

# JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688

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## INVITATION TO COMMENT

### SPR19-36

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<b>Title</b>	<b>Action Requested</b>
Rules and Forms: Notices of Hearing in Probate Proceedings	Review and submit comments by June 10, 2019
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Adopt form DE-115/GC-015; revise form DE-120	January 1, 2020
<b>Proposed by</b>	<b>Contact</b>
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Corby Sturges, 415-865-4507 Corby.Sturges@jud.ca.gov

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### Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends adopting one mandatory notice form and revising one mandatory notice form to give the information and advisements required by statute in (1) a notice of a petition filed under section 850 of the Probate Code and (2) a notice of hearing on a report of status of estate administration under section 12201 of that code. These revisions have been requested by courts and stakeholders. They are needed to conform to existing law, to promote access to the courts, and to allow timely distribution of the proceeds of decedents' estates.

### Background

Form DE-120, *Notice of Hearing—Decedent's Estate or Trust*, is used to give notice of hearings in proceedings under the Probate Code<sup>1</sup> except for guardianships and conservatorships.<sup>2</sup>

Effective January 1, 2002, Senate Bill 669 (Stats. 2001, ch. 49) consolidated various provisions in the Probate Code dealing with determination of property claims involving estates of decedents, conservatees, minors, and trusts into sections 850–859. The bill authorized the

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<sup>1</sup> All subsequent statutory references are to the Probate Code unless otherwise specified.

<sup>2</sup> *Notice of Hearing—Guardianship or Conservatorship* (form GC-020) must be used to give notice of a hearing in a guardianship or conservatorship proceeding.

*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 It is circulated for comment purposes only.*

probate court to resolve questions of title affecting property and any related claims by or against a fiduciary acting on behalf of an estate or other person.<sup>3</sup>

Effective January 1, 2018, Assembly Bill 308 (Stats. 2017, ch. 32, § 1) amended section 851 to require a notice of hearing on a petition under section 850 to include (1) a description of the property at issue, (2) a description of any relief sought for bad-faith conduct or financial abuse, and (3) a statement that any person interested in the property may file a response to the petition.

Since January 1, 1991, and operative July 1 of that year, section 12201 has required that notice of a hearing on a report of the status of estate administration include “a statement in not less than 10-point boldface type or a reasonable equivalent thereof if printed, or in all capital letters if not printed, in substantially the following words: ‘YOU HAVE THE RIGHT TO PETITION FOR AN ACCOUNT UNDER SECTION 10950 OF THE CALIFORNIA PROBATE CODE.’” (Stats. 1990, ch. 79, § 14.)

## **The Proposal**

The Probate and Mental Health Advisory Committee recommends adopting *Notice of Petition to Determine Claim to Property* (form DE-115/GC-015) and revising *Notice of Hearing—Decedent’s Estate or Trust* (form DE-120) to implement the statutory requirements described above and conform to Judicial Council form standards.

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

1. Adopting form DE-115/GC-015 to give notice of a hearing and a petition under section 850 to the persons listed in section 851(a) and (b) in conformity with section 851(c), which requires that the notice:
  - Describe the property in dispute with sufficient specificity to give adequate notice to any person who has an interest in the property;
  - Advise interested persons that each may file a response to the petition; and
  - Describe the relief sought for alleged bad-faith conduct or elder abuse with sufficient specificity to give notice to any person against whom that relief is sought.
2. Revising form DE-120 to
  - Indicate whether the subject of the noticed hearing is a report of status of decedent’s estate administration under section 12201 and, if it is, add the required statement advising interested persons of their right to petition for an accounting;
  - Update the instructions for requesting an accommodation under the Americans with Disabilities Act;
  - Update statutory references in the form footer; and
  - Conform to current Judicial Council form standards.

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<sup>3</sup> Sen. Com. on Judiciary, Analysis of Sen. Bill No. 669 (2001–2002 Reg. Sess.) as introduced, p. 1.

## Alternatives Considered

The committee considered not recommending any revisions to form DE-120, as the statutes seem to place the burden on the filing parties to provide the requested information. However, in light of requests from courts and stakeholders, as well as the judicial branch’s interests in providing access to the courts, giving all interested persons notice and an opportunity to be heard, and resolving cases efficiently, the committee elected to recommend these revisions.

The committee also considered recommending the incorporation of the notices and advisements required by section 851 into form DE-120 and not recommending a separate form for notice of hearing and a section 850 petition. The committee determined, however, that resolving a claim to specific property implicated rights sufficiently independent of an underlying estate proceeding to warrant a dedicated notice form, that a crossover form was needed because a section 850 petition may also be filed in a guardianship or conservatorship estate proceeding, and that adding the required elements to form DE-120 would make that form confusing and difficult to use.

## Fiscal and Operational Impacts

The proposal would require courts to develop processes for using form DE-115/GC-115, replace current inventories of form DE-120, and possibly enter one or more new data elements into their case management systems. Based on the requests for the proposal from courts, the revisions will probably reduce the frequency with which examiners need to flag a notice on a section 850 petition or a report of status of administration for procedural deficiencies, and thereby reduce the frequency of continued hearings and increase the efficiency of case processing.

