

Judicial Council of California

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INVITATION TO COMMENT

W18-08

Title	Action Requested
Probate Conservatorships: Interstate Transfer	Review and submit comments by February 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve forms GC-363, GC-364, GC-365, and GC-366	September 1, 2018
Proposed by	Contact
Probate and Mental Health Advisory Committee	Corby Sturges, corby.sturges@jud.ca.gov
Hon. John H. Sugiyama, Chair	415-865-4507

Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends approving four Judicial Council forms for optional use to transfer conservatorship proceedings into and out of California under the California Conservatorship Jurisdiction Act (CCJA). The CCJA provides the exclusive basis for determining whether a California court, as opposed to a court of another state, has jurisdiction to appoint a probate conservator.

The Proposal

The Probate and Mental Health Advisory Committee recommends that the Judicial Council approve, effective September 1, 2018:

- *Petition to Transfer Probate Conservatorship* (form GC-363);
- *Orders Transferring Probate Conservatorship* (form GC-364)
- *Petition to Accept Transfer of Probate Conservatorship* (form GC-365);
- *Orders Accepting Transfer of Probate Conservatorship* (form GC-366)

for optional use in proceedings to transfer probate conservatorships between states, as defined, in accordance with the requirements of the California Conservatorship Jurisdiction Act (CCJA). ([SB 940; Stats 2014, ch. 553.](#)) The CCJA applies only to general probate conservatorships. It does not apply to proceedings for the care or protection of a minor child, a person with a

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 These proposals are circulated for comment purposes only.

developmental disability, or a person subject to involuntary mental health care or treatment. (Prob. Code, § 1981.)¹

Transfer California conservatorship to another state

The CCJA authorizes a conservator appointed by a California court to petition the court to transfer the conservatorship to another state (the receiving state). (*Id.*, § 2001(a).) If, after a noticed hearing, the court is satisfied that the court in the receiving state will accept the conservatorship and makes specific findings regarding the conservatee’s presence in or significant connections to the receiving state, objections to the transfer, the conservatee’s interests, and the arrangements for care of the conservatee’s person or property in the receiving state, the court must issue an order provisionally granting the petition and direct the conservator to petition the court in the receiving state to accept the conservatorship. (*Id.*, § 2001(d)–(f).) Proposed form GC-363 solicits the information the court needs to make the required findings. Proposed form GC-364 provides a framework for the court to issue findings and a provisional order in conformance with the statutory requirements.

The conservator must then file a petition similar to the one described below in an appropriate court of the receiving state. Once the California court has received both a provisional order accepting the conservatorship from a court of the receiving state and all documents, including any required accounting, required to terminate the conservatorship in California, the court must issue a final order confirming the transfer and terminating the conservatorship in California. (*Id.*, § 2001(g).) Proposed form GC-364 provides a framework for the court to issue the final order.

Transfer out-of-state conservatorship to California

The CCJA also authorizes a conservator appointed in another state, on issuance of an order provisionally transferring a conservatorship proceeding to California, to petition an appropriate court in this state to accept the conservatorship. (*Id.*, § 2002(a)(1).) The petition must include a certified copy of the provisional order of transfer, must state on the first page that the conservatorship is not excluded from the CCJA’s application, and must allege facts showing that the CCJA applies and the requirements for transfer are satisfied. (*Id.*, § 2002(a)(2)–(3).) The petition must also specify any modification needed to conform the conservatorship to California law and include the terms of a proposed final order accepting the conservatorship. (*Id.*, § 2002(a)(4).) A petition for appointment of a temporary conservator may also be filed while this petition is pending. (*Id.*, §§ 1994(a)(3), 2002(a)(5).) Proposed form GC-365 is intended to capture all the information required to be in the petition.

After filing, the petitioner must give notice to all persons entitled to notice of a hearing for appointment of a conservator in both this state and the transferring state, as well as any attorney representing the conservatee in either state. (*Id.*, § 2002(b).) Any person entitled to notice may object to the petition on one or more of four specific grounds: (1) transfer would be contrary to the conservatee’s interests; (2) under the law of the transferring state, the conservator is

¹ Unless otherwise specified, all statutory references are to the Probate Code.

ineligible for appointment in California; (3) under California law, the conservator is ineligible for appointment in California, and the petition does not identify a willing and eligible replacement; or (4) the CCJA does not apply to the conservatorship. (*Id.*, § 2002(c).) The court must promptly appoint an investigator, who must, in turn, promptly investigate the facts related to the specific bases for objection. (*Id.*, §§ 1454, 2002(d), (f).)

