

THE COURTS

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Rescission of Phila.Civ.R. *2039.1 and *2206, and Adoption of Phila.Civ.R. *2039, *2064 and *2206; President Judge General Court Regulation No. 2016-1

Order

And Now, this 25th day of May, 2016, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on May 19, 2016 to rescind Philadelphia Civil Rules *2039.1 and *2206 and to adopt Philadelphia Civil Rules *2039, *2064 and *2206, *It Is Hereby Ordered and Decreed* that Philadelphia Civil Rules *2039.1 and *2206 are rescinded and Philadelphia Civil Rules *2039, *2064 and *2206 are adopted as follows.

This General Court Regulation is issued in accordance with Pa.R.C.P. No. 239 and shall be filed with the Office of Judicial Records in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County. As required by Pa.R.C.P. No. 239(c), two certified copies of this General Court Regulation and amended local rules, as well as a copy on a computer diskette, shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one certified copy shall be submitted to the Administrative Office of Pennsylvania Courts, and one certified copy to the Supreme Court Civil Procedural Rules Committee. The previously-referenced rule changes shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. Copies of the General Court Regulation and rules shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the website of the First Judicial District of Pennsylvania: <http://courts.phila.gov/regs>.

By the Court

HONORABLE SHEILA WOODS-SKIPPER,
President Judge, Court of Common Pleas

Philadelphia Civil Rule *2039. Procedure to Compromise, Settle, Discontinue or Distribute Funds in Matters Involving Minors. See also Pa.R.C.P. Nos. 2039 and 2206.

(A) *When Petition Required.* No action in which a minor is a party shall be compromised, settled, or discontinued except after the filing of a Petition for Approval of the Compromise, Settlement, Discontinuance, or Distribution. In addition to the requirements set forth in this Rule, Petitions for Approval of dispositions of Wrongful Death or Survival Actions involving minors must also comply with Pa.R.C.P. No. 2206.

(B) *Situs of the Filing of the Petition.* Petitions for Approval of Settlements in which minors have an interest shall be served on all parties of record and filed as follows:

(1) For cases in which a civil action has been initiated in the Trial Division, Petitions for Approval of Settlements shall be electronically filed with the Office of Judicial Records, Civil (formerly the "Prothonotary"). Upon expiration of the Response period, the Petition shall be assigned to a Judge of the Orphans' Court Division for disposition and the entry of an appropriate final appealable order. The Order shall be docketed and served on all interested parties by the Office of Judicial Records.

(2) For cases in which a civil action has not been initiated in the Trial Division, and no civil docket number has been assigned, Petitions for Approval of Settlement shall be electronically filed with the Clerk of the Orphans' Court Division. Upon expiration of the Response period, the Petition shall be assigned to a Judge of the Orphans' Court Division for disposition and the entry of an appropriate final appealable order. The Order shall be docketed and served on all interested parties by the Clerk of the Orphans' Court Division.

(C) *Appointment of Guardian ad Litem.* In any case where a minor has an interest and the Settlement Judge or the Trial Judge has not appointed a guardian ad litem, and the Judge of the Orphans' Court Division believes it necessary that the minor be represented separately, the Orphans' Court Judge shall appoint a guardian ad litem, who shall be an attorney in good standing who is admitted to practice law in the Commonwealth of Pennsylvania, to represent the minor's interest. A guardian ad litem may be appointed if required by the circumstances without regard to whether a guardian of the person or of the estate of the minor has been appointed.

(D) *Contents of the Petition.* The Petition shall be substantially in the form set forth hereunder, and shall:

(1) Set forth the date of birth and the address of the minor, the names and addresses of the minor's parents, the names and addresses of all guardians of the person, the estate and/or ad litem of the minor, and the appointing court, and a factual recitation of the salient facts which form the basis of the cause of action;

(2) State the terms of the settlement, including the specific provisions of any annuity, if applicable, including the credit rating of the entity assuming responsibility for future payments, the present cost of the annuity, as well as the schedule and amount of periodic and lump sum payments;

(3) State the amount of counsel fees and provide an itemization of the expenses to be paid out of settlement proceeds;

(4) State whether a lien or claim has been raised on behalf of any medical care provider or payer, including the Department of Human Services and Medicare; and

(5) Contain or be accompanied by the following:

(a) A written report of a physician setting forth the present physical and mental condition of the minor;

(b) A verified statement by the parent(s) of the minor and the guardian of the person or guardian ad litem, if appointed, certifying the present physical and mental condition of the minor; and a copy of the decree appointing the guardian of the person or guardian ad litem;

(c) A verified statement by the parent(s) of the minor and the guardian of the estate or guardian ad litem, if appointed, certifying approval of the proposed settlement and distribution thereof; and a copy of the decree appointing the guardian of the estate or guardian ad litem;

(3) State the amount of counsel fees and provide an itemization of the expenses to be paid out of settlement proceeds;

(4) State whether a lien or claim has been raised on behalf of any medical care provider or payer, including the Department of Human Services and Medicare; and

(5) Contain or be accompanied by the following:

(a) A written report of a physician setting forth the present physical and mental condition of the minor;

(b) A verified statement by the parent(s) of the minor and the guardian of the person or guardian ad litem, if appointed, certifying the present physical and mental condition of the minor; and a copy of the decree appointing the guardian of the person or guardian ad litem;

(c) A verified statement by the parent(s) of the minor and the guardian of the estate or guardian ad litem, if appointed, certifying approval of the proposed settlement and distribution thereof; and a copy of the decree appointing the guardian of the estate or guardian ad litem;

(d) If the minor is sixteen (16) years of age or older and not otherwise incapacitated, his or her written approval of the proposed settlement and distribution thereof;

(e) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion;

(f) If there is to be an allocation between adults and minors or among minors, a statement of the amounts allocated to each party and specific reasons for such proposed allocation;

(g) If a guardian ad litem has been appointed, a statement of the professional opinion of the guardian ad litem as to the reasonableness of the proposed allocation, and the basis for such opinion. The guardian ad litem shall give specific reasons for his or her approval or disapproval of any proposed allocation of the proceeds;

(h) Statement of the final lien amount from the Department of Human Services;

(i)(1) Statement of the amount paid by Medicare for medical costs as reflected on the relevant Explanations of Benefits received from the Medicare payers and Conditional Payment letters received from the Medicare Secondary Payer Recovery Contractor. This amount should constitute the maximum Medicare reimbursement exposure to the plaintiff for which funds from the settlement amount should be reserved. Should the actual reimbursement to Medicare be less than the reserved amount as a result of allowances by Medicare for the fees, costs or other factors, the balance shall be distributed in accordance with the Court Order, and shall be reflected in the Affidavit of Compliance filed with the Court.

