

Settling A Minor's Personal Injury Claim – A California Primer

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In California, the court must approve all minor's settlements, no matter how small. There are no exceptions to this requirement. Without court approval of a minor's settlement, the guardian ad litem can disaffirm the settlement and bring another lawsuit against that defendant. Or, the minor, upon turning age 18, could bring his or her lawsuit against the defendant as a result of the same incident.

This article addresses the basic requirements and considerations for preparing and filing a Minor's Compromise petition.

Proper Venue

If a lawsuit has been filed, the petition is filed in the same court. If a lawsuit has yet to be filed, you may file the petition in the county where the minor resides or in any county where venue of the lawsuit would be proper. C.C.P. Section 372; Prob. C. Section 3500 (b).

Appointment of Guardian Ad Litem

A minor must have a guardian ad litem represent his or her interests in a claim or lawsuit. Typically the parent of the minor will serve as a guardian ad litem. The appointment of a guardian ad litem is straightforward. The party seeking appointment of a guardian ad litem completes Judicial Counsel Form CIV-010. This form is typically filed with the Minor's Compromise petition.

Preparing a petition on behalf of a claimant

Preparing a Minor's Compromise petition on behalf of a claimant is time-consuming. The Minor's Compromise Form MC-350 requires the following information:

- Name, date of birth, age and sex of the minor;
- Relationship of petitioner to minor;
- Description of the nature of the claim including whether action had been filed, subject to pending action, or was the result of a judgment;
- Description and nature of the incident including date, time, place, persons involved, and the facts, events and circumstances of the incident;
- Description of the minor's injuries and treatment received;

- Description of the extent of injuries and recovery, including all medical reports containing diagnosis and prognosis of the minor's injuries and a report of the minor's present condition;
- Petitioner must acknowledge the settlement is final and binding;
- Description of the amount and terms of the settlement including total amount offered, breakdown of different defendant's contributions, and any other terms of the settlement;
- State any settlement payments to others and provide an explanation of the apportionment;
- State all minor's medical expenses to be reimbursed from proceeds of settlement;
- State requested amount of attorneys' fees and costs;
- State any reimbursement of expenses paid by petitioner of which reimbursement is sought with proofs of expenses incurred;
- State the net amount of the minor's settlement;
- Summarize the financial breakdown of the settlement;
- Disclose information about attorney

- representing or assisting petitioner;
- Disclosure of how the minor’s settlement will be managed;
- Explain any additional orders requested, state the settlement is fair, reasonable, and in the best interest of the minor.

Attendance at Hearing

The minor and the person compromising the claim on his or her behalf, must attend the hearing on the compromise of the claim unless the court for good cause dispenses with a personal appearance. Cal. Rules of Ct. 7.952 (a).

In general, the parents of the injured minor and the minor should attend the hearing. The reason for this is because the judge can meet the minor and ask him or her questions about his or her injuries, including the status of their present medical condition. More importantly, the minor’s presence will help to ensure approval of the court regarding the settlement amount which helps to prevent any unforeseen delays of the settlement itself.

However, there are times a judge will not require the attendance of the minor. If the judge feels, based on the medical evidence and other factors, that mandatory appearance of the minor child is not required, then the minor child does not have to appear before the court for approval of his or her bodily injury settlement. This means the judge

has found “good cause” to not require the child to physically appear for the court hearing.

Conclusion

Once you reach a settlement with a minor, you must ensure a minor’s compromise petition is properly filed with the court and a court order approving the minor’s settlement is obtained. Failure to do so may result in another lawsuit against your client.

ABOUT THE AUTHOR

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