

THE ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA

CASE NO. 22-1
(Court Administration)

ADMINISTRATIVE ORDER
NO. 08-18 A1
(Amending AO No. 08-18)

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, 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.

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Eleventh Judicial Circuit of Florida under Florida Rule of General Practice and 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: Approval of Minor Settlements and Appointment of Guardians Ad Litem.

1. If the gross settlement of the claim does not exceed \$15,000.00, then approval of the minor's portion of a settlement and the appointment of a Guardian Ad Litem is not required unless the court believes it is in the minor's best interest. See §744.3025(1)(a), Fla. Stat. (2015).
2. If the gross settlement of the claim exceeds \$15,000 but is less than \$50,000, then the court may appoint a Guardian Ad Litem to represent the minor's interest before approving a settlement of the minor's claim if the court believes guardian ad litem is necessary to protect the minor's interest. See §744.3025(1)(a), Fla. Stat. (2015).
3. If the gross settlement of the claim equals or exceeds \$50,000.00, then the court shall appoint a Guardian Ad Litem to represent the minor's interest before approving a settlement of the minor's claim. 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).

Part II: Procedure for Filing Petition for Approval of Settlement

1. Petitions for Approval of a Settlement of a Minor ("Petition") shall be filed in the pending civil action. Prior to seeking approval, a guardianship for the minor must be filed in the Probate Division and the guardianship case number shall be referenced in any order approving settlement. If a guardianship is already in place, that existing case number shall be referenced in the approval order. No order approving minor settlement exceeding \$15k shall be entered without an open guardianship filed on behalf of the minor.
2. If no civil action is pending, the Petition for Approval of a Minor Settlement shall be filed in a proceeding in the Probate Division of the Circuit Court

Part III: Court Approval and Appointment of the Guardians Ad Litem.

1. If applicable, the Court shall use the attached Order Appointing Guardian Ad Litem.
2. The appointment of a Guardian Ad Litem shall be made by the Court upon the filing of a petition. The Guardian Ad Litem shall be selected from the "Guardian Ad Litem for Approval of Minor Settlements" wheel of pro bono volunteer lawyers provided by ABOTA, or other circuit-approved pro bono GAL program, maintained by the Administrative Office of the Courts. The appointed Guardian Ad Litem shall provide this service on a pro bono basis and shall represent the best interests of the minor. 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. (2015), Fla. Prob. R. 5.636(d).
3. 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. (2015), Fla. Prob. R. 5.636.
4. The Guardian Ad Litem shall serve on a pro bono basis, unless the Court determines that the matter is unusually time consuming or complex.
5. A Guardian Ad Litem shall file and serve a report as soon as possible but no later than five days prior to a hearing to approve the settlement, 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 IV: 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 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 any minor plaintiff 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.

2. As to any net settlement proceeds which will be used to fund a tax-free structured settlement (annuity) 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 for appropriate language.)
3. If the net settlement to the minor exceeds \$15,000.00, the settlement may be approved by the Judge in the civil action, 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).
4. If the net settlement proceeds will be used to fund a structured settlement (annuity) for the benefit of the minor, a guardianship in the Probate Division is not required as long as the minor does not receive payments until he/she reaches the age of majority.
5. If any settlement proceeds are being used to fund a structured settlement (annuity) all settlement funds shall be free from anticipation, assignment, alienation, transfer, pledge or obligations of the claimant/plaintiff or any payee, his/her heirs, executors, administrators, successors, assigns or anyone acting on behalf of claimant/plaintiff/payee, and shall not be subject to attachment, exclusion, or other legal process. Neither the claimant/plaintiff nor any payee shall have the power to sell, mortgage, encumber or anticipate the payments or any part thereof by assignment or otherwise. All structured settlement contracts must incorporate this or similar language. (See attached form order for appropriate language.)

Except as amended herein, Administrative Order No. 08-18 shall remain in full force and effect. This Order shall take effect immediately upon execution and shall remain in effect until further order of the court.

DONE AND ORDERED in Chambers at Miami-Dade, Florida, this 16th day of

December 2022.

NUSHIN G. SAYFIE, CHIEF JUDGE
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

ATTACHMENT

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

CASE NO: 2016-002634-CA-01

SECTION: CA59

JUDGE: Lisa S. Walsh (CA59)

Ramiro Menendez et al

Plaintiff(s)

vs.

Citizens Property Insurance Corporation

Defendant(s)

ORDER APPROVING GAL SETTLEMENT

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 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 that this settlement of the minor's claim is APPROVED as follows:

1. If the net settlement to or minor exceeds \$15,000, then 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.
2. If the net settlement proceeds will be used to fund a structured settlement (annuity) for the benefit of the minor, a guardianship in the Probate Division is not required as long as the minor does not receive payments until he/she reaches the age of majority.
3. If any settlement proceeds are being used to fund a structured settlement (annuity) it is ORDERED that all settlement funds shall be free from anticipation, assignment, alienation, transfer, pledge or obligations of the claimant/plaintiff or any payee, his/her heirs, executors, administrators, successors, assigns or anyone acting on behalf of claimant/plaintiff/payee, and shall not be subject to attachment, exclusion or other legal process. Neither the claimant/plaintiff nor any payee shall have the power to sell, mortgage, encumber or anticipate the payments or any part thereof by assignment or otherwise. All structured settlement contracts must incorporate this or similar language.
4. 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), 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. Proceeds to be used to purchase a structured settlement may be held by the Defendant pending the funding of the structured settlement.

5. 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.
6. 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 Court.
7. The guardian ad litem appointed by the Court is hereby discharged.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this _____.

CIRCUIT JUDGE

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT