



LEGAL SERVICES FOR CHILDREN

GUARDIANSHIP MANUAL

A GUIDE TO OBTAINING PROBATE LEGAL GUARDIANSHIPS
FOR MINORS

(WITH SPECIFIC EXAMPLES FROM SAN FRANCISCO AND ALAMEDA COUNTIES)

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HOW TO USE THIS MANUAL

- ⇒ This manual is designed for use by attorneys. It was written primarily for the use of pro bono attorneys working with Legal Services for Children (LSC).
- ⇒ The primary text focuses on forms and procedures in the San Francisco Superior Court and some reference to the Alameda County Superior Court. All statutory references in this manual are to the California Codes. Procedures will differ slightly from county to county. Therefore, attorneys are advised to ***consult the local rules*** of their county.
- ⇒ If you are not an attorney and you are looking for guidance on legal guardianships, you may wish to consult the Court's website at: <http://www.courts.ca.gov/selfhelp-guardianship.htm>.
- ⇒ If you are looking for blank guardianship forms, you can find them at your local courthouse or online at <http://www.courts.ca.gov/forms.htm>.
- ⇒ LSC represents youth, including children under the age of eighteen. Therefore, the manual is written with the presumption that the minor is the petitioner and this is reflected in our examples. In many guardianship proceedings, the proposed guardian is the petitioner. Thus, adaptations to our examples are necessary for adult petitioners.
- ⇒ This manual does not constitute legal advice nor create an attorney-client relationship. It should not replace a case-by-case analysis and consultation with a mentor attorney on an individual case.

All information in this manual is current as of October 2019

ACKNOWLEDGMENTS

This manual has truly been a joint effort of the entire staff of Legal Services for Children, including many legal and social work student interns. The cumulative experience of the many guardianships LSC has completed over the years made this manual possible.

We would also like to thank the many pro bono attorneys on our Pro Bono Panel who have donated their time and expertise in representing children in guardianship cases. These pro bono attorneys have also been a valuable source of feedback, helping us to improve this manual. Without help of our Pro Bono Panel many youth would have gone unrepresented. Further information on our Pro Bono Panel is available on our website at <http://www.lsc-sf.org>.

Table of Contents

HOW TO USE THIS MANUAL	2
ACKNOWLEDGMENTS	3
PREFACE	6
I. INTRODUCTION: PROCEEDINGS AFFECTING CUSTODY OF A MINOR	7
LEGAL GUARDIANSHIP	7
DISSOLUTION	7
UNMARRIED PARENTS	7
DOMESTIC VIOLENCE PREVENTION ACT	8
ADOPTION	8
JUVENILE COURT	8
CONSERVATORSHIP	9
EMANCIPATION	9
II. GUARDIANSHIP: AN OVERVIEW	10
A. GUARDIANSHIP OF THE PERSON	10
B. GUARDIANSHIP OF THE ESTATE	14
III. GUARDIANSHIP: INITIAL STAGES	15
A. INITIAL INTERVIEW	15
B. NOTICE: OBTAINING INFORMATION	15
IV. GUARDIANSHIP: PREPARING THE PAPERS	19
A. OVERVIEW	19
B. CAPTIONING THE DOCUMENTS	20
C. REQUEST TO WAIVE COURT FEES (JUDICIAL COUNCIL FORM: FEE WAIVER, FW-001-GC)	20
D. ORDER ON COURT FEE WAIVER (JUDICIAL COUNCIL FORM: FEE WAIVER FW-003-GC)	23
E. PETITION FOR APPOINTMENT OF GUARDIAN	23
F. GUARDIANSHIP PETITION- CHILD INFORMATION ATTACHMENT	28
G. DECLARATION UNDER UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA) (JUDICIAL COUNCIL FORM: FL-105/GC-120)	29
H. CONSENT OF PROPOSED GUARDIAN/NOMINATION OF GUARDIAN/ CONSENT TO APPOINTMENT OF GUARDIAN & WAIVER OF NOTICE AND CONSENT (JUDICIAL COUNCIL FORM: GC-211)	30
I. DECLARATION OF PROPOSED GUARDIAN (SAN FRANCISCO ONLY) (LOCAL FORM, PGF-1)	31
J. CONFIDENTIAL GUARDIANSHIP SCREENING FORM (JUDICIAL COUNCIL FORM: GC-212)	31
K. DUTIES OF GUARDIAN (JUDICIAL COUNCIL FORM: GC-248)	31
L. NOTICE OF HEARING OF GUARDIANSHIP (JUDICIAL COUNCIL FORMS: GUARDIANSHIP AND CONSERVATORSHIP DIRECTORY, GC-020)	31
M. NOTICE AND ACKNOWLEDGMENT OF RECEIPT (JUDICIAL COUNCIL FORM: POS-015)	33
N. PROOF OF PERSONAL SERVICE OF NOTICE OF HEARING- GUARDIANSHIP AND CONSERVATORSHIP (JUDICIAL COUNCIL FORM: GC-020(P))	33
O. ORDER APPOINTING GUARDIAN OF MINOR (JUDICIAL COUNCIL FORMS: GC-240)	34
P. LETTERS OF GUARDIANSHIP (JUDICIAL COUNCIL FORMS: GC-250)	36
V. GUARDIANSHIP: FILING, NOTICE, HEARING, CONCLUSION	38
A. HOME VISIT	38
B. FILING THE PAPERS	38
C. NOTICE: SENDING OUT NOTICE	39
D. NOTICE- PERSONAL SERVICE	45
E. THE GUARDIANSHIP HEARING	45

F. THE CONTESTED GUARDIANSHIP HEARING AND MEDIATION	47
G. FOLLOW-UP/ STATUS REPORTS	48
VI. GUARDIANSHIP VARIATIONS: TEMPORARY, SPECIAL IMMIGRANT JUVENILE STATUS; WARD BETWEEN THE AGES OF 18-21 (AB 900), DEPENDENCY, TERMINATIONS, & WITHDRAWALS	50
A. TEMPORARY GUARDIANSHIPS	50
1. <i>PETITION FOR APPOINTMENT OF TEMPORARY GUARDIAN</i>	<i>52</i>
2. <i>GOOD CAUSE EXCEPTION TO NOTICE</i>	<i>54</i>
3. <i>DECLARATION OF NOTICE (San Francisco Only)</i>	<i>55</i>
4. <i>ORDER APPOINTING TEMPORARY GUARDIAN</i>	<i>55</i>
5. <i>LETTERS OF TEMPORARY GUARDIANSHIP</i>	<i>56</i>
B. SPECIAL IMMIGRANT JUVENILE STATUS.....	56
C. JOINT GUARDIANSHIPS WITH TERMINALLY ILL PARENTS	58
D. GUARDIANSHIP OF CHILDREN WITH NATIVE AMERICAN OR INDIAN HERITAGE.....	58
E. GUARDIANSHIP OF DEPENDENT & DELINQUENT CHILDREN	60
F. TERMINATION OF GUARDIANSHIP	61
H. SUCCESSOR GUARDIANSHIPS.....	61
H. ADDING A CO-GUARDIAN TO AN EXISTING GUARDIANSHIP	61
I. WITHDRAWING THE GUARDIANSHIP PETITION	61
VII. PERTINENT SECTIONS OF THE CALIFORNIA PROBATE CODE	63
VIII. SAMPLE FORMS – SEE LSC WEBSITE FOR COMPREHENSIVE LIST OF SAMPLE FORMS.....	65

PREFACE

Legal Services for Children, Inc. (LSC) in San Francisco was created as a non-profit agency in 1975, the nation's first free and comprehensive law firm just for minors. One of the services provided by LSC is the representation of minors in legal guardianship proceedings.

In a guardianship, a non-parent is given most of the parental rights and responsibilities over a minor, while the parents' rights are suspended. A legal guardianship can be a fairly simple and non-stigmatizing legal solution to a minor's need for good care and stability in her/his living arrangement. On the other hand, it can also cause problems if the parents oppose the arrangement, or if the minor and guardian cannot maintain a healthy relationship. Sometimes other solutions are more appropriate.

The purpose of this manual is to explain the effect of a guardianship, to place guardianship into context with other proceedings affecting child custody, and to describe in detail the process by which a guardianship is obtained.

LSC represents primarily minors and this manual is written from the perspective of representing minors.

LSC is pleased to share this manual with any attorney or other person interested in helping children to obtain legal guardianships. However, all readers are advised that this is a basic guide only and that they must do their own research and review to be sure that they are acting on currently applicable law and procedure.

I. INTRODUCTION: PROCEEDINGS AFFECTING CUSTODY OF A MINOR

Although this manual discusses legal guardianships, it is important to be aware of other proceedings in which custody of minors is affected. Legal custody of a minor means the right and responsibility to make almost all decisions affecting the care and supervision of that minor. This includes the right to determine the minor's domicile, the right to provide consent for the minor's medical care, the right to guide the minor's educational and religious development, and the right to make decisions that may control the minor's conduct.

LEGAL GUARDIANSHIP

Legal guardianship of the person of the minor suspends the parents' right to custody of their child and places that custody with another adult. It does **not** permanently terminate parental rights, parents retain the right to petition the court for visits or to terminate the guardianship at any time. Technically, parents also remain financially responsible for the minor. Guardianship of minors may be for their persons, their estates, or both. Guardianship of the person transfers legal custody of the minor. A guardianship of the estate of a minor is usually for the purpose of managing property and/or substantial assets that are in the minor's name. The Probate Court appoints the legal guardian. (Legal guardians can also be appointed by Juvenile Court, see section F, but this manual describes the process for obtaining a guardianship in Probate Court.)

DISSOLUTION

Legal custody is initially vested **equally** in the minor's natural parents (Fam. Code § 3010) whether they are married or not. Several ways exist to change legal custody. If the parents are or were married, custody is usually determined in a dissolution action. The court can consider the child's preference and the reasons for it, if the child is sufficiently mature. Any custody order can be modified based upon a change of circumstances.

The Family Court in San Francisco (and in most counties in California) seeks the assistance of Family Court Services (FCS) when there is a dispute over custody issues between parents. FCS is an office of the court, which employs professional counselors. These professionals first attempt to mediate a custody or visitation dispute between parents. If the child has legal counsel, their counsel's input will be included. If mediation fails, FCS will conduct an independent evaluation and provide a written report to the court.

UNMARRIED PARENTS

If the parents have never been married to each other, the issue of child custody is usually adjudicated through a paternity action, pursuant to California Family Code §§ 7600–7650. Once the legal father of the child is established, the issue of custody is resolved within that parentage

action and mediation may be utilized to resolve custody or visitation disputes as in a dissolution action, as described above.

DOMESTIC VIOLENCE PREVENTION ACT

In situations involving domestic violence, custody of minors can be temporarily determined under the Domestic Violence Prevention Act (Fam. Code § 6200 et seq.). A temporary restraining order may award custody of a minor child to one parent, subject to visitation rights of the other upon determination of the court. The abusive party may also be required to make child support payments. One parent may obtain temporary care and control of her/his minor child through a restraining order when the parties have not been married, or when no petition for separation, nullity of marriage, or dissolution of marriage has been filed.

ADOPTION

An adoption is a complete substitution of one parent or set of parents for another (Fam. Code §§ 8500-9340). In an adoption, the natural parent(s) (and the parents' other relatives) lose all their rights and obligations regarding their children, including custody, visitation and support. The new adoptive parent(s) are placed in the same legal position vis-à-vis the minor as a natural parent including custody, support, and inheritance rights. In a stepparent adoption, only one parent is substituted for another. If the parent to be substituted is living, an adoption requires that the natural parent's rights be terminated (Fam. Code §§ 8604-8606).

An adoption is different from a guardianship in that guardianship temporarily suspends the parents' right to custody (not their right to visitation or obligation to support), while adoption permanently substitutes one parent, or set of parents, for another.

JUVENILE COURT

Custody may also be changed through the three Juvenile Court jurisdictional sections: Welfare and Institutions Code § 300 (dependency), § 601.2 (status offense), and § 602 (delinquency). If the minor falls within the descriptions of § 300, § 601, or § 602, the Juvenile Court may remove custody of the minor from the parent or other legal custodian by declaring the minor a dependent child (Welf. & Inst. Code § 300) or a "ward" (Welf. & Inst. Code § 601, 602) of the court. The court may place that custody with relatives or friends of the minor with the addition of ongoing supervision by the Probation Department or Human Services Agency (HSA). The court may also transfer placement to HSA or the Probation Department, which generally results in an "out of home" placement of the minor such as a foster home or group home setting. In some cases, the child will remain in the physical custody of the parents, under the supervision of the Human Services Agency (Welf. & Inst. Code § 300) or of the Probation Department (Welf. & Inst. Code §601, 602).

The Juvenile Court can also appoint a legal guardian in both dependency and delinquency proceedings. Please note that this manual relates only to Probate Court guardianships, rather than Juvenile Court guardianships.

Tip: If a guardianship was originally established in a Juvenile Court, any changes **MUST** be made in that same Juvenile Court. You cannot change a guardian by using the Probate Court Guardianship Process.

In San Francisco Juvenile Court dependency or delinquency matters, the court maintains jurisdiction over the minor through HSA or Juvenile Probation. The City Attorney represents HSA, and the District Attorney represents Juvenile Probation. The recommendations of HSA and Juvenile Probation carry substantial weight with the court, and the court has wide discretion in making dispositional orders concerning the care and custody of minors.

CONSERVATORSHIP

Custody of a minor can also be placed with a conservator. A conservatorship allows the involuntary placement of a minor found to be gravely disabled in a treatment facility. The procedures for conserving a minor for mental health treatment may be found at the Welfare and Institutions Code § 5350 et seq.

EMANCIPATION

A minor can become her/his own legal custodian before attaining majority (i.e. turning 18) if s/he is declared emancipated (Fam. Code §§ 7000-7135). A minor can be emancipated in three ways:

- By joining the United States Armed Services with parental consent;
- By getting married – requiring consent of one parent and the court through a court order (Fam. Code §§ 302, 7002); **or**
- By obtaining a Declaration of Emancipation from the court (Fam. Code §§ 7002, 7122).

To obtain a Declaration of Emancipation, the minor must:

- Be fourteen years of age or older;
- Live on his/her own with the consent or acquiescence of his/her parents;
- Manage her/ his own finances;
- The Court must find emancipation to be in the minor's best interests

Emancipation allows a minor to make most of her/his own decisions, and it terminates the parents' obligation to support the minor. The minor should consult with an attorney for assistance in making this important decision. For more information, see LSC's [Emancipation Manual](#), which can be located at <http://www.lsc-sf.org/faq/what-is-emancipation-and-how-does->

II. GUARDIANSHIP: AN OVERVIEW

The Probate Court can appoint a guardian whenever such action is "necessary or convenient" (Prob. Code § 1514). If the parents do not consent, the court must find (1) that custody with parent(s) would be detrimental to the minor (if a parent contests), and (2) that it would be in the best interests of the minor to live with the proposed guardian (Fam. Code § 3041). In guardianship proceedings, unlike Juvenile Court dependency proceedings (Welf.& Inst. Code § 300), the court does not have to find the parents unfit.

A. GUARDIANSHIP OF THE PERSON

a. "Necessary or Convenient" and "Detrimental" standards

The Probate Court may grant a guardianship whenever it appears "necessary or convenient" to do so (Prob. Code § 1514). Guardianship proceedings are commenced when a Petition for Appointment of Guardian of Minor is filed in the Probate Court. The petition may be filed by the proposed guardian, the proposed ward (if s/he is twelve years or older), or any relative or person on behalf of the minor (Prob. Code § 1510). In a guardianship, the minor is called the ward. The Probate Code use of the term "ward" is **not** related to the Juvenile Court use of the term in the Welfare and Institutions Code § 601 and § 602.

When filling out a Petition for Appointment of Guardian, always provide information in the space provided in item 8 to explain why the guardianship is "necessary and convenient." There are two types of Petitions that can be used: the GC-210 and the plain language version GC-210(P) that is generally for pro per petitioners. If you use the plain language form, GC-210(P), this item must be included as item 9.

