

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR19-34

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**Title**

Probate Conservatorship and Guardianship:  
Accounting

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

Amend Cal. Rules of Court, rule 7.575;  
approve form GC-410

**Proposed by**

Probate and Mental Health Advisory  
Committee  
Hon. John H. Sugiyama, Chair

**Action Requested**

Review and submit comments by June 10,  
2019

**Proposed Effective Date**

January 1, 2020

**Contact**

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### Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends amending one rule of court to clarify the procedure for submitting original statements in support of a conservatorship or guardianship accounting when those statements are generated and issued electronically, and to require information about the personal residence of a conservatee or ward to be submitted in support of a request for a court order excusing an otherwise required accounting. The committee also proposes approving one form for optional use by a conservator or guardian to request an order excusing the filing of an otherwise required accounting. The recommendations are needed to facilitate implementation of existing statutory accounting requirements and to protect a conservatee's or ward's personal residence from loss or foreclosure by ensuring that the fiduciary is exercising ordinary care and diligence.

### Background

Section 2620 of the Probate Code<sup>1</sup> requires a conservator or guardian of the estate to file an accounting with the court at regular intervals beginning one year from the date of appointment. (Prob. Code, §§ 2600, 2620.) As amended by Assembly Bill 1286 (Stats. 2001, ch. 563, § 6),

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<sup>1</sup> All subsequent statutory references are to the Probate Code unless otherwise specified. All subsequent references to rules are to the California Rules of Court.

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 It is circulated for comment purposes only.*

section 2620(c) requires that original account statements, not copies, be filed in support of an accounting.

Section 2628 authorizes a court to make an order “that the conservator need not present the accounts otherwise required by this chapter” if certain specified conditions are met. (Prob. Code, § 2628(a).) These conditions include a cap on the value of the estate, but exclude from that cap the value of the residence of the ward or conservatee.

## **The Proposal**

The Probate and Mental Health Advisory Committee recommends amending rule 7.575 to clarify the requirement to submit original statements in support of a conservatorship or guardianship accounting when those statements are generated and issued electronically. This recommendation is needed to facilitate implementation of the requirement in section 2620(c) to submit original account statements and other financial documents in support of an accounting.

AB 1286 added the requirement to file original statements in support of accountings to prevent conservators from committing fraud by altering and photocopying statements, then submitting the altered copies to the court.<sup>2</sup> Neither the bill nor the Assembly Judiciary Committee analysis addressed the form required for a statement to qualify as an original. Fiduciaries and courts have encountered difficulty determining whether and when a printout of an electronic statement qualifies as an original statement under section 2620(c).

Section 255 of the Evidence Code provides assistance in resolving this question. First, the statute provides that an “original” is “the writing itself or any counterpart intended to have the same effect by the person ... issuing it.” Second, section 255 states that “[i]f data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an original.”<sup>3</sup>

Rule 7.575(f) would authorize a court to accept printouts of account statements created, stored, and delivered electronically if the printouts qualify as original writings under section 255. The fiduciary would have the burden of showing that the printed statements were authentic and that the information in the statements was accurate.

The committee also recommends amending rule 7.575 to require a conservator or guardian who files a request for an order excusing the filing of an otherwise required accounting to submit information about the personal residence of a conservatee or ward in support of that request. The additional information will assist the court to perform its oversight function (see Prob. Code,

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<sup>2</sup> See Assem. Com. on Judiciary, Rep. on Assem. Bill No. 1286 (2001–2002 Reg. Sess.) as amended Feb. 23, 2001, p. 3 (“author argues that courts need ... originals, which are much more difficult to doctor” than photocopies).

<sup>3</sup> Evid. Code, § 255. Section 255 was added to the Evidence Code in 1977. (Stats. 1977, ch. 708, § 1.) Based on the absence of a definition of *original* in section 2620 and the Legislature’s presumptive awareness of existing law (see *In re Greg F.* (2012) 55 Cal.4th 393, 407), the committee understands Evidence Code section 255’s definition of original writing to apply to statements filed in satisfaction of section 2620(c)’s requirements.

