



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

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**Title**

Probate Conservatorship and Guardianship:  
Accounting

**Agenda Item Type**

Action Required

**Effective Date**

January 1, 2020

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

Amend Cal. Rules of Court, rule 7.575;  
approve form GC-410

**Date of Report**

September 6, 2019

**Recommended by**

Probate and Mental Health Advisory  
Committee  
Hon. John H. Sugiyama, Chair

**Contact**

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### Executive Summary

The Probate and Mental Health Advisory Committee recommends amending one rule of the California Rules of Court and approving one form to clarify existing requirements, provide guidance on submitting original account statements when they are issued and received electronically, and require submission of specified information about a ward's or conservatee's personal residence in support of a request for a waiver of an otherwise required periodic accounting. The amendments are needed to facilitate implementation of statutory accounting requirements and to protect a personal residence from loss or foreclosure by verifying that the fiduciary is using ordinary care and diligence.

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Amend rule 7.575 of the California Rules of Court to:
  - Restructure the existing provisions of the rule to clarify the distinction between standard and simplified accountings and the requirements for each;

- Add subdivision (b) to provide guidance on submitting original account statements in paper form in support of a court accounting; and
- Add subdivision (f) to require submission of specific documents regarding a conservatee's or ward's personal residence in support of a request for a waiver of an otherwise required accounting; and

2. Approve *Request and Order for Waiver of Accounting* (form GC-410) for optional use.

The text of the amended rule and the new form are attached at pages 8–15.

### **Relevant Previous Council Action**

The Judicial Council adopted rule 7.575, effective January 1, 2008, in response to the mandate in Assembly Bill 1363 (Stats. 2006, ch. 493, § 24), part of the Omnibus Conservatorship and Guardianship Reform Act of 2006.<sup>1</sup>

### **Analysis/Rationale**

Probate Code section 2620 requires a conservator or guardian of the estate to file periodic accountings with the court at regular intervals beginning one year from the date of the fiduciary's appointment and establishes requirements governing those accountings.<sup>2</sup> Rule 7.575 implements section 2620(a)'s mandate to develop standard accounting forms, simplified accounting forms, and rules specifying when the simplified forms could be used.<sup>3</sup> The committee recommends clarifying the rule and expanding its scope to address challenges to compliance with accounting requirements in statute and the existing rule.

### **Standard and simplified accountings**

First, the committee recommends reorganizing and rewriting the rule to address confusion reported by courts, fiduciaries, and attorneys regarding the distinction between standard and simplified accountings and the use of the Judicial Council form sets for each type. The preamble to the rule is amended to place conservatorship and guardianship accounting requirements more clearly in context. After amendment, subdivision (a) clarifies the information required in every accounting, standard or simplified. Subdivisions (c) and (d) outline the requirements for standard and simplified accountings, respectively; subdivision (d)(1) explains the circumstances in which a fiduciary is authorized to file a simplified accounting. Subdivision (e) describes the Judicial

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<sup>1</sup> See Judicial Council of Cal., Advisory Com. Rep., *Probate: Standard and Simplified Accountings by Conservators and Guardians* (Oct. 2, 2007).

<sup>2</sup> Prob. Code, § 2620. Unless otherwise specified, all subsequent statutory references are to the Probate Code, and all references to rules are to the California Rules of Court.

<sup>3</sup> *Id.*, § 2620(a).

Council accounting forms and the different circumstances in which each set may or must be used.<sup>4</sup>

### **Original statements in support of accountings**

Second, the committee recommends adding a new subdivision (b) to provide guidance on submission of financial statements in support of conservatorship and guardianship accountings. As amended by Assembly Bill 1286 (Stats. 2001, ch. 563, § 6), section 2620(c) requires a fiduciary to file *original* statements, not copies. This requirement was enacted, at least in part, to prevent fiduciaries from committing accounting fraud by altering original paper statements, photocopying the statements to conceal the alterations, and submitting the photocopies to the court.<sup>5</sup> Since 2001, it has become common practice for banks and other financial institutions to issue and deliver statements to accountholders in electronic form. The fiduciaries who receive financial statements in electronic form have encountered both legal and practical problems trying to submit “original” electronic statements in support of accountings.

Neither section 2620(c) nor the Assembly Judiciary Committee’s analysis of AB 1286 addresses the conditions required for a statement, electronic or paper, to qualify as an original, except to note that a copy would not.<sup>6</sup> The statutes and rules of court governing court filings allow documents to be submitted or filed electronically and in paper form, and set standards for filing in each form.<sup>7</sup> But the electronic filing statute and rules focus on filing electronic copies of paper originals.<sup>8</sup> Determining when a document issued or delivered electronically to a filer constitutes an original is beyond their current scope.

Fiduciaries also face practical difficulties filing electronic statements. Filing the statements electronically, in the same form as they were received, depends on local e-filing rules that vary widely among courts. Many courts do not permit any electronic filing.<sup>9</sup> Some courts that permit or require electronic filing in probate proceedings do not permit financial documents to be filed

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<sup>4</sup> Subdivisions (b) and (f) are discussed in detail below.

<sup>5</sup> See Assem. Com. on Judiciary, Rep. on Assem. Bill No. 1286 (2001–2002 Reg. Sess.) as amended Feb. 23, 2001, p. 3.

