



Judicial Council of California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No. 23-167

For business meeting on September 19, 2023

Title

Civil Practice and Procedure: Appointment of Guardian ad Litem

Agenda Item Type

Action Required

Effective Date

January 1, 2024

Date of Report

August 4, 2023

Rules, Forms, Standards, or Statutes Affected

Adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935

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Recommended by

Civil and Small Claims Advisory Committee

Hon. Tamara L. Wood, Chair

Family and Juvenile Law Advisory Committee

Hon. Stephanie E. Hulsey, Cochair

Hon. Amy M. Pellman, Cochair

Probate and Mental Health Advisory Committee

Hon. Jayne Chong-Soon Lee, Chair

Executive Summary

The Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Probate and Mental Health Advisory Committee propose adopting one form, revising two forms, revising and renumbering one form, and revoking one form to reflect a change in the law and to clarify and modernize the existing forms. The mandatory forms in the proposal are used to apply for and order the appointment of a guardian ad litem in a civil action or proceeding, including a family law proceeding, and in a proceeding under the Probate Code.

Recommendation

The Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Probate and Mental Health Advisory Committee recommend that the Judicial Council, effective January 1, 2024:

1. Adopt *Order Appointing Guardian ad Litem—Civil and Family Law* (form CIV-011/FL-936) for mandatory use to appoint a guardian ad litem in civil and family law proceedings;
2. Revise *Application and Order for Appointment of Guardian ad Litem—Civil* (form CIV-010), retitle it as *Application for Appointment of Guardian ad Litem—Civil and Family Law*, and renumber it as form CIV-010/FL-935 to separate the application from the order, incorporate new statutorily required elements, update its language, and clarify that it is intended for use in family law proceedings;
3. Revise *Petition for Appointment of Guardian ad Litem—Probate* (form DE-350/GC-100) and *Order Appointing Guardian ad Litem—Probate* (form DE-351/GC-101) to incorporate new statutorily required elements and update their language; and
4. Revoke *Application and Order for Appointment of Guardian ad Litem of Minor—Family Law* (form FL-935) because it is now unnecessary.

The proposed new, revised, and revoked forms are attached at pages 8–16.

Relevant Previous Council Action

The forms in this proposal, with the exception of form DE-351/GC-101, were last revised effective January 1, 2008. Form DE-351/GC-101 was adopted effective January 1, 2004, and has not been revised until now.

Analysis/Rationale

Revisions are necessary because the existing forms for requesting and appointing a guardian ad litem in civil, family, and probate proceedings reflect legal requirements modified by Senate Bill 1279 (Stats. 2022, ch. 843). In addition, the current civil and family law forms combine the application and order into a single form. That combination can make it difficult for computerized case management systems to process the form. To address these issues, the committees recommend revising two existing forms, revising, retitling, and renumbering an existing form, adopting a new form, and revoking an existing form.

Language regarding lack of capacity

SB 1279 amended Code of Civil Procedure section 372 and Probate Code section 1003 in several respects. First, SB 1279 updated the language in Code of Civil Procedure section 372 and Probate Code section 1003 to refer to “a person who lacks legal capacity to make decisions” as one category of persons who must appear through a guardian ad litem or for whom a guardian ad

litem may be appointed.¹ This term reflects the current legislative preference for the use of person-centered terms to refer to persons with disabilities. Three forms—*Application and Order for Appointment of Guardian ad Litem—Civil* (form CIV-010), *Petition for Appointment of Guardian ad Litem—Probate* (form DE-350/GC-100), and *Order Appointing Guardian ad Litem—Probate* (form DE-351/GC-101)—use the outdated language “an incompetent person.” This recommendation revises all three of these forms to use the new statutory term.

Guardian ad litem for a person who has a guardian or conservator of the estate

Second, SB 1279 amended Code of Civil Procedure section 372 to condition a court’s grant of an application for appointment of a guardian ad litem in civil and family law proceedings for a person who already has a guardian or conservator of the estate on (1) the applicant giving notice and a copy of the application to the guardian or conservator of the estate, (2) the application disclosing the existence of the guardian or conservator of the estate, and (3) the application stating reasons why the guardian or conservator of the estate would be inadequate to represent the interests of the proposed ward.² The committees recommend revising form CIV-010 to give the applicant the opportunity to comply with these requirements.

Conflicts of interest

Third, SB 1279 added to both Code of Civil Procedure section 372 and Probate Code section 1003 a requirement that, before appointment of a guardian ad litem under either statute, a proposed guardian ad litem must disclose to the court and all parties to the action or proceeding any “known actual or potential conflicts of interest that would or might arise from the appointment” and any “familial or affiliate relationship the proposed guardian ad litem has with any of the parties.”³ In addition, the statutes now require that, after appointment, a guardian ad litem disclose to the court any potential conflict of interest that the guardian ad litem realizes has become an actual conflict of interest and any new actual or potential conflict that has arisen.

The committees recommend revising forms CIV-010 and DE-350/GC-100 to provide space for the required disclosures and to inform the proposed guardian ad litem of the duty to report to the court any conflicts of interest that ripen or arise after appointment. In addition, the committees recommend revising form DE-351/GC-101 to include an order requiring the guardian ad litem to report conflicts of interest to the court.

