

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

455 Golden Gate Avenue
San Francisco, California 94102-3688

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: Guardianship and Conservatorship Screening Forms
(revise forms GC-212 and GC-314) (Action Required)

Issue Statement

The screening forms that must be completed by candidates for appointment as guardians or conservators do not require disclosure of information that is required by current law. This information may directly affect the candidates' eligibility for appointment.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2006, revise the *Confidential Guardian Screening Form* and the *Confidential Conservator Screening Form* (forms GC-212 and GC-314) to seek additional information about proposed guardians and conservators that is required by current law.

Attached are copies of the following:

1. Proposed revised *Confidential Guardian Screening Form* (form GC-212) at pages 6 – 7;
2. Proposed revised *Confidential Conservator Screening Form* (form GC-314) at pages 8 – 9; and
3. Existing forms GC-212 and GC-314 at pages 10 – 13.

Rationale for Recommendation

Private professional guardians or conservators—persons appointed as guardians or conservators of two or more persons to whom they are not related—must file information statements annually with the courts that appoint them and must register with the Statewide Registry of Private Conservators, Guardians, and Trustees maintained by the California Department of Justice.¹ Most proposed guardians and conservators, including private professionals, must also complete screening forms that require disclosure of information pertaining to their suitability for appointment.²

The screening forms, GC-212 and GC-314, currently do not inquire into a proposed guardian's or conservator's status as a private professional fiduciary subject to the local filing and statewide registration requirements. A proposed guardian or conservator who is required but fails to file the information statement or maintain current registration is ineligible for appointment or, if appointed, must be removed from office.³

The revised form GC-212 would add item 16 on page 2 of the form, to ask if a proposed guardian is a private professional guardian as defined in Probate Code section 2341, and if so, whether he or she has filed the information statement with the court. Item 17 would ask if the proposed guardian is currently registered with the Statewide Registry and require disclosure of the current registration's expiration date.⁴

Item 17 would also request an unregistered proposed guardian to explain why he or she is not registered. There are three exceptions to the requirement of statewide registration that could be offered as explanations by the proposed guardian: (1) he or she is not a private professional guardian as defined in Probate Code sections 2340, 2341, and 2850; he or she is exempt from registration under section 2854; or (3) he or she is seeking appointment on an emergency basis under section 2853.

¹ Probate Code sections 2342(a) (appointing-court information statement), 2850(a)(3), and 2854 (Statewide Registry). Registration with the Department of Justice is sometimes referred to in this report as "statewide registration."

² Banks and other entities authorized to conduct the business of a trust company are exempt from the screening form requirement (Cal. Rules of Court, rules 7.1001(a) (guardianship) and 7.1050(a) (conservatorship)).

³ Probate Code sections 2340(a) (appointing-court information statement) and 2851(a) (statewide registration).

⁴ Each registration is for a three-year period. (Prob. Code, § 2850(a).)

Item 18 of form GC-212 would ask the responsible corporate officer of a nonprofit corporation authorized to be appointed as a guardian under Probate Code section 2104 to state facts under oath that would authorize the corporation to be appointed.

Identical items, numbered as items 17 through 19, would be added to page 2 of form GC-314, which applies to proposed conservators. In addition, a new item 5 would be added on page 1 of this form that would require the proposed conservator to state that he or she is or was formerly the domestic partner of the proposed conservatee. If the proposed conservator is currently the proposed conservatee's domestic partner, this item would ask whether he or she intends to terminate the partnership. These facts may affect the current or former domestic partner's eligibility for appointment as conservator.⁵

The current *Petition for Appointment of Guardian of Minor*, form GC-210, contains no allegations concerning a proposed guardian's status as a private professional who must file an information statement, register with the Statewide Registry, or both. The revised screening form would provide the court with the only evidence on these points directly from the proposed guardian.

