SPR RULE 98.16W
ESTATES--GUARDIANSHIP--SETTLEMENT OF CLAIMS OF MINORS AND INCAPACITATED PERSONS

(a) Approval of Settlement Required. In every settlement of a claim, whether or not filed in court, involving the beneficial interest of an unemancipated minor or a person determined to be disabled or incapacitated under RCW 11.88, the court shall determine the adequacy of the proposed settlement on behalf of such affected person and reject or approve it. If a suit for recovery on behalf of the affected person has been previously maintained, then the petition shall be filed in that county, or if no such suit exists, then in the county where the affected person resides, unless either court orders otherwise.

(b) Petition. The petition for approval of settlement on behalf of the affected person shall contain, as a minimum and to the full extent known:

(1) the affected person's full name and date of birth;

(2) the general identification and relationship of others having claims or potential claims arising from the same matters and identity of their counsel;

(3) the description and amount of all liens, subrogation or reimbursement claims, fees, bills, costs or expenses connected with the affected person's claim;

(4) the description and amount of all liens, reimbursements, fees, costs or expenses requested to be paid from the settlement funds to be deposited with the court (or the maximum claimed for reimbursement if any item is being disputed or negotiated further), including a columnar listing of all amounts to be received, all amounts to be paid or the maximum claimed and concluding with the net amount of money or other property remaining for the affected person.

(c) Appointment, Role and Termination of the Settlement Guardian ad Litem; Exceptions to Appointment.

(1) Upon filing of the petition, the court shall appoint a Settlement Guardian ad Litem to assist the court in determining the adequacy of the proposed settlement. The Settlement Guardian ad Litem shall conduct an investigation and file a written report with the court with a recommendation regarding approval and final disposition within 45 days of appointment or such other time as the court may order. The court, if appropriate under existing law, may order that all or part of the report and contents shall be confidential or sealed. Upon filing of the report and appearing at hearings as may be required, the Settlement Guardian ad Litem is exonerated from further duties unless otherwise ordered by the court.

(2) The court may dispense with the appointment of the Settlement Guardian ad Litem if by written finding the court determines a guardian ad litem, a guardian, or limited guardian has been previously appointed or if the court affirmatively finds that the affected person is represented by independent counsel, so long as the guardian ad litem, guardian, limited guardian, or independent counsel has the qualifications which would be required for a Settlement Guardian ad Litem and neither has nor represents interests in conflict with those of the affected person which would not be allowed for a Settlement guardian ad Litem. Independent counsel's fee interest in the claim, if allowed by the Rules of Professional Conduct, is not a disqualifying interest. If a Settlement Guardian ad Litem is not required, the independent counsel, guardian ad litem, guardian or limited guardian shall file the report.

(d) Qualifications of Settlement Guardian ad Litem. The Settlement Guardian ad Litem shall be an attorney with at least five years of pertinent legal experience and such other qualifications as the court may require. The Settlement Guardian ad Litem shall neither have nor represent any interest in conflict with the affected person, including but not limited to the conflicting interests of parents or others legally responsible for medical care of the affected person.

(e) Report of Settlement Guardian ad Litem. The report of the Settlement Guardian ad Litem or other person authorized above shall include a description, in depth appropriate to the magnitude of injuries and settlement, of at least:

(1) the background of the appointment and qualifications of the writer including any relationship with involved parents, guardians, insurers or attorneys;

(2) a description of the investigation conducted, the persons interviewed and the documents reviewed, if any;

(3) a description of the incident and the affected person's potential legal claims;

(4) a description of the affected person's injuries, general treatment, diagnosis and prognosis attaching a recent supporting medical report or office record;

(5) a discussion of the damages potentially recoverable including identification of all special damages;

(6) a discussion of the potential liability of all persons and entities;

(7) an identification of other insurance or collateral sources for payment of any bills or expenses;

(8) A discussion and recommendation regarding any lien, subrogation or reimbursement claims, including any suggested retention in an attorney's trust account of the full amount claimed until the final resolution of such claim;

(9) an identification of all other claims, specifically including any claims held by other family members;

(10) a discussion of any proposed apportionment of claim proceeds among family members or unrelated claimants, if any;

(11) a discussion and recommendation regarding the proposed settlement form, documents and amounts;

(12) a discussion and recommendation regarding the expenses and fees for which payment is requested;

(13) a discussion and recommendation regarding the requested disposition of net proceeds;

(14) a statement of time spent, expenditures made and the fees and costs requested by the Settlement Guardian ad Litem;

(15) a discussion and recommendation regarding the presence of the affected person and the Settlement Guardian ad Litem at any court hearings on the Petition;

(16) a statement as to whether the Petition has been submitted for approval in any other jurisdiction.

