

Memorandum 78-24

Subject: Study F-30.300 - Guardianship-Conservatorship Revision
(Compromise of Claims of Minor or Incompetent Person)

The Commission has decided to recommend that a guardian or conservator be authorized to settle certain kinds of claims or actions without court approval (see proposed Section 2533 below). Some additional revision is necessary to make the provision fit properly with other provisions.

First, Section 372 of the Code of Civil Procedure (set out in Exhibit 1) requires court approval of a settlement of a pending action to which a minor or incompetent person is a party. The approval is by the court in which the action is pending. It would therefore seem unnecessary to require a separate approval by the court in which the guardianship or conservatorship is pending. The staff recommends that a provision be added to proposed Section 2533 to make clear that, when approval of a settlement is required by the court in which the action is pending, then approval is not required by the guardianship/conservatorship court:

2533. (a) The guardian or conservator may do any of the following:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of or against the ward or conservatee, the guardian or conservator as such, or the estate.

(2) Extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the ward or conservatee or the estate.

(b) ~~Approval~~ Except as provided in subdivision (c), approval of the court is required for action by the guardian or conservator under subdivision (a) in any of the following cases:

(1) Where real property is involved.

(2) Where the claim or action is by the ward or conservatee for wrongful death.

(3) Where the claim or action is for personal injury to the ward or conservatee.

(4) Where the claim, action, or proceeding is against the guardian or conservator.

(5) Where the compromise or settlement involves the transfer of assets of the estate, or the creation of a liability against the estate, in excess of the lesser of \$25,000 or 10 percent of the net value of the real and personal property of the estate.

(6) Where approval is otherwise required by a statute specifically applicable to the particular case.

(c) If approval of the court in which an action or proceeding is pending is required by Section 372 of the Code of Civil Procedure or by other statute specifically applicable to the particular case, then approval of the court in which the guardianship or conservatorship proceeding is pending is not required.

~~(e)~~ (d) Where approval of the court in which the guardianship or conservatorship proceeding is pending is required by this section, the guardian or conservator shall file a petition showing the advantage of the compromise, settlement, extension, renewal, or modification. Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. ~~This subdivision does not apply where another statute is specifically applicable to the particular case and provides for approval of the court.~~

~~(d)~~ (e) If under this section the court authorizes the transfer of real property of the estate, conveyances shall be executed by the guardian or conservator. Such conveyances shall refer to the order authorizing the transfer, and a certified copy of the order shall be recorded in the office of the recorder of the county in which the real property or any portion thereof lies. Conveyances so made convey all the right, title, interest, and estate of the ward or conservatee in the property at the time of the conveyance.

[Note. Paragraph (5) of subdivision (b) has been added by staff pursuant to a policy decision by the Commission. The language has not been previously reviewed or approved by the Commission.]

Second, the provisions in Part 6 (miscellaneous protective proceedings) of the draft statute relating to compromise of a minor's disputed claim (proposed Sections 3200-3203, set out in Exhibit 2, derived from existing Section 1431, set out in Exhibit 3) require court approval for compromise of any "disputed claim for damages, money or other property" by a minor against a third person. See proposed Section 3201. Note that court approval is required whether the compromise is by a parent or a guardian. Paragraph (6) of subdivision (b) of proposed Section 2533 above appears to acknowledge the minor's compromise provisions, and to require court approval whenever a guardian is settling a claim "for damages, money or other property" by a minor ward. The staff proposes to make this clear by adding the following language to the Comment to proposed Section 2533:

Comment.

Paragraph (6) of subdivision (b) requires court approval where otherwise required by a statute specifically applicable to the particular case. See, e.g., Section 3201 (court approval required for minor's disputed claim for damages, money, or other property against a third person).

An alternative to the staff suggestion would be to limit proposed Section 3201 to permit the guardian to compromise claims (but not pending actions) without court approval except in the cases listed in paragraphs (1)-(5) of Section 2533. This would give the guardian a greater authority to compromise claims than a parent. This is the reason this alternative is not recommended by the staff.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

EXHIBIT 1

Code of Civil Procedure § 372

§ 372. [Minors, insane and incompetent persons as parties; Manner of appearing; Appointment of guardian ad litem; Authority of guardian; Handling of moneys, etc., recovered.] When a minor, or an insane or incompetent person is a party, he must appear either by a guardian of the estate or by a guardian ad litem appointed by the court in which the action is pending, or by a judge thereof, in each case. A guardian ad litem may be appointed in any case, when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to represent the minor, or insane, or incompetent person in the action or proceeding, notwithstanding he may have a guardian of the estate and may have appeared by him. The guardian of the estate or guardian ad litem so appearing for any minor, or insane or incompetent person in any action or proceeding shall have power, with the approval of the court in which such action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against his ward, and to satisfy any judgment or order in favor of said ward or release or discharge any claim of said ward pursuant to such compromise. Any money or other property to be paid or delivered for the benefit of a minor or insane or incompetent person pursuant to said order or judgment shall be paid and delivered in the manner and upon the terms and conditions specified in Section 1510 of the Probate Code.

Where reference is made in this section to "guardian of the estate" such reference shall be deemed to include "conservator of the estate" and reference to "incompetent person" shall be deemed to include "a person for whom a conservator may be appointed."

Nothing in this section or in any other provision of this code, the Probate Code, or the Civil Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of his constitutional rights in any proceedings under the Juvenile Court Law, Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

EXHIBIT 2

30942

CHAPTER 3. COMPROMISE OF MINOR'S DISPUTED CLAIM

§ 3200. Persons having right to compromise minor's claim

3200. When a minor has a disputed claim for damages, money, or other property against a third person, the following persons have the right to compromise, or execute a covenant not to sue on, the claim:

(a) Either parent if the parents of the minor are not living separate and apart.

