

## 25 SETTLEMENT IN FAVOR OF A MINOR

Alaska Civil Rule 90.2 provides that, before a release of a minor's claim can be effective, the settlement must be approved by the court. Court approval must be sought by filing a petition or motion. The court may approve a minor's settlement without a hearing if the amount of the settlement (after attorney's fees and costs are deducted) does not exceed \$25,000. In all other cases, a hearing is required.

If the settlement arises from personal injuries to the minor, the petition or motion must describe the extent of the injuries, the medical treatment provided, and the probable future course of treatment.<sup>304</sup> The petition or motion must state the minor's date of birth the relationship between the moving party and the minor, the circumstances giving rise to the claim, **the amount of any applicable liability insurance**, and the basis for determining that the settlement is fair and reasonable. If the settlement in favor of a minor arises from the wrongful death or injury of another person, the petition or motion must describe the relationship between the other person and the minor, and state whether the amount of the settlement is consistent with applicable state law.

No release agreement is effective to terminate a minor's interest until such funds are paid as directed by the court. The court may order the settlement to be held by a parent or guardian for the benefit of the minor where the balance of the settlement proceeds, after subtracting costs and attorney's fees, does not exceed \$10,000. Alternatively, the court may order that a formal trust be established for the benefit of the minor, or take other steps to protect the minor's interest.<sup>305</sup>

Settlements involving claims of minors (whether the minor was injured, or the minor is asserting a negligent infliction of emotional distress or loss of consortium claim) can create a host of collateral issues – such as whether the minor's paternity is in dispute. For example, a minor may have a claim based on the wrongful death of the minor's father, but there may be a dispute about paternity. In such situations, before approving a release of the minor's claims, the court must meaningfully assess the minor's chances of prevailing on the paternity issue. If paternity is virtually certain, the court should not normally permit any distribution that compromises the minor's interests.<sup>306</sup> The Alaska Supreme Court has explained that, although the trial court should not independently determine the extent of the minor's damages, it must exercise its independent judgment to determine if the proposed minor settlement is fair and reasonable.

<sup>304</sup> See Alaska R. Civ. P. 90.2(a)(2).

<sup>305</sup> See Alaska R. Civ. P. 90.2(b) for a complete list of options.

<sup>306</sup> *Matter of Estate of Brandon*, 902 P.2d 1299 (Alaska 1995).

For cases filed in U.S. District Court, settlements in favor of a minor are subject to the provisions of Local Rule 68.3. That rule requires minor settlements to be approved by the Superior Court for the State of Alaska under Civil Rule 90.2 and no judgment or order of dismissal will issue unless and until a certified copy of the order from the Superior Court approving the settlement has been filed.

Appendices:

Alaska R. Civ. P. 90.2  
D. Ak. LR 68.3

(1) *Approval.* A parent or guardian of a minor who has a claim against another person has the power to execute a full release or a covenant not to sue, or to execute a stipulation for entry of judgment on such claim. However, before such a document is effective, it must be approved by the court upon the filing of a petition or motion.

(2) *Petition or Motion.* A petition or motion for court approval of a minor's settlement under this rule must state the date of birth of the minor, the relationship between the moving party and the minor, the circumstances giving rise to the claim, the amount of any applicable liability insurance, and the basis for determining that the settlement is fair and reasonable. If the settlement arises from personal injuries to the minor, the petition or motion must describe the extent of the injuries, the medical treatment provided and the probable future course of treatment. If the settlement arises from the wrongful death or injury of another person, the petition or motion must describe the relationship between the other person and the minor and state whether the amount of the settlement is consistent with applicable state law.

(3) *Attorneys' Fees and Costs.* The court shall approve any attorneys' fees and costs that are to be paid from the settlement proceeds when the minor claimant is represented by counsel.

(4) *Hearing.* The court may approve the minor's settlement without a hearing if the settlement proceeds, after attorney's fees and costs are deducted, do not exceed \$25,000. When a hearing on the petition or motion is held, the court may require the presence of any person that has information concerning the minor's claim, the fairness of the settlement or any related matter.

(5) *Termination of Minor's Rights.* No instrument executed under this rule is effective to terminate a minor's interests until such funds are paid as directed by the court.

(b) **Disbursement of Proceeds.**

(1) *Order Directing Payment of Expenses, Costs and Fees.* The court shall order that reasonable expenses (medical or otherwise, including reimbursement to a parent, guardian or conservator), costs and attorney's fees be paid from the settlement.

(2) *Disposition of Remaining Balance.* The court shall order that the remaining balance of the settlement, including any future payments, be disposed of in a manner which benefits the best interests of the minor. Dispositions which may be allowed include:

(A) ordering the settlement to be held by a parent or guardian for the benefit of the minor if the remaining balance of the settlement does not exceed \$10,000;

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(B) ordering that a formal trust be established for the benefit of the minor;

(C) ordering the appointment of a conservator to hold the proceeds of the settlement for the benefit of the minor;

(D) ordering that the proceeds of the settlement be deposited in a federally insured financial institution in an account from which withdrawal is not permitted without authority of the court; or

(E) ordering that the proceeds of the settlement be transferred to a custodian for the benefit of the minor under the Alaska Uniform Transfers to Minors Act (commencing with AS 13.46.010).

(3) *Standards for Disbursement of Proceeds.* The person or institution with authority under subparagraph (b) (2) may authorize disbursement of the settlement proceeds:

(A) for the support and education of the minor if the settlement proceeds are the result of the death or disability of another person;

(B) for the medical bills, special education or other costs related to the minor's injuries if the settlement proceeds are the result of injuries to the minor; or

(C) for any payment in the best interests of the minor after consideration of the benefit to the minor, the resources of the parents or guardian, and the amount of remaining settlement proceeds.