### 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. Forms DE-115/GC-015 and DE-120, at pages 4–7

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"/> ESTATE OF <input type="checkbox"/> TRUST OF (name):  <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR <input type="checkbox"/> SETTLOR	
NOTICE OF PETITION TO DETERMINE CLAIM TO PROPERTY	CASE NUMBER:

***A petition has been filed asking the court to determine a claim to the property identified in 3, and a hearing on the petition has been set. Please refer to the petition for more information.***

***If you have a claim to the property described in 3, you may attend the hearing and object or respond to the petition. If you do not want to attend the hearing, you may also file a written response before the hearing.***

***If you do not respond to the petition or attend the hearing, the court may decide the claim to the property without your input.***

1. NOTICE is given that (name):  
 (fiduciary or representative capacity, if any):  
 has filed a petition under Probate Code section 850 asking for a court order determining a claim to the property described in 3.

2. A HEARING on the petition will be held as follows:

<b>Hearing Date</b>	→	Date: _____ Dept.: _____	Time: _____ Room: _____	Name and address of court if different from above: _____
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3. The property that is the subject of the petition is (describe each item of real or personal property; for real property—i.e., land or buildings—give the street address or, if none, describe the property's location and give the assessor's parcel number):

Check 4 only if the petition seeks the additional relief described.

4.  In addition to seeking to recover the property described in 3, the petition also alleges and seeks relief for bad faith conduct, undue influence in bad faith, or elder or dependent adult financial abuse. The petition describes these allegations in detail. Based on the allegations, the petition seeks to recover twice the value of the property described in 3  and requests that the court award attorney's fees and costs to the petitioner. (Prob. Code, § 859.)

**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* ([form MC-410](#)). (Civ. Code, § 54.8.)

<input type="checkbox"/> ESTATE OF <input type="checkbox"/> TRUST OF <i>(name):</i>  <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR <input type="checkbox"/> SETTLOR	CASE NUMBER:
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**PROOF OF SERVICE BY MAIL\***

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify):*
  
3. I served the foregoing *Notice of Hearing—Petition to Determine Claim of Property Ownership* on 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.  I served with the *Notice of Hearing—Petition to Determine Claim of Property Ownership* a copy of the petition referred to in the Notice.

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)		_____ (SIGNATURE)
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**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

- |    | <u>Name</u> | <u>Address (street &amp; number, city, state, zip code)</u> |
|----|-------------|---|
| 1. |             |   |
| 2. |             |   |
| 3. |             |   |
| 4. |             |   |
| 5. |             |   |
| 6. |             |   |
| 7. |             |   |
| 8. |             |   |

Continued on an attachment. *(You may use Attachment to Notice of Hearing Proof of Service by Mail, form DE-120(MA)/GC-020(MA), for this purpose.)*

\* Do **not** use this form to prove personal or electronic service. You may use form DE-120(P) or GC-020(P) to prove personal service.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> IN THE MATTER OF (name):  <input type="checkbox"/> DECEDENT <input type="checkbox"/> TRUST <input type="checkbox"/> OTHER	CASE NUMBER:
<b>NOTICE OF HEARING—DECEDENT'S ESTATE OR TRUST</b>	
<i><b>This notice is required by law. You are not required to appear in court, but you may attend the hearing and object or respond if you wish. If you do not respond or attend the hearing, the court may act on the filing without you.</b></i>	

1. NOTICE is given that (name):  
 (fiduciary or representative capacity, if any):  
 has filed a petition, application, report, or account (specify and briefly describe):\*

Please refer to the filed documents for more information about the case. (Some documents filed with the court are confidential.)

2. A HEARING on the matter described in 1 will be held as follows:

<b>Hearing Date</b>	→ Date:	Time:	Name and address of court, if different from above:
	Dept.:	Room:	

**NOTICE**  
 If the filing described in 1 is a  
 report of status of decedent's estate administration,  
**YOU HAVE THE RIGHT TO PETITION FOR AN ACCOUNTING  
 UNDER SECTION 10950 OF THE PROBATE CODE.**

**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* ([form MC-410](#)). (Civ. Code, § 54.8.)

\* Do not use this form to give notice of a petition to administer an estate (see Prob. Code, § 8100 and use form DE-121) or notice of a hearing in a guardianship or conservatorship case (see Prob. Code, §§ 1511 and 1822 and use form GC-020).

<input type="checkbox"/> ESTATE OF <i>(name)</i> :	<input type="checkbox"/> IN THE MATTER OF <i>(name)</i> :	CASE NUMBER:
<input type="checkbox"/> DECEDENT <input type="checkbox"/> TRUST <input type="checkbox"/> OTHER		

**CLERK'S CERTIFICATE OF POSTING**

1. I certify that I am not a party to this cause.
2. A copy of the foregoing *Notice of Hearing—Decedent's Estate or Trust*
  - a. was posted at *(address)*:
  
  
  - b. was posted on *(date)*:

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

**PROOF OF SERVICE BY MAIL\***

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify)*:
  
  
3. I served the foregoing *Notice of Hearing—Decedent's Estate or Trust* on 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.  I served with the *Notice of Hearing—Decedent's Estate or Trust* a copy of the petition or other document referred to in item 1 of the Notice.

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) (SIGNATURE)

**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

- |    | <u>Name</u> | <u>Address (street &amp; number, city, state, zip code)</u> |
|----|-------------|---|
| 1. |             |   |
| 2. |             |   |
| 3. |             |   |
| 4. |             |   |
| 5. |             |   |

Continued on an attachment. *(You may use Attachment to Notice of Hearing Proof of Service by Mail, form DE-120(MA)/GC-020(MA), for this purpose.)*

\* Do **not** use this form for proof of personal service. You may use form DE-120(P) to prove personal service of this Notice.