RULE 17A. SETTLEMENT OF CLAIMS OF MINOR PLAINTIFFS

(a) Motion or Application for Settlement. In any action commenced by or on behalf of a minor, the guardian, guardian ad litem, or next friend of such minor may move the court for an order of approval of settlement. If no action has been commenced on a claim by a minor, any such representative may file an application in any court in which such an action might have been commenced, seeking an order of approval of settlement. The application shall contain a short and plain statement of the claim to be settled. No service of the application and no further pleadings shall be required unless directed by the court.

The motion or application and supporting papers may be prepared by the attorney for an adverse party or by an attorney obtained by an adverse party to represent the interests of the minor.

(b) Supporting Papers. Any motion or application filed in accordance with subdivision (a) of this rule shall be accompanied by:

(1) an affidavit or verified application of the moving party or plaintiff stating the terms of and any reasons for approving the settlement and any fee to be paid to an attorney for the minor and also stating that the movant or plaintiff was informed of the right to attend the hearing upon the motion or application and that the right to attend a hearing is waived, where court action without hearing is sought;

(2) A statement by the moving party or plaintiff describing the age of the minor, the nature of the injuries or damages suffered by the minor, and the facts of the event which led to the injury or damage. This statement shall be in sufficient detail to allow the court to evaluate the injuries or damages in determining whether to approve the settlement. Where the total amount of the proposed settlement exceeds $5,000 or where the attorney who prepared the motion has any connection with a party adverse to the plaintiff, the statement shall have attached to it copies of any police reports, any emergency room reports of the incident and resulting injuries or damages, a statement from a physician indicating the nature of the injuries and expectations for recovery or permanent impairment, and such other reports of the injuries or damages and the incident which caused the injuries or damages as the court may require;

(3) An affidavit of the attorney who prepared the motion or application and the supporting papers stating whether or not the attorney was

retained at the instance of, represents, or has any connection with a party adverse to the minor.

(4) Where a defendant is not represented by counsel, a statement signed by the defendant, or a representative of the defendant's insurer, indicating that the defendant consents to settlement or judgment in the settlement amount; and

(5) A draft proposed order which states all of the financial arrangements of the settlement, allocates the funds as indicated in the settlement, designates a depository of the funds received for the minor and subjects any withdrawals to court approval until the minor reaches majority.

(c) Hearing and Judgment. At the hearing on the motion or application the court may require the moving party or plaintiff, the minor, and any attorney representing the minor to attend, and may make such inquiry as it deems necessary into the circumstances giving rise to the claim, the nature and extent of the damages sustained by the minor, other proceedings concerning the same claim, and any other matters pertinent to the adequacy of the settlement. Under exceptional circumstances the court may appoint a referee under Rule 53 to make such inquiry and to make recommendations thereon. After hearing, the court may approve the settlement or order entry of final judgment in accordance with its terms or may, with the consent of the parties, make such other order as justice may require, including provisions for a trust created for the minor's benefit and for payments to be made to the minor after age 18. Judgment shall be entered without costs and shall approve the fee for the minor's attorney, if any.

(d) Custody of Proceeds. The court may order that the proceeds of the settlement be deposited to the credit of the minor with such depository, trustee or custodian and on such terms as the court may designate until the minor reaches majority. No withdrawal of funds so deposited shall be made unless approved by a justice or judge of the court in which the order of deposit was entered.

(e) Verification. Not later than 30 days after entry of the order approving the settlement, the attorney or party to whom the funds are paid shall file a sworn affidavit verifying that the funds paid have been deposited as required by the court order, stating the depository financial institution and account number, and certifying that a copy of the court's order with restrictions on withdrawal, if any, has been provided to the depository financial institution.

Advisory Note – April 2015

Rule 17A(b)(4) is amended to make clear that the statement signed by an unrepresented defendant or a representative of its insurer may indicate that the defendant consents either to settlement or to judgment in the settlement amount. Prior to the amendment, the language of the rule appeared to require an unrepresented defendant to consent only to judgment. Rule 17A(c), however, allows a court either to enter judgment or to approve a minor settlement. This amendment makes Rule 17A(b)(4) consistent with Rule 17A(c).

Advisory Committee's Notes
May 1, 2000

The amendment substitutes the word "minor" for "infant" in the title. The text of the rule is not changed.

Advisory Committee's Notes
May 1, 1999

Rule 17A (c) and (d) are amended to give the court more flexibility in approving minor settlements. Prior to the amendment, the language of the rule appeared to limit the parties and the court to the deposit of funds in a bank. The best interests of the minor can be served by more flexible arrangements, such as trusts created and administered under court supervision. Although the parties now have the flexibility to propose a trust for the minor benefit, the court still retains final authority on approval of the terms of the trust and any withdrawals therefrom.

Advisory Committee's Notes
June 2, 1997

Subdivision (c) of Rule 17A is amended to make clear that the court approval of a minor settlement may include a provision for payments after the minor has reached the age of 18. This change authorizes the use of special needs trusts or other continuing payments where medical or other needs may be arranged for the minor's best advantage early in the minor's life. The court will continue to be guided by the minor's best interests, as 14 M.R.S.A. § 1605 (Supp. 1995) intends.

