



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No. 22-168*

For business meeting on September 20, 2022

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| <b>Title</b>                                         | <b>Agenda Item Type</b>                                                                               |
| Rules and Forms: Guardianship Objection              | Action Required                                                                                       |
| <b>Rules, Forms, Standards, or Statutes Affected</b> | <b>Effective Date</b>                                                                                 |
| Approve form GC-215                                  | January 1, 2023                                                                                       |
| <b>Recommended by</b>                                | <b>Date of Report</b>                                                                                 |
| Probate and Mental Health Advisory Committee         | July 31, 2022                                                                                         |
| Hon. Jayne Chong-Soon Lee, Chair                     | <b>Contact</b>                                                                                        |
|                                                      | Corby Sturges, 415-865-4507<br><a href="mailto:corby.sturges@jud.ca.gov">corby.sturges@jud.ca.gov</a> |

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### Executive Summary

The Probate and Mental Health Advisory Committee recommends approving one form for optional use by parents, relatives, and other interested persons to object to a petition to appoint a probate guardian for a minor child. In guardianship proceedings, most parties and interested persons are self-represented. The petitions, forms GC-210 and GC-210(P), provide a framework for petitioners to specify their requests and allegations in appropriate categories. There is currently no Judicial Council form for objecting to a guardianship petition. Courts and self-help centers have indicated that the lack of a simple, standard form places objectors at a disadvantage and often leaves courts unable to discern the bases for objections. The proposed form is intended to address these concerns.

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2023, approve *Objection to Petition for Appointment of Guardian* (form GC-215) for optional use to file or structure an objection to a petition for appointment of a guardian in probate court.

The proposed new form is attached at pages 5–6.

## Relevant Previous Council Action

The Judicial Council has never approved a guardianship objection form.

## Analysis/Rationale

The vast majority of probate guardianship petitions in California request appointment of a guardian of the child's person, and not of the estate. Most petitioners and objectors in those proceedings are self-represented. The existing petition forms, *Petition for Appointment of Guardian of Minor* (form GC-210) and *Petition for Appointment of Guardian of the Person* (form GC-210(P)), provide alternative mandatory vehicles for petitioners to clarify their requests and allegations, separating them into appropriate categories. These forms help petitioners to articulate the issues the court needs to address; they also help the court to identify any issues of fact and determine whether it needs more evidence to resolve those issues.

No corresponding Judicial Council form exists for use by persons who wish to object to a petition for appointment of a guardian. Courts and self-help centers across the state have requested the development of an objection form because the lack of a form leaves objectors without guidance on how to focus and structure their objections. This lack of focus and structure often leaves courts, in turn, unable to discern the nature of the objections or the bases for them.

Proposed form GC-215 addresses these issues for an objector who chooses to use it. First, it requires an objector to identify the petition to which their objection applies by providing the name of the petitioner. Second, the form requires an objector to specify the children who fall within the scope of the objection. Frequently, a petition for appointment of a guardian of the person will include children who have different fathers. A father or a paternal relative of fewer than all the children subject to the petition may wish to object to appointment of a guardian of only those children to whom the objector is related. The recommended form offers that option. Third, the form requires an objector to specify their relationship with, or connection to, the child or family.

Fourth, the form allows an objector to contest the establishment of a guardianship over the child or children covered by the objection. In most circumstances, an objection focuses on whether the child needs a guardianship at all. This element of the form focuses the objection on this issue and requires them to explain why they think a guardianship is not needed.

Fifth, the form allows an objector to contest the appointment of the person proposed as guardian by the petition. An objector may agree that a guardianship is needed because the child's parent cannot properly care for the child, but think that appointment of a different person as guardian would be in the child's best interest. This element of the form focuses the objection on the reasons the objector thinks the proposed guardian should not be appointed.<sup>1</sup>

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<sup>1</sup> An objector would need to file a separate petition to ask the court to appoint a different person as guardian.

Finally, the form allows an objector to contest other requests made in the petition. These might include requests for specific visitation orders or for independent powers.

### **Policy implications**

Recommended form GC-215 is intended to improve the quality of justice and service to the public by providing a standard mechanism for a child's parents, other relatives, and interested persons to object to a petition for appointment of a guardian for the child. Use of the form to present competing viewpoints will enable the court to make a more accurate determination of the child's best interest. No policy implications contributed to controversy or intense debate in the committee.

### **Comments**

The proposal circulated for comment in the spring 2022 invitation-to-comment cycle. Four comments were received: two from superior courts, one from a county bar association, and one from a private individual. The Superior Court of Los Angeles County agreed with the proposal. The Superior Court of San Diego County, the Orange County Bar Association, and the individual agreed and suggested modifications.

