

**Settlement Approval Hearings  
before  
United States District Judge Timothy M. Cain**

Counsel seeking court approval of settlements on behalf of minors, incapacitated persons, or estates shall adhere to the following requirements:

1. **First determine whether to seek approval from the federal court.** It is often more appropriate to obtain approval of the settlement from a state court of competent jurisdiction, particularly if there is an open estate or related state court action(s). For example, in South Carolina, a settlement of a wrongful death or survival action must be approved by either a probate court, circuit court, or United States District Court. *See* S.C. Code Ann. § 15-51-41 (1992); *see also* S.C. Code Ann. § 15-51-42 (stating that the federal court, at its discretion, may issue an order transferring the case to state court for consideration of the proposed settlement). **If approval will be obtained from a state court**, the federal action may be ended by either (1) a conditional order of dismissal (“Rubin Order”) which notes the requirement for state approval within a specified time, or (2) a motion to transfer to state court for approval. In some cases, the United States District Court may also transfer the matter *sua sponte*. *See* S.C. Code Ann. § 15-51-42 (stating that the federal court, at its discretion, may issue an order transferring the case to state court for consideration of the proposed settlement).
2. **Referral of settlement proceedings to a U.S. Magistrate Judge.** Pursuant to 28 U.S.C. § 631, United States Magistrate Judges are appointed by the district court. Such appointments are made after a rigorous application and screening process. Federal magistrate judges are assigned to each division in this district. Pursuant to 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, a United States Magistrate Judge may, upon consent of the parties, conduct any or all proceedings in a jury or nonjury civil matter and enter a final order in the case. Due to the caseloads and dockets of the district judges, United States Magistrate Judges are often more flexible in scheduling civil hearings and are in a better position to accommodate the scheduling needs of the parties. Accordingly, the parties should consider consenting to the referral of settlement approvals to a United States Magistrate Judge for final disposition. If the parties so consent, they must file AO Form 85, found at <https://www.uscourts.gov/forms/civil-forms/notice-consent-and-reference-civil-action-magistrate-judge>.

**3. In the event the parties desire that Judge Cain conduct the settlement approval hearing, he requires submission of the following supporting documents before a hearing date is set:**

(a) A verified petition for approval of the settlement signed by the Representative Plaintiff must be filed with the court (*e.g.*, personal representative or guardian ad litem). The petition shall:

(1) provide the legal and factual basis of the petitioner's authority to seek settlement approval by attaching documentation establishing the Representative Plaintiff's authority, including a certified true copy of the certificate of appointment or order of appointment;

(2) summarize –

- the nature of the action,
- the stage of the proceedings at the time of settlement (including a summary of completed discovery),
- the nature and extent of injuries (including a summary of medical expenses),
- factors influencing the decision to settle the claim,
- the amounts and nature of any insurance coverage relevant to the action,
- the names of any creditors and the amounts of their claims,
- the amount and terms of the settlement, and detailed explanation of how proceeds will be distributed (see paragraphs 4 and 6 below regarding confidentiality),
- the nature of the release to be given, and
- the status of any other actions arising out of the same incident which have been or may be filed (and the impact on the fairness of any settlement in this action);

- (3) state whether there are any known, anticipated, or potential disputes as to distribution of proceeds, or approval of the settlement and, if so, provide a full explanation;
- (4) set forth the amount of attorneys' fees, with an itemization of fees and costs, and attach supporting documentation including fee or fee-splitting agreements;
- (5) include statements by petitioners that the amount and terms of the settlement, including costs and fees, are fair and reasonable;

(6) In addition:

- In wrongful death actions, the Representative Plaintiff shall list all persons known to have a right to proceeds under the wrongful death statute and indicate whether they have been informed of the action and the planned settlement. All such persons must be given notice of the hearing to approve settlement. Proof of notice must be filed with the court.
- In settlements for minors and incapacitated persons, the petition must address the payment requirements found in S.C. Code Ann. § 62-5-433 (requiring payment to a conservator under certain circumstances), provide information regarding the care plan for the minor or incapacitated person, and detail how proceeds will be managed. In cases requiring payment of settlement proceeds to a conservator, a certified true copy of the certificate of appointment issued by the appropriate court shall be provided. Include the name, address, and telephone number of the court which appointed the conservator or other fiduciary who will be holding and managing the settlement proceeds for the minor or incapacitated person and the amount of any bond or surety issued in connection therewith.
- In settlements involving a structured settlement (payment of proceeds over time), the petition must include information and documentation as to the entity that will receive, manage, and be responsible for payment of the settlement proceeds. Petitioner shall include the current rating of the annuity policy issuer from

a recognized rating agency (for example, A.M. Best, Moody's, Standard & Poor's, etc.) and provide adequate information to permit a determination as to the company's suitability to provide long-term management of such funds, including (a) if the company is regulated by a state or federal authority which requires minimum capitalization requirements; (b) if it is required to file annual financial reports with a regulatory authority; (c) if it is required to have outside independent audits; and (d) the nature and amount of the company's errors and omissions insurance coverage.

- If settlement proceeds will be paid to a Special Needs Trust that will be managed and administered by:
  - A professional Trust Company – The petition shall provide adequate information to permit a determination as to the Trust Company's suitability to provide long-term management of such funds, to include (a) if the Trust Company is regulated by a state or federal authority that requires minimum capitalization requirements; (b) if the Trust Company is required to file annual financial reports with a regulatory authority; (c) if the Trust Company is required to have outside independent audits; and (d) the nature and amount of the Trust Company's errors and omissions insurance coverage.
  - An individual – The petition shall provide the name, address, and telephone number of the individual to serve as Trustee, as well as a description of the nature of the relationship between the Trustee and the minor(s) or incapacitated person(s).
- In cases involving minors or incompetent parties, the petition must also comply with Local Rule 17.01, D.S.C. The court reserves the right to appoint a separate and independent Guardian ad Litem to review the proposed settlement, including the terms and conditions of any structured settlements or trust arrangements for the benefit of minors or incapacitated persons, and allocate the fees and expenses associated therewith.

(b) A declaration of counsel affirming counsel's agreement with the content of the verified petition and joining in the request for settlement approval. Counsel shall disclose any known disputes as to settlement approval, distribution of proceeds, or competing claims. The declaration of counsel may be made a part of the verified petition.

4. **A proposed order approving the settlement shall also be submitted pursuant to the court's CM/ECF preferences.** The court will not incorporate the terms of an unfiled agreement into the order approving the settlement, although it may make findings that the settlement set forth in an unfiled agreement is fair and reasonable. Further, the court will not include a confidentiality requirement in any order approving a settlement.
5. **Hearings.** The above materials must be submitted before a hearing will be scheduled to approve the settlement. Absent prior approval from the court, the Representative Plaintiff should be present for the hearing, as should at least one attorney for the Representative Plaintiff and for each Defendant who has been directly involved in the representation and is fully familiar with the litigation.
6. **Confidentiality.** Filed settlement agreements may not be sealed. *See* Local Civil Rule 5.03(e), (D.S.C.). Other filed documents may be sealed (or the courtroom closed) only with court approval and after satisfying the requirements of Local Civil Rule 5.03 and applicable law. Any motion or request to file any settlement-related document under seal or, alternatively, to submit specific settlement-related documents for *in camera* review, should be made prior to filing the document to which the request would apply.