

Invitation to Comment

<p>Title</p>	<p>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 California 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)).</p>
<p>Summary</p>	<p>This proposal would change the practices under rules of court requiring court approval of compromises of claims of minors and actions involving minors or persons with a disability, and court approval of the disposition of the proceeds of judgments in favor of minors or persons with a disability. Specifically, the changes would include the following:</p> <ol style="list-style-type: none"> 1. The rule on awards of attorney’s fees and other expenses from the proceeds of these compromises or judgments would be amended to specify the factors the court may consider in determining a reasonable attorney’s fee for service to a minor or person with a disability, and the amended rule would preempt all local rules on this subject; 2. The existing form petition for court approval of these matters would be extensively revised, and an optional form of an attachment to that form is proposed; 3. A new procedure would be created for expedited court approval of certain of these matters without a hearing, and a new form of petition for expedited approval in these cases is proposed; and 4. The mandatory form order for these proceedings would be revised.
	<p>Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair</p> <p>Probate and Mental Health Advisory Committee Hon. Marjorie Laird Carter, Chair</p>
<p>Staff</p>	<p>Patrick O’Donnell, Supervising Attorney, 415-865-7665, patrick.o’donnell@jud.ca.gov</p> <p>Douglas C. Miller, Senior Attorney, 415-865-7535, douglas.miller@jud.ca.gov</p>

Introduction

This proposal has been developed by a working group consisting of members of the Probate and Mental Health Advisory Committee and the Civil and Small Claims Advisory Committee, with the assistance of others. The working group proposes a substantial revision of the rules of court and Judicial Council forms applicable to minors' compromises. The advisory committees have reviewed the working group's proposals and support these proposals, which are described in this Invitation to Comment.

Background*Current statutory law*

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

1. Compromise of a disputed claim of a minor, including execution of a covenant not to sue on or enforce a judgment on the claim;
2. Compromise of a pending action or proceeding to which a minor or person with a disability is a party; and
3. Disposition of the proceeds of a judgment in favor of a minor or person with a disability.

Section 3601 requires the court to authorize and direct payment of reasonable expenses from the proceeds of the compromise 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, as the court approves and allows.

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 him or her eligible to establish and benefit from a special needs trust without jeopardizing eligibility for federal public benefits; or (3) a person with developmental disabilities defined under state law. An adult person with a disability under this definition may have or lack capacity to petition for court

approval of, or consent to, the compromise of his or her action or the disposition of the proceeds of the judgment in his or her favor.¹

Current rules 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 the following discussion, as minors’ compromises despite their wider application.

Judicial Council form *Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* MC-350 is a mandatory form petition for court approval under sections 3600–3602. Judicial Council form *Order Approving Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability* (form MC-351) is the mandatory form order on the petition.

This proposal

This proposal recommends the amendment of rules 7.101 (on use of Judicial Council forms), 7.950 (on petitions for the compromise of disputed claims), and 7.955 (on attorney’s fees), and the adoption of rule 7.950.5 (on expedited petitions for court approval of a claim).

It proposes the revision of the current mandatory petition, form MC-350, and the mandatory order, form MC-351. In addition, it proposes the adoption of a new *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) that would be mandatory for use in expedited proceedings, and the approval of a new *Medical Expense Lienholder Attachment to Petition To Approve Compromise of Claim or Action, or Disposition of Proceeds of Judgment*, (form MC-350(A-13b(5).) for optional use in appropriate cases.

These rule and form changes are described in detail below.

¹ See Probate Code sections 3613 and 812. An adult without a conservator who does have capacity, within the meaning of section 812, must consent to the proposed compromise of his or her action or disposition of the proceeds of his or her judgment before the court can make an order approving the compromise or disposition.

1. Amendment of rule 7.955, concerning attorney's fees payable from the proceeds of a minor's compromise.

Rule 7.955, adopted in 2003 and amended in 2007, requires courts to evaluate a request for attorney's fees in minors' compromise proceedings and determine a reasonable fee under all the facts and circumstances of each individual case. As the Probate and Mental Health Advisory Committee's comment accompanying the rule indicates, the rule was intended to permit, but not require, courts to determine that a contingency fee agreement could be the basis for a reasonable fee under the rule and Probate Code section 3601. Under some circumstances, a reasonable fee could be higher or lower than a percentage formula under some local rules.² The advisory committee believed 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 in 2003. There is also evidence that some courts have declined entirely to consider contingent fee agreements in some of these cases.