¹ Code Civ. Proc., § 372(a)(2)(A), (a)(4); Prob. Code, § 1003(a)(2). The bill also amended section 372 to explain that, for purposes of that section, the term “person who lacks legal capacity to make decisions” refers to a “person who lacks capacity to understand the nature or consequences of the action or proceeding,” a “person who lacks capacity to assist the person’s attorney in the preparation of the case, and a “person for whom a conservator may be appointed pursuant to Section 1801 of the Probate Code.” (Code Civ. Proc., § 372(a)(4).) The statute does not indicate whether the specified references are intended to be exclusive.

² *Id.*, § 372(a)(2)(B).

³ *Id.*, § 372(d); Prob. Code, § 1003(d).

Additional changes

Separate order form

The committees recommend revising form CIV-010 by removing from it the order appointing a guardian ad litem and adopting *Order Appointing Guardian ad Litem—Civil and Family Law* (form CIV-011/FL-936) as a separate form. The combination of an incoming application and an outgoing order in a single form can present a problem for some courts' case management systems. Placing the application and order on separate forms is intended to allow case management systems to process the forms more efficiently. In addition, the recommended new form includes an order requiring the guardian ad litem to report conflicts of interest to the court.

Revocation of family law form

The committees also recommend revoking *Application and Order for Appointment of Guardian ad Litem of Minor—Family Law* (form FL-935) because it is unnecessary. Code of Civil Procedure sections 372–376 supply the procedures for appointment of a guardian ad litem in family law proceedings.⁴ Form CIV-010 can be used for this purpose, as it elicits all the information needed to apply for appointment of a guardian ad litem in a family law proceeding. The committees also recommend cross-numbering form CIV-010 as CIV-010/FL-935 and retitling it as *Application for Appointment of Guardian ad Litem—Civil and Family Law* to limit confusion.

Additional information and determinations

The committees recommend revising the existing forms to add space to address issues of fact that, if applicable, require judicial determinations under the law. These revisions include adding space on form CIV-010/FL-935 for applicants to explain, in their own words, the circumstances underlying an assertion that a proposed ward lacks legal capacity to make decisions or is someone for whom a guardian or conservator of the estate has been appointed; revising form DE-350/GC-100 to add space for a petitioner to explain why representation of the person's interest would be inadequate without appointment of a guardian ad litem; and revising form DE-351/GC-101 to allow the court to make a finding to that effect.

Technical and minor substantive changes

In the course of reviewing the existing forms that are included in this recommendation, the committees also identified opportunities to clarify their formatting, simplify their language, and update them to conform to current Judicial Council forms guidelines.

Policy implications

The recommendations are needed to conform to the law as amended by SB 1279. Accordingly, the key policy decisions were made by the Legislature. In addition, the committees were mindful of the ongoing need to improve the quality of justice and service to the public and to modernize court administration when developing their recommendations.

⁴ Family Code sections 6223 and 7635 require appointment of a guardian ad litem in specific circumstances, but do not supply alternative procedures.

Comments

The proposal circulated for public comment in the spring 2023 invitation-to-comment cycle. The committees received seven comments, including four from superior courts. One commenter agreed with the proposal as circulated, three commenters agreed and suggested modifications, and three commenters did not indicate a position and suggested modifications. Most commenters suggested minor or technical changes to make the forms simpler and more accessible to self-represented litigants. The committees accepted almost all of these suggestions.

One commenter, the Superior Court of Los Angeles County, suggested several revisions. The committees have incorporated the court's suggested technical revisions into the forms. The committees have also modified their recommendation in response to two of the court's substantive comments. First, the court observed that neither of the grounds in item 5 (renumbered as item 6) on form CIV-010/FL-935 seemed to apply to the appointment of a guardian ad litem for a minor requesting or opposing a request for an injunction or restraining order described in Code of Civil Procedure sections 372(b) and 374(a). The committees agree and have determined that sections 372(b) and 374(a) require appointment of a guardian ad litem regardless of whether the minor has a guardian of the estate. The committees have also determined that Family Code section 7635 requires appointment of a guardian ad litem for a minor party in an action under the Uniform Parentage Act. (UPA; Fam. Code, § 7600–7730.) The committees have therefore modified the forms to add, in item 6 on form CIV-010/FL-935, express options to apply for appointment of a guardian ad litem in restraining order proceedings and UPA actions and corresponding options, in item 5 on form CIV-011/FL-936, for the court to order appointment in those proceedings.

The court also suggested moving items 7 and 8 from the main body of form CIV-010/FL-935, to be completed by the applicant, to the last section of the form, to be completed by the proposed guardian ad litem because the applicant, if different from the proposed guardian ad litem, might not know the information required by those items. Item 7 required specification of the proposed guardian ad litem's relationship to the person to be represented. Item 8 required disclosure of any conflicts of interest between the guardian ad litem and the person to be represented. The committees agree with the suggested change and have moved items 7 and 8, renumbered as items 8 and 9, to the last section of the form, which is retitled "Disclosures and Consent to Act as Guardian ad Litem." Although the court did not specifically suggest it, the committees have made the same change to form DE-350/GC-100 for the same reason.

Another commenter suggested revising the instructions on forms CIV-010/FL-935 and DE-350/GC-100 to clarify that form CIV-010/FL-935 must be used to apply for appointment of a guardian ad litem in a "minor's compromise" proceeding under Probate Code sections 3500–3613. The committees agree that the instructions need clarification, though not in the manner suggested. The committees have revised the instructions on both forms to explain that a new or separate guardian ad litem is not required in a minor's compromise proceeding, and so neither form is appropriate for use in such a proceeding. A guardian of the estate has independent power under Probate Code section 2500 et seq. to compromise a minor's disputed claim without

litigation. In the absence of a guardian of the estate, section 3500 confers that power on a parent and requires the parent to petition the court for approval of the compromise.

