

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**  
**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

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**President Judge General Court Regulation No. 2016-1**

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*In re: Rescission of Phila.Civ.R. \*2039.1 and \*2206, and  
Adoption of Phila.Civ.R. \*2039, \*2064 and \*2206*

**ORDER**

AND NOW, this 25<sup>th</sup> 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\*2039, \* 2064 and \*2206, IT IS HEREBY ORDERED and DECREED that Philadelphia Civil Rules \*2039.1 and \*2206 are rescinded and Philadelphia Civil Rules \*2039, \* 2064 and \*2206 are adopted as follows.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 above-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:

*/s/ Sheila Woods-Skipper*

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

**PHILADELPHIA CIVIL RULE \*2039**

**\*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;
  - (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**

**\*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 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 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 appointed 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 or 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**

**\*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.  
 Published in the Pennsylvania Bulletin June 11, 2016; effective July 11, 2016.



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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.

12) The following settlement has been proposed:<sup>3</sup> \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

(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: \_\_\_\_\_  
\_\_\_\_\_.

<sup>3</sup>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.

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(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 \_\_\_\_\_

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(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 Distribution<sup>4</sup> as follows:

a) To \_\_\_\_\_ \$ \_\_\_\_\_  
Reimbursement for Costs

b) To \_\_\_\_\_ \$ \_\_\_\_\_

c) To \_\_\_\_\_ \$ \_\_\_\_\_  
Counsel Fee

d) To: Adult Plaintiff(s) (if applicable) \$ \_\_\_\_\_

e) To \_\_\_\_\_, A Minor,<sup>5</sup> in restricted accounts not to be withdrawn before majority or upon prior leave of Court. \$ \_\_\_\_\_

OR

f) To \_\_\_\_\_, the Guardian of \$ \_\_\_\_\_

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

<sup>5</sup> 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).

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

**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





2. Adult Plaintiff<sup>8</sup>

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 Records<sup>9</sup> within sixty (60) days of the entry 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:

\_\_\_\_\_ J.  
 ORPHANS' COURT DIVISION

<sup>8</sup> The share of each adult plaintiff shall be separately distributed.

<sup>9</sup> 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.

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

: TERM, 20  
:  
:  
:  
:  
: NO:

v.

**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: \_\_\_\_\_  
\_\_\_\_\_  
Attorney for Petitioner, Esquire

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
Trial Division - Civil<sup>1</sup>**

:                   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:

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 \_\_\_\_\_

<sup>1</sup> In the event the Petition is filed in the Orphans' Court Division, the caption must comply with Pa.O.C. 3.2. Published in the Pennsylvania Bulletin June 11, 2016; effective July 11, 2016.

intestate heirs<sup>2</sup> 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 claims<sup>3</sup> 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:

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9. The following settlement has been proposed<sup>4</sup>:

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<sup>2</sup> 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.

<sup>3</sup> Petitioner must indicate whether the Department of Human Services has a claim or a lien against Petitioners, the Estate or any wrongful death beneficiaries.

<sup>4</sup> 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

\_\_\_\_\_  
(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.

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:

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(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 Distribution<sup>5</sup> 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,

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NAME OF ATTORNEY  
ATTORNEY FOR PETITIONER

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



**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 before<sup>6</sup>  
\_\_\_\_\_, 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

\_\_\_\_\_  
<sup>6</sup>Unless waived by all beneficiaries or interested parties, the response period shall be thirty (30) days.

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

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

<sup>8</sup>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.

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 of the entry 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

5-19-16

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  
:  
:  
:  
:  
: NO:

v.

**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