<sup>6</sup> See Assem. Com. on Judiciary, Rep. on Assem. Bill No. 1286, *supra*, at p. 5 (“author argues that courts need the originals, which are much more difficult to doctor” than copies).

<sup>7</sup> Code Civ. Proc., § 1010.6(b), (e); Cal. Rules of Court, 2.10 (rules apply to documents submitted in electronic or paper form), 2.100 (form and format of papers); 2.114 (form and format of exhibits), 2.250(b)(1) (document includes an exhibit or other writing submitted to the court; may be in paper or electronic form).

<sup>8</sup> See Code Civ. Proc., § 1010.6(b)(1) (document filed electronically shall have the same legal effect as an original paper document); Cal. Rules of Court, rule 2.252(e) (if filing an original document is required, a person may file an electronic copy if the original is filed later).

<sup>9</sup> See, e.g., Super. Ct. Mendocino County, Local Rules, rule 1.7; Super. Ct. Yolo County, Local Rules, rules 2.2, 2.4, 11.1.

in electronic form.<sup>10</sup> In courts that do permit e-filing, fiduciaries may be unable to comply with the format requirements in rule 2.256(b) or local rules without altering the electronic statements.<sup>11</sup> Fiduciaries who submit paper printouts of electronically delivered statements have found that courts may reject those filings because they, too, are not originals.

Both fiduciaries and courts have requested assistance in addressing these difficulties. Amended rule 7.575(b) tried to resolve them by authorizing a court to accept a computer-generated printout of a statement submitted by a fiduciary who received the statement in electronic form under certain conditions. To avoid running afoul of section 2620(c), the rule requires that the printout meet Evidence Code section 255's definition of "original." (Evid. Code, § 255.) Section 255 provides that, "[i]f data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an 'original.'"<sup>12</sup> Rather than separately defining an electronic original, section 255 provides the flexibility needed to treat a paper printout of an electronic document as an original.

The rule also requires the fiduciary to verify under penalty of perjury that the submitted statement was received electronically and printed without alteration. The committee is sensitive to the need to prevent fiduciary fraud and has therefore clarified that the rule is not intended to create an exception to the requirement in section 2620(c). Rule 7.575(b) clarifies the statutory term "original statement"; it does not authorize submission of a copy of a statement.

### **Waiver of an accounting**

Third, the committee recommends adding a new subdivision (f) to address waiver of an accounting and approving an optional form for use to request and order those waivers. Section 2628(a) authorizes a court to make an order "that the guardian or conservator need not present the accounts otherwise required by this chapter" if certain specified conditions are met. (Prob. Code, § 2628(a).) These conditions include a cap on the value of the estate, but exclude from that cap the value of the residence of the ward or conservatee.

As amended, rule 7.575(f) requires a conservator or guardian who requests a waiver of an otherwise required accounting to submit, in addition to information establishing that the conditions required by section 2628(a) have been met, specific information about the support and

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<sup>10</sup> See, e.g., Super. Ct. Butte County, Local Rules, rule 21.4(a)4; Super. Ct. Calaveras County, Local Rules, rule 2.15(d)4; Super. Ct. Orange County, Local Rules, rule 352 (mandatory e-filing) and EFILING FOR PROBATE/MENTAL HEALTH, [www.occourts.org/online-services/efiling/efiling-probate.html](http://www.occourts.org/online-services/efiling/efiling-probate.html) (private professional fiduciaries barred from e-filing original financial documents).

<sup>11</sup> Cal. Rules of Court, rule 2.256(b) (specifying software, printing, and text search requirements). In addition, some case management systems can receive a document for electronic filing only after the document has been printed (if electronic), scanned, and saved in a different electronic format.

<sup>12</sup> Evid. Code, § 255. Section 255 was added to the Evidence Code in 1977. (Stats. 1977, ch. 708, § 1.) Based on the absence of a definition of *original* in section 2620 or elsewhere in the Probate Code or the Code of Civil Procedure and the Legislature's presumptive awareness of existing law (see *In re Greg F.* (2012) 55 Cal.4th 393, 407), the committee interprets Evidence Code section 255's definition of "original" to apply to account statements filed in satisfaction of section 2620(c)'s requirements.

maintenance of the ward's or conservatee's personal residence, if the estate includes one. The additional information will assist the court to perform its oversight function (see Prob. Code, § 2102) more effectively and to prevent the loss of a personal residence because of a fiduciary's failure to use ordinary care and diligence.

Finally, the committee recommends approving form GC-410 for optional use by a conservator or guardian to request a court order waiving an otherwise required accounting. The form will serve as a checklist, ensuring that the fiduciary has addressed all the elements required by section 2628(a) and included the information and documents required by amended rule 7.575(f). The order block at the end of the form will simplify the process of granting a waiver and reduce paperwork.

### **Policy implications**

The recommendation promotes at least three Judicial Council policy objectives. First, it helps modernize the rules of court by addressing an ambiguity arising from advances in technology. Second, it promotes access to the courts by clarifying the rule and providing a form to ensure that the court receives the information needed to determine a request for waiver. Third, the proposal will improve the quality of justice and service to the public by giving the court more information to allow it to exercise its oversight of fiduciary relationships more effectively.

