

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR18-29

Title	Action Requested
Juvenile Law: Guardianship Information	Review and submit comments by June 8, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise forms JV-330 and JV-350	January 1, 2019
Proposed by	Contact
Family and Juvenile Law Advisory Committee	Corby Sturges, Attorney
Hon. Jerilyn L. Borack, Cochair	415-865-4507 phone
Hon. Mark A. Juhas, Cochair	corby.sturges@jud.ca.gov

Executive Summary and Origin

The Family and Juvenile Law Advisory Committee proposes revising two forms to update legal information covering the establishment, supervision, modification, and termination of guardianships in juvenile court proceedings in language and a format easily understood by a person not trained in law. The proposal is needed to comply with an ongoing statutory mandate. Revisions were also suggested by child welfare departments, county counsel's offices, juvenile courts, and the Judicial Council's Probate and Mental Health Advisory Committee.

The Proposal

The Family and Juvenile Law Advisory Committee proposes revising two Judicial Council forms to give accurate legal information to guardians and prospective guardians appointed by the juvenile court. Much of the information in the pamphlet is out of date; the pamphlet was last revised in 2001.

The revisions are needed to conform to the continuing mandate in section 68511.1 of the Government Code, which requires the council to develop "a pamphlet explaining the nature of a guardianship of a minor and the rights, duties, and obligations of a person serving as guardian of a minor." (Gov. Code, § 68511.1.) The revisions are also intended to fulfill the statutory mandate to use "language easily understood by a lay person not trained in law." (*Ibid.*) The proposed revisions will help persons not trained in law to understand the process of appointing and supervising a guardian in a juvenile court proceeding as well as the duties of a guardian. Better-informed guardians will, in turn, reduce the need for court intervention after appointment.

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 These proposals are circulated for comment purposes only.

Specifically, the committee proposes, effective January 1, 2019, to:

1. Revise *Guardianship Pamphlet (Juvenile)* (form JV-350) to:
 - Clarify and update legal information, including information about eligibility for financial support and other benefits;
 - Expand the pamphlet's scope to include juvenile justice proceedings; and
 - Use plain language and clear formatting to convey information to prospective guardians.¹

2. Revise *Letters of Guardianship (Juvenile)* (form JV-330) to:
 - Indicate that the form applies to all guardianships established by the juvenile court, whether in child welfare proceedings, under Welfare and Institutions Code² sections 360 and 366.26, or in juvenile justice proceedings, under section 728.
 - Specify that the guardian's powers and duties are enumerated in the Probate Code even though the guardian is appointed by the juvenile court;
 - Inform a prospective guardian of the authority, added by Senate Bill 438 (Stats. 2017, ch. 307), to name a successor guardian in the assessment for appointment of an initial guardian;
 - Indicate clearly that the juvenile court, not the probate court, retains jurisdiction to supervise, modify, and terminate the guardianship; specify that this supervision includes the authority to appoint a successor guardian and to approve moving the child's residence out of California;
 - Separate the guardian's affirmation from the clerk's witness;
 - Separate the clerk's witness, which must be completed on the original Letters, from the clerk's certification of a true copy, which must be completed only when the clerk issues a certified copy of the form; and
 - Expand the notice of the purpose and intended use of the Letters.

Alternatives Considered

The committee considered deferring revision of the forms, but determined that updates and clarification were urgently needed based on requests from multiple stakeholders and the Probate and Mental Health Advisory Committee.

Implementation Requirements, Costs, and Operational Impacts

The proposal would require courts to create copies of the updated forms. Courts that issue paper copies of the guardianship pamphlet would incur more costs than courts that distribute the pamphlet electronically. All courts would incur costs to produce hard copies of the revised *Letters of Guardianship*, but, because that form is issued on a case-by-case basis, there may be no additional printing costs imposed. Courts would also need to integrate the revised Letters into

¹ Please note that form JV-350 is formatted as a memorandum for public circulation. This format is intended to highlight proposed changes and does not indicate that the committee intends to recommend that the council adopt it. Formatting suggestions are welcome.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

their electronic case management systems. The revisions should make the process clearer and more accessible for guardians and prospective guardians, thereby reducing the overall time and cost of the process for courts, justice partners, and attorneys, too.