Most matters presented for court approval under section 3600 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 counsel under any other fee arrangement. This is an even greater concern for minors or adults 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 or in minors' compromise proceedings arising from them.

² Many courts had local rules establishing an attorney's fee of 25% of the amount of the compromise or judgment as presumptively reasonable.

The amended rule

The following changes are proposed for rule 7.955:

a. Preemption of local rules.

New subdivision (d) of 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, except for rules pertaining to the assignment of these matters or the scheduling of hearings in them.

b. Consideration of the terms 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, and to evaluate the agreement based on the facts and circumstances existing when it was made.³ 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, although the agreement is not binding on the court.⁴

c. Factors the court may consider in determining a reasonable fee.

The revised 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

³ An adult person with a disability with sufficient capacity who does not have a conservator may be his or her own representative. In that case, the representation agreement would be directly between the attorney and the claimant. If a minor is the claimant, the most common representative is one or both of the minor's parents. Other representatives include appointed guardians or conservators.

⁴ 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. Although Probate Code 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 on behalf of the ward or conservatee, most minors' compromise proceedings are not filed by previously-appointed guardians or conservators and they seek an award of attorneys' fees without a prior order of court approving the terms of representation. In such cases, particularly those involving minors, a contingency fee agreement presented to the court is void and is not binding on the court when it is presented. The court may, however, determine that the terms of the representation agreement establish a reasonable fee under all the circumstances.

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.⁵

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 contingency fee cases, the court may also consider the time and labor required of the attorney.

d. Attorney's declaration

New rule 7.955(c) would require the attorney's declaration that must be attached to the petition for approval of the minor's compromise to include a discussion of 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.

2. Amendment of rule 7.950, concerning the petition for approval of a minor's compromise.

Rule 7.950 was adopted effective January 1, 2002, the same date that the form petition for approval of a minor's compromise, *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), was adopted. The rule lists the required contents of that petition. This list would be deleted as unnecessary and replaced with the statement that the petition must be prepared on a fully completed form MC-350. Future changes in this form would no longer also 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

⁵ 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 an attorney's fee must be found to be unconscionable under rule 4-200 to be an unreasonable fee under rule 7.955.

to match the description of the petition in section 3600, including references to the compromise of 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.

3. Revision of form MC-350, the petition for approval of minors' compromises

The mandatory form petition for court approval of a minor's compromise would be increased from eight to 10 pages and revised as follows:

a. Title of the form

"Adult" is 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).)

b. Notice to Petitioners text box, page 1

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 increased in size to enhance readability.

c. The order of items 5–23 in the form, beginning on page 2

Items that must be answered only if the petition concerns a compromise of a claim or action rather than disposition of a judgment are collected more logically together as consecutive items 5–12, not scattered throughout the form.

As part of this reorganization, the items describing the proposed compromise (items 12 and 13 on page 5 of the existing form, items 11 and 12 on pages 3 and 4 of the revised form) would be 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).

d. Petitioner's status as a plaintiff or claimant

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 is a more logical place for questions about 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 have no place 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 petitioner if he or she is also participating in the settlement).

e. Medical expenses

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 in this item 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 goes into detail on medical expenses paid by and to be reimbursed to petitioner, private health insurers (under both ERISA and non-ERISA plans), Medicare, and Medi-Cal, including statutory reduction of Medicare liens and full or negotiated reduction of Medi-Cal lien claims.⁶

⁶ 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 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.