These items would also be added to the conservatorship screening form although the current form *Petition for Appointment of Probate Conservator*, form GC-310, contains allegations concerning some of them.⁶ If a proposed conservator is not a petitioner, the conservatorship screening form remains the only place where he or she would be required to provide the relevant information under oath.⁷

Item 3 of form GC-314 asks whether the proposed conservator was or was not nominated by the proposed conservatee or his or her spouse, domestic partner, or parent. This item would be greatly clarified by eliminating the "was not nominated" alternative. A proposed fiduciary would indicate that he or she is not a nominee of any of the specified persons simply by not checking the first checkbox in the item.

⁵ See Probate Code section 1813.1.

⁶ Form GC-310 currently contains allegations about a proposed conservator's status as a current or former domestic partner of the proposed conservatee and as a private professional conservator who has filed an information statement with the court (form GC-310, items 3c(3), (5), and (7)). The petition currently makes no allegations concerning a proposed conservator's registration with the Statewide Registry. However, a proposed revision of form GC-310 that will be presented to the Judicial Council at the same time as this proposal would add this allegation to that form.

⁷ The proposed conservator is not always a petitioner for his or her appointment. See Probate Code sections 1820 and 1821.

Other proposed changes in both forms are as follows:

1. The bold text in the first text box on page 1 of each form would be revised to clarify that the proposed guardian or conservator is responsible for completing and signing the form but the person requesting appointment of the fiduciary—the petitioner—must submit the completed form to the court with the petition;
2. The text in the second text box on page 1 of each form would be revised to speak in the third person, referring to the proposed guardian or conservator rather than “you,” also to address the situation where the petitioner and the proposed fiduciary are not the same person;
3. Text boxes would be added to the first page of each form, just beneath the case number box, for the date and time of the hearing on the petition for appointment of a guardian or conservator and the department where the matter will be heard;⁸ and
4. The full form group and subgroup to which these forms are assigned, “(Probate—Guardianships and Conservatorships)” would be placed below the form name at the bottom of each page of each form.

Alternative Actions Considered

No action other than revision of these forms was considered.

Comments From Interested Persons

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 14–16 is a chart showing the comments received from the public on this proposal and the advisory committee’s responses.

⁸ The date, time, and place of the hearing on most probate petitions are assigned at the filing window when the petition is filed, before notice is given to others by the petitioner. Clerks usually handwrite this information on conformed copies of the petition returned to the petitioner.

The advisory committee will propose the addition of these text boxes to existing form probate petitions and supporting documents, such as the screening forms involved in this proposal, as each form is revised for other purposes. This change will standardize the place of notation by court clerks and provide a uniform place for the information to be provided on copies of the petitions and supporting documents served with notices of hearing on interested persons by petitioners or their counsel.

Eight comments were received. All were favorable. One commentator requested that item 5 of both forms, an inquiry into the professional mental health treatment history of proposed guardians and conservators, be modified to inquire only into whether the proposed fiduciary has been prescribed psychotropic medicines.

The advisory committee disagrees with this request. The committee believes that a fiduciary's mental health treatment history is material to the issue of his or her appointment long before psychotropic medications are needed.

Implementation Requirements and Costs

There should be no costs incurred by this proposal other than the normal costs of revising and distributing any Judicial Council form. These expenses should be outweighed by the savings in time and expense to court staff because the screening forms will clearly indicate at the earliest stage of a proceeding whether the court will need to review its own information statement files or the Statewide Registry to become informed about a proposed guardian or conservator who is a private professional fiduciary.

Attachments

CONFIDENTIAL (DO NOT ATTACH TO PETITION)

GC-212

| | | | |
|---|--|------------------------------|--------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): | | FOR COURT USE ONLY | |
| TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ | | | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____ | | | |
| GUARDIANSHIP OF (Name): _____ | | CASE NUMBER: _____ | |
| MINOR | | | |
| CONFIDENTIAL GUARDIAN SCREENING FORM Guardianship of <input type="checkbox"/> Person <input type="checkbox"/> Estate | | HEARING DATE AND TIME: _____ | DEPT.: _____ |

The proposed guardian must complete and sign this form. The person requesting appointment of a guardian must submit the completed and signed form to the court with the guardianship petition. This form must remain confidential.

