



# Judicial Council of California

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## REPORT TO THE JUDICIAL COUNCIL

*Item No.: 24-155*

For business meeting on September 20, 2024

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**Title**

Probate Conservatorship: Confidential  
Declaration Forms

**Rules, Forms, Standards, or Statutes Affected**

Adopt form GC-325; revise form GC-335;  
revoke and replace form GC-335A

**Recommended by**

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

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2025

**Date of Report**

August 15, 2024

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### Executive Summary

The Probate and Mental Health Advisory Committee recommends adopting one form, revising one form, and revoking and replacing one form for use as declarations regarding the abilities and capacities of a probate conservatee or proposed conservatee. This recommendation updates the forms to conform to the law as amended by recent legislation, including Assembly Bill 1194 (Stats. 2021, ch. 417) and Assembly Bill 1663 (Stats. 2022, ch. 894), and makes the forms easier for professional declarants to use to communicate their conclusions to the court.

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2025:

1. Adopt *Confidential Declaration on Medical Ability to Attend Hearing—Probate Conservatorship* (form GC-325) for use by a medical or religious practitioner to make a declaration regarding a person's ability to attend a hearing;

2. Revise *Capacity Declaration—Conservatorship* (form GC-335) to:
  - Retitle the form as *Confidential Capacity Assessment and Declaration—Probate Conservatorship*;
  - Remove the content regarding the medical ability of a conservatee or proposed conservatee to attend a hearing;
  - Focus a clinician’s assessment and declaration on the aspects of a person’s mental capacity relevant to the issues raised in the proceeding in which the declaration is to be filed;
  - Use language that allows clearer communication of clinical conclusions to legal audiences; and
  - Add content regarding capacity to consent to placement and medication to treat major neurocognitive disorders that is currently on form GC-335A; and
3. Revoke *Major Neurocognitive Disorder Attachment to Capacity Declaration—Conservatorship* (form GC-335A) and replace with a new optional form, *Everyday Activities Attachment to Confidential Capacity Assessment and Declaration—Probate Conservatorship* (form GC-335A), to allow a clinician or other professional to offer conclusions regarding the person’s ability to perform everyday activities.

The recommended forms are attached at pages 12–23.

## **Relevant Previous Council Action**

The Judicial Council most recently revised forms GC-335 and GC-335A, effective January 1, 2019, in response to legislation that updated statutory terminology used in these forms from “dementia” to “major neurocognitive disorder.” The council approved *Capacity Declaration—Conservatorship* (form GC-335) as an optional form, effective July 1, 1998, and adopted it for mandatory use with all other probate forms then existing, effective January 1, 2000. The council also revised form GC-335 and adopted form GC-335A as *Dementia Attachment to Capacity Declaration—Conservatorship*, effective January 1, 2004, based on changes in the law.

## **Analysis/Rationale**

Assembly Bill 1194 (Stats. 2021, ch. 417) and Assembly Bill 1663 (Stats. 2022, ch. 894) recently amended several conservatorship statutes to promote self-determination by persons under conservatorship (conservatees) and persons who are the subject of petitions for appointment of a conservator (proposed conservatees).<sup>1</sup> This recommendation promotes the statutory goals by framing the forms to allow clinicians and other experts to provide more detailed information and conclusions that will, in turn, allow a court to make more accurate determinations about a (proposed) conservatee’s abilities, capacities, and needs and issue orders

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<sup>1</sup> Most of the issues discussed in this report can be raised either in a petition for appointment of a conservator and in a separate petition filed after appointment or in both. See, e.g., § 1890(a). This report uses “(proposed) conservatee” when the discussion applies equally to a proposed conservatee and a conservatee.

that limit the intrusions on a (proposed) conservatee’s autonomy to those necessary to protect those other rights and interests.<sup>2</sup>

### **Legal background**

The conservatorship provisions of the Probate Code, both individually and as a whole, require the court to consider the abilities, capacities, and needs of a conservatee or proposed conservatee to determine whether a conservatorship is needed and what powers and duties to grant the conservator.<sup>3</sup> To grant a petition for appointment of a conservator, even if the petition is unopposed, the court must find that the statutory conditions for appointment have been proven by clear and convincing evidence.<sup>4</sup> In addition, the code bars appointment of a conservator absent an express judicial finding, after consideration of the proposed conservatee’s “abilities and capacities with current and possible supports,”<sup>5</sup> that “the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.”<sup>6</sup>

To make these determinations and issue appropriate orders protecting a proposed conservatee’s interests while preserving their autonomy to the extent possible, the court needs evidence of the proposed conservatee’s ability to perform everyday activities related to the functions identified in section 1801(a) and (b). The court can receive that evidence from a variety of sources,<sup>7</sup> one of which is *Confidential Supplemental Information* (form GC-312). The petitioner or proposed conservator must file form GC-312 setting forth facts addressing the proposed conservatee’s ability, among other things, to perform the activities specified in section 1801(a) and (b).<sup>8</sup> Form GC-312 must also discuss alternatives to conservatorship considered or tried by the petitioner and give reasons that the alternatives are not suitable or did not meet the proposed conservatee’s needs.<sup>9</sup>

Before a hearing on a petition for appointment of a conservator, the court investigator must review form GC-312, gather and review medical reports, determine whether the investigator believes that the proposed conservatee suffers from any mental function deficits that significantly

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<sup>2</sup> See, e.g., Judicial Council of Cal., Advisory Com. Rep., *Probate Conservatorship: Less Restrictive Alternatives* (July 17, 2023), <https://jcc.legistar.com/View.ashx?M=F&ID=12246541&GUID=2D040B09-36A5-4157-85D0-428F176C4608>.

<sup>3</sup> See Prob. Code, §§ 1800.3, 1801, 1872–1873, 1880–1881, 1890, 2351, 2358, 2402, 2450; see also *id.*, §§ 1850, 1863, 2102, 2113. All subsequent statutory references are to the Probate Code unless otherwise specified.

<sup>4</sup> § 1801(e).

<sup>5</sup> § 1800.3(c), added by AB 1663 (Stats. 2022, ch. 553, § 5).

<sup>6</sup> §§ 1800.3(b), 1801.

<sup>7</sup> The court hears and determines “the matter of the establishment of a conservatorship according to the law and procedure relating to the trial of civil actions.” § 1827. See section 1863(a), applying the same procedures to a hearing to determine whether to terminate or continue a conservatorship.

<sup>8</sup> § 1821(a)(1)(A) (the inability of the proposed conservatee to provide properly for their own needs for physical health, food, clothing, or shelter), (E) (the proposed conservatee’s substantial inability to manage their own financial resources or to resist fraud or undue influence).

<sup>9</sup> § 1821(a)(1)(C).

impair the proposed conservatee’s ability to understand and appreciate the consequences of any of the functions or activities in section 1801(a) and (b), and report to the court on all these issues.<sup>10</sup>

At a hearing on the petition, any party may present lay testimony based on personal observation of the proposed conservatee performing or attempting to perform activities related to the functions in section 1801(a) and (b). A party may also present expert testimony that identifies any mental function deficits that significantly impair the proposed conservatee’s ability to understand and appreciate the consequences of the functions and activities specified in section 1801(a) and (b).<sup>11</sup> In many cases, a petitioner initially offers such expert testimony in the form of a “capacity declaration” attached to the petition or to form GC-312.<sup>12</sup> If the petition is unopposed, the court must receive the capacity declaration as evidence in lieu of live expert testimony.<sup>13</sup>

When the court is asked to impose a legal disability based on a (proposed) conservatee’s lack of capacity to perform a type of act or make a category of decision, the petitioner must present evidence of the existence of one or more mental function deficits that significantly impair the (proposed) conservatee’s “ability to understand and appreciate the consequences of [their] actions with regard to the type of act or decision in question.”<sup>14</sup> For example, appointment of a conservator of the person does not give the conservator exclusive authority to consent to the conservatee’s nonemergency medical treatment unless the court has determined that the conservatee lacks the capacity to give or withhold informed consent to medical treatment and grants the conservator that power.<sup>15</sup> A determination that a conservatee lacks medical consent capacity must meet the requirements in section 1881 and be supported by a capacity declaration executed by “a licensed physician, or a licensed psychologist [practicing] within the scope of [their license].”<sup>16</sup>

### **Existing form GC-335**

Currently, a single mandatory form, *Capacity Declaration—Conservatorship* (form GC-335), serves as the vehicle for different classes of experts to provide the court with their conclusions

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<sup>10</sup> § 1826(a)(4)(A), (B) and (a)(9), (10). The duty to perform many of these functions is contingent on an appropriation “identified for [that] purpose.” (See § 1826(h).) Most courts perform as many as their resources permit.

<sup>11</sup> See section 811(a) for a list of relevant mental functions. See, generally, sections 810–813 for the legal framework of a judicial determination of lack of capacity.

<sup>12</sup> As used in this report, “declaration” includes an affidavit. Cal. Rules of Court, rule 1.6(21).

<sup>13</sup> § 1022. The petitioner and the court may not know until the hearing is called whether the petition will be opposed. See section 1043, authorizing an interested person to appear and make a response or objection in writing at or before the hearing or orally at the hearing.

<sup>14</sup> §§ 811–812.

<sup>15</sup> §§ 1880, 2354.

<sup>16</sup> § 1890(c).

relevant to several different statutory determinations. After seeking information about the declarant's identity, qualifications, and relationship with the person assessed, the form provides the framework for a declaration required to establish the medical inability of a (proposed) conservatee to attend one of several statutorily specified hearings at which they would otherwise be required to appear or be produced.<sup>17</sup>

The balance of the existing form serves as the declaration of an expert clinician regarding the (proposed) conservatee's mental capacity to give or refuse informed consent to all forms of medical treatment. Item 6 of the form calls for an assessment of the person's mental functions and identification of any deficits in those functions. Item 7 then asks the clinician for their opinion on whether the (proposed) conservatee has or lacks the capacity to consent to medical treatment. If a petition seeks authority to place the person in a secured-perimeter residential care facility because of a major neurocognitive disorder (NCD) or to administer medication for care and treatment of major NCDs, the clinician must also complete and attach *Major Neurocognitive Disorder Attachment to Capacity Declaration—Conservatorship* (form GC-335A) to document their conclusions regarding the conservatee's capacity to give or withhold informed consent to placement or medication, or both, as well as additional statutorily required determinations.<sup>18</sup>

A single form serving both as a declaration regarding a person's medical ability to attend a hearing and as a declaration regarding a person's mental capacity to perform actions or make decisions is not desirable for several reasons. First, the statutory qualifications required to complete the first declaration are distinct from, though they overlap with, those required to execute the second declaration.<sup>19</sup> Medical inability to attend a hearing may be established by the declaration of a "licensed medical practitioner" or, if the person is an adherent of a religion that calls for reliance on prayer alone for healing, the declaration of an accredited practitioner of that religion who is treating the person. On the other hand, where the law requires a declaration to support a judicial determination that a person lacks legal capacity, that declaration must be executed by a "licensed physician, or a licensed psychologist [practicing] within the scope of [their] licensure."<sup>20</sup> The specification of a physician or psychologist in item 3a of the existing form imposes unwarranted restrictions on the practitioners qualified to complete the declaration on medical ability to attend a hearing. Furthermore, the parenthetical instruction in item 3b authorizing a religious practitioner to complete only the declaration on medical ability to attend a hearing is easily overlooked. Completion and submission of the capacity declaration in items 6 and 7 by a religious practitioner would waste time and resources; it could, if unnoticed,

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<sup>17</sup> E.g., §§ 1825(a)(2) & (b), 1860.5(e)(2), 1863(b)(1)(B) & (b)(2), 1893(b), 2253(d)(1) & (e), 2356.5(f)(2). See §§ 1956, 2250.4(b), 3141.

