

JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-16-01

Title Action Requested

Probate Conservatorship: Conservatees' VOTING MEMBERS ONLY: Vote and Capacity to Vote return by fax. Additionally, return original

signature page.

Rules, Forms, Standards, or Statutes Affected

Revise form GC-340 Please Respond By January 14, 2016

Recommended by

Judicial Council Rules and Projects

Date of Report

Committee January 8, 2016

Hon. Harry E. Hull, Chair

Contact

Martin Hoshino, Administrative Director Patrick O'Donnell, 415-865-7665 patrick.o'donnell@jud.ca.gov

Executive Summary

In response to legislation that became effective on January 1, 2016, the *Order Appointing Probate Conservator* (form GC-340) must be revised to reflect changes in the standard for a conservatee's capacity to vote. The Judicial Council Rules and Projects Committee and the Administrative Director recommend this revision be made by circulating order rather than at the council's next business meeting to ensure that courts have the necessary conservatorship orders with the correct new legal standard for voting capacity as soon as possible after the effective date of the legislation.

Recommendation

The Judicial Council's Rules and Projects Committee and the Administrative Director recommend that the Judicial Council revise item 8 on page 1 of the *Order Appointing Probate*

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Conservator (form GC-340), effective January 15, 2016, to state the new standard for disqualification of a conservatee from voting, which was created by legislation that became effective on January 1, 2016.

Revised form GC-340 is attached at page 4.

Previous Council Action

At its meeting on December 11, 2015, the Judicial Council revised conservatorship forms GC-310, GC-320, GC-330, and GC-331, effective January 1, 2016 (agenda item 15-420). On December 10, 2015, the council's Rules and Projects Committee approved circulation of the proposal for these changes for public comment in the winter 2016 comment cycle, December 11, 2015, through January 22, 2016.

Rationale for Recommendation

Senate Bill 589, enacted as Stats. 2015, ch. 736, and effective January 1, 2016, changed the standard for a conservatee's capacity to vote, from an incapacity to complete an affidavit of voter registration to an inability to communicate, with or without reasonable accommodations, a desire to participate in the voting process. Three of the four forms listed above were revised to substitute the new standard for the old standard previously stated in those forms or to explicitly state the new standard instead of merely citing a code section that applies the standard.

A fifth conservatorship form, the *Order Appointing Probate Conservator* (form GC-340), was inadvertently excluded from the proposal submitted to the council in December. Item 8 of that form, which is one of the findings in support of the court's orders, contains the old standard for disqualification of a conservatee from voting. It must be revised to apply the new standard necessary to make that finding. The revised form should become effective as close as possible to the effective date of SB 589 and the other revised forms. Courts will need the correct voting incapacity finding in their orders appointing conservators within a very short time after January 1, 2016.

Comments, Alternatives Considered, and Policy Implications

Comments have not yet been received on the proposal that was circulated beginning on December 11, 2015. There is no alternative to a revision of form GC-340 because the current

¹ See Elections Code section 2208(a), as amended by section 6.5 of SB 589.

² The fourth form, the *Petition for Appointment of Probate Conservator* (form GC-310), was revised to delete any reference to a proposed conservatee's capacity to vote, based on the advisory committee's conclusion that the law before and after passage of SB 589 does not make the proposed conservatee's capacity to vote part of the case in chief of a petitioner for the appointment of a conservator. The provisions of the Elections Code and the Probate Code concerning a conservatee's voting capacity instead place the task of determining that capacity initially on the court investigator and finally on the court at the appointment hearing after the need for a conservatorship has been established. (See Prob. Code, §§ 1826(a)(8)(A) and 1910(a), as amended by sections 9 and 12, respectively, of SB 589.)

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form contains a finding in support of a determination of a conservatee's incapacity to vote that was changed by SB 589. If the form is not revised, courts would be required to strike the existing text in item 8 of the form and substitute a handwritten or typed finding that conforms to the legislation in every case in which the court determines that the conservatee is disqualified from voting.

Implementation Requirements, Costs, and Operational Impacts

The costs of implementation of this proposal should be the same modest costs as are incurred with the distribution of any new or revised Judicial Council form.

Attachments

- 1. Revised form GC-340, at pages 4–6
- 2. Voting instructions
- 3. Vote and signature pages

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Do NOT use this form for a temporary conservatorship.