If there is any chance a parent will contest the guardianship, **also** check the box preceding the statement "[p]arental custody of the minor would be detrimental to the minor or minors named in item 2" and include the reasons in Attachment 8. This check box option is not given on the GC-210(P) form, but reasons why parental custody would be detrimental to the minor should be included in Attachment 9. If a parent objects to a guardianship, the guardianship can only be granted if it is determined that return of the minor to the parent would be detrimental (Fam. Code § 3041(a); Prob. Code § 1514(b)). If there is prior knowledge that the guardianship will be contested, the papers can still be filed if the minor client wishes to pursue the guardianship. For more information, see the section on contested guardianship hearings and consult with your LSC mentor attorney.

b. Notice

Notice requirements are strict and jurisdictional (Prob. Code §§ 1511, 1516, 1542). For example, parents or legal custodians must receive personal service unless the court dispenses with notice or prescribes another manner of notice. Certain other relatives (grandparents and siblings) and agencies may be served by mail. For details about providing notice, see Chapter V.

If the minor is an "Indian Child" under the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901 et seq. (generally a minor who is a member or a biological child of a member of a Native American Tribe), the Tribe needs to be given notice of the proceedings.

c. Appropriate Reasons for a Guardianship

Guardianship of the person of a minor is usually advisable when: (1) the minor wants a particular adult to be her/his custodian; (2) that adult is both willing and appropriate to be the minor's guardian; and (3) the minor and proposed guardian have a relationship established over time. In San Francisco and many California counties, if either parent is likely to oppose guardianship, the court may refer the case for mediation.

In the experience of LSC, the desires of minors, especially those twelve years or older, carry significant weight with the court. In addition, an older child's adamant refusal to live with her/his parents is usually an important factor in the Judge's decision. Additional factors that usually weigh heavily are indications of violence or abuse, alcohol or drug problems, or signs of neglect. It is best, if possible, to avoid making specific written allegations against the parents in order to prevent the further deterioration of the parent-child relationship. However, if a Judge is reluctant to grant the guardianship because it is actively contested by either or both parents, such information may be important and necessary in persuading the judge to grant the guardianship. Please keep in mind that the Probate Court files are not confidential so it may not be appropriate to include detailed allegations of abuse and neglect in the initial petition. An exception to this may be if there is need for a temporary guardianship or Special Immigrant Juvenile Status Findings.

d. Rights and Responsibilities

When advising the minor and proposed guardian, be certain each understands the significance of a guardianship and their respective rights and responsibilities. The rights and responsibilities are stated on the court form that the guardian must sign which is the GC-248. The guardian's duties include, but are not limited to, the duty and responsibility for the care, custody, and control of the ward (Prob. Code § 2351). The guardian may determine the residence of the ward (Prob. Code § 2352) and has the right to give consent for the ward's medical treatment (Prob. Code § 2353). Once appointed, the guardian must inform the court of any change of address and must obtain court approval before moving the minor to another state (Prob. Code §2352). Although the parents remain legally responsible for the minor's support, guardians often

voluntarily accept this responsibility. Legal guardians may be entitled to child support and may want to go to the child support office in their county to inquire more about this.

A non-relative guardian may receive cash benefits and public medical benefits from the county social services agency for the child, regardless of the guardian's own income. In San Francisco, these benefits are processed through the Human Services Agency's Non-Relative Guardian Unit. A relative guardian may also receive benefits, including CALWORKS, regardless of the guardian's income. In fact, qualified relatives can receive benefits even if they do not yet have legal guardianship. If the guardian receives any type of public benefits for the minor, the District Attorney will likely attempt to collect reimbursement from the minor's parent(s). Guardians of SIJS eligible clients are generally not eligible for public benefits for that child until the child adjusts status. Since *Timmons v. McMahon* (1991) 235 Cal.App.3d 512 [286 Cal.Rptr. 620], temporary guardians are eligible to receive public benefits.

In certain cases, a guardian may also be statutorily liable for the tortious acts of the ward. A guardian is liable for civil damages for any act or willful misconduct of the minor that results in injury or death to another person or injury to the property of another (Civ. Code § 1714.1).

Similarly, any act of willful misconduct of a minor that results in the defacement of someone else's property with paint or a similar substance (e.g., graffiti) is imputed to the guardian for all purposes of civil damages, including court costs, and attorney's fees, to the prevailing party, and the guardian is jointly and severally liable with the minor for any damages resulting from the willful misconduct (Civ. Code § 1714.1(a), (b)).

A guardian also may be liable for any injury to the person or property of another proximately caused by the discharge of a firearm by the minor, if the guardian either permitted the minor to have the firearm or left the firearm in a place accessible to the minor. (Civ. Code § 1714.3).

Furthermore, a guardian of the person may be liable for the actions of the ward according to basic tort principles under which one who takes charge of a person whom s/he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the person to prevent him or her from doing harm to others. (See *Poncher v. Brackett*, 246 Cal.App2d 769, 772-73 (1966) [55 Cal.Rptr. 59]).

e. Investigation

Regardless of whether the minor or proposed guardian are related or unrelated there is a home study and recommendation completed by the Court pursuant to Probate Code § 1513. The person performing this investigation will depend on whether the minor and guardian are related or not. If the minor and guardian are **NOT related**, generally the local county social services agency will perform an investigation known as a "home study," and will provide the court with a written recommendation (Prob. Code § 1513). The investigator will contact the proposed guardian and minor to arrange an appointment. In San Francisco, the Human Services Agency performs the home study and court report for non-relative guardianship cases.

Probate Code 1513:

The report done by the court investigator shall include, but is not limited to:

- 1) A social history of the guardian
- 2) A social history of the proposed ward, including, to the extent feasible, an assessment of any identified developmental, emotional, psychological or educational needs of the proposed ward and the capability of the petitioner to meet those needs
- 3) The relationship of the proposed ward and guardian including duration and character, how physical custody was acquired by the guardian, statement on ward's attitude concerned the guardianship if possible.
- 4) The anticipated duration of the guardianship and the plan by parents and proposed guardian/ward for a stable/permanent home for the child. However, this may be waived for relative guardians.

In a guardianship between **relatives**, the Probate Court will request that the Court's probate investigator perform a home visit and prepare a report to the court on their recommendations for whether the guardianship is "necessary and convenient."

Sometimes the agency is unable to complete the investigation in a timely fashion. When that occurs, the court usually continues the guardianship hearing to give the investigator time to complete their written report and recommendations.

If the attorney visits the home prior to the agency home study and has concerns about the appropriateness of the guardianship, please call your LSC mentor attorney to discuss your concerns. The child might be at risk of being made a dependent of the Juvenile Court once the agency becomes aware of her/his circumstances. Accordingly, the attorney and client should carefully evaluate whether to proceed with the guardianship in questionable cases.

In both relative and non-relative guardianships, the Court will conduct a background check on the proposed guardian and all adults over the age of 18 in their household regarding criminal history and any referrals made to Child Protective Services (CPS) for abuse or neglect. The attorney should discuss this process with the proposed guardian and encourage the proposed guardian to reveal any relevant information prior to the filing of the guardianship so the forms can reflect this information. It is important to emphasize that concerning history can be explained and is not necessarily a bar to the guardianship. However, if the proposed guardians fails to disclose their history, the court may see this as an indication that the guardian cannot be trusted and may decide to not grant the guardianship. This will assist the attorney in assessing the appropriateness of the guardianship and in addressing early, any issues that arise.

LSC's Model of Representation

LSC is child-centered and seeks to empower the youth themselves. Thus, LSC only files guardianships for clients twelve years of age or older, since the minor at this age can be the petitioner (Probate Code §1510). Even when the proposed guardians are supporters of the minor clients and their interests seem aligned, LSC does not represent both the guardian and the minor, because a conflict of interest may arise in later proceedings affecting the custody of the minor. LSC does not represent adults. The attorney must inform both the proposed guardian and the minor at the outset of the case that the attorney will proceed according to the minor's interest should a future conflict arise. If you are working on a LSC case and have questions about this, please speak with your LSC mentor.

f. Termination

A guardian, parent, or ward may terminate the guardianship whenever the guardianship is no longer necessary, or when it is in the minor's best interest to terminate (Prob. Code §§ 1601, 2650, 2652, 2660). The guardianship automatically terminates upon the majority (when s/he turns 18 unless extended pursuant to Prob. Code 1510.1), death, adoption, or emancipation of the ward. (Prob. Code § 1600). See Chapter VI for more information on termination.

B. GUARDIANSHIP OF THE ESTATE

A guardianship can be of the person, the estate or both. A guardianship of the estate will not be necessary if the minor has no money or property or if any money they have can be placed in a blocked account that will not be used until the minor reaches majority. However, a guardianship of the estate will be necessary if there is a large amount of money or property or the guardian will need to use any of the money to support the minor during the guardianship. A guardianship of the estate can be filed at the same time as a guardianship of the person using the same petition. This manual pertains to guardianship of the person only.

III. GUARDIANSHIP: INITIAL STAGES

The guardianship process is straightforward, but many steps are involved. The first steps in arranging a guardianship is the determination of whether a guardianship is appropriate and the collection of information that will be needed for the preparation of the guardianship papers and the provision of notice.

A. INITIAL INTERVIEW

The attorney should arrange an initial interview to meet the child and the prospective guardian. This initial interview can be in the guardian's home, the attorney's office, or any other mutually convenient place. Insofar as possible, the attorney should try to talk with and establish a relationship with both guardian and child. Note that the focus of the initial interview should be on the child and ideally, the attorney should meet with the child alone during this meeting.

In arranging the initial interview, the attorney should inform the prospective guardian and the minor of the kind of information s/he will need to collect so that the guardian and minor may make relevant materials available for the meeting. Note that an LSC social worker may have already conducted a home visit with the family prior to the attorney's initial interview. A copy of the minor's birth certificate, most recent report card and vaccination records will be required to be attached to the forms.

Legal Services for Children's **Guardianship Questionnaire** provides a format for collecting all the necessary information for the guardianship papers required in San Francisco and Alameda counties. A blank copy can be found in the Sample Forms Section. For cases in Alameda, the attorney should also bring to the initial meeting a copy of the **Alameda County Guardianship Questionnaire**, which requests information that may not be covered in the LSC Guardianship Questionnaire. To make the first meeting more efficient, the attorney may want to send the questionnaire to the family in advance if possible.

At the initial interview, the attorney should remind the proposed guardian that s/he will represent the minor, not the guardian, should their interests diverge. It may be beneficial for the attorney to bring the retainer or engagement letter this meeting in order to review the attorney-client relationship.

B. NOTICE: OBTAINING INFORMATION

The law requires that the proposed ward, the proposed guardian, all relatives within the second degree of the minor (parents, grandparents, and siblings including half siblings but not step-siblings), and "any person having legal custody of the ward or serving as the guardian of the estate" be given *Notice of Hearing of Guardianship* and a copy of the *Petition for Appointment of Guardian* at least **15 days** before the initial Guardianship Hearing (Prob. Code § 1510 and 1511). The 15 day period runs from the date the forms are placed for mailing and is not extended to include the time it takes for mail service (Prob. Code § 1215; *Bridgeman v. Allen* (2013) 219 Cal.App.4th 288, 298). There is no extension for out of state or international mailing.

Tip: When interviewing the minor, proposed guardian and other interested persons, the attorney should try to obtain as complete a picture of the minor's life as possible, including:

- The minor's wishes and needs
- Whether there are other important adults or family members in her/his life
- How the parents feel about the situation
- When the minor last saw the parents
- Whether the minor has hopes of reuniting with the parents
- How is the living situation in guardian's home (number of bedrooms; name, age, and gender of all residents in home; where minor will sleep)
- What are the reasons that the guardianship is needed: why the parents are unable to care for the minor?
- Whether the minor has any special emotional, physical, psychological, or educational needs and the plans of the guardian to provide for those needs
- Whether the minor was/is in therapy or is interested in seeing a therapist
- Whether the minor receives Supplemental Security Income (SSI) or other benefits
- Whether the proposed guardian needs a Caregiver Affidavit
- Whether proposed guardian is aware of CalWORKs

The minor should bring as many of these addresses as possible to the initial interview. Afterwards, the attorney and the petitioner will have to work together to try to obtain the addresses.

Additionally, the minor should bring her birth certificate to the initial interview. The child's birth certificate is required to be attached to the local forms in both Alameda (Alameda County Probate Guardianship Questionnaire) and San Francisco Counties (PGF-1).

a. Parents

Actual notice of guardianship proceedings must be given to parents (Prob. Code § 1511; Code of Civ. Proc. § 415.10 and 415.30) at least 15 days before the initial hearing. In addition to personal service, actual notice can be met if the parent either:

- signs the *Waiver of Notice and Consent* OR
- signs the *Notice and Acknowledgment of Receipt*.

If the parents fail to do either of these, parents must be **personally** served with the *Notice of Hearing of Guardianship*, the *Petition for Appointment of Guardian with Child Information Attachment*, and *Declaration under UCCJEA*.

The court may, however, dispense with the notice requirement if the petitioner can show that a parent's address is unknown and undiscovered through due diligence or that notice would be contrary to the interests of justice (Prob. Code § 1511(g)).

b. Diligent Efforts/Interests of Justice

If a parent's address is unknown, the petitioner must exercise reasonable diligence to find an address for the parent (Prob. Code § 1511). Since guardianship suspends the parental rights of custody and control over the minor, the reasonable diligence required is more extensive than that required to locate other relatives. A parent who is denied due process in notice may ask the court to vacate the order granting guardianship.

In making reasonably diligent efforts, the attorney must be guided by common sense. In the initial interview of the minor and proposed guardian, the attorney should obtain information about the parents, including: date of birth, last known address, place of employment, social security number, and the names of other persons who may know where the parent is and whether the parent is or was being served by DHS, has Social Security and/or is receiving Supplemental Security Income (SSI) benefits, is on probation, etc. Other avenues of inquiry include searching the telephone directory, conducting a search on the Internet, and conducting a real property search. If there is any reason to believe a parent or relative is incarcerated, the attorney should search prisoner databases for the relevant local, state, or federal jurisdictions. The attorney should also try to determine the amount of contact between the parent and the minor (e.g., when they last saw each other, when they last lived together, etc.).

Once this information is obtained, the attorney can decide how best to search for the parent. In general, due diligence is shown by whether, in light of the available information and the amount of contact between the parent and the minor, there exists an avenue of inquiry which has a reasonable probability of leading to the discovery of the parent's whereabouts.

This search must be documented as it is made, so that the attorney can include details of the search in a declaration to the court. A declaration by the attorney can be included in Attachment 10 to the *Petition for Appointment of Guardian of Minor* (GC-210) or in Attachment 10b to *Petitioner Info – Guardianship of the Person* (GC-210(P)) (see the instructions for the Petition in the following chapter). If the search is made after the petition has been filed, then the details should be set forth in a "Declaration of Due Diligence" and filed separately (See Sample in the Sample Forms Section). Every effort to find the parents should be made.

If neither the child nor anyone in the child's life knows where the parent is and the attorney has made reasonable efforts to locate the parent, the judge will probably dispense with notice.

In **Alameda County**, the Judge requires the attorney to present efforts in the format outlined in Cal. Rule of Court 7.52. The declaration must state the name of the person whose address is unknown, the last known address of the person, the approximate date when the person was last known to reside there, the efforts made to locate the person, and any facts that explain why the person's address cannot be obtained. The declaration must include a description of the attempts to learn of the person's business and residence addresses by: (1) inquiry of relatives, friends, acquaintances, and employers of the person entitled to notice and of the person who is subject of the proceeding; (2) review of appropriate city telephone directories and directory assistance; and (3) search of the real and personal property indexes in the recorder's and assessor's offices for the county where the person was last known of believed to reside.

c. Relatives Other Than Parents

For relatives whose addresses are unknown, the attorney should make a search much like the one for parents described above. The amount of contact between the minor and the relative is an important factor in measuring reasonable diligence. As with parents, notice can be dispensed with if the relative's address cannot with reasonable diligence be ascertained or if notice is contrary to the interests of justice (Prob. Code §1511(g)). Facts supporting these grounds must be alleged in Attachment 10 or 10b to the Petition or in a separate "declaration of due diligence" that may be filed later. In Alameda County cases, efforts should be presented in the format outlined in Cal. Rules of Court, rule 7.52, as described above.

