JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
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Probate and Mental Health Advisory Committee
Hon. Marjorie Laird Carter, Chair
Douglas C. Miller, Senior Attorney, Committee Counsel
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DATE: August 31, 2009

SUBJECT: Civil and Probate Practice and Procedure: Compromise of Minors' Claims, Settlement of Actions Involving Minors and Persons With Disabilities, and Disposition of Judgments in Favor of Minors and Persons with Disabilities (amend Cal. Rules of Court, rules 7.101, 7.950, and 7.955; adopt rule 7.950.5; revise Judicial Council forms MC-350 and MC-351; adopt form MC-350EX; and approve form MC-350(A-13b(5)) (Action Required)

Issue Statement

Courts must approve proposed compromises of the disputed claims of minors, settlements of filed actions involving minors or persons with certain defined disabilities, and dispositions of the proceeds of judgments in favor of minors or persons with disabilities. Courts must also authorize payment of reasonable expenses, including attorney's fees, from the proceeds of these compromises, settlements, or judgments. There is inconsistency across the state in awards of attorney's fees in these matters.

The Judicial Council mandatory form petition for court approval of compromises, settlements, and disposition of judgments is complex, difficult to complete, and hard to understand by practitioners, parties, and courts. The petition asks for some unnecessary information and does not address recent developments in the law.

Many claims of minors or disabled persons proposed for settlement and court approval are small or uncontroversial. These claims would benefit from a simplified petition and an expedited process for their evaluation and approval by the courts.

A working group composed of members of the two sponsoring advisory committees and others has been working for more than a year on a substantial revision of the rules of court and Judicial Council forms governing the court approval process for the claims of minors or disabled persons. The advisory committees have considered the product of the working group's effort and jointly recommend implementation of the group's proposal.

Recommendation

The Civil and Small Claims Advisory Committee and the Probate and Mental Health Advisory Committee recommend that the Judicial Council, effective January 1, 2010:

1. Amend rules 7.101, 7.950, and 7.955 and adopt rule 7.950.5 of the California Rules of Court; and

2. Revise Judicial Council forms MC-350 and MC-351, adopt form MC-350EX, and approve form MC-350(A-13b(5)).

The text of amended rules 7.101, 7.950, and 7.955 and new rule 7.950.5 and copies of revised and new forms MC-350, MC-350EX, MC-350(A-13b(5)), and MC-351 are attached to this report at pages 28–59.

Rationale for Recommendation

Current rules of court and forms

Rules 7.950–7.955 of the California Rules of Court govern proceedings under Probate Code sections 3600–3613—commonly referred to, and referred to in this report, as minors' compromises despite the fact that the proceedings apply also to settlements of pending actions or disposition of judgments involving disabled persons, including disabled adults. Judicial Council form MC-350 is a mandatory form petition for court approval under sections 3600–3602. Form MC-351 is the mandatory form order on the petition.

This proposal recommends the amendment of rules 7.101 (on use of Judicial Council forms in probate proceedings), 7.950 (on petitions for court approval of the compromise of disputed claims or settlements or disposition of the proceeds of judgments in minors' compromises), and 7.955 (on attorney's fees awarded in these proceedings) and the adoption of a new rule 7.950.5 (to create and define a new procedure for requesting expedited court review and approval of certain smaller or less controversial minors' compromises without a court hearing).

The proposal also includes a complete revision of the existing form MC-350 and a new optional attachment to that form, designated as form MC-350(A-13b(5)). The new attachment would be used to list and provide required information about additional medical service providers that cannot be listed in the petition. A new alternative mandatory form is proposed for the expedited petition under rule 7.950.5, designated as form MC-350EX. The existing form order, form MC-351, is also revised to properly reflect the expanded statutory definition of a person with a disability, provide for a reservation of jurisdiction in certain situations, and enable the form to be used for the expedited procedure as well as for the regular court approval procedure.

Amendment of rule 7.955
The following changes are proposed for rule 7.955:

- The rule would expressly preempt all local rules relating to the determination of reasonable attorney's fees to be awarded by the court in minors' compromise proceedings.

- Rule 7.955(a)(2) would require courts to consider the terms of any representation agreement between an attorney and the representative of the minor or person with a disability—or directly between an attorney and an adult claimant with sufficient capacity—and to evaluate the agreement based on the facts and circumstances existing when it was made.

- The amended rule would include a new subdivision (b), containing a nonexclusive list of factors the court may consider in determining a reasonable fee under section 3601.

- New subdivision (c) would require the attorney's declaration that must be attached to the petition for approval of the minor's compromise to address the factors listed in rule 7.955(b).

Amendment of rule 7.950
Rule 7.950 lists the required contents of form MC-350. This list would be deleted and replaced with the statement that the petition must be prepared on a fully completed form. Future changes to this form would no longer require amendment of this rule.

Revision of form MC-350
The mandatory form petition for court approval of a minor's compromise would be increased from 8 to 10 pages, revised to include instructions about the new expedited procedure authorized by rule 7.950.5., and reorganized to place together inquiries that are relevant and must be answered only if there is a compromise or settlement rather

than a judgment. A new inquiry would be added requiring statement of the reasons for the apportionment of settlement payments between the minor or disabled claimant and each other claimant or plaintiff.

The revised form would modify the instruction concerning provision of a medical report to clarify that the required report showing the claimant's present condition need not be a new report if a previous report accurately describes the claimant's current condition. This is a common occurrence if the claimant had made a full recovery or was stabilized with permanent injuries at the time of the earlier report.

Item 13 on pages 4 and 5 of the revised petition would inquire about medical expenses to be paid from the proceeds of the compromise or judgment. Item 13 is a complete revision of item 10 in the existing form. The item includes the following changes from the existing form:

- Other than the request for the total of medical expenses in item 13a(1), there is no inquiry about medical expenses that are not to be paid or reimbursed from the proceeds of the judgment or settlement.

- Item 13b of the revised form inquires about medical expenses paid by and to be reimbursed to the petitioner, private health insurers, Medicare, and Medi-Cal, including statutory reduction of Medicare liens and full or negotiated reduction of Medi-Cal lien claims.

- Item 13b(2) of the revised form asks about payments by private health insurance or self-funded plans that are to be reimbursed from the proceeds, and inquires whether the plans are governed by the federal Employee Retirement Income Security Act of 1974 (ERISA).

- Item 13b(4)(d) concerns outstanding and unresolved disputes concerning Medi-Cal liens, including a reference to a motion for a reduction of the lien. This is commonly referred to as an *Ahlborn* motion, named after the United States Supreme Court decision that created it. The item either advises that the motion is filed with the petition or asks the court to reserve jurisdiction to decide the motion after determining the rest of the proposed compromise or settlement.

- Item 13b(5) addresses statutory and contractual liens for medical expenses asserted by medical service providers to be paid from the proceeds of the compromise or judgment. This item replaces item 10b of the existing form, which inquires about all medical service providers, including those to whom payment is not to be made or reimbursed from the settlement or judgment proceeds, and also asks about the treatment given by each provider. The

revised item does not ask about treatment because the general course of medical treatment is already addressed in item 8 on page 2 of the revised form.

Adoption of rule 7.950.5
A new rule establishing an expedited procedure for determining certain types of minors' compromises is proposed. Rule 7.950.5(a) would make the expedited procedure available as an option for the petitioner if the conditions specified in rule 7.950.5(a)(1)–(9) are present.

The expedited petition must be decided by the court not more than 35 days after its filing unless a hearing is requested, required, or scheduled; or the time for determination is extended for good cause by the court (subdivision (b)). There is no hearing required on the petition unless (1) a hearing is requested by the petitioner or an objection is filed or (2) the court schedules a hearing on its own motion or announces an intended ruling that does not grant the petition in full as requested. The decision to schedule a hearing or the tentative ruling must be announced by the court within 25 days after the petition is filed (subdivision (c)).

Amendment of rule 7.101(b)
Rule 7.101(b) lists alternative mandatory forms authorized for use in probate proceedings. The rule would be amended to extend it to proceedings governed by the Probate Code (in order to include minors' compromises, which are governed by that code but are not probate proceedings). Forms MC-350 and MC-350EX would be added to the rule's list of alternative mandatory forms.

Adoption of Form MC-350EX
A new form would be adopted to be used by any petitioner who desires to use the new expedited procedure authorized by rule 7.950.5.

Approval of form MC-350(A-13b(5))
An optional form is proposed for approval that may be used as an attachment to form MC-350 to list additional medical service providers if all of them cannot be listed in the limited space provided in item 13b(5) of that form.

Revision of form MC-351
The existing mandatory form order approving minors' compromises, form MC-351, would be revised to provide for the expedited procedure under rule 7.950.5 and to comply with recently changed statutory provisions concerning disabled persons under Probate Code sections 3603 and 3613. A new item would be added to the order to provide for a reservation of jurisdiction over the *Alhborn* motion for a reduction in the lien of the Department of Health Care Services for Medi-Cal payments made for the claimant's benefit.

These revisions require the addition of a fourth page to the order, which presents the opportunity to improve the general appearance and spacing of the text and provide additional space for responses to several items calling for additional information.

Alternative Actions Considered

The working group and the advisory committees did not consider alternatives to the amendment and adoption of rules of court and the revision, adoption, or approval of existing and new forms to accomplish the changes they recommend here. This effort initially focused on attorney's fees. However, it became clear early in the course of this project that existing forms needed substantial revision to improve their clarity and ease of use and to provide judicial officers with the information they actually need to fairly evaluate these cases, particularly in light of recent developments in the law of public benefit and other liens against personal injury recoveries. It also became apparent that many smaller and less complex minors' compromise cases could be simplified and their resolution expedited, at a considerable savings of time and money by the parties, their attorneys, and the courts.

Comments From Interested Parties

This proposal was circulated for public comment in the spring of 2009. Twenty-five comments, many of them extensive, were received. No commentators opposed the proposal. Thirteen approved it; eight approved the proposal with suggested modifications, some of them specific, detailed, and very helpful; and four commentators did not expressly indicate approval or disapproval of the proposal. A chart containing the comments received and responses of the advisory committees is attached beginning at page 59.

Implementation Requirements and Costs

Some additional costs will be incurred as a result of the amendment and adoption of rules of court and the revision, adoption, or approval of Judicial Council forms. Some courts may also experience increased training and other costs to implement the new expedited procedure. However, the advisory committees believe that the time and money saved by the parties, attorneys, and courts over time as they use this new procedure that will eliminate court hearings in expedited cases will outweigh these initial costs.

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
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Probate and Mental Health Advisory Committee
Hon. Marjorie Laird Carter, Chair
Douglas C. Miller, Senior Attorney, Committee Counsel
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DATE: August 14, 2009

SUBJECT: Civil and Probate Practice and Procedure: Compromise of Minors' Claims, Settlement of Actions Involving Minors and Persons With Disabilities, and Disposition of Judgments in Favor of Minors and Persons with Disabilities (amend Cal. Rules of Court, rules 7.101, 7.950, and 7.955; adopt rule 7.950.5; revise Judicial Council forms MC-350 and MC-351; adopt form MC-350EX; and approve form MC-350(A-13b(5)) (Action Required)

Issue Statement

Courts must approve proposed compromises of the disputed claims of minors, settlements of filed actions involving minors or persons (both adults and minors) with certain defined disabilities, and dispositions of the proceeds of judgments in favor of minors or persons with disabilities. Courts must also authorize payment of reasonable expenses, including attorney's fees, to be paid from the proceeds of the compromises, settlements, or judgments payable to or for the benefit of the minors or disabled persons.

There is a significant lack of consistency across the state in the application of standards for awards of attorney's fees in these matters. The Judicial Council mandatory form petition for court approval of these compromises is complex and difficult to complete and understand by practitioners, parties, and courts. The petition asks for some unnecessary information and fails to address recent developments in the

law affecting liens on recoveries in personal injury actions in favor of public and private medical benefit payers and medical service providers.

Many claims of minors or disabled persons proposed for settlement and court approval are small and uncontroversial. These claims would benefit from a simplified petition and an expedited process for their evaluation and approval by the courts, a process that would save judicial and court resources without a significant loss of effective court supervision and control.

A working group composed of members of the two sponsoring advisory committees and others[1] has been working for more than a year on a substantial revision of the rules of court and Judicial Council forms governing the court approval process for the claims of minors or disabled persons. The advisory committees have considered the product of the working group's effort and jointly recommend implementation of the group's proposal for the reasons discussed below.

Rationale for Recommendation

Probate Code sections 3600–3613[2] require court approval of the following:

1. Compromises of disputed claims of minors, including execution of covenants not to sue on or enforce judgments on the claims;
2. Settlements of pending actions or proceedings to which minors or persons with a disability[3] are parties; and
3. Disposition of the proceeds of judgments in favor of minors or persons with a disability.

Section 3601 requires the court to authorize and direct payment of reasonable expenses from the proceeds of the compromise, settlement, or judgment payable to the minor or person with a disability. These include medical expenses; reimbursements to a parent, guardian, or conservator; and costs and attorney's fees.

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[1] The co-chairs of the working group are superior court judges F. Clark Sueyres, Jr. and Peter J. Polos. The current members are superior court judges Arnold H. Gold (ret.), Harold W. Hopp, Craig D. Karlan, and William D. Palmer; and attorneys Sharon J. Arkin, Bruce M. Brusavich, Harry W. R. Chamberlain II, Dennis P. Howell, Linda C. Martinez, and Irving P. Reifman. Ms. Martinez is a recently retired senior research attorney for the Superior Court of Orange County whose court assignment was in probate and mental health, including minors' compromise proceedings. The other attorney members of the working group are in private practice and include experienced personal injury lawyers for both plaintiffs and defendants.

[2] All references are to the Probate Code unless otherwise specified.

[3] Section 3603 defines a person with a disability as (1) a person for whom a conservator may be appointed; (2) a person, including a minor, who meets certain federal definitions of disability that make the person eligible to establish and benefit from a special needs trust without jeopardizing eligibility for federal public benefits; or (3) a person with a developmental disability defined under state law.

Current rules of court and forms
Rules 7.950–7.955 of the California Rules of Court govern proceedings under section 3600 et seq.—commonly referred to, and referred to in this report, as minors' compromises despite their wider application. The *Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Adult Person With a Disability* (form MC-350) is a mandatory form petition for court approval under sections 3600–3602, last amended in 2007 to reflect a substantial expansion of the statutory definition of a person with a disability. The *Order Approving Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Adult Person With a Disability* (form MC-351) is the mandatory form order on the petition.

This proposal recommends the amendment of rules 7.101 (on use of Judicial Council forms in probate proceedings), 7.950 (on petitions for the compromise of disputed claims or settlements in minors' compromises), and 7.955 (on attorney's fees awarded in minors' compromise proceedings) and the adoption of a new rule 7.950.5 (to create and define a new procedure for requesting expedited court review and approval of certain smaller or less controversial claims, settlements, or judgments without a court hearing).

The proposal also includes a complete revision of the existing mandatory form petition, form MC-350, and a new optional attachment to that form. The new form, designated as form MC-350(A-13b(5)), would be used to list and provide required information about additional medical service providers that cannot be listed in the petition. A new alternative mandatory form is proposed for the expedited petition under rule 7.950.5, designated as form MC-350EX. The existing form order, form MC-351, is also revised to properly reflect the expanded definition of a person with a disability, provide for a reservation of jurisdiction in certain situations, and enable the form to be used for the expedited procedure as well as for the regular court approval procedure.

These rule and form changes are described in detail below.

Amendment of rule 7.955, Attorney's fees for services to a minor or person with a disability
Rule 7.955, adopted in 2003 and amended in 2007,[4] requires courts to evaluate a request for attorney's fees for services to the minor or person with a disability in minors' compromise proceedings and determine a reasonable fee under all the facts and circumstances of each individual case. As the advisory committee comment accompanying the rule indicates, the rule was intended to permit, but not require,

[4] The 2007 amendment substituted "person with a disability" for "incompetent person" in the text of the rule to reflect the changes in Probate Code sections 3600–3613 made in 2004 legislation. See footnote 6 below.

courts to determine that a contingency fee agreement could be the basis for a reasonable fee, and that under some circumstances, the fee could be higher or lower than a percentage formula under some local rules.[5] The advisory committee believed when it proposed the rule and its comment for adoption that many of these local rules had routinely been applied without regard to the circumstances of individual cases.

The working group and the advisory committees are concerned that many local courts continue to apply their fixed-percentage local rules without an evaluation of reasonableness in each case despite the adoption of this rule and the advisory committee comment in 2003. There is also evidence that some courts have declined entirely to consider contingent fee agreements in some of these cases. There is a significant lack of uniformity throughout the state on the standards applied to the determination of reasonable attorney's fees as an authorized expense in minors' compromise proceedings.

Most matters presented for court approval under sections 3600 and 3601 are claims for damages from personal injuries. Contingency fee agreements calling for a fee measured by a percentage of the amount recovered are prevalent in this type of litigation because most injured persons could not afford to retain capable counsel under any other fee arrangement. This is an even greater concern for injured minors or persons with a disability because they are likely to have fewer resources than other injured persons. These vulnerable claimants could face a substantial denial of access to the courts if they cannot obtain representation by competent and experienced counsel in personal injury cases and in minors' compromise proceedings arising from them.

On the other hand, the statute requires the court to determine a reasonable attorney's fee. This requires more than the mere enforcement of a contingency fee agreement between counsel and a party representing the interests of a minor or disabled person in most cases.[6] The amended rule is proposed to assist courts, parties, and attorneys to determine a reasonable fee in these cases.

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[5] A number of courts had adopted local rules indicating that an attorney's fee of 25 percent of the proceeds of the compromise or judgment is presumptively reasonable. Over time, this percentage became the default fee awarded in the great majority of cases, particularly when viewed as a ceiling.

[6] The 2004 change in the definition of adults whose settlements or judgments are subject to court approval under section 3601 expanded the category beyond "incompetent persons" and persons for whom a conservator could be appointed. (See footnote 2 above and Stats. 2004, ch. 67 (Assem. Bill 1851), § 6, amending section 3603.)

This change brought within section 3601 adult claimants with capacity to enter into representation agreements directly with attorneys. Some courts have concluded that, although they have jurisdiction to approve a compromise or settlement on behalf of a disabled adult claimant with capacity, they will not look behind the terms of a representation agreement made by such a claimant that is not unconscionable within the meaning of the State Bar's Rules of Professional Conduct. The proposed amendment of rule 7.955 does not require a different result, as the factors the court may consider in determining a reasonable fee include the informed consent to the fee of the representative of the person with a disability (in this case the disabled person directly)

The following changes are proposed for rule 7.955:

Preemption of Local Rules
The amended rule would expressly preempt all local rules relating to the determination of reasonable attorney's fees to be awarded by the court in minors' compromise proceedings, except for rules pertaining to the assignment of these matters or the scheduling of hearings in them. (See amended rule 7.955(d).)

Consideration of Representation Agreement
Rule 7.955(a)(2) would require courts to consider the terms of any representation agreement between an attorney and the representative of the minor or person with a disability—or directly between an attorney and an adult claimant with sufficient capacity—and to evaluate the agreement based on the facts and circumstances existing when it was made. This provision would clarify that the court may consider the terms of a representation agreement calling for a contingency fee as a basis for a reasonable fee under section 3601 even though the agreement is not binding on the court.[7]

Factors in Determining a Reasonable Fee
The amended rule would include a new subdivision (b), containing a nonexclusive list of factors the court may consider in determining a reasonable fee under section 3601. As noted in a new sentence added at the end of the first paragraph of the advisory committee comment to this rule, these factors are modeled after the factors listed in rule 4-200 of the Rules of Professional Conduct of the State Bar of California.[8]

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and the relative sophistication of the attorney and the representative. (See amended rule 7.955(b)(9) and (10).) A determination of a reasonable attorney's fee that gives greater weight to a representation agreement between a disabled adult with capacity and an attorney than an agreement between a representative of a minor or incapacitated disabled claimant and an attorney is supportable under the amended rule.

[7] Family Code section 6602 provides that a contract for attorney's fees for litigation services made on behalf of a minor is void unless the contract is approved by the court where the case is pending or the court with jurisdiction of the minor's guardianship estate. A contingency fee agreement presented to the court in such cases is void and is not binding on the court when it is presented. Under this provision of the rule, the court may, however, determine that the terms of the representation agreement establish a reasonable fee under all the circumstances.