The bar association suggested providing expanded instructions for the use of the form. The committee recommends modifying the form in one of the ways suggested. The committee has modified the instructions for items 4, 5, and 6, which provide an opportunity to specify objections and give reasons for those objections, to clarify that the objector need complete each of these items only if their objection falls in the category covered by the item. The committee does not recommend adding a separate instruction form to accompany form GC-215 or adding instructions to the form itself. The committee has made the form as simple as possible. Adding information or instructions beyond those discussed above risks distracting or confusing an objector. If the council concurrently approves forms GC-205-INFO and GC-206-INFO at its September 2022 meeting, as recommended by this committee and the Family and Juvenile Law Advisory Committee, those forms will provide enough information to allow a person to make informed objections to the appointment of a guardian.

The San Diego court suggested adding a proof of service to the form. The committee does not recommend that addition. There is no requirement in the Probate Code for service of an objection. An objector is typically not a party to a guardianship proceeding until they appear and object. Probate Code section 1043 permits an interested person to choose to appear and object, without prior notice, in writing at or before a hearing or orally at the hearing. A service requirement seems inconsistent with this permission.

A chart of comments is attached at pages 7–10.

### **Alternatives considered**

The committee considered taking no action, but concluded that the form would both assist self-represented objectors to clarify their objections to the requested guardianship and help courts to identify and determine contested issues and make informed decisions about the best interests of

children. The committee also considered recommending that the council adopt the form for mandatory use, but determined that a mandatory form would be inconsistent with the permission to appear and object orally at a hearing on a petition in Probate Code section 1043.

### **Fiscal and Operational Impacts**

The proposed form would impose indeterminate costs on the courts attendant to updating case management systems, changing operating procedures, and training. It is possible that the form, by providing a framework for objecting to a guardianship petition, could lead to marginal cost savings by reducing the length of hearings and the need for continuances.

### **Attachments and Links**

1. Form GC-215, at pages 5–6
2. Chart of comments, at pages 7–10

|                                                                                                                                                                             |  |                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY<br>NAME:<br>FIRM NAME:<br>STREET ADDRESS:<br>CITY: STATE: ZIP CODE:<br>TELEPHONE NO.: FAX NO.:<br>EMAIL ADDRESS:<br>ATTORNEY FOR (name): |  | FOR COURT USE ONLY<br><br><br><b>DRAFT</b><br><b>Not approved by</b><br><b>the Judicial Council</b> |
| <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b><br>STREET ADDRESS:<br>MAILING ADDRESS:<br>CITY AND ZIP CODE:<br>BRANCH NAME:                                                 |  |                                                                                                     |
| GUARDIANSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF<br>(name(s)): MINOR(S)                                                               |  | CASE NUMBER:                                                                                        |
| <b>OBJECTION TO PETITION FOR APPOINTMENT OF GUARDIAN</b>                                                                                                                    |  | HEARING DATE:<br>DEPT.: TIME:                                                                       |

- I (name): \_\_\_\_\_ object to the petition for appointment of a guardian filed by  
(name of petitioner): \_\_\_\_\_.
- My objection concerns the following child or children (give full name and date of birth for each):
  - ☐ Child (name): \_\_\_\_\_ (date of birth): \_\_\_\_\_
  - ☐ Child (name): \_\_\_\_\_ (date of birth): \_\_\_\_\_
  - ☐ If there are more children, identify them on a separate piece of paper, attach it to this form, and label it as Attachment 2.
- My relationship to the child or children named in item 2 is (tell the court about your connection with the child, children, or family): \_\_\_\_\_
- ☐ If you need more space, use a separate piece of paper, attach it to this form, and label it as Attachment 3.
- ☐ I object to a guardianship of the child or children named in item 2 because (if you think the court should not appoint a guardian, tell the court why): \_\_\_\_\_
- ☐ If you need more space, use a separate piece of paper, attach it to this form, and label it as Attachment 4.
- ☐ I object to the person the petitioner has asked the court to appoint as guardian because (if you think that person should not be the guardian, tell the court why): \_\_\_\_\_
- ☐ If you need more space, use a separate piece of paper, attach it to this form, and label it as Attachment 5.

GUARDIANSHIP OF (name):

CASE NUMBER:

6. ☐ I object to other requests in the petition because *(if you object to other requests in the petition, tell the court which specific requests you object to and why you object to each one)*:

☐ If you need more space, use a separate piece of paper, attach it to this form, and label it as Attachment 6.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing, including all attachments, is true and correct.

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF OBJECTOR)

(TYPE OR PRINT NAME)



(SIGNATURE OF OBJECTOR)

☐ Names and signatures of additional objectors follow last attachment.

