

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: October 12, 2007

SUBJECT: Probate: Notice of Changes of Residence of Conservatees or
Wards (adopt rules 7.1013 and 7.1063 of the California Rules of
Court; revise form GC-080 and adopt form GC-079; and approve
forms GC-079(MA) and GC-080(MA)) (Action Required)

Issue Statement

Conservators and guardians of the person are authorized to establish the residence of their conservatees and wards at any place in California without permission of the court. Probate Code section 2352 requires these fiduciaries to select the least restrictive appropriate residence that is available and necessary to meet the needs of the conservatee or ward and is in his or her best interest.

Under former law, a conservator or guardian was merely required to give notice by mail to the court of any change of a conservatee's or ward's residence. No one else was entitled to notice of the move, and no advance notice of a change was necessary. A 2006 amendment of section 2352 has fundamentally altered these requirements.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, take the following actions to provide the notices of change of residence required by amended Probate Code section 2352 and to provide guidance concerning the requirements of the new law:

1. Adopt rules 7.1013 and 7.1063 of the California Rules of Court;
2. Revise *Change of Residence Notice* (form GC-080);
3. Adopt *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079); and
4. Approve *Attachment to Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079(MA)) and *Attachment to Post-Move Notice of Change of Residence of Conservatee or Ward* (form GC-080(MA)).

The text of proposed rules 7.1013 and 7.1063 is attached at pages 19–23.

Copies of the proposed new and revised forms and current form GC-080 are attached at pages 24–30.

Rationale for Recommendation

The Omnibus Act substantially rewrote existing law concerning notice of change of residence of conservatees or wards within California. Before the new law, conservators or guardians were required merely to “promptly” mail notice to the court of all changes in the conservatee’s or ward’s residence within the state. No specific time period within which to mail the notice was stated, no one other than the court was entitled to receive the notice or otherwise to be advised about a change in residence, and no notice to the court or anyone else in advance of the move was required.

Post-move notice

Probate Code section 2352(e)(1) requires (1) notice of a change in a conservatee’s or ward’s residence to be filed with the court within 30 days of the change; (2) the conservator’s declaration that the conservatee’s change of residence is consistent with the standard described in section 2352(b), stated in the opening paragraph of this report; and (3) the Judicial Council to develop, on or before January 1, 2008, one or more forms of notice and declaration to be used for this purpose. This notice is referred to in the proposed new rules of court, revised form GC-080, and this report as the “post-move notice” to distinguish it from the advance notice of a change in residence sometimes required under new section 2352(e)(3), discussed below.

New section 2352(e)(2) identifies the persons who must be mailed the post-move notice of a conservatee’s or ward’s change of residence by referring to section 1822(b) for conservatorships and section 1511(b) for guardianships. These code sections define who must be served with notice of the hearing and a copy of the

petition for appointment of a conservator or guardian at the beginning of the proceeding.

Pre-move notice

Section 2352(e)(3) creates a new duty to give advance notice to the ward (if at least 12 years old), and to the ward's or conservatee's important family members of a proposed change of the ward's or conservatee's residence in some circumstances. This new requirement is referred to in this report and in the proposed rules and forms as the pre-move notice. Not all changes of residence require this notice. The statute refers to changes in the conservatee's or ward's *personal* residence, whereas the post-move notice discussed above applies to any residence.

Section 2352(e)(3) requires notice of a change in the conservatee's or ward's personal residence to be mailed to the same persons entitled to receive the post-move notice: those mentioned in sections 1822(b) (conservatorship) or 1511(b) (guardianship). The notice must be mailed at least 15 days before the move, in the absence of an emergency. If there is an emergency requiring a shorter period of notice, the conservator or guardian must state the basis for the emergency in the written notice.

Rules 7.1013 and 7.1063

Section 2352 does not direct the council to develop rules of court. However, the advisory committee believes the statute requires clarification that would directly affect the post-move notice the council is directed to prepare and the pre-move notice the committee is also proposing. This proposal would clarify the requirements for mailing the pre-move and post-move notices in guardianships. Pre-move notice to the conservatee of a change in his or her personal residence, omitted in the statute, would be required under proposed rule 7.1063. Rules 7.1013 and 7.1063 would not require mailing of the post-move notice to the conservatee or ward as superfluous, although mailed notice to their attorneys would be required.

Perhaps the most important reason for the proposed rules of court is the absence of a definition of "personal residence" in section 2352 for purposes of the pre-move notice required by section 2352(e)(3). The advisory committee infers from section 2352.5, a new code section added by the Omnibus Act, that the personal residence of the conservatee or ward is his or her residence at commencement of the case—when the petition for appointment of a conservator or guardian was filed. Rule 7.1013(b) would, therefore, define a ward's personal residence in this way.

The definition of a conservatee's personal residence is more complex. The committee proposes to define the conservatee's "personal residence" for purposes of the pre-move notice as the residence the conservatee understood or believed, or appeared to understand or believe, to be his or her permanent residence when the conservatorship was commenced. If the conservatee could not at that time form an understanding or belief about a permanent residence or could not communicate such an understanding, the personal residence would be the residence the conservatee last previously considered to be his or her permanent residence. See proposed rule 7.1063(b)(1) and (2).

Paragraph (3) of rule 7.1063(b) would provide guidance in three common situations. Any move from a conservatee's personal residence would clearly be a change of that residence requiring the pre-move notice. A move from a residential care facility or other temporary housing to a residence other than the conservatee's personal residence would also be a change of personal residence requiring this notice. But a move from a residential care facility or other temporary housing to the conservatee's personal residence would not be a change of personal residence under the rule.

For purposes of the post-move notice, the residence of the conservatee or ward would be defined simply as his or her residence at any time after appointment of a fiduciary (rules 7.1013(d) and 7.1063(d)).

Form GC-080

The advisory committee proposes a complete revision of the current Judicial Council form *Change of Residence Notice* (form GC-080), to comply with the new requirements of section 2352(e)(1) and (2) concerning the post-move notice. The revised form would be renamed *Post-Move Notice of Change of Residence of Conservatee or Ward*.

Item 2 of the form would request the conservatee's or ward's new address, telephone number, and another contact telephone number, the same information requested in the current form. Item 3 of the form would apply in all conservatorships. It contains a declaration, that the conservatee's change of residence is consistent with the standard described in section 2352(b).

The second page of this form contains a proof of mailing similar to proofs of service by mail contained in other probate forms, including the basic forms used in decedents' estates, conservatorships, and guardianships to give notice of hearings in those matters (forms DE-120 and GC-020). This proof of mailing, however, is designed to be completed and signed by the fiduciary, his or her attorney, or the employee of the attorney. This design is proposed in order to avoid problems with mailing suffered by many unrepresented fiduciaries. They find it difficult to

understand or comply with the traditional prohibition against a party in litigation proving service of a document by mail.

Form GC-079

The advisory committee proposes adoption of a new mandatory form for the pre-move notice required by section 2352(e)(3), *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079). This form, like revised form GC-080, contains detailed information and instructions for conservators and guardians, including mailing instructions.

The form requests the proposed date of the move, the address of the new residence, and the type of residence. The latter information is not required by the statute, but the advisory committee believes that it is important information for the court and family members entitled to notice, particularly in a conservatorship, where moves to residential care facilities or other institutional housing are common.

Item 4 of the form provides an opportunity for the fiduciary to state the reasons for the emergency that requires a reduced period of notice, as required by section 2352(e)(3).

Form GC-079 provides for mailing and execution of the proof of mailing by the conservator, attorney, or attorney's employee for the same reasons as revised form GC-080.

Forms GC-079(MA) and GC-080(MA)

The advisory committee proposes optional forms to be attached to the two notice forms to show additional addressees. These forms are similar to other attachments to mailing or service forms in probate matters approved in recent years.

Alternative Actions Considered

Probate Code section 2352 requires a form for the post-move notice and the declaration mentioned in section 2352(e)(1). These are provided in revised form GC-080. No alternative to development of a form for these purposes was considered.

The committee considered a single form for both the pre-move and post-move notices required by the new statute but elected to recommend separate notice forms to reduce the complexity and length of a combined form and possible confusion in its use.

