

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

455 Golden Gate Avenue  
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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,  
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DATE: September 15, 2005

SUBJECT: Probate: Discharge of Court-Appointed Fiduciaries in Decedents'  
Estates, Conservatorships, and Guardianships (adopt form  
DE-295/GC-395) (Action Required)

Issue Statement

Bonded fiduciaries in probate proceedings must petition the court for discharge from liability on their bonds for actions after the date of discharge. Although many local forms are used for this purpose, there is no statewide form petition or application for the discharge of a court-appointed fiduciary at the conclusion of the fiduciary's administration, and no statewide form order on the application.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2006, adopt the proposed new form *Ex Parte Petition for Discharge and Order* (form DE-295/GC-395) to provide a uniform statewide means for personal representatives of decedents' estates, as well as conservators and guardians of the estates of conservatees and wards, to request and obtain their discharge from liability on their surety bonds.

Attached at page 5 is a copy of the proposed new form.

### Rationale for Recommendation

No Judicial Council form exists for the ex parte petition for discharge required by the Probate Code,<sup>1</sup> and for the court's order on the petition. Some courts have developed local form petitions or applications and orders for discharge.<sup>2</sup> Some of these forms expressly apply only to decedents' estates but are often modified by practitioners for use in guardianships and conservatorships. Others are designed for use in all of these proceedings.

The form would apply to decedent estates, conservatorships of the estate, and guardianships of the estate where a fiduciary's discharge is required for exoneration of a surety bond.

The Los Angeles local form identified in the above footnote is called an "affidavit or declaration" while the San Diego form is identified as a "petition." The latter term was selected for the proposed form because the Probate Code sections governing the application for discharge refer to it as a petition, and because that term is broad enough to cover a routine application.<sup>3</sup> However, the form would call for the petitioner's signature under penalty of perjury as in a declaration, rather than in the way other petitions in probate are usually signed.<sup>4</sup>

The form would refer to distributions or transfers, the recipients as distributees or transferees, and the court orders authorizing the distributions as orders for distribution or liquidation. This language is prompted by Probate Code section 2631, which authorizes "liquidation" of a guardianship or conservatorship estate and "transfer" of the assets to the persons entitled following the death of the ward or conservatee where the value of the estate is lower than the \$100,000 ceiling for a distribution without administration under Probate Code section 13100.

The form would also follow the San Diego local form in calling for the recording information on the distribution or transfer order or fiduciary's deed to be placed in the form itself, rather than referring to a separate statement for this purpose (see item 2c on the form). Probate Code section 11753(b) requires the personal representative to

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<sup>1</sup> Probate Code sections 12250(a), 2100.

<sup>2</sup> See, e.g., Superior Court of California, Los Angeles County form PRO 002 01-02; Superior Court of California, San Francisco County form F1327; Superior Court of California, San Diego County form PR-25; and Superior Court of California, Santa Clara County form PB-4012.

<sup>3</sup> See Probate Code sections 11753(b) and 12250(a). California Rules of Court, rule 7.2(a)(2) defines "pleading" as including an application.

<sup>4</sup> A petitioner usually signs once in the body of the petition and also signs a separate verification. However, Probate Code section 1020 says that verification of a document is also signature of the document unless the law expressly provides otherwise. Verification or execution under penalty of perjury are equivalent acts. (See Code Civ. Proc., §§ 446, 2015.5.)

file a statement identifying the dates and places the order of distribution of estate real property or the personal representative's deed, or both, were recorded, including appropriate recording information. The statute does not require the statement to be separate from the petition for discharge.

From the court staff's point of view, it would be preferable to have the recording information readily available in the petition rather than in another document that must be checked and might become separated from the petition or the court file. On the other hand, if some courts wish to continue to encourage separate statements, the space provided in the form would be sufficient for a petitioner to refer to that statement, using language similar to that used in the Los Angeles form.

Item 2f of the form would require the petitioning guardian of the estate to state the date the (former) minor attained the age of majority. Probate Code section 2627 provides that, except as otherwise provided in the code—when the minor dies before attaining the age of majority or where there is a successor guardian to receive and give a receipt for the estate—the guardian is not eligible for discharge until a year after the minor reaches the age of majority.

#### Alternative Actions Considered

No alternatives to adoption of a statewide form petition or application and order were considered.

#### Comments From Interested Parties

This proposal was circulated to a standard list of court executives, judicial officers, and organizations, and also to an augmented list of probate practitioners, probate department staff, and probate-related legal organizations, including the State Bar Trusts and Estates Section and probate-interest sections of many local or regional bar associations. Attached at pages 6–7 is a chart showing the comments received from the public on this proposal and the advisory committee's responses.

Ten comments were received. All were favorable. Six commentators made no additional suggestions or recommendations. Three commentators, two court staff managers and a member of the State Bar Trusts and Estates Section Executive Committee, recommended that a requirement of attaching copies of distribution orders be dispensed with or made optional. A State-Bar-certified specialist in estate planning, trust, and probate law, recommended that the form be revised to permit a trustee of a trust that is subject to court supervision to use the form to apply for and obtain a discharge.

The advisory committee agrees with the recommendations to delete the requirement of attaching a copy of each distribution order to the form. The requirement to attach

copies of distribution orders would be eliminated entirely, although the requirement of stating the dates of all such orders would be retained.