(2) In the event that compliance with the Court's Order is not fully accomplished, the attorney shall describe the extent of compliance and any reasons for delay in an Affidavit filed within 60 days of the entry of the Order. A subsequent Affidavit shall be filed upon complete satisfaction of the terms of the Order.

(j) Statement from medical care providers agreeing to compromised amount(s), if any;

(k) Any other information which might be helpful for the orderly disposition of the Petition; and

(l) A proposed Order for Distribution, etc., substantially in the form set forth in (K) below.

(E) *Release of Defendants.* After Court approval of the gross amount of the settlement, but before Court approval of the distribution, the plaintiff may sign a release to discharge the settling defendant and the Court may issue an Order to Settle, Discontinue and End to the settling parties. If plaintiff releases and discharges a defendant pursuant to this subsection, defendant's draft or check shall be made payable to the plaintiff and to counsel for the plaintiff and the payees shall deposit the draft or check into a separate insured interest-bearing escrow account or the attorney's Interest on Lawyers Trust Account (IOLTA), pending the issuance of an Order of Distribution by the Court. This subsection is intended to allow prompt tender of settlement proceeds independent of issues involving distribution.

(F) *Counsel Fees.* The proposed Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees in the representation of minors is that such fees must be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct, Counsel are advised to maintain time records.

Counsel fees of one-third (1/3) of the net fund recovered may be considered reasonable, subject to the approval of the Court. The net fund is calculated by subtracting the attorney's reimbursable costs from the gross settlement amount. Counsel fees shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties.

(G) *Personal Appearances.* The Judge of the Orphans' Court to whom the Petition is assigned may, at his or her discretion, require the personal appearance of the minor, the parents, the guardians of the estate and/or of the person, the guardian ad litem, the physicians, or any other relevant party, as well as the production of any other evidence deemed necessary for the disposition of the Petition.

(H) *Compliance with Court Order and Proof of Deposit.* Within sixty (60) days of the entry of a final Order of Distribution, counsel shall electronically file an Affidavit of Compliance with the Court maintaining the docket of the matter, either with the Office of Judicial Records or with the Clerk of the Orphans' Court Division. The Affidavit of Compliance shall certify compliance with the Order, attach a copy of the said Order and shall submit proof of deposit in the restricted account, annuity, structured settlement or trust. The Affidavit of Compliance shall be substantially in the form set forth in (K) below.

(I) *Distribution to Minors Pursuant to Pa.R.C.P. No. 2039.* Funds allocated by a Court approved minor's compromise, settlement, or by a judgment entered upon a verdict, for the direct benefit of a minor shall be payable only to the guardian of the estate of the minor appointed by the Court with jurisdiction over the minor, with the express authorization of the Court as to payment of counsel fees and expenses or posting of security.

In the alternative, the Court may:

(1) Order, as provided in Pa.R.C.P. No. 2039(b)(1), an amount not in excess of twenty-five thousand dollars (\$25,000) to be paid for the benefit of the minor to the parent(s) as natural guardian(s), or to the guardian of the person of a minor;

(2) Order, as provided in Pa.R.C.P. No. 2039(b)(2),

(a) Any amount be deposited in one or more restricted savings account(s) in the name of the minor, in federally insured banks or savings institutions having an office in Philadelphia County, each not to exceed the insured amounts, with the funds payable to the minor upon majority. The savings account shall be titled and restricted as follows:

_____, a minor, not to be withdrawn before the minor attains majority, except for the payment of local, state and federal income taxes on the interest earned, or upon Order of Court.

Or

(b) the purchase of one or more restricted certificate(s) of deposit in the name of the minor, in federally insured banks or savings institutions having an office in Philadelphia County, each not to exceed the insured amounts, with the funds payable to the minor upon majority. The certificate shall be titled and restricted as follows:

_____, a minor, not to be redeemed except for renewal in its entirety, not to be withdrawn, assigned, negotiated, or otherwise alienated before the minor attains majority, except upon Order of Court.

(3) Approve an agreement providing for a structured settlement in the manner provided by Pa.R.C.P. No. 2039(b)(3).

(4) Approve a trust agreement to be executed by a corporate fiduciary in the manner provided by Pa.R.C.P. No. 2039(b)(4).

(J) *Service. Notice. Proof of Service.* Petitions filed pursuant to Section (B)(1) above shall be served as provided in Phila.Civ.R. *205.4(f)(7) and Pa.R.C.P. No. 205.4(g). Petitions filed pursuant to Section (B)(2) above shall be noticed as provided in Pa.O.C. Rule 3.5. Service to all parties in interest not effectuated through the Electronic Filing System shall be effectuated by mailing Notice of the filing of the Petition and a copy of the Petition by first-class United States mail, postage prepaid. Proof of Service and a copy of the notice shall be appended to the Petition or filed after service, as appropriate.

(K) *Forms.* See Appendix.

Philadelphia Civil Rule *2064. Procedure to Compromise, Settle, Discontinue or Distribute Funds in Matters Involving Incapacitated Persons. See also Pa.R.C.P. Nos. 2064 and 2206.

