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## INVITATION TO COMMENT

### SPR12-22

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Title	Action Requested
Probate Guardianships: Communications Between California Courts on Guardianship Venue Issues.	Review and Submit Comments by June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 7.1014	January 1, 2013
Proposed by	Contact
Probate and Mental Health Advisory Committee	Douglas C. Miller
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### Executive Summary and Origin

Proposed rule 7.1014 of the California Rules of Court would implement a new statutory requirement regarding a court in which a petition for the appointment of a guardian of the person of a minor has been filed. Such a court must communicate with courts in all other California counties where family law custody or visitation proceedings concerning the minor were previously filed before determining the appropriate venue for the guardianship proceeding.

The proposed rule is a response to a provision in the new law that directs the Judicial Council to adopt rules of court to implement the intercourt communication mandate of the law by January 1, 2013.

### Background

Before 2012, guardianship venue when the proposed ward had previously been the subject of custody or visitation litigation under the Family Code was the county where the custody matter was filed, regardless of where the proposed ward lives when the guardianship is filed.<sup>1</sup> Legislation effective January 1, 2012 changed that rule.<sup>2</sup>

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<sup>1</sup> See *Greene v. Superior Court* (1951) 37 Cal.2d 307, at 310–312.

<sup>2</sup> Assem. Bill 458; Stats. 2011, ch. 102. Unless otherwise stated, all code references are to the Probate Code. A link to the legislation, which amended section 1514 and added sections 2204 and 2205, follows this Invitation to Comment. The venue provisions are in sections 2204 and 2205.

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

New Probate Code section 2204(a) establishes a presumption in favor of venue in the county where the guardianship case is filed if the proposed guardian and the proposed ward have resided there for at least six months or since the minor's birth if he or she is less than six months old. If they have not, the presumption is in favor of venue in a county where a previous family law custody or visitation proceeding was filed concerning the proposed ward. Either presumption can be overcome if the guardianship court determines that action to be in the best interests of the minor.<sup>3</sup>

Section 2204(b) mandates communications between the court where the guardianship is filed and each court where a family law custody or visitation matter concerning the proposed ward was previously filed before the guardianship court makes its venue determination. Provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) concerning similar communications between courts of different states, codified in California in Family Code section 3410, apply to the communications between California courts under section 2204(b).<sup>4</sup>

Section 2204(b)(5) directs the Judicial Council to adopt rules of court to implement the provisions of section 2204(b) by January 1, 2013.

## **The Proposal**

Proposed rule 7.1014 is a response to the Legislature's direction.

The new rule would provide for two kinds of communications between courts: mandatory substantive communications between judicial officers in the two or more affected courts (subd. (b)); and optional preliminary communications between representatives of these courts (subd. (c)). Except in small courts—those with four or fewer authorized judges, which may have insufficient staff available to make preliminary communications—the rule would require preliminary communications to be between court staff of the guardianship court and staff or judicial officers of the family court or courts.

This difference between substantive and preliminary communications is proposed because persons interested in the guardianship case must be informed about substantive communications under subdivision (b) and must be given access to the record of those communications, but preliminary communications under subdivision (c) of the rule are exempt from these

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<sup>3</sup> A custody or visitation proceeding is defined in section 2204(c) as a "proceeding described in Section 3021 of the Family Code that relates to the rights to custody or visitation of the minor under Part 2 (commencing with Section 3020) of Division 8 of the Family Code." Seven types of proceedings are listed in Family Code section 3021. They are: proceedings for dissolution or nullity of marriage or for legal separation; actions for exclusive custody under Family Code section 3120; determinations of physical or legal custody or visitation in proceedings under the Domestic Violence Prevention Act (Fam. Code, § 6200, et seq.) or under the Uniform Parentage Act (Fam. Code, § 7600, et seq.); and proceedings brought by a district attorney to determine physical or legal custody or visitation under Family Code section 17404.

