

THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA  
ADMINISTRATIVE ORDER NO. 7.02

**PROCEDURES FOR SETTLEMENTS REQUIRING COURT APPROVAL**

**WHEREAS**, from time to time, Circuit Court Judges are asked to approve settlements regarding decedent's claims and claims of minors or incapacitated persons. Even though there are guidelines set forth in the Florida Probate Code and the Florida Probate Rules, these guidelines do not elicit all of the information needed for the court to make an independent determination of whether a settlement is in the best interest of an incapacitated or minor person or an estate. Due to the different contexts under which settlement approval requests are made and the resulting varying procedures and outcomes, the Eighth Judicial Circuit is in need of a uniform system to review these settlement proposals. It is therefore

**ORDERED** that the following procedures shall be observed for court approval of settlements:

**I. CLAIMS OF MINORS OR INCAPACITATED PERSONS**

**1. Definition** - Any claim being made by or on behalf of a minor or incapacitated person, where court approval is sought.

**2. Petition** - The petition for approval of a settlement shall conform with the requirements set forth in Florida Probate Rule 5.636, and shall also address:

- a.** Liability, causation, and damages and how these affect the settlement to be approved. The information in the petition must be in sufficient detail to allow the court to make its own assessment of these issues so that the court can determine whether the settlement is in the best interest of the claimant,
- b.** The policy limits of the insurance policies against which the claim is being made or the financial position of the defendant/tortfeasor(s) against whom the claim was made, if applicable. If the policy limits are being

offered, the petitioner must address the practicality and feasibility of pursuing the tortfeasor, individually, for amounts in excess of the insurance policy limits, and

- c. Whether or not there is any other person making a claim arising from the same cause of action, and if so set forth the names, relationship, the nature and amount of the claim.

**3. Documentation** - The petitioner shall provide, as attachments to the petition:

- a. Medical reports which support the petitioner's allegation that the proposed settlement is in the claimant's best interest;
- b. The accident or incident report, if applicable;
- c. The declaration of policy limits of insurance, if applicable;
- d. The proposed closing statement, which sets forth all actual costs and any charges to be assessed against the settlement proceeds.

**4. Notice** - The petitioner shall give notice to the parties set forth below, if applicable:

- a. Next of kin as defined in §744.102(12), Fla. Stat, including both parents, if the claimant is a minor, regardless of whether the minor claimant resides with only one parent or only one parent has custody. If a parent cannot be located, then notice may be given by publication, after the petitioner has filed an affidavit of diligent search, setting out with certainty the steps taken by the petitioner to locate the parent(s). If a parent is deceased, the petition shall so indicate;
- b. The custodian of the ward, if the custodian is not someone who is otherwise entitled to notice;
- c. The claimant, unless the claimant is a minor under 14 years of age or is a person who has been declared to be fully incapacitated; and

- d. Anyone who is entitled to notice of guardianship proceedings, if the claimant is a ward in a guardianship case;

5. **Conflicts** - If the petitioner has requested reimbursement of any alleged payment or loss as a result of providing services for or to the claimant (whether a minor or incapacitated person), that request shall be deemed a conflict between the petitioner and the minor or incapacitated person and the court shall appoint an attorney ad litem on a *pro bono* basis to evaluate the petitioner's claim and report to the court whether the petitioners request is a legally sufficient claim, whether the items claimed are substantiated and whether the request or any part of the request is reasonable or not. Such items may include, but are not limited to any petitioner's claim for mileage, lost wages, transportation expenses, medical bills, non-medical sundries alleged to be necessary for the care of the claimant, or other claims made by the petitioner.

6. **Order** - The order authorizing the settlement shall set forth the gross amount of the settlement being approved and how the settlement proceeds are distributed, including the net amount to go to the claimant and to whom the claimant's net settlement shall be paid, including directions for protecting those assets, if the assets are not to be paid to a guardian or other fiduciary. If the assets are to be placed in a restricted guardianship account the settlement proceeds shall be delivered to the attorney for the guardian and the attorney shall assist the guardian in depositing the proceeds in the appropriate restricted account pursuant to directions from the guardianship court. **If the settlement is a structured annuity or the proceeds of the settlement will be used to fund a structured annuity with a present value of \$15,000 or greater, the court will not approve the settlement until a guardianship is established.**

## II. ESTATE CLAIMS

1. **Definition**: Any claim being made by or on behalf of an estate, where court approval is sought.

**2. Petition** - A petition to approve settlement of a wrongful death claim or other claim of a decedent shall be verified and executed by the personal representative or, if there is no personal representative, by a majority of the survivors, and shall include the following information:

- a. The nature of the cause of action.
- b. The proportionate liabilities of the parties.
- c. The available insurance coverage, or if none, a discussion of the financial status of the alleged tortfeasor.
- d. The names and addresses of all potential claimants who have claims arising out of the same cause of action, including, but not limited to, the estate and any survivors.
- e. The amount of attorneys fees being claimed and the method used to determine that fee.
- f. Any other costs intended to be paid from the settlement proceeds.
- g. A proposed distribution of the proceeds, making specific apportionments amongst the claimants.

**3. Estate's Claim** - Estates have their own claims pursuant to the wrongful death statute for medical or funeral expenses and net accumulations. If the petitioner is of the opinion that the estate does not have a claim, the petitioner must set forth with particularity the reasons why the estate had no claim for medical or funeral expenses or net accumulations, i.e., if the decedent was elderly and had retired the estate may have no claim for net accumulations.

**4. Calculation** - To arrive at each claimant's relative portion of the settlement, add all of the potential claims of the claimants for a total. Calculate the percent of each claimant's claim in proportion to the total claimed damages and apply those percentages to the settlement amount.

5. **Notice** - Informal notice of the petition, as authorized by the Probate Code, shall be given to all interested persons as defined in 731.201(21), including creditors of the estate, and to the survivors entitled to make a claim under the wrongful death statute.

6. **Closing Statement** - The petitioner shall attach a copy of the proposed closing statement and shall set forth on said statement all actual costs and any charges to be assessed against the settlement proceeds and the apportionment of the proposed distribution in substantially the following format:

Payee/Category	Description	Dollar Amount	Subtotals	Totals
Settlement Offer				\$ amount of settlement
Attorney's Fees	method of determining fee	\$ fee		
Attorney's Costs	broken down by item	\$ cost		
Total to Attorney			\$ combined fees and costs	
Net to Be Apportioned				
Net to Survivor #1	percent assigned to #1		\$ to #1	
Net to Survivor #2	percent assigned to #2		\$ to #2	
Net to Estate	percent assigned to estate		\$ to estate	
Total Distribution				\$ total distributed

This Order replaces Administrative Order No. 7.02(v2) entitled "Procedures for Settlements Requiring Court Approval" entered on January 30, 2015.

**ORDERED ON** this 2<sup>nd</sup> day of August, 2015 *nunc pro tunc* August 21, 1997.

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Robert E. Roundtree, Jr., Chief Judge