§ 2102) more effectively and to prevent the loss of a conservatee's or ward's home through neglect or malfeasance.

The committee recommends approving one form for optional use by a conservator or guardian to request an order excusing the filing of an otherwise required accounting. The form will facilitate implementation of the requirements in section 2628(a) and rule 7.575(f).

Specifically, the committee recommends, effective January 1, 2020:

1. Amending rule 7.575 to:

- Insert new subdivision (b) to clarify that a conservator or guardian may submit printouts of electronic account statements in support of accountings if those printouts qualify as original writings under section 255 of the Evidence Code;
- Add subdivision (f) to specify that, in addition to verifying that the conditions in section 2628(a) are met, a request for a court order excusing an accounting under section 2628 must disclose whether the estate of the ward or conservatee includes a personal residence and, if so, document that the fiduciary has taken steps to maintain the estate's ownership of the residence; and
- Reorganize and recast the rule's existing provisions to clarify the general statutory requirements for an accounting in a conservatorship or guardianship, to distinguish more clearly a simplified accounting from a standard accounting, and to specify when a simplified accounting may be filed.

2. Approving *Request for Order Excusing Accounting* (form GC-410) to promote submission of a request for a court order excusing an accounting that includes the information needed to verify that the conditions for granting the order have been met.

### **Alternatives Considered**

The committee considered not recommending amendment of rule 7.575 or approval of form GC-410. Ongoing challenges with filing electronic statements in conservatorship and guardianship accountings and the need for courts to protect a conservatee's or ward's interest in a personal residence in light of the statewide housing crisis, however, persuaded the committee that the rule amendments are needed. Court staff suggested that an optional form would be useful to courts that had not already adopted a local form for requesting the order.

The committee also considered recommending adoption of form GC-410 for mandatory use. However, several courts have adopted local forms for the same purpose. The committee does not wish to preempt effective local practices that achieve the same goals as this form.

### **Fiscal and Operational Impacts**

The proposal would clarify certain accounting requirements for self-represented guardians and conservators, facilitate the filing of accountings that comply with existing legal requirements, provide the court with more information to review the accountings, and reduce continuances and

other delay in reviewing accountings. The requirement to submit documentation of the fiduciary's activity to maintain a personal residence would impose an additional duty on the fiduciary, but that duty would be far less onerous than requiring the fiduciary to complete and file the accounting from which the fiduciary seeks excuse. The proposal would require courts that adopt form GC-410 to integrate the form into their case management systems. Some courts already have procedures in place to address requests to excuse or dispense with an accounting in a conservatorship or guardianship. This proposal is not intended to displace any of those procedures.

### **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 7.575, at pages 5–9
2. Form GC-410, at pages 10–11

Rule 7.575 of the California Rules of Court would be amended, effective January 1, 2020, to read:

1 **Rule 7.575. ~~Accounts~~ Accounting of conservators and guardians**

2  
3 ~~This rule defines standard and simplified accountings filed by conservators and guardians~~  
4 ~~under Probate Code section 2620(a), provides when each type of accounting must or may~~  
5 ~~be filed, and prescribes the use of Judicial Council accounting forms in both types of~~  
6 ~~accountings.~~

7  
8 Unless excused by the court under section 2628 of the Probate Code, a conservator or  
9 guardian of the estate must file accountings in the frequency, manner, and circumstances  
10 specified in Probate Code section 2620. The court may order accountings to be filed more  
11 frequently than required by the statute. An accounting must be filed as a standard  
12 accounting unless this rule authorizes filing a simplified accounting.

