

Paralegals Section



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A SIMPLE GUIDE TO WRAPPING UP THE SETTLEMENT OF A MINOR'S PERSONAL INJURY CLAIM

Most of us working in law firms realize that not everything is as simple as it might sound at first. We are well aware that one answer usually brings several new questions. And then, just as we thought we found all the answers, they keep changing on us. As paralegals, attorneys rely on us to get to them the right answers – the quicker, the better. As those of us working for personal injury attorneys know, it is not uncommon to have an injured client who is under the age of eighteen, i.e., a minor. The attorney represents the minor's legal interests through the minor's guardian – usually one parent or both. The reason the attorney represents the minor's guardian is twofold. First, it is common knowledge that a minor cannot enter into a legal

contract. Secondly, the natural guardian (biological parent with custody) or legal guardian of a minor has the authority to settle a claim on behalf of their minor child (as long as they are not disqualified under §744.309(3), Florida Statutes (2009)). [See §744.301, Fla. Stat. (2009).]

The Minor's Claim Has Settled... Now What?

There are several things to consider at the time the minor's claims are settled. Is court approval of the minor's settlement necessary? Does a guardianship need to be set up? Will the judge require a Guardian Ad Litem? The answers are found in the current Florida Statutes, the Florida Probate Rules, and some requirements are left up to the particular judge's guidelines, procedures, and discretion.

- The first thing to keep in mind is that once a lawsuit has been filed on behalf of the minor, it is necessary to obtain court approval of any settlement, no matter what the amount of the settlement is.
- The second thing to consider is the amount of settlement. The amounts of both the gross settlement and the net settlement determine what needs to be done. The following chart breaks down what is necessary for all scenarios and cites the supporting law.

Obtaining Court Approval

First, let's take the scenario that your minor client's claim was settled for a gross amount under \$15,000, however, it took litigation to either reach a settlement or obtain a judgment. Easy one. Remember, once a lawsuit has been filed, no matter what the amount of the settlement, court

Quick Chart for Settlement of Minors' Personal Injury Claims, 2009

Legal Requirements	Gross Settlement = 15K or less	Gross Settlement exceeds 15K, but is not more than 50K	Gross Settlement exceeds 50K
Need Court Approval	NO, unless lawsuit has been filed, then yes ----- §744.301(2), Fla.Stat. §744.387(3)(a), Fla.Stat.	YES ----- §744.387(3)(a), Fla.Stat.	YES ----- §744.387(3)(a), Fla.Stat.
Need Legal Guardianship/ Guardian of the Property Appointed	NO	YES, but ONLY if Net Settlement Exceeds 15K ----- §744.387(2), Fla.Stat.	YES, but ONLY if Net Settlement Exceeds 15K ----- §744.387(2), Fla.Stat.
Need Guardian Ad Litem	NO	At the judge's discretion ----- §744.3025, Fla.Stat.	YES ----- §744.3025, Fla.Stat.

*Note that in 2006, the statutes were amended and Section 744.3025 was created, increasing the dollar figure from \$25,000 to \$50,000 as the threshold amount requiring the appointment of a guardian as litem.

approval of the settlement is necessary. The judge assigned to the personal injury case can handle the approval of the settlement.

How do you go about getting court approval? The first thing to be done is to draft a Petition for Approval of Settlement of a Minor's Claim. The Petition needs to be signed by the minor's guardian and filed with the court. Many judges will approve the settlement without a hearing, and in that case, you can go ahead and prepare and send to the judge (either the judge who handled the personal injury case, or a probate judge) with a copy of the Petition, a proposed Order for the judge to sign. [For Petition requirements, see Fla. Prob. R. 5.636(b) and (c).] If the judge requires a hearing, coordinate a hearing time with the judge's judicial assistant, the minor's personal injury attorney, and the minor's guardian who signed the Petition. Fifteen minutes should be enough hearing time for the average case with no complicated issues or required testimony.

Guardianship and Guardian of the Property

Whenever the net settlement of a minor exceeds \$15,000, a legal guardianship is required. The court may approve the settlement, subject to the establishment of a legal guardianship and the appointment of a Guardian of the Property. The court shall require the appointment of a guardian for the property to collect the amount of the minor's net judgment or settlement and to execute a release on behalf of the minor. The judge shall then have sole discretion to direct further disbursement of the minor's funds to an appropriate financial institution/depository, whether the disbursement is an all cash payment, a structured settlement funded by an annuity, a special needs trust, or other. A receipt from the depository needs to be filed with the court.

