

**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 Guardianships: Visitation by a Former Guardian After
Termination of the Guardianship (revise forms GC-255
and GC-260) (Action Required) _____

Issue Statement

A statute enacted in 2004 has created visitation rights for former guardians of children upon or after termination of their guardianship proceedings.¹ The statute added section 1602 to the Probate Code. The new code section authorizes a court that is terminating a guardianship under section 1601 to order ongoing visitation between the child and the former guardian in the order terminating the guardianship.

The Judicial Council form petition for termination of guardianship and the order terminating the guardianship do not provide for a request for visitation by a petitioning guardian or for an order granting the request. Changes in these forms are necessary to implement the new legislation.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council revise the *Petition for Termination of Guardianship and Order Terminating Guardianship* (forms GC-255 and GC-260) effective January 1, 2006 to permit a guardian petitioning for termination of the guardianship to request

¹ Stats. 2004, ch. 301 (Assem. Bill 2292).

visitation with the ward after termination, and to provide for the court to order such visitation.

Attached are copies of the following:

1. Revised *Petition for Termination of Guardianship* (form GC-255) at pages 5–6;
2. Revised *Order Terminating Guardianship* (form GC-260) at page 7;
3. Existing forms GC-255 and GC-260 at pages 8–10; and
4. Assembly Bill 2292 at pages 11–12.

Rationale for Recommendation

Form GC-255 would be revised by the addition of a new item 8, in which a guardian petitioning for termination could request visitation with the former ward after termination of the guardianship. The visitation proposed by the guardian would be described in an attachment.

Only a petitioning guardian could use revised form GC-255 to request visitation. If the termination petition were filed by the child or his or her parents under Probate Code section 1601 rather than by the guardian, the guardian would be required to request visitation in his or her own pleading in response to the child's or parents' petition for termination.²

Other proposed changes to form GC-255 include deletion of the phrase “It is no longer necessary that the minor have a guardian . . .” from item 5. Lack of continued necessity as a ground for termination of the guardianship was deleted from section 1601 in 2002.³ The sole ground for termination under section 1601 is the best interest of the child.

In addition, the language in the notice at the bottom of page 1 would be modified to clarify that a petition for termination of the guardianship is not required when the minor turns 18, and text boxes would be added under the case-number caption box on page 1 of the form for the date and time when and the department where

² New item 8 refers to a declaration under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The declaration is Judicial Council form FL-105/GC-120. It must be filed with the initial pleading in all “child custody proceedings” as defined in the UCCJEA, including requests for court-ordered visitation. See Fam. Code, §§ 3402(d) (definition of “child custody proceeding” under the UCCJEA), 3429 (information required in first pleading or attached affidavit in custody proceeding); Prob. Code, §§ 1510(f), 1512 (required disclosure of pending actions affecting custody of the [proposed] ward).

³ Stats. 2002, ch. 1118, § 6.

the hearing will take place. The advisory committee has decided to propose the addition of these text boxes to all form probate petitions on which hearings are set, and on form documents that are filed in support of these petitions, where there is room in the forms to do so.

The revised *Order Terminating Guardianship* (form GC-260) would feature a new item 6 in the order portion, for the judge to order visitation between the child and the former guardian. The details of the visitation would be described in a separate attachment. Item 1 of the form would also be enlarged to indicate personal appearance at the hearing of a larger list of potential parties and attorneys than is permitted in the current form.

A former guardian who was not awarded visitation when the guardianship was terminated must bring a custody proceeding under the Family Code to obtain a visitation order if either of the child's parents is living and no juvenile dependency proceeding is pending.⁴ The Family and Juvenile Law Advisory Committee has proposed a revision of the *Petition for Custody and Support of Minor Children* (form FL-260) to permit a former guardian to be identified as a petitioner in a Family Code custody proceeding.⁵

If the child has no surviving parent, the former guardian who did not receive a visitation order at termination of the guardianship must request visitation in a guardianship proceeding (Fam. Code, § 3105(c)). The revised *Petition for Termination of Guardianship* could not be used in that situation because the guardianship already will have been terminated. No Judicial Council form is currently proposed for a previously terminated guardian to seek a visitation order in that situation.

Alternative Actions Considered

Assembly Bill 2292 requires revision of the guardianship termination forms. No alternative to making the necessary changes was considered. The advisory committee did consider the development of separate form attachments for use by petitioners to specify the details of the visitation they seek in all guardianship proceedings in which visitation may be at issue, including guardianship terminations. The committee decided not to propose adoption of visitation forms at this time but will continue to evaluate the need for such forms in probate guardianship proceedings.

⁴ Family Code section 3105(c), added by section 1 of the new statute (Stats. 2004, ch. 301, § 1).

⁵ That committee and this one are also jointly proposing the adoption of two new California Rules of Court concerning former guardian visitation effective January 1, 2006, designated as rules 5.475 and 7.1008 (see council agenda item A-26 for this meeting). A copy of the text of the proposed rules is attached at pages 13–15.

Comments From Interested Persons

This proposal was circulated to a standard list of court executives, judicial officers, and organizations as well as 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 16–18 is a chart showing the comments received from the public on this proposal, and the responses recommended by the Forms Subcommittee.

Nine comments were received. Six agreed with the proposal; the remaining comments also agreed but included suggestions or recommendations.

One commentator, a program manager from the Superior Court, Ventura County, responded to a specific request in the invitation to comment circulated with this proposal by stating her preference for a visitation order form suitable for use in probate. As noted above, the advisory committee has not yet concluded that a probate child visitation order is necessary or useful, or if either, what form it should take. The committee will continue to consider this issue.

The Superior Court, Los Angeles County referred to proposed new rule 5.600(a)(4), a copy of which is attached to this report, with a request that the names and addresses of the persons to whom the clerk must mail copies of the visitation order under the proposed rule be included in the order terminating the guardianship. The advisory committee disagrees with this request. The visitation order would be entirely contained in a separate attachment to the order terminating the guardianship. The names and addresses should be listed in the separate attachment, not in the body of the termination order.

Implementation Requirements and Costs

This proposal should cause only those costs associated with the revision and distribution of any 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> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF <i>(Name):</i> _____	CASE NUMBER: _____
PETITION FOR TERMINATION OF GUARDIANSHIP	HEARING DATE AND TIME: _____ DEPT.: _____

1. Petitioner *(name)*: _____ **requests that**
 - a. the guardianship of the PERSON of *(minor)*: _____ **be terminated.**
 - b. the guardianship of the ESTATE of *(minor)*: _____ **be terminated.**
 - (1) The estate has been entirely exhausted through expenditures or disbursements (Probate Code, § 2626).
 - (2) The estate falls within the provisions of Probate Code section 2628(b) (small estate), and no accounts have been required.
 - (3) Other *(specify)*: _____

2. Petitioner is the minor minor's guardian minor's parent.
3. *(Name)*: _____ was appointed guardian of the PERSON
of the minor named in item 1a on *(date)*: _____ .
4. *(Name)*: _____ was appointed guardian of the ESTATE
of the minor named in item 1b on *(date)*: _____ .
5. It is in the best interest of the minor that the guardianship of the person estate be terminated for the reasons
 stated in Attachment 5 stated below *(specify)*: _____

6. A request for special notice
 - a. has not been filed.
 - b. has been filed and notice will be given to *(names)*: _____

7. Notice to the persons identified in Attachment 7 should be dispensed with because
 - a. they cannot with reasonable diligence be given notice *(specify names and efforts to locate in Attachment 7)*.
 - b. other good cause exists to dispense with notice *(specify names and reasons in Attachment 7)*.
8. Petitioner is the minor's guardian. Petitioner requests reasonable visitation with the minor after termination of the guardianship as specified in Attachment 8. A completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120) is also attached.

NOTICE: This guardianship will terminate automatically when the child reaches age 18. No petition or court order is necessary to terminate the guardianship at that time. Nevertheless, if this is a guardianship of the estate, termination of the guardianship does not eliminate the requirement that a final report or account must be filed. (See Prob. Code, § 1600.)

GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF _____ (Name): <div style="text-align: right; margin-right: 50px;">MINOR</div>	CASE NUMBER:
--	----------------------

9. The names and residence addresses of the guardian, minor, and minor's parents, brothers, sisters, and grandparents are (specify):
- a. Guardian:
 - b. Minor:
 - c. Father:
 - d. Mother:
 - e. Brother or sister:
 - f. Brother or sister:
 - g. Brother or sister:
 - h. Maternal grandfather:
 - i. Maternal grandmother:
 - j. Paternal grandfather:
 - k. Paternal grandmother:
 - l. Additional names and addresses continued on Attachment 9.

10. Number of pages attached: _____

Date: _____

(SIGNATURE OF ATTORNEY OR PETITIONER WITHOUT AN ATTORNEY *)

* (Signature of all petitioners also required (Prob. Code, § 1020).)

