

Handbook for Attorney Advisers Appointed Under Minn. Stat. § 549.405

Introduction

This handbook is designed for attorneys who have been or are seeking to be appointed as Attorney Advisers under Minn. Stat. § 549.405. It can also be used as background for judges with cases involving the sale of structured settlements (“SSS”).

This handbook provides background information related to the SSS and the specific statute that allows for the appointment of Attorney Advisers. It also suggests steps Attorney Advisers may want to take to fulfill their responsibilities under the statute.

Structured settlements are arrangements that allow periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim. (Minn. Stat. § 549.30, subd. 12). Generally speaking, a plaintiff may choose to receive a structured settlement, as opposed to a one-time payment, if it is anticipated that the plaintiff may need treatment for injuries over many years; when there are tax or governmental benefit consequences that are lessened by the use of a structured settlement; or when the plaintiff’s cognitive impairment make a structured settlement in the plaintiff’s best long term interest.

There is a structured settlement purchasing industry that offers discounted upfront payments to induce beneficiaries (sometimes referred to as “payees”) to sell their future structured settlement payments. The practice of offering an upfront payment in exchange for the assignment of all or partial future benefits under a structured settlement is called “factoring.”

Under Minnesota law, a court must approve each SSS. Concerned about the terms related to these sales, the Minnesota Legislature recently revised the statutes governing the SSS to require Minnesota judges to appoint an Attorney Advisers in certain cases and permit judges to appoint Attorney Advisers in any other instance. An Attorney Adviser is tasked with advising the court, based on the attorney’s independent assessment, whether the proposed sale is in the best interest of the beneficiary.

We intend this handbook to be used by Attorney Advisers and judges to better understand the scope of Minn. Stat. § 549.405. It was created in partnership with board members of the Academy of Court-Appointed Neutrals (“ACAN”), namely Randi Roth, Alva Dial, and Amy Gernon. ACAN is an organization dedicated to helping people become court-appointed neutrals, court-appointed neutrals become better and the profession better serve the interests of justice. We also received valuable assistance from Judge Kristin Siegesmund (Ret.), Hennepin County District Court, and Ron Elwood, Mid-Minnesota Legal Services Advocacy Project. Your feedback on this handbook will help improve future SSS resources. Please provide any feedback or questions to Amy Gernon at amy@amygernon.com.

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A. Background: Structured Settlements and Oversight Needs

Structured settlements are unique financial arrangements, typically arising from legal settlements or judgments, where the recipient opts to receive payments over time rather than as a lump sum. These structured settlements provide financial stability to the recipient, often catering to long-term needs resulting from injury or loss. Their public policy purpose is to maintain the recipient's ability to meet future living and medical expenses without becoming a "public charge."

In 2021, the *Minneapolis Star Tribune* conducted an in-depth investigation into the structured settlement factoring industry, revealing that judges approved 90% of nearly 700 cases filed in Minnesota since 2000. Of those sales, on average, sellers only received 40% of their future payments in cash, with many receiving significantly less. "In Minnesota, records show that one in eight transactions approved by local judges involved a seller with documented mental health problems. Many of those individuals received settlements after suffering traumatic brain injuries that permanently disrupted their lives."

The newspaper four-part series exposed how companies aggressively pursued individuals with structured settlements, often offering immediate cash at rates significantly less than the long-term value of the settlements, highlighting a system that seemed to prioritize profit over the financial well-being of vulnerable individuals.

One part of the newspaper series focused on judicial oversight of the SSS. Judges noted the lack of clarity in the then-current statutes related to what was considered to be in the "best interest of the payee." They explained that they were "routinely deprived of key information about the people selling their payments, including medical records and court filings." Judges urged the legislature to provide them with a framework for evaluating the SSS.

Links to each section of the *Star Tribune* series are included in **Appendix A**.

B. Current Legal Framework

Shortly after the *Star Tribune* series was published, Legal Aid and the Minnesota Association of Justice led a concerted effort to develop legislation to better protect structured settlement beneficiaries. The relevant statutes were passed in 2022 and became law in 2023.

