



# Judicial Council of California

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## INVITATION TO COMMENT

### SPR24-30

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**Title**

Probate Guardianship: Participation of a  
Minor Ward in Court

**Action Requested**

Review and submit comments by May 3, 2024

**Proposed Rules, Forms, Standards, or Statutes**

Amend Cal. Rules of Court, rule 7.1016

**Proposed Effective Date**

January 1, 2025

**Proposed by**

Probate and Mental Health Advisory  
Committee  
Hon. Jayne Chong-Soon Lee, Chair

**Contact**

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### Executive Summary and Origin

The Probate and Mental Health Advisory Committee proposes amending rule 7.1016 of the California Rules of Court to conform to recent legislation that amended Family Code section 3042. The legislation changed the conditions under which a minor child participates or testifies in court in a child custody or visitation proceeding, including a probate guardianship of the person. The committee also proposes amending the rule to conform more closely to statute by narrowing the scope of its application and expanding the protections afforded to wards who are parties, as well as to clarify its requirements and simplify its language.

### Background

The Legislature amended Family Code section 3042 in 2010 to expand the provisions governing a child's participation and testimony in a child custody or visitation proceeding. (Assem. Bill 1050; Stats. 2010, ch. 187.) The legislation required the Judicial Council to adopt a rule of court "establishing procedures for examination of a child witness" and "guidelines on methods other than direct testimony for obtaining information or other input from the child regarding custody or visitation." (*Ibid.*) On the recommendation of the Family and Juvenile Law Advisory Committee

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.*

and the Elkins Family Law Implementation Task Force, the Judicial Council adopted rule 5.250, effective January 1, 2012, to fulfill this mandate.<sup>1</sup>

A probate guardianship of the person gives custody of a minor child to an adult other than the child’s parent. Probate Code section 1514(b)(1) provides that, “[i]n appointing a guardian of the person, the court is governed by” Family Code sections 3020–3032 and 3040–3049, “relating to custody of a minor.” Thus, Family Code section 3042 governs the probate court in appointing a guardian of the person. Effective January 1, 2013, the Judicial Council approved the Probate and Mental Health Advisory Committee’s recommendation to adopt rule 7.1016, governing the participation and testimony of a ward or a proposed ward in a probate guardianship of the person.<sup>2</sup>

In 2021, Senate Bill 654 (Stats. 2021, ch. 768, § 2) amended Family Code section 3042 again. The bill required the Judicial Council to develop or amend rules to implement that section no later than January 1, 2023. (Fam. Code, § 3042(j).) On the recommendation of the Family and Juvenile Law Advisory Committee, the council amended rule 5.250, effective January 1, 2023, to implement the statutory amendments made by SB 654.<sup>3</sup> Amending rule 7.1016 was not considered at that time.

## The Proposal

The proposed amendments to rule 7.1016 would implement the changes to Family Code section 3042 made by SB 654 as they apply to probate guardianships. In particular, SB 654 barred a court from permitting a child to address the court regarding custody or visitation *in the presence of the parties* unless the court found that doing so in the parties’ presence would be in the child’s best interest and stated the reasons for that finding on the record. (Fam. Code, § 3042(f).) The amendment also required the court to provide a way to obtain the child’s input out of the presence of the parties. (*Id.*, § 3042(f)(1).) Proposed amendments to rule 7.1016(e)(1)–(3) would implement those statutory changes as they apply to probate guardianships.

SB 654 also amended section 3042 to impose a duty on the child’s attorney, an evaluator, an investigator, or a child custody recommending counselor to indicate, as soon as feasible, to the judge, the parties or their attorneys, and other professionals serving on the case if a child has changed their preference about addressing the court. (*Id.*, § 3042(h).) Proposed amendments to rule 7.1016(c) would implement those statutory changes as they apply to probate guardianships.

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<sup>1</sup> Judicial Council of Cal., Advisory Com. Rep., *Family Law: Children’s Participation and Testimony in Family Court Proceedings* (Oct. 6, 2011).

All further unspecified references to rules are to the California Rules of Court.