(A) *When Petition Required.* No action in which an incapacitated person is a party shall be compromised, settled, or discontinued except after the filing of a Petition for Approval of the Compromise, Settlement, Discontinuance or Distribution. In addition to the requirements set forth in this Rule, Petitions for Approval of dispositions of Wrongful Death or Survival Actions involving incapacitated persons must also comply with Pa.R.C.P. No. 2206.

(B) *Situs of the Filing of the Petition.* Petitions for Approval of Settlements in which incapacitated persons have an interest shall be served on all parties of record and filed as follows:

(1) For cases in which a civil action has been initiated in the Trial Division, Petitions for Approval of Settlements shall be electronically filed with the Office of Judicial Records, Civil (formerly the "Prothonotary"). Upon expiration of the Response period, the Petition shall be assigned to a Judge of the Orphans' Court Division for disposition and the entry of an appropriate final appealable order. The Order shall be docketed and served on all interested parties by the Office of Judicial Records.

(2) For cases in which a civil action has not been initiated in the Trial Division, and no civil docket number has been assigned, Petitions for Approval of Settlement shall be electronically filed with the Clerk of the Orphans' Court Division. Upon expiration of the Response period, the Petition shall be assigned to a Judge of the Orphans' Court Division for disposition and the entry of an appropriate final appealable order. The Order shall be docketed and served on all interested parties by the Clerk of the Orphans' Court Division.

(C) *Appointment of Guardian ad Litem.* In any case where an incapacitated person, de facto or de jure, has an interest and the Settlement Judge or the Trial Judge has not appointed a guardian ad litem, and the Judge of the Orphans' Court Division believes it necessary that the incapacitated person be represented separately, the Orphans' Court Judge shall appoint a guardian ad litem, who shall be an attorney in good standing who is admitted to practice law in the Commonwealth of Pennsylvania, to represent the incapacitated person's interest. A guardian ad litem may be appointed if required by the circumstances without regard to whether a guardian of the person or of the estate of the incapacitated person has been appointed.

(D) *Content of the Petition.* The Petition shall be substantially in the form set forth hereunder, and shall:

(1) Set forth the date of birth and the address of the incapacitated person, the names and addresses of all guardians of the person, the estate and/or ad litem of the incapacitated person, and the appointing court, and a factual recitation of the salient facts which form the basis of the cause of action;

(2) State the terms of the settlement, including the specific provisions of any annuity, if applicable, including the credit rating of the entity assuming responsibility for future payments, the present cost of the annuity, as well as the schedule and amount of periodic and lump sum payments;

(3) State the amount of counsel fees and provide an itemization of the expenses to be paid out of settlement proceeds;

(4) State whether a lien or claim has been raised on behalf of any medical care provider or payer, including the Department of Human Services and Medicare; and

(5) Contain or be accompanied by the following:

(a) A written report of a physician setting forth the present physical and mental condition of the incapacitated person;

(b) A verified statement by the guardian of the person of the incapacitated person, or the guardian ad litem, if appointed, certifying the present physical and mental condition of the incapacitated person, and a copy or the decree appointing the guardian of the person or guardian ad litem;

(c) A verified statement by the guardian of the estate of the incapacitated person, or the guardian ad litem, if appointed, certifying approval of the proposed settlement and distribution thereof; and a copy of the decree appointing the guardian of the estate or guardian ad litem;

(d) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion;

(e) If there is to be an allocation between a sui juris adult and an incapacitated person, a statement of the amounts allocated to each party and specific reasons for such proposed allocation;

(f) If a guardian ad litem has been appointed, a statement of the professional opinion of the guardian ad litem as to the reasonableness of the proposed allocation, and the basis for such opinion. The guardian ad litem shall give specific reasons for his or her approval or disapproval of any proposed allocation of the proceeds;

(g) Statement of the final lien amount from the Department of Human Services;

(h)(1) Statement of the amount paid by Medicare for medical costs as reflected on the relevant Explanations of Benefits received from the Medicare payers and Conditional Payment letters received from the Medicare Secondary Payer Recovery Contractor. This amount should constitute the maximum Medicare reimbursement exposure to the plaintiff for which funds from the settlement amount should be reserved. Should the actual reimbursement to Medicare be less than the reserved amount as a result of allowances by Medicare for the fees, costs or other factors, the balance shall be distributed in accordance with the Court Order, and shall be reflected in the Affidavit of Compliance filed with the Court.

(2) In the event that compliance with the Court's Order is not fully accomplished, the attorney shall describe the extent of compliance and any reasons for delay in an Affidavit filed within 60 days of the entry of the Order. A subsequent Affidavit shall be filed upon complete satisfaction of the terms of the Order.

(i) Statement from medical care providers agreeing to compromised amount(s), if any;

(j) Any other information which might be helpful for the orderly disposition of the Petition; and

(k) A proposed Order of Distribution, etc., substantially in the form set forth in (K) below.

(E) *Release of Defendants.* After Court approval of the gross amount of the settlement, but before Court approval of the distribution, the plaintiff may sign a release to discharge the settling defendant and the Court may issue an Order to Settle, Discontinue and End to the settling parties. If plaintiff releases and discharges a defendant pursuant to this subsection, defendant's draft or check shall be made payable to the plaintiff and to counsel for the plaintiff and the payees shall deposit the draft or check into a separate insured interest-bearing escrow account or the attorney's Interest on Lawyers Trust Account (IOLTA), pending the issuance of an Order of Distribution by the Court. This subsection is intended to allow prompt tender of settlement proceeds independent of issues involving distribution.

(F) *Counsel Fees.* The proposed Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees in the representation of incapacitated persons is that such fees must be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct. Counsel are advised to maintain time records.

Counsel fees of one-third (1/3) of the net fund recovered may be considered reasonable, subject to the approval of the Court. The net fund is calculated by subtracting the attorney's reimbursable costs from the gross settlement amount. Counsel fees shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties.

