

GENERAL RULES OF PRACTICE

General Rules of Practice for the District Courts

Adopted September 5, 1991 Effective January 1, 1992
With amendments received through August 8, 2003

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[For text of Title I, see M.S. 2002, Volume 15]

TITLE II - RULES GOVERNING CIVIL ACTIONS

[For text of Part A to Part E, see M.S. 2002, Volume 15]

PART F - SPECIAL PROCEDURES

[For text of Rule 135. to Rule 144., see M.S. 2002, Volume 15]

Rule 145. Actions on Behalf of Minors and Incompetent Persons

[For text of Rule 145.01 to Rule 145.04, see M.S. 2002, Volume 15]

Rule 145.05 Terms of the Order.

The court's order shall:

- (a) Approve, modify or disapprove the proposed settlement or disposition and specify the persons to whom the proceeds are to be paid.
- (b) State the reason or reasons why the proposed disposition is approved if the court is approving a settlement for an amount which it feels is less than what the injuries and expenses, might seem to call for, e.g., limited insurance coverage, dubious liability, comparative fault or other similar considerations.

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

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

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

(2) In lieu of such disposition of the proceeds, the order may provide for the filing by the petitioner of a surety bond approved by the court conditioned for payment to the ward in a manner therein to be specified of such moneys as the ward is entitled to receive, including interest which would be earned if the proceeds were invested.

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

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

(2) that the account be opened in the name of the minor or incompetent person and that any deposit document be issued in the name of the minor or incompetent person;

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

(4) that financial institution forthwith acknowledge to the court receipt of the order approving settlement and the sum and that no disbursement of the funds will occur unless the court so orders, using the form substantially equivalent to Form 145.1;

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

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

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

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

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

(Amended effective January 1, 1993; amended effective January 1, 2003.)

Rule 145.06 Structured Settlements.

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

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

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

(1) Be licensed to do business in Minnesota;

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

(3) Has complied with the applicable provisions of Minnesota Statutes, sections 549.30 to 549.34;

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

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

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

(1) The minor reaches majority;

(2) The terms of the policy have been fully performed; or

(3) The minor dies, whichever occurs first.

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

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

(f) Provide that:

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

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

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

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

(Amended effective January 1, 1993; amended effective January 1, 1996; amended effective March 1, 2001; amended effective January 1, 2003.)

Cross Reference: Minn. R. Civ. P. 17.

[For text of Rule 145.07, see M.S. 2002, Volume 15]

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.

PART G - APPENDIX OF FORMS

[For text of Form 104 to Form 112.01, see M.S. 2002, Volume 15]

FORM 145.1 - RECEIPT OF MINOR SETTLEMENT ORDER AND FUNDS

FORM 145.1 RECEIPT OF MINOR SETTLEMENT ORDER AND FUNDS
(Gen. R. Prac. 145.05)

State of Minnesota

District Court

County of _____

_____ Judicial District

Case Type: _____

Plaintiff/Petitioner

Case No. _____

and

**RECEIPT OF MINOR SETTLEMENT
ORDER AND FUNDS**
(Provided Pursuant to Rule 145 of the
Minnesota General Rules of Practice)

Defendant/Respondent

1. _____ ("Financial Institution") acknowledges receipt of the sum of \$ _____ on behalf of _____ in this action.

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

Name of Depository: _____

Branch Name: _____

Branch Address: _____

Account Number: _____

Date Account Opened: _____

Current Balance: \$ _____

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

Dated: _____ Type or Print Name _____

Signature: _____

Title: _____

(Added effective January 1, 2003.)

**FORM 145.2 - COMBINED MOTION AND ORDER FOR
RELEASE OF MINOR SETTLEMENT FUNDS**

**FORM 145.2 COMBINED MOTION AND ORDER FOR RELEASE OF MINOR
SETTLEMENT FUNDS (Gen. R. Prac. 145.05)**

State of Minnesota
County of _____

District Court
Judicial District _____

Case Type: _____

Plaintiff/Petitioner

Case No. _____

and

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

Defendant/Respondent

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

_____. Movant brings this Motion as the
_____ (Minor, now past the age of majority—Date of Birth _____)

or

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

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

Name of Depository: _____

Branch Name: _____

Branch Address: _____

Account Number: _____

Date Account Opened: _____

Current Balance: \$ _____

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

_____ None.

or

_____ \$ _____ on _____ for the purpose of _____

_____ \$ _____ on _____ for the purpose of _____

\$ _____ on _____ for the purpose of _____

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

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

_____ Minor has reached the age of 18 and this is a final distribution

or

_____ The funds will be used for the benefit of the minor in the following way:

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

5. Funds should be disbursed as follows:

\$ _____ to _____

\$ _____ to _____

\$ _____ to _____

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

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

Dated: _____

Type or Print Name _____

Signature: _____

(sign only in front of notary public or court administrator)

Sworn / affirmed before me this

day of

(DATE) (MONTH) (YEAR)

Notary Public/ Deputy Court Administrator

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

(Added effective January 1, 2003; amended effective January 13, 2003.)

[For text of Part H and Title III. to Title V., see M.S. 2002, Volume 15]

TITLE VI—CONCILIATION COURT RULES

[For text of Title VI. and Rule 501. to Rule 521., see M.S. 2002, Volume 15]

Rule 522. Pleadings in District Court

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

(Amended effective January 1, 2003.)

Advisory Committee Comment - 2002 Amendment

Rule 522 establishes a streamlined procedure for amendment of pleadings as a matter of right during the first 30 days after an action is removed to district court. The 2002 amendment adds a sentence before the last sentence to make it clear that the parties may move for leave to amend at other times, and the court can allow amendment on its own initiative. In these situations, the standards for amendment and supplementation of

pleadings 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.

[For text of Rule 523 to Rule 525, Appendix of Forms and Title VII. to Title X., see M.S. 2002, Volume 15]