Under Probate Code section 2644, contingency fee agreements between attorneys and guardians or conservators on behalf of wards or conservatees are valid *if approved by order of the court*. Although section 2644 permits a guardian or conservator to petition for court approval of a contingency fee agreement in an appropriate case before legal services are performed, most compromise proceedings are not filed by previously appointed guardians or conservators and they seek awards of attorney's fees without a prior order of court approving the terms of representation. Section 2644 does not require prior court approval. The agreement becomes valid if the court approves it after it is made, including in a minor's compromise proceeding (see section 2644(a) and (d)). Amended rule 7.955(a)(1) clarifies that the rule does not affect representation agreements approved by the court in advance, meaning contingency fee agreements between guardians or conservators and attorneys approved under section 2644 in guardianship or conservatorship proceedings.

[8] Rule 4-200 concerns unconscionable attorney's fees. Although the factors in both rules are similar, the revised advisory committee comment would advise that the committee does not intend to suggest or imply that

If a contingency fee arrangement is proposed as the measure of a reasonable fee, the court may consider the risk of loss borne by the attorney, the costs advanced by the attorney, and the passage of time before payment of fees and reimbursement of the advanced costs. However, even in cases where a contingency fee is involved, the court may still consider the time and labor required of the attorney and any of the other factors listed in subdivision (b).

Attorney's Declaration
New subdivision (c) would require the attorney's declaration that must be attached to the petition for approval of the minor's compromise to address the factors listed in rule 7.955(b). This provision is consistent with the instructions for the relevant inquiry in the new and revised form petitions and is intended to advise counsel that they may not answer this inquiry merely by attaching a copy of their representation agreement to the petition, although they must always attach the agreement.

Amendment of rule 7.950, Petition for approval of the compromise of a claim
Rule 7.950 lists the required contents of form MC-350. This list would be deleted and replaced with the statement that the petition must be prepared on a fully completed form. Future changes in this form would no longer require amendment of this rule.

The opening paragraph of rule 7.950 refers to the petition under Probate Code section 3600 as a petition for court approval of a compromise or covenant not to sue under the Probate Code. The rule would be amended to match the description of the petition in section 3600, including references to the settlement of pending actions and disposition of the proceeds of judgments in favor of minors and persons with disabilities, and would correctly cite the applicable chapter of the Probate Code governing minor's compromise proceedings.

Revision of the Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Adult Person With a Disability *(form MC-350)*
The mandatory form petition for court approval of a minor's compromise would be increased from 8 to 10 pages and revised as follows:

"Adult" would be deleted from the title of the form as a modifier of "person with a disability" because some disabled persons may be minors. (See Prob. Code, § 3603(b)(3).)

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an attorney's fee must be found to be unconscionable under rule 4-200 to be an unreasonable fee under rule 7.955.

The instructions to the form's users at the top of the first page would be expanded to include advice about the new expedited procedure authorized by rule 7.950.5 (discussed below) and the font would be increased in size to enhance readability.

Items that must be answered only if the petition concerns a compromise of a claim or settlement of an action rather than disposition of the proceeds of a judgment are collected together more logically as consecutive items 5–12 beginning on page 2, not scattered throughout the form. As part of this reorganization, the items describing the proposed compromise or settlement (items 12 and 13 on page 5 of the existing form, items 11 and 12 on pages 3–4 of the revised form) are moved before the items that inquire into medical and other expenses to be paid from the proceeds (items 10 and 14 on pages 3 and 5 of the existing form, items 13 and 14 on pages 4–6 of the revised form).

Items 3b and 3c on page 1 of the existing form ask about the petitioner's status as a plaintiff in the same action as the claimant or as a claimant against the minor or disabled person's recovery. These items have been moved to item 12 on page 4 of the revised form (item 13 of the existing form). See items 12b(2) and (3) of the revised form.

Item 12 concerns settlement payments to others, including petitioner (item 12b(4)). This item s a more logical place for questions about the petitioner's status as a competitor or in conflict with the claimant in the proposed settlement or its proceeds because the item applies only to settlements. Those questions would serve no purpose in a case involving a judgment.

A new inquiry is added in item 12b(6). The new item requires a statement of the reasons for the apportionment of settlement payments between the minor or disabled claimant and each other plaintiff or claimant (including the petitioner if he or she is participating in the settlement). This item is in bold to emphasize its importance.

Item 9 of the existing and the revised form inquires into the extent of the claimant's injuries and recovery. The existing form has an instruction calling for the attachment of a medical report showing the claimant's present condition. This instruction has been interpreted by some courts and practitioners to require a new report, often a substantial and unnecessary expense. The revised form modifies the instruction to clarify that the report showing the claimant's present condition need not be a new report if a previous report accurately describes the claimant's current condition. This is common if the claimant had made a full recovery or was stabilized with permanent injuries at the time of the earlier report.

Item 21 on page 8 of the existing form is an acknowledgment that the proposed compromise will bar recovery of additional compensation in the future, a standard

release. This item is retained in the revised form but is moved to page 3 as item 10.[9] The text of the release is also modified to clarify that it applies only to the settling parties, not to any other defendants that are not joining in the compromise.

Item 13 on pages 4 and 5 of the revised petition inquires about medical expenses to be paid from the proceeds of the compromise or judgment. Item 13 is a complete revision of item 10 in the existing form. A major change is the revised version's emphasis on medical expenses to be paid or reimbursed from the proceeds of the compromise or judgment. No questions, other than the request for the total of medical expenses in item 13a(1), inquire about medical expenses not to be paid or reimbursed from the funds made available because of the judgment or settlement.

Item 13b of the revised form goes into detail on medical expenses paid by and to be reimbursed to the petitioner, private health insurers, Medicare, and Medi-Cal, including statutory reduction of Medicare liens and full or negotiated reduction of Medi-Cal lien claims.[10]

Item 13b(2) asks about payments by private health insurance or self-funded plans that are to be reimbursed from the proceeds, including insured and self-funded plans that are and are not governed by the federal Employee Retirement Income Security Act of 1974 (ERISA). ERISA self-funded plans are exempt on federal supremacy grounds from state laws providing for reduction of liens against damage recoveries, but ERISA plans funded by insurance are not exempt from state law because of an insurance exception to the preemption provisions of the federal law. Non-ERISA plans, however funded, are subject to state lien reduction laws. These distinctions are important for the courts to know so they can ensure that all lien reductions against the settlement proceeds required by state law are properly applied.

Item 13b(4)(d) concerns outstanding and unresolved disputes concerning Medi-Cal liens. The item advises that there is a motion for a reduction of the lien filed with the petition or requests the court to reserve jurisdiction over the issue.[11]

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[9] This change was made to place the release with other items that apply only to a compromise or settlement, not to a judgment (items 5–12 of the revised form). These items have initial check boxes because they need not be completed if the matter concerns the disposition of the proceeds of a judgment after trial. (See the instructions at item 4c on page 2 of revised form MC-350.)

[10] See item 13b(4) on page 5 of the revised form. This item also includes the inquiry about notice of the claim or action to the State Director of Health Care Services under Welfare and Institutions Code section 14124.76, moved from a separate item 17 on page 7 of the existing form, four pages away from the rest of the inquiries about medical expenses in that form.

[11] This item addresses the *Ahlborn* motion, named after *Arkansas Dept. of Health and Human Services v. Ahlborn* (2006) 547 U.S. 268, 164 L. Ed.2d 459, now governed in this state by Welfare and Institutions Code section 14124.76. The Supreme Court held in that case that the amount of recovery on a lien for medical expenses paid by a state's Medicaid program (including Medi-Cal) from the proceeds of an action or settlement against a third party in favor of the Medicaid recipient must be limited to the portion of the judgment or settlement allocable to past medical care or expenses. The motion must be decided at the time of the court's

Item 13b(5) addresses statutory and contractual liens for medical expenses asserted by medical service providers to be paid from the proceeds of the compromise or judgment. Item 13b(5)(a) asks for the total amount of these liens and the total sum that all lienholders have accepted to satisfy them. Item 13b(5)(b) asks for the name and address of each medical service provider that furnished care or treatment of the claimant and (1) has a lien for all or any part of the charges against the recovery or (2) was paid (or will be paid from the proceeds) by the petitioner for which he or she requests reimbursement, the amounts charged and paid, and the amount of any agreed reduction, leading to the net amount to be paid to each provider from the settlement or judgment proceeds.[12]

Item 13b(5)(b) replaces item 10b of the existing form, which inquires about all medical service providers, including those to whom payment is not to be made or reimbursed from the settlement or judgment proceeds, and also asks about the treatment given by each provider. The revised item does not ask about treatment because the general course of medical treatment is already addressed in item 8 on page 2 of the revised form. Space is provided, as in the existing form, for the identity and information required of two providers. Additional providers are to be identified in an attachment to the petition, but the instruction for this item advises that the new optional form MC-350(A-13b(5)), discussed below, may be used for this purpose.

Item 14 on page 6 of the revised form concerns the attorney's fees and other nonmedical expenses to be paid from the proceeds of the compromise or judgment. This item is generally the same as item 14 in the existing form, except that the

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approval of a settlement or disposition of the proceeds of a judgment under Probate Code section 3600 et seq., unless the issue is reserved for later determination under Code of Civil Procedure section 664.6. (See *Espericuenta v. Shewry* (2008) 164 Cal.App. 4th 615, 625–627; and *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, 757–761.)

[12] The draft of this form circulated for public comment called for the identification of only those medical service providers with contractual liens against the proceeds of the settlement. However, some medical service providers have statutory liens against personal injury claim recoveries not based on contract (see Civ. Code § 3045.1); the item was therefore revised to refer to all lienholders.

Many medical service providers do not have contractual or statutory liens, yet they provide services to claimants under sections 3600 and 3601 based on arrangements with the claimants' parents or other representatives (or under arrangements directly with some adult claimants). The working group and the advisory committees support payment of medical service providers without liens from the settlement proceeds where that is permissible. Section 3601 authorizes reimbursement of expenses, including medical expenses, paid by a claimant's parent, guardian, or conservator. This authority led the committees to consider payments from the settlement proceeds directly to medical service providers without statutory or contractual liens as reimbursements to the petitioner if he or she incurred obligations to pay the providers and is a parent, guardian, or conservator of the claimant. (If the claimant paid or incurred obligations to pay medical expenses directly, he or she may also be reimbursed or the providers may be paid directly from the proceeds; the settlement is for the claimant's benefit.) Item 13b(5)(b) was revised to request information about medical service providers with liens or who were paid (or will be paid out of the settlement) by the petitioner for which he or she is requesting reimbursement.

instructions for the attorney's fee expense item ask for the attorney's declaration to address the applicable factors listed in rule 7.955(b), discussed above, and request that a copy of any written fee agreement be attached as part of the response to item 18. That item asks questions about the attorney assisting the petitioner to prepare the petition. It is the same as item 11 of the existing form, except that the question about the attorney's representation agreement with the petitioner is made part of item 18a(2), instead of a stand-alone question at the end of the item.

Item 15 on page 6 of the revised form is new. This item requires the petitioner to list the total of medical expenses, attorney's fees, and other expenses he or she paid that are to be reimbursed from the proceeds of the compromise or judgment and instructs the petitioner to attach proofs of the expenses incurred and payments made. These expenses include previously unpaid charges of the claimant's medical service providers who do not have liens but that the petitioner is obligated to pay.

Item 17 of the revised form is a summary of all the items that show the terms of the compromise, settlement, or judgment, including the gross amount, all expenses to be paid from that sum, and the net amount payable to or for the benefit of the minor or disabled claimant. This item is unchanged from item 19 of the existing form, but it is placed in a more logical place, immediately following the items it summarizes, before the lengthy items that describe the proposed disposition of the net proceeds.

The inquiry about satisfaction of statutory liens if there will be a distribution to a special needs trust is moved from item 18 to item 20 on page 10 of the revised form, and additional space for the petitioner's response is provided. More than one-half page is also provided for additional orders in item 21, on the last page of the revised form.

Adoption of rule 7.950.5, Expedited petition for court approval of the compromise of a claim or pending action, a covenant, or disposition of the proceeds of a judgment
This new rule would establish an expedited procedure for determining certain types of minors' compromises. Rule 7.950.5(a) would make the expedited procedure available as an option for the petitioner if the following conditions are present:

(1) The petitioner is represented by an attorney authorized to practice in California;

(2) The claim is not for damages for wrongful death;

(3) None of the net proceeds of the compromise, settlement, or judgment in favor of the minor or disabled claimant are to be placed in a trust;

(4) There are no unresolved disputes concerning liens to be satisfied from the proceeds of the compromise, settlement, or judgment;

(5) The petitioner's attorney did not become involved in the matter at the direct or indirect request of a person against whom the claim is asserted or an insurance carrier for that person;

(6) The petitioner's attorney is neither employed by nor associated with a defendant or insurance carrier in connection with the petition;

(7) If an action has been filed on the claim, all defendants that have appeared in the action are participating in the compromise or the court has finally determined that the settling parties entered into the compromise in good faith;

(8) The judgment for the minor or disabled claimant (exclusive of interest and costs) or the total amount payable to the minor or disabled claimant and all other parties under the proposed compromise is $50,000 or less or, if greater, represents payment of the individual-person policy limits of all liability insurance policies covering all proposed contributing parties, all of whom must be substantially judgment proof outside of their liability insurance policies; and

(9) The court does not otherwise order. (See rule 7.950.5(a)(1)–(9).)

The expedited petition must be decided by the court not more than 35 days after its filing unless a hearing is requested, required, or scheduled; or the time for determination is extended for good cause by the court (subdivision (b)). There is no hearing required on the petition unless: (1) a hearing is requested by the petitioner or an objection is filed; or (2) the court schedules a hearing on its own motion or announces an intended ruling that does not grant the petition in full as requested. The decision to schedule a hearing or the tentative ruling must be announced by the court within 25 days after the petition is filed (subdivision (c)).

Amendment of rule 7.101(b), Use of Judicial Council forms
Rule 7.101(b) lists alternative mandatory forms authorized for use in probate proceedings. The rule would be amended to extend it to proceedings governed by the Probate Code (in order to include minors' compromises, which are governed by that code but are not probate proceedings). A new paragraph (3) would be added to the rule adding the regular and expedited petitions in minors' compromise proceedings, forms MC-350 and MC-350EX, to the list of alternative mandatory forms in these matters, meaning that the forms are mandatory but the petitioner may choose between them in a case that qualifies for the expedited procedure under rule 7.950.5. (See rule 1.31.)

Adoption of the Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability *(form MC-350EX)*

This new form would be mandatory for any petitioner who desires to use the new expedited procedure authorized by rule 7.950.5. The form has the following features:

The attorney caption at the top of page 1 does not refer to the possibility that a self-represented person's name and address information may be stated instead of an attorney's information because a self-represented petitioner (who is not an attorney) may not file an expedited petition.

The form has a Notice to Petitioners text box on page 1 similar to the notice on the standard petition, form MC-350, but this version advises of the requirements for an expedited petition and that if those requirements are not met or if the petitioner chooses not to proceed with the expedited procedure, he or she must use the standard petition.

Item 3 on page 1 identifies the requirements for the expedited petition under rule 7.950.5 (other than the requirement of representation by counsel, which is mentioned in the Notice to Petitioners text box). All of the requirements listed in items 3a–3f must be satisfied. Item 3g permits a choice between two alternatives concerning the size of the claim. If the claim is for the policy limits of liability insurance covering all contributing defendants (item 3g(2)), an instruction calls for a description of the investigation made to determine whether the contributors are judgment proof and its results.

Items 4–12 at pages 2–3 inquire into the relationship of the petitioner to the minor or disabled claimant, the nature of the claim, the incident or accident, the injuries suffered, the extent and expected degree of recovery from those injuries, the treatment given the claimant, and the amount and terms of a proposed settlement. They are identical to items 3–11 of revised form MC-350.

Item 13 of form MC-350EX concerns settlement payments to persons other than the claimant. It corresponds to item 12 of revised form MC-350 and item 13 of the existing version of that form. However, unlike those items, this item 13 does not inquire into petitioner's status as a plaintiff in the same action as the claimant or as a claimant against the minor or disabled person (although it does ask the petitioner to state whether he or she is to receive money under the proposed settlement). Instead, the item requires the petitioner to (1) state that the settlement payments to the claimant and to each other settling party (including the petitioner) are apportioned between them on a pro rata basis, based on the special damages claimed by each (and

asks for the amount of those damages each claims), or (2) specify in an attachment any other reasons for the apportionment.

Item 14 of form MC-350EX concerns medical expenses. It is a simplified version of item 13 of revised form MC-350. Both items depart from item 10 of existing form MC-350 in that they inquire only into expenses to be paid or reimbursed from the settlement or judgment.

Item 14a asks for the totals of expenses; amounts paid from all sources, including insurance, negotiated reductions, liens; and the total to be paid from the proceeds. Items 14b–14d ask about Medicare, Medi-Cal, and health plan payments to be reimbursed and statutory or negotiated reductions in each, leading to the final amounts payable to satisfy the liens held by these payers.[13] Item 14e asks for the amount of petitioner's payments for medical expenses to be reimbursed, and item 14f inquires about liens of unpaid medical service providers and the agreed total amount necessary to satisfy them.

Item 14g(1) requests copies of the latest statements from all medical service providers but permits these not to be provided if the petitioner can state (in item 14g(2)) that all medical expenses have been paid by private insurance, Medicare, or Medi-Cal. Moreover, this item, unlike item 13b(5)(b)(5) of revised form MC-350, does not require information about medical service providers with liens or who have been paid or will be paid from the settlement as part of the petitioner's reimbursement.

Items 15 and 16 of form MC-350EX are identical to items 14 and 15 of revised form MC-350, concerning attorney's fees and other non-medical expenses to be paid or reimbursed from the judgment or settlement, and reimbursement of expenses paid by the petitioner.

Item 19 of form MC-350EX, on page 6 of the form, corresponds to item 18 of revised form MC-350. There is, however, an important difference between these items. Item 19a of this form inquires whether the attorney is representing or employed by any other party involved in the matter. The instruction for this item advises that if the other party is a defendant, form MC-350 must be used and expedited consideration under rule 7.950.5 is not available.

The remaining items in form MC-350EX are the same as the corresponding items in form MC-350.

[13] Because all disputes concerning liens must be resolved in order to qualify for the expedited procedure, the item does not contain a reservation of jurisdiction for an *Ahlborn* motion, discussed above in footnote 11.

Approval of the Medical Service Provider Attachment to Petition to Approve Compromise of Claim or Action, or Disposition of Proceeds of Judgment *(form MC-350(A-13b(5)))*

Item 13b(5)(b) of form MC-350 requires the petitioner to list and provide information about each medical service provider that has a lien that will be paid from the proceeds of the judgment or settlement or has been or will be paid by the petitioner for which he or she is requesting reimbursement. A new optional form is proposed for approval for use as an attachment to item 13b(5) of form MC-350 to list additional medical service providers that cannot be listed in the limited space provided in that item. The new form is designated as form MC-350(A-13b(5)).

Revision of the Order Approving Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Adult Person With a Disability *(form MC-351)*

The existing mandatory form order approving minors' compromises, form MC-351, would be revised as follows:

For the same reason mentioned in the discussion above concerning revision of the title of form MC-350, namely that a minor may be a person with a disability under Probate Code section 3603(b)(3), "adult" is deleted from the title of this form order and from the text of item 1 on page 1 of the form.

Item 2 of this form is revised to provide an option for no hearing because the petition is an expedited petition under rule 7.950.5.

Item 3 of form MC-351 is revised to add an adult person with a disability as a possible petitioner. See item 3(a)(5) of existing form MC-350, item 3(e) of revised form MC-350, and item 4e of form MC-350EX.

Item 4 of existing form MC-351 concerns the claimant's status as a minor or disabled adult person. This item is revised to provide for the possibility that a disabled person may be a minor described in Probate Code section 3603(b)(3) (item 4b(2)).

Additional information concerning adult disabled persons is also added in item 4b(1), to give effect to Probate Code section 3613. If the disabled adult has no conservator, the court must determine whether or not he or she has capacity under Probate Code section 812 to consent to the order and, if so, that such consent has been given. See items 4b(1)(a) and (b).

A new item 7b is added to the order at page 2. This item is the reservation of jurisdiction over the *Alhborn* motion under Welfare and Institutions Code section 14124.76 for a

reduction in the lien of the Department of Health Care Services for Medi-Cal payments made for the claimant's benefit, discussed above at footnote 11. The reservation states that the amount shown as payable to the department elsewhere in the order is the maximum lien claimed by it but is subject to reduction on determination of the *Ahlborn* motion on further order of the court. The effect of this provision is that the parties to the compromise must agree to its terms without regard to the result of the *Ahlborn* motion.

