

RULE 2039: PETITIONS FOR APPROVAL OF MINORS' COMPROMISES

- (A) (1) Petitions for Approval of Settlement or Compromise in matters in which a minor has an interest shall be filed in the Orphans' Court Division where the minor resides if no suit has been previously filed or in the Prothonotary's Office under the docket number of the previously filed suit.
- (2) The petition shall set forth:
- (a) The factual background of the claim;
 - (b) The identification of the parties including the age of the minor and the addresses of the biological parents of the minor;
 - (c) Counsel's analysis of the liability and damages issues relevant to the determination of the reasonableness of the proposed settlement;
 - (d) Counsel's certification that the settlement is reasonable and in the best interest of the minor;
 - (e) The types and amounts of insurance coverage applicable to the claim and representation as to the efforts made to identify other collateral sources;
 - (f) Whether there are any unpaid liens, claims or debts. Where claims or debts have been waived, Petitioner shall attach as an exhibit written proof of waiver of such lien, claim or debt;
 - (g) A request for authorization of parent or natural guardian to sign the proposed release;
 - (h) A description of the type of account into which the settlement proceeds will be deposited;
 - (i) A statement of the proposed distribution of the settlement funds which includes the proposed percentage of counsel fees and an itemization of costs. The petitioner shall attach appropriate documentation in support of the itemized costs;
 - (j) Certification of the joinder of the parents or natural guardians in the proposed settlement.
- (3) The petition shall contain the following exhibits:
- (a) Copies of medical reports or records evidencing the diagnosis and

prognosis of the minor's injuries;

- (b) Investigative or police accident reports which provide background information regarding the incident which caused the minor's injuries;
 - (c) The counsel fee agreement with the parents or natural guardians of the minor executed by any attorney seeking recovery of counsel fees;
- (4) Any amendments or supplements to the petition required by the court shall be filed of record.
- (5) The Court may approve a petition without a hearing. If the Court schedules a hearing, the court may require the personal attendance and testimony of the guardian, the treating physician, the representative of the financial institution responsible for the investment of settlement funds or any other evidence which the court deems necessary to determine whether the proposed settlement adequately protects the minors interests.
- (6) The Court may require a hearing on the issue of counsel fees if counsel seeks the recovery of fees in excess of 25% of the gross settlement amount. If a hearing on counsel fees is required, the court shall require the testimony of counsel primarily responsible for the preparation of the case.
- (7) Except as otherwise required by the Court, the appearance of the minor shall not be required.
- (8) The Petitioner shall attach a proposed order which includes the caption to the face of the petition substantially in the form found in local rule 2039A which sets forth:
- (a) The court's authorization for the petitioner to enter into a settlement and release on behalf of the minor;
 - (b) Reference to the total amount of the settlement;
 - (c) A complete statement of the distribution of the settlement amount as set forth in the petition;
 - (d) Identification of the type of account to be utilized, which account shall comply with Pa.R.C.P. 2039, including a provision that no withdrawal shall be made from any such account until the minor attains majority or by a prior order of court;

- (e) A provision that counsel shall provide the court with an Affidavit of Deposit of Minor's Funds within ten days from the date of the order. Said affidavit shall be substantially in the form found in local rule 2039B.

- (b) The Court shall, in appropriate cases, authorize the parent or natural guardian to deposit cash to be paid for the benefit of the minor into an interest bearing, restricted account, insured by the Federal government, which conforms to the provisions of Pa.R.C.P. 2039.

COMMENT: Attorneys and Pro Se Parties are advised that Pa.R.C.P. No. 2039 provides for the payment of a minor's settlement funds to the minor when he/she reaches the age of majority. However, it is currently the court's policy to approve settlements which call for the payment of funds to the minor up to age 22 under the provisions of Pa.R.C.P. No. 2039(a)(3) and (4). Longer terms may also be approved under extraordinary circumstances such as those calling for a special needs trust, and the attorneys and pro se parties are advised to contact the court for guidance in this area before finalizing settlement discussions.