

CPLR ARTICLE 12: INFANTS.

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An INFANT (person under 18 years of age) shall “appear” by the GUARDIAN of their property - unless the court appoints a Guardian Ad Litem (GAL) - or if no such person: by a custodial parent or **adult** spouse of infant with whom infant resides.

A person declared JUDICIALLY INCOMPETENT shall appear by COMMITTEE.

A CONSERVATEE shall appear by CONSERVATOR.

In the case of a CONFLICT OF INTEREST between an adult incapable of defending/prosecuting their rights, and that adult’s representative, the Court **MAY** direct a GAL be appointed.

The Court may appoint a GAL on its own motion, or upon application by:

- 1) an INFANT, if over 14.
- 2) an infant’s: relative/**friend**/guardian;
- 3) a COMMITTEE or CONSERVATOR;

If no such motion is made by the above within 10 days after completed service, any party may make such application.

Notice of such motion shall be to the INFANT - if over 14 - and to any person not JUDICIALLY INCOMPETENT for whom a GAL is to be appointed.

A person appointed to be GAL must consent in writing to the Court; **AND** provide an AFFIDAVIT of “ability to answer” damages resulting from negligence/misconduct.

No DEFAULT may be granted in such an action until 20 days have passed since a GAL was appointed; or unless the representative of an INFANT/INCOMPETENT has appeared.

A GAL is entitled to “reasonable compensation”, upon AFFIDAVIT of services rendered. Court can direct payment from any party, or out of RECOVERED monies.

No COSTS shall be liable against an INFANT/INCOMPETENT or their REPRESENTATIVE; except as the court shall ORDER.

Monies for the benefit of the infant/incompetent are to be held by the Guardian, or by an infant’s adult spouse (if residing together); **OR** by another adult with whom the

infant resides - not more than \$10,000. Court may direct such funds to be deposited in a BANK or TRUST, or as a STRUCTURED SETTLEMENT/ANNUITY.

Court order shall be required for payment; unless the infant turns 18; **EXCEPT**: if a Court orders WITHHOLDING of WITHDRAWAL.

ACTIONS involving INFANTS/INCOMPETENTS may be settled. If no ACTION exists, SPECIAL PROCEEDINGS may be initiated for the purpose of settling claims. Supporting papers shall include: Representative's Affidavit; Attorney's Affidavit; and -if a PERSONAL INJURY case - Medical/hospital reports (need not be verified).

If the Supreme Court is unavailable, Special Proceeding may be in the County Court; the County Judge will have the same powers - and limits as to amount of money - as the Supreme Court Justice.

An ORDER on such a Special Proceeding has the same effect as a JUDGMENT; shall be entered without costs; and shall approve the attorney's fee, if any.

Parties' appearances before the Court are REQUIRED (including INFANT), **UNLESS EXCUSED** for "good cause".

Attorney for INFANT/INCOMPETENT can **NOT** have a "conflict of interest".

If the infant/incompetent is not represented by an attorney, ADVERSE PARTY shall prepare papers, make statement of that fact.

No ARBITRATION allowed **EXCEPT** by court order (on application on Representative); **UNLESS** on *behalf* of infant pursuant to Insurance Law.

Petition for GUARDIAN of infant may be made by infant's relative or **FRIEND**; or by infant over 14. A hearing shall be held thereon. A GUARDIAN so appointed shall file the *certified* order with the Surrogates Court (in the county of appointment).

An Order of Guardianship shall either REQUIRE or DISPENSE with **UNDERTAKING**, as mandated by Surrogates Procedure.

The Court may direct that infant's money be invested in New York or United States bonds, or in a bank; and may also specify that **ONLY** the income or interest be received by the GUARDIAN. PETITION to release money for the support of an infant shall be on notice to the GUARDIAN (if brought by other person); to the FATHER, if alive; else the MOTHER, if alive; else to anyone with whom the infant resides; as well as the infant **IF** over 14.