Notice is not required for any child under the age of 12 years if notice is properly given to, or the petition is brought by, a parent, guardian, or other person having legal custody of the minor with whom the minor resides (Prob. Code § 1460.1). If the sibling under the age of 12 does not fall into any of these categories, then they will need separate notice, which can be satisfied with mailing the documents to them.

IV. GUARDIANSHIP: PREPARING THE PAPERS

Once you have met the client and the proposed guardian, and you have gathered the information you need, the technical work begins: filling out the paperwork. Copies of all the judicial council forms needed are available in the San Francisco Superior Court Clerk's office and online at <https://www.courts.ca.gov/forms.htm?filter=GC>. Additionally, sample forms for each judicial council form to be filed in court are in the Sample Forms section. It is important to note that the forms for LSC clients should be filled out on behalf of the minor who is the petitioner. LSC Pro Bono attorneys are welcome to call their mentor attorney at LSC for assistance.

A. OVERVIEW

The goal of legal guardianship proceedings is to obtain two important documents that vest legal custody of a minor to a guardian: 1) the **Order Appointing the Guardian** and (2) the **Letters of Guardianship**.

The letters are issued by the County Clerk after the Probate Court Judge signs an *Order Appointing Guardian*. The order is made at a hearing in Probate Court. The hearing is obtained by filing a *Petition for Appointment of Guardian of Minor*, a *Guardianship Petition- Child Information Attachment*, a *Declaration Under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)*, a *Consent of Proposed Guardian*, a *Confidential Guardianship Screening Form*, *Duties of Guardian* and a *Confidential Declaration of Proposed Guardian (SF only)* of *Alameda Probate Guardianship Questionnaire (Alameda only)* with the Probate Clerk.

When the *Petition for Appointment of Guardian of Minor* is filed, it must be accompanied by a filing fee or by a *Request to Waive Court Fees and Order on Court Fee Waiver*. Because the petitioner is the minor, LSC clients are eligible for a fee waiver. A *Notice of Hearing of Guardianship*, a copy of the *Petition for Appointment of Guardian of Minor with Child Information Attachment*, and *Declaration Under UCCJEA* must be mailed or personally served to those persons entitled to receive notice.

Proof that the *Notice of Hearing of Guardianship* and the *Petition for Appointment of Guardian of Minor* were properly served on people entitled to notice of the proceedings must be filed with the clerk. This proof can be made by completing the *Proof of Service by Mail* section on the second page of the *Notice of Hearing of Guardianship* and by completing the *Proof of Personal Service of Notice of Hearing* form for relatives entitled to receive personal service (unless such person has signed an *Acknowledgment of Receipt* or has waived notice on the *Consent of Proposed Guardian/Nomination of Guardian/Waiver of Notice and Consent* form). Note that you will file these forms after the paperwork has been filed with the court and after you have provided notice to the parties of the guardianship proceeding. Accordingly, multiple copies of the *Notice of Hearing of Guardianship* forms along with the applicable proof of service form(s) can be filed with the clerk (you may print copies of the *Notice of Hearing* form and insert the date of the

hearing yourself once you have it).

B. CAPTIONING THE DOCUMENTS

The top section of each paper is called the "caption." It is identical in most documents. (This does not apply for GC-210(P) or GC-110(P)).

- (1) In the upper left hand corner of the caption, list the Attorney's name, state bar number, law office name, address, phone number, fax number, and email of the attorney for the petitioner.
 - Type in the minor's name after "ATTORNEY FOR" in capital letters.
 - If your client is the PETITIONER put "ATTORNEY FOR PETITIONER, Kelly Kid, minor petitioner." All judicial council forms and pleadings should follow this format.
- (2) Type in the name of the court in the county in which the papers will be filed and the address of the Superior Court.

In San Francisco, the address is:
400 McAllister Street
San Francisco, CA 94102

In Alameda County, the address is:
2120 Martin Luther King, Jr. Way
Berkeley, CA 94704

For other counties you can look on the Court website to find the address.

- (3) On the forms which have blocks for plaintiff and defendant, enter: "In the Matter of the Guardianship of [First Name, Last Name], a Minor."
- (4) Check the appropriate boxes (Minor, Minors, Person, Guardianship, Conservatorship), on the forms which have boxes.
- (5) In the "Guardianship of" Box, type out each child's name in full. Do not use abbreviations like "et al."
- (6) Some information will not yet be available at the time of the initial filing. The clerk will assign the case number at the time of filing. For subsequent filings, include the case number that the clerk assigned at the initial filing. The clerk will also include the date and time of the hearing at the time of the filing.

C. REQUEST TO WAIVE COURT FEES (Judicial Council Form: Fee Waiver, FW-001-GC)

To file a petition for guardianship, a filing fee must be paid, or the fee must be waived. The fee for a guardianship petition in San Francisco as of September of 2017 is \$450. The fee can be waived if the petitioner:

- receives public benefits (Supplemental Security Income, Aid for Families with Dependent Children/Temporary Aid to Needy Families, Food Stamps, County Relief, General Relief or General Assistance, MediCal);
- has a gross monthly income that is less than the amount shown on the *Information Sheet* available online or at the County Clerk's office; or
- receives insufficient income to pay for the common necessities of life.

If seeking a fee waiver, the petitioner should complete a *Request to Waive Court Fees* (FW-001-GC) and an *Order on Court Fee Waiver (Superior Court)* (FW-003-GC) and submit them at the time of the initial filing in place of a check. Note, that the petitioner for any new LSC client is the minor child. In San Francisco, this form is filed along with the initial guardianship paperwork at the Superior Court's Probate filing window. In San Francisco, when approved, orders waiving court fees and costs are mailed to the attorney of record.

Alameda County will not accept the Judicial Council form Order on Application for Waiver of Court Fees and Costs (FW-003-GC), but rather generates fee orders electronically. In Alameda, the status for applications for fee waiver can be checked at <http://apps.alameda.courts.ca.gov/domainweb/html/index.html>. If you need a copy of the order, for example to allow for personal service of parents by law enforcement, you will need to retrieve the order from the clerk's office or provide a self-addressed, postage-prepaid envelope at time of filing.

Having a signed fee waiver order can be particularly important if you need to use the sheriff for service of process since they will provide this service for free if you have a fee waiver order. No guardianship paperwork can be filed without either a *Request to Waive Court Fees* (FW-001-GC) and *Order on Court Fee Waiver* (FW-003-GC) or a check. This procedure varies by county, so check the local Clerk's office.

Item 1: Type in the name, address and phone number of the minor petitioner.

Item 2: Type in your name, bar number, and contact information

Item 3: Type in the name, address and phone number of the minor petitioner.

Item 4: Type in your name, bar number, and contact information Item 5:

Type in t

Item 6: Check the first box before "Superior Court" only

Item 7: Check if applicable

- Item 8a: If the petitioner receives financial assistance through any of the listed programs, check the appropriate boxes. If the petitioner does not receive financial assistance through the programs, proceed to Item 5b.
- Item 8b: If the petitioner is not receiving financial assistance and her/his income is less than the amount shown in the included chart, check this box.
NOTE: Item 5b should ALWAYS be checked. This is the most frequently used basis for a fee waiver when the minor is the petitioner, as the minor's income is usually less than the ceiling level.
- Item 8c: Check this box only if Items 5a and 5b cannot be checked. Also, check the box preceding "waive all court fees." If this box is checked, all information requested on the other side of the form, Items 14-18, must also be provided.
- Item 9: Check box next to "Person only, no estate."
- Item 10: Fill in information for the minor's parents. If unavailable state this in the form.
- Item 11: Check box next to "Person only, no estate."
- Item 12: Leave this section blank
- Item 13: Leave this section blank
- Item 14: (If necessary) Check if applicable
- Item 15: (If necessary) List the minor's income, if any
- Item 16: (If necessary) List income of other people in the home who depend on the minor for support or on whom the minor depends for support (Do not include income of the proposed guardian).
- Item 17: (If necessary) List money and property of other people in the home (Do Not include money or property of the proposed guardian)
- Item 18: (If necessary) List the household's monthly deductions or expenses (Do not include deductions or expenses of the proposed guardian)
- Item 8: 8a needs to be filled out. Generally, the minor's total monthly income is zero. DO NOT INCLUDE THE PROPOSED GUARDIAN'S INCOME.
- Item 9: Leave blank a. (1)-(4). Type "N/A--Minor Petitioner" next to "Total monthly income and household income" in item 9.
- Item 10: Type "0" next to item a. and leave the rest of this section blank.
- Item 11: Type "0" next to "Total monthly expenses" and leave the rest of this section blank.

Fee waivers for guardianships with minor petitioners are routinely granted in San Francisco County. However, in **Alameda** and other outlying counties, fee waiver forms filed by minors are scrutinized more closely. In other counties, you may wish to include a brief attachment to the form (utilizing Judicial Council Form MC-025). There is a check box in the lower left-hand corner of page 4 that allows for an attachment. The attachment should explain that the minor has the right to file a probate guardianship petition under the Probate Code but cannot do so without a fee waiver. Be sure to note any particular facts that support the granting of the requested waiver, such as the minor being a full time student and lacking income. See the Sample of Forms for an example.

D. ORDER ON COURT FEE WAIVER (Judicial Council Form: Fee Waiver FW-003-GC)

Only the front of the form is of concern to the applicant. Fill in the court name and address on the upper right-hand side of the form.

Item 1: Type in the name and contact information for the minor petitioner.

Item 2: Type in your name, State Bar number, and contact information.

Item 3: Type in the name and contact information fo the minor petition

Item 4: Type in your name, State Bar number, and contact information

Item 5: Write the date that you file the Request. If the client has received a fee waiver from the court in the past, check the box accordingly and fill in the date of the previously filed fee waiver.

Item 6: Check the box preceding "*Request to Waive Court Fees*," check box "a." and box "(1)."

Alameda County generally generates its own orders on fee waivers, so the Order on Court Fee Waiver (FW-003-GC) may not be used by the Court.

E. PETITION FOR APPOINTMENT OF GUARDIAN

(Judicial Council Forms: If petition is for appointment of guardian of person only, you can use either GC-210(P) or GC-210*.

*In an attempt to make the guardianship paperwork more accessible to petitioners who do not have attorneys, the court provides two versions of the Petition for Appointment of Guardian: the original Judicial Council form (GC 210) and a plain language version of that form (GC-210(P)). The versions are equivalent, and either can be filed to petition for guardianship.

1. GC-210 Form

Item 1: Fill in the name of the petitioner.

Item 1a/b: Letter a is for guardianship of the person; b is for a guardianship of the estate. Include the name, address, and telephone number of the proposed guardian in the appropriate space.

Item 1c(1): For guardianships of the person only, check this box and the box next to “because the petition is for guardianship of the person only” (Prob. Code § 2322).

Item 1c(2): In guardianships of the estate, see Probate Code § 2320 for bond requirements. If a bond is required, check the second box and fill in the appropriate amount (usually the amount equal to the value of the estate and the probable annual income and bond recovery amount).

Item 1c(3): If money has been or will be deposited into a bank account (most often a blocked account, pursuant to Prob. Code § 3413(a)), check the third box and fill in the total amount.

Item 1d/e: If an order is necessary to tailor the general power of the guardian of the minor's estate (Item 1d) or person (Item 1e), check the appropriate box and list the desired powers and reasons on a separate page under the heading of "Attachment 9" (for estate) or "Attachment 1e" (for person).

Item 1f: If notice to persons is not possible (e.g., address cannot be found) or you anticipate notice to persons will not be possible, or is not in the interests of justice (e.g., minor has never met grandparents), check this box. Set forth the details of the relationship between the relative and the minor and/or a summary of the search for the relative, on a separate page titled “Attachment 10.” If you need to submit an additional declaration later about efforts to locate a relative, you may do so on pleading and may title it “Supplemental Attorney Declaration of Due Diligence”. You should aim to file the declaration two weeks before the hearing; provide a courtesy copy to Room 202 of the Probate Department at 400 McAllister St. in San Francisco.

NOTE: This will be a frequently used item, since often at least one person entitled to notice cannot be located.

- Item 1g: Check this box if you seek any other orders not covered above, and then specify the orders and the reasons on a separate page headed "Attachment 1g." It is recommended that the attorney check this box and add an attachment requesting an order to be relieved as counsel of record when the guardianship is granted.
- Items 2: List the full name and date of birth for each proposed ward. Complete and attach a Child Information Attachment (GC-210(CA)) for each minor.
- Item 3: Check box b; the minor is the petitioner.
- Item 4: Check all appropriate boxes. Mark a) where the proposed guardian has been nominated to become the guardian; b) if the proposed guardian is a relative; and c) where the proposed guardian is unrelated to the minor.
- Item 5: Check this box if petitioner intends to adopt the minor.
- Item 6: Check this box if someone other than the proposed guardian has been nominated to be the minor's guardian. Enter that nominee's name and address and attach the nomination separately as Attachment 6. This person is entitled to **personal service** of the *Notice of Hearing of Guardianship*. If s/he cannot be located, s/he should be included in Attachment 10, the attachment requesting that notice be dispensed for people who cannot be located.
- Item 7: For guardianships of the **estate**, list the character and value of minor's estate. If this is a guardianship of the **person** only, leave this item blank.
- Item 8: Check the appropriate box or boxes. Describe the reasons why the guardianship is "necessary and convenient." If you need to, continue reasons in Attachment 8. Check "Parental custody would be detrimental to the minor or minors named in 2" and include facts supporting this standard if there is any chance that a parent will contest.
- Item 9: If Item 1e (tailoring the general powers of the guardian) is checked, check this box. Be sure to include "Attachment 9." If this is a guardianship of the **person** only, leave this box blank.
- Item 10: If Item 1f (requesting that notice be dispensed with) is checked, check the appropriate boxes here as well. Be sure to include reasons to dismiss with notice and due diligence for each person you are requesting notice be excused to in Attachment 10 for each person. Refer to Chapter II for standards and instructions for the declaration.
- Item 11: If the proposed guardian of the person **is not a relative** of the minor, complete this section.
- Item 11(a): Check this box if the petitioner is the proposed guardian.

Item 11(b): If the petitioner is not the proposed guardian (e.g., the minor is the petitioner), then the second box should be checked and Attachment 11b should be completed as follows: "I, [NAME], the proposed guardian, will promptly furnish upon request all information requested by any agency referred to in § 1543 of the Probate Code." This should be signed and dated by the proposed guardian and filed with the petition.

Item 11(c), (d): Check the appropriate boxes.

Item 12, 13: Check the appropriate boxes if the listed documents are filed with the petition. A *Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)* (FL-105/GC-120), *Consent of Proposed Guardian* (GC-211, item 1), and *Confidential Guardian Screening Form* (GC-212) are filed in all cases. These boxes should ALWAYS be checked. Also check the "Other" box and type "*Request to Waiver Court Fees, Duties of Guardian, Declaration of Proposed Guardian, Child Information Attachment*" (Do not include "Declaration of Proposed Guardian" in counties other than San Francisco). Also, list any other documents being filed with the petition.

Item 14: Indicate the number of pages attached.

The petition must be dated and the attorney and all petitioners must sign the petition. The name(s) of the petitioner(s) should be typed next to the signature lines.

2. GC-210(P) Form (*alternate form to the GC-210, file either version but NOT both*)

At the top of the page, type the minor's name to complete "Guardianship of the person of:"

Item 1: Type in the name of the minor.

Item 2: Fill in the current address and phone number of the minor.

