

CHAPTER 19 GUARDIANSHIPS

Rule 4.19.1

Temporary Guardianships

A. A petition for appointment of temporary guardian must be a separate pleading and may not be filed prior to the filing of a petition for appointment of a general guardian.

B. The court will require a full bond from the temporary guardian of the estate unless waived for good cause.

C. The court will not consider the appointment of a temporary guardian ex parte unless proper showing is made by separate declaration and order as set forth at California Rules of Court, rule 7.1012. Upon granting of an ex parte temporary guardianship, a reconsideration hearing will be set if the petition for general guardianship is more than 30 days from date of temporary appointment order.

D. Upon request, a petition for temporary guardianship, may be “short set” by the Probate Business Office on the next available moving calendar. The petition will be set at a shortened date and time to allow five court days’ notice to parties so entitled.

E. The filing fee required for petitions for temporary guardianship is due at filing in addition to the ex parte filing fee, if any.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2010; Rev. 1/1/2011; Rev. 1/1/2015; Rev. 1/1/2017)

Rule 4.19.2

Petition for Appointment of Guardian: Jurisdiction

A. Counsel must refer to the Guardianship Protocol available in the Probate Business Office to determine if the matter is properly filed in the Probate Division.

B. Any request for appointment of guardianship of the person shall state whether the minor or minors that are the subject of the proposed guardianship are the subject of a juvenile dependency proceeding, and shall state whether the minor or minors are subject to the jurisdiction of the family court in a pending or concluded dissolution, paternity, child support or domestic violence proceeding. If the minor or minors become the subject of a juvenile dependency or family court proceeding while any request for appointment of a guardian is pending, any party with knowledge of such a proceeding shall immediately file and serve in the guardianship proceeding a pleading describing such proceeding.

C. When an appointment is requested for guardianship of the estate only, the petition must be filed in the Probate Court.

D. Any proposed guardian not related to the minor must disclose if they are serving as guardian for any other minors to whom they are not related.

E. It is the petitioner’s responsibility to ensure that allegations that parental custody would be detrimental to the minor child, other than a statement of ultimate fact, not appear in the petition. Allegations of this nature must be submitted on a separate document which will be maintained in a confidential envelope. (Fam. Code, § 3041.)

(Adopted 1/1/1990, Rev. 7/1/1996; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Rev. 1/1/2017)

Rule 4.19.3

Co-Habitant of Proposed Guardian

A. If the minor resides with the proposed guardian and the proposed guardian is co-habiting with another adult who will share in the physical custody of the minor, the court must presume that the co-habiting adult is a person having care of the minor. Unless waived, the co-habiting adult must be noticed and served with a copy of the petition for appointment of guardian. The co-habiting adult is subject to a background screening by the investigating agency.

B. Written consent of the co-habiting adult must be filed with the court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2011; Rev. 1/1/2018)

Rule 4.19.4

Proceedings to Have Child Declared Free From Custody and Control of One or Both Parents

Probate proceedings authorized by Probate Code section 1516.5 will be filed and heard in the Juvenile Division. The guardianship file will be consolidated into the juvenile proceedings pursuant to the request and direction of the Juvenile Court.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Rev. 1/1/2005; Rev. & Renum. 1/1/2006)

Rule 4.19.5

Investigation

Probate Code section 1513 requires that, unless waived by the court, in each proposed appointment of guardian, an investigation be made and a report submitted to the court. These investigations will be done by Family Court Services, the Court Investigator (Probate Department) or Health and Human Services Agency as follows:

Guardianship Of	Proposed Guardian	Agency
1. Person or Person/Estate	Relative	Family Court Services
2. Person or Person/Estate	Non-relative	HHSA
3. Estate only	Relative or Non-relative	Court Investigator
4. Estate Only-Waiver	Relative or Non-relative	No Investigation

For these purposes, relative is defined in Probate Code section 1513 subdivision (g).

PETITIONER IS TO SUBMIT DOCUMENTS AND FOLLOW THE PROCEDURES BELOW FOR CORRESPONDING NUMBERS ABOVE:

A. RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE

In order to begin the investigation process, copies of the following filed documents (from your initial guardianship packet) must be submitted to Family Court Services (location and phone number can be found at <http://www.sdcourt.ca.gov>) prior to scheduling an investigation date:

1. Petition for Appointment of Guardian of Minor(s) (Judicial Council form GC-210P).
2. Order Directing or Waiving Investigation signed by Judge of the Superior Court (SDSC Form PR-063).
3. Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Judicial Council form FL-105/GC-120).
4. Confidential Guardianship Screening Form (Judicial Council form GC-212).
5. Guardianship Questionnaire (SDSC form FCS-045).

