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House of Representatives - Oregon State  
Legislature

HB 2807-1  
-1 Amendment  
Proposed amendment of UTCR 9.040

Dear Representatives:

I am a litigation attorney with over thirty years of experience. Although I also represent plaintiffs, I primarily represent defendants in personal injury cases. I write in support of the above proposed amendment to Oregon State Court Uniform Trial Court Rule 9.040.

UTCR 9.040 governs the settlement of personal injury claims in probate cases. The large majority of these claims involve injured minors. To protect the minor, the court must review and approve the proposed settlement. This means that the court must receive information relevant to the settlement, including what would otherwise be privilege medical reports concerning the minor's injuries, diagnosis, and prognosis. In addition, the court is informed of the financial terms of the settlement.

Currently, UTCR 9.040 does not limit the disclosure of this information, thus making potentially privileged and sensitive information part of the public record in the probate case. This does not benefit the minor, and in many cases, may be harmful to the minor. This includes large claims where the amount paid in settlement is substantial, and if publicly disclosed would create the potential for third parties to attempt to improperly contact the minor or their family to gain access to these funds.

In addition, allowing this information to become public can create a disincentive to defendants to settle in cases where confidentiality is important to the defendants. Keeping this information private would promote settlement of claims where confidentiality is important to the parties.



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Finally, it is important to keep in mind that in settlement of personal injury claims of competent adults, these settlements are always private and the parties can agree to keep the settlement terms confidential. So while the probate courts need to receive the relevant information to evaluate proposed settlements of a minor's personal injury claim, there is no good public policy to publicly disclose the terms of the settlement. Therefore, amending UTCR 9.040 to provide that this information shall remain confidential and under seal (except where in a particular case there is a compelling reason for public disclosure) is in the best interest of minors (and other protected persons) and will promote settlements.

Best regards,

Donald E. Templeton