These revisions require the addition of a fourth page to the order, which presents the opportunity to improve the general appearance and spacing of the text and provide additional space for responses to several items calling for additional information.

Alternative Actions Considered

This effort initially focused on attorney's fees. However, it became clear early in the course of this project that existing forms needed substantial revision to improve their clarity and ease of use and to provide judicial officers with the information they actually need to fairly evaluate these cases, particularly in light of recent developments in the law of public benefit and other liens against personal injury recoveries. It also became apparent that many smaller and less complex minors' compromise cases could be simplified and their resolution expedited, at a considerable savings of time and money by the parties, their attorneys, and the courts.

Some participants in the deliberations leading to this proposal advised the working group that they and professional organizations they support were actively considering proposing legislation to address attorney's fees in personal injury cases subject to the minors' compromise requirements if changes in that area could not be accomplished by rule of court. This proposal represents a sincere effort by these participants, together with experienced insurance defense attorneys and judicial officers and senior court staff experienced in minors' compromise litigation, to arrive at agreements on changes in minors' compromise practice and procedure without legislation that will serve to improve the process for the benefit of all parties and the court, including the persons most affected by these cases, minors and disabled persons seeking redress for often significant and life-changing injuries. All portions of this proposal were recommended to the advisory committees unanimously by the working group.

Comments From Interested Parties

This proposal was circulated for public comment in spring 2009. The proposal was sent to a list of attorneys and organizations interested in personal injury litigation generally and cases involving minors and other special plaintiffs specifically, as well as to civil and probate judicial officers and senior court staff interested in minors' compromise proceedings. The proposal was also circulated to court executive officers, presiding judges, individuals, and organizations with a more general interest in court-related issues.

Twenty-five comments, many of them extensive, were received. No commentators opposed the proposal. Thirteen approved it, including the Consumer Attorneys of California, the California Defense Counsel, and judicial officer and court staff representatives of several superior courts. Eight commentators approved the proposal with suggested modifications, some of them specific, detailed, and very helpful. Four commentators did not expressly indicate approval or disapproval of the proposal, but none of these commentators recommended specific changes. A chart containing the comments received and responses of the advisory committees is attached beginning at page 59.

Most of the individual commentators were plaintiffs' personal injury attorneys. All of these commentators either supported the proposal or did not clearly indicate support or opposition. Many of their comments defended the contingency fee in personal injury litigation and objected to the policies of some courts to require detailed time records in minors' compromise cases. Some of these commentators complained of the presumptive 25 percent contingency fee in these cases, others preferred to retain that percentage instead of a lower percentage, and still others supported contingency fee representation agreements as the sole basis for fee awards in minors' compromises. These commentators generally did not address the specifics of the proposal, including the revised rule 7.955's provisions concerning attorney's fees in minors' compromises.

The following specific recommendations were made by commentators. Each is followed by the advisory committees' response.

1. Rule 7.955 should require a specific finding if the terms of a contingency fee representation agreement are not followed in the fee award (comment no. 1, comment of attorney John P. Bisnar).

The committees declined to require this specific finding. Probate Code section 3601 calls for reasonable expenses to be paid from the proceeds of the compromise or settlement, not merely the enforcement of a representation agreement. The amended rule permits the terms of a representation agreement to be factors to be considered in the fee determination, but they are not the only factors.

2. There are substantial issues of confidentiality of minors' compromises not directly relevant to this proposal that remain to be resolved (comment no. 3, comment of California Defense Counsel).

The committees concurred that issues of confidentiality in these cases remain to be addressed. The working group will continue to meet this year and will soon begin working on this issue. The group will report its recommendations to the two sponsoring advisory committees for consideration and further action by them.

3. The court order (form MC-351) should contain the reservation of jurisdiction for the *Ahlborn* motion for reduction of Medi-Cal liens (comment no. 5, comment of Consumer Attorneys of California).

The committees concurred with this recommendation and have revised the order to include the reservation as item 7b on page 2 of the order.

4. Concerning medical benefits paid from an employer's health plan, the form should inquire whether the plan is self- or insurance-funded because of federal supremacy issues under ERISA (comment no. 5, comment of the Consumer Attorneys of California; comment no. 6, comment of attorney Donald M. de Camara).

The committees agreed with these comments. Item 3b(2) of form MC-350 has been rewritten to request identification of health plans that made medical payments for the benefit of claimants for which they are to be reimbursed from the proceeds of the compromise or settlement as ERISA or non-ERISA plans and as self- or insurance-funded.

5. The fee agreement should be the standard applied to an award of fees. The (de facto) approved contingency percentage is now 25 percent in minors' cases and should not be reduced below that percentage (comment nos. 8 and 13, comments of attorneys Robert B. Gray and Alex Liao).

The proposed changes in rule 7.955 are intended to reinforce the reasonableness standard of Probate Code section 3601. They eliminate local rules purporting to establish a presumption in favor of percentage-of-proceeds fees generally and a 25 percent of proceeds fee specifically. However, the changes do not require courts to abandon a percentage of recovery attorney's fee in any particular case if the amount so determined is reasonable under the circumstances. The emphasis in the amended rule on the totality of factors affecting reasonable compensation should make it more rather than less likely that if a percentage of recovery is to be the measure of the fee, a higher percentage than 25 percent may be awarded in an appropriate case if the representation agreement provides for the possibility.

6. There should be a "floor" in attorney fee awards: i.e., "not less than" a stated percentage (comment no. 9, comment of attorney Sanford Jossen).

The committees did not support a floor on attorney's fee awards. "Reasonable" can mean less than 25 percent or any other stated percentage, but could also mean a higher rather than a lower percentage, subject to the upper limits provided in the representation agreement.

7. The amended rules of court provide no procedure for structured settlements other than their approval (Comment no. 9, comment of attorney Sanford Jossen).

This recommendation goes beyond the current proposal but will be referred to the working group that made initial recommendations to the advisory committees, and eventually to those committees, for consideration of future changes to address structured settlements.

8. Rule 7.955 should clearly state that the attorney's declaration required by the rule need not include a detailed breakdown of each minute spent on the case. These personal injury cases are on contingency. Most attorneys do not keep the detailed time records that they would keep on hourly matters (comment no. 12, comment of Robert B. Kopelson).

The amended rule does not require an attorney's supporting declaration to detail each minute spent on the case. However, the declaration should give the court some idea how much time was spent on the case, particularly if it was settled before an action was filed. This can be done in the narrative that describes what was done and its effect on the settlement, not merely in reciting in detail the time spent in each activity.

9. There is a lot of documentation involved in minors' compromise matters, with a hearing appearance. The attorney must put additional effort and time in the minor's compromise proceeding in addition to the negotiations or litigation in the underlying case (for which he or she should be compensated) (Comment no. 13, comment of attorney Alex Liao).

This proposal contemplates that the time and effort expended to obtain the court's approval of the compromise, payment of expenses, and disposition of the net proceeds should be compensated.

10. The 10-day period within which to file objections to an expedited petition provided in rule 7.950.5(c)(1) is not enough time and should be extended to 15 days (comment no. 17, comment of Judge Randall J. Sherman of the Superior Court of Orange County).

This comment led to a review of the entire subject of objections to an expedited petition, including who can file them and their timing. In the case of compromises of unfiled claims, notice to other interested persons of hearings in minors' compromises is generally governed under Probate Code mailed-notice provisions, which require 15 days' notice by mail (see Prob. Code, § 1460), although notice to third parties is specifically required only in limited situations. If the matter involves the settlement of a filed civil action, notice to other parties in the case would be required in the form of motion notice under Code of Civil Procedure sections 1005–1015 and rule 3.1300,

generally at least 16 court days before the hearing, with additional calendar days required if notice is served by mail. Sections 3600–3613 do not expressly identify any parties with standing to object to a proposed minor's compromise.

These circumstances caused the committees to eliminate the 10-day period for objections from rule 7.950.5(c)(1). The committees believe that the rule should not specify time limits for filing objections that are defined or suggested in statutes or other rules of court of more general application.

The court must make a decision whether to require a hearing—that is, to permit the expedited procedure under rule 7.950.5 to proceed—within 25 days of the date the expedited petition is filed. That time period should be sufficient for the filing of objections by parties to a filed civil action given motion notice or by interested persons given "probate notice" under section 1460.

The possibility that nonsettling defendants involved in a filed action might seek to object to a minor's compromise petition proposing a partial settlement of the case led the committees to revise rule 7.950.5(a) to change the requirements of the expedited procedure. Rule 7.950.5(a)(7) was added to bar the expedited procedure if all defendants that have appeared in a filed action are not participating in the settlement unless the court has finally determined that the settling parties entered into the settlement in good faith. (See Code Civ. Proc., § 877.6.) This change should reduce significantly the number of expedited petitions in filed actions that will be opposed and will ensure that nonsettling defendants are not prevented by entry of an order without a hearing approving a minor's compromise from preserving their right to claim that the settlement approved in that proceeding was not entered into in good faith.

11. The expedited procedure should be modified to require that hearings be set not more than 35 days from the date of filing (comment no. 19, comment of the Superior Court of Los Angeles County).

The committees did not support this change. The court states that this requirement is necessary because it cannot manage a 25-day review cycle based on a filing rather than a calendar date in its probate departments, where compromises of unfiled claims are assigned. The committees note that if a hearing date must be calendared, it could be tentatively scheduled on the 35th day, subject to vacation no later than the 25th day after filing if the court elects not to require a hearing within that time. Moreover, difficulties with scheduling minors' compromises in probate departments should not affect settlements of filed civil actions involving minors or disabled persons, which are determined in the civil departments of the court responsible for the pending actions. The committees believe that the burden of any extra calendaring or other

deadline tracking by probate departments required for expedited petitions should be offset by the elimination of court hearings in these cases.

12. Rule 7.950.5 should provide that the petition must be submitted with all required documentation and a completed proposed order (comment no. 20, comment of the Superior Court of Orange County).

This comment recommends that an incomplete expedited petition or one submitted without a proposed order should be automatically disqualified from the expedited procedure on a statewide basis. The committees disagreed with this recommendation. They believe that each court should determine the effect of a partially completed or incomplete expedited petition and whether a proposed order must be submitted with the petition, by local rule or practice. The court has authority under rule 7.950.5 to require a hearing and compel production of additional documents in any case in which it determines that a filing is so deficient that the court cannot fairly evaluate the proposed compromise as filed. But not every omission would be equally fatal to a proper determination of a proposed compromise.

13. The custom and practice of most local courts to arbitrarily set fees at 25 percent is wrong. The risks, skills, and costs required in cases involving injured minors do not make the attorneys' work worth less than it would be for an adult. The value of the services should not be determined by the age of the injured person at the time of the attorney's retention, but instead should be determined by the nature of the case, the attorney's skill, risks, costs, etc. The present arbitrary 25 percent "rule" makes it difficult for some claimants to find an attorney (comment no. 24, comment of attorney Charles Tarr).

The committees agreed with this comment. The changes proposed for rule 7.955 were to a considerable extent proposed to eliminate the presumptive 25 percent contingency fee and to replace local rules containing this provision with proper legal standards for courts to use to fairly evaluate requests for attorney's fees in these cases.

Implementation Requirements and Costs

Some additional costs will be incurred as a result of the amendment of existing and adoption of new rules of court and the revision, adoption, or approval of new Judicial Council forms. Moreover, some courts may experience increased training and other costs to implement the new expedited procedure. However, the advisory committees believe that the time and money saved by the parties, attorneys, and courts over time as they get used to this new procedure that will eliminate court hearings in expedited cases will outweigh these initial costs.

Recommendation

The Civil and Small Claims Advisory Committee and the Probate and Mental Health Advisory Committee recommend that the Judicial Council, effective January 1, 2010:

3. Amend rules 7.101, 7.950, and 7.955 and adopt rule 7.950.5 of the California Rules of Court; and

4. Revise Judicial Council forms MC-350 and MC-351, adopt form MC-350EX, and approve form MC-350(A-13b(5)).

The text of amended rules 7.101, 7.950, and 7.955 and new rule 7.950.5 and copies of revised and new forms MC-350, MC-350EX, MC-350(A-13b(5)), and MC-351 are attached to this report at pages 28–58.

Attachments

Rules 7.101, 7.950, and 7.955 of the California Rules of Court are amended and rule 7.950.5 is adopted, effective January 1, 2010, to read:

Rule 7.101. Use of Judicial Council forms

(a) * * *

(b) Alternative mandatory forms

The following forms have been adopted by the Judicial Council as alternative mandatory forms for use in probate proceedings or other proceedings governed by provisions of the Probate Code:

(1) *Petition for Appointment of Guardian of Minor* (form GC-210) and *Petition for Appointment of Guardian of the Person* (form GC-210(P);

(2) *Petition for Appointment of Temporary Guardian* ~~or Conservator~~ (form GC-110) and *Petition for Appointment of Temporary Guardian of the Person* (form GC-110(P)~~.~~;

(3) *Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350) and *Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350EX).

(c) * * *

Rule 7.950. Petition for court approval of the compromise of, or a covenant on, a disputed claim; a compromise or settlement of a pending action; or the disposition of the proceeds of a judgment

A petition for court approval of a compromise of or a covenant not to sue or enforce judgment on a minor's disputed claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or disposition of the proceeds of a judgment for a minor or person with a disability under chapter 4 of part 8 of division 4 ~~under~~ of the Probate Code (commencing with section 3600) or ~~under~~ Code of Civil Procedure section 372 must be verified by the petitioner and must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise, ~~or~~ covenant, settlement, or disposition. Except as provided in rule 7.950.5, the

~~information must include, but is not limited to, the following:~~ petition must be prepared on a fully completed *Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350).

~~(1) The name, birthdate, age, and sex of the minor or person with a disability;~~

~~(2) An account of the facts or events and the circumstances out of which the claim or injury arose, including the time, the place, and the identity of the persons involved;~~

~~(3) A description of the nature and extent of the injury giving rise to the claim, with sufficient particularity to inform the court whether the injury is permanent or temporary;~~

~~(4) An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the injury, and a report of the claimant's present condition;~~

~~(5) In all cases in which payment for medical or hospital care or treatment for the claimant is sought, the names of the hospitals, doctors, and other providers furnishing the care, the amounts of the respective charges for the care (whether paid or owing), the amounts paid (whether covered by insurance or not), the amounts of any negotiated reductions of the charges, and the net amount owed to each provider;~~

~~(6) The amount of attorney's fees requested and the basis for the fees, with an itemization of the costs sought to be allowed and charged against the settlement;~~

~~(7) The gross and net amounts of the settlement;~~

~~(8) A description of the manner in which the settlement proceeds will be distributed;~~

~~(9) A full disclosure of all amounts, if any, paid or to be paid to other claimants;~~

~~(10) A statement of whether the petitioner is a plaintiff in the same action with the minor or claimant with a disability and, if so, whether the pendency or disposition of the petitioner's claim on his or her own behalf has in any way affected the proposed compromise of the claim;~~

~~(11) A statement of whether the petitioner is a claimant against the recovery of the minor or claimant with a disability and, if so, whether the pendency or disposition of petitioner's claim on his or her own behalf has in any way affected the proposed compromise of the claim;~~

~~(12) If settlement money is to be deposited in an account or accounts subject to withdrawal only upon order of the court, the name and address of the proposed depository;~~

~~(13) A statement whether notice of the action or claim has been given under Welfare and Institutions Code section 14124.73; and~~

~~(14) If the petition requests an order for payment of money to a special needs trust, a statement of the method by which all statutory liens will be satisfied under Probate Code section 3604.~~

Rule 7.950.5 Expedited petition for court approval of the compromise of, or a covenant on, a disputed claim; a compromise or settlement of a pending action; or the disposition of the proceeds of a judgment

(a) Authorized use of expedited petition

Notwithstanding the provisions of rule 7.950, a petitioner for court approval of a compromise of or a covenant not to sue or enforce judgment on a minor's disputed claim; a compromise or settlement of a pending action or proceeding to which a minor or person with a disability is a party; or disposition of the proceeds of a judgment for a minor or person with a disability under chapter 4 of part 8 of division 4 of the Probate Code (commencing with section 3600) or Code of Civil Procedure section 372 may, in the following circumstances, satisfy the information requirements of that rule by fully completing the *Expedited Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350EX):

(1) The petitioner is represented by an attorney authorized to practice in the courts of this state;

(2) The claim is not for damages for the wrongful death of a person;

(3) No portion of the net proceeds of the compromise, settlement, or judgment in favor of the minor or disabled claimant is to be placed in a trust;

(4) There are no unresolved disputes concerning liens to be satisfied from the proceeds of the compromise, settlement, or judgment;

(5) The petitioner's attorney did not become involved in the matter at the direct or indirect request of a person against whom the claim is asserted or an insurance carrier for that person;

(6) The petitioner's attorney is neither employed by nor associated with a defendant or insurance carrier in connection with the petition;

(7) If an action has been filed on the claim:

(A) All defendants that have appeared in the action are participating in the compromise; or

(B) The court has finally determined that the settling parties entered into the settlement in good faith;

(8) The judgment for the minor or disabled claimant (exclusive of interest and costs) or the total amount payable to the minor or disabled claimant and all other parties under the proposed compromise or settlement is $50,000 or less or, if greater:

(A) The total amount payable to the minor or disabled claimant represents payment of the individual-person policy limits of all liability insurance policies covering all proposed contributing parties; and

(B) All proposed contributing parties would be substantially unable to discharge an adverse judgment on the minor's or disabled person's claim from assets other than the proceeds of their liability insurance policies; and

(9) The court does not otherwise order;

(b) Determination of expedited petition

An expedited petition must be determined by the court not more than 35 days after it is filed, unless a hearing is requested, required, or scheduled under (c) or the time for determination is extended for good cause by order of the court.

(c) Hearing on expedited petition

(1) The expedited petition must be determined by the court without a hearing unless a hearing is requested by the petitioner at the time the expedited petition is filed, an objection or other opposition to the petition is filed by an interested party, or a hearing is scheduled by the court under (2) or (3).

(2) The court may on its own motion elect to schedule and conduct a hearing on an expedited petition. The court must make its election to schedule the hearing and must give notice of its election and the date, time, and place of the hearing to the petitioner and all other interested parties not more than 25 days after the date the expedited petition is filed.

(3) If the court decides not to grant an expedited petition in full as requested, it must schedule a hearing and give notice of its intended ruling and the date, time, and place of the hearing to the petitioner and all other interested parties within the time provided in (2).

Rule 7.955. Attorney's fees for services to a minor or a person with a disability

(a) Reasonable attorney's fees

(1) In all cases under Code of Civil Procedure section 372 or Probate Code sections 3600–3601, unless the court has approved the fee agreement in advance, the court must use a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. ~~The court may approve and allow attorney fees under a contingency fee agreement made in accordance with law, provided that the amount of fees is reasonable under all the facts and circumstances.~~

(2) The court must give consideration to the terms of any representation agreement made between the attorney and the representative of the minor or person with a disability and must evaluate the agreement based on the facts and circumstances existing at the time the agreement was made, except where the attorney and the representative of the minor or person with a disability contemplated that the attorney's fee would be affected by later events.

(b) Factors the court may consider in determining a reasonable attorney's fee

In determining a reasonable attorney's fee, the court may consider the following nonexclusive factors:

(1) The fact that a minor or person with a disability is involved and the circumstances of that minor or person with a disability.

(2) The amount of the fee in proportion to the value of the services performed.

(3) The novelty and difficulty of the questions involved and the skill required to perform the legal services properly.

(4) The amount involved and the results obtained.

(5) The time limitations or constraints imposed by the representative of the minor or person with a disability or by the circumstances.

(6) The nature and length of the professional relationship between the attorney and the representative of the minor or person with a disability.

(7) The experience, reputation, and ability of the attorney or attorneys performing the legal services.

(8) The time and labor required.

(9) The informed consent of the representative of the minor or person with a disability to the fee.

(10) The relative sophistication of the attorney and the representative of the minor or person with a disability.

(11) The likelihood, if apparent to the representative of the minor or person with a disability when the representation agreement was made, that the attorney's acceptance of the particular employment would preclude other employment.

(12) Whether the fee is fixed, hourly, or contingent.

(13) If the fee is contingent:

(A) The risk of loss borne by the attorney;

(B) The amount of costs advanced by the attorney; and

(C) The delay in payment of fees and reimbursement of costs paid by the attorney.

(14) Statutory requirements for representation agreements applicable to particular cases or claims.

(c) Attorney's declaration

A petition requesting court approval and allowance of an attorney's fee under (a) must include a declaration from the attorney that addresses the factors listed in (b) that are applicable to the matter before the court.