### **Comments**

As part of the regular spring comment cycle, the proposed recommendation circulated for public comment from April 12 to June 10, 2019, to the regular list of persons interested in probate and mental health proposals. The proposal received 10 comments from individuals and organizations. Four commenters—including three superior courts and the Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee—agreed with the proposal as circulated; 4 commenters agreed with the proposal and suggested modifications; and 1 commenter did not indicate a position, but generally agreed with the proposal. One commenter did not agree with the proposal.<sup>13</sup> A chart with the full text of the comments received and the committee's responses is attached at pages 16–25.

The committee considered all comments received and made several modifications to its recommendation in response. Several commenters interpreted proposed rule 7.575(b) to authorize a fiduciary to submit copies of electronic statements in support of court accountings. That is not the committee's intent. As noted above, section 2620(c) requires submission of original statements. A rule authorizing submission or acceptance of copies would be inconsistent with the statute and therefore beyond the Judicial Council's rule-making authority. The committee instead added language to clarify that the rule is not intended to authorize the submission or acceptance of copies. In addition, and for similar reasons, the committee declined

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<sup>13</sup> The commenter who did not agree with the proposal predicted that its adoption would effectively do away with the requirement to submit original statements and would interfere with courts' ability to detect accounting fraud, but did not provide any basis for these predictions. The committee does not believe that its recommendation will have either of these predicted effects.

to add a reference to section 1552 of the Evidence Code to subdivision (b) because section 1552 appears to authorize the submission of copies of electronic documents in certain circumstances.

Commenters also suggested that the committee add language to the rule to specify the type of evidence that would be required to verify the accuracy of a printed statement's content. The committee elected not to address this issue because it is beyond the scope of the proposal. The rule, like the statute, leaves to the court to determine what, if any, further evidence is sufficient to verify the accuracy of the statement's content. The court is in the best position to determine the credibility of the fiduciary in that regard. The committee did, however, modify the recommendation to specify more clearly the conditions for the court's acceptance, as an original, of a computer-generated printout of an electronic statement.

Finally, commenters suggested that the committee add express references in rule 7.575 and form GC-410 to rule 7.903, which applies the accounting requirements in section 2620 to accountings filed by trustees of specific trusts funded by court order. (See Cal. Rules of Ct., rule 7.903(c)(6).) The committee does not recommend this addition. Rule 7.575 was adopted effective January 1, 2008, three years after the Judicial Council adopted rule 7.903. The council is presumed to have known that section 2620, which rule 7.575 implemented, applied to trusts within the scope of rule 7.903. Yet the council did not then incorporate a reference to those trusts into rule 7.575, there has been no indication that the absence of such a reference has caused confusion or delay in the twelve years since rule 7.575 was adopted, and the committee is not aware of changed circumstances warranting its inclusion now.<sup>14</sup>

### **Alternatives considered**

The committee considered not recommending amendments to rule 7.575 or approval of form GC-410. But the ongoing challenges for conservators and guardians who receive electronic account statements for the estate and must file original statements in support of accountings, and the need for courts to protect a conservatee's or ward's interest in their personal residence in light of the statewide housing crisis, persuaded the committee that the rule amendments are necessary.

The committee also considered recommending the adoption of form GC-410 for mandatory use, both before circulation and again in response to comments received. The committee decided to recommend the form's approval for optional use, in large part because several courts have already developed local forms that serve the same purpose. The committee does not wish to preempt effective local practices but does hope to facilitate their expansion to other courts. Committee members who represent court staff suggested that an optional form would be useful to courts that have not already adopted a local form for requesting a waiver.

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<sup>14</sup> The council may have chosen to forgo a blanket reference to rule 7.903 because that rule precludes the application of section 2620 to trusts with total assets of \$20,000 or less after funding. (See *id.*, rule 7.903(d).)

## **Fiscal and Operational Impacts**

The proposal would clarify certain accounting requirements for guardians and conservators, facilitate the filing of accountings that comply with statutory requirements, provide the court with more information to review filed accountings, and thereby reduce continuances and other delays in reviewing accountings. The requirement to submit documentation of activity to maintain a personal residence would impose a burden on the fiduciary, but that duty would be far less onerous than requiring the fiduciary to complete and file the full accounting of which the fiduciary seeks a waiver. Courts will need to integrate form GC-410 into their case management systems. Some courts already have procedures in place to address requests to waive an accounting in a conservatorship or guardianship. This proposal is not intended to displace any of those procedures.

## **Attachments and Links**

1. Cal. Rules of Court, rule 7.575, at pages 8–13
2. Form GC-410, at pages 14–15
2. Chart of spring 2019 comments and committee responses, at pages 16–25
3. Link A: Prob. Code, § 2620,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PROB&sectionNum=2620](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=2620)
4. Link B: Prob. Code, § 2628,  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PROB&sectionNum=2628](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=2628)

Rule 7.575 of the California Rules of Court is amended, effective January 1, 2020, to read:

**Rule 7.575. ~~Accounts~~ Accountings of conservators and guardians**

~~This rule defines standard and simplified accountings filed by conservators and guardians under Probate Code section 2620(a), provides when each type of accounting must or may be filed, and prescribes the use of Judicial Council accounting forms in both types of accountings.~~

Unless waived by the court under Probate Code section 2628, a conservator or guardian of the estate must file accountings in the frequency, manner, and circumstances specified in Probate Code section 2620. The court may order accountings to be filed more frequently than required by the statute. An accounting must be filed as a standard accounting unless this rule authorizes filing a simplified accounting.

