



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-151

For business meeting on September 20, 2024

Title

Probate Guardianship: Participation of a
Minor Ward in Court

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 7.1016

Effective Date

January 1, 2025

Recommended by

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

Date of Report

August 21, 2024

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Executive Summary

The Probate and Mental Health Advisory Committee recommends amending rule 7.1016 of the California Rules of Court to conform to Senate Bill 654 (Stats. 2021, ch. 768, § 2), which amended Family Code section 3042 to place additional conditions on a minor child's participation in court or testimony in proceedings, including probate *guardianships of the person*, that address child custody or visitation. The committee also recommends amending the rule to conform more closely to statute by limiting its application to specified proceedings and expanding its protections to apply to wards who are parties, as well as to express its requirements more clearly.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council amend California Rules of Court, rule 7.1016, effective January 1, 2025, to:

- Bar a court from permitting a ward to address the court in the presence of the parties absent a finding on the record that doing so would be in the ward's best interest;

- Require specified professionals to inform the court if they become aware that a ward has changed their mind about addressing the court;
- Expand the rule’s protections to apply to wards who are parties;
- Limit the scope of the rule’s application to proceedings; and
- Express the rule’s requirements more clearly.

The text of the amended rule is attached at pages 6–14.

Relevant Previous Council Action

Effective January 1, 2012, the Judicial Council adopted California Rules of Court, rule 5.250 to implement the requirements in Family Code section 3042 that govern a child’s participation and testimony in proceedings to determine child custody and visitation.¹ Rule 5.250 applies to family law custody and visitation proceedings. The Judicial Council adopted rule 7.1016, effective January 1, 2013, to implement Family Code section 3042’s requirements in proceedings for appointment of a probate guardian of the person.²

Effective January 1, 2023, the Judicial Council amended rule 5.250 in response to amendments to Family Code section 3042 by Senate Bill 654 (Stats. 2021, ch. 768, § 2).³ Amending rule 7.1016 was not considered at that time.

Analysis/Rationale

Family Code section 3042 governs a child’s participation and testimony in a proceeding to determine child custody or visitation. A probate guardianship of the person gives custody of a minor child to an adult other than the child’s parent.⁴ Probate Code section 1514(b)(1) provides that, “[i]n appointing a guardian of the person, the court is governed by” Family Code sections 3020–3032 and 3040–3049, including section 3042, “relating to custody of a minor.”

The recommended amendments to rule 7.1016 would implement the changes to Family Code section 3042 made by SB 654 as they apply to probate guardianships. SB 654 made two significant changes to section 3042. First, it barred a court from permitting a child to address the court regarding custody or visitation in the presence of the parties unless the court found that doing so in the parties’ presence would be in the child’s best interest and stated the reasons for

¹ Fam. Code, § 3042, as amended by Assem. Bill 1050 (Stats. 2010, ch. 187, § 1). See Judicial Council of Cal., Advisory Com. Rep., *Family Law: Children’s Participation and Testimony in Family Court Proceedings* (Oct. 6, 2011). All further unspecified references to rules are to the California Rules of Court.

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

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

⁴ The Probate Code authorizes the court to appoint two types of guardian, as needed. A guardian *of the person* has care, custody, and control of the child. (Prob. Code, § 2351(a).) A guardian *of the estate* is charged with managing the child’s money and property. (*Id.*, § 2401(a).)

that finding on the record. (Fam. Code, § 3042(f).) The amendment also required the court to provide a way to obtain the child's input out of the presence of the parties. (*Id.*, § 3042(f)(1).) The recommended amendments to rule 7.1016(e)(1)–(3) implement these statutory changes in proceedings for appointment or removal of a guardian of the person.

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

Amended Family Code section 3042 both shields children from having to provide testimony in front of their parents or caregivers and provides assurances that the court will learn that the child has changed their mind about addressing the court. (See Fam. Code, §§ 3042(f) and (h).) Amending rule 7.1016 to conform to these statutory changes will avoid confusion and ensure that children in probate guardianship proceedings are afforded the same protections as those in family law custody and visitation proceedings.