(d) Preemption

The Judicial Council has preempted all local rules relating to the determination of reasonable attorney's fees to be awarded from the proceeds of a compromise, settlement, or judgment under Probate Code sections 3600–3601. No trial court, or any division or branch of a trial court, may enact or enforce any local rule concerning this field, except a rule pertaining to the assignment or scheduling of a hearing on a petition or application for court approval or allowance of attorney's fees under sections 3600–3601. All local rules concerning this field are null and void unless otherwise permitted by a statute or a rule in the California Rules of Court.

Advisory Committee Comment

This rule requires the court to approve and allow attorney's fees in an amount that is reasonable under all the facts and circumstances, under Probate Code section 3601. The rule is declaratory of existing law concerning attorney's fees under a contingency fee agreement when the fees must be approved by the court. The facts and circumstances that the court may consider are discussed in a large body of decisional law under section 3601 and under other statutes that require the court to

determine reasonable attorney's fees. The factors listed in rule 7.955(b) are modeled after those provided in rule 4-200 of the Rules of Professional Conduct of the State Bar of California concerning an unconscionable attorney's fee, but the advisory committee does not intend to suggest or imply that an attorney's fee must be found to be unconscionable under rule 4-200 to be determined to be unreasonable under this rule.

The rule permits, but does not require, the court to allow attorney's fees in an amount specified in a contingency fee agreement. The amount of attorney's fees allowed by the court must meet the reasonableness standard of section 3601 no matter how they are determined. ~~That standard may support the court's allowance of attorney's fees that are higher or lower than fees determined by applying the formulas in some current local rules.~~

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**Draft 8** **August 21, 2009** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	CASE NUMBER:
PETITION TO APPROVE: ☐ **COMPROMISE OF DISPUTED CLAIM** ☐ **COMPROMISE OF PENDING ACTION** ☐ **DISPOSITION OF PROCEEDS OF JUDGMENT** ☐ **Minor** ☐ **Person With a Disability**	HEARING DATE: DEPT.: TIME:

NOTICE TO PETITIONERS:

Except as noted below, you must use this form to request court approval of (1) the compromise of a disputed claim of a minor, (2) the compromise of a pending action or proceeding in which a minor or a person with a disability (including a conservatee) is a party, or (3) the disposition of the proceeds of a judgment for a minor or person with a disability. (See Code Civ. Proc., § 372; Prob. Code, § 3600 et seq.) You and the minor or disabled person must attend the hearing on this petition unless the court for good cause dispenses with a 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. The court may consider on an expedited basis without a hearing requests for approval of the compromises of certain claims and actions or the disposition of the proceeds of certain judgments. If your claim, action, or judgment qualifies for expedited consideration and you want to request it, you must use form MC-350EX for your request. See Cal. Rules of Court, rule 7.950.5.

1. **Petitioner** *(name):*
2. **Claimant** *(name):*
   a. Address:
   b. Date of birth: c. Age: d. Sex: e. ☐ Minor ☐ Person with a disability
3. **Relationship** Petitioner's relationship to the claimant *(check all applicable boxes):*
   a. ☐ Parent
   b. ☐ Guardian ad litem
   c. ☐ Guardian
   d. ☐ Conservator
   e. ☐ Disabled adult claimant is a petitioner. *(See instructions for items 3e and 3f below.)*
   f. ☐ Disabled adult claimant's express consent to the relief requested in this petition is provided on Attachment 3f.
   (If you checked item 3e or 3f, state facts on Attachment 3e or 3f showing that the claimant has capacity under Probate Code section 812 to petition or consent to a petition. Only an adult claimant who has sufficient capacity and who does not have a conservator of the estate may petition or consent to a petition. See Probate Code section 3613.)
   g. ☐ Other relationship *(specify:)*
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.)*

Form Adopted for Alternative Mandatory Use
Judicial Council of California
MC-350 [Rev. January 1, 2010]

PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM OR PENDING ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT FOR MINOR OR PERSON WITH A DISABILITY
(Miscellaneous)

Code of Civil Procedure, § 372 et seq.;
Probate Code, § 3500 et seq.;
Cal. Rules of Court, rules 3.1384, 7.101, 7.950, 7.951
www.courtinfo.ca.gov

CASE NAME:	CASE NUMBER:

4. **Nature of claim** The claim of the minor or adult person with a disability:

c. ☐ Is the subject of a pending action or proceeding that has been or will be reduced to a judgment for the claimant against the defendants named below in the total amount (exclusive of interest and costs) of *(specify below):*

$

Defendants *(names)*

☐ Additional defendants listed on Attachment 4. ☐ The judgment was filed on *(date):*

(Attach a copy of the (proposed) judgment as Attachment 4c and complete items 13–23.)

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 described in item 7 *(describe):*

☐ Continued on Attachment 8.

CASE NAME:	CASE NUMBER:

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 new report is not necessary so long as a previous report accurately describes the claimant's current condition.)*

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. ☐ **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 from the settling defendants named below even though the claimant's injuries may in the future appear to be more serious than they are now thought to be.**

11. ☐ **Amount and terms of settlement**

By way of settlement, the defendants named below have offered to pay the following sums to the claimant:

a. The total amount offered by all defendants named below is *(specify):* **$**

b. The defendants and amounts offered by each are as follows *(specify):*

Defendants *(names)*	Amounts
	$
	$
	$
	$
	$

☐ Defendants and amounts offered continued on Attachment 11.

c. The terms of settlement are as follows *(if the settlement is to be paid in installments, both the total amount and the present value of the settlement must be included):*

☐ Continued on Attachment 11.

CASE NAME:	CASE NUMBER:

12. ☐ **Settlement payments to others**

a. ☐ No defendant named in item 11b has offered to pay money to any person or persons other than the claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.

b. ☐ By way of settlement, one or more defendants named in item 11b have also offered to pay money to a person or persons other than claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.

(1) The total amount offered by all defendants to others *(specify):* **$**

(2) Petitioner ☐ is not ☐ is a claimant against the recovery of the claimant (other than for reimbursement for expenses paid by petitioner and listed under item 15).
(If you answered "is," explain in Attachment 12 the circumstances and the effect your claim has on the proposed compromise of the claim described in this petition.)

(3) Petitioner ☐ is not ☐ is a plaintiff in the same action with the claimant.
(If you answered "is," explain in Attachment 12 the circumstances and the effect your claim and its disposition has on the proposed compromise of the claim or action described in this petition.)

(4) ☐ Petitioner would receive money under the proposed settlement.

(5) The settlement payments are to be apportioned and distributed as follows:

Other plaintiffs or claimants *(names)*	Amounts
	$
	$
	$
	$

☐ Additional plaintiffs or claimants and amounts are listed on Attachment 12.

(6) Reasons for the apportionment of the settlement payments between the claimant and each other plaintiff or claimant named above are specified on Attachment 12.

13. **The claimant's medical expenses, including medical expenses paid by petitioner and insurers, to be reimbursed from proceeds of settlement or judgment**

a. Totals

(1) Total medical expenses: $ _____

(2) Total outstanding medical expenses to be paid from the proceeds: $ ☐

(3) Total out-of-pocket, co-payments, or deductible payments to be reimbursed from proceeds: $ ☐

b. Medical expenses were paid and are to be reimbursed from proceeds as follows:

(1) ☐ Paid by petitioner in the amount of: $ ☐

(2) ☐ Paid by private health insurance or a self-funded plan under:

(a) ☐ An Employee Retirement Income Security Act (ERISA) insured plan.

(b) ☐ An ERISA self-funded plan.

(c) ☐ A Non-ERISA insured plan.

(d) ☐ A Non-ERISA self-funded plan.

(e) Amount paid by plan: $_____

(f) Amount of reimbursement to the plan from proceeds of settlement or judgment:

(i) ☐ No reimbursement is requested by the plan.

(ii) ☐ Reimbursement is to be made to the plan and:

(A) ☐ There is a contractual reduction of $ (_____)

(B) ☐ There is a negotiated reduction of $ (_____)

(C) ☐ No reduction has been agreed to,

for a total reimbursement to the plan in the amount of: $ ☐

CASE NAME:	CASE NUMBER:

13. **The claimant's medical expenses, including medical expenses paid by petitioner and insurers, to be reimbursed from proceeds of settlement or judgment**

b. Medical expenses were paid and are to be reimbursed from proceeds as follows:

(3) ☐ Paid by Medicare in the amount of: $

less the statutory reduction in the amount of: $ _____)

for a total reimbursement to Medicare in the amount of: $ ☐

(Attach a copy of the final Medicare demand letter or letter agreement as Attachment 13b(3).)

(4) ☐ Paid by Medi-Cal in the amount of $ _____

(a) ☐ Notice of this claim or action has been given to the State Director of Health Care Services under Welfare and Institutions Code section 14124.73. A copy of the notice and proof of its delivery ☐ is attached. ☐ was filed in this matter on *(date):*

(b) ☐ Notice of this claim or action has **not** been given to the State Director of Health Care Services. *(Explain why notice has not been given in Attachment 13b(4).)*

(c) ☐ In full satisfaction of its lien rights, Medi-Cal has agreed to accept reimbursement in the amount of: $ ☐

(Attach a copy of the final Medi-Cal demand letter or letter agreement as Attachment 13b(4).)

(d) ☐ Petitioner is entitled to a reduction of the Medi-Cal lien under Welfare and Institutions Code section 14124.76 and:

(i) ☐ Is filing a motion seeking a reduction of the lien concurrently with this petition.

(ii) ☐ Requests that the court reserve jurisdiction over this issue.

The amount of the lien in dispute is: $ _____

(5) ☐ (a) There are one or more statutory or contractual liens of medical service providers for payment of medical expenses. The total amount claimed under these liens is: $ _____ . In full satisfaction of their lien claims, the lienholders have agreed to accept the total sum of: $ ☐

(Provide requested information on each lienholder and certain other medical service providers below.)

(b) The name of each medical service provider that furnished care and treatment to claimant and (1) has a lien for all or any part of the charges or (2) was paid (or will be paid from the proceeds) by petitioner for which petitioner requests reimbursement; the amounts charged and paid; the amount of negotiated reduction of charges, if any; and the amount to be paid from the proceeds of the settlement or judgment to each provider are as follows:

(i) (A) Provider *(name):*

(B) Address:

(C) Amount charged: $

(D) Amount paid (whether or not by insurance): $ ( )

(E) Negotiated reduction, if any: $ (_____)

(F) Amount to be paid from proceeds of settlement or judgment: $ ☐

(ii) (A) Provider *(name):*

(B) Address:

(C) Amount charged: $

(D) Amount paid (whether or not by insurance): $ ( )

(E) Negotiated reduction, if any: $ (_____)

(F) Amount to be paid from proceeds of settlement or judgment: $ ☐

☐ Continued on Attachment 13b(5). *(Provide information about additional providers in the above format, including providers paid or to be paid by petitioner for which reimbursement is requested in item 13b(1) above. You may use form MC-350(A-13b(5)) for this purpose.)*

CASE NAME:	CASE NUMBER:

14. **The claimant's attorney's fees and all other expenses (except medical expenses), including expenses advanced by claimant's attorney or paid or incurred by petitioner to be reimbursed from proceeds of settlement or judgment**
    a. Total amount of attorney's fees for which court approval is requested: $
    (If fees are requested, attach as Attachment 14a, a declaration from the attorney explaining the basis for the request, including a discussion of applicable factors listed in rule 7.955(b) of the Cal. Rules of Court. Respond to item 18a(2) on page 7 and attach a copy of any written attorney fee agreement as Attachment 18a.)
    b. The following additional items of expense (other than medical expenses) have been incurred or paid, are reasonable, resulted from the incident or accident, and should be paid out of claimant's share of the proceeds of the settlement or judgment:

Items	Payees *(names)*	Amounts
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$

☐ Continued on Attachment 14b. **Total: $**

15. **Reimbursement of expenses paid by petitioner**
    a. ☐ Petitioner has paid none of the claimant's expenses listed in items 13 and 14 for which reimbursement is requested.
    b. ☐ Petitioner has paid (or become obligated to pay) the following total amounts of the claimant's expenses for which reimbursement is requested.
        (1) ☐ Medical expenses listed in item 13: $
        (2) ☐ Attorney's fees included in the total fee amount shown in item 14a: $
        (3) ☐ Other expenses included in the total shown in item 14b: $ _____
        Total: $
    (Attach proofs of the expenses incurred and payments made or obligations to pay incurred, e.g., bills or invoices, canceled checks, credit card statements, explanations of benefits from insurers, etc.)

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

17. **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's 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)):* $

CASE NAME:	CASE NUMBER:

18. **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. *(Go to item 19.)*

(2) ☐ Petitioner has been represented or assisted by an attorney in preparing this petition or with respect to the claim asserted. 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," attach a copy of the agreement as Attachment 18a, and complete items 18b.–18f.)*

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 ☐ 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):*

From whom *(names)*	Amounts	Dates
	$	
	$	
	$	
	$	
	$	

☐ Continued on Attachment 18c.

d. 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 18d.)*

e. 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 18e.)*

f. The attorney ☐ does not ☐ does expect to receive 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 "does," identify the person who will pay the fees or other compensation, the amounts to be paid, and the expected dates of payment):*

From whom *(names)*	Amounts	Expected dates
	$	
	$	
	$	
	$	
	$	

☐ Continued on Attachment 18f.

CASE NAME:	CASE NUMBER:

19. **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 19a(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 19a(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 19a(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 19a(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 19a(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 19a(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 19a(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 19a(3).

CASE NAME:	CASE NUMBER:

19. **Disposition of balance of proceeds of settlement or judgment** (cont.)
Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows:

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 19b(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 19b(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 19b(3).

(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 19b(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 3401–3402, without bond. The name and address of the parent and the money or other property to be delivered are specified in Attachment 19b(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 19b(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 19b(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 18b(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 19b(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 19b(11).

☐ Continued on Attachment 19.

CASE NAME:	CASE NUMBER:

20. ☐ **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 20.

21. ☐ **Additional orders**
Petitioner requests the following additional orders *(specify and explain):*

☐ Continued on Attachment 21.

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)

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)

ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**Draft 12** **August 21, 2009** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	CASE NUMBER:
EXPEDITED PETITION TO APPROVE: ☐ **COMPROMISE OF DISPUTED CLAIM** ☐ **COMPROMISE OF PENDING ACTION** ☐ **DISPOSITION OF PROCEEDS OF JUDGMENT** ☐ **Minor** ☐ **Person With a Disability**	☐ No hearing date is requested. ☐ HEARING DATE: DEPT.: TIME:

NOTICE TO PETITIONERS

You must use this form if you wish to request expedited court approval of certain (1) compromises of disputed claims of a minor, (2) compromises of pending actions or proceedings in which a minor or a person with a disability (including a conservatee) is a party, or (3) dispositions of the proceeds of judgments for a minor or person with a disability. (See Code Civ. Proc., § 372; Prob. Code, § 3500 et seq.) You may use this form if (1) you are represented by an attorney; (2) the statements in items 3a, 3b, 3c, 3d, 3e, 3f, and either 3g(1) or 3g(2) below are true; and (3) the court does not otherwise order.

If you qualify and choose to use this form, the court may consider and act on your petition without a hearing. If your compromise or judgment does not qualify for expedited treatment or you choose not to use this form, you must use the *Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-350), and the court will schedule a hearing. See Cal. Rules of Court, rules 7.950, 7.950.5, and 7.951.

1. **Petitioner** *(name):*
2. **Claimant** *(name):*
   a. Address:
   b. Date of birth: c. Age: d. Sex: e. ☐ Minor f. ☐ Person with a disability
3. **Expedited petition**
   a. The claimant's claim or action is **not** for damages for the death of a person caused by the wrongful act or neglect of another.
   b. No portion of the net proceeds of the judgment or settlement in favor of the claimant is to be placed in a trust.
   c. There are no unresolved disputes concerning liens to be satisfied from the proceeds of the judgment or settlement.
   d. Petitioner's attorney did not become involved with this matter, directly or indirectly, at the request of a party against whom the claim is asserted or a party's insurance carrier.
   e. Petitioner's attorney is not representing, employed by, or associated with a defendant in this matter or an insurance carrier.
   f. All defendants that have appeared in a pending action on the claim are participating in the proposed compromise **or** the court has finally determined that all settling parties entered into the settlement in good faith.
   g. (1) ☐ The judgment for the claimant described in item 5c (exclusive of interest and costs) or the total of the settlement described in items 12 and 13 payable to the claimant and all other persons named in item 13 is in the amount of $50,000 or less; or
      (2) ☐ The settlement described in item 12 represents payment of the single-person policy limits of all liability insurance policies covering the defendants named in that item. The investigation described in Attachment 3 shows that all of those defendants are judgment proof outside of their insurance coverage. *(Describe investigation and results in Attachment 3.)*

CASE NAME:	CASE NUMBER:

4. **Relationship** Petitioner's relationship to the claimant *(check all applicable boxes):*
   a. ☐ Parent
   b. ☐ Guardian ad litem
   c. ☐ Guardian
   d. ☐ Conservator
   e. ☐ Disabled adult claimant is a petitioner. *(See instructions for items 4e and 4f below.)*
   f. ☐ Disabled adult claimant's express consent to the relief requested in this petition is provided on Attachment 4f.
   g. ☐ Other relationship *(specify):*

   (If you checked item 4e or 4f, state facts on Attachment 4e or 4f showing that the claimant has capacity under Probate Code section 812 to petition or consent to a petition. Only an adult claimant who has sufficient capacity and who does not have a conservator of the estate may petition or consent to a petition. See Probate Code section 3613.)

5. **Nature of claim** The claim of the minor or adult person with a disability:
   a. ☐ Is not the subject of a pending action or proceeding. *(Complete items 6–23.)*
   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 6–23.)*
   c. ☐ is the subject of a pending action or proceeding that has been or will be reduced to a judgment for the claimant against the defendants named below in the total amount (exclusive of interest and costs) of *(specify):*

   $

   Defendants *(names)*:

   ☐ Additional defendants listed on Attachment 5. ☐ The judgment was filed on *(date):*

   (Attach a copy of the (proposed) judgment as Attachment 5c and complete items 14–23.)

6. ☐ **Incident or accident**
   The incident or accident occurred as follows:
   a. Date Time:
   b. Place:
   c. Persons involved *(names):*

   ☐ Continued on Attachment 6.

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

   ☐ Continued on Attachment 7.

CASE NAME:	CASE NUMBER:

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

☐ Continued on Attachment 8.

9. ☐ **Treatment**
The claimant received the following care and treatment for the injuries described in item 8 *(describe):*

☐ Continued on Attachment 9.

10. ☐ **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 10. A new report is not necessary so long as a previous report accurately describes the claimant's current condition.)*
   a. ☐ The claimant has recovered completely from the effects of the injuries described in item 8, and there are no permanent injuries.
   b. ☐ The claimant has not recovered completely from the effects of the injuries described in item 8, and the following injuries from which the claimant has not recovered are temporary *(describe the remaining injuries):*

   ☐ Continued on Attachment 10b.

   c. ☐ The claimant has not recovered completely from the effects of the injuries described in item 8, and the following injuries from which the claimant has not recovered are permanent *(describe the permanent injuries):*

   ☐ Continued on Attachment 10c.

11. ☐ **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 from the settling defendants named below even though the claimant's injuries may in the future appear to be more serious than they are now thought to be.**

12. ☐ **Amount and terms of settlement**
By way of settlement, the defendants named below have offered to pay the following sums to the claimant:
   a. The total amount offered by all defendants named below is *(specify):* **$** _____
   b. The defendants and amounts offered by each are as follows *(specify):*

Defendants *(names)*	Amounts
	$
	$
	$
	$

   ☐ Additional defendants and amounts offered are listed on Attachment 12.

   c. The terms of settlement are described on Attachment 12. *(If the settlement is to be paid in installments, both the total amount and the present value of the settlement must be included.)*

CASE NAME:	CASE NUMBER:

13. ☐ **Settlement payments to others**

a. ☐ No defendant named in item 12b has offered to pay money to any person or persons other than the claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.

b. ☐ By way of settlement, one or more defendants named in item 12b have also offered to pay money to a person or persons other than claimant to settle claims arising out of the same incident or accident that resulted in the claimant's injury.

(1) The total amount offered by all defendants to others *(specify):* **$**

(2) ☐ Petitioner would receive money under the proposed settlement.

(3) The settlement payments are to be apportioned and distributed as follows:

Other plaintiffs or claimants *(names)*	Amounts
	$
	$
	$
	$

☐ Additional plaintiffs or claimants and amounts are listed on Attachment 13.

