

**39.2064. Procedure for Approval of Compromise in Cases in Which an Incapacitated Person is Plaintiff.**

39-2064.1. *Situs of the Filing of the Petition.* Petitions for approval of settlements in cases in which an incapacitated person is plaintiff shall be filed with the Prothonotary if an action is pending. In cases in which an action is not already pending, such petitions may be styled as Orphans' Court matters and filed with the Clerk of Courts.

39-2064.2. *Issuance of Rule to Show Cause Discretionary.* Petitions for approval of settlements shall not proceed upon a Rule to Show Cause unless the Court, in its discretion, determines that a Rule should issue.

39-2064.3. *Contents of Petition.* The petition for Court approval shall comply with Pa.R.C.P. 2064 as appropriate and shall set forth the following:

- (a) The salient facts which form the basis of the cause of action;
- (b) Date of birth, social security number and address of the incapacitated person, names and addresses of the guardian or guardian at litem, and reference to the court, docket number and date of the court order appointing the guardian or guardian at litem;
- (c) Terms of settlement, including the specific provisions of any annuity or structured settlement, the credit rating of any entity which assumes responsibility for future payments and the present cost of the annuity or structure, periodic and lump sum payments;
- (d) Whether a lien or claim has been raised on behalf of any medical supplier, Medicare, the Department of Public Welfare, ERISA plan or other entity;
- (e) Health care records and/or a written physician's report reflecting the incapacitated person's injuries and health care progress;
- (f) A statement under oath by the guardian or guardian at litem certifying the present physical and/or mental condition, as

appropriate, of the incapacitated person and approval of the proposed settlement and distribution;

- (g) If there is to be an allocation between parties, a statement of the amounts to be allocated to each party and specific reasons for such allocation;
- (h) A copy of the agreement supporting a claim for attorney fees;
- (i) An itemized accounting of all attorney expenses which counsel requests that the Court approve for reimbursement as part of the settlement;
- (j) Certification of policy limits or copy of the declaration page supporting any allegation that limits of insurance coverage are being offered; and
- (k) A proposed Order.

39-2064.4. *Proof of Deposit and Compliance with Court Order.* As soon as possible and within sixty (60) days of entry of a final order, the petitioner shall file with the Prothonotary or Clerk of Courts, as appropriate, a certification of compliance with the court order and proof of deposit.

39-2064.5. *Hearing.* In a petition for Court approval of settlement or by separate affidavit, a petitioner shall set forth reasons why a hearing may be required on the petition. Such reasons shall include, but are not limited to, information as to whether or not the available limit of insurance coverage is being offered in settlement. On consideration of the petition, the Court shall determine whether or not a hearing is required. In the event that a hearing is required, the petitioner or counsel for the petitioner shall be so advised. In such event, the petitioner or counsel for the petitioner shall secure a date and time for the hearing and shall provide the Court with a proposed Order scheduling hearing.

*Local Rule Committee Note:* It is anticipated that various circumstances may exist which may persuade the Court that a hearing is or is not required on a petition for Court approval of settlement. Relevant information would likely include whether or not insurance policy limits are being offered and may include many other circumstances such as the nature and continuing effect of the incapacitated person's injuries, whether or not a structured settlement is

proposed, and whether a proposed attorney fee appears to be out of proportion to the services rendered.

Adopted by Order of Court dated February 7, 2001  
Published in the Pennsylvania Bulletin, Vol. 31, Number 8, February 24, 2001