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 proposal appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms JV-330 and JV-350, at pages 4–13
2. Gov. Code, § 68511.1,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=68511.1
3. Sen. Bill 438,
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB438

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CASE NAME:	
LETTERS OF GUARDIANSHIP (JUVENILE)	CASE NUMBER:

LETTERS

1. (Name): _____ is appointed guardian of the person
 of (child's name): _____ (date of birth): _____
 with the authority and responsibility to make decisions and provide for the child's care, custody, control, education, residence, and medical treatment as set forth in the parts of sections 2351–2358 of the Probate Code that apply to guardianships.
2. Other powers granted or conditions imposed (specify):

continued on Attachment 2.

AFFIRMATION

3. **I, the person named in 1, solemnly affirm** that I will perform the duties of guardian according to law. **I have received a copy of Duties of Guardian (form GC-248).**
- Signed on (date): _____ at (place): _____, California.

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE OF APPOINTEE)

WITNESS, clerk of the court, with seal of the court affixed:

(SEAL)

Date: _____

Clerk, by _____, Deputy

NOTICE

The juvenile court named above will supervise this guardianship. Any request to change or end the guardianship, including a request to move the child's residence out of California or to appoint a successor guardian, must be filed in the juvenile court using Request to Change Court Order (form JV-180).

Continued on the next page

CHILD'S NAME:	CASE NUMBER:
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**IMPORTANT NOTICE
TO GUARDIAN OF CHILD**

This form, known as *Letters of Guardianship*, is evidence of your appointment as guardian of the child. The *Letters* stay in effect until the guardianship is ended by the child reaching 18 years of age, by the child's emancipation or adoption—by you or another person—or by order of the juvenile court.

To verify your appointment to school personnel, medical personnel, and other service providers, you will need to show them a certified copy of the *Letters*. Be sure to keep this form in a safe place. If you can't find the form, you will need to request a new, certified copy from the clerk of the juvenile court. You may be charged a fee for the certified copy.

CERTIFICATION

I certify that this is a correct copy of the original form on file in my office and that the *Letters* issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

(SEAL)

Date:

Clerk, by _____, Deputy

GUARDIANSHIP PAMPHLET

(JUVENILE COURT)

A **legal guardianship** is a court order that gives a person who is not a child's parent the responsibility for the care, custody, control, education, and medical treatment of the child. This pamphlet gives general information about becoming the legal guardian of a child in a **juvenile court** case. It explains how to ask to become the child's guardian and discusses a guardian's rights and duties. If you want to become the guardian of a child who does not have a juvenile court case, you need to ask the probate court instead. Read Guardianship Pamphlet (Probate Court) (form GC-205) to find out how. If you need more information or have specific questions, think about talking to an attorney.

WHAT IS A LEGAL GUARDIAN?

A child's legal guardian, also known as a *guardian of the person*, is

- An adult.
- Not the child's parent.
- Given legal powers and duties to take care, custody, and control of the child.
- By court order.

A guardian may be the child's relative—such as an aunt, uncle, or adult sibling—but does not need to be.

HOW TO BECOME THE LEGAL GUARDIAN OF A CHILD IN A JUVENILE COURT CASE

The juvenile court decides *petitions*, filed by social workers or probation officers, asking the court to remove children from their parents' homes because the children cannot live there safely. If the court orders a child removed from home, the child will need a place to live. If you know a child who was removed from home and you are willing and able to take care of the child as a *foster parent*, let the child's social worker or probation officer know as soon as you can. Ask about applying and getting trained to be a *resource family*.

Foster parents have the right to attend their foster child's court *hearings* and to give the court information about the child's needs. Other caregivers and relatives can also give the court written information. If you're a relative, even if you're not the child's foster parent, think about getting involved this way in the child's case.