Item 3: Check the box. Fill in attorney's name and office information.

Item 4: Check the second and third boxes. Provide the name, address and phone number of the proposed guardian after the second box and the minor's date of birth after the third box.

Item 5: Check the appropriate box or boxes; a) when the proposed guardian is a relative; b) when the proposed guardian is unrelated to the minor; and c) if the proposed guardian has been nominated by a parent.

Item 6: Check this box if the proposed guardian is unrelated to the minor. Check the appropriate boxes that follow. If the petitioner is a minor, you will check box c) and provide an Attachment 6 that reads: "I, [NAME], the proposed guardian, will promptly furnish upon request all information requested by any agency referred to

in §1543 of the Probate Code." This should be signed and dated by the proposed guardian and filed with the petition.

Item 7: Check this box if someone other than the proposed guardian has been nominated to be the minor's guardian. Write "Form GC-210 (P)- Attachment 7: Nomination of Another Person as Guardian" at the top of the nomination and attach it to the petition. Also, enter that nominee's name and address in item 2 of the Guardianship Petition- Child Information Attachment. This person is entitled to personal service of the Notice of Hearing of Guardianship. If s/he cannot be located, s/he should be included in Attachment 10b, the attachment requesting that notice be dispensed for people who cannot be located.

Item 8: Type the full name and date of birth for the proposed ward(s).

Item 9: Describe the reasons why the guardianship is "necessary and convenient." If you need to, continue reasons in Attachment 9. If there is any chance that a parent will contest, explicitly state why parental custody would be detrimental to the minor(s).

Item 10b: If notice to persons is not possible (e.g., address cannot be found) or is not in the interests of justice (e.g. minor has never met grandparents), check this box. Type the name of the minor, the name of the person to whom you want the court to excuse notice, and their relationship.

Set forth the details of the relationship between the relative and the minor and/or a summary of the search for the relative, in Attachment 10b. Be sure to include reasons to dismiss with notice and due diligence for each person you are requesting notice be excused to in Attachment 10b for each person (See Sample Forms section). If you need to submit an additional declaration later about efforts to locate a relative, make sure it is clearly marked as "Amendment to Attachment 10b: Declaration re: Notice to ___" and is filed two weeks before the hearing or a courtesy copy is brought to Room 202 of the Probate Department at 400 McAllister St. in San Francisco.

NOTE: This will be a frequently used item, since often at least one person entitled to notice cannot be located.

Item 10c: Check this box if you seek any additional orders. Specify the orders and the reasons. Check the second box and continue on a separate page headed "Form GC-210(P)- Attachment 10c: Additional Orders" if you need additional space.

Item 11: Check the appropriate boxes if the listed documents are filed with the petition. A *Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)* (FL-105/GC-120), *Consent of Proposed Guardian* (GC-211, item 1), and *Confidential Guardian Screening Form* (GC-212) are filed in all cases. These boxes should ALWAYS be checked. Also check the "Other" box and type "*Request to Waiver Court Fees, Duties of Guardian, Declaration of Proposed Guardian, Child Information*

Attachment.” (Do not include “Declaration of Proposed Guardian” in counties other than San Francisco.) Also, list any other documents being filed with the petition.

Item 12: Type the total number of pages attached to the Petition.

The petition must be dated and the attorney and all petitioners must sign the petition. The name(s) of the petitioner(s) should be typed next to the signature lines.

F. GUARDIANSHIP PETITION- CHILD INFORMATION ATTACHMENT

(Judicial Council Form: (GC-210 (CA))

A separate form is filled out for EACH minor needing a guardian.

The Child Information Attachment needs to be attached to the Petition for Appointment of Guardian (GC-210 or GC-210(P)) for both filing and when serving notice.

Item 1a: Fill in the minor’s full name and date of birth.

Item 1b: Fill in the minor’s current address.

Item 1c: Check the appropriate boxes for (1) and (2). Additional information is required if yes is checked for either (1) or (2). See Chapter VI. C. for details. If a child is of Native American descent, there are special notice requirements under I.C.W.A.

Item 1d: Check the appropriate box(es).

Item 1e: Check the appropriate box. If “Yes” is checked, fill in the following chart. If the minor’s family receives CALWORKS, but the minor is not in the home, then the minor is not receiving benefits.

Item 1f: Fill in name and address of the person with legal custody of the minor.

Item 1g: Fill in the name and address of the person with whom the child is currently living. This is usually the proposed guardian.

Item 1h: Check this box if the minor(s) has been involved in any other court proceedings and give details of the case type below.

Item 1i: Check this box if appropriate and fill in additional information. Although the minor will rarely be an institutionalized patient, the possibility should be addressed in the initial interview.

Item 2: Fill in the names and addresses of the minor’s relatives. Check the box below and continue listing names and addresses on an attachment labeled “Form GC-210 (CA)” the name of the child, and “Item 2:-Other Siblings” if more space is needed. If there

is another person nominated as the guardian of the minor other than the proposed guardian of this petition, be sure to include the name and address of that person at the bottom. When listing siblings, put their ages in parenthesis so that the court can tell whether they are entitled to notice.

Item 3: Type a) the name of the proposed guardian and b) the relationship to the minor(s).

Item 4: Use this space to describe why the proposed guardian would be best for the child. If there is any chance that a parent will contest the guardianship, explain the reasons why parental custody of the minor would be detrimental. Continue on "Attachment 4:-Best Interest of Child" if more space is needed.

Item 5: Check the appropriate boxes.

Item 6: Check the appropriate boxes.

Item 7: Check this box and then check "Not a relative." Type "(self) minor petitioner."

Item 8: Check the appropriate boxes.

Item 8c: This box should be checked in most cases.

Item 8c(1): Write "Form GC-210(CA)," the name of the child, and "Attachment 8c(1):—Indian Child Inquiry" at the top of each page of paper you attach to this form to complete item 1. Write the names, relationships to the child, addresses, and telephone numbers, of the persons interviewed to collect or confirm the information given below, and the date or dates the interviews took place

Item 8c(8): Check this box if the child has no known Native American ancestry.

G. DECLARATION UNDER UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA) (Judicial Council Form: FL-105/GC-120)

This form is filed with all guardianships of the person or of the person and estate (not for guardianships of the estate only). This form is self-explanatory, requiring previous addresses for the minor for the previous five years and information about court hearings involving the child's custody. It is perfectly acceptable if some items are filled with incomplete information; just include as much information as the minor can recall (e.g. "22nd Street" and "dates unsure").

The parents are considered parties to the proceeding for the purposes of Item 6. Therefore, if the minor is living with the proposed guardian but the parents have full legal custody and there are no others who claim custody or visitation rights, the question should be answered "no."

The declarant should usually be the petitioner, but could also be the proposed guardian or the parent. Be sure that the declarant signs and dates this form in the spaces provided at the bottom of page two.

**H. CONSENT OF PROPOSED GUARDIAN/NOMINATION OF GUARDIAN/
CONSENT TO APPOINTMENT OF GUARDIAN & WAIVER OF NOTICE AND
CONSENT** (Judicial Council Form: GC-211)

It may be helpful to think of this document in three sections. The first section applies to the proposed guardian, the second applies to the parents, and the third applies to both. For all guardianship of person cases, the proposed guardian(s) must sign the first section of this form consenting to serve as the legal guardian of the minor (Item 1) and the box "*Consent of Proposed Guardian*" should be checked. The form as completed by the proposed guardian must be filed with the Petition in all cases. If there is more than one proposed guardian, each guardian must sign and file a separate form. It is recommended that the proposed guardian also sign the 3rd section waiving notice, otherwise the attorney will have to have the guardian sign this at a later date or personally serve the guardian.

The second and third sections of the form concerns the minor's parents. This form is usually mailed along with an explanatory letter to each parent. A self-addressed stamped envelope should be enclosed. See sample Forms Section. Whether or not the parent (or person who has legal custody) signs this form will depend on circumstance and whether this individual consents to legal guardianship over the minor or not. If a parent consents to the guardianship, the parent should sign and date both the second and the third sections (Items 2-4), the *Nomination of Guardian* and the *Consent and Waiver of Notice*.

Usually, the proposed guardian and each parent sign separate forms, unless they are all present to sign the form at once. Accordingly, there will likely be more than one of these forms filed with the Court. All information should be typed before giving or sending it to the respective parties to sign. In addition, it helps to make a red "x" at each line where the person should sign or date the form. This will facilitate accuracy in the completion of the forms.

Legally, if a parent signs the Waiver of Notice and Consent, and that form is filed along with the Petition, the parent need not be given notice. However, it is LSC's practice to send the Notice of Hearing and a copy of the Petition to the parents, if possible to provide context of the case to the parent. Note that the form with these sections completed may be filed after the initial guardianship paperwork is filed with the court. If the parent does not provide consent and does not sign the Notice and Acknowledgment of Receipt (see Section M, below), then personal service may be necessary (see Section N, below).

I. DECLARATION OF PROPOSED GUARDIAN (SAN FRANCISCO ONLY)

(Local Form, PGF-1)

San Francisco County requires that a local form, *Declaration of Proposed Guardian* (PGF-1), be filed with the guardianship petition (Super. Ct. S.F. County, Local Rules, rule 14.76(D)(1)). It can be found on the Court website at <https://www.sfsuperiorcourt.org/forms-filing/forms>. The form is labeled “Confidential” and is thus filed separately in a folder marked “Confidential” by the Court Clerk. If there is more than one proposed guardian, each guardian will need to provide a separate declaration. The child’s birth certificate, most recent report card, and immunization records are required to be attached to this form (question number 16).

J. CONFIDENTIAL GUARDIANSHIP SCREENING FORM (Judicial Council Form: GC-212)

Item 1: Fill in appropriate information for proposed guardian.

Items 2-19: Check appropriate boxes. If the answer is yes to any of the questions an attachment (Form MC-025) will need to be prepared explaining why. Even though the guardian answered yes to a question, this may not be an impediment to them being an appropriate guardian. For example, if the guardian has an arrest in the past for drug sales the attachment should explain that the arrest was long in the past and explain what changes the guardian has made since that time. (For example, participation in a substance abuse treatment program). The attachment should include as much information as possible about any remedial actions (such as participation in a substance abuse program) that the proposed guardian has taken.

Items 20-22: Type in minor’s contact information: name, school name and phone number, and home phone number.

If there is more than one proposed guardian, each guardian will need to fill out a confidential guardianship screening form.

K. DUTIES OF GUARDIAN (Judicial Council Form: GC-248)

This form must be read and signed by the proposed guardian. Caption the document and make sure to put the minor’s name on the top of each page. Print the guardian’s name on the last page, under “Acknowledgement of Receipt” and put the date. Be sure to review these duties with the guardian before having her sign the form. The language of Item 1 under “Acknowledgement of Receipt” on the last page should be changed to reflect that the minor is the petitioner, not the proposed guardian. Leave a blank copy of this form with the proposed guardian for their records

L. NOTICE OF HEARING OF GUARDIANSHIP (Judicial Council Forms: Guardianship and Conservatorship Directory, GC-020)

Copies of this document will be mailed or personally delivered, together with a copy of the *Petition for Appointment of Guardian* to people entitled to notice of the guardianship hearing. The *Notice of Hearing of Guardianship* informs the person that a guardianship petition has been filed and that a hearing will occur at a specified time and place.

The first page of the form must be partially completed and filed with the Petition. Before filing guardianship papers, complete the following:

Complete the top caption. The case number will be assigned and stamped in at the time of filing.

Item 1: Type in the minor's name and the words "PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR."

Item 3: Check this box only if Item 1-e on the *Petition for Appointment of Guardian* is checked and you are requesting the independent exercise of powers under Probate Code §2590. If you check this box, include an Attachment 3 detailing the powers sought. This is only for guardianships of the estate and will likely not apply in your case

Item 4: (a) Type in the time (if known), department name or number, room number in the courthouse, and in (b) the courthouse address. The date will be stamped in at the time of filing the petition.

NOTE: In San Francisco, all guardianship hearings are on Tuesdays at 1:00 pm in the Probate Department, Room 204.

On page 2 of the *Notice*, fill out the top caption box. This is all the information you need to include on this form at time of filing.

You will likely be filing multiple versions of this form as you notice parties of the proceedings. After you have filed the *Petition for Appointment of Guardian* and obtained a hearing date (which the clerk will stamp on the *Notice of Hearing*), you may complete the *Proof of Service by Mail* section on page 2 of the *Notice* (items 1-5) once you mail copies of the paperwork to the individuals entitled to notice. Each person who is noticed should be listed, along with their address, in one of the boxes on the form.

In almost all cases, you will have more than four names to include. Check the box labeled "Continued on Attachment" and continue your listing on form GC-020(MA) *Attachment to Notice of Hearing Proof of Service by Mail*. This attachment is attached directly to the back of the *Notice of Hearing* form.

Note that if you have personally served an individual entitled to notice of the proceedings, you must use form GC-020(P) *Proof of Personal Service of Notice of Hearing - Guardianship or Conservatorship* (See Section O, below). The form should also be stapled to the back of the *Notice of Hearing* form; there may be multiple versions of this document filed due to parties being served at different times.

M. NOTICE AND ACKNOWLEDGMENT OF RECEIPT (Judicial Council Form: POS-015)

Probate Code § 1511(b) requires personal service of the *Notice of Hearing* and the *Petition* on the following persons: the proposed ward (if age twelve or over), the person having legal custody of the proposed ward, the parents of the proposed ward, and any person nominated as guardian for the proposed ward (Prob. Code § 415.10 also refers to personal service).

This form is used as a substitute for personal service of the *Notice of Hearing* and the *Petition*. It is not needed for parties who are personally served (usually the minor and the proposed guardian), have already signed the *Waiver of Notice and Consent* form (see above), or cannot be located.

The *Notice of Hearing*, a copy of the *Petition*, and **two copies** of the *Notice and Acknowledgment of Receipt* should be mailed to each person (usually the parents) along with a cover letter requesting the person to sign and date the *Acknowledgment*, and to fill in the date on which the *Notice* was received. It is also best to also include a Consent form to a parent in case they are willing to sign that form. The person should also be requested to mail the *Acknowledgment* back to the attorney. A self-addressed stamped envelope should be provided for that purpose.

The caption should be completed as it was on the *Petition*, including the case number that was assigned at the time of filing

- (1) Type in the name of the person to whom the *Notice* will be sent.
- (2) Type in the date on which the *Notice* is sent. The person sending it should sign it.
- (3) Place an "X" in the box next to the word "Other," and type in the words "Petition for Appointment of Guardian of Minor" and "Notice of Hearing (Guardianship)."
- (4) Leave the bottom lines blank. It is usually helpful to place a red "x" by the lines for the person's signature, name, and the dates.

N. PROOF OF PERSONAL SERVICE OF NOTICE OF HEARING- GUARDIANSHIP AND CONSERVATORSHIP (Judicial Council Form: GC-020(P))

When a person who is entitled to personal service of the *Petition* and *Notice of Hearing* is personally served, a *Proof of Personal Service* must be completed and signed by the person who made the service. Form GC-020 (P) is the form used to document personal service.

Items 3 and 4: LSC generally checks both box 3 and box 4. In box 4, list the forms served along with the *Notice of Hearing*. This should generally include at least the *Petition for Appointment of Guardians of Minor, Child Information Attachment, and Declaration under UCCJEA*.

Items 5 and 6: Before filing this form, make sure that it has been completed by the person who performed service. Completion of the form means that one or more boxes in Item 5 are checked; the server's name, address, and telephone number are listed in Item 6; the full name of each person served and the address of each service is noted in the numbered boxes; the date and time of each service is noted; and that the form is both dated and signed at the bottom.

This form is intended to be filed in conjunction with the *Notice of Hearing* form. Once you have completed all required notice and service, file the *Notice of Hearing GC-020, Attachment to Notice of Hearing GC-020(MA), and Proof of Personal Service GC-020(P)* forms together at the court.