If court approval of the compromise of a *pending* action or proceeding or the disposition of judgment proceeds under Probate Code sections 3600–3613 is required on behalf of a person identified in Code of Civil Procedure section 372 and a guardian or conservator of the estate has not been appointed or is inadequate, the court presiding over the pending action will have already appointed a guardian ad litem in that action. The existing guardian ad litem will have standing to petition for approval of the compromise or disposition without further order; a new or separate guardian ad litem is not required.

A different commenter suggested that the committees add a reference on form CIV-010/FL-935, the civil and family law application, to the requirements of Code of Civil Procedure section 372(a)(4), which describes three categories of persons who may require a guardian ad litem because of a lack of legal capacity. The committees do not recommend that addition because they have concluded that the applicant should describe the disability of the person to be represented in their own words and leave to the court the determination whether the disability fits one of the statutory categories of lack of capacity. This commenter also suggested adding items to forms CIV-011/FL-936 and DE-351/GC-101 for the court to specify its findings regarding capacity in more detail. The committees do not recommend these additions. The statutes do not require detailed specification of the findings. And in many cases, the court will take judicial notice of a different court’s determination, in a separate proceeding, that the person to be represented lacks legal capacity to make decisions.

A chart of comments and committee responses is attached at pages 17–28.

Alternatives considered

The committees considered taking no action but determined that the changes in the law required corresponding changes to the forms. The committees also considered limiting the proposed changes strictly to those required by the recent legislation but determined that additional clarification and updating were necessary, particularly to make the forms more accessible to self-represented applicants or petitioners. Finally, the committees considered retaining and revising form FL-935 but determined that this form was approved before the adoption of any form application for appointment of a guardian ad litem, that form CIV-010 is intended to apply broadly, and, with minor revisions, form CIV-010 is suitable for use in all the proceedings to which form FL-935 might apply. No commenters objected to this recommendation.

Fiscal and Operational Impacts

The proposal would impose the usual costs for courts to train staff and update their internal procedures and case management systems to reflect the new and revised forms. As noted above, new form CIV-011/FL-936 should allow case management systems to handle the guardian ad litem appointment process more efficiently by separating the order from the application.

Attachments and Links

1. Forms CIV-010/FL-935, CIV-011/FL-936, DE-350/GC-100, DE-351/GC-101, and FL-935, at pages 8–16
2. Chart of comments, at pages 17–28
3. Link A: Sen. Bill 1279 (Stats. 2022, ch. 843),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1279

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT</h2> <h2 style="margin: 0;">Not approved</h2> <h2 style="margin: 0;">by Judicial</h2> <h2 style="margin: 0;">Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	
APPLICATION FOR APPOINTMENT OF GUARDIAN AD LITEM—CIVIL AND FAMILY LAW <input type="checkbox"/> EX PARTE	CASE NUMBER:
<p><i>This form is for use in a civil or family law proceeding in which a party is a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed. A person who seeks the appointment of a guardian ad litem in a proceeding under the Probate Code—other than a proceeding under Probate Code sections 3500–3613 for approval of a compromise, settlement, or disposition of judgment proceeds—should use form DE-350/GC-100. NOTE: A person may not act as a guardian ad litem unless the person is represented by an attorney, is an attorney, or, in an action under the Uniform Parentage Act (Family Code, §§ 7600–7730), is an adult relative of a minor party.</i></p>	

1. I (applicant's name):
am (check all that apply):
 - a. ☐ the parent of (name):
 - b. ☐ the guardian of (name):
 - c. ☐ the conservator of (name):
 - d. ☐ a party to the suit.
 - e. ☐ the minor to be represented (if the minor is 14 years of age or older).
 - f. ☐ another interested person (specify capacity):
2. I am asking the court to appoint the following person as guardian ad litem (name, address, phone number, and email address):

3. The guardian ad litem will represent the interest of (name, address, and, if applicable, phone number and email address):

4. The person named in item 3 is a party and is (check all that apply):
 - a. ☐ a minor (date of birth):
 - b. ☐ a person who lacks legal capacity to make decisions (explain the basis for claiming lack of capacity):

 - ☐ Continued on Attachment 4b.
 - c. ☐ a person for whom a conservator has been appointed (provide the details of the appointment):

 - ☐ Continued on Attachment 4c.

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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5. ☐ The person named in item 3 is a minor and is (*check one*):
- a. ☐ a plaintiff or petitioner in this action and the summons has not been issued.
- b. ☐ a defendant or respondent in this action. More than 10 days have passed since service of the summons, and no one has applied for the appointment of a guardian ad litem.

6. I am asking the court to appoint a guardian ad litem because the person named in item 3 (*check all that apply*):


- a. ☐ is a minor who is a party to an action under the Uniform Parentage Act (Family Code, §§ 7600–7730).
- b. ☐ is a minor who is requesting or opposing a request for an injunction or restraining order described in Code of Civil Procedure sections 372(b)(1) and 374(a). (*If the minor is 12 years of age or older, check one of the following*):
The minor ☐ does ☐ does not ☐ object to the appointment of the person named in item 2.
☐ I don't know whether the minor objects to the appointment of the person named in item 2.
- c. ☐ has no guardian or conservator of the estate.
- d. ☐ has a guardian or conservator of the estate, but the guardian or conservator is inadequate to represent the person's interest in this action or proceeding because (*explain*):

☐ Continued on Attachment 6d.