Unless the court determines at the hearing that any of the specific grounds for objection applies, the court must provisionally grant the petition and set another noticed hearing, no more than 60 days from the date of the provisional order, to determine whether the conservatorship needs modification to conform to California law and to review the conservatorship. (*Id.*, §§ 1851.1, 2002(f), (h).) Proposed form GC-366 provides a framework for the court to make these provisional orders. Once the court orders provisional acceptance, the appointed court investigator must promptly begin a full review investigation under section 1851.1, which incorporates and augments the requirements for a review investigation under section 1851. (*Id.*, §§ 1851, 1851.1, 2002(g).)

At the modification and review hearing—which the conservatee must attend unless excused—the court may take any action necessary to bring the conservatorship into conformity with California law, including striking or modifying any unauthorized powers. (*Id.*, §§ 1851.1, 2002(h)(1).) The court must also consider the findings in the investigator’s report, including whether the conservatee wishes to petition for termination of the conservatorship, whether the conservatorship is still necessary, and whether the conservator is acting in the conservatee’s best interests. (*Id.*, §§ 1851(a), 1851.1(c), 2002(h)(2).) The court may take any appropriate action in response to the investigator’s report. (*Id.*, § 1851.1(c).) Proposed form GC-366 provides space for the court to specify necessary modifications and to make findings in response to the investigator’s report.

If the court determines that the conservatorship may be modified to conform to California law, the review indicates that the conservatorship remains necessary, then once the court has received a final order transferring the conservatorship to California, it must issue a final order accepting the transfer and appointing the conservator in California. (*Id.*, § 2002(i).) Proposed form GC-366 provides a framework for this final order.

Alternatives Considered

The committee considered not recommending the approval of these forms, as they are not expressly required by the CCJA. However, evidence indicates that litigants are experiencing difficulty articulating the jurisdictional facts needed for a probate court to order transfer of a conservatorship from California to another state or to accept the transfer of a conservatorship proceeding from another state. These forms attempt to address this difficulty by soliciting all the necessary facts and information from petitioners in a framework suitable for incorporation into a court order.

Implementation Requirements, Costs, and Operational Impacts

The implementation requirements and costs of approving the proposed forms are not clear. Short-term training requirements and costs seem likely. It is possible, though, that court staff would need training to implement the CCJA transfer process even without the forms. Operationally, the forms are likely to promote more efficient court operations and use of judicial resources. By soliciting the information needed to support a petition to transfer a conservatorship to or from California, the forms should lead to both faster and better-informed adjudication of transfer petitions. In particular, they will reduce the number of issues needing to be addressed in probate notes or at hearings as well as the frequency and duration of continuances. The forms should also promote access to justice for both conservators and conservatees by facilitating both a faster transfer process and the ongoing protection of the conservatee's interests.

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?
- Would additional forms be useful to facilitate the transfer of conservatorship proceedings into and out of California? If so, please identify the function or purpose of those forms.

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. Proposed new forms GC-363, GC-364, GC-365, and GC-366, at pages 5–12

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:	
CONSERVATORSHIP OF (name):	CONSERVATEE
PETITION TO TRANSFER PROBATE CONSERVATORSHIP	CASE NUMBER:

1. I, (name):
(address):

(telephone):

(e-mail):

the conservator of the person estate in California for the person identified in 2, request that the court order this proceeding transferred to (name of state): (the receiving state).

2. Conservatee's personal information

Name:

Residence address:

(telephone):

(e-mail):

3. For all conservatorships:

a. Conservatee's relationship to receiving state

- (1) The conservatee is physically present in the receiving state; or
- (2) The conservatee plans to move permanently to the receiving state on (date):

Conservatee's residence address in receiving state:

- Same as stated in 2.
- Other:

b. Conservatee's interests (complete one of the following):

- (1) No objection to the transfer of the conservatorship has been made; or
- (2) One or more objections to the proposed transfer have been made. The proposed transfer would be in the best interests of the conservatee for the following reasons (give reasons):

CONSERVATORSHIP OF <i>(name):</i>	CASE NUMBER:
CONSERVATEE	

c. The conservatorship is consistent with the laws of the receiving state and is likely to be accepted by the court in that state because *(give reasons):*

4. For a conservatorship of the person:

a. Petitioner has made or plans to make the following arrangements for the conservatee's care in the receiving state *(describe arrangements):*

b. Petitioner has arranged for the provision of the following services to the conservatee in the receiving state *(describe services):*

5. For a conservatorship of the estate:

a. Conservatee's relationship to receiving state:

(1) Same as stated in 3a.

(2) The conservatee has the following significant connection(s) to the receiving state *(describe all connections):*

(a) Family members and other persons entitled to notice of the proceedings who live in receiving state *(name and address of each):*

(b) The conservatee has been present in the receiving state for a total of _____ months from *(date first arrived):* _____ to *(date last departed):* _____. During that time, the conservatee was absent from the receiving state for a total of _____ months.