### (c) Probate Master.

A master appointed to hear probate proceedings has the authority under this rule to:

(1) conduct the hearing set forth in paragraph (a) (4) and recommend to the court that the settlement be approved; (2) receive proof that the proceeds have been disposed of as set forth in subparagraph (b) (2); and (3) issue orders approving the withdrawal of funds pursuant to subparagraph (b) (2) (D).

### (d) Disbursement of Proceeds Resulting from Judgment.

Proceeds resulting from a judgment in favor of a minor must be disbursed as set forth in paragraph (b).

(Adopted by SCO 835 effective August 1, 1987; amended by SCO 1106 effective January 15, 1993)

### Annotations

#### Cases

Allocation of the proceeds of a wrongful death lawsuit was reversed because superior court failed to satisfy the requirements of this rule. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

The appellate court exercises its independent judgment in deciding whether this rule applies to particular aspects of a settlement affecting a minor's interests, and if so, whether the

proceedings satisfy that rule. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

Attorney's fees equaling 89% of net amount minor was to receive in wrongful death settlement were potentially excessive. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

Total fee award was potentially excessive given several attorneys, each operating under a separate contingent fee agreement, asked the court to order the minor to pay attorneys' fees based on those agreements. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

If settlement of a paternity claim was the result of duress, the settlement did not satisfy this rule. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

Where allegations raising possible ethical and fiduciary violations, fee splitting and duress, relative to an allocation of wrongful death proceeds were not patently insufficient, the trial court should have considered them when allocating settlement proceeds. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

Court, in determining whether to approve a 1992 wrongful death settlement, could only determine whether the settlement's allocations were fair and reasonable by considering the substance and effects of all aspects of a 1990 paternity agreement which potentially disadvantaged the minor. Because the 1990 agreement never received the scrutiny required by this rule, the court erred in relying on that agreement to calculate the final distribution of wrongful death proceeds in 1992. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

Active involvement of minor's mother and attorney retained by mother to represent minor's interests in settlement of paternity suit which could determine whether minor would receive any proceeds from a wrongful death action did not excuse failure to follow Rule 90.2 regarding the paternity settlement or to consider the terms of the paternity settlement in ultimately considering settlement of the wrongful death case. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

When a minor's paternity is in dispute, and that dispute may determine whether the minor receives anything from wrongful death proceeds, the court, before approving a complete or partial relinquishment of the minor's claims to those proceeds, must meaningfully assess the minor's chances of prevailing on the paternity issue. If paternity is virtually certain, the court should not normally permit any distribution that compromises the minor's interests. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

In determining whether a settlement is fair and reasonable, the court must determine whether the benefit the minor receives is commensurate with what the minor gives up, and must take into account all consideration to be given or received by the minor. This necessarily requires the court to evaluate the risks and benefits of prosecuting the claim to completion. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

The trial court cannot approve a proposed minor settlement without first determining that it is fair and reasonable. The court may conduct its own investigation of the facts in making that determination and must exercise its independent judgment. *Matter of Estate of Brandon*, Op. No. 4216, 902 P2d 1299 (Alaska 1995).

**RULE 68.3 SETTLEMENTS AND  
JUDGMENTS IN FAVOR OF  
A MINOR**

**(a) Power to Execute a Release, Stipulation, or Acknowledgment of Satisfaction of Judgment.**

(1) A parent or legal guardian of a minor who asserts a claim on behalf of the minor against another person in the United States District Court has the power to execute a release, a stipulation for entry of judgment, or an acknowledgment of satisfaction of judgment.

(2) Any release, stipulation, or acknowledgment is effective only if executed in compliance with the provisions of this rule.

**(b) Settlements.** Subject to the provisions of subsection (d), a settlement agreement, release, or stipulation that has the effect of resolving or dismissing any claim by a minor must be approved by the Superior Court for the State of Alaska under Rule 90.2, Alaska Rules of Civil Procedure.

(1) The Superior Court must approve:

[A] the terms of any settlement, release or stipulation; and

[B] the plan of disbursement, including the provisions for expenses, costs, and fees.

(2) No judgment or order of dismissal will issue unless and until a certified copy of the order of the Superior Court of the State of Alaska approving the settlement, release or stipulation under Rule 90.2 is filed with this court.

**(c) Judgments.** Subject to the provisions of subsection (d), upon the rendering of a final judgment in favor of a minor, the parent or guardian asserting the claim on behalf of the minor must file a petition with the Superior Court for the State of Alaska seeking approval, under Rule 90.2, Alaska Rules of Civil Procedure, of a plan of disbursement of the proceeds.

(1) The Superior Court must approve the plan of disbursement contemplated, including the provisions for expenses, costs, and fees.

(2) No acknowledgment of satisfaction of the judgment will be effective until a certified copy of the order of the Superior Court approving the plan of disbursement is filed with this court.

**(d) Non-Resident Parents and Guardians.**

(1) Where a parent or legal guardian subject to this rule is not a resident of the State of Alaska, and where the state of the parent or guardian's residence has a procedure similar to Rule 90.2, Alaska Rules of Civil Procedure, the court may, upon application, approve the substitution of a similar procedure for compliance with subsection (b).

(2) In the absence of any similar procedure, the court may adopt such procedure as it deems appropriate for approval of a settlement, taking guidance from Rule 90.2.

**Related Provisions**

Ak.Civ.R 90.2

Settlement and Judgments in Favor of a Minor

Effective October 1, 2002.