The committee also considered proceeding without proposing rules of court. The committee decided, however, that the absence of a statutory definition of a

“personal residence” for purposes of the pre-move notice and the statute’s reference to Probate Code sections 1511(b) and 1822(b) to define who should receive the notices requires clarification by means of the proposed rules.

The committee also considered waiting until the passage or failure of Senate Bill 800 in the 2007 Legislature before proceeding with a form or a rule of court concerning the pre-move notice of a change of a conservatee’s personal residence. The committee elected, however, to proceed with the rule provisions and the form of pre-move notice without waiting to learn the fate of SB 800.

Comments From Interested Parties

This proposal was circulated for comment in a special cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, and probate-interest sections of the State Bar and local bar associations, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Fourteen comments were received concerning this proposal. A chart showing the comments and the committee’s responses is attached beginning at page 33, following the rule text, copies of the forms, and the text of Probate Code sections 2352 and 2352.5.

Most commentators approve the rules and forms with modifications. Two commentators oppose them entirely. Two commentators advise that mailing the post-move notice on conservatees and wards (over 11 years of age) after completion of the move, as originally required by rules 7.1013(c) and 7.1063(c), would be superfluous. The committee agrees with these comments and has amended the rules to delete the requirement of mailing a post-move notice directly on the conservatee or the ward.

Another commentator recommends that the definition of a conservatee’s personal residence in proposed rule 7.1063(b) be expanded to include rented residences or living arrangements with family that were in place when the conservatorship was filed. The committee’s response advises that the modified definition provided in the rule refers to the residence the conservatee considers to be his or her permanent residence. That residence could certainly include any of the arrangements mentioned by this commentator.

Another commentator requests that the proposed rules of court and the notice forms should include a procedure for objecting to a proposed move on receipt of the pre-move notice. The committee’s response notes that the right to object to a conservatee’s or ward’s move within California and the procedure for doing so are

unclear, as amended sections 2352(a) and (b) continue to authorize the guardian or conservator to establish the residence of the ward or conservatee anywhere in the state without prior court approval. Neither sections 2352 or 2352.5 nor any other provision of the Omnibus Act expressly authorize an objection on this ground, confer standing on anyone to make the objection, or require a hearing to determine the objection. The proposed rules of court, therefore, do not prescribe a procedure for objecting to a change of personal residence.

The State Bar's Trusts and Estates Section disagrees with the proposed pre-move notice form on the ground, among others, that the draft as circulated did not provide for disclosure of the conservatee's or ward's new address. The committee agrees with the objection and modified the form not only to provide for statement of the new address, but also to advise the court and persons who receive the form of the type of residence to which the conservatee will be moved.

Implementation Requirements and Costs

This proposal will result in the normal costs associated with the adoption of new rules of court and the adoption or approval and distribution of new Judicial Council forms. If Senate Bill 800 is enacted in 2008, additional expenses will be incurred to amend rule 7.1063 and revise form GC-079. The committee believes, however, that the rules and the forms will save attorney's fees for the estates of conservatees and wards to comply with, and court staff time and related costs incurred to ensure compliance with, the current requirements of amended section 2352.

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Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: October 12, 2007

SUBJECT: Probate: Notice of Changes of Residence of Conservatees and Wards (adopt rules 7.1013 and 7.1063 of the California Rules of Court; revise form GC-080 and adopt form GC-079; and approve forms GC-079(MA) and GC-080(MA)) (Action Required)

Issue Statement

Conservators and guardians of the person are authorized to establish the residence of their conservatees and wards at any place in California without permission of the court. These fiduciaries must select the least restrictive appropriate residence that is available and necessary to meet the needs of the conservatee or ward and is in his or her best interest.¹

Under former law, a conservator or guardian was merely required to give notice by mail to the court of any change of a conservatee's or ward's residence. No one else was entitled to notice of the move, and no advance notice of a change was necessary. The 2006 amendment of section 2352 referenced in the above note has fundamentally altered these requirements.

¹ Probate Code section 2352(a) (guardians), and (b) (conservators), as amended effective January 1, 2007, by Stats. 2006, ch. 490 (Senate Bill 1116), § 1, part of the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Omnibus Act), consisting of chapters 490–493, respectively, SB 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363. These amended subdivisions substantially restate the standard for establishing the residence of a conservatee or ward under former section 2352(a)(1).

Rationale for Recommendation

The Omnibus Act substantially rewrote existing law concerning notice of change of residence of conservatees or wards within California. Before the new law, conservators or guardians were required merely to “promptly” mail notice to the court of all changes in the conservatee’s or ward’s residence within the state. No specific time period within which to mail the notice was stated, no one other than the court was entitled to receive the notice or otherwise to be advised about a change in residence, and no notice to the court or anyone else in advance of the move was required.² A Judicial Council form, *Change of Residence Notice* (form GC-080), was adopted in 2000 to provide the notice to the court required by former section 2352(c).

Post-move notice

Probate Code sections 2352(e)(1) and (2), new paragraphs added by SB 1116, have replaced former section 2352(c). Section 2352(e)(1) requires (1) notice of a change in a conservatee’s or ward’s residence to be filed with the court within 30 days of the change; (2) the conservator’s declaration that the conservatee’s change of residence is consistent with the standard described in section 2352(b), stated in the opening paragraph of this report; and (3) the Judicial Council to develop, on or before January 1, 2008, one or more forms of notice and declaration to be used for this purpose.³ This notice is referred to in the proposed new rules of court, revised form GC-080, and this report as the “post-move notice” to distinguish it from the advance notice of a change in residence sometimes required under new section 2352(e)(3), discussed below.⁴

New section 2352(e)(2) identifies the persons who must be mailed the post-move notice of a conservatee’s or ward’s change of residence by referring to section 1822(b) for conservatorships and section 1511(b) for guardianships. These code sections define who must be mailed notice of the hearing and a copy of the petition for appointment of a conservator or guardian at the beginning of the proceeding.⁵

² Former Probate Code section 2352(c), a restatement of prior law added by Stats. 1990, ch. 79, §14 as part of the repeal and reenactment of the entire Probate Code effective July 1, 1991. (See Cal. Law Revision Com. comment, 52A West’s Ann. Prob. Code (2002 ed.) foll. § 2352, p. 388.)

³ Copies of amended section 2352 and a new section 2352.5, added by section 2 of SB 1116, are attached to this report at pages 31–32, following the text of the rules of court and copies of the forms proposed for adoption or approval by the council.

⁴ Mailing the notice to the court after rather than before the move was standard practice under former law, and the phrase “within 30 days of the date of the change” plainly permits that practice under the new law.

⁵ Section 1822(b) requires mailed service of notice of hearing and a copy of the petition for appointment of a conservator on the conservatee’s spouse or registered domestic partner and the

Pre-move Notice

Section 2352(e)(3) creates a new duty to give advance notice to the ward (if at least 12 years old), and to the ward's or conservatee's important family members of a proposed change of the ward's or conservatee's residence in some circumstances. This new requirement is referred to in this report and in the proposed rules and forms as the pre-move notice. Not all changes of residence require this notice. The statute refers to changes in the conservatee's or ward's *personal* residence, whereas the post-move notice discussed above applies to any residence.

Section 2352(e)(3) requires notice of a change in the conservatee's or ward's personal residence to be mailed to the same persons entitled to receive the post-move notice: those mentioned in sections 1822(b) (conservatorship) or 1511(b) (guardianship). The notice must be mailed at least 15 days before the move, in the absence of an emergency. If there is an emergency requiring a shorter period of notice, the conservator or guardian must state the basis for the emergency in the written notice.

Section 2352(e)(3) requires notice of a change in the conservatee's or ward's personal residence to be mailed to the same persons entitled to receive the post-move notice: those mentioned in sections 1822(b)(conservatorship) or 1511(b)(guardianship). The notice must be mailed at least 15 days before the move, in the absence of an emergency. If there is an emergency requiring a shorter period of notice, the conservator or guardian must state the basis for the emergency in the written notice.

Rules 7.1013 and 7.1063

Section 2352 does not direct the council to develop rules of court. However, the advisory committee proposes rule 7.1013 and 7.1063 because it believes the statute requires clarification that would directly affect the post-move notice the council is directed to prepare and the pre-move notice the committee is proposing.

