

LR 17 – Claims Involving Protected Persons Under Fed. R. Civ. P. 17(c)

(See Fed. R. Civ. P. 17(c))

(a) Representation

At the commencement of an action or upon initial appearance in defense of an action involving a minor or other protected person under Fed. R. Civ. P. 17(c) ("protected person"), the attorney or person representing the protected person must attach as an exhibit to the complaint, petition, notice of removal, or responsive pleading a copy of the order or judgment of appointment for protected persons appearing through a conservator or general guardian appointed under state law. For all other protected persons, the person or attorney commencing the action or defending the action must petition the assigned judge for appointment of a suitable guardian *ad litem* to act in the protected person's interests. Upon a showing of good cause, the assigned judge may dispense with the appointment of a guardian *ad litem*.

(b) Qualifications of Guardian *Ad Litem*

A guardian *ad litem* must be suitable to serve as a fiduciary. Suitability factors include, but are not limited to, the following:

- (1) The relationship, if any, of the proposed guardian *ad litem* to the protected person;
- (2) The existence or potential for conflict of interest between the proposed guardian *ad litem* and the protected person;
- (3) Whether the guardian *ad litem* is serving for more than one protected person in litigation against the same defendant(s);
- (4) The qualifications and relevant experience of the guardian *ad litem*;
- (5) Any criminal record of the guardian *ad litem*; and
- (6) For financial claims, any significant history of unpaid debt or bankruptcy.

(c) Functions of Guardian *Ad Litem* or Other Fiduciary

A fiduciary acting on behalf of a protected person must:

- (1) Retain, or ratify the retention of, qualified counsel to pursue the protected person's claim(s) or defense(s);
- (2) Be sufficiently apprised of the facts of the case to reasonably make decisions on behalf of the protected person with the advice of counsel;
- (3) Maintain communication with counsel and make informed decisions based on the advice of counsel;
- (4) Monitor the progression of the litigation, including reviewing material filings;

- (5) Evaluate proposed settlement offers and offers of judgment;
- (6) When appropriate, seek the input of the protected person, the protected person's immediate family and/or custodians and/or obtain a second opinion from other counsel before accepting or rejecting the offer;
- (7) Approve the voluntary disposition of the case; and
- (8) For any disposition of the case that will result in the payment of money or transfer of property to the protected person, ensure a conservatorship, trust, or other protective measure is in place for the money or property.

(d) Procedure for Settlement or Compromise

No settlement offer, offer of judgment, or other compromise may be rejected or conditionally accepted without the informed prior authorization of the protected person's fiduciary and, if the fiduciary has been appointed under state law, with such court authorization as may be required under that law. Any settlement offer, offer of judgment, or other compromise must be communicated to the protected person if such communication can reasonably occur. A conditionally accepted offer, offer of judgment, or other compromise is not effective or enforceable until approved by the assigned judge. Approval of a settlement, offer of judgment, or other compromise includes the analysis and approval of the proposed disposition of the gross settlement proceeds or property, including but not limited to approval of the reasonableness of proposed attorney fees, fiduciary fees, costs, expenses, lien resolutions, and structuring of a portion or all of the net settlement proceeds. Upon a showing that the state court administering the protected person's conservatorship or guardianship of the estate is in a better position to evaluate the settlement, offer of judgment, or other compromise under the totality of the protected person's circumstances, the assigned judge may by order allow the protected person to petition the state court for review and approval of the settlement, offer of judgment, or other compromise, and to submit the resulting state court order or judgment to the assigned judge for consideration.

(e) Discretion of the Court

Nothing in this rule forecloses the assigned judge from taking any other action necessary to protect the interests of the protected person, including appointment of a suitable guardian *ad litem* in addition to an existing fiduciary.

Amendment History to LR 17	
June 1, 2023	
LR 17	New Rule.