(4) ☐ The settlement payments are apportioned between the claimant and each other plaintiff or claimant named above on a pro rata basis, based upon the special damages claimed by each. The special damages claimed by each other plaintiff or claimant are specified on Attachment 13.

(5) ☐ Reasons for the apportionment of the settlement payments between the claimant and each other plaintiff or claimant named above are specified on Attachment 13.

14. **The claimant's medical expenses, including medical expenses paid by petitioner, Medicare, Medi-Cal, and private insurers, that are to be reimbursed from proceeds of settlement or judgment**

a. Totals

(1) Total expenses: $

(2) Total amount paid (including payments by private insurance, Medi-Cal, or Medicare): $ ( )

(3) Total of negotiated reductions, if any: $ ( )

(4) Total amount of medical expenses to be paid or reimbursed from proceeds: $

(5) Total amount of medical liens, if any: $

(Identify each medical expense payer and the amount each paid, and explain any differences between items 14a(1), (4) and (5) in Attachment 14a.)

b. (1) ☐ None of the claimant's medical expenses have been paid by Medicare.

(2) ☐ Medicare paid some or all of claimant's medical expenses. In full satisfaction of its lien rights, Medicare will be reimbursed in the amount of $

(Attach a copy of the final Medicare demand letter or letter agreement as Attachment 14b(2).)

c. (1) ☐ None of the claimant's medical expenses have been paid by Medi-Cal.

(2) ☐ Medi-Cal paid all or some or all of the claimant's medical expenses.

(a) Notice of this claim or action has been given to the State Director of Health Care Services under Welfare and Institutions Code section 14124.73. A copy of the notice and proof of its delivery ☐ is attached. ☐ was filed in this matter on *(date):*

(b) In full satisfaction of its lien rights, Medi-Cal has agreed to accept reimbursement in the amount of: $

(Attach a copy of the final Medi-Cal demand letter or letter agreement as Attachment 14c(2).)

d. ☐ The claimant's health plan is requesting reimbursement for medical expenses paid under the plan. In full satisfaction of the plan's lien rights, it will be reimbursed in the amount of: $

(Attach statements from the plan showing expense payments and requesting reimbursement.)

e. ☐ Petitioner has paid claimant's medical expenses to be reimbursed in the amount of $

(See instructions for item 16.)

CASE NAME:	CASE NUMBER:

14. **The claimant's medical expenses, including medical expenses paid by petitioner, Medicare, Medi-Cal, and private insurers, that are to be reimbursed from proceeds of settlement or judgment**

f. ☐ There are one or more liens from medical service providers for payment of claimant's medical expenses.
In full satisfaction of their lien claims, the lienholders have agreed to accept the sum of: $

g. *(Select (1) or (2) below.)*

(1) ☐ Latest statements from all medical service providers are attached as Attachment 14g.
(2) ☐ All medical expenses have been paid by private insurance, Medicare, or Medi-Cal.

15. **The claimant's attorney's fees and all other expenses (except medical expenses), including fees or expenses paid by petitioner and claimant's attorney, to be paid or reimbursed from proceeds of settlement or judgment**

a. Total amount of attorney's fees for which court approval is requested: $

(If fees are requested, attach as Attachment 15a a declaration from the attorney explaining the basis for the request, including a discussion of applicable factors listed in rule 7.955(b) of the Cal. Rules of Court. Include a copy of any written attorney fee agreement in Attachment 15a.)

b. The following additional items of expense (other than medical expenses) have been incurred or paid, are reasonable, resulted from the incident or accident, and should be paid or reimbursed out of claimant's share of the proceeds of the settlement or judgment:

Items	Payees *(names)*	Amounts
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
		$
	Total:	$

☐ Continued on Attachment 15b.

c. ☐ Costs of suit attributable to more than one settling plaintiff are **not** apportioned between them on a pro rata basis based on their gross settlement amounts. The apportionment of these costs is described and explained in Attachment 15c.

16. **Reimbursement of expenses paid by petitioner**

a. ☐ Petitioner has paid none of the claimant's expenses listed in items 14 and 15 for which reimbursement is requested.
b. ☐ Petitioner has paid the following total amounts of the claimant's expenses for which reimbursement is requested.

(1) ☐ Medical expenses listed in item 14: $
(2) ☐ Attorney's fees included in the total fee amount shown in item 15a: $
(3) ☐ Other expenses included in the total shown in item 15b: $

(Attach proofs of the expenses incurred and payments made, e.g., bills or invoices, canceled checks, credit card statements, explanations of benefits from insurers, etc.) **Total: $**

17. **Net balance of proceeds for the claimant**

The balance of the proceeds of the proposed settlement or judgment remaining for the claimant after payment or reimbursement of all requested fees and expenses is *(specify):* $

CASE NAME:	CASE NUMBER:

18. **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's 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)):* $ [ ]

19. **Information about attorney representing or assisting petitioner**

a. The attorney [ ] is not [ ] is representing or employed by any other party involved in this matter.

(If you answered "is," identify the other party and explain the relationship in Attachment 19a. If the other party is a defendant, you must use form MC-350 for your petition and are not eligible for expedited consideration by the court. See item 3e on page 1 and Cal. Rules of Court, rule 7.950.5(a)(6).)

b. The attorney [ ] has neither received nor expects to receive [ ] has received or expects to receive 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 received or expects to receive," identify the person who paid or will pay the fees or other compensation, the amounts paid or to be paid, and the dates of payment or expected payment):*

From Whom Paid or Expected *(name):*	Date Paid or Expected	Amount Paid or Expected
		$
		$
		$
		$
		$
		$
		$
	Total:	$ [ ]

[ ] Continued on Attachment 19b.

20. **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 20a(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 20a(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 20a(2).

CASE NAME:	CASE NUMBER:

20. **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

(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 20a(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 20a(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 20a(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 20b(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 20b(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 20b(3).

(4) ☐ $ will be paid or delivered to a parent of the minor, upon the terms and under the conditions specified in Probate Code sections 3401–3402, without bond. The name and address of the parent and the money or other property to be delivered are specified in Attachment 20b(4). *(Value of minor's entire estate, including the money or property to be delivered, must not exceed $5,000.)*

(5) ☐ $ 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 20b(5).

(6) ☐ $ 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 20b(6). *(Value must not exceed $20,000.)*

(7) ☐ $ 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 20b(7).

(8) ☐ $ 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).

(9) ☐ $ will be paid or transferred to the adult person with a disability. The money or other property is specified in Attachment 20b(9).

☐ Continued on Attachment 20.

CASE NAME:	CASE NUMBER:

21. 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.

22. ☐ **Additional orders**
Petitioner requests the following additional orders *(specify and explain):*

☐ Continued on Attachment 22.

23. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME OF ATTORNEY) (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 OF PETITIONER) (SIGNATURE OF PETITIONER)

CASE NAME:	CASE NUMBER:

MEDICAL SERVICE PROVIDER ATTACHMENT TO PETITION TO APPROVE COMPROMISE OF CLAIM OR ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT

(A person using Judicial Council form MC-350 to petition for court approval of the compromise of a claim of a minor or an action involving a minor or person with a disability, or disposition of the proceeds of a judgment in favor of a minor or person with a disability, must provide information about medical service providers that (1) have liens for payment of charges for medical care and treatment provided to the minor or disabled claimant or (2) were paid (or will be paid from the proceeds) by petitioner for which petitioner requests reimbursement from the proceeds of the compromise or judgment. (See item 13b(5) on page 5 of form MC-350.) One or more copies of this form may be used as Attachment 13b(5) to that form to provide the required information about additional medical service providers not listed in that form.)

Attachment 13b(5) to form MC-350

13 b. (5) (b) The name of each medical service provider that furnished care and treatment to claimant and (1) has a lien for all or any part of the charges or (2) was paid (or will be paid from the proceeds) by petitioner for which petitioner requests reimbursement; the amounts charged and paid; the amount of negotiated reduction of charges, if any; and the amount to be paid from the proceeds of the settlement or judgment to each provider are as follows:

____ (A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): $ ( )
(E) Negotiated reduction, if any: $ ( )
(F) Amount to be paid from proceeds of settlement or judgment: $

____ (A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): $ ( )
(E) Negotiated reduction, if any: $ ( )
(F) Amount to be paid from proceeds of settlement or judgment: $

____ (A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): $ ( )
(E) Negotiated reduction, if any: $ ( )
(F) Amount to be paid from proceeds of settlement or judgment: $

____ (A) Provider *(name):*
(B) Address:

(C) Amount charged: $
(D) Amount paid (whether or not by insurance): $ ( )
(E) Negotiated reduction, if any: $ ( )
(F) Amount to be paid from proceeds of settlement or judgment: $

Page ____ of ____ attached pages

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**Draft 3** **August 21, 2009** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
ORDER APPROVING: ☐ **COMPROMISE OF DISPUTED CLAIM** ☐ **COMPROMISE OF PENDING ACTION** ☐ **DISPOSITION OF PROCEEDS OF JUDGMENT** ☐ **Minor** ☐ **Person With a Disability**	CASE NUMBER: HEARING DATE, IF ANY: 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 a person with a disability or a proposed disposition of the proceeds of a judgment for a minor or a person with a disability.
2. **Hearing**
   a. ☐ No hearing was held. The petition is an expedited petition under rule 7.950.5 of the California Rules of Court.
   b. ☐ Date: Time: Dept.:
   c. Judicial officer:
3. **Relationship to claimant**
   Petitioner has the following relationship or relationships to claimant *(check all applicable boxes):*
   a. ☐ Parent
   b. ☐ Guardian ad litem
   c. ☐ Guardian
   d. ☐ Conservator
   e. ☐ Claimant, an adult person with a disability, is the petitioner.
   f. ☐ Other *(specify):*
4. **Claimant** *(name):*
   a. ☐ is a minor.
   b. ☐ is a "person with a disability" within the meaning of Probate Code section 3603 who is:
      (1) ☐ An adult. Claimant's date of birth is *(specify):*
         (a) ☐ Without a conservator. Claimant has capacity to consent to this order, within the meaning of Probate Code section 812, and has consented to this order.
         (b) ☐ A conservatee; a person for whom a conservator may be appointed; or without capacity to consent to this order, within the meaning of Probate Code section 812.
      (2) ☐ A minor described in Probate Code section 3603(b)(3).
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")):*

Form Adopted for Mandatory Use
Judicial Council of California
MC-351 [Rev. January 1, 2010]

ORDER APPROVING COMPROMISE OF DISPUTED CLAIM OR PENDING ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT FOR MINOR OR PERSON WITH A DISABILITY
(Miscellaneous)

Code of Civil Procedure, § 372;
Probate Code, § 3500 et seq.;
Cal. Rules of Court, rules 3.1384, 7.953
www.courtinfo.ca.gov

CASE NAME:	CASE NUMBER:

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. ☐ Until further order of the court, jurisdiction is reserved to determine a claim for a reduction of a Medi-Cal lien under Welfare and Institutions Code section 14124.76. The amount shown payable to the Department of Health Care Services in item 7c(1)(d) of this order is the full amount of the lien claimed by the department but is subject to reduction on further order of the court upon determination of the claim for reduction.

c. 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's fees in the total amount of: $ payable to *(specify):*

(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 7c(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 7c(1)(d).

(e) ☐ Total allowance for fees and expenses from the settlement or judgment: $

CASE NAME:	CASE NUMBER:

7. **THE COURT ORDERS** (cont.)

c. The payer shall disburse the proceeds of the settlement or judgment approved by this order in the following manner:

(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* (form MC-355), 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 7c(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 Care 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 7c(2)(c).

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 7c(2)(a):

a. Within 48 hours of receipt of a check or draft described in item 7c(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.

CASE NAME:	CASE NUMBER:

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 7c(2)(a):

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* (form MC-355), which is signed contemporaneously with this order, and three copies of the *Receipt and Acknowledgment of Order for the Deposit of Money Into Blocked Account* (form MC-356). 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 the settlement or judgment deposited in a blocked account or accounts under item 7c(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

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Rules and Forms Relating to Compromises of Disputed Claims of Minors; Compromises of Actions Involving Minors or Persons with a Disability; and Disposition of the Proceeds of Judgments in Favor of Minors or Persons with a Disability (amend rules 7.101, 7.950, and 7.955 of the Cal. Rules of Court; adopt rule 7.950.5; revise Judicial Council forms MC-350 and MC-351; adopt form MC-350EX; and approve form MC-350(A-13b(5)).

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	John P. Bisnar Bisnar/Chase Newport Beach	A	I thank the Working Group for tackling this subject matter. I strongly support the suggestions about the Expedited Petition which will work very well with most of the minors' cases my firm sees (dog attacks, auto accidents). I appreciate the changes to the layout of the Petition, which feels better organized, and the removal of the need to list all health care charges limiting the submission of information to the Court only regarding those bills which have amounts which will be paid from the recovery. I thoroughly support the manner in which the form and the proposed Rule 7.950 address lien claims - especially those which are contested and need the court's intervention in resolving the dispute between the minor and his health care provider, his insurance company, or the Department of Health Care Services. My firm has represented hundreds of minors and a few adults with disabilities, all of whom have had their recoveries approved through the compromise process. I have seen the difficulties which judges face with the mass of information which must be presented for a weekly calendar of	No response is required to this commentator's supportive opening statement. A response is made below to his separately stated recommendation for changes in rule 7.955.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			30 or 40 cases. I have experienced, first hand, the sense of being stymied by the lack of court rules which support and guide the resolution of all of the claims arising against the fund of money generated by a settlement for a minor or an adult with disabilities. I have also faced judges with, what seem to my eyes, misguided and short-sighted priorities in ruling on these Petitions. The pending Proposals make important and significant progress toward a more fair and thoughtful process for the resolution of the claims of children and incompetent adults. I ask the Judicial Council to implement these Proposals. <u>COMMENTS - Proposed Amendment to Rule 7.955</u> Primary among the Proposals which makes the most important advance for fairness is the proposal for the amendment of Rule 7.955 of the *California Rules of Court*. The proposal goes a long way toward establishing more fairness to the attorney-client relationship with a minor. The guidance that the fee contract should be	The committees appreciate the commentator's support for the proposed changes in rule 7.955.

	Commentator	Position	Comment	Committee Response
			enforced if it is not unconscionable is a welcome, and just, change. For far too long, attorneys have been forced to compromise the fees they earn for their work if they choose to represent minors. Unfortunately, the people who suffer from the penuriousness of judicial officers are the children who are denied the representation of highly qualified and effective law firms. Under existing local rule fee terms [such as the old Orange County Superior Court local rule, and the still existing Rule 10.02 of the Sacramento Superior Court Rules of Court], law firms take a 25-50% reduction [if we would have earned a 45% fee on a product liability recovery and get 25% instead, that is a 44.4% loss] in the fee they would have earned from a settlement had the client been an adult. This is a relatively small amount in absolute dollar terms when the case is a $15,000 or $25,000 automobile accident policy limit case which settles without litigation. However, if the case is an automobile products liability wrongful death case, or a products liability case regarding a deficiently designed propane heater, the absolute amounts can be	

	Commentator	Position	Comment	Committee Response
			hundreds of thousands or millions of dollars in a fee. When a firm must make a decision to commit to a case for a minor under the current judicial state of mind to fees in minors' cases, or to leave itself available to prosecute similar claims for an adult, the understandable business decision will be to hold firm capacity and resources open for an adult's case ... a sense that the firm cannot "afford" to take on the case of a minor. So children lose because experienced, successful firms will not take their cases. We will not take a products liability case for a child in many counties in California. We prosecuted a case for the son of a Franchise Tax Board auditor who was killed when the rear of the SUV she was a passenger in was rear ended, sending the car into a spin. The impact broke out the glass in the back, and also broke the seat supports for the front-passenger seat. Mom slid out from under her shoulder belt and lap belt and was thrown out of the car onto the highway, where she was killed. Two different law firms and two different sets of expert consultants had evaluated the case over an 18 month period. The legal	

	Commentator	Position	Comment	Committee Response
			guardian for the son had been advised, and had accepted the decision, to destroy the car and to move on. They were ready to dismiss the lawsuit pending in the Sacramento Superior Court after settling with the driver who ran into the back of the car. Luckily, her attorney had just attended a presentation given by my partner, so he called us. In six months we settled the son's automobile products liability case for a very large sum. We asked the court, at the compromise of that claim which resulted in payments which will total more than $2,000,000 for the client, for a 25% fee [we had less than $10,000 in costs on the case]. The court refused, and awarded only 20%. We made a motion to ask the Court to reconsider that award. The Court again ordered only 20% because, we were told, the 25% fee was unfair to the client. Here, we were willing to accept a fee which would pay us $200,000 less than the fee an adult would pay, but that wasn't enough of a sacrifice for this judge. He denied us yet another $50,000. Somehow, a $250,000 fee was unreasonable for a client who will receive more than $2,000,000 just because of our work.	

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Rules and Forms Relating to Compromises of Disputed Claims of Minors; Compromises of Actions Involving Minors or Persons with a Disability; and Disposition of the Proceeds of Judgments in Favor of Minors or Persons with a Disability (amend rules 7.101, 7.950, and 7.955 of the Cal. Rules of Court; adopt rule 7.950.5; revise Judicial Council forms MC-350 and MC-351; adopt form MC-350EX; and approve form MC-350(A-13b(5)).

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	Commentator	Position	Comment	Committee Response
			We have a products liability case (which had been handled and then returned by other experience firms because the establishment of liability would be too hard) currently pending in Orange County Superior Court which involves an indoor/outdoor propane space heater, the housing of which melted and started burning. As a result of the fire it caused, our young client's mouth, esophagus, and lungs were burned from the superheated air in the trailer he was sleeping in. We have spent three-quarters of a million dollars of our money to develop the evidence necessary to prepare this case for trial where we will demonstrate the dangerously defective design of the product. In the meantime we have spent thousands of hours of time in discovery and hotly contested discovery disputes — one such dispute has us involved in a writ proceeding in the Court of Appeal at this time. When this case resolves, and we have collected the compensation our client deserves for his heartbreaking injuries, we will be asking the Court for a 45% fee. We will have earned and deserve a 45% fee.	

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	Commentator	Position	Comment	Committee Response
			Without the guidance of the proposed Rule, it is probable that we will be limited to a 25% fee, a difference of at least $2,000,000 if we obtain the recovery we expect. This is an extreme disincentive to taking a case which we could see was going to be such a drain on our firm's resources. We are driven by the desire to represent this client, seriously injured because of Coleman's callous disregard of the safety of its customers in exchange for its own profit, but the likelihood that we will suffer the loss of over a million dollars in that pursuit will make us seriously consider rejecting a case like this in the future. The people who will suffer the consequences of that experience will be the children whose cases we choose to reject. I therefore whole-heartedly support the adoption of the proposed amendments to Rule 7.955. <u>COMMENT - Suggestion for Further Amendment to Rule 7.955 - Require a Statement on the Record of the Court's Findings</u> The most effective guard against the	The committees respectfully disagree with this recommendation to require courts to state express findings when the award of fees departs from the terms of a representation agreement. The statute calls for court approval of reasonable expenses to be paid

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Rules and Forms Relating to Compromises of Disputed Claims of Minors; Compromises of Actions Involving Minors or Persons with a Disability; and Disposition of the Proceeds of Judgments in Favor of Minors or Persons with a Disability (amend rules 7.101, 7.950, and 7.955 of the Cal. Rules of Court; adopt rule 7.950.5; revise Judicial Council forms MC-350 and MC-351; adopt form MC-350EX; and approve form MC-350(A-13b(5)).

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			continued life of old local rules and guidelines will be the stated requirement that a court, in ruling upon a request for attorney's fees, state its findings which serve as the basis for deciding to not enforce the fee terms of the existing attorney-client agreement and why those fee terms are unconscionable. Just as with deviations from child support guidelines, when there is a deviation from the terms of the fee agreement, the Court should be required to state its reasons on the record. Thank you for this opportunity for me to comment on these proposals. Feel free to call me if you would like to develop any of my comments further.	from the proceeds of a compromise, judgment or settlement payable to a minor or disabled person, not merely enforcement of a contingent fee agreement. The terms of a representation agreement are properly factors to be considered in the court's determination of what is a reasonable attorney's fee to be paid from the proceeds under all the circumstances of the case, but they are not the only factors.
2.	John P. Blumberg Blumberg Law Corporation Long Beach	A	I fully support these revisions.	No response required.
3.	California Defense Counsel by Michael Belote, Legislative Advocate Sacramento	A	On behalf of the California Defense Counsel ("CDC"), we are writing in support of the proposals included in Item SPR09-41, "Rules and Forms Relating to Compromises of Disputed Claims of Minors; Compromises of Actions	Except as noted below, no response to these favorable comments is required.

