

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: September 10, 2007

SUBJECT: Probate: Written Notice to Conservatees and Others of the
Conservatee's Rights (adopt form GC-341 and approve
form GC-341(MA)) (Action Required)

Issue Statement

The appointment of a conservator for an individual's person or estate necessarily places severe limits on the conservatee's personal autonomy. But the law also preserves many significant rights for conservatees. However, neither conservatees nor persons close to them are systematically advised of these retained rights after appointment of a conservator.

The Omnibus Conservatorship and Guardianship Reform Act of 2006 added section 1830(c) to the Probate Code to address this situation.¹ Section 1830(c) requires an information notice of the retained rights of a conservatee to be attached to the order appointing a conservator and requires the order and the notice to be mailed by the conservator to the conservatee and other persons close to the conservatee. The legislation directs the Judicial Council to develop the notice by January 1, 2008.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, adopt form GC-341, *Notice of Conservatee's Rights*, a mandatory form containing a statement of a conservatee's retained rights

¹ Stats. 2006, chapters 490–493 (respectively, Senate Bills 1116, 1550, and 1716, and Assembly Bill 1363). Section 1830(c) was added by section 10 of chapter 493 (AB 1363).

after appointment of a conservator, instructions on its mailing, and a proof of mailing; and form GC-341(MA), *Attachment to Notice of Conservatee's Rights*, an optional form designed to show the names and addresses of additional persons to whom the notice form and the appointment order are mailed.

Copies of the proposed forms are attached at pages 7–11.

Rationale for Recommendation

Probate Code section 1830(c) provides:

An information notice of the rights of conservatees shall be attached to the order [appointing the conservator]. The conservator shall mail the order and the attached information notice to the conservatee and the conservatee's relatives, as set forth in subdivision (b) of Section 1821. By January 1, 2008, the Judicial Council shall develop the notice required by this subdivision.

Form GC-341

The notice portion of the proposed *Notice of Conservatee's Rights*, on the first two pages of the form, is divided into three sections. The first, in narrative form, contains general statements concerning the proper relationship of respect between a conservator and his or her conservatee.

This statement is derived from the statement at page 10 of the 2002 edition of the *Handbook for Conservators*, the Judicial Council publication that newly appointed conservators must acquire in order to qualify to perform the duties of their office.² The statement contained in the form, however, has been expanded by the addition of a third paragraph emphasizing the conservatee's right to be afforded the greatest degree of freedom and privacy possible, consistent with the reasons for the conservatorship. The statement concludes with an admonition to the conservator to give due regard to the conservatee's preferences and to encourage the conservatee's involvement in making decisions affecting his or her care, protection, and support.

² See Probate Code sections 1834(a) and 1835. The "written information" mentioned in these sections is the *Handbook for Conservators*. See Judicial Council form GC-348, *Duties of Conservator and Acknowledgment of Receipt of Handbook*. This form contains the statement of duties and liabilities of the conservator required by section 1834(a)(1) and includes a receipt for a copy of the *Handbook for Conservators*. The receipt must be signed by the newly appointed conservator and the signed form must be filed before the conservator can receive Letters of Conservatorship showing his or her authority to act.

The second section of the notice, at the bottom of page 1 of the form, lists specific and unconditional rights that conservatees retain under specific statutes. The third section, on page 2 of the form, lists specific conditional rights the conservatee may have that are subject to limitation or elimination by the court. These rights are also expressly provided by statute.

The third page of form GC-341 is a proof of mailing similar to such proofs included in other probate forms requiring service by mail. This proof differs from many of those forms, however, in that it calls for completion and execution of the proof of mailing, and the mailing itself, by the conservator, the conservator's attorney, or an employee of the attorney.

Section 1830(c) refers to mailing the notice, not formal service by mail. The committee has concluded that this reference authorizes the conservator, as well as the conservator's attorney or the attorney's employee, to do the mailing and fill out and sign the proof of mailing. Many conservators are unrepresented. The usual prohibition against service of documents by parties, including service by mail, is a difficult concept for unrepresented persons to understand and not easily explained to them. Eliminating that requirement here would improve unrepresented conservators' access to the courts.