The court will usually order the social worker or probation officer to offer *reunification services* to the family for up to a year to help the child return home safely. In some cases, though, the

court decides that the child cannot be safely returned home even after services are offered. If the court doesn't order any services, or orders the services to stop, the social worker or probation officer will recommend to the court a *permanent plan* for the child's long-term custody and care.

Legal guardianship is one possible permanent plan. It requires appointment by court order and is intended to last until the child turns 18. If you are the child's adult relative, extended family member, current or former foster parent, or another adult, the department and the court may consider appointing you the child's guardian. If you want to become the child's guardian, tell the social worker or probation officer and write a letter to the judge.

After the juvenile court orders a guardianship, the court will supervise the guardianship. The juvenile court can make orders to add or remove the guardian's powers and duties, to direct the guardian to take specific actions, or to remove and replace the guardian.

IMPORTANT: The juvenile court will not end the guardianship and return custody to the parent unless it finds that something has changed and that ending the guardianship is best for the child.

LEGAL PROCESS

The court will appoint you as guardian only after a hearing and only if you agree to serve. First, you will need to complete some legal forms. The social worker or probation officer will visit your home, make sure you're eligible, and write a report, called an *assessment*, for the court.

When the court hearing is scheduled, you will get *notice*, an official form telling you when and where the hearing will be. You have a right to go to the hearing and talk to the judge. The child's parents and other interested persons can also go to the hearing and tell the judge whether they think you would be a good guardian.

The court will read and consider the agency's report and all the other reasons for and against making you the child's guardian. If the court decides that guardianship is best for the child and that you would be a good guardian, the court will appoint you.

If the court appoints you as guardian, take the court order to the clerk's office and get at least one certified copy of *Letters of Guardianship* (form JV-330) as proof that you are the child's guardian. Take a certified copy of the Letters with you whenever you take the child to the doctor or sign the child up for school. Keep the Letters in a safe place; if you lose them, you will need to get another certified copy from the court.

NOTE: If more than one person asks to be appointed guardian, ask the social worker or probation officer to consider naming you as the *successor guardian* in the assessment if they don't recommend your appointment as the first guardian. That means that, even if you're not appointed, you could be assessed and appointed if the first guardian can't continue to serve.

GUARDIANSHIP OR ADOPTION?

Guardianship of the person *suspends* the parents' rights and duties to make decisions about *care, custody, and control* of the child. As guardian, you will hold those rights and duties. A child in a guardianship, however, can still inherit property from the parents. (If the child owns or might inherit any property, the court will also consider appointing a *guardian of the estate*. This doesn't happen very often in juvenile court.)

NOTE: The juvenile court will supervise the guardianship as long as it lasts. The court can order you to take specific actions, to change your powers and duties, and to remove you as guardian. In particular, the court can order that the parents or other relatives be allowed to visit or spend time with the child. As the guardian, you must obey all court orders related to the guardianship.

The guardianship ends automatically when the child turns 18 and becomes a legal adult. The court may end the guardianship before the child turns 18, but, as noted earlier, the court won't do that unless it finds that the child's best interests require it.

Adoption, on the other hand, *ends* all legal rights and duties, including inheritance and visitation rights, between the birth parents and the child. The legal relationship with all other "birth relatives" also ends when adoption is final unless the court approves an agreement for contact after adoption. When you adopt a child, you become that child's legal parent, with the same parental rights and duties as if that child had been born to you. The court does not supervise an adoption. An adopted child becomes your own child in all respects; you will always be your adopted child's parent.

Because adoption is the most stable permanent plan for a child, it is the legally preferred plan. Government programs (*adoption assistance*) can give financial help and services for adopted children with special needs. You may want to discuss this option with your attorney or the child's social worker or attorney.

GUARDIAN OR FOSTER PARENT?

A guardian has many more legal duties than a foster parent. Guardianship can give a child a stable home and relationship. Unlike foster care, which can end at any time, guardianship is a formal, long-term commitment by the guardian to the child. Guardianship may also affect the amount of government financial support a child living with a relative caregiver can receive. (For more information about financial support, see page x, below.)

