



# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101

## GENERAL INFORMATION FOR SELF-REPRESENTED LITIGANTS (GUARDIANSHIP OF THE PERSON)

The following information is intended to answer general questions a self-represented litigant may have about guardianship of the person. This is not a complete reference or procedural guide, nor is it intended as legal advice. It is your responsibility to read and comply with the applicable laws, use current forms, and be prepared to present your case.

### **What is guardianship?**

Guardianship is a court proceeding in which a judge gives someone who is not the parent:

- Custody of a child under the age of 18. This type of guardianship is called "Guardianship of the Person".
- Power to manage the child's income, money, or other property until the child turns 18. This type of guardianship is called "Guardianship of the Estate".

**Note: If you are petitioning for a guardianship of the estate, this packet is not applicable.**

More information about guardianship of the person and the estate can be found at [www.courtinfo.ca.gov/selfhelp/family/guardianship](http://www.courtinfo.ca.gov/selfhelp/family/guardianship) and [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (click on Probate).

If there is an open Juvenile Court case, contact the Child Welfare Services (CWS) worker assigned to the case or go to Juvenile Court to find out what your next step is. When there is an open Juvenile Court case, the Probate Court generally does not have the authority to grant a guardianship petition.

If there is an open Family Court case with an order of custody to a parent, you will be required to join in that case to seek custody of the child.

### **Guardianship of the Person**

A petition for guardianship of the person is filed when a minor child is living with an adult who is not the parent and the adult needs the legal right to make decisions on behalf of the child. When a guardian of the person is appointed, the guardian is awarded custody of the child and the natural parents no longer have the right to determine where the child will live or how he or she will be educated. Instead, the guardian has those rights, including the responsibility to determine medical treatment for the child.

### **What do I have to do to become the guardian of the person?**

To become the legal guardian of a child, you first have to file a petition and other forms with the court. You must fill out the following forms, available in the Probate Business Office and online at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (click on Forms, then Probate):

- Petition for Appointment of Guardian of the Person (JC Form #GC-210(P))
- Guardianship Petition—Child Information Attachment (JC Form #GC-210(CA))
- Notice of Hearing—Guardianship or Conservatorship (JC Form #GC-020)
- Consent of Proposed Guardian, Nomination of Guardian, and Consent to Appointment of Guardian and Waiver of Notice (JC Form #GC-211)
- Duties of Guardian and Acknowledgment of Receipt (JC Form #GC-248)
- Letters of Guardianship (JC form #GC-250)
- Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)(JC Form #FL-105/GC-120)
- Confidential Guardianship Screening Form (JC Form #GC-212)
- Order Appointing Guardian of Minor (JC Form #GC-240)
- Order Directing or Waiving Investigation (SDSC Form #PR-063)
- Information Sheet on Indian Child Inquiry Attachments and Notice of Child Custody Proceeding for Indian Child (JC Form #ICWA-005-INFO)

### **What do I have to do after I fill out the forms?**

After you fill out the required forms:

- ✓ Make at least one copy of each completed form.
- ✓ File your forms with the Probate Business Office at the location listed on page 1. There is a filing fee due at the time you file your papers. (Refer to the sections “Is there a fee to file a guardianship?” and “What if I don’t have enough money to pay the fees?” below.)
- ✓ The clerk will keep the original forms and return the copies to you. Your copies will be file stamped and a hearing date will be scheduled.
- ✓ Serve a copy of the filed paperwork upon parents and relatives as required by law. (Refer to the section “Serving Parents and Relatives” on page 2.)
- ✓ Review the Instructions to Proposed Guardian of the Person Re: Guardianship Investigations (SDSC Form #PR-061A) and follow the procedures to schedule the investigation.

### **Is there a fee to file a guardianship?**

Yes. There are court costs – the court filing fee and the investigation fee. The current fee amounts can be found on the court’s Fee Schedule (SDSC Form #ADM-001), available on the court’s website, [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov), or you can ask staff in the Probate Business Office.