The fourth page of the form contains instructions for mailing the notice and attached conformed copies of the *Order Appointing Probate Conservator*.³ Section 1830(c) is silent concerning a deadline for mailing the notice form required by the statute, and whether the original must be filed with the court. The advisory committee believes that these omissions were inadvertent and inconsistent with the normal expectations in conservatorship practice. Therefore, item 3 of the instructions advises conservators that the mailing must be completed on or before the 30th day after the filing date of the *Order Appointing Probate Conservator*, and the proof of mailing requires that the date of the order be stated. The advisory committee will consider the need for a rule of court to establish this deadline, although no public commentators expressed difficulty with the requirement as expressed in the form.

The instructions also advise that the original form, with completed proof of mailing but without an attached copy of the order, must be filed with the court. Filing the original of a required written notice with a completed proof of service attached is the usual way a party proves that written notice required under the Probate Code has been given. The original *Order Appointing Probate Conservator*

³ The *Order Appointing Probate Conservator* is a mandatory Judicial Council form, designated as form GC-340.

will be in the court file. There is no need to have another copy of the order filed with the original notice.

Mailing form GC-341

Probate Code section 1821(b) specifies the persons who must be listed in the petition for appointment of a conservator. Section 1830(c) identifies the persons who must be mailed a copy of the *Notice of Conservatee's Rights* and the attached *Order Appointing Probate Conservator* by referring to the conservatee's relatives "set forth in subdivision (b) of section 1821." These are the conservatee's spouse or registered domestic partner;⁴ and relatives within the second degree (children, grandchildren, parents, grandparents, and siblings).⁵

If the conservatee has no spouse or registered domestic partner and no (living) relatives within the second degree, section 1821(b) refers to certain relatives of the conservatee's relatives or in-laws, requires their identification in the petition for appointment of a conservator, and treats these persons as relatives of the conservatee for notice purposes.⁶ The committee believes that this treatment of "deemed relatives" in section 1821(b) supports their inclusion as relatives for purposes of the notice required by section 1830(c). Therefore, the instructions on page 4 of form GC-341 include instructions to deliver the *Notice of Conservatee's Rights* to these persons where warranted under the circumstances described in section 1821(b).⁷

⁴ Section 1821(b) says "domestic partner," not "registered domestic partner." A domestic partner is defined in Probate Code section 37 as one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State under division 2.5 of the Family Code, commencing with section 297, whose partnership has not been terminated. Family Code section 298.5 requires the Secretary of State to register Declarations of Domestic Partnership filed with her or his office. Some statutes more recently enacted or amended than section 1821 refer to domestic partnerships under the Family Code as *registered* domestic partnerships and domestic partners as *registered* domestic partners (see, e.g., Probate Code section 1822(b)(1)). The advisory committee has decided to use the word "registered" in its reports and in California Rules of Court or Judicial Council forms it proposes for adoption or approval when referring to domestic partnerships or domestic partners under the Family Code, whether or not any specific relevant statute identifying the domestic partnership or partner also uses that term.

⁵ Form GC-341 also requires mailing to the attorney for the conservatee. This requirement follows Probate Code section 1214, which requires that copies of any papers served, mailed, or otherwise delivered to a person, must also be delivered to the person's attorney of record.

⁶ The "deemed relatives" under section 1821(b) are the spouse or registered domestic partner of a predeceased parent of the conservatee; the children of the conservatee's predeceased spouse or registered domestic partner; the siblings of the conservatee's parents or, if none, their children; and the children of the conservatee's siblings.

⁷ Form GC-341 also includes instructions for mailing the notice and order to a person entitled to notice who is under the age of 12. These instructions are derived from standard practice in proceedings under division 4 of the Probate Code, including conservatorships, authorized by Probate Code section 1460.1.

Form GC-341(MA)

Form GC-341(MA) is proposed as an optional attachment to form GC-341 to show persons to whom the *Notice of Conservatee's Rights* is mailed who cannot be listed on the proof of mailing in that form. This type of attachment form has been approved by the Judicial Council frequently in recent years.

Alternative Actions Considered

Because of the statutory imperative, no alternative to creation of the notice form was considered. The committee did consider various alternatives in drafting the rights statement itself, particularly in the general statements preceding the specific statute-based rights. The early drafts of the notice form included instructions placed in the proof of mailing but did not include them in a separate page. Consideration of the needs of unrepresented conservators led to the eventual placement of much more thorough and detailed instructions on a separate page of the form.