Today, the SSS are governed by Minn. Stat. §§ 549.30-549.41. These statutes provide the legal framework that prioritizes evaluating whether a proposed sale is in the best interests of the payee.

They require companies purchasing future structured settlement payments (referred to as "transferees") to register with the Minnesota Secretary of State and pay a surety bond. They also place certain restrictions on how transferees may solicit business.

Together, these statutes mandate a comprehensive review process to evaluate the terms of the sale, focusing on the long-term impact on the payee’s financial and personal well-being. Key components of the statutes include:

1. **Disclosure Requirements.** The statutes require full disclosure of the terms of the sale to the payee, including the amount of each payment, the total number of payments to be transferred, the discounted present value of these payments, and the amount the payee will receive in exchange.
2. **Independent Professional Advice.** Payees are encouraged to seek independent professional advice to understand the financial, legal, and tax implications of the sale.
3. **Approval Process.** The sale of structured settlement payments cannot proceed without court approval. A judge reviews the transaction to confirm that it is in the best interest of the payee and that the payee is not being subjected to unfair or predatory practices.
4. **Best Interest Standard.** The court must determine that the transaction is in the best interest of the payee, considering their current and future financial needs, and that the transaction complies with the terms of the structured settlement agreement.

A link to the relevant statutes can be found [here](#), and a PDF of the most relevant provisions is included as **Appendix B**.

C. Appointment of Attorney Advisers

A key addition to the 2023 laws concerns the appointment of Attorney Advisers under Minn. Stat. § 549.405. While other states sometimes require a beneficiary to consult with a third-party adviser, this step often becomes perfunctory, and it does not provide the court with the information it needs to evaluate a SSS. In contrast, Minnesota law now allows judges to appoint their own attorney Adviser before they rule on a SSS motion. In this way, the appointment of an attorney Adviser is fundamental to Minnesota’s newly revised statutes.

There are both mandatory and discretionary appointments under the statute. First, a judge is required to appoint an Attorney Adviser in cases involving a “minor’s structured settlement payments” or if the proposed sale to a payee who “appears to the court ... may suffer from a mental or cognitive impairment.” Minn. Stat. § 549.405, subd. 2. Second, the company proposing the sale is required to seek the appointment of an Attorney Adviser if (1) it is aware that the underlying structured settlement arose from a case in which the beneficiary was found to have a mental or cognitive impairment; or (2) it is aware of any other case in which a court made a finding that the beneficiary has a mental or cognitive impairment. Minn. Stat. § 549.405, subd. 3.

Third, the statute allows judges, in their discretion, to “appoint an attorney to make an independent assessment and advise the court whether the proposed transfer is in the best interest of the payee, taking into consideration the payee’s dependents, if any.” § 549.405, subd. 1.

The statute also allows an Attorney Adviser to consult, as necessary, with a certified public accountant, actuary, or other licensed professional adviser.

1. Criteria for Appointment

Other than the requirement that an Adviser be an attorney, the statute is silent as to how a judge might select an attorney for appointment. Judges may appoint attorneys whom they have previously worked with or whom they know have specialized expertise related to structured settlements. The goal of this handbook is to educate attorneys about the SSS in hopes of developing a pool of attorneys who are willing and able to serve as Attorney Advisers.

2. Role and Responsibilities for Attorney Advisers

A judge’s appointment order will define an Attorney Adviser’s roles and responsibilities. A sample appointment order can be found at **Appendix C**. Please note that the sample order allows *ex parte* communication between the judge and the Attorney Adviser. This ensures that the Attorney Adviser can freely speak to the judge to clarify any concerns before submitting the required report.

In general, the appointment order will ask the attorney to make an independent determination of whether the proposed sale is in the best interest of the payee. In making this determination, attorneys should familiarize themselves with the specific requirements set forth in Minn. Stat. § 549.38, which lists six factors to be considered when evaluating whether a proposed sale is in the best interests of the payee. Briefly, those factors include:

- a. The *reasonable* preference of the payee;

This is a unique type of case, wherein there is not a dispute between the parties. There is not really a “plaintiff” and a “defendant,” but rather a buyer and a seller (payee) who are seeking the same result from the court. But not infrequently, the seller’s desire for immediate monetary compensation does not result from a thoughtful, informed decision and often ignores the buyer’s own long-term interests. In other words, the payee’s preference may not be reasonable under the terms, exigent conditions surrounding the seller, and the potential for the one-time payment to be insufficient in preventing the payee from becoming a “public charge.”

