

Invitation to Comment

Title	Probate: Standards for the Good Cause Exception to Notice of Hearing of a Petition for Appointment of a Temporary Guardian or Conservator (adopt rules 7.1012 and 7.1062 of the California Rules of Court).
Summary	The proposed rules would establish uniform statewide standards for exceptions to the notice of hearing required for a petition for the appointment of a temporary guardian (rule 7.1012) or a temporary conservator (rule 7.1062).
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller, Attorney Committee Counsel Office of the General Counsel, Administrative Office of the Courts (415) 865-7535 douglas.miller@jud.ca.gov
Discussion	<p>Probate Code section 2250 governs petitions for the appointment of a temporary guardian or conservator, usually pending the hearing on a petition for appointment of a general guardian or conservator. Section 2250(c), as amended by the Omnibus Conservatorship and Guardianship Reform Act of 2006 effective July 1, 2007, will require at least 5 days’ notice of the hearing on a petition for appointment of a temporary guardian or conservator “[u]nless the court for good cause otherwise orders”¹</p> <p>Section 2250(j), added by the Omnibus Act, requires the Judicial Council to adopt a rule of court effective January 1, 2008 that establishes uniform standards for the good cause exception to the notice required by section 2250(c).² The standards must limit the exception to cases where waiver of notice is essential to protect the</p>

¹ Stats 2006, chapters 490–493 (respectively, SB 1116, SB 1550, SB 1716, and AB 1363), referred to collectively as the Omnibus Act. The amendments to section 2250 were made by section 15 of chapter 493 (AB 1363). See also, section 36 of chapter 493.

² Section 2250(j) provides in full as follows:

“(j) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (c) [of Section 2250], limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the conservatee or ward, from substantial harm.”

proposed temporary conservatee or ward from substantial harm.

The Probate and Mental Health Advisory Committee proposes two rules in response to the statutory directive. Rule 7.1012 would apply to temporary guardianships. Rule 7.1062 would apply to temporary conservatorships.

All references in the rules to section 2250 are to the section as it will read with the changes made by the Omnibus Act effective on July 1, 2007, six months before the rules would be effective. These changes include new requirements for personal delivery of a notice of hearing and a copy of the petition for appointment of a temporary guardian or conservator—not just the “notice of the proposed application” required under current law—to the proposed ward (if he or she is at least 12 years old), the proposed ward’s parents, and any person who has a valid visitation order with the child, or to the proposed temporary conservatee. Also new is a requirement that the persons required to be named in a petition for appointment of a general conservator under Probate Code section 1821(b) (and served with a notice of hearing on that petition under section 1822(b)) must also be served with a notice of hearing and a copy of the petition for appointment of a temporary conservator.³

Both proposed rules would advise that exceptions to the notice requirements of section 2250 include not just waiver of notice, but also the possibility that the court may require a different period of notice or may change the manner of giving notice, including requiring expedited notice by means other than personal delivery or mail to persons other than the proposed ward or conservatee. (See rules 7.1012(c) and 7.1062(c).)

Both rules also would emphasize that a showing of good cause for waiver of notice or a reduced period of notice because of the passage of time must address the immediate and substantial harm to the ward or conservatee that could occur during the *notice period*, not the period before appointment of a general guardian or conservator (rules

³ The manner of service on persons other than the proposed conservatee is not stated in amended section 2250(c)(2), but presumably either personal service or service by mail would be sufficient. (See Prob. Code, § 1217.) Delivery of a notice of hearing and a copy of the petition for appointment of a temporary guardian or conservator is not explicitly required under current law (but see Prob. Code, § 1211), and no one other than the proposed conservatee is entitled to advance notice of an application for a temporary conservatorship.

7.1012(d) and 7.1062(d)).

Good cause for waiver of notice to specific persons because of possible harm they might do to the proposed ward or conservatee is also addressed in both rules. Rules 7.1012(e) and 7.1062(e) provide that a basis for waiver of notice to one person is not a ground for waiver of notice to the proposed ward or conservatee or any other person unless the facts demonstrate that the potentially harmful person is likely to be notified of the application if the proposed ward or conservatee or the other person is given notice.

Specific provisions for waivers of notice or reduced notice because of medical or financial emergencies are contained in both rules. Medical emergencies must be immediate and substantial, and treatment must be reasonably unavailable unless a temporary guardian or conservator is appointed and cannot be deferred for the notice period because of the ward's or conservatee's pain or extreme discomfort or a significant risk of harm. (See rules 7.1012(f) and 7.1062(f)).

Financial emergencies are addressed in rules 7.1012(h) and 7.1062(g). These provisions require the emergency to be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the estate (or to a ward's support) during the notice period. The focus should be on preservation of the estate or support during the notice period, not on recovery of property lost during the temporary or general guardianship or conservatorship.

The text of rules 7.1012 and 7.1062 is attached beginning at page 4.