Comments From Interested Persons

This proposal was circulated for comment in a special comment cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, and probate-interest sections of the State Bar and local bar associations, in addition to the AOC's list of interested court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Fifteen comments on this proposal were received. All were favorable, but several proposed modifications. A chart showing the comments and the committee's responses follows the proposed forms, beginning at page 12.

Three commentators, committee member Peter Stern, on behalf of the Executive Committee of the State Bar's Trusts and Estates Section; Ms. Donna Bashaw, representing the National Academy of Elder Law Attorneys; and the Superior Court of Los Angeles County point out that the notice form's statement that the conservatee retains the right to enter into *business* transactions to the extent reasonable to provide the necessities of life to the conservatee and his or her minor children, is misleading or incorrect.

The advisory committee believes these comments are well taken. Under Probate Code section 1871(d), the conservatee retains the right to enter into *transactions*—not business transactions—to the extent reasonable to provide the necessities of life to himself or herself, his or her spouse, and his or her minor children, and to provide basic living expenses to his or her domestic partner. The statement was modified to conform to section 1871.

Ms. Mary Joy Quinn, manager of the probate department of the Superior Court of San Francisco County and a former member of the committee, proposes the addition of a statement concerning the conservatee's privacy to the preamble on page 1 of the form, by adding the words "and privacy" following "degree of freedom" and before "possible consistent with the underlying reasons for the conservatorship . . ." in the first sentence of the third paragraph of the preamble. The committee supports and has made this change.

The chart contains other comments that the committee addressed by making small changes in the forms. See the remaining comments of Ms. Bashaw, the comments of Sacramento attorney Ms. Jerilyn Paik, and the committee's responses.

Implementation Requirements and Costs

Adoption of these forms will result in the usual costs associated with the creation and distribution of any Judicial Council form. The requirement of mailing the notice forms to the conservatee and possibly to a large number of relatives will slightly increase the cost of administering a conservatorship, and courts will incur additional costs to supervise the fiduciary to the extent necessary to verify compliance with the requirements for mailing and filing the notice form. These additional costs should not be significant.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY DRAFT 6 10/01/07 Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____ <div style="text-align: right;">CONSERVATEE</div>	
NOTICE OF CONSERVATEE'S RIGHTS	CASE NUMBER: _____

When a person becomes a conservatee, he or she does not necessarily lose the right to take part in important decisions affecting his or her property and way of life. Every conservatee has the right to be treated with understanding and respect and to have his or her wishes considered. Every conservatee has all basic human rights and the right to be well cared for by his or her conservator.

The conservatee has the right to ask questions and to express concerns and complaints about the conservatorship and the actions of his or her conservator. The conservatee may ask the court to review the conservator's management of the conservatorship if disputes cannot be worked out between them. Even if the conservatee does not take direct action, the court will periodically send a person, called a **court investigator**, to visit the conservatee, to inquire about his or her circumstances and desires, and to advise the conservatee of his or her rights. The court also may appoint a lawyer to represent the conservatee.

The conservatee will be allowed the greatest degree of freedom and privacy possible consistent with the underlying reasons for the conservatorship. The conservator should give as much regard to the wishes of the conservatee as possible under the circumstances so that the conservatee may function at the highest level his or her ability permits. The conservator must give due regard to the preferences of the conservatee and to encourage the conservatee's participation in decision-making.

THE CONSERVATEE'S RIGHTS

After appointment of a conservator, the conservatee keeps the right to:

- Be represented by a lawyer;
- Ask a judge to replace the conservator;
- Ask a judge to end the conservatorship;
- Make or change his or her will;
- Directly receive and control his or her salary; and
- Control an allowance (an allowance is personal spending money the court has authorized the conservator to pay directly to the conservatee).

(Conservatee's rights continued on next page)

Page 1 of 4

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): CONSERVATEE	CASE NUMBER:
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THE CONSERVATEE'S RIGHTS (continued)

Unless the court has limited or taken the right away, the conservatee also keeps the right to:

- Receive personal mail;
- Vote;
- Marry or enter into a registered domestic partnership;
- Receive visits from family and friends;
- Make his or her own medical decisions;
- Enter into transactions, to the extent reasonable to (1) provide the necessities of life to the conservatee and his or her minor children, and (2) provide the necessities of life to his or her spouse or basic living expenses to his or her registered domestic partner;
- Engage in other activities the court expressly allows him or her to do, at the time of the conservator's appointment, or a later time following a court hearing on a request for authority to engage in the activity; and
- If the conservatee is a **limited conservatee**, to engage in any activity that the court has not expressly reserved to his or her **limited conservator**.