The committee also recommends amending the rule so that its provisions apply to a ward regardless of whether the ward is a party. The protections in rule 7.1016(c)–(e) and (g) currently apply only to a ward who is *not* a party. The absence from Family Code section 3042 of language clearly excluding children who are parties from participating in custody proceedings indicates that the Legislature did not intend to exclude them. The statutory silence is not attributable to any want of authority for child parties in family law custody proceedings. A child may be a party to a custody proceeding brought in the context of a Domestic Violence Prevention Act case (Fam. Code, §§ 6211(e)–(f), 6229, 6301(a)) or an action under the Uniform Parentage Act (Fam. Code, § 7630(a)). (See generally Fam. Code, §§ 3021(e)–(f), 3022.) A ward may also be a party to a probate guardianship proceeding. Given the absence of a clear reason for excluding wards who are parties, proposed amendments to rule 7.1016(c)–(e) and (g) would extend the application of those subdivisions to a ward who is a party and wishes to participate or testify in a hearing.⁵

The committee, however, recommends that the rule continue to separately address situations in which a ward who is a party receives a discovery request or is called as a witness by another party. (Rule 7.1016(h).) Those situations are beyond the scope of Family Code section 3042 because they may entail a ward's unwilling participation or testimony. Nevertheless, a rule

⁵ Excluding a ward who is a party from the scope of the rule's protections could be problematic for another reason. Probate Code section 1043(b) authorizes an interested person to appear and make a response or objection orally at a hearing. Under this statute and prevailing probate practice, a ward who was not a party and who responded or objected to a guardianship petition (in other words, expressed a preference) would by virtue of their participation become a party to the proceeding. Rule 7.1016(a)(2) therefore treats a ward as a party if the ward files a petition or makes a response or objection in a guardianship proceeding. And it does not make sense to afford the protections of Family Code section 3042 to a ward before they have begun to address the court but not afterward.

governing the participation and testimony of a ward in a guardianship proceeding would be incomplete without addressing these possibilities.

The committee also recommends amending rule 7.1016(d) to distinguish more clearly between a ward 12 years of age or older, who *must* be permitted to address the court *unless* doing so would not be in the ward’s best interest, and a ward younger than 12 years old, who *may* be permitted to address the court *if* doing so would be in the ward’s best interests.⁶

Further recommended amendments would eliminate the distinction in existing rule 7.1016 between a “proceeding,” to which the rule applies, and “[an]other matter subject to this rule,” which, as used, is actually *not* subject to the rule but a matter to which the court may, in its discretion, apply all or part of the rule.⁷ The amendments would instead specify expressly that the rule applies to a ward’s participation and testimony in a hearing on appointment or removal of a guardian of the person, parental visitation of a ward during a guardianship of the person, or the termination of a guardianship of the person.⁸ (Rule 7.1016(b)(1).) The court would have discretion to apply the rule’s provisions to the participation or testimony of a ward in any other hearing in a guardianship of the person or of the estate. (Rule 7.1016(b)(2).)

Policy implications

Several of the recommended amendments to rule 7.1016 are required to conform to law. Others, by expanding the scope of the rule’s protections to all wards and clarifying its provisions, promote the council’s goals of (1) delivering the highest quality of justice and service to the public; (2) fostering the fair, timely, effective, and efficient processing and resolution of cases; and (3) making court procedures easier to understand.

Comments

The recommended rule amendments circulated for public comment from March 29 to May 3 in the spring 2024 invitation-to-comment cycle. The committee received four comments. Three commenters agreed with the proposal as circulated, and one did not indicate a position. The committee has reviewed the comments and does not recommend any changes to the rule as circulated for comment.

The Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee agreed with the proposed amendments while expressing concerns about burdens on court investigators and other professionals. These comments, however, targeted longstanding elements of Family Code section 3042 that, in some cases, have been addressed in rule 7.1016 since its adoption, effective January 1, 2013. The

⁶ Rule 7.1016(d)(2)–(3). This distinction aligns with, but is not limited to, the Probate Code’s authorization of a minor child 12 years of age or older to file a petition for appointment of a guardian for themselves and thereby become a party. (Prob. Code, § 1510(a))

⁷ See rule 7.1016(a)(2) & (b)(2), as adopted, effective January 1, 2013.

⁸ See Prob. Code, § 1514(b)(1), providing that Family Code sections 3020–3032 and 3040–3049, including section 3042, govern the probate court in appointing a guardian of the person.

recommended rule amendments, by clarifying the limits of professionals' duties and narrowing the rule's application to specific proceedings, should alleviate these concerns to some extent.

JRS's comment also described the detrimental effects on children of testifying in the presence of their parents about custody and visitation. The recommended rule amendments, by implementing SB 654's amendments of Family Code section 3042, address these concerns as well.

A chart of comments is included at pages 15–19.

Alternatives considered

The committee did not consider taking no action because SB 654's amendments to Family Code section 3042 require amendments to rule 7.1016. The committee considered limiting its recommendation to amendments strictly necessary to conform to SB 654's changes to Family Code section 3042. On reviewing the rule, however, the committee determined that additional amendments were needed to bring the rule into conformity with existing law by expanding its protections to include wards who are parties and limiting the proceedings to which it applies.