The guardian or conservator of the estate is (*name, address, telephone number, and email address*):

(*After filing this application, you must give notice and a copy of the application to the guardian or conservator above.*)

7. The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person named in item 3.

<hr/> (TYPE OR PRINT NAME)		<hr/> (SIGNATURE OF ATTORNEY)
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:		
<hr/> (TYPE OR PRINT NAME)		<hr/> (SIGNATURE OF APPLICANT)

DISCLOSURES AND CONSENT TO ACT AS GUARDIAN AD LITEM

8. I have the following relationship with the person named in item 3 (*check one*):

- a. ☐ No relationship
- b. ☐ A familial relationship (*specify*):
- c. ☐ An affiliate (nonfamilial) relationship (*specify*):

9. I am (*check one*):

- a. ☐ not aware of any actual or potential conflicts of interest that would or might arise from the appointment.
- b. ☐ aware of the following actual or potential conflicts that would or might arise from the appointment (*describe the actual or potential conflicts of interest and explain why the proposed guardian should still be appointed*):

☐ Continued on Attachment 9b.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I consent to act as guardian ad litem in this action or proceeding. If I become aware that a potential conflict of interest has become an actual conflict, or that a new potential or actual conflict exists, I will promptly disclose the conflict of interest to the court.

Date:		
<hr/> (TYPE OR PRINT NAME)		<hr/> (SIGNATURE OF PROPOSED GUARDIAN AD LITEM)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY <div style="font-size: 24pt; font-weight: bold; margin-top: 20px;"> DRAFT Not approved by Judicial Council </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	
ORDER APPOINTING GUARDIAN AD LITEM—CIVIL AND FAMILY LAW <input type="checkbox"/> EX PARTE	CASE NUMBER:

1. Applicant (name):
seeks appointment of a guardian ad litem of (name):
2. ☐ The application came on regularly for a hearing as follows:
 - a. Judicial officer (name):
 - b. Hearing date: Time: ☐ Dept.: ☐ Room:
 - c. The following persons were present at the hearing:
 - (1) ☐ Applicant (name):
 - (2) ☐ Attorney for applicant (name):
 - (3) ☐ Guardian ad litem named in item 6.
 - (4) ☐ Attorney for guardian ad litem (name):
 - (5) ☐ Plaintiff/Petitioner (name):
 - (6) ☐ Attorney for Plaintiff/Petitioner (name):
 - (7) ☐ Defendant/Respondent (name):
 - (8) ☐ Attorney for Defendant/Respondent (name):
 - (9) ☐ Other (names):

THE COURT FINDS

3. ☐ All notices required by law have been given.
4. The person for whom a guardian ad litem is to be appointed is a party who is
 - a. ☐ a minor (date of birth):
 - b. ☐ a person who lacks legal capacity to make decisions.
 - c. ☐ a person for whom a conservator has been appointed.
5. ☐ The person for whom a guardian ad litem is to be appointed
 - a. ☐ is a minor who is a party to an action under the Uniform Parentage Act. (Family Code, §§ 7600–7730.)
 - b. ☐ is a minor who is requesting or opposing a request for an injunction or restraining order described in Code of Civil Procedure sections 372(b) and 374(a).
 - c. ☐ does not have a guardian or conservator of the estate.
 - d. ☐ has a guardian or conservator of the estate, but the guardian or conservator is inadequate to represent the person's interest and appointment of a guardian ad litem is expedient.

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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THE COURT ORDERS

6. (Name):
is appointed guardian ad litem of (name):
7. The guardian ad litem ☐ is ☐ is **not** authorized to waive or disclaim any substantive rights of the represented party without further order of this court.
8. The guardian ad litem must promptly report to the court any potential conflict of interest with the represented person that becomes an actual conflict, as well as any new potential or actual conflict of interest that arises during the course of the representation.
9. ☐ Other (specify):

☐ Continued on Attachment 9.

10. Number of pages attached: _____



JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MATTER OF (name): <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR	CASE NUMBER: HEARING DATE AND TIME: DEPT.: TIME:
PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM—PROBATE <input type="checkbox"/> EX PARTE	
<i>Use this form for proceedings under the Probate Code, except proceedings to request approval of the (1) compromise of a minor's disputed claim (Probate Code, § 3500), (2) compromise of a pending action or proceeding in which a party is a minor or person with a disability, or (3) disposition of the proceeds of a judgment for a minor or person with a disability. (Probate Code, §§ 3600–3613.) A guardian ad litem is not required in a proceeding under section 3500. A guardian ad litem in a pending action or proceeding may seek approval of a compromise of the action or proceeding or disposition of judgment proceeds without further order. NOTE: A guardian ad litem must be an attorney or be represented by an attorney. A guardian ad litem is not the same as a guardian of the person or estate.</i>	

1. Petitioner (name):
 is (check one):
 - a. ☐ personal representative of the estate of (name):
 - b. ☐ guardian of (name):
 - c. ☐ conservator of (name):
 - d. ☐ trustee of (exact name of trust):
 - e. ☐ other interested person (name and interest):
2. This petition seeks appointment of the following person as guardian ad litem (name, address, phone number, and email address):
3. The guardian ad litem will represent the interest of (name, address, and, if applicable, phone number and email address):
4. The person named or described in item 3 is (check one):
 - a. ☐ A minor (date of birth):
 - b. ☐ A person who lacks legal capacity to make decisions (explain basis for claiming lack of capacity):
 - c. ☐ An unborn person.
 - d. ☐ An unascertained person or a designated class of persons who are not ascertained or are not in being.
 - e. ☐ A person whose identity or address is unknown.
5. Representation of the interest of the person named or described in item 3 would be inadequate without appointment of a guardian ad litem because (give the reason or reasons below; if necessary, check the box and continue on page 2):

☐ Continued on next page.