How This Form Will Be Used

This form is **confidential** and will not be a part of the public file in this case. Each proposed guardian must complete and sign a separate copy of this form under rule 7.1001 of the California Rules of Court. The information provided will be used by the court and by persons and agencies designated by the court to assist the court in determining whether to appoint the proposed guardian as guardian. The proposed guardian **must** respond to each item.

1. a. **Proposed guardian (name):**
b. Date of birth: _____
c. Social security number: _____ d. Driver's license number: _____ State: _____
e. Telephone numbers: Home: _____ Work: _____ Other: _____
2. I am I am not required to register as a sex offender under California Penal Code section 290.
(If you checked "I am," explain in Attachment 2.)
3. I have I have not been charged with, arrested for, or convicted of a crime deemed to be a felony or a misdemeanor. (If you checked "I have," explain in Attachment 3.)
 (Check here if you have been arrested for drug or alcohol-related offenses.)
4. I have I have not had a restraining order or protective order filed against me in the last 10 years.
(If you checked "I have," explain in Attachment 4.)
5. I am I am not receiving services from a psychiatrist, psychologist, or therapist for a mental health-related issue.
(If you checked "I am," explain in Attachment 5.)
6. Do you, or does any other person living in your home, have a social worker or parole or probation officer assigned to him or her?
 Yes No (If you checked "Yes," explain in Attachment 6 and provide the name and address of each social worker, parole officer, or probation officer.)
7. Have you, or has any other person living in your home, been charged with, arrested for, or convicted of any form of child abuse, neglect, or molestation? Yes No (If you checked "Yes," explain in Attachment 7.)
8. I am I am not aware of any reports alleging any form of child abuse, neglect, or molestation made to any agency charged with protecting children (e.g., Child Protective Services) or any other law enforcement agency regarding me or any other person living in my home.
(If you checked "I am," explain in Attachment 8 and provide the name and address of each agency.)
9. Have you, or has any other person living in your home, habitually used any illegal substances or abused alcohol?
 Yes No (If you checked "Yes," explain in Attachment 9.)

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| | |
|------------------------------------|--------------|
| CONSERVATORSHIP OF <i>(Name)</i> : | CASE NUMBER: |
| PROPOSED CONSERVATEE | |

- 7. I have I have not filed for bankruptcy protection within the last 10 years. *(If you checked "I have," explain in Attachment 7.)*
- 8. I have I have not been convicted of a felony or had a felony expunged from my record. *(If you checked "I have," explain in Attachment 8.)*
- 9. I have I have not been charged with, arrested for, or convicted of embezzlement, theft, or any other crime involving the taking of property. *(If you checked "I have," explain in Attachment 9.)*
- 10. I have I have not been charged with, arrested for, or convicted of a crime involving fraud, conspiracy, or misrepresentation of information. *(If you checked "I have," explain in Attachment 10.)*
- 11. I have I have not been charged with, arrested for, or convicted of any form of elder abuse or neglect. *(If you checked "I have," explain in Attachment 11.)*
- 12. I have I have not had a restraining order or protective order filed against me in the last 10 years. *(If you checked "I have," explain in Attachment 12.)*
- 13. I am I am not required to register as a sex offender under California Penal Code section 290. *(If you checked "I am," explain in Attachment 13.)*
- 14. I have I have not previously been appointed conservator, executor, or fiduciary in another proceeding. *(If you checked "I have," explain in Attachment 14.)*
- 15. I have I have not been removed or resigned as a conservator, guardian, executor, or fiduciary in any other case. *(If you checked "I have," explain in Attachment 15.)*
- 16. I have or may have I do not have an adverse interest that the court may consider to be a risk to, or to have an effect on, my ability to faithfully perform the duties of conservator. *(If you checked "I have or may have," explain in Attachment 16.)*
- 17. I am I am not a private professional conservator, as defined in Probate Code section 2341.
 I have I have not filed with the court the information statement required by Probate Code section 2342. *(If you checked "I am" and "I have not," explain in Attachment 17.)*
- 18. I am I am not currently registered with the Statewide Registry of Conservators/Guardians/Trustees maintained by the California Department of Justice under Probate Code sections 2850–2855.
My current registration will expire on *(date)*:
(If you checked "I am not," explain why you are not registered in Attachment 18.)
- 19. I am I am not a responsible corporate officer authorized to act for *(name of corporation)*:

a California nonprofit charitable corporation that meets the requirements for appointment as conservator of the proposed conservatee under Probate Code section 2104. I certify that the corporation's articles of incorporation specifically authorize it to accept appointments as conservator. *(If you checked "I am," explain the circumstances of the corporation's care of, counseling of, or financial assistance to the proposed conservatee in Attachment 19.)*
- 20. Do you, or does any other person living in your home, have a social worker or parole or probation officer assigned to him or her?
 Yes No *(If you checked "Yes," explain in Attachment 20 and provide the name, address, and telephone number of each social worker, parole officer, or probation officer.)*

DECLARATION

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 PROPOSED CONSERVATOR) | | (SIGNATURE OF PROPOSED CONSERVATOR)* |
|--|--|--------------------------------------|

*Each proposed conservator must fill out and file a separate screening form.

CONFIDENTIAL

| | | |
|-------------------------|-------|--------------|
| GUARDIANSHIP OF (Name): | MINOR | CASE NUMBER: |
|-------------------------|-------|--------------|

9. Have you or has any other person living in your home habitually used any illegal substances or abused alcohol?
 Yes No (If yes, explain in Attachment 9.)
10. Have you or has any other person living in your home been charged with, arrested for, or convicted of a crime involving illegal substances or alcohol?
 Yes No (If yes, explain in Attachment 10.)
11. Do you or does any other person living in your home suffer from mental illness?
 Yes No (If yes, explain in Attachment 11.)
12. Do you suffer from any physical disability that would impair your ability to perform the duties of guardian?
 Yes No (If yes, explain in Attachment 12.)
13. I have or may have I do not have an adverse interest that the court may consider to be a risk to, or to have an effect on, my ability to faithfully perform the duties of guardian. (If you have or may have, explain in Attachment 13.)
14. I have I have not previously been appointed guardian, conservator, executor, or fiduciary in another proceeding. (If you have, explain in Attachment 14.)
15. I have I have not been removed as guardian, conservator, executor, or fiduciary in any other case. (If you have, explain in Attachment 15.)
16. I have I have not filed for bankruptcy protection within the last 10 years. (If you have, explain in Attachment 16.)

MINORS' CONTACT INFORMATION

17. Minor's name: School: Other tel.:
Home tel.: School tel.:
18. Minor's name: School: Other tel.:
Home tel.: School tel.:
19. Minor's name: School: Other tel.:
Home tel.: School tel.:

Information on additional minors is attached.

DECLARATION

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 PROPOSED GUARDIAN*)

*Each proposed guardian must fill out and file a separate screening form.

CONFIDENTIAL

| | |
|--|--------------|
| CONSERVATORSHIP OF <i>(Name)</i> : <div style="text-align: center; padding-top: 10px;">PROPOSED CONSERVATEE</div> | CASE NUMBER: |
|--|--------------|

9. I have I have not been charged with, arrested for, or convicted of, a crime involving fraud, conspiracy, or misrepresentation of information. *(If you have, explain in Attachment 9.)*
10. I have I have not been charged with, arrested for, or convicted of any form of elder abuse or neglect. *(If you have, explain in Attachment 10.)*
11. I have I have not had a restraining order or protective order filed against me in the last 10 years. *(If you have, explain in Attachment 11.)*
12. I am I am not required to register as a sex offender under California Penal Code section 290. *(If you have, explain in Attachment 12.)*
13. I have I have not previously been appointed conservator, executor, or fiduciary in another proceeding. *(If you have, explain in Attachment 13.)*
14. I have I have not been removed or asked to resign as a conservator, guardian, executor, or fiduciary in any other case. *(If you have, explain in Attachment 14.)*
15. I have or may have I do not have an adverse interest that the court may consider to be a risk to, or to have an effect on, my ability to faithfully perform the duties of conservator. *(If you have or may have, explain in Attachment 15.)*
16. Do you or does any other person living in your home have a social worker or parole or probation officer assigned to him or her?
 Yes No *(If yes, explain in Attachment 16 and provide the name and address of each social worker, parole officer, or probation officer.)*

