

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

Legal Counsel Division

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MEMORANDUM

TO: George Valentine
Deputy Attorney General
Civil Litigation Division

FROM: Janet M. Robins *JMR*
Deputy Attorney General
Legal Counsel Division

DATE: March 6, 2014

SUBJECT: Legal Advice Concerning Applicability of D.C. Official Code § 21-120 to Pre-Suit Settlements
(AL-14-106)

On February 24, 2014, this office received your email requesting legal advice concerning the applicability of D.C. Official Code § 21-120 to pre-suit settlements. You opined that both subparts (a) and (b) appear to apply only to situations where a lawsuit was filed. For the reasons stated below we concur in your reading of this statute.

The plain language of D.C. Official Code § 21-120 does not require court approval of pre-litigation settlements with minors. This provision states:

- (a) A person entitled to maintain or defend an action on behalf of a minor child, including an action relating to real estate, is competent to settle *an action so brought* and, upon settlement thereof or upon satisfaction of a judgment obtained therein, is competent to give a full acquittance and release of all liability in connection with the action, but such a settlement is not valid unless approved by a judge of the court in which the action is pending.
- (b) A person may not receive money or other property on behalf of a minor in settlement of *an action* brought on behalf of or against the minor or in satisfaction of a judgment *in the action*, where, after deduction of fees, costs and all other expenses incident to the matter, the net value of the money and property due the minor exceeds \$ 3,000, before he is appointed by a court of competent jurisdiction as guardian of the estate of the minor to receive the money or property, and qualifies as such. (Emphasis added.)

The term "action" is not defined by the statute. The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *United States v. Goldenberg*, 168 U.S. 95, 102-103, 42 L. Ed. 394, 18 S. Ct. 3 (1897); accord, e.g., *James Parreco & Son v. District of Columbia Rental Housing Comm'n*, 567 A.2d 43, 46 (D.C. 1989). Moreover, "the words of the statute should be construed according to their ordinary sense and with the meaning commonly attributed to them." *Davis v. United States*, 397 A.2d 951, 956 (D.C. 1979); *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc). Black's Law Dictionary defines the term "action," in this context, as "a civil or criminal judicial proceeding," *Black's Law Dictionary* (9th ed. 2009). "[A]n action has been defined to be an ordinary proceeding in a court of justice, by which one party prosecutes another party for enforcement or protection of a right . . ." *Id.* (quoting 1 Morris M. Estee, *Estee's Pleadings, Practice and Forms* § 3, at 1 (Carter P. Pomeroy ed., 3d ed. 1885)).

A review of the legislative history of D.C. Official Code § 21-120¹ further supports the interpretation of this provision as not requiring court approval of pre-litigation settlements with minors. There were two committee reports, one from the Senate and one from the House of Representatives addressing the bill later enacted as D.C. Official Code § 21-120. Neither of these reports discusses any type of settlements other than settlements arising from "actions." See H.R. Rep. No. 86-1110 (1959); and S. Rep. No. 86-679 (1959).

The only case law on point is found in *Dominique v. Ralph D. Kaiser Co., Inc.*, 479 A.2d 319, 325 n.3 (D.C. 1984) (Terry, J., concurring):

Counsel apparently felt obliged under D.C. Code § 21-120(a) to seek judicial approval of the proposed settlement. *Although this statute does not expressly require judicial scrutiny of settlements reached before a claim is formalized by the filing of a civil action, a wise attorney would be well advised to seek court approval of any settlement involving a minor child, even if no other court action is contemplated.* (Emphasis added.)

This supports the conclusion that while it may be a good practice to seek court approval for pre-lawsuit settlements, such an action is not required by the statute.²

¹ D.C. Official Code § 21-120 was originally enacted by Congress as An Act to Authorize persons maintaining or defending actions in the District of Columbia on behalf of a minor to give releases of liability, and requiring persons receiving money or property in settlement of such actions or in satisfaction of a judgment in any such action to be appointed as a guardian of the estate of such minor, approved September 14, 1959 (73 Stat. 553; Pub. L. 86-268).

If you have any questions regarding this memorandum, please contact Catherine Brinkley³
Assistant Attorney General, Legal Counsel Division, at 724-6152, Arthur Parker, Assistant Deputy
Attorney General, Legal Counsel Division, at 724-5565, or me at 724-5524.

JMR/cmb

Attachments: Committee Reports H.R. Rep. No. 86-1110 (1959); and S. Rep. No. 86-679
(1959).
K.A.E. v. Manual, 115 D.W.L.R. 2589 (Super. Ct. Dec. 9, 1987)

³ Admitted to practice only in Virginia. Practicing in the District of Columbia under the direct supervision of Janet M. Robins, a member of the D.C. Bar, pursuant to D.C. Court of Appeals Rule 49(c).