



PRO BONO GUARDIANSHIP PROJECT MANUAL

**A GUIDE TO OBTAINING LEGAL
GUARDIANSHIPS
IN
SAN MATEO COUNTY**

**LEGAL AID SOCIETY
OF SAN MATEO COUNTY**

2013

**REVISED AND EDITED BY JANET B. SELDON
DIRECTOR OF PRO BONO
LEGAL AID SOCIETY OF SAN MATEO COUNTY
Natalie Lanam Justice Center
The Sobrato Center for Nonprofits
330 Twin Dolphin drive, suite 123
Redwood City, CA 94065
(650) 558-0915
Jbseldon@legalaidsmc.org**

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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 the Legal Aid Society of San Mateo County. The primary text focuses on forms and procedures in the San Mateo 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 a guide to seeking legal guardianship in San Mateo County 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>.
- ⇒ Legal Aid represents the proposed guardians, therefore, the manual is written with the presumption that the proposed guardian is the petitioner and this is reflected in our examples.

All information in this manual is current as of January 2013.

PREFACE

The Legal Aid Society of San Mateo County has been providing high quality civil legal services to families, children, and seniors in San Mateo County since 1959. In January 2002, Legal Aid created an innovative new program, the Pro Bono Guardianship Project, to provide free legal assistance to grandparents and other relatives caring for minor children. A vital component to the program is the Pro Bono Guardianship Panel, a network of Silicon Valley/Bay Area Law firms and individual attorneys doing guardianship cases for low-income family caregivers of children on a pro bono basis. More information about Legal Aid's Pro Bono Programs can be found online at www.legalaidsmc.org and by contacting **Janet B. Seldon, Director of Pro Bono** at **(650) 558-0915** or at jbseldon@legalaidsmc.org.

Legal guardianship gives a non-parent custody of a minor and the legal authority to make most decisions about the minor's life. It suspends, but does not terminate, many of the parent's rights, including the right to decide where a child will live. The parents have a continuing legal obligation to support the minor and can petition to end the guardianship and regain custody at any time. A legal guardianship can be a fairly simple and non-stigmatizing legal solution to a minor's need for good care and stability.

The purpose of the Guardianship Training 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. This manual focuses on forms and procedures in the **San Mateo County Superior Court**. All statutory references in this manual are to the California Codes. Although Legal Aid makes every effort to inform attorneys participating in the Pro Bono Guardianship Panel of changes in statute and local rules governing guardianship matters, 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. **Legal Aid strongly recommends that every pro bono attorney review the San Mateo Court's Local Probate Rules before filing a guardianship petition. The rules can be found online at the Court's website, www.sanmateocourt.org.**

TABLE OF CONTENTS

I.	INTRODUCTION: PROCEEDINGS AFFECTING CUSTODY.....	6
A.	LEGAL GUARDIANSHIP	6
B.	DISSOLUTION	6
C.	UNMARRIED PARENTS	6
D.	DOMESTIC VIOLENCE PREVENTION ACT	7
E.	ADOPTION.....	7
F.	JUVENILE COURT	7
G.	CONSERVATORSHIP	8
H.	EMANCIPATION	8
II.	GUARDIANSHIP: AN OVERVIEW	9
A.	GUARDIANSHIP OF THE PERSON.....	9
B.	GUARDIANSHIP OF THE ESTATE	12
C.	PROCEDURE FOR OBTAINING GUARDIANSHIP	12
D.	FLOWCHART OF PAPER PROCEDURES	13
III.	GUARDIANSHIP: INITIAL STAGES	14
A.	INITIAL INTERVIEW.....	14
B.	GUARDIANSHIP QUESTIONNAIRE	15
C.	NOTICE I: OBTAINING INFORMATION.....	23
IV.	GUARDIANSHIP: PREPARING THE PAPERS.....	25
A.	OVERVIEW	25
B.	DOCUMENT CHECKLISTS.....	26
C.	CAPTIONING THE DOCUMENTS	27
D.	REQUEST TO WAIVE COURT FEES	27
E.	ORDER ON COURT FEE WAIVER	29
F.	PETITION FOR APPOINTMENT OF GUARDIAN.....	29
G.	GUARDIANSHIP PETITION – CHILD INFORMATION ATTACHMENT.....	33
H.	DECLARATION UNDER UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)	34
I.	CONSENT OF PROPOSED GUARDIAN/NOMINATION OF GUARDIAN/WAIVER OF NOTICE AND CONSENT	35
J.	GUARDIANSHIP CONFIDENTIAL DECLARATION	35
K.	CONFIDENTIAL GUARDIANSHIP SCREENING FORM	35
L.	DUTIES OF GUARDIAN	36
M.	NOTICE OF HEARING OF GUARDIANSHIP	36
N.	NOTICE AND ACKNOWLEDGMENT OF RECEIPT.....	37
O.	PROOF OF PERSONAL SERVICE OF NOTICE OF HEARING – GUARDIANSHIP AND CONSERVATORSHIP	38
P.	ORDER APPOINTING GUARDIAN OF MINOR.....	38
Q.	LETTERS OF GUARDIANSHIP.....	40
V.	GUARDIANSHIP: FILING, NOTICE, HEARING, CONCLUSION.....	41
A.	HOME VISIT	41
B.	FILING THE PAPERS.....	41

C.	NOTICE II: SENDING OUT NOTICE	42
D.	SERVICE BY MAIL	44
E.	NOTICE III: PERSONAL SERVICE.....	45
F.	THE GUARDIANSHIP HEARING	45
G.	THE CONTESTED GUARDIANSHIP HEARING AND MEDIATION	46
H.	FOLLOW-UP	47
VI.	GUARDIANSHIP VARIATIONS: TEMPORARIES, DEPENDENCIES, TERMINATIONS, & WITHDRAWALS	48
A.	TEMPORARY GUARDIANSHIPS	48
B.	JOINT GUARDIANSHIPS WITH TERMINALLY ILL PARENTS	52
C.	GUARDIANSHIP OF CHILDREN WITH NATIVE AMERICAN OR INDIAN HERITAGE	53
D.	GUARDIANSHIP OF DEPENDENT & DELINQUENT CHILDREN.....	54
E.	TERMINATION OF GUARDIANSHIP	55
F.	SUCCESSOR GUARDIANSHIPS	55
G.	ADDING A CO-GUARDIAN TO AN EXISTING GUARDIANSHIP	56
H.	WITHDRAWING THE GUARDIANSHIP PETITION.....	56
I.	SPECIAL IMMIGRANT JUVENILE STATUS CASES	56
VII.	PERTINENT SECTIONS OF THE CALIFORNIA PROBATE CODE	57
VIII.	APPENDIX: ADDITIONAL INFORMATION AND FORMS	60

I. INTRODUCTION: PROCEEDINGS AFFECTING CUSTODY

Although this manual discusses legal guardianship, 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 any reasonable order to control the minor's conduct.

A. 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. Technically, parents 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.)

B. DISSOLUTION

Legal custody is initially vested **equally** in the minor's natural parents (Family 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 courts in San Mateo County (and in most counties in California) seek 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.

C. 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 Family Code §7600 – §7750. Once the legal father of the child is established, the issue of custody is resolved as in a dissolution action, as described above.

D. DOMESTIC VIOLENCE PREVENTION ACT

In situations involving domestic violence, custody of minors can be temporarily determined under the Domestic Violence Prevention Act (Family 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 during the period of custody. One parent may obtain 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.

E. ADOPTION

An adoption is a complete substitution of one parent or set of parents for another (Family 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 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, either voluntarily (Family Code §8604 – §8605) or involuntarily (Family Code §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.

