

# SUPREME COURT OF QUEENSLAND

## PRACTICE DIRECTION 9 OF 2007

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### PERSONS UNDER A LEGAL DISABILITY

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1. This Practice Direction is concerned with proceedings for damages for personal injuries where the plaintiff is a person under a legal disability and the Court is asked to sanction the compromise of the plaintiff's claim pursuant to s 59 of the *Public Trustee Act 1978* or to give judgment for the plaintiff.
2. Rule 98 of the *Uniform Civil Procedure Rules* addresses material to be supplied to the Court on an application for sanction. In addition, the plaintiff should ordinarily provide the Court with a copy of an opinion of counsel in relation to the compromise.
3. The application for sanction and supporting material (other than the opinion of counsel) should be served on the Public Trustee of Queensland.
4. If an administrator or guardian has already been appointed under the *Guardianship and Administration Act 2000*, the Court should be provided with a copy of the Tribunal's order making the appointment, as the Court may review that appointment.
5. The plaintiff should prepare a draft order, make copies of it available to the defendant and the Public Trustee of Queensland before the hearing of the application, and provide it to the Court at the hearing.
6. Where the plaintiff is an adult, the order should usually provide for the appointment of an administrator (and in some cases also a guardian) under the *Guardianship and Administration Act*, and for the payment of the balance of the compromise sum or judgment sum (after statutory refunds and payment of other sums as directed by the Court) to the administrator.
7. The basis upon which the administrator is to receive and manage the compromise sum or judgment sum should be expressed in the order. In most cases this will be as an administrator pursuant to s 12 of the *Guardianship and Administration Act*, and it will be unnecessary to provide that the compromise sum be held on trust for the plaintiff. The unnecessary creation of a trust should be avoided, as this may affect the level of management fees payable.

8. The order should provide for service of the order on the Guardianship and Administration Tribunal. This will trigger processes in the Tribunal for approval of a management plan. See *GAAT Presidential Direction No 2 of 2007*  
[www.justice.qld.gov.au/guardian/gaat/pdfs/pd2of07.pdf](http://www.justice.qld.gov.au/guardian/gaat/pdfs/pd2of07.pdf)
9. Where the plaintiff is a child the order should provide for the appointment of a trustee to receive, hold and manage the balance of the compromise sum or judgment sum until the plaintiff reaches 18 or, where the plaintiff child has a mental incapacity, until any appointment by the Guardianship and Administration Tribunal of an administrator to receive, hold and manage the balance of the compromise sum or judgment sum takes effect.
10. If the child plaintiff has a mental incapacity, the order should provide for service of the order on the Guardianship and Administration Tribunal. When the plaintiff reaches 17 ½ years the Tribunal may make an order for the appointment of an administrator and or a guardian to take effect when the plaintiff reaches 18, pursuant to s 13 of the *Guardianship and Administration Act*.
11. Similar considerations apply where there is a judgment in favour of a plaintiff who is under a legal disability.
12. Pro forma orders relating to an adult plaintiff and a child plaintiff are annexed to this Practice Direction.

**Paul de Jersey**  
Chief Justice  
11 December 2007

**CHILD PLAINTIFF ORDER**

SUPREME COURT OF QUEENSLAND

REGISTRY:  
NUMBER:

Plaintiff: AB (by his/her litigation guardian CD)

and

Defendant: EF

ORDER

Before: Justice GH

Date:

Initiating document: Application filed

THE ORDER OF THE COURT IS THAT –

1A **[Ed note: if compromise]** The compromise of this proceeding on the following terms be sanctioned pursuant to s 59(1) of the *Public Trustee Act 1978* :

(a) that the defendant pay the plaintiff damages in the sum of \$\_\_\_\_\_,  
being primary damages in the sum of \$\_\_\_\_\_ together with further  
damages in the sum of \$\_\_\_\_\_ for management fees (“the  
compromise sum”);

(b) that the defendant pay the plaintiff his/her costs of and incidental to this proceeding, including the costs of this application, to be assessed on the standard basis (“the standard costs”).