**(a) ~~Standard and simplified~~ Information required in all accountings**

~~A standard accounting lists receipts and disbursements in subject-matter categories, with each receipt and disbursement category subtotaled. A simplified accounting lists receipts and disbursements chronologically, by receipt or payment date, without subject-matter categories.~~

Notwithstanding any other provision of this rule or the Judicial Council accounting forms, each accounting filed with the court must include:

- (1) All information required by Probate Code section 1061 in the *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM));
- (2) All information required by Probate Code sections 1062–1063 in the supporting schedules; and
- (3) All information required by Probate Code section 1064 in the petition for approval of the accounting or the report accompanying the petition.

**(b) Supporting documents**

Each accounting filed with the court must include the supporting documents, including all original statements, specified in section 2620(c) of the Probate Code.

- (1) If a conservator or guardian receives a statement from the issuing institution in electronic form but not in paper form, the court has discretion to accept a computer-generated printout of that statement as an original in satisfaction of the requirements in section 2620(c) if:



1           (A) The fiduciary submitting the printout verifies under penalty of perjury  
2           that the statement was received in electronic form and printed without  
3           alteration; and

4  
5           (B) The printout is an “original,” as defined in Evidence Code section 255.

6  
7           (2) This rule does not authorize a fiduciary to submit, or a court to accept, a copy  
8           of a statement in support of an accounting filed under section 2620.

9  
10   **~~(b)~~ (c)     Standard accounting authorized or required**

11  
12       ~~A conservator or guardian may file any accounting required or authorized by~~  
13       ~~Probate Code section 2620 as a standard accounting under this rule and must file a~~  
14       ~~standard accounting if:~~

15  
16       ~~(1)   The estate contains income real property;~~

17  
18       ~~(2)   The estate contains a whole or partial interest in a trade or business;~~

19  
20       ~~(3)   The appraised value of the estate is \$500,000 or more, exclusive of the~~  
21       ~~conservatee’s or ward’s personal residence;~~

22  
23       ~~(4)   Except as provided in (c)(d), Schedule A (receipts) or Schedule C~~  
24       ~~(disbursements) prepared in a simplified accounting format exceeds five~~  
25       ~~pages in length; or~~

26  
27       ~~(5)   The court directs that a standard accounting be filed.~~

28  
29       A “standard accounting” reports receipts and disbursements in subject-matter  
30       categories, with each category subtotaled on a separate form. A conservator,  
31       guardian, or trustee must file each accounting as a standard accounting unless a  
32       simplified accounting is authorized in (d)(1).

33  
34   **~~(e)~~ (d)     Simplified accounting authorized**

35  
36       ~~A conservator or guardian may file a simplified accounting in all cases not listed in~~  
37       ~~(b). If required by this rule to file a standard accounting only because a receipts or~~  
38       ~~disbursements schedule is longer than five pages under (b)(4), a conservator or~~  
39       ~~guardian may file a simplified accounting, except for that schedule, which must be~~  
40       ~~prepared in a standard accounting format.~~

1 A “simplified accounting” reports individual receipts and disbursements  
2 chronologically, by receipt or payment date, without separating them into subject-  
3 matter categories.

4  
5 (1) A conservator, guardian, or trustee may file a simplified accounting only if  
6 all the following requirements are met:

7  
8 (A) The estate or trust contains no income-generating real property;

9  
10 (B) The estate or trust contains neither a whole nor a partial interest in a  
11 trade or business;

12  
13 (C) The appraised value of the estate or trust, excluding the value of the  
14 conservatee’s or ward’s personal residence, is less than \$500,000; and

15  
16 (D) The court has not directed the fiduciary to file a standard accounting.

17  
18 (2) If the requirements in (1) are met, but either *Schedule A, Receipts—Simplified*  
19 *Account* (form GC-405(A)) or *Schedule C, Disbursements—Simplified*  
20 *Account* (form GC-405(C)) would be longer than five pages, the fiduciary  
21 must use the standard receipt forms—forms GC-400(A)(1)–(6)—or the  
22 standard disbursement forms—forms GC-400(C)(1)–(11)—as applicable, but  
23 may otherwise file a simplified accounting.

24  
25 **(d) (e) ~~Standard and simplified accounting~~ Judicial Council forms**

26  
27 ~~Judicial Council forms designated as GC-400 are standard accounting forms. Forms~~  
28 ~~designated as GC-405 are simplified accounting forms. Forms designated as GC-~~  
29 ~~400/GC-405 are forms for both standard and simplified accountings. Each form is~~  
30 ~~also designated by a suffix following its accounting designator that identifies the~~  
31 ~~form’s intended use, based either on the form’s schedule letter as shown in the~~  
32 ~~*Summary of Account* (form GC-400(SUM)/GC-405(SUM)) or the form’s subject~~  
33 ~~matter.~~

34  
35 The Judicial Council has approved two overlapping sets of forms for accountings in  
36 conservatorships and guardianships.

37  
38 (1) Forms intended for use in standard accountings are numbered GC-400.

39  
40 (2) Forms intended for use in simplified accountings are numbered GC-405.

41  
42 (3) Forms intended for use in both accounting formats bear both numbers.