F. JUVENILE COURT

Custody may also be changed through the three Juvenile Court jurisdictional sections: Welfare and Institutions Code §300 (dependency), §601 (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 (§300) or a "ward" (§601 or §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 placement of the minor in a group or foster home. In some cases, the child will remain in the physical custody of the parents, under the supervision of the Human Services Agency (§300) or of the Probation Department (§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. **IMPORTANT NOTE:** If a guardianship was originally established in Juvenile Court any changes must be made in Juvenile Court. You cannot change a guardian by using the Probate Court guardianship process if the original guardianship was established in Juvenile Court. We will not refer you a guardianship case that is already in juvenile court.

G. 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 Welfare & Institutions Code § 5350 et seq.

H. EMANCIPATION

A minor can become her/his own legal custodian before attaining majority (i.e. turning 18) if s/he is declared emancipated (Family Code §7000 – §7135). Emancipation is possible in three situations: if the minor

- joins the United States Armed Services with parental consent;
- gets married – requiring consent of one parent and court order (Family Code §302); **or**
- obtains a Declaration of Emancipation from the court.

In order to obtain a Declaration of Emancipation, the minor must:

- be fourteen years of age or older;
- live on her/his own with the consent or acquiescence of her/his parents;
- legally support her/himself; **and**
- 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.

For more information, see Legal Services for Children's (LSC_SF.ORG) [Emancipation Manual](#).

II. GUARDIANSHIP: AN OVERVIEW

The Probate Court can appoint a guardian whenever such action is “necessary or convenient” (Probate 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 (Family Code §3040). In guardianship proceedings, unlike Juvenile Court dependency proceedings (Welfare and Institutions Code §300), the court does not have to find the parents unfit.

A. GUARDIANSHIP OF THE PERSON

1. “Necessary or Convenient” and “Detrimental” standards

The Probate Court may grant a guardianship whenever it appears “necessary or convenient” to do so (Probate 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 (Probate 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 Welfare and Institutions Code §601 et seq. and §602 et seq.

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.” If you use the plain language form, GC-210(P), this item must be included as item 9. Use Attachment 8 to provide more reasons than the space allows, or attachment 9 on the plain language form. See Chapter IV, Section F for information regarding the difference between the GC-210 and GC-210(P).

If there is any chance a parent will contest the guardianship, **also** check the box preceding the statement “parental 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 does object to a guardianship, the guardianship can only be granted if it is determined that return of the minor to the parent would be detrimental (Probate Code §1514(b); Family Code §3041). For more information, see the section on contested guardianship hearings in Chapter V..

2. Notice

Notice requirements are strict and jurisdictional (Probate Code §§1511, 1516, and 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.

3. 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 Mateo and many California counties, **if either parent is likely to oppose guardianship, the court may refer the case for mediation and in some cases the probate judge has the discretion to ask the Child Protective Services to investigate the case to see if a juvenile court dependency action would be more appropriate.**

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 in persuading the judge to grant the guardianship. Please keep in mind that Probate Court files are not confidential so it is not appropriate to include detailed allegations of abuse and neglect in the initial petition. If the Judge refuses to grant the guardianship, it is possible as a last resort to contact Child Protective Services to investigate any allegations of abuse or neglect.

4. Rights and Responsibilities

In advising the proposed guardian, be certain they understand the significance of a guardianship and their respective rights and responsibilities. The guardian has the duty and responsibility for the care, custody, and control of the ward (Probate Code §2351). The guardian may determine the residence of the ward (Probate Code §2352) and has the right to give consent for the ward's medical treatment (Probate 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 (Probate Code §2352). Although the parents remain legally responsible for the minor's support, guardians often voluntarily accept this responsibility.

A 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 Mateo County, 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). If a minor is an undocumented immigrant, a

guardian is not eligible to receive benefits. Since Timmons v. McMahon (1991) 235 Cal. App. 3d 512, 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 (Civil 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 (Civil 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 (Civil 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. App 2d 769, 772-773 (1966)).

5. Investigation

In San Mateo County every guardianship is assigned to a probate court investigator to do a report to the court. When the minor and guardian are not related, the local social services agency or Child Protective Services will do the investigation. Either investigator will provide the court with a written recommendation (Probate Code §1543). The investigator will contact the proposed guardian to arrange an appointment. They will visit the house and will often interview the minor as well if the minor is of school age.

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 Legal Aid to discuss your concerns. Furthermore, 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 cases where there are allegations of abuse, neglect or abandonment, the probate judge has the discretion to ask CPS to do the investigation in order to determine whether or not the case belongs in juvenile court as a dependency case.

In both relative and non-relative guardianships, the Court will conduct a background check on the proposed guardian and **all persons over the age of 16** 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. This will assist the attorney in assessing the appropriateness of the guardianship and in addressing early any issues that arise.

6. 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 (Probate Code §§1601, 2650, 2652, 2660). The guardianship automatically terminates upon the majority, death, adoption, or emancipation of the ward, when s/he turns 18 (Probate 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. If a guardianship of the estate is necessary a probate attorney should be consulted.

C. PROCEDURE FOR OBTAINING GUARDIANSHIP

- | | |
|-----------------------------------|---------|
| • Initial Interview | Page 14 |
| • Notice I: Obtaining Information | Page 23 |
| • Preparing the Papers | Page 25 |
| • Home Visit | Page 41 |
| • Filing the Papers | Page 41 |
| • Notice II: Sending Out Notice | Page 42 |
| • Notice III: Personal Service | Page 45 |
| • The Guardianship Hearing | Page 45 |
| • Follow-Up | Page 47 |

D. FLOWCHART OF PAPER PROCEDURES

STEP 1: Writing the Petition

COMPLETE THE FOLLOWING FORMS:

1. Request to Waive Court Fees
2. Order On Court Fee Waiver
3. Notice of Hearing of Guardianship (Proof of Service on back)
4. Petition For Appointment of Guardian of Minor (and necessary attachments)
5. Guardianship Petition- Child Information Attachment
6. Indian Child Welfare Act Inquiry
7. Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
8. Consent of Proposed Guardian, Nomination and Waiver of Notice
9. Guardianship Confidential Declaration (PR-18)
10. Confidential Guardian Screening Form (GC-212)
11. Duties of Guardian

STEP 2: Signing the Petition

HAVE PETITIONER OR APPROPRIATE PEOPLE READ AND SIGN FORMS:

1. Request to Waive Court Fees (Petitioner)
2. Petition For Appointment of Guardian of Minor (and necessary attachments) (Petitioner)
3. Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) (Petitioner)
4. Consent of Proposed Guardian, Nomination and Waiver of Notice (Proposed Guardian & Parent(s) – if possible)
5. Guardianship Confidential Declaration (PR-18)
6. Confidential Guardian Screening Form (GC-212) (Guardian)
7. Duties of Guardian (Guardian)
8. Any additional declarations or attachments

STEP 3: Filing the Petition

FILE PETITION AND SUPPORTING DOCUMENTS WITH THE PROBATE CLERK AND GET A HEARING DATE. DO NOT STAPLE FORMS!

1. File Request to Waive Court Fees , if eligible – this allows a waiver of the filing fees.
2. Get a hearing date put on the front page of the Notice of Hearing of Guardianship.
3. File the Petition with the attachment(s), the Consent of proposed guardian (and the Nomination of Guardian and Waiver of Notice and Consent if the parent(s) already have signed), the Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), Duties of Guardian, Confidential Screening form and Guardianship Confidential Declaration

THE PAPERS THAT ARE FILED: GIVE ORIGINAL AND ONE COPY TO THE CLERK AND KEEP A FILED ENDORSED COPY FOR YOUR OWN RECORDS AND FOR SERVICE OF NOTICE.