Many personal injury attorneys prefer to hire a probate/guardianship attorney to get this accomplished, given their expertise in this area of law. In that case, you need to coordinate with the probate attorney in scheduling the hearing to get the settlement approved, then draft a Notice of Hearing on Petition for Approval of Settlement. (In the alternative, the probate attorney can get the guardian of the property appointed, then the hearing on the approval of settlement can be scheduled for afterwards.)

Guardian ad Litem

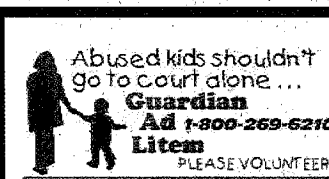
The guardian ad litem's job is to essentially "look over the shoulder" of the minor's personal injury attorney, assuring the Court that it would be in the best interest of the minor to accept the proposed settlement. The Guardian ad Litem (GAL) files a written report with respect to the proposed apportionment of the settlement proceeds, and with respect to the determination of attorney's fees and costs and the apportionment thereof. If your minor client's settlement mandates that a GAL be appointed, you need to hire one on the minor's behalf (if there is not already a personal representative of the estate or guardian of the ward) who is paid from the minor's settlement. Usually another personal injury attorney or elder law attorney who is familiar with the requirements can handle the job just fine. The GAL needs to be approved by the Court so a Request for Appointment of the GAL will need to be filed

Practice Tip: The Florida Probate Rules can be easily accessed and viewed by going to The Florida Bar's website located at www.floridabar.org, and then clicking on the "Professional Practice" link on the left menu bar, then "Rules of Procedure" under that.

with the court and a copy provided to the judge with a proposed Order appointing the GAL. [The requirements regarding the appointment of the GAL and his/her report are set forth in Rule 5.120(a)-(e), Florida Probate Rules.]

Once the GAL has been appointed by the Court, he/she will need to do what's necessary to comply with Rule 5.636, Florida Probate Rules, and submit a report to the court indicating his/her determination regarding whether the proposed settlement will be in the best interest of the minor. For requirements regarding the GAL's report, see Rule 5.636(f), Florida Probate Rules. Make sure the GAL's report gets filed with the court no later than five (5) days prior to the hearing on the Petition for Approval of Settlement of a Minor's Claim. The Guardian Ad Litem shall also be given an opportunity to testify at the hearing or telephonically at the discretion of the Court. Upon entry of the order appointing a Guardian of the Property and directing payment of the minor's net settlement proceeds to the settlement proceeds to the guardianship, the responsibilities of the Guardian ad Litem are completed and he/she can be dismissed by the Court.

So whenever your attorney asks you to prepare the paperwork necessary to finalize your minor client's settlement, refer to the applicable Florida Statutes and Florida Probate Rules that apply to your minor client's situation, always double-checking to make sure there haven't been any changes to the law, as well as checking with the presiding judge's guidelines and procedures to determine what needs to be done. If a guardianship is required, check with your attorney on whether or not he/she would feel more comfortable with a probate attorney handling that part of it. Coordinate with both the probate attorney and the Guardian ad Litem, if either one of both are involved, to facilitate the time of getting all the necessary document filed and a hearing time secured in an expeditious manner.



In Florida, there are approximately 42,000 children who have been abused, neglected or abandoned by the adult in their life and are a part of the dependency system. As

of April 2009, the GAL Program represents approximately 27,000 children and had 7,000 certified volunteers. The need for more volunteers is great. There are still thousands of dependent children who have no voice in court. Perhaps you could be the voice?

The Florida Bar Rules provide that every attorney has a professional responsibility to render at least 20 hours of pro bono representation each year. Guardian ad Litem representation can fulfill the pro bono requirement. By completing the required training, pro bono attorneys will receive eight hours of continuing legal education (CLE) credit, including one ethics credit (attorneys are required to complete 30 hours of CLEs every three years). To volunteer or learn more, contact the Guardian ad Litem Program at 1-866-341-1GAL(1425) or visit www.GuardianadLitem.org.