

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Thomas W. Stoever, Chair
Douglas C. Miller, Committee Counsel, 415-865-7535,
douglas.miller@jud.ca.gov

DATE: August 9, 2004

SUBJECT: Proposal to revise *Petition to Approve Compromise of Claim*,
and *Order Approving Compromise of Claim*, effective January 1, 2005.
(Revise forms MC-350 and MC-351) (Action Required)

Issue Statement

Recently enacted legislation sponsored by the State Bar and supported by the Judicial Council amends and adds new Probate Code provisions that require and govern court approval of compromises of minors' claims or pending actions involving minors or incompetent persons and disposition of the proceeds of judgments in favor of such persons.¹ Form MC-350, the form petition for court approval required under Probate Code section 3600 et seq., and form MC-351, the order on the petition, do not reflect the new legislation.

Recommendation

The Probate and Mental Health Advisory Committee recommends that forms MC-350 and MC-351 be revised effective January 1, 2005, to incorporate changes in applicable law that will be made on that date by Assem. Bill 1851, specify the disposition alternatives available for the net proceeds of compromises or judgments in favor of minors or disabled adults, explicitly apply the forms to a petition for court

¹ Probate Code sections 3600–3613. The legislation is Stats. 2004, ch. 67, referred to in this report by its bill number, Assem. Bill 1851. It was signed by the Governor on June 23, 2004, and will become effective on January 1, 2005. The legislation replaces the phrase “incompetent person” with “person with a disability” throughout the affected code sections. This report uses the phrase “disabled adult” to describe persons other than minors who are subject to the amended Probate Code provisions.

approval of the disposition of a judgment in favor of a minor or disabled adult, and clarify the information required by the forms concerning court-approved expenses to be deducted from the gross proceeds of a compromise or judgment.

The texts of the proposed revised forms MC-350 and MC-351 are attached at pages 7–14 and 15–17, respectively.

Attached at pages 18–24 is a copy of the current form MC-350.

Attached at pages 25–27 is a copy of the proposed revised form MC-351.

Attached at pages 28–36 is a copy of AB 1851.

Rationale for Recommendation

Assem. Bill 1851’s principal purpose is to replace “incompetence” with “disability” for purposes of the affected Probate Code provisions. The new law defines “disability” primarily by references to federal law and regulations that determine disabled persons’ eligibility for federal needs-based benefits.² This change makes the court approval process available to adults who are disabled within the meaning of the new definition but who do not have a conservator and are not mentally impaired.³ The legislation also modifies and clarifies the disposition alternatives available for the proceeds of a compromise or judgment in favor of a minor or a disabled adult when he or she does not have a guardian or conservator of the estate.⁴

Provisions for disabled but mentally capable adults

Assem. Bill 1851 addresses mentally capable but disabled adults in two ways. First, new Probate Code section 3613 provides that such persons must expressly consent to the court’s order under section 3600. Second, section 3611(i) has been added to authorize the court to order a distribution of net proceeds directly to a disabled adult.

Revised form MC-350 would provide for a disabled adult person’s consent by adding items 3a(5) and (6) to page 1 of the form, identifying the person as the petitioner or referencing an attachment to the form that contains his or her written consent to the relief requested in the petition of another. The instructions for these items would require a statement of facts demonstrating the disabled adult person’s capacity to petition or consent to a petition.

² See Probate Code section 3603, as amended by section 6 of Assem. Bill 1851.

³ See Probate Code section 3613, added by section 11 of Assem. Bill 1851. Mental capacity is expressed as the capacity to make a decision within the meaning of Probate Code section 812.

⁴ See Probate Code section 3611, as amended by section 9 of AB 1851.

Specification of disposition alternatives in form MC-350

Probate Code section 3602 provides 7 possible disposition alternatives for the net proceeds of a compromise or judgment in favor of a minor or disabled adult if he or she has a guardian or conservator of the estate. If he or she does not have an estate guardian or conservator, section 3611 as amended by AB 1851 provides 11 disposition alternatives.⁵ The current petition, form MC-350, item 15 at page 6, specifies only 2 alternatives, deposit to a blocked account and “other.” The revised form MC-350 would provide for all of the disposition alternatives available under the law as amended by Assem. Bill 1851.⁶ Any combination of alternatives for which court approval is requested could be specified and easily identified in the petition.

Disposition of proceeds of judgment

Revised forms MC-350 and MC-351 would for the first time explicitly refer to an application for court approval of expenses to be deducted from a judgment, and a proposed disposition of the net proceeds of a judgment, in favor of a minor or disabled adult. Although an application for court approval distinct from entry of the judgment itself has always been required in this situation⁷ and the current forms have been used for this purpose, the forms currently refer only to a compromise or settlement. The revised forms would explicitly provide for or refer to judgments in addition to compromises or settlements throughout the text of both forms, including the titles of the forms and the text of the note at the top of page 1 of form MC-350. In addition, a new item 4 would be added at page 2 of form MC-350.

⁵ Assem. Bill 1851 makes the following changes in section 3611:

1. The alternative of distribution to a county treasurer has been moved from subdivision (b) to a new subdivision (h), uncovering the alternatives of distribution of money to an insured blocked account or single-premium annuity and distribution of property other than money on conditions that the court determines are in the best interest of the minor or disabled adult. Before the amendment these alternatives were in the last part of a long sentence in a detailed provision about the county treasurer. Some courts treated them as authorized investments by the county treasurer rather than disposition alternatives available to the court.
2. An ambiguity between dispositions of property other than money on “best-interest” conditions under subdivisions (b) and (d) of section 3611 has been resolved by Assem. Bill 1851. As amended, these subdivisions will authorize distribution of property other than money on “best-interest” conditions set by the court without a value ceiling (subd. b), but will place a limit of \$20,000 on a distribution of money on “best-interest” conditions (subd. d).
3. A new subdivision (i) has been added, providing for an outright distribution of money or other property to the affected person with a disability.

⁶ Item 16 at pages 6–7 of revised form MC-350.

⁷ See Probate Code section 3601, which says, in part, that the court giving a judgment shall make a *further* order authorizing and directing payment of reasonable expenses, costs, and attorney fees from the proceeds of the judgment. See also sections 3602 and 3610, which provide for court approval of the disposition of the net proceeds of a judgment in favor of a minor or disabled person after payment of the expenses and attorney fees approved by the court.

Item 4 would require the petitioner to state whether the claim involved has been or will be reduced to judgment after a trial on the merits. If so, the petitioner would be required to attach a copy of the (proposed) judgment but would be excused from answering subsequent items in the form that plainly apply only to a proposed compromise of a claim or pending action without trial.⁸

Court-approved expenses

Revised form MC-350 would clarify and amplify the requested information about expenses and attorney fees to be approved by the court as deductions from the proceeds of a compromise or judgment. The following changes are proposed:

1. Item 10 of the form, concerning medical expenses, would ask for the amount of the medical lien held by each health-care provider and the total amount of medical liens. The item would require an explanation of any differences between the total amount of medical liens, the total amount owed for medical expenses net of negotiated reductions, and the total amount of medical expenses to be paid from the proceeds of the compromise or judgment.
2. Item 14 of the revised form (item 13 of the current form) would be revised to clarify that the expenses to be listed there are not limited to expenses incurred by the claimant's attorney.
3. A summary would be added as new item 19 at page 8 of the revised form to show in one place the gross amount of proceeds of the proposed compromise or judgment, all deductions for authorized expenses and attorney fees, and the net amount of proceeds available for the affected minor or disabled adult.

Alternative Actions Considered

New legislation requires most of the changes proposed for these forms. No alternatives to their revision was considered. The advisory committee also elected to go beyond the changes necessary to comply with the new law to make the forms more complete, clearer, and easier to review.

Comments From Interested Parties

This proposal was circulated to a special list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters, and probate interest

⁸ Items 5, 6, 9, 12, 13, and 21 of revised form MC-350. These items include a description of the facts and circumstances of the incident or accident giving rise to the claim, the nature and extent of the injuries and recovery, the amount and terms of a compromise, and the statement of diligence in the investigation of facts and circumstances of the incident leading to the compromise.

The phrase "after trial on the merits" is used in item 4 to distinguish a judgment entered after a fully contested trial from a judgment entered as part of a compromise, e.g., a consent or stipulated judgment. A petitioner presenting a compromise judgment for court approval would be required to fully respond to all items in the form.

sections of local bar associations, in addition to the AOC's standard list of interested court executives, individuals, and organizations, including the Consumer Lawyers of California, whose members represent a high percentage of claimants.

Attached at pages 37–42 is a chart showing the comments received and responses by the Probate and Mental Health Advisory Committee. Six comments were received. Three commentators agreed with the proposal without specific comments. The comment of Ms. Mary M. Davis, a court executive officer, approved the revised forms but expressed concern that redefining “incompetence” as “disability” would cause rather than alleviate confusion. In response to Ms. Davis's comment, the advisory committee notes that the definition of “person with a disability” in Probate Code section 3603, as amended by Assem. Bill 1851, should provide sufficient clarity.

Another approving comment, that of private attorney Richard Haeussler, requested that form MC-350 require attachment of a copy of a notice of the underlying claim or action that, under provisions of the Medi-Cal law, must be sent to the Department of Health Services in some circumstances.⁹ The advisory committee declined to revise the form to require attachment of a copy of the notice. If a court desires more evidence than a petitioner's allegation that notice has been given, it could always require the petitioner to produce the served notice at the hearing on the petition.

The most extensive comments were made by Concord personal injury attorney Hal Seibert, who would approve the revised forms if modified in accord with his comments. The advisory committee disagrees with four of Mr. Seibert's comments, but has made changes in form MC-351 and recommends adoption of these changes in response to another comment. This comment and Mr. Seibert's principal comments with which the advisory committee disagrees are discussed below. The committee's responses to all of Mr. Seibert's comments are shown in the attached comment chart.

Mr. Seibert's first recommendation concerns item 9 on page 3 of the revised form petition, which calls for information about the claimant's current medical condition, including attachment of medical reports to support the information stated. Mr. Seibert requests that the petitioner be excused from producing and attaching medical reports in an uninsured motorist (UM) case where the policy limits of the UM policy will be paid under the terms of the compromise. The advisory committee disagrees with this comment. It does not believe that a blanket exemption from providing medical reports should be provided in the form for a policy-limits uninsured motorist claim. Judges always have discretion to waive medical reports in appropriate cases.

⁹ Welfare and Institutions Code section 14124.73. Item 17 of the revised form (item 16 of the current form) requires the petitioner to state that the notice has or has not been sent, and if not, to explain why not.

Mr. Seibert's second recommendation concerns the endorsement required for checks to be deposited in blocked accounts under item 7b(2)(a) at page 2 of form MC-351. The endorsement ended with the phrase "and no withdrawals may be made from the [blocked] accounts without a written court order." Mr. Seibert reports that this endorsement language causes some financial institutions to require a further court order at the time of withdrawal from a blocked account even when the *Order to Deposit Money Into Blocked Account*, Judicial Council form MC-355, used to establish the account, recites that the minor claimant may collect the proceeds of the account without further order of the court upon attaining his or her majority (item 5b in form MC-355). In that situation the *Order to Deposit* is the court order referred to in the endorsement in form MC-351 and should be the only order required.

Mr. Seibert recommends modifying the endorsement required in item 7b(2)(a) to end with the phrase "no withdrawals shall be made except as provided in the *Order to Deposit Money Into Blocked Account*." The advisory committee agrees with this recommendation and made this change in the attached modified form.

Mr. Seibert also is concerned that the 48-hour period mentioned in item 8a of the order, form MC-351 at page 3, is too short because the settlement check, payable to the claimant or fiduciary and the attorney, must be held in the attorney's trust account for that period of time or longer. The advisory committee disagrees with this comment and has declined to increase the time period. Its response to Mr. Seibert's comment notes that the current and proposed revised forms contemplate that only the checks for payment of expenses and attorney fees are to be made payable jointly to the petitioner and the attorney. Checks for payment of the net proceeds for the benefit of the claimant after deduction of expenses and attorney fees are not to be made payable to the attorney and, thus, may be deposited directly into the blocked accounts within 48 hours under item 8 of the order.

Implementation Requirements and Costs

This proposal is a complete overhaul of the form petition and order. The petition would be increased by one page. However, the petition will provide a detailed description of every disposition alternative available. It should provide important additional information and guidance to parties and their attorneys, particularly those unfamiliar with personal injury practice. The forms' lesser reliance on attachments should actually reduce costs of preparation, filing, and storage of the forms. The additional information requested about proposed settlements should give courts an enhanced opportunity to exercise meaningful supervision over these transactions.

Attachments

CASE NAME: 	CASE NUMBER:
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4. **Nature of claim**

The claim of the minor or adult person with a disability

- a. has not been filed in an action or proceeding. *(Complete items 5–23.)*
 b. is the subject of a pending action or proceeding that will be compromised without a trial on the merits of the claim.

Name of court:

Case No.:

Trial date:

(Complete items 5–23.)

- c. has been or will be reduced to a judgment for the claimant after a trial on the merits of the claim.

Judgment filed on *(date)*:

Amount: \$

(Attach a copy of the (proposed) judgment as Attachment 4c and complete items 7–8, 10–11, 14–20, and 22–23.)

5. **Incident or accident**

The incident or accident occurred as follows:

a. Date and time:

b. Place:

c. Persons involved *(names)*:

Continued on Attachment 5.

6. **Nature of incident or accident**

The facts, events, and circumstances of the incident or accident are *(describe)*:

Continued on Attachment 6.

7. **Injuries**

The following injuries were sustained by the claimant as a result of the incident or accident *(describe)*:

Continued on Attachment 7.

8. **Treatment**

The claimant received the following care and treatment for the injuries sustained as a result of the incident or accident *(describe)*:

Continued on Attachment 8.

CASE NAME: 	CASE NUMBER:
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9. **Extent of injuries and recovery**

(An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's present condition, must be attached to this petition as Attachment 9.)

- a. The claimant has recovered completely from the effects of the injuries described in item 7, and there are no permanent injuries.
- b. The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are temporary *(describe the remaining injuries)*:

Continued on Attachment 9b.

- c. The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are permanent *(describe the permanent injuries)*:

Continued on Attachment 9c.

10. **Medical expenses**

a. **Totals**

- (1) **Total charges:** \$ _____
- (2) **Total amount paid (whether or not by insurance):** \$ _____
- (3) **Total of negotiated reductions, if any:** \$ _____
- (4) **Total net amount owed:** \$ _____
- (5) **Total amount of medical liens, if any:** \$ _____
- (6) **Total amount of medical expenses to be paid from proceeds of settlement or judgment:** \$

(Explain any differences between items 10a (4),(5), and (6) in Attachment 10.)