STEP 6: The guardianship hearing

AT THE GUARDIANSHIP HEARING:

Have these forms ready: (Order should be filed in advance but bring an extra one in case in didn't make it to the court file)

Order Appointing Guardian of Minor
Letters of Guardianship

You present the case. The Judge may ask some questions of the Guardian or Ward or of the attorney regarding the parents, etc. The Order Appointing Guardian of Minor should be handed to the Judge for review and signature.

Take the signed Order to the Clerk and file with the signed Letters of Guardianship. Ask for certified copies of letters.

STEP 4: Serving the Petition

SENDING OUT THE NOTICE OF HEARING AND THE PETITION:

1. Sign and date the proof of service by mail on the back of the Notice of Hearing.
2. Personally serve parents and mail copies to other relatives of:
 - Notice of Hearing.
 - Petition for Appoint of Guardian (and attachment(s))
 - Consent of Proposed Guardian/Nomination of Guardian/Waiver of Notice
 - Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA)

The Request to Waive Court Fees, Duties of Guardian, Confidential Screening form, Confidential Guardianship Screening Form and Guardian Confidential Declaration (PR-18) should NOT be sent with the Notice.

- To the parents add a cover letter and the Forms: Notice and Acknowledgement of Receipt and the Consent of Proposed Guardian/Nomination of Guardian/Waiver of Notice and Consent.
- To HSA add a cover letter with information for background check.

THE NOTICE NEEDS TO BE MAILED AT LEAST 15 DAYS BEFORE THE HEARING TO PEOPLE WITHIN THE USA, 30 DAYS IF OUTSIDE THE USA.

If parents have not returned the Notice and Acknowledgment or the Consent form they need to be personally served at least 15 days prior to the hearing.

STEP 5: Preparing for the hearing

THINGS TO DO BEFORE THE HEARING DATE:

File the Notice of Hearing (with the completed proof of service by mail and proof of personal service sections attached).

File the Notice and Acknowledgment of Receipt (if you get them) or Proof of Personal Service to parents.

File the Consent of Proposed Guardian/Nomination of Guardian and Waiver of Notice and Consent if the parent(s) have returned them.

Check with the Human Services Agency or the Probate Investigator to see if the report on suitability of the proposed guardian is complete and/or favorable.

Prepare Order Appointing Guardian of Minor and Letters of Guardianship forms.

Remind clients where/when to be at court hearing.

III. GUARDIANSHIP: INITIAL STAGES

The guardianship process is straightforward, but many steps are involved. The first steps in arranging a guardianship are 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 prospective guardian (and at some point, the minor if they are over 12 and will be attending the hearing). 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 (if the child is 12 or over).

In arranging the initial interview, the attorney should inform the prospective guardian of the kind of information s/he will need to collect so that the guardian may make relevant materials available for the meeting.

Legal Aid Society of San Mateo County's **Guardianship Questionnaire** provides a format for collecting all the necessary information for the guardianship papers required in San Mateo. A blank copy can be found on the following pages.

When interviewing the 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
- the living situation in guardian's home (number of bedrooms; name, age, and gender of all residents in home; where minor will sleep)
- 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
- whether the minor receives Supplemental Security Income (SSI) or other benefits

The following is a blank Guardianship Questionnaire which you will receive from Legal Aid at the beginning of your case, which may help answer some of these questions.

B. GUARDIANSHIP QUESTIONNAIRE

I. Minor's Information

Last Name	First Name	Middle
-----------	------------	--------

Social Security No.	Age	D.O.B.	Place of Birth
---------------------	-----	--------	----------------

Current Street Address No.	City	Zip Code	Phone
-------------------------------	------	----------	-------

Minor's School	School Telephone	Grade Level
----------------	------------------	-------------

How long at current residence? _____

If minor has lived at a different address(es) since birth, please list below. If the minor has had more than two other addresses since birth, please list this information on a separate sheet of paper. It is important to gather information on all living situations the minor has been in since birth.

Previous Street Address	City	Zip Code
-------------------------	------	----------

How long at this residence? From: _____ until _____

Name of person(s) with whom the minor was living at this residence: _____

Relationship to the minor: _____

Previous Street Address	City	Zip Code
-------------------------	------	----------

How long at this residence? From: _____ until _____

Name of person(s) with whom the minor was living at this residence: _____

Relationship to the minor: _____

Minor's Doctor: _____ Phone No.: _____

Doctor's Street Address	City	Zip Code
-------------------------	------	----------

Please check YES or NO for each of the following questions.

- | | | |
|---|--------------------------|--------------------------|
| | YES | NO |
| 1. Is legal guardianship necessary to give medical consent for the minor? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Does the minor have any Native American or Indian ancestry? | <input type="checkbox"/> | <input type="checkbox"/> |

- 3. Is the minor entitled to veteran's benefits or Social Security Death Benefits?
- 4. Is the minor receiving public benefits? If yes, what kind? _____
- 5. Are there any other court cases involving the minor?
(foster care, juvenile justice, family law, restraining order, etcetera)
- 6. Has the minor had any involvement with the police or Child Protective Services?
- 7. Did the minor have any previous drug or alcohol involvement?
- 8. Does the minor have any physical disabilities?
- 9. Does the minor have any special education needs?
- 10. Does the minor have any money or property?
- 11. Does the minor have an estate?
- 12. Has the minor ever been in foster care or on probation?
- 13. Is the minor married?
- 14. Is the child in or on leave from a mental health institution?
- 15. Is there anyone else who is not a party to this proceeding who has physical custody of or visitation rights with the minor? If yes, please provide the name and address of the person(s), and state whether they HAVE physical custody, CLAIM custody rights, or CLAIM visitation rights.

If YES was checked in any of the above Questions #1-15, please provide a brief explanation in the space provided.

A. MINOR'S FAMILY CONTACTS

Mother's Name	D.O.B.	Phone No.
---------------	--------	-----------

Address	City	Zip Code
---------	------	----------

Father's Name	D.O.B.	Phone No.
---------------	--------	-----------

Address	City	Zip Code
---------	------	----------

Maternal Grandmother's Name	Phone No.
-----------------------------	-----------

Address	City	Zip Code
---------	------	----------

Maternal Grandfather's Name	Phone No.
-----------------------------	-----------

Address	City	Zip Code
---------	------	----------

Paternal Grandmother's Name	Phone No.
-----------------------------	-----------

Address	City	Zip Code
---------	------	----------

Paternal Grandfather's Name	Phone No.
-----------------------------	-----------

Address	City	Zip Code
---------	------	----------

Sibling's Name	Phone No.	Age
----------------	-----------	-----

Address	City	Zip Code
---------	------	----------

Sibling's Name	Phone No.	Age
----------------	-----------	-----

Address	City	Zip Code
---------	------	----------

Sibling's Name Phone No. Age

Address City Zip Code

Sibling's Name Phone No. Age

Address City Zip Code

If more siblings, please write their names, ages, telephone numbers, and mailing address on a piece of paper and attach it to this Questionnaire.

II. Proposed Guardian's Information

Last Name First Name Middle Name

Relationship to Minor D.O.B. Place of Birth

Social Security No. Cal. I.D./Driver's Lic. No. Email Address

Current Street Address City Zip Code

Home Phone No. Work Phone No. Other Phone No.

