

How to secure approval of a minor's compromise petition on your first try

By Molly M. McKibben

Once you have settled a case, it can be tempting to speed through the last steps in finalizing the lawsuit in order to get the client their money as quickly as possible. But if the case involves a minor, there are additional steps that are not only required by the court, but often by the settling defendants as a condition of settlement, and their significance can't be discounted. Failure to follow them carefully can result in a settlement process being dragged out unnecessarily or even derailed completely. Even experienced attorneys have tales of woe about having to come back to the court more than once to get a minor's settlement approved.

Every case involving settlement funds of a minor requires you to do what's referred to as a minor's compromise. It's important to understand the Five W's of a minor's compromise – what is it, why it's necessary, who can file one, where it can be filed, and what happens at the hearing. Understanding each of these can give you the foundation needed to have the best shot at it being approved by the court. But the crucial element for a successful petition is something that many lawyers looking to quickly wrap up a case overlook – attention to detail. A minor's compromise petition has many parts, and a lawyer who follows directions and provides complete and accurate responses substantially increases their likelihood of obtaining approval from the court on the first try.

The petition is filed by a petitioner, usually the minor's parents or a guardian, on behalf of the minor, who is referred to as the claimant.

Any settlement that is paid without going through the minor's compromise procedure is voidable by the minor's guardian – thus, defendants are usually keen to ensure that a plaintiff obtains court approval of the settlement to avoid the minor taking the monies and suing the defendant again. Many defendants will not issue payment on a settlement until the minor's compromise petition has been approved by the court.

The statutes and rules governing minor's compromises are found in California Probate Code §§ 3400-3613 and 3909, California Code of Civil Procedure §§ 372-376, California Family Code § 6602, and California Rules of Court, Rules 3.1384, 7.950-7.955. Depending on your jurisdiction, there may also be local rules that apply.

California courts require petitioners and claimants filing a minor's compromise petition to use the Judicial Council forms. The forms and documents *required* for a minor's compromise include:

1. Petition to Approve Compromise of Claim (MC-350) or Petition for Expedited Approval or Compromise of Claim (MC-350EX)

The petition itself appears intimidating to anyone tackling it for the first time. But the Judicial Council has done a great job of including directions for each section,



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What Is a Minor's Compromise Petition? And Why It's Important

A minor lacks capacity to enter into settlement agreements or open a bank account to deposit settlement monies in – they need an adult to do so on their behalf. Rightfully so, California courts want to ensure that settlement monies received by minors are protected and used in the best interest of the minor. In order to accomplish that goal, when the case of a minor is settled, you must obtain court approval of the settlement and the disposition of the funds to the minor and your firm. This is true for all settlements on behalf of minors, regardless of how small the amount. This is done via a petition for approval of a disputed claim for a minor, otherwise known as a minor's



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and if you follow the steps outlined in the forms, you are almost guaranteed success in securing approval. One petition needs to be filed on behalf of each minor. Starting the petition as soon as the minor client has decided how they would like to handle their settlement funds and as soon as all liens have been finalized gives you the time you need to get together all the documents that need to be filed with the petition.

There are a few specific portions of the petition that warrant additional advice:

If the minor's claim is for personal injuries, you will need to fill out Section 6, which asks for detail on the injuries sustained; Section 7, which asks for detail about their treatment for those injuries; and Section 8, which requires a copy of "any doctor's report containing a diagnosis of the claimant's injuries or a prognosis for the claimant's recovery" and "a report of the claimant's current condition." A short description will suffice for Sections 6 and 7, and while a report from a treating doctor or expert can be attached for Section 8, a discharge summary from a provider will also generally satisfy the requirement.

If there are medical or other liens that need to be paid on behalf of the minor, you will need to detail them in Section 12 of the petition. You will also need to include documentation from the provider or Medi-Cal confirming the final amount of the lien (which can be a letter or ledger reflecting the final or agreed-upon balance).