B. NON-RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE

1. Per Probate Code section 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.
2. Submit the Order Directing or Waiving Investigation (SDSC form PR-063) to the Probate department.
3. Send a second copy of the petition to: Health and Human Services Agency, Children's Services, Guardianship Clerk, 8911 Balboa Ave. San Diego, CA 92123.

C. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE ONLY (NON-WAIVER)

1. Complete and submit the Order Directing or Waiving Investigation (SDSC form PR-063) and Guardianship Questionnaire – Estate (Confidential) (SDSC PR-064) to the probate department.
2. Provide a copy of the petition to the probate department to initiate the investigation.

D. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE - WAIVER REQUESTED

1. Submit a Probate Ex Parte Request and Order (SDSC form PR-136), Ex parte Petition for Waiver of Investigation (on pleading paper-no form), Guardianship Questionnaire (SDSC form FCS-045), and Order Directing or Waiving Investigation (SDSC form PR-063) to the Probate Department. Fill out order but do NOT check a box.

2. If waiver is denied, the party will receive a copy of the Order Directing or Waiving Investigation (SDSC form PR-063).

All non-relative guardianship petitions of the person require you to send notice to the local agency investigating guardianships (Prob. Code, § 1516). The actual screening for neglect or abuse will be done by either the San Diego Health and Human Services Agency or Family Court Services, depending upon which agency is responsible for the investigation of the guardianship of the person. Since Family Court Services conducts screenings for prior referrals of neglect or abuse of minors in relative guardianship petitions, notice pursuant to Probate Code section 1516, subdivision (a) for relative guardianships is not required.

(Adopted 1/1/1990; Rev. 7/1/1995; Rev. 1/1/2000; Renum. 7/1/2001; Rev. 7/1/2003; Rev. 1/1/2005; Rev. & Renum. 1/1/2006; Rev. 1/1/2008; Rev. 1/1/2009; Rev 1/1/2011; Rev. & Renum. 1/1/2012; Rev. 1/1/2013; Rev. 1/1/2016; Rev. 1/1/2019)

Rule 4.19.6

Additional Powers

The court may, on the petition of the guardian of the estate, either at the time of appointment or later, grant additional powers to the guardian as authorized by sections 2590 and 2591 of the Probate Code. Such powers are not granted unless sufficient reason is shown for their necessity. The court will grant only those additional powers necessary or proper under the specific circumstances of each case. The powers so granted must be set forth in the order and in the letters of guardianship.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014; Rev. 1/1/2016)

Rule 4.19.7

Investments by Guardian

A. See rule 4.18.13.

B. The guardian should also consider the circumstances of the estate, indicated cash needs, the age of the minor and the date of prospective termination of the guardianship.

(Adopted 1/1/1990; Renum. 7/1/2001; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.19.8

Request for Use of Minor's Assets

A. If a minor has a living parent or receives or is entitled to support from another source, prior court approval must be obtained before using guardianship assets for the minor's support, maintenance or education pursuant to Probate Code section 2422. The father and mother of a minor child have an equal responsibility to support the minor.

B. A request to expend funds may be made at the time of appointment of guardian, in a separate noticed petition, or in an accounting and report.

C. The petition must set forth in detail the parents' financial inability or other circumstances which in the minor's interest would justify use of the guardianship assets.

D. The request must be for a specific and limited purpose and for a limited period of time.

E. The petition must be accompanied by a statement describing income, expenses, assets and liabilities of any parent and must include the receipt of Social Security aid if applicable.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2011; Renum. 1/1/2014)

Rule 4.19.9

Fees and Commissions in Guardianships

See Chapter 16 regarding fees and commissions generally.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. & Renum. 1/1/2006; Rev. & Renum. 1/1/2011; Renum. 1/1/2014)

Rule 4.19.10

Reserved for Future Use

(Adopted 1/1/2015; Del. 1/1/2017)

Rule 4.19.11

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(Adopted 1/1/2016; Del. 1/1/2019)