- (4) Each form number is followed by a suffix—for example, GC-405(A)—to specify that form’s intended use. The suffix indicates either the letter or the subject matter of the form’s schedule.
- (5) The *Summary of Account—Standard and Simplified Accounts* (form GC-400(SUM)/GC-405(SUM)) must be used in all accountings.
- (6) Except for the *Summary of Account*, all standard accounting forms are optional. A fiduciary who files a standard accounting and elects not to use the Judicial Council forms must:
- (A) Report receipts and disbursements in the subject-matter categories specified on the Judicial Council standard accounting forms for receipts and disbursements schedules;
- (B) Provide the same information about any asset, property, transaction, receipt, disbursement, or other matter that is required on the applicable Judicial Council standard accounting form; and
- (C) Provide the information in the same general format as that of the applicable Judicial Council standard accounting form, except that instructional material and material contained or requested in the form’s header and footer may be omitted.
- (7) *Schedule A, Receipts—Simplified Account* (form GC-405(A)) and *Schedule C, Disbursements—Simplified Account* (form GC-405(C)) must be used in all simplified accountings unless (d)(2) requires use of the standard forms for Schedule A or Schedule C.
- (8) A fiduciary filing a simplified accounting must use the appropriate form in the GC-405 series whenever the accounting covers an asset, a transaction, or an event to which that form applies.

**(e) Mandatory and optional forms**

- ~~(1) Judicial Council accounting forms adopted as mandatory forms must be used by standard and simplified accounting filers. Judicial Council accounting forms approved as optional forms may be used by all accounting filers. Judicial Council accounting forms designated as GC 400/GC 405 that are approved as optional forms may be used by standard accounting filers but must be used by simplified accounting filers.~~

- 1           (2) ~~Standard accounting filers electing not to use optional Judicial Council~~  
2 ~~accounting forms must:~~  
3  
4           (A) ~~State receipts and disbursements in the subject matter categories~~  
5 ~~specified in the optional Judicial Council forms for receipts and~~  
6 ~~disbursements schedules;~~  
7  
8           (B) ~~Provide the same information about any asset, property, transaction,~~  
9 ~~receipt, disbursement, or other matter that is required by the applicable~~  
10 ~~Judicial Council accounting form; and~~  
11  
12           (C) ~~Provide the information in the same general layout as the applicable~~  
13 ~~Judicial Council accounting form, but instructional material contained~~  
14 ~~in the form and material contained or requested in the form's header~~  
15 ~~and footer need not be provided.~~  
16

17 **(f) Required information in all accounts**  
18

19 ~~Notwithstanding any other provision of this rule and the Judicial Council~~  
20 ~~accounting forms, all standard and simplified accounting filers must provide all~~  
21 ~~information in their accounting schedules or their *Summary of Account* that is~~  
22 ~~required by Probate Code sections 1060–1063 and must provide all information~~  
23 ~~required by Probate Code section 1064 in the petition for approval of their account~~  
24 ~~or the report accompanying their account.~~  
25

26 **(f) Order waiving an accounting**  
27

28 The court may make an order waiving an otherwise required accounting if all the  
29 conditions in Probate Code section 2628(a) are met. If the conservatee or ward  
30 owns a personal residence, the request for an order waiving the accounting must  
31 include, in addition to the information needed to verify that all the conditions in  
32 section 2628(a) are met, the following information and documents regarding the  
33 personal residence:  
34

- 35           (1) The street address of the residence;  
36  
37           (2) A true copy of the most recent residential property tax bill;  
38  
39           (3) A true copy of the declarations page from the homeowner's insurance policy  
40 covering the residence;  
41  
42           (4) A true copy of the most recent statement for any mortgage or loan secured by  
43 the residence; and

1  
2  
3

(5) A true copy of the most recent fee or dues statement for any homeowners' association or similar association.

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>   <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP    OF (name):	CASE NUMBER:
<b>REQUEST AND ORDER FOR WAIVER OF ACCOUNTING</b>	HEARING DATE AND TIME:    DEPT.:

1. I, (name):

conservator or guardian of the estate ☐ and the person of (name):  
 request that the court make an order waiving the accounting otherwise due on (date):  
 covering the period from (date): to (date):

2. The conservatee or ward named in 1 is now living at (residence address):

☐ This address is the conservatee's or ward's personal residence.

3. ☐ An *Inventory and Appraisal* of the estate was filed with the court on (date):

4. At both the beginning and the end of the period covered by this request, the estate had a total net value of less than \$15,000, excluding the value of the personal residence described in 5b.  
 (Initial here to verify this statement): \_\_\_\_\_

5. The estate of the conservatee or ward contains the following property (check all that apply):

- a. ☐ Cash or bank accounts in the amount of: \$  
 b. ☐ A personal residence. If not the residence listed in 2, the personal residence is located at (street address):

A verified copy of each of the following documents that applies to the residence is included as Attachment 5b:

- (1) ☐ A true copy of the most recent residential property tax bill;  
 (2) ☐ A true copy of the declarations page from the current homeowner's insurance policy covering the residence;  
 (3) ☐ A true copy of the most recent statement for any mortgage or loan secured by the residence; and  
 (4) ☐ A true copy of the most recent fee or dues statement for any homeowners' association or similar association.  
 c. ☐ Other real or personal property valued at: \$ (describe the estate property here):

☐ Additional property is described on Attachment 5c.

6. The estate's income for each month of the period covered by this request, excluding public benefits, was less than \$2,000.  
 (Initial here to verify this statement): \_\_\_\_\_

<input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP    OF (name): _____	CASE NUMBER: _____
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7. During the period covered by this request, all the estate's income, if any, was used for the benefit of the conservatee or ward.  
 (Initial here to verify this statement): \_\_\_\_\_

8. The estate receives the following income each month (list each source and amount, then give total amount):

<u>Source of income (e.g., pension, trust, social security)</u>	<u>Amount</u>
	\$
	\$
	\$
	\$
	\$

☐ Additional sources and amounts of income are provided on Attachment 8.