The first clarification concerns the proper application of section 1511(b)—a statute that lists persons who must be notified of a hearing before a guardian has been appointed—to define who should receive the notices required by section 2352,

conservatee's relatives named in the petition, identified in section 1821(b). These are the conservatee's second-degree relatives (children, grandchildren, siblings, parents, and grandparents). If the conservatee has no spouse, domestic partner, or second-degree relatives, section 1821(b) requires certain in-laws, stepchildren, or more remote relatives to be named in the petition as the conservatee's "deemed relatives." Section 1511(b) requires mailed service of notice of hearing and a copy of the petition for appointment of a guardian on the minor if he or she is at least 12 years old, the minor's parents, any person having legal custody of the child or serving as guardian of his or her estate, and any person nominated as guardian.

which follow the guardian's appointment.⁶ Section 1511(b) mentions persons with legal custody of the minor and nominated guardians. But after appointment of a guardian of the person, the guardian has legal custody of the child. Therefore, a post-appointment duty to give notice of a ward's move to a person who has legal custody is either meaningless because the guardian need not notify himself or herself (see Prob. Code, § 1201), or the duty is limited to notification of the person who had legal custody before appointment of the guardian. Proposed rule 7.1013(a)(4) and (c)(3) prescribe the latter alternative for both the pre-move and post-move notices.

If there was a nominated guardian under Probate Code section 1500 (nominee of parents as guardian of the person, estate, or both) or section 1501 (nominee of donor or grantor of property to the minor as guardian of the estate), after appointment of a guardian, the nominee would be either the appointed guardian of the person, the estate, or both, or would not have been appointed. If the nominee is the appointed guardian of the person, self-notification is unnecessary. If the nominee is the appointed guardian of the estate, he or she is entitled to notice under section 1511(b) as guardian, not as a nominee. Therefore, proposed rule 7.1013(a)(6) requires the guardian to give notice only to nominees who were not appointed in the case.

There is another unusual consequence of section 2352(e)(3)'s' reliance on sections 1822(b) and 1511(b) to establish who must be served with the pre-move notice. Section 1511(b) requires mailed service on the proposed ward if he or she is at least 12 years old. However, section 1822(b) does not list the *conservatee* as a person entitled to notice by mail.⁷ The advisory committee believes that omission of the conservatee as a person who should receive the pre-move notice is inadvertent; no reason is apparent to treat older wards and conservatees differently in this respect. Proposed rule 7.1063(a)(1) would require the pre-move notice to be mailed to the conservatee. Both rules would also require the pre-move and post-move notices to be mailed to the attorney for the conservatee or ward. (See proposed rules 7.1013(a)(2), (c)(1); and 7.1063(a)(2), (c)(1).)⁸

Despite section 1511(b)'s express requirement of service on a ward who is at least 12 years old, the proposed rules eliminate as unnecessary a requirement to mail the

⁶ See note 5 above.

⁷ There is no reason to mention the proposed conservatee in section 1822(b) because section 1823 requires that he or she be personally served with a citation and a copy of the petition for appointment of a conservator. The citation is Judicial Council form GC-320, *Citation for Conservatorship*.

⁸ See Probate Code section 1214, which provides that when a person entitled to service of a paper is represented by counsel, copies of the paper must be delivered to both of them.

post-move notice directly to a ward of any age or to the conservatee. They will have already experienced the move; a mailed notice advising them of it would serve no purpose.

The rule would, however, require copies of the post-move notice to be mailed to the ward's or conservatee's attorney. The mailed post-move notice may be the only way that counsel learns where his or her client has moved, particularly, appointed counsel without a prior relationship with the ward or conservatee.

Perhaps the most important reason for the proposed rules of court is the absence of a definition of "personal residence" in section 2352 for purposes of the pre-move notice required by section 2352(e)(3). As noted above, the advisory committee infers from section 2352.5 that the personal residence of the conservatee or ward is his or her residence at commencement of the case—when the petition for appointment of a conservator or guardian was filed.

The committee believes that this inference is sufficient in a guardianship, where the child is usually living at home with a parent or has already moved in with the proposed guardian under a consensual arrangement when the petition for appointment of a guardian is filed. Rule 7.1013(b), therefore, defines a ward's personal residence as his or her residence when the guardianship was commenced.

The definition of a conservatee's personal residence is more complex. In many cases the conservatee will have already moved from independent living to a shared arrangement with a family member or into a residential care facility when the conservatorship petition is filed. Sometimes these changes occur years before a conservatorship becomes necessary.

The intent behind the pre-move notice legislation and the presumption created in section 2352.5 appears to have been the desire to ensure that the conservatee remains in his or her "true" home as long as possible, and that the conservatee and his or her close family have an interest in preserving that living arrangement. It is far from clear, however, that all conservatees live in shared housing or in residential care facilities reluctantly and would wish to return to their previous residence.

The committee proposes to define the conservatee's "personal residence" for purposes of the pre-move notice as the residence the conservatee understood or believed, or appeared to understand or believe, to be his or her permanent residence when the conservatorship was commenced. If the conservatee cannot at that time form an understanding or belief about a permanent residence or cannot communicate such an understanding, the personal residence would be the

residence the conservatee last previously considered to be his or her permanent residence. See proposed rule 7.1063(b)(1) and (2).

Paragraph (3) of rule 7.1063(b) would provide guidance in three common situations. Any move from a conservatee's personal residence would clearly be a change of that residence requiring the pre-move notice. A move from a residential care facility or other temporary housing to a residence other than the conservatee's personal residence would also be a change of personal residence requiring this notice. But a move from a residential care facility or other temporary housing to the conservatee's personal residence would not be a change of personal residence under the rule.

For purposes of the post-move notice, the residence of the conservatee or ward would be defined simply as his or her residence at any time after appointment of a fiduciary (rules 7.1013(d) and 7.1063(d)).

Form GC-080

The advisory committee proposes a complete revision of the current Judicial Council form *Change of Residence Notice* (form GC-080), to comply with the new requirements of section 2352(e)(1) and (2) concerning the post-move notice. The revised form would be renamed *Post-Move Notice of Change of Residence of Conservatee or Ward*, and would feature a text box at the top of page 1 containing advice to conservators and guardians of the person about the use of the form, including detailed instructions for mailing it in both proceedings. In accordance with the provisions of the rules of court discussed above, the instructions include directions not to mail copies of the form directly to the conservatee or ward.

Item 2 of the form requests the conservatee's or ward's new address, telephone number, and another contact telephone number, the same information requested in the current form.⁹ Item 3 of the form would apply in all conservatorships. It contains a declaration, required by section 2352(e)(1), that the conservatee's change of residence is consistent with the standard described in section 2352(b).

The second page of this form contains a proof of mailing similar to proofs of service by mail contained in other probate forms, including the basic forms used in

⁹ The current form has space for three names and addresses. This is useful in a guardianship, where two or more siblings are often joined together as wards of the same guardian in a single proceeding (see Prob. Code, § 2106), much less so in a conservatorship. The revised form could not provide for more than one ward if it is to remain a one-page form. Instead, the form includes space in its form title caption box for the name of a ward when there is more than one in the case, and an instruction to the guardian to file and mail separate copies of the form for each ward who has moved. (See the instruction in item 2 of the Information for Conservators and Guardians text box.)

decedents' estates, conservatorships, and guardianships to give notice of hearings in those matters (forms DE-120 and GC-020). This proof of mailing, however, is designed to be completed and signed by the fiduciary, his or her attorney, or the employee of the attorney. This design is proposed in order to avoid problems with mailing suffered by many unrepresented fiduciaries. They find it difficult to understand or comply with the traditional prohibition against a party in litigation proving service of a document by mail.¹⁰

Section 2352(e)(2) requires the conservator or guardian to *mail*, not *serve*, the notice. The event described in the notice, a change of residence, is not a hearing or other litigation event. Moreover, the party responsible for the mailing is a fiduciary appointed by the court under ongoing court supervision, and the persons who must receive the mailing are not necessarily parties to the proceeding. The committee concluded that these facts are sufficient to support a departure from the traditional method of proving service by mail of notices and other papers in contested litigation.