MATTER OF (name):

CASE NUMBER:

☐ DECEDENT ☐ CONSERVATEE ☐ MINOR

5. (continue explanation below if necessary):

☐ Continued on Attachment 5.
6. ☐ The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person named or described in item 3, as explained in Attachment 6.

7. Notice of this proceeding (check all that apply):

- a. ☐ Will be given to the persons named in Attachment 7a.
- b. ☐ Should not be given to the persons named below because (give names and reasons that notice should not be required):

☐ Continued on Attachment 7b.

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 is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

DISCLOSURES AND CONSENT TO ACT AS GUARDIAN AD LITEM

8. I have the following relationship with the person named or described in item 3 (check one):

- a. ☐ No relationship.
- b. ☐ A familial relationship (specify):
- c. ☐ An affiliate (nonfamilial) relationship (specify):

9. I have (check one):

- a. ☐ No known actual or potential conflicts of interest with the person named or described in item 3.
- b. ☐ One or more actual or potential conflicts of interest with the person named or described in item 3. All conflicts of interest are fully described in Attachment 9b.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I consent to the appointment as guardian ad litem in this proceeding. If I become aware that a potential conflict of interest has become an actual conflict, or that a new potential or actual conflict exists, I will promptly disclose the conflict of interest to the court.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PROPOSED GUARDIAN)

☐ **CONSENT OF MINOR 12 YEARS OF AGE OR OLDER (Optional)**

I, (name): _____, am (specify age): _____ years of age. I consent to the appointment of (name): _____ as my guardian ad litem to represent my interest in this proceeding for the reasons set forth in item 5 of this petition.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF MINOR 12 YEARS OF AGE OR OLDER)

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MATTER OF (name): <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR </div>	
<div style="text-align: center;"> ORDER APPOINTING GUARDIAN AD LITEM—PROBATE <input type="checkbox"/> EX PARTE </div>	CASE NUMBER:

1. The court has considered the petition for appointment of a guardian ad litem for (name of person to be represented):

filed by (name of petitioner):

on (date):

2. The person for whom appointment of a guardian ad litem is requested is (check one):

- a. ☐ A minor (date of birth):
- b. ☐ A person who lacks legal capacity to make decisions.
- c. ☐ An unborn person.
- d. ☐ An unascertained person or a designated class of unascertained persons or persons who are not in being.
- e. ☐ A person whose identity or address is unknown.

THE COURT FINDS

3. a. ☐ Notice has been given as required by law.
- b. ☐ For good cause, notice does not need to be given to the following persons (name all):

4. Representation of the interest of the person to be represented would be inadequate without appointment of a guardian ad litem.

THE COURT ORDERS

5. (Name):
is hereby appointed guardian ad litem for (name):
6. The guardian ad litem ☐ is ☐ is **not** authorized to waive or disclaim any substantive rights of the represented person without further order of this court.
7. The guardian ad litem must promptly report to the court any potential conflict of interest with the represented person that ripens into an actual conflict as well as any new potential or actual conflict of interest that arises during the course of the representation.
8. ☐ Other orders (specify):

☐ Continued on Attachment 8.

9. Number of pages attached: _____

Date:

(SIGNATURE OF JUDICIAL OFFICER)

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

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- ☐ Continued on Attachment 4 (describe in detail, attach additional pages if necessary).

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Civil Practice and Procedure: Appointment of Guardian ad Litem (adopt form CIV-011/FL-936; revise forms DE-350/GC-100 and DE-351/GC-101; revise form CIV-010 and renumber as CIV-010/FL-935; revoke form FL-935)

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	Commenter	Position	Comment	Committee Response
1.	Family Violence Appellate Project by Jodi Lewis, Senior Managing Attorney, and Cory Hernandez, Senior Staff Attorney Oakland	NI	<p>We support the proposal, and wanted to make additional recommendations below. . . . Mostly the comments focus on making the forms more plain language and reader/user-friendly.</p> <p>CIV-010/FL-935</p> <ul style="list-style-type: none"> • P. 1, item 1 – easier-to-read formatting would be good here. The spacing between “Applicant (name):” and “is” makes it easy to miss the word “is,” as we did initially. It may be better to divide this into two items: (1) “Name of person asking for Guardian Ad Litem Appointment: [blank]”; (2) “Person in (1) is: [list checkboxes].” • P. 2, item 5 – the phrase, “expedient, notwithstanding . . .” is not plain language. Perhaps better language could be, “necessary[or useful may be better word to use here], even though the person in item 3 already has a guardian or conservator of the estate.” • P. 2, item 6(b) – the word “elapsed” may be unknown to some readers, so “passed” may be better. • P. 2, item 8(b) – instead of “nevertheless,” maybe use “still.” <p>CIV-011/FL-936</p> <ul style="list-style-type: none"> • P. 1, item 1 – As noted above, the formatting of this item 1, with the spacing, is confusing 	<p>The committees appreciate these comments. See below for responses to specific comments.</p> <p>The committees agree and have changed the formatting of item 1 of form CIV-010/FL-935. The word “is” has been moved to the second line and replaced with “am.” A parenthetical instruction to “check all that apply” has also been added.</p> <p>The committees have revised item 6 (item 5 as it was circulated for comment) of form CIV-010/FL-935 to remove the reference to the statutory standard and render this comment moot.</p> <p>The committees agree and have changed “elapsed” to “passed” in item 5b of form CIV-010/FL-935.</p> <p>The committees agree and have changed “nevertheless” to “still” in item 9b of form CIV-010/FL-935.</p> <p>The committees agree and have moved “seeks appointment of a guardian ad litem of (name):” to</p>