The attorney fee declaration is a crucial part of any minor's compromise petition where you are seeking fees from the minor's settlement. If you are requesting fees, you must file as Attachment 13(a) a declaration that discusses all of the applicable factors listed in California Rules of Court, Rule 7.955(b). You must also attach a copy of your fee agreement with the petitioner on behalf of the minor as Attachment 17(a). In the past, some jurisdictions had local rules that purported to limit attorney's fees on minors' cases, but those rules have been preempted by California Rules of Court, Rule 7.955(d). The court is to use the factors outlined in Rule 7.955(b) in determining whether an attorney's requested fee amount is "reasonable." The Rules of Court also require the court to "give consideration to the terms of any representation agreement made between the attorney and the representative of a minor." (See Cal. Rules of Court, Rule 7.955(a)(2).)

If you are requesting reimbursement of costs advanced on the case, you will need to include them in Section 13(b) of the petition, and include a list of all costs as Attachment 13(b).

Section 18 of the petition addresses how the settlement monies going to the minor will be handled. Probate Code §§ 3602 and 3611 outline the only available options for what to do with a minor's settlement funds. There are different options depending on the facts of each case – the age of the minor;

the amount of money they will be receiving after deducting liens, costs, and fees; their injuries/losses and need for future care or treatment; etc. It can be very helpful for an attorney representing a minor client who will be receiving a substantial amount of money to have the client and their parent/guardian meet with a financial planner or settlement planner to determine what the best option is. This is especially true if the minor will require a special needs trust (which is a trust that allows a minor to receive settlement income without reducing their eligibility for governmental benefits). Two of the more straightforward options that are utilized commonly are (1) depositing the funds into a blocked account that the minor has access to at age 18 or (2) using the funds to invest in an annuity on behalf of the minor that pays them set amounts of money at a schedule chosen by the parent/guardian. Which option is selected for the minor's money determines which attachment for Section 18 you will need to include (for instance, if the annuity option is chosen for a minor without a guardianship/conservatorship, you will need to attach documents that outline the details of the annuity as Attachment 18(b)(3).)

The petition also needs to be verified and signed by the petitioner (parent/guardian). Given how complex the petition can seem to an attorney, it can be even more confusing to a client. It can be helpful to set time aside to walk them through the petition and explain what each section means. Unfortunately, the Judicial Council forms are only available in English, and if the minor client and their parent/guardian

do not speak/read English competently, you will need to walk them through the forms in their native language or have the forms translated into their native language so they can understand them.

There also is an expedited petition option. An expedited minor's compromise is an option for claims (1) settling for \$50,000 or less or (2) claims where the total amount payable represents the individual policy limits of all liability insurance policies covering all proposed contributing policies. An expedited petition cannot be filed in a wrongful death case or in a case where any portion of the minor's funds will be placed in a trust. It can be approved without a hearing and must be approved by the court within 35 days. To file an expedited petition, you must use the expedited petition form, Judicial Council Form MC-350EX.

2. Application and Order for Appointing Guardian Ad Litem (CIV-010)

A guardian ad litem is a person that the court appoints to act on behalf of the minor and help make decisions on how to manage their settlement funds. It can be a parent or extended family member, or even a non-relative or lawyer.

If the minor's settlement comes after a lawsuit has been filed, the petitioner in the minor's compromise petition must be the guardian ad litem of the minor. If the lawsuit is currently pending, the Application for An Order Appointing a Guardian Ad Litem is a document that you have likely already filed with the complaint, and a second one need not be done. If the lawsuit is pending and the application hasn't already been filed, you should do that and get approval (often without a hearing) before filing the petition.

If the minor's case is settled without a lawsuit being filed, and the parent is the petitioner, then no order appointing a guardian ad litem is required. If someone other than the minor's parent is the petitioner, an Application for An Order Appointing a Guardian Ad Litem must be filed along with the petition.

3. Order Approving Compromise of Claim (MC-351)

In the haze of getting everything together for the petition, it's easy to forget the

second required document – the order. The order generally only requires one or two attachments related to what the minor and their parent/guardian has chosen to do with the minor's funds and mirrors the information included in the petition in Section 18.

Some courts also have specific rules requiring the submission of additional documents (example: Orange County Superior Court requires that for cases in which a lawsuit has already been filed, the first page of the complaint, amended complaint, cross-complaint, and any dismissals must be included with the petition); thus, it's critical that you check your jurisdiction's local rules before filing your petitions to ensure you're complying with all requirements.