**TOTAL** (including all amounts from Attachment 8): \$

9. Neither the sources nor the amounts of the estate's income are expected to change in the foreseeable future, except for automatic cost-of-living adjustments.

10. This request covers estate activity during the period shown in 1, which begins with (1) the end of the period covered by the last accounting filed with and approved by the court or (2) the date the court last made an order excusing an accounting under Probate Code section 2628, whichever is later, and ends on the date of the fiduciary's signature, below.

Date:

(TYPE OR PRINT NAME OF ATTORNEY)		(SIGNATURE OF ATTORNEY)
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**Each fiduciary must sign here and initial items 4, 6, and 7.**

I declare under penalty of perjury under the laws of the State of California that the information provided on this form and on any attachment is true and correct.

Date:

(TYPE OR PRINT NAME OF FIDUCIARY)		(SIGNATURE OF FIDUCIARY)
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Date:

(TYPE OR PRINT NAME OF FIDUCIARY)		(SIGNATURE OF FIDUCIARY)
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### ORDER

The request for an order waiving the accounting for the period stated in item 1 is ☐ granted ☐ denied.

This order does not waive or excuse the requirement to file a final accounting in this matter.

Date:

JUDICIAL OFFICER

## SPR19-34

### Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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

	Commenter	Position	Comment	Committee Response
1.	Michael Acker, Research Attorney Superior Court of Santa Barbara County Santa Maria	N	The proposed changes would essentially nullify any need to produce original statements and extremely attenuate, if not absolutely destroy, the court's ability to detect fraudulent activity in accountings.	The committee appreciates the commenter's concern. The committee does not intend its recommendation to modify Probate Code section 2620(c)'s requirement to produce original statements or to make it more difficult for a court to detect accounting fraud and does not believe the recommendation will have those effects. The committee notes that its recommendation is similar to local rule 1743 of the Superior Court of Santa Barbara County.
2.	Orange County Bar Association by Deirdre Kelly, President Newport Beach	AM	The OCBA believes that this proposal approximately addresses its stated purposes provided the following amendments are made: (1) the proposed language at Rule 7.575(b)(1) on page 5 is confusing in that it only applies if the institution "stores financial information in electronic form" <u>and</u> "delivers <u>original</u> statements electronically" to the conservator/guardian; no conservator/ward would know anything about how an institution stores its data so that condition should be removed; the condition that the institution deliver "original" statements defeats the entire purpose of this rule change to make copies of computer statements and print-outs admissible in accordance with Evidence Code §255 and §1552; even if the amendments to Probate Code §2620(c) reference the use of "original account statements" and "original escrow closing statements" it should be presumed that the legislature understood the meaning of "original" in accordance with Evidence Code §255 and §1552;	<p>The committee does not intend the proposed amendments to rule 7.575(b) to authorize the submission of <i>copies</i> of account statements in satisfaction of Probate Code section 2620(c) and has redrafted the rule to clarify its intent. The committee reads Evidence Code section 255 to treat a computer-generated printout of an electronic writing to <i>be</i> an original writing if it meets the criteria specified in that section. Therefore, a computer-generated printout of a statement transmitted and received electronically would qualify as an original statement as long as it met the statutory criteria because, as the commenter points out, the Legislature is deemed to have been aware of section 255 when it amended section 2620(c) in 2001 to require submission of original statements.</p> <p>In addition, the committee has redrafted rule 7.575(b)(1) to remove the condition that the bank or other institution <i>store</i> the financial information in electronic form and to focus instead on the bank's issuance of statements in electronic form</p>

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



## SPR19-34

### Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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	Commenter	Position	Comment	Committee Response
			(2) at the same section a reference should be added to Evidence Code §1552 as additional support; and	<p>and the fiduciary's receipt of statements in that form.</p> <p>The committee does not recommend adding a reference to Evidence Code section 1552 to the rule. The Legislature added section 1552 in 1998 (SB 177 [Stats. 1998, ch. 100]) as part of replacing the "best evidence rule," which required an original writing to be offered in evidence, with the "secondary evidence rule," which allows the content of a writing to be proved by admissible evidence other than the original document. Section 1552 states: "A printed representation of computer information or a computer program is presumed to be an accurate representation of the computer information or computer program that it purports to represent." That language appears to treat a "printed representation" as a <i>copy</i>, or secondary evidence, of the original "computer information." By contrast, section 255 treats a "computer-generated printout" that meets specified criteria as an <i>original</i> document. Three years later, with both those provisions in place, the Legislature amended section 2620(c) to replace the requirement to submit copies of account statements with the requirement to submit originals. (SB 1286 [Stats. 2001, ch. 563].) This amendment is best read as an exception to the secondary evidence rule. The Legislature required originals instead of copies to make it harder for a fiduciary to file fraudulent accounts. The committee does not recommend incorporating Evidence Code section 1552's exception to that</p>