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			<p>and makes the right-justified text easily missed. Perhaps better to divide into two items: (1) “Name of person asking for Guardian Ad Litem Appointment: [blank]”; (2) “Person in (1) is: [list checkboxes].”</p> <p>o Alternatively, the blank spaces should have underlines (_____) so it is clear information needs to be added there, and the right-justified text (“seeks appointment of a” and “who is:”) should be moved over to left-justified, after a line break, to make it easier to read, so it’d look like:</p> <p>“Applicant (Name): _____ seeks appointment of a guardian ad litem for (name): _____ who is: a. [] a minor”</p> <p>• P. 2, item 6 – instead of “authorized to waive . . .” maybe: “allowed to waive or say no to any [is there a plainer word for substantive?] rights of the represented party without another court order.”</p>	<p>the start of line 2 of item 1 of form CIV-011/FL-936.</p> <p>The committees note that the forms that will be available to users on the courts.ca.gov website will have blue-colored fields for each of the fillable items, which will help users see where they are supposed to provide information. The copies of the forms included with Invitations to Comment can’t display these fields, which makes the forms appear harder to read than they will be in practice—at least for users completing them online.</p> <p>The committees do not adopt this suggestion because it is difficult to translate this item into plain language without losing some of its meaning. In particular, “substantive rights” cannot easily be translated into plain language, and “say no to” does not fully capture the meaning of “disclaim.” The committees also believe that judges, not guardians ad litem, will primarily be the ones interpreting this provision and applying it to specific conduct, so it is less important for this item to be in plain language than some others.</p>

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			DE-350/GC-100 <ul style="list-style-type: none">• P. 1, item 1 – Same comments as above, in terms of readability.• P. 2, item 9(b) – instead of “should be dispensed with” maybe: “is not needed” or “does not have to be given.” DE-351/GC-101 <ul style="list-style-type: none">• P. 1, item 6 – Same comment above for p. 2, item 6 of CIV-110/FL-936	<p>The committees agree and have moved “is (<i>check one</i>).” to the beginning of line 2 of item 1.</p> <p>The committees agree and have replaced “should be dispensed with” with “should not be required.”</p> <p>The committees do not recommend the suggested change because translating this item into plain language would lead to the loss of too much of its meaning. In particular, “substantive rights” cannot easily be translated into plain language, and “say no to” does not fully capture the meaning of “disclaim” as that term is used in the Probate Code. Judicial officers, not guardians ad litem, will primarily be the ones interpreting this provision and applying it to specific conduct, so it is less important for this item to be in plain language than some others.</p>
2.	Hon. Gus T. May, Judge Superior Court of Los Angeles County	NI	I am writing to request further clarification of the instructions/note included in italics under the caption on each of these forms. The issue that I come across that could use some clarification pertains to GAL applications filed in connection with Petitions for Approval of Compromise of Claim (“Minor’s Compromise Petition”) (Judicial Council form MC-350) brought under Probate Code sections 3500, 3600–3613.	The committees agree that the instructions would benefit from clarification, though not in the manner suggested. The committees have revised the instructions on both forms to explain that a new or separate guardian ad litem is not required in a minor’s compromise proceeding, and so neither form is appropriate for use in such a proceeding. A guardian of the estate has independent power under Probate Code section 2500 et seq. to compromise a minor’s disputed claim without litigation. In the absence of a

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			<p>Probate Courts occasionally see Minor's Compromise petitions brought by someone other than a parent or guardian of the estate, e.g., guardian of the person, other relative who is serving as an informal caregiver (e.g., parent resides out of the country) or even a county that has custody of the minor under a dependency court order. The petition seeks to have the settlement proceeds placed into a blocked account to be held for the minor until they turn 18. In those instances, the petitioner will submit an ex parte application to be appointed as the Guardian ad Litem in order to file the Minor's Compromise Petition. The issue is that it's unclear which form they are supposed to use for these purposes. Specifically:</p> <p>CIV-010 directs the litigant who is filing a Minor's Compromise Petition to use the DE-350, since the Petition is technically one brought under the Probate Code. ("This form is for use in civil or family law proceedings in which a party is a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed. A party who seeks the appointment of a guardian ad litem in a proceeding under the Probate Code should use form DE-350/GC-100." (italics added))</p> <p>DE-350 states that it is NOT to be used in connection with a Minor's Compromise</p>	<p>guardian of the estate, section 3500 confers that power on a parent and requires the parent to petition the court for approval of the compromise. No other person is authorized by law to compromise a minor's claim or to petition for approval of that claim. An adult nonparent may petition for appointment as a guardian of the estate for purposes of compromising a minor's claim. A county social services or probation department would need to seek a juvenile court order under Welfare and Institutions Code sections 361(a) and 362(a) specifically limiting parental authority to compromise a dependent child's claim and granting that authority to the department.</p> <p>If court approval of the compromise of a pending action or proceeding or the disposition of judgment proceeds under Probate Code sections 3600–3613 is required on behalf of a person identified in Code of Civil Procedure section 372 and a guardian or conservator of the estate has not been appointed or is inadequate, the court presiding over the pending action will have already appointed a guardian ad litem in that action. The existing guardian ad litem will have standing to petition for approval of the compromise or disposition; a new guardian ad litem is not required except in extraordinary circumstances.</p>

