

## **PRACTICE NOTE DC (CIVIL) NO. 7**

### **COURT APPROVAL OF SETTLEMENTS**

This Practice Note applies to actions commenced in the Sydney Registry of the Court only.

1. In general, applications for approval under the Civil Procedure Act will be listed for hearing on Fridays. However alternative arrangements will be made for urgent applications or where there are special circumstances.
2. A party may list a matter for approval either by filing copies of the proposed Terms of Settlement and the relevant Affidavit(s) in the Registry or by contacting the List Office.
3. Where an approval is listed by contacting the List Office, the parties are required to file all Affidavit evidence upon which they will rely at the hearing at least three (3) clear working days prior to the listing of the application before the Court.
4. A matter should not be listed unless the application will be ready to proceed. If the plaintiff's disability requires orders to be made by the Supreme Court or Guardianship Board, application for orders should, wherever possible, be made prior to the matter being listed.
5. Unless there are exceptional circumstances, the plaintiff and the tutor will be required to attend at the hearing of the application.
6. The Affidavit evidence should, where relevant, include the following matters:

- A. Whether the settlement reflects a compromise on liability and if so, copies of any relevant documents;
  - B. Up to date medical report/s dealing with all relevant medical issues;
  - C. A statement by the tutor as to the plaintiff's current disabilities, if any;
  - D. A statement of the net amount to be invested on behalf of the plaintiff or which will be payable in accordance with a Court order, which should include all accounts (including legal costs and claims by the tutor or family members for reimbursement), both paid and unpaid;
  - E. Details of the past out-of-pocket expenses both paid and unpaid;
  - F. Details of any other deductions to be made from the settlement e.g. Centrelink;
  - G. A statement by the tutor to the effect that the amount allowed for past out-of-pocket expenses in the settlement includes all accounts, both paid and unpaid, of which the tutor is aware having made all relevant enquiries;
  - H. A current Medicare Notice of Charge or Clearance;
  - I. An acknowledgement by the tutor that the settlement is final.
7. A copy of counsel's advice, or in its absence the advice of the solicitor with carriage of the matter, dealing with both the question of liability and the consideration of each of the applicable heads of damage in the proceedings should generally be provided for the assistance of the presiding Judge considering approval of the settlement three (3) clear working days prior to the listing of the application before the Court. Such advice may be provided to the Court in a sealed envelope and will be returned.

8. In cases where an undertaking is required from a legal representative in relation to either the payment of out of pocket expenses or the reimbursement of payments made, the undertaking should, unless the court otherwise orders, be in the following form:

Undertaking

(Insert name) undertakes to the Court to hold any amount received pursuant to this settlement, other than for legal costs and disbursements, on trust and to only apply those trust funds in accordance with the Orders made and the evidence filed in support of the application for approval.

- 9 If an application for approval pursuant to section 76 of the Civil Procedure Act is either refused or not ready to proceed the action will be returned for management. If the action has already been allocated an arbitration or trial date, that arbitration or trial will, unless the Court otherwise orders, proceed.

The Hon. Justice R.O. Blanch A.M.  
Chief Judge  
6 May 2009