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.⁷

Item 13b(5) addresses contractual liens for medical expenses asserted by health care providers to be paid from 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 lienholder, the amounts charged and paid, and the amount of any agreed reduction, leading to the net amount to be paid to each lienholder from the settlement or judgment proceeds. This item replaces item 10b of the existing form, which inquires about all health-care providers, including those who have not asserted liens against the judgment or settlement, and also asks about the treatment given by each of them. 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 two lienholders to be identified. Additional health-care providers are to be disclosed in an attachment, also as in the existing form, but the instruction for this item advises that the new form MC-350(A-13b(5)), discussed below, may be used for this attachment.

f. Attorney's fees and other non-medical expenses

Item 14 on page 6 of the revised form concerns the attorney's fees and other non-medical 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 instructions for the attorney fee expense item ask for the attorney's declaration to address the applicable factors

⁷ 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. 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 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.)

listed in rule 7.955(b) of the rules of court, 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.

g. Reimbursement of expenses paid by petitioner

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.

h. Remaining items

Item 17 of the revised form is a summary of all items showing the terms of the 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 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 9 of the revised form, and additional space for the petitioner's response provided. More than one-half of a single page is also provided for additional orders in item 21, on the last page of the revised form.

4. Adoption of rule 7.950.5, concerning a new procedure for an expedited disposition of smaller or less complex petitions for approval of minors' compromises.

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 following conditions are present (rule 7.950.5(a)(1)–(8)):

- (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, covenant, 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, directly or indirectly, at the 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) The court does not otherwise order; and
- (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.

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 (rule 7.950.5(b)). There is no scheduled hearing on the petition unless (1) it is requested by the petitioner or an objection is filed, or (2) the court schedules a hearing on its own motion or because the court 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 (rule 7.950.5(c)).

Rule 7.950(c)(1) provides a 10-day period within which an interested person may file objections to the petition. The advisory committee asks for comments as to whether this time period would be sufficient for this purpose.

5. Adoption of new form MC-350EX, the expedited petition for approval of a minor's compromise under rule 7.950.5, and amendment of rule 7.101 to authorize the new form and form MC-350 as alternative mandatory forms.

Rule 7.101

The expedited petition described in new rule 7.950.5, designated as form MC-350EX, would be listed as an alternative mandatory form, together with the regular petition, form MC-350, in rule 7.101(b). Both forms would be mandatory forms under rule 1.31, meaning that petitioners must use them. However, as alternative mandatory forms, a petitioner could select either form in an appropriate case.

Form MC-350EX

This proposal recommends the adoption of *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 is eight pages long and has the following features:

a. Attorney caption

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.

b. Notice to Petitioners

The form has a Notice to Petitioners text box on page 1 similar to the one on form MC-350, but this version advises of the requirements of rule 7.950.5 for an expedited petition, and that if those requirements are not

met or if the petitioner chooses not to file an expedited petition, he or she must use the standard petition, form MC-350.

c. Expedited petition requirements

Item 3 on page 1 identifies the requirements for the expedited petition under rule 7.950.5. All requirements listed in items 3a–3e must be satisfied. Item 3f 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 3f(2)), an instruction requires a description of the investigation made to determine whether the contributors are judgment proof and its results.

d. Items 4–12, pages 2 and 3

Items 4–12 of form MC-350EX 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, with one important exception.

Item 9 of form MC-350, concerning the extent and expected recovery from injuries suffered by the claimant, has an instruction requiring attachment of all doctors' reports containing a diagnosis and prognosis of the claimant's injuries and a report of the claimant's present condition. The corresponding item in form MC-350EX, item 10, does not include this instruction. Expensive medical reports should be unnecessary for expedited cases under rule 7.950.5 because claims in these cases would either be so small (a maximum of \$50,000, including all settlement payments to others) or would represent the maximum that settling defendants could pay under any circumstances, regardless of the claimant's present condition or prognosis.

e. Settlement payments to others

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.

This form differs from form MC-350, in that this item does not inquire into the petitioner's status as a plaintiff in the same action as the claimant

or as a claimant against the minor or disabled person. Instead, this item requires the petitioner to state (1) that the settlement payments to claimant and to each other settling party (including 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 claimed by each); or (2) other reasons for the apportionment are specified in an attachment.

f. Medical expenses

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 contractual liens and statutory or negotiated reductions in each, leading to the final amounts payable to satisfy all of these liens. Because all disputes concerning liens must be resolved in order to qualify for the expedited procedure, the item does not contain a reservation for an *Ahlborn* motion, discussed above in footnote 7.