- b. The names of the hospitals, doctors, and other health-care providers that have furnished care and treatment for claimant, the respective charges for such care and treatment, the amounts paid, the amounts of negotiated reductions of the charges, if any, the net amounts owed to each provider, and the amount of the provider's lien, if any, are described below:

- (1) (a) Provider *(name)*:
- (b) Address:

(c) Care or treatment *(describe)*:

- (d) Amount charged: \$ _____
- (e) Amount paid (whether or not by insurance): \$ _____
- (f) Negotiated reduction, if any: \$ _____
- (g) Net amount owed: \$ _____
- (h) Amount of lien, if any: \$ _____
- (i) Amount to be paid from proceeds of settlement or judgment: \$

- (2) (a) Provider *(name)*:
- (b) Address:

(c) Care or treatment *(describe)*:

- (d) Amount charged: \$ _____
- (e) Amount paid (whether or not by insurance): \$ _____
- (f) Negotiated reduction, if any: \$ _____
- (g) Net amount owed: \$ _____
- (h) Amount of lien, if any: \$ _____
- (i) Amount to be paid from proceeds of settlement or judgment: \$

Continued on Attachment 10. *(Provide information about additional providers in the above format.)*

CASE NAME: 	CASE NUMBER:
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11. Information about attorney representing or assisting petitioner

- a. (1) Petitioner has not been represented or assisted by an attorney in preparing this petition or in any other way with respect to the claim asserted *(if this item is checked, go to item 12).*
- (2) Petitioner has been represented or assisted by an attorney in preparing this petition or with respect to the claim asserted *(if this item is checked, answer questions 11b–11g below).*
- b. The attorney who has represented or assisted petitioner is *(name)*:
 - (1) State Bar number:
 - (2) Law firm:
 - (3) Address:

 - (4) Telephone number:
- c. The attorney did not did become concerned with this matter, directly or indirectly, at the instance of a party against whom the claim is asserted or a party's insurance carrier. *(If you answered "did," explain the circumstances in Attachment 11c.)*
- d. The attorney is not is representing or employed by any other party or any insurance carrier involved in the matter. *(If you answered "is," identify the party or carrier and explain the relationship in Attachment 11d.)*
- e. The attorney has not has received attorney's fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition *(if you answered "has," identify the person who paid the fees or other compensation, the amounts paid, and the dates of payment):*

<u>From whom (names)</u>	<u>Amounts</u>	<u>Dates</u>
	\$	
	\$	
	\$	

Continued on Attachment 11e.

- f. The attorney does not does expect to receive attorney fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition *(if you answered "does," identify the person who will pay the fees or other compensation, the amounts to be paid, and the expected dates of payment):*

<u>From whom (names)</u>	<u>Amounts</u>	<u>Expected dates</u>
	\$	
	\$	
	\$	

Continued on Attachment 11f.

- g. Petitioner and the attorney do not do have an agreement for services provided in connection with the claim giving rise to this petition. *(If you answered "do," describe the terms of the agreement including the amount of any contingency fee):*

Continued on Attachment 11g.

CASE NAME: 	CASE NUMBER:
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15. Total balance

The balance of the proceeds of the proposed settlement or judgment remaining for the claimant after payment of all requested fees and expenses is: \$

16. Disposition of balance of proceeds of settlement or judgment

Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows:

a. There is a guardianship of the estate of the minor or a conservatorship of the estate of the adult person with a disability filed in *(name of court)*:

Case No.:

(1) \$ _____ of the proceeds in money or other property will be paid or delivered to the guardian of the estate of the minor or the conservator of the estate of the conservatee. The money or other property is specified in Attachment 16a(1).

(2) Petitioner is the guardian or conservator of the estate of the minor or the adult person with a disability. Petitioner requests authority to deposit or invest \$ _____ of the money or other property to be paid or delivered under 16a(1) with one or more financial institutions in this state or with a trust company, subject to withdrawal only as authorized by the court. The money or other property and the name, branch, and address of each financial institution or trust company are specified in Attachment 16a(2).

(3) Petitioner proposes that all or a portion of the proceeds **not** become part of the guardianship or conservatorship estate. Petitioner requests authority to deposit or transfer these proceeds as follows *(check all that apply)*:

- (a) \$ _____ will be deposited in insured accounts in one or more financial institutions in this state from which no withdrawals can be made without a court order. The name, branch, and address of each depository are specified in Attachment 16a(3).
- (b) \$ _____ will be invested in a single-premium deferred annuity subject to withdrawal only on order of the court. The terms and conditions of the annuity are specified in Attachment 16a(3).
- (c) \$ _____ will be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the property to be transferred are specified in Attachment 16a(3).
- (d) \$ _____ will be transferred to the trustee of a trust that is either created by or approved of in the order approving the settlement or the judgment given or to be given for the minor. This trust is revocable when the minor attains the age of 18 years and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the property to be transferred are specified in Attachment 16a(3). A copy of the (proposed) judgment is attached as Attachment 4c.
- (e) \$ _____ will be transferred to the trustee of a special needs trust under Probate Code sections 3602(d) and 3604 for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the property to be transferred are specified in Attachment 16a(3).

b. There is no guardianship of the estate of the minor or conservatorship of the estate of the adult person with a disability. Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows *(check all that apply)*:

- (1) A guardian of the estate of the minor or a conservator of the estate of the adult person with a disability will be appointed. \$ _____ of money and other property will be paid or delivered to the person so appointed. The money or other property are specified in Attachment 16b(1).
- (2) \$ _____ of money will be deposited in insured accounts in one or more financial institutions in this state, subject to withdrawal only upon the authorization of the court. The name, branch, and address of each depository are specified in Attachment 16b(2).
- (3) \$ _____ of money will be invested in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court. The terms and conditions of the annuity are specified in Attachment 16b(3).

CASE NAME: _____	CASE NUMBER: _____
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16. b. **Disposition of proceeds of settlement or judgment**

- (4) \$ _____ will be paid or transferred to the trustee of a special needs trust under Probate Code sections 3604 and 3611(c) for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the money or other property to be paid or transferred are specified in Attachment 16b(4).
- (5) \$ _____ will be paid or delivered to a parent of the minor, upon the terms and under the conditions specified in Probate Code sections 3401–3403, without bond. The name and address of the parent and the money or other property to be delivered are specified in Attachment 16b(5). (*Value of minor's entire estate, including the money or property to be delivered, must not exceed \$5,000.*)
- (6) \$ _____ will be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the money or other property to be transferred are specified in Attachment 16b(6).
- (7) \$ _____ will be transferred to the trustee of a trust that is either created by or approved of in the order approving the settlement or the judgment given or to be given for the minor. This trust is revocable when the minor attains the age of 18 years and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the money or other property to be transferred are specified in Attachment 16b(7).
 A copy of the (proposed) judgment is attached as Attachment 4c.
- (8) \$ _____ of money will be held on such conditions as the court in its discretion determines is in the best interest of the minor or the adult person with a disability. The proposed conditions are specified on Attachment 16b(8). (*Value must not exceed \$20,000.*)
- (9) \$ _____ of property other than money will be held on such conditions as the court in its discretion determines is in the best interest of the minor or the adult person with a disability. The proposed conditions and the property are specified in Attachment 16b(9).
- (10) \$ _____ will be deposited with the county treasurer of the County of (*name*):
The deposit is authorized under and subject to the conditions specified in Probate Code section 3611(h).
- (11) \$ _____ will be paid or transferred to the adult person with a disability. The money or other property is specified in Attachment 16b(11).
- Continued on Attachment 16.

17. **Medi-Cal notice**

Notice of the claim or action has has not been given under Welfare and Institutions Code section 14124.73. (*If notice has not been given, explain*):

Continued on Attachment 17.

18. **Statutory liens for special needs trust**

Petitioner requests a court order for payment of funds to a special needs trust (*explain how statutory liens under Probate Code section 3604, if any, will be satisfied*):

Continued on Attachment 18.

CASE NAME: 	CASE NUMBER:
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19. Summary

- a. Gross amount of proceeds of settlement or judgment for claimant: \$
- b. Medical expenses to be paid from proceeds of settlement or judgment: \$
- c. Attorney fees to be paid from proceeds of settlement or judgment: \$
- d. Expenses (other than medical) to be paid from proceeds of settlement or judgment: \$ _____
- e. Total of fees and expenses to be paid from proceeds of settlement or judgment (add (b), (c), and (d)): \$ (_____)
- f. Balance of proceeds of settlement or judgment available for claimant after payment of all fees and expenses (subtract (e) from (a)): \$

20. Additional orders

Petitioner requests the following additional orders (specify and explain):

Continued on Attachment 20.