13  
14 **(a) ~~Standard and simplified~~ Information required in all accountings**

15  
16 ~~A standard accounting lists receipts and disbursements in subject-matter categories,~~  
17 ~~with each receipt and disbursement category subtotaled. A simplified accounting~~  
18 ~~lists receipts and disbursements chronologically, by receipt or payment date,~~  
19 ~~without subject-matter categories.~~

20  
21 Notwithstanding any other provision of this rule or the Judicial Council accounting  
22 forms, every accounting filed with the court must include:

23  
24 (1) All information required by Probate Code sections 1060–1063 in the  
25 accounting schedules or the *Summary of Account—Standard and Simplified*  
26 *Accounts* (form GC-400(SUM)/GC-405(SUM)); and

27  
28 (2) All information required by Probate Code section 1064 in the petition for  
29 approval of the accounting or the report accompanying the accounting.

30  
31 **(b) Supporting documents**

32  
33 Each accounting filed with the court must include the supporting documents  
34 specified in section 2620(c) of the Probate Code.

35  
36 (1) If an institution, financial institution, escrow agent, or care facility stores  
37 financial information in electronic form and delivers original statements  
38 electronically to the conservator or guardian, the court may accept printouts  
39 of those statements in satisfaction of section 2620(c) if those printouts qualify  
40 as original writings under the criteria in section 255 of the Evidence Code.

41  
42 (2) The guardian or conservator filing the accounting has the burden of showing  
43 the authenticity of the printouts and the accuracy of the data they reflect.

1  
2 **(bc) Standard accounting authorized or required**

3  
4 A conservator or guardian may file any accounting required or authorized by  
5 Probate Code section 2620 as a standard accounting under this rule and must file a  
6 standard accounting if:

- 7  
8 (1) The estate contains income real property;  
9  
10 (2) The estate contains a whole or partial interest in a trade or business;  
11  
12 (3) The appraised value of the estate is \$500,000 or more, exclusive of the  
13 conservatee's or ward's personal residence;  
14  
15 (4) Except as provided in (c)(d), Schedule A (receipts) or Schedule C  
16 (disbursements) prepared in a simplified accounting format exceeds five  
17 pages in length; or  
18  
19 (5) The court directs that a standard accounting be filed.  
20

21 A "standard accounting" reports receipts and disbursements in subject-matter  
22 categories, with each category listed subtotaled on a separate form. A conservator  
23 or guardian must file each accounting as a standard accounting unless a simplified  
24 accounting is authorized in (d)(1).

25  
26 **(ed) Simplified accounting authorized**

27  
28 A conservator or guardian may file a simplified accounting in all cases not listed in  
29 (b). If required by this rule to file a standard accounting only because a receipts or  
30 disbursements schedule is longer than five pages under (b)(4), a conservator or  
31 guardian may file a simplified accounting, except for that schedule, which must be  
32 prepared in a standard accounting format.  
33

34 A "simplified accounting" reports individual receipts and disbursements  
35 chronologically, by receipt or payment date, without separating them into subject-  
36 matter categories.

37  
38 (1) A conservator or guardian may file a simplified accounting only if all the  
39 following requirements are met:

- 40  
41 (A) The estate does not contain any income-generating real property;  
42

1           (B) The estate does not contain either a whole or a partial interest in a trade  
2           or business;

3  
4           (C) The appraised value of the estate, excluding the value of the  
5           conservatee’s or ward’s personal residence, is less than \$500,000; and

6  
7           (D) The court has not directed the fiduciary to file a standard accounting.  
8

9           (2) If the requirements in (1) are met, but either *Schedule A, Receipts—Simplified*  
10           *Account* (form GC-405(A)) or *Schedule C, Disbursements—Simplified*  
11           *Account* (form GC-405(C)) would be longer than five pages, the conservator  
12           or guardian must use the standard forms for *Schedule A, Receipts* (forms GC-  
13           400(A)(1)–(6)) or *Schedule C, Disbursements* (forms GC-400(C)(1)–(11)) as  
14           applicable, but may otherwise file a simplified accounting.