(f) Hearing. At the time the petition for approval of the settlement is heard, the allowance and taxation of all fees, costs, and other charges incident to the settlement shall be considered and disposed of by the court. The court by local rule or by specific direction, may require or waive the presence of the affected person or the Settlement guardian ad Litem.

(g) Attorney's Fees and Costs. Any attorney claiming fees, costs or other charges incident to representation of the affected person, from the claim proceeds or otherwise, shall file an affidavit or declaration under RCW 9A.72.085 in support thereof. Copies of any written fee agreements must be attached to the affidavit or declaration.

(h) Deposit in Court and Disbursements. Except for any structured portion of a settlement, the total judgment or total settlement shall be paid into the registry of the court, or as otherwise ordered by the court. All sums deductible therefrom, including costs, attorney's fees, hospital and medical expenses, and any other expense, shall be paid upon approval of the court.

(i) Form for Payment of Remaining Funds. Checks for funds payable to the affected person may be made out by the clerk jointly to the depository bank, trust company, or insured financial institution and to the independent attorney for the affected person, guardian or limited guardian, or trustee, and deposit shall be made to the trust or into a blocked account for the affected person with provision that withdrawals cannot be made except as provided in the trust instrument or as ordered by the court. A deposit receipt to that effect must timely be filed with the court by the payee.

(j) Control and Orders for Remaining Funds. In calculating the amount remaining from a structured settlement, if the settlement required court approval only because the affected person was an unemancipated minor, then

only the payments received and to be received before attaining majority age are counted. All orders directing funds to a blocked account should recite that the funds are payable upon further order of the court or to the affected person at his or her age of majority, which date should be specified. Upon approval of settlement and payment of all authorized fees, bills and expenses, the court shall order one of the following actions:

(1) $25,000 or Less. If the money or the value of other property remaining after deduction for all approved fees, bills and expenses is $25,000 or less, the court shall require that:

(A) the money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the affected person, subject to withdrawal only upon the order of the court as a part of the original proceeding; or

(B) the money or property be paid to a duly appointed and qualified guardian or limited guardian; or

(C) the money be placed in trust, subject to the conditions set forth in subsection (3).

(2) More than $25,000. If the money or the value of other property remaining after deduction for all approved fees, bills and expenses exceeds $25,000, the court in the order or judgment shall:

(A) if there is an existing or newly created guardian or limited guardian who approves, require that the money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the affected person, subject to withdrawal only upon the order of the court handling the guardianship or limited guardianship;

(B) if there is no guardian or limited guardian of the affected person or no approval under (A), the court in the order or judgment shall require that either a guardian or limited guardian be appointed, or

(C) the money or other property be placed in trust, subject to the conditions set forth in subsection (3).

(3) Conditions for Use of Trust. A trust established pursuant to this rule under subsection (1) or (2) must meet the following requirements:

(A) The selection of the trustee(s) and the terms of the trust shall be subject to the court's approval;

(B) No family member of the affected person, or other potential residual beneficiary of the trust, shall be approved by the court as a sole trustee;

(C) A bonded or insured fiduciary shall be designated as a sole trustee or as co-trustee with principal responsibility for financial management of the trust estate;

(D) The fiduciary shall prepare an annual statement of income, expenses, current assets, and fees charged; shall deliver the statement to any co-trustees, the beneficiary, and the beneficiary's personal representative; and shall present the statement for review and approval by the court having jurisdiction over the beneficiary;

(E) No family member or potential residual beneficiary who serves as a co-trustee shall exercise discretionary authority over individual expenditures from the trust that would bring direct or indirect benefit to that individual; and

(F) The administration of the trust shall be subject to the continuing jurisdiction of the appropriate court.

(k) Bond. Unless all funds are to be placed in a blocked account or court approved trust, sufficient bond shall be required for guardians and limited guardians to the extent required by guardianship law.

131 Wn.2d 1105 effective April 8, 1997