Fiscal and Operational Impacts

The amendments to rule 7.1016 should not have a significant fiscal or operational impact on the courts. Most of the changes to court processes and related training are attributable to the statutory amendments in SB 654; their fiscal impact is expected to be minimal. Courts may have already begun these updates, as SB 654 took effect on January 1, 2022. To the extent that the recommended amendments to rule 7.1016 are not required by statute, they may work to make processing of guardianship proceedings more efficient.

Attachments and Links

1. Cal. Rules of Court, rule 7.1016, at pages 6–14
2. Chart of comments, at pages 15–19
3. Link A: Fam. Code, § 3042,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FAM§ionNum=3042
4. Link B: Prob. Code, § 1514,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB§ionNum=1514

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

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

3
4 **(a) Definitions**

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

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

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

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

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

17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15
16 A child custody evaluator, an expert witness appointed under Evidence Code
17 section 730, an investigator, or a child custody recommending counselor ~~or other~~
18 ~~custody mediator who is~~ appointed or assigned to meet with obtain information
19 from a ward and provide the information to the court and the parties must:
20

- 21 (1) ~~Provide information to~~ Inform the ward in an age-appropriate manner about
22 the ~~limitations on the~~ confidentiality of testimony and ~~the possibility that~~
23 information provided to the professional may will be shared with the court on
24 the record and provided to the parties in the case;
25
26 (2) ~~Allow but not require the ward to state a preference regarding the issues to be~~
27 ~~decided in the proceeding or other matter subject to this rule, and provide~~
28 ~~information~~ Inform the ward in an age-appropriate manner about the process
29 by which the court will make a decision; ~~and~~
30
31 (3) Allow but not require the ward to state a preference regarding the issues to be
32 decided by the court; and
33
34 (3) (4) ~~Provide to~~ Give the other parties ~~in the case~~ information about how best to
35 support ~~the interest of~~ the ward during the court process.
36

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

38
39 Courts should provide information to the parties and information and support to the
40 a ward who is not a party to the proceeding or other matter subject to this rule when
41 if the ward wants to participate or testify. Methods of providing information or
42 support may include:
43

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

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

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

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

23

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

25

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

- 28
- 29 (1) A ward's² participation in proceedings or other matters subject to this rule,
 30 guardianship hearings;
- 31
- 32 (2) Methods other than direct testimony for receiving input from a ward to give
 33 relevant information and input to the court;
- 34
- 35 (3) Procedures for taking a ward's testimony, consistent with the safeguards in
 36 this rule, Family Code section 3042, and Evidence Code sections 765(b) and
 37 767(b); and
- 38
- 39 (4) The differences in the application of this rule to wards who are parties and
 40 those who are not parties to the proceeding or other matters subject to this
 41 rule.
- 42

SPR24-30

Probate Guardianship: Child’s Participation in Court (amend Cal. Rules of Court, rule 7.1016)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran, President	A	The proposed form appropriately addresses the stated purpose.	The committee appreciates this comment. No further response required.
2.	Superior Court of Riverside County by Sarah Hodgson, Chief Deputy of Legal Services/General Counsel	NI	<p>The proposal addresses the stated purpose.</p> <p>Would the proposal provide cost savings? If so, please quantify. A: No cost savings</p> <p>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? A: Update procedure, clerk alert, training of staff, update existing CMS code/description, create new CMS code. FCS and CCRC cost impact would be determined by the FCS Manager.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Depend on vendor time tables. No sooner than 3 but up to 6 months may be needed.</p> <p>How well would this proposal work in courts of different sizes? A: This proposal should work well in courts of different sizes.</p>	The committee appreciates these comments. No further response required.
3.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Q: Does the proposal appropriately address the state purpose?</p> <p>A: Yes.</p>	The committee appreciates these comments. No further response required.

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Probate Guardianship: Child’s Participation in Court (amend Cal. Rules of Court, rule 7.1016)

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	Commenter	Position	Comment	Committee Response
			<p>Q: Would the proposal provide cost savings? If so, please quantify. A: No.</p> <p>Q: 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? A: Implementation will require training of staff and Judicial Officers.</p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A: Yes.</p> <p>Q: How well would this proposal work in courts of different sizes? A: This proposal should work well, regardless of the size of the court.</p>	
4.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules Subcommittee)	A	<p>The JRS also notes the following impact to court operations:</p> <ul style="list-style-type: none"> • Potential need to update/revise Local Rules • Additional training of court investigators and court-appointed attorneys on the requirements of new CRC, rule 7.1016, and 	<p>The committee appreciates the JRS’s comments.</p> <ul style="list-style-type: none"> • No response required. • The committee notes that, although it would be a best practice, neither the statute nor the rule specifically requires a court investigator