15  
16       **~~(de) Standard and simplified accounting Judicial Council forms~~**

17  
18       ~~Judicial Council forms designated as GC-400 are standard accounting forms. Forms~~  
19       ~~designated as GC-405 are simplified accounting forms. Forms designated as GC-~~  
20       ~~400/GC-405 are forms for both standard and simplified accountings. Each form is~~  
21       ~~also designated by a suffix following its accounting designator that identifies the~~  
22       ~~form’s intended use, based either on the form’s schedule letter as shown in the~~  
23       ~~*Summary of Account* (form GC-400(SUM)/GC-405(SUM)) or the form’s subject~~  
24       ~~matter.~~

25  
26       The Judicial Council has approved two separate, overlapping sets of forms for  
27       accountings in conservatorships and guardianships.

28  
29       (1) Forms intended for use in standard accountings are numbered GC-400.

30  
31       (2) Forms intended for use in simplified accountings are numbered GC-405.

32  
33       (3) Forms intended for use in both accounting formats bear both numbers.

34  
35       (4) Each form number is followed by a suffix—for example, GC-405(A)—  
36       further to specify that form’s intended use. The suffix indicates either the  
37       letter or subject matter of the form’s schedule.

38  
39       (5) The *Summary of Account—Standard and Simplified Accounts* (form GC-  
40       400(SUM)/GC-405(SUM)) must be used in all accountings.  
41

- 1           (6) Except for the *Summary of Account*, all standard accounting forms are  
2 optional. A conservator or guardian who files a standard accounting and  
3 elects not to use the Judicial Council forms must:  
4  
5           (A) Report receipts and disbursements in the same subject-matter  
6 categories specified in the Judicial Council standard accounting forms  
7 for receipts and disbursements schedules;  
8  
9           (B) Provide the same information about any asset, property, transaction,  
10 receipt, disbursement, or other matter that is required by the applicable  
11 Judicial Council standard accounting form; and  
12  
13           (C) Provide the information in the same general format as the applicable  
14 Judicial Council standard accounting form, except that instructional  
15 material and material contained or requested in the form’s header and  
16 footer may be omitted.  
17  
18       (7) *Schedule A, Receipts—Simplified Account* (form GC-405(A)) and *Schedule*  
19 *C, Disbursements—Simplified Account* (form GC-405(C)) must be used in all  
20 simplified accountings unless (d)(2) requires use of the standard forms for  
21 Schedule A or Schedule C.  
22  
23       (8) A conservator or guardian filing a simplified accounting must use the  
24 appropriate form in the GC-405 series whenever the accounting covers an  
25 asset, a transaction, or an event to which that form applies.  
26

27 **(e) ~~Mandatory and optional forms~~**  
28

- 29       (1) ~~Judicial Council accounting forms adopted as mandatory forms must be used~~  
30 ~~by standard and simplified accounting filers. Judicial Council accounting~~  
31 ~~forms approved as optional forms may be used by all accounting filers.~~  
32 ~~Judicial Council accounting forms designated as GC-400/GC-405 that are~~  
33 ~~approved as optional forms may be used by standard accounting filers but~~  
34 ~~must be used by simplified accounting filers.~~  
35  
36       (2) ~~Standard accounting filers electing not to use optional Judicial Council~~  
37 ~~accounting forms must:~~  
38  
39           (A) ~~State receipts and disbursements in the subject-matter categories~~  
40 ~~specified in the optional Judicial Council forms for receipts and~~  
41 ~~disbursements schedules;~~  
42

1 (B) Provide the same information about any asset, property, transaction,  
2 receipt, disbursement, or other matter that is required by the applicable  
3 Judicial Council accounting form; and  
4

5 (C) Provide the information in the same general layout as the applicable  
6 Judicial Council accounting form, but instructional material contained  
7 in the form and material contained or requested in the form's header  
8 and footer need not be provided.  
9

10 (f) **Required information in all accounts**

11  
12 Notwithstanding any other provision of this rule and the Judicial Council  
13 accounting forms, all standard and simplified accounting filers must provide all  
14 information in their accounting schedules or their *Summary of Account* that is  
15 required by Probate Code sections 1060–1063 and must provide all information  
16 required by Probate Code section 1064 in the petition for approval of their account  
17 or the report accompanying their account.  
18