<sup>4</sup> See section 2204(b)(4). The reference to section 3140 in paragraph (4) is a typographical error. Corrective legislation has been introduced this year (Assem. Bill 2683, filed on March 12, 2012). The proposed rule refers to Family Code section 3410. A copy of that code section follows this Invitation to Comment.

requirements under Family Code section 3410(c) and proposed rule 7.1014(c)(5). If nonexempt communications are made only by judicial officers in the guardianship court and these officers do not make the exempt preliminary communications, errors will less likely be made in determining which communications are exempt than would be the case if both kinds of communications are routinely made by judicial officers in the guardianship court.

There is also a difference between recordkeeping requirements under the proposed rule and those requirements under Family Code section 3410. Preliminary communications under the rule would not be exempt from the requirement of recordkeeping despite the discretionary exemption of similar communications from recordkeeping in section 3410(c) and the fact that access to the records of preliminary communications under the rule need not be given to persons interested in the guardianship. See rule 7.1014(c)(4) and (5).

This difference is proposed because of the mandatory role of guardianship court staff in preliminary communications under the rule. The contents of those communications—including the age, nature and content of prior orders affecting the proposed ward in the family law matters and the identity of the responsible judicial officer (or officers) in the family law court (or courts)—would be delivered by staff of the guardianship court to the judicial officer of that court for use in his or her communications with judicial officers of the other courts. All or most of the information obtained by staff from those courts would necessarily be in writing, or reduced to writing, for that purpose. Requiring a written record of preliminary communications will provide greater assurance that this sound practice will be followed. The committee contemplates that guardianship court staff will quickly develop written checklists that can become the heart of the written record of preliminary communications under the rule.

Rule 7.1014(c)(1) would list recommended information about the family law proceedings to be collected by the guardianship court in preliminary communications. The list is neither mandatory nor exclusive and includes any additional information desired by the judicial officer of that court, but the listed items would provide that officer with a thorough briefing about the prior family law proceedings for use in substantive discussions with judicial officers in the other court or courts. Responding family law courts are encouraged to provide as much of the listed information as is reasonable under the circumstances.

Rule 7.1014(b) would state the main issue to be determined in inter-court communications under the rule, consistent with the standard for guardianship venue in a county other than the minor's county of residence under section 2201(b): the county that is in the best interest of the proposed ward.

Paragraph (1) of that subdivision identifies the responsible judicial officers in the family law courts with whom the substantive communications would occur. In order, these would be (1) the judicial officer currently assigned to the case; (2) if none (potentially a common occurrence because the family law matter might be several years old with nothing pending for decision when

the guardianship case is filed), the managing or supervising judge of the court's family law division, if any; or (3) if none, the court's presiding judge or his or her designee.

Rule 7.1014(b)(2) would address the situation where three or more courts are involved because more than one family law proceeding concerning the ward was filed in two or more counties. The preference is for simultaneous communications between all affected courts, but if that cannot be accomplished, the record of substantive communications between some of the courts must be provided to the judicial officer of any nonparticipating court at or before the later substantive communication between the guardianship court and the latter court.

Rule 7.1014(b)(4) would identify who must be informed of and given access to the record of substantive communications between judicial officers under the subdivision. Family Code section 3410(d) limits the persons so entitled to parties—persons who have filed pleadings in the case. The proposed rule would extend that definition to include persons entitled to notice of the hearing on the guardianship appointment petition because (1) venue determinations under the rule and section 2204 will often be made before any parties other than the petitioner will have appeared in the case, (2) persons entitled to notice in guardianship and other probate matters retain some of the rights and characteristics of parties in other civil litigation even though they have not filed pleadings in the case, and (3) persons entitled to notice of the hearing of the appointment petition in the guardianship will include the parties in the prior family law matters in most situations.

Rule 7.1014(e) would refer to Family Code section 3410(e) for the definition of a record of a communication. That definition is as follows:

(e) For the purposes of [section 3410], "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

### **Alternatives Considered**

Because of the legislative mandate, the advisory committee did not consider alternatives to a rule of court. The committee did consider merely incorporating the provisions of Family Code section 3410 into the intrastate court communications required by Probate Code section 2204(b), but decided to provide for the exceptions to section 3410 noted above, for the reasons stated. In particular, the committee strongly supported the requirement that preliminary communications must be made by guardianship court staff, to reduce the possibility of confusion between preliminary and substantive communications when a court is deciding which communications must be provided to interested parties.