<sup>2</sup> Judicial Council of Cal., Advisory Com. Rep., *Probate Guardianships: Testimony and Alternatives to Testimony of Wards and Proposed Wards in Guardianship Cases* (Aug. 29, 2012).

<sup>3</sup> Judicial Council of Cal., Advisory Com. Rep., *Family Law: Child Custody and Visitation in Cases Involving Abuse by Parent and Child Testimony* (Sept. 2, 2022), pp. 2–3, 7, 9, <https://jcc.legistar.com/View.ashx?M=F&ID=11204080&GUID=A2EE8E73-47E5-40A6-8441-C95EC7CE60D2>.

In addition, the committee proposes amendments that would apply the rule’s general provisions to a ward regardless of whether the ward is a party. The protections in rule 7.1016(c)–(e) and (g) currently apply only to a ward who is not a party. Family Code section 3042, however, does not limit its application to a child who is not a party, and a child may be a party to a family law custody proceeding. In particular, a child may be a party to a custody proceeding brought in the context of a Domestic Violence Prevention Act (Fam. Code, §§ 6211(e)–(f), 6229, 6301(a)) case or an action under the Uniform Parentage Act (Fam. Code, § 7630(a)). (See generally Fam. Code, §§ 3021(e)–(f), 3022.) In the absence of a reason for excluding wards who are parties, proposed amendments to rule 7.1016(c)–(e) and (g) would extend their application to a ward who is a party and wishes to participate in the hearing or testify.<sup>4</sup>

On the other hand, the committee proposes that the rule continue to separately address situations in which a ward who is a party receives a discovery request or is called as a witness by another party. These situations are beyond the scope of Family Code section 3042 because they could entail a ward’s unwilling participation or testimony. (Rule 7.1016(h).) Nevertheless, a rule governing the participation and testimony of a ward in a guardianship proceeding would be incomplete without them.

An additional proposed amendment to rule 7.1016(d) would clarify the distinction between a ward 12 years of age or older, who *must* be permitted to address the court *unless* doing so would not be in the ward’s best interest, and a ward younger than 12 years old, who *may* be permitted to address the court *if* doing so would be in the ward’s best interests.<sup>5</sup>

Further proposed amendments would eliminate the existing distinction between a “proceeding,” to which the rule applies, and “[an]other matter subject to this rule,” which, as used, is actually *not* subject to the rule but a matter to which the court may, in an exercise of discretion, apply all or part of the rule. The amendments would instead specify clearly that the rule applies to a ward’s participation and testimony in a hearing on appointment or removal of a guardian of the person, parental visitation of a ward during a guardianship of the person, or the termination of a guardianship of the person. (Rule 7.1016(b)(1).) The court would have discretion to apply the rule’s provisions to the participation or testimony of a ward in any other hearing in a guardianship of the person or of the estate. (Rule 7.1016(b)(2).)

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<sup>4</sup> Excluding a ward who is a party from the scope of the rule’s protections could be problematic for another reason. Probate Code section 1043(b) authorizes an interested person to appear and make a response or objection orally at a hearing. In line with this statute and probate practice, rule 7.1016(a)(2) would treat a ward as a party if the ward filed a petition or made a response or objection in a guardianship proceeding. A ward who was not a party to a guardianship would thus become a party by virtue of expressing to the court a preference regarding a matter before the court. It does not make sense to afford the protections of Family Code section 3042 to a ward before they have begun to address the court but not afterward.

<sup>5</sup> Rule 7.1016(d)(2)–(3). This distinction aligns with, but is not limited to, the Probate Code’s authorization of a minor child 12 years of age or older to file a petition for appointment of a guardian for themselves and thereby become a party. (Prob. Code, § 1510(a); see also Fam. Code, § 3042(c)–(d).)

## Alternatives Considered

The committee did not consider taking no action because legislation mandated revisions to the rule. The committee considered limiting its proposed amendments to those necessary to conform to the amendments to Family Code section 3042 enacted by SB 654. On reviewing the rule, however, the committee determined that additional amendments were needed to (1) bring the rule into conformity with existing law more generally, (2) clarify its requirements and the scope of its application, and (3) simplify its language.