A foster parent's main duties are to furnish food, clothing, housing, and nurturing care to a child. The foster parent is always under the supervision of the child welfare or probation department. Placement in foster care after the court orders family services to stop means that the department and the court will remain involved in the life of the child and foster family on a regular, continuing basis.

When it appoints a guardian, the juvenile court may keep dependency or delinquency jurisdiction over the child or end that jurisdiction. But even if it ends dependency or delinquency jurisdiction, the juvenile court will continue to supervise the guardianship.

GUARDIAN'S RIGHTS AND DUTIES

Sections 2351–2360 of the Probate Code govern the rights and duties of a guardian of the person. As guardian, you must take care, custody, and control of the child and arrange for the child's education and medical treatment until the child turns 18, you are removed as guardian, or the guardianship ends for another reason. Your specific rights and duties include:

RIGHTS

Child's Residence

You have the right to decide where the child will live. Ordinarily, the child will live with you, but you can arrange for the child to live somewhere else if that's necessary to meet the child's needs and in the child's best interests. You cannot, however, send the child to live with a parent unless you first get a court order.

If you want to move the child to a different home in California, you need to send written notice to the juvenile court and specific other people, including the child if 12 years old or older, the child's attorney, and the child's parents, at least 15 days *before* you plan to move. Use Judicial Council form GC-079 to send the required notice; follow the instructions on that form carefully. You must also send notice on form GC-080 within 30 days *after* you move; that form also includes detailed instructions that you should follow.

If you plan to move the child to a home outside California, you must get the juvenile court's permission *before* the child leaves the state. Use Judicial Council form GC-085 to ask the juvenile court for permission to move out of state. You'll need to send notice of the hearing and a copy of your request to the child's parents and others. If the court grants your request, it will also require you to bring the child back to California or start a new guardianship proceeding in the place of new residence within a specific period of time.

NOTE: Other states have different laws for guardianships. If you plan to move to another state, find out about your legal rights and duties in that state.

Education

You have the same right as a parent to choose the child's school and learning program. In special situations, the court may also be involved in this decision. Pay attention to how the child does in school and meet with the teacher. You also have the right to request special education and related services from schools or other providers and to attend meetings about educational services.

Medical Care

You have the right to give permission (*consent*) for most medical or dental treatment for the child. But for any surgery that is not an emergency, when a child 14 years old or older objects, you must get court approval first. In some cases, the law also allows older and more mature

children to get some medical treatment on their own without your approval. These cases can include outpatient mental health treatment, reproductive health care, and drug and alcohol treatment.

Social Services

You have the right to arrange services for a child with special needs from government programs like Head Start, regional centers for developmentally disabled children, health care services, and after-school care.

Marriage

Both you and the court must give permission before the child can get married.

Armed Services

You must give permission for the child to enlist in the armed services.

Driver's License

You must give permission for the child to get a driver's license. (See also the duties listed below.)

DUTIES

In addition to the duties that accompany those rights, as guardian you are responsible for the child's well-being and the consequences of the child's actions. Although these responsibilities may seem challenging, remember that a parent would have the same duties toward the child.

Harm Caused by the Child's Driving

You must give written permission for the child to get a driver's license. You will also need to get insurance in case the child has an accident while driving.

You will have to pay for harm caused by the child when driving. However, the law limits the amount of money that you can be forced to pay. If you're worried about this, talk to a lawyer.

If you change your mind later, you can sign a form at the DMV to cancel the child's driver's license.

Harm Caused by the Child's Conduct

You are usually required to pay only for harm to another person caused by the child's *willful* misconduct. Even then, the law often limits how much you'll need to pay. On the other hand, you may sometimes be required to pay for harm caused by the child's *negligent* (or careless) conduct. Check with an attorney if you're worried about this possibility.

Financial Support of Child

The parents remain legally responsible for the child's support, but you can voluntarily accept this responsibility. You may be able to get help from the government to pay for the child's care.

Additional Responsibilities

In addition, the judge may require you to accept other special responsibilities. For example, the judge may order you to take the child to visits with his or her parents at specific times and places. Judicial Council form GC-248 gives more details about the duties of a guardian.