### **What if I don’t have enough money to pay the fees?**

- If you cannot afford the **filing fee**, you can request a fee waiver from the court. The fee waiver forms are available in the Probate Business Office or online at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) and [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). You will need the following forms:
  - Information Sheet on Waiver of Superior Court Fees and Costs (JC Form #FW-001-INFO)
  - Request to Waive Court Fees (Ward or Conservatee) (JC Form #FW-001-GC)
  - Order on Court Fee Waiver (Superior Court) (Ward or Conservatee) (JC Form #FW-003-GC)

If the court approves your Request to Waive Court Fees, you won’t have to pay the filing fee or investigation fee.

### **Serving parents and relatives**

The law requires that parents and certain relatives be served (given) a copy of the petition for guardianship and other court forms you filed with the court. This is sometimes referred to as “giving notice.” **Someone else – NOT YOU – must serve the documents. There are rules for giving notice. You must follow them carefully, otherwise you have to start all over.**

**There are two types of service: personal service and service by mail.**

- **Personal service** – **parents** (or any person having legal custody of the child or serving as guardian of the estate) **and the minor child(ren)** of the action (over the age of 12) **must be personally served**. This means someone else – **not you** – personally hands them a copy of the Notice of Hearing—Guardianship or Conservatorship (JC Form #GC-020) and Petition for Appointment of Guardian of the Person (JC Form #GC-210(P)) at least 15 days before the hearing.
- **Service by mail** – Paternal and maternal **grandparents**, the child’s **brothers** and **sisters** (over the age of 12), including half-brothers and half-sisters (over the age of 12), and any person having the care of the proposed child of the guardianship (if other than the person having legal custody) and any spouse named in the petition **may be served by mail**. This means someone else – **not you** – mails them a copy of the Notice of Hearing—Guardianship or Conservatorship (JC Form #GC-020) and Petition for Appointment of Guardian of the Person (JC Form #GC-210(P)) at least 15 days before the court hearing. (Note: The child’s grandparents are the parents of the child’s mother and parents of the child’s father.)

### **What if the parents and relatives agree I can be the guardian?**

If anyone who is required to receive notice of the guardianship petition (parents and relatives) agree you can be the guardian, he/she can sign the Consent of Proposed Guardian, Nomination of Guardian, and Consent to Appointment of Guardian, and Waiver of Notice form (JC Form #GC-211). You don't have to give notice to anyone who signs the consent portion of that form. If a person tells you verbally he/she agrees you can be the guardian, but doesn't sign a written consent, you still have to give that person notice. Refer to "Serving Parents and Relatives" for information about giving notice.

### **What if I don't know where the parents or relatives are?**

If you don't know where the parents or relatives are, you must make a reasonable and diligent effort to locate them. Some suggestions to find them include:

- ✓ Asking all family members, friends, acquaintances, and employers;
- ✓ Searching the real and personal property indexes in the recorder's and assessor's offices for the county where the person last resided;
- ✓ Looking in the phone book;
- ✓ Calling telephone information;
- ✓ Searching on the Internet (e.g. social media).

If you have done everything you can to locate the parents or relatives and you still can't locate them, you can ask the court to allow you to proceed without giving notice to those persons. To do this, fill out Declaration of Diligent Search and Request to Dispense with Notice (SDSC Form #FLF-002), available in the Probate Business Office and online at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov), and file it at least four days prior to your hearing.

### **What happens after the forms are served?**

If the forms were served by personal delivery to the parents or relatives, the person serving the forms fills out a Proof of Personal Service of Notice of Hearing—Guardianship form (JC Form #GC-020(P)). If the forms were served by mail (not allowed for parents or minor(s) in the case), the person serving the forms fills out the Proof of Service by Mail on the back side of the Notice of Hearing form (JC Form #GC-020).

After the forms have been properly filled out and signed, file the proof of service forms with the Probate Business Office at least four days prior to your hearing.

### **What happens before the court hearing date?**

Before your court hearing date, a probate examiner will review the paperwork submitted by you and make notes for the probate judge. A copy of these notes are available online at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (click on the Probate tab, then Examiner Notes).