The committee also considered but elected to delete as unnecessary a provision stating that substantive communications between judicial officers could be in person, by telephone, or electronic.

### **Implementation Requirements, Costs, and Operational Impacts**

The obligation of communications between courts now required by law and implemented by the proposed rule will increase staff work in guardianship courts and judicial officer time and effort in those courts and in affected family law departments. These communications will be required in all guardianship cases in which a proposed ward was the subject of a family law custody or visitation matter previously filed in a different county, not merely those in which petitions for transfer have been filed.<sup>5</sup>

On the other hand, the required consultations between courts should result in venue decisions in many cases that eliminate the need for interested persons to file such petitions and for courts to hear and decide them—including requests for transfer made by guardianship petitioners under the former law in which they sought to transfer their guardianship cases to the counties where they and their proposed wards currently live, after having been compelled by that law to file their cases in counties where family law custody matters involving their wards were previously filed. Over time, the new law, including the consultation process implemented by the proposed rule, should reduce the total cost to interested parties and courts of determining proper venue in guardianship cases subject to the rule.

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<sup>5</sup> A petition to transfer is the probate guardianship and conservatorship analogue to a motion for change of venue in a civil action. See sections 2210–2217.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposed rule appropriately address the legislative mandate?
- Should the rule provide for allocation of the cost of responding to preliminary communications from guardianship courts to family law courts requesting information about family law custody proceedings? If so, what provision should be made?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal reduce or increase costs? In the short term (within two years)? Over a longer term? For guardianship courts, family law courts, both courts or neither court? If so please quantify.
- What would the implementation requirements be for guardianship and family law courts? For example, training staff (please identify positions and expected hours of training), revising processes and procedures (please describe), changing docket codes in the case management system, or modifying case management system.
- Is the proposed exemption of small courts from the requirement that preliminary communications be made by court staff of the guardianship court (proposed rule 7.1014(c)(3)) necessary or helpful for such courts, and is the exemption sufficient to address all special difficulties small courts may have in implementing the rule?

### Attachments and Links

1. Cal. Rules of Court, rule 7.1014, at pages 7–9
2. Assembly Bill 458, 2011 Legislature, at: [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0451-0500/ab\\_458\\_bill\\_20110725\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0451-0500/ab_458_bill_20110725_chaptered.pdf)
3. Family Code section 3410, at page 10

## Rule Proposal

Rule 7.1014 of the California Rules of Court would be adopted, effective January 1, 2013, to read as follows:

1 **Rule 7.1014. Communications between courts in different California counties**  
2 **concerning guardianship venue.**

3  
4 **(a) Purpose of rule**

5  
6 This rule concerns communications between courts about guardianship venue  
7 required by Probate Code section 2204(b). These communications are between the  
8 superior court in one California county where a guardianship proceeding has been  
9 filed (referred to in this rule as the guardianship court), and one or more superior  
10 courts in one or more other California counties where custody or visitation  
11 proceedings under the Family Code involving the ward or proposed ward were  
12 previously filed (referred to in this rule as the family court or courts, or the other  
13 court or courts).

14  
15 **(b) Communications between judicial officers**

16  
17 Before making a venue decision on a petition for appointment of a general guardian  
18 in a guardianship proceeding described in (a), or a decision on a petition to transfer  
19 under Probate Code section 2212 filed in the proceeding before the appointment of  
20 a guardian or temporary guardian, the judicial officer responsible for the  
21 proceeding in the guardianship court must communicate with the judicial officer or  
22 officers responsible for the custody proceeding or proceedings in the family court  
23 or courts in the other county or counties, concerning which county provides the  
24 venue for the guardianship proceeding that is in the best interests of the ward or the  
25 proposed ward.

26  
27 (1) If no currently responsible judicial officer in the family court or courts can be  
28 identified, communication must be made with the managing or supervising  
29 judicial officer of the family law departments of the other court or courts, if any,  
30 or with the presiding judge of the other court or courts or his or her designee.