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 PETITIONER)

_____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF PETITIONER)

CONSENT TO TERMINATION AND WAIVER OF SERVICE AND NOTICE OF HEARING

11. I consent to the termination of the guardianship of the person estate of the minor and waive service of a copy of, and notice of the hearing on, this petition.

Date: _____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF MINOR * GUARDIAN PARENT OTHER)

Date: _____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF MINOR * GUARDIAN PARENT OTHER)

Date: _____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF MINOR * GUARDIAN PARENT OTHER)

Date: _____ (TYPE OR PRINT NAME) _____ (SIGNATURE OF MINOR * GUARDIAN PARENT OTHER)

Additional signatures on Attachment 11.

* Minor over 12 years of age.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <hr/> TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____ MINOR	
ORDER TERMINATING GUARDIANSHIP	CASE NUMBER: _____

1. The petition to terminate the guardianship came on for hearing as follows (check boxes c-l to indicate personal presence):

- a. Judicial Officer (name): _____
- b. Hearing date: _____ Time: _____ Dept. Rm.:
- c. Petitioner (name): _____
- d. Attorney for petitioner (name): _____
- e. Minor (name): _____
- f. Attorney for minor (name): _____
- g. Guardian of the person (name): _____
- h. Attorney for guardian of the person (name): _____
- i. Guardian of the estate (name): _____
- j. Attorney for guardian of the estate (name): _____
- k. Parent of minor (name): _____
- l. Attorney for parent (name): _____

THE COURT FINDS

- 2. a. All notices required by law have been given.
- b. Notice of hearing has been should be dispensed with to the following persons (specify): _____
- c. It is in the minor's best interest to terminate the guardianship of the PERSON.
- d. It is in the minor's best interest to terminate the guardianship of the ESTATE.
 - (1) The estate has been entirely exhausted through expenditures or disbursements (Prob. Code, § 2626).
 - (2) The estate falls within the provisions of Probate Code section 2628(b) (small estate), and no accounts have been required.
 - (3) Other reasons (specify): _____

THE COURT ORDERS

- 3. The guardianship of the PERSON of (minor): _____ is terminated.
- 4. The guardianship of the ESTATE of (minor): _____ is terminated.
- 5. Notice of hearing to the persons named in item 2b is dispensed with.
- 6. Visitation between the minor and the guardian of the person of the estate is ordered as provided in Attachment 6.
- 7. Other (specify): _____

Continued on Attachment 7.

Date: _____

 JUDICIAL OFFICER
 Signature follows last attachment.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i> <hr/> TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF <i>(Name):</i> <div style="text-align: right;">MINOR</div>	
PETITION FOR TERMINATION OF GUARDIANSHIP	CASE NUMBER: _____

1. **Petitioner** *(name):* _____ **requests that**

a. the guardianship of the PERSON of *(minor):* _____ be terminated.

b. the guardianship of the ESTATE of *(minor):* _____ be terminated.

(1) The estate has been entirely exhausted through expenditures or disbursements (Probate Code, § 2626).

(2) The estate falls within the provisions of Probate Code section 2628(b) (small estate), and no accounts have been required.

(3) Other *(specify):* _____

2. Petitioner is the minor minor's guardian minor's parent.

3. *(Name):* _____ was appointed guardian of the PERSON on *(date):* _____

4. *(Name):* _____ was appointed guardian of the ESTATE on *(date):* _____

5. It is no longer necessary that the minor have a guardian of the person estate and the best interests of the minor require termination of the guardianship for the reasons stated in Attachment 5 stated below *(specify):*

6. A request for special notice

a. has not been filed.

b. has been filed and notice will be given to *(names):* _____

7. Notice to the persons identified in Attachment 7 should be dispensed with because

a. they cannot with reasonable diligence be given notice *(specify names and efforts to locate in Attachment 7).*

b. other good cause exists to dispense with notice *(specify names and reasons in Attachment 7).*

(Continued on reverse)

NOTICE: Guardianships terminate automatically at age 18. No petition or court order is necessary to terminate the guardianship. Nevertheless, if this is a guardianship of the estate, termination of the guardianship does not eliminate the requirement that a final report or account be filed. (See Probate Code, § 1600.)

GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): <div style="text-align: right; margin-top: 10px;">MINOR</div>	CASE NUMBER:
---	----------------------

8. The names and residence addresses of the guardian, minor, and minor's parents, brothers, sisters, and grandparents are as follows:

- | | |
|---|--|
| <p>a. Guardian:</p>

<p>b. Minor:</p>

<p>c. Father:</p>

<p>d. Mother:</p>

<p>e. Brother or sister:</p>

<p>f. Brother or sister:</p> | <p>g. Brother or sister:</p>

<p>h. Maternal grandfather:</p>

<p>i. Maternal grandmother:</p>

<p>j. Paternal grandfather:</p>

<p>k. Paternal grandmother:</p>

<p>l. <input type="checkbox"/> Additional names and addresses continued in Attachment 8.</p> |
|---|--|

9. Number of pages attached: _____

Date:

*(Signature of all petitioners also required (Prob. Code, § 1020).)

▶ _____
(SIGNATURE OF ATTORNEY *)

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 PETITIONER)

.....
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

CONSENT TO TERMINATION AND WAIVER OF NOTICE

I consent to the termination of the guardianship of the person estate of the minor and waive notice of the hearing on this petition.

Date:
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF MINOR* GUARDIAN PARENT OTHER)

Date:
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF MINOR* GUARDIAN PARENT OTHER)

Date:
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF MINOR* GUARDIAN PARENT OTHER)

Date:
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF MINOR* GUARDIAN PARENT OTHER)

Additional signatures on attachment.

* Minor over 12 years of age.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i> <hr/> TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF <i>(Name):</i> <div style="text-align: right;">MINOR</div>	
ORDER TERMINATING GUARDIANSHIP	CASE NUMBER: _____

1. The petition to terminate the guardianship came on for hearing as follows *(check boxes c, d, and e to indicate personal presence)*:
- a. Judge *(name)*:
 - b. Hearing date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____
 - c. Petitioner *(name)*:
 - d. Attorney for petitioner *(name)*:
 - e. Attorney for minor *(name)*:

THE COURT FINDS

2. a. All notices required by law have been given.
- b. Notice of hearing to the following persons has been should be dispensed with *(names)*:
- c. The guardianship of the PERSON is no longer necessary.
- d. The guardianship of the ESTATE is no longer necessary.
- (1) The estate has been entirely exhausted through expenditures or disbursements (Probate Code, § 2626).
 - (2) The estate falls within the provisions of Probate Code section 2628(b) (small estate), and no accounts have been required.
 - (3) Other reasons *(specify)*:
- e. Termination of the guardianship is in the best interests of the minor.

THE COURT ORDERS

3. The guardianship of the PERSON of *(minor)*: _____ is terminated.
4. The guardianship of the ESTATE of *(minor)*: _____ is terminated.
5. Notice of hearing to the persons named in item 2b is dispensed with.
6. Other *(specify)*:

Date: _____

JUDGE OF THE SUPERIOR COURT

Assembly Bill No. 2292

CHAPTER 301

An act to add Section 3105 to the Family Code, and to add Section 1602 to the Probate Code, relating to visitation.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2292, Wolk. Visitation: former legal guardians.

Existing law authorizes the court to grant reasonable visitation rights to a stepparent or a grandparent of a minor child if the court determines that visitation is in the best interest of the child.

Existing law also authorizes the court to terminate a guardianship if the court determines that it is in the best interest of the minor to terminate the guardianship.

This bill would authorize the court to grant reasonable visitation rights to a person who has previously served as the legal guardian of a child if visitation by the former legal guardian is determined to be in the best interest of the child, and would make other, related changes. The bill would authorize a former legal guardian to maintain an independent action for visitation with his or her former minor ward.

This bill would authorize the court, upon making a determination that a guardianship should be terminated, to consider whether continued visitation between a ward and his or her guardian is in the best interest of the ward. The bill would also authorize the court to issue an order, as part of the order of termination, for visitation between the former guardian and his or her former minor ward after the termination of the guardianship.

The people of the State of California do enact as follows:

SECTION 1. Section 3105 is added to the Family Code, to read:

3105. (a) The Legislature finds and declares that a parent's fundamental right to provide for the care, custody, companionship, and management of his or her children, while compelling, is not absolute. Children have a fundamental right to maintain healthy, stable relationships with a person who has served in a significant, judicially approved parental role.



(b) The court may grant reasonable visitation rights to a person who previously served as the legal guardian of a child, if visitation is determined to be in the best interest of the minor child.