(G) *Personal Appearances.* The Judge of the Orphans' Court to whom the Petition is assigned may, at his or her discretion, require the personal appearance of the incapacitated person, the guardians of the estate and/or of the person, the guardian ad litem, the physicians, or any other relevant party, as well as the production or any other evidence deemed necessary for the disposition of the Petition.

(H) *Compliance with Court Order and Proof of Deposit.* Within sixty (60) days of the entry of a final Order or Distribution, counsel shall electronically file an Affidavit of Compliance with the Court maintaining the docket of the matter, either with the Office of Judicial Records or with the Clerk of the Orphans' Court Division. The Affidavit of Compliance shall certify compliance with the Order, attach a copy of the said Order and shall submit proof of deposit in the restricted account, annuity, structured settlement or trust. The Affidavit of Compliance shall be substantially in the form set forth in (K) below.

(I) *Distribution to Incapacitated Persons Pursuant to Pa.R.C.P. No. 2064.* Funds allocated by a Court approved incapacitated person's compromise, settlement, or by a judgment entered upon a verdict, for the direct benefit of an incapacitated person shall be payable only to the guardian of the estate of the incapacitated person ap-

pointed by the Court with jurisdiction over the incapacitated person, with the express authorization of the Court as to payment of counsel fees and expenses or posting of security.

In the alternative, the Court may:

(1) Order, as provided in Pa.R.C.P. No. 2064(b)(1), an amount not in excess of twenty-five thousand dollars (\$25,000) to be paid for the benefit of the incapacitated person to the guardian of the person of the incapacitated person;

(2) Order, as provided in Pa.R.C.P. No. 2064(b)(2),

(a) any amount be deposited in one or more restricted savings account(s) in the name of the incapacitated person, in federally insured banks or savings institutions having an office in Philadelphia County, each not to exceed the insured amounts. The savings account shall be titled and restricted as follows:

_____, an incapacitated person, not to be withdrawn, except for the payment of local, state and federal income taxes on the interest earned, or upon Order of Court.

Or

(b) the purchase of one or more restricted certificate(s) of deposit in the name of the incapacitated person, in federally insured banks or savings institutions having an office in Philadelphia County, each not to exceed the insured amounts. The certificate shall be titled and restricted as follows:

_____, an incapacitated person, not to be redeemed except for renewal in its entirety, not to be withdrawn, assigned, negotiated, or otherwise alienated, except upon Order of Court.

(3) Approve an agreement providing for a structured settlement in the manner provided by Pa.R.C.P. No. 2064(b)(3).

(4) Approve a trust agreement to be executed by a corporate fiduciary in the manner provided by Pa.R.C.P. No. 2064(b)(4).

(J) *Service. Notice. Proof of Service.* Petitions filed pursuant to Section (B)(1) above shall be served as provided in Phila.Civ.R. *205.4(f)(7) and Pa.R.C.P. No. 205.4(g). Petitions filed pursuant to Section (B)(2) above shall be noticed as provided in Pa.O.C. Rule 3.5. Service to all parties in interest not effectuated through the Electronic Filing System shall be effectuated by mailing Notice of the filing of the Petition and a copy of the Petition by first-class United States mail, postage prepaid. Proof of Service and a copy of the notice shall be appended to the Petition or filed after service, as appropriate.

(K) *Forms.* See Appendix.

Philadelphia Civil Rule *2206. Petitions for Approval of Settlements and Distribution in Wrongful Death/Survival Actions. See also Pa.R.C.P. No. 2206 and Phila.Civ.R. *2039 and *2064.

(A) *When Required.*

(1) *Survival Action.* Court approval of settlements in Survival Actions brought for the benefit of the estate is always required.

(2) *Wrongful Death.* If a Wrongful Death claim, brought for the benefit of the appropriate intestate heirs, is

raised, Court approval of settlements shall be required only where a minor or incapacitated person has an interest.

(3) *Combined Wrongful Death and Survival Actions.* If both Wrongful Death and Survival Action claims are raised, Court approval is required.

(B) *Situs of the Filing of the Petition.*

(1) Petitions for Approval of Settlements in Wrongful Death or Survival Actions shall be electronically filed with the Office of Judicial Records, Civil (formerly the "Prothonotary") if suit was commenced in the Trial Division. Upon expiration of the Response period, the Petition shall be assigned to the Administrative Judge of the Orphans' Court Division for disposition and the entry of an appropriate final appealable Order. The Order shall be docketed and served on all interested parties by the Office of Judicial Records.

(2) If Settlement is reached prior to the commencement of a lawsuit and no Civil Docket number has been assigned, the Petition for Approval shall be electronically filed with the Clerk of the Orphans' Court Division. Upon expiration of the Response period, the Petition shall be assigned to the Administrative Judge of the Orphans' Court Division for disposition and the entry of an appropriate final appealable Order. The Order shall be docketed and served on all interested parties by the Clerk of the Orphans' Court Division.

(C) *Notice to Government Agencies.* Notice of the settlement must be given to the Pennsylvania Department of Revenue and the Pennsylvania Department of Human Services.

(D) *Contents of Petition.* The Petition shall be substantially in the form set forth hereunder, and shall:

(1) Set forth the date of death of the decedent, the name of the personal representative of the estate and the county of appointment. A copy of the Decree of the Register of Wills granting Letters and a copy of the Will, if any, must be attached;

(2) State the terms of the settlement, including the specific allocation as between Wrongful Death and Survival Action, name the Wrongful Death beneficiaries and the amount each is to receive, name the intestate heirs of decedent as of the date the cause of action arose, state reasons why the settlement and allocation are reasonable, and otherwise comply with Pa.R.C.P. No. 2206.