Item 14e requests copies of the latest statements from all medical service providers, but permits these not to be provided if the petitioner can state that all medical expenses have been paid by private insurance, Medicare, or Medi-Cal. Moreover, this item, unlike item 13b(5)(b) of revised form MC-350, does not require a list of all health care providers who are lienholders.

g. Attorney's fees and other expenses and reimbursement of expenses paid by petitioner

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 petitioner.

h. Information about the attorney representing petitioner

Item 19 of form MC-350EX, on pages 5 and 6 of the form, corresponds to item 18 of revised form MC-350. There is, however, an important difference between these two 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.

6. Approval of new form MC-350(A-13b(5)), an optional form attachment for item 13b(5) of revised form MC-350, concerning medical expense lienholders who would be paid from the proceeds of the compromise or judgment.

As noted above in the discussion of revised form MC-350, item 13b(5)(b) of that form requires the petitioner to list each health care provider who has a contractual lien that will be paid from the proceeds of the judgment or settlement. The advisory committee is proposing an optional form that could be used to list additional medical lienholders if all of them cannot be listed in the petition. The form would be an attachment to form MC-350, titled *Medical Expense Lienholder Attachment to Petition To Approve Compromise of Claim or Action, or Disposition of Proceeds of Judgment*, and designated as form MC-350(A-13b(5)).

7. Revision of form MC-351, the order on the petition and expedited petition for approval of minor's compromises.

Form MC-351 is the mandatory form order approving a minor's compromise under Probate Code section 3600 et seq. The advisory committees recommend the following revisions of the form:

- a. Deletion of "Adult" as a modifier of "Person with a disability" in the title of the form and in the first paragraph.

For the same reason mentioned in the discussion above concerning revision of the title of form MC-350, "adult" is deleted from the title of this form and from the text of item 1 on page 1 of the form.

- b. Addition of an option of no hearing in item 2.

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.

- c. Adult claimants as petitioners

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.

d. Status of disabled persons as claimants

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 (item 4b(2)).

Additional information concerning adult disabled persons is also added, 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).

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

Rule Proposal

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

1 **Rule 7.101. Use of Judicial Council forms**

2
3 (a) * * *

4
5 (b) **Alternative mandatory forms**

6
7 The following forms have been adopted by the Judicial Council as alternative
8 mandatory forms for use in probate proceedings or other proceedings
9 governed by provisions of the Probate Code:

- 10
11 (1) *Petition for Appointment of Guardian of Minor* (form GC-210) and
12 *Petition for Appointment of Guardian of the Person* (form GC-210(P);
13
14 (2) *Petition for Appointment of Temporary Guardian ~~or Conservator~~* (form
15 GC-110) and *Petition for Appointment of Temporary Guardian of the*
16 *Person* (form GC-110(P)-;:
17
18 (3) *Petition to Approve Compromise of Disputed Claim or Pending Action*
19 *or Disposition of Proceeds of Judgment for Minor or Person With a*
20 *Disability* (form MC-350) and *Expedited Petition to Approve*
21 *Compromise of Disputed Claim or Pending Action or Disposition of*
22 *Proceeds of Judgment for Minor or Person With a Disability* (form MC-
23 350EX).

24
25 (c) * * *

26
27 **Rule 7.950. Petition for court approval of the compromise of a disputed claim,**
28 **a covenant, compromise or settlement of a pending action, or disposition**
29 **of the proceeds of a judgment**

30
31 A petition for court approval of a compromise of or a covenant not to sue or
32 enforce judgment on, a minor's disputed claim; a compromise or settlement of a
33 pending action or proceeding to which a minor or person with a disability is a
34 party; or disposition of the proceeds of a judgment for a minor or person with a
35 disability under Chapter 4 of Part 8 of Division 4 ~~under~~ of the Probate Code
36 (commencing with section 3600) or ~~under~~ Code of Civil Procedure section 372
37 must be verified by the petitioner and must contain a full disclosure of all
38 information that has any bearing upon the reasonableness of the compromise, ~~or~~

1 covenant, settlement, or disposition. Except as provided in rule 7.950.5, the
2 information must include, but is not limited to the following: petition must be
3 prepared on a fully-completed Petition to Approve Compromise of Disputed Claim
4 or Pending Action or Disposition of Proceeds of Judgment for Minor or Person
5 With a Disability (form MC-350).

