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## Hot Topics: Lessons Learned

# How to obtain approval of infant settlements in general district court when the funds are to be paid to the circuit court

by Rakin Hamad

Representing a minor in a personal injury case requires several different considerations than representing an adult. For example, the time period of resolving a minor's personal injury case, how the minor's injuries will impact their future, and the client communication are all different when you are representing an individual under 18 years of age. The most important distinction, though, may be the lawyer's requirement to protect the proceeds from the minor's personal injury case for the minor's use when they become of age. In the general district court, this requirement to protect the minor's personal injury funds can lead to procedural complications.

When settling a personal injury case for a minor, the insurance carrier will most likely require that the settlement is approved by the Court. This process protects the carrier, and the attorney, from claims in the future that the settlement was not in the best interest of the minor. The Virginia legislature has codified the process of approving a minor, or infant, settlement in Virginia Code §8.01-424(B). The Code says:

“[i]n case of damage to the person... under a disability, caused by the wrongful act, neglect, or default of any person, when death did not ensue therefrom, any person or insurer interested in compromise of any claim for such damages, including any claim under the provisions of any liability insurance policy, may, upon motion to the court in which the action is pending for the recovery of damages on account of such injury, or if no such action is pending, then to any circuit court, move the court to approve the compromise.”

In cases where the personal injury case resolves pre-litigation, the process of approving the infant settlement is simple as the petition for approval can be filed in any circuit court. In cases where the personal injury case resolves during circuit court

litigation, the process once again is simple as the petition for approval of the settlement can be filed in the circuit court where the litigation is ongoing. The process may not be as simple if the personal injury case settles during general district court litigation.

The timeline from filing the warrant in debt to trial in general district court is usually under 6 months. This can help cases settle quickly once a case is filed in general district court. As mentioned above, in a personal injury case involving a minor, the lawyer should be considering how to protect the funds for the minor if the case settles. Virginia Code §8.01-424(D) lists the options for payment of the personal injury proceeds in a case involving the minor. In personal injury cases involving minors, the pertinent options are:

1. Paid to circuit court pursuant to Virginia Code §8.01-600;
2. Investment in a college savings trust account (529 plan) for which the minor is the beneficiary;
3. Structured settlement funded by an annuity to provide the minor with future periodical payments
4. Paid to the minor's parent or guardian to be held in trust for the benefit of the minor.

In general district court cases, the funds that will ultimately be available to the minor after fees, costs, and medical expenses usually are \$30,000.00 or less. This can make it difficult to structure the settlement as there are minimums that usually need to be met to purchase the annuity. Paying the funds to the minor's parent or guardian can also be a sticky solution as many judges are uncomfortable with approving those settlements as there is no way to guarantee that the parent will keep and/or use the funds in benefit of the minor and that can cause future litigation. This can lead the attorney to deciding the best option for the minor is to pay the



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funds into the court. While the return on the principal is not going to be ideal, paying the funds to the Court can still be in the best interest of the minor if they are close to turning 18 or the funds are a small amount.

Virginia Code §8.01-600 gives authority on how to pay funds into the circuit court, however that code section is silent on paying funds into the general district courts. Virginia Code §8.01-606(C) discusses the scope paying funds into the general district court. Unlike the circuit court, the general district court may only hold funds for 180 days. This statute does lay out a process to have the funds paid to the district court clerk and then transferred to the circuit court. However, the process is convoluted and complex. First, the general district court clerk must enter an order directing the district clerk to hold the funds in escrow for up to 180 days. The parties must then file a petition in circuit court to have the funds moved from the general district court to the circuit court. Once the order is entered in the circuit court, the parties must then provide a certified copy of the circuit court order to the general district court clerk, who then must transfer the funds into the circuit court. There are a few issues with this process and following this statute. First, the statute states that judgment must be entered for the plaintiff in order to receive the funds. Second, the statute only allows the district court to hold funds for 180 days. After the 180 days, the clerk must disburse to the plaintiff. This leads to clerks of the district court stating that they cannot receive funds for a minor because they cannot disburse to that minor after the 180 days. The 180-day time limit can also be a tight turnaround depending on the circuit court that is hearing the petition and the process that court requires to appoint a Guardian *ad Litem*. For those reasons, the better process is to deposit the funds into the circuit court instead of paying the funds to the district court and then petitioning for a transfer.

There are a couple of options to have the proceeds of the settlement paid directly to the circuit court. The first consideration is how to delay the ongoing general district court litigation. The important practice tip here is do not use a nonsuit to stop the general district court litigation. Virginia Code §8.01-380 states that “[a]fter a nonsuit no new proceeding on the same cause of action or against the same party shall be had in any court other than that in which the nonsuit was taken.” This means that there is a valid argument that the petition for approval of the infant settlement could not be heard in circuit court after a nonsuit was taken in general district court because that would be a new proceeding on the same cause of action in a new court. There are potential arguments around this, as the statute does allow for a new proceeding in a new court upon a showing of “good cause” and the peti-

tion for approval could be filed before the nonsuit is actually taken, however it is best to stay away from using the nonsuit solely for obtaining circuit court approval. The best options are to either request a continuance of the general district court litigation or to file a motion to stay the proceedings of the general district court litigation. A motion to stay is the best option as a continuance usually requires a date certain whereas a motion to stay does not require a date certain or may only require a status conference.

Once the general district court litigation is stayed, the parties can proceed with petitioning the circuit court to approve the infant settlement and to receive the funds for the minor. Virginia Code §8.01-424 allows the parties to file for approval of an infant settlement to “the court in which the action is pending... or if no such action is pending, then to any circuit court.” The statute is interesting in that it does not specify circuit court when referencing a pending action, but if there is no pending action then the settlement approval must be petitioned for in circuit court. This can bring up an issue when attempting to obtain approval for a general district court case. The circuit court petition must detail the aforementioned reasons that the settlement cannot be approved in general district court. If the circuit court Judge refuses to hear or approve the settlement because the general district court case is pending, then the parties must transfer the matter to the circuit court. Virginia Code §16.1-77 allows the court and parties to transfer pending matters from general district court to circuit court without requiring a dismissal or nonsuit. The requirement to transfer the matter pursuant to Virginia Code §16.1-77 is for the plaintiff to increase the amount sued for to over \$50,000, which is the jurisdictional limit of the general district court. This can be an issue for defense counsel and/or the insurance carrier if the defendant has an insurance policy less than or equal to \$50,000 as they will not want to create exposure for their client. At this point, there would be a settlement agreed upon though, so the defendant would not be facing any increased exposure and the sole purpose of increasing the amount sued for is for jurisdictional purposes to approve the settlement.

The process for approving an infant settlement in a general district court case can be quite complicated when the funds are to be paid into the court. As mentioned above, there are other payment options that should be considered before moving forward with paying the minor’s funds into the court. However, sometimes paying the funds to the court can be the only option due to the amount of the proceeds in general district court. Knowing the process of obtaining approval and to be able to pay the funds into the circuit court are important for those types of cases.