

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[231 PA. CODE CHS. 2020, 2050 AND 2200]

Amendment of Rules Governing Minors, Incapacitated Persons and Wrongful Death Actions; No. 266; Doc. No. 5

#### Order

*Per Curiam:*

And Now, this 3rd day of October, 1996, Pennsylvania Rules of Civil Procedure 2039, 2064 and 2206 are amended to read as follows.

This Order shall be effective January 1, 1997 and shall be processed in accordance with Pennsylvania Rule of Judicial Administration 103(b).

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 2020. MINORS AS PARTIES

**Rule 2039. Compromise, Settlement, Discontinuance and Distribution.**

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(b) When a compromise or settlement has been so approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may make such order as it deems proper fixing counsel fees and other proper expenses. The balance of the fund shall be paid to a guardian of the estate of the minor qualified to receive the fund, if [ **he** ] **the minor** has one or one is to be appointed. **The balance of the fund payable to the guardian of the estate may include a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments or a trust as described in subdivision (b)(4) of this rule.** If the minor has no such guardian and none is to be appointed, the court may order:

(1) an amount not more than [ **Ten Thousand Dollars (\$10,000.00)** ] **twenty-five thousand dollars (\$25,000.00)** to be paid for the benefit of the minor to the guardian of the person or to the natural guardian or to the person or agency by whom the minor is maintained or to the minor;

**Official Note: The amount payable under subparagraph (1) conforms to the amount set forth in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary.**

(2) any amount in cash of a resident or non-resident minor to be deposited in one or more savings accounts in the name of the minor in banks, building and loan associations [ **or** ], savings and loan associations or

**credit unions**, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured, **or in one or more accounts in the name of the minor investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions.** Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains [ **his** ] majority, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record[ . ];

**Official Note:** The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account, see Rule 76.

**The rule contemplates the deposit of money in an account investing in federally guaranteed securities, withdrawals from which may be blocked, and not the direct investment in a particular security.**

(3) **an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during minority shall be paid into a restricted account as provided by subdivision (b)(2) of this rule;**

(4) **a trust agreement be executed with a corporate fiduciary which is independent from the minor and anyone acting on the minor's behalf and is lawfully authorized to engage in trust business in Pennsylvania or the state of the minor's domicile, which trust**

(i) **is designated to receive the fund;**

(ii) **contains such terms for investment, disbursement and distribution of the fund as the court deems proper; and**

(iii) **expressly provides that it is subject to the court's continuing jurisdiction, including the court's right to modify or terminate, for cause shown, although the trust may be otherwise irrevocable.**

**Official Note: This rule permits the use of a trust, including a special needs trust.**

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#### CHAPTER 2050. INCAPACITATED PERSONS AS PARTIES

**Rule 2064. Compromise, Settlement, Discontinuance and Distribution.**

\* \* \* \* \*

(b) When a compromise or settlement has been approved by the court, or when a judgment has been entered upon a verdict or by agreement, the court, upon petition by the guardian or the guardian ad litem or any party to the action, shall make an order approving or disapproving any agreement entered into by the guardian or the guardian ad litem for the payment of counsel fees and other expenses out of the fund created by the compromise, settlement or judgment; or the court may

make such order as it deems proper fixing counsel fees and other proper expenses. The balance of the fund shall be paid to the guardian of the estate of the incapacitated person qualified to receive the fund, if there is one or one is to be appointed. **The balance of the fund payable to the guardian of the estate may include a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments or a trust as described in subdivision (b)(4) of this rule.** If the incapacitated person has no such guardian, and none is to be appointed, the court may order:

(1) an amount not more than [ **Ten Thousand Dollars (\$10,000.00)** ] **twenty-five thousand dollars (\$25,000.00)** to be paid for the benefit of the incapacitated person to the guardian of the person or to the person or agency by whom the incapacitated person is maintained;

**Official Note: The amount payable under subparagraph (1) conforms to the amount set forth in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary, incorporated by reference into Section 5505 of the Code, 20 Pa.C.S. § 5505.**

(2) any amount in cash of a resident or non-resident incapacitated person to be deposited in one or more savings accounts in the name of the incapacitated person in banks, building and loan associations [ **or** ], savings and loan associations **or credit unions**, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured, **or in one or more accounts in the name of the incapacitated person investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions.** Every such order shall contain a provision that no withdrawal can be made from any such account unless the incapacitated person is adjudicated to have capacity, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record[ . ];

**Official Note:** The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account, see Rule 76.

**The rule contemplates the deposit of money in an account investing in federally guaranteed securities, withdrawals from which may be blocked, and not the direct investment in a particular security.**

(3) an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during incapacity shall be paid into a restricted account as provided by subdivision (b)(2) of this rule;

(4) a trust agreement be executed with a corporate fiduciary which is independent from the incapacitated person and anyone acting on the incapacitated person's behalf and is lawfully authorized to engage in trust business in Pennsylvania or the state of the incapacitated person's domicile, which trust

(i) is designated to receive the fund;

(ii) contains such terms for investment, disbursement and distribution of the fund as the court deems proper; and

(iii) expressly provides that it is subject to the court's continuing jurisdiction, including the court's right to modify or terminate, for cause shown, although the trust may be otherwise irrevocable.