Note that if you use a sheriff's office or a private process server to serve parties, they will often insist on using their own proof of service forms rather than the Judicial Council form. This is generally acceptable to the court, as long as the proof of service contains a sworn declaration, under penalty of perjury, that the service occurred.

For more information on Proof of Service, see the Judicial Council Form titled "*What is Proof of Service in a Guardianship?*" sheet and the San Francisco Court Fact Sheet titled "*How to Give Notice of A Guardianship Petition*" both found in the Sample Forms Section

O. ORDER APPOINTING GUARDIAN OF MINOR (Judicial Council Forms: GC-240)

This form, as well as the *Letters of Guardianship*, need not be completed at the time of the initial filing. The *Order* is the document signed by the judge appointing a person guardian of a minor, and directs the clerk to issue *Letters of Guardianship*.

However, a proposed *Order* must be filed at least two weeks before the hearing. In San Francisco County, Local Rule 14.6 requires the *Order* to be submitted to the probate courtroom at least two (2) weeks before the scheduled hearing date, with the scheduled hearing date noted on the face sheet. The proposed order should be prepared on the assumption that the petition will be granted. You may also submit the proposed Order at the same time you file the initial guardianship paperwork.

The caption should be completed as it was on the *Petition*, including the case number that was assigned at the time of filing.

Item 1a: Type in the judge's name. This item may be left blank until the hearing.

- Item 1b: Type in the hearing date, time, and department. In San Francisco, guardianships are heard at 1:00 pm in the Probate Department, Room 204.
- Items 1c,d: Type in the petitioner's name and the petitioner's lawyer's name, if any.
- Item 1e: Type in the minor's lawyer's name (usually LSC or Panel attorney), address, and phone number.
- Item 2a: Mark the first box if addresses for all required persons have been obtained and a *Notice of Hearing* and *Petition* has been mailed or served upon all of them.
- Item 2b: Mark the second box if you are requesting that notice be waived to any person entitled to receive it. The box "should be dispensed with" should be marked, and the names of those relatives whose addresses could not be found should be entered here.
- Item 3: Mark the appropriate box: guardianship of person.
- Item 4: If the client is over 18 check this box.
- Item 5: Mark this box only in those rare cases in which a guardian of the estate is being appointed and the powers of that guardian will be tailored.
- Item 6: Mark this box only if the attorney has been appointed by the court.
- Item 7: Mark this box and supply the requested information if appropriate. This will usually be someone in Family Court Services if a guardianship petition is contested.
- Item 8a: Fill in the name, address, and phone number of the proposed guardian of the **person** of the minor, and the name of the minor.
- Item 8b: Fill in the name, address, and phone number of the proposed guardian of the **estate** of the minor, if any, and the name of the minor.
- Item 18c: Fill in the name, address, and phone number of the proposed guardian if the guardianship is to be extended past the ward's 18th birthday.
- Item 9: If the last box of Item 2b is marked (indicating relatives you were unable to locate), then this box should also be marked.
- Item 10: Always mark at least one of these boxes. Usually it will be the first box (bond not required for guardianships of the person).
- Item 11: LSC does not charge fees, so do not mark this box.

- Item 12: Mark this box only for guardianships of the estate, and then only if Item 4 is also marked. If you mark this box, attach Attachment 11, specifying the requested powers.
- Item 13: Mark this box only if the *Petition* requested a tailoring of powers of the guardian of the person of the minor. If so, attach Attachment 12, specifying the requested powers.
- Item 14: Mark this box only for guardianship of the estate.
- Item 15: Mark this box if you have made a request to be relieved as counsel (petition box 1g) and include attachment 15 granting your request.
- Item 16: Mark this box if a probate referee was appointed (this is very rare).
- Item 17: Type in the number of boxes marked in Items 9-16.
- Item 18: Type in the number of pages attached to the Order.

Finally, type in the date of the hearing. Leave the space for the judge's signature blank.

P. LETTERS OF GUARDIANSHIP (Judicial Council Forms: GC-250)

This is the document, which, when completed and stamped by the clerk, gives the guardian custody of the minor. Bring a copy with you to the hearing and have the guardian sign after the order is issued. Then file with the clerk and ask for two certified copies, one for the guardian and one for your records.

The caption should be completed as it appears on the *Petition and Notice of Hearing*.

- Item 1: Type in the name of the guardian, mark the appropriate box (es), and type in the name of the minor.
- Item 2: Type in the name of the guardian and the name of the minor if the guardianship is to be extended past the minor's 18th birthday.
- Items 3 & 4 These boxes should not be marked unless the powers of the guardian have been specially tailored.
- Item 5: Type in the date of the minor's 18th birthday (or 21st birthday if minor over 18)
- Item 6: Type in the number of pages attached (usually zero, unless Items 2 or 3 have been marked).
- Affirmation: Type the date and city in which the guardian signs this affirmation.

Certification: Leave this item blank. When the clerk issues the letters after the judge signs the *Order*, ask the clerk for at least two certified copies: one for the guardian and one for the ward. If fees have not been waived, there will be a small fee charged by the Clerk to copy and certify the documents.

Make sure the guardian signs the *Letters of Guardianship* after the hearing. The name signed by the guardian must be EXACTLY the name typed on the ORDER including middle and last names.

V. GUARDIANSHIP: FILING, NOTICE, HEARING, CONCLUSION

After the papers are prepared, you are on your way! This section discusses final preparation of the papers for filing, the process of filing, the details of providing notice of the guardianship hearing to those entitled by law to notice, the guardianship hearing, and the final wrap-up of the guardianship process for pro bono attorneys. Feel free to reach out to your LSC mentor attorney as needed.

A. HOME VISIT

After the papers are completed, they must be signed by the minor/petitioner and the proposed guardian. This is often a good opportunity to make a home visit to ensure that everything is going well and that the home is as you described it in the initial guardianship paperwork.

In LSC's experience, as the filing date approaches, the minor often has many questions. Building in some time for discussion when you meet to sign the papers is often a good idea.

B. FILING THE PAPERS

a. Copies

In San Francisco, you will need to bring the originals plus three copies of all documents to the clerk's office for filing. In Alameda bring the original and two copies. Group each document with its copies, placing the original on top. The originals must be two-hole punched on top and paperclipped, the copies may be stapled.. The clerk will take two copies from you. One copy is for your records, and, in San Francisco, it is highly recommended to leave a copy in an envelope marked confidential in the Probate Court "courtesy copies" box in Room 202. You can make copies of the endorsed-filed papers later when you are ready to serve the individuals entitled to notice of the proceedings. Copies of the *Notice of Hearing, Petition for Appointment of Guardian, Child Information Attachment, and Declaration Under UCCJEA* go to all persons entitled to notice (LSC refers to these copies as "notice packets".)

b. Filing

When the documents are ready for filing, take the originals and the copies to the probate window in the Superior Court Clerk's office on the first floor of 400 McAllister Street in San Francisco and for Alameda County take the forms to 2120 Martin Luther King Jr. Way in Berkeley.

Give the originals and one copies to the clerk, in the following order:

1. Request to Waive Court Fees and Order On Court Fee Waiver (in SF only) or a check for the filing fees
2. Notice of Hearing
3. Petition for Appointment of Guardian
4. Child Information Attachment (attached to petition)
5. Consent of Guardian
6. Duties of Guardian
7. Guardianship Screening Form
8. Declaration under the UCCJEA
9. Declaration of Proposed Guardian (with all attachments; only in San Francisco)
10. Alameda County Guardianship Questionnaire (only in Alameda County).
11. Other documents when necessary (for temporary guardianship procedures, see Chapter VI, below)

The clerk will examine the documents to ensure they are in proper form. The clerk will assign a case number and stamp this number on all the originals. Next, the clerk stamps "Original-Filed" in the upper right corner of the original forms, and stamps "Endorsed-Filed" on each of the other copies. Although the clerks may not provide legal advice, they are generally helpful and will assist in making sure the filing is done properly. Papers designated as confidential, such as the Declaration of Proposed Guardian, are kept separated within or separately from the public court file folder and are not available to the public.

The clerk will stamp the hearing date on the *Notice of Hearing*. Usually the hearings are scheduled far enough in advance to ensure that the probate investigator has ample time to conduct an investigation and prepare a report. You may also at this time suggest dates that work with your schedule.

C. NOTICE: SENDING OUT NOTICE

Probate Code § 1510 and 1511 requires service of the *Notice of Hearing of Guardianship*, with a copy of the *Petition for Appointment of Guardian*, *Child Information Attachment*, and *Declaration Under UCCJEA* on the following persons:

- The proposed ward, if age twelve or over
- The proposed guardian
- The person having legal custody of the proposed ward
- Relatives of the proposed ward within the second degree (grandparents, parents, siblings). Minors who are under 12 do not need to receive separate notice if the adult they live with receives notice and has custody over them.
- The local agency designated to investigate guardianships (in San Francisco, the Human Services Agency completes these investigations)
- For non-relative guardianships, the State Department of Social Services

In addition, notice must be provided to any Native American or Indian tribes with which the child may be affiliated. For more information, see “Guardianship of Children with Native American or Indian Heritage” in the “Guardianship Variations” section of this manual.

a. Prepare Notice of Hearing Packages

Once you have filed the *Petition* with the court and received a hearing date, make sure that the hearing date, time, and location are entered on the front of the *Notice of Hearing*.

b. Sending the Notice Packages

Once the *Petition* has been filed and the *Notice of Hearing* is drafted, it is time to send out notice by mail.

Make copies of the *Notice* and *Petition* with all attachments (*Declaration under UCCJEA* and the *Child Information Attachment* are considered attachments to the *Petition*) for all the parties entitled to notice. Address and stamp an envelope for each person entitled to notice. A separate envelope must be sent to each recipient, even if her/his address is the same as that of another recipient (i.e., grandparents living in the same home receive separate notice).

The law requires that the proposed ward, the proposed guardian, all relatives within the second degree of the minor (parents, grandparents, and siblings), and “any person having legal custody of the ward or serving as the guardian of the estate” be given *Notice of Hearing of Guardianship*, a copy of the *Petition for Appointment of Guardian* with the *Child Information Attachment*, and *Declaration Under UCCJEA* at least **15 days** before the initial Guardianship Hearing (Prob. Code § 1511). The 15 day period runs from the date of the deposit in the mail and is not extended to include mail service (Prob. Code § 1215; *Bridgeman v. Allen* (2013) 219 Cal.App.4th 288, 294-95). There is no extension for out of state or international mailing.

1. Parents

If you have not sent the *Nomination of Guardian/Waiver of Notice* form to each parent previously, it should be sent to each parent at this time, along with an explanatory letter. Remember to include a self-addressed stamped envelope for each parent.

Each parent should be sent a copy of the *Notice of Hearing*, *Petition* with *Child Information Attachment* and, *Declaration Under UCCJEA*. Remember to include a self-addressed stamped envelope and two copies of the *Notice and Acknowledgment of Receipt* for each parent. A cover letter should also be sent, explaining the procedure and requesting them to mail back the *Consent/Waiver* and/or the *Acknowledgment* form (See Samples Section).

Legally, if a parent signs the *Waiver of Notice and Consent*, and that form is filed along with the *Petition*, the parent need not be given notice. However, in all cases LSC sends the *Notice of Hearing* and a copy of the *Petition for Appointment of Guardian* to the parents, if possible.

If the parent does not mail back the *Acknowledgment* form and no consent has been provided, then personal service may be necessary (see section below for personal service).

Pursuant to CCP § 415.30(d), if the person to whom the notice is sent fails to complete and return the acknowledgment form within 20 days of such mailing, that party shall be liable for reasonable expenses incurred in serving or attempting to serve them by another permitted manner.

2. Other Relatives

Each relative within the second degree (grandparents and siblings) must be sent the *Notice of Hearing* and *Petition* (with attachments) unless the *Petition* requests waiver of notice. Only these documents need be sent to relatives other than parents; the *Notice and Acknowledgment of Receipt* is unnecessary. Siblings over 12 years old should be sent these items themselves. If the sibling is under 12, they do not need to be sent notice if their custodian also received notice, otherwise they should be served just like any other party.

3. Notice to Agencies San Francisco

Within one week of the filing of the petition, you must send *Notice of Hearing* (GC-020) and a copy of the *Petition* (GC-210 or 210 (P) including *Child Information Attachment*), the *Declaration of Proposed Guardian (PGF-1)*, *Confidential Guardian Screening Form, (GC-212)* and any *Temporary Guardianship Order* (if applicable), to the local social services agency office in all cases (Prob. Code § 1516; Super. Ct. S.F. County, Local Rules, rule 14.77A2.). The agency is required to do a background check on all proposed guardians and other adults living in the same household to identify any child abuse allegations or criminal records. For this reason, the complete name, date of birth, driver's license number, and social security number of the proposed guardian and any other adults in the home should be included in a cover letter (or in a completed "*Who's Who Sheet*" found in the Sample Forms) to the local agency, when sending the *Notice of Hearing* and *Petition for Appointment of Guardian*. This is done as a courtesy in order to expedite the agency's background police and children protective services check. If any of the parties require an interpreter, please include that information in the cover letter or "*Who's Who Sheet*." A sample letter to San Francisco's Human Services Agency is located in the Sample Forms Section. (The following addresses were accurate as of October 2019):

The address for San Francisco is as follows:

ATTN: Jonathan Newsome, H166
San Francisco Human Services Agency
P.O. Box 7988
San Francisco, CA 94120-7988

If the proposed guardian is a non-relative, in addition to serving the Human Services Agency (as described above), a copy of the *Petition* and *Notice of Hearing* along with a cover letter or “*Who’s Who Sheet*” with the above mentioned information must also be sent to the State Department of Social Services (Prob. Code § 1542).

The address for the state is:

State Department of Social Services
Director of Social Services
744 P Street, M.S. 19-31F
Sacramento, CA 95814

The Court Investigator also conducts criminal background checks for **relative guardianships**, so if the proposed guardian is a relative, you may want to send a courtesy email to the Court Investigator with the names, date of birth, social security numbers, and driver’s licenses for all adults in the home OR use the “*Who’s Who Sheet*” which contains this information (see Appendix for a sample). If any of the parties require an interpreter, please include that in the email, as well. Include the same cover letter that you send to CPS. A sample email can be found in the Sample Forms Section.

Alameda County:

Notice in Alameda County differs for relative and non-relative proposed guardians. See “Sending in the Alameda County Guardianship Questionnaire.” The instructions can be found on the first page of the Questionnaire itself.

A copy of the *Petition with Child Information Attachment, Declaration Under UCCJEA and Proposed Guardian’s Questionnaire* must be mailed to Child Protective Services in ALL cases.

Also, if the proposed guardian is a **non-relative**, a *Notice of Hearing* and *Petition with Child Information Attachment, Declaration Under UCCJEA, and Proposed Guardian’s Questionnaire* must also be sent to the State Director of Social Services and the local agency designated to investigate guardianships (Prob. Code § 1542). Addresses of these agencies as of September 2017 are noted below.

Child Protective Service, K-230
P.O. Box 1769
Oakland, CA 94604-1769

Director of Social Services
744 P Street, M.S. 19-31
Sacramento, CA 95814

c. Proof of Service by Mail

Once you have mailed the notice packets to all parties, it is time to complete the *Proof of Service by Mail*, located on page 2 of the *Notice of Hearing* (Form GC-020).

Item 2: Enter the address of the person mailing the notice. The address must be in the county where the mailing takes place. If the petition is filed in another county, the person mailing the notices will normally do so after returning to San Francisco after filing the petition.

Item 3: Check the appropriate box.

Item 4: Type in the date and place where the mailing occurred. A separate *Proof of Service* should be completed if some notices are sent on a different date or by a different person.

Item 5: Check this box.

Fill in the date and the person's name who is completing the mailing. That person should sign it, and underneath that type in the name and address (exactly as it appears on the envelope) of each person to whom a *Notice of Hearing* was sent. In almost all cases, it will be necessary to include the *Attachment to Notice of Hearing* form, GC-020.