6
7 (1) ~~The name, birthdate, age, and sex of the minor or person with a disability;~~

8
9 (2) ~~An account of the facts or events and the circumstances out of which the~~
10 ~~claim or injury arose, including the time, the place, and the identity of the persons~~
11 ~~involved;~~

12
13 (3) ~~A description of the nature and extent of the injury giving rise to the claim,~~
14 ~~with sufficient particularity to inform the court whether the injury is permanent or~~
15 ~~temporary;~~

16
17 (4) ~~An original or a photocopy of all doctors' reports containing a diagnosis of~~
18 ~~and prognosis for the injury, and a report of the claimant's present condition;~~

19
20 (5) ~~In all cases in which payment for medical or hospital care or treatment for~~
21 ~~the claimant is sought, the names of the hospitals, doctors, and other providers~~
22 ~~furnishing the care, the amounts of the respective charges for the care (whether~~
23 ~~paid or owing), the amounts paid (whether covered by insurance or not), the~~
24 ~~amounts of any negotiated reductions of the charges, and the net amount owed to~~
25 ~~each provider;~~

26
27 (6) ~~The amount of attorney's fees requested and the basis for the fees, with an~~
28 ~~itemization of the costs sought to be allowed and charged against the settlement;~~

29
30 (7) ~~The gross and net amounts of the settlement;~~

31
32 (8) ~~A description of the manner in which the settlement proceeds will be~~
33 ~~distributed;~~

34
35 (9) ~~A full disclosure of all amounts, if any, paid or to be paid to other claimants;~~

36
37 (10) ~~A statement of whether the petitioner is a plaintiff in the same action with the~~
38 ~~minor or claimant with a disability and, if so, whether the pendency or disposition~~
39 ~~of the petitioner's claim on his or her own behalf has in any way affected the~~
40 ~~proposed compromise of the claim;~~

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

5
6 (12) If settlement money is to be deposited in an account or accounts subject to
7 withdrawal only upon order of the court, the name and address of the proposed
8 depository;

9
10 (13) A statement whether notice of the action or claim has been given under
11 Welfare and Institutions Code section 14124.73; and

12
13 (14) If the petition requests an order for payment of money to a special needs
14 trust, a statement of the method by which all statutory liens will be satisfied under
15 Probate Code section 3604.

16
17 **7.950.5 Expedited petition for court approval of the compromise of a**
18 **claim or pending action, a covenant, or disposition of the proceeds**
19 **of a judgment**

20
21 **(a) Authorized use of expedited petition**

22
23 Notwithstanding the provisions of rule 7.950, a petitioner for court approval
24 of a compromise of or a covenant not to sue or enforce judgment on, a
25 minor's disputed claim; a compromise or settlement of a pending action or
26 proceeding to which a minor or person with a disability is a party; or
27 disposition of the proceeds of a judgment for a minor or person with a
28 disability may, in the following circumstances, satisfy the information
29 requirements of that rule by fully completing the *Expedited Petition to*
30 *Approve Compromise of Disputed Claim or Pending Action or Disposition of*
31 *Proceeds of Judgment for Minor or Person With a Disability* (form MC-
32 350EX):

33
34 (1) The petitioner is represented by an attorney authorized to practice in the
35 courts of this state;

36
37 (2) The claim is not for damages for the wrongful death of a person;

38
39 (3) No portion of the net proceeds of the compromise, covenant, or
40 judgment in favor of the minor or disabled claimant is to be placed in a
41 trust;

- 1 (4) There are no unresolved disputes concerning liens to be satisfied from
2 the proceeds of the compromise, settlement, or judgment
3
4 (5) The petitioner’s attorney did not become involved in the matter, directly
5 or indirectly, at the request of a person against whom the claim is
6 asserted or an insurance carrier for that person;
7
8 (6) The petitioner’s attorney is neither employed by nor associated with a
9 defendant or insurance carrier in connection with the petition;
10
11 (7) The court does not otherwise order; and
12
13 (8) (A) The judgment for the minor or disabled claimant (exclusive of
14 interest and costs) or the total amount payable to the minor or
15 disabled claimant and all other parties under the proposed
16 compromise, settlement, or covenant, is \$50,000 or less; or
17
18 (B) (i) The total amount payable to the minor or disabled claimant
19 represents payment of the individual-person policy limits of
20 all liability insurance policies covering all proposed
21 contributing parties; and
22
23 (ii) All proposed contributing parties would be substantially
24 unable to discharge an adverse judgment on the minor’s or
25 disabled person’s claim from assets other than the proceeds
26 of their liability insurance policies.
27

