



JUDICIAL COUNCIL OF CALIFORNIA

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

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-16-01

Title

Probate Conservatorship: Conservatees'
Capacity to Vote

Action Requested

VOTING MEMBERS ONLY: Vote and
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
Committee

Hon. Harry E. Hull, Chair

Date of Report

January 8, 2016

Martin Hoshino, Administrative Director

Contact

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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*

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.¹ 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.²

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.)

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

1. The petition for appointment of ☐ successor conservator came on for hearing as follows
(check boxes c, d, e, and f or g to indicate personal presence):
- a. Judicial officer (name): _____
- b. Hearing date: _____ Time: _____ ☐ Dept.: _____ ☐ Room: _____
- c. ☐ Petitioner (name): _____
- d. ☐ Attorney for petitioner (name): _____
- e. ☐ Attorney for ☐ person cited ☐ the conservatee on petition to appoint successor conservator:
(Name): _____ (Telephone): _____
(Address): _____
- f. ☐ Person cited was ☐ present. ☐ unable to attend. ☐ able but unwilling to attend. ☐ out of state.
- g. ☐ The conservatee on petition to appoint successor conservator was ☐ present. ☐ not present.

2. All notices required by law have been given.
3. Granting the conservatorship is the least restrictive alternative needed for the protection of the conservatee.
4. (Name):
 - a. ☐ is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.
 - b. ☐ is substantially unable to manage his or her financial resources or to resist fraud or undue influence.
 - c. ☐ has voluntarily requested appointment of a conservator and good cause has been shown for the appointment.
5. The conservatee
 - a. ☐ is an adult.
 - b. ☐ will be an adult on the effective date of this order.
 - c. ☐ is a married minor.
 - d. ☐ is a minor whose marriage has been dissolved.
6. ☐ There is no form of medical treatment for which the conservatee has the capacity to give an informed consent.
☐ The conservatee is an adherent of a religion defined in Probate Code section 2355(b).
7. ☐ Granting the ☐ successor conservator powers to be exercised independently under Probate Code section 2590 is to the advantage and benefit and in the best interest of the conservatorship estate.
8. ☐ The conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process.

Page 1 of 3

CONSERVATORSHIP OF (name):	CASE NUMBER:
CONSERVATEE	

9. ☐ The conservatee has dementia as defined in Probate Code section 2356.5, and the court finds all other facts required to 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 is: \$
 The conservatee has the ability to pay ☐ all ☐ none ☐ a portion of this sum (specify): \$
11. ☐ The conservatee need not attend the hearing.
12. ☐ The appointed court investigator is (name): _____
 (Address and telephone): _____
13. ☐ (For limited conservatorship only) The limited conservatee is developmentally disabled as defined in Probate Code section 1420.
14. ☐ The ☐ successor conservator is a professional fiduciary as defined by Business and Professions Code section 6501(f).
15. ☐ The ☐ successor conservator holds a valid, unexpired, unsuspended license as a professional fiduciary issued by the Professional Fiduciaries Bureau of the California Department of Consumer Affairs under chapter 6 (commencing with 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.
- b. ☐ The ☐ successor conservator is the spouse of the conservatee and is not a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
- c. ☐ The ☐ successor conservator is the spouse of the conservatee and is a party to an action or proceeding against the conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage.
 It is in the best interest of the conservatee to appoint the spouse as ☐ successor conservator.
17. (Either a, b, or c must be checked):
- a. ☐ The ☐ successor conservator is not the domestic partner or former domestic partner of the conservatee.
- b. ☐ The ☐ successor conservator is the domestic partner of the conservatee and has neither terminated nor intends to terminate their domestic partnership.
- c. ☐ The ☐ successor conservator is the domestic partner or former domestic partner of the conservatee and intends to terminate or has terminated their domestic partnership. It is in the best interest of the conservatee to appoint the domestic partner or former domestic partner as ☐ successor conservator.