<sup>18</sup> See section 2356.5(b), on placement; section 2356.5(c), on medication; and section 2356.5(f)(3), on the requirement of a declaration addressing required findings, including lack of capacity.

<sup>19</sup> Compare, for example, section 1893(b), specifying the qualifications required to complete a declaration on medical ability to attend a hearing, with section 1890(c), specifying the qualifications required for execution of a capacity declaration.

<sup>20</sup> §§ 1890(c), 2356.5(f)(3).

inappropriately influence the court's determinations in proceedings in which it is received as evidence.

Second, the declaration on medical ability to attend a hearing must address issues and contain conclusions different from those in a capacity declaration. A person's medical ability to attend a hearing depends primarily on their physical health on and around the date of the hearing.<sup>21</sup> A person's legal capacity to make a decision or perform an act depends on whether the person suffers from any mental function deficits; whether those deficits significantly impair the person's ability to understand the consequences of the action or decision; the frequency, severity, and duration of any periods of impairment; and the kind of act or decision at issue.<sup>22</sup>

Third, the governing statutes expressly provide that the declaration on medical ability is evidence *only* of the person's inability to attend the hearing. The court must not consider that declaration in determining whether the person has or lacks legal capacity to perform an act or make a decision.<sup>23</sup> A capacity declaration is material to the court's determination of that very issue. In a contested proceeding, the court *may* receive a capacity declaration as evidence of a conservatee's abilities, capacities, and needs if the parties so stipulate. In an uncontested proceeding or when required by statute, the court *must* receive a capacity declaration as evidence of a conservatee's abilities, capacities, and needs. Separating these two forms will promote the proper use and independent consideration of each.

### **Recommended revisions**

The committee therefore recommends revising form GC-335 to focus on a clinician's assessment of a (proposed) conservatee's mental capacity. This recommendation includes the following:

- Adopting a new form, *Confidential Declaration on Medical Ability to Attend Hearing—Probate Conservatorship* (form GC-325), for a declaration regarding a (proposed) conservatee's medical ability to attend a hearing;<sup>24</sup>
- Revising form GC-335 to:
  - Provide clearer instructions;
  - Give the clinician the opportunity to document their assessment of a (proposed) conservatee's mental functioning in more detail and to connect any mental function deficits to the impairment of the (proposed) conservatee's ability to perform everyday activities; and

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<sup>21</sup> "Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate *physiological* damage to the proposed conservatee." § 1825(c), italics added; for application of the same requirement to different hearings, see §§ 1860.5(e)(3), 1863(b)(3), 1893(b), 2253(d)(1).

<sup>22</sup> §§ 811–813.

<sup>23</sup> §§ 1825(b), 1860.5(e)(2), 1863(b)(2), 1893(b), 2253(e).

<sup>24</sup> See *supra* note 14 and accompanying text.

- Move items from form GC-335A for the clinician’s opinion on the capacity of a person with a major NCD, such as dementia, to give or withhold informed consent to placement in a secured-perimeter residential care facility for the elderly or the administration of medications appropriate for the care and treatment of a major NCD, or both;<sup>25</sup> and
- Revoking form GC-335A as no longer needed and replacing it with new, optional *Everyday Activities Attachment to Confidential Capacity Assessment and Declaration—Probate Conservatorship* (form GC-335A) to allow the clinician or another professional to discuss any impairment of the (proposed) conservatee’s ability to perform activities that are related to judicial determinations of issues raised in the proceeding.

***New form GC-325***

The committee recommends adopting *Confidential Declaration on Medical Ability to Attend Hearing—Probate Conservatorship* (form GC-325) as a separate, standalone form for mandatory use and clarifying the practitioners authorized to complete the form. The committee recommends adding a nurse practitioner, a physician assistant, and a registered nurse to the list of practitioners expressly authorized to complete the declaration. In response to comment, the committee recognizes that this is not an exhaustive list of licensed medical providers who might be qualified to complete the declaration. The committee has therefore modified the recommended form to add a separate check box and fillable field for a practitioner not otherwise specified to enter their qualifications. The committee also recommends adding a field for an accredited religious practitioner to provide the name of their accrediting religious organization.

***Form GC-335***

The committee recommends retitling *Capacity Declaration—Conservatorship* (form GC-335) as *Confidential Capacity Assessment and Declaration—Probate Conservatorship* and revising it substantially. As described above, to support a judicial determination that a person lacks legal capacity to perform an act or make a decision, the law requires evidence that the person has a deficit in at least one of many specified mental functions and a correlation between the deficit or deficits and the action or decision in question such that the deficit, alone or together with other mental function deficits, significantly impairs the person’s ability to understand and appreciate the consequences of the type of action or decision in question.<sup>26</sup> The recommended revisions to form GC-335 expand the opportunity for the clinician to describe an impairment resulting from a mental function deficit and explain how an impairment affects the person’s ability to make the decisions or perform the actions that are the subject of the judicial capacity determination. The form also uses language in Parts I and II that can help a clinician apply their clinical conclusions to the legal issues on which those conclusions are brought to bear in Part III.

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<sup>25</sup> § 2356.5(b) & (c).

<sup>26</sup> § 811(a) & (b). The diagnosis of a mental or physical disorder, without more, is not sufficient to warrant a judicial determination that a person lacks the capacity to perform an act or make a decision. § 811(c).

The recommended revisions add several elements to form GC-335, including:

- A new introductory section that includes:
  - An explanation of the form’s purpose;
  - A checklist for the petitioner to specify what issues they would like the clinician to address in the assessment and declaration;
  - New items for the clinician’s use to provide background about their history with the assessed person, the date and duration of the most recent examination of the person; and the bases for the conclusions of the assessment; and
- An expanded assessment report that gives the clinician the opportunity to:
  - Discuss the general state of the (proposed) conservatee’s physical and mental health (Part I);
  - Provide a more detailed assessment of the (proposed) conservatee’s mental functions (Part II), including a new option to indicate whether the (proposed) conservatee has a *mild* deficit in each function, an option to indicate whether any temporary or reversible factors may be causing or contributing to an apparent mental function deficit or impairment, and an option to discuss any impairment of the (proposed) conservatee’s ability to perform everyday activities; and
  - Apply the determinations in Parts I and II to the applicable legal standards and give their professional opinion on the (proposed) conservatee’s capacity to give or withhold informed consent to medical treatment generally, to a specific medical treatment, and, if applicable, to placement in a secured-perimeter residential care facility for the elderly or administration of medication for treatment of major NCDs currently addressed on form GC-335A (Part III).

The committee intends its proposed revisions to allow clinicians to communicate the information and opinions courts need to make informed determinations using language that courts will be able to use and apply to the cases before them.<sup>27</sup>

### ***Existing form GC-335A***

As discussed above, the committee recommends moving from form GC-335A to form GC-335 the information and conclusions relevant to a judicial determination that a person lacks capacity to give or withhold informed consent (1) to placement in a secured-perimeter residential care facility because of a major NCD and (2) to administration of medication for treatment of major NCDs. As a result, the determinations regarding capacity to consent to treatment for major NCDs

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<sup>27</sup> Because of the extent of the recommended revisions to form GC-335, the customary practice of indicating such revisions with highlights would be more distracting than helpful. The committee has therefore not highlighted the revisions on this form.



are no longer necessary in the form attachment. The committee therefore recommends revoking existing form GC-335A.

### ***New form GC-335A***

The committee recommends approving *Everyday Activities Attachment to Confidential Capacity Assessment and Declaration—Probate Conservatorship* (form GC-335A) for optional use by a clinician or assessment team member to document conclusions regarding a (proposed) conservatee’s abilities.

The new, optional everyday activities attachment now addresses a (proposed) conservatee’s ability to perform activities of daily living—such as preparing meals and eating for adequate nutrition, maintaining adequate hygiene, and protecting themselves from harm—and instrumental activities of daily living—such as using cash or checks, paying monthly bills, obtaining and using a credit card, choosing and directing caregivers, admitting themselves to a health-care facility, managing their own medication, maintaining a reasonably safe and clean home, or accessing transportation. These conclusions, whether admitted into evidence as an attachment to form GC-335 or as the subject of live testimony, would support the court’s legal determinations about a (proposed) conservatee’s ability to perform the functions described in section 1801(a) and (b) and the court’s decisions whether to order the establishment or continuation of a conservatorship; what type of conservatorship, if any, to order; and what powers and duties to grant the conservator or withhold from them.

For the reasons discussed above, the committee proposed revoking existing form GC-335A in the invitation to comment. The committee did not propose replacing form GC-335A at that time. The content of recommended form GC-335A was instead proposed and circulated as Part III of recommended form GC-335. The committee received no objections to this content itself, but commenters did express concern about its inclusion in a mandatory form. These commenters thought that parties could infer that form GC-335 constituted the only permissible method of presenting evidence of a person’s ability to perform everyday activities. To avoid the risk of this false inference, the committee recommends approval of form GC-335A for optional use to present evidence of a person’s abilities without recirculating the proposal.

### **Policy implications**

The recommended action is needed to conform to the law, including recent statutory amendments. In addition, the new and revised forms, particularly the division of elements of form GC-335 into separate forms, will improve service to the public and enable courts to issue conservatorship orders tailored more specifically to the needs of (proposed) conservatees.