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	Commentator	Position	Comment	Committee Response
			Involving Minors or Persons with a Disability; and Disposition of Proceeds of Judgments in Favor of Minors or Persons with a Disability". Members of the CDC were pleased to be included on the working group which developed the proposed rules and forms changes for recommendation to the Probate and Mental Health Advisory Committee and the Civil and Small Claims Advisory Committee. In our view, the proposed rules and forms appropriately address critical issues relating to claims by minors and persons with disabilities. It is important that vulnerable populations be protected in a manner which does not impede access to justice. On issues such as expenses and attorney fees, the rules appropriately strike that balance. We would also note that important principles of judicial discretion are maintained: in the attorney fees area, for example, the rules require case-specific determinations of reasonableness. The rules also provide guidelines on factors which should be considered in making those determinations, obviating concerns that prior local rules operated as *de facto* limits on fees.	

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			In clarifying that determinations should be made on a case-by-case basis; the proposed rules are consistent with many prior proposals which have been successfully incorporated into statewide Rules of Court. While not directly relevant to item SPR09-41, we would reiterate that substantial issues relating to confidentiality of minor's compromises remain to be resolved. We understand that those issues are being considered by a separate working group whose activities are ongoing. Thank you for this opportunity to comment.	The working group plans to address issues of confidentiality this summer and fall. The sponsoring advisory committees, Probate and Mental Health and Civil and Small Claims, will take the issues up after recommendations concerning them have been made by the working group.
4.	Christopher Cole Attorney at Law San Francisco	A	I support these changes. They are long overdue and will be an aid to both the minor and counsel. And, they will make the court's job simpler by providing guidelines.	No response required.
5.	Consumer Attorneys of California by Christine Spagnoli, President, and Christopher Dolan, President Elect Sacramento	A	**Attorney's Fees** Most injured people, including children and persons with disabilities, cannot, following a personal injury, afford to hire an attorney on an hourly basis or pay litigation costs as they are incurred. The	No detailed response is made to this comment because it does not recommend any changes in rule 7.955 as it would be amended in this proposal. The advisory committees believe that the changes in rule 7.955 provide

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			contingency fee allows these claimants to retain competent counsel where the lawyer agrees to represent the individual with no guarantee of ever being paid for services rendered. Where the attorney agrees to advance costs, after-tax dollars are invested into the client's claim which cannot be deducted as business expenses, pursuant to the Internal Revenue Service. Contingency fee lawyers, therefore, advance their time and resources without interest facing the risk that they may never be paid for their services or reimbursed for costs advanced. Clients who elect to retain an attorney on a contingency arrangement knowingly and voluntarily enter the pool of clients being represented by the attorney on a contingency. Most persons injured or harmed do not have a ready supply of funds to pay for a retainer or an hourly fee-for-services arrangement with a lawyer. The contingency fee arrangement balances the playing field by allowing an injured party to secure high quality representation for themselves or their family members following a tragedy without having to make a significant up-front payment to	appropriate support for a contingent fee when that fee represents reasonable compensation under all the facts and circumstances of the case.

	Commentator	Position	Comment	Committee Response
			retain a lawyer. Like insurance companies, the lawyer will win some cases, lose some resulting in the attorney sometimes losing money, sometimes breaking even, and on occasion, obtaining a premium over what she would have made had she been billing by the hour. The contingency fee system also acts as a screen against unsubstantiated complaints as the lawyer, if she accepts the case, bears all the risks involved with the case, including the risk of not receiving any payment for services rendered should the case be unsuccessful. This pool of clients with different cases and different probabilities for recovery allows the contingency fee lawyer to operate a law practice and hopefully make a profit while spreading the risks associated with the nature of the contingent fee representation over a number of cases, over a period of time. The proceeds from a case settled or tried today help finance the legal services that have been, and will be, provided to the other clients of the contingent fee lawyer. Contingency fees are freely negotiated in an arms-length transaction where competition among attorneys acts for the	

	Commentator	Position	Comment	Committee Response
			benefit of the consumer. The negotiated contingency agreement allows for the allocation of the risk among numerous cases. This provides an incentive for lawyers to assume the uncertainty of these cases. Clients who elect to be represented through a contingency fee arrangement necessarily agree to be part of the lawyer's contingency practice and, therefore, share in the benefits of such a system. Contingency fee clients understand that their case, as part of the lawyer's contingency based practice, will, for some period of time, be the beneficiary of settlements or verdicts reached by the attorney in other cases. As such, contingency fee clients participate in a mutual benefit arrangement not only with their lawyers, but with that lawyer's other clients. The client who elects contingency representation also understands that the attorney's fees, if and when ultimately paid, may exceed what the client could have paid on an hourly basis had they agreed to pay hourly rates and costs as they were incurred. In most cases, should the contingent fee system not exist, access to	

	Commentator	Position	Comment	Committee Response
			justice would be denied these litigants for lack of available funds to hire an attorney. As minors are unable to legally enter into contract, their parent, or guardian, enters into the attorney fee relationship on their behalf. As with most decisions made by parents on behalf of children, parents seek to do what is best for their child weighing the costs of the contingent fee against the skill and reputation of the lawyer who they seek to retain. Lawyers reviewing prospective cases, must choose where and how to devote their resources. They must use their knowledge and experience to determine the likelihood of success and the potential value of the recovery of any particular case. Contingent fee lawyers' resources are finite. Agreeing to represent one client, given the ethical requirements not to take on more work than a lawyer can handle, inevitably leads to rejection of other client's cases. Therefore, contingency fee agreements involve the balancing of risk and potential for recovery by all parties to the transaction. As with any contract, clarity and certainty of the terms is vital so the	

	Commentator	Position	Comment	Committee Response
			parties are fully aware of both their rights and responsibilities. An attorney, like any other small business, must be able to create an economic plan which relies upon agreements with her clients. Because of the nature of disputed litigation, a contingent fee practice involves significantly more risk than any other form of legal practice or professional service. Post litigation alteration of a contingency fee agreement skews the careful decision making that attorneys undergo making it less likely that minors may secure the best representation. If a lawyer cannot count on receiving the benefit of the bargained for exchange, and is subject to having her fee arbitrarily reduced, they may be (and presently are) reluctant to accept the assignment. Likewise, they may be hindered in devoting the full measure of required resources to such a case out of a fear that they will not be adequately compensated because of a post hoc reduction of fees. In cases where a recovery is achieved, judges ruling upon a minor's compromise take a retrospective view of the fee	

	Commentator	Position	Comment	Committee Response
			agreement, from a position of certainty, disregarding the uncertainty and risks that were far from clear at the inception of the case. From this perspective of certainty, the court then adjusts the fee as if there was never any risk associated with the case. In some instances courts go so far as to require that, contrary to the contract between the parties, the costs of litigation (monies advanced by the attorney for depositions, filings, experts, etc) be deducted first before the reduced fee is calculated. All of this presents a slippery slope mitigating against the representation of minors because of the lack of predictability and certainty in contracting. The lack of uniformity also results in waste of judicial resources and extensive delay. Some courts, by local rule, require extensive, arbitrary, accountings of time spent by the attorneys and minute justification of the costs expended by counsel. In some instances, the court, looking backwards, even strikes/precludes recovery of actual out of pocket expenses of the attorney without providing any justification.	

	Commentator	Position	Comment	Committee Response
			This lack of uniformity is also exemplified by the fact that most counties have local rules which set varying, arbitrary, fee caps when considering the petitions of minors and persons with disabilities. If that were not difficult enough, many jurists now deviate from their already, artificially lower rates articulated in the local rules, allowing those fees only in "unusual circumstances" while routinely imposing fees as low as 15-20%. The arbitrary application of these fee caps causes additional confusion and uncertainty in the representation of minors and dependants in the medical negligence arena. As MICRA placed a cap on the recovery of non economic damages (C.C.P. Section 3333.2) and minors and/or the disabled often have significantly reduced, or non-existent wage loss /economic damages, the application of these local rules not only violates the fee provisions of Section 3333.2, they act as a further barrier to parents and relatives of injured/disabled plaintiffs in securing competent representation. Plaintiff personal injury practices are small	

	Commentator	Position	Comment	Committee Response
			businesses with employees ranging from few to many. The contingency fees generated must pay all of the expenses of a typical small business—rent, utilities, premises liability insurance, workers' compensation insurance, payroll taxes, etc. Many lawyers try to provide employees with benefits like health/dental insurance and retirement plans. Lawyers also incur the professional expenses like professional liability insurance, legal research fees, professional dues, fees and MCLE compliance. Litigation firms also face ever increasing filing fees, deposition fees, expert witness fees and other costs associated with preparing and litigating personal injury cases. All of this is accomplished by a careful balance of a calculated risk-return ratio that is disturbed by arbitrary modification of the attorney client agreement. A lawyer needs to have some reasonable expectation of anticipated fees to be earned when they accept representation of a client. A retention agreement that reflects prevailing market rates freely signed by the guardian or representative of the claimant should provide the attorney with a	

	Commentator	Position	Comment	Committee Response
			reasonable assurance that fees will be paid pursuant to the retention agreement. Unfortunately, this is not the case in most courts and a significant number of our members report that they have severely limited their representation of minors due to the difficulty in getting paid a reasonable fee. The Consumer Attorneys of California supports the proposed rule change which requires the court to consider the retention agreement for the claim. We are concerned that the judiciary, in an effort to "protect" the interest of the minor or person with a disability, is actually impeding the ability of these personal injury victims to obtain quality legal representation due to the arbitrary modification of the contingency fee contract post trial/settlement. Many contingent fee lawyers, already handling tremendous uncertainty, are unwilling to devote their resources to the handling of these claims under the arbitrary process which now exists. This creates a significant barrier to access to justice for many minors, elderly, and disabled victims. It should also be noted that the defense bar does not work at discounted rates where	

	Commentator	Position	Comment	Committee Response
			the plaintiff is a minor or person with a disability. Insurance carriers do not lavish larger or quicker settlements where the claimant happens to be a minor or a person with a disability. Furthermore, there is nothing easy about representing these claimants. In fact, representing these plaintiffs is often more difficult than representing a competent adult for a comparable injury claim. Children and persons with disabilities can be more problematic and unreliable witnesses on liability issues and often poorly articulate their problems caused by the injury. Future medical residuals and medical needs are often difficult to predict and with no prior earning history, proving an impairment of future earning capacity is a challenging undertaking. The courts' post resolution fee also fails to take into account the complete loss born by the personal injury lawyer when his/her client's case, although meritorious, is, because of the nature of the jury system, lost at trial. Nowhere does a court provide an additur in such circumstances to compensate the plaintiff's attorney, who, despite their best efforts and the significant	

	Commentator	Position	Comment	Committee Response
			expenditure of time and money, receives no compensation under such circumstances. By adopting the proposals concerning the establishment of a statewide, uniform, system to be employed in the consideration of attorney's fees which recognizes and weighs the terms of the retention agreement, the nature of the contingency fee practice, and existing law, such as C.C.P. Section 3333.2, we believe that the pool of qualified attorneys willing to represent these most vulnerable of claimants will expand enhancing both access to justice, and the quality of legal representation. **<u>Expedited Forms & Process</u>** We fully support the creation of an expedited form and process for obtaining court approval without a hearing in appropriate cases. It is often a hardship, especially in these difficult economic times, for a parent or guardian to take an unpaid day off of work to attend a compromise hearing. Children are ill-served to miss school for the purpose of	No response to this favorable comment is required.

	Commentator	Position	Comment	Committee Response
			appearing at a compromise hearing where they have little to add. The time and trouble often associated with seeking court approval is another reason why many of our members have reported they no longer agree to undertake representation of minors on meritorious but smaller claims. The expedited process should help eliminate the unnecessary appearances in these claims that will qualify for the expedited process and help promote judicial efficiency in these difficult budgetary times. **<u>Revisions to MC-350</u>** There have been significant statutory enactments and appellate opinions which justify many of the proposed modifications to form MC-350. A medical provider's entitlement to assert a lien in a personal injury case may depend upon whom that provider is, the type of services provided, and whether or not they have received some compensation from another source for the services provided.	The advisory committees appreciate the contributions of many members of the Consumer Attorneys of California to the revision of form MC-350. Their expertise, particularly in connection with highly complex and swiftly evolving legal issues surrounding statutory and contractual liens of medical service providers and private and public insurers, was particularly helpful.

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			For example, in 2003, our Supreme Court decided *Olszewski v. Scripps Health* (2003) 30 Cal.4th 234, which held that where a medical provider accepts Medi-Cal, it has accepted that payment as payment in full and it cannot seek further payment from the proceeds of the patient's personal injury lawsuit. In 2005, the court decided *Parnell v. Adventist Health* (2005) 35 Cal.4th 595, and reached a similar conclusion concerning a medical provider who had contractually agreed to accept negotiated contractual reductions from an insurance company plus co-payment as payment in full. Such a provider, absent language in the contract with the insurance company allowing them to pursue payment, cannot assert a lien for the balance of the bill in the patient's personal injury case. In 2006, the United States Supreme Court decided *Arkansas Dept. of Health and Human Servcs. v. Ahlborn* (2006) 257 U.S. 268, holding therein that a state department of health services participating in the Medicaid program may not assert a lien in the beneficiary's personal injury case that goes beyond the beneficiary's recovery for	

	Commentator	Position	Comment	Committee Response
			past medical expenses. In 2007, the California legislature amended Welfare and Institutions Code to comply with the *Ahlborn* decision and Section 14124.76 now provides for mandatory judicial review of a Medi-Cal reimbursement claim in order to determine if a reduction, as required by *Ahlborn*, is appropriate if requested by the beneficiary or the Department of Health Services. In *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, the court held that where such a motion is made, the trial court must hear and decide the motion. More recently, the court reached the same decision in *Lima v. Vous* 94 Cal.Rptr.3d 183, 2009 WL 1464263 (Cal.App. 2 Dist.), 09 Cal. Daily Op. Serv. 6415, affirming the trial court's duty to make an *Ahlborn* reduction determination providing a suggested formula for doing so. In *Espercueta v. Shewry* (2008) 164 Cal.App.4th 615, and *McMillian v. Stroud* (2008) 166 Cal.App.4th 692, petitioners returned to court after the minor's compromise petition had been approved seeking *Ahlborn* reductions. The court rejected the request, holding that the	

	Commentator	Position	Comment	Committee Response
			petition was untimely since the order approving the petition had already been entered. There may be cases where the petitioner needs immediate approval of a settlement with a third party defendant and needs time to evaluate the status of all liens in the case and attempt to negotiate an *Ahlborn* reduction as contemplated by Welfare and Institutions Code section 14124.76. In that case, the petitioner would need to reserve the issue of an *Ahlborn* hearing, if necessary. Paragraph 13(b)(4)(d) of form MC-350 provides for appropriate notice to the court that the *Ahlborn* motion is being sought concurrently with the petition or whether it will be sought at a later time. However, CAOC would request a modification to the Order, MC-351, to add a box providing a mechanism for the court and counsel to reserve jurisdiction over an *Ahlborn* motion so that the petitioner is not precluded from seeking a later hearing pursuant to *Espercueta* and *McMillian*.	The advisory committees support this recommendation and have revised the form order accordingly. See item 7b on page 2 of the revised order. The statement reserving jurisdiction says: "Until further order of the court, jurisdiction is reserved to determine a claim for a reduction of a Medi-Cal lien under Welfare and Institutions Code section 14124.76. The amount shown payable to the Department of Health Services in item 7c(1)(d) of this order is the full amount of the lien claimed by the Department, but is subject to reduction on further order of the court upon determination of the claim for reduction."

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			In the area of medical benefits paid on behalf of a minor or a person with a disability under a plan provided by an employer, which may be subject to federal law under the Employee Retirement Income Security Act (ERISA), it is important to know if the plan is self-funded, and therefore not subject to California law concerning reductions, or whether it is funded through an insurance plan which subjects it to California law concerning reductions. *Totten v. Hill* (2007) 154 Cal.App.4th 1512. The proposed changes deal with this distinction, but CAOC believes further refinement of the petition form regarding the applicability of ERISA would be beneficial to the litigants and the court. For example, ERISA preemption would not apply even in an employer provided plan if	This means that the remaining terms of the settlement, including the total payable by the settling defendants, is not contingent on a successful outcome of the *Ahlborn* motion. Form MC-350 has been revised to inquire whether a plan under which medical benefits have been paid for the benefit of the injured minor or person with a disability is an insured or self-funded ERISA plan, or an insured or self-funded non-ERISA plan. See item 13b(2) on page 4 of the revised form.

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			the employee is employed by a governmental entity or church. 29 U.S.C. 100 3(b)(1 & 2). Adapting the form so as to clearly communicate this to the court would help facilitate the petition process. Likewise, in the area of medical care provided on an emergency and ongoing basis, special statutory lien considerations apply pursuant to California Civil Code § 3045.1. Consumer Attorneys of California would suggest modifying Paragraph 13 of MC-350 so as to provide information to the court relating to any liens asserted pursuant to these special statutory provisions. With that request, CAOC endorses Paragraph 13 of the proposed revised form MC-350 as it allows the practitioner and the court to evaluate the nature and validity of the lien claims being asserted, whether it should be compromised, negotiated or eliminated by court order. This modification provides a tremendous benefit to the court, attorneys and the minor or person with a disability in that it helps assure that funds are not being paid to satisfy an impermissible or excessive lien claim.	The category of liens in item 13b(5)(a) and the list of medical service providers with liens in item 13b(5)(b) on page 5 of form MC-350 has been expanded to include statutory as well as contractual liens. The hospital lien under section 3045.1 would qualify as a statutory lien.

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			The proposed changes to the Form MC-350 regarding unpaid bills and lien claims streamline the petition process focusing the court and counsel on what needs to be accomplished to close the minor's case, while assuring that all legitimate debts have been satisfied. Where a claimant has had extensive medical care which has been paid by some source and the provider or insurer is not asserting a claim for reimbursement, the petitioner should not (as is currently the case) be required to itemize all of the past care provided. In a significant injury case, this can take days of compilation of medical provider information and the amounts billed and paid when it really serves no purpose in connection with the petition for compromise. The proposed revisions focus the court not on what has happened and been resolved but, instead, on the outstanding issues such as unpaid bills and lien claims, the propriety of those claims, and the amounts and methods to be used in satisfying these obligations.	

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			<u>Conclusion</u> The mission of the Consumer Attorneys of California is to ". . . seek justice for all preserve the right of consumers to a trial by jury, and uphold the honor and dignity of the legal profession with the highest standards of ethical conduct and integrity." We believe these proposed changes to the rules and forms concerning petitions to compromise the claims of minors and persons with disabilities will advance these important goals. They will improve access to justice for this group of claimants by allowing them to retain highly qualified legal counsel at competitive, fair, market rates when adjusted for risk as counsel will be more likely to undertake representation if they can project certainty into their compensation agreements. These changes will also more effectively, and efficiently guide the attorneys, claimants, and the court through the often onerous and complicated task of settling the affairs of the case thereby making sure that the petitioner is well protected and that all of their obligations have been fairly satisfied.	

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6.	Donald M. de Camara Law Offices of Donald de Camara Carlsbad	AM	Item 13 in revised form MC-350 would benefit from several changes. Item 13b2 on page 4 of the form attempts to draw a distinction between ERISA and non-ERISA plans, referring to them both as "private health insurance." This may run afoul of the ERISA "deemed" clause in 29 USC § 1144 which provides that no employee benefit plan shall be deemed to be an insurance company. The "deemed" clause is necessary in section 1144 because of the "savings" clause, which saves to the state the power to regulate insurance. The important distinction to draw here would be between insured plans and self-funded ERISA plans in order to determine whether state insurance limits on reimbursement (like Civ. Code, § 3040) apply. Civil Code section 3040 and other state insurance regulations would apply to both private health insurance and insured ERISA plans, due to the savings clause. But such statutes do not apply to self-funded ERISA plans, which are subject exclusively to federal law. Therefore, I would suggest four categories in item 13b2 instead of the 3 present in the draft form:	The committees have accepted this recommendation, and have made the changes proposed by the commentator in item 13b(2) at page 4 of form MC-350. See response to comment of the Consumer Attorneys of California above concerning ERISA and non-ERISA plans, funded and unfunded.