(c) The conservatee holds a legal or beneficial interest in the following property located in the receiving state *(describe each piece of property and give street address of real property or location of personal property):*

(d) The conservatee has the following other ties to the receiving state:

Registered to vote in the receiving state *(voter registration number):*

Filed state tax return in receiving state *(tax ID number and year(s) filed):*

Filed local tax return in receiving state *(tax ID number and year(s) filed):*

Registered vehicle in receiving state *(VIN number and license plate number of each):*

Driver's license issued by receiving state *(number):*

(e) Friends and social ties in receiving state *(name and address of each):*

CONSERVATORSHIP OF <i>(name):</i>	CASE NUMBER:
CONSERVATEE	

(f) Public benefits or services received in receiving state *(list each)*:

(g) Other ties *(describe each)*:

b. The petitioner has made the following arrangements for management of the conservatee's property in the receiving state *(describe all arrangements)*:

6. If you have been appointed conservator of both the person and estate for the person named in 2, complete 3, 4, and 5, above.

7. Status of final California accounting: _____

Includes payment of all fees and costs, including attorney's fees.

Date expected:

Date filed:

I declare under penalty of perjury under the laws of the State of California that the information stated on this form is true and correct.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY 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:	
CONSERVATORSHIP OF (name):	CONSERVATEE
ORDERS TRANSFERRING PROBATE CONSERVATORSHIP	CASE NUMBER:

Provisional Order

The court held a hearing a petition to transfer the conservatorship proceeding on (date):

The court finds:

1. Notice of the hearing was given as provided in Probate Code section 2001(b).
2. Based on the evidence presented, it is likely that a court of (state): _____ (the receiving state) will accept the conservatorship.
3. The conservatee is physically present in reasonably expected to move permanently to _____ the receiving state.
4. The conservatee has the following significant connections to the receiving state:
5. No objection to the transfer had been filed, or The transfer would not be contrary _____ to the conservatee's interests.
6. [Person] The plans for the care of and provision of services to the conservatee in the receiving state are reasonable and sufficient.
7. [Estate] The arrangements made for the management of the conservatee's property are adequate.

The court orders:

8. The petition to transfer the conservatorship to (state): _____ is provisionally granted.
9. The conservator is directed to file a petition for acceptance of the conservatorship in an appropriate court of the receiving state.

Date: _____ _____
(JUDICIAL OFFICER)

Final Order

The court has received an order, issued by a court of record of the receiving state, provisionally accepting the conservatorship.

The court has received and, if appropriate, approved all documents, including a final accounting, needed to terminate the conservatorship in California.

The court therefore orders:

10. The transfer of the conservatorship to the receiving state is confirmed.
11. The California conservatorship is terminated.

Date: _____ _____
(JUDICIAL OFFICER)

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:	
CONSERVATORSHIP OF (name):	CONSERVATEE
PETITION TO ACCEPT TRANSFER OF PROBATE CONSERVATORSHIP	CASE NUMBER:

1. Conservatee's personal information

Name:

Residence Address:

2. I, (name):

was appointed conservator for the person named in 1 by a court of record of the state of (specify):
on (date): . My appointment remains in effect.

3. A certified copy of the provisional order of transfer is attached to this petition.

The existing conservatorship is best described under California law as (check all that apply):

- a. A conservatorship of the person (The conservatorship order gives the conservator powers and duties to manage the conservatee's personal needs for physical health, food, clothing, or shelter.)
- b. A conservatorship of the estate (The conservatorship order gives the conservator powers and duties to manage the conservatee's finances and property.)

4. The California Conservatorship Jurisdiction Act applies to this proceeding because:

- a. The conservatee is 18 years of age or older.
- b. The conservatee is not involuntarily committed to a mental health facility or subjected to any other involuntary mental health care or treatment.
- c. The conservatee has not been assessed or diagnosed with a developmental disability.

5. Additional factors relevant to the jurisdiction of the California court:

- a. The conservatee has been physically present in California since (date): _____ and remains present in California.
- b. The conservatee was physically present in California from (date): _____ to (date): _____, ending with six months of the date this petition is filed.
- c. The conservatee has no home state, but has the following significant connections to California.

(1) The following relatives and other persons required to be notified of the conservatorship proceeding are located in California:

(2) The conservatee has been physically present in California during the following periods:

From (date): _____ to (date): _____

CONSERVATORSHIP OF <i>(name):</i> _____ <div style="text-align: right; margin-top: 10px;">CONSERVATEE</div>	CASE NUMBER: _____
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5. c. (3) The following property belonging to the conservatee's estate is located in California:

(4) The conservatee has the following other ties to California *(for example, voter registration, driver's license, tax filing)*:

6. I request that the court:

a. Accept transfer of the conservatorship proceeding identified above and recognize the transferring state's conservatorship order.

b. (1) Appoint me as conservator of the person estate under California law for the person named in 1.
 (2) Appoint *(name):* _____
(mailing address): _____

(telephone number): _____ *(e-mail address):* _____
(relationship to conservatee): _____, who is eligible for appointment under California law,
 as conservator of the person estate for the person named in 1.

c. (1) Adopt the transferring state's conservatorship order, which needs no modifications to conform to California law.