21. Petitioner has made a careful and diligent inquiry and investigation to ascertain the facts relating to the incident or accident in which the claimant was injured; the responsibility for the incident or accident; and the nature, extent, and seriousness of the claimant's injuries. Petitioner fully understands that if the compromise proposed in this petition is approved by the court and is consummated, the claimant will be forever barred from seeking any further recovery of compensation even though the claimant's injuries may in the future appear to be more serious than they are now thought to be.

22. Petitioner recommends the compromise settlement or the proposed disposition of the proceeds of the judgment for the claimant to the court as being fair, reasonable, and in the best interest of the claimant and requests that the court approve this compromise settlement or proposed disposition and make such other and further orders as may be just and reasonable.

23. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME OF ATTORNEY)	▶	(SIGNATURE OF ATTORNEY)
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PETITIONER)	▶	(SIGNATURE OF PETITIONER)
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ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i> <hr style="width: 10%; margin-left: 0;"/> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER:
CASE NAME:	HEARING DATE:
PETITION TO APPROVE COMPROMISE OF CLAIM <input type="checkbox"/> MINOR <input type="checkbox"/> INCOMPETENT PERSON	DEPT.: _____ TIME: _____

NOTE: This form is to be used for the compromise of the claim of a minor or an incompetent person (including a conservatee) under Code of Civil Procedure section 372 et seq. or Probate Code section 3500 et seq. The person compromising the claim and the minor or incompetent person must attend the hearing on this petition unless the court for good cause dispenses with the personal appearance. The court may require the presence and testimony of witnesses, including the attending or examining physician, and other evidence relating to the merits of the claim, and the nature and extent of the injury, care, treatment and hospitalization.

1. **Petitioner** *(name):*

2. **Claimant** *(name):*

- a. Address:
- b. Date of birth:
- c. Age:
- d. Sex:
- e. Minor Incompetent person

3. **Relationship**

a. Petitioner's relationship to the claimant *(check all applicable boxes):*

- (1) Parent
- (2) Guardian ad litem
- (3) Guardian
- (4) Conservator
- (5) Other relationship *(specify):*

b. Petitioner is not is a plaintiff in a suit arising out of the same incident or accident from which the claim arises *(if you answered "is," explain the circumstances and whether the pendency or disposition of the petitioner's own claim has in any way affected the proposed compromise of the claim that is the subject of this petition):*

Continued on Attachment 3b.

CASE NAME:	CASE NUMBER:
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3. c. Petitioner is not is a claimant against the recovery of the claimant (if you answered "is," explain the circumstances and whether the pendency or disposition of the petitioner's own claim has in any way affected the proposed compromise of the claim that is the subject of this petition):

Continued on Attachment 3c.

4. Incident or accident

The accident or incident occurred as follows:

- a. Date and time:
- b. Place:
- c. Persons involved:

5. Nature of incident or accident

The facts, events, and circumstances of the accident or incident are (describe):

Continued on Attachment 5.

6. Injuries

The following injuries were sustained by the claimant as a result of the accident or incident (describe):

Continued on Attachment 6.

7. Treatment

The claimant received the following care and treatment for the injuries sustained as a result of the accident or incident (describe):

Continued on Attachment 7.

CASE NAME:	CASE NUMBER:
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8. Extent of injuries and recovery

(An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's present condition, must be attached to this petition as Attachment 8.)

- a. The claimant has recovered completely from the effects of the injuries described in item 6, and there is no permanent injury.
- b. The claimant has not recovered completely from the effects of the injuries described in item 6, and the injuries from which the claimant has not recovered are temporary *(describe the remaining injuries)*:

Continued on Attachment 8b.

- c. The claimant has not recovered completely from the effects of the injuries described in item 6, and the injuries from which the claimant has not recovered are permanent *(describe the permanent injuries)*:

Continued on Attachment 8c.

9. Medical expenses

- (1) **Total charges:** \$
- (2) **Total amount paid *(whether or not by insurance)*:** \$
- (3) **Total negotiated reduction, if any:** \$
- (4) **Net amount owed:** \$

The names of the hospitals, doctors, and other providers that have furnished care and treatment for claimant, the respective charges for such care and treatment, the amounts paid (whether or not by insurance), the amounts of negotiated reductions of the charges, if any, and the net amounts owed to each provider are described below:

- a. Provider *(name)*:
 - (1) Address:
 - (2) Care or treatment *(describe)*:
 - (3) Amount charged: \$
 - (4) Amount paid: \$
 - (5) Negotiated reduction, if any: \$
 - (6) Net amount owed: \$
- b. Provider *(name)*:
 - (1) Address:
 - (2) Care or treatment *(describe)*:
 - (3) Amount charged: \$
 - (4) Amount paid: \$
 - (5) Negotiated reduction, if any: \$
 - (6) Net amount owed: \$

CASE NAME:	CASE NUMBER:
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9. c. Provider (*name*):

- (1) Address:

- (2) Care or treatment (*describe*):

- (3) Amount charged: \$
- (4) Amount paid: \$
- (5) Negotiated reduction, if any: \$
- (6) Net amount owed: \$

Continued (*If there are additional providers that treated the claimant, provide information about them on a separate list designated as Attachment 9.*)

10. **Information about attorney**

- a. (1) Petitioner has not been represented or assisted by an attorney in preparing this petition or in any other regard with respect to the claim asserted.
- (2) Petitioner has been represented or assisted by an attorney in preparing this petition or with respect to the claim asserted (*if this is checked, answer questions 10b–10g below*).

b. The attorney who has represented or assisted petitioner is (*name*):

- (1) State bar number:
- (2) Law firm:
- (3) Address:
- (3) Telephone number:

c. The attorney did not did become concerned with this matter, directly or indirectly, at the instance of a party against whom the claim is asserted or a party's insurance carrier (*if you answered "did," explain the circumstances*):

Continued on Attachment 10c.

d. The attorney is not is representing or employed by any other party or any insurance carrier involved in the matter (*if you answered "is," identify the party or carrier and the relationship*):

Continued on Attachment 10d.

e. The attorney has not has received attorney's fees or other compensation for services provided in connection with the claim giving rise to this petition (*if you answered "has," identify the person who paid the fees or other compensation, the amounts paid, and the dates of payment*):

<u>From whom (names)</u>	<u>Amounts</u>	<u>Dates</u>
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Continued on Attachment 10e.

CASE NAME:	CASE NUMBER:
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13. Attorney's fees and expenses

a. Total amount of attorney's fees for which court approval is requested: \$
(If attorney's fees are requested, a declaration from the attorney explaining the basis for the requested fees must be attached as Attachment 13a.)

b. The following additional items of expense have been incurred or paid, are reasonable, resulted from the incident or accident, and should be paid out of the proceeds of the settlement to be paid to the claimant:

<u>Items</u>	<u>Payees (names)</u>	<u>Amounts</u>
--------------	-----------------------	----------------

Continued on Attachment 13b.

14. Total balance

The total balance *(after payment of all fees and expenses)*: \$

15. Disposition of settlement proceeds

Petitioner requests that the balance of the settlement proceeds be disbursed as follows:

a. Deposit in blocked account:
 The balance will be deposited in an interest-bearing, federally insured account, from which no withdrawals shall be made without a court order, located at *(name of depository, branch, and address)*:

b. Other disbursement of balance:
 The balance will be *(describe other disposition of settlement funds)*:

16. Notice

Notice of the claim or action has has not been given under Welfare and Institutions Code section 14124.73 *(if notice has not been given, explain)*:

Continued on Attachment 16.