Once you have sent all the required notice and completed this form, you must file it with the clerk. Take the *Notice of Hearing* (you may generate a new first page and type in your hearing date) along with one copy, and file it with the Probate Clerk. Have the clerk endorse-file the copy for the attorney's file. Alternatively, you may mail the *Notice of Hearing* with the proof of service attachments to the clerk with a copy and a self-addressed, stamped envelope. The clerk's office will keep the original and return the copy, stamped "Endorsed Filed." The *Proof of Service* should be filed at least two weeks before the hearing. If there is an update that needs to be filed closer to the hearing date, please put a courtesy copy in the box in Room 202 of the Probate Department at 400 McAllister St. in San Francisco.

Note that the *Proof of Personal Service of Notice of Hearing* form, GC-020 (P), is also intended to be filed along with the *Notice of Hearing* form if individuals were personally served in your case. See the above discussion of this form (Section O, "Preparing the Papers", above) for further instruction on completion of this form.

**SENDING IN THE ALAMEDA COUNTY
GUARDIANSHIP QUESTIONNAIRE (ALAMEDA
COUNTY ONLY)**

Alameda County requires that proposed guardians fill out a multi-form packet, referred to as the Alameda County Guardianship Questionnaire. The packet requires detailed information about the ward and the proposed guardian for the use of Alameda County Child Protective Services and the Court Investigator's Office. If there is more than one proposed guardian, each guardian must complete a separate copy of the questionnaire. The last page must also be signed. The minor's birth certificate and most recent report card must be attached to this questionnaire.

If the proposed guardian is asking to be appointed as the Guardian of the Person, the court investigator generally will conduct a home visit. Everyone who lives in the home must be present during the home visit. After the questionnaire is received, the court investigator will contact the proposed guardian to schedule the home visit. The court investigation fee of \$800 may be waived based on financial inability to pay. File a *Request to Waive Court Fees* (FW-001) to obtain this waiver. No court investigator fee will be imposed in any case in which a fee waiver has been approved by the court (Super. Ct. Alameda County, Local Rules, rule 7.730).

The Alameda County Guardianship Questionnaire includes two forms: the *Confidential Guardianship Screening* (pursuant to Prob. Code § 1516) and the *Confidential Proposed Guardian's Questionnaire*. The packet is available in Alameda County Superior Court/Probate Clerk's offices or the Alameda County Court's website.

Although the first page of the Alameda County Guardianship Questionnaire states that it should be filed at the same time as the *Petition for Appointment of Guardian* is filed, the questionnaire can also be MAILED to the Court Investigator's Office with a copy of the *Petition* after the initial filing. The packet should be mailed to the following address:

**Court Investigator's Office
2120 Martin Luther King, Jr. Way
Berkeley, CA 94704**

In ALL cases, after the initial filing of the *Petition*, send the completed *Confidential Proposed Guardian's Questionnaire* and a copy of the *Petition* to CPS (address is located on the first page of the Alameda County Guardianship Questionnaire).

If the proposed guardian is not related to the child, mail a copy of the *Petition* and *Notice of Hearing* to the Director of Social Services in Sacramento (address is located on the first page of the Alameda County Guardianship Questionnaire).

Generally, these forms should be filed **at least 60 days prior** to the hearing. It is LSC's practice to complete these forms at the same time the initial guardianship paperwork is being completed. The Court Investigator's Office/CPS will use the information provided in their assessment of the suitability of the guardianship. In LSC's experience, the Alameda County courts do not waive the reports by these agencies. On the contrary, if the hearing date arrives before the investigation is complete; the parties must come to court to request a continuance.

D. NOTICE- PERSONAL SERVICE

If a person on whom personal service (the parents and guardian) is required does not send back the *Notice and Acknowledgment of Receipt*, or sign the *Waiver of Notice and Consent* (Form GC-211), the attorney must have that person personally served. Service must take place **15 days** prior to the hearing. It is preferable if someone other than the attorney serves notice. Pursuant to Code of Civil Procedure §415.30(d), the cost of personal service can be shifted to the person receiving the mail. The person serving must execute a *Proof of Personal Service*. The cost of this personal service can theoretically be charged to the person if the *Acknowledgment* is sent and not returned. As a practical matter, however, the chance of actual reimbursement usually is not worth the effort.

Where a party is personally served, GC-020(P), *Proof of Personal Service of Notice of Hearing- Guardianship or Conservatorship* is used. For further discussion on this form and instructions for its completion, see Section O, "Preparing the Papers," above.

You may ask your county's sheriff department to personally serve a party. In San Francisco, to request the sheriff to personally serve a party to the proceeding, call (415)554-7235. You will need to go to Room 456 in City Hall, located on the 4th floor. The San Francisco Sheriff's Department prefers that you bring them the notice package at least 45 days before the hearing date. Bring two (2) copies of your prepared Notice Package, which includes the *Petition* with all attachments, a *Notice of Hearing*, self-addressed stamped envelopes, and any other documents that you wish to include (See Notice II: Sending Out Notice section in this manual for details on how to prepare the Notice packet), a copy of the *Order on Court Fee Waiver* (if you do not bring the fee waiver order, the fee is \$35), and a signed letter of instruction to the sheriff (See Sample Forms Section). The San Francisco County Sheriff's Department generates their own proof of service forms. Each Sheriff's Department has a different process to request assistance with personal service, please check the website for the sheriff before sending them any forms.

E. THE GUARDIANSHIP HEARING

a. San Francisco

All guardianship and conservatorship matters in San Francisco are heard before the Probate Judge on Tuesday afternoons at 1:00 pm in Room 204, of the Superior Court of San Francisco, 400 McAllister Street, San Francisco. At least two weeks prior to the hearing, the attorney should call CPS worker or the probate investigator to make sure that they have

conducted a home visit. The attorney should call the minor and proposed guardian a day or two in advance to remind them about the hearing. The presence of the proposed guardian and ward is required. The calendar is usually posted outside the courtroom and is published on the day before and on the day of the hearing in The Recorder and The Daily Journal, San Francisco's legal newspapers. It can also be found on the court's website. At 1:00 p.m., the court shows a 20-minute video tape on conservatorships and guardianships produced by the court and the proposed guardian is required to watch this video. At approximately 1:30 p.m., the court will ask for any cases that need to be continued. The cases are then called in order. If a case is not ready when called, the judge or commissioner will usually pass the matter, and call it again at the end of the calendar.

When the case is called, all persons interested in the matter should advance to the front of the courtroom. The attorney, the minor, and the proposed guardian should take a seat at the counsel table. The attorney should identify all persons present, except persons represented by other counsel or representing themselves in opposing the *Petition for Appointment of Guardian*. The Judge may ask questions about any deficiencies or omissions in the papers, including notice. The judge will usually examine the agency and investigator's reports and may ask some questions about the minor's parents. The Judge will also want to be sure that the minor and the proposed guardian understand the nature of the proceeding and are in agreement with the proposed guardianship. Prepare your client for the possibility of the judge to asking a few questions (confirming the desire of the guardianship and how the minor is doing in school, for example). If there are notice issues, the judge will address them at the hearing and confirm that notice was provided or that there is sufficient evidence to dispense with notice.

When the Judge grants the guardianship, the attorney should be prepared to pass the proposed *Order* to the clerk or bailiff, who will hand it to the Judge. Note that the Court may already have your proposed *Order*, but be sure to bring a copy just in case. The Judge will examine the *Order*, sign it, and hand it back to the attorney. Examine the *Order* to see that it was signed and properly completed by the Judge. After thanking the Judge, everyone should leave the courtroom.

Once outside the courtroom, the guardian should sign the *Letters of Guardianship*. The group should then proceed to the clerk's office.

File the *Order* and the *Letters* and endorse-file the copies. At least two copies of the *Letters* should also be certified: one for the guardian, one for the minor. Note there is a certification fee, unless fees have been waived.

Give a copy of the *Order* and a certified copy of the *Letters* to the minor and to the guardian. Also, save an additional set for the attorney's file.

If an attorney wishes to withdraw upon the appointment of the guardian, this can be requested at the conclusion of the guardianship hearing. If the attorney does not withdraw, then the attorney will remain the attorney of record for the length of the case (usually until the ward turns 18 years old). See Section H, below for more information.

b. Alameda County

You should check the status of the case online before the hearing date by going to <http://apps.alameda.courts.ca.gov/domainweb/html/index.html>. You can check to see that court files are complete, and you can see the Examiner's Notes.

Alameda County also provides tentative rulings at this website: <https://publicrecords.alameda.courts.ca.gov/PRS/>

The proposed guardian and the proposed ward, if s/he is 12 years old or older, must attend the hearing to establish a guardianship of a minor unless the court excuses the appearance of the proposed ward for good cause (Super. Ct. Alameda County, Local Rules, rule 7.720).

In Alameda County, the proposed Order Appointing Guardian of Minor MUST be submitted in advance of the hearing to the probate examiner. The proposed order is reviewed by the Probate Examiner and filed by the courtroom clerk, if the petition is granted.

F. THE CONTESTED GUARDIANSHIP HEARING AND MEDIATION

A parent or relative may appear at the guardianship hearing and contest the appointment of a guardian for the child. Usually, if a relative appears to contest, the Court will allow the relative to address the court and state any concerns.

When a parent is contesting the guardianship, the Court is required to make a finding that parental custody of the child would be detrimental and that granting custody to a nonparent would be in the best interest of the child (Fam. Code § 3041; Prob. Code § 1514(b)). Further, California case law requires the Court to find that a "clear and convincing" showing has been made that it would be detrimental to the child to be in parental custody and that the award to a nonparent is in the child's best interest. See *Guardianship of Jenna G.*, 63 Cal.App.4th387 (1998) [74 Cal.Rptr.2d 47]; *Guardianship of Stephen G.*, 40 Cal. App.4th1418 (1995) [47 Cal.Rptr.2d 409].

In making a determination of best interest and detriment, the Court will look at a variety of circumstances including the stated interest of the child, the age of the child, and the nature of the parent-child relationship and the relationship between the child and proposed guardian. Furthermore, the Court should look at the psychological and emotional well-being of the child, including the child's need for continuity and stability of care and of relationships. See *Guardianship of Kaylee J.*, 55 Cal.App.4th 1425 (1997) [64 Cal.Rptr.2d 662].

a. San Francisco

In San Francisco Probate Court, when the guardianship case is called, all parties are asked to state their positions and make any further arguments as necessary. If the case is contested, the Judge may decide to have all parties attempt to mediate the issues. The purpose of the mediation is to provide a forum to work out conflicts in guardianship cases, including visitation disputes. Mediation may happen with the court investigator on the same date as the guardianship hearing. The parties will then report to the court at the end of the calendar. The

Probate Court also has a mediation program where a group of volunteer attorneys have been trained as mediators. The Court makes a decision to refer a case to the mediation program when appropriate. The parties and any attorneys meet with the mediator to attempt to come to an agreement regarding the issues in dispute. If the parties come to an agreement, that agreement is signed by all parties and presented to the Probate Judge for approval. The attorney for the minor is responsible for setting up the mediation after receiving information from the Court. The attorney for the minor is also responsible for ensuring that the consent forms and mediation agreement are completed at the mediation.

If an agreement cannot be reached, the Court may take one of the following actions. The Court may make a decision to grant or deny the guardianship based on the petition, supporting or contesting declarations, and arguments made in court. The Court may grant or extend a temporary guardianship to allow for further investigation and/or mediation. Finally, the Court may grant or extend a temporary guardianship pending an evidentiary hearing.

b. Alameda County

In Alameda County, when a guardianship case is contested the case it may be referred to Family Court Services. If this occurs, all parties appear at an initial hearing in Probate Court and state their positions. Extensive arguments are not heard at this time. The judge refers the parties to Family Court Services for mediation and the matter is set to be heard in Family Court. All parties, excluding their attorneys, meet with the Family Court Services mediator prior to the next hearing to discuss their positions. Minor's counsel should request to be present if the child will be attending mediation. If there are significant concerns about the child participating in mediation, the minor's attorney can request that the minor meet with the mediator alone, apart from the proposed guardian and contesting party. If the parties fail to come to an agreement, the mediator makes a recommendation to Family Court as to the pending guardianship petition. At the Family Court hearing, all parties must be prepared to provide any additional evidence and/or witnesses that would be relevant to the guardianship matter. The judge will hear from the parties and in her/his discretion allow for further evidence. At that hearing, the judge may take any of the actions as described above for San Francisco County.

G. FOLLOW-UP/ STATUS REPORTS

Probate Code § 1513.2 requires status reports to be filed annually with the Probate Court after every guardianship is established, the first one due one year and thirty days after the establishment of the guardianship. In San Francisco, the court will typically set a status report hearing for twelve months after guardianship is granted. The court has developed a simple form, which should be filed with the court in advance of the hearing, but no later than one month after the anniversary of the date the guardianship was established (Cal. Rules of Court, rule 7.1003). This form is called the *Confidential Guardianship Status Report* (Form GC-251). The San Francisco Court typically mails this form to the guardian approximately one month before the hearing date and generally reviews this prior to the hearing. The LSC pro bono attorney may choose to assist the guardian with the completion of the form and/or complete a separate report on behalf of the minor. If a report is completed on behalf of the minor, it must be filed on pleading paper and

titled: "Confidential Status Report of Minor's Counsel."

If difficulties are noted in the report, or if the report is not turned in on time, the Judge may require the attorney, guardian and minor/ward to appear at the hearing to review the guardianship and any issues. Otherwise, no appearances are necessary at the status report hearing. Attorneys should check the court calendar to verify whether the hearing will go forward. In Alameda County, this form is not given to the guardian and they are expected to download the form online, the court will not remind the Guardian to send in the status report.

LSC pro bono attorneys can continue to represent minors throughout their guardianship. This can be very helpful and rewarding, but is not always necessary. You should discuss this with your mentor attorney in advance, if you are considering withdrawing at the guardianship hearing. If you need to withdraw at a later date, please also discuss this with your mentor.

When pro bono panel attorneys conclude a case assigned through LSC, it is imperative that LSC be informed of the case's completion and outcome. The case closing form provided in the referral packet should be completed and returned to LSC at this time. Learning of the resolution of guardianship cases is essential to LSC's record keeping and statistical compilation, as well as for reference in the event of future contact between LSC and the client. Please contact LSC if you did not receive a case-closing memo at the time that you accepted a pro bono case or if the form has been misplaced over time.

VI. GUARDIANSHIP VARIATIONS: TEMPORARY, SPECIAL IMMIGRANT JUVENILE STATUS; WARD BETWEEN THE AGES OF 18-21 (AB 900), DEPENDENCY, TERMINATIONS, & WITHDRAWALS

Sometimes minors have special needs. They may be in immediate danger, they may be seeking additional special findings related to Special Immigrant Juvenile Status, they may have previously been in the dependency system, or they may have an existing guardianship that requires termination. This chapter covers some variations on the straightforward guardianship.

A. TEMPORARY GUARDIANSHIPS

The time between filing a guardianship petition and the appointment of a guardian is typically eight to twelve weeks. Occasionally the minor needs someone to exercise legal custody during this time. In certain cases, a temporary guardianship can be quickly obtained, but there must be some kind of urgency for a temporary guardianship to be granted. Temporary guardianship, like permanent guardianship, may be for the person or the estate, or both. However, the temporary guardian has only those powers necessary to provide for the temporary care, maintenance, and support of the minor (Prob. Code § 2252).

Most people do not need a temporary guardianship. A temporary guardianship will only be granted if there is an urgent need or emergency where someone must have legal authority to act for the child. Examples of emergencies, which may require a temporary guardian, are a need for immediate medical treatment, a need for protection from abuse or neglect, or if the child is in imminent danger (San Francisco Local Rules 14.76(A)).

If possible, evidence of any potential immediate or irreparable harm should be included in the Petition for the Appointment of a temporary guardian along with time periods in which the minor has been in the care of the proposed temporary guardian.