### **Comments**

The proposed revisions circulated for public comment from April 2 to May 3, 2024, as part of the spring invitation-to-comment cycle. The committee received eight comments. Four commenters agreed with the proposal, and four commenters did not indicate a position but suggested multiple changes to improve the recommendation.

A chart of comments and committee responses is attached at pages 24–49.

The committee asked for specific comment on whether adding a box to allow indication of a hearing date to the caption of forms GC-325 and GC-335 would be useful. Commenters generally thought that adding a hearing date box to form GC-335 would be useful, though the Superior Court of San Diego County observed that filing parties often leave the hearing date field in captions blank. The committee has added a hearing date field to the caption of form GC-335 notwithstanding the San Diego court’s observation. In light of the hearing date field in item 1a of form GC-325, commenters were divided on whether to add a hearing date box to form GC-325. Because the committee intends a party to be able to obtain a declaration on the form before filing a petition or file the form with a petition before a hearing has been set, it does not recommend adding a hearing date box to the caption of form GC-325. The committee concluded that retaining the hearing date field in item 1a, juxtaposed with the option in item 1b of completing the declaration before a petition is filed or a hearing is set, would more clearly highlight that choice.

General comments fell into two overlapping categories. Many commenters suggested shortening form GC-335 because many elements on the circulated form were unnecessary and the length of the form as circulated (10 pages) would deter petitioners from seeking to obtain a capacity declaration when one was required and would deter clinicians from agreeing to perform an assessment and complete a declaration.

Several commenters suggested removing the section on the (proposed) conservatee’s ability to perform everyday activities in original Part III and the section 1801 findings in original Part IV for two reasons. First, evidence bearing on those issues can be provided by persons other than physicians or psychologists, and commenters thought that the inclusion of those items on a form that only physicians and psychologists were authorized to complete could be read to imply the contrary. Second, commenters thought that inclusion of those issues in the mandatory capacity declaration form alongside issues for which a capacity declaration is statutorily required could be interpreted to require the filing of a capacity declaration in support of every petition for appointment of a conservator. The committee does not intend to promote that interpretation of the law.

The committee has responded to these concerns by removing some elements—including the (proposed) conservatee’s residence information and the instructions to the clinician from the introduction and the conclusions regarding judicial findings required by section 1801(a) and (b) from original Part IV—from the form entirely and moving original Part III, on everyday activities, to recommended optional form GC-335A and replacing it, as suggested by the Superior Court of Riverside County, with a single question in Part II about impairment of the ability to perform everyday activities by a mental function deficit (item 19). The committee recommends approval of form GC-335A for optional use by a broader range of health-care professionals to give their opinion on a (proposed) conservatee’s ability to perform everyday

activities. Part III of form GC-335 continues to provide the opportunity for physicians and psychologists to give their opinions on issues that require their expertise.<sup>28</sup>

In response to another comment by the Superior Court of Riverside County, the committee has modified item 1 and items 20–23 on form GC-335 to indicate more clearly that items 20–23 should be completed only if the petitioner has checked the corresponding box in item 1.

### **Alternatives considered**

The committee considered taking no action but determined that some elements on form GC-335 were inconsistent with the law and needed revision to conform. The committee considered maintaining a separate attachment for major NCD declarations but determined that that information would be more appropriate as part of the principal capacity declaration form. On the other hand, the committee considered and circulated for comment a proposed version of form GC-335 that included both conclusions about a person’s ability to perform everyday activities and conclusions about the ultimate determinations of fact required for appointment of a conservator. The committee determined that the conclusions about ability to perform everyday activities would be more appropriately provided on an optional attachment to forestall the false inference that a capacity declaration completed by a physician or psychologist was necessary to establish the inability to perform those activities. The committee also determined that asking a clinician or other assessor to opine on the ultimate issues of fact risked confusing the legal determination reserved to the court with the clinical conclusions that serve as evidence supporting the legal determination. The committee therefore modified its recommendation to remove those items from form GC-335.

### **Fiscal and Operational Impacts**

The proposed new and revised forms are not likely to have a significant fiscal or operational effect on the courts. Courts will need to update their case management systems and train staff on the purpose and effect of the forms, but these effects are typical of any change to forms.

### **Attachments and Links**

1. Forms GC-325, GC-335, and GC-335A, at pages 12–23
2. Chart of comments, at pages 24–49

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<sup>28</sup> The Superior Court of Riverside County also suggested removing from form GC-335 the item addressing a conservatee’s capacity to give or withhold informed consent to a specific form of medical treatment because petitions under section 2357 seeking a determination that a conservatee lacks that capacity are exceedingly rare. The committee determined that those petitions are filed more frequently in other counties than in Riverside County and so recommends keeping that item as item 20 on form GC-335.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	STATE BAR NUMBER:     	<p style="text-align: center;"><i>FOR COURT USE ONLY</i> <i>FILE IN CONFIDENTIAL FOLDER</i></p> <p style="text-align: center;"><b>DRAFT 071624</b> <b>Not approved by</b> <b>the Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE		
<b>CONFIDENTIAL DECLARATION ON MEDICAL ABILITY TO ATTEND HEARING—PROBATE CONSERVATORSHIP</b>		CASE NUMBER:

The person requesting the declaration must complete item 1.

1. A petition that requires a hearing
  - a.  has been filed in the conservatorship proceeding named above and set for hearing on (date):
  - b.  will be filed in the conservatorship proceeding named above.

**INSTRUCTIONS TO DECLARANT (PRACTITIONER)**

The (proposed) conservatee is expected to attend the hearing, but may be excused if medically unable to attend. Please complete items 2–6, below, to give your professional opinion whether the (proposed) conservatee is medically able to attend.

**Note:** Emotional or psychological instability does not qualify as medical inability to attend unless, because of that instability, attending the hearing is likely to cause the (proposed) conservatee serious and immediate physiological damage.

**DECLARANT'S CONTACT INFORMATION AND QUALIFICATIONS**

2. Name:
3. Office address, telephone number, and email:
4. a.  I am a California-licensed  physician  psychologist  nurse practitioner  physician assistant  registered nurse  other medical practitioner (specify):  
My license number is:
- b.  I am an accredited practitioner of a religion that calls for reliance on prayer alone for healing. The (proposed) conservatee is an adherent of my religion and is under my treatment.  
Accrediting religious organization (name):
5. a. I last examined the (proposed) conservatee on (date):
- b. The (proposed) conservatee  is  is **not** a patient under my ongoing care and treatment.

**MEDICAL ABILITY TO ATTEND COURT HEARING**

6. a.  The (proposed) conservatee is medically able to attend a court hearing (check all that apply):  
 in person  remotely.
- b.  The (proposed) conservatee is medically unable to attend a court hearing (check one):  
(1)  from (date): until (date):  
(2)  for the foreseeable future.
- c. **Factual basis for conclusion** (Supporting facts are stated  below  in Attachment 6c.)

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 OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NUMBER:  NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY FILE IN CONFIDENTIAL FOLDER   <b>DRAFT 072224</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:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
<b>CONFIDENTIAL CAPACITY ASSESSMENT AND                  DECLARATION—PROBATE CONSERVATORSHIP</b>	HEARING DATE: TIME: DEPT. or ROOM:
This form is intended to record the results of a capacity assessment of the person named in item 2, to describe the assessing clinician's conclusions about the person's mental functioning and capacity, and to submit the results and conclusions under oath to the court. The petitioner completes items 1 and 2 to give instructions to the clinician. The clinician completes the remainder of the form.	

**PETITIONER'S INSTRUCTIONS TO CLINICIAN**

1. **Assessments requested.** In addition to completing Parts I and II (pages 2–4), please complete the following items in Part III (pages 5–6) to assess the person's ability to perform the action or capacity to make the decision indicated (*check all that apply*):
- a.  Item 20: Give or withhold informed consent to medical treatment specified in the petition. (Prob. Code §§ 811, 813, 2357.)
  - b.  Item 21: Give or withhold informed consent to medical treatment generally. (*Id.*, §§ 811, 1880–1891, 2355.)
  - c.  Item 22: Give or withhold informed consent to placement in a secured-perimeter (locked) residential care facility for the elderly. (*Id.*, §§ 811, 2356.5.)
  - d.  Item 23: Give or withhold informed consent to administration of medication appropriate for care and treatment of major neurocognitive disorders (e.g., dementia). (*Id.*, §§ 811, 813, 2356.5.)

**Note to petitioner:** Provide a copy of the petition to the clinician who will be assessing the person named in item 2 for the clinician's reference. Do **not** attach *Confidential Supplemental Information* (form GC-312).

2. **Person to be assessed**

Name:  
 Address:  
 Telephone number: Email address:  
 Date of birth:  
 Highest level of education completed (*grade or degree*):  
 Marital or partnership status:  single  married/partnered  dissolved  widowed  
 Preferred language:  speaks  reads  writes

**TO THE CLINICIAN:** Provide your contact and license information below.

3. a. Name:  
 b. Office address:  
 Telephone number: Email address:
4. a.  I am a California-licensed physician. License no:  
 b.  I am a California-licensed psychologist practicing within the scope of my license. License no:  
 I have at least two years' experience diagnosing major neurocognitive disorders (including dementia).  
 c. I have been practicing as a licensed physician or psychologist for \_\_\_\_\_ years.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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**Information about the assessment**

5. a. The person named in item 2  is  is **not** a patient under my continuing care and treatment.  
 b. I have known this person for (specify length of time in months or years):
  
6. a. Date of the examination on which this assessment is based or, if based on multiple examinations, the date I most recently examined the person:  
 b. Time spent in most recent examination:
  
7. My responses to the questions and prompts on this form are based on (check all that apply):
  - a.  My examination of this person for the purpose of assessing the person's abilities and capacities.
  - b.  Multiple examinations of this person for purposes of general health care and medical treatment.
  - c.  Administration of standardized examinations or tools that measure the person's mental functioning. All tests administered and dates of administration are listed  below  in Attachment 7c.
  
  - d.  My review of the person's medical records.
  - e.  Discussions with other practitioners responsible for providing health care to the person. These discussions are described  below  in Attachment 7e.
  
  - f.  Discussions with team members or other professionals who participated in the person's assessment. These discussions are described  below  in Attachment 7f.
  
  - g.  Discussions with the person's family or friends; names and relationships are given  below  in Attachment 7g.
  
  - h.  Other sources of information, which are described  below  in Attachment 7h.