Form GC-079

The advisory committee proposes adoption of a new mandatory form for the pre-move notice required by section 2352(e)(3), *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079). This form, like revised form GC-080, would have detailed information and instructions for conservators and guardians, including mailing instructions.

The form requests the proposed date of the move, the address of the new residence, and the type of residence. The latter information is not required by the statute, but the advisory committee believes that it is important information that family members entitled to notice, and the court, should know, particularly in a conservatorship, where moves to residential care facilities or other institutional housing are common. The examples of residential care facilities included in the instruction for item 3 of the form are taken from the Judicial Council's *Handbook for Conservators*, which all conservators must acquire at the time of their appointment. Most conservators, whether or not they are represented by counsel, should be familiar with the examples.

Item 4 of the form provides an opportunity for the fiduciary to state the reasons for the emergency that requires a reduced period of notice, as required by section 2352(e)(3). Because of limited space, resort to an attachment is necessary for an explanation longer than the one available line. The committee believes this is a

¹⁰ Code of Civil Procedure section 1013a requires proofs of service by mail of documents in litigation to recite that the declarant doing the mailing or responsible for placing the mail in the ordinary stream of mail from a business is not a party to the action.

preferable alternative to a multipage form, and also that most moves will not require a reduced period of notice and selection of item 4.

Form GC-079 provides for mailing and execution of the proof of mailing by the conservator, attorney, or attorney's employee for the same reasons as does revised form GC-080.

Forms GC-079(MA) and GC-080(MA)

The advisory committee proposes optional forms to be attached to the two notice forms to show additional addressees. These forms are similar to other attachments to mailing or service forms in probate matters approved in recent years.

Alternative Actions Considered

Probate Code section 2352 requires only a form for the post-move notice and the declaration mentioned in section 2352(e)(1). These are provided in revised form GC-080. No alternative to development of a form for these purposes was considered.

The committee considered a single form for both the pre-move and post-move notices required by the new statute but elected to recommend separate notice forms to reduce the complexity and length of a combined form and possible confusion in its use.

The committee also considered proceeding without proposing rules of court. The committee decided, however, that the absence of a statutory definition of a "personal residence" for purposes of the pre-move notice and the statute's reference to sections 1511(b) and 1822(b) to define who should receive the notices requires clarification by means of the proposed rules.

The committee also considered waiting until the passage or failure of SB 800 in the 2007 Legislature before proceeding with a form or a rule of court concerning the pre-move notice of a change of a conservatee's personal residence. The committee elected, however, to proceed with the rule provisions and the form of pre-move notice without waiting to learn the fate of SB 800.¹¹

¹¹ SB 800 did not pass out of the Legislature. It is expected to be a two-year bill that will be revisited next year. If enacted in its present form in 2008, the procedure surrounding moves of conservatees from their personal residence would be entirely changed. Substantial revisions of rule 7.1063 and form GC-079 would then be required. The bill would require either prior court approval for a conservatee's change of personal residence or, under a new procedure similar to the Notice of Proposed Action in decedents' estates administered under the Independent Administration of Estates Act, the conservator could give written notice of a proposed move and would be authorized to proceed with the move without court approval if he or she does not receive an objection to the move within a specified period of time.

Comments From Interested Parties

This proposal was circulated for comment in a special cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, and probate-interest sections of the State Bar and local bar associations, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Fourteen comments were received concerning this proposal. A chart showing the comments and the committee's responses is attached beginning at page 33, following the rule text, copies of the forms, and the text of Probate Code sections 2352 and 2352.5.

Most commentators approve the rules and forms with modifications. Two commentators oppose them entirely. Two commentators, one who opposes the forms in their entirety; and one, Mr. Joseph L. Chairez, President of the Orange County Bar Association, who would approve of the forms if modified, comment that service of the post-move notice on conservatees and wards (over 11 years of age) after completion of the move, as originally required by rules 7.1013(c) and 7.1063(c), would be superfluous. The committee agrees with these comments and has amended the rules to delete the requirement of service of post-move notices directly on the conservatee or the ward.

Ms. Jackie A. Miller, on behalf of the Professional Fiduciary Association of California, recommends that the definition of a conservatee's personal residence in proposed rule 7.1063(b) be expanded to include rented residences or living arrangements with family that were in place when the conservatorship was filed. This comment was made in response to an earlier draft of rule 7.1063(b) that tried to distinguish between independent and institutional residences of conservatees. The definition has been modified to refer to the residence the conservatee considers to be his or her permanent residence. The permanent residence could certainly include any of the arrangements mentioned by Ms. Miller.

Ms. Mary Joy Quinn, Director of the Probate Department, Superior Court of San Francisco County, requests that the proposed rules of court and the notice forms should include a procedure for objecting to a proposed move on receipt of the pre-move notice. The committee's response to Ms. Quinn notes that the right to object to a conservatee's or ward's move within California and the procedure for doing so are unclear, as amended sections 2352(a) and (b) continue to authorize the guardian or conservator to establish the residence of the ward or conservatee anywhere in the state without prior court approval. Section 2352.5's reference to a presumption in favor of a conservatee's personal residence as the least restrictive appropriate residence that may be overcome by a preponderance of the evidence

suggests that an objection could be made to a proposed change of residence on the ground that the new residence is not the least restrictive appropriate residence, and that there may be a hearing where that issue may be litigated. However, neither sections 2352 or 2352.5 nor any other provision of the Omnibus Act expressly authorize an objection on this ground, confer standing on anyone to make the objection, or require a hearing to determine the objection. The committee's response to Ms. Quinn's comment advises that provisions of SB 800 in the 2007 Legislature would have created the objection procedure she seeks for a change in a conservatee's personal residence. (See footnote 11.)

Mr. Peter S. Stern, Vice-Chair of the Executive Committee of the Trusts and Estates Section of the State Bar, disagrees with the proposed pre-move notice form on the ground, among others, that the draft as circulated did not provide for disclosure the new address. The committee agrees with the objection and modified the form not only to provide for statement of the new address, but also to advise the court and persons who receive the form of the type of residence to which the conservatee will be moved.

Implementation Requirements and Costs

This proposal will result in the normal costs associated with the adoption of new rules of court and the adoption or approval and distribution of new Judicial Council forms. If Senate Bill 800 is enacted in 2008, additional expenses will be incurred to amend rule 7.1063 and revise form GC-079. The committee believes, however, that the rules and the forms will save attorney's fees for the estates of conservatees and wards, and court staff time and related costs incurred to ensure compliance with the current requirements of amended section 2352.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, take the following actions to provide the notices of changes of residence required by amended Probate Code section 2352 and to provide guidance concerning the requirements of the new law:

1. Adopt rules 7.1013 and 7.1063 of the California Rules of Court;
2. Revise *Change of Residence Notice* (form GC-080);
3. Adopt *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079); and
4. Approve *Attachment to Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079(MA) and *Attachment to*

Post-Move Notice of Change of Residence of Conservatee or Ward
(form GC-080(MA)).

The text of proposed rules 7.1013 and 7.1063 is attached at pages 19–23.

Copies of the proposed new and revised forms and current form GC-080 are attached at pages 24–30.

Attachments

Rules 7.1013 and 7.1063 of the California Rules of Court are adopted, effective January 1, 2008, to read:

1 **Rule 7.1013. Change of ward's residence**

2
3 **(a) Pre-move notice of change of personal residence required**

4
5 Unless an emergency requires a shorter period of notice, the guardian of the
6 person must mail copies of a notice of an intended change of the ward's
7 personal residence to the persons listed below at least 15 days before the date
8 of the proposed change, and file the original notice with proof of mailing
9 with the court. Copies of the notice must be mailed to:

- 10
11 (1) The ward if he or she is 12 years of age or older;
12
13 (2) The attorney of record for the ward;
14
15 (3) The ward's parents;
16
17 (4) Any person who had legal custody of the ward when the first petition
18 for appointment of a guardian was filed in the proceeding;
19
20 (5) A guardian of the ward's estate; and
21
22 (6) Any person who was nominated as guardian of the ward under Probate
23 Code sections 1500 or 1501 but was not appointed guardian in the
24 proceeding.