## Fiscal and Operational Impacts

The proposal is not expected to generate any additional costs for the courts. If there are costs to implement the proposal, they would result from the underlying legislative action.

### 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. Cal. Rules of Court, rule 7.1016, at pages 5–13
2. Link A: Fam. Code, § 3042,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=FAM&sectionNum=3042](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM&sectionNum=3042)
3. Link B: Prob. Code, § 1514,  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PROB&sectionNum=1514](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=1514)

Rule 7.1016 of the California Rules of Court would be amended, effective January 1, 2025, to read:

1 **Rule 7.1016. Participation and testimony of wards in guardianship proceedings**  
2 **(Prob. Code, § 1514(b)(1); Fam. Code, § 3042)**

3  
4 **(a) Definitions**

5  
6 As used in this rule, ~~the following terms have the meanings specified:~~

- 7  
8 (1) “Ward” includes a “proposed ward.”  
9  
10 (2) ~~A “proceeding” is a matter before the court for decision in a probate~~  
11 ~~guardianship of the person that concerns appointment or removal of a~~  
12 ~~guardian, visitation, determination of the ward’s place of residence, or~~  
13 ~~termination of the guardianship by court order.~~  
14  
15 (3) ~~“Party,” as used in this rule to~~ when referring to the a ward, means indicates a  
16 ward who has filed a petition or ~~opposition~~ made a response or objection to a  
17 petition concerning a proceeding or other matter subject to this rule in a  
18 probate guardianship proceeding.  
19

20 **(b) Purpose and scope of rule**

- 21  
22 (1) This rule applies ~~Family Code section 3042~~ to the participation and testimony  
23 of the a ward in a proceeding in a probate hearing on:  
24  
25 (A) Appointment or removal of a guardianship of the person, including  
26 appointment of a successor guardian;  
27  
28 (B) Parental visitation of a ward in a guardianship of the person; or  
29  
30 (C) Termination of a guardianship of the person. The testimony of other  
31 minors in a guardianship case is governed by Evidence Code sections  
32 765(b) and 767(b).  
33  
34 (2) The court may, in its discretion, may apply all or part of this rule, in whole or  
35 in part, to the participation and testimony of a ward in a hearing in a  
36 guardianship of the estate or in a matter before the court in a guardianship of  
37 the person that is not a proceeding within the meaning of this rule. The phrase  
38 “or other matter subject to this rule” following the term “proceeding” is a  
39 reference to the matters described in this paragraph a hearing in a  
40 guardianship of the person on a matter not described in (1).  
41

- 1 (3) ~~No statutory mandate, rule, or practice requires a ward who is not a party to~~  
 2 ~~the proceeding or other matter subject to this rule to participate in~~ This rule  
 3 ~~does not require a ward to address the~~ court or prohibits him or her a ward  
 4 ~~from doing so. When a ward desires to participate but is not a party to the~~  
 5 ~~proceeding or other matter subject to this rule, the court must balance the~~  
 6 ~~protection of the ward, the statutory duty to consider the wishes of and other~~  
 7 ~~input from the ward, and the probative value of the ward's input while~~  
 8 ~~ensuring all parties' due process rights to challenge evidence relied on by the~~  
 9 ~~court in making decisions affecting the ward in matters covered by the rule.~~
- 10
- 11 (4) ~~This rule rather than r~~Rule 5.250, ~~on children's participation and testimony in~~  
 12 ~~family court proceedings, applies in~~ does not apply to probate guardianship  
 13 proceedings.
- 14
- 15 (5) Nothing in this rule limits the application of Evidence Code sections 765(b)  
 16 and 767(b) to the testimony of a minor in a guardianship proceeding.