- b. Whether the future periodic payments were intended to cover future income or future medical expenses;

- c. Whether payee can meet the financial needs of any dependents, including the existence of child support and spousal maintenance obligations;
- d. The payee's previous sales, if any, of structured settlements;

As the *Star Tribune* exposé revealed, structured settlement purchasing companies will often purchase a part of the entire settlement and contact the payee the very next day after a sale is completed to offer further inducement to the payee to sell more or the remainder of the settlement. One red flag for attorney advisors and judges is the number of sales that have previously been made, especially if they are over a relatively short period of time.

- e. The impact the sale may have on the payee's eligibility for governmental benefits; and
Eligibility for public assistance programs, whether they be cash, food, housing, or other public supports, varies widely, depending on the program. Income and, possibly asset, limits determine whether a person receives or is denied benefits. If the lump sum benefit creates an income or asset level that suddenly renders a payee ineligible for a benefit they are receiving or which they need and for which they would otherwise be eligible, the loss of those benefits may be detrimental to the payee's wellbeing. Attorney advisors and judges should be aware of the adverse impacts approval of a sale may have on the payee.
- f. Any other factors the court determines to be relevant.

Minn. Stat. § 549.405 requires the Attorney Adviser to file a report with the Court, and most likely, the Attorney Adviser will be required to attend all court hearings concerning the proposed sale. Often, these hearings are conducted virtually.

3. Payment to Attorney Adviser

Minn. Stat. § 549.405 requires the transferee (the buyer of the structured payments) to pay the costs and fees of the Attorney Adviser (and any other professional consulted) not to exceed \$2,000. The Attorney Adviser must therefore keep time and submit an invoice after their assignment is completed. The mechanics related to how an invoice should be submitted may be addressed in the appointment order, or the judge may ask that the attorney submit the invoice directly to chambers' staff.

4. Report of the Attorney Adviser

Minn. Stat. § 549.405 requires the Attorney Adviser to file a report with the Court.

The mechanics related to how this report should be delivered may be addressed in the appointment order. In some instances, the judge may instruct the Attorney Adviser to send the report to chambers, and court staff will later distribute the report to the relevant

stakeholders. Or the judge may instruct the Attorney Adviser to file the report on the docket. The Attorney Adviser will also be required to attend the court hearing to answer any questions about the report.

The specific “best interest” requirements set forth in Minn. Stat. § 549.38 will guide the preparation of the report. While each appointment will require the Attorney Adviser to seek information specific to the contours of the particular case, the following steps are most likely needed to prepare most reports.

Step One: Gather Facts

The fact-gathering phase is key to a comprehensive understanding of the payee’s circumstances, which is needed to provide an informed independent assessment concerning a payee’s best interests.

The first step is to review the relevant documents filed in conjunction with the SSS. These documents will list the payee’s purported reason for selling, may discuss the underlying litigation that led to the original structured settlement or prior sales, and should describe the overall terms of the sale.

With this information in mind, the Attorney Adviser should next interview the payee. It may take time to connect by phone with the payee, depending on the payee’s work schedule and/or if the payee has a current cell phone. During the interview(s), it is important to remain curious and ask open-ended questions that encourage detailed responses to confirm statements in the filed documents, such as:

- What are your primary goals in selling these structured settlement payments?
- How did you arrive at the decision to sell at this time?
- What are your current financial needs?
- How do you anticipate this sale will impact your financial future?
- Do you have any dependents? A spouse or ex-spouse? Children?
- Are you currently receiving any governmental benefits? If so, what kind?
- Why did you originally receive the structured settlement? Tell me about the underlying litigation.
- Do you have any health conditions related to the original settlement or judgment?
- Do you have any current health conditions?
- Do you have any other sources of income?
- Does anyone else support you?