**REPORT OF ASSESSMENT**

*If a question or prompt does not apply to an ability or capacity checked in item 1 or your assessment does not address a question or prompt, please check the appropriate box in that item or, if there is no box, leave the item blank. Secure or destroy your copy of the petition. Do not send it to the court.*

**PART I. GENERAL PHYSICAL AND MENTAL HEALTH** This part describes the general state of the physical and mental health of the person named in item 2.  Information focused on the effect of the person's health on their mental function is given in items 16–18.

**8. Physical health**

- a. Overall physical health is:  Excellent  Good  Fair  Poor  I don't know
- b. Overall physical health is likely to:  Improve  Remain stable  Deteriorate  I don't know  
 The person should be reevaluated in \_\_\_\_\_ weeks.
- c. Chronic conditions that require ongoing care and treatment are listed  below  in Attachment 8c.

**9. Mental health**

- a. Overall mental health is:  Excellent  Good  Fair  Poor  I don't know
- b. Overall mental health is likely to:  Improve  Remain stable  Deteriorate  I don't know  
 The person should be reevaluated in \_\_\_\_\_ weeks.
- c. All known diagnosed mental health disorders (current *Diagnostic and Statistical Manual of Mental Disorders*) are listed  below  in Attachment 9c.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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**PART II. MENTAL FUNCTIONING** This part documents the existence and extent of any deficits found by my assessment of the mental functioning of the person described in item 2. Deficits are indicated in items 10–14 as follows:

**a = no deficit; b = mild deficit; c = moderate deficit; d = major deficit or no function; e = not applicable or not assessed**

**10. Alertness and attention** (ability to recognize and react to a stimulus)

- a. Level of arousal or consciousness (deficit may be shown by lethargy, lack of response without constant stimulation, or stupor)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- b. Orientation to:
  - (1) Time (When? Year, month, day, hour)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
  - (2) Place (Where? State, city, address)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
  - (3) Person (Who? Name, relationship)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
  - (4) Situation (What? How? Why?)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- c. Ability to attend to and concentrate on tasks (ability to attend to a stimulus; concentrate on a stimulus over brief time periods)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
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Notes:

**11. Information processing**

- a. Memory
  - (1) Immediate recall
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
  - (2) Short-term memory and learning (the ability to encode, store, and retrieve information)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
  - (3) Long-term memory (ability to remember information from the past)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- b. Understanding (the ability to receive and accurately process information given in written, spoken, visual, or other media)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- c. Communication (the ability to express oneself and indicate preferences in speech, writing, signs, pictures, etc.)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- d. Visual-spatial reasoning (recognition of familiar objects; spatial perception, problem solving, and design)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- e. Quantitative reasoning (the ability to understand basic quantities and make simple calculations)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- f. Verbal reasoning (the ability to compare options, to reason using abstract concepts, and to reason logically about outcomes)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- g. Executive functioning (the ability to plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------

Notes:

**12. Thought processes**

- a. Organization of thinking (deficit may be demonstrated by severely disorganized, nonsensical, or incoherent thinking)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- b. Correspondence of thoughts to reality (deficit may be demonstrated by hallucinations or delusions)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------
- c. Control of thoughts (deficit may be demonstrated by uncontrollable, repetitive, or intrusive thoughts)
 

<input type="checkbox"/> a	<input type="checkbox"/> b	<input type="checkbox"/> c	<input type="checkbox"/> d	<input type="checkbox"/> e
----------------------------	----------------------------	----------------------------	----------------------------	----------------------------

Notes:

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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a = no deficit; b = mild deficit; c = moderate deficit; d = major deficit or no function; e = not applicable or not assessed

13. **Ability to modulate mood and affect** (deficit may be demonstrated by pervasive and persistent or recurrent mood or affect inappropriate in kind or degree to the circumstances)  a  b  c  d  e  
 Notes:

14. **Ability to accept and cooperate with appropriate care or assistance** (deficit may be demonstrated by inability to acknowledge illness or disorder, acting without regard for consequences, or inability or refusal to accept appropriate care)  a  b  c  d  e  
 Notes:

15. **Variation** (some or all of the deficits noted above vary in frequency, severity, or duration):  
 Yes  No  I don't know Variation of deficits is described  below  in Attachment 15.

**Possible Temporary or Reversible Causes of Mental Function Deficits**

**16. Medications**

a. Is the person currently taking any medication—prescription or nonprescription—that may impair the person's mental functioning?  
 Yes  No  I don't know  Not applicable  
 If yes, each of those medications, with dosage and treatment indications, is listed  below  in Attachment 16a.

Name	Dosage/Schedule	Indications
------	-----------------	-------------

b.  Each medication listed in item 16a can impair a person's mental functioning as explained  
 below  in Attachment 16b.

17. **Reversible causes** Have temporary or reversible causes of mental impairment been considered, assessed, diagnosed, or treated?  
 Yes  No  I don't know All causes considered are discussed  below  in Attachment 17.

18. **Physical or emotional factors** Are there physical or emotional factors (e.g., hearing, vision, or speech impairment; bereavement; or others) present that could diminish the person's capabilities and that could improve with time, treatment, or assistive devices?  
 Yes  No  I don't know  
 Applicable physical or emotional factors are described  below  in Attachment 18.

**Effect on Ability to Perform Everyday Activities**

19. In my professional opinion, the mental function deficits, if any, identified in items 10–14  will  will not significantly impair the person's ability to perform some or all activities of daily living (e.g., eating, cooking, toileting, bathing, dressing) or instrumental activities of daily living (e.g., shopping, scheduling appointments, paying bills, using a credit card or checks, taking medication). More details about specific activities and reasons for my opinion are given (*check all that apply*):  
 below  in Attachment 19  in the attached *Everyday Activities Attachment* (form GC-335A).

I do not have enough information to form an opinion on this issue.



CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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**PART III. CAPACITY TO GIVE OR WITHHOLD INFORMED CONSENT** This part documents my professional conclusions about each issue checked in item 1. The conclusions are based on my assessment of the level of the person's mental functions described in Part II.

20.  **Capacity to give or withhold informed consent to medical treatment specified in the petition** (Probate Code, § 2357.)

The following medical treatment has been recommended for the person (*describe*):

Based on my assessment of the person's applicable mental functions and abilities, it is my professional opinion that:

- a.  The person **has** the capacity to give or withhold informed consent to the recommended medical treatment because the person can do **all** of the following: (1) respond knowingly and intelligently to questions about the treatment; (2) participate in the treatment decision by means of a rational thought process; and (3) understand (A) the nature and seriousness of the diagnosed disorder, (B) the nature of the recommended treatment, (C) the probable degree and duration of and benefits and risks of the recommended treatment, (D) the consequences of lack of treatment, and (E) the nature, risks, and benefits of any reasonable alternatives to the recommended treatment.
- b.  The person **lacks** the capacity to give or withhold informed consent to the recommended medical treatment because the person **cannot do at least one** of the following: (1) respond knowingly and intelligently to questions about the treatment, (2) participate in the treatment decision by means of a rational thought process, or (3) understand at least one of the following: (A) the nature and seriousness of the diagnosed disorder, (B) the nature of the recommended treatment, (C) the probable degree and duration of and benefits and risks of the recommended treatment, (D) the consequences of lack of treatment, or (E) the nature, risks, and benefits of any reasonable alternatives to the recommended treatment.  
 These conclusions are further explained  below  in Attachment 20b.
- c.  I do not have enough information to form an opinion on this issue.

21.  **Capacity to give or withhold informed consent to medical treatment generally** (Probate Code, §§ 811, 1881.)

Based on my assessment of the person's applicable mental functions and abilities, it is my professional opinion that:

- a.  The person **has** the capacity to give or withhold informed consent to medical treatment because the person can do **all** of the following: (1) respond knowingly and intelligently to questions about at least some forms of medical treatment; (2) participate in at least some treatment decisions by means of a rational thought process; and (3) understand (A) the nature and seriousness of some diagnosed disorders, (B) the nature of some recommended treatments, (C) the probable degree and duration of and benefits and risks of at least some forms of treatment, (D) the consequences of lack of at least some forms of treatment, and (E) the nature, risks, and benefits of any reasonable alternatives to at least some forms of treatment.
- b.  The person **lacks** the capacity to give or withhold informed consent to any form of medical treatment because **either** (1) the person is unable to respond knowingly and intelligently to questions about their medical treatment **or** (2) the person is unable to participate in treatment decisions by means of a rational thought process, which means the person cannot understand at least one of the following: (A) the nature and seriousness of any illness, disorder, or defect that they have or may develop; (B) the nature of any medical treatment that is or may be recommended by their health-care providers; (C) the probable degree and duration of any benefits and risks of any medical intervention that is or may be recommended by the person's health-care providers and the consequences of lack of treatment; or (D) the nature, risks, and benefits of any reasonable alternatives.  
 The person's lack of capacity to give or withhold informed consent is linked to one or more mental function deficits described in Part II.  
 These conclusions are further explained  below  in Attachment 21b.
- c.  I do not have enough information to form an opinion on this issue.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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22.  **Capacity to give or withhold informed consent to placement in a secured-perimeter residential facility for persons with major neurocognitive disorders** (Probate Code, § 2356.5.)
- a.  The person has a major neurocognitive disorder (such as dementia) as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*. See Part I of this form for more information.
  - b.  The person needs or would benefit from placement in a restricted and secure environment for the reasons (for example, wandering, violence, or rejecting care) explained  below  in Attachment 22b.
  - c. Based on my assessment of the person's relevant mental functions and abilities, it is my professional opinion that:
    - (1)  The person **has** the capacity to give or withhold informed consent to this placement.
    - (2)  The person **lacks** the capacity to give or withhold informed consent to this placement. The mental function deficit or deficits described in Part II significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of giving consent to placement in a restricted, secured-perimeter residential facility.  
 These conclusions are further explained  below  in Attachment 22c.
  - d.  The proposed placement in a locked or secured-perimeter facility  is  is **not** the least restrictive environment appropriate to the person's needs.
  - e.  I do not have enough information to form an opinion on this issue.

23.  **Capacity to give or withhold informed consent to administration of medication for treatment of major neurocognitive disorders** (Probate Code, § 2356.5.)
- a.  The person has a major neurocognitive disorder (such as dementia) as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders*. See Part I of this form for more information.
  - b.  The person needs or would benefit from appropriate medications for the care and treatment of major neurocognitive disorders (including dementia). Any medications and the need or potential benefit of each are described  below  in Attachment 23b.
  - c. Based on my assessment of the person's relevant mental functions and abilities, it is my professional opinion that:
    - (1)  The person **has** the capacity to give or withhold informed consent to the administration of medications appropriate for the care and treatment of major neurocognitive disorders (including dementia).
    - (2)  The person **lacks** the capacity to give or withhold informed consent to the administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia). The mental function deficit or deficits described in Part III significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of giving consent to the administration of medications for the care and treatment of major neurocognitive disorders (including dementia).  
 These conclusions are further explained  below  in Attachment 23c.
  - d.  I do not have enough information to form an opinion on this issue.