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	Commenter	Position	Comment	Committee Response
			(3) the OCBA recommends that the proposed Form GC-410 be made mandatory and referenced at proposed Rule 7.575(f) since a stated purpose of the rule is to create uniformity among all courts and allowing individual courts to utilize their own mandatory forms in this statutory area makes less sense in this setting.	<p>requirement into rule 7.575 without express statutory direction.</p> <p>The committee does not recommend adoption of form GC-410 for mandatory use. Probate Code section 2628(a) and rule 7.575(f) establish sufficiently uniform statewide conditions for waiver of an accounting. Several courts have created forms that already incorporate these conditions. The committee does not intend to supersede these local forms. Furthermore, adopting a mandatory form may not be necessary to establish the uniformity desired by the commenter. Under rule 1.35(a), forms approved by the Judicial Council for optional use may, whenever applicable, be used by parties and must be accepted for filing by all courts.</p>
3.	Michelle Rowe, Court Attorney Superior Court of San Luis Obispo County	AM	<p>As to the original statement versus electronic statement changes under proposed rule 7.575(b)(2),</p> <p>it appears a declaration would typically be sufficient to establish the authenticity and accuracy of the electronic statements. Based on the current status on this issue and what is being</p>	<p>The committee does not intend to distinguish original statements from electronic statements. It intends, rather, to distinguish <i>electronic</i> statements from <i>paper</i> statements and address a fiduciary's reported difficulty in complying with section 2620(c) when statements are transmitted or received only in electronic form. Amending the rule to clarify that a computer-generated printout of an electronic statement is an "original" if it meets the definition in Evidence Code section 255 provides another method with which a fiduciary may comply with section 2620(c).</p> <p>The committee has modified the draft rule as suggested by the commenter below to require that the fiduciary verify that the statement was received electronically and was printed without</p>

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## SPR19-34

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	Commenter	Position	Comment	Committee Response
			<p>seen in our Court, I suspect most guardians and conservators (and court supervised SNT trustees per Cal. Rules of Court, rule 7.903) would argue they could be the person to execute the declaration. We currently have a local rule with a similar flavor to the proposed change and have seen this argument.</p> <p>This possible interpretation appears to circumvent the original purpose of the statute. In other words, there seems to be a conflict with the guardian/conservator/court supervised SNT trustee declaring the authenticity and accuracy of the data, when the Court is trying to confirm the same person has not altered data. It would be helpful if the rule indicated the guardian/conservator/court supervised SNT trustee, attorney for or employee of the either, could not be the party executing a declaration to show that authenticity and accuracy of the data (absent perhaps compelling circumstances as determined by the Court). If possible, the rule may need to reflect an agent from the institution, etc., should be the declarant, absent “compelling circumstances” as determined by the Court.</p> <p>It is also noted subsection (B) only cites to guardians and conservators, but it appears this rule would also apply to SNT trustees for trusts subject to Cal. Rules of Court, rule 7.903. It would be helpful if the new rule of Court</p>	<p>alteration. The printout must also meet the definition in Evidence Code section 255 for treatment as an original statement for purposes of section 2620(c). The rule, like the statute, leaves to the court to determine what, if any, further evidence is sufficient to verify the accuracy of the statement’s content. The court is in the best position to determine the credibility of the fiduciary in that regard.</p> <p>The committee has revised the draft rule to limit its scope more clearly to determining whether a computer-generated printout of an electronic statement may be deemed an original. Nothing in the rule would prevent the court from seeking verification of the statement’s content in the event that doubts arose in the course of examination or audit. The scope of the court’s authority in this regard is intended to be identical to the scope of its authority under section 2620(c)–(e).</p> <p>The committee does not recommend adding a reference to a trust funded by court order to rule 7.575 without some indication that the absence of such a reference has caused confusion or delay in the twelve years since rule 7.575 was adopted.</p>

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## SPR19-34

### Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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	Commenter	Position	Comment	Committee Response
			specifically made this clarification, as I can imagine there will be challenges a trustee's burden due to the absence.	
4.	Hon. Ruben Sundeen, Commissioner Superior Court of Alameda County	NI	<p>My comments are with regard to submission of original statements delivered or received electronically.</p> <p>I think requiring the fiduciary (and/or attorney) to verify—i.e., declare under penalty of perjury—that the attached account statements were received electronically, were printed without alteration, and constitute original records consistent with Evidence Code section 255, would provide assurances of authenticity and ensure the fiduciary understands the import and importance of submitting original records as conceived by the legislature.</p>	<p>The committee appreciates the commissioner's comments.</p> <p>The committee agrees with the suggestion and has modified recommended rule 7.575(b) to require a fiduciary who submits a computer-generated printout of an electronic statement to verify, as conditions of the court's accepting the statement, that the statement was received electronically and printed without alteration. The statement must also meet the criteria in Evidence Code section 255 for treatment as an original.</p>
5.	Superior Court of Los Angeles County	AM	<p><b>Form GC-410</b></p> <p>Sections 2 and 5b: "Personal Residence" is not defined or clear. Does it mean rented residence or ownership?</p> <p>Section 4, 6 and 7: A line at the end of text to initial required information will lead to a lot of missed initials, incomplete forms, and therefore lost court resources to reject and reprocess submissions.</p> <p>Section 5b:</p>	<p>The committee does not recommend defining "personal residence," though it understands the desire for a definition. Personal residence is not defined in the Probate Code or the probate rules. In addition, the form applies only to a personal residence that is part of the estate. Only a residence owned by the ward or conservatee would be part of the estate.</p> <p>The committee has revised its recommendation to align the spaces for initials to the left end of the text to be verified.</p>