- Have you spoken to other advisors about this proposed sales? If so, what was their guidance?

Occasionally, the payee may mention a case worker, a family member, or another person who may have information that could be relevant to the report. Depending on the scope of your appointment order, you may ask the payee for permission to speak to these additional people. If permission is denied and you think it necessary for your evaluation, you may wish to discuss how to proceed with the judge.

In addition, if you have questions about the underlying terms of the proposed sale, you may consider contacting the transferee's attorney.

Step Two: Understand Specifics of the Proposed Sale

To prepare the report, an Attorney Adviser must understand some general economic metrics used in the valuation of structured settlements. First, the purchase price is dependent on numerous factors, including:

- Are the payments guaranteed or contingent? Contingent payments will only be paid as long as the payee is alive. In this case, a payee's life expectancy is a crucial factor in determining the value of the future payments. Contingent payments are usually valued less than guarantee payments because guarantee payments will continue even if the beneficiary dies.
- What is the payee's health condition? If the payee is not in good health, this factor may inform whether the proposed sale is in the payee's best interests. This answer will depend, among other things, on whether the payee has dependents or whether the payee has immediate medical needs that could be served with access to immediate funds. In addition, a payee's health condition may be a factor in how the transferee company values the future contingent payments.

Given this, it is critical to understand whether SSS payments are guaranteed or contingent and to learn about the payee's current health condition. Both factors help determine if a lump-sum payment might better serve immediate needs or if continuing periodic payments offer more sustained support.

To illustrate this issue, let's assume a payee has a structured settlement that provides \$2,000 per month for the next 20 years, totaling \$480,000. If these payments are contingent and the payee's life expectancy is only 2 years due to a health condition, the present value of these future payments will be lower than if the payee was in excellent health and expected to live for 20 years. In such a case, a buyer might offer a low lump-sum payment for the SSS. If the payee has significant immediate medical expenses or dependents needing immediate financial support, accepting a low lump sum could be beneficial to the payee, despite the low total amount. Conversely, if the payee is in good health and has a longer life

expectancy, continuing to receive periodic payments might provide more financial stability in the long term.

To arrive at a sale price, the transferee company uses actuarial projections. Although the Attorney Adviser can consult with such professionals, finding one to assist may not always be feasible. Either alone or with the assistance of other professionals, an Attorney Adviser must evaluate the fairness of the proposed SSS. A fair deal should reflect a reasonable discount rate, acknowledging the payee's need (versus a desire, which may have been created by aggressive marketing) for immediate funds while also ensuring they receive equitable compensation for their future payment rights.

Given this, it is important to have a basic understanding of how to compare the present value of the future payments with the proposed sale amount:

- a. **Present Value Calculation:** The core of the financial analysis is determining the present value of the future payments of the structured settlement. This involves calculating the amount of money that, if received today, would be equivalent in value to the total future payments, considering the time value of money.

- (1) Formula for Present Value Calculation

The basic formula for calculating the present value of a future amount of money is:

$$PV = \frac{FV}{(1+r)^n}$$

Where:

PV = Present Value

FV = Future Value (amount of money to be received in the future)

r = Discount rate (annual)

n = Number of years until the payment is received

Transferee companies are required to provide this information in their offers to payees so Attorney Advisors will have access to how an offer was calculated.

- b. **Steps for Calculating Present Value of Future Structured Settlement Payments**

Identify Future Payments: Determine the amounts and timings of the structured settlement payments you are evaluating. For example, you might have three future guaranteed payments of (a) \$25,000 in 3 years; (b) \$30,000 in 5 years; and (c) \$50,000 in 10 years.

Select a Discount Rate: Choose an appropriate discount rate, which could be based on the interest rate of risk-free securities (government bonds), adjusted for the risk profile

of the payee or a market-based rate paying attention to the rate of similar transactions. For instance, if the discount rate is 5% per year, you would use 0.05 in the formula. If the payments are contingent, this discount rate will be significantly higher.

Calculate Present Value for Each Payment: Apply the formula to each future payment to calculate its present value. For instance, to find the present value of \$25,000 due in 3 years with a 5% discount rate:

$$PV = \frac{\$25,000}{(1+0.05)^3}$$

Sum the Present Values: Add together the present values of all future payments to get the total present value of the structured settlement.