1B **[Ed note: if an adjudication or consent judgment for damages]** The defendant pay the plaintiff –

(a) damages in the sum of \$\_\_\_\_\_ (“the judgment sum”); and

(b) costs of and incidental to the proceeding, including the costs of this application, to be assessed on the standard basis (“the standard costs”).

2A **[Ed note: where the plaintiff’s incapacity arises only from age]**

\_\_\_\_\_ (“the trustee”) be appointed to receive, hold and manage the balance of the compromise sum\* after deduction of the amounts identified in subparagraphs 6.1, 6.2 and 6.3 of this order on trust for the plaintiff until he/she attains 18 years.

2B **[Ed note: where child plaintiff also has a mental incapacity]**

\_\_\_\_\_ (“the trustee”) be appointed to receive, hold and manage the balance of the compromise sum\* after deduction of the amounts identified in subparagraphs 6.1, 6.2 and 6.3 of this order on trust for the plaintiff until any appointment pursuant to the *Guardianship and Administration Act 2000* of an administrator for the plaintiff to receive and manage the balance of the compromise sum\* and any accretions takes effect.

3 The trustee be empowered to invest the balance of the compromise sum\* and any accretions in such investments as trustees are empowered to invest under the *Trusts Act 1973*.

4 The trustee apply such moneys for the maintenance benefit and support of the plaintiff.

5 Within seven (7) days of this order, the plaintiff's solicitors serve a copy of it on the trustee.

6 Within twenty-one (21) days of this order or of the defendant's receipt of the last of any statutory clearances or charges in relation to the compromise sum\* (whichever is the later to occur), the defendant pay the compromise sum\* as follows –

6.1 to any statutory body having a charge over the compromise sum\*, the amount necessary to satisfy the charge;

6.2 to \_\_\_\_\_, for out of pocket expenses incurred on behalf of the plaintiff, \$\_\_\_\_\_;

6.3 to \_\_\_\_\_, for past personal care and assistance given to the plaintiff, \$\_\_\_\_\_;

6.4 to the trustee, the balance

whose receipt shall in each case be a sufficient discharge for the defendant.

- 7 The defendant pay the standard costs to the trustee within twenty-one (21) days of their assessment or prior agreement between the defendant and the trustee as to their amount.
- 8 The plaintiff's costs of and incidental to this proceeding, including the costs of this application, be assessed on the indemnity basis ("the indemnity costs").
- 9 The trustee pay the indemnity costs to the plaintiff's solicitors from the moneys received under sub-paragraph 6.4 of this order within twenty-one (21) days of their assessment or prior agreement between the plaintiff's solicitors and the trustee as to their amount.
- 10 **[Ed note: where the child plaintiff also has a mental incapacity]** The Registrar of the Court provide a copy of this order and copies of the affidavits read on this application to the Registrar of the Guardianship and Administration Tribunal forthwith
- 11 The Registrar of the Court place the opinion of counsel read on this application in a sealed envelope marked "Not to be opened without an order of the Court".
- 12 Each of the parties, the trustee and the plaintiff's solicitors have liberty to apply in respect of these orders.

Signed:

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\*Replace with 'judgment sum' where appropriate

**ADULT PLAINTIFF ORDER**

SUPREME COURT OF QUEENSLAND

REGISTRY:  
NUMBER:

Plaintiff: AB (by his/her litigation guardian CD)

and

Defendant: EF

**ORDER**

Before: Justice GH

Date:

Initiating document: Application filed

THE ORDER OF THE COURT IS THAT -

1A **[Ed note: if sanction as well as administration order required]** The compromise of this proceeding on the following terms be sanctioned pursuant to s 59(1) of the *Public Trustee Act 1978* :

(c) that the defendant pay the plaintiff damages in the sum of \$\_\_\_\_\_, being primary damages in the sum of \$\_\_\_\_\_ together with further damages in the sum of \$\_\_\_\_\_ for management fees (“the compromise sum”);

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**ORDER**

Filed on behalf of  
[Form 59] R. 661



(d) that the defendant pay the plaintiff his/her costs of and incidental to this proceeding, including the costs of this application, to be assessed on the standard basis (“the standard costs”).

