

Court Approval of Minor's Claims—Part I

When you represent a minor in a personal injury claim the case may present special challenges, including identifying and documenting the injuries, dealing with an inarticulate client, and problems of proof. What shouldn't be a challenge is finalizing the settlement once an agreement has been reached to settle the claim.



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Unfortunately, the procedures for finalizing minor's settlements are unclear. The statutes and court rules on the subject conflict. Local rules and the state civil rules conflict. Some counties have *unwritten* procedures. Some of the procedures mandated for minor's claims involve considerable expense, especially in proportion to a modest claim.

If you ask five personal injury attorneys what steps are necessary to finalize a minor's settlement, you will probably get five different answers. What I will try to do in this month's and next month's columns, is to lay out some of the procedures our firm uses to finalize minor's settlements. At the end of the column I will tell you how to obtain a packet of forms for use on minor's claims.

Do Your Research

When settling a minor's claim there are a number of statutes and court rules that should be reviewed. Chief among these are Special Proceedings Rule 98.16W which concerns judgment for and settlement of minor's claims. You should also review the local rule in your county that corresponds to SPR 98.16W.

Also important to review are the statutes concerning guardianships and limited guardianships, RCW 11.88 and RCW 11.92. It also makes sense to check RCW 4.24.010 which specifies when a notice of institution of suit must be served. The specific facts of your case may suggest additional research.

Notice of Institution of Suit

In the usual minor's claim, one of the parents will bring an action on behalf of the injured minor. However, if the

parents of the minor are not married, or are separated, then the parent filing the action on behalf of the child must give notice of the suit, together with a copy of the complaint, to the other parent. That notice must state that the other parent must join as a party to the suit within 20 days or their right to recover damages shall be barred. RCW 4.24.010.

Appoint a Guardian Ad Litem for the Minor

A person under the age of 18 appears in court through a guardian ad litem. In the typical case you will have a responsible parent appointed to act as the child's guardian ad litem while the litigation is pending. I am not aware of any requirement that the guardian ad litem post a bond while the third party claim is pending.

To appoint a guardian ad litem for a minor you file a Petition For Appointment Of Guardian Ad Litem. This can be done at the same time the lawsuit is filed and is usually handled in the ex parte department. The Court will sign an order appointing a responsible person, usually a parent, to act as the guardian ad litem for the minor. Thereafter, the guardian ad litem makes decisions and can make court appearances on behalf of the minor.

Seek Court Approval for Settlement of the Minor's Claim

Settlement of minor's claims requires Court approval. SPR 98.16W.

The procedure that is followed is to file a Petition For Approval Of Settlement Of Minor's Claim. That petition should contain enough information for the Court to rule on the adequacy of the settlement and the reasonableness of any fees or costs incurred. I favor a petition that contains subject headings that identify the parties, describe the claim, set forth the assets and insurance available to satisfy the claim, describe the settlement offer, provide an explanation of the fees and costs, and contain a recommended disbursement of the funds.

The petition should also state specifically what relief is requested. That relief will vary depending on the cir-

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cumstances of the claim but will typically include a request for approval of the settlement offer, a request for authorization for the guardian ad litem to execute releases, a request for approval of payment of the costs and attorney fees, a request that the clerk disburse funds through the Court registry, and other provisions that relate to the payment of funds, or their retention in an appropriate investment vehicle.

The petition should contain enough information for the Court to make its decision. In some cases it might be appropriate to attach a copy of the police report, or other documents affecting liability, and to attach relevant medical records or reports.

Also in the petition should be a description of how the funds will be held on behalf of the minor. Typically funds are held in a blocked account, a structured settlement, or a settlement trust. These investment vehicles should be described and their benefits and drawbacks set forth for the Court.

Appoint an Attorney Guardian Ad Litem to Investigate the Adequacy of the Settlement

In most cases you will need to seek the appointment of an independent attorney guardian ad litem to review the adequacy of the settlement on behalf of the minor. SPR 98.16W provides that:

In every case where there is a settlement involving a . . . claim of a person under the age of 18 . . . the Court must appoint an independent guardian ad litem to investigate the adequacy of the offered settlement and file a written report. Said guardian ad litem shall be an attorney. . . .

The Court is given the discretion to dispense with the appointment of an attorney guardian ad litem if the minor has a guardian or limited guardian, or if the Court affirmatively finds that the minor is represented by independent counsel who does not represent interests in conflict with that of the minor. SPR 98.16W(a).

The way to seek appointment of an attorney to review the settlement is to bring a Motion For Appointment Of Attorney Guardian Ad Litem To Investigate The Adequacy Of The Minor's Settlement. The motion should state that you request appointment of an attorney guardian ad

litem, briefly state the nature of the minor's claim, and that an attorney guardian ad litem should review the proposed settlement. The Court will sign an Order appointing an attorney to the position.

The cost of having an independent attorney review the settlement may be prohibitive in small cases. I have heard attorneys suggest that if the case is small enough, you can ask the Court to waive the requirement of an independent attorney. You might consider instead asking an attorney to do the report on a pro bono basis if the case is too small to justify payment of an attorney guardian ad litem's fee.

Next Month

Next month we will discuss the duties of the independent attorney guardian ad litem, the court order approving settlement of the minor's claim, deposit receipts, discharge of the attorney guardian ad litem, and other issues that come up in approving minor's claims.

Help is Coming

Because of the confusion surrounding minor's settlements, WSTLA has formed a task force to review minor settlement issues and seek improvements in the process. I am the chair of that task force.

We are currently selecting a number of people to be on the task force who have an interest in minor's settlements. We are consulting people from the clerk's office, the plaintiff's and defense bar, from the insurance industry, the Court, and others.

We intend to investigate the problems that occur in resolving minor settlements. If you have had problems approving settlements, or if you have any good ideas for making this process a simpler one, please feel free to call me or drop me a note.

Once the information gathering process is complete, we intend to recommend a comprehensive solution to the problems, probably resulting in legislation which might be called the "Minor's Settlement Act."

Packet of Forms

If you would like a packet of forms that might help you in preparing minor settlements you can call our office at 624-5000.

The packet of forms contains the following:

1. Notice of Institution of Suit.
2. Petition For Appointment Of Guardian Ad Litem For Minor.
3. Appointment Of Guardian Ad Litem For Minor.
4. Motion For Appointment Of Attorney Guardian Ad Litem To Investigate Adequacy Of Minor's Settlement.
5. Order Appointing Attorney Guardian Ad Litem.
6. Petition For Approval Of Settlement Of Minor's Claim.
7. Order-Approving Settlement Of Minor's Claim.
8. Report Of Attorney Guardian Ad Litem On Adequacy Of Minor's Settlement.
9. Order Discharging Attorney Guardian Ad Litem.

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