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			(1) private insurance; (2) self-funded ERISA plan; (3) insured ERISA plan; and (4) non-ERISA self-funded plan (this would be public entity or church plans not subject to ERISA). In item 13b(4)(d)(ii) on page 5 of form MC-350, the form allows a request that the court "reserve judgment" over the *Ahlborn* reduction issue. If this is intended to mean a reservation of jurisdiction, I think that should be clarified. If it purports to allow the minor's attorney to avoid bringing the *Ahlborn* motion, I do not think it is a good idea. *Ahlborn* reduction issues should be resolved at the time of the settlement and minor's compromise.	Reservation of jurisdiction is intended, so "reservation of jurisdiction" has been substituted for "reservation of judgment" in the form. A full resolution of the compromise cannot be had until an *Ahlborn* issue is resolved. However, in many cases there is delay before that occurs, during which time other issues can be addressed. If there remains an unresolved *Ahlborn* issue but the parties are willing to proceed with the rest of the settlement on the understanding that the Medi-Cal lien may not be reduced, the court may work around it so long as the maximum size of the Medi-Cal lien is known.
7.	Michael J. Fitzpatrick Attorney at Law San Jose	AM	I don't like the way that item 14(d) of form MC-350EX refers to "contractual liens for reimbursement" and "lienholders". This part of the form seems to encompass all reimbursement claims from medical providers and insurers, only some of which are truly "liens" under California law (i.e. security for an EXISTING debt). It should	Item 14d of form MC-350EX (redesignated as item 14f) has been changed to refer to "liens from medical service providers for payment of claimant's medical expenses" to clarify that the items refer to statutory as well as contractual liens (for example liens from hospitals under Civ. Code, § 3045.1) held by medical service providers to secure payment

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			read contractual "claims" for reimbursement, and that would encompass liens as well as simple unperfected contingent contractual reimbursement claims that might be subject to other defenses. These are two very distinct animals. We don't want to be creating equitable rights for these unsecured claimants that don't already exist, simply by using a mandated form. These are subtle but very real and significant distinctions, and the form oversimplifies a complex area of the law. I would be happy to discuss this issue with you if you care to contact me.	for medical services rendered, not claims to reimbursement for payment of these expenses by insurers. There is an additional category of medical service providers that can be paid from the proceeds. These are providers without statutory or contractual liens that have been paid by petitioner or to which petitioner is obligated to made payment. These payments or obligations are treated as reimbursements to petitioner, authorized under Probate Code section 3601.
8.	Robert B. Gray Attorney at Law Oakland	NI	The bulk of personal injury contingent fee cases do not pay a fee which is actually equal to a standard hourly rate. The cases all require research and case costs and investigative services (frequently by the attorney). Those cases which actually provide a fee which is in excess of the hourly rate standard actually assist in financing the representation of cases where the people need help and can't afford it. Secondly, many plaintiffs' attorneys do not keep time card on their cases. They are not	The advisory committees understand that most personal injury cases involve contingent attorneys' fees. The proposed changes in the rules of court do not discourage contingent fees in cases involving injured minors or disabled persons. However, many local rules of court over the years had settled into an inflexible application of a presumption in favor of a 25 percent contingent fee in these cases. Some other courts had concluded that attorneys must show in fine detail the exact time expended in all situations, without regard to a contingent fee agreement or other

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			paid by the hour and to keep those cards/sheets is an extra time requirement and would result in less time spent on the cases themselves. The fee agreement should be the standard applied to award fees. It is now at 25 percent in minors cases and should stay there. If the court starts reducing that sum, deserving cases will go wanting for an attorney simply because attorneys cannot afford to fund them.	factors. The revised rule 7.955 is intended to ensure that courts evaluate fee requests in these cases in light of all relevant factors, including in some cases, the time spent to achieve the results obtained. The proposed changes in rule 7.955 do not require courts to reduce the percentage of recovery awarded as attorneys' fees in these cases. If anything, the new emphasis on the totality of factors affecting reasonable compensation should make it more rather than less likely that a higher percentage than 25 percent may be awarded in an appropriate case if the fee agreement provides for the possibility.
9.	Sanford Jossen Attorney at Law Manhattan Beach	AM	Thank you for your hard work on this body of law. I have worked in the area of representing minors in their tort claims arising out of foster care and related services for over twenty years. For the reasons set forth below, modification of these rules is necessary. Initially, I have attached an article written by Judge Rich in Riverside which points	No response to the generally supportive statements in this comment is required. Responses to specific recommendations for modifications are provided below.

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			out some of the problems with the minor's compromise process. As it now stands and as emphasized by Judge Rich, it is disparate based on the whims of judges in the many counties composing our state. Some judges award 25% of the gross recovery, some award 25% of the net after expenses, some award "reasonable fees based on work." The problem with this disparate approach (in addition to the disparity itself) is that the current fee structure operates as a disincentive to the representation of minors. The fact of the matter is that with a 25% cap for attorney fees [where an attorney is paid based on the gross recovery, which is not the policy statewide], many cases are financially impractical to pursue for an attorney working on a contingency fee basis. This results in the rejection of many cases on behalf of minors and the loss of access to justice for them. If it is the intent of the law to promote or "incentivize" attorneys to enforce the rights of minors, the proposed fee structure accomplishes uniformity by preempting the Local Rules and provides a more reality based measure	

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			of attorney compensation. In reviewing the proposed modifications, the following might be further addressed: 1. Regarding the expedited procedure, should a provision be inserted to permit a hearing on a Petition for Compromise without the appearance of (A) the minor; and/or (B) the Petitioner GAL? What of the case where the minor is below a certain age and will add nothing to a hearing or the Parent/GAL is out of State? What about a Declaration signed by the GAL indicating that fees are set by the court based on quantum meruit [essentially], that the parent/GAL has the right to be heard regarding the fees; that approval is a final disposition on a claim and that parent/GAL has no objection [where the parent/GAL approves]? Even now, some Judges require an appearance and some don't. There is no consistency in Los Angeles Courts now. 2. Should there be a "floor" in attorneys fees i.e. "not less than"? Some judges consider a claim which is not litigated to be phone calls and a few letters. That is not always the case. Judges have told me that	1. The expedited procedure, if applicable and if the expedited form is completed and filed, would not require an appearance by anyone, including the minor or a guardian ad litem (GAL), unless the court exercises its discretion to require an appearance. 2. The committees do not support a floor on attorneys' fee awards. "Reasonable" can mean less than 25 percent or any other stated percentage, but could also mean a higher rather than a lower percentage, subject to the

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			"reasonable" can mean less than 25 percent. 3. The modified Rules of Court provide no procedure for Structured Settlements, other than their approval. The current practice is that the Court approves a Structured Settlement, but what happens then? Now, in Los Angeles, a blocked account is reported to the Court and the Court monitors whether the account is opened. What about the case of structured settlements. There is no monitoring process at all to ensure the placement of these funds or the payment of these funds on maturity. I think an attorney should have to file a Declaration with the court identifying the Structure Company and administrator with a copy of the annuity contract. The Court should "follow" these structures. On maturity, if the minor cannot be located or the checks come back, the structure company should have to notify the Court. The Court can contract with a locator service that could get paid out of the minor's funds. Also by filing the annuity contract with the Court, a minor or his GAL will have access to the annuity contract if the attorney retires or dies, etc.	upper limits provided in the representation agreement. 3. This recommendation goes beyond the current proposal, but will be referred to the working group that made initial recommendations to the advisory committees, and eventually to those committees, for consideration of future changes to address structured settlements.

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			Currently, no tracking system for structured settlements exists at all.	
			4. The proposed modification does not include the requisite contents of the Attorneys Declaration re fees in Rule 7.955(c). Perhaps the elements are implied by the portion of the rule setting forth factors to be considered by the Court. Under rule 7.955(a), shouldn't the Court be permitted to consider the entirety of circumstances over the course of the case as well as the case in chief in evaluating the fee agreement and the measure of a reasonable fee?	4. The advisory committees believe the reference in rule 7.955(c) to the factors listed in subdivision (b) of the rule is a sufficient indication of the desired contents of the declaration. The declaration is to *include* a discussion of those factors, indicating that such a discussion is not sufficient. A thorough description of the services provided, an analysis of liability issues when appropriate, and any other factors touching on the basis for a claim that the fee requested is reasonable, are clearly to be included in the declaration.
			5. Rule 7.950 refers to the proceeds of judgments but should also include the proceeds from settlements.	5. Amended rule 7.950 includes references to the proceeds of compromises of unfiled claims of minors, settlement of actions involving minors or disabled persons, and the disposition of the proceeds of judgments for minors or disabled persons.
			6. The expedited procedure specifies that it is not applicable in the case where a trust exists. Does this mean/include structured settlements or not. It should be clear and specific so that there is no ambiguity which	6. Structured settlements involving trusts are not eligible for expedited treatment. Those that do not involve trusts, and are within the size limits of the expedited procedure, are eligible for that procedure. In effect, this

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			creates confusion.	largely means policy-limits compromises of otherwise judgment-proof defendants, as the small size of other types of settlements eligible for the expedited procedure would reduce the need for a structured payout in those cases.
			7. In some cases, minor's cases are referred through a Bar association such as the Los Angeles| Bar Association Dependency Tort panel. In such cases, the handling attorney pays the Bar 15 percent of his fee. Can a Judge consider in calculating a reasonable fee such expenses.	7. Nothing in this proposal indicates any change in policy concerning a bar association referral payment. If these payments have been shown as a factor affecting a fee award in the past, they may be shown to do so under this proposal.
			Also may a Judge consider the amount of money an attorney expended and has at risk in a case in determining a fee. It would seem fair in both cases. I have advanced over $100,000 in cases I have carried for 5 years. While I am not suggesting that attorneys receive lost interest, this is a factor which should be considered in a reasonable fee.	Yes, the court may consider advanced costs and the risk of loss. See amended rule 7.955(b)(13).
			8. Finally, there is no stated rationale for why attorney fees for minors might not be simply a matter of contract. Cases involving minors are no easier than cases	8. The rationale for awarding a reasonable fee is the language of Probate Code section 3601. That fee may be the fee provided by an agreement, depending on all of the

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			involving adults. What is the reason for a lesser or "reasonable" fee for minor's cases? Thank you for the opportunity to comment on this proposal	circumstances.
10.	Christopher J. Keane The Keane Law Firm San Francisco	A	I am submitting these comments in support of the proposed amendments to CRC 7.955, and especially with respect to the proposed changes as to the court's determination of attorney fees in cases involving minor's compromises. My law practice is devoted exclusively to the representation of minors. We primarily represent minors who have suffered shaken baby syndrome/abusive head trauma, or other forms of abuse, and who have suffered catastrophic brain injury. In addition to my law practice, I volunteer at the San Francisco Child Abuse Prevention Center and currently serve as the President of its Board of Directors. While I have been a practicing attorney for almost 18 years, only recently have my family and I moved to California from Michigan and even more recently have I begun	No response to this comment in support of the proposal to amend rule 7.955 is required.

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			representing children in California. When I moved, I chose to continue my representation of abused children in this state despite learning that lower fees were generally permitted under California law (i.e. 25%) than in other jurisdictions. These cases contain very complicated legal and scientific issues – including state and federal government tort claims, medical malpractice, modified joint and several collection issues, judgment collection issues and causation issues, coupled with expensive economic analysis of future life care needs. I chose to do this work in California, despite the economic disincentive, because these cases involving abused children need to be brought against both the abusers and third parties who have a duty to prevent the abuse but fail to uphold that duty. I believe that the cases need to be brought by competent attorneys who have experience and the money to be able to finance these cases. Abused children, their guardians and the parents - as has been my experience - do not have the money to finance these cases. It has been attributed to Chicago civil rights lawyer, James Montgomery, when discussing the subject of access to justice	

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			for those whose rights are disrespected and violated, as is the case with most victims of abuse, those people must depend upon the law to protect them. In order to get the law to protect them, they need lawyers and they need to pursue lawsuits. To pursue lawsuits, lawyers need access to money - money to pay multiple experts, prepare exhibits, transcripts, etc. In cases with catastrophically brain-damaged children, this can easily exceed $100,000.00-$200,000.00/case over the course of several years. That amount needs to be multiplied by several cases at one time, as well, since most competent lawyers are asked to serve on multiple cases at one time. However, for abused children, as is the case with most persons whose rights are disrespected, those persons have the least access to money. As Mr. Montgomery has said, it is up to the lawyers who choose to represent them to provide them with the money to enforce their rights: "the challenge for the future is to make freedom and democracy work for everyone...it is a challenge left to the lawyers who succeed us....it is an awesome challenge."	

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			Despite all of the risk and responsibility associated with these cases, I am willing to take on this challenge for the children if my firm can work towards an agreed upon reduced contingency fee of 25%. However, the choice becomes increasingly more difficult, if the fee becomes less than that in these complicated cases. My staff is highly qualified and uniquely equipped to handle cases involving children - in addition to me and my assistant, I work with two (2) nurses with pediatric backgrounds, and a trial attorney who is a former child protective worker. We do not do this work just for money, but in order to do this work successfully and devote our expertise to this line of work, we need to be reassured that our risk and responsibility will be analyzed appropriately by a trial court and your proposed changes point a trial court in that direction. Thank you for your consideration.	
11.	Lawrence M. Knapp Law Offices of Lawrence M Knapp Stockton	A	No specific comment.	No response required.

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12.	Robert B. Kopelson Law Offices of Robert B Kopelson San Jose	NI	I think it should be made clear that attorney's declaration is not required to be a detailed breakdown of each minute spent on the case. These PI cases are on contingency, and therefore most attorneys do not keep a detailed time record as they would on an hourly case. I would hate to see judges basing the fees on how many hours were spent per the declaration, and then multiplying by an hourly rate. I also fear judges may give a small fee if they believe the attorney hasn't provided a detailed accounting of hours spent.	The proposed amended rule 7.955 does not require an attorney's supporting declaration to detail each minute spent on the case. However, the declaration should give the court some idea how much time was spent on the case, particularly if it was settled before an action was filed. This can be done in the narrative that describes what was done and its effect on the settlement, not merely in reciting in detail the time spent in each activity.
13.	Alex Liao, Attorney at Law Law Offices of S. Alex Liao San Jose	AM	The rules should set a minimum of 25% attorney's fee and with court's discretion to increase above, after considering enumerated factors. There is a lot of documentation involved in the current proceeding with a hearing appearance. Therefore, the attorney representing the minor must put some efforts and time in the proceeding as well as in the negotiation or litigation of the	See the response to the comment of Robert Gray above. The proposal contemplates that the time and effort expended to obtain the court's approval of the compromise, payment of expenses, and the disposition of the net proceeds should be compensated.

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			case. The uncertainty in the attorney's award will put a chilling effect on the rights of the minors and is counter-productive. Attorneys might shy away from representing the minors when there is uncertainty in their fees award.	
14.	Orange County Bar Association by Michael G. Yoder, President Newport Beach	A	No specific comment.	No response required.
15.	Linda Fermoyle Rice Rice & Bloomfield, Law Offices Woodland Hills	A	Last year, I spent in excess of 40 hours preparing a minor's compromise on a $3.5 million settlement. It was a nightmare, and it seemed to me unnecessarily complicated. In one part of the form, I had to list the names and addresses of all of the health care providers. The Medi-Cal lien was 40 pages long, so there were a lot of providers, but I didn't necessarily have addresses to go with them. As I recall, the petition asked that I list to whom costs had been paid, but then the order (or another part of the petition) wanted these addresses, too. I couldn't imagine the court would be doing anything with this information, so it	This commentator agrees with the proposed changes. Her comments do not address any problems she may sees with the proposal, so they will not be responded to in detail.

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			seemed like busy work that delayed the consummation of the settlement for quite some period of time.	
16.	Hon. R. William Schoettler, Jr. Judge of the Superior Court of Los Angeles County (Ret.)	NI	I practiced personal injury law for 23 years before being appointed by Governor Deukmejian to the Superior Court bench in 1988. During my tenure on the Los Angeles Superior Court I heard over 8,000 cases, many of which involved minor's compromises. Since leaving the Bench I have worked with both JAMS and ADR Services as a mediator. I have personally been involved in the settlement of minor's cases in well over 1000 cases. I give you this information by way of background for the opinions I now wish to share. It has been my professional experience in my entire legal career (44 years) that the representation of a minor involves more work and more effort on the part of the representing attorney than for similar cases involving adults. In both business matters and especially in personal injury matters, the long-term interests of the minor are of paramount interest to the attorney. Any reasonably conscientious attorney representing minors will spend extra time, not only with the client but with all aspects	

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			of the case. Liability issues have a unique perspective that is generally not present when dealing with adult parties. Damages are equally demanding of the attorney's careful attention. In many cases involving minors the representing attorney must play multiple roles, including running interference between what the attorney perceives as the best interests of the minor versus the often-times greed of the minor's legal guardian(s). The attorney has to balance the best interests of the minor against the demanding self- interest of the guardian, trying to keep the one happy while protecting the real interests of the other. This is not an easy task. Injuries to minors have consequences that are extremely difficult to evaluate. The representing attorney must be careful to recognize, and represent genuine long-term disabilities which may be significantly different for a minor when compared to an adult. The minor, depending of course upon age and education, may well have an excellent economic future, even with significant injuries, but may experience	

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			consequential emotional and other psychological damages which must be presented with skill and artistry. Attorneys who are willing to take on the representation of minors, or, for that matter, mentally challenged adults, have a far more difficult task in their handling of such cases when compared with the representation of an adult. Communication with the client can be almost impossible, and communications with legal guardians is frequently unsure, unspecific, and otherwise challenging. In fact, the attorney representing a minor or challenged adult really has two clients, the real-party-in-interest and the guardian. When I began practicing law I was informed that the "traditional" fee system called for approximately a 25% contingency fee for the representing attorneys, with occasional cases justifying much more. As my practice continued (I was with an insurance-defense firm for my 23 years of practice) I came to realize that the attorneys did as much or more work representing minors as they did representing adults. I became convinced	

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			that there was no rational basis for limiting or otherwise restricting attorney fees for representing minors. It became my opinion that any attorney who takes on the representation of a minor, or a mentally-challenged adult earns every penny of any fee that is ever awarded by the Courts. When I was on the Bench I regularly accepted, and honored, requests for a minimum of 25% contingent fees. There were many cases in which I felt higher fees were justified and when higher fees were requested in those cases I agreed.	The advisory committees believe that the changes proposed for rule 7.955 will make it more likely that an attorney could be awarded a fee greater than 25% of the recovery if the circumstances support the award and the fee agreement authorizes it.
			I would urge this Committee to carefully analyze the striking similarities of effort put forth by attorneys representing minors and adults, to acknowledge the unique characteristics of any case calling for dealing with guardians and their parties, and honor the principles of the market-place that accepts a minimum contingent fee of 25% for any attorney successfully representing minors.	The committees believe the changes in rule 7.955 currently proposed will enable plaintiffs' attorneys to be properly and fairly compensated at rates that are commensurate with their efforts and the results obtained for their clients in these often difficult cases.

