

**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 and Self-Represented Litigants must refer to the Guardianship Protocol available on the Court’s website and 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; Rev. 1/1/2020)

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 be submitted to the court. Investigations will be conducted by Family Court

Services (FCS), County of San Diego Health and Human Services Agency (HHSA), or a Court Investigator (CI) as follows:

Guardianship of:	Proposed Guardian:	Agency:
A. Person or Person/Estate	Relative	FCS
B. Person or Person/Estate	Non-relative	HHSA
C. Estate Only	Relative or Non-relative	CI
D. Estate Only-Waiver Granted	Relative or Non-relative	No Investigation

For these purposes, relative is defined in Probate Code section 1513 subdivision (g). Note: If a Petition for Appointment of Guardian (JC Form #GC-210/210(P)) is filed and accompanied with a Petition for Special Immigrant Juvenile Findings (JC Form #GC-220) and the minor is 18 at the time of the hearing, the court will automatically waive the investigation requirement at the time the petitions are filed.

A. RELATIVE GUARDIAN - PERSON OR PERSON/ESTATE

1. FCS will conduct an investigation upon appointment only (location and phone number can be found at www.sdcourt.ca.gov). Appointments can only be made in person. Conformed copies of the following documents must be provided to FCS:

- a. Petition for Appointment of Guardian of Minor(s) (JC Form #GC-210P).
- b. Order Directing or Waiving Investigation signed by Judge of the Superior Court (SDSC Form #PR-063).
- c. Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (JC Form #FL-105/GC-120).
- d. Confidential Guardianship Screening Form (JC Form #GC-212).
- e. Guardianship Questionnaire (SDSC Form #FCS-045). *(Submit original to FCS. Do not file with Probate Business Office)*

2. Since FCS 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.

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

- 1. Probate Code 1542 requires that notice be given to the Director of Social Services in Sacramento and HHSA.
- 2. When providing notice to HHSA, conformed copies of the following documents must be provided:
 - a. Petition for Appointment of Guardian of Minor(s) (JC Form #GC-210P).
 - b. Order Directing or Waiving Investigation signed by Judge of the Superior Court (SDSC Form #PR-063).
 - c. Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (JC Form #FL-105/GC-120).
 - d. Confidential Guardianship Screening Form (JC Form #GC-212).
- 3. HHSA will provide the petitioner with a packet of materials to complete and return prior to its investigation.

C. RELATIVE OR NON-RELATIVE GUARDIAN - ESTATE ONLY

- 1. Guardianship Questionnaire – Estate (SDSC Form # PR-064) must be filed with the Probate Business Office.
- 2. CI will contact the petitioner and conduct an investigation prior to the hearing.

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

- 1. The following documents must be submitted to the Probate Business Office:
 - a. Application for Waiver of Investigation (SDSC Form # PR-062)
 - b. Probate Ex Parte Request and Order (SDSC Form #PR-136)
 - c. Guardianship Questionnaire (SDSC Form #PR-064)
 - d. Order Directing or Waiving Investigation (SDSC Form #PR-063). *(Complete information in caption only.)*
- 2. If request is approved, no investigation will be required. If denied, a CI will contact the petitioner and conduct an investigation prior to the hearing.

(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; Rev. 1/1/2020; Rev. 1/1/2021)

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

Reserved for Future Use

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