DECLARATION

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 PROPOSED CONSERVATOR*)

*Each proposed conservator must fill out and file a separate screening form.

SPR05-42
Probate Guardianships and Conservatorships: Guardian and Conservator Screening Forms
(revise forms GC-212 and GC-314)

| | Commentator | Position | Comment on behalf of group? | Comment | Response of the Probate and Mental Health Advisory Committee |
|----|---|-----------------|------------------------------------|------------------------------|---|
| 1. | Hon. Thomas Edwards Judge of the Superior Court of California, County of Santa Cruz San Jose, California | A | N | Agree with proposed changes. | No response necessary. |
| 2. | 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. |
| 3. | Ms. Keri Griffith Court Program Manager Superior Court of California, County of Ventura Ventura, California | A | N | Agree with proposed changes. | No response necessary. |
| 4. | Mr. Samuel Ingham Attorney at Law Certified Specialist, Estate Planning, Trust, and Probate Law Beverly Hills, California | A | N | Agree with proposed changes. | No response necessary. |
| 5. | Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego San Diego, California | A | N | Agree with proposed changes. | No response necessary. |

SPR05-42

**Probate Guardianships and Conservatorships: Guardian and Conservator Screening Forms
(revise forms GC-212 and GC-314)**

| | Commentator | Position | Comment on behalf of group? | Comment | Response of the Probate and Mental Health Advisory Committee |
|----|---|-----------------|------------------------------------|---|---|
| 6. | Ms. Emily Stuhlbarg Private Professional Conservator Emily Stuhlbarg & Associates, Inc. Torrance, California | AM | N | Item 15 in the conservator screening form (GC-314) should be “asked to resign,” as in Item 14. In the guardian screening form (GC-212), item 5, an inquiry about professional help for mental-health related issues, could be positive rather than negative. | The advisory committee disagrees with this proposed change. Item 14 refers to prior appointments as a fiduciary, Item 15 to prior removals or resignations as a fiduciary. Neither item refers to requests for resignations. The commentator’s last statement is certainly true. Professional help for mental health related issues is not an automatic disqualifier for appointment as a guardian, and might be viewed by a court as evidence of maturity and judgment that would support the candidate’s appointment. It depends on all the circumstances. However, the inquiry remains relevant and should be retained in the form. |
| 7. | Superior Court of California, County of Los Angeles | A | Y | Although no change has been proposed concerning paragraph 5 of the Confidential | The advisory committee disagrees with this recommendation. The |

SPR05-42

**Probate Guardianships and Conservatorships: Guardian and Conservator Screening Forms
(revise forms GC-212 and GC-314)**

| | Commentator | Position | Comment on behalf of group? | Comment | Response of the Probate and Mental Health Advisory Committee |
|----|---|-----------------|------------------------------------|---|--|
| | Los Angeles, California (commentator not identified). | | | Guardian and Conservator Screening forms (GC 212 and GC 314), the court believes the existing paragraph should be changed from “___ I am ___ I am not receiving services from a psychiatrist, psychologist, or therapist for a mental-health related issue” To “___ I am ___ I am not prescribed psychotropic medication(s).” | court should learn of the mental health therapeutic history of proposed conservators in circumstances short of administration of psychotropic medicines. |
| 8. | Mr. Dean Zipser President Orange County Bar Association Irvine, California | A | N | Agree with proposed changes. | No response necessary. |