(3) In the event a portion of the settlement is payable through the purchase of an annuity, set forth the credit rating of the entity assuming responsibility for future payment, the present cost of the annuity, as well as the schedule and amount of periodic and lump sum payments;

(4) Show compliance with Pa.R.C.P. Nos. 2205 and 2207, and set forth the name, date of birth, relationship and address of decedent's intestate heirs (as set forth in 20 Pa.C.S. §§ 2201 et seq.), and the name, date of birth and address of all beneficiaries under the Will, who must be served with a copy of the Petition;

(5) State whether a lien or claim has been raised on behalf of any medical care provider or payer, including the Department of Human Services and Medicare; and

(6) Contain or be accompanied by the following:

(a) Statement of the final lien amount from the Department of Human Services;

(b)(1) Statement of the amount paid by Medicare for medical costs as reflected on the relevant Explanations of Benefits received from the Medicare payers and Conditional Payment letters received from the Medicare Secondary Payer Recovery Contractor. This amount should constitute the maximum Medicare reimbursement exposure to the plaintiff for which funds from the settlement amount should be reserved. Should the actual reimbursement to Medicare be less than the reserved amount as a result of allowances by Medicare for the fees, costs or other factors, the balance shall be distributed in accordance with the Court Order, and shall be reflected in the Affidavit of Compliance filed with the Court.

(2) In the event that compliance with the Court's Order is not fully accomplished, the attorney shall describe the extent of compliance and any reasons for delay in an Affidavit filed within 60 days of the entry of the Order. A subsequent Affidavit shall be filed upon complete satisfaction of the terms of the Order.

(c) Approval of the allocation from the Pennsylvania Department of Revenue;

(d) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion.

(e) A statement setting forth the following:

(i) the time between the injury and death;

(ii) whether or not the decedent was conscious, and the circumstances prior to his or her death;

(iii) the amount of the medical and funeral bills;

(iv) the amount of the decedent's wage loss;

(v) the age, employment and any other circumstances of any potential beneficiaries under the Wrongful Death Act.

(f) Proof of service of the initiation of the wrongful death action as required under Pa.R.C.P. No. 2205.

(g) Identification of any other parties who may have a possible interest in the decedent's estate, and list unpaid claims raised, or which are outstanding, in the decedent's estate; and

(h) A proposed Order, approving the settlement and allocation between wrongful death and survival, substantially in the form set forth in (H) below.

(E) *Service. Notice. Proof of Service.* Petitions filed pursuant to Section (B)(1) above shall be served as provided in Phila.Civ.R. *205.4(f)(7) and Pa.R.C.P. No. 205.4(g). Petitions filed pursuant to Section (B)(2) above shall be noticed as provided in Pa.O.C. Rule 3.5. Service to all parties in interest not effectuated through the Electronic Filing System shall be effectuated by mailing Notice of the filing of the Petition and a copy of the Petition by first-class United States mail, postage prepaid. Proof of Service and a copy of the notice shall be appended to the Petition or filed after service, as appropriate.

(F) *Compliance with Court Order and Proof of Deposit.* Within sixty (60) days of the entry of a final Order of Distribution, counsel shall electronically file an Affidavit of Compliance with the Court maintaining the docket of the matter, either with Office of Judicial Records or with the Clerk of the Orphans' Court Division. The Affidavit of

Compliance shall certify compliance with the Order, attach a copy of the said Order and shall submit proof of deposit in the restricted account, annuity, structured settlement or trust as ordered. The Affidavit of Compliance shall be substantially in the form set forth in (H) below.

(G) *Release of Defendant.* After Court approval of the gross amount of the settlement, but before Court approval of the distribution, the plaintiffs may sign a release to discharge the settling defendant and the Court may issue an Order to Settle, Discontinue and End to the settling

parties. If plaintiff releases and discharges a defendant pursuant to this subsection, defendant's draft or check is to be made payable to all plaintiff(s) and to counsel for plaintiff(s), to be deposited into a separate insured interest-bearing escrow account or the attorney's Interest on Lawyers Trust Account (IOLTA), pending an Order of Distribution from the Court. This subsection is intended to allow prompt tender of settlement proceeds independent of issues involving distribution.

(H) *Forms.* See Appendix.

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
Trial Division—Civil¹

PLAINTIFF : TERM, 20
: :
v. : :
: :
DEFENDANT : NO:

PETITION FOR LEAVE TO SETTLE OR
COMPROMISE MINOR'S ACTION²

To The Honorable, the Judges of the Said Court:

The Petition of _____, a minor, by his Guardian (see Pa.R.C.P. No. 2028), by his attorney, _____, Esquire respectfully requests:

- 1) Petitioner is (see Pa.R.C.P. No. 2026): _____.
- 2) The minor was born on _____, and his/her social security number is _____.
- 3) The minor resides with _____ at the following address:

4) A guardian (was) (was not) appointed for the minor as follows:

A copy of the Order is attached.

5) The minor's parents are _____ who reside at the following address:

6) The defendant is _____ who resides or whose principal place of business at all relevant times was _____.

7) On _____ at the following location _____, the minor sustained the following injuries (set forth in detail):

8) A Complaint was filed against defendant(s) as follows: _____

9) Attached hereto is a report by Dr. _____ dated _____ which sets forth the present condition of the minor.

10) Attached hereto is a statement, under oath, of the minor's parents and/or guardian and/or guardian ad litem certifying the physical and/or mental condition of the minor, as well as the parents' and/or guardian's and/or guardian ad litem's approval of the proposed settlement and distribution.

11) Attached hereto is the written approval of the proposed settlement and distribution by the minor, who is sixteen (16) years of age or older.

¹ In the event the Petition is filed in the Orphans' Court Division, the caption must comply with Pa.O.C. 3.2.
² In the event the Petition involves an Incapacitated Person, appropriate changes are to be made. See Pa.R.C.P. No. 2051, et seq. and Phila.Civ.R. 2064.

12) The following settlement has been proposed:³ _____

(If additional space is needed, please continue on separate page).