(Proof of mailing on page 3)
 (Instructions for mailing on page 4)

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____ <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER: _____
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PROOF OF MAILING

1. I am over the age of 18. I am the appointed conservator of the above-named conservatee, the conservator's attorney, or an employee of the conservator's attorney. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (*specify*): _____
3. I mailed the foregoing *Notice of Conservatee's Rights* to each person named below by enclosing a copy in an envelope addressed as shown below AND
 - a. **depositing** the sealed envelope on the date and at the place shown in item 4 with the United States Postal Service with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: _____ b. Place mailed (*city, state*): _____
5. Each copy of the *Notice of Conservatee's Rights* was mailed with an attached conformed copy, showing the date of its filing and the judicial officer's signature, of the *Order Appointing Probate Conservator* filed in this matter on (*date*): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)	▶	(SIGNATURE OF PERSON COMPLETING THIS FORM)
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NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	<u>Name and relationship to conservatee</u>	<u>Address (number, street, city, state, and zip code)</u>
1.	Conservatee	
2.	Attorney for conservatee	
3.	Spouse or registered domestic partner	
4.	Relationship: <input style="width: 150px;" type="text"/>	
5.	Relationship: <input style="width: 150px;" type="text"/>	

Continued on an attachment. (*You may use form GC-341(MA) to show additional addressees.*)

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____	CASE NUMBER: _____
CONSERVATEE	

**INSTRUCTIONS FOR MAILING COPIES OF NOTICE OF CONSERVATEE'S
RIGHTS AND ORDER APPOINTING PROBATE CONSERVATOR**

1. **What to mail:** The conservator, the conservator's attorney, or the attorney's employee must mail a copy of this *Notice of Conservatee's Rights*, with an attached copy of the **Order Appointing Probate Conservator** showing the judicial officer's signature and the date of filing, to each person identified in item 2 below.
2. **Who must receive the mailing:** The persons to whom copies of this *Notice of Conservatee's Rights* and the *Order Appointing Probate Conservator* must be mailed are:
 - a. The conservatee;
 - b. The conservatee's attorney, if any;
 - c. The following relatives of the conservatee named in Probate Code section 1821(b) (spouse or registered domestic partner and second-degree relatives required to be named in the *Petition for Appointment of Probate Conservator*):
 - (1) Spouse or registered domestic partner;
 - (2) Parents;
 - (3) Children at least 12 years old (see item e below if there are children under the age of 12);
 - (4) Grandparents;
 - (5) Grandchildren at least 12 years old (see item e below if there are grandchildren under the age of 12); and
 - (6) Brothers and sisters, including half-brothers and half-sisters.
 - d. If the conservator knows of no spouse or registered domestic partner or second-degree relative of the conservatee, copies of this *Notice of Conservatee's Rights* and the *Order Appointing Probate Conservator* must be mailed to the following persons:
 - (1) Spouse or registered domestic partner of a predeceased parent of the conservatee;
 - (2) Children of a predeceased spouse or predeceased registered domestic partner of the conservatee at least 12 years old (see item e below if there are children under the age of 12);
 - (3) Brothers and sisters of the conservatee's parents (conservatee's aunts and uncles), if any, or, if none, to their natural and adoptive children at least 12 years old (see item e below if there are children under the age of 12); and
 - (4) The natural and adoptive children of the conservatee's brothers and sisters at least 12 years old (see item e below if there are children under the age of 12).
 - e. If a person named above is under the age of 12, a parent, guardian, or other person having legal custody of the person entitled to notice, with whom the person entitled to notice resides.
3. **When the mailing must be completed:** The mailing described in item 1 must be completed on or before the 30th day following the filing date of the *Order Appointing Probate Conservator*.
4. **Fill out Proof of Mailing:** The conservator or his or her attorney of record must fill out the Proof of Mailing on page 3 of this form, including the correct addresses of the persons to receive the mailing, identified in item 2 above, before making the copies to be mailed. If the Proof of Mailing does not have enough space for the names and addresses of all persons who will receive the mailing, the names and addresses not shown on the Proof of Mailing must be shown on one or more additional pages attached to this form. One or more copies of *Attachment to Notice of Conservatee's Rights* (form GC-341(MA)) may be used for this purpose. After the mailing described in item 5 below, the conservator or his or her attorney must date and sign the Proof of Mailing on page 3 of this form.
5. **How to mail:** The conservator, the conservator's attorney of record, or an employee of the attorney, must do the following:
 - a. Place copies of this *Notice of Conservatee's Rights*, with attached conformed copies of the *Order Appointing Probate Conservator* in sealed envelopes, addressed to each person at the address shown for that person on the Proof of Mailing on page 3 of this form, or on attached additional pages, with postage fully prepaid.
 - b. Deposit (mail) the sealed envelope(s) with the United States Postal Service on the date and from the place (city and state) shown in item 4 of the Proof of Mailing on page 3 of this form.
6. **Filing Notice of Conservatee's Rights:** The conservator, or his or her attorney of record, must file with the court the original *Notice of Conservatee's Rights*, with a signed and dated Proof of Mailing and all attached additional address pages. **Do not attach a copy of the Order Appointing Probate Conservator to the original Notice of Conservatee's Rights filed with the court.**

