

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

PROMULGATION OF AMENDMENTS
TO THE MINNESOTA GENERAL RULES OF PRACTICE
FOR THE DISTRICT COURTS

ORDER

In its report filed August 19, 2002, the Supreme Court Advisory Committee on the General Rules of Practice recommended, among other things, amendments to Rules 145.05, 145.06 and 522 of the General Rules of Practice for the District Courts. On October 29, 2002, the Supreme Court held a separate hearing on the proposed rule amendments. The Supreme Court has reviewed the proposals and the submitted comments, and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached amendments to Rules 145.05, 145.06 and 522 of the General Rules of Practice for the District Courts be, and the same hereby are, prescribed and promulgated to be effective on January 1, 2003.
2. The attached amendments shall apply to all actions pending on the effective date and to those filed thereafter.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

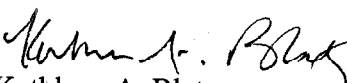
DATED: December 7, 2002

OFFICE OF
APPELLATE COURTS

DEC 17 2002

FILED

BY THE COURT:


Kathleen A. Blatz
Chief Justice

1 **RULE 145. ACTIONS ON BEHALF OF MINORS AND INCOMPETENT PERSONS**

2 * * *

3 **Rule 145.05. Terms of the Order**

4 The court's order shall:

5 (a) Approve, modify or disapprove the proposed settlement or disposition and specify the
6 persons to whom the proceeds are to be paid.

7 (b) State the reason or reasons why the proposed disposition is approved if the court is
8 approving a settlement for an amount which it feels is less than what the injuries and expenses,
9 might seem to call for, e.g., limited insurance coverage, dubious liability, comparative fault or
10 other similar considerations.

11 (c) Determine what expenses may be paid from the proceeds of any recovery by action or
12 settlement, including the attorney's fee. Attorney's fees will not be allowed in any amount in
13 excess of one-third of the recovery, except on a showing that: (1) an appeal to an appellate court
14 has been perfected and a brief by the plaintiff's lawyer has been printed therein and (2) there has
15 been an expenditure of time and effort throughout the proceeding which is substantially
16 disproportionate to a one-third fee. No sum will be allowed, in addition to attorney fees, to
17 reimburse any expense incurred in paying an investigator for services and mileage, except in
18 those circumstances where the attorney's fee is not fully compensatory or where the investigation
19 must be conducted in any area so distant from the principal offices of the lawyer so employed
20 that expense of travel and related expense would be substantially equal to, or in excess of, usual
21 investigating expenses.

22 (d) Specify what disposition shall be made of the balance of the proceeds of any recovery
23 after payment of the expenses authorized by the court.

24 (1) The court may authorize investment of all or part of such balance
25 of the proceeds in securities of the United States, or in an annuity or other form of
26 structured settlement, including a medical assurance agreement, but otherwise
27 shall order the balance of the proceeds deposited in one or more banks, savings
28 and loan associations or trust companies where the deposits will be fully covered
29 by Federal deposit insurance.

30 (2) In lieu of such disposition of the proceeds, the order may provide
31 for the filing by the petitioner of a surety bond approved by the court conditioned

32 for payment to the ward in a manner therein to be specified of such moneys as the
33 ward is entitled to receive, including interest which would be earned if the
34 proceeds were invested.

35 (e) If part or all of the balance of the proceeds is ordered deposited in one or more
36 financial institutions, the court's order shall direct:

37 (1) that the defendant pay the sum to be deposited directly to the
38 financial institution;

39 (2) that the ~~deposit book or other~~ account be opened in the name of the
40 minor or incompetent person and that any deposit document be issued in the name
41 of the minor or incompetent person;

42 (3) that the petitioner shall, at the time of depositing, supply the
43 financial institution with a tax identification number or a social security number
44 for the minor and a copy of the order approving settlement; and

45 ~~(3 4) that the deposit book (or other deposit document) be transmitted by~~
46 ~~the financial institution forthwith acknowledge to the court receipt of the order~~
47 ~~approving settlement and the sum and that no disbursement of the funds will~~
48 ~~occur unless the court so orders, using the form substantially equivalent to Form~~
49 ~~145.1; to the court administrator for safekeeping within 5 days after its receipt of~~
50 ~~the deposit;~~

51 (4 5) that the financial institution shall not make any disbursement from
52 the deposit except upon order of the court; and

53 (5 6) that a copy of the court's order shall be delivered to said financial
54 institution by the petitioner with the remittance for deposit. The financial
55 institution(s) and the type of investment therein shall be as specified in MINN.
56 STAT. § 540.08, as amended. Two or more institutions shall be used if necessary
57 to have full Federal deposit insurance coverage of the proceeds plus future
58 interest; and time deposits shall be established with a maturity date on or before
59 the minor's age of majority. If automatically renewing instruments of deposit are
60 used, the final renewal period shall be limited to the date of the age of majority.