19 (f) **Excusing an otherwise required accounting**

20  
21 The court may make an order excusing a conservator or guardian from filing an  
22 otherwise required accounting if the conditions in Probate Code section 2628(a) are  
23 met. If the conservatee or ward owns a personal residence, the request for an order  
24 excusing an accounting must include, in addition to the information needed to  
25 verify that the conditions in section 2628(a) are met, the following information and  
26 documents regarding the personal residence:  
27

28 (1) The street address of the residence;

29  
30 (2) A true copy of the most recent residential property tax bill;

31  
32 (3) A true copy of the declarations page from the homeowner's insurance policy  
33 covering the residence;

34  
35 (4) A true copy of the most recent statement for any mortgage or loan secured by  
36 the residence; and

37  
38 (5) A true copy of the most recent homeowners' association fee statement, if the  
39 residence is part of a homeowners' association.

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  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF (name):	CASE NUMBER:
<b>REQUEST FOR ORDER EXCUSING ACCOUNTING</b> <b>(Guardianships and Conservatorships)</b>	HEARING DATE AND TIME:                      DEPT.:

1. I, (name):  
 conservator or guardian of the estate  and the person of (name):  
 request that the court make an order excusing me from filing the accounting otherwise due on (date):  
 covering the period from (date): to (date):
  
2. The conservatee or ward named in 1 is now living at (residence address):  
  
 This address is the conservatee's or ward's personal residence.
  
3.  An Inventory and Appraisal of the estate was filed with the court on (date):
  
4. At both the beginning and the end of the period covered by this request, the estate had a total net value of less than \$15,000, excluding the value of the personal residence described in 5b, below. (initial here): \_\_\_\_\_
  
5. The estate of the conservatee or ward contains the following property (check all that apply):
  - a.  Cash or bank accounts in the amount of: \$
  - b.  A personal residence. If not the current residence listed in 2, the personal residence is located at (street address):

Verified copies of all of the following documents are included as Attachment 5b:

  - (1)  A true copy of the most recent residential property tax bill;
  - (2)  A true copy of the declarations page from the current homeowner's insurance policy covering the residence;
  - (3)  A true copy of the most recent statement for any mortgage or loan secured by the residence; and
  - (4)  A true copy of the most recent fee or dues statement for any homeowners' association or similar association.

c.  Other real or personal property valued at: \$ (describe the estate property here):

Additional property is described on Attachment 5c.
  
6. The estate's income for each month of the period covered by this request, excluding public benefits, was less than \$2,000. (initial here): \_\_\_\_\_
  
7. During the period covered by this request, all the estate's income, if any, was used for the benefit of the conservatee or ward. (initial here): \_\_\_\_\_

<input type="checkbox"/> CONSERVATORSHIP	<input type="checkbox"/> GUARDIANSHIP OF (name):	CASE NUMBER:
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8. The estate receives the following income each month (list each source and amount, then give total amount):

<u>Source of income (e.g., pension, trust, social security)</u>	<u>Amount</u>
	\$
	\$
	\$
	\$
	\$

Additional sources and amounts of income are provided on Attachment 8.

**TOTAL** (including all amounts from Attachment 8): \$

9. Neither the sources nor amounts of the estate's income are expected to change in the foreseeable future, except for automatic cost-of-living adjustments. If the estate's monthly income does change, I will file a report explaining the changes.

10. This request covers estate activity during the period shown in 1, above, which begins with (1) the end of the period covered by the last accounting filed with and approved by the court or (2) the date the court last made an order excusing an accounting under section 2628 of the Probate Code, whichever is later, and ends on the date of the fiduciary's signature, below.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)	▶	(SIGNATURE OF ATTORNEY)
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**Each fiduciary must sign here and initial items 4, 6, and 7.**

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

Date:

(TYPE OR PRINT NAME OF FIDUCIARY)	▶	(SIGNATURE OF FIDUCIARY)
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Date:

(TYPE OR PRINT NAME OF FIDUCIARY)	▶	(SIGNATURE OF FIDUCIARY)
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