17

18 (c) **Determining whether ~~the nonparty~~ a ward wishes to address the court or has**  
 19 **changed their preference about addressing the court**

- 20
- 21 (1) The following persons must inform the ~~court~~ judicial officer if they ~~have~~  
 22 ~~information indicating~~ are aware that a ward ~~who is not a party~~ wishes to  
 23 address the court ~~in a proceeding or other matter subject to this rule:~~
- 24
- 25 (A) The ward's ~~counsel;~~ attorney or guardian ad litem;
- 26
- 27 (B) A court or county guardianship investigator;
- 28
- 29 (C) A child custody recommending counselor who provides  
 30 recommendations to the judicial officer under Family Code section  
 31 3183; or
- 32
- 33 (D) An expert appointed by the court under Evidence Code section 730 to  
 34 assist the court in the matter; ~~or.~~
- 35
- 36 (E) ~~The ward's guardian ad litem.~~
- 37
- 38 (2) ~~The following persons~~ A party to the proceeding or a party's attorney may  
 39 inform the ~~court~~ judicial officer if they ~~have information indicating~~ that a  
 40 ward ~~who is not a party~~ wishes to address the ~~court in a proceeding or other~~  
 41 ~~matter subject to this rule:~~ court.
- 42
- 43 (A) A party in the guardianship case; and

1  
2 (B) ~~An attorney for a party in the guardianship case.~~

3  
4 (3) In the absence of information indicating that a ward ~~who is not a party~~ wishes  
5 to address the court ~~in a proceeding or other matter subject to this rule~~, the  
6 judicial officer may inquire whether the ward wishes to do so.

7  
8 (4) If a ward informs any of the persons specified in (1) that the ward has  
9 changed their preference about addressing the court, that person must, as  
10 soon as feasible, inform the parties or their attorneys, the ward's attorney or  
11 guardian ad litem, the court investigator, and the judicial officer of that  
12 change.

13  
14 (d) **~~Guidelines for determining~~ Determining whether addressing the court is in the**  
15 **~~nonparty a~~ ward's best interest**

16  
17 (1) ~~When~~ If a ward who is not a party indicates that he or she wishes to address  
18 the court, the judicial officer must consider whether ~~involving~~ permitting the  
19 ward ~~in the proceeding or other matter subject to this rule~~ to address the court  
20 is in the ward's best interest.

21  
22 (2) If the ward is 12 years old or older, the judicial officer must ~~hear from~~ permit  
23 the ward to address the court unless the court ~~makes a finding~~ finds that  
24 addressing the court is not in the ward's best interest and states the reasons  
25 for that ~~finding~~ finding on the record.

26  
27 (3) If the ward is younger than 12 years of age, the court may permit the ward to  
28 address the court if the court finds that addressing the court is appropriate and  
29 in the ward's best interest.

30  
31 (4) In determining whether addressing the court is in the ward's best interest, the  
32 judicial officer should consider the following:

33  
34 (A) Whether the ward is of sufficient age and capacity to form an  
35 intelligent preference as to the matter to be decided;

36  
37 (B) Whether the ward is of sufficient age and capacity to understand the  
38 nature of testimony;

39  
40 (C) Whether ~~information has been presented indicating that~~ the ward may  
41 be at risk of emotionally ~~harm~~ harm if ~~he or she is~~ permitted or denied the  
42 opportunity to address the court; ~~or that~~

1           (D) Whether the ward may benefit from addressing the court;

2  
3           ~~(D)~~ (E) Whether the subjects ~~areas~~ about which the ward is anticipated to  
4           address the court are relevant to the court's decision ~~the court must~~  
5           make;

6  
7           ~~(E)~~ (F) Whether ~~the~~ appointment of ~~counsel under Probate Code section 1470~~  
8           an attorney or a guardian ad litem for the ward would be helpful to the  
9           determination or ~~would be~~ necessary to protect the ward's interests; and

10  
11           ~~(F)~~ (G) Whether any other factors weigh in favor of or against ~~having~~  
12           permitting the ward to address the court, taking into consideration the  
13           ward's desire to do so.