Documents you may also need to file, depending on the facts of the case and how the minor client/their guardian have decided to handle the minor's settlement funds include:

If any portion of the minor client's settlement funds is being deposited into a blocked account, you will need to provide the court with two forms:

1. Order to Deposit Money into Blocked Account (MC-355)

This form is one that the court will sign at the hearing or thereafter and directs that the funds be deposited into a blocked account. You bring it with you and the petitioner to the banking institution and provide it to the bank so it will facilitate the deposit of the minor's funds.

2. Receipt and Acknowledgement of Order for the Deposition of Money into Blocked Account (MC-356)

This form is one that you must bring to the banking institution for the bank representative to sign confirming the minor's funds have been deposited in the blocked account. This form must be returned to the court (the court will typically set a deadline for the form to be filed) – it can be returned directly by the banking institution or facilitated by you.

If the minor client's settlement funds are being used in whole or in part to fund an annuity, you may need to file the following documents with the court:

1. Attorney Declaration Regarding Proof of Funding of Annuity

While it is not required, after a petition is granted where some portion or all

of the minor's funds will be used to invest in an annuity, some courts will ask you to provide proof that the annuity has been funded. This can take the form of your declaration that you file with the court that attaches a letter or other document from the annuity company stating that the annuity has been funded.

Occasionally a defendant seeking confidentiality regarding settlement amounts will request that the minor's compromise be filed under seal. In such situations, it makes the most sense for the defense attorney to bear the burden of filing a motion or ex parte application to seal the petition after plaintiff's counsel provides them with a completed, unredacted version of the petition.

Who Can File a Minor's Compromise Petition?

California Probate Code § 3500 allows the following people to represent the minor in compromising their claim:

- Either parent (if the parents are not living separate and apart);
- The parent "having the care, custody, or control of the minor" (if the parents are living separate and apart);
- A guardian ad litem as ordered by the court.

Where Can You File a Minor's Compromise Petition?

What jurisdiction a petition is filed in depends on the case. If a lawsuit has not been filed, the minor's compromise petition can be filed in the county where the minor resides or wherever venue of the lawsuit would be proper. Within that jurisdiction, some courts allow the petitioner to choose to file their minor's compromise petition in either a civil courtroom or probate courtroom.

If a lawsuit has been filed, different jurisdictions handle which department will hear the petition. Some jurisdictions require that a minor's compromise petition be filed and heard in a probate courtroom, even if there is a pending civil action. You should reach out to the court clerk for the jurisdiction where the case would be filed/has been filed to find out what the appropriate filing department is.

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How Much Does a Minor's Compromise Petition Cost to File?

As of the date of publication of this article, if the lawsuit has not been filed, a petition for compromise of the claim of a minor will cost a filing fee of \$435.

If there is already a lawsuit pending, you may have to pay nothing or may only need to pay the normal motion filing fee, which is usually around \$60. Some courts that provide court reporters may also charge a fee for having the court reporter present, which can be around \$30. It's important to contact the clerk of the court or the department where the petition will be filed to find out what the fees will be so these items can be included in your request for reimbursement of costs in the petition.

What Happens at a Minor's Compromise Hearing?

Unless you have filed an expedited minor's compromise petition, there will be a hearing on the petition. Typically, the petitioner (parent/guardian) and the minor are required to attend the hearing unless the court allows them to not attend after a showing of good cause. (See Cal. Rules of Court, Rule 7.952.) In today's age of virtual hearings, different departments within different jurisdictions have developed various local rules for whether they are requiring the petitioner and minor to attend in person and whether they may satisfy this requirement by a virtual appearance. You should contact the department where the petition has been filed to find out who, if anyone, needs to appear in person for the hearing.

At the hearing, the judge may ask the petitioner questions, and depending on

the age of the minor, the judge may also ask the minor some questions. The questions may range on topics such as the client's injuries (if the case involves personal injuries), how they are recovering from injuries or the death of a loved one, whether they are satisfied with your representation and the settlement, and whether they understand the terms of the settlement and the petition.

The judge may also ask you questions. You should be prepared to discuss the items covered in your fee declaration, as well as the costs incurred on the case. It's good practice to speak with clients ahead of the hearing and discuss the questions the judge may ask so they feel comfortable and are prepared.

With attention to detail and a healthy dose of preparation, you can ensure a high likelihood that your minor's compromise petition is approved by the court on your first try. ■