

GUIDELINES FOR FILING PETITION TO WITHDRAW FUNDS FROM A RESTRICTED ACCOUNT

A conservator or other fiduciary named in the Court's *Order to Deposit Funds to Restricted Account* must petition the Court for approval to withdraw funds from the ward's restricted account. A bank may not allow a withdrawal of funds from the restricted account without an order signed by the Court authorizing the withdrawal. *See Matter of Conservatorship of Roth*, 804 P.2d 265 (Colo. Ct. App. 1990). The Court in *Roth* held that once the bank returned the acknowledgment form to the Court, it was transformed from being merely a depository to a fiduciary pursuant to C.R.S. § 15-1-507. As a fiduciary, a bank has a duty to refrain from transactions that are contrary to the interests of the ward. The Court determines whether the transaction is in the best interest of the ward by either granting or denying the *Petition to Withdraw Funds*. (See attached forms).

Petitions to Withdraw Funds are decided on a case-by-case basis. Whether a Petition is granted depends on the amount of money in the respondent's restricted account, the pattern and frequency of withdrawals, the need for future medical treatments and method of payment for any such future treatments, the proposed use of the requested funds, and other factors that may be situation-specific. However, there are some guidelines the Court follows when making its determination:

- Requests must be properly submitted on the Court's form.
- Requests will not be considered if a review of the file reveals that the requesting party is delinquent on a prior Court Order, e.g. accountings are late, receipts from a prior withdrawal have not been filed, etc.
- The first priority for proceeds from the settlement of a personal injury claim is for expenses related to the personal injury. The Court will generally approve petitions for the withdrawal of funds for necessary or elective surgeries, therapy, special equipment, or other expenses that arise from the injury.
- The Court will not allow withdrawals for items that a parent or guardian of the respondent has a duty to provide, such as food, clothing, shelter, etc. These matters are part of the parental support obligation. Parents should be discouraged from submitting such requests.
- The Court is not supportive of petitions for "loans" to be made from a restricted account. The Court will consider such a petition only in the most dire of circumstances and only if the "loan" is for the direct benefit of the ward. Parents who "borrow" from their children's restricted accounts and fail to make repayments are subject to fines and penalties.
- The Court generally is not supportive of petitions to withdraw funds for the purchase of automobiles. The Court will consider such a petition only if the petitioner can prove that ownership of an automobile is essential to the ward (eg. getting to and from school, work, etc.), that the automobile will be titled in the ward's name, and that the expenses associated with ownership of an automobile, such as insurance, maintenance, parking, gasoline, etc., will be paid from funds **other than** those in the ward's restricted account. Funds cannot be taken from a minor's account to purchase a "family" automobile.

- **The Court will not approve withdrawals of funds for the purchase of motorcycles, mopeds, scooters, or other motorized vehicles other than automobiles and will not approve withdrawals of funds for the purchase of an automobile for a ward who is under the legal driving age or who does not hold a valid driver's license.**
- The Court is generally supportive of petitions to withdraw funds if the request is related to the educational endeavors of a minor and if the parents are not able to afford the expense. Examples of such expenses include tuition and expenses for college, development of a particular skill or talent, such as music, sports, etc., purchase of a personal computer, tuition and expenses for camps or outings that are of benefit to the minor, and other related expenses.
- Withdrawals to pay the income taxes due on the income earned by the ward's account are granted routinely if a copy of the tax return is submitted with the petition for the withdrawal.

Petitions to withdraw funds, even when granted, may be conditional – that is, they may be partially allowed and partially denied. The Court frequently requires that receipts be filed to prove purchases following the Order Allowing Withdrawal.

In certain circumstances, the Court will require that a Petition for Withdrawal be set for hearing so that the Judge or Magistrate can hear testimony in their consideration of the request.