CASE NAME:	CASE NUMBER:
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17. Liens

Petitioner requests does not request a court order for payment of funds to a special needs trust *(if petitioner requests such an order, explain how under Probate Code section 3604 statutory liens, if any, will be satisfied):*

Continued on Attachment 17.

18. Other orders requested *(explain):*

Continued on Attachment 18.

19. Petitioner has made a careful and diligent inquiry and investigation to ascertain the facts relating to the accident in which the claimant was injured, the responsibility for the accident, and the nature, extent, and seriousness of the claimant's injuries. Petitioner fully understands that if the compromise proposed in this petition is approved by the court and is consummated, the claimant will be forever barred from seeking any further recovery of compensation even though the claimant's injuries might in the future appear to be more serious than they are now thought to be.

20. Petitioner recommends the compromise settlement to the court as being fair, reasonable, and in the best interest of the claimant and requests that the court approve this compromise settlement and make such other and further orders as may be just and reasonable.

21. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <hr/> <p style="text-align: center;">TELEPHONE NO.: _____ FAX NO. (Optional): _____</p> <p>E-MAIL ADDRESS (Optional): _____</p> <p>ATTORNEY FOR (Name): _____</p>	FOR COURT USE ONLY <h2 style="margin: 0;">Draft 6</h2> <h2 style="margin: 0;">09/20/04</h2> <h3 style="margin: 10px 0 0 0;">Not approved by the Judicial Council</h3>		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
CASE NAME:			
ORDER APPROVING: <input type="checkbox"/> COMPROMISE OF DISPUTED CLAIM <input type="checkbox"/> COMPROMISE OF PENDING ACTION <input type="checkbox"/> DISPOSITION OF PROCEEDS OF JUDGMENT <input type="checkbox"/> Minor <input type="checkbox"/> Adult Person With A Disability	CASE NUMBER: <table style="width:100%; border: none;"> <tr> <td style="border: none; width: 60%;">HEARING DATE:</td> <td style="border: none; width: 40%;">DEPT.:</td> </tr> </table>	HEARING DATE:	DEPT.:
HEARING DATE:	DEPT.:		

1. **Petitioner (name):** _____ has petitioned for court approval of a proposed compromise of a disputed claim of a minor or a pending action involving a minor or an adult person with a disability, or a proposed disposition of the proceeds of a judgment for a minor or an adult person with a disability.
2. **Hearing**
 Date: _____ Time: _____ Dept.: _____ Judicial officer: _____
3. **Relationship to claimant**
 Petitioner is claimant's (check all applicable boxes):
 a. Parent
 b. Guardian ad litem
 c. Guardian
 d. Conservator
 e. Other (specify): _____
4. **Claimant (name):**
 a. is a minor.
 b. is an adult "person with a disability" within the meaning of Probate Code section 3603.
5. **Defendant**
 The claim or action to be compromised is asserted, or the judgment is entered, against (name of settling or judgment defendant or defendants (the "payer")): _____
6. **THE COURT FINDS** that all notices required by law have been given.
7. **THE COURT ORDERS**
 - a. The petition is granted and the proposed compromise of claim or action or the proposed disposition of the proceeds of the judgment is approved. The gross amount or value of the settlement or judgment in favor of claimant is \$
 - b. The payer shall disburse the proceeds of the settlement or judgment approved by this order in the following manner:
 - (1) **Payment of fees and expenses**
 Fees and expenses shall be paid by one or more checks or drafts, drawn payable to the order of the petitioner and the petitioner's attorney, if any, or directly to third parties entitled to receive payment identified in this order for the following items of expense or damage, which are hereby authorized to be paid out of the proceeds of the settlement or judgment:
 (a) Attorney fees in the total amount of: \$ payable to (specify): _____

CASE NAME: 	CASE NUMBER:
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7. b. (1) (b) Reimbursement for medical and all other expenses paid by the petitioner or the petitioner's attorney in the total amount of: \$
- (c) Medical, hospital, ambulance, nursing, and other like expenses payable directly to providers as follows, in the total amount of: \$
- (i) Payee (*name*):
 (A) Address:

 (B) Amount: \$
- (ii) Payee (*name*):
 (A) Address:

 (B) Amount: \$
- Continued on Attachment 7b(1)(c). (*Provide information about additional payees in the above format.*)
- (d) Other authorized disbursements payable directly to third parties in the total amount of: \$
 (*Describe and state the amount of each item, and provide the name and address of each payee*):

- Continued on Attachment 7b(1)(d).
- (e) Total allowance for fees and expenses from the settlement or judgment: \$

(2) **Balance**

The balance of the settlement or judgment available for claimant after payment of all allowed fees and expenses is: \$

The balance shall be disbursed as follows:

- (a) By one or more checks or drafts in the total amount of (*specify*): \$
 drawn payable to the order of the petitioner as trustee for the claimant. Each such check or draft must bear an endorsement on the face or reverse that it is for deposit in one or more interest-bearing, federally insured accounts in the name of the petitioner as trustee for the claimant, and no withdrawals may be made from the accounts except as provided in the *Order to Deposit Money Into Blocked Account*, which is signed contemporaneously with this order ("blocked account").
- (b) By the following method(s) (*describe each method, including the amount to be disbursed*):

- Continued on Attachment 7b(2)(b).
- (c) If money is to be paid to a special needs trust under Probate Code section 3604, all statutory liens in favor of the state Department of Health Services, the state Department of Mental Health, the state Department of Developmental Services, and any city and county in California must first be satisfied by the following method (*specify*):

Continued on Attachment 7b(2)(c).

CASE NAME: _____	CASE NUMBER: _____
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8. **Further orders of the court concerning blocked accounts**

The court makes the following additional orders concerning any part of the balance ordered to be deposited in a blocked account under item 7b(2)(a):

- a. Within 48 hours of receipt of a check or draft described in item 7b(2)(a), the petitioner and the petitioner's attorney, if any, must deposit the check or draft in the petitioner's name as trustee for the claimant in one or more blocked accounts at (*specify name, branch, and address of each depository, and the amount of each account*):

Continued on Attachment 8a.

- b. The petitioner and the petitioner's attorney, if any, must deliver to each depository at the time of deposit three copies of the *Order to Deposit Money Into Blocked Account*, which is signed contemporaneously with this order, and three copies of the *Receipt and Acknowledgment of Order to Deposit Money Into Blocked Account* ("receipt"). The petitioner or the petitioner's attorney must file a copy of the receipt with this court within 15 days of the deposit. The sole responsibilities of the petitioner and the petitioner's attorney, if any, are to place the balance in a blocked account or accounts and to timely file a copy of the receipt.

- c. The balance of the proceeds of settlement or judgment deposited in a blocked account or accounts under item 7b(2)(a) may be withdrawn only as follows (*check (1) or (2)*):

(1) No withdrawals of principal or interest may be made from the blocked account or accounts without a further written order under this case name and number, signed by a judge, and bearing the seal of this court. The money on deposit is not subject to escheat.

(2) The blocked account or accounts belong to a minor. The minor was born on (*date*):
No withdrawals of principal or interest may be made from the blocked account or accounts without a further written order under this case name and number, signed by a judicial officer, and bearing the seal of this court, until the minor attains the age of 18 years. When the minor attains the age of 18 years, the depository, without further order of this court, is authorized and directed to pay by check or draft directly to the former minor, upon proper demand, all moneys including interest deposited under this order. The money on deposit is not subject to escheat.

9. **Authorization to execute settlement documents**

The petitioner is authorized to execute settlement documents as follows (*check only one*):

- a. Upon receipt of the full amount of the settlement sum approved by this order and the deposit of funds, the petitioner is authorized and directed to execute and deliver to the payer a full, complete, and final release and discharge of any and all claims and demands of the claimant by reason of the accident or incident described in the petition and the resultant injuries to the claimant and a properly executed dismissal with prejudice.
- b. The petitioner is authorized and directed to execute any and all documents reasonably necessary to carry out the terms of the settlement.
- c. The petitioner is authorized and directed (*specify*):

Continued on Attachment 9c.