Are you currently: Married Widowed Single Separated Divorced

If currently married or separated, what is your spouse's name? _____

Will you or anyone else in the home require an interpreter? Yes No Language: _____

Education (name of any high school, college, or other institution attended or graduated from): _____

Employment (most recent): _____ Income: _____

What kind of financial support do you have to care for the minor (including financial resources other than employment)? _____

Health Status of proposed guardian: _____

What the minor calls the proposed guardian: _____

Who has legal custody of the minor? _____

Do one or both of the child's parents agree that the proposed guardian should be the child's guardian?

- a. Father ___Yes ___No ___Not known at this time
- b. Mother ___Yes ___No ___Not known at this time

Size of guardian's home: _____ # of bedroom(s)

Where does the minor sleep?

Will the minor have her/his own room? ___Yes ___No

If no, who will the minor be sharing her/his room

with: _____

Does the child live with the proposed guardian now? _____

Does the proposed guardian plan to adopt the child? _____

If the court approves the guardianship, will this child live with the proposed guardian?

Where would the minor attend school? _____

Who would the minor's doctor be? _____

What would the day-care arrangements be for the minor? _____

Are you related to the child's ___Mother ___Father By: ___Blood ___Marriage

Please check YES or NO for each of the following questions.

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Have you had any involvement with the Police or CPS? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Have you ever been charged with, arrested for, or convicted of any crime?
(If yes, list the offense, when it occurred and the outcome below.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Have you had any previous drug or alcohol involvement? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Have you habitually used drugs or alcohol?
(If you are still habitually using, explain use below. If you are no longer using,
list when you stopped habitually using and how.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Have you ever been charged with or arrested for a crime involving
drugs or alcohol? (If yes, list the offense below, when it occurred and
the outcome below.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Are you a registered sex offender? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have you been charged with, arrested, or convicted of child abuse,
neglect, or molestation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Have any reports or allegations of child abuse been made against you to
any agency? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Do you have a social worker, parole or probation officer?
(If yes, list name and address below.) | <input type="checkbox"/> | <input type="checkbox"/> |

- 10. Have you filed or had filed against you a restraining order in the past 10 years?
- 11. Are you currently seeing a mental health professional?
- 12. Do you suffer from mental illness?
- 13. Do you have any physical disabilities that would affect your ability to care for the minor?
- 14. Have you filed for bankruptcy in the past 10 years?
- 15. Are you a licensed foster care provider?
- 16. Have you ever served as a guardian or a conservator before?
- 17. Have you ever been removed as a guardian or conservator?
- 18. If you became guardian would you benefit financially or in any other way from the child? Would there be any conflict of interest that would prevent you from serving as guardian?
- 19. Do you have information about, or have you participated as a party or as a witness or in some other capacity in, another court case or custody or visitation proceeding, in California or elsewhere, concerning a child subject to this proceeding?
 (If yes, attach a copy of the orders, if you have one, and provide on a separate sheet of paper the Type of Proceeding [Family, Guardianship, Juvenile, Other, Etc.], Case Number, Court [name, state, location], Court order or judgment [date], Name of each child, Your Connection to the Case, and Case Status)
- 20. Are you a private professional fiduciary?
- 21. Are you currently licensed by the Professional Fiduciaries Bureau of the Department of Consumer Affairs?

If YES was checked in any of the above Questions #1-21, please provide a brief explanation in the space provided.

III. General House Screening Questions

Are there other minors in the guardian's home? (List below.)

Name(s)	D.O.B	Relationship to Minor.
---------	-------	------------------------

- 1)
- 2)
- 3)

Are there other adults in the home? (List below.)

1) Name	D.O.B.
---------	--------

Soc. Sec No	Cal. I.D./Driver's Lic. No.
-------------	-----------------------------

Relationship to minor: _____

2) Name	D.O.B.	Income/ Source
---------	--------	----------------

Soc. Sec No	Cal. I.D./Driver's Lic. No.
-------------	-----------------------------

Relationship to minor: _____

If there are additional adults in the home, please note all of the above information for each adult on a separate piece of paper and attach it to this Questionnaire.

The following questions are for person(s) living in the proposed guardian's home, excluding the proposed guardian.

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. Does anyone in the home have a social worker, parole officer, or probation officer? (If yes, list name and address below.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Has anyone in the home ever been charged with, arrested for, or convicted of child abuse, neglect, or molestation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Has anyone in the home had any reports made against them for child abuse, neglect, molestation to CPS, the police, or any other agency? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Has anyone in the home ever habitually used drugs or alcohol? (If yes, list when and what treatment(s) received below.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Has anyone in the home ever been charged with or arrested for a crime involving drugs or alcohol? (If yes, list the offense below, when it occurred and the outcome below.) | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Does anyone in the home suffer from mental illness? | <input type="checkbox"/> | <input type="checkbox"/> |

If YES was checked in any of the above Questions #1-6, please provide a brief explanation in the space provided.

C. NOTICE I: 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), 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 fifteen days in advance of the hearing -- add five days if notice is given by mail (Probate Code §1511, Civil Procedure §1013). The proposed guardian 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.

1. Parents

Actual notice of guardianship proceedings must be given to parents (Probate Code §1511). The law requires that parents must be personally served unless they either:

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

If they fail to do either of these, parents must be **personally** served with the Notice of Hearing of Guardianship and the Petition for Appointment of Guardian. 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 (Probate Code §1511(g)).

2. 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 (Probate 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, is on probation, etc. Other avenues of inquiry include searching the telephone directory or conducting a search on the Internet. 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 there has been 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. Every effort to find the parents should be made.

The results of the search should be included in Attachment 10 or 10b to the petition, which asks the court to dispense with notice to a parent or relative. 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.

3. 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 (Probate Code §1511(g)). Facts supporting these grounds must be alleged in Attachment 10 or 10b to the Petition.

Notice is not required to be given to 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. (Probate Code §1460.1).

IV. GUARDIANSHIP: PREPARING THE PAPERS

Once you've met the proposed guardian, and you've gathered the information you need, the technical work begins: filling out the paperwork. Copies of all the forms needed are available in the San Mateo Superior Court Clerk's office and online at www.sanmateocourt.org under "Forms". Additionally, guardianship forms are included in the Judicial Council Forms program; we have noted the directory in which you may find each form in the text below. The papers are not difficult, but questions may arise. If you have questions please contact Janet B. Seldon, Director of Pro Bono at Legal Aid. jbseldon@legalaidsmc.org 650-558-0915.

A. OVERVIEW

The goal of legal guardianship proceedings is to obtain Letters of Guardianship, the document that vests legal custody of a minor in a guardian.

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 Guardianship Confidential Declaration 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. Most of Legal Aid's clients are eligible for a fee waiver. A Notice of Hearing of Guardianship, together with a copy of the Petition for Appointment of Guardian of Minor, must be sent 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 must be filed with the clerk. This proof can be made by completing the Proof of Service by Mail section on the back 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. A separate Proof of Personal Service of Notice of Hearing for each person who is entitled to personal service should be attached to the Notice of Hearing of Guardianship and filed with the clerk.

