

Kane County Local Rule

ARTICLE 7: SETTLEMENTS AND JUDGMENTS INVOLVING PROCEEDS FOR MINORS AND WARDS

7.00 APPLICABILITY OF RULES

The rules contained in this Article 7 shall be applicable to all cases assigned to the Civil Division in which a minor or a ward of the court is or may be the recipient of a settlement or judgment in an existing civil case or a potential cause of action.

7.01 AUTHORIZED PERSONAL REPRESENTATIVES

- (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 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.

7.02 PROBATE PETITION MAY BE REQUIRED

- (a) The personal representative must file a verified petition for approval of a proposed settlement for a minor or disabled person in the pending civil lawsuit or Law (L, AR, or SC) case to be heard by the judge assigned to that case.
- (b) In the event no such civil lawsuit for personal injuries or property damage is pending, the personal representative must file a verified petition in a Probate (P) case, to be heard by the judge assigned to such probate cases.
- (c) If a civil lawsuit is pending, the judge hearing the petition for approval of settlement may also determine that due to the complexity and expected duration of the matter, a probate guardianship estate should be opened to provide for continued court supervision and periodic accounting in the best interests of the minor or disabled person.

7.03 BOND

The personal representative must provide a bond two (2) 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 as surety) provided that upon request and upon good cause shown surety on the bond may be waived.

7.04 NOTICE

Prior to presentation of the Verified Petition for approval of the settlement of a cause of action, notice should be sent to the following persons or entities with regard to 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:

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- (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.

7.05 PETITION REQUIREMENTS

The Verified Petition must contain, if known, the following:

- (1) The Petitioner's name, address and relationship to the minor, ward or disabled person;
- (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 or report of the attorney for petitioner, stating that in the attorney's opinion, based upon the facts and the law, 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 and the current condition of the minor, ward or disabled person in regards to those injuries and prognosis;
- (9) The proposed place where any portion of settlement funds due to the minor, ward or disabled person is to be deposited.

7.06 APPOINTMENT OF GUARDIAN *AD LITEM*

- (a) The Court may on its own motion, appoint an attorney as guardian *ad litem* to investigate the merits of a proposed settlement and to report findings and recommendations to the Court.
- (b) 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.
- (c) The Court may in its discretion, allow the guardian *ad litem* reasonable compensation to be paid either from the proceeds of the settlement or otherwise.

7.07 ATTORNEY FEES

- (a) Attorney 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

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(2) If the fees sought are based upon a contingent fee agreement, an account of the work performed, the result realized (with a copy of the fee agreement and a statement justifying any amount in excess of twenty-five percent (25%) of the gross settlement amount).

(b) Attorney's compensation shall not exceed one-third of the settlement if the case is disposed of in the trial court by settlement or trial. If an appeal is perfected, the compensation paid to the attorney shall not in any event exceed one-half of the recovery.

7.08 HEARING ON PETITION

The judge hearing the case, upon the approval of the settlement as fair and reasonable or upon the entry of a judgment, shall adjudicate liens, and determine expenses, including attorneys' compensation, to be deducted from the settlement or judgment and shall determine the net amount to be distributed to the minor or disabled person.

7.09 ORDER APPROVING SETTLEMENT OF WARD'S CASE

(a) 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 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 have 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, or other rating service found acceptable by the Court.
- (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.

(b) 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 language substantially as follows: "No withdrawals, expenditures or transfers shall be made of these monies at any time prior to (insert the date that the minor attains majority) unless same has been authorized by order of Court".

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7.10 SETTLEMENT OF SMALLER CASES, DIRECT DISTRIBUTION DISCRETIONARY

- (a) If the portion of the settlement funds due a minor, ward or disabled person is \$15,000 or less, and no representative has been appointed, the Court may in its discretion order the amount to be distributed directly to the parent, or person standing *in loco parentis* to the minor, or to the spouse or relative having the responsibility of the support of the disabled person, to be used solely for the benefit of the minor, ward or disabled person, in accordance with [Probate Act Section 25-2](#).
- (b) 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 expressly state this responsibility.
- (c) 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, the guardian may be dismissed and the case in which settlement is sought may be dismissed.

7.11 JUDGMENTS: MINORS, WARDS AND DISABLED PERSONS

That portion of funds realized from any judgment payable to a minor, ward or disabled person shall be distributed consistent with other provisions of this Article 7.

7.12 PETITIONS FOR WITHDRAWAL OF MINOR'S FUNDS

A petition or motion for withdrawal from a restricted account as provided above, prior to the minor reaching the age of majority, shall be in writing and shall state the amount in the account at the time of presenting the petition, the annual amount of income available to the minor, the amount and purpose of the proposed withdrawal, and the date(s), amount(s), and purpose(s) of any previous withdrawal(s) from the account.