Property and directing payment of the minor's net settlement proceeds into the restricted depository or for the purchase of the annuity, the responsibilities of the Guardian Ad Litem shall be considered completed. Upon petition served on all interested persons, the General Jurisdiction Division Judge or Probate Division Judge shall enter an order discharging the Guardian Ad Litem.

This Administrative Order shall take effective immediately upon execution. Administrative Order No. 06-04 and Administrative Order No. 08-05 are hereby rescinded in their entirety and held for naught.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, this 10th day of October, 2008.

**JOSEPH P. FARINA, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA**

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO.

Plaintiff(s)

vs.

ORDER APPROVING SETTLEMENT
OF MINOR'S CLAIM

(Pursuant to AO No. 08-18)

Defendant(s)

On _____ (date), this cause came to be heard on a petition for the court to approve the settlement of a claim on behalf of a minor(s). The Court having heard argument of counsel, reviewed the report of the guardian ad litem, and otherwise being fully advised in the premises, finds the settlement reflected in the attached closing statement to be in the minor's best interest and the share allocable to the minor to be fair under the circumstances.

It is therefore **ORDERED** and **ADJUDGED**:

1. This settlement of the minor's claim is approved as follows: _____ . This settlement is subject to the establishment of an appropriate guardianship in the Probate Division pursuant to §744.3025, Fla. Stat. (2006); §744.387, Fla. Stat. (2002); and, Fla. Prob. R. 5.636. In wrongful death cases, the personal representative shall comply with the wrongful death statute and afford all appropriate notice and due process to creditors (including the funeral bill) and other interested parties.
2. Pursuant to Administrative Order No. 08-18, the settlement proceeds shall be paid into an interest bearing trust account under the control and supervision of plaintiff's counsel who is hereby authorized to disburse to all the plaintiffs, other than the minor plaintiff(s) who is (are) the subject of a guardianship proceeding, the net settlement proceeds which have been apportioned to such persons as well as the approved attorney's fees and costs attributable to the minor's settlement. However, as to any net settlement proceeds which will be used to fund a tax-free structured settlement for the benefit of the minor, upon agreement of the parties, said

proceeds may be held by the Defendant pending the funding of the structured settlement and a court order approving such.

3. .No other disbursements, dispositions, and/or management of the net settlement proceeds allocable to the minor shall be made except upon appropriate directives and orders of the Probate Judge.
4. Counsel shall file with the Probate Division Judge a duplicate copy of this order, the closing statement and the guardian ad litem report.

DONE and **ORDERED** in Chambers at Miami-Dade, Florida, this _____ day of _____.

Circuit Court Judge