28 **(b) Determination of expedited petition**
29

30 An expedited petition must be determined by the court not more than 35 days
31 after it is filed, unless a hearing is requested, required, or scheduled under
32 (c), or the time for determination is extended for good cause by order of the
33 court.
34

35 **(c) Hearing on expedited petition**
36

- 37 (1) Unless a hearing is requested by the petitioner at the time the expedited
38 petition is filed, objection or other opposition to the petition is filed by
39 an interested party within 10 days of the date the petition is filed, or a
40 hearing is scheduled by the court under (2) or (3), the expedited petition
41 must be determined by the court without a hearing.
42

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

7
8 (3) If the court decides not to grant an expedited petition in full as
9 requested, it must schedule a hearing and give notice of its intended
10 ruling and the date, time, and place of the hearing to the petitioner and
11 all other interested parties within the time provided in (2).

12
13 **Rule 7.955. Attorney's fees for services to a minor or a person with a**
14 **disability**

15
16 **(a) Reasonable attorney's fees**

17
18 (1) In all cases under Code of Civil Procedure section 372 or Probate Code
19 sections 3600–3601, unless the court has approved the fee agreement in
20 advance, the court must use a reasonable fee standard when approving
21 and allowing the amount of attorney's fees payable from money or
22 property paid or to be paid for the benefit of a minor or a person with a
23 disability. ~~The court may approve and allow attorney fees under a~~
24 ~~contingency fee agreement made in accordance with law, provided that~~
25 ~~the amount of fees is reasonable under all the facts and circumstances.~~

26
27 (2) The court must give consideration to the terms of any representation
28 agreement made between the attorney and the representative of the
29 minor or person with a disability and must evaluate the agreement
30 based on the facts and circumstances existing at the time the agreement
31 was made, except as the attorney and the representative of the minor or
32 person with a disability contemplated that the attorney's fee would be
33 affected by later events.

34
35 **(b) Factors the court may consider in determining a reasonable attorney's**
36 **fee**

37
38 In determining a reasonable attorney's fee, the court may consider the
39 following nonexclusive factors:

40
41 (1) The fact that a minor or person with a disability is involved and the
42 circumstances of that minor or person with a disability.

- 1 (2) The amount of the fee in proportion to the value of the services
2 performed.
3
4 (3) The novelty and difficulty of the questions involved and the skill
5 requisite to perform the legal services properly.
6
7 (4) The amount involved and the results obtained.
8
9 (5) The time limitations or constraints imposed by the representative of the
10 minor or person with a disability or by the circumstances.
11
12 (6) The nature and length of the professional relationship between the
13 attorney and the representative of the minor or person with a disability.
14
15 (7) The experience, reputation, and ability of the attorney or attorneys
16 performing the legal services.
17
18 (8) The time and labor required.
19
20 (9) The informed consent of the representative of the minor or person with
21 a disability to the fee.
22
23 (10) The relative sophistication of the attorney and the representative of the
24 minor or person with a disability.
25
26 (11) The likelihood, if apparent to the representative of the minor or person
27 with a disability when the representation agreement was made, that the
28 attorney's acceptance of the particular employment would preclude
29 other employment.
30
31 (12) Whether the fee is fixed, hourly, or contingent.
32
33 (13) If the fee is contingent:
34
35 (A) The risk of loss borne by the attorney;
36
37 (B) The amount of costs advanced by the attorney; and
38
39 (C) The delay in payment of fees and reimbursement of costs paid by
40 the attorney.
41
42 (14) Statutory requirements for representation agreements applicable to
43 particular cases or claims.