14  
15       (e) **Guidelines for ~~r~~Receiving testimony and other input from ~~the nonparty a~~**  
16       **ward**

17  
18       (1) ~~No testimony of a ward may be received without such testimony being heard~~  
19       ~~on the record or in the presence of the parties. This requirement may not be~~  
20       ~~waived.~~

21  
22       (2) ~~On deciding to take the testimony of a ward who is not a party in a~~  
23       ~~proceeding or other matter subject to this rule, the judicial officer should~~  
24       ~~balance the necessity of taking the ward's testimony in the courtroom with~~  
25       ~~parents, the guardian or proposed guardian, other parties, and attorneys~~  
26       ~~present with the need to create an environment in which the ward can be open~~  
27       ~~and honest. In each case in which a ward's testimony will be taken, the~~  
28       ~~judicial officer should consider:~~

29  
30       (A) ~~Where the testimony will be taken;~~

31  
32       (B) ~~Who should be present when the testimony is taken;~~

33  
34       (C) ~~How the ward will be questioned; and~~

35  
36       (D) ~~Whether a court reporter is available in all instances, but especially~~  
37       ~~when the ward's testimony may be taken outside the presence of the~~  
38       ~~parties and their attorneys. If the court reporter will not be available,~~  
39       ~~whether there are other means to collect, preserve, transcribe, and make~~  
40       ~~the ward's testimony available to parties and their attorneys.~~

41  
42       (1) Unless the court determines that permitting a ward to address the court in the  
43       presence of the parties would be in the ward's best interest and states the



1 reasons for that finding on the record, the court must not permit the ward to  
2 address the court in the presence of the parties.

3  
4 (2) In determining the best interest of the ward under (1), the court must consider  
5 whether addressing the court in the presence of the parties is likely to be  
6 detrimental to the ward.

7  
8 (3) If the court does not permit the ward to address the court in the presence of  
9 the parties, the court must provide an alternative method for the ward to  
10 address the court so that the court can obtain input directly from the ward on  
11 the record. If a court reporter is not available, the court must provide other  
12 means to obtain the ward's input and make it available to the parties and their  
13 attorneys.

14  
15 (3) (4) ~~In taking testimony from a ward who is not a party to the proceeding or~~  
16 ~~other matter subject to this rule, the court must take~~ exercise the special care  
17 required by Evidence Code sections 765(b) and 767(b) to the extent that  
18 those sections apply. In addition, if ~~If~~ the ward is not represented by an  
19 attorney and the court does not appoint one, the court must inform the ward  
20 in an age-appropriate manner about the ~~limitations on~~ to the confidentiality of  
21 testimony and that the information provided to the court will be on the record  
22 and provided to the parties in the case.

23  
24 (4) (5) ~~In the process of listening to and inviting the ward's input, the court must~~  
25 ~~allow but not require the ward to state a preference regarding the matter to be~~  
26 ~~decided in the proceeding or other matter subject to this rule and should~~  
27 provide information in an age-appropriate manner about the process by which  
28 the court will make a decision.

29  
30 (5) (6) ~~In any case in which a ward who is not a party to the proceeding or other~~  
31 ~~matter subject to this rule will be called to testify, the court must consider the~~  
32 ~~appointment of counsel for the ward under Probate Code section 1470 and~~  
33 ~~may consider the appointment of a guardian ad litem~~ appointing an attorney  
34 or a guardian ad litem for the ward. ~~In addition to satisfying the requirements~~  
35 ~~for minor's counsel under rule 7.1101, minor's counsel~~ The attorney or  
36 guardian ad litem must:

37  
38 (A) Provide information to the ward in an age-appropriate manner about the  
39 ~~limitations on~~ to the confidentiality of testimony and indicate to the  
40 ward ~~the possibility that~~ the information provided to the court will be  
41 on the record and provided to the parties in the case;  
42