B. DOCUMENT CHECKLISTS

- 1) Request to Waive Court Fees
- 2) Order On Court Fee Waiver **OR** a check made out for the amount of filing fees (\$225 as of January 2013 for Petition of the Person Only)
- 3) Petition for Appointment of Guardian (GC-210 or GC-210(P))
- 4) Guardianship Petition – Child Information Attachment (GC-210(CA))
- 5) Child Indian Inquiry –ICWA 010 (A) and 020
- 6) Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (FL-105/GC-120)
- 7) Consent of Guardian/Nomination of Guardian/Waiver of Notice and Consent (GC-211)
 - a. Mother (may be filed with petition)
 - b. Father (may be filed with petition)
 - c. Proposed Guardian (file with petition)
- 8) Guardianship Confidential Declaration (PR-18) Local Form
- 9) Notification to Court of Addresses for Guardianship (PR-2) Local Form
- 10) Confidential Guardianship Screening Form (GC-212)
- 11) Duties of Guardian (GC-248)
- 12) Notice of Hearing/Attachment to Notice of Hearing (GC-020)
- 13) Notice and Acknowledgment of Receipt (to be sent to parents with Notice if no consent) (POS-015)
- 14) Proof of Personal Service of Notice of Hearing (GC-020(P))
- 15) Order Appointing Guardian (GC-240)
- 16) Letters of Guardianship (GC-250)
- 17) Minor's birth certificate attached to Petition

NOTE: Use form MC-025 or pleading paper when additional space is required to explain items in a given form or when an attachment is needed. (See Appendix samples.)

WHEN THERE IS MORE THAN ONE PROPOSED GUARDIAN

You will need to fill out a SEPARATE one of each of the below forms for each co-guardian:

- 1) Confidential Guardianship Screening Form (GC-212)
- 2) Consent of Guardian Form (GC-211)
- 3) Guardianship Confidential Declaration (PR-18)

WHEN THERE IS MORE THAN ONE CHILD IN THE GUARDIANSHIP PROCEEDING

Fill out a separate Child Information Attachment (GC-210(CA)) for each child.

C. 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 law office name, address, phone number, fax number, and email of the attorney for the petitioner.

Type in the client's name after "ATTORNEY FOR" in capital letters.

- (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 Mateo County, the address is:

Superior Court of California, San Mateo County
Hall of Justice
400 County Road, PROBATE CLERK
Redwood City, CA 94063

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 case number will be assigned by the clerk 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.

D. REQUEST TO WAIVE COURT FEES

(Judicial Council Forms: Fee Waiver Directory, FW-001)

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 Mateo County in January 2013 is \$225.

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);
- has a gross monthly income that is less than the amount shown on the Information Sheet available 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) and an Order on Court Fee Waiver (Superior Court) (FW-003) and submit them at the time of the initial filing in place of a check. In San Mateo County you can get the Order during **ex parte hours (from 2:00-3:00p.m.)** by notifying the probate court investigators office by calling **650-363-4351** and letting them know that you are coming in with the long form Request for Fee Waiver.

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 papers can be filed without either a Request to Waive Court Fees (FW-001) and Order on Court Fee Waiver (FW-003) or a check. This procedure varies by county, so check the local Clerk's office.

- Item 1: Fill in the name, address and phone number of the petitioner.
- Item 2: Type in the petitioner's occupation and the name and address of her/his employer
- Item 3: Type in your name, address, phone number and State Bar number. Skip items "a." and "b."
- Item 4: Check the first box which precedes "Superior Court" only.
- Item 5a: If the petitioner receives financial assistance through any of the listed programs, check the appropriate boxes. You do not need to fill out page two. If the petitioner does not receive financial assistance through the programs, proceed to Item 5b.
- Item 5b: 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. Then sign and date the form at the bottom of this side and fill out Items 7, 8, and 9 on the back of the form. The form is then complete.
- Item 5c: 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 8-11, must also be provided. Remember to sign and date the application.
- Item 7: Check this box if it is applicable.
- Item 8: If you checked Item 5b, put total monthly income.
- Item 9: If you checked Item 5b, fill in "Total monthly income and household income" in item 9.
- Item 10: If you checked Item 5b, type "0" next to item a. and leave the rest of this section blank. If you checked Item 5c, fill in the appropriate amounts.
- Item 11: If you checked Item 5b, type "0" next to "Total monthly expenses" and leave the rest of this section blank. If you checked Item 5c, fill in the appropriate amounts.

E. ORDER ON COURT FEE WAIVER

(Judicial Council Forms: Fee Waiver Directory, FW-003)

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: Fill in the name and address of the petitioner.
- Item 2: Include your name, office address and State Bar number.
- Item 3: 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 4: Check the box preceding "*Request to Waive Court Fees*," box "a." and box "(1)."

F. PETITION FOR APPOINTMENT OF GUARDIAN

(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-210)

PLEASE NOTE: If petition is for appointment of guardian of person only, you can use either GC-210(P) or GC-210. **(Our sample case uses the GC-210 form.)**

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.

This is the document in which the petitioner alleges all forms signed under penalty of perjury contain all the information necessary for the court to consider a 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" (Probate 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 rents).

Item 1c(3): If money has been or will be deposited into a bank account [most often a blocked account, pursuant to Probate 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 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, in Attachment 10. 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 10: Declaration re: Notice to ____" and is filed two weeks before the hearing.

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, then specify the orders and the reasons on a separate page headed "Attachment 1g."

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 a.

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" 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): Check the appropriate boxes.
- Item 11(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." 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

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 not related 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. (Refer to Form E, Attachment 10 in this manual's Appendix for a sample.) 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 one week before the hearing.

NOTE: This will be a frequently used item, since often at least one person entitled to notice often 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.

G. GUARDIANSHIP PETITION – CHILD INFORMATION ATTACHMENT

(Judicial Council Forms: Guardianship and Conservatorship Directory,
(GC-210 (CA))

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

Check the box that corresponds with the version of the Petition for Appointment of Guardian that you are using.

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 1: 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: Because you will typically be representing the proposed guardian, you do not need to check this box.

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.

H. DECLARATION UNDER UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)

(Judicial Council Forms: Guardianship and Conservatorship Directory, 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 fairly 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 to be 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. Be sure that the declarant signs and dates this form in the spaces provided at the bottom of page two.

I. CONSENT OF PROPOSED GUARDIAN/NOMINATION OF GUARDIAN/WAIVER OF NOTICE AND CONSENT

(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-211)

This form is really three documents on one page and can be used for the signatures of different people.

The caption should be completed as it appears on the Petition for Appointment of Guardian, including the case number if it has been assigned. The appropriate boxes in the title of the document should be checked to correspond with the sections of the page being used.

Usually, the proposed guardian and each parent sign separate forms, unless they are all present to sign the form at once. All information should be typed before giving or sending it to the respective parties to sign. Also, 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.

The proposed guardian should fill in the top section of the form (Item 1), the Consent of Proposed Guardian. **The Consent of Proposed Guardian form must be signed and filed with the Petition in all cases.** If there is more than one proposed guardian, each guardian must sign and file a separate form.

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. If more than one parent consents to the guardianship, each should complete their own form.

This form is usually mailed along with an explanatory letter to each parent. A self-addressed stamped envelope should be enclosed.

J. GUARDIANIANSHIP CONFIDENTIAL DECLARATION

(San Mateo County Local Form PR-18)

San Mateo County requires that a local form, Declaration of Proposed Guardian (PR-18), be filed with the guardianship petition. It can be found on the Court website at <http://www.sanmateocourt.org>; click on Forms & Filing, then Local Forms and choose "Probate" from the drop-down menu. 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. See Sample Case for form.

K. CONFIDENTIAL GUARDIANSHIP SCREENING FORM

(Judicial Council Forms: Guardianship and Conservatorship Directory, 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 will need to be prepared explaining why. Even though the guardian answered yes to a question that should 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.) It may be appropriate to submit an additional declaration from the guardian on this topic.

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.

L. DUTIES OF GUARDIAN

(Judicial Council Forms: Guardianship and Conservatorship Directory, 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.

M. NOTICE OF HEARING OF GUARDIANSHIP

(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-020)

This is the document of which copies 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.

This document is filled out partially before the initial filing of guardianship papers and completed once the Petition for Appointment of Guardian is filed and a guardianship hearing date has been set. 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.