1
2 **(c) Attorney's Declaration**
3

4 A petition requesting court approval and allowance of an attorney's fee
5 under (a) must include a declaration from the attorney that addresses the
6 factors listed in (b) that are applicable to the matter before the court.
7

8 **(d) Preemption**
9

10 The Judicial Council has preempted all local rules relating to the
11 determination of reasonable attorney's fees to be awarded from the proceeds
12 of a compromise, settlement, or judgment under Probate Code sections
13 3600–3601. No trial court, or any division or branch of a trial court, may
14 enact or enforce any local rule concerning this field, excepting a rule
15 pertaining to the assignment or scheduling of a hearing on a petition or
16 application for court approval or allowance of attorney's fees under sections
17 3600–3601. All local rules concerning this field are null and void unless
18 otherwise permitted by a statute or a rule in the California Rules of Court.
19

20 **Advisory Committee Comment**
21

22 This rule requires the court to approve and allow attorney's fees in an amount that is reasonable
23 under all the facts and circumstances, under Probate Code section 3601. The rule is declaratory of
24 existing law concerning attorney's fees under a contingency fee agreement when the fees must be
25 approved by the court. The facts and circumstances that the court may consider are discussed in a
26 large body of decisional law under section 3601 and under other statutes that require the court to
27 determine reasonable attorney's fees. The factors listed in rule 7.955(b) are modeled after those
28 provided in rule 4-200 of the Rules of Professional Conduct of the State Bar of California
29 concerning an unconscionable attorney's fee, but the advisory committee does not intend to
30 suggest or imply that an attorney's fee must be found to be unconscionable under rule 4-200 to be
31 determined to be unreasonable under this rule.
32

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

CASE NAME:	CASE NUMBER:
------------	--------------

4. **Nature of claim** (cont.) 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)

[Redacted area]

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. 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 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):*

<u>Defendants (names)</u>	<u>Amounts</u>
	\$
	\$
	\$
	\$
	\$

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:

<u>Other plaintiffs or claimants (names)</u>	<u>Amounts</u>
\$	
\$	
\$	
\$	
\$	

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 others 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 under a:
 - (a) Employee Retirement Income Security Act (ERISA) Plan in the amount of: \$
 - (b) Non-ERISA Plan in the amount of \$
 - (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: \$
- (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).)

CASE NAME: _____	CASE NUMBER: _____
-------------------------	---------------------------

13. The claimant's medical expenses, including medical expenses paid by others to be reimbursed from proceeds of settlement or judgment (cont.)

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

- (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 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.) _____
- (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 pursuant to 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 judgment over this issue.
- The amount of the lien in dispute is: \$ _____

- (5) (a) There are one or more contractual liens 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: \$ _____ (Identify and provide requested information on each contractual lienholder below.)
- (b) The name of each hospital, doctor, and other health-care provider that has a contractual lien for charges for care and treatment furnished to claimant; 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 described below:
- (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. You may use form MC-350(A-13b(5)) for this purpose.)

CASE NAME:	CASE NUMBER:
------------	--------------

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 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)): \$

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 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 18c.)

d. The attorney is not is representing or employed by any other party or any insurance carrier involved in the matter. (If you answered "is," identify the party or carrier and explain the relationship in Attachment 18d.)

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

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

Continued on Attachment 18e.

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

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

Continued on Attachment 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).

- 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).

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. (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 3401–3403, 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.

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.

CASE NAME: 	CASE NUMBER:
--------------------	----------------------

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): <hr/> <p style="text-align: center;">TELEPHONE NO.: FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>ATTORNEY FOR (Name):</p>	FOR COURT USE ONLY <h2 style="margin: 0;">Draft 9</h2> <h2 style="margin: 0;">March 18, 2009</h2> <h3 style="margin: 0;">Not Approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	CASE NUMBER:
EXPEDITED PETITION TO APPROVE: <input type="checkbox"/> COMPROMISE OF DISPUTED CLAIM <input type="checkbox"/> COMPROMISE OF PENDING ACTION <input type="checkbox"/> DISPOSITION OF PROCEEDS OF JUDGMENT <input type="checkbox"/> Minor <input type="checkbox"/> Person With A Disability	<input type="checkbox"/> No hearing date is requested. <input type="checkbox"/> HEARING DATE: DEPT.: TIME:
NOTICE TO PETITIONERS You must use this form 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, and either 3f(1) or 3f(2) below are true; and (3) the court does not otherwise order. If you qualify and 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 <i>Petition to Approve Compromise of Disputed Claim or Pending Action or Disposition of Proceeds of Judgment for Minor or Person With a Disability</i> (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. (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:
--------------------	----------------------