25
26 **(b) Ward's personal residence**

27
28 The "ward's personal residence" under (a) is the ward's residence when the
29 first petition for appointment of a guardian was filed in the proceeding.

30
31 **(c) Post-move notice of a change of residence required**

32
33 The guardian of the person of a minor must file a notice of a change of the
34 ward's residence with the court within 30 days of the date of any change.
35 Unless waived by the court for good cause to prevent harm to the ward, the
36 guardian, the guardian's attorney, or an employee of the guardian's attorney
37 must also mail a copy of the notice to the persons listed below and file a
38 proof of mailing with the original notice. Unless waived, copies of the notice
39 must be mailed to:
40

- 1 (1) The ward’s attorney of record;
2
3 (2) The ward’s parents;
4
5 (3) Any person who had legal custody of the ward when the first petition
6 for appointment of a guardian was filed in the proceeding;
7
8 (4) A guardian of the ward’s estate; and
9
10 (5) Any person who was nominated as guardian of the ward under Probate
11 Code sections 1500 or 1501 but was not appointed guardian in the
12 proceeding.

13
14 **(d) Ward’s residence**

15
16 The “ward’s residence” under (c) is the ward’s residence at any time after
17 appointment of a guardian.
18

19 **(e) Use of Judicial Council forms GC-079 and GC-080**

- 20
21 (1) The *Pre-Move Notice of Proposed Change of Personal Residence of*
22 *Conservatee or Ward* (form GC-079) must be used for the pre-move
23 notice required under (a) and Probate Code section 2352(e)(3). The
24 guardian, the guardian’s attorney, or an employee of the attorney may
25 complete the mailing and sign the proof of mailing on page 2 of the
26 form. If the notice is mailed less than 15 days before the date of the
27 move because an emergency requires a shorter period of notice, the
28 basis for the emergency must be stated in the notice.
29
30 (2) The *Post-Move Notice of Change of Residence of Conservatee or Ward*
31 (form GC-080) must be used for the post-move notice required under
32 (c) and Probate Code section 2352(e)(1) and (2). The guardian, the
33 guardian’s attorney, or an employee of the attorney may complete the
34 mailing and sign the proof of mailing on page 2 of the form.
35

36 **(f) Prior court approval required to establish ward’s residence outside**
37 **California**

38
39 Notwithstanding any other provision of this rule, prior court approval is
40 required before a ward’s residence may be established outside the state of
41 California.

1 **Rule 7.1063. Change of conservatee’s residence**

2
3 **(a) Pre-move notice of change of personal residence required**

4
5 Unless an emergency requires a shorter period of notice, the conservator of
6 the person must mail copies of a notice of an intended change of the
7 conservatee’s personal residence to the persons listed below at least 15 days
8 before the date of the proposed change, and file the original notice with proof
9 of mailing with the court. Copies of the notice must be mailed to:

- 10
11 (1) The conservatee;
12
13 (2) The conservatee’s attorney of record;
14
15 (3) The conservatee’s spouse or registered domestic partner; and
16
17 (4) The conservatee’s relatives named in the *Petition for Appointment of*
18 *Probate Conservator*, including the conservatee’s “deemed relatives”
19 under Probate Code section 1821(b)(1)–(4) if the conservatee has no
20 spouse or registered domestic partner and no second-degree relatives.

21
22 **(b) Conservatee’s personal residence**

- 23
24 (1) The “conservatee’s personal residence” under (a) is the residence the
25 conservatee understands or believes, or reasonably appears to
26 understand or believe, to be his or permanent residence on the date the
27 first petition for appointment of a conservator was filed in the
28 proceeding, whether or not the conservatee is living in that residence on
29 that date. A residential care facility, including a board and care,
30 intermediate care, skilled nursing, or secured perimeter facility, may be
31 the conservatee’s personal residence under this rule.
32
33 (2) If the conservatee cannot form or communicate an understanding or
34 belief concerning his or her permanent residence on the date the first
35 petition for appointment of a conservator was filed in the proceeding,
36 his or her personal residence under this rule is the residence he or she
37 last previously understood or believed, or appeared to understand or
38 believe, to be his or her permanent residence.
39
40 (3) For purposes of this rule, the following changes of residence are or are
41 not changes of the conservatee’s personal residence, as indicated:
42

1 (A) A move from the conservatee’s personal residence under this rule
2 to a residential care facility or other residence is a change of the
3 conservatee’s personal residence under (a).

4
5 (B) A move from a residential care facility or other residence to
6 another residence that is not the conservatee’s personal residence
7 under this rule is a change of the conservatee’s personal residence
8 under (a).

9
10 (C) A move from a residential care facility or other residence to the
11 conservatee’s personal residence under this rule is not a change of
12 the conservatee’s personal residence under (a).

13
14 **(c) Post-move notice of a change of residence required**

15
16 The conservator of the person must file a notice of a change of the
17 conservatee’s residence with the court within 30 days of the date of the
18 change. Unless waived by the court for good cause to prevent harm to the
19 conservatee, the conservator must mail a copy of the notice to the persons
20 named below and file a proof of mailing with the original notice filed with
21 the court. Unless waived, the notice must be mailed to:

- 22
23 (1) The conservatee’s attorney of record;
24
25 (2) The conservatee’s spouse or registered domestic partner; and
26
27 (3) The conservatee’s relatives named in the *Petition for Appointment of*
28 *Probate Conservator*, including the conservatee’s “deemed relatives”
29 under Probate Code section 1821(b)(1)–(4) if the conservatee has no
30 spouse or registered domestic partner and no second-degree relatives.

31
32 **(d) Conservatee’s residence**

33
34 The “conservatee’s residence” under (c) is the conservatee’s residence at any
35 time after appointment of a conservator.

36
37 **(e) Use of Judicial Council forms GC-079 and GC-080**

- 38
39 (1) The *Pre-Move Notice of Proposed Change of Personal Residence of*
40 *Conservatee or Ward* (form GC-079) must be used for the pre-move
41 notice required under (a) and Probate Code section 2352(e)(3). The
42 conservator, the conservator’s attorney, or an employee of the attorney
43 may complete the mailing and sign the Proof of Mailing on page 2 of

1 the form. If the notice is mailed less than 15 days before the date of the
2 move because an emergency requires a shorter period of notice, the
3 basis for the emergency must be stated in the notice.
4

5 (2) The *Post-Move Notice of Change of Residence of Conservatee or Ward*
6 (form GC-080) must be used for the post-move notice required under
7 (c) and Probate Code section 2352(e)(1) and (2). The conservator, the
8 conservator's attorney, or an employee of the attorney may complete
9 the mailing and sign the Proof of Mailing on page 2 of the form.

10
11 **(f) Prior court approval required to establish conservatee's residence**
12 **outside California**

13
14 Notwithstanding any other provision of this rule, prior court approval is
15 required before a conservatee's residence may be established outside the
16 state of California.
17

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY <p style="text-align: center;">Draft 4, 10/01/07 Not Approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF <i>(Name)</i> : _____ <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR	
PRE-MOVE NOTICE OF PROPOSED CHANGE OF PERSONAL RESIDENCE OF <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> WARD (<i>Name</i>): _____	CASE NUMBER: _____

INFORMATION FOR CONSERVATOR OR GUARDIAN OF THE PERSON:

- (1) You must mail, **at least 15 days before the date of the proposed move** (unless you can show that an emergency requires a shorter time), a notice of your intention to change your conservatee's or ward's **personal residence** (his or her residence as defined in rules 7.1063(b) or 7.1013(b) of the Cal. Rules of Court) to the conservatee, the ward if 12 years of age or older, the conservatee's or ward's attorney; and **(a) in a conservatorship**, the conservatee's spouse or registered domestic partner; and the conservatee's relatives named in the petition for appointment of a conservator in your case (the conservatee's second-degree relatives, or if there are no spouse, registered domestic partner, and second-degree relatives, the persons named in Probate Code section 1821(b)(1)–(4) as the conservatee's "deemed relatives"); or **(b) in a guardianship**, the ward's parents; any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in your case, the guardian of the ward's estate, and any person nominated as a guardian for the ward who was not appointed. **Use copies of this form for the notice described above. File the original of the notice form with the court and show proof of mailing. See page 2 of this form for proof of mailing. If there is more than one ward in your case, file and mail copies of a separate form for each ward moved.** (See rules 7.1013(a) and (b), or 7.1063(a) and (b) of the Cal. Rules of Court.)
- (2) You must also give notice to the court and others, **after the move**, of any change in the conservatee's or ward's residence within the State of California. **Do not use this form for that notice.** Use form GC-080, *Post-Move Notice of Change of Residence of Conservatee or Ward*, for that notice. (See rules 7.1013(c)–(e), and 7.1063(c)–(e) of the Cal. Rules of Court.)
- (3) You must obtain court permission **before** the conservatee or ward can move to a new residence outside California.