1B **[Ed note: if an adjudication or consent judgment for damages]** The defendant pay the plaintiff –

(a) damages in the sum of \$\_\_\_\_\_ (“the judgment sum”); and

(b) costs of and incidental to the proceeding, including the costs of this application, to be assessed on the standard basis (“the standard costs”).

2 **[Ed note: If administrator appointed for a financial matter]** Pursuant to s 12 of the *Guardianship and Administration Act 2000* \_\_\_\_\_ (“the administrator”) be appointed administrator for the plaintiff to receive and manage the balance of the compromise sum\* after deduction of the amounts identified in subparagraphs 8.1, 8.2 and 8.3 of this order.

3 **[Ed note: If the Public Trustee of Queensland is appointed administrator]** Pursuant to s 59(4) of the *Public Trustee Act 1978*, any moneys paid to the administrator under this order be held and applied as administrator for the plaintiff pursuant to s 12 of the *Guardianship and Administration Act 2000*, and not on trust for the plaintiff.

4 **[Ed note: if guardian appointed for a personal matter]** Pursuant to s 12(1) of the *Guardianship and Administration Act 2000* \_\_\_\_\_ be appointed

guardian for the plaintiff for a personal matter namely [**Ed note: eg, with whom the plaintiff is to live, where the plaintiff is to live, the provision of care assistance and medical treatment to the plaintiff**].

5 The administrator be empowered to invest all moneys received and held under this order pursuant to s 51 of the *Guardianship and Administration Act 2000*;

6 Within seven (7) days of this order, the plaintiff's solicitors serve a copy of it on the administrator appointed by this order [**Ed note: insert, if appropriate, "and on any administrator or guardian appointed by the Guardianship and Administration Tribunal**].

7 Within sixty (60) days of the date of this order, the administrator give the Guardianship and Administration Tribunal a management plan within the meaning of the *Guardianship and Administration Act 2000* for approval.

8 Within twenty-one (21) days of this order or of the defendant's receipt of the last of any statutory clearances or charges in relation to the compromise sum\* (whichever is the later to occur), the defendant pay the compromise sum\* as follows –

8.1 To any statutory body having a charge over the compromise sum\*, the amount necessary to satisfy the charge;

8.2 to \_\_\_\_\_, for out of pocket expenses incurred on behalf of the plaintiff, \$\_\_\_\_\_;

8.3 to \_\_\_\_\_, for past personal care and assistance given to the plaintiff, \$ \_\_\_\_\_;

8.4 to the administrator, the balance

whose receipt shall in each case be a sufficient discharge for the defendant.

9 The defendant pay the standard costs to the administrator within twenty-one (21) days of their assessment or prior agreement between the defendant and the administrator as to their amount.

10 The plaintiff's costs of and incidental to this proceeding, including the costs of and incidental to this application, be assessed on the indemnity basis ("the indemnity costs").

11 The administrator pay the indemnity costs to the plaintiff's solicitors from the moneys received under sub-paragraph 8.4 of this order within twenty-one (21) days of their assessment or prior agreement between the plaintiff's solicitors and the administrator as to their amount.

12 The Registrar of the Court –

12.1 provide a copy of this order and copies of the affidavits read on this application to the Registrar of the Guardianship and Administration Tribunal forthwith; and

12.2 place the opinion of counsel in a sealed envelope marked “Not to be opened without an order of the Court”.

13 Each of the parties, the administrator, [**Ed note: insert, if appointed, “the guardian”**] and the plaintiff’s solicitors have liberty to apply in respect of these orders.

Signed:

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\* Replace with ‘judgment sum’ where appropriate