(b) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart.

(c) The guardian of the estate, if any, of the minor.

Comment. Section 3200 continues the substance of the first portion of the first sentence of former Section 1431. If the claim is the subject of pending litigation, and a guardian ad litem has been appointed for the minor, the guardian ad litem also has the authority to compromise the claim with approval of the court in which the litigation is pending. Code Civ. Proc. § 372.

CROSS-REFERENCES

Definitions:

Guardian of the estate, § 1424

Note. The staff has deleted from Section 3200 language which limited the section to minor's claims which are not the subject of a pending action or proceeding. This language does not appear in existing Section 1431 of the Probate Code on which Section 3200 is based, but was originally added by staff on the theory that Code of Civil Procedure Section 372 was the applicable provision regarding settlement of a pending action or proceeding. However, the case of *Everett v. Everett*, 57 Cal. App.3d 65, 129 Cal. Rptr. 8 (1976), has since come to the attention of the staff. The case held that Probate Code Section 1431 applies to claims which are the subject of a pending action or proceeding as well as to those which are not. In that case, the minor's mother purported to enter into a stipulation without court approval affecting the merits of her action for paternity and child support against the child's father. Code of Civil Procedure Section 372 did not apply since the minor was not a party to the action. However, since the "claim" was the minor's, Probate Code Section 1431 did apply, and court approval was required.

§ 3201. Approval by court

3201. (a) The compromise or covenant is valid only after it has been approved by the superior court upon the filing of a petition.

(b) If the petition is by a parent, it shall be filed in the county in which the minor resides. If the petition is by the guardian of the estate, it shall be filed in the county in which the guardianship of the estate is pending.

Comment. Subdivision (a) of Section 3201 is the same in substance as a portion of the first sentence of former Section 1431.

Subdivision (b) revises the venue rules of former Section 1431. If the petition is by a parent, the petition is filed in the county where the minor resides as under prior law. However, if the petition is filed by the guardian of the estate, the petition is filed in the county where the guardianship of the estate is pending rather than in the county where the minor resides as under prior law. If the minor's claim is the subject of a pending action or proceeding, the approval of a compromise is by the court in which the action or proceeding is pending. Code Civ. Proc. § 372.

CROSS-REFERENCES

Definitions:

Guardian of the estate, § 1424
 Petition must be verified, § 1450

32299

§ 3202. Notice to guardian of the estate; right to appear

3202. If a petition under this chapter is filed by a parent of the minor and there is a pending guardianship of the minor's estate, a copy of the petition and notice of the time and place of hearing shall be mailed to the guardian of the estate. The guardian of the estate may appear at the hearing and support or oppose the petition.

Comment. Section 3202 is new and is to ensure that the guardian of the minor's estate, if any, will be advised of the proceedings for compromise of the minor's disputed claim under this chapter.

CROSS-REFERENCES

Definitions:

Guardian of the estate, § 1424

Note. Section 3202 was drafted in response to a policy decision by the Commission. However, the Commission has not approved the specific language of the section.

§ 3203. Payment or delivery of money or other property

3203. (a) Unless the money or other property is to be paid or delivered to an existing guardian of the estate, any money or other property to be paid or delivered for the benefit of the minor pursuant to the compromise or covenant shall be paid and delivered in the manner and upon the terms and conditions specified in Chapter 4 (commencing with Section 3300).

(b) The person having the right to compromise the disputed claim of the minor may execute a full release and satisfaction, or execute a covenant not to sue on the disputed claim, after the money or other property to be paid or delivered has been paid or delivered as provided in subdivision (a). If the court orders that all or any part of the money, to be paid under the compromise or covenant, be deposited in a bank or trust company or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity issued by an admitted life insurer, the release and satisfaction or covenant is not effective for any purpose until the money has been deposited or invested as directed in the order of the court.

Comment. Section 3203 continues the substance of the second and third sentences of former Section 1431. The introductory clause of subdivision (a) is added for clarity since Sections 3311-3314 contemplate the situation where there is not an existing guardianship of the minor's estate.

CROSS-REFERENCES

Definitions:

Account in an insured savings and loan association, § 1406
 Guardian of the estate, § 1424
 Shares of an insured credit union, § 1433
 Single-premium deferred annuity, § 1436
 Trust company, § 1439

EXHIBIT 3

Probate Code § 1131

§ 1431. Minor's disputed claim: Court approval of compromise, release, etc., by parent or guardian: Deposit of money in bank or savings account. When a minor has a disputed claim for damages, money or other property against a third person, either parent, or if the parents of the minor are living separate and apart, then that parent having the care, custody, or control of the minor, or the guardian of the estate, if any, of the minor, shall have the right to compromise, or execute a covenant not to sue on, such claim, but before the compromise or covenant is valid it must be approved by the superior court of the county where the minor resides, upon the filing of a verified petition in writing. The parent having the right to compromise or execute a covenant not to sue, or the guardian of the estate, if any, may execute a full release and satisfaction or execute a covenant not to sue on the disputed claim after the money and other property to be paid or delivered has been paid or delivered as hereinafter prescribed; provided, however, that if the court shall order that all or any part of the money, to be paid under the compromise or covenant, be deposited in a bank or trust company, invested in an account in an insured savings and loan association, or shares of an insured credit union, or in a single-premium deferred annuity issued by an admitted life insurer, such release and satisfaction or covenant shall not be effective for any purpose until such money has been deposited as directed in the order of the court. Any money or other property to be paid or delivered for the benefit of the minor pursuant to said compromise or covenant shall be paid and delivered in the manner and upon the terms and conditions specified in Section 1510 of the Probate Code.