THE COURT ORDERS

18. a. (Name): _____ (Telephone): _____
 (Address): _____
- is appointed** ☐ successor ☐ conservator ☐ limited conservator of the PERSON of (name): _____
 and Letters of Conservatorship shall issue upon qualification. (Telephone): _____
- b. (Name): _____
 (Address): _____
- is appointed** ☐ successor ☐ conservator ☐ limited conservator of the ESTATE of (name): _____
 and Letters of Conservatorship shall issue upon qualification.
19. ☐ The conservatee need not attend the hearing.
20. a. ☐ Bond is not required.
- b. ☐ Bond is fixed at: \$ _____ to be furnished by an authorized surety 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 order.

☐ Additional orders in attachment 20c.

CONSERVATORSHIP OF
(name):

CASE NUMBER:

CONSERVATEE

20. (cont.)

d. ☐ The ☐ successor conservator is not authorized to take possession of money or any other property without a specific court order.

21. ☐ For legal services rendered, ☐ conservatee ☐ conservatee's estate shall pay the sum of: \$
to (name):

☐ forthwith ☐ as follows (specify terms, including any 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 treatment and the ☐ successor conservator of the person is granted the powers specified in Probate Code section 2355.

☐ The treatment shall be performed by an accredited practitioner of a religion as defined in Probate Code section 2355(b).

24. ☐ The ☐ successor conservator of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers specified in attachment 24 subject to the conditions provided.

25. ☐ Orders relating to the capacity of the conservatee under Probate Code sections 1873 or 1901 as specified in attachment 25 are granted.

26. ☐ Orders relating to the powers and duties of the ☐ successor conservator of the person under Probate Code sections 2351–2358 as specified in attachment 26 are granted. (Do not include orders under Probate Code section 2356.5 relating to dementia.)

27. ☐ Orders relating to the conditions imposed under Probate Code section 2402 on the ☐ successor conservator of the estate as specified in attachment 27 are granted.

28. ☐ a. ☐ The ☐ successor conservator of the person is granted authority to place the conservatee in a care or nursing facility described in Probate Code section 2356.5(b).

b. ☐ The ☐ successor conservator of the person is granted authority to authorize the administration of medications appropriate for the care and treatment of dementia described in Probate Code section 2356.5(c).

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 the ☐ successor limited conservator of the person under Probate Code section 2351.5 as specified in attachment 31 are granted.

32. ☐ (For limited conservatorship only) Orders relating to the powers and duties of the ☐ successor limited conservator of the estate under Probate Code section 1830(b) as specified in attachment 32 are granted.

33. ☐ (For limited conservatorship only) Orders limiting the civil and legal rights of the limited conservatee as specified in attachment 33 are granted.

34. ☐ This order is effective on the ☐ date signed ☐ date minor attains majority (specify):

35. Number of boxes checked in items 18–34:

36. Number of pages attached:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

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:

☒ Approve

☐ Disapprove

☐ Abstain

Tani G. Cantil-Sakauye, Chair

_____/s/
Marla O. Anderson

_____/s/
Brian John Back

Richard Bloom

_____/s/
Mark G. Bonino

Daniel J. Buckley

_____/s/
Ming W. Chin

Emilie H. Elias

_____/s/
Samuel K. Feng

Harry E. Hull, Jr.

_____/s/
James M. Humes

_____/s/
Hannah-Beth Jackson

_____/s/
Patrick M. Kelly

_____/s/
Donna D'Angelo Melby

My vote is as follows:

☒ Approve

☐ Disapprove

☐ Abstain

_____/s/
Douglas P. Miller

Gary Nadler

_____/s/
Debra Elaine Pole

_____/s/
David M. Rubin

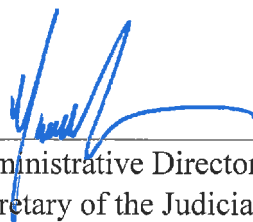
Marsha G. Slough

_____/s/
Dean T. Stout

Martin J. Tangeman

Date: January 14, 2016

Attest:



Administrative Director and
Secretary of the Judicial Council