

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 days’ notice to parties entitled.

(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)

Rule 4.19.2

Petition for Appointment of Guardian: Jurisdiction

A. If there is a proceeding regarding the minor pending in Juvenile Court or Family Court, counsel must refer to the Guardianship Protocol available in the Probate Business Office.

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

C. 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.

D. 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)

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 and a copy of the petition and notice must be served by mail on said co-habiting adult. 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)

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 Department of Social Services 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(g).

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

1. RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE

a. Submit Order Directing or Waiving Investigation, PR-63. Fill out order, check #1.

b. Go to Family Court Services immediately to make an appointment. The investigation process will ordinarily take at minimum six weeks. TAKE COPIES OF ALL GUARDIANSHIP DOCUMENTS WITH YOU including a completed Guardianship Questionnaire (form SDCS FCS-045). Locations and phone numbers can be found at www.sdcourt.ca.gov. The investigation fee must be paid prior to the investigation.

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

a. Per Probate Code 1542, notice is to be given to the Director of Social Services in Sacramento and to the local agency investigating guardianships.

b. Party to submit the Order Directing or Waiving Investigation PR-63 to the Probate department. Fill out order, check #2.

c. Send a second copy of the petition to: Health and Human Services Agency, Children's Services, Guardianship Clerk, 6950 Levant Street, San Diego, CA 92111.

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

a. Submit Order Directing or Waiving Investigation PR-63 to the probate department. Fill out order, check #3.

b. Send copy of order to Court Investigator to initiate investigation.

c. Pay the investigation fee to the probate department and send receipt with a copy of the petition and Order Directing Investigation to the Probate Department, attention Court Investigator.

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

a. Submit a Probate Ex Parte Coversheet and Instructions PR-136, Ex parte Petition for Waiver of Investigation (on pleading paper-no form), Guardianship Questionnaire (FCS-039), and Order Directing or Waiving Investigation (PR-63) to the Probate Department. Fill out order but do NOT check a box.

b. If waiver is denied, the party will receive a copy of the Order Directing or Waiving Investigation (PR-63). The party will pay the investigation fee to the probate department and send of copy of the Order to the probate department, attention: Court Investigator.

All non-relative guardianship petitions of the person require you to send notice to the local agency investigating guardianships (per Probate Code 1516). The actual screening for neglect or abuse will be done by either San Diego Department of Social Services 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 1516(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)

Rule 4.19.6

Additional Powers

A. 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.

B. A petition to fix the residence of the minor in another state, once approved by the court, will be continued for a 60 day review. Upon showing a guardianship has been established in the new state of residence, the matter will be taken off calendar.

(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)

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 included 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 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)