Attachment

Rule Proposal

Rules 7.1012 and 7.1062 of the California Rules of Court would be adopted, effective January 1, 2008, to read:

1 **Rule 7.1012. The Good Cause Exception to Notice of the Hearing on a**
2 **Petition for Appointment of a Temporary Guardian**

3
4 **(a) Purpose**

5
6 The purpose of this rule is to establish uniform standards for the good cause
7 exception to the notice of the hearing required on a petition for appointment
8 of a temporary guardian under Probate Code section 2250(c).
9

10 **(b) Good cause for exceptions to notice limited**

11
12 Good cause for an exception to the notice required by section 2250(c) must
13 be based on a showing that the exception is essential to protect the proposed
14 ward or his or her estate from immediate and substantial harm.
15

16 **(c) Court may waive or change the time or manner of giving notice**

17
18 Exceptions to the notice requirement of section 2250(c) include:
19

20 (1) Waiving notice;

21
22 (2) Requiring a different period of notice; or
23

24 (3) Changing the required manner of giving notice under section 2250(c),
25 including requiring expedited notice by telephone, fax, e-mail, or by a
26 combination of these methods, instead of notice by personal delivery to
27 the proposed ward's parents or to a person with a visitation order.
28

29 **(d) Good cause based on the passage of time**

30
31 Good cause for waiver of notice or a reduced notice period may be based on
32 a showing of harm caused by the passage of time. The showing must
33 demonstrate the immediate and substantial harm to the ward or the ward's
34 estate that could occur during the notice period.

1 **(e) Good cause based on the conduct of a person to be given notice**

2
3 Good cause for waiver of notice to a person entitled to notice under section
4 2250(c) may be based on a showing of possible harm the person might do to
5 the proposed ward, including abduction; or harm to the proposed ward's
6 estate if notice is given. However, such a showing would not support waiver
7 of notice to the proposed ward or any other person entitled to notice unless
8 the showing also demonstrates that notice cannot reasonably be given to the
9 proposed ward or the other person without also giving notice to the possibly
10 harmful person.

11
12 **(f) Death or incapacity of custodial parent**

13
14 Good cause for waiver of notice may be based on a showing that the
15 proposed ward's custodial parent has died or become incapacitated and the
16 petitioner is the nominee of the custodial parent.

17
18 **(g) Medical emergency**

19
20 Good cause for waiver of notice or a reduced notice period may be based on
21 a showing of medical emergency. The emergency must be immediate and
22 substantial and treatment (1) must be reasonably unavailable unless a
23 temporary guardian is appointed, and (2) cannot be deferred for the notice
24 period because of the proposed ward's pain or extreme discomfort or a
25 significant risk of harm.

26
27 **(h) Financial emergency**

28
29 Good cause for waiver of notice or a reduced notice period may be based on
30 a showing of financial emergency. The emergency must be immediate and
31 substantial and other means shown likely to be ineffective to prevent loss or
32 further loss to the proposed ward's estate or loss of support for the proposed
33 ward during the notice period. The focus should be on preservation of the
34 estate or support during the notice period.

1 **Rule 7.1062. The Good Cause Exception to Notice of the Hearing on a**
2 **Petition for Appointment of a Temporary Conservator**

3
4 (a) **Purpose**

5
6 The purpose of this rule is to establish uniform standards for the good cause
7 exception to the notice of the hearing required on a petition for appointment
8 of a temporary conservator under Probate Code section 2250(c).
9

10 (b) **Good cause for exceptions to notice limited**

11
12 Good cause for an exception to the notice required by section 2250(c) must
13 be based on a showing that the exception is essential to protect the proposed
14 conservatee or his or her estate from immediate and substantial harm.
15

16 (c) **Court may change the time or manner of giving notice**

17
18 Exceptions to the notice requirement of section 2250(c) include:
19

20 (1) Waiving notice;

21
22 (2) Requiring a different period of notice; or

23
24 (3) Changing the required manner of giving notice under section 2250(c),
25 including requiring expedited notice by telephone, fax, e-mail, or
26 personal delivery, or by a combination of these methods, instead of or
27 in addition to notice by mail to the proposed conservatee's spouse or
28 domestic partner and relatives.
29

30 (d) **Good cause based on the passage of time**

31
32 Good cause for waiver of notice or a reduced notice period may be based on
33 a showing of harm caused by the passage of time. The showing must
34 demonstrate the immediate and substantial harm to the conservatee or the
35 conservatee's estate that could occur during the notice period.
36

37 (e) **Good cause based on the conduct of a person to be given notice**

38
39 Good cause for waiver of notice to a person entitled to notice under section
40 2250(c) may be based on a showing of possible harm the person might do to
41 the proposed conservatee or the proposed conservatee's estate if notice is
42 given. However, such a showing would not support waiver of notice to the
43 proposed conservatee or any other person entitled to notice unless the

1 showing also demonstrates that notice cannot reasonably be given to the
2 proposed conservatee or the other person without also giving notice to the
3 possibly harmful person.

4
5 **(f) Medical emergency**

6
7 Good cause for waiver of notice or a reduced notice period may be based on
8 a showing of medical emergency. The emergency must be immediate and
9 substantial and treatment (1) must be reasonably unavailable unless a
10 temporary conservator is appointed, and (2) cannot be deferred for the notice
11 period because of the proposed conservatee’s pain or extreme discomfort or
12 a significant risk of harm.

13
14 **(g) Financial emergency**

15
16 Good cause for waiver of notice or a reduced notice period may be based on
17 a showing of financial emergency. The emergency must be immediate and
18 substantial and other means shown likely to be ineffective to prevent loss or
19 further loss to the proposed conservatee’s estate during the notice period.
20 The focus should be on preservation of the estate during the notice period.
21

Item SP07-11 Response Form

Title: Probate: Standards for the Good Cause Exception to Notice of Hearing of a Petition for Appointment of a Temporary Guardian or Conservator (adopt rules 7.1012 and 7.1062 of the California Rules of Court).

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or [respond using the Internet](#) to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102

Fax: (415) 865-7664 **Attention:** Camilla Kieliger

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 13, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*