24.  Other information regarding my assessment of the person's mental functions, any deficits in those functions, and any resulting significant impairments to the person's ability to understand and appreciate the consequences of acts or decisions is given in Attachment 24.

25. Number of pages attached: \_\_\_\_\_

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 OF DECLARANT)

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

**ATTACHMENT TO FORM GC-335, CAPACITY DECLARATION—CONSERVATORSHIP,  
ONLY FOR (PROPOSED) CONSERVATEE WITH A MAJOR NEUROCOGNITIVE DISORDER**

9. It is my opinion that the (proposed) conservatee  HAS  does NOT have a major neurocognitive disorder (such as dementia) as defined in the current edition of *Diagnostic and Statistical Manual of Mental Disorders*.

a.  **Placement of (proposed) conservatee.** (If the (proposed) conservatee requires placement in a secured-perimeter residential care facility for the elderly, please complete items 9a(1)–9a(5).)

(1) The (proposed) conservatee needs or would benefit from placement in a restricted and secure facility because (state reasons; continue on Attachment 9a(1) if necessary):

(2) The (proposed) conservatee's mental function deficits, based on my assessment in item 6 of form GC-335, include (describe; continue on Attachment 9b(2) if necessary):

(3)  The (proposed) conservatee HAS the capacity to give informed consent to this placement.

(4)  The (proposed) conservatee does NOT have the capacity to give informed consent to this placement. The deficits in mental function assessed in item 6 of form GC-335 and described in item 9a(2) above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of giving consent to placement in a restricted and secure environment.

(5) A locked or secured-perimeter facility  is  is NOT the least restrictive environment appropriate to the needs of the (proposed) conservatee.

b.  **Administration of medications.** (If the (proposed) conservatee requires administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia), please complete items 9b(1)–9b(5).)

(1) For the reasons stated in item 9b(5), the (proposed) conservatee needs or would benefit from the following medications appropriate to the care and treatment of major neurocognitive disorders (including dementia) (list medications; continue on Attachment 9b(1) if necessary):

(2) The (proposed) conservatee's mental function deficits, based on my assessment in item 6 of form GC-335, include (describe; continue on Attachment 9b(2) if necessary):

(3)  The (proposed) conservatee HAS the capacity to give informed consent to the administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia).

The (proposed) conservatee does NOT have the capacity to give informed consent to the administration of medications appropriate to the care and treatment of major neurocognitive disorders (including dementia). The deficits in mental function assessed in item 6 of form GC-335 and described in item 9b(2) above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of giving consent to the administration of medications for the care and treatment of major neurocognitive disorders (including dementia).

(4) The (proposed) conservatee needs or would benefit from the administration of the medications listed in item 9b(1) because (discuss reasons; continue on Attachment 9b(5) if necessary):

10. Number of pages attached: \_\_\_\_\_

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 OF DECLARANT)



CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF <i>(name):</i> <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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**Activities of Daily Living** (care of self and related activities)

**6. Prepare meals and eat for adequate nutrition**

Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 6.

**7. Identify abuse or neglect and protect self from harm**

Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 7.

**Instrumental Activities of Daily Living**

**8. Financial** (if appropriate, note dollar limits)

a. Protect and spend small amounts of cash

Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 8a.

b. Manage and use checks; pay monthly bills

Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 8b.

c. Enter into a contract (including, for example, to buy, sell, or lease real property or to obtain and use a credit card)

Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 8c.

**9. Resist fraud or undue influence** (for example, has a history of being a victim of fraud or undue influence)

Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 9.

**10. Medical**

a. Choose and direct caregivers

Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 10a.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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10. b. Admit self to health-care facility

- Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 10b.

c. Manage own medication (take proper dose as scheduled; refill or renew prescriptions as needed)

- Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 10c.

d. Contact help if ill or in an emergency

- Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 10d.

11. Home and community life

a. Maintain a reasonably safe and clean home or other living environment; arrange for home maintenance or repair

- Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 11a.

b. Recognize and avoid common hazards (for example, a hot stove or poisons)

- Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 11b.

c. Access transportation (for example, drive a car or use public transportation)

- Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 11c.

d. Initiate and follow a schedule of daily activities

- Able; fully independent   
  Able with advice and passive support   
  Able only with active assistance   
  Unable, even with assistance   
  I don't know

Comments  below  in Attachment 11d.

**CONFIDENTIAL**

**GC-335A**

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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12.  Other information regarding my assessment of the person's ability to perform activities of daily living or instrumental activities of daily living, including any significant impairments to that ability, is given  below  in Attachment 12.

13. Number of pages attached: \_\_\_\_\_

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 OF DECLARANT)

**SPR24-29**

**Probate Conservatorship: Confidential Declaration Forms** (adopt form GC-325, revise form GC-335, and revoke form GC-335A)

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

	Commenter	Position	Comment	Committee Response
1.	Philip C. Ladew, Deputy County Counsel Office of the County Counsel, County of Alameda	NI	<p>The Executive Summary and Origin of the Invitation to Comment states, in part:</p> <p>The new form for mandatory use would be used to certify that a conservatee, proposed conservatee, or person alleged to lack capacity is medically unable to attend a hearing that they would otherwise be required to attend. The revised form—also for mandatory use—would (1) expand the scope of the existing capacity declaration to allow the assessing clinician to provide additional information needed by the court to make the legal determinations at issue, and (2) incorporate other capacity determinations related to a conservatee’s treatment for a major neurocognitive disorder, such as dementia. The proposal is part of the committee’s project to update the conservatorship forms to conform to recent legislation promoting self-determination for persons subject to protective proceedings, including conservatorships.</p> <p>However, the additional information sought in the proposed revisions is assumed and overbroad; it is not necessarily “needed by the court”, nor are the determinations it targets necessarily “at issue.”</p> <p>Further, the Background states, “The Probate Code <i>requires</i> an assessment of the needs of a proposed conservatee to determine the appropriateness and extent of a conservatorship, to provide that the health and psychosocial needs of the proposed conservatee are met, and to set goals for increasing</p>	<p>The committee appreciates these comments. See below for responses to specific comments.</p> <p>The committee has modified its recommendation to reduce the amount of information sought on form GC-335 and thereby shorten the form significantly.</p> <p>The committee does not recommend a change to the proposed forms in response to this comment. To the extent the comment is responding to language in the Invitation to Comment, that memorandum does not necessarily reflect the committee’s final view of the forms to be</p>

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			<p>a conservatee’s functional abilities to the extent possible.” See Invitation to Comment, at FN 3, citing Prob. Code, § 1800(b) &amp; (c), emphasis added. This misstates the law.</p> <p>Contrary to this assertion, section 1800 of the Probate Code merely recites legislative intent and goals, and does not necessarily equate to a legal “requirement.” See <i>Shamsian v. Department of Conservation</i> (2006) 136 Cal.App.4th 621, 633. Still, that legislative intent must be honored to the extent possible, which raises the question as to whether a more complete capacity declaration form is the proper vehicle for this assessment/determination and goal setting.</p> <p>The current statutory scheme provides that it is the <i>adversarial court process</i> (and not a capacity declaration) that allows for assessment and determination. Only a case specific inquiry into the needs of an individual and requirement of proof according to law can do this. A court is free to order further assessment as may be required, and a proposed conservatee has the right to request that the expense and effort be avoided. Therefore, a form, even a comprehensive affidavit from a physician or psychologist is extremely limited, and should always be viewed as such. Overreliance on a preprinted capacity declaration form promotes harm to the conservatee, and negates the very intent of the Legislature for reasons including those discussed below:</p>	<p>recommended to the Judicial Council. The committee has taken the comment into account when drafting its report to the Judicial Council.</p> <p>The committee agrees that a case-specific inquiry into a (proposed) conservatee’s abilities and capacities is needed to determine whether a conservatorship is needed and what the appropriate scope of the conservatorship should be. The recommended revisions—including separating the declaration on the ability to attend a hearing from the capacity declaration, specifying in item 1 of form GC-335 of the allegations that the petitioner is asking the capacity declaration to address, and expanding the range of possible responses to each item in part II—are intended to promote exactly that sort of inquiry. The preprinted elements of the form reflect the framework of legal provisions and factual categories into which a clinician would need to fit their conclusions regarding a specific (proposed) conservatee. The committee has modified its</p>

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			<p><b>1. A capacity declaration is not mandatory in the first instance.</b>            It is true that a GC-335 is a <i>mandatory form</i> and must be used <i>if a capacity declaration is applicable, i.e., to be used</i>. See Cal. Rule of Court, rules 1.31 and 7.101.</p> <p>Probate Code section 811 states that to find incapacity to make a decision or do an act a court must have “evidence of a deficit” in one or more mental functions. Prob. Code § 810(a), 811(c). However, the law does not require that this “evidence of a deficit” be in the form of a declaration (nor should it). Indeed, if a matter is contested, a declaration cannot be used as evidence (absent stipulation or failure to object). See Prob. Code § 1022, See also <i>Estate of Bennett</i> (2008) 163 Cal.App.4th 1303.</p> <p>The law does require that the record be supported by a written declaration when the court issues an order determining that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent. See Probate Code §§ 1880, 1890(c). Also, a declaration is required <i>to petition</i> for authority related to placement in a secured perimeter facility or for psychotropic medication. See Probate Code § 2356.5(f)(3). However, the law does not provide that the capacity declaration is admissible as</p>	<p>recommendation to reduce the scope of the issues that a petitioner could ask the clinician to address using mandatory form GC-335.</p> <p>The committee does not recommend a change to the proposal in response to this comment. The existence of a mandatory form for use to prepare and file a capacity declaration does not preclude a party from offering <i>alternative</i> evidence regarding capacity in circumstances in which a declaration is not statutorily required or from offering <i>additional</i> evidence when a declaration is required.</p>