(c) In the absence of a court order granting or denying visitation between a former legal guardian and his or her former minor ward, and if a dependency proceeding is not pending, a former legal guardian may maintain an independent action for visitation with his or her former minor ward. If the child does not have at least one living parent, visitation shall not be determined in a proceeding under the Family Code, but shall instead be determined in a guardianship proceeding which may be initiated for that purpose.

SEC. 2. Section 1602 is added to the Probate Code, to read:

1602. (a) The Legislature hereby finds and declares that guardians perform a critical and important role in the lives of minors, frequently assuming a parental role and caring for a child when the child's parent or parents are unable or unwilling to do so.

(b) Upon making a determination that a guardianship should be terminated pursuant to Section 1601, the court may consider whether continued visitation between the ward and the guardian is in the ward's best interest. As part of the order of termination, the court shall have jurisdiction to issue an order providing for ongoing visitation between a former guardian and his or her former minor ward after the termination of the guardianship. The order granting or denying visitation may not be modified unless the court determines, based upon evidence presented, that there has been a significant change of circumstances since the court issued the order and that modification of the order is in the best interest of the child.

(c) A copy of the visitation order shall be filed in any court proceeding relating to custody of the minor. If a prior order has not been filed, and a proceeding is not pending relating to the custody of the minor in the court of any county, the visitation order may be used as the sole basis for opening a file in the court of the county in which the custodial parent resides. While a parent of the child has custody of the child, proceedings for modification of the visitation order shall be determined in a proceeding under the Family Code.



Rules 5.475 and 7.1008 of the California Rules of Court are adopted, effective January 1, 2006, to read:

1 **Rule 5.475. Custody and visitation orders following termination of a juvenile**
2 **court proceeding or probate court guardianship proceeding (Fam. Code, §**
3 **3105; Welf. & Inst., Code, § 362.4; Prob. Code, § 1602)**
4

5 **(a) [Custody and visitation orders from other court divisions]** A juvenile
6 court or probate court may transmit a custody or visitation order to a family court
7 for inclusion in a pending family law proceeding or to open a new family law case
8 file, upon termination of a juvenile court proceeding or a probate guardianship
9 proceeding under rules 1457 and 7.1008.

10
11 (1) Procedure for filing custody or visitation orders from juvenile or
12 probate court

13
14 (A) The custody or visitation order of a juvenile court or the visitation
15 order of a former guardian must be filed in any pending nullity,
16 dissolution, paternity, or other family law proceeding, or in any
17 probate guardianship proceeding which affects custody or
18 visitation of the child.

19
20 (B) If no dependency, family law, or probate guardianship proceeding
21 affecting custody or visitation of the child is pending, the order
22 may be used as the sole basis to open a file and assign a family
23 law case number.

24
25 (C) The clerk must immediately file the custody or visitation order,
26 without a filing fee, in the file of any family law proceeding
27 affecting the custody and visitation of the child.

28
29 (2) (Endorsed filed copy—clerk’s certificate of mailing) Within 15 court
30 days after receiving the order, the clerk must send, by first-class mail,
31 an endorsed filed copy of the order showing the receiving court case
32 number to:

33
34 (A) The persons whose names and addresses are listed on the order;
35 and

36
37 (B) The court that issued the order, with a completed clerk’s
38 certificate of mailing, for inclusion in the sending court’s file.
39

1 **(b) [Modification of former guardian visitation orders—Custodial parent]**
2 When a parent of the child has custody of the child following termination of a
3 probate guardianship, proceedings for modification of the probate court visitation
4 order, including an order denying visitation, must be determined in a proceeding
5 under the Family Code.

6
7 **(c) [Independent action for former guardian visitation]**
8

9 (1) If the court terminated a guardianship under the Probate Code and did
10 not issue a visitation order, the former guardian may maintain an
11 independent action for visitation if a dependency proceeding is not
12 pending. The former guardian may bring the action without the
13 necessity of a separate joinder action.

14
15 (2) If the child has at least one living parent and has no guardian,
16 visitation must be determined in a proceeding under the Family Code.
17 If the child does not have at least one living parent, visitation must be
18 determined in a guardianship proceeding, which may be initiated for
19 that purpose.