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	Commenter	Position	Comment	Committee Response
			<p>The line starting “Verified copies ...” should include some indication that these documents must be provided if applicable. In current form the document appears to allow for supporting documents but may lead to a lot of rejected submissions.</p> <p>Section 9: The text indicates that a report will be filed if income changes. For the purpose of this form waiver, the court should not be concerned if income decreases and the text should be amended to indicate that the report will be filed if income <i>increases</i> by more than cost-of-living adjustments and only if income exceeds the Probate Code section 2628 threshold. Also, the requirement to file this report should be within a time certain, such as 30 or 60 days.</p> <p>Order: The form might include an area at the bottom of the last page for an order granting or denying the request for accounting waiver.</p> <p><b>Does the proposal appropriately address the stated purpose?</b> Yes, as amended above.</p> <p><b>Would the proposal provide cost savings? If so, please quantify.</b> No, we do not anticipate cost savings.</p> <p><b>What would the implementation requirements be for courts—for example,</b></p>	<p>The committee agrees with the suggestion and has modified its recommendation accordingly.</p> <p>The committee has determined that the requirement of an interim report is unnecessary and has modified its recommendation to remove it. The waiver, if granted, would apply to the previous accounting period. Any change in the estate’s income would be addressed at the end of the next accounting period. In addition, if the court learns of any concerns, it has the authority to order an accounting before the end of the regular period.</p> <p>The committee agrees and has modified its recommendation to add an order as suggested.</p>

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	Commenter	Position	Comment	Committee Response
			<b>training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</b> Implementation requirements include training of staff and judges regarding the new form and implied procedure of receiving the form, routing it for consideration and approval. It would also require implementation of new codes and workflows in Case Management System.  <b>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b> Yes, three months would be sufficient.	
6.	Superior Court of Monterey County by Christopher Haug, Research Attorney	A	Monterey County supports the amendments to the rule and implementation of the optional form.	The committee appreciates the court's comments. No further response is required.
7.	Superior Court of Riverside County by Susan Ryan, Chief Deputy—Legal Services	A	Riverside is in support of this new proposed form. This will streamline the process for filing waivers of accounting in conservatorship and guardianship estates if the estates qualify for the waiver under Probate Code 2628. The new form will also ensure that if a primary residence is owned by a conservatee or ward there is accountability for the fiduciary to provide information that the mortgage payments, real property taxes and HOA if any, are paid and are not delinquent.	The committee appreciates the court's comments. No further response is required.

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## SPR19-34

### Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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	Commenter	Position	Comment	Committee Response
			There is no additional cost the court will incur on implementing this form and change.	
8.	Superior Court of San Bernardino County by Court Executive Office	A	<b>Does the proposal appropriately address the stated purpose?</b> Yes  <b>Would the proposal provide cost savings? If so, please quantify.</b> Yes, due to the potential reduction in continuances and a more streamlined review process.  <b>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</b> Minimal training required, less than 1 hour- Probate Examiners, Legal Processing Assistants, Judicial Assistants. Potential code updates in the Case Management System.  <b>Would 3 months from the enactment of the proposed legislation until its effective date provide sufficient time for implementation? Or should additional time be requested?</b> Yes	The committee appreciates the court's comments. No further response is required.
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	<b>Does the proposal appropriately address the stated purpose?</b> Yes.	The committee appreciates the court's comments. See below for responses to specific comments.

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## SPR19-34

### Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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Commenter	Position	Comment	Committee Response
		<p><b>Would the proposal provide cost savings? If so, please quantify.</b> No.</p> <p><b>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</b> If our court chooses to repeal our local form that currently serves this purpose, we would need to notify attorneys/parties of the new form. Our court would need to add this form as a filing in our CMS. If there is no proposed order to accompany this request, our court would need to draft a local form or train courtroom staff to create minute orders to capture the judge's decision on these requests.</p> <p><b>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</b> Yes.</p> <p><b>How well would this proposal work in courts of different sizes?</b> The proposal should work adequately, no matter the size of the court.</p> <p><b>General Comments:</b></p>	<p>The committee has chosen to recommend the approval of the form for optional use to give each court the opportunity to weigh the costs and benefits of continuing to use its current form or using the proposed form.</p>

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## SPR19-34

### Probate Conservatorship and Guardianship: Accounting (amend rule 7.575; approve form GC-410)

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	Commenter	Position	Comment	Committee Response
			An order to accompany the request or incorporation of an order within the form would be helpful. As-is, if the form is submitted outside of a scheduled hearing, the court will have to issue a separate minute order to memorialize whether the request was granted or denied.	The committee agrees and has modified its recommendation to incorporate an order into the request form.
			Suggest renaming the form: Request for Order Waiving Accounting or Request & Order for Waiver of Accounting. This is more in line with terminology used in Probate.	The committee agrees with the suggestion and has modified its recommendation to rename the form <i>Request and Order for Waiver of Accounting</i> .
			Suggest adding language to reflect that an order excusing/waiving an accounting does not waive the requirement to file a final accounting would be helpful.	The committee agrees with the suggestion and has modified its recommendation accordingly.
10.	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee Joint Rules Subcommittee (JRS)	A	The JRS notes that the proposed rule makes a helpful change that will allow probate courts to recognize well-established technologies by accepting account statement printouts as original documents.	The committee appreciates the JRS's comments. No further response is required.

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