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	Commenter	Position	Comment	Committee Response
			<p>related Family Law section 3042, e.g., knowing to ask minor ward’s preference; minor ward’s right to address the court in camera or in open court; assessing whether addressing the court would be in minor ward’s best interest, etc.</p> <ul style="list-style-type: none"> • There will need to be either a court investigator and/or court-appointed counsel in every guardianship so the minor ward has someone to ask them their preference and report that preference to the court and/or the minor’s desire to address the court. • Additional court investigator and court-appointed attorney tasks, e.g., asking minor ward’s preference; alerting court to minor’s desire to address the court in camera or in open court; assessing whether addressing the court would be in minor ward’s best interest, etc. <p><u>Additional Comments</u> The intent of this proposal could largely be achieved via non-statutory applications, under the Probate court’s duty to determine what is in the best interests of the minor, and to use its permissive/discretionary powers to perform or</p>	<p>or a child’s attorney to ask the child whether the child wishes to address the court. Professionals having information about a ward’s wish to address the court have had the duty to inform the court of that wish since the rule’s adoption in 2013. The committee recognizes the burden of the duties imposed on the court investigator by the statute and, by extension, the rule. But the California Rules of Court must not be inconsistent with statute.</p> <ul style="list-style-type: none"> • See response above. • See response above. <p>The committee does not recommend a change to the proposal in response to this comment. The comment addresses policy considerations resolved by the Legislature in amendments to Family Code section 3042 enacted by Assembly Bill 1050,</p>

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Probate Guardianship: Child’s Participation in Court (amend Cal. Rules of Court, rule 7.1016)

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	Commenter	Position	Comment	Committee Response
			<p>direct that investigation. There is no legal barrier to the judge, the court investigator, or minor’s counsel asking the minor their preference for custody or visitation—provided the minor has the ability to understand the gravity of the question. And there is likewise no barrier to the judge deciding to hear from a minor in open court, or in camera if there are concerns that the minor would not be able to speak freely in open court.</p> <p>The detail that might need to be statutory/required is the existence of a court officer (court appointed counsel or a court investigator, etc.) who is responsible for asking the minor, prior to the hearing, if they have a preference and reporting the response to the court.</p> <p>There is concern that overzealous application of a statutory process for a minor child to express their preference of custody or visitation to the court will force a child to express an opinion on the court record they are not fully prepared to make or be held to in the long term, and which may be overemphasized by competing parties or the court. A minor does not always know what is in their best interests, or the full scope of their options, particularly when they are still dependent on the adults in their life and/or have already faced instability or insecure caregiver</p>	<p>operative January 1, 2012. AB 1050 also required the Judicial Council to adopt a rule of court to implement its provisions. The council adopted rule 7.1016, effective January 1, 2013, in response to this mandate as it applies to probate guardianships of the person. The amendments to rule 7.1016 recommended in this proposal respond to further amendments to Family Code section 3042 enacted by Senate Bill 654 (Stats. 2021, ch. 768, § 2).</p> <p>The committee does not recommend a change to the proposal in response to this comment. Family Code section 3042 and rule 7.1016 do not require anyone to ask a child whether the child wishes to address the court. (See Fam. Code, § 3042(g); Cal. Rules of Court, rule 7.1016(c).) The statute authorizes the judicial officer to ask the child directly if no one has indicated that the child wishes to address the court. (See Fam. Code, § 3042(g).)</p> <p>The committee does not recommend a change to the proposal in response to this comment. The statute and the rule make clear that they do not require a “child to express to the court a preference or to provide other input regarding custody or visitation.” (Fam. Code, § 3042(i); see Cal. Rules of Court, rule 7.1016(b)(3).) SB 654’s amendments to Family Code section 3042 and corresponding amendments to rule 7.1016 further protect the child by barring the court from permitting a child to address the court regarding custody or visitation <i>in the presence of the parties</i></p>

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SPR24-30**Probate Guardianship: Child's Participation in Court** (amend Cal. Rules of Court, rule 7.1016)

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	Commenter	Position	Comment	Committee Response
			relationships.	without an express judicial finding that doing so would be in the child's best interest; requiring the court to provide an alternative to addressing the court in the presence of the parties; and requiring all persons who have a duty to inform the judicial officer if the child wishes to address the court also to inform the judicial officer if the child changes their mind. (<i>Id.</i> , § 3042(f), (h); Cal. Rules of Court, rule 7.1016(c), (e).)

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