

IN THE COURT OF COMMON PLEAS, PROBATE DIVISION, GEauga COUNTY, OHIO
Judge Timothy J. Grendell

Information Sheet
Settlement of Minor's Injury Claim

WARNING

This Information Sheet is intended to provide you with a brief overview of the subject matter. It may not provide you with all information that you require to be fully informed of the law that is applicable to your case. Additionally, the information may not accurately describe the pertinent sections of the Ohio Revised Code that are referenced in the footnotes. You should read those sections that are referenced. The Ohio Revised Code has a link on the Court's website. Additionally, you should consider reading those sections that are footnoted using "Page's Ohio Revised Code Annotated," which can be found at the Geauga County Law Library in the basement of the Courthouse at 100 Short Ct. Street, Chardon, Ohio 44024. Page's Ohio Revised Code Annotated also will provide you a summary of applicable court decisions (known as "case law"). While the Help Center can provide you with a limited amount of information, the Help Center staff cannot provide you with legal advice, and this Information Sheet is not intended to provide you with legal advice that is applicable to your case. You must decide how to best use the information provided. In the footnotes you will see a reference such as "R.C. 2111.05." That refers to Ohio Revised Code Section 2111.05, which is found in R.C. Title 21, and in R.C. Chapter 2111.

Background

If a minor suffers a loss, whether personal injury or damage to the minor's property, and the loss results from an actionable claim against a third party (e.g. negligence, intentional tort, strict tort liability), and if the third party desires to enter into a settlement agreement, then there is a fundamental legal problem, which is that a minor, as a matter of law, does not have the legal capacity to enter into a binding settlement agreement. However, the Ohio Revised Code¹ and the Rules of Superintendence for the Courts of Ohio² provide a method to settle the minor's claim in a manner that protects both the third party who caused the loss and the minor. You should review (i) Geauga Probate Local Rules 68.1, 68.2, 68.3, and 68.4 and (ii) the Court's "Checklist - Settlement of Minor's Injury Claim," found on the Court's website.

General Requirements.

- The Applicant. If a guardian of the estate of the minor has been appointed, then that guardian shall seek the Court's authorization to settle the minor's claim for personal injury or property

¹ R.C. 2111.05 and R.C. 2111.18

² Sup. R. 68

damage by filing the form titled “Application to Settle Minor’s Claim” (Form 22.0),³ together with related documents. If a guardian of the estate of the minor has not been appointed, then a parent or other individual having custody of the child may either:

1. apply to be appointed guardian of the estate so that, as duly appointed guardian of the estate, the guardian may file that application and related documents;⁴ OR
 2. file a motion asking the Court for a court order dispensing with the appointment of a guardian of the estate and permitting that custodial parent or other person having legal custody to file that application.⁵
- Residency. The injured minor must be a Geauga County resident.
 - Multiple Minors. If multiple minor children suffer a loss, then a separate application must be prepared and filed for each child.

Documents to be Filed.

1. **Form 22.0 – “Application to Settle a Minor’s Claim”**
 - a. Narrative Statement. A narrative statement in support of the proffered settlement prepared by the applicant or applicant’s attorney. The narrative statement must include a description of the occurrence and the extent of the injury or damage.
 - b. Physician’s Statement.⁶ Note that the application shall be accompanied by a current statement of an examining physician in respect to (i) the injuries sustained, (ii) the extent of recovery, and (iii) the permanency of any injuries.
 - c. Other Claims. Moreover, the application shall state what additional funds, if any, are being paid to persons other than the minor as a result of the incident causing the injury to the minor.
 - d. Attorneys Fee. Finally, the application shall state what arrangement, if any, has been made regarding the payment of legal counsel, which, in any event, is subject to the Court’s approval.⁷
2. **Form 22.1 – “Waiver and Consent to Settle Minor’s Claim”** (to the extent that either or both parents are willing to do so, have the parent(s) sign this Waiver).
3. **Form 22.2 – “Entry Approving Settlement of a Minor’s Claim”**
4. **Certified copy of minor’s birth certificate**

³ Sup. R. 68(A)

⁴ See probate information sheet titled “Guardianship of a Minor” and “Checklist – Guardianship of a Minor”

⁵ Sup. R. 68(A). See also The Supreme Court of Ohio & Judicial System - Probate Bench Cards, Miscellaneous-Minor Settlements.