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____ <div style="text-align: right; margin-top: 10px;">CONSERVATEE</div>	CASE NUMBER: _____
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ATTACHMENT TO NOTICE OF CONSERVATEE'S RIGHTS

(This attachment is for use with Form GC-341.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship to conservatee

Address (number, street, city, state, and zip code)

_____ Relationship: _____	
_____ Relationship: _____	
_____ Relationship: _____	
_____ Relationship: _____	
_____ Relationship: _____	
_____ Relationship: _____	
_____ Relationship: _____	
_____ Relationship: _____	
_____ Relationship: _____	

SP07-10

Probate: Notice of Conservatee’s Rights (adopt form GC-341 and approve form GC-341(MA))

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Therese F. Alvillar Occidental, California	AM	N	Agree with proposed changes if modified. Notice of conservatee’s rights should be given prior to the appointment of a conservator.	The Omnibus Conservatorship and Guardianship Reform Act of 2006 requires the <i>Notice of Conservatee’s Rights</i> to be mailed after, not before, the appointment of a conservator. Moreover, the court investigator, the court at the hearing, and counsel for the conservatee will advise the proposed conservatee of his or her procedural and substantive rights before a conservator is appointed.
2.	Ms. Donna R. Bashaw Immediate past President of National Academy of Elder Law Attorneys (NAELA) Laguna Hills, California 92653	AM	Y	Agree with proposed changes if modified. As elder law attorneys committed to the safety and preservation of dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity, and just plain hard work. Thus, our comments are made not in the spirit of criticism but in the spirit of appreciation of the enormity of the task to which you were commissioned. While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				<p>enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will preclude conscientious, but nonprofessional, family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product.</p> <p><u>Statement of Conservatee’s Rights (Proposed Form GC-341)</u></p> <p><u>Page 2 of 4</u> The first four items apply to persons under conservatorships of the person and estate. The last four items may cause considerable confusion to the conservatee. We suggest adding to the fifth item, "unless medical powers are given to the Conservator of the Person".</p> <p>The sixth item on page 2 particularly could lead to problems. We can see third parties</p>	<p>The committee believes the conditional statement at the top of page 2 of Form GC-341 is sufficient to indicate possible limitations on all of the rights listed on page 2.</p> <p>The committee agrees with this comment and other comments concerning this item. It has been</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				<p>contracting with conservatees using the stated ability to "enter into business transactions" as an excuse. We suggest deleting the words "Enter into business transactions".</p> <p>As to the last item, most conservatees are not going to know what a limited conservatee is and will not know what this item means</p> <p><u>Page 4 of 4</u> In item 1 we suggest bolding the words “with attached copies of the Order Appointing Probate Conservator.” In item 2c, children should be but are not listed as persons who must be mailed a copy of the notice.</p> <p>Conclusions:</p>	<p>revised to remove the reference to <i>business</i> transactions, and to add provision of necessities of life for the conservatee’s spouse or provision of basic living expenses to the conservatee’s registered domestic partner.</p> <p>The statement of rights is intended as a reminder to the conservator of the conservatee’s rights, in addition to advice to the conservatee and his or her family members interested in their relative’s care and support. The conservator, the conservatee’s relatives, and ultimately the conservatee, will benefit from the information conveyed by the notice even if the conservatee does not fully understand every statement in it.</p> <p>The committee agrees with these comments and has made the recommended changes.</p> <p>The committee has no response to</p>