10. Bond is ordered and fixed in the amount of: \$ _____ not required.

11. A copy of this order shall be served on the payer forthwith.

12. **Additional orders**

The court makes the following additional orders (*specify*):

Continued on Attachment 12.

Date: _____

JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i> <hr/> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
ORDER APPROVING COMPROMISE OF CLAIM <input type="checkbox"/> MINOR <input type="checkbox"/> INCOMPETENT PERSON	CASE NUMBER:

1. **Petitioner** *(name)*:
 has petitioned for the approval of the proposed compromise of claim. This matter came on for hearing on *(date)*:
 at *(time)*: _____ in Dept.:

2. **Relationship to claimant**
 Petitioner is claimant's:
- a. Parent.
 - b. Guardian ad litem.
 - c. Guardian.
 - d. Conservator.
 - e. Other *(specify)*:

3. **Claimant** *(name)*:
- a. is a minor.
 - b. is an incompetent person.

4. **Defendant**
 The claim to be compromised is asserted against *(name of settling defendant or defendants (the "payer"))*:

THE COURT ORDERS

5. The petition is granted and the compromise is approved.
6. The payer shall disburse the proceeds of the settlement approved by this order in the following manner:
- a. Payment of fees and expenses**
 Fees and expenses shall be paid by one or more checks or drafts, drawn payable to the order of the petitioner and the petitioner's attorney, if any, or directly to those entitled to receive payment, for the following items of expense or damage, which are hereby authorized to be paid out of the proceeds of settlement:
- (1) Attorney's fees in the amount of: \$ _____ Payable to *(specify)*:
- (2) Reimbursement for medical and other expenses paid by the petitioner in the amount of: \$ _____ payable to the petitioner.

CASE NAME:	CASE NUMBER:
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6. a. (3) Medical, hospital, ambulance, nursing, and other like expenses in the total amount of: \$ payable as follows:

- | | |
|--|---|
| (i) Payee (<i>name</i>):
(a) Address:
(b) Amount: | (iii) Payee (<i>name</i>):
(a) Address:
(b) Amount: |
| (ii) Payee (<i>name</i>):
(a) Address:
(b) Amount: | (iv) Payee (<i>name</i>):
(a) Address:
(b) Amount: |

Continued (*if there are additional payees, a list of such payees must be attached to this form as Attachment 6a(3).*)

(4) Other authorized payments (*specify*):

(5) **Total allowance for fees and expenses: \$**

b. Balance

The balance of the settlement proceeds shall be disbursed as follows:

- (1) By one or more checks or drafts in the total amount of (*specify*): \$ _____ drawn payable to the order of the petitioner as trustee for the claimant. Each such check or draft shall bear an endorsement on the face or reverse that it is for deposit in an interest-bearing, federally insured account in the name of the petitioner as trustee for the claimant, and no withdrawals shall be made from the account without a written court order (a "blocked account").
- (2) By the following method (*specify*):

If the method involves the payment of money to a special needs trust, all statutory liens in favor of the State Department of Mental Health, the State Department of Developmental Services, and any city and county in California must first be satisfied by the following method (*specify*):

7. Blocked accounts

If the court orders distribution of the balance into a blocked account or accounts under item 6b(1), it further orders:

- a. Within 48 hours of receipt of a check or draft described in item 6b(1), the petitioner and the petitioner's attorney, if any, must deposit the check or draft in the petitioner's name as trustee for the claimant in a blocked account at (*specify name, branch, and address of each depository*):
- b. The petitioner and the petitioner's attorney, if any, must deliver to each depository at the time of deposit three copies of the *Order to Deposit Money Into Blocked Account ("Order")*, which is signed contemporaneously with this order, and three copies of the *Receipt and Acknowledgment of Order to Deposit Money Into Blocked Account ("Receipt")*. The petitioner or the petitioner's attorney must file a copy of the *Receipt* with this court within 15 days of the deposit. The sole responsibilities of the petitioner are to place the balance in a blocked account or accounts and to timely file a copy of the *Receipt*.

CASE NAME:	CASE NUMBER:
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7. c. The balance of the settlement proceeds deposited in a blocked account under item 6b(1) may be withdrawn only as follows (*check only (1) or (2)*):
- (1) No withdrawals of principal or interest may be made from the blocked account or accounts without a written order under this case name and number, signed by a judge, and bearing the seal of this court. The money on deposit is not subject to escheat.
 - (2) The blocked account or accounts belong to a minor. The minor was born on (*date*):
No withdrawals of principal or interest may be made from the blocked account or accounts without a written order under this case name and number, signed by a judge, and bearing the seal of this court, until the minor attains the age of 18 years. When the minor attains the age of 18 years, the depository, without further order of this court, is authorized and directed to pay by check or draft directly to the former minor, upon proper demand, all moneys including interest deposited under this order. The money on deposit is not subject to escheat.

8. Authorization to execute settlement documents

The petitioner is authorized to execute settlement documents as follows (*check only one*):

- a. Upon receipt of the full amount of the settlement sum approved by this order and the deposit of funds, the petitioner is authorized and directed to execute and deliver to the payer a full, complete, and final release and discharge of any and all claims and demands of the claimant by reason of the accident or incident described in the petition and the resultant injuries to the minor, and a properly executed dismissal with prejudice.
 - b. The petitioner is authorized and directed to execute any and all documents reasonably necessary to carry out the terms of the settlement.
 - c. The petitioner is authorized and directed (*specify*):
9. Bond is waived fixed in the amount of: \$
10. A copy of this order shall be served on the payer forthwith.
11. Other (*specify*):

Date:

JUDGE OF THE SUPERIOR COURT

SIGNATURE FOLLOWS LAST ATTACHMENT

Assembly Bill No. 1851

CHAPTER 67

An act to amend Sections 3412, 3413, 3600, 3601, 3602, 3603, 3604, 3610, 3611, and 3612 of, and to add Section 3613 to, the Probate Code, relating to incapacity.

[Approved by Governor June 23, 2004. Filed with
Secretary of State June 24, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1851, Harman. Incapacity: protective proceedings.

(1) Existing law provides for the disposition of certain funds held for the benefit of a minor or incompetent person.

This bill would revise and recast those provisions, and would replace the term "incompetent person" with the term "person with a disability," as defined. The bill would provide that those provisions do not apply to an adult with capacity who has no conservator, except as specified, and would make various technical, nonsubstantive changes to those provisions.

(2) Existing law provides that specified funds held for the benefit of a minor or incompetent person may be ordered by the court to be paid to a special needs trust.

This bill would permit a parent, guardian, conservator, or other interested person to instead petition the probate court to establish that special needs trust, if a specified condition is met.

(3) As a result of certain protective proceedings, existing law requires the court to have continuing jurisdiction over the money and property paid, delivered, deposited, or invested for a minor until that minor reaches 18 years of age.

This bill would additionally require the court to maintain continuing jurisdiction of the money and property of an individual who meets the definition of a person with a disability, as defined, after he or she reaches 18 years of age, until terminated by the court.

The people of the State of California do enact as follows:

SECTION 1. Section 3412 of the Probate Code is amended to read:
3412. If the minor has a guardian of the estate and the sole asset of the guardianship estate is money, the court may order that the guardianship of the estate be terminated and, if the court so orders, the court in its discretion shall also order any one or more of the following:

(a) That the money be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(c) If the money of the guardianship estate does not exceed twenty thousand dollars (\$20,000), that the money be held on any other condition that the court in its discretion determines to be in the best interests of the minor.