13) Counsel is of the professional opinion that the proposed settlement is reasonable due to the following: _____

(If additional space is needed, please continue on separate page).

14) Counsel has incurred the following expenses for which reimbursement is sought (please set forth in detail) _____

(If additional space is needed, please continue on separate page).

15) The following costs have been incurred by or on behalf of the minor and must be paid from the proceeds of the settlement: _____

(If additional space is needed, please continue on separate page.)

16) The Department of Human Services, or any other entity, does (not) have a claim or lien against the plaintiff(s) as follows _____

(If additional space is needed, please continue on separate page.)

17) Counsel requests a fee in the sum of \$ _____ which is _____ % per cent of the net settlement payable to the minor. A copy of the retainer agreement is attached.

18) Counsel (has) (has not) and (will) (will not) receive collateral payments as counsel fees for representation involving the same matter from third parties (i.e. subrogation).

19) The net settlement payable to the minor (after deduction of costs and attorney's fees) is \$ _____ .

WHEREFORE, Petitioner requests that he/she be permitted to enter into the settlement recited above and that the Court enter an Order of Distribution⁴ as follows:

- a) To _____ \$ _____
Reimbursement for Costs
 - b) To _____ \$ _____
 - c) To _____ \$ _____
Counsel Fee
 - d) To: Adult Plaintiff(s) (if applicable) \$ _____
 - e) To _____ \$ _____
A Minor,⁵ in restricted accounts not to be withdrawn before majority or upon prior leave of Court.
- OR
- f) To _____ \$ _____
the Guardian of the Estate of _____, A Minor, appointed or to be appointed by the Orphans' Court of _____ County, after posting appropriate security

Name of Attorney
Attorney for Petitioner

³ Phila.Civ.R. *2039(D)(5)(f) provides that if there is to be an allocation between adults and minors or among minors, the amounts allocated to each party and specific reasons for such allocation must be set forth. Additionally, if more than one plaintiff is involved, whether minor, adult or incapacitated, Petitioner must set forth the amount each will receive and shall provide justification for the requested allocation. In the event a portion of the settlement is payable through the purchase of an annuity, set forth the credit rating of the entity which assumes responsibility for future payments, the present cost of the annuity, as well as the periodic and lump sum payments.

⁴ Counsel is cautioned to specifically provide the requested distribution. Requests that distribution be "as per the attached Order" are not acceptable.

⁵ Counsel is cautioned that the restricted account must be set up in the name of the minor only (not in the name of the parent as guardian for the minor). See Pa.R.C.P. No. 2039(b)(2).

VERIFICATION

I, _____, am the Petitioner in this action and hereby verify that the statements made in the foregoing Petition to Settle or Compromise Minor's Action are true and correct to the best of my knowledge, information and belief.

I understand that the statement in said Petition are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

DATE: _____

PETITIONER

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
Trial Division—Civil**

TERM, 20

:
:
:
:

No:

**ORDER APPROVING SETTLEMENT
AND
ORDER FOR DISTRIBUTION**

AND NOW, this _____ day of _____, 20____, upon consideration of the Petition For Leave to Compromise A Minor's Action, filed _____, it is hereby ORDERED and DECREED that Petitioner is authorized to enter into a settlement with Defendant(s) _____ in the gross sum of _____ (\$ _____) Dollars. Defendant(s) shall forward all settlement drafts or checks to Petitioners' counsel for proper distribution.

IT IS FURTHER ORDERED and DECREED that the settlement proceeds be allocated as follows:

1. To: Minor Plaintiff(s)

NAME	DOB	SS #	
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

2. To: Adult Plaintiff(s)

_____	\$ _____
_____	\$ _____

IT IS FURTHER ORDERED and DECREED that the settlement proceeds be distributed as follows:

1. Minor Plaintiff⁶

NAME	DOB	SS #	
_____	_____	_____	\$ _____

a. To: _____, Esquire \$ _____
Reimbursement of Costs

b. To: _____ \$ _____
Costs

c. To: _____, Esquire \$ _____
Counsel Fees

d. The balance, the sum of \$ _____ payable to _____, A Minor, shall be distributed as follows⁷:

OPTION 1

To: _____, Guardian of the Estate of _____, A minor; provided, however, that no payment shall be made to the guardian until the guardian has posted additional security as required by the Orphans' Court Division of _____ County pursuant to 20 Pa.C.S. § 5121, et seq. An appropriate Petition shall be filed with the Orphans' Court within thirty (30) days.

OPTION 2

Counsel is hereby authorized to execute all documentation necessary to purchase saving certificate(s), from federally insured banks or savings institutions having an office in Philadelphia County, in the sum of \$ _____, each not to exceed the insured amount, with the funds payable to the minor upon majority. The certificate shall be titled and restricted as follows:

_____, a minor, not to be redeemed except for renewal in its entirety, not to be withdrawn, assigned, negotiated, or, otherwise alienated before the minor attains majority, except upon prior Order of Court.

⁶ The share of each minor Plaintiff shall be separately distributed.

⁷ In the event a portion of the settlement is payable through the purchase of an annuity, set forth the credit rating of the entity which assumes responsibility for future payments, the present cost of the annuity, as well as the periodic and lump sum payments.

Counsel shall open a savings account in the sum of \$ _____ in the name of the minor. The savings account shall be titled and restricted as follows:

_____, a minor, not to be withdrawn before the minor attains majority, except for the payment of city, state, and federal income taxes on the interest earned by the savings certificate and savings account, or upon prior Order of Court.

2. Adult Plaintiff⁶

The portion of the settlement payable to _____, an Adult Plaintiff named in the Complaint, shall be distributed as follows:

- To: _____, Esquire \$ _____
Reimbursement of Costs
- To: _____ \$ _____
Costs
- To: _____, Esquire \$ _____
Counsel Fees
- To: _____ \$ _____
Plaintiff

Pursuant to Phila.Civ.R. *2039(H), counsel shall file with the Office of Judicial Records⁹ within sixty (60) days from the date of this final Order, proof of the establishment of the accounts as required herein, by Affidavit from counsel certifying compliance with this Order. Counsel shall attach to the Affidavit a copy of the Certificate of Deposit and/or bank account containing the required restrictions.