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17.	Hon. Randall J. Sherman Judge of the Superior Court of Orange County	AM	I am the Judge in Orange County who has handled virtually all its Minor's Compromises since August 2007. I would like to suggest some modifications to the proposed rule and form changes being discussed, as follows: In the Discussion near the top of page 12, it says "Rule 7.950(c)(1) provides a 10-day period within which an interested party may file objections to the petition." The reference should be to Rule 7.950.5, not 7.950. Further, I believe 10 days is not enough time and that 15 days should be allowed, since notice presumably will be by mail, cutting into the 10 days.	Judge Sherman is correct. The reference in the Invitation to Comment should have been to rule 7.950.5. However, the rule text itself is correct, so no change in its language is necessary. This comment has led to a review of the entire subject of objections to an expedited petition, including who can file them and their timing. The following is noted: 1. If the petition is for the compromise of an unfiled action involving a minor, the Probate Code provisions call for notice of a hearing under Probate Code section 1460 (15 days notice by mail) only in the following circumstances: a. Under Probate Code section 3602(c) and (e), if the petition is filed by a person interested in the guardianship estate of the

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				minor and seeks specified dispositions of the proceeds other than payment to the guardian (the fiduciary may present an ex parte petition for this relief); b. Under Probate Code sections 3602(d) and (f), notice to relevant state agencies if the petition seeks authority to place proceeds in a special needs trust. (Proposed rule 7.950.5(a)(3) provides that the expedited procedure cannot be used if proceeds are to be distributed to a trust. Therefore, in such cases there would always be a court hearing on the petition and rule 7.950.5 would not apply.) 2. If there is a civil action pending on the claim of a minor or disabled person, in addition to notice required under Probate Code section 3602, described above, which is also applicable to conservatorships of the estates of disabled adults; notice must be given to all parties to the civil action who are not participants in the settlement under general principles (see Code Civ. Proc., §§ 1005–1015, particularly section 1014, and rule 3.1300). Motion practice applicable to parties who have appeared in a civil case generally requires filing and service of motions at least 16 court days before the

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				hearing, with additional calendar days required if notice is served by mail (see section 1005). Possible objectors could, under these circumstances, include non-settling codefendants in the pending action desiring to claim that the settlement proposed is not in good faith under Code of Civil Procedure section 877.6. These provisions have caused the committee to make the following changes in its proposal, in response to Judge Sherman's request. 1. Elimination of a reference to a time period for the filing of objections in rule 7.950.5. This rule should not specify time limits for filing objections that are defined in statutes or other rules of court of more general application. The court must make a decision whether to require a hearing—that is, to permit the expedited procedure under rule 7.950.5 to proceed—within 25 days of the date the petition is filed. That time period should be sufficient for the filing of objections by parties to a filed civil action given motion notice or interested persons

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				given "probate notice" under Probate Code section 1460. 2. Rule 7.950.5(a) is modified to eliminate from the expedited procedure filed civil actions in which less than all defendants who have appeared in the case have joined in the compromise, unless the court has finally determined that the proposed settlement was entered into in good faith. (See revised rule 7.950(a)(7) and revised form MC-350EX, item 3f on page 1.) Such cases would require a hearing and use of the regular petition (form MC-350). Non-settling defendants could then safely preserve their right to challenge the settlement as not made in good faith under Code of Civil Procedure section 877.6(a)(1) without concern that the settlement will have already been approved by the court without a hearing merely because a minor or disabled adult is a party; or the settling parties could combine their petition for approval of the compromise with a request for a determination that the settlement is made in good faith under section 877.6(a)(2).

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			Rule 7.950.5(a) needs a semi-colon after subpart (4), just as there are semi-colons after the other subparts.	The committees agree with and have made this change.
			In Paragraph 9 of the Petition [form MC-350], which obligates the petitioner to attach the doctors' reports as well as "a report of the claimant's present condition," I would change the "a" to "any", so it is clear that the court is not mandating that a new report be prepared, but just that any existing report be filed.	The committees support this recommendation; neither the working group nor the committees intended to require a new report so long as the existing report describes the patient's present condition. However, the committees have addressed this issue by adding the following sentence at the end of the Italicized instruction at the beginning of item 9, following the sentence addressed by Judge Sherman. The entire instruction now reads as follows: *"(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 new report is not necessary so long as a previous report accurately describes the claimant's current condition.****)"* (Bold text added.) The identical instruction has also been added to item 10 in form MC-350EX, which is identical to item 9 in form MC-350.

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			In Paragraph 10 of the Petition (and Paragraph 11 of the Expedited Petition), which warns of the preclusive effect of a settlement, I would change "the claimant will be forever barred from seeking any further recovery of compensation" to "the claimant will be forever barred from seeking any further recovery of compensation **from these settling parties,**" since the claimant is free to pursue damages from non-settling parties.	The committees support this change in both the regular petition (item 10 in form MC-350) and the expedited petition (item 11 in form MC-350EX). The revised text refers to the settling parties as "the settling defendants named below."
			In Paragraph 11 of the Petition (and Paragraph 12 of the Expedited Petition), I would ask petitioner to identify not just the settling defendants, but also their carriers, so the court can determine if any annuity provider is also a defense carrier, thereby requiring three comparable annuity quotes.	The committees do not believe there is a statewide requirement for three annuity quotes if an annuity provider is a defense insurer, although this may be a local requirement in Orange County and may be sound. The working group will consider this issue further in connection with its review of structured settlements.
			Paragraph 12(b)(6) of the Petition is a great addition and I recommend it be bolded (or otherwise highlighted) so it is not overlooked.	The committees agree with this suggestion. Item 12(b)(6) has been bolded.
			In Paragraphs 13(a)(2) and (a)(3) of the Petition, instead of saying "medical expenses to be paid from the proceeds" and	There is not room in the space available to make this change. However, greater clarity has been provided by changing the heading of

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			"payments to be reimbursed from proceeds", I would say "medical expenses to be paid to medical providers from the proceeds" and "payments to be reimbursed to petitioner or others from the proceeds", to help ensure the parties don't confuse the two categories.	item 13 to read: "The claimant's medical expenses, *including medical expenses paid by petitioner and insurers*, to be reimbursed from proceeds of settlement or judgment" (Italics added.)
			In the Expedited Petition, page 1, the Notice to Petitioners, the first words should not be "You must use this form to request expedited court approval," but either "You may use this form to request expedited court approval," or "You must use this form if you wish to request expedited court approval."	The committees support the second alternative recommended by this commentator and have made the change.
			Paragraph 3 of the Expedited Petition throws off the parallel paragraph numbering between the Petition and the Expedited Petition for the remaining paragraphs, thereby losing consistency in reference. For example, the Paragraph 14(a) attorneys' fees Declaration that I always talk about in hearings becomes the Paragraph 15(a) attorneys' fees in the Expedited Petition. I would therefore either put paragraph 3 at the end, or put it before Paragraph 1 and without a paragraph	The committees declined to make this change. Item 3 of the Expedited Petition states the fundamental jurisdictional requirements for the expedited procedure under rule 7.950.5. The item clearly requires a number, as it is an allegation showing compliance with those requirements. Moreover, settling plaintiffs will not be preparing both forms in a given case and the items should otherwise be or will shortly become clear to reviewing courts, which should soon get used to the slightly different numbering in the two petitions. The

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			number. If Paragraph 14(d) of the Expedited Petition is intended to cover liens by a private insurance provider, that should be clarified, just like Paragraph 14(e)(2) references Medicare, Medi-Cal and private insurance. If not, a new sub-paragraph should be added to cover private insurance liens for reimbursement. Paragraph 14(e)(1) of the Expedited Petition should say that the latest statements from providers **seeking payment** are attached, since the court doesn't need statements from providers whose bills have already been taken care of. I would add a Paragraph 15(c) to the Expedited Petition, covering costs of suit, as follows: "Costs attributable to more than one plaintiff have been apportioned pro rata based on their gross settlement amounts," or other language to make sure the minor is not paying more than his or her fair share of the costs. Thank you for your consideration of these proposals.	items that follow item 3 in the Expedited Petition (form MC-350EX) and item 2 in the regular petition (form MC-350) appear in the same general order in both forms, except on the last pages of both forms, where the order is slightly changed as needed to save space or because the regular petition contains items that are omitted from the Expedited Petition. The committees do not support this change. Latest statements from providers paid by petitioner for which reimbursement is requested should also be provided even though the providers themselves have been paid. The statements document and support the reimbursement claim. The committees support this recommendation, but express pro rata apportionment of joint costs as the default, with a requirement that any different allocation be explained in an attachment. The following item 15c has been added at page 5 of form MC-350EX: "Costs of suit attributable to more than one settling plaintiff are **not** apportioned between them on a pro rata basis based on their gross settlement

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				amounts. The apportionment of these costs is described and explained in Attachment 15c." (Bold text in original.)
18.	Scott Sumner Partner Law Offices of Hinton, Alfert & Sumner Walnut Creek	AM	One of the greatest frustrations of the minor/incompetent compromise form has been dealing with unpaid medical claims, where statutory liens exist, and with medical payer reimbursement claims (i.e., Medicare, Medi-Cal, and private disability health insurance). The overwhelming problem in the past was that the petition form did not distinguish adequately between disability health insurer reimbursement claims, and statutory liens. The form previously also did not provide a location to spell out what amounts were sought in reimbursement, which is probably the most important information the Court needs in determining the appropriateness of proposed disbursements to such claimants. These proposed changes provide much needed relief in this regard. In light of recent changes to Welfare & Institutions Code, specifically Section 14124.76, and the holding of the US Supreme Court in *Ahlborn v. Arkansas*	

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			Dept. of Health Services, the proposed changes are essential in dealing with Medi-Cal lien claims. The one modification I would propose is paragraph 13.b.(5)'s reference to contractual "liens" for payment of medical expenses. Disability health insurers that pay medical services have contingent reimbursement claims, and referring to them as "liens" potentially confuses them with statutory liens such as Workers Compensation, Medi-Cal, and Medicare. I would propose modifying paragraph 13.b.(5) (a) to read: 13.b.(5) (a) There are one or more CLAIMS OF REIMBURSEMENT for payment of medical expenses. The total amount SOUGHT IN REIMBURSEMENT under these CLAIMS is: $_____ (Identify and provide requested information on each contractual REIMBURSEMENT CLAIM below) (A) Provider (B) Address (C) Amount charged	The committees are reluctant to depart from the term “lien” for payments to medical service providers in these cases in item 13b(5)(a). Where minors or disabled persons are involved, contracts for the provision of medical services will usually be made by others on their behalf: the minor’s parent or guardian, or the disabled adult’s conservator. Care should be taken to ensure that authorized payments from the proceeds directly to medical service providers are limited to those whose contracts provide for liens against the recovery, or where there is a statute, such as Civil Code section 3045.1, that establishes such a lien. (See response to comment of the Consumer Attorneys of California above concerning hospital liens.) But Probate Code section 3601 permits reimbursements from the proceeds to a parent, guardian, or conservator. If a petitioner has one of these statuses and has paid or obligated himself or herself to pay medical expenses of the claimant under agreements with providers that do not provide for liens from the recovery, these expenses should be treated as

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			(D) AMOUNT CLAIMED AS LIEN (E) Negotiated reduction, if any (F) Amount to be paid from proceeds of settlement or judgment	reimbursements of the petitioning parent, guardian, or conservator in item 13b(1) rather than direct payment to the provider, even if direct payment is in fact made in discharge of the petitioner's obligation. Medical service providers without statutory or contractual liens who are to be paid from the settlement or judgment proceeds as a reimbursement to petitioner would also be required to be listed in item 13b(5)(b). Claims for reimbursement by disability health insurers should be addressed in item 13b(2), not in item 13b(5).
19.	Superior Court of Los Angeles County Los Angeles	AM	Expedited Procedure 1. It is suggested, that in lieu of an expedited procedure, all Petitions to Approve Compromise of Disputed Claims etc., (MC-350 and MC-350EX) shall be set for hearing not more than 35 days from the date of filing. Probate Courts hear several compromises each week. Under CRC Title 7, Rule 7.950(c)(2), the court must determine, within 25 days of filing the petition, whether or not a hearing should be scheduled and, if scheduled, the court must	1. The committees respectfully decline to eliminate the "no hearing" feature of the expedited petition for all courts. They believe that all courts, including the Los Angeles court, should be able to keep track of the 25-day deadline provided in rule 7.950.5 without scheduling a hearing. However, if the calendaring system does require a hearing to be set when the petition is filed, the hearing can be tentatively set on the 35th day, subject to vacation no later than the 25th day after filing if the court elects not to require a hearing within that time. Moreover, the

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			advise the petitioner and other interested parties of the hearing date. Further, the court must also provide notice of its intended ruling. Managing 25 day review cycles based on individual filing dates will be problem in the larger courts.	expedited petition is also available in appropriate filed civil cases, where the proposed settlement or disposition of a judgment is usually decided in the civil department where the case was pending, not in the probate department.
			Calendaring petitions ensures that the deadlines are not missed. Otherwise courts must maintain independent tracking systems (calendaring system) so that the 25 and 35 day deadlines are not missed. This places additional burdens on court staff. The expedited petition (short form) MC350-EX, with modifications, could still be utilized in situations described in CRC Title 7, Rule 7.950.5 subdivisions 3a–3e.	The committees understand that extra calendaring or other deadline tracking may be required when the expedited petition is used, but the extra burdens imposed on staff by this process would be offset to some extent by the elimination of court hearings.
			2. Expedited procedure denies unrepresented parties equal access to the court.	2. The committees believe that unrepresented persons would be much less likely than represented persons to be able to prepare and submit complete petitions and supporting material suitable for a decision by the court without a hearing. Moreover, fiduciaries, including guardians ad litem, probate guardians, and conservators, participating in

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				filed civil actions on behalf of minors or disabled claimants must be represented by counsel under current law.
20.	Superior Court of Orange County by Linda Martinez Senior Research Attorney Santa Ana	AM	In order to minimize the workload on the courts and to make sure the courts have all the information and forms necessary to decide the expedited petitions, it should be included in Rule 7.950.5 and noted on the form MC-350EX that the petition is to be submitted with all the documentation specified in the petition and a completed order on form MC-351. Rule 7.950.5: Recommend after the end of (a) insert the following: (b) Filing of expedited petition The expedited petition must be filed with all the documentation specified in the petition and a completed order using form MC-351. Form MC-350EX Recommend replacing the second paragraph in the NOTICE TO	The committees believe that each court should determine the effect of a partially completed or incomplete petition by local rule or practice. The court has authority to require a hearing and compel production of additional documents in any case in which it determines that a filing is so deficient that the court cannot fairly evaluate the proposed compromise on the petition as filed. Not every omission will be equally fatal to a proper determination of the proposed compromise. If the court desires a completed proposed order to be submitted with the petition, within the 25-day period within which the court may determine whether to require a hearing or at some other time, the court may so provide by local rule. The committees hesitate to require submission of an order with an expedited petition by statewide rule.

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			PETITIONERS with: "If you qualify and use this form, the court may consider and act on your petition without a hearing. You must submit with the expedited petition all the documentation specified in the petition and a completed MC-351 order. If your compromise, or judgment does not qualify for expedited treatment or you choose not to use this for,…" Suggested changes to forms: Form MC-350 13.b.(1) delete as it is covered under #15 15.b.(1) delete "listed in item 13" as it is not necessary to refer back to #13 Form MC-350EX After 14.c.(2)(b) insert a new 14.d. the plaintiff's health plan is requesting reimbursement for medical expenses paid under the plan. (Attach a copy of the	 The committees disagree with this proposed change. Item 13b(1) is part of the total of item 13, so it must be placed in that item to arrive at that total. Repeating the figure in the recapitulation in item 15 is not difficult or onerous, and enhances clarity. The committees believe that the reference back to item 13 should help petitioners to swiftly carry forward the correct amount to item 15b(1). The committees support this recommendation and have made this change. In addition, a new item 14e has been added, as follows:

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			statement from the health plan requesting reimbursement) (show amount in the box). Change the letters for the boxes that follows this change. After 20.a.(2), 20.a.(3)(a), and 20.b.(2) add the following: (Submit a completed MC-355 order with the petition) If the expedited petition requests a blocked account and the petition is granted, the court would need a completed order to deposit money into the blocked account.	"Petitioner has paid claimant's medical expenses to be reimbursed in the amount of $_____*(See instructions for item 16.)*" Existing items 14d and 14e are redesignated as items 14f and 14g. As noted above, the committees believe that rules requiring submission of orders with petitions should be local options.
21.	Superior Court of Riverside County by Tom Johnson, Supervising Probate Attorney Riverside	A	We are in favor of the proposal. But the expedited procedure will likely have a substantial effect on the staff of our court. The court support staff will become more involved in assisting the judicial officers with review and processing of these documents due to the lack of a hearing. One of our judicial officers also reported that they encountered frequent errors regarding the birth date of minor parties listed in petitions for minor's compromise. These errors are identified at the hearing	The committees do not believe that errors in birthdates of minor claimants are a significant problem. They considered adding a requirement that a birth record be attached to an expedited petition involving a minor

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			on the petition and corrected prior to the order. Without a hearing, these errors will likely go undetected and may cause confusion if a petition to withdraw funds from a blocked account is filed when the minor reaches the age of majority.	claimant, but decided against this step because of uncertainty as to which foreign records in lieu of domestic birth certificates should be required and the degree of authentication of these records that should be required.
22.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer San Diego	A	No additional comments	No response required.
23.	Charles Tarr Attorney at Law Santa Rosa	A	The custom and practice of most local courts to arbitrarily set fees at 25% is wrong. The risks skills and costs involved in a minor's case do not make the attorney fees worth less than they would be for an adult. Further, at times you have a minor plaintiff who is likely to turn 18 prior to the conclusion of the case, making this even more irrational. The value of the services, whatever they might be should not be determined by age at time of retention, but by the nature of the case, skill, risks, costs, etc. The present arbitrary 25% "rule" makes it difficult for some claimants to find an attorney.	The committees agree with this comment. The changes in rule 7.955 were to a considerable extent proposed to eliminate the presumptive 25% contingent fee and to replace local rules containing this presumption with proper legal standards for court to use to fairly evaluate requests for attorneys' fees in these cases.

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24.	Waters & Kraus, LLP by Gary M. Paul El Segundo	NI	Waters & Kraus, a law firm specializing in toxic tort law in California and other states, is currently involved in an area of extremely complex and specialized litigation involving personal injury claims on behalf of minors and persons with disabilities. These cases involve catastrophic birth defects suffered by the children of parents who experienced exposure to hazardous chemicals while employed in highly technical and complicated processes involved in the manufacture of computer chips, printed circuit boards and other electronic components. These industrial processes called for the use of certain dangerous chemicals which cause birth defects. A very large proportion of this type of manufacturing in the United States took place in Silicon Valley, California. To date a very small number of plaintiff law firms, no more than five or six, are working on these specific types of cases. This is due in large part to the fact that these birth defects are extremely rare and consequently there are not a large number	No response is made to this comment because it does not address the proposal specifically or indicate general support or opposition. The committees believe, however, that the changes proposed for rule 7.955 would support requests for reasonable fees above the normal percentage based on the complexity of the litigation and the risks involved.

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			of such cases. To undertake an individual or a small group of these cases against the semiconductor chip manufacturing industry is an enormous and expensive undertaking. Causation and liability must be established on a case by case basis, hence the typical economics of scale which exist in "mass torts" litigation do not exist. As a consequence, very few of these cases have been litigated to date and most have been handled by Waters & Kraus' co-counsel in New York City and Massachusetts. Only plaintiff law firms willing to become specialized for a small number of cases are able to represent such individuals. Based upon our experience in this litigation elsewhere, it is the opinion of these law firms that such litigation is not tenable at contingent fee agreements less than 40%. A minor or disabled person's ability to obtain competent counsel for such cases where fees are fixed at a lower level would be very difficult if not impossible. More so than for other types of personal injury and even other toxic tort cases, plaintiff's lawyers face high risk in undertaking these cases. Exceptionally	

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			difficult proof issues exist due to the type of injury and type of chemical exposure. Congenital or birth defect injuries actually involve a host of different medical disciplines. These include genetics, pediatrics, OB/GYN, developmental medicine as well as fields such as cardiology, neurology, etc. depending upon the site of the birth defect. Although hundreds of chemicals are involved in these industrial processes, according to the industry's own reporting very few have been studied for teratogenicity. Yet the few existing epidemiology studies of populations exposed to these chemicals repeatedly demonstrate statistically significant elevations in the rate of reproductive harm. Many of these cases will require showing that a fetus was harmed in utero to toxic chemicals inhaled or absorbed by the mother often more than twenty years ago. Further complicating these cases is the fact that for some of these workers, their only exposure to dangerous chemicals used in semiconductor manufacturing occurred prior to conception. Such a case will require proving that genetic damage was	

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			caused by such exposure resulting in particular birth defects. Moreover, some of these cases involve only paternal exposure to these chemicals. This will require proving that the father's sperm was harmed resulting in the birth defect. The results in similar cases to date have been extensive pre-trial litigation, the involvement of numerous experts and extremely high costs. By way of example, in similar litigation involving several children with birth defect claims against IBM that took place in Westchester County, New York, the cases took 10 years to complete, involved over 50 experts and plaintiff's costs were hundreds of thousands of dollars. In a recent case in Massachusetts involving only one plaintiff with a birth defect, a total of 22 experts were designated by the parties. Only law firms with significant manpower and financial resources as well as the necessary expertise and experience in complex litigation are able to handle such claims. The high risk along with the enormous costs requires that firms be able to represent clients on a contingent fee	

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Rules and Forms Relating to Compromises of Disputed Claims of Minors; Compromises of Actions Involving Minors or Persons with a Disability; and Disposition of the Proceeds of Judgments in Favor of Minors or Persons with a Disability (amend rules 7.101, 7.950, and 7.955 of the Cal. Rules of Court; adopt rule 7.950.5; revise Judicial Council forms MC-350 and MC-351; adopt form MC-350EX; and approve form MC-350(A-13b(5)).

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			agreement at a level fairly reflective of such risk and resource requirements.	
25.	Thomas D. Weaver Attorney at Law Tustin	A	No specific comment.	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.