(d) If the money of the guardianship estate does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

(e) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

SEC. 2. Section 3413 of the Probate Code is amended to read:

3413. If the minor has no guardian of the estate and there is money belonging to the minor, the court may order that a guardian of the estate



be appointed and that the money be paid to the guardian or the court may order any one or more of the following:

(a) That the money be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(b) That all or any part of the money be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(c) If the money belonging to the minor does not exceed twenty thousand dollars (\$20,000), that the money be held on any other condition that the court in its discretion determines to be in the best interests of the minor.

(d) If the money belonging to the minor does not exceed five thousand dollars (\$5,000), that all or any part of the money be paid to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400).

(e) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

SEC. 3. Section 3600 of the Probate Code is amended to read:



3600. This chapter applies whenever both of the following conditions exist:

(a) A court (1) approves a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim, (2) approves a compromise of a pending action or proceeding to which a minor or person with a disability is a party, or (3) gives judgment for a minor or person with a disability.

(b) The compromise, covenant, or judgment provides for the payment or delivery of money or other property for the benefit of the minor or person with a disability.

SEC. 4. Section 3601 of the Probate Code is amended to read:

3601. (a) The court making the order or giving the judgment referred to in Section 3600, as a part thereof, shall make a further order authorizing and directing that reasonable expenses, medical or otherwise and including reimbursement to a parent, guardian, or conservator, costs, and attorney's fees, as the court shall approve and allow therein, shall be paid from the money or other property to be paid or delivered for the benefit of the minor or person with a disability.

(b) The order required by subdivision (a) may be directed to the following:

(1) A parent of the minor, the guardian ad litem, or the guardian of the estate of the minor or the conservator of the estate of the person with a disability.

(2) The payer of any money to be paid pursuant to the compromise, covenant, or judgment for the benefit of the minor or person with a disability.

SEC. 5. Section 3602 of the Probate Code is amended to read:

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in subdivisions (c) and (d), if there is a guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property, after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601, shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be



paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order one or more of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money and other property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(3) That all or part of the remaining balance of money and other property not become a part of the guardianship estate and, instead, be transferred to the trustee of a trust which is either created by, or approved of, in the order or judgment described in Section 3600. This trust shall be revocable by the minor upon attaining 18 years of age, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(d) Upon petition of the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be paid to a special needs trust established under Section 3604 for the benefit of the minor or person with a disability.

(e) If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(f) Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the petition, shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

SEC. 6. Section 3603 of the Probate Code is amended to read:



3603. Where reference is made in this chapter to a “person with a disability,” the reference shall be deemed to include the following:

- (a) A person for whom a conservator may be appointed.
- (b) Any of the following persons, subject to the provisions of Section 3613:

(1) A person who meets the definition of disability as defined in Section 1382c(a)(3) of Title 42 of the United States Code, or as defined in Section 416(i)(1) of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 416.905 of Title 20 of the Federal Code of Regulations.

(2) A person who meets the definition of disability as defined in paragraphs (1), (2), and (3) of subsection (d) of Section 423 of Title II of the federal Social Security Act (42 U.S.C. Sec. 401 et seq.) and regulations implementing that act, as set forth in Part 404.1505 of Title 20 of the Federal Code of Regulations.

(3) A minor who meets the definition of disability, as set forth in Part 416.906 of Title 20 of the Federal Code of Regulations.

(4) A person with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code.

SEC. 7. Section 3604 of the Probate Code is amended to read:

3604. (a) (1) If a court makes an order under Section 3602 or 3611 that money of a minor or person with a disability be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the proper county for commencement of a proceeding as determined under Section 17005.

(2) If the court referred to in subdivision (a) could have made an order under Section 3602 or 3611 to place that money into a special needs trust, but that order was not requested, a parent, guardian, conservator, or other interested person may petition a court that exercises jurisdiction pursuant to Section 800 for that order. In doing so, notice shall be provided pursuant to subdivisions (e) and (f) of Section 3602, or subdivision (c) of Section 3611, and that notice shall be given at least 15 days before the hearing.

(b) A special needs trust may be established and continued under this section only if the court determines all of the following:

(1) That the minor or person with a disability has a disability that substantially impairs the individual’s ability to provide for the individual’s own care or custody and constitutes a substantial handicap.

(2) That the minor or person with a disability is likely to have special needs that will not be met without the trust.



(3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or person with a disability.

(c) If at any time it appears (1) that any of the requirements of subdivision (b) are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary, and (2) that the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, or a county or city and county in this state has a claim against trust property, that department, county, or city and county may petition the court for an order terminating the trust.

(d) A court order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state shall first be satisfied.

SEC. 8. Section 3610 of the Probate Code is amended to read:

3610. When money or other property is to be paid or delivered for the benefit of a minor or person with a disability under a compromise, covenant, order or judgment, and there is no guardianship of the estate of the minor or conservatorship of the estate of the person with a disability, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in this article.

SEC. 9. Section 3611 of the Probate Code is amended to read:

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall, upon application of counsel for the minor or person with a disability, order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on conditions the court determines to be in the best interest of the minor or person with a disability.

(c) After a hearing by the court, that the remaining balance of any money and other property be paid to a special needs trust established



under Section 3604 for the benefit of the minor or person with a disability. Notice of the time and place of the hearing and a copy of the petition shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.

(d) If the remaining balance of the money to be paid or delivered does not exceed twenty thousand dollars (\$20,000), that all or any part of the money be held on any other conditions the court in its discretion determines to be in the best interest of the minor or person with a disability.

(e) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars (\$5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(f) If the remaining balance of the money and other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

(g) That the remaining balance of the money and other property be paid or delivered to the trustee of a trust which is created by, or approved of, in the order or judgment referred to in Section 3600. This trust shall be revocable by the minor upon attaining the age of 18 years, and shall contain other terms and conditions, including, but not limited to, terms and conditions concerning trustee's accounts and trustee's bond, as the court determines to be necessary to protect the minor's interests.

(h) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, if all of the following conditions are met:

(1) The county treasurer has been authorized by the county board of supervisors to handle the deposits.

(2) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code.

(3) The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.



(4) The county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor.

(5) Funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4.

(i) That the remaining balance of the money and other property be paid or delivered to the person with a disability.

SEC. 10. Section 3612 of the Probate Code is amended to read:

3612. (a) Notwithstanding any other provision of law and except to the extent the court orders otherwise, the court making the order under Section 3611 shall have continuing jurisdiction of the money and other property paid, delivered, deposited, or invested under this article until the minor reaches 18 years of age.

(b) Notwithstanding subdivision (a), the trust of an individual who meets the definition of a person with a disability under paragraph (3) of subdivision (b) of Section 3603 and who reaches 18 years of age, shall continue and be under continuing court jurisdiction until terminated by the court.

SEC. 11. Section 3613 is added to the Probate Code, to read:

3613. Notwithstanding any other provision of this chapter, a court may not make an order or give a judgment pursuant to Section 3600, 3601, 3602, 3610, or 3611 with respect to an adult who has the capacity within the meaning of Section 812 to consent to the order and who has no conservator of the estate with authority to make that decision , without the express consent of that person.



Comments for Proposal SPR04-35
Forms MC-350 and MC-351, *Petition to Approve Compromise of Claim*, and *Order Approving Compromise of Claim*

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee's Response
1.	Ms. Sandy Almansa Supervising Legal Clerk II Superior Court of California, County of Stanislaus 1100 I Street Modesto, CA 95353	A	N	Agree with proposed changes. Petition is lengthy; however it eliminates need for multiple attachments that are routinely filed in these cases.	No response necessary
2.	Mr. Robert Dimitrijevič Court Probate Examiner Superior Court of California, County of San Luis Obispo 1035 Palm Street San Luis Obispo, CA 93401	A	N	Agree with proposed changes.	No response necessary
3.	Ms. Mary Majich Davis Chief Deputy Executive Officer Superior Court of California, County of San Bernardino 172 W. 3rd St., 2nd Floor San Bernardino, CA 92415	A	N	Approve the proposed changes to the Petition to Approve Compromise of Claim and Order Approving Compromise of Claim. However, although the need for the change is understandable, there is a concern that the change in terms (from "incompetent" to "person with disability") may cause more confusion than clarification.	The advisory committee believes that the definition of "disability" contained in the Probate Code provisions, as revised by AB 1851, will be sufficiently clear.
4.	Mr. Richard L. Haeussler Attorney 4425 Jamboree Road, Ste. 117 Newport Beach, CA 92660	AM	N	Item 17 on the petition asks if MEDI-CAL has been given notice. 1. I suggest that a copy of the notice be attached as a "17-A" exhibit and that the paragraph have a box to check.	1. The advisory committee disagrees with this comment. The allegation that notice has been served should be sufficient in most cases. If there is a question, the court can direct the petitioner to file the notice or produce it at the hearing.