- 1 (B) ~~Allow but not require the ward to state a preference regarding the~~  
2 ~~issues to be decided in the proceeding or other matter subject to this~~  
3 ~~rule, and p~~Provide information to the ward in an age-appropriate  
4 manner about the process by which the court will make a decision;  
5
- 6 (C) If appropriate, provide the ward with an orientation to the courtroom or  
7 other place where the ward will testify; and  
8
- 9 (D) Inform the parties and the court about the ward's desire to testify or  
10 otherwise provide input.  
11
- 12 (6) (7) If the court precludes ~~the calling of a ward who is not a party~~ from testifying  
13 ~~as a witness in a proceeding or other matter subject to this rule, the court~~  
14 must provide alternatives to testimony for ~~the court to obtaining~~ information  
15 about the ward's preferences or other input ~~from the ward. These alternatives~~  
16 may include:  
17
- 18 (A) ~~A~~ Participation of a court or county guardianship investigator  
19 ~~participating~~ in the case under Probate Code section 1513 or 1513.2;  
20
- 21 (B) Appointment of a child custody evaluator or investigator under  
22 Evidence Code section 730;  
23
- 24 (C) Appointment of counsel or a guardian ad litem for the ward;  
25
- 26 (D) ~~Admissible~~ Receipt of admissible evidence provided by the ward's  
27 parents, parties, or witnesses in the proceeding or other matter subject  
28 to this rule;  
29
- 30 (E) ~~Information provided by~~ Receipt of information from a child custody  
31 recommending counselor authorized under Family Code section 3183  
32 to make a recommendation to the court; and  
33
- 34 (F) ~~Information provided~~ Receipt of information from a child interview  
35 center or professional to avoid unnecessary multiple interviews.  
36
- 37 (7) (8) If the court precludes ~~the calling of a ward who is not a party~~ from testifying  
38 ~~as a witness in a proceeding or other matter subject to this rule and specifies~~  
39 ~~one of the other~~ an alternatives to testimony, the court must require that the  
40 information ~~or evidence~~ obtained by through that alternative means and  
41 provided by a professional (other than counsel for the ward or counsel for any  
42 party) or a other nonparty:  
43

- 1 (A) Be documented in writing and fully ~~document~~ reflect the views  
 2 expressed by the ward's views on the matters ~~on which he or she~~  
 3 ~~wished to express an opinion~~ to be decided;  
 4  
 5 (B) Describe the ward's input in sufficient detail to assist the court in  
 6 making its decision;  
 7  
 8 (C) Be obtained and provided to the court and to the parties by a person  
 9 who will be available for testimony and cross-examination; and  
 10  
 11 (D) Be filed in the confidential portion of the case file.

12  
 13 **(f) Responsibilities of court-connected or appointed professionals—~~all wards~~**  
 14

15 A child custody evaluator, an expert witness appointed under Evidence Code  
 16 section 730, an investigator, or a child custody recommending counselor ~~or other~~  
 17 ~~eustody mediator~~ who is appointed or assigned to ~~meet with~~ obtain information  
 18 from a ward and provide the information to the court and the parties must:  
 19

- 20 (1) ~~Provide information to~~ Inform the ward in an age-appropriate manner about  
 21 the ~~limitations on~~ to the confidentiality of testimony and ~~the possibility that~~  
 22 information provided to the professional ~~may~~ will be shared with the court on  
 23 the record and provided to the parties in the case;  
 24  
 25 (2) ~~Allow but not require the ward to state a preference regarding the issues to be~~  
 26 ~~decided in the proceeding or other matter subject to this rule, and provide~~  
 27 ~~information~~ Inform the ward in an age-appropriate manner about the process  
 28 by which the court will make a decision; ~~and~~  
 29  
 30 (3) Allow but not require the ward to state a preference regarding the issues to be  
 31 decided by the court; and  
 32  
 33 (3) (4) ~~Provide to~~ Give the other parties ~~in the case~~ information about how best to  
 34 support ~~the interest of~~ the ward during the court process.  
 35

36 **(g) ~~Methods of p~~Providing information to parties and supporting nonparty wards**  
 37

38 Courts should provide information to ~~the parties and~~ information and support to ~~the~~  
 39 a ward who is not a party to the proceeding or other matter subject to this rule when  
 40 if the ward wants to participate or testify. Methods of providing information or  
 41 support may include:  
 42