Assuming the structured settlement consists of the following payments:

- \$25,000 in 3 years
- \$30,000 in 5 years
- \$50,000 in 10 years

And a discount rate of 5%, the present value of each payment would be calculated as follows:

1. For \$25,000 in 3 years: $PV = \frac{\$25,000}{(1+0.05)^3} = \$21,573.48$
2. For \$30,000 in 5 years: $PV = \frac{\$30,000}{(1+0.05)^5} = \$23,408.79$
3. For \$50,000 in 10 years: $PV = \frac{\$50,000}{(1+0.05)^{10}} = \$30,695.66$

Then, add these present values together to get the total present value of the structured settlement payments:

$$\$21,573.48 + \$23,408.79 + \$30,695.66 = \$75,677.93$$

This total represents the current worth of the future structured settlement payments based on the selected discount rate.

Adjusting the discount rate or the timing of payments will change the present value, reflecting different assumptions about the time value of money and the risk profile of the structured settlement. In addition, if the payments are contingent, the discount rate will depend on the health of the payee.

Step Three: Prepare the Report

Once the Attorney Adviser has thoroughly vetted the offer and reviewed the circumstances, they need to prepare a comprehensive report based on the requirements of the appointment

order and the relevant statutes. A sample report (based on hypothetical facts) can be found at **Appendix D**. In preparing the report, the Attorney Adviser should consider:

- **Current and Future Financial Needs:** Understanding the payee’s immediate and long-term financial needs is paramount. This includes assessing their living expenses, medical costs, debt obligations, other sources of income or support and future financial goals to ensure that the sale will not jeopardize their financial security.
- **Reasons for the Sale:** The motivations behind the payee’s decision to sell their structured settlement must be critically assessed. Whether it is for covering medical expenses, paying off debt, funding education, or other significant life events, it is important to ensure that the sale aligns with the payee’s best interests and is not driven by short-term financial pressures or exploitation.
- **Impact on the Payee’s Life:** The broader implications of the sale on the payee’s life are considered, including how the immediate lump sum will affect their quality of life, emotional well-being, and long-term happiness. This holistic approach helps to ascertain whether the sale genuinely benefits the payee beyond just financial relief.
- **Financial Fairness:** Evaluate if the sale amount is fair and reasonable, considering the present value of future payments and the seller’s financial needs. The discount rate applied in the transaction should be scrutinized to ensure it is in line with industry standards and does not unduly disadvantage the seller.
- **Alternative Solutions:** Before finalizing the sale, explore alternative financial solutions or adjustments to the settlement structure that may better meet the payee’s needs and objectives. This could involve negotiating better terms for the sale or considering other financial instruments or support mechanisms.

This report will likely include the following sections:

- a. **Executive Summary:** This section should provide a concise overview of the case, highlighting the main points of the analysis and the advisor’s recommendations.
- b. **Methodology:** Describe the approach taken to gather and analyze data, including interviews conducted, documents reviewed, and financial analyses performed. This section establishes the credibility of the findings and ensures the process's transparency.
- c. **Findings:** Present the collected data and observations in an organized manner. This should include a detailed account of the seller's financial situation, health status, motivations for selling, and an assessment of the offer's fairness.

- d. **Analysis:** This section should interpret the findings, assessing how they align with the statutory requirements and guidelines for structured settlement sales. It should evaluate the financial implications of the sale, the seller's understanding and consent, and any potential risks or benefits to the seller's long-term well-being.
- e. **Recommendations:** Based on the analysis, provide a clear and reasoned recommendation on whether the sale should proceed. This could include suggesting modifications to the terms to better protect the seller's interests or outright recommending approval or denial of the sale.