20
21 (3) Judicial Council form FL-105/GC-120, *Declaration Under Uniform*
22 *Child Custody Jurisdiction and Enforcement Act (UCCJEA)* must be
23 filed with a petition or motion for visitation by a former guardian.
24

25 **Rule 7.1008. Visitation by former guardian after termination of guardianship**
26

27 **(a) [Visitation order at time of termination of guardianship]** Subject to the
28 provisions of Welfare and Institutions Code section 304, a guardian may request
29 the court to order visitation with the child under guardianship at the time of
30 termination of the guardianship either in the guardian’s petition for termination or
31 in the guardian’s objections or other pleading filed in response to the petition of
32 another party for termination. The court may then order visitation if it is in the
33 best interest of the child.

34
35 **(b) [Request for visitation after termination of guardianship]** If no order
36 was entered under (a) concerning visitation between the former guardian and the
37 former ward at termination of the guardianship and no dependency proceedings
38 for the child are pending, the former guardian may request the court to order
39 visitation with the former ward after termination of the guardianship as provided
40 in Family Code section 3105, Probate Code section 1602, rule 5.475, and this rule,
41 as follows:
42

1 (1) If either parent of the former ward is living, in an independent action
2 for visitation under the Family Code; or

3
4 (2) If neither parent of the former ward is living, in a guardianship
5 proceeding under the Probate Code, including a proceeding
6 commenced for that purpose.

7
8 (c) [Declaration under UCCJEA] A guardian or former guardian requesting
9 visitation under this rule must file Judicial Council form FL-105/GC-120,
10 Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act
11 (UCCJEA), with his or her request for visitation.

12
13 (d) [Transmission of visitation order] Following the termination of the
14 guardianship the clerk of the superior court issuing the visitation order concerning
15 the guardian or former guardian and the ward or former ward must promptly
16 transmit an endorsed filed copy of the order to the superior court of the county
17 where a custody proceeding under the Family Code is pending or, if none, to the
18 superior court of the county in which the custodial parent resides. An order
19 transmitted to the court in the county where the custodial parent resides may be
20 sent to the receiving court's Court Operations Manager, Family Division, or
21 similar senior manager or clerk responsible for the operations of the family law
22 departments of the court. If the receiving court has more than one location, the
23 order may be sent to the main or central district of the court.

SPR05-45

**Probate Guardianships: Visitation by a Former Guardian After Termination of the Guardianship
(revise forms GC-255 and GC-260)**

	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
1.	Ms. Sheila Ballin Family Law Facilitator Superior Court of California, County of San Joaquin Stockton, California	A	N	Agree with proposed changes.	No response necessary.
2.	Hon. Charles W. Campbell Presiding Judge of the Superior Court of California, County of Ventura Ventura, California	A	N	Agree with proposed changes.	No response necessary.
3.	Ms. Deborah Decker Administrative Analyst Superior Court of California, County of Butte Oroville, 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	A	Y	Similar to what has been developed for juvenile custody orders; I believe a visitation order form needs to be developed in probate. Since a visitation order can be filed in other cases or as the basis of a new court file, a consistent order form is necessary. Such an order would also be helpful for law enforcement agencies if they are involved.	The advisory committee is considering whether development of visitation forms for use in guardianship proceedings would be necessary or useful. No final decision has been made on that question. The committee believes, however, that the revisions of the guardianship termination forms

SPR05-45

**Probate Guardianships: Visitation by a Former Guardian After Termination of the Guardianship
(revise forms GC-255 and GC-260)**

	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
					now proposed should proceed without delay.
5.	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.
6.	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.
7.	Ms. Emily Stuhlbarg Private Professional Conservator Emily Stuhlbarg & Associates, Inc. Torrance, California	AM	N	A visitation order may be from mediation proceedings or dispute resolution. Not sure such an order should be attached to a guardianship termination order.	Assembly Bill 2292 compels a visitation order as part of a guardianship termination proceeding when the court orders visitation in response to the petition of the guardian brought as part of the termination proceeding.
8.	Superior Court of California County of Los Angeles Los Angeles, California (commentator not identified)	AM	Y	Proposed rule 5.600(a)(4) provides that the clerk “must send by first class mail an endorsed filed copy of the order...(i) to the persons whose names and addresses are listed on the order...” The proposed Order Terminating Guardianship (GC-260) does not include a paragraph for names and addresses of the	The advisory committee disagrees with this comment. Proposed rule 5.600(a)(4) refers to the parties to a visitation proceeding. Their names and addresses should be placed in the visitation order referenced as an attachment to the termination order,

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	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				parties. The proposed modification to GC 260 should include a paragraph or an attachment for this information.	not in the termination order itself. Many, if not most, guardianship terminations will not involve visitation orders.
9.	Mr. Dean Zipser President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response necessary.