NOTICE IS GIVEN as follows:

1. I intend to change the above-named conservatee's or ward's personal residence on (*date*):
2. The conservatee's or ward's residence address after the move will be (*street address, including residence or facility name and room or apartment number, if any, and city, county, and zip code*):
3. The new residence will be a (*describe type of residence or facility, for example, single family residence; apartment or condominium; board and care, intermediate care, or skilled nursing*):
4. I cannot give at least 15 days' notice of this intended change because of the emergency described below (*specify*):

Continued on Attachment 4. (*State name of this case, case number, and title of this form on the top of attached page.*)

Date:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(TYPE OR PRINT NAME OF CONSERVATOR OR GUARDIAN)

(SIGNATURE OF CONSERVATOR OR GUARDIAN)

Page 1 of 2

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): <hr/> <p style="text-align: center;">TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____</p> <p>E-MAIL ADDRESS (<i>Optional</i>): _____</p> <p>ATTORNEY FOR (<i>Name</i>): _____</p>	FOR COURT USE ONLY <p style="font-size: 1.2em; font-weight: bold;">Draft 10, 10/01/07 Not Approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF (Name): _____ <div style="text-align: right;"><input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR</div>	
POST-MOVE NOTICE OF CHANGE OF RESIDENCE OF <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> WARD (Name): _____	CASE NUMBER: _____

INFORMATION FOR CONSERVATOR OR GUARDIAN OF THE PERSON:

- (1) Every time your conservatee or ward moves to a new residence in California, you must, **within 30 days of the date of the move**, give written notice of the change to the court and, unless the court excuses you for good cause to prevent harm to the conservatee or ward, mail a copy of the notice to the attorney for the conservatee or ward; and **(a) in a conservatorship**, mail copies of the notice to the conservatee's spouse or registered domestic partner and the conservatee's relatives named in the petition for appointment of a conservator in your case (the conservatee's second-degree relatives, or if there is no spouse, registered domestic partner, and second-degree relatives, the persons named in Probate Code section 1821(b)(1)–(4) as the conservatee's "deemed relatives"); or **(b) in a guardianship**, mail copies of the notice to the ward's parents, any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in your case, the guardian of the ward's estate, and any person nominated as a guardian for the ward who was not appointed.
- (2) **Use this form for the notice described above.** Do not mail a copy to the conservatee or ward. To give notice to the court, file the original of this form after filling out the proof of mailing on the second page. (See rules 7.1013(c) and (d), or 7.1063(c) and (d) of the Cal. Rules of Court.) If there is more than one ward in your case, file and mail copies of a separate form for each ward moved.
- (3) You must also give notice, **before the move**, of an intent to move the conservatee or ward from his or her personal residence (as defined in rules 7.1063(b) and 7.1013(b) of the Cal. Rules of Court). **Do not use this form for that notice.** Use form GC-079, *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward*, for that notice.
- (4) You must obtain court permission **before** the conservatee or ward can move to a new residence outside California.

NOTICE IS GIVEN as follows:

1. On (*date*): _____ the conservatee or ward named above moved to the residence described in item 2.
2. New address (*street address, city, county, and zip code*): _____

 Telephone number: _____ Other contact telephone number, if any (*if none, write "None"*): _____
3. (*Check this box if this case is a conservatorship.*) The conservatee's new residence identified in 2 is the least restrictive appropriate residence that is available to meet his or her needs and is in the conservatee's best interest.

Date: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ (TYPE OR PRINT NAME OF CONSERVATOR OR GUARDIAN)	_____ (SIGNATURE OF CONSERVATOR OR GUARDIAN)
--	---

<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF (Name): _____ <div style="text-align: center;"> <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	CASE NUMBER: _____
--	--------------------

ATTACHMENT TO PRE-MOVE NOTICE OF PROPOSED CHANGE OF PERSONAL RESIDENCE OF CONSERVATEE OR WARD

(This attachment is for use with form GC-079.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship to conservatee or ward

Address (number, street, city, state, and zip code)

_____ Relationship: _____	

<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF (Name): _____ <div style="text-align: center;"> <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	CASE NUMBER: _____
---	--------------------

ATTACHMENT TO POST-MOVE NOTICE OF CHANGE OF RESIDENCE OF CONSERVATEE OR WARD

(This attachment is for use with form GC-080.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship
to conservatee or ward

Address (number, street, city, state, and zip code)

_____ Relationship: _____	

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____	
CHANGE OF RESIDENCE NOTICE	

NOTICE IS GIVEN of the following change of residence of:

1. Name:
 New address:
 Telephone number:
 Other contact number:

2. Name:
 New address:
 Telephone number:
 Other contact number:

3. Name:
 New address:
 Telephone number:
 Other contact number:

NOTE: You must notify the court EVERY time there is a change of residence for the minor or conservatee. You must obtain court permission BEFORE any out-of-state move.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

..... (TYPE OR PRINT NAME)

_____ (SIGNATURE OF GUARDIAN OR CONSERVATOR)

Probate Code sections 2352 and 2352.5

2352. (a) The guardian may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

(b) The conservator may establish the residence of the conservatee at any place within this state without the permission of the court. The conservator shall select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.

(c) If permission of the court is first obtained, a guardian or conservator may establish the residence of a ward or conservatee at a place not within this state.

(d) An order under subdivision (c) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order.

(e) (1) The guardian or conservator shall file a notice of change of residence with the court within 30 days of the date of the change. The conservator shall include in the notice of change of residence a declaration stating that the conservatee's change of residence is consistent with the standard described in subdivision (b). The Judicial Council shall, on or before January 1, 2008, develop one or more forms of notice and declaration to be used for this purpose.

(2) The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement pursuant to this paragraph in order to prevent harm to the conservatee or ward.

(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall mail a notice of his or her intention to change the residence of the ward or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence. If the notice is served less than 15 days prior to the proposed removal of the ward or conservatee, the guardian or conservator shall set forth the basis for the emergency in the notice. The guardian or conservator shall file proof of service of that notice with the court.

(f) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to establish his or her own residence.

2352.5. (a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence.

(b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.

(1) That determination shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence.

(2) If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, that determination shall either include a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future.

(c) The determination made by the conservator pursuant to subdivision (b) shall be in writing, signed under penalty of perjury, and submitted to the court within 60 days of appointment as conservator.

(d) The conservator shall evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care.

(e) (1) This section shall not apply to a conservatee with developmental disabilities for whom the Director of the Department of Developmental Services or a regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, acts as the conservator and who receives services from a regional center pursuant to the Lanterman Developmental Disabilities Act, Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code.

(2) Services, including residential placement, for a conservatee described in paragraph (1) who is a consumer, as defined in Section 4512 of the Welfare and Institutions Code, shall be identified, delivered, and evaluated consistent with the individual program plan process described in Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code.

SP07-13

Probate: Notice of Changes of Residence of Conservatees or Wards
 (adopt rules 7.1013 and 7.1063 of the California Rules of Court; revise form GC-080 and adopt form GC-079;
 and approve forms GC-079(MA) and GC-080(MA)).