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**

- 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 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*):

<u>Defendants (names)</u>	<u>Amounts</u>
	\$
	\$
	\$
	\$

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:

<u>Other plaintiffs or claimants (names)</u>	<u>Amounts</u>
	\$
	\$
	\$
	\$
	\$

- 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, claimant's attorney, and all other persons, 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 from proceeds: \$
- (5) Total amount of medical liens, if any: \$

(Identify each medical expense payer and amount 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 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. There are one or more contractual liens for reimbursement of medical expenses. In full satisfaction of their lien claims, the lienholders have agreed to accept the sum of: \$

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

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

CASE NAME: 	CASE NUMBER:
--------------------	----------------------

19. Information about attorney representing or assisting petitioner (cont.)

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):

<u>From Whom Paid or Expected (name):</u>	<u>Date Paid or Expected</u>	<u>Amount Paid or Expected</u>
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
Total:		\$ <input style="width: 150px; height: 20px;" type="text"/>

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).
- (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).

CASE NAME: 	CASE NUMBER:
--------------------	----------------------

20. **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 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 3401–3403, 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.

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.

CASE NAME: 	CASE NUMBER:
--------------------	----------------------

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 EXPENSE LIENHOLDER 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 identify and provide certain information about health care providers who have contractual liens for payment of charges for medical care and treatment provided to the minor or disabled claimant that will be paid out of 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 expense lienholders not listed in that form.)

Attachment 13b(5) to form MC-350

13 b. (5) (b) The name of each hospital, doctor, and other health-care provider that has a contractual lien for charges for care and treatment furnished to claimant; 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 described below:
(cont.)

____ (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): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY Draft 1 March 19, 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: <input type="checkbox"/> COMPROMISE OF DISPUTED CLAIM <input type="checkbox"/> COMPROMISE OF PENDING ACTION <input type="checkbox"/> DISPOSITION OF PROCEEDS OF JUDGMENT <input type="checkbox"/> Minor <input type="checkbox"/> Person With A Disability	CASE NUMBER: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%; padding: 2px;">HEARING DATE, IF ANY:</td> <td style="width:30%; padding: 2px;">DEPT.:</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> </tr> </table>	HEARING DATE, IF ANY:	DEPT.:		
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")): _____

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

(1) **Payment of fees and expenses**

Fees and expenses shall be paid by one or more checks or drafts, drawn payable to the order of the petitioner and the petitioner's attorney, if any, or directly to third parties entitled to receive payment identified in this order for the following items of expense or damage, which are hereby authorized to be paid out of the proceeds of the settlement or judgment:

(a) Attorney fees in the total amount of: \$ payable to *(specify)*:

(b) Reimbursement for medical and all other expenses paid by the petitioner or the petitioner's attorney in the total amount of: \$

(c) Medical, hospital, ambulance, nursing, and other like expenses payable directly to providers as follows, in the total amount of: \$

(i) Payee *(name)*:

(A) Address:

(B) Amount: \$

(ii) Payee *(name)*:

(A) Address:

(B) Amount: \$

Continued on Attachment 7b(1)(c). *(Provide information about additional payees in the above format.)*

(d) Other authorized disbursements payable directly to third parties in the total amount of: \$
(Describe and state the amount of each item, and provide the name and address of each payee):

Continued on Attachment 7b(1)(d).

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

CASE NAME: 	CASE NUMBER:
--------------------	----------------------

7. THE COURT ORDERS (cont.)

b. The payer shall disburse the proceeds of the settlement or judgment approved by this order in the following manner: (cont.)

(2) Balance

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

\$

The balance shall be disbursed as follows:

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

(b) By the following method(s) (describe each method, including the amount to be disbursed):

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

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

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

8. Further orders of the court concerning blocked accounts

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

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

Continued on Attachment 8a.

CASE NAME: _____	CASE NUMBER: _____
---------------------	-----------------------

8. **Further orders of the court concerning blocked accounts** (cont.)

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

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

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

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

9. **Authorization to execute settlement documents**

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

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

Continued on Attachment 9c.

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

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

12. **Additional orders**

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

Continued on Attachment 12.

Date:

 JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

Item SPR09-41 Response Form

Title: **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))).

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 17, 2009
--

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.