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Getting Settlements on Behalf of Minors, Incompetents & Disabled Adults  
Approved by the Court

(Local Superior Court Rule 2.37 and Federal Court Rule 17.1)  
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Agreeing to a settlement is not the final step in cases involving minors, incompetents and disabled adults. The plaintiff's attorney still needs to get court approval of the settlement and establish an appropriate structure to receive and handle the settlement proceeds. This will typically include a trust or blocked account which will receive the settlement proceeds. Sometimes an appointment of a guardian of the estate of the minor or a conservator of the estate for an incompetent or disabled adult is also required.

The court where the case was filed is required to consider the fairness of the settlement, as well as the structure and manner of how the settlement is to be paid, held and maintained for the minor, incompetent or disabled individual. The state and federal courts in San Diego have created special procedures for this process through their local rules.

Local Superior Court Rule 2.37 requires that any settlement of a civil case which involves the creation of a trust, whether it is a special needs trust or a revocable trust, be submitted by the trial judge in the civil proceeding to the probate court for review and approval.

The petition, trust and/or order must contain the following:

- 1) The name of the trust, the name of the initial trustee and the specific amount to be placed in the trust must be clearly identified.
- 2) A general description of the circumstances giving rise to the settlement and a general description of the beneficiary's injuries and anticipated needs.
- 3) Since a bond is always required unless the trustee is a corporate fiduciary, the trust should provide for payment of the bond. The petition and order should state the amount of the initial bond, which includes the trust corpus plus the estimated income for one year. The bond must be posted before the funds are transmitted.
- 4) There must a provision that accountings will be made to the beneficiary and that the accounting will be filed with the court as required.
- 5) The trust should contain a provision for the court to appoint a successor trustee in the event there are no provisions for the appointment of a successor trustee.

- 6) A Trust Advisory Committee may be included in the trust provisions as long as they are set up to make recommendations regarding the care of the beneficiary, but are not allowed any control over the funds.
- 7) The trust should state that additions of assets and amendments to the trust may be made only on noticed hearing, with notice to public entities.
- 8) The trust may not provide that assets are paid directly to the beneficiary in any manner. However, it is appropriate for the trust to allow payment for the benefit of the beneficiary and to purchase a residence or vehicle.
- 9) If the trust is created under Probate Code § 3611, it must state that the trust will terminate when the beneficiary reaches age eighteen if the beneficiary has capacity.
- 10) The trust should state that the ultimate distribution of remaining assets must be under intestate succession if there is no estate plan. The trust may provide for disposition of assets by the estate plan of the beneficiary if competent.
- 11) There must be a provision in the petition and the order that if trust will be subject to the continuing supervision of the probate court. If so, the order should provide that the trustee file a "Petition for Review of Compliance with Order pursuant to Probate Code §§ 3602 or 3604."

In addition, if the settlement contains a special needs trust:

- 12) There must be allegations to support the determinations required under Probate Code §3604(b).
- 13) There must be a provision for notice of death or termination to the appropriate government agencies and parties.
- 14) There must be a pay back provision up to the amount remaining in trust to be paid back to any agency providing public benefits.
- 15) The petition should state that the Court makes no specific finding with respect to whether the special needs trust satisfies or complies with applicable federal laws or regulations.
- 16) Notice of the hearing and a copy of the petition and trust must be mailed to the directors of the Departments of Health Services, Mental Health and Developmental Services at least 15 days before the hearing.

In federal court, Local Civil Rule 17.1 closely follows the San Diego Superior Court Local Rule 2.37. However, the responsibility to review the structural components of the settlement is placed in the hands of the magistrate judges. Under Local Rule 17.1, parties must submit the settlement to magistrate judges for preliminary review of the structural components. The parties may also consent to the jurisdiction of the magistrate judge to approve the fairness of the settlement. The preliminary review will include monitoring the creation of necessary and proper guardianships, trusts and special needs trusts. Even if the proceeding is in federal court, the conservators or guardian will need to be established in a state court proceeding.

The local courts have designed these rules to protect minors, incompetents and disabled adults in the settlement of their cases and to insure that the manner of payment and/or the structure of the future payments will provide for the long term benefit of these plaintiffs. A familiarity with the court's requirements for gaining approval in these types of cases will save the plaintiffs attorney time and aggravation when in the process of completing a case of this kind.