If there are defects (things that are missing and/or corrections to be made), they will be noted by the probate examiner. Ordinarily the defects need to be corrected before your petition will be granted by the judge. If defects are noted and have not been corrected before the hearing date, attend the hearing to assure the judge you still want the guardianship. The court may continue the hearing to a later date to allow you time to correct the defects. Most defects can be cleared by filling out the Supplement to Petition for Appointment of Guardian of the Person (SDSC Form #PR-107) and filing it with the Probate Business Office at least four days prior to your hearing.

The probate examiners can be contacted by phone or email. Instructions are available online at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (click on the Probate tab, then Examiner Notes).

If the court grants your petition for guardianship at the hearing, submit the Order Appointing Guardian of Minor (JC Form #GC-240) and Letters of Guardianship (JC Form #GC-250) forms to the Probate Business Office. The Letters of Guardianship are evidence of your authority to act on behalf of the child. Obtaining a certified copy of the Letters of Guardianship is advisable.

### **What if there is a need for a temporary guardian before the hearing?**

The court may grant Letters of Temporary Guardianship (JC Form #GC-150) under the following circumstances:

1. There is an immediate and compelling need for the appointment;
2. The Petition for Appointment of Guardian is filed at the same time;
3. There is good cause to waive notice to the parents, or they consent and waive notice for the temporary guardianship; and
4. The minor is residing with the petitioner at the time the request for temporary guardianship is made.

If the above criteria can be met, the petition for temporary guardianship may be submitted to the Probate Business Office for determination by the probate judge. The hearing will generally be set in five to ten court days. The required documents for temporary guardianship are:

- Petition for Appointment of Temporary Guardian of the Person (JC Form #GC-110(P)).
- Order Appointing Temporary Guardian (JC Form #GC-140).
- Letters of Temporary Guardianship (JC Form #GC-150).
- All the documents needed for the general guardianship (see page 1).
- Waivers of notice, if you have them.

### **What happens after the hearing?**

If the judge grants you guardianship, you will be the guardian of the minor child until the child turns age 18. When the child turns age 18, the guardianship terminates by operation of law. You must inform the court in writing if you move within the state. You can do so by filling out a Notice of Change of Address or Other Contact form (JC Form #MC-040) and filing it with the Probate Business Office. If you want to move out of the state, you must petition the court for permission to do so by filling out the Petition to Fix Residence Outside the State of California (JC Form #GC-085) and filing it with the Probate Business Office.

### **Do I need a lawyer to set up a guardianship?**

No, you can represent yourself. However, the forms for guardianship and the rules for notice can be complicated. If you don't follow the rules carefully and defects occur, you may have to come back to court more than once to have your guardianship approved, and it will take more time to process your case.

Talking to a lawyer is a good idea when:

- the child has extensive and/or valuable property;
- you live out of state;
- there are other legal cases going on at the same time (like adoption, custody in Family Court, or Juvenile Court involvement);
- the child has special needs (physically/emotionally disabled); or
- the child is Native American (because federal laws apply).

### **If you need legal advice:**

Contact an attorney of your choice. If you need help locating an attorney in San Diego County, you may contact the Lawyer Referral & Information Service of the San Diego County Bar Association at their website [www.sdcb.org](http://www.sdcb.org) or by calling (619) 231-8585.

**If you need general legal information or assistance with completing court forms:**

**Family Law Facilitator's Office - Guardianship Assistance Program**

This program is operated by the San Diego Superior Court. For further information, you may inquire in the Probate Business Office or call (619) 844-2869.

**San Diego Volunteer Lawyer Program**

This private, non-profit legal organization offers a guardianship clinic on a first come, first served basis to income qualified individuals. Call (619) 235-5656 (ext. 104) or visit [www.sdvlp.org](http://www.sdvlp.org) for information about days and hours of operation.

**If you are in the military and need assistance:**

Camp Pendleton Legal Office (760) 725-6558

North Island Legal Office (619) 545-6437