5. Ethical Considerations

Maintaining confidentiality and avoiding conflicts of interest are paramount to ensure the integrity of the Attorney Adviser appointment process. An Attorney Adviser licensed in Minnesota is bound by the Minnesota Rules of Professional Conduct. The Attorney Adviser should also familiarize themselves with any applicable court or judicial ethical standards. We briefly highlight two ethical considerations:

Confidentiality: Attorney Advisors are entrusted with sensitive information about the payee's personal, financial, and health status. They should safeguard this information, only disclosing it under the terms of the appointment order and/or with the consent of the payee. Attorney Advisors should treat a payee's confidential information with as much care as they would their own clients by following their firm's established privacy policies and procedures.

Conflict of Interest: Attorney Advisors must actively identify and disclose any potential conflicts of interest that may affect their ability to independently evaluate the proposed sale. This includes personal, financial, or professional interests that could be seen to influence their judgment. If a conflict is identified, the Attorney Adviser should recuse themselves from the appointment.

D. Summary

We hope this handbook equips current and future Attorney Advisors and judges with tools and knowledge to navigate the requirements for Advisers Appointed Under Minn. Stat. § 549.405. It is intended to enhance understanding and implementation of Minnesota's newly-enacted statutes that define "best interest of the payee" and allow for the appointment of Attorney Advisors. Additional material is provided in the appendices.

We thank all who helped prepare this handbook, particularly Judge Kristin Siegesmund (Ret.), Hennepin County District Court; Ron Elwood, Mid-Minnesota Legal Services Advocacy Project; and Randi Roth, Alva Dial and Amy Gernon, board members of the Academy of Court-Appointed Neutrals ("ACAN").

Handbook current as of January 2025

Finally, we thank the Minnesota Attorney General's Office, particularly Jason Pleggenkuhle and Marty Casserly, for organizing and hosting the CLE that accompanies this handbook.

Please contact amy@amygernon.com if you have any questions about or suggestions for this handbook.

Appendix A

UNSETTLED

Cashing in on accident victims

Minnesota Star Tribune, October 2021

A special report examining how companies obtain court approval to purchase payments intended to help accident victims recover from their injuries.

- [Explore: The Data](#). Hundreds of Minnesotans sold their payments at a discount for cash up front. Explore the cases to see what they gave up and got in return.
- [Part 1: The Sellers](#). Deals often involve accident victims with mental health problems who don't understand what they're giving up in these transactions.
- [Part 2: The Judges](#). Judges often rubber stamp deals after brief hearings, even when they don't approve of the terms or there are other objections.
- [Part 3: The Buyers](#). Companies mount relentless marketing campaigns aimed at persuading people to sell off a piece of their court settlements.
- [Part 4: The Guardians](#). In New Mexico, some judges routinely appoint guardians to look into whether a deal makes sense for the seller, leading to far lower approval rates.

January 2025

Appendix B

- A. [Minn. Stat. § 549.38](#), Conditions and Approval of Transfers of Structured Settlement Payment Rights and Structured Settlement Agreements
- B. [Minn. Stat. § 549.405](#), Appointment of Attorney Adviser

January 2025

Appendix C

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT _____

In re: Transfer of Structured Settlement Payment
Rights from _____, an adult

Case Type: Civil Other/Misc.
Court File No. _____
Hon. _____

**ORDER FOR APPOINTMENT OF
ATTORNEY ADVISER**

The above-entitled matter came for hearing on _____, before the Honorable _____, Judge of District Court, upon [transferee company's] Application for an Order Authorizing Transfer of Structured Settlement Payment Rights.

Transferee represented by _____

Payee _____ appeared pro se

[Attorney Adviser was also present, if applicable]

Based upon the files and proceedings here, the Court now issues the following:

ORDER

1. Pursuant to its discretionary power to appoint an attorney Adviser under Minnesota Statutes §549.405, the Court appoints _____ of _____ to serve as an attorney adviser to make an independent assessment and advise the Court as to whether the proposed transfer in this matter is in the best interest of the payee. See Minn. Stat. §549.405, subd. 1.

2. In performing those duties, the attorney adviser may communicate *ex parte* with the Court or any party to this proceeding. The attorney adviser may also consult with a certified public account, actuary or other licenses professional advisor, if necessary. The attorney adviser may rely on their independent interview of the payee; the court records; other pertinent records regarding the payee's financial or medical condition; reports from professional advisers; and other relevant information from any source. The attorney adviser will identify all information upon which the attorney adviser relied in making their report.