## SPR22-18

### Rules and Forms: Guardianship Objection (approve form GC-215)

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

|    | Commenter                                                                          | Position | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Committee Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----|------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | Daniel<br>Walnut Park (Los Angeles County)                                         | AM       | There are no Judicial Council forms or court procedure to challenge the legality of individuals detained pursuant to [Welfare and Institutions Code] § 5150 or on a subsequent 5150 hold by certification and provision on how to proceed in certain circumstances when the medical staff neglect to disclose to a patient of statutory & constitutional rights including due process rights which result in the patient attempting to petition for judicial review when the only opportunity available is when they are a patient during his detention period.                                                     | The committee appreciates the comment. It is, however, beyond the scope of this proposal, which is limited to probate guardianship proceedings.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 2. | Orange County Bar Association<br>by Daniel S. Robinson, President<br>Newport Beach | AM       | <p>The OCBA agrees that the proposal appropriately addresses the stated purpose provided the following modifications are adopted:</p> <p>(1) Form GC-215 “Objection to Petition for Appointment of Guardian” should be modified to explain and provide instructions regarding the process when an objector wishes to ask the court to appoint a different person as guardian, as noted in footnote 1 of the Invitation to Comment discussion.</p> <p>(2) The form should have accompanying instructions and/or an Information form accompanying it since it will be used primarily by self-represented persons.</p> | <p>The committee appreciates these comments.</p> <p>The committee considered adding instructions regarding the petition process to its recommendation but determined that these instructions would distract users from the purpose of the form. Forms GC-205-INFO and GC-206-INFO, recommended by this committee and the Family and Juvenile Law Advisory Committee for council approval, effective January 1, 2023, will, if approved, provide extensive information on the probate guardianship process.</p> <p>The committee does not recommend the development of an instruction form. The committee believes the addition of the parenthetical instructions suggested in comment (3), updated information on the guardianship pages of the California Courts Online Self-Help</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## SPR22-18

### Rules and Forms: Guardianship Objection (approve form GC-215)

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

|    | Commenter                                                           | Position | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Committee Response                                                                                                                                                                                                                                                                                                                                                      |
|----|---------------------------------------------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                                                     |          | <p>(3) The purpose of proposed form GC-215 is to provide a means whereby persons objecting to a guardianship, likely to be self-represented, could frame and focus their objection/s. While it is understood that items 4, 5, and 6 each have their own checkboxes, this may not be enough distinction to signal that all of these issues do not need to be included or addressed in order to make an objection. Accordingly, it is suggested the instructions, in parentheses and following each of these items, be modified as follows: at item 4 “...(if you think the court should not appoint a guardian, tell the court why);” at item 5 “...(if you think the court should not appoint that person to be the guardian, tell the court why);” and at item 6 “...(if you object to other requests, tell the court which request or requests you object and why);”.</p> <p>(4) The form should be modified to include “objections” to appointment of a conservator as we are unaware of such form with instructions.</p> | <p>Center, and forms GC-205-INFO and GC-206-INFO, if approved, will give sufficient guidance to an objector.</p> <p>The committee agrees with the suggestion and has modified the proposed form accordingly.</p> <p>The committee appreciates the comment. It is, however, beyond the scope of this proposal, which is limited to probate guardianship proceedings.</p> |
| 3. | Superior Court of Los Angeles County by Bryan Borys                 | A        | More than 3 months will be required to implement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | The committee appreciates this comment. No further response is required.                                                                                                                                                                                                                                                                                                |
| 4. | Superior Court of San Diego County by Mike Roddy, Executive Officer | AM       | <p><i>Does the proposal appropriately address the stated purpose?</i> Yes.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> No.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>The committee appreciates the comment. No further response is required.</p> <p>No further response is required.</p>                                                                                                                                                                                                                                                  |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## SPR22-18

### Rules and Forms: Guardianship Objection (approve form GC-215)

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

|  | Commenter | Position | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Committee Response                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--|-----------|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |           |          | <p><i>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?</i></p> <p>Examiners would have a clearer understanding of how to reflect objections in probate notes. Changes to case management system would be required in accepting the new form.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</i></p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>It appears this proposal would work similarly among courts of all sizes.</p> <p><i>Other Comments:</i></p> <p>Our court currently has a local form for the purpose of generically objecting to any petition filed in Probate. The one item lacking in this form is incorporation of a proof of service section as an additional page. We find including this in forms that are primarily used by self-represented litigants helps to prompt them that service is required.</p> | <p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p> <p>The committee does not recommend adding a proof of service to the proposed form because service is not required in all instances. Under Probate Code section 1043, an interested person may appear and make an objection to a petition in writing at or before the hearing, or may appear and make an objection orally at the hearing. Service, even of a written objection, is not required. No provision of division 4 of the Probate Code provides a different procedure for objecting. As a practical matter, requiring service seems</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

## SPR22-18

### Rules and Forms: Guardianship Objection (approve form GC-215)

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

|  | Commenter | Position | Comment | Committee Response                                                                                                                                    |
|--|-----------|----------|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
|  |           |          |         | likely to deter self-represented persons from using the form and thus deprive the parties and the court of the focus and structure the form provides. |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated