

Minors and Liability Waivers

by Eric A. Spacek, JD, ARM

TODAY'S CHURCHES typically offer a variety of activities geared toward students that increasingly include off-site and higher risk activities such as ski trips, water recreation, zip lines, rock climbing and paintball. One question that comes up in connection with these activities is what type of permission or liability waiver form is appropriate, and enforceable, when minors are involved.

This article addresses the legal and risk management issues that apply to liability waiver forms for minors.¹ The moral considerations of asking a parent to sign away a minor's rights in the event of an injury during a church activity are outside the scope of this article and left to the discretion of the church.

Two recent court cases have addressed the question of liability waivers for minors and have provided guidance on the topic.

In September, a Florida jury returned a \$4.75 million verdict against a church for injuries suffered by a teen during a youth group ski outing to North Carolina. Reportedly, the minor's parents had signed a liability waiver form in that case; however, the court did not allow the liability waiver form to be used as a defense at trial because of a previous Florida case finding such forms to be unenforceable.

In the previous case, a 14-year-old boy was killed in an accident while he was operating an ATV at a motor sports park. Prior to engaging in the activity, his father had signed a release and waiver of liability form from the sports park.

After the boy's mother filed a wrongful death lawsuit, the case was dismissed by the trial court on the ground that the liability waiver signed by the father barred the claim. However, the Florida Supreme

Court determined that the liability waiver signed by the father was not enforceable.

The court began its analysis by recognizing two competing interests: (1) that of parents in raising their children and (2) that of the state in protecting children. The court noted that the state, as *parens patriae*², may in certain situations usurp parental control. The court found that pre-injury releases of liability involved just such a situation because the parent "is not protecting the welfare of the child, but is instead protecting the interests of the activity provider." Because a parent is impacting the child's estate and his/her property rights by signing a liability waiver form, "the state must assert its role under *parens patriae* to protect the interests of the minor children." Therefore, the liability waiver was found to be unenforceable against the minor's claim.



Likewise, in November, the Supreme Court of Iowa ruled that a pre-injury liability waiver signed by a parent or guardian on behalf of a minor child is unenforceable. In that case, a 14-year-old girl attending a school field trip was injured when she was struck by a car as she attempted to cross the street. Before she went on the field trip, her mother had signed a standard permission and release form.

When the mother later sued over the girl's injuries, the lawsuit was dismissed by the trial court based on the signed release, finding that it constituted a valid waiver of the girl's claims. The Iowa Supreme Court disagreed and reversed the trial court's decision. Focusing on the public policy that "children must be accorded a measure of protection against improvident decisions of their parents," the court concluded that pre-injury releases signed by parents on behalf of their minor children cannot be enforced. The court stated that "the strong policy in favor of protecting children must trump any competing interest of parents and tortfeasors in their freedom to contractually nullify a minor child's personal injury claim before an injury occurs."

This ruling is consistent with the law in most U.S. states; however, both the Iowa and Florida Supreme Courts noted that in a minority of states, such as California, Massachusetts, and Ohio, releases of a minor's claims by a parent can be enforced. The Florida court noted that those courts did so "because community-run and school-sponsored type activities involve different policy considerations

than those associated with commercial activities." This leaves open the question of whether liability waivers relating to a community or volunteer organization, such as a church, may be upheld in certain jurisdictions where they might otherwise be found void.

So where does this leave churches? Several key points can be gleaned from these cases:

1. Because the validity of liability waivers for minors is a question of state law (legislative or judicial), it is important to check with your church's legal advisor on the law in your state. Be sure to clarify with your legal advisor the following issues:
 - a. Whether liability waivers of a minor's claim are enforceable in your state; and
 - b. Whether any distinction is, or in good faith could be, made between liability waivers for commercial activity operators and those for non-profit community organizations such as your church.
2. Depending on the responses you receive to the first point above, work with your legal advisor on drafting an appropriate permission and release document.
3. Even if liability waivers for minors are not enforceable in your state, it is important to include permission/consent language in the document to avoid claims that the parents were unaware of the activity the children were partici-

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pating in and would not have agreed to it if they had been aware. This includes transportation to and from the activity. It also is advisable to include consent to emergency medical treatment in the event there is an injury and the parents cannot be contacted immediately.

4. Because liability waivers for minors are not enforceable in most states, safety and risk management in the selection and supervision of youth activities become all the more important. Make sure that an appropriate leadership team from the church is aware, and approves of, higher risk activities and that an appropriate plan for safety and supervision is in place.

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¹ For purposes of this article, the terms liability "waiver" and "release" are used interchangeably to indicate a pre-injury release of liability document signed by a parent or guardian in favor of the organization sponsoring or providing the activity.

² *Parens patria*, which is Latin for "parent of his or her country," describes the state in its capacity as provider of protection to those unable to care for themselves. *Black's Law Dictionary* 1144 (8th ed. 2004).