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			<p>evidence in these proceedings if contested.</p> <p>Indeed, there is no law requiring a capacity declaration be provided to begin conservatorship proceedings, nor should there be. The need for a conservatorship can (and often must) be proven without a capacity declaration. It is more effective and accurate to prove the appropriateness of a conservatorship with other evidence, like medical records and live testimony (as is the petitioner’s option, and required in a contested hearing at the proposed conservatee’s option).</p> <p>Currently, proposed conservators routinely file capacity declarations even when not statutorily required. The proposed capacity declaration will incentivize proposed conservators to not file the capacity declaration at all unless required to avoid undue expense and delay.</p> <p><b>2. A capacity declaration is not meant to be determinative, or complete evidence of a person’s capacity.</b> The stated purpose of the proposed revised capacity declaration is to allow the court to make “fine-grained determinations about a person’s abilities and needs and issue more narrowly tailored orders that limit the intrusions on a conservatee’s autonomy to those necessary to protect those other rights and interests.”</p> <p>However, a capacity declaration, no matter how</p>	<p>The committee has modified its recommendation to reduce the length of form GC-335 by splitting it into two recommended forms—a mandatory form for use as a capacity declaration and an optional attachment for use to document conclusions about a person’s ability to perform everyday activities—and deleting several additional items from the proposed form.</p> <p>The committee does not recommend a change to the proposal in response to this comment. The recommended revisions to form GC-335 do not affect the admissibility of a capacity declaration or the weight that a court may give to such a declaration if it is properly admitted.</p>

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			<p>long or comprehensive, is not the proper vehicle for this this purpose. It is indisputable that a capacity declaration—no matter how long and comprehensive—is an extremely limited tool, and only provides one provider’s assessment of an individual at one single moment in time. Indeed, a capacity declaration is not meant to be dispositive or a picture of a person’s complete and overall capacity, nor should it be. A capacity declaration is merely evidence that can be used by the court to support a finding of incapacity at an uncontested hearing. See Prob. Code § 1022. A Form GC-335, even if revised to be more comprehensive, will simply never be sufficient to provide a detailed picture of a person’s capacity.</p> <p>Creating a longer more comprehensive capacity declaration would presumably provide the court with more opinion data of the assessing professional. However, there are many reasons why such a revision is counterproductive, and potentially dangerous, for example:</p> <ol style="list-style-type: none"> <li>1. Often, the capacity declaration is completed by a professional who is previously unfamiliar with the proposed conservatee (i.e., the opinion is made with limited knowledge, the assessment is based on a singular and short (maybe a 45-minute) moment in time, etc. This proposed capacity declaration further invites secondhand information that may be unreliable;</li> <li>2. In a contested matter the declaration would be</li> </ol>	<p>The committee agrees that the proposed revisions to form GC-335, as circulated for comment, created a form that was too long and likely to defeat the intended purpose by making it more difficult for clinicians to complete. The committee has modified its recommendation to address this concern. However, the committee has no reason to think that the length or scope of the form will deter judicial officers or court investigators from performing their duties under the law.</p>

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			<p>inadmissible, and thus useless;</p> <p>3. A more comprehensive capacity declaration could falsely signal to judges and others that the capacity declaration provides more value than it does (something perhaps evidenced by the suggested revision); it could signal that it can be relied upon and perhaps used as evidence when it cannot;</p> <p>4. The Court Investigator is tasked with gathering and reviewing relevant medical reports regarding the proposed conservatee from the proposed conservatee's primary care physician and other relevant mental and physical health care providers and making observations related to the need for conservatorship. See Prob. Code § 1826 (note, what is statutorily mandated may depend on legislative appropriation). This independent review is difficult, and time consuming, but is statutorily <i>a function of the court investigator</i>. Providing a more comprehensive Capacity Declaration could lead to a court investigator mainly relying on the Capacity Declaration;</p> <p>5. It could encourage judges to avoid further inquiry (e.g., through investigation and assessment via the court investigator, or section 730 of the Evidence Code, etc.);</p> <p>6. As the number of providers willing to complete the current capacity declaration is limited, it will likely be difficult to find a</p>	

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			<p>provider willing to complete a longer capacity declaration, and even then, the current form can prove difficult to complete with legal sufficiency. Therefore, a longer capacity declaration will likely lead to delays and hindrances to providing assistance to elders and dependent adults who need the assistance of a conservator.</p> <p><b>3. A capacity declaration has very limited purposes and is <i>only for use by stipulation or in uncontested matters</i>—or for specific purposes related to healthcare decision making.</b></p> <p>Should a proposed conservatee wish to contest the imposition of a conservatorship or any related disability, then the proposed conservatee (who is entitled to counsel, including court-appointed counsel) can simply request a hearing, whereby the burden is on the petitioner to prove incapacity by clear and convincing (or in LPS matters, beyond a reasonable doubt) evidence. See <i>Conservatorship of O.B.</i> (2020) 9 Cal.5th 989, see also, Prob. Code §§ 1801, 1823(b)(7), 1828(a)(6), 1827. At any contested hearing, the capacity declaration is worthless, absent a stipulation that is be allowed into evidence. (See Prob. Code § 1022, compare Code of Civ. Pro. § 98, which is not applicable in conservatorship matters.) This is especially true because the proposed revised capacity declaration invites heavy reliance on second-hand information fed to the declaring clinician. (See e.g., Para 8(d), 8(e), 8(f) and 8(g).)</p> <p>As mentioned, the law does require that the record</p>	<p>The committee intends and believes that the proposed revisions to form GC-335 will serve the purpose commended by the commenter. The fact that the <i>form</i> covers multiple issues does not signify that <i>every declaration</i> must cover all those issues. Item 1 on proposed form GC-335 requires the petitioner to specify the issues raised by the allegations in the petition. The specification of allegations in item 1 will focus the clinician’s inquiry on abilities and capacities relevant to determining the facts at issue in the petition. In addition, the form provides ample opportunity for the clinician to indicate that they do not know the answer to a question, did not assess a mental function or capacity, or formed no opinion on a particular issue. It also requires the clinician to document their sources of information to allow the court to judge their admissibility and weight.</p> <p>Nothing in the committee’s recommendation</p>

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			<p>be supported by a written declaration when the court issues an order determining that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent. See Probate Code §§ 1880, 1890(c). Also, a declaration is required <i>to petition</i> for authority related to placement in a secured perimeter facility or for psychotropic medication. See Probate Code § 2356.5(f)(3). However, the law does not require that the capacity declaration cover all areas of capacity to make these determinations, nor is a capacity declaration admissible as evidence for determining these issues, if contested. See Prob. Code § 1022, see also <i>Estate of Bennett</i> (2008) 163 Cal.App.4th 1303.</p> <p>A conservatorship proceeding is a special proceeding, and not a limited civil matter. See Code Civ. Pro. §§ 22-23, 98. As such, a mere declaration cannot come into evidence without a failure to object, or stipulation by the proposed conservatee, or counsel acting on their behalf. See Evid. Code § 1220 et seq., see also <i>Walker v. Superior Court</i> (2021) 12 Cal.5th 177 and <i>Estate of Bennett</i> (2008) 163 Cal.App.4th 1303. Instead, the petitioner would need to introduce evidence in other forms, e.g., testimony from those with firsthand information and/or the assessing physician or psychologist, medical records, etc. It is here that targeted, and relevant information can come into evidence to allow any determinations, fine-grained or otherwise. With the medical provider on the witness stand, questions can be asked to drill down into the proposed</p>	<p>affects the occasions for use of a capacity declaration, the duties of the probate investigator, or the ability of a petitioner to choose to obtain and file a declaration to support the allegations in their petition. As noted above, the petitioner bears the burden of showing, by clear and convincing evidence, that appointment of a conservator is warranted regardless of whether the petition is contested.</p>

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			<p>conservatee’s ability to “do a thing” or not. No capacity declaration or report will suffice for this purpose, no matter how long in pages, or attempt or to be comprehensive.</p> <p>It is indeed the adversarial process, by which a proposed conservatee and their attorney can test the appropriateness and limits of the requested disabilities. A proposed conservatee need merely voice an objection to a requested power, and the law provides that the petitioner must make sufficient proof. Moving away from this jurisprudence and statutory scheme is to invite overreliance on things like a capacity declaration.</p> <p><b>4. If disabilities are contested, it is in the best interests of the conservatee to have the points of disagreement identified, and the process seek targeted information, rather than requiring a comprehensive general capacity declaration at the outset.</b></p> <p>Probate Code section 1881(e) states, “<i>In the interest of minimizing unnecessary expense to the parties to a proceeding</i>”, the court only needs to determine impairment and person’s inability to give informed consent, “wherein the conservatee, after notice by the court of his or her right to object which, at least, shall include an interview by a court investigator pursuant to Section 1826 prior to the hearing on the petition, <i>does not object to the proposed finding of incapacity, or waives any objections.</i>” Prob. Code, § 1881, emphasis added.</p>	<p>The committee does not recommend a change to the proposal in response to this comment. The committee’s recommendation neither requires a party to file nor precludes a party from filing a capacity declaration “at the outset” or any other stage of a conservatorship proceeding. The opportunity offered to the clinician by the revised form to provide information and opinion on a wider range of matters does not require the clinician to opine on all of them. The form, as modified in response to other comments, makes clear that the clinician is expected to address only the issues relevant to the allegations identified in item 1 and provides ample opportunity for the clinician to indicate that they do not know the answer to a question, did not assess a mental function or capacity, or formed no opinion on a particular issue.</p>

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			<p>Many conservatorship petitions are uncontested. And, where there is a disagreement as to the imposition of a disability, that can often be settled by the parties, or set for hearing on that limited issue. In these instances, to require a comprehensive capacity declaration will merely increase the expense to the conservatee, and delay on an already overburdened assessment system. Unless there are more physicians or psychologists willing to perform assessments and complete capacity declarations, then access to the support of the conservatorship system will be severely affected for the worse. See, for example, Prob. Code § 1881(e).</p> <p>Interests of the proposed conservatee and the court’s time are better served by reserving the need for lengthy capacity declarations for those who contest some aspect of the conservatorship, and by asking the targeted question as to what points to assess before completing a comprehensive capacity declaration at the outset.</p> <p><b>5. If sufficient information as to capacity is not presented, the court may seek the targeted information it requires.</b></p> <p>In conservatorships, and the adversarial civil court process, the court has the authority, on its own motion and at any time, to get more information from any experts it deems necessary. See Evid. Code §§ 730, 300.</p> <p>Evidence Code section 730 provides, “When it</p>	<p>The committee does not recommend a change to form GC-335 in response to this comment. The committee’s recommendation has no effect on the court’s authority to appoint an expert under Evidence Code section 730.</p>