In **San Francisco**, temporary guardianships are normally set on the ex parte calendar and require an appearance by all parties including the ward. San Francisco has indicated that they will not hear temporary guardianships if the youth is less than 30 days from turning 18. If filing for a temporary guardianship in San Francisco prepare the Petition for Appointment of Temporary Guardian (GC-110 of GC-110P) along with all of the general guardianship forms (see previous chapters for list of the forms) and take to probate clerk filing window. The *Petition for Appointment of Temporary Guardian* can only be heard after the filing of a general *Petition for Appointment of Guardian* (Prob. Code § 2250). The clerk will provide a date for the temporary guardianship at this time, which will be written on the forms. After filing the petitions for temporary and general guardianship, drop a copy of all the papers in the Probate Office, Room

202. Temporary guardianship hearings are generally held on weekday mornings. If the minor is the petitioner, the minor should be present if possible along with the proposed guardian. The Probate Court staff attorney reviews the petition with the parties and then brings it to the judge.

The minor (age twelve or older) and parents (and anyone else with a valid visitation order) must receive personal notice of the hearing at least five days in advance of the appointment, unless the court waives notice for good cause (Prob. Code § 2250(e); San Francisco Local Rules 14.76(C)). In San Francisco, the local rules also require 24 hours' notice (by telephone or fax) of the proceeding to relatives within the second degree of the minor (i.e. grandparents, siblings, etc.). A declaration regarding notice to these relatives in compliance with California Rules of Court Rule 3.1204 must be filed and delivered to Room 202 of the San Francisco Probate Court, no later than 12pm on the day before the ex parte hearing (San Francisco Local Rules 14.76(C)). The proofs of service showing that the minor (if the proposed ward is 12 years of age or older), the parents, and anyone having a valid visitation order must be filed and endorsed filed copies delivered to Room 202 at least three (3) court days before the temporary guardianship hearing (Local Rule 14.76(C)).

If notice to the parents or relatives would create a dangerous situation for the minor and the petitioner wishes to waive notice you must allege the reasons for waiving notice and include that in a separate Declaration along with the Petition asking for a Waiver of Notice Due to Good Cause. In San Francisco, if a temporary guardianship is granted, it lasts until the date of the hearing on the petition for permanent guardianship.

In **Alameda County**, the Probate Department generally does not hold hearings for temporary guardianships. However, the Probate Department may set a hearing for a temporary guardianship if it is contested*¹. The temporary guardianship papers should be filed along with the petition for guardianship and submitted to the Probate Department. They are then reviewed by the court investigators' office and the Judge, and an order is usually available in the next few days. The court often will not notice you on their decision. Check the Domain Web program on the Alameda County Superior Court website for the registry of actions on the case, which will include any decision to grant or deny the temporary guardianship petition.

If the court determines that a hearing on the petition for a temporary guardianship is necessary, the court will send notice to the attorney and petitioner. The attorney or the petitioner must serve a copy of the notice on those required to receive notice and file proof of service with the court (Super. Ct. Alameda County, Local Rules, rule 7.740(a)).

Probate Code § 2257 provides that the temporary guardianship shall terminate automatically after 30 days, unless a permanent guardian is appointed earlier or the court extends the time of termination based upon a showing of good cause. If the request for a temporary guardianship is granted following review of an ex parte application and a hearing on the permanent guardianship is more than 30 days away, the Court will set a date for a review hearing 30 days after the granting of the temporary guardianship and notice will be provided to the attorney or the petitioner. The attorney or petitioner must serve a copy of the notice on

¹ * Ask your LSC mentor attorney for information regarding the preferred filing process for a temporary guardianship in either San Francisco or Alameda County.

those required to receive notice and file proof of service with the court (Super. Ct. Alameda County, Local Rules, rule 7.740(b)). At the review hearing, the Court may grant an extension of the temporary guardianship lasting until the hearing on the petition for permanent guardianship.

If the parent objects to temporary guardianship, the Court may conduct a short hearing to determine if the temporary guardianship is necessary. The attorney should prepare the minor to speak, and should consider bringing witnesses or submitting declarations from witnesses in support of the temporary guardianship.

If you are able to obtain a signed temporary guardianship order, take it to the Probate filing window to file it. Before filing, conform the copies to the original, if needed. Make sure to endorse-file three copies. Give one copy of the *Order* to the minor and one to the guardian. The other copy is for the attorney's file. Submit the *Letters* for filing, and endorse-file three copies. Two of those copies should also be certified, one for the guardian and one for the minor. The other copy is for the attorney's file.

California case law holds that temporary guardians can receive public benefits such as CALWORKS and Medi-Cal for their wards. *Timmons v. McMahon* (1991) 235 Cal.App.3d 512 [286 Cal.Rptr. 620]. In San Francisco, the Court expects a compelling reason in order to grant a temporary guardianship. Payment of cash benefits alone is not usually considered a sufficient basis for appointment of a temporary guardian.

1. PETITION FOR APPOINTMENT OF TEMPORARY GUARDIAN

(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-110)

This is prepared much like the *Petition for Appointment of Guardian* and is available in two versions: the original judicial form (GC-110) and a plain language version of that form (GC-110(P)). The versions are equivalent, and either can be filed to petition for temporary guardianship.

a. GC-110 Form

Item 1: Enter the petitioner's name.

Item 1a/b: Fill in the name, address, and phone number of the proposed guardian in the appropriate section. For guardianship of the person, use section 1a only.

Item 1c: If this is a guardianship of the person, check box (1). No bonds are required for guardianships of the person only.

Item 1d: If you are requesting that notice be waived to a parent or other person with a court order for visitation, check the appropriate box and submit "Attachment 1d."

LSC uses the following language for this attachment when the petitioner is the minor: "Petitioner [name] requests that an order be granted dispensing with notice of the Petition for Appointment of a Temporary Guardian to her/his mother/father, [name], for good cause pursuant to Probate Code §2250(k)(e) and the attached declaration of the Petitioner." The declaration should explain clearly why notice should be waived for her/his safety.

Item 1e: If special powers are requested, specify them in "Attachment 1e" and check this box. This is very unusual.

Item 1f: If any other orders are requested, check this box and submit "Attachment 1f."

Item 2: Type the proposed ward's name, current address, and phone number.

Item 3: Check the appropriate boxes. Where a temporary guardianship of the person is sought, check "provide for temporary care, maintenance, and support." **This is the most important section, in which the petitioner must state facts sufficient to establish good cause for the appointment of a temporary guardian.** No formula exists for what constitutes good cause; use common sense and state the reasons succinctly. A description of the facts and reasons are usually put into an Attachment 3.

Item 4: Request that the guardianship be granted pending the hearing on the petition for appointment of general guardian (box a).

Item 5: Fill in only for guardianships of the **estate**.

Item 6: Indicate whether the minor will be present at the hearing. Generally, they should attend.

Item 7: Total up the number of attached pages and enter it here.

Enter the date in both places required, and have both the attorney and the petitioner(s) sign the petition.

b. GC-110(P) Form

Item 1: Type in the name of the minor.

Item 2: Type in the minor's current address and phone number.

Item 3: Check this box and fill in your name and office information.

Item 4: Check the second and third boxes. Provide the name, address and phone number of the proposed guardian after the second box and the minor's date of birth after the third box.

- Item 5: Check the appropriate box and provide information explaining the relationship between the proposed guardian and minor(s) where necessary.
- Item 6: Type the name, address, and phone number for the minor(s).
- Item 7: Explain why the minor(s) are in need of temporary care, maintenance and support right now. **This is the most important section in which the petitioner must state facts sufficient to establish good cause for the appointment of a temporary guardian.** No formula exists for what constitutes good cause; use common sense and state the reasons succinctly. A description of the facts and reasons are usually put into an attachment "GC-110(P) - Item 7: Reasons for Appointment of Temporary Guardian."
- Item 8: Indicate whether the minor will be present at the hearing. Generally, they should attend.
- Item 9: Check box b. if you are requesting that notice be waived to a parent or other person who has a court order for visitation, and then submit "Attachment 9: Request for Waiver of Notice." Because LSC represents children only, we would never request a guardianship without notice to the minor. Thus, the box preceding "minor" should never be checked.

LSC uses the following language for this attachment when the petitioner is the minor: "Petitioner [name] requests that an order be granted dispensing with notice of the Petition for Appointment of a Temporary Guardian to her/his mother/father, [name], for good cause pursuant to Probate Code § 2250(e)(k) and the attached declaration of the Petitioner." The declaration should explain clearly why notice should be waived for her/his safety.

- Item 10: Type the total number of pages attached.

Enter the date in both places required, and have both the attorney and the petitioner(s) sign the petition.

2. GOOD CAUSE EXCEPTION TO NOTICE

Good cause for an exception to the notice required by Probate Code Section 2250(e) must be based on a showing that the exception is necessary to protect the minor or his/her estate from immediate and substantial, harm (Cal Rules of Ct. 7.1012(b)). A request to establish a good cause exception to the notice requirement must be in writing, separate from the petition for appointment of a temporary guardian, and must include the relief requested, the factual showing of the application under penalty of perjury, a declaration under penalty of perjury with personal knowledge of relevant info and a proposed order (Cal Rules of Ct. 7.1012(e)(1)).

3. DECLARATION OF NOTICE (San Francisco Only)

San Francisco local rules require that a declaration be filed (Cal Rules of Ct 3.1204) setting forth the names of the persons to which notice was given, indicating a notification of the time and place of the ex parte hearing, the nature of the hearing and relief sought, and a statement that the notice requirement has been complied with or an explanation of the reasons why notice was not provided. The declaration should also include what response, if any, was received. This declaration must be filed and delivered to Room 202 of the San Francisco Probate Court, no later than 12pm on the day before the ex parte hearing (San Francisco Local Rules 14.76(C)(2)(6)).

4. ORDER APPOINTING TEMPORARY GUARDIAN

(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-140)

Item 1a/b: In San Francisco, the court usually hears the temporary guardianships, in Room 202 of the Probate Department at 400 McAllister St.

Item 1c-l: These boxes are completed with the names of those present for the hearing. When the minor is the petitioner, the entries in c and e are the same.

Item 2a: If notice was given to the ward and the parents, mark this box.

Item 2b: If the Petition requested waiver of notice to one or both parents, check this box and the box marked "should be dispensed with." In addition, the name(s) of those individual(s) should be typed here.

Item 3: Mark the first box. Mark the box "guardian," and "providing for temporary care, maintenance, and support." Then mark the box "pending the hearing on the petition for appointment of a general guardian."

Item 4a: Enter the name, address, and phone number of the temporary guardian of the **person**, then the name of the minor.

Item 4b: Enter name, address, and phone of the temporary guardian of the **estate**, if any.

Item 5: If you have requested any waiver of notice, check this box.

Item 6: If this is a guardianship of the person only, check box a. If this is a guardianship of the estate, conform boxes b and c to the Petition for Appointment of Temporary Guardian.

Item 7: If you have requested any additional powers, include them in the space provided or prepare them as Attachment 7.

Item 8: If you have requested any additional orders, prepare them as Attachment 8.

Item 9: Check this box. The court will enter the hearing date.

Items 10, 11: Remember to complete these items and enter the date below. The judge will sign the order at the hearing.

5. LETTERS OF TEMPORARY GUARDIANSHIP

(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-150)

Prepare Item 1 (and Items 2, 4 and 5 if necessary). The clerk will complete Item 3 and the **Certification** at the time of filing. In the **Affirmation** section, check the guardian box; fill in the date and place in which the affirmation will be executed. The proposed guardian can sign the Affirmation at any time before filing.

B. SPECIAL IMMIGRANT JUVENILE STATUS

If your client is a non-citizen, it is important to determine whether s/he is eligible for Special Immigrant Juvenile Status (SIJS), an immigration benefit that allows undocumented youth whom have been victims of abuse, abandonment and/or neglect, to seek legal residency in the United States.

Special Immigrant Juvenile Status is a unique, hybrid form of immigration relief that requires the involvement of state courts before a child is eligible to apply for Special Immigrant Juvenile Status with U.S. Citizenship & Immigration Services (USCIS). It provides an avenue for undocumented children to obtain legal status when they cannot be reunified with one or both parents due to abuse, neglect, or abandonment and it is not in their best interest to return to their home country. Youth who are successful in obtaining SIJS are then eligible to apply for adjustment of status to that of a lawful permanent resident (a green card holder). However, before a youth may apply for the special status, a state court must first make three specific findings (often referred to as the “state court predicate order” or SIJS findings). The three findings are:

1. *That the child has been declared dependent on a juvenile court or legally committed to or placed under the custody of a state agency or department or an individual or entity appointed by a state or juvenile court;*
2. *That reunification with one or both of the child’s parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law; and*
3. *That it is not in the child’s best interest to be returned to his or her country of nationality or last habitual residence.*

These three findings must be made before a child can even apply for SIJS before USCIS. In California, these findings are most commonly made in probate guardianship, family court custody, dependency, or delinquency proceedings.

In addition to the underlying guardianship forms that are needed to petition for a legal guardianship, three additional forms are necessary for obtaining a predicate order from the

Probate Judge: 1) the *Petition for Special Immigrant Juvenile Findings* (GC-220); 2) Declaration in Support of Minor's Petition for Special Immigrant Juvenile Findings, and 3) *Special Immigrant Juvenile Findings* (GC-224).

Please review *Guidance for SIJS State Court Predicate Orders in California: What You Need to Know* (November 29, 2017), a publication by the Immigrant Resource Legal Center (ILRC), Kids In Need of Defense (KIND) and Legal Services for Children (LSC). This guidance has specific tips regarding the evidence and amount of detail to include on these forms as well as sample forms. You may find this guidance at the following link:
https://www.ilrc.org/sites/default/files/resources/guidance_for_sij_predicate_orders_11.29.17.pdf

These forms will include detailed facts concerning the abuse, abandonment and/ or neglect of the minor by one or both of the minor's parents and the reasons why the minor cannot return to the minor's home country. Make sure to discuss this with your client and to prepare your client for potential questions about the information disclosed (the court investigator and/ or the judge may seek confirmation of the facts presented).

Please discuss any questions or concerns you have with your LSC mentor attorney before filing any of the SIJS guardianship forms.

1. ASSEMBLY BILL 900- WARDS BETWEEN THE AGES OF 18-21

Assembly Bill (AB) 900 went into effect on January 1, 2016 and the goal was to provide better support and protections for unaccompanied, undocumented youth ages 18-20 in California. The Legislature opined that:

"given the recent influx of unaccompanied immigrant children arriving to the United States, many of whom have been released to family members and other adults in California and have experienced parental abuse, neglect, or abandonment, it is necessary to provide an avenue for these unaccompanied children to petition the probate courts to have a guardian of the person appointed beyond reaching 18 years of age. This is particularly necessary in light of the vulnerability of this class of unaccompanied youth, and their need for a custodial relationship with a responsible adult as they adjust to a new cultural context, language, and education system, and recover from the trauma of abuse, neglect, or abandonment. These custodial arrangements promote permanency and the long-term well-being of immigrant children present in the United States who have experienced abuse, neglect, or abandonment." See Assem. Bill No. 900 (2015-2016 Reg. Sess.) § 1(a)(6).

AB 900 achieves this in two ways: 1) by giving probate courts jurisdiction to appoint legal guardians for youth ages 18-20 in order to assist these youth in adjusting to a new culture and social structure; and 2) by aligning state law with federal law to allow these youth to access Special Immigrant Juvenile Status (SIJS), a form of humanitarian immigration relief for abandoned, abused, or neglected immigrant youth (Assembly Bill 900, ILRC fact sheet published December 2015, www.ilrc.org).