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.

In San Mateo County, guardianship hearings are held every morning (except Thursdays) at 9:00am in Department 28, Courtroom 2F.

On the back of the Notice, fill out the top caption box. The Proof of Service by Mail should be completed once you have filed the Petition for Appointment of Guardian (see Proof of Service section below). 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 stapled directly to the back of the Notice of Hearing form. Note that if you are able to use form GC-020(P) Proof of Personal Service of Notice of Hearing - Guardianship or Conservatorship (form O, discussed in further detail below), it should also be stapled to the back of the Notice of Hearing form before filing.

N. NOTICE AND ACKNOWLEDGMENT OF RECEIPT

(Judicial Council Forms: Proof of Service Directory, 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.

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), if the parents have already signed the Waiver of Notice and Consent form (see above), or if the parents 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. 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. File prior to the hearing if there is time. Otherwise bring copies to the hearing and present them to the judge through the bailiff.

The Acknowledgment of Receipt or Proof of Service should be filed before the hearing. **In San Mateo County the minor is required to attend the hearing if they are over the age of 12.**

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.

O. PROOF OF PERSONAL SERVICE OF NOTICE OF HEARING – GUARDIANSHIP AND CONSERVATORSHIP (Judicial Council Forms: Guardianship and Conservatorship Directory, 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), adopted by the Judicial Council in July 2005, is the form used to document personal service.

Items 3 and 4: Check 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, Declaration under UCCJEA, and Consent of Guardian forms.

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, staple the Notice of Hearing GC-020, Attachment to Notice of Hearing GC-020(MA), and Proof of Personal Service GC-020(P) forms together and file 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.

P. ORDER APPOINTING GUARDIAN OF MINOR
(Judicial Council Forms: Guardianship and Conservatorship Directory, 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.

Local rules in some counties mandate that a proposed Order be submitted to the court before the hearing. In San Mateo County the Order must be submitted to the probate courtroom at least seven days in advance of 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.

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 Mateo County guardianships are heard at 9 am in Department 28, Courtroom 2F on the second floor.
- Items 1c, d: Type in the petitioner's name and the petitioner's lawyer's name.
- Item 1e: Type in the petitioner's lawyer's name 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 and/or estate.
- Item 4: 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 5: Mark this box only if the attorney has been appointed by the court.
- Item 6: 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 7a: 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 7b: 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 8: If the last box of Item 2b is marked (indicating unlocated relatives), then this box should also be marked.
- Item 9: Always mark at least one of these boxes. Usually it will be the first box (bond not required for guardianships of the person).
- Item 10: This is a pro bono case, no fees will be charged, so do not mark this box.
- Item 11: 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 12: 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.

Items

13, 14, 15: Generally used only if special orders or conditions are requested.

Item 16: Type in the number of boxes marked in Items 8-15.

Item 17: Type in the number of pages attached to the Order (usually zero).

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

Q. LETTERS OF GUARDIANSHIP

(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-250)

This is the document which, when completed and stamped by the clerk, gives the guardian custody of the minor. It is issued by the clerk of the court once the Order is signed and any bond is posted.

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.

Items 2,3: These boxes should not be marked unless the powers of the guardian have been specially tailored.

Item 4: 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, then take them to the clerk's office to get certified copies are issued.

V. GUARDIANSHIP: FILING, NOTICE, HEARING, CONCLUSION

After the papers are prepared, you're 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. **Pro bono attorneys are encouraged to call Janet B. Seldon, Director of Pro Bono at 650-558-0915 or email to lbseldon@legalaidsmc.org if you have any questions during the process.**

A. HOME VISIT

After the papers are completed they must be signed by the petitioner and the proposed guardian. It is not a requirement but it 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 declaration.

B. FILING THE PAPERS

1. Copies

In San Mateo County, you will need to bring the originals plus two copies of all documents to the clerk's office for filing. Group each document with its copies, placing the original on top, do not staple any of the forms. After you return from filing the papers you can make copies of the endorsed-filed papers to use to send out Notice packets. Copies of the Notice of Hearing, Petition for Appointment of Guardian, Declaration Under UCCJEA, Consent of Guardian, and Child Information Attachment go to all persons entitled to notice.

2. Filing

When the documents are ready for filing, take the originals and two copies to the probate window in the Superior Court Clerk's office on the first floor of 400 County Center, Redwood City. Give the originals and one copy to the clerk, in the following order:

1. Request to Waive Court Fees and Order On Court Fee Waiver or a check for the filing fees (\$225 in San Mateo County as of January 2013).
2. Notice of Hearing
3. Petition for Appointment of Guardian
4. Child Information Attachment (attached to petition, with birth certificate attached)
5. Indian Child Inquiry
6. Consent of Guardian
7. Duties of Guardian
8. Guardianship Screening Form
9. Declaration under the UCCJEA
10. Guardianship Confidential Declaration

11. Other documents when necessary (for temporary guardianship procedures, see the next chapter)

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 Guardianship Confidential Declaration, are kept separated within or separately from the public court file folder and are not available to the general public. The clerk keeps the originals and one copy (of Petition, UCCEJA, Screening form, Duties, Declaration & Consent) for the court investigator.

The clerk will stamp the hearing date on the Notice of Hearing. The hearing date will be at least 30 days from the time of filing to ensure that the probate investigator has ample time to conduct an investigation and prepare a report.

C. NOTICE II: SENDING OUT NOTICE

Probate Code § 1511 requires service of the Notice of Hearing of Guardianship, with a copy of the Petition for Appointment of Guardian, 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 (parents, grandparents, siblings). Minors who are under 12 do not need to receive separate notice if the adult they live with receives notice.
- Any person nominated as guardian for the proposed ward
- The local agency designated to investigate guardianships (in San Mateo County the Human Services Agency completes these investigations)
- For non-relative guardianships, the State Department of Social Services

Also, 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.

1. 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.

2. 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 (Consent of Guardian, Declaration under UCCJEA, Indian Child Inquiry 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).**

Notice needs to be mailed at least 15 days before the hearing to people within the USA and at least 30 days before the hearing to people outside of the USA.

a. Parents

If you have not sent the Nomination of Guardian/Consent to Appointment of Guardian and Waiver of Notice form to each parent previously, it should be sent to each parent at this time, along with an explanatory letter. A sample letter is included in the appendix. Remember to include a self-addressed stamped envelope for each parent.

Each parent should also be sent a copy of the Petition, with attachments, and the Notice of Hearing. You should include two copies of the Notice and Acknowledgment of Receipt (POS-015) for each parent. A cover letter should be sent, explaining the procedure and requesting them to mail back the Acknowledgment form. Sample letters are located in the appendix to this manual.

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 it is prudent to send the Notice of Hearing and a copy of the Petition for Appointment of Guardian to the parents, if possible.

If you do not receive a Waiver or Acknowledgement back from the parents, they must be personally served at least 15 days before the hearing. See Section D, below, for instructions on completing personal service.

b. 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 for due diligence or in the interests of justice. 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, then notice should be sent to the sibling's caretaker.

c. Offices

- **San Mateo County**

Within one week of the filing of the petition, you must send Notice of Hearing and a copy of the Petition (including attachments), the Declaration of Proposed Guardian and any Temporary Guardianship Order, if there is one, to the local social services agency office in all cases (Probate Code §1516). 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 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. A sample letter (Form W) to San Mateo County's Human Services Agency is located in this manual's Appendix.

(The following addresses were accurate as of January 2013.)

