

Tentative Rulings for September 20 , 2022
Department 401

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Ruling

Re: ***Robles v. Fresno Unified School District***
Superior Court Case No. 20CECG00231

Hearing Date: September 20, 2022 (Dept. 401)

Motion: Amended Petition for Approval of Compromise of Minor's Claim

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested minor is excused from appearing.

Explanation:

There continue to be problems with the petition.

Petitioner's Name

Petitioner's name should be filled in at Item 1.

CourtCall Costs

Plaintiff will need to substantiate the cost in the amount of \$376 for CourtCall appearances. CourtCall currently charges \$94 for an appearance. The file reflects that counsel made only two appearances via CourtCall: an appearance at the Case Management Conference on August 25, 2020, and at a Dismissal Hearing on June 8, 2022. Assuming CourtCall charged the same amount in 2020, this would mean counsel's cost would only be \$188, and not \$376.

Medi-Cal Lien

The amended petition makes it clear that the minor is covered by Medi-Cal. The court will assume that the payments the two medical providers received from Medi-Cal was, by contract, all they could charge, and that they were required to write off any charges over that amount. However, that still leaves the question of whether Medi-Cal is asserting a lien against the minor's settlement. Item 12b(4) of the petition requires the petitioner to make this clear, and requires the attachment of a copy of Medi-Cal's final demand letter. If Medi-Cal is not asserting a lien, this correspondence will reflect this. If is asserting a lien, the petition must provide for its payment.

Request to Transfer Net Settlement Amount to a Trust

Petitioner has checked the box at Item 18b(7), which indicates the net settlement amount of \$10,490.01 will be "transferred to the trustee of a trust that is either created by

or approved in the order approving the settlement or judgment for the minor." If this box is checked, the terms of the proposed trust must be specified in Attachment 18b(7), and no such attachment was appended to the petition. First, this court will not approve such a trust via the petition for approval of the compromise. Instead, if this is desired, petitioner will need to seek approval of the trust via a petition filed in the Probate Department first, and once that is obtained he may then file a compromise petition that attaches the pre-approved trust.

Second, petitioner also checked the box at Item 18b(7) to indicate that "A copy of the (proposed) judgment is attached as Attachment 3c," and no such attachment was appended to the petition. The court believes this was in error, since this would only be appropriate if Item 3c of the petition had been checked to indicate that "a judgment has been or will be entered" for the minor, but here the petitioner correctly checked Item 3b to indicate that the pending action settled without a trial.

Third, the proposed order is at odds with the petition, since it does not contemplate funding a trust with the minor's net settlement, but instead checks the box at item 9c(2) to indicate the funds will be deposited in a blocked account. Petitioner has also provided a form of Order to Deposit (MC-355), which also appears to indicate petitioner wants to place the fund in a blocked account. A blocked account is not a trust. If a blocked account is desired, the court will approve this, but petitioner will need to instead check Item 18b(2) on the petition, and append Attachment 18b(2) to indicate the name, branch, and address of the banking institution where the deposit will be made.

Errors on the Order

There are several errors on the Order Approving Compromise (MC-351). The dollar amount at Item 6 should be the gross settlement amount of \$17,500. The cost amount payable to the attorney must be shown at Item 8a(2). If a Medi-Cal lien is being asserted, it should be reflected at Item 8a(3). The amount placed at Item 8a(5) should be the sum total of the attorney fees, costs, and medical lien payments, i.e., the total of Items 8a(1)-(3). If the next petition requests the net settlement to be deposited in a blocked account, Item 9a should be completed to specify the name, branch, and address of the bank.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RGM on 9/16/2022 .

(Judge's initials)

(Date)