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Donna R. Bashaw Immediate past President of National Academy of Elder Law Attorneys (NAELA) Laguna Hills, California 92653	N	Y	<p>Do not agree with proposed changes.</p> <p>As elder law attorneys committed to the safety and preservation of dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity, and just plain hard work. Thus, our comments are made not in the spirit of criticism bur in the spirit of appreciation of the enormity of the task to which you were commissioned.</p> <p>While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will preclude conscientious but nonprofessional,</p>	

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				<p>family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product.</p> <p><u>Rule 7.1063 Change of Conservatee’s residence</u></p> <p>We believe that protections are already in place if enforced by the court and that these new provisions only add additional cost and will create more family disputes.</p> <p>Conclusions:</p> <p>We believe that many of the changes made are unnecessary and merely an over reaction to the L.A. Times articles. The main problem in the past has been a lack of funding for the courts, especially to hire investigators. Increased funding is a beneficial part of the changes. However, we believe that the changes have made it more expensive for the ward and conservatee and have effectively priced the protection of guardianships and conservatorships out of the middle class market. This is the most serious and detrimental problem with the new laws and needs to be</p>	<p>The duty to notify certain persons about a conservatee’s change of residence is a requirement of Probate Code section 2352 as amended by the Omnibus Conservatorship and Guardianship Reform Act of 2006. This comment appears to be addressed to the wisdom of the legislation, not to this rule and form proposal. Therefore, the committee cannot respond with changes to the proposal that would satisfy the commentator’s concerns.</p>

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				rectified immediately. The second most serious problem is with the new accounting rules which, we believe, are unnecessary. Thank you for your efforts in implementing this new law. We, as elder law attorneys, are happy to contribute in anyway to assist you in your work. .	
2.	Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California	AM	Y	Agree with proposed changes if modified. Agree with the requirement of service by mail of notice of intent to change personal residence on conservatee and ward over 11, but service by mail of completed change of address on conservatee or ward over 11 should not be required because change of address will have already been completed when notice is served.	The committee agrees with this comment. Mailing a post-move notice to a ward 12 years of age or older or conservatee who has already experienced the move would make little sense. The committee has eliminated this requirement in rules 7.1010(c) and 7.1063(c). These rules provide for service on a ward's or conservatee's attorney, however.
3.	Ms. Malea Chavez Staff Attorney Superior Court of San Francisco	A	Y	Agree with proposed changes.	No response necessary.

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	County, San Francisco, California				
4.	Ms. Margaret K. Herring Attorney Herring & Herring, APC Coronado, California	AM	N	Agree with proposed changes if modified. Practitioners need to know that box 4 (least restrictive placement) is required for conservatorship cases— the conservator must sign under penalty of perjury to that statement for every move. Since the form could apply to either guardianship or conservatorship, I am afraid a box that may or may not be checked could cause a lot of unintended problems.	The committee has revised the form that was circulated for comment by breaking it into two separate forms. The new form, designated as form GC-079, would be for the pre-move notice required under Probate Code section 2352(e)(3). Form GC-080 would continue to be used for the post-move notice under section 2352(e)(1) and (2). Item 4 of the form circulated for public comment would become item 3 in the revised form GC-080. That item would be accompanied by an instruction calling for the check box for that item to be checked if the case is a conservatorship. The instructions at the top of the form advise fiduciaries that item 3 applies only to conservatorships.
5.	Ms. Jamie Lamborn Retired Sacramento, California	AM	N	Agree with proposed changes if modified. I find the court-appointed conservator, after gaining control of the conservatee's residence,	The committee cannot respond to this comment, which does not

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				uses the conservatee's finances to upgrade or fix the residence, puts the conservatee into a nursing or care home, and the attorney representing the conservator petitions the court to sell the residence. The judge is told a hard luck story of finances being depleted and the residence is sold. In my opinion, this is the greatest asset of interest to the conservator and her attorney. The system needs oversight.	address the specifics of the proposal or indicate what modifications in the proposed rules or forms would meet with the commentator's approval.
6.	Mr. Keeley C. Luhnnow Associate Attorney La Jolla, California	AM	N	Agree with proposed changes if modified. I completely disagree with the council's interpretation of this code section and the decision to treat as a personal residence any residence where the conservatee lives at the establishment of the conservatorship. If the conservatee already lives outside of the home, then he or she lives outside of the home; it should not be decided that suddenly a facility or board and care is the person's personal residence just for convenience. This nullifies the distinction between the 15-day requirement and the 30-day requirement. I completely object to 7.1063(b)(2).	The proposed rule has been modified to define the conservatee's personal residence as the residence he or she considered or believed, or appeared to consider or believe, to be his or her permanent residence at the time the conservatorship was commenced (the date the first petition for appointment of a conservator was filed), whether or not the conservatee was then actually in that residence. The personal residence could be the home the conservatee had lived in for a long time before moving to a residential care facility shortly before the case was commenced, or

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					could be a care facility the conservatee considers to be home.
7.	Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California	AM	Y	Agree with proposed changes if modified. The definition of “conservatee’s personal residence” does not include living in an apartment or with family members or friends. PFAC recommends that the definition of an institutional residential setting be clarified. Does the definition include only a hospital or skilled nursing facility, or is it more broadly defined to include assisted living and other residential care facilities?	The revised definition of “personal residence” in rule 7.1063(b) is based on the conservatee’s belief as to its permanence, not on its type. The personal residence could certainly be an apartment or in a family member’s home. The definition of an institutional residential setting has been deleted from the proposed rule. The phrase “residential care facility” is used instead, and specifically includes board and care, intermediate care, skilled nursing, and secured perimeter facilities. An assisted living residence would normally be considered an intermediate care facility.
8.	Ms. Cheryl Phillips Court Rules Specialist CompuLaw, LLC Los Angeles, California	AM	Y	Agree with proposed changes if modified. CRC rules 7.1013(c) and 7.1063(c) are ambiguous as to when the 30-day period for	The language of subdivision (c) of both rules is taken from Probate

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				<p>giving notice runs.</p> <p>CRC 7.1013(c) states, "The guardian of the person of a minor must file a notice of a change of the ward's residence with the court within 30 days of the date of the change."</p> <p>The phrase "within 30 days of the date of the change" is somewhat unclear. Does this mean in the 30 days before the date of the change or in the 30 days after the date of the change?</p> <p>Perhaps it would be less confusing if the rule read, "within 30 days after the date of the change."</p>	<p>Code section 2352(e)(1), concerning the post-move notice, language that was contained in section 2352 before the 2006 amendments and always meant within 30 days after the change. The headings placed on amended subdivision (c) of rules 7.1013 and 7.1063 and the title of form GC-080, the form designed for notice of a change of residence, refers to a "post-move" notice. These modifications to the proposed rules and form GC-080 should be sufficient to address this commentator's concerns.</p>
9.	Ms. Mary Joy Quinn Director, Probate Superior Court of San Francisco County, San Francisco, California	AM	N, Y	<p>Agree with proposed changes if modified.</p> <p>The rules and the form should include a procedure for objecting to a proposed move.</p>	<p>It is unclear under current law whether there is a basis to object to a proposed move within California. Probate Code sections 2352(a) and (b) still provide that a conservator or guardian may establish the</p>

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					<p>conservatee’s or ward’s residence anywhere in the state without permission of the court. Presumably, however, a move that does not satisfy the residence standard of section 2352(a) or (b)—the least restrictive appropriate residence available and necessary to meet the needs of the ward or conservatee and in his or her best interests—could be the basis of an objection by the ward or conservatee, or a relative or other interested person on his or her behalf.</p> <p>The procedure for such an objection is also unclear under current law. The 2006 amendment of section 2352 to provide a pre-move notice indicates that the Legislature may have contemplated the possibility of an objection to a proposed move, but the statute does not provide specific grounds for objection or define a procedure for making it.</p> <p>Senate Bill 800 in this year’s Legislature would provide two</p>

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					<p>alternatives: (1) a petition for authority to change a conservatee’s personal residence brought by a petitioner for appointment of a conservator or an appointed conservator, or (2) a notice of proposed action by an appointed conservator. Under the latter alternative, if a notice of proposed action is given by the fiduciary and no one indicates opposition to the move within a specified period of time, the move could proceed. If opposition is indicated, the conservator would be required to petition the court for authority to make the move.</p> <p>SB 800 would also repeal the general authority of a conservator to establish a conservatee’s residence anywhere in the state. That repeal would be necessary to implement the rest of the bill’s provisions concerning this subject.</p> <p>SB 800 did not pass the Legislature this year. It is likely to become a two-year bill. If the bill passes next</p>