FINANCIAL HELP

If you have trouble paying for the child's needs, you may be able to get financial help from the government. The amount of money can depend on the child's eligibility for assistance and whether the child is your relative.

Before you become the child's guardian, discuss how to get financial help with your attorney, if you have one, or the child's social worker, probation officer, or attorney.

IF THE CHILD IS RELATED TO YOU

If you become the legal guardian of a child who is your relative, you might be able to get financial help from the government.

Kinship Guardianship Assistance Payment (KinGAP) Program

If you are the relative guardian of an eligible former foster child, you can receive monthly KinGAP payments if (1) the court closes the dependency case, (2) you make a written agreement with the social worker or probation officer, and (3) the child has lived with you for six months in a row. In California, the payments are the same amount as the foster care payments the child received in foster care. You can continue to receive KinGAP payments if you move with the child to another county or state, but the amount may change in another state. If the youth continues to live with you, receive your financial support, and met all other eligibility requirements, KinGAP payments or, in some cases, foster care payments can continue after the child turns 18, even though you won't be the guardian anymore. Payments end when the child turns 21.

NOTE: For KinGAP purposes, California law defines *relative* to include not only a person related by blood, adoption, or affinity (marriage), but also an approved nonrelative extended-family member (NREFM), an Indian child's tribe or an Indian custodian, and a child's current foster parent who has been identified as the child's "permanent connection. If you're not sure whether you fit the definition, ask the social worker or probation officer.

CalWORKS (welfare)

A relative guardian who cannot get KinGAP payments can still get CalWORKS support. If the guardian has a low income, they can get a full CalWORKS grant. A guardian whose income is too high to qualify for a full grant can still receive a "child-only" CalWORKS grant.

Health Care–Medi-Cal: A child is eligible for Medi-Cal as long as they are eligible for KinGAP.

Independent Living Services: Beginning at age 16, a child in a relative guardianship under KinGAP may receive Independent Living Services to help them become a successful adult.

IF THE CHILD IS NOT RELATED TO YOU

In California, you can get the same government financial help as a foster parent if you are the guardian of a child who is not your relative. But if you move with the child to another state, California will stop making payments. The other state might not give you the same help.

Foster Care Payments

If you are the nonrelative guardian of a former foster child, you can get foster care payments and other services. These payments are the same amount that a foster parent receives, and they are higher than CalWORKS. The state will check every six months to make sure the child is still eligible. If the child continues to live with you, receive your financial support, and meet all other eligibility requirements, foster care payments can continue after the child turns 18 even though you won't be the guardian anymore. Payments end when the child turns 21.

Health Care–Medi-Cal: A child is eligible for Medi-Cal as long as they are eligible for foster care payments.

Independent Living Services: Beginning at age 16, a child in a juvenile court guardianship may receive Independent Living Services to help them become a successful adult.

OTHER FINANCIAL HELP

If KinGAP or foster care payments are not allowed, Social Security, Supplemental Income (SSI), Medi-Cal, or other financial help may still be available.

MORE INFORMATION

You can get more information about financial options. Ask the child's social worker, probation officer, or attorney, or your own attorney. Here is a list of helpful local telephone numbers:

HOW IS A LEGAL GUARDIAN REPLACED?

Any adult can ask the juvenile court to remove you as guardian and replace you with a new (or *successor*) guardian. If the child is 14 years old or older, they can also ask the court to appoint a new guardian. The judge will decide what to do based on what is in the child's *best interests*. The judge will look to see if you have performed your duties as guardian properly. If you don't want to be the guardian anymore, you can also ask the court for permission to resign.

HOW DOES A GUARDIANSHIP END?

- The guardianship ends automatically when the child:
 - Turns 18 and becomes a legal adult,
 - Is adopted, or
 - Gets married or is legally emancipated for another reason.

- Sometimes, the juvenile court will end a guardianship before the child turns 18. But a guardianship is supposed to be a permanent relationship. The court will end a safe and stable guardianship only if that is in the child's best interests, even if the parent asks for custody and has fixed whatever problems led to juvenile court jurisdiction and your appointment as guardian.