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			<p>appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required.”</p> <p>If the provided capacity declaration is insufficient for a purpose, or if the petitioner is unable to acquire sufficient evidence, the court has a statutory remedy in section 730 of the Evidence Code. A more comprehensive capacity declaration will only make courts less inclined to seek the targeted information needed, and instead rely on an overly broad, and untailed form completed by one doctor, who may not know the proposed conservatee prior, and who is assessing the proposed conservatee in only one session.</p> <p><b>6. The suggested revised Capacity Declaration needs to be pared down and revised further.</b> The revision is exceedingly long and complicated. Additionally, it asks for a declaration as to the ultimate issue without first qualifying the declarant as an expert or identifying whether those opinions are within common experience. See Evid. Code § 801. The declaration also asks for opinion on matters that are necessarily outside the firsthand knowledge of the declarant, particularly in Part III and Part IV. A professional assessor would not</p>	<p>As noted above, the committee has modified its recommendation to reduce the length of form GC-335.</p>

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			<p>have the ability to discern many of these questions. Further, the form contains logical extremes that are nonsensical. For example, item 21.c.4. requesting opinion on “use of public transportation” noting “unable no matter what type of assistance”—since someone can be carried onto a conveyance, extreme assistance will virtually always enable the use, making questions like these impossible to answer. Also, the purpose of this question is unclear in the context of a conservatorship. For another example: the meaning of “passive support” vs. “active assistance” is unclear (e.g., is handing someone a toothbrush passive or active?) Also, see item 21.c. an assessing professional will need to guess as to what a “reasonably safe and clean home” might be, and the standard will deviate. This 10-page declaration will serve to frustrate medical practitioners, resulting in an unwillingness to complete an evaluation, or if they are willing, undue expense for a proposed conservatee.</p> <p>Also, while the form uses unclear terms and asks somewhat irrelevant things, the form does not ask about the more relevant issues, e.g., a person’s capacity to make or revoke a trust, consent to marriage, possess a firearm, etc.</p>	<p>In the interest of reducing the length of recommended form GC-335, as suggested by this and other commenters, the committees does not recommend adding any further elements to it.</p>
			<p><b>GC-325, Confidential Declaration on Medical Ability to Attend Hearing—Probate Conservatorship.</b></p> <p>1. In the caption box—it is unclear as to what “other” refers. In a conservatorship matter the only party that needs this declaration is a proposed conservatee or conservatee (see for</p>	<p>The committee agrees and has removed “other” from the caption of the recommended form.</p>

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			<p>example item 7 on the suggested form). Others are determined unable to attend per usual means.</p> <p>2. In item 1.a. There is no need to check boxes and type in the title of the petition.</p> <p>And in 1.b, the date of the hearing is not given, so the doctor has no indication of when the hearing will be so as to discern ability to attend, if that is important. Perhaps just state: “1. One or more court hearings will be required in the conservatorship proceeding named above.” For the date, the form could allow the declarant to provide a date range.</p> <p>3. For item 6. It does not appear that the term, “licensed medical practitioner” as used in Probate Code section 1825 is defined in law, however, most certainly is not limited to the list in the form (i.e., physician, nurse practitioner,</p>	<p>The committee agrees in part with the suggested change and has removed the request for the title of the petition from item 1a. The committee recommends retaining the check boxes in item 1 to distinguish proceedings in which a petition has been filed and a hearing set from proceedings in which a petition has not been filed or a hearing set when the declaration is completed.</p> <p>The committee does not recommend a change to the form in response to this comment. The date of the hearing is not given in item 1b because, if that item is checked, the petition has yet not been filed and a hearing has not been set. Even without knowing the hearing date, the practitioner should still be able to complete item 6a or 6b, as they are independent of a specific hearing date. The committee agrees that allowing the declarant to provide a date range is appropriate; item 6b(1) of the recommended form currently allows the declarant to do precisely that; item 6b(2) allows the declarant to indicate that the (proposed) conservatee will be medically unable to attend a hearing for the foreseeable future.</p> <p>The committee agrees that the list is not exhaustive. To accommodate additional categories of practitioners, the committee has modified its recommendation to add a check box for <i>registered nurse</i> and a check box and fillable field for a</p>

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			<p>physician’s assistant, or psychologist acting within the scope of my license). Perhaps a chiropractor, a nurse, dentist, acupuncturist, etc. This term should be defined by law, or at least a rule of court, not my way of limited check boxes on a mandatory form. Also, a psychologist would presumably be limited to opining on inability due to emotional or psychological inability, has further limitations. See Prob. Code § 1825.</p> <p>4. For item 6. If the licensee is required to put a license number, the religious practitioner should also name their accreditor. Licenses can be verified only, whereas verification of religious accreditation is presumably more difficult.</p> <p>5. For item 8. For remote appearances, it is rare that one would be unable to appear on a screen without assistance. A court rule or statute should address what medical inability means for this purpose—does it mean unable without assistance? In conservatorships, the petitioner can often assist with the proposed conservatee’s appearance. However, if the proposed conservatee is unwilling to allow the assistance, that can be impossible.</p> <p>6. For item 8.c. Clarity should be brought regarding the fact that “emotional or</p>	<p>practitioner to specify another licensed profession that might qualify but is not listed. The committee does not recommend removing licensed psychologist from the list of practitioners in item 4a. All professionals listed are expected to practice within the scope of their respective licenses.</p> <p>The committee agrees that a space for the religious practitioner to give the name of the accrediting religious organization would be useful and has added one to item 4b of the recommended form.</p> <p>The committee recommends removing the options “in person” and “remotely” from item 6b(1) and (2). To excuse a person’s attendance at a hearing, the statute requires an unqualified declaration that the person is unable to attend because of medical inability regardless of the manner in which the hearing might be conducted. Including the manner of attendance in item 6b is therefore not appropriate. The manner of conducting the hearing may be relevant to an explanation of how the person might be able <i>to attend</i> the hearing and is therefore properly included in item 6a. The remaining questions raised by this comment are beyond the scope of the proposal.</p> <p>The committee does not recommend a change to the form in response to this comment. The</p>

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			psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.” See Prob. Code, § 1825.	instructions to the declarant (practitioner), which restate the quoted statutory limit on medical inability, provide sufficient guidance to the declarant.
2.	Orange County Bar Association by Christina Zabat-Fran, President	A	<p>This proposal appropriately addresses the stated purpose of revising and creating new probate conservatorship forms related to the conservatee's mental capacities for attending hearings and for the conservatee's care treatments. It is a necessary part of the committee’s on-going project to update forms to conform to recent legislation promoting self-determination for persons subject to protective proceedings.</p> <p>The OCBA recommends that a box be added to both forms for the petitioner to complete to indicate the next scheduled hearing date for use by the court, the parties, and the preparers for proper timing and understanding.</p>	<p>The committee appreciates this comment.</p> <p>The committee does not recommend adding a date field to the caption of form GC-325. As other commenters have indicated, the date field in item 1a is sufficient to indicate the hearing date if one has been set. Adding a hearing date to the caption could also cause some users to infer incorrectly that the form could be filed only if a hearing had been set. The committee intends that a party be able to obtain and file the declaration on this form even if a hearing has not yet been set. The committee agrees that a hearing date box on form GC-335 would be helpful and has added one to the caption of that form.</p>
3.	Superior Court of Orange County by Sean Lillywhite	NI	<i>What is filing timeframe required for the new GC-325?</i>	The committee appreciates the court’s comments.

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

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> <li><i>Is this form to be filed with the petition (when the case is initiated), or can this form be filed after the petition but before the hearing just like the current GC-335?</i></li> </ul> <p><i>Date box potentially added to GC-325 and GC-335.</i></p> <ul style="list-style-type: none"> <li><i>Adding a date field on both the revised GC-335 and new GC-325 will be helpful for the public, as they can take this in consideration to file the form on time. However, the current GC-335 does not have a space for the hearing date, and adding the date field will impact training and enhancement to the CMS in relation to the automatic date stamps for the hearing or making this a manual entry for staff at the time of filing.</i></li> </ul> <p><i>Suggestions for improving readability for GC-325:</i></p> <ul style="list-style-type: none"> <li><i>Is the “Instructions” section to be filled out by the petitioner or by court staff? Including language clarifying the party responsible for completing this section would be helpful. As it currently stands, it could be interpreted as either.</i></li> <li><i>In the “Declarant’s Information” section, it would be beneficial to add wording specifying the “declarant” as the “mental health professional”. This clarification is important</i></li> </ul>	<p>The committee intends for a party to file the form before a hearing but is not aware of a reason to require the form to be filed with a petition. Neither a statute nor a rule of court prescribes a deadline for filing the affidavit/declaration regarding medical ability to attend a hearing.</p> <p>The committee does not recommend adding a date field to the caption of form GC-325. As other commenters have indicated, the date field in item 1a is sufficient to indicate the hearing date if one has been set. Adding a hearing date to the caption could also cause some users to infer incorrectly that the form could be filed only if a hearing had been set. The committee intends that a party be able to obtain and file the declaration on this form even if a hearing has not yet been set. The date of the declaration is also in the signature block. The committee agrees that a hearing date box on form GC-335 would be helpful and has added one to the caption of that form.</p> <p>The committee has modified its recommendation to eliminate the need for completion of the instructions on form GC-325 by stating them in static text and to indicate expressly that the person requesting the completion of the form must complete item 1.</p> <p>The committee agrees and has modified its recommendation to indicate in the heading to the instructions that the declarant is expected to be a practitioner and to complete items 2–6. Item 4</p>

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			<p><i>as the term “declarant” may be confusing for self-represented parties.</i></p>	<p>makes clear that the declarant must be a licensed medical practitioner or an accredited practitioner of a religion that calls for reliance on prayer alone for healing.</p>
			<p><b>1. Does the proposal appropriately address the stated purpose?</b>  <i>Response: Yes</i></p> <p><b>2. Would adding a space to the caption box on form GC-325, form GC-335, or both, for use to indicate a hearing date be useful?</b>  <i>Response: Yes</i></p> <p><b>3. Would the proposal provide cost savings?</b>  <i>Response: Yes</i>  <i>If yes, explain: The cost implications would manifest in the reduced number of hearings necessitated for the conservatee’s attendance. Additionally, these forms are designed to furnish Judicial Officers with comprehensive information essential for informed decision-making regarding the conservatee’s level of care, even in instances where the proposed conservatee does not have the ability to attend the hearing as noted by a mental health professional (GC-325). This enables the case to progress without the need for repetitive continuances, optimizing the allocation of the court’s time and resources.</i></p> <p><b>4. What are the implementation requirements for courts? For example, training staff (please identify position and expected hours</b></p>	<p>No response required.</p> <p>See response above to the comment suggesting addition of a date field to the caption box of the forms.</p> <p>The committee shares the commenter’s hope that the recommended revisions will lead to reduced costs.</p>