(2) Issue a new conservatorship order as proposed on the attached *Order Appointing Probate Conservator* (form GC-340), which modifies the terms of the conservatorship as needed to conform to California law as follows:

(A) Powers modified:

(B) Duties modified:

(C) Bond modified:

(D) Other information needed:

Additional modifications are included on Attachment 6c(2). *(You may use form MC-205 for this purpose.)*

d. Issue *Letters of Conservatorship* (form GC-350) on qualification.

7. A *Petition for Appointment of Temporary Conservator* (form GC-111) is filed with this petition.

8. The conservatee has has not been diagnosed with a major neurocognitive disorder (MNCD, a.k.a. dementia).

a. A completed *Petition for Exclusive Authority to Give Consent for Medical Treatment* (form GC-380), with *Attachment Requesting Special Orders Regarding Dementia* (form GC-313), is filed with this petition.

b. I intend to petition the court for MNCD powers under section 2356.5 of the Probate Code as soon as the court issues a final order accepting transfer of this conservatorship.

I declare under penalty of perjury under the laws of the State of California that the information stated on this form is true and correct.

Date: _____

_____ _____
 (TYPE OR PRINT NAME) (SIGNATURE)

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:	
CONSERVATORSHIP OF (name):	CONSERVATEE
ORDERS ACCEPTING TRANSFER OF PROBATE CONSERVATORSHIP	CASE NUMBER:

Provisional Order of Acceptance

Findings:

1. Notice of the hearing was given as required by law.
2. A court of record of the State of _____ has issued an order provisionally transferring the conservatorship identified above to California.
3. Based on a review of the results of the preliminary investigation conducted under section 2002(d) and all other evidence before the court:
 - a. The transfer of the conservatorship proceeding to California would not be contrary to the conservatee's interests.
 - b. Under the law of the transferring state, the conservator is eligible for appointment in California.
 - c. (1) The conservator is eligible for appointment in California under California law; or
 (2) The conservator is ineligible for appointment in California under California law, but the petition has identified a person who is willing to serve as conservator and eligible for appointment in California.
 - d. The California Conservatorship Jurisdiction Act applies to these proceedings. This court has jurisdiction to appoint a conservator in these proceedings under section 1993 of the Probate Code.

Orders:

4. The petition to accept the transfer of the conservatorship identified above from (state): _____ to California is provisionally granted.
5. The court investigator must promptly begin an investigation under section 1851.1 of the Probate Code. The investigator must complete the investigation and report its findings in writing as required under section 1851(b)(1) no fewer than 15 days before the date of the hearing set in 6.
6. A hearing is set in this department on _____, no more than 60 days from the date of this order, to determine whether the conservatorship needs to be modified to conform to California law and to review the conservatorship.
 - a. The conservatee must attend the hearing unless excused in accordance with sections 1825 and 1851.1(c) of the Probate Code.

Date: _____ _____
(JUDICIAL OFFICER)

SHORT TITLE	CASE NUMBER:
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Determination of Conformity with California Law and Review of Conservatorship

- 7. Notice of the hearing was given as required by law.
- 8. The conservatee attended was excused from the hearing.
- 9. a. No modification to the original conservatorship order is needed to conform to California law.
- b. The following modifications to the conservatorship order are necessary to conform to California law and are ordered on the attached *Order Appointing Probate Conservator* (form GC-340):
 - (1) Powers modified:

 - (2) Duties modified:

 - (3) Bond modified:

 - (4) Other information needed:

 - Additional modifications are set forth on Attachment 9b(2).

- 10. The court has read and considered the findings of the review investigation conducted in accordance with sections 1851.1(c) and 2002(h)(2) and all other admitted evidence, and finds the following:
- 11. The conservatee does not wish to petition for termination of the conservatorship.
- 12. The conservatee does not object to the person identified below serving as conservator in California.
- 13. The conservatee was informed of the rights to attend the hearing and to be represented by legal counsel of one's choice or, if desired, by counsel appointed by the court.
- 14. The conservatee is still in need of the conservatorship.
- 15. Other (*specify*):

Final Order of Acceptance

16. The court has received a final order from the court of (*state*): _____ transferring the conservatorship to California. The court orders acceptance of the conservatorship.

17. Name:
 Address:
 Telephone: _____ E-mail: _____
 is appointed conservator of the person estate for (*name*): _____
 under California law as specified in the accompanying original conservatorship order form GC-340.
 The clerk is ordered to issue *Letters of Conservatorship* (form GC-350) on the appointee's qualification.

Date: _____  _____
 (JUDICIAL OFFICER)