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			<p>Petition. (“This form is for use in proceedings under the Probate Code, except for a request for court approval of (1) the compromise of a minor's disputed claim, (2) the compromise of an action to which a minor or a person with a disability is a party, or (3) disposition of the proceeds of a judgment in favor of a minor or person with a disability. (See Prob. Code, §§ 3600–3613.) A request for appointment of a guardian ad litem in a civil or family law proceeding must use form CIV-010/FL-935.”) (italics added)</p> <p>As you can see, the instructions to each form direct the filer to use the other form. If the intention is that a person seeking appointment as a GAL in order to file a Minor’s Compromise Petition must use CIV-010, it would be helpful to modify the instruction to add the following underlined words to CIV-010: “... Unless the proceeding is one seeking approval of compromise under Probate Code sections 3600-3613, a party who seeks the appointment of a guardian ad litem in a proceeding under the Probate Code should use form DE-350/GC-100.”</p> <p>Similarly, the DE-350 instructions could be modified as follows: “... A request for appointment of a guardian ad litem in a civil, and or family law proceeding or probate</p>	<p>The committees do not recommend the suggested revision. The committee has, however, revised the recommended instruction to read, “A party who seeks the appointment of a guardian ad litem in a proceeding under the Probate Code—other than a proceeding under Probate Code sections 3500–3613 for approval of a compromise, settlement, or disposition of judgment proceeds—should use form DE-350/GC-100.” This language does not instruct a person who seeks appointment of a guardian ad litem in a proceeding under Probate Code sections 3500–3613 to use form CIV-010/FL-935 unless one assumes that a new, separate guardian ad litem is required in such a proceeding.</p> <p>To avert that assumption, the committees have added two sentences to the instructions on form DE-350/GC-100 to clarify: “A guardian ad litem is not required in a proceeding under section</p>

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			proceeding under Probate Code sections 3600-3613 must use form CIV-010/FL-935.”	3500. A guardian ad litem in a pending action or proceeding may seek approval of a compromise of that action or proceeding or disposition of judgment proceeds without further order.”
3.	Orange County Bar Association by Michael A. Gregg, President	AM	<p>The Orange County Bar Association agrees that this proposal appropriately addresses the stated purposes of creating and amending mandatory forms for guardian ad litem appointments due to statutory changes and a need to make them more accessible/usable. However, we recommend that the forms be modified as follows:</p> <p>(1) Form CIV-010/FL-935 at section 4 should reference the requirements of Code of Civil Procedure § 372(a)(4) describing the three (3) types of persons who may require a GAL because of a lack of legal capacity; otherwise self-represented persons will have little guidance;</p> <p>(2) Form CIV-011/FL-936 needs to have a finding under a new section 5 describing which requirement of CCP § 372(a)(4) has been established;</p> <p>(3) Form DE-351/GC-101 should reference at new sub-section 3c the required finding that the person lacks the capacity to make decisions as required by Probate Code</p>	<p>The committees appreciate these comments. See below for responses to specific comments.</p> <p>The committees do not recommend the suggested change. It is preferable for applicants to explain in their own words why the represented person lacks capacity. In many cases, there will be an existing capacity declaration. If there is not, referring to the statutory language might lead an applicant to repeat that language in a conclusory manner instead of giving facts that support their assertion.</p> <p>The committees do not recommend the suggested change. Code of Civil Procedure section 372 does not require a judicial officer to enter a finding as to which subparagraph of section 372(a)(4) applies to the person to be represented.</p> <p>The committees do not recommend the suggested change. The check box in item 2b, if checked, indicates that this determination has been made, either by the appointing court or by another court</p>

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	Commenter	Position	Comment	Committee Response
			<p>§ 1003(a)(2).</p> <p>Without these recommended changes then any GAL appointments could be subject to various legal challenges.</p>	<p>in a previous proceeding. If made by the appointing court, the statute does not require that the court specify the basis for its determination.</p>
4.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	<p><i>General Comments:</i></p> <ul style="list-style-type: none">o If litigants are required to schedule a hearing (see CIV-011/FL-936, Section 2), then overall operational costs will increase. <p>Additionally, filers are unable to submit on the pleadings without having a hearing, leading to additional delays if a hearing is required.</p> <p>Lastly, will a motion fee be required?</p> <p><i>Regarding CIV-010/FL-935, Application for Appointment of Guardian Ad Litem-Civil and Family Law form:</i></p>	<p>The committees do not recommend a change in response to this comment. The committees do not intend the recommended changes to the forms to affect whether a hearing is required. The captions of existing form CIV-010 and recommended forms CIV-010/FL-935 and CIV-011/FL-936 include check boxes that, if checked, indicate that the application was made and the order was determined <i>ex parte</i>. If the <i>court</i> wishes to set a hearing on an <i>ex parte</i> application, it has that authority. In addition, the check box in item 2 on form CIV-011/FL-936 is intended to indicate that item 2 is to be completed only if a hearing is held. It does not require the court to hold a hearing.</p> <p>The committees do not recommend a change in response to this comment, as it addresses matters beyond the scope of the proposal.</p> <p>The committees do not recommend a change in response to this comment, as it raises an issue beyond the scope of the proposal.</p>