3. The Attorney Adviser will report to the Court the attorney's assessment and advice regarding whether the transfer is in the best interest of the payee which addresses the best interest factors set forth in Minn. Stat. §549.38, subd 1(b)(1)-(6):

a. The reasonable preference of the payee, in light of the payee's age, mental capacity, maturity level, understanding of the terms of the agreement, and stated purpose for the transfer;

b. If periodic payments were intended to cover future income or losses or future medical expenses, whether the payee has means of support aside from the structured settlement to meet these obligations;

c. Whether the payee can meet the financial needs of, and obligations to, the payee's dependents if the transfer is allowed to proceed, including child support and spousal maintenance;

d. Whether the payee completed previous transactions involving the payee's structured settlement payment rights and the timing, size, stated purpose, and actual use of the proceeds;

e. The impact of the proposed transfer on current or future eligibility of the payee or the payee's dependents for public benefits; and

f. Any other factors or facts that should be considered.

4. The attorney adviser shall prepare a written report no later than _____. The attorney adviser shall email a copy of to the judge's clerk who shall file the report. The attorney for Transferee shall receive a copy of the report through e-filing. The attorney adviser shall mail a copy to [payee].

5. A hearing will be held _____ to review the attorney adviser report. The hearing will be held _____. Consistent with Minn. Stat. §549.40, subd. 2, the Payee _____ must appear.

6. All costs and reasonable fees for the attorney adviser will be borne by the Transferee. Transferee is directed to deposit \$2,000 with the _____ Court Administrator by _____, which will be used to pay for the services of the attorney adviser and the services of a certified public accountant, actuary, or other licensed professional adviser, if one is engaged. Minn. Stat. §549.405, subd. 1.

7. The attorney adviser's hourly rate shall be \$___/ hour. All costs and reasonable fees for the appointed attorney adviser shall not exceed \$2,000. If the attorney adviser consults with a certified public accountant, actuary, or other licensed professional adviser, the combined total of the fees for the attorney adviser and professional advisers may not exceed \$2,000. The attorney

adviser shall submit an invoice for his/her time and the time of any of his/her consultants to the Court, with a copy to the Transferee and Payee, no later than fourteen (14) days following the hearing on _____. Any objections to the request for costs and fees must be filed within seven (7) days after the invoice is submitted, or objections will be waived.

BY THE COURT:

January 2025

Appendix D

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT

In re: Transfer of Structured Settlement Payment
Rights from _____, an adult

Case Type: Civil Other/Misc.
Court File No. _____
Hon. _____

REPORT OF ATTORNEY ADVISER

On _____ 2024, the Honorable _____ appointed me as an Attorney Adviser pursuant to Minnesota Stat. § 549.405, which allows the Court to make a discretionary appointment for an attorney to provide advice as to whether the proposed transfer in this matter is in the best interests of the payee. *See* Minnesota Stat. § 549.405, subd. 1.

Pursuant to the _____ Order, I make the following report.

1. The Court's Order allowed me to work with other licensed professionals, and to prepare this report, I worked with _____, who is also a _____. This report is based on (a) an initial telephone conversation with Mr. Smith on _____, 2024; (b) an email to and from Mr. Smith on _____, 2024; (c) a follow-up call with Mr. Smith on _____, 2024; (d) the documents filed in connection with this proposed transfer; (e) court records related to Mr. Smith's prior petitions to transfer payments; and (f) a general understanding of the relevant case law and applicable laws concerning the sale of structured settlements.

2. On _____, 2024, Mr. Smith and Transferee Company ("Company") entered into an amended purchase agreement related to a partial purchase of three payments Mr. Smith is scheduled to receive under an underlying structured settlement. Specifically, the amended purchase agreement involves one payment of \$_____ on September 1, 2026, one payment of \$_____ on September 1, 2031, and one payment of \$_____ on September 1, 2036. The aggregate value of those payments is \$_____, which Company represents has a discounted present value of \$_____ pursuant to the federal rate of _____. The purchase price for these payments is \$_____, which represents a _____% discounted present value. This means Mr. Smith would, in effect, be paying Transferee Company "interest" at rate of _____% per year.

3. Mr. Smith is a ___-year-old resident of _____ County. He is currently living with his mother. He states that he is pursuing a career in nursing, while working part time as a waiter. He states that he is planning on returning to college soon and purchasing a home. Mr. Smith willingly answered all questions, particularly concerning the purpose for the funds.

4. The Court's appointment order directs me to report to the Court the "assessment and advice regarding whether the transfer is in the best interest of the payee which addresses the best interest factors set forth in Minn. Stat. §549.38, sub 1(b)(1)-(6)." My assessment follows those factors, which are listed below in italics.

a. The reasonable preference of the payee, in light of the payee's age, mental capacity, maturity level, understanding of the terms of the agreement, and stated purpose for the transfer;

Mr. Smith, who is currently living with mother, clearly expressed the terms of the proposed purchase. He asserts that he has written out a plan to use the funds to complete his nursing degree and to eventually purchase a home.

He understands that it will be difficult to purchase a home without a downpayment and poor credit history and he hopes a sibling will assist him. He believes he will have money to both pay for his education and a downpayment on a house. However, he does not have an estimate about how much money he needs to pay for the credit hours he needs to complete his nursing degree.

b. if the periodic payments were intended to cover future income or losses or future medical expenses, whether the payee has means of support aside from the structured settlement to meet these obligations;

Mr. Smith reports earning approximately \$ 2,000/month. He asserts that he has medical benefits and that he has no ongoing health issues. Mr. Smith was not forthcoming about his underlying injury that gave rise to the underlying structured settlement, but he insists that he has no ongoing medical issues.

c. whether the payee can meet the financial needs of, and obligations to, the payee's dependents if the transfer is allowed to proceed, including child support and spousal maintenance;

Mr. Smith is a ___-year-old man with no dependents. He has no adult children; no former or current spouse; and no child support obligations. He reports living with his mother.

d. whether the payee completed previous transactions involving the payee's structured settlement payment rights and the timing, size, stated purpose, and actual use of the proceeds.

Transferee Company submitted documents to the Court show that Mr. Smith was scheduled to receive three future payments as of November 2022 and that he recently sold a portion of these payments. These documents did not address the stated purpose or actual use of those previous transactions. However, as noted below in subsection 5(f), Judge _____ recently denied Mr. Smith petition for a similar transfer in July 2023. In that Order, the court addressed this factor, expressing concern over how Mr. Smith used his previous proceeds. Specifically, Judge _____ stated “_____.”

In comparing Mr. Smith's prior petitions, I found the following: [insert relevant facts].

e. the impact of the proposed transfer on current or future eligibility of the payee or the payee's dependents for public benefits;

Mr. Smith is able to work and is not a candidate for public benefits.

f. any other factors or facts that should be considered.

Mr. Smith previously filed a petition to sell three payments, which Judge _____ recently denied. In making that decision, Judge _____ expressed concern over whether Mr. Smith how Mr. Smith used proceeds from his previous sale. Judge _____ Order is attached as **Exhibit A** to this Report and should be considered in the evaluation of Mr. Smith's current petition.

5. Based on the above factors, it is my opinion that the proposed transfer is not in Mr. Smith's best interests. Mr. Smith expressed excitement for returning to school, purchasing a home, and becoming a nurse. Yet, he did not use the proceeds from his prior sale to further those interests. In addition, the proposed purchase is for non-contingent payments, yet they are discounted at a rate of ____%. If this petition is granted, the only payment Mr. Smith will only receive is for approximately \$____ in 13 years. Given the purported purpose of the underlying structured settlement, and considering Judge _____ prior Order, I conclude that Mr. Smith's interests are best served by denying this petition.

6. Today I will mail a copy of this report to Mr. Smith at the address given during the _____ hearing, and I will email a copy of this report to Judge _____ clerk for distribution to Company.

Handbook current as of January 2025

7. I declare, under penalty of perjury, that the foregoing is true and correct.

Date: _____, 202_

[Attorney Advisor]