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					<p>year, both the form and the rule governing conservatorships would have to be rewritten.</p> <p>Because of this uncertainty, the committee decided not to provide guidance on objections to moves of conservatees and wards at this time. The committee will revisit this issue if SB 800 is enacted next year.</p>
10.	Ms. Dominique Sanz-David Access Center San Francisco, California	A	N	<p>Agree with proposed changes.</p> <p>Is there any way for a family member or the court to oppose the residence change?</p>	See the committee's response to the preceding comment.
11.	Mr. Peter S. Stern Vice-Chair, Executive Committee of the Trusts and Estates Section of the California State Bar Palo Alto, California	N	Y	<p>The Executive Committee does not agree with the proposed changes.</p> <p>Notice of Change of Address After Move of Conservatee: Notification to the conservatee that he or she has been moved is superfluous and should be deleted from the proposed form. Prior to Senate Bill 1116, Probate Code section 2352(c) required only that "the guardian or conservator shall promptly mail to the court notice of all changes in the residence of the conservatee." SB 1116 sought to protect the conservatee's personal residence and</p>	<p>The committee agrees that post-move notice to a conservatee (or a ward) is superfluous. The requirement has been deleted from rules 7.1013(c) and 7.1063(c). Conservatees and wards will have learned of the move when they make it. They do not need a written notice of what has already taken place in their presence.</p>

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				<p>established a rebuttable presumption that the least restrictive residence of a conservatee was where the conservatee lived at the beginning of the conservatorship procedure. As part of the general goal of making conservatorships more transparent to family members, the bill provided that after a change of residence, notice should be mailed to all persons entitled to notice under Probate Code Section 1822(b)—all persons entitled to notice of the filing of the petition to establish conservatorship. Suggestions for substantial portions of SB 1116 were drafted by the Legislation Subcommittee of the Judicial Council Probate and Mental Health Advisory Committee, including the post-move notice provision. In the discussions about that notice, there was no intention articulated to require notice of the move to the conservatee for the obvious reason that the conservatee had already been moved.</p> <p>Notice of Intent to Move Conservatee From Personal Residence: In June 2006, The Executive Committee voted to oppose SB 1116 unless it was amended to provide for notice to family members before the (proposed) conservatee was moved from the personal residence. The Executive Committee had several concerns. First, it was hoped that</p>	

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				<p>providing such notice to the same class of persons who would receive the notice after the move of the conservatee would obviate the need for a mandatory hearing in every case before such a move would take place. Second, it would continue the tendency throughout the conservatorship legislation to make matters of vital interest to the happiness and well being of the conservatee transparent by requiring their disclosure to family members.</p> <p>The Executive Committee’s suggestions were incorporated in SB 1116 in its August 7, 2006 amendment. The text of subdivision (e)(3) is the language of the August 7, 2006, amendment, as follows:</p> <p>“(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall, in the absence of an emergency, mail a notice of his or her intention to change the residence of the ward or conservatee to a person entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. That notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her</p>	

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				<p>personal residence. The guardian or conservator shall file proof of service of that notice with the court.”</p> <p>The Executive Committee believes that the intent of the statute, following as it does the proposed language submitted by the Executive Committee to the legislature in June 2006, was not to provide notice to the conservatee but to make the process of removing a conservatee from his or her personal residence known in advance to family members within the second degree. Sending a written notice to a conservatee is superfluous; either the conservatee knows of the move already, since it is not likely there would be an attempt to move a conservatee without some form of discussion or direct intervention of the conservator, or the conservatee would not benefit from a mere written notice.</p>	<p>The committee believes that exclusion of the conservatee from the list of persons to be mailed the pre-move notice under Probate Code section 2352(e)(3) was inadvertent. The exclusion stems from the statute’s reference to Probate Code section 1822(b) to define the persons to receive the notice. The conservatee is not mentioned in section 1822(b) as entitled to mailed notice of the hearing on a petition for appointment of a general conservator because the conservatee must be personally served with the petition and a citation under section 1823. But section 2352(e)(3) also requires service of pre-move notice in a guardianship to the persons entitled to notice under Probate Code section 1511(b), which includes proposed wards over the age of 11. There is no reason to require service on a ward in a</p>

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				<p>Further, the statute contemplates providing a notice of changing the residence of the conservatee. It is incomplete, in the opinion of the Executive Committee, merely to state that the residence will be changed; the notice must indicate to where the residence will be changed.</p>	<p>guardianship but not a conservatee in a conservatorship.</p> <p>The committee believes the purpose for the requirement of pre-move notice of a move from a conservatee’s personal residence at commencement of the proceeding is to give the conservatee and close family members an opportunity to object to the move before it takes place. The grounds for such an objection are unclear and the procedure for making the objection is uncertain at this time and may not become clear and certain unless and until Senate Bill 800 passes next year as a two-year bill (see response to the comment of Ms. Mary Joy Quinn).</p> <p>The form for the pre-move notice, new form GC-079, includes space for the new address, plus a description of the type of residence that is proposed.</p> <p>The Judicial Council must follow</p>

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				<p>If the Judicial Council believes that the intent of the statute is to provide adequate notice to the conservatee prior to the move, the correct response would be to provide a rule that requires personal notice be given to the conservatee by the conservator, who would then be required to file with the court a document akin to the Citation indicating under penalty of perjury that the conservator had discussed personally with the conservatee the proposed move.</p> <p>It is illusory to believe that mailing a form with a check box to a conservatee is adequate notice of anything; if the Judicial Council believes the intent of the legislation was to give notice to the conservatee, make that notice real, effective, and personal.</p>	<p>the statute, which requires written notice.</p> <p>The committee believes that pre-move notice to the conservatee’s attorney of record and to the conservatee’s close relatives, who have the right to act in the proceeding for the conservatee’s benefit, is not illusory notice.</p>
12.	Superior Court of California County of Los Angeles Los Angeles, California	AM	Y	<p>Agree with proposed changes if modified.</p> <p>Proposed revised Judicial Council form, GC-80, <i>Notice of Proposed Change of Personal Residence</i>:</p> <p>The first sentence in paragraph 1 of the Information for Conservator and Guardian is confusing. Would it be clearer to state:</p>	<p>The new pre-move notice form, form GC-079, would commence the information statement with the following:</p>

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				<p>“Unless there is an emergency requiring a shorter period of time, you must mail, at least 15 days before the date of the proposed move, a notice of your intention to change the conservatee’s or ward’s <u>personal residence</u> to the conservatee . . . (The conservatee’s or ward’s personal residence is . . .) . . . ”</p>	<p>“You must mail, at least 15 days before the date of the proposed move (unless you can show that an emergency requires a shorter time) a notice of your intention to change the conservatee's or ward's personal residence (his or her residence as defined in rules 7.1063(b) or 7.1013(b) of the Cal. Rules of Court) . . . ”</p> <p>The committee believes this sentence is clearer than the previous version commented upon, and conveys more accurate information to the conservator or guardian.</p>
13.	<p>Ms. Robin C. Westmiller President National Association to Stop Guardian Abuse Thousand Oaks, California</p>	AM	Y	<p>Agree with proposed changes if modified.</p> <p>Add: If a family member objects, by responding to notice, the conservatee may not be relocated until after a formal hearing.</p> <p>There is nothing in this section which provides</p>	<p>Current law would not support the proposed language. If Senate Bill 800 is enacted in 2008, a procedure would be established that would create the remedy this commentator seeks. (See comment of Ms. Mary Joy Quinn and the committee’s response.)</p> <p>The committee believes that the</p>

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				<p>any form or information on the process to object to moving the conservatee, only the notification of the move.</p> <p>There is nothing in any of the text which gives family members the opportunity to protest such a move and as long as the conservator sends out notice, they are still free to move the person in spite of what the family may want.</p> <p>As long as the conservator follows the new “rules,” there is still nothing a family member can do to stop the move.</p>	<p>pre-move notice form cannot give information about objections to the proposed move until the fate of SB 800 in the 2008 Legislature is known. If that legislation is enacted, the notice form would be revised accordingly.</p>
14.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	A	N	Agree with proposed changes.	No response necessary.