BY THE COURT:

ORPHANS' COURT DIVISION J.

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
Trial Division—Civil

v. _____ : TERM, 20
: :
: :
: :
: : NO:

AFFIDAVIT

I, _____, Esquire, hereby state and affirm that I have complied with the Order issued on _____ by the Honorable _____ as follows:

Copies of bank accounts are attached hereto.

I verify that the statements in this Affidavit are made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities.

DATE: _____, _____, Esquire
Attorney for Petitioner

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
Trial Division—Civil¹

: TERM, 20
: :
: :
: : NO:

PETITION TO SETTLE WRONGFUL
DEATH AND SURVIVAL ACTIONS

To The Honorable, the Judges of the Said Court:

The Petition of _____, Administrator/Executor of the Estate of _____, Deceased, by his/her attorney, _____, Esquire, respectfully requests:

⁸ The share of each adult plaintiff shall be separately distributed.
⁹ If the Petition has been filed with the Clerk of the Orphans' Court Division pursuant to Rule *2039(B)(2), the Affidavit shall likewise be filed with the Clerk of the Orphans' Court Division.
¹ In the event the Petition is filed in the Orphans' Court Division, the caption must comply with Pa.O.C. 3.2.

1. Petitioner is _____ who was appointed Administrator/Executor of the Estate of _____, Deceased, on _____, _____, by the Register of Wills of _____ County. A copy of the Decree of the Register is attached.

2. The plaintiff decedent died on _____ as a result of (set forth relevant information describing the underlying negligence or cause of action as required by Phila.Civ.R. *2206(D)):

(If additional space is needed, please continue on separate sheet).

3. Notice of the institution of the action as required by Pa.R.C.P. 2205 and Philadelphia Civ.R. *2206(E) was given on _____ to the following individuals:

NAME	ADDRESS:
_____	_____
_____	_____
_____	_____

4. Pursuant to Phila.Civ.R. *2206(E) Petitioner has served a copy of this Petition on the intestate heirs² of plaintiff decedent (as provided in 20 Pa.C.S. § 2101 et seq.) who are as follows:

NAME	RELATIONSHIP	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Pursuant to Phila.Civ.R. *2206(E) Petitioner has served a copy of this Petition on the following parties who may have a possible interest:

NAME	RELATIONSHIP	ADDRESS
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Decedent (did) (did not) have a Will. A copy is attached.

7. The following unpaid claims³ have been raised and/or are outstanding in the decedent's estate:

CREDITOR	AMOUNT DUE
_____	_____
_____	_____
_____	_____

8. A Complaint was filed against defendant(s) as follows:

9. The following settlement has been proposed⁴:

(If additional space is needed, please continue on a separate page).

10. Counsel is of the professional opinion that the proposed settlement is reasonable due to the following (state the reasons why in the professional opinion of counsel the settlement is proper):

(If additional space is needed, please continue on separate page).

11. Petitioner is of the opinion that the proposed settlement is reasonable.

² In the event any court has appointed a guardian for a minor heir or incapacitated person, set forth the name of the guardian, the Court date and manner of appointment.
³ Petitioner must indicate whether the Department of Human Services has a claim or a lien against Petitioners, the Estate or any wrongful death beneficiaries.
⁴ In the event a portion of the settlement is payable through the purchase of an annuity, set forth the credit rating of the entity which assumes responsibility for future payments, the present cost of the annuity, as well as the periodic and lump sum payments sought.

12. Counsel has incurred the following expenses for which reimbursement is sought (Please set forth in detail):

(If additional space is needed, please continue on separate page).

13. Counsel requests counsel fees in the amount of \$ _____ which represents _____ % of the net proceeds of the settlement.

14. Petitioner requests allocation of the net proceeds of the settlement (after deduction of costs and attorneys fees) as follows:

- a. Wrongful Death Claim \$ _____
- b. Survival Claim \$ _____

15. The reason for the requested allocation are as follows:

(If additional space is needed, please continue on a separate page).

16. Pursuant to the Wrongful Death Statute (42 Pa.C.S. § 8301), the beneficiaries of the Wrongful Death Claim, and the proportion of their interest, are as follows:

NAME	AMOUNT DUE
_____	_____
_____	_____

17. The pecuniary loss suffered by the beneficiaries listed in Paragraph 16 is as follows:

(If additional space is needed, please continue on a separate page).

WHEREFORE, Petitioner requests that he/she be permitted to enter into the settlement recited above, and that the Court enter an Order of Distribution⁵ as follows:

- a. To: _____ \$ _____
Reimbursement of Costs
- b. To: _____ \$ _____
Costs
- c. To: _____ \$ _____
Counsel Fees
- d. Wrongful Death Claim
 - i. To: Spouse; and/or \$ _____
 - ii. To: Adult Child(ren); and/or \$ _____
 - iii. To: Minor Child(ren) and/or incapacitated persons; and/or \$ _____
 - (a) in restricted accounts; or \$ _____
 - (b) to the guardian of the minor(s) estate; and/or \$ _____
 - iv. To: Parent(s) \$ _____
- e. Survival Claim
To: _____, Administrator/Executor of the Estate of _____, \$ _____
Deceased

Respectfully submitted,

NAME OF ATTORNEY
ATTORNEY FOR PETITIONER

⁵ Counsel is cautioned to specifically provide the requested distribution. Requests that distribution be "as per attached Order" are not acceptable.

THE COURTS

VERIFICATION

I, _____, am the Petitioner in this action and hereby verify that the statements made in the foregoing Petition to Settle or Compromise Minor's Action are true and correct to the best of my knowledge, information and belief.

