

## PROCEDURE FOR FILING PETITION FOR APPROVAL OF MINOR SETTLEMENT

**A minor cannot act for her/himself: therefore, she/he needs someone to act in a representative capacity to sue or agree to a settlement. MCR 2.420.**

**Where a lawsuit has not been filed in Circuit Court. (Before an action is commenced, the settlement of a claim on behalf of a minor is governed by the Estates and Protected Individual Code).**

**A conservator/special conservator has the power to settle a claim by or against the estate without court authorization. MCL 700.5423(2)(u).**

**A minor 14 years of age or older has a right to nominate her/his own conservator. MCL 700.5409(1)(b).**

**A conservator/special conservator may be appointed without a formal hearing if all interested parties have waived notice and consent to the appointment. Since a minor 14 years or older is an interested person, she/he must be served personally. She/he cannot waive notice. Therefore, a hearing must be held.**

### **A. SETTLEMENT OF \$5,000.00 OR LESS:**

If the insurance company will not accept a release from a parent or guardian, petition for Protective Order. MCL 700.5401.

### **B. STRUCTURED SETTLEMENT:**

Any settlement which does not involve the payment of more than \$5,000.00 immediately, or the payment of more than \$5,000.00 to the minor in any single year during minority.

**The following checklist/procedure is to be used for the Settlement of \$5,000.00 or less or Structured Settlement.**

- \_\_\_\_ 1. Petition for a Protective Order, PC 639 (see attachment #1 for added language) filed by a person interested in the individual's estate, affairs, or welfare, including a parent, guardian, or custodian, or a person who would be adversely affected by lack of effective management of the individual's property or business affairs.
- \_\_\_\_ 2. Petition for Approval of Minor Settlement, KCPC 100 (see attachment #2) filed by a person interested in the individual's estate, affairs, or welfare, including a parent, guardian, or custodian, or a person who would be adversely affected by lack of effective management of the individual's property or business affairs.
- \_\_\_\_ 3. If attorney fees are contingent, a copy of the written agreement must be filed with the Petition, along with a statement setting forth the fees and costs.
- \_\_\_\_ 4. Statement of out-of-pocket expenses by a person other than attorney.
- \_\_\_\_ 5. Court will set Petitions for hearing and the minor must be present unless, for good cause, the Judge excuses the minor's presence.

- \_\_\_ 6. Unless waived, notice of the hearing must be given to the following persons MCR 5.125(24)
  - \_\_\_ a. The individual to be protected if 14 years of age or older
  - \_\_\_ b. The presumptive heirs of the individual to be protected
  - \_\_\_ c. If known, a person named as attorney in fact under a durable power of attorney (not usually applicable)
  - \_\_\_ d. The nominated conservator
  - \_\_\_ e. A governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending
  - \_\_\_ f. May be advisable to notify the insurance company
  
- \_\_\_ 7. If petitioner is not represented by an attorney, or if the petition is prepared by the attorney for the insurance company, the court will appoint an attorney for the minor, who has the powers and duties of a guardian ad litem. MCL 700.5406.
  
- \_\_\_ 8. If part of the settlement is going to be paid to a parent for her/himself, the court may appoint an attorney for the minor to protect the minor's interest who has the powers and duties of a guardian ad litem. MCL 700.5406.
  
- \_\_\_ 9. Serve the Notice of Hearing in the manner provided by MCR 5.104.
  
- \_\_\_ 10. File a Proof of Service or Waivers of notice in accordance with MCR 5.104.
  
- \_\_\_ 11. Proposed Protective Order, PC 644 (see attachment #3 for added language).
  
- \_\_\_ 12. Acceptance of Appointment of Special Conservator to effectuate the settlement PC 571, MCL 700.5412. (see attachment #4).
  
- \_\_\_ 13. Order Approving Minor Settlement, KCPC 101 (see attachment # 5).

**C. SETTLEMENTS OF MORE THAN \$5,000.00**

**The following checklist/procedure is to be used for the Appointment of a Conservator:**

- \_\_\_ 1. Petition for Appointment of Conservator, PC 639 (see attachment #6) filed by a person interested in the individual's estate, affairs, or welfare, including a parent, guardian, custodian, or a person who would be adversely affected by lack of effective management of the individual's property or business affairs.

- \_\_\_\_\_ 2. File Agreement in Regard to Use of Verification of Deposit, KCPC 102, (see attachment #7) signed by the attorney of record to supervise the placement of funds in a restricted or non-restricted account.
  
- \_\_\_\_\_ 3. Court will set the Petition for Appointment of Conservator for hearing and the minor must be present unless, for good cause, the Judge excuses the minor's presence.
  