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	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee's Response
				<p>2. In Medi-Cal decedent estates, I have a form for notice that complies with the Department of Health Services' notice requirement. We should have a form for notice that is machine readable.</p> <p>3. The notice should be given at least 90 days in advance of the hearing, to give the Department of Health Services a chance to search their records.</p>	<p>2. Probate Code section 9202(a)(1) provides that the Department of Health Services, not the Judicial Council, has authority to develop a form of notice to the department concerning a Medi-Cal beneficiary's death. This notice must be given in many non-court contexts. The Judicial Council's authority to develop forms is limited to forms used in the courts.</p> <p>3. This is a good practice suggestion, but there is no authority to require such notice in this form or in the court proceeding, or to give an instruction concerning the amount of notice required to the department.</p>
5.	Ms. Kim Hubbard President Orange County Bar Association P.O. Box 17777 Irvine, CA 92623-7777	A	Y	Agree with proposed changes.	No response necessary
6.	Mr. Hal Seibert	AM	N	MC-350	

Comments for Proposal SPR04-35
Forms MC-350 and MC-351, *Petition to Approve Compromise of Claim*, and *Order Approving Compromise of Claim*

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee's Response
	Attorney 2450 Stanwell Drive Concord, CA 94520			<ol style="list-style-type: none"> 1. Para. 9 of form MC-350 should provide for a settlement for policy limits of an Uninsured Motorist claim without the need for a current medical report. The report can cost up to \$500, and would be a waste in a policy-limits UM case. Since the settlement is only with the Uninsured Motorist carrier, for policy limits, the court should approve it regardless of the minor's current condition. Such a settlement does not prohibit the minor from prosecuting the case against the uninsured tortfeasor. In essence, I cannot think of a reason the court would not approve an uninsured motorist settlement where the minor is getting the policy limits. 2. Para. 11(g) of form MC-350: What is the reason to set forth the terms of any written retainer agreement the petitioner had with the attorney. Unless that agreement was approved by the court, it is not binding on the minor. Also, most courts have a fees schedule for contingent fees for minor compromise claims. So what difference does it make what agreement the parent made with the attorney? 	<ol style="list-style-type: none"> 1. The advisory committee disagrees with this comment. It does not believe that the form should be modified to provide a blanket exemption from the requirement of providing medical reports where policy limits under uninsured motorist policies have been offered. The court will have discretion in every case to approve a settlement without medical reports if the circumstances justify that decision. 2. The court is considering the appropriate attorney fee to award from the proceeds of the settlement or judgment. The court is not bound by the terms of any contingency fee agreement, but may approve a fee measured by the agreement if appropriate under all the circumstances. The court needs to know the terms of the agreement to do this. Rule 7.955 was intended to require the courts to exercise discretion on a case-by-case basis rather than rely on a local rule percentage formula or fee schedule. Over time, rule 7.955, which was adopted only last year, should diminish the effect of local rules of this kind.

Comments for Proposal SPR04-35
Forms MC-350 and MC-351, *Petition to Approve Compromise of Claim*, and *Order Approving Compromise of Claim*

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee's Response
				<p>MC-351 - Order Approving Minor's Compromise</p> <p>1. Para. 7(b)(2)(a): Requires an endorsement on front or back of check that there can be no withdrawals without a court order. This is not needed and appears to be overkill to make sure money gets into blocked account. Some banks will then require another order, even when the minor should be able to get the funds at 18 years of age. If an endorsement is desired, it should simply say that "no withdrawals shall be made except as provided in the <i>Order to Deposit Money Into Blocked Account</i>" (form MC-355).</p> <p>2. If the purpose of the restrictive endorsement language in the form is to ensure that a petitioner</p>	<p>MC-351</p> <p>1. The advisory committee agrees with this recommendation and proposes to revise the language of item 7b(2)(a) as requested. The <i>Order to Deposit Money Into Blocked Account</i>, form MC-355, recites in item 5b that the depository may pay the proceeds of the account to the minor when he or she attains the age of 18 years without further order of the court. The endorsement stating that there can be no withdrawal without a court order is not inconsistent with that recital because the <i>Order to Deposit</i> is the court order authorizing the withdrawal if item 5b in form MC-355 is selected.</p> <p>The problem raised by this comment stems from the fact that depository banks may not recognize that no order in addition to the <i>Order to Deposit</i> is needed for withdrawal after the minor attains the age of 18 years if item 5b in that order has been selected.</p> <p>2. The court could certainly make special provisions for self-represented petitioners, if the limitation "as trustee</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee's Response
				<p>without an attorney makes the deposit, there should be a way for the court to order that the net funds payable to the minor be payable jointly to petitioner as trustee and the bank.</p> <p>3. Para. 8(a): 48 hours is too short. The check is normally payable to both attorney and petitioner (see para. 7(b)(1)). I would want it in my trust account at least 3 banking days before making withdrawal. There are other reasons petitioner might not be able to get to the bank. Suggest 10 days after receipt of settlement checks to deposit into blocked account.</p>	<p>for the claimant” on the payment check is not considered sufficient. Those provisions would be inserted in item 7b(2)(b) of the form.</p> <p>The advisory committee disagrees with this comment, in the absence of any evidence that a depository bank would desire or consent to be added as a co-payee. In addition, the petitioner may not yet know the identity of the institution where a blocked account will be established when the order approving a compromise is made, so the court could not name the institution in the order.</p> <p>The restrictive endorsement provided in the form should provide enough protection against misuse of settlement proceeds by a self-represented petitioner.</p> <p>3. The advisory committee disagrees with this comment. The existing and revised forms contemplate that only checks for fees and expenses are to be made payable jointly to the petitioner and his or her attorney. Compare items 6a and 6b(1) in the existing form and items 7b(1) and 7b(2)(a) in the revised form.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee's Response
				<p>4. Para. 9(a): Requires insurer to pay funds before getting a release signed. Haven't yet met an insurance company that will do so. Usually they want the signed release before sending a check. I would never check this box. I would only use (b).</p> <p>Although you did not ask, Form MC-356, <i>Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account</i>, should be changed. The last paragraph of that form, where the bank officer certifies receipt of funds, states that there will be no withdrawals without court order. Some banks will require another court order, even if minor wants the funds at 18 years. The paragraph should simply say "no withdrawal except as provided in <i>Order to Deposit</i>," of which bank acknowledges receipt in paragraph 1 of the Receipt.</p>	<p>Checks for the net proceeds payable for the minor or disabled adult that are to be deposited in blocked accounts are from the payer, not from the attorney's trust account. Forty eight hours should be sufficient for deposit of these checks.</p> <p>4. Paragraph 9a would authorize a simultaneous exchange of check and release and (if necessary) dismissal. Item 9b remains an option, or very specific execution instructions can be provided in item 9c, if the insurance carrier refuses to comply.</p> <p>The advisory committee will look at form MC-356. The problem the commentator raises appears to be the same as that described in No. 1 above, and would be solved by making the same change in the endorsement language as is recommended above.</p>