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				<p>We believe that many of the changes made are unnecessary and merely an overreaction to the <i>L.A. Times</i> articles. The main problem in the past has been a lack of funding for the courts, especially to hire investigators. Increased funding is a beneficial part of the changes. However, we believe that the changes have made it more expensive for the ward and conservatee and have effectively priced the protection of guardianships and conservatorships out of the middle class market. This is the most serious and detrimental problem with the new laws and needs to be rectified immediately. The second most serious problem is with the new accounting rules which, we believe, are unnecessary. Thank you for your efforts in implementing this new law. We, as elder law attorneys, are happy to contribute in any way to assist you in your work.</p>	<p>this comment, which appears to be directed at the requirements imposed by the Omnibus Conservatorship and Guardianship Reform Act of 2006.</p>
3.	<p>Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California</p>	A	Y	<p>Agree with proposed changes.</p>	<p>No response necessary.</p>
4.	<p>Ms. Malea Chavez Staff Attorney Superior Court of California, County of San Francisco San Francisco, California</p>	A	Y	<p>Agree with proposed changes.</p> <p>This is a good thing, but it is one more technical thing that makes it more difficult for pro pers to do it themselves.</p>	<p>No response necessary.</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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5.	Ms. Margaret Herring Attorney Herring & Herring, APC Coronado, California	A	N	This is a great form. I think many people will also find it helpful that you included on page 4 the list of persons entitled to receive notice.	No response necessary.
6.	Ms. Jamie Lamborn Retired Sacramento, California 958538	N	N	Do not agree with proposed changes. Notification is incomplete. I have found during my research that in many cases if the estate is of great value, it seems to be no relatives are found until after the conservatee has expired. The attorney goes to court, stating a relative has been located and the case is closed. Who is the relative and where were they while the conservatee was living and needed help? There needs to be a follow-up on where the estate actually goes. I find it interesting in my research when one single relative is located, that relative requests the conservator and her attorney to distribute this estate. The conservatee has passed away, the conservator and her attorney have had control of this estate for, sometimes years, and not only have they collected their exuberant fees, now they continue to keep this control, that is not necessary, considering there is only the one living heir. Something does not look right.	The committee has no response to this comment because it does not address the proposal.
7.	Ms. Jackie A. Miller	A	Y	Agree with proposed changes.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California				
8.	Ms. Jerilyn Paik Attorney at Law Law Offices of Jerilyn Paik Sacramento, California	A	N	<p>Agree with proposed changes.</p> <p>Re "Name and relationship to conservatee of addressee" on proof of mailing:-</p> <p>Delete "of addressee" since it is confusing. change to: Name and Relationship to Conservatee</p> <p>Re: Instructions of What to Mail: Singularize "copies" in items 1. and 5. to read: "The conservator or the conservator's attorney must mail a copy of this Notice of Conservatee's Rights, and attach a copy of the Order Appointing . . ."</p> <p>The language in the Proof of Mailing on page 3 of form GC-341 is correct.</p>	<p>The committee agrees with this comment and has made the recommended change.</p> <p>The committee agrees with this agreement, but has made the following change in response to it:</p> <p>“The conservator or the conservator’s attorney must mail a copy . . . , <i>to each</i> person identified in item 2 below.” (Italics added for emphasis.)</p>
9.	Ms. Mary Joy Quinn	AM	Y	Agree with proposed changes if modified.	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

SP07-10

Probate: Notice of Conservatee’s Rights (adopt form GC-341 and approve form GC-341(MA))

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Director, Probate Superior Court of California, County of San Francisco San Francisco, California			Form should include recognition of conservatee's right to privacy. First sentence of the third paragraph of the preamble should be modified to read: The conservatee will be allowed the greatest degree of freedom AND PRIVACY possible consistent with the underlying reasons for the conservatorship.	The committee agrees with this comment and has made this change.
10.	Ms. Lynn Renard Probate Paralegal Chico, California	A	N	Agree with proposed changes. I work as a probate paralegal and previously was employed as a clerk in the probate division of the Superior Court of Butte County. I believe this is long overdue and am happy to see it laid out in black and white for the conservatee.	No response necessary.
11.	Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, California	AM	Y	Agree with proposed changes if modified. The Executive Committee points out that the right of a conservatee to enter into transactions to provide the necessities of life (Prob. Code, § 1871) does not extend to business transactions, which apparently has been imported from the <i>Handbook for Conservators</i> . Use of the word "business" connotes operation of a business by the conservatee. The Executive Committee recommends that the right described in the notice to be attached to the order appointing conservator be made to follow more closely the	The committee agrees with this comment and has made the requested change. See the committee’s response to the similar comment of Ms. Donna Bashaw, above.