- \_\_\_\_\_ 4. Unless waived, notice of the hearing must be given to the following persons MCR 5.125(24)
  - \_\_\_\_\_ a. The individual to be protected if 14 years of age or older
  - \_\_\_\_\_ b. The presumptive heirs of the individual to be protected
  - \_\_\_\_\_ c. If known, a person named as attorney in fact under a durable power of attorney (not usually applicable)
  - \_\_\_\_\_ d. The nominated conservator
  - \_\_\_\_\_ e. A governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending
  
- \_\_\_\_\_ 5. Serve the Notice of Hearing in the manner provided by MCR 5.104
  
- \_\_\_\_\_ 6. File a Proof of Service or Waivers of notice in accordance with MCR 5.104.

**The following is required when assets are ordered to be placed in restricted account:**

- \_\_\_\_\_ 7. File Order Regarding Appointment of Conservator, KCPC 104 (see attachment #8 for added language) when assets are ordered to be placed in restricted account.
  
- \_\_\_\_\_ 8. File Acceptance of Appointment, PC 571 (see attachment # 9) when assets are ordered to be placed in a restricted account.
  
- \_\_\_\_\_ 9. File Letters of Conservatorship, KCPC 105 (see attachment #10 for additional language) when assets are ordered to be placed in restricted account.

**The following is required when assets are ordered to be placed in a non-restricted account:**

- \_\_\_\_\_ 10. File Order Regarding Appointment of Conservator, PC 640 (see attachment # 11) when bond is ordered and assets are not ordered to be placed in a restricted account.
  
- \_\_\_\_\_ 11. File Bond PC 570 (see attachment # 12) if assets are not placed in restricted account.

\_\_\_\_ 12. File Letters of Conservatorship, PC 645 (see attachment # 13) when assets are placed in a non-restricted account.

\_\_\_\_ 13. File Verification of Funds on Deposit, KCPC 103, (see attachment # 14) within 5 days from the receipt of the funds in cases where the funds are not received on the date of the entry of the Order Approving Settlement.

**The following checklist/procedure is to be used for the Petition for Approval of Minor Settlement:**

\_\_\_\_ 14. Petition for Approval of Minor Settlement, KCPC 100 (see attachment #15) filed by a person interested in the individual's estate, affairs, or welfare, including a parent, guardian, or custodian, or a person who would be adversely affected by lack of effective management of the individual's property or business affairs.

\_\_\_\_ 15. If attorney fees are contingent, a copy of the written agreement must be filed with the Petition for Approval of Minor Settlement, along with a statement setting forth the fees and costs.

\_\_\_\_ 16. Statement of out-of-pocket expenses by a person other than attorney.

\_\_\_\_ 17. Court will set Petition for Approval of Minor Settlement for hearing and the minor must be present, unless for good cause, the Judge excuses the minor's presence.

\_\_\_\_ 18. Unless waived, notice of the hearing must be given to the following persons MCR 5.125(24)

\_\_\_\_ a. The individual to be protected if 14 years of age or older

\_\_\_\_ b. The presumptive heirs of the individual to be protected

\_\_\_\_ c. If known, a person named as attorney in fact under a durable power of attorney (not usually applicable)

\_\_\_\_ d. The nominated conservator

\_\_\_\_ e. A governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending

\_\_\_\_ f. May be advisable to notify the insurance company

\_\_\_\_ 19. If petitioner is not represented by an attorney, or if the petition is prepared by the attorney for the insurance company, the court will appoint an attorney for the minor, who has the powers and duties of a guardian ad litem. MCL 700.5406.

\_\_\_\_ 20. If part of the settlement is going to be paid to a parent for her/himself, the court may appoint an attorney for the minor to protect the minor's interest who has the powers and duties of a guardian ad litem. MCL 700.5406.

\_\_\_\_ 21. Serve the Notice of Hearing in the manner provided by MCR 5.104.

- \_\_\_\_\_ 22. File a Proof of Service or Waivers of notice in accordance with MCR 5.104.
  
- \_\_\_\_\_ 23. File Order Approving Minor Settlement KCPC 101 (see [attachment #16](#)).
  
- \_\_\_\_\_ 24. File Verification of Funds on Deposit, KCPC 103, (see [attachment #17](#)) within 5 days from the receipt of the funds in cases where the funds are not received on the date of the entry of the Order Approving Settlement.
  
- \_\_\_\_\_ 25. File Petition and Order, PC586 (see [attachment #18](#)) if assets are not to be placed in a restricted account.