61 ~~In every case, minor settlement orders shall include a provision~~
62 ~~substantially as follows:~~

63 IT IS FURTHER ORDERED that the deposit shall remain
64 with the designated financial institution until date at which time the
65 minor shall reach the age of majority. Time deposits shall be
66 established with a maturity date on or before that date the minor's
67 age of majority. If automatically renewing instruments of deposit
68 are used, the final renewal period shall be limited to the date of the
69 age of majority. On the date of majority the financial institution is
70 hereby authorized to the funds (name of beneficiary) upon
71 presentation of the deposit book or other deposit document that has
72 been obtained from the court administrator, without further order
73 of this Court;

74 (6) — that the petitioner shall, at the time of depositing, supply the
75 financial institution with a tax identification number or a social security number
76 for the minor; and

77 (7) that the petitioner shall be ordered to file or cause to be filed timely
78 state and federal income tax returns on behalf of the minor.

79 (f) Authorize or direct the investment of proceeds of the recovery in securities of the
80 United States only if practicable means are devised comparable to the provisions of paragraphs
81 (d) and (e) above, to insure that funds so invested will be preserved for the benefit of the minor
82 or incompetent person, and the original security instrument be deposited with the court
83 administrator consistent with paragraph (e) above.

84 (g) Provide that applications for release of funds, either before or upon the age of
85 majority may be made using the form substantially similar to Form 145.2.

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87 **Rule 145.06. Structured Settlements**

88 If the settlement involves the purchase of an annuity or other form of structured
89 settlement, the court shall:

90 (a) Determine the cost of the annuity or structured settlement to the tortfeasor by
91 examining the proposal of the annuity company or other generating entity;

92 (b) Require that the company issuing the annuity or structured settlement:

93 (1) Be licensed to do business in Minnesota;

94 (2) Have a financial rating equivalent to A. M. Best Co. A+, Class
95 VIII or better; and

96 (3) Has complied with the applicable provisions of MINN. STAT. §
97 549.30 to § 549.34;

98 or that a trust making periodic payments be funded by United States Government
99 obligations; and

100 (4) If the company issuing the proposed annuity or structured
101 settlement is related to either the settling party or its insurer, that the proposed
102 annuity or structured settlement is at least as favorable to the minor or
103 incompetent person as at least one other competitively-offered annuity obtained
104 from an issuer qualified under this rule and not related to the party or its insurer.
105 This additional proposal should be for an annuity with the same terms as to cost
106 and due dates of payments.

107 (c) Order that the original annuity policy be deposited with the court administrator,
108 without affecting ownership, and the policy be returned to the owner of the policy when:

- 109 (1) The minor reaches majority;
110 (2) The terms of the policy have been fully performed; or
111 (3) The minor dies, whichever occurs first.

112 (d) In its discretion, permit a “qualified assignment” within the meaning and subject to
113 the conditions of Section 130(c) of the Internal Revenue Code;

114 (e) In its discretion, order the tortfeasor or its insurer, or both of them, to guarantee the
115 payments contracted for in the annuity or other form of structured settlement; and

116 (f) Provide that:

117 (1) The person receiving periodic payments is entitled to each periodic
118 payment only when the payment becomes due;

119 (2) That the person shall have no rights to the funding source; and

120 (3) That the person cannot designate the owner of the annuity nor have
121 any right to control or designate the method of investment of the funding medium;
122 and

123 (g) Direct that the appropriate party or parties will be entitled to receive appropriate
124 receipts, releases or a satisfaction of judgment, pursuant to the agreement of the parties.

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Advisory Committee Comment—2002 Amendment

Rule 145.05 is revamped to create a new procedure for handling the deposit of funds resulting from minor settlements. The new rule removes provisions calling for deposit of funds in "passbook" savings accounts, largely because this form of account is no longer widely available from financial institutions. The revised rule allows use of statement accounts, but requires that the financial institution acknowledge receipt of the funds at the inception of the account. A form for this purpose is included as Form 145.1. Additionally, the rule is redrafted to remove inconsistent provisions. Under the revised rule, release of funds is not automatic when the minor reaches majority; a separate order is required. A form to implement the final release of funds, as well as any permitted interim release of funds, is included as Form 145.2.

Rule 145.06(b)(4) is a new provision to require at least two competitive proposals for a structured settlement. This requirement applies only when one of the proposals is for an annuity issued by the settling party, its liability insurer, or by an insurer related to either of them. The rule requires that the competitive bids be issued by annuity companies that would be qualified to issue an annuity that complies with the requirements of Rule 145.06. In order to permit the trial court to determine that the proposed settlement adequately provides for the interests of the minor, the competitive bids must be for annuities with comparable terms. The rule requires only a second proposal, but permits the court to require additional proposals or analysis of available proposals in its discretion. The rule, as revised, does not direct how the trial court should exercise its discretion in approving or disapproving the proposed structure settlement. It is intended, however, to provide the court some information upon which it can base the decision.

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5 State of Minnesota

District Court

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7 County of _____

_____ Judicial District

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9 Case Type: _____

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11 _____
Plaintiff/Petitioner

Case No. _____

12 and

13 RECEIPT OF MINOR SETTLEMENT
ORDER AND FUNDS

14 (Provided Pursuant to Rule 145 of the
15 Minnesota General Rules of Practice)

16 _____
Defendant/Respondent

17
18 1. _____ (“Financial Institution”) acknowledges receipt of
19 the sum of \$ _____ on behalf of _____ in this action.