- 1 (1) ~~Having~~ Directing court or county guardianship investigators ~~and or~~ experts  
2 appointed under Evidence Code section 730 to meet jointly or separately with  
3 the parties and their attorneys to discuss alternatives to having the ward  
4 provide direct testimony;
- 5  
6 (2) Providing an orientation for the ward ~~about~~ to the court process and the role  
7 of the judicial officer in making decisions, ~~how the~~ setup of the courtroom or  
8 chambers ~~will be set up where the ward will testify or address the court,~~ and  
9 ~~what the process of~~ participating or testifying ~~will entail~~;
- 10  
11 (3) Providing information to parties before the ward participates or testifies so  
12 that they can consider the possible effect on the ward of participating or ~~not~~  
13 ~~participating in the proceeding or other matter subject to this rule~~ testifying;
- 14  
15 (4) ~~Appointing counsel under Probate Code section 1470~~ an attorney or a  
16 guardian ad litem for the ward to assist in the provision of information to the  
17 ward concerning his or her decision to participate ~~in the proceeding~~ or testify;
- 18  
19 (5) Including information in guardianship orientation presentations and  
20 publications about the options available to a ward ~~who is not a party to the~~  
21 ~~proceeding or other matter subject to this rule~~ to participate or testify or not  
22 to do so, and the consequences of a ward's decision ~~whether~~ to become a  
23 party to the proceeding ~~or other matter subject to this rule~~; and
- 24  
25 (6) Providing an interpreter for the ward.

26  
27 **(h) If the a ward is a party to the proceeding**

- 28  
29 (1) A ward who is a party ~~to the proceeding or other matter subject to this rule~~ is  
30 subject to the law of discovery ~~applied~~ applicable to parties in civil actions  
31 and may be called as a witness by any other party unless the court makes a  
32 finding that ~~providing information in response~~ requiring the ward to respond  
33 to discovery requests or testifying as a witness ~~is~~ would not be in the ward's  
34 best interest and states the reasons for that finding on the record.
- 35  
36 (2) The court must consider appointing ~~counsel under Probate Code section 1470~~  
37 an attorney or a guardian ad litem for a ward who is a party ~~to the proceeding~~  
38 ~~or other matter subject to this rule~~ if the ward is not represented by counsel.
- 39  
40 (3) In determining whether ~~providing information in response~~ requiring a ward to  
41 respond to discovery requests or testifying as a witness ~~is~~ would be in the  
42 ward's best interest, the judicial officer should consider ~~the following~~:
- 43

- 1 (A) Whether ~~information has been presented indicating that the ward may~~  
 2 ~~be at risk of emotionally harm if he or she is permitted or denied the~~  
 3 ~~opportunity to provide information in response required to respond to~~  
 4 ~~discovery requests or by testimony testify;~~  
 5  
 6 (B) Whether the subjects ~~areas about which that~~ the ward's responses or  
 7 testimony is anticipated to provide information in response to discovery  
 8 requests or by testimony are expected to address are relevant to the  
 9 court's decision the court must make; and  
 10  
 11 (C) Whether any other factors weigh in favor of or against having requiring  
 12 the ward provide information in response to respond to discovery  
 13 requests or by testimony testify.  
 14  
 15 (4) In taking testimony from a ward ~~who is a party to the proceeding or other~~  
 16 ~~matter subject to this rule,~~ the court must take exercise the special care  
 17 required by Evidence Code sections 765(b) and 767(b) to the extent that  
 18 those sections apply. In addition, if If the ward is not represented by an  
 19 attorney and the court does not appoint one, the court must inform the ward  
 20 in an age-appropriate manner about the limitations on to the confidentiality of  
 21 testimony and that the information provided to the court will be on the record  
 22 and provided to the parties in the case.

23  
 24 **(i) Education and training of ~~judicial officers and court staff~~**

25  
 26 Education and training ~~content~~ for court staff and judicial officers should include  
 27 information on:

- 28  
 29 (1) A ward's<sup>2</sup> participation in proceedings or other matters subject to this rule,  
 30 guardianship hearings;  
 31  
 32 (2) Methods other than direct testimony for receiving input from a ward to give  
 33 relevant information and input to the court,;  
 34  
 35 (3) Procedures for taking a ward's testimony, consistent with the safeguards in  
 36 this rule, Family Code section 3042, and Evidence Code sections 765(b) and  
 37 767(b); and  
 38  
 39 (4) The differences in the application of this rule to wards who are parties and  
 40 those who are not parties to the proceeding or other matters subject to this  
 41 rule.  
 42