

PART 10. DISPOSITION OF CASES OF MINORS OR DISABLED PERSONS

Rule 10.1 Settlement of Minor's or Ward's Personal Injury, Wrongful Death, or Survival Statute Claim

(a) **Authorized Representatives.** Only a personal representative authorized by law may seek Court approval of a settlement of a claim for personal injury and/or property damages on behalf of a minor or ward. A personal representative authorized by law includes a guardian appointed under the Probate Act, a next friend as recognized under the Code of Civil Procedure or the Probate Act, and a guardian *ad litem* appointed by the Court.

(b) **Petition.** To settle a cause of action for personal injuries and/or property damage sustained by a minor or ward or any other action in which a minor or ward will receive any or all the settlement proceeds, the legal representative of the minor, ward, or decedent's estate shall execute and file a verified petition setting forth:

- (1) A description of the occurrence giving rise to the cause of action;
- (2) The name and address of the person or entity against whom the cause of action has accrued;
- (3) The name and address of the liability insurance carrier, if any, affording coverage to the person or entity against whom the cause of action has accrued, and the monetary limits of the applicable liability insurance policy;
- (4) A brief description of the injuries sustained by the minor or ward and a list of hospital and medical expenses incurred on behalf of the minor or ward as a result of the occurrence. The petition need not be supported by a current medical certificate or letter executed by the attending physician unless the Court requests this support;
- (5) A statement by the petitioner or the attorney for the petitioner as to the fairness of the proposed settlement and the basis for the petitioner's or attorney's recommendation that the proposed settlement be approved; and
- (6) The amount of attorney's fees and costs, if any, that would be paid from the proceeds of the proposed settlement and the bases for these amounts.

(c) **Judge Assigned if Injury Action is Pending.** When the proposed settlement relates to a pending case, the verified petition shall be heard by the judge assigned to the case. The judge assigned to the case may also determine that, based on the complexity and expected duration of the matter, a probate guardianship estate should be opened to provide for continued court supervision and periodic accounting.

(d) **Judge Assigned if No Injury Action is Pending.** When the proposed settlement does not relate to a pending case, the verified petition shall be heard by the judge regularly assigned to hear probate matters.

(e) **Notice.** Before a party may present a petition to the Court, the party must send a notice of hearing, a copy of the petition, and any exhibits to the petition to the minor's or ward's spouse, parents, adult siblings, appointed guardian, or, if none, person with or facility in which the minor or ward resides. A party entitled to notice may waive notice by written consent. The Court may excuse notice on a showing of good cause.

(f) **Appointment of Guardian *ad Litem*.** In any case, the Court may appoint an attorney as guardian *ad litem* to investigate the merits of the proposed settlement and to report his or her findings and recommendations. The Court shall fix an appropriate fee for the guardian *ad litem* to be taxed as costs in the case.

(g) **Expenses and Attorney's Fees.** When approving a settlement, the Court shall determine the expenses, including attorney's fees, to be deducted from the settlement and shall determine the net amount distributable to the minor or ward. The Court shall not allow attorney's fees in excess of 33 1/3% of the gross settlement amount unless the attorney representing the minor or ward in a sworn affidavit recites the work and hours involved or other special circumstances that justify a higher attorney's fee to compensate the attorney fairly for the work performed; provided, however, that if an appeal is perfected and the case disposed of by the reviewing court, the attorney's fee shall not in any event exceed 50% of the recovery.

(h) **Evidence of Receipt.** Any order entered approving a settlement shall provide for the distribution of the settlement funds and the filing of vouchers to evidence receipt of any portion of the funds within a time prescribed by the Court.