I understand that the statement in said Petition are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

DATE: _____

PETITIONER

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
Trial Division—Civil**

PLAINTIFF : TERM, 20
: :
v. : :
: :
DEFENDANT : NO:

NOTICE

PURSUANT TO PHILA.CIV.R. *2206

TO: _____
(Name of Beneficiary)

DATE: _____

YOU ARE HEREBY NOTIFIED THAT, _____, Administrator/Executor of the Estate of _____, Deceased has filed (or will file) on _____, A Petition to Approve a Settlement of a Wrongful Death and Survival Action. A copy of that Petition is enclosed.

If you object to the proposed settlement and/or proposed distribution, you must electronically file your written objections or Response to the Petition on or before⁶ _____, 20 __, through the Civil Electronic Filing System as provided in Phila.Civ.R. *205.4 or Phila.O.C.R. 3.7.A.

I hereby certify that the within Notice has been mailed to the above named individual(s) on the date set forth above.

NAME OF ATTORNEY
ATTORNEY FOR PETITIONER

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
Trial Division—Civil**

: TERM, 20
:
:
:
:
NO:

ORDER

AND NOW, this _____ day of _____, 20 __, upon consideration of the Petition to Compromise Wrongful Death and Survival Action filed on _____, 20 __, it is hereby ORDERED and DECREED that Petitioner is authorized to enter into a settlement with Defendant(s) _____, in the gross sum of _____ (\$ _____) Dollars. Defendant(s) shall forward all settlement drafts or checks to Petitioner's counsel for proper distribution.

IT IS FURTHER ORDERED and DECREED that the settlement proceeds are allocated as follows:

- 1. Wrongful Death \$ _____
- 2. Survival Claim \$ _____

IT IS FURTHER ORDERED and DECREED that the settlement proceeds be distributed as follows:

- 1. To: _____, Esquire \$ _____
For Costs
- 2. To: _____, Esquire \$ _____
For Counsel Fees

⁶ Unless waived by all beneficiaries or interested parties, the response period shall be thirty (30) days.

- 3. The Wrongful Death Claim in the sum of shall be paid as follows: \$ _____
- a. To: Spouse; and/or \$ _____
- b. To: Adult Child(ren);⁷ and/or \$ _____
- c. To: Minor Child(ren)⁸ \$ _____

as provided hereunder

OPTION 1

To: _____, Guardian of the Estate of _____, a minor; provided, however, that no payment shall be made to the guardian until the guardian has posted additional security as may be required by the Orphans' Court Division of _____ County pursuant to 20 Pa.C.S. § 5121, et seq. An appropriate Petition shall be filed with the Orphans' Court within thirty (30) days.

OPTION 2

Counsel is hereby authorized to execute all documentation necessary to purchase saving certificate(s), from federally insured banks or savings institutions having an office in Philadelphia County, in the sum of \$ _____, each not to exceed the insured amount, with the funds payable to the minor upon majority. The certificate shall be titled in the name of the minor and shall be restricted as follows:

Not to be redeemed except for renewal in its entirety, not to be withdrawn, assigned, negotiated, or otherwise alienated before the minor attains majority, except upon prior Order of Court. Counsel shall open a savings account in the sum of \$ _____ in the name of the minor.

The savings account shall be restricted as follows:

Not to be withdrawn before the minor attains majority, except for the payment of city, state, and federal income taxes on the interest earned by the savings certificate and savings account, or upon prior Order of Court.

c. To: Parent(s) \$ _____

4) The Survival Claim in the sum of \$ _____ shall be paid to _____, Administrator/Executor, of the Estate of _____, Deceased; provided, however, that counsel shall not distribute any funds to the said Administrator/Executor until the additional security as may be required by the Register of Wills of _____ County pursuant to 20 Pa.C.S. § 3323(b)(3) is posted.

Within sixty (60) days from the date of this final Order, counsel shall file with the office of Civil Administration an Affidavit from counsel certifying compliance with this Order. Counsel shall attach to the Affidavit a copy of the Certificate of Deposit and/or bank account containing the required restrictions.

BY THE COURT:

J.
ORPHANS' COURT DIVISION

cc: Register of Wills of _____ County.

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
Trial Division—Civil**

TERM, 20

v.

NO:

AFFIDAVIT

I, _____, Esquire, hereby state and affirm that I have complied with the Order issued on _____ by the Honorable _____ as follows:

Copies of bank accounts are attached hereto.

I verify that the statements in this Affidavit are made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities.

DATE: _____

, Esquire
Attorney for Petitioner

[Pa.B. Doc. No. 16-975. Filed for public inspection June 10, 2016, 9:00 a.m.]

⁷ In the event the beneficiary is an incapacitated person, appropriate changes are to be made.

⁸ In the event part of the settlement proceeds are payable through the purchase of an annuity, the terms of the annuity shall be set forth in the Order.

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Adoption of Local Rule of Civil Procedure 1910.10*. Alternative Hearing Procedure. Rescission of Local Rule of Civil Procedure 1910.11*. Support Conciliation; No. 2016-00001

Order

And Now, this 26th day of May, 2016, the Court hereby Adopts Montgomery County Local Rule of Civil Procedure 1910.10*. Alternative Hearing Procedure. The Court further Rescinds Montgomery County Local Rule of Civil Procedure 1910.11*. Support Conciliation. These Rule changes shall become effective on July 18, 2016.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.C.P.

239, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and one (1) certified copy shall be filed with the Domestic Relations Procedural Rules Committee. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court.

By the Court

WILLIAM J. FURBER, Jr.,
President Judge

Rule 1910.10*. Alternative Hearing Procedure.

The Montgomery County Court of Common Pleas adopts the alternative hearing procedure of Pa.R.C.P. No. 1910.12.

Rule 1910.11*. Support Conciliation.

(Rescinded.)

[Pa.B. Doc. No. 16-976. Filed for public inspection June 10, 2016, 9:00 a.m.]