

IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO: H-2001-19A

AMENDED
ADMINISTRATIVE ORDER REGARDING PROCEDURES FOR
SETTLEMENT OF LAWSUITS AND CLAIMS
INVOLVING MINORS

Pursuant to the provisions of § 744.301, the mother and father are natural guardians of their children; and the natural guardians or guardian of a minor may settle any claim by or on behalf of a minor that does not exceed Fifteen Thousand (\$15,000.00) Dollars, without bond. A legal guardianship shall be required when the amount of the net settlement to the ward exceeds Fifteen Thousand (\$15,000.00) Dollars, pursuant to § 744.387(2), Florida Statutes.

In all matters involving the settlement of personal injury, wrongful death and medical malpractice lawsuits (filed actions) or such claims not the subject of a lawsuit (unfiled actions) arising wherein the gross settlement proceeds are equal to or greater than Fifteen Thousand (\$15,000.00) Dollars, and one or more persons who are under the age of eighteen (18) years are among the claimants, the following procedures shall apply:

1) When a gross settlement for a claim of a minor or incapacitated person equals or exceeds Fifteen Thousand (\$15,000.00) Dollars, at such time as the parties to a filed or unfiled action agree to a settlement (but in the case of a filed action, before said settlement has been approved by the general jurisdiction division of the Circuit Court, Plaintiff's counsel or claimant's counsel shall petition the probate and guardianship division of the Circuit Court for the appointment of a guardian of the property. Section 744.301(4)(a) provides that if a minor's settlement claim equals or exceeds Fifteen Thousand (\$15,000.00) Dollars, the Court may appoint a guardian ad litem. Therefore, effective immediately, when a gross settlement for a claim of a minor or incapacitated person in Hernando County equals or exceeds Fifteen Thousand (\$15,000.00) Dollars, a petition for appointment of a guardian ad litem shall also be filed if, in the case of filed actions, a guardian ad litem has not already been appointed by the general jurisdiction court, unless this requirement is waived by the Court. In any case in which the gross settlement involving a minor equals or exceeds Twenty-five Thousand (\$25,000.00) Dollars, the Court shall appoint a guardian ad litem to represent the minor's interests prior to approval of the settlement of the minor's claim. Copies

of each petition shall be served on all interested persons, and, with respect to a filed action, copies of each petition shall be filed with the general jurisdiction court. Orders shall be entered on said petitions by the probate and guardianship court appointing a guardian and/or guardian ad litem, as appropriate. A copy of these orders shall be served on all interested persons, and, with respect to a filed action, a copy of the orders shall be filed with the general jurisdiction court.

2) A petition for approval and apportionment of the settlement, and for the determination of fees and costs, shall be filed with the general jurisdiction court (in the case of a filed action) and with the probate and guardianship court (in a case of an unfiled action). Application for a formal hearing on the petition shall be served on all interested persons and the guardian ad litem, and, with respect to a filed action, a copy of the petition shall be filed with the probate and guardianship court. The petition shall set forth in detail the proposed gross settlement amount, the proposed apportionment of the same among the Plaintiffs or claimants, and the gross attorney's fees and costs.

3. The proceeding on the petition for approval and apportionment shall be recorded either by a court reporter or through electronic recording, and a qualified interpreter shall also be present, if necessary. The guardian ad litem, if one has been appointed, shall represent the interest of all plaintiffs or claimants under the age of eighteen (18) years with respect to the petition, and shall file a written report with respect to the determination of the attorney's fees and costs and the apportionment thereof. Said written report shall be served on all interested parties, and, with respect to a filed action, a copy shall be filed with the probate and guardianship court. The guardian ad litem shall be given the opportunity to testify at the hearing.

4) Upon approval of the settlement amount and the apportionment thereof, and the attorney's fees and costs and apportionment thereof, the general jurisdiction court (in the case of a filed action) or the probate and guardianship court (in the case of an unfiled action) shall enter an appropriate order which shall authorize the payment of the net settlement proceeds into an interest-bearing trust account under the control and supervision of the attorney for any plaintiff or claimant who is the subject of a guardianship proceeding. Said order shall further authorize such attorney to disburse to all plaintiffs or claimants who are the subject of a guardianship proceeding, the net settlement proceeds which have been apportioned to such persons, and shall further authorize the disbursement of the approved attorney's fees and costs. Said order shall further provide that there shall be no disbursement of settlement proceeds for which a guardianship is to



be established until such time as an appropriate order is entered by the probate and guardianship court. The order shall also award costs to the guardian ad litem, and if appropriate, as herein provided, fees. The guardian ad litem may 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 requested, the Court shall consider the reasonably anticipated remaining services to be performed by the guardian ad litem, and such fees and costs, if any, shall be paid from the proceeds of the settlement.

5) In each case of a filed action, the attorney for the parent(s) of each plaintiff under the age of eighteen (18) years (or such other person as may have been representing the interest of any such person in the general jurisdiction proceedings seeking approval of the settlement, other than the guardian ad litem) shall set for hearing the petition for appointment of guardian of the property with the probate and guardianship court. Notice thereof shall be served on all interested persons, including the guardian ad litem. A copy of the petition shall also be filed with the general jurisdiction court.

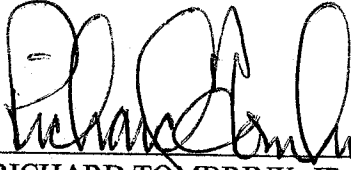
6) In the case of an unfiled action, the same procedures for notice shall be followed as in a filed action, but the hearing on the petition for appointment of a guardian of the property shall, whenever possible, be held at the conclusion of the hearing on the petition for approval of the settlement.

7) Upon notice and hearing, at which the guardian ad litem shall be given an opportunity to be heard, the probate and guardianship court shall enter an order appointing a guardian of the property and directing plaintiff's or claimant's attorney to disburse the settlement proceeds from the interest-bearing trust account, plus accrued interest, to one or more restricted depositories pursuant to § 69.031, Florida Statutes, and/or to such trust company authorized to do business in the State of Florida, as the Court shall deem appropriate, to be placed in an account entitled in the name of the guardianship. A copy of the order shall be served on all interested persons, and the guardian ad litem, and, in the case of a filed action, a copy of the order shall be filed in the general jurisdiction proceeding.

8) Upon entry of the order appointing the guardian of the property and directing payment of the settlement proceeds on behalf of the ward, the responsibilities of the guardian ad litem shall be considered completed. Upon petition served on all interested persons, an order shall be entered by the probate and guardianship court discharging the guardian ad litem.

9) This order shall supersede and replace A.O. H-2001-19, dated September 6, 2001.

DONE AND ORDERED in Chambers in Brooksville, Hernando County, Florida, this ^{4th} day
of September, 2001.


RICHARD TOMBRINK, JR.
Administrative Judge
Hernando County, Florida

