

RULE L2039 – COMPROMISE, SETTLEMENT, DISCONTINUANCE AND DISTRIBUTION

The Court will not entertain a petition under Pa.R.C.P. 2039, filed in the Carbon County Prothonotary's Office, unless the minor's guardian has commenced an action in this Court by filing either a Praecipe for Writ of Summons or a Complaint, with subsequent service of the writ or the complaint.

A. SETTLEMENTS:

- (1) Motions for Settlement of a case in which a minor or incapacitated person has an interest shall be filed to the same docket number as the Complaint or Writ of Summons and served in accordance with the Pennsylvania Rules of Civil Procedure.
- (2) The petition shall:
 - (A) Set forth the factual circumstances of the case;
 - (B) State the reasons why the settlement is a reasonable one; and
 - (C) Be accompanied by the following:
 - (1) A proposed order of distribution;
 - (2) A written report of a physician setting forth the present condition of the minor or incapacitated person;
 - (3) A statement under oath by a parent or guardian certifying (a) the present physical or mental condition of the minor or incapacitated person, and (b) approval of the proposed settlement and distribution thereof;
 - (4) A statement of the professional opinion of counsel as to the reasonableness of the proposed settlement and the basis for such opinion;
 - (5) In the event that the minor is fourteen years of age or over, his or her written approval of the proposed settlement and distribution thereof; and
 - (6) If there is to be an allocation between parents and children or

among children, the amounts allocated to each party

- (3) The Order of Distribution shall include an award of counsel fees. The standard for the award of counsel fees in the representation of minors is that such fees must be reasonable in accordance with the guidelines set forth in Rule 1.5 of the Rules of Professional Conduct. Under normal circumstances a counsel fee in the amount of twenty-five percent (25%) of the fund recovered shall be considered reasonable, subject to the approval of the Court. The attorney fee determined shall be reduced by the amount of collateral payments received as counsel fees for representation involving the same matter from third parties such as Blue Cross/Blue Shield.
- (4) The approving Judge, to whom the Petition is submitted, may, at his or her discretion, require the personal appearance of the minor, guardians, physicians, or any other relevant party, as well as, the production of any other evidence deemed necessary for adjudication of the Petition.

B. DISTRIBUTION:

- (1) Motions for Allowance of Distribution of funds in which a minor or incapacitated person has an interest shall be filed and served pursuant to Carbon County Local Rule of Civil Procedure CARB.R.C.P. 208.3(a).
- (2) The petition shall include:
 - (A) The facts and circumstances surrounding the origination of the minor's fund;
 - (B) A chronological statement of all prior requests for allowance, including the reasons there for, the amounts thereof, and the disposition;
 - (C) The age of the minor at the time the fund was created and the minor's present age;
 - (D) The original amount of the minor's fund and the present balance of same; and
 - (E) The circumstances and reasons supporting the request for allowance.
- (3) All petitions shall be accompanied by:

- (A) A proposed Order;
- (B) A copy of the Original Petition for Compromise and the Order of Distribution;
- (C) Copies of all prior requests for allowances and the Orders with respect to same;
- (D) Substantiating documentation to support the proposed request; and
- (E) A consent filed by the petitioner.