31  
32 (2) If courts in more than two counties are involved, simultaneous communications  
33 between judicial officers in all of the courts are recommended, if reasonably  
34 practicable. If communications are made between some but not all involved  
35 courts, the record of these communications must be made available to the  
36 appropriate judicial officer or officers of the non-participant court or courts at or  
37 before the time the judicial officer of the guardianship court communicates with  
38 them.

- 1  
2 (3) A record must be made of all communications between judicial officers under  
3 this subdivision.  
4  
5 (4) The parties to the guardianship proceeding, including a petitioner for transfer;  
6 all persons entitled to notice of the hearing on the petition for appointment of a  
7 guardian; and any additional persons ordered by the guardianship court must  
8 promptly be informed of the communications and given access to the record of  
9 the communications.  
10  
11 (5) The provisions of Family Code section 3410(b) apply to communications  
12 between judicial officers under this subdivision, except that the term  
13 “jurisdiction” in that section refers to “venue” in this context, and the term  
14 “parties” in that section refers to the persons listed in (4).

15  
16 **(c) Preliminary communications**

17  
18 To assist the judicial officer in making the communication described in (b), the  
19 guardianship court may have preliminary communications with the family court or  
20 courts in the other county or counties to collect information about the family court  
21 proceedings or for other routine matters, including calendar management, and  
22 scheduling.

- 23  
24 (1) The guardianship court should attempt to collect and the family court or courts  
25 are encouraged to provide, as much of the following information about the  
26 family court proceedings as is reasonable under the circumstances:  
27  
28 (A) The case number or numbers and the nature of the family court proceedings;  
29  
30 (B) The names of the parties to the family court proceedings, including contact  
31 information for self-represented parties; their relationship or other  
32 connection to the ward or proposed ward in the guardianship proceeding;  
33 and the names and contact information of counsel for the parties represented  
34 by counsel;  
35  
36 (C) The current status (active or inactive) of the family court proceedings and  
37 whether any hearings are set for future dates in those proceedings. If there  
38 are hearings scheduled in the future, their dates and times, locations, and  
39 nature;  
40  
41 (D) The contents and dates filed of orders of the court or courts in the family  
42 court proceedings that decide or resolve custody or visitation issues  
43 concerning the ward or proposed ward in the guardianship proceeding;



1  
2 (E) Whether any orders of the family court or courts are final, were appealed  
3 from, or were the subject of extraordinary writ proceedings, and the current  
4 status of any such appeal or proceeding;  
5

6 (F) The court branches and departments where the family court proceedings  
7 were assigned and where those proceedings are currently assigned or  
8 pending;  
9

10 (G) The identity of the judicial officer or officers currently assigned to or  
11 otherwise responsible for the family court proceedings; and  
12

13 (H) Other information about the family court proceedings desired by the  
14 responsible judicial officer in the guardianship court.  
15

16 (2) Except as provided in (3), preliminary communications under this rule must be  
17 between court staff of the courts involved or between staff of the guardianship  
18 court and judicial officers of the family court or courts.  
19

20 (3) In guardianship courts with four or fewer authorized judges, preliminary  
21 communications under this rule may be between judicial officers of the  
22 guardianship court and judicial officers or staff of the family court or courts.  
23

24 (4) The guardianship court must make a record of the information obtained in  
25 preliminary communications under this rule. “Information obtained” under this  
26 paragraph includes the identity, position held, and contact information of any  
27 persons connected with the family court or courts who were contacted, and the  
28 dates of any communications.  
29

30 (5) Family Code section 3410(c) applies to preliminary communications under this  
31 rule, except as provided in (4).  
32

33 **(d) Applicability of rule to petitions to transfer filed after the appointment of a**  
34 **guardian or temporary guardian**  
35

36 Subdivisions (b) and (c) of this rule may, in the discretion of the guardianship  
37 court, apply to petitions for transfer described in Probate Code section 2204(b)(2).  
38

39 **(e) “Record” under this rule**  
40

41 “Record” under this rule has the meaning provided in Family Code section 3410(e).

### **Family Code section 3410**

3410. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this part.
- (b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
- (c) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.
- (d) Except as otherwise provided in subdivision (c), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.
- (e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.