

# Practice Note DC (Civil) No. 7

## Court Approval of Settlements

This Practice Note revises the version published on 6 May 2009 and commences on 31 August 2020.

This Practice Note only applies to actions commenced in the Sydney Registry of the Court or matters transferred to Sydney for the purpose of approval.

1. Approval of settlements will be determined in Chambers, unless otherwise notified by the Court.
2. A matter will be considered for approval upon the filing in the Registry of the following documents (together the "Approval Documents"):
  - (a) A Written Request for Approval (for proceedings already commenced) or Summons (where proceedings have not been commenced);
  - (b) any affidavits to be relied upon for the proper consideration of the approval;
  - (c) the signed Judgment Order reflecting the settlement agreed on by the parties;
  - (d) a Confidential Advice in a sealed envelope from the most senior legal representative acting for the plaintiff as to whether and why the settlement should be approved. This advice (which should not be filed or shown to the opposing party without express instructions to that effect) should analyse any issues regarding liability, the extent of any discount for liability and provide an itemised assessment of the damages by reference to the medical evidence exchanged between the parties. Where the plaintiff is not a minor, the Confidential Advice should indicate that consideration has been given to the impact of the settlement on the plaintiff's other financial arrangements and entitlements;
  - (e) if necessary, an undertaking of the type referred to in paragraph 7 below; and
  - (f) a draft in electronic form and Word format of the Orders proposed to be entered onto JusticeLink, which may be attached to the

affidavit of the solicitor for the plaintiff together with the Consent Judgment entered into inter parties.

A return date will not be allocated by the Registry but the Approval Documents will be referred to the Approvals Judge for attention.

3. For proceedings which have been listed for hearing, the Approval Documents, with the exception of the Confidential Advice which is to remain sealed, must be filed as soon as possible after the settlement has been reached and in any event by no later than 4pm on the day preceding the first day set for hearing. In all matters with a hearing date, the parties must be prepared to proceed with the hearing on the day set in the event that the settlement is not approved. Hearing dates will not be vacated until or unless the settlement is approved.
4. A matter should not be submitted for approval unless the application is ready to proceed. If the plaintiff's disability requires orders to be made by the Supreme Court or Guardianship Board, application for those orders should, where possible, be made prior to the filing of the Approval Documents and the affidavit material should attach copies of the court documents and/or orders.
5. If the Court directs that the matter be listed in Court for approval, the plaintiff and the tutor will not be required to attend at the hearing of the application, unless otherwise ordered by the Presiding Judge. If the reasons for listing the matter for approval are that incomplete documentation has been provided, an affidavit of explanation from the solicitor with conduct of the matter should be provided to the Presiding Judge and such conduct may be the subject of costs orders, including personal costs orders.
6. The affidavit evidence must include the following information and documents:
  - (a) whether the settlement reflects a compromise on liability and, if so, copies of all relevant documents to permit the Court to make an assessment of liability;
  - (b) up to date medical evidence dealing with all relevant medical issues, including diagnosis, prognosis, the need for treatment or domestic assistance and the medical basis for any claim for economic loss;
  - (c) if the plaintiff claims damages as a result of any scarring or other visible deformity, recent colour photographs depicting same. The photographs should bear the date upon which they were taken;

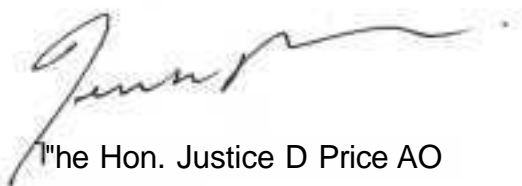
(d) evidence from the tutor in respect of the following matters:

- (i) the plaintiff's current disabilities, if any;
- (ii) any expenses incurred by the tutor in respect of which reimbursement is sought;
- (iii) acknowledgment by the tutor that the settlement is final and that the plaintiff will have no further rights against the defendant(s);
- (iv) acknowledgement by the tutor of the net sum to be invested for the plaintiff and where that sum is to be invested;
- (v) confirmation from the tutor 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 enquires.
- (vi) details of the past out-of-pocket expenses both paid and unpaid, including a current Notice of Charge from Medicare and the specific amount (if any) to be repaid to the defendant(s) for reimbursement;
- (vii) details of any other deductions to be made from the settlement, for example to Centrelink;
- (viii) confirmation by the solicitor for the plaintiff that costs and disbursements on a party/party basis will be accepted in full satisfaction. In the event that is not the case, then the solicitor must explain why and specify the amount to come out of the settlement for solicitor/client costs. Unless orders are made to the contrary by the Presiding Judge, the allowance of any such costs will be at the discretion of NSW Trustee and Guardian or any other trustee managing the plaintiff's affairs.

7. 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 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.

A handwritten signature in black ink, appearing to read 'Justice D Price AO', written in a cursive style.

The Hon. Justice D Price AO  
Chief Judge  
11 August 2020