The address for San Mateo County is as follows:

**Sarah Gregg, Supervisor
SMC Children & Family Services
400 Harbor Boulevard, Building B
Belmont, CA 94002**

- State Department of Social Services

If the proposed guardian is a **non-relative**, a copy of the Petition and Notice of Hearing must also be sent to the State DSS (Probate Code §1542). The address for the state is:

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

D. 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.

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 Mateo County 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 that 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(MA).

Once you have sent all the required notice and completed this form, the Notice must be submitted to the court. Take the original Notice of Hearing, along with one copy, and file the original with the Probate Clerk. Endorse-file the copy for the attorney's file. You may also submit the signed Notice of Hearing and Proof of Service by mail 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 than that, please deliver it to the clerk's office before 2:00 or before 12:00 on Friday's.

Note that the Proof of Personal Service of Notice of Hearing form, GC-020 (P), is intended to be filed along with the Notice of Hearing form. See the above discussion of this form (Letter O in "Preparing the Papers") for further instruction on completion of this form.

E. NOTICE III: PERSONAL SERVICE

If a person on whom personal service is required does not send back the Notice and Acknowledgment of Receipt, 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. 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 Letter O in "Preparing the Papers," above.

You may ask your county's sheriff department to personally serve a party IF they qualify and received a Request for Fee Waiver. In San Mateo County to request the sheriff to personally serve a party to the proceeding you must fill out the form "General Service of Process Instructions" and bring three complete 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 Package), a copy of the Order on Court Fee Waiver. The Sheriff's Department generates their own proof of service forms. This form can be found on the Sheriff's website at: www.smcsheriff.com.

F. THE GUARDIANSHIP HEARING

All guardianship and conservatorship matters in San Mateo County are heard before the Probate Judge (usually Judge George Miram) every morning at 9:00 a.m. except on Thursdays, in Department 28, Courtroom 2F on the second floor of 400 County Center, Redwood City. At least one week prior to the hearing, the attorney should call CPS or the probate investigator to make sure that they have conducted a home visit. The attorney should call the proposed guardian a day or two in advance to remind them about the hearing. All minors 12 and over are required to attend. Even though the minor is required to attend sometimes, after a few friendly questions to the minor, they may be

asked to wait outside the courtroom. Make sure someone else has been brought along to the hearing to sit with the minor in case that happens. The calendar is usually posted outside the courtroom and is on the court website: www.sanmateocourt.org under "tentative rulings" a few days before. The cases are then called but not necessarily 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. S/he will usually ask some questions about the parents, examine the agency and investigator's reports, and otherwise assure her/himself of the necessity of guardianship. The Judge will also want to be sure that the proposed guardian understands the nature of the proceeding and is in agreement with the proposed guardianship.

When the Judge indicates a willingness to grant the Petition, the attorney should pass the prepared Order to the clerk or bailiff, who will hand it to the Judge. The Judge will examine the Order, sign it, and hand it back. Examine the Order to see that it was signed and properly completed by the Judge. After thanking the Judge, everyone should leave the courtroom.

After the Judge signs the papers, the parties may 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 endorse-file the copies. Then file 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. 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.

G. 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 (Probate Code §1514, Family Code §3041). 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. 4th 387, 74 Cal. Rptr. 2d 47 (1998), Guardianship of Stephen G., 40 Cal. App. 4th 1418, 47 Cal. Rptr. 2d 409 (1995).

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, 64 Cal. Rptr. 2d 662 (1997).

In San Mateo County 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 in the department of Family Court Service which is on the 6th floor of the courthouse. The purpose of the mediation is to provide a forum to work out conflicts in guardianship cases, including visitation disputes. Mediation may happen during the court calendar of the guardianship hearing with someone from Family Court Services. The parties will then report back to the court at the end of the calendar. The parties 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 guardian is responsible for setting up the mediation after receiving information from the Court.

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.

Under the new law the judge also has the discretion to refer the case to CPS for further investigation and to determine whether or not a dependency petition should be filed in juvenile court.

H. FOLLOW-UP

The attorney may wish to contact the guardian by phone periodically, to make sure that the guardianship is going well and that no further legal assistance is needed.

In San Mateo County the court sets at the guardianship hearing 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 at least two weeks in advance of the hearing. The San Mateo County court mails this form to the guardian approximately one month before it is due. If difficulties exist, the Judge may wish the attorney, guardian and ward to appear in a hearing to review the guardianship. Otherwise, no appearances are necessary at the status report hearing. In San Mateo County, the form is typically given to the guardian at the time the initial guardianship is granted.

If, as a volunteer panel attorney, you feel you cannot commit to continue with the case, you should withdraw as attorney of record at the guardianship hearing. Future status reports can be submitted by the guardian.

When Guardianship Panel attorneys conclude a case assigned through the Legal Aid Society of San Mateo County, it is imperative that we be informed of the case's completion and outcome. The case closing form given to Guardianship Panel attorneys at the time they accept a case should be completed and returned to Legal Aid at the completion of the case. Learning of the resolution of guardianship cases is essential to Legal Aid's record keeping and statistical compilation, as well as for reference in the event of future contact between us and the client.

VI. GUARDIANSHIP VARIATIONS: TEMPORARIES, DEPENDENCIES, TERMINATIONS, & WITHDRAWALS

Sometimes minors have special needs. They may be in immediate danger, 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 four to six 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 (Probate 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 situation 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.

In San Mateo County, temporary guardianships are normally done on an ex parte basis, which means that a judge reviews the petition and then grants the petition, denies it, or orders a hearing to be set. If filing for a temporary guardianship call the Probate Court Investigator's office at 650-363-4351 and request a date to come in for an ex parte temporary hearing which will be between the hours of 2:00-3:00 any week day. Include the date and time of the hearing on the petition for application of temporary guardian and file the petition for temporary and permanent guardian together at least two days prior to the temporary hearing. The Petition for Appointment of Temporary Guardian can only be heard after the filing of a general Petition for Appointment of Guardian (Probate Code §2250). The Probate Court staff reviews the petition with the parties and then brings it to the judge. The proposed guardian and minor over the age of 12 should attend.

The minor (age twelve or older) and parents must receive notice of the hearing at least five days in advance of the appointment, unless the court for good cause waives notice (Probate Code §2250). In San Mateo County the local rules also require verbal notice (by telephone) of the proceeding to everyone else entitled to notice of the guardianship. (i.e. grandparents, siblings, etc.) 24 hours in advance, unless such notice would endanger or create severe hardship for the minor. San Mateo County local rules also require that a declaration be filed with the Petition that the required notice has been given. 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. In San Mateo County, if a temporary guardianship is granted, it lasts until the date of the hearing on the petition for guardianship. **Under the new law, Probate Code, 1512 (b), effective, January 1, 2013, the probate judge may refer a case to the Juvenile Court for an investigation as to whether or not a dependency action should be filed. Pending the outcome of that investigation the attorney should request a temporary guardianship be put in place. (Always bring extra forms to the hearings just in case you need them!)**

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 those required to receive notice and file proof of service with the court. 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. If problems are anticipated, the attorney should prepare the proposed guardian to speak, and if possible bring witnesses or declarations from witnesses to speak on the client's behalf.

If you are able to obtain a signed temporary guardianship order, take it to the Probate window on the first floor to file it. Before it is filed, conform the copies to the original, if needed. Make sure to endorse-file two copies. Give one copy of the Order to the guardian. The other copy is for the attorney's file. Submit the Letters for filing, and endorse-file two copies. Two of those copies should also be certified, one for the guardian, 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. In San Mateo County, 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. The need for housing may be (a minor has to be on a HUD lease, but cannot be until a temporary guardian is appointed).

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 also 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 a 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."

