

MEMORANDUM

To: Senator Richard Sears, Chair Senate Committee on Judiciary
From: Hon. Brian J. Grearson, Chief Superior Judge
Date: February 3, 2020
Re: Proposed Legislative Changes to 14 V.S.A. § 2643 and 32 V.S.A. § 1434(a)(28)

I. 14 V.S.A. § 2643

Proposed amendment to 14 V.S.A. § 2643:

§ 2643. Release by court and parent on behalf of minor

- (a) The Superior judge of the Superior Court within and for the county where the minor resides, on behalf of a minor, must approve of and consent to a release to be executed by a parent in the settlement of any claim that does not exceed the sum of ~~\$1,500.00~~ **\$10,000.00**. A release so furnished shall be binding on the minor and both parents, their heirs, executors, administrators, or assigns, respectively.
- (b) Any claim settled for a sum in excess of ~~\$1,500.00~~ **\$10,000.00** shall require the approval of a court-appointed guardian.

Rationale for change

14 V.S.A. § 2643, as currently written, requires approval by “the Superior judge of the Superior Court” of a claim settled on behalf of a minor for an amount not to exceed \$1,500. Additionally, any claim settled for a sum in excess of \$1,500 requires the approval of a court-appointed guardian. The appointment of a guardian for a minor to settle a claim in excess of \$1,500 is made by the Probate Division. Approval by a Superior Court Judge sitting the Civil Division of a minor settlement requires no follow-up supervision by the Court. On the other hand, any approval by a court-appointed guardian of a settlement on behalf of minor requires the Probate Division to supervise the court-appointed guardian’s fiduciary duty at least on an annual basis and until the minor reaches the age of majority. Further, Probate Division involvement with financial guardians of minors can include ruling on motions for expenditures of funds from the settlement amounts,

approving the establishment of trusts with settlement funds and reviewing yearly financial accountings. (See 14 V.S.A. § 2659(e)(4)-(6)).

Although the exact number is not known to me, the Probate Division supervises numerous financial guardianships for minors with amounts less than \$10,000. Increasing the threshold amount before requiring a court-appointed guardian to settle a minor's claim would ease the burden on the Probate Division and place these settlements directly into the hands of parents of minor children until their age of majority. Increasing the threshold amount to \$10,000 would, in many cases, also eliminate time and expense incurred by petitioners and guardians in financial guardianships of minors.

Finally, the last increase was made in 1979 from \$500 to the current \$1,500 threshold amount. With the passage of approximately 40 years, consideration of an increase to \$10,000 is not unreasonable.

II. 32 V.S.A. § 1434(a)(28)

Proposed amendment to 32 V.S.A. § 1434(a)(28):

~~“Petitions for minor settlement pursuant to 14 V.S.A. § 2643 – \$90.00”~~

The Probate Division Oversight Committee recommends that 32 V.S.A. § 1434(a)(28) be stricken. 32 V.S.A. §§ 1434(a)(1)-(33) itemize the various entry fees to be charged for Probate Court cases. Section 1434(a)(28) establishes the entry fee to be charged *in Probate Court* for a petition for a minor settlement but the Probate Division, as discussed in Section I above, does not have jurisdiction to entertain a petition for a minor settlement under 14 V.S.A. § 2643. (emphasis added). This fee statute has caused confusion as to what entry fee should be charged in the Probate Division for Petitions for Financial Guardians for Minors: \$150 pursuant to 32 V.S.A. § 1434(15) or \$90 pursuant to 32 V.S.A. § 1434(a)(28). Since the Probate Division does not have jurisdiction over minor settlements, Section 1434(a)(28) should be stricken.

Therefore, the Probate Oversight Committee requests the Legislature to strike 32 V.S.A. § 1434(a)(28), as there is no Petition for minor settlement pursuant to 14 V.S.A. § 2643 in the Probate Division because jurisdiction for that approval is vested in the Civil Division.