Page 1 of 3

CONSERVATORSHIP OF	CASE NUMBER:
(name): CONSERVATE	E
9. The conservatee has dementia as defined in Probate Code section 2356.5, and make the orders specified in item 28.	
10. Attorney (name):	has been appointed by the court as legal
counsel to represent the conservatee in these proceedings. The cost for representation has the ability to pay all processing a partial	
The conservatee has the ability to pay all none a portion and a portion and the conservatee need not attend the hearing.	on of this sum (specify): \$
12. The appointed court investigator is (name):	
(Address and telephone):	
13. (For limited conservatorship only) The limited conservatee is developmentally of 1420.	lisabled as defined in Probate Code section
14. The successor conservator is a professional fiduciary as defined by E 6501(f).	Business and Professions Code section
15. The successor conservator holds a valid, unexpired, unsuspended li the Professional Fiduciaries Bureau of the California Department of Consumer section 6500) of division 3 of the Business and Professions Code.	
License no.: Issuance or last renewal date:	Expiration date:
16. (Either a, b, or c must be checked):	
a The successor conservator is not the spouse of the conservatee.	is not a party to an action or proceeding
b The successor conservator is the spouse of the conservatee and against the conservatee for legal separation, dissolution, annulment, or adjusted the conservation of the conservation and the conservation are conservation and the conservation and the conservation are conservation and the conservation and the conservation are conservation are conservation are conservation.	
c. The successor conservator is the spouse of the conservatee and the conservatee for legal separation, dissolution, annulment, or adjudication	
It is in the best interest of the conservatee to appoint the spouse as17. (Either a, b, or c must be checked):	successor conservator.
a. The successor conservator is not the domestic partner or former	domestic partner of the conservatee.
 The successor conservator is the domestic partner of the conser intends to terminate their domestic partnership. 	vatee and has neither terminated nor
c. The successor conservator is the domestic partner or former domestic to terminate or has terminated their domestic partnership. It is in the best in	
THE COURT ORDERS	Sivator.
18. a. (Name): (Address):	(Telephone):
is appointed successor conservator limited conservator	of the PERSON of (name):
	Conservatorship shall issue upon qualification. (Telephone):
b. (Name): (Address):	(тегерпопе).
is appointed successor conservator limited conservator and Letters of conservator	of the ESTATE of <i>(name):</i> Conservatorship shall issue upon qualification.
19. The conservatee need not attend the hearing.	
20. a. Bond is not required.	
	irety company or as otherwise provided by law.
c. Deposits of: \$ are ordered to be placed in a blocked	account at (specify institution and location):
and receipts shall be filed. No withdrawals shall be made without a court or Additional orders in attachment 20c.	der.

CONSERVATORSHIP OF (name):	CASE NUMBER:
CONSERVATE	≣E
20. (cont.)	
 d The successor conservator is not authorized to take possessic without a specific court order. 	on of money or any other property
21. For legal services rendered, conservatee conservatee's estate	shall pay the sum of: \$
to (name):	ny combination of payors):
lortnwith as lollows (specify terms, including a	ny combination of payors).
Continued in attachment 21.	
22. The conservatee is disqualified from voting.	
23. The conservatee lacks the capacity to give informed consent for medical treatric conservator of the person is granted the powers specified in Probate Code sec	
The treatment shall be performed by an accredited practitioner of a relig section 2355(b).	ion as defined in Probate Code
24 The successor conservator of the estate is granted authorization und	
independently the powers specified in attachment 24 subject to the con 25. Orders relating to the capacity of the conservatee under Probate Code section	
are granted. 26. Orders relating to the powers and duties of the successor conserv	ator of the person under Probate Code
sections 2351–2358 as specified in attachment 26 are granted. (Do not includ relating to dementia.)	
27. Orders relating to the conditions imposed under Probate Code section 2402 or	n the successor conservator
of the estate as specified in attachment 27 are granted. 28 a The successor conservator of the person is granted auth	ority to place the conservatee in a care or
nursing facility described in Probate Code section 2356.5(b).	only to place the conservatee in a care of
b The successor conservator of the person is granted auth medications appropriate for the care and treatment of dementia described	
29. Other orders as specified in attachment 29 are granted.	
30. The probate referee appointed is (name and address):	
31. (For limited conservatorship only) Orders relating to the powers and duties of	
limited conservator of the person under Probate Code section 2351.5 as specifical specifical section 2351.5 as specifical specifical section 2351.5 as specifical section 2551.5 as specifical	· ·
limited conservator of the estate under Probate Code section 1830(b) as spe	
33. (For limited conservatorship only) Orders limiting the civil and legal rights of the attachment 33 are granted.	e limited conservatee as specified in
34. This order is effective on the date signed date minor attains r	najority (specify):
35. Number of boxes checked in items 18–34:	
36. Number of pages attached:	
. •	
Date:	
SIGNATURE EC	JUDICIAL OFFICER DLLOWS LAST ATTACHMENT
SIGNATURE PO	PLEONO E AUTATIACIINEM

Instructions for Review and Action by Circulating Order

Voting members

- Please indicate your **vote**, **sign**, **and return by 5pm**, **January 14**, **2016**, if possible by one of these methods:
 - 1. Fax the signature pages to the attention of Judicial Council Support, Leadership Services Division at 415-865-4391
 - 2. Reply to the e-mail message with "I approve," "I disapprove," or "I abstain."
- If you are unable to reply by **January 14, 2016**, please do so as soon as possible thereafter.
- Additionally, return the original signature page to the Judicial Council Support, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, California, 94102-3688.
 Please keep a copy for your records.

Advisory members

The circulating order is being faxed to you for your information only. There is no need to sign or return any documents.

CIRCULATING ORDER Judicial Council of California Voting and Signature Pages

Effective on January 15, 2016, the Judicial Council approves the revision of the *Order Appointing Probate Conservator* (form GC-340) proposed in the Circulating Order Memorandum dated January 5, 2016.

My vote is as follows:	
	☐ Disapprove ☐ Abstain
Tani G. Cantil-Sakauye, Chair	Marla O. Anderson
Brian John Back	Richard Bloom
Difail John Back	Richard bioom
Mark G. Bonino	Daniel J. Buckley
Ming W. Chin	Emilie H. Elias
/s/	
Samuel K. Feng	Harry E. Hull, Jr.
James M. Humes	Hannah-Beth Jackson
Junes III. Humes	ridinan Den Jackson
/s/	/s/
Patrick M. Kelly	Donna D'Angelo Melby

My vote is as follows:		
☒ Approve	☐ Disapprove ☐ Abstain	
/s/		
Douglas P. Miller	Gary Nadler	
Debra Elaine Pole	David M. Rubin	
Marsha G. Slough	Dean T. Stout	
Martin J. Tangeman		
Date: January 14, 2016	1 1	
	Attest:	
	Administrative Director and	
	Secretary of the Judicial Council	