AB 900 allows the Probate Court, with consent of the proposed ward, to appoint a guardian for an unmarried youth aged 18-20 in connection with an SIJS petition. Similar to a

guardianship for youth under the age of 18, this petition can be filed by the proposed ward, the proposed guardian or a relative. The guardianship can remain in place until the ward turns 21 or completes the SIJS process with the United States Citizenship & Immigration Services (USCIS) whichever is best for the youth. These guardianships will not authorize the guardian to take away any of the rights that the ward may have by virtue of being over the age of 18 and a legal adult, unless the ward expressly consents. This is because effective January 1, 2016, Probate Code Section 1510.1(d) extends the term “minor” for the purposes of Division 4 of the Probate Code, but does not change the age of majority in California.

The Judicial Council Forms have been updated to reflect the changes based on AB 900 and provides a space for the proposed ward to consent to the appointment of a guardian. Therefore, there is no need to include any extra forms when filing for guardianship and SIJS other than to reflect in the petition that the ward is in fact over the age of 18 and to indicate on the Letters of Guardianship and the Orders of Guardianship when the guardianship should terminate (e.g. the ward’s 21st birthday as opposed to their 18th birthday).

C. JOINT GUARDIANSHIPS WITH TERMINALLY ILL PARENTS

If a custodial parent has been diagnosed as having a terminal condition, as evidenced by a declaration executed by a licensed physician, the court, in its discretion, may appoint the custodial parent and a person nominated by the custodial parent as joint guardians of the person of the minor. However, this appointment shall not be made over the objection of a noncustodial parent without a finding that the noncustodial parent's custody would be detrimental to the minor (Fam. Code § 3041). This provision was adopted with the intent that a parent with a terminal condition would be able to make arrangements for the joint care, custody, and control of her/his minor children so as to minimize the emotional stress of and disruption for the minor children whenever the parent is incapacitated or upon the parent's death. The provision was also adopted to avoid the need to provide a temporary guardian or place the minor children in foster care, pending appointment of a guardian, as might otherwise be required (Prob. Code § 2105(f)). Filing for a joint guardianship involves the same process as filing for a regular guardianship. The only difference is that the petition must also include a declaration from the parent’s doctor stating that the parent suffers from a terminal illness.

D. GUARDIANSHIP OF CHILDREN WITH NATIVE AMERICAN OR INDIAN HERITAGE

Under the Indian Child Welfare Act (ICWA), notice must be given to all Indian tribes to which a child may belong, of any pending “involuntary child custody proceedings.” 25 U.S.C. § 1912. This category includes not only foster care placements, termination of parental rights, pre-adoptive or adoptive placements, but also probate guardianships. Thus, in probate guardianships, prospective guardians and minors must be asked if the subject child may have any Indian heritage. In the event that there may be some type of Native American ancestry, the tribe must be notified of the pending proceeding. Proof of such notice, including copies of notices and sent and all return receipts and responses received, must be filed with the court.

This notice must be sent, along with a copy of the petition or other document initiating the proceeding, by registered or certified mail with return receipt requested to any and all tribes of which the child may be a member or may be eligible for membership. Additional notice by first class mail is recommended. The notice should be sent to the tribal chairperson, unless the tribe has designated another agent for service. An updated list of federally recognized tribes and designated agents for ICWA purposes can be found on the California Department of Social Services website: <http://www.childsworld.ca.gov/res/pdf/cdsstribes.pdf>. This list is updated more often than the annual list of tribes published by the Bureau of Indian Affairs. The website also has helpful information under Frequently Asked Questions. If the identity or location of the tribe cannot be determined, notice must be sent to the Bureau of Indian Affairs. The BIA then has fifteen days to provide notice as required to the appropriate tribe.

As an example, if a child's parent or guardian suggests that s/he may have Apache heritage, but they do not have any information about a specific tribe, notice should be sent to all eight federally recognized Apache tribes listed at the CDSS website. If a child's parent or guardian suggests that s/he may have Native American heritage, but they are unaware of any specific tribal affiliation, notice should be sent to the Bureau of Indian Affairs. The notice requirements arise even where the family is not certain whether or not the child has Indian heritage.

Notice should be sent whenever there is reason to believe that a child may have Indian heritage, and for every hearing thereafter unless and until it is determined that ICWA does not apply to the particular case. If, after a reasonable time following the sending of notice, but in no event less than sixty (60) days, no determinative response to the notice is received, the court may determine that the act does not apply to the case unless further evidence on the applicability of the act is later received. In any event, child custody proceedings (including legal guardianships) cannot proceed to hearing until at least ten (10) days after receipt of the notice by the tribe. If a tribe responds to the notice within the ten days and requests a continuance, a twenty (20) day continuance must be granted.

A sample ICWA notice letter to an Indian tribe for notification of a pending probate guardianship involving an Indian child is included in the Sample Forms Section. The letter should include the following information:

- (1) Child's name, birth date and birthplace
- (2) Name of the Indian tribe or tribes in which the child is a member or may be eligible for membership
- (3) Names, if known, and current and former addresses of the child's mother, father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married or former names or aliases
- (4) Birthdates and places of birth and death of the above family members listed in (3)
- (5) Tribal enrollment number of the above family members listed in (3)
- (6) Copy of the petition, complaint, or other document initiating the proceeding
- (7) Statement of the right of the parents, Indian custodian, and tribe to intervene in the proceeding
- (8) Statement that counsel will be appointed for parents or Indian custodians who cannot afford one

- (9) Statement of the right of the parents, Indian custodian and tribe to receive, on request, an additional twenty days to prepare for the proceedings
- (10) Location, mailing address and telephone number of the court
- (11) Statement of the right of the parents, Indian custodian, and tribe to petition the court to transfer the proceeding to tribal court
- (12) The potential legal consequences of proceedings on the future custodial and parental rights of the parents or Indian custodian
- (13) Statement that all parties noticed should keep confidential the information in the notice.

NOTE: *Per the California Rule of Court rule 5.481, the party seeking a guardianship must complete Indian Child Inquiry Attachment (ICWA-010A) and attach it to the petition. In addition, at the initial guardianship hearing, the court will order the parent, Indian custodian, or guardian to complete Parental Notification of Indian Status (ICWA-020). Neither San Francisco nor Alameda County require these forms, though other Bay Area counties (e.g., Contra Costa) are following this procedure in every case, regardless of whether the child has Native American ancestry.*

E. GUARDIANSHIP OF DEPENDENT & DELINQUENT CHILDREN

Occasionally, minors who have been made dependents of the Juvenile Court under Welfare and Institutions Code § 300 want their foster parents or relatives to become their guardians. Guardianship can add long-term stability to the child's life, as a formal commitment is made between the minor and the guardian. It also removes from the DHS caseload those cases that do not require supervision. This procedure usually takes place as part of the Permanent Plan for the dependent minor.

In San Francisco, this type of guardianship is done in the Juvenile Division of the Superior Court, **not** the Probate Division. It is important that an attorney who is handling a matter relating to an existing guardianship obtain a copy of the order. This will show in which division the guardianship matter needs to be handled. **All future matters relating to a guardianship that has been handled in the Juvenile Division must be brought in that Division (see Welf. & Inst. Code §§ 304, 366.4).** If an attorney discovers that the existing guardianship was handled as part of a dependency in the Juvenile Division, they should contact LSC immediately to discuss the process. This manual only covers the guardianship process in Probate Court.

The process in the Juvenile Division is different from that in the Probate Division. Generally, the City Attorney will file the Petition in Juvenile Court on behalf of the proposed guardian or the judge can order appointment of a guardian at the end of the permanency planning process (at the ".26" hearing) pursuant to Welfare and Institutions Code § 366.26. When the guardianship is granted, the judge will usually simultaneously dismiss the dependency.

Delinquency cases can work in the same way. The court decides where to place the child. If the child cannot live with the parents, the court can choose a responsible adult to be the child's legal guardian. The probation officer makes a recommendation to the judge regarding what s/he thinks is best for the child and protection of the public. If the judge appoints a guardian, all future matters relating to the guardianship must be handled in the delinquency court.

F. TERMINATION OF GUARDIANSHIP

A guardianship, whether for the person, estate, or both, automatically terminates upon the ward's attainment of majority at age 18, the ward's death, the ward's adoption, or the ward's emancipation (Prob. Code § 1600) unless the guardianship is concerning a ward between the ages of 18-21 under AB 900.

The court can, upon petition of the guardian, parent, or ward, terminate the guardianship if it is no longer necessary or it is no longer in the minor's best interest (Prob. Code § 1601). The ward or any other interested party may petition for the removal of the guardian (Prob. Code §§ 2650, 2651). Some causes for removal include continued failure to perform duties or incapacity to perform duties suitably, conviction of a felony, and gross immorality (Prob. Code §§ 2650). The guardian may also petition to resign (Prob. Code §§ 2660). A sample petition to terminate guardianship and order to terminate guardianship is included in the Sample Forms Section.

If a successor guardian is desired, to take the original guardian's place, do not file a termination petition, but instead follow the procedures outlined in the next section.

G. SUCCESSOR GUARDIANSHIPS

Sometimes, when a guardian becomes unable to care for a minor, it is necessary to petition for a successor guardian to take the place of that guardian. When a successor is required, a new *Petition for Appointment of Guardian* must be filed. The petition, order and letters should be altered to read "successor guardian." There is currently no form for this so the modification needs to be made by hand. The remaining process is identical to when an initial guardianship is established. Use the existing case number. Once the successor guardianship is granted, the original guardian is relieved of their duties as guardian.

H. ADDING A CO-GUARDIAN TO AN EXISTING GUARDIANSHIP

Sometimes, especially with older guardians, a family may want to add a co-guardian to an existing guardianship. In this case, all forms for a guardianship must be submitted as if you were filing the original petition for two co-guardians. However, you also need to file an "Amendment to Guardianship" so that the Court will know you are actually amending an existing guardianship. Use the existing case number for all pleadings.

I. WITHDRAWING THE GUARDIANSHIP PETITION

Sometimes, during the process of working with a minor who is seeking to establish a guardianship, the minor is able to reconcile with her/his parent(s), and the factors that initially

triggered the guardianship process no longer exist. If this situation occurs, the guardianship petition may be withdrawn after the guardianship papers are filed and before the hearing date.

To withdraw a petition, file a declaration withdrawing the Guardianship Petition (See Sample Forms Section) at the Court where the original guardianship petition was filed, and make sure to send notice to all parties that were noticed when the original Petition was filed.

VII. PERTINENT SECTIONS OF THE CALIFORNIA PROBATE CODE

- **Appeals** (Prob. Code §§ 1301-1312)
 - § 1301: Guardianships; Grounds for appeal
 - § 1310: Stay of Judgment or Order; Guardianship Proceedings; Undertaking Required by Court
 - § 1311: Appointment of fiduciary; reversal of error; validity of fiduciary acts; liability

- **Nomination of Guardian** (Prob. Code §§ 1500-1502)
 - § 1500: Nomination of Guardian of Person
 - § 1500.1: Consent by Indian Child's Parent; Requirements
 - § 1501: Nomination of guardian to particular property
 - § 1502: Manner of Nomination; Time Effective; Subsequent Legal Incapacity or Death of Nonminor

- **Appointment of Guardian Generally** (Prob. Code §§ 1510-1517)
 - § 1510: Petition for Appointment; Contents
 - § 1511: Notice of Hearing
 - § 1512: Amendment of Petition to disclose Newly Discovered Proceedings Affecting Custody
 - § 1513: Investigation; Report and Recommendation to Court Concerning Proposed Guardianship; Contents; Confidentiality
 - § 1513.1: Assessments for Costs of Investigation
 - § 1513.2: Status Reports
 - § 1514: Appointment of Guardian: Standards, Consideration of Older Minor's Wishes
 - § 1515: No Guardian of Person for Married Minor
 - § 1516: Petitions for Guardianship of the Person; Mailing of Notice of Hearing and Copy of Petition; Screening of Guardians; Application of Section
 - § 1517: Guardianships resulting from Permanency Planning (Welf. & Inst. §§ 366.25, 366.36)

- **Non-Relative Guardianships** (Prob. Code §§ 1540-1543)
 - § 1540: Application of Article (Relative Guardianships, Welf. & Inst. § 366.25 Guardianships, or Public Officials Appointed Guardian)
 - § 1541: Petition for Guardianship; Additional Contents
 - § 1542: Notice of Hearing and Copy of Petition to Director and Local Agency
 - § 1543: Suitability of Proposed Guardian for Guardianship; Report; Confidentiality

- **Termination of Guardianships** (Probate Code §§ 1600-1602)
 - § 1600: Termination on Majority, Death, Adoption, or Emancipation of Ward
 - § 1601: Court Order; Notice

- **General Provisions of Guardianship** (Prob. Code §§ 2100-2113)

- § 2100: Law Governing
- § 2101: Fiduciary Relationship; Trust Law
- § 2102: Control by Court
- § 2103: Final Judgment or Order
- § 2104: Nonprofit Charitable Corporation; Appointment
- § 2105: Joint Guardians; Appointment
- § 2105.5: Multiple Guardians; Liability for Breach of Another Guardian
- § 2106: One Guardian for Several Wards; Appointment
- § 2107: Person of Nonresident; Guardian; Powers and Duties
- § 2108: Powers Granted Guardian Nominated by Will
- § 2109: Guardian for Particular Property; Powers and Duties
- § 2110: Personal Liability

- **Jurisdiction and Venue** (Prob. Code §§ 2200-2205)

- § 2200: Superior court; Jurisdiction
- § 2201: Residents; Venue
- § 2202: Nonresidents; Venue
- § 2203: Priority of Court; Proceedings Instituted in Several Counties

- **Change of Venue** (Prob. Code §§ 2210-2217)

- § 2210: Definitions
- § 2211: Transfer of Proceedings
- § 2212: Petition for Transfer; Persons Authorized to File
- § 2213: Petition for Transfer; Contents
- § 2214: Notice of Hearing
- § 2215: Hearing and Order
- § 2216: Transfer of Proceedings; Fees
- § 2217: Transferred Guardianship or Conservatorship; Notice of Receipt; Compliance; Review; Hearing by Transferring Court

- **Temporary Guardians** (Prob. Code §§ 2250-2258)

- § 2250: Petition for Appointment
- § 2251: Issuance of Letters
- § 2252: Powers and Duties
- § 2255: Inventory and Appraisal of Estate
- § 2256: Settlement and Allowance of Accounts
- § 2257: Termination of Powers; Rime
- § 2258: Suspension, Removal, Resignation, Discharge

- **Requirement of Oath and Bond** (Prob. Code § 2300)

- § 2300: Oath and Bond; Necessity Before Appointment

- **Letters** (Prob. Code §§ 2310-2313)
 - § 2310: Issuance; Evidence of Appointment; Warning
 - § 2311: Form

- **Powers and Duties of Guardian of the Person** (Prob. Code §§ 2350-2360)
 - § 2350: Definitions
 - § 2351: Care, Custody, Control, and Education
 - § 2352: Residence of Ward
 - § 2353: Medical Treatment of Ward
 - § 2356: Limitations on Application of Chapter
 - § 2357: Court Ordered Medical Treatment
 - § 2358: Additional Conditions in Order of Appointment
 - § 2359: Instructions From or Confirmation by Court

- **Removal of Guardian** (Prob. Code §§ 2650-2655)
 - § 2650: Causes for Removal
 - § 2651: Petition for Removal
 - § 2652: Notice of Hearing
 - § 2653: Hearing and Judgment
 - § 2654: Suspension of Powers and Surrender of Estate Pending Hearing
 - § 2655: Contempt; Disobeying Order of Court

- **Resignation of Guardian** (Prob. Code §§ 2660-2662)
 - § 2660: Resignation of Guardian

- **Appointment of Successor Guardian** (Prob. Code § 2670)
 - § 2670: Vacancy; Appointment of Successor

- **Requests for Special Notice** (Prob. Code §§ 2700-2702)
 - § 2700: Written Request; Persons Authorized
 - § 2701: Modification or Withdrawal of Request; New Request
 - § 2702: Petitioner Required to Give Special Notice

- **Transfer of Personal Property Out of State** (Prob. Code §§ 2800-2808)

VIII. SAMPLE FORMS – See LSC website for comprehensive list of sample forms.