

CHAPTER 3 - CLAIMS OF MINORS, INCOMPETENT PERSONS AND PERSONS WITH A DISABILITY

3.00 Application for Appointment of Guardian Ad Litem.

Petitions for appointment of a guardian ad litem for a minor or incompetent person, except in family law, probate, juvenile, civil harassment or other special proceedings, shall be submitted by ex parte application to the law and motion departments.

When an application is made for appointment of a guardian ad litem and the nominee for appointment is a plaintiff in the same action with the ward or in some manner was a participant in the transaction or occurrence giving rise to the alleged injury to the ward, the nominee will ordinarily not be appointed unless the application is accompanied by:

- (A) A declaration under penalty of perjury setting forth facts establishing that no other parent, relative, or friend can or will accept the appointment of guardian ad litem for the minor in the action; and
- (B) A declaration under penalty of perjury by the attorney for the nominee stating that the attorney, having investigated the circumstances, has represented to the nominee and represents to the court that there is no conflict of interest between the nominee and the minor if the nominee is appointed the guardian ad litem.
- (C) Attorney fee contracts, payment of attorney's fees and disbursement of settlement proceeds shall be ordered in accordance with California Rules of Court, rules 7.950 through 7.955.
- (D) No "Guardian ad litem" appointment is required for the filing of a minor's compromise by a custodial parent under Probate Code section 3500 without the filing of a civil action.

(Adopted 1/1/2013)

3.01 Withdrawal of Funds.

(A) Any order authorizing the withdrawal of funds for the purpose of transferring said funds from one financial institution to another shall contain the language set forth in California Rules of Court, rule 7.953(a) and shall further provide that the draft of the institution from which the funds are withdrawn shall be payable to the financial institution to which the funds are to be transferred for deposit in a blocked account.

(B) Applications for withdrawal of funds shall be filed and heard in the Probate Department.

(Adopted 1/1/2013)

3.02 Claims of Minors and Incompetents.

(A) If there is a request to place the proceeds of a judgment or compromise for a minor or incompetent into a trust (revocable, special needs or otherwise) or a California Uniform Transfer to Minors Act, the plaintiff shall then file a petition to be set in the Probate Department for a

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hearing as to the establishment, terms and conditions of the proposed disposition of funds. The Compromise must be approved before referral to the Probate Department.

(B) Upon approval of the trust described herein by a judicial officer of the Probate Department, the court shall set a hearing date 14 months later for status on the filing of the first account.

(Adopted 1/1/2013; Revised 1/1/2018)

3.03 Trusts Created Pursuant to Court Order.

(A) A trust created by order of the Probate Court for the benefit of a minor or incompetent adult pursuant to Probate Code section 2580 et seq., section 3100 et seq. or section 3600 et seq. will ordinarily be required to contain the following provisions to be effective during the lifetime of the incompetent adult or during the minor's minority.

- (1) Trustee must post bond for assets and income of the trust.
- (2) Trustee shall obtain prior court approval for gifting, hypothecation, borrowing, loans, and sales of assets as would be required by a guardian or conservator of the estate.
- (3) Prior court approval shall be required for payments of fees to attorneys, conservators, guardians and trustees.
- (4) The trust shall pay for court approved court investigation costs, fees for guardians, conservators, their attorneys and court-appointed counsel as well as other costs of administration approved by the court.
- (5) Prior court approval shall be required for appointment of advisory committee members and for requested fees.

(B) A petition that includes a request for approval of a trust advisory committee shall set forth the member's qualifications or relationship and his/her expertise, if any, with federal/state public benefit programs (i.e., S.S.I., Medi-Cal).

(C) The petition for approval of the trust shall include the proposed distribution of the trust assets upon termination of the trust.

(Adopted 1/1/2013)