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				wording in section 1871. Adopted by Executive Committee 25-0 with three abstentions, June 16, 2007.	
12.	Superior Court of California County of Los Angeles Los Angeles, California	AM	Y	Agree with proposed changes only if modified. Proposed Judicial Council form GC-341, <i>Notice of Conservatee’s Rights</i> page 2, bullet 6: The proposed form is inconsistent with Probate Code section 1871(d). Providing for necessities of life is not limited to entering into “business transactions”. The conservatee may provide the necessities of life for his or her spouse in addition to the minor children, and may provide the basic living expenses of his or her registered domestic partner.	The committee agrees with this comment and has made the recommended changes in form GC-341. (See the similar comments of Ms. Donna Bashaw and the State Bar Trusts and Estates Section’s Executive Committee, above, and the committee’s responses.)
13.	Ms. Michaelle Uzeta Associate Managing Attorney Protection and Advocacy, Inc. Los Angeles, California	AM	Y	Agree with proposed changes if modified. Our agency asks that the third sentence of the first paragraph of the draft <i>Notice of Conservatee’s Rights</i> form be amended to read: "Every conservatee has all basic human rights as well, and the right to be well cared for by his or her conservator IN THE LEAST	The committee believes the proposed additional statement is too broad. The standard for placement under Probate Code sections 2352 and 2352.5 is the least restrictive appropriate residence <i>that is</i>

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				<p>RESTRICTIVE SETTING. (Edits in caps.)</p> <p>We believe it is essential to recognize and expressly state that conservatees have the right to live in the least restrictive setting appropriate to their needs, with the services and supports they require to do so. This right, in our experience, is frequently overlooked.</p>	<p><i>available and necessary to meet the needs of the conservatee and is in the best interests of the conservatee.</i></p>
14.	<p>Ms. Robin C. Westmiller, J.D. President National Association to Stop Guardian Abuse Thousand Oaks, California</p>	AM	Y	<p>Agree with proposed changes if modified.</p> <p>1. Section 1830(c) re: mailing. Any notification of this matter MUST be sent out by CERTIFIED, mail, not just first class, to be sure all interested parties, especially out of state family members are notified of the pending order and given a chance to respond and/or object BEFORE conservatorship is ordered.</p> <p>If there is a medical emergency, a TEMPORARY EMERGENCY Conservator may be appointed for a period not exceeding 10 days while family is notified and has a chance to respond.</p>	<p>1. The statute does not require certified mail. Nor does it require this notice to be sent before the conservator is appointed. The <i>Notice of Conservatee’s Rights</i> is not a notice of the application for conservatorship or the hearing on the application or a substitute for the notice of these events currently required.</p> <p>This proposal makes no provisions concerning appointment of a temporary conservator.</p>

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				<p>Otherwise, the victim's family might never know until it is too late, that their loved one has been abducted by the STATE.</p> <p>2. "Court may also appoint a lawyer to represent the conservatee..." add AT NO COST TO THE CONSERVATEE OR THEIR ESTATE. The court appointed attorney must come from the PUBLIC DEFENDER'S office and not from the private sector. This provision will avoid any accusations of impropriety if it is shown a "court" has repeatedly appointed the same attorney over and over and that attorney is charging huge fees from the conservator's estate to "represent" them.</p>	<p>The committee disagrees with the statements that conservatorships are abductions by the state and conservatees are made victims by their status as conservatees.</p> <p>2. The recommended statements are not consistent with California law, which requires payment for counsel from the conservatee’s estate to the extent it has the ability to pay. Both private counsel and public defenders may be appointed in many cases. Both private counsel and public defenders’ counties may be paid from the conservatee’s estate.</p>
15.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	A	N	Agree with proposed changes.	No response necessary.

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