

Incapacitated Persons as Parties

Local Rule 2064 Compromise, Settlement, Discontinuance and Distribution.

(1) Contents of Petition.

A petition under Pa.R.C.P. 2064 shall be verified by the guardian or guardian ad litem of the incapacitated person, and shall contain a statement of the nature of the evidence relied upon to show liability, the elements of damage, the injuries sustained, and the list of expenses incurred or to be incurred. The petition shall be accompanied by the following exhibits:

- (a) A statement of counsel's professional opinion regarding the desirability of the settlement and reasons therefor, including a discussion with specific references to the factual circumstances as to both the liability and damages aspects of the case; a description of the services rendered; a description and the amount of reimbursable expenses requested; and the amount of fees requested, which, except in extraordinary circumstances, shall not exceed 33-1/3% of the present value of a structured settlement or 33-1/3% of the gross recovery of any other settlement.
- (b) A statement by the attending physician as to the injuries sustained by the incapacitated person, treatment administered and the prognosis.
- (c) In property damage claims, a statement by the party who made the repairs or appraised the loss.

(2) Deposit of Funds by Order of Court.

- (a) All petitions under Pa.R.C.P. 2064 shall have attached to the petition an order including the following:

It is hereby ordered and decreed that the amount of \$ _____ shall be paid to _____, the guardian of the estate. [If the guardian of the estate is an individual, include the following sentence.] A surety bond shall be posted in the same net amount as stated above.

- (b) Proof of surety bond is to be filed with the Clerk of the Orphans' Court within thirty (30) days by _____, guardian of the estate.

Note: If no guardian has been appointed, see Pa.R.C.P. 2064.

(3) **Presentation of Petition.**

All petitions under Pa.R.C.P. 2064 shall be first delivered for signature to the Administrative Judge of the Orphans' Court Division and thereafter presented to the Calendar Control Judge.

(4) **Annuity Contracts.**

- (a) Where the terms of settlement of an incapacitated person's claim include an annuity contract, the annuity contract shall provide that the policy will not be transferred or assigned to another company without the prior approval of the Orphans' Court Division of this Court.
- (b) A copy of this local rule shall be served upon the company issuing the annuity contract and proof of service thereof shall be filed with the Clerk of the Orphans' Court Division of this Court.

Note: For approval of a settlement of an incapacitated person's claim where no action has been instituted, see analogous procedures at Orphans' Court Local Rule 12.16G.

Editor's Note: Effective December 4, 2006.