**Official Note: This rule permits the use of a trust, including a special needs trust.**

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**CHAPTER 2200. ACTIONS FOR WRONGFUL DEATH**

**Rule 2206. Settlement, compromise, discontinuance and judgment.**

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(b)(1) When as the result of a verdict, judgment, compromise, settlement or otherwise it has been determined that a sum of money is due the plaintiff in an action for wrongful death, the court, upon petition of any party in interest, shall make an order designating the persons entitled to share in the damages recovered and the proportionate share of the net proceeds to which each is entitled. If a share shall be payable to a minor or incapacitated person, the court shall designate as the person to receive such share a guardian of the estate of the minor or incapacitated person qualified to receive the fund if there is one or one is to be appointed. **The share to be received by the guardian of the estate may include a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments or a trust as described in subdivision (b)(4)(iii) of this rule.**

(2) If the minor has no such guardian, and none is to be appointed, the court upon petition may order an amount not more than [ **Ten Thousand Dollars (\$10,000.00)** ] **twenty-five thousand dollars (\$25,000.00)** to be paid for the benefit of the minor to the guardian of the person or to the natural guardian or to the person or agency by whom the minor is maintained or to the minor.

**Official Note: The amount payable under paragraph (2) conforms to the amount set forth in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary.**

(3) If the incapacitated person has no such guardian, and none is to be appointed, the court upon petition may order an amount not more than [ **Ten Thousand Dollars (\$10,000.00)** ] **twenty-five thousand dollars (\$25,000.00)** to be paid for the benefit of the incapacitated person to the guardian of the person or to the person or agency by whom the incapacitated person is maintained.

**Official Note: The amount payable under paragraph (3) conforms to the amount set forth in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary, incorporated by reference into Section 5505 of the Code, 20 Pa.C.S. § 5505.**

(4) If the minor or the incapacitated person has no such guardian, and none is to be appointed, the court may order

(i) any amount in cash of a resident or nonresident minor or incapacitated person to be deposited in one or more savings accounts in the name of the minor or the incapacitated person in banks, building and loan associations [or], savings and loan associations or credit unions, deposits in which are insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which such accounts are thus insured, or in one or more accounts in the name of the minor or the incapacitated person investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions. Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains his majority or unless the incapacitated person is adjudicated to have capacity, except as authorized by a prior order of the court. Proof of the deposit shall be promptly filed of record[.];

**Official Note:** The order should provide for deposits in more than one savings institution if future accrued interest may reasonably be expected to increase a single deposit beyond the insured limit.

For the definition of savings account, see Rule 76.

**The rule contemplates the deposit of money in an account investing in federally guaranteed securities, withdrawals from which may be blocked, and not the direct investment in a particular security.**

(ii) an agreement be executed providing for a structured settlement underwritten by a financially responsible entity that assumes responsibility for future payments. All moneys paid from the structured settlement during minority or incapacity shall be paid into a restricted account as provided by subdivision (b)(4)(i) of this rule;

(iii) a trust agreement be executed with a corporate fiduciary which is independent from the minor or incapacitated person and anyone acting on behalf of the minor or incapacitated person and is lawfully authorized to engage in trust business in Pennsylvania or the state of the minor's or incapacitated person's domicile, which trust

(i) is designated to receive the fund;

(ii) contains such terms for investment, disbursement and distribution of the fund as the court deems proper; and

(iii) expressly provides that it is subject to the court's continuing jurisdiction, including the court's right to modify or terminate, for cause shown, although the trust may be otherwise irrevocable.

**Official Note:** This rule permits the use of a trust, including a special needs trust.

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**Explanatory Comment**

Identical amendments have been promulgated to three rules governing compromise, settlement, discontinuance and distribution: Rule 2039 (Minors), Rule 2064 (Incapacitated Persons) and Rule 2206 (Wrongful Death Actions).

The first amendment increases from \$10,000 to \$25,000 the amount which may be paid directly to the guardian of the person, the natural guardian, the person or agency by whom the minor or incapacitated person is maintained or to the minor and provides that the payment "is for the benefit of" the minor or incapacitated person. This amendment conforms the amount set forth in the rules to the amount stated in Section 5101 of the Probate, Estates and Fiduciaries Code, 20 Pa.C.S. § 5101, relating to when a guardian is unnecessary in small estates of minors. The amount in Section 5101 of the Code was similarly increased from \$10,000 to \$25,000 by Act No. 102 of 1994. This statutory provision applies also to small estates of incapacitated persons as it is incorporated by reference into Section 5505 of the Code, 20 Pa.C.S. § 5505.

The second amendment is a specific authorization for the court to approve a distribution of funds which includes a structured settlement or a trust. Prior to the present amendment, the rules contained no explicit statement in this regard. The amended rules authorize the use of a structured settlement or trust both where there is a guardian of the estate and where there is no such guardian. A note indicates that the broad category of trusts includes a special needs trust.

The third amendment makes two revisions to rules which formerly limited the investment of funds to savings accounts in banks, building and loan associations or savings and loan associations. The amendment now includes credit unions among these institutions. As in the case of banks and the other institutions in which deposits have been traditionally allowed, the rules will apply only to credit unions "deposits in which are insured by a Federal governmental agency."

In addition, the amendment expands the permissible investments to include accounts "investing only in securities guaranteed by the United States government or a Federal governmental agency managed by responsible financial institutions." A note advises that the rules contemplate the deposit of funds in an account investing in such securities rather than investment in a security directly. Restrictions as to withdrawals or other matters may be placed upon an account which might not be placed upon an individual security.

*By the Civil Procedural Rules Committee*

EDWIN L. KLETT,  
*Chairperson*

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