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."
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(c) 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. ORDER APPOINTING TEMPORARY GUARDIAN

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

- Item 1a/b: In San Mateo County, the attorney gives the paperwork to the Probate Court Investigator who gives it to the judge to sign. You may or may not see the judge. Of you are requesting a temporary during a general guardianship hearing where the judge has referred it to the Juvenile Division and CPS is doing the investigation, request the temporary in court and wait for the judge to sign it.
- 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." And 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 boxes "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, 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.

3. 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. 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 (as provided in §3041 of the Family Code). 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 (Probate 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.

C. 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 which is part of the federal Department of the Interior. 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 appendix to this manual. Proper notice should be written in clear and understandable language and 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 CRC Rule 5.481, the party seeking a guardianship must complete Indian Child Inquiry Attachment (ICWA-010A) and attach it to the petition. Also, at the initial guardianship hearing, the court will order the parent, Indian custodian, or guardian to complete Parental Notification of Indian Status (ICWA-020).

D. 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 Mateo County, 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 Welfare and Institutions Code Sections 304 and 366.4).** If an attorney discovers that the existing guardianship was handled as part of a dependency in the Juvenile Division, they should contact Legal Aid immediately to discuss this as we do not handle those cases. Minors and their parents get court appointed attorneys and there are social workers who can assist a relative who would like to become a guardian for a child who is in a dependency process.

The process in the Juvenile Division is different from that in the Probate Division. Generally, the County Counsel 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 can't live with the parents, the court can choose the 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. What is best may be juvenile hall, a foster home, a group home, or another plan for the child. If the judge appoints a guardian, all future matters relating to the guardianship must be handled in the delinquency court.

E. 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 (Probate Code §1600).

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 (Probate Code §1601). The ward or any other interested party may petition for the removal of the guardian (Probate 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 (Probate Code §2650). The guardian may also petition to resign (Probate Code §2660). A sample petition to terminate guardianship and order to terminate guardianship is included in the following pages.

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.

F. 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.

G. 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 a "Amendment to Guardianship" so that the Court will know you are actually amending an existing guardianship. Use the existing case number for all pleadings.

H. WITHDRAWING THE GUARDIANSHIP PETITION

Sometimes, during the process of working with a family 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 Withdrawal of Guardianship Petition (See Form EE in this Manual's Appendix as a sample.) 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.

I. SPECIAL IMMIGRANT JUVENILE STATUS CASES

Some of the minors involved in Legal Aid's cases were not born in the United States and do not have any legal immigration status. There is an immigration remedy that is potentially available to these minors called Special Immigrant Juvenile Status, pursuant to Section 101(a)(27)(J) of the Immigration and Nationality Act (the "INA"), 8 U.S.C. § 1101(a)(27)(J)(2002), the Code of Federal Regulations sets forth the standard for implementing the statute at 8 C.F.R. § 204.11(a) and (d)(2)(i)(2002). **SIJS provides lawful permanent residency to minors in a guardianship case who cannot be reunified with ONE or BOTH parents due to abuse, neglect, abandonment or a similar basis in state law.**

If you have a minor who may qualify, we will alert you to this so that you can assist in getting them the proper Order Establishing Minor's Eligibility for Special Immigrant Juvenile Status after the guardianship is granted. Once the Order has been signed by the probate judge then an application can be made to US Citizenship and Immigration Services. Part of the application process involves a medical exam and an interview at the CIS office at 630 Sansome Street in San Francisco. If this application is approved the minor will be granted a "green card", be eligible to work legally in the United States and eventually apply for citizenship.

A sample Motion and Order is found in the Appendix and the Immigrant Legal Resource Center has a full training manual for pro bono attorneys if you choose to work on one of these cases.

VII. PERTINENT SECTIONS OF THE CALIFORNIA PROBATE CODE

- **Appeals** (Probate Code §1300- §1312)

- §1300: Grounds for Appeal; all proceedings governed by this code
- §1301: Guardianships, Conservatorships, and other protective proceedings; grounds for appeal
- §1310: Stay of judgment or order; acts of fiduciaries directed by court; guardianship proceedings; undertaking required by court
- §1311: Appointment of fiduciary; reversal of error; validity of fiduciary acts; liability

- **Nomination of Guardian** (Probate Code §1500 - §1502)

- §1500: Nomination of guardian of person or estate
- §1501: Nomination of guardian to particular property
- §1502: Manner of nomination; time effective; subsequent legal incapacity or death of nominator

- **Appointment of Guardian Generally** (Probate 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 guardianship of the person for a married minor
- §1516: Mailing of notice of hearing and copy of petition of guardianship of the person to local social services agency; screening of guardians
- §1517: Guardianships resulting from permanency planning (W&I 366.25/366.36)

- **Non-Relative Guardianships** (Probate Code §1540 - §1543)

- §1540: Application of article (not to guardianships of estate only, relative guardianships, W&I 366.25 guardianships, or public officials appointed guardian)
- §1541: Additional contents for petition for guardianship
- §1542: Notice of hearing and copy of petition to local investigative agency and State Department of Social Services
- §1543: Report on suitability of proposed guardian by local agency; confidentiality of report.

- **Termination of Guardianships** (Probate Code §1600 - §1601)

- §1600: Termination on majority, death, adoption, or emancipation of ward
- §1601: Court order; notice

• **General Provisions of Guardianship** (Probate Code §2100 - §2112)

- §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
- §2111: Transaction
- §2111.5: Person related by blood or marriage
- §2112: Application of federal Indian law

• **Jurisdiction and Venue** (Probate Code §2200 - §2203)

- §2200: Superior court; jurisdiction
- §2201: Residents; venue
- §2202: Nonresidents; venue
- §2203: Priority of court; proceedings instituted in several counties

• **Change of Venue** (Probate Code §2210 - §2216)

- §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

• **Temporary Guardians** (Probate 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; time
- §2258: Suspension, removal, resignation, discharge

• **Requirement of Oath and Bond** (Probate Code §2300)

- §2300: Oath and bond; necessity before appointment

• **Letters** (Probate Code §2310 - §2313)

- §2310: Issuance; evidence of appointment; warning
- §2311: Form

- **Powers and Duties of Guardian of the Person** (Probate Code §2350 - §2359)
 - §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** (Probate 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** (Probate Code §2660 - §2662)
 - §2660: Resignation of guardian
- **Appointment of Successor Guardian** (Probate Code §2670)
 - §2670: Vacancy; appointment of successor
- **Requests for Special Notice** (Probate Code §2700 - §2702)
 - §2700: Written request; persons authorized
 - §2701: Modification or withdrawal or request; new request
 - §2702: Petitioner required to give special notice
- **Transfer of Personal Property Out of State** (Probate Code §2800 - §2808)

NEW LEGISLATION ENACTED JANUARY 1, 2013

Cal. Probate Code §1513(b):

(b) If the proposed ward is or may be described by Section 300 of the Welfare and Institutions Code, the court may refer the matter to the local child welfare services agency to initiate an investigation of the referral pursuant to Sections 328 and 329 of the Welfare and Institutions Code and to report the findings of that investigation to the court. Pending completion of the investigation, the court may take any reasonable steps it deems appropriate to protect the child's safety, including, but not limited to, appointment of a temporary guardian or issuance of a temporary restraining order. If dependency proceedings are initiated, the guardianship proceedings shall be stayed in accordance with Section 304 of the Welfare and Institutions Code. Nothing in this section shall affect the applicability of Section 16504 or 16506 of the Welfare and Institutions Code. If a dependency proceeding is not initiated, the probate court shall retain jurisdiction to hear the guardianship matter.