Advisory Committee's Notes
1988

Rule 17A is amended to assure that the court receives sufficient information about the nature of a minor's injuries and their cause to permit an informed evaluation of a request for settlement. The amendment is also intended to provide more protection to the minor by requiring verification of deposits and better confirmation that all parties have agreed to the settlement.

Throughout the Rule, the word "minor" has been substituted for "infant" as more in accord with current terminology.

Rule 17A(b) has been substantially rewritten. Paragraph (1) has been amended to specify procedures for waiving hearing if hearing is not desired. A new paragraph (2) has been added, requiring a detailed statement of the nature and the causes of the minor's injury or damages, with special requirements for detail in independent reports where a settlement is for more than $5,000 or is presented by adverse parties. A new paragraph (4) has been added to require written indication of approval of settlements by defendants not represented by counsel. Paragraph (5) has been added to require that a draft order be submitted, detailing the financial arrangements and fund distributions.

Rule 17A(e) has been added. The provision requires verification that required deposits have in fact been made and that the depository institution has received a copy of the court's order, including any restrictions on withdrawal.

Advisory Committee's Note
October 1, 1970

This rule spells out for the first time the procedure for obtaining the court approval required by 18 M.R.S.A. § 3652 for settlement of the claim of an infant plaintiff. It is adopted out of a concern on the part of both the courts and the practicing bar for the protection of the rights of injured minors and for the avoidance of any appearance of impropriety on the part of the legal profession or laxness on the part of the judiciary. Previously, such settlements were generally approved through the medium of the so-called "friendly suit" in which an attorney, often secured and paid by the defending insurance company, sued on the minor's behalf. Such suit would then be settled upon petition of the defendant. While responsible counsel would see that the court was fully informed both as to the nature of the representation and as to the circumstances surrounding the claim and settlement, there was no duty to investigate or present evidence and no standards other than good faith and absence of fraud by which to measure the adequacy of

counsel's presentation. *See Ayer v. Androscoggin & Kennebec R. R.*, 163 A. 270, 131 Me. 381 (1932). Moreover, under 18 M.R.S.A. § 3652 the court had sole discretion as to the procedure and criteria for approval of the settlement. The new rule substitutes for the friendly suit a procedure less subject to abuse and criticism and provides detailed guidelines for the court to follow whether settlement is sought under the new procedure or in ordinary adversary proceedings.

The statutory foundation for Rule 17A was laid by the recent amendment adding the following sentences to 18 M.R.S.A. § 3652 (*see* 1970 Laws, c. 590, § 22-A):

> If no action has been commenced, an infant by next friend may apply to any court in which an action based on the claim of the infant could have been commenced for an order approving the settlement of any such claim. An order approving such a settlement shall have the effect of a judgment.

The rule is based on N.Y.C.P.L.R. § 1207, R. 1208, with simplifications in the requirements for affidavits and hearing.

The procedure spelled out in the rule applies both where there is a pending action commenced on behalf of the infant (whether or not the action was commenced completely at arms length) and where a settlement agreement has been arrived at without the commencement of an action. In the latter case, the guardian or the other representative of the infant may file an application seeking an order of approval of settlement. Where there is a pending action the plaintiff representing the infant simply files a motion for an order of approval for settlement.

Rule 17A(a) expressly permits the motion or the application and also the supporting papers to be prepared by the attorney for an adverse party (typically the insurance company lawyer) or by an attorney obtained by the adverse party. The rule thus eliminates the sham involved in the prior practice of the "friendly suit." The rule makes no attempt to create the appearance of independence upon the part of the attorney preparing the papers for the infant. Rather the emphasis is put upon spelling out on the record in the form of an affidavit of the attorney who prepared the papers the full facts relating to his connections with the adverse party.

The rule does not, and indeed cannot, eliminate the responsibility of the court to investigate the reasonableness of the proposed settlement. On the other hand, the supporting papers required by the rule are intended, without imposing

unnecessarily burdensome paper work, to provide the court with the essential information on the subject. That information must be made a part of the record in an affidavit sworn to by the guardian or other representative of the infant. Subdivision (c), by expressly providing that the court may require the guardian or other representative as well as the infant and any attorney representing him to attend the hearing, encourages the court to make the hearing something more than a perfunctory matter. Counsel undoubtedly will try to make the affidavit of the guardian or other representative of the infant sufficiently full to avoid the delay and expense of a hearing at which all such persons are required to be present in person.

Subdivision (c) spells out the matters as to which the court should make inquiry relating to the adequacy of the settlement. The court may appoint a referee to investigate the adequacy of the settlement and to make his recommendations to the court. As stated in Rule 53(b) a "reference shall be the exception and not the rule." A referee should not be appointed as a routine matter, but only under exceptional circumstances or, in the language of Rule 53(b) "upon a showing that some exceptional condition requires it." Such "exceptional circumstances" might exist, for example, if the issue of liability on the infant plaintiff's claim involved serious difficulties in the proof of essential facts or doubtful questions of law and a settlement is proposed representing far less than full compensation for the injuries received by the plaintiff infant. It would obviously be improper for the referee subsequently to represent any party in regard to the infant's claim or any related claim. *See* Disciplinary Rule 9-101(A) of the Code of Professional Responsibility and in particular Note 7 appended thereto.