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	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>testing and resolution of any issues within the CMS.</i></p> <p><b>6. How well would this proposal work in courts of different sizes?</b>  <i><b>Response:</b> With no associated costs and sufficient planning coupled with ample preparation time, the operational impact can be effectively mitigated, and the proposal would work for courts of different sizes.</i></p>	No further response required.
4.	Superior Court of Placer County by Naslie Rezaei, Court Services Analyst	A	<p>One of the questions posed by the advisory committee was “would adding a space to the caption box on form GC-325, form GC-335, or both, for use to indicate a hearing date be useful?”</p> <p>Adding a caption box to GC-335 for the hearing date would be useful as there is currently no space to write the hearing date for reference by the litigant or the court.</p> <p>Adding a caption box to GC-325 for the hearing date would not be as necessary. Number 1 on the GC-325 states “A petition that requires a hearing has been filed in the conservatorship proceeding named above and set for hearing on _____”; this could be utilized to easily locate the hearing date. As such, there wouldn't be as much of a need for a hearing box in the caption.</p>	<p>The committee agrees and has modified its recommendation accordingly.</p> <p>The committee agrees and does not recommend adding a date field to the caption of form GC-325. As other commenters have indicated, the date field in item 1a is sufficient to indicate the hearing date if one has been set. Adding a hearing date to the caption could also cause some users to infer incorrectly that the form could be filed only if a hearing had been set. The committee intends that a party be able to obtain and file the declaration on this form even if a hearing has not yet been set.</p>
5.	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>We recommend adding a space in the caption box</p>	<p>The committee appreciates these comments.</p> <p>The committee agrees that a hearing date box on</p>

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	Commenter	Position	Comment	Committee Response
			<p>on both forms for the hearing information. The Court has also prepared an additional response separately attached for consideration to this Invitation to Comment.</p> <p>Would the proposal provide cost savings? If so, please quantify.  <b>A: No cost savings</b></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?  <b>A: Update procedure, clerk alert, training of staff, update existing CMS code/description, create new CMS code.</b></p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?  <b>A: Depend on vendor time tables. No sooner than 3 but up to 6 months may be needed.</b></p>	<p>form GC-335 would be helpful and has added one to the caption of that form. However, the committee does not recommend adding a date field to the caption of form GC-325. As other commenters have indicated, the date field in item 1a is sufficient to indicate the hearing date if one has been set. Adding a hearing date to the caption could also cause some users to infer incorrectly that the form could be filed only if a hearing had been set. The committee intends that a party be able to obtain and file the declaration on this form even if a hearing has not yet been set.</p> <p>No further response required.</p> <p>No further response required.</p> <p>No further response required.</p>

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			<p>How well would this proposal work in courts of different sizes?  <b>A: This proposal should work well in courts of different sizes.</b></p> <p><i>Further comments:</i>                      Conservatorship litigants and counsel experience great difficulty obtaining completed capacity declarations from physicians using the present form. Any change to this form should be focused on improving this situation. The proposed amended form would exacerbate this situation, resulting in further delays before vulnerable conservatees can receive assistance from a conservator.</p> <p>We propose shortening the length of the form and clarifying that some portions may not be required.</p> <p><i>Length of Form</i>                      The current version of the Capacity Declaration is 3 pages. The major neurocognitive disorder attachment adds another page, for a total of 4 pages. The proposed amended form splits the current form into two, for a total of 10 pages. Six pages have been added to the form. The following factors are responsible for the longer length. If these factors are addressed, nearly 4 pages of the proposed amended form can be eliminated.</p> <p><i>Additional Procedures</i>                      The existing form addresses three statutory procedures that require a declaration by a</p>	<p>No further response required.</p> <p>The committee has reduced the length of recommended form GC-335 as described below in response to specific comments.</p>

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			<p>physician: (1) excuse from attending the hearing (Probate Code 1825(b)), (2) exclusive medical consent (Probate Code 1881), and (3) major neurocognitive disorder medication and placement (Probate Code 2356.5).</p> <p>The new form adds five new items:</p> <ul style="list-style-type: none"> <li>• Ability to provide properly for the conservatee’s own needs for physical health, food, clothing or shelter (Probate Code 1801(a))</li> <li>• Ability to stay or return to live safely in their own residence (Probate Code 2352, 2352.5)</li> <li>• Capacity to give or withhold medical consent to medical treatment specified in a petition (Probate Code 2357)</li> <li>• Ability to manage the conservatee’s own financial resources properly (Probate Code 1801(b))</li> <li>• Ability to resist fraud or undue influence (Probate Code 1801(b))</li> <li>• These items are represented by a portion of item 1 and all of items 22, 23, 24, and 28 on the proposed new form, representing 1.5 pages of space.</li> </ul> <p><i>Physician Declaration Not Required</i> Four of these five procedures do not require a physician declaration. The petitioner, family members, probate investigators, or other lay witnesses can provide this evidence. See Probate Code 1826(a)(4).</p> <p><i>Rarely Used</i></p>	<p>The committee has modified its recommendation to remove the items that do not require the declaration of a physician or psychologist. The commenter is correct that evidence regarding these determinations is available from other sources, including lay witnesses.</p>

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			<p>A declaration from a physician is required for a petition under Probate Code 2357. In the past several decades, we have received less than 5 such petitions. The detriments of extending the length of the form outweigh any benefits to accommodate this rarely-used procedure.</p> <p><i>Daily Living Activities</i>            Probate Code 811 requires evidence of a mental function deficit, a correlation between the deficit and significant impairment of the person’s ability to understand and appreciate the consequences of the person’s act or decision, and the extent of the impairment (i.e. frequency, severity, and duration).</p> <p>The existing form addresses deficits and extent of impairment, but only briefly addresses correlation by asking the ultimate questions required by the statute.</p> <p>The proposed new form adds more than two pages to address correlation by assessing ability to complete activities of daily living and instrumental activities of daily living. Although this information is relevant and helpful, in almost all cases, physicians will lack personal knowledge on these topics. Again, this evidence can be provided by the petitioner, family members, the probate investigator, and other lay witnesses. Substantial space is taken by these items. These items should be replaced with a single question whether the physician is aware of any ADLs or IADLs that have been significantly impaired by a mental function deficit.</p>	<p>The committee does not recommend removing this item from the form. Courts in other counties may receive more frequent petitions under section 2357, and this item by itself does not significantly increase the form’s length.</p> <p>The committee has modified its recommendation to remove the items asking the clinician to offer opinions on the (proposed) conservatee’s ability to perform activities and instrumental activities of daily living from recommended form GC-335 and replaced them with a single item, as suggested. The committee also recommends revoking form GC-335A as currently used and approving a replacement form GC-335A for optional use as an attachment and placing the questions and prompts regarding the (proposed) conservatee’s ability to perform everyday activities on that form.</p>

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			<p><i>Duplicative Data</i> Item 2(b) requests data concerning the current placement of the proposed conservatee. This takes almost 1/6 of a page. Petitioner provides this data both before and after appointment. See <i>Confidential Supplemental Information</i> (form GC-312), <i>CARE Plan</i> (form GC-355). The physician often will not have personal knowledge concerning this issue.</p> <p><i>Instructions</i> Item 3 provides instructions, taking over 1/6 of a page. These instructions are not necessary, and should be eliminated to shorten the form.</p> <p><i>Optional Portions</i> Items 22 to 29 may not be needed, based on whether the appropriate boxes in item 1 are checked. Items 22 to 29 should be modified to indicate this.</p>	<p>The committee agrees that item 2b is duplicative and has deleted it from recommended form GC-335.</p> <p>The committee agrees that the instructions in item 3 of form GC-335 are unnecessarily repetitive and has modified its recommendation to remove them from the form. To the extent appropriate, the committee has revised the instructions for completing specific parts and items on the form.</p> <p>The committee agrees that form GC-335 should indicate more clearly that the clinician should complete only those items in revised part III that correspond to items checked in item 1 of the form and has modified its recommendation accordingly.</p>
6.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Q: Does the proposal appropriately address the state purpose? <b>A: Yes.</b></p> <p>Q: Would adding a space to the caption box on form GC-325, form GC-335, or both, for use to indicate a hearing date be useful? <b>A: No, hearing dates in the caption are often left blank by the filing party. Having the</b></p>	<p>The committee appreciates these comments.</p> <p>No further response required.</p> <p>The committee has modified its recommendation to add a box for the hearing date to form GC-335,</p>

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			<p><b>hearing date as item #1 of the new GC-325 will be helpful to the declarant.</b></p> <p>Q: Would the proposal provide cost savings? If so, please quantify.  <b>A: No.</b></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?  <b>A: Implementation will require training of staff, updates to the case management system to rename the existing form and adding a new form. Additionally, form packets will need to be updated.</b></p> <p>Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?  <b>A: Yes.</b></p> <p>Q: How well would this proposal work in courts of different sizes?  <b>A: This proposal should work well, regardless of the size of the court.</b></p> <p>No additional Comments.</p>	<p>but agrees with the commenter that the field in item 1 on form GC-325 is sufficient to indicate the hearing date if a hearing has been set.</p> <p>No further response required.</p> <p>No further response required.</p> <p>No further response required.</p> <p>No further response required.</p>

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7.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules Subcommittee)	A	<p>The JRS notes the following impact to court operations:</p> <ul style="list-style-type: none"> <li>• Potentially will require an update of local rules.</li> <li>• Results in additional training, which requires the commitment of staff time and court resources.</li> </ul> <p>The JRS also notes that the proposal will require additional legal staff and judicial officer training to understand the legal impact/meaning of the revised and new forms' information as the information applies to the court's analysis of a conservatorship petition under the Probate Code.</p> <p>It is necessary to update or revise these forms to comply with the changes to the law regarding probate conservatorships. An update will also allow the forms' queries and solicitation of the assessing medical provider's opinions and how the opinions are presented in the form, to align to the current scientific/medical knowledge and research about mental capacity and capabilities more closely, as they relate to probate conservatorship proceedings.</p>	The committee appreciates these comments and has taken them into consideration in making its recommendation. No further response is required.
8.	Jessica Chia Wojewidka, Deputy County Counsel Office of the County Counsel, County of Alameda	NI	* See the comments of Philip C. Ladew, Deputy County Counsel, Office of the County Counsel, County of Alameda, beginning on page 24. Jessica Chia Wojewidka's comments duplicate those comments word for word.	The committee appreciates these comments. Please refer to the committee responses to the comments of Philip C. Ladew, beginning on page 24.

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