The advisory committee disagrees with the proposal to expand the form to include trustees of trusts subject to court supervision because the committee is not certain that trustees of court-supervised trusts are subject to the same discharge requirement as court-appointed fiduciaries in decedent estates, conservatorships, and guardianships. The committee will look into this question more thoroughly in the months to come as it reviews all decedent estate forms to determine which should be modified for use in trust proceedings.

#### Implementation Requirements and Costs

This proposal should incur no costs beyond the normal costs associated with the adoption and distribution of any new Judicial Council form.

#### Attachments

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> _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> ESTATE <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF <i>(Name):</i> _____  <div style="text-align: right;"> <input type="checkbox"/> DECEDENT    <input type="checkbox"/> CONSERVATEE    <input type="checkbox"/> MINOR                 </div>	
<b>EX PARTE PETITION FOR FINAL DISCHARGE AND ORDER</b>	CASE NUMBER: _____

1. Petitioner is the  personal representative  conservator  guardian of the estate of the above-named decedent, conservatee, or minor. Petitioner has distributed or transferred all property of the estate as required by the final order  and all preliminary orders for distribution or liquidation filed in this proceeding on *(specify date each order was filed):*
  
2. All required acts of distribution or liquidation have been performed as follows *(check all that apply):*
  - a.  All personal property, including money, stocks, bonds, and other securities, has been delivered or transferred to the distributees or transferees as ordered by the court. The receipts of all distributees or transferees are now on file or are filed with this petition. Conformed copies of all receipts previously filed are attached on Attachment 2.
  - b.  No personal property is on hand for distribution or transfer.
  - c.  Real property was distributed or transferred. The order for distribution or transfer of the real property; the personal representative's, conservator's, or guardian's deed; or both, were recorded as follows *(specify documents recorded, dates and locations of recording, and document numbers or other appropriate recording information):*
  
  - d.  No real property is on hand for distribution or transfer.
  - e.  No receipts are required because Petitioner is the sole distributee.
  - f.  The minor named above attained the age of majority on *(date):*

3. Petitioner requests discharge as personal representative, conservator, or guardian of the estate.  
 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 OF PETITIONER)

(SIGNATURE OF PETITIONER)

**ORDER FOR FINAL DISCHARGE**

**THE COURT FINDS** that the facts stated in the foregoing *Ex Parte Petition for Final Discharge* are true.

**THE COURT ORDERS** that *(name):*  
 is discharged as  personal representative  conservator  guardian of the estate of the above-named decedent, conservatee, or minor, and sureties are discharged and released from liability for all acts subsequent hereto.

Date: \_\_\_\_\_

\_\_\_\_\_  
 JUDICIAL OFFICER  
 SIGNATURE FOLLOWS LAST ATTACHMENT.

**SPR05-41**

**Probate: Discharge of Court-Appointed Fiduciaries in Decedents’ Estates, Conservatorships, and Guardianships  
(adopt form DE-295/GC-395)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Response of the Probate and Mental Health Advisory Committee</b>
1.	W. F. Docker Member Executive Committee; Trusts & Estates Section, The State Bar of California San Francisco, California	AM	Y	Modify to provide that the conformed copies to be included on Attachment 1 and Attachment 2 are optional.	The advisory committee has deleted the attachment requirement completely in response to the comments of Ms. Griffith and Ms. Stuart.
2.	Mr. Samuel Ingham Attorney at Law Certified Specialist, Estate Planning, Trust, and Probate Law Beverly Hills, California	AM	Y	Should also include trustees. (Trusts can be court supervised.)	The advisory committee disagrees with this comment because the committee is not certain that court-supervised trustees have the same obligation as personal representatives or guardians or conservators of the estate to obtain a discharge order. The committee will consider this issue in more depth in the next year.
3.	Ms. Linda A. Gorham Court Manager Superior Court of California, County of San Francisco San Francisco, California	A	N	Agree with proposed changes.	No response necessary.
4.	Ms. Keri Griffith Court Program Manager Superior Court of California County of Ventura Ventura, California	AM	Y	I agree that including dates of distribution orders would be useful but attaching copies is not. The dates are enough to make location of them useful, but adding more paper to files is not.	The advisory committee agrees with this comment. The form has been revised to delete the attachment requirement.

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5.	Mr. Stephen V. Love Court Executive Officer Superior Court of California County of San Diego San Diego, California	A	N	Agree with proposed changes.	No response necessary.
6.	Hon. Kathleen R. O'Connor Judge of the Superior Court of California, County of Yuba Marysville, California	A	N	Agree with proposed changes	No response necessary.
7.	Ms. Iris Stuart Court Operations. Manager Superior Court of California County of Sonoma	AM	Y	Listing the date(s) of the orders for distribution in Item 1 of the form DE-295 is fine. Attaching conformed copies of the receipts is unnecessarily duplicative.	The advisory committee agrees with this comment. The form has been revised to delete the attachment requirement.
8.	Ms. Emily Stuhlbarg Private Professional Emily Stuhlbarg & Associates	A	Y	Would speed up process and make closing estates easier.	No response necessary.
9.	Superior Court of California County of Los Angeles (commentator not identified).	A	N	Agree with proposed changes.	No response necessary.
10.	Mr. Dean Zipser President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response necessary.