⁶ Sup. R. 68(B)

⁷ Sup. R. 68(B)

5. **Identification** - regarding the applicant (if not a court-appointed guardian of the estate or not represented by legal counsel) deliver (1) a government-issued photographic identification (e.g. a current driver's license or passport), and (2) evidence of current mailing address (e.g. recent utility bill, bank statement account, property tax bill, voter registration card).
6. **Criminal Background Check Authorization** - regarding the applicant (if not a court-appointed guardian of the estate) prepare and file with the Court the form titled "Background Certification and Records Check" (GC PF 4.30).

Parental Right to Notice. If a hearing is set, the applicant shall deliver to the noncustodial parent or parents a notice of the application to settle the minor's claim, no less than seven days before the hearing on the application, unless the parent(s) signed the form titled "Waiver and Consent to Settle Minor's Claim" (Form 22.1). To notify those parent(s), the applicant must use the form titled "Notice of Hearing-Settlement of Minor's Claim (GF PF 41.18A) and (i) serve that notice in compliance with Geauga Probate Local Rule 78.13, and (ii) provide the Court with proof of service by preparing and filing the form titled "Affidavit Evidencing Service of Notice" (GC PF 41.6). See probate information sheet titled "Service of Notice" for more details on service of notice and proof of service to the Court. If the address of a person to be served is unknown, or the name is unknown, and service of publication is required, then review Geauga Probate Local Rule 78.14 and probate information sheet titled "Service of Notice" for more details.

Required Appearance. Unless the Court orders otherwise, the injured minor, the parent or parents with whom the minor resides or the Person who has legal custody of the minor and the Guardian of the minor's estate, if any, their respective attorneys, guardian ad litem for the minor, if any, shall attend the hearing on the settlement of the minor's claim.⁸

Dispense with Hearing. The Court may dispense with a hearing if (1) the applicant is represented by an attorney, (2) the gross amount of the proposed settlement does not exceed \$10,000, (3) there are no disputed claims on any portion of the settlement proceeds, (4) a guardianship of the estate of the minor is not required by Applicable Law, and (5) the applicant is one or more of the minor's parents or adoptive parents and all parents or adoptive parents have consented to the settlement.

Post Order-Matters. Following the court order authorizing the settlement and payment and distribution of proceeds in accordance with that court order, the applicant shall prepare and file with the Court the form titled "Report of Distribution and Entry Minor's Claim" (Form 22.4). If the Court orders the funds are paid to a financial institution, then the applicant shall prepare and file with the Court the form titled "Verification and Receipt of Deposit" (Form 22.3).

R.C. §2111.182 Trust. The applicant should consider filing an application to have the court approve the establishment of a trust under R.C. 2111.182 to receive the funds intended for the injured minor, which will enable the delay of distribution until the minor attains the age of 25. See Geauga Probate Local Rules 68.4 and 78.20.

⁸ Sup. R. 68(C)

Net Proceeds of \$1,000 or Less.⁹

If the net settlement proceeds are \$1,000 or less and the applicant is the natural or adoptive parent of the minor, then the applicant may apply for the net proceeds to be paid to either or both of the minor's parents for the benefit of the minor in place of a minor guardianship. The parent receiving the settlement proceeds shall file with the Court the form titled 'Acknowledgment of Responsibility for Minor Settlement' (GC Form "GC PF 14.4) before the Court will approve the settlement. The Court generally will not approve distribution of net settlement proceeds exceeding \$1,000 directly to a parent, absent a showing of Exceptional Circumstances.

LEGAL PRACTICE IN THE PROBATE COURT IS RESTRICTED BY LAW TO ATTORNEYS WHO ARE LICENSED BY THE SUPREME COURT OF OHIO AND INDIVIDUALS WHO ARE HANDLING THEIR OWN LEGAL MATTERS. IF AN INDIVIDUAL WISHES TO HANDLE HIS OR HER OWN CASE, THAT PERSON MAY ATTEMPT TO DO SO, HOWEVER DUE TO THE COMPLEXITY OF THE LAW AND THE DESIRE TO AVOID COSTLY ERRORS, MANY PERSONS WHO HAVE MATTERS BEFORE THE COURT ARE REPRESENTED BY AN ATTORNEY.

IF YOU CHOOSE TO REPRESENT YOURSELF AND USE THE COURT'S FORMS, BE AWARE THAT STATE LAW PROHIBITS THE JUDGE, MAGISTRATE, AND EMPLOYEES OF THE GEauga COUNTY PROBATE COURT, INCLUDING THE HELP CENTER STAFF, FROM PROVIDING YOU WITH LEGAL ADVICE. IF YOU NEED LEGAL ADVICE, THEN YOU SHOULD CONTACT AN ATTORNEY OF YOUR CHOOSING.

⁹ See Geauga Probate Local Rule 68.1(F)