20 2. **Financial Institution** acknowledges receipt of the Order Approving Settlement and
21 For Deposit Into Restricted Account dated _____ in this action, and that the funds
22 delivered remain subject to that order in the account specified below:
23

24 Name of Depository: _____

25 Branch Name: _____

26 Branch Address: _____

27
28 Account Number: _____

29 Date Account Opened: _____

30 Current Balance: \$ _____

31 3. This account is a federally insured, restricted account, and no withdrawal of either
32 principal or interest shall be allowed by **Financial Institution** without a signed court order in
33 this case.

34 Dated: _____ Type or Print Name _____

35 Signature: _____

Title: _____

**COMBINED MOTION AND ORDER FOR RELEASE OF MINOR
SETTLEMENT FUNDS**
(Gen. R. Prac. 145.05)

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6 **State of Minnesota**

District Court

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8 **County of _____**

_____ Judicial District

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10 **Case Type: _____**

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13 _____
14 **Plaintiff/Petitioner**

Case No. _____

15
16 **and**

**COMBINED MOTION AND ORDER
FOR RELEASE OF
MINOR SETTLEMENT FUNDS**
(Pursuant to Rule 145 of the
Minnesota General Rules of Practice)

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18 _____
19 **Defendant/Respondent**

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22 1. _____ ("Movant") requests an order of permitting withdrawal of funds
23 now held in a restricted account pursuant to a minor settlement approved in this action on
24 _____ . Movant brings this Motion as the

25 _____ (Minor, now past the age of majority—Date of Birth _____)

26 **or**

27 _____ to minor. (Specify whether trustee,
28 custodian, parent, legal guardian, conservator, or other specified role).

29 2. Funds are now held on behalf of _____ in the following account:

30 **Name of Depository:** _____

31 **Branch Name:** _____

32 **Branch Address:** _____

33
34 **Account Number:** _____

35 **Date Account Opened:** _____

36 **Current Balance:** \$ _____

37 3. Previous withdrawals from the account, each of which was approved by the Court, are
38 as follows:

39 _____ None.
40 *or*
41 _____ \$ _____ on _____ for the purpose of _____
42 \$ _____ on _____ for the purpose of _____
43 \$ _____ on _____ for the purpose of _____

44 Check if additional space is necessary, and attach a separate sheet with
45 that information.

46 4. Movant seeks the release of funds in the amount of \$ _____ for the
47 following reason:

48 _____ Minor has reached the age of 18 and this is a final distribution
49 *or*
50 _____ The funds will be used for the benefit of the minor in the following way:
51 _____
52 _____
53 _____

54 Check if additional space is necessary, and attach a separate sheet with
55 that information.

56 5. Funds should be disbursed as follows:

57 \$ _____ to _____
58 \$ _____ to _____
59 \$ _____ to _____

60 Check if additional space is necessary, and attach a separate sheet with that
61 information.

62 I declare under penalty of perjury under the laws of the State of Minnesota that the
63 foregoing is true and correct and that any funds released pursuant to this request will be used for
64 the benefit of the minor and in the way stated.

65 Dated: _____ Type or Print Name _____
66 Signature: _____
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ORDER APPROVING RELEASE OF FUNDS

Pursuant to the foregoing Motion,

IT IS HEREBY ORDERED that

1. Movant is authorized to withdraw funds to be made payable as follows:

\$ _____ to _____

\$ _____ to _____

2. _____ This is a final distribution of funds from this account and the account may accordingly may be closed following this final distribution

or

_____ This is not a final distribution of funds and this account must be maintained as to the remaining funds and subject to all restrictions on distribution previous ordered.

3. Other provisions: _____

Dated: _____.

Judge of District Court

1 **RULE 522. PLEADINGS IN DISTRICT COURT**

2 The pleadings in conciliation court shall constitute the pleadings in district court. Any
3 party may amend its statement of claim or counterclaim if, within 30 days after removal is
4 perfected, the party seeking the amendment serves on the opposing party and files with the court
5 a formal complaint conforming to the Minnesota Rules of Civil Procedure. If the opposing party
6 fails to serve and file an answer within the time permitted by the Minnesota Rules of Civil
7 Procedure, the allegations of the formal complaint are deemed denied. Amendment of the
8 pleadings at any other time shall be allowed in accordance with the rules of civil procedure. On
9 the motion of any party or on its own initiative, the court may order either or both parties to
10 prepare, serve and file formal pleadings.

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12 **Advisory Committee Comment—2002 Amendment**

13 Rule 522 establishes a streamlined procedure for amendment of pleadings as a matter
14 of right during the first 30 days after an action is removed to district court. The 2002
15 amendment adds a sentence before the last sentence to make it clear that the parties may
16 move for leave to amend at other times, and the court can allow amendment on its own
17 initiative. In these situations, the standards for amendment and supplementation of pleadings
18 contained in Rule 15 of the Minnesota Rules of Civil Procedure and the case law
interpreting that rule should guide the court in deciding whether to allow amendment.