(i) **Use of Bank Accounts.** When settlement funds are to be received by a parent or legal representative on behalf of a minor child or ward, the parent or legal representative must deposit the funds in a federally insured account in a financial institution approved by the Court for the benefit of the minor or ward and shall not withdraw any of the funds without approval by the Court. The Court shall continue the case to a specific date for the purpose of receiving a voucher from the financial institution. The voucher must acknowledge receipt of the funds and a copy of the Court's order approving the settlement and shall include the express language that "No withdrawals shall be made from this account unless authorized by order of Court." If the account is for the benefit of a minor, the voucher may allow withdrawals without order of court after the date on which the minor reaches the age of majority.

(j) **Investment of Settlement Funds.** If determined by the Court to be in best interest of the minor or ward, a parent or legal representative receiving settlement funds may, in lieu of depositing the funds as required by Rule 10.1(i), invest the funds for the benefit of the minor or ward in accord with applicable provisions of the Probate Act. Invested funds shall not be withdrawn or used without approval of the Court.

(k) **Appointment of Guardian of the Estate.** An order entered approving a settlement shall provide for the appointment of a guardian for the minor's or ward's estate

and shall require the guardian to file a bond pending proper deposit of the funds in the approved financial institution. If the Court waives the requirement of a surety, the attorney representing the estate of the minor or ward shall have personal responsibility for depositing the funds in the approved financial institution.

(l) Dismissal of Action. A stipulation dismissing any pending action shall be accompanied by the voucher from the financial institution.

(m) Annuities. When an approved settlement agreement involves a structured settlement, the company providing the annuity must be one that holds a current rating of "A" or better by Best's Insurance Guide or other comparable rating service. When annuity payments or income are payable before the beneficiary reaches the age of majority, an order approving the settlement shall provide that the payments be made only to the estate of the minor or ward, that they not be expended, transferred, or withdrawn from the estate without leave of the Court, and that proof of payment of any allowed distributions be filed with the Court.

(n) Settlements Involving Minors or Wards 14 Years or Older

(1) If Amount is \$750 or Less. If the amount distributable to a minor or ward 14 years of age or older is \$750 or less, the Court in its discretion may order the amount distributed directly to the parent or guardian with whom the minor or ward permanently resides for the benefit of the minor or ward or may order deposit into a financial institution approved by the Court.

(2) If Amount is Between \$750 and \$10,000. If the amount distributable to a minor or ward 14 years of age or older exceeds \$750 and is \$10,000 or less, the Court in its discretion may order the amount distributed on behalf of the minor or ward to be deposited into a financial institution approved by the Court or may order that proceedings be instituted pursuant to the Probate Act.

(3) If Amount Exceeds \$10,000. If the amount distributable to a minor or ward exceeds \$10,000, or the minor or ward is younger than 14 years of age, or the distribution to the minor or ward is to be made pursuant to a structured settlement, a proceeding shall be initiated pursuant to the Probate Act. This provision may be waived by the Court for good cause.

(o) Administration under Probate Act. Any approved settlement that is required to be administered pursuant to the Probate Act shall be paid to the guardian of the minor or ward, and the order approving the distribution shall be effective only after the entry of an order by the judge assigned to probate matters approving the bond or other security required to administer the settlement and distribution.

(p) Petitions to Withdraw Funds. A petition to withdraw funds held for the benefit of a minor or ward shall be in writing and shall state the amount in the account at the time of presenting the petition, the annual income available to the minor or ward, the

amount and purpose of the withdrawal, and the amount of the last authorization for withdrawal from the account for the same purpose.

Rule 10.2 Distribution of Funds to a Minor Pursuant to Judgment. The proceeds of any judgment from which a minor or ward is to receive funds shall be distributed in a manner in accord with Rule 10.1.

APPROVED this 12th day of March, 2021.

Jacquelyn D. Ackert, Circuit Judge

Michael P. Bald, Circuit Judge

Robert T. Hanson, Circuit Judge

James M. Hauser, Circuit Judge

J. Jerry Kane, Circuit Judge

Douglas E. Lee, Circuit Judge

John B. Roe, IV, Circuit Judge

Kevin J. Ward, Circuit Judge