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none">o In Header title, “-Civil and Family Law” is missing, as indicated in the footero Page 1, in the Note section: The reference to “conservator” does not have the extended definition (eg: “conservator of the estate”)o Page 1, Section 2 & 3: Suggest adding email address to the list of contact information types, as more communication is occurring through email addresses, and for consistency with Probate formso Page 1, Section 4b and 4c: Suggest adding “(form MC-025)” alongside “Continued on Attachment 4b/4c” to be consistent with the explanation in other Judicial Council formso Prior versions of FL-935 had a place for “Consent to Guardian by Minor 14 years of Age or Older.” No such section is included in the proposed Application	<p>The committees agree and have revised the caption of form CIV-010/FL-935 to add the suggested text.</p> <p>The committees do not recommend a change in response to this comment. The language of the first sentence of the instructions is consistent with the requirement in Code of Civil Procedure section 372(a)(1) that a party for whom a conservator has been appointed must appear in litigation through a conservator of the estate or a guardian ad litem. If a conservator of the person but not of the estate has been appointed for a party to litigation, that party would need to appear through a guardian ad litem.</p> <p>The committees agree with the suggestion and have revised their recommendation accordingly.</p> <p>The committees do not recommend a change in response to this comment. The suggested addition could require the attachment of multiple separate pages, contrary to Judicial Council policy.</p> <p>The committees have modified their recommendation to add a line to item 6c on form CIV-010/FL-935 to indicate whether a minor 12 years of age or older objects to the appointment of the proposed guardian ad litem. (See Code Civ. Proc., § 372(b)(1).)</p>

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	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none">o Page 1, Section 5: It is unclear whether this field will stay blank or what options should be picked in Family Law Restraining Order scenarioso Page 2, Section 7 & 8: These sections are in response to the bill requiring a proposed guardian ad litem to disclose to the court and all parties to the action any known actual or potential conflicts of interest. Because another “applicant” may not know this information, it is suggested that these fields be moved below the signature lines for the attorney and applicant, but immediately above the “Consent to Act as Guardian Ad Litem” field—so it is the proposed Guardian Ad Litem who is completing and responsible for those two items.	<p>The committees recommend revising item 6 to add new subitems 6b and 6c to address appointment of a guardian ad litem for a minor who is a party to an action under the Uniform Parentage Act or who is requesting or opposing a request for an injunction or restraining order described in Code of Civil Procedure sections 372(b)(1) and 374(a). The committees also recommend modifying form CIV-011/FL-936 to incorporate elements addressing appointment of a guardian ad litem for a minor in these situations as items 5b and 5c.</p> <p>The committees agree and have revised their recommendation to move the items seeking the disclosures required by Code of Civil Procedure section 372(d) on form CIV-010/FL-935 and on form DE-350/GC-100 to the part of each form to be completed by the proposed guardian ad litem and to rename that part “Disclosures and Consent to Act as Guardian ad Litem.”</p>
5.	Superior Court of Orange County Family Law and Juvenile Law Divisions by Jenny Diaz Avendano, Operations Analyst	NI	<ul style="list-style-type: none">▪ <u>Does the Proposal appropriately address the stated purpose?</u> Yes.▪ <u>Would the proposal provide cost savings? If so, please quantify.</u>	The committees appreciate the court’s comments. No further response required.

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	Commenter	Position	Comment	Committee Response
			<p>No.</p> <ul style="list-style-type: none"> <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> The implementation would require minimal training for staff, procedure and case management revisions. <i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes. <i>How well would this proposal work in courts of different sizes?</i> Our court is a large court, and this could work for Orange County. 	
6.	Superior Court of San Bernardino County, Barstow District by Anita Morales, Legal Processing Assistant	A	No specific comment.	The committees appreciate the court's comment. No further response required.
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p>	The committees appreciate these comments. See below for responses to specific comments.

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			<p>No.</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?</p> <p>Revising the court’s internal procedures, updating case management entries, and notifying and training court staff.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes, provided the final versions of the forms are provided to the court at that time. This will ensure that the court is able to provide training to staff and update its internal procedures and case management systems.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>It appears the proposal would work for courts of various sizes.</p> <p>General Comments</p> <p>CIV-011/FL-936, Item 4.b.(2): Propose changing “named in item 2 above” to “for whom a guardian ad litem is to be appointed” or to “named in item 1 above.”</p>	<p>The committees agree and have modified their recommendation to replace “named in item 2 above” with “to be represented by the guardian ad</p>

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			<p>CIV-011/FL-936, Page 1: Propose including a citation to Fam. Code § 7635 in the right footer.</p> <p>DE-350/GC-100, Item 3: Recommend inserting “proposed” before “guardian ad litem” for consistency (see Items 6, 7, 8).</p> <p>DE-350/GC-100, Item 6: Propose inserting “(check one)” after “in item 3 [is].”</p> <p>DE-351/GC-101, Item 4: Propose inserting “first” before “person” because item 1 contains two names: the name of the person to be represented and the name of the petitioner.</p>	<p>litem” to match the language in item 4b.</p> <p>The committees agree and have revised the form footer accordingly.</p> <p>The committees do not recommend the suggested change. In contrast to items 6, 7, and 8, item 3 does not ask for information specific to the person proposed for appointment as guardian ad litem. Instead, it asks about the person to be represented by a guardian ad litem if one is appointed.</p> <p>The committees agree with the suggestion and have modified their recommendation accordingly.</p> <p>The committees agree that the proposed text was confusing and have replaced “person in item 1” with “person to be represented” in item 4.</p>

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