

PROTOCOL FOR GUARDIANSHIPS

7/31/09

Issues relating to the guardianship of the person of a minor child may arise in Probate, Juvenile, and Family Court. In order to resolve issues concerning where such cases are to be heard and other procedural issues, the Court adopts the following protocol:

1. Filing of Probate Guardianships

Probate Petitions for Guardianship of the Person of a Minor, Petitions for Guardianship of the Person and Estate of a Minor, and Petitions for Guardianship of the Estate of a Minor shall be filed at 191 North First Street, San Jose, CA 95113. All such petitions shall be accompanied by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) form, which shall be completed in full, disclosing the existence of any and all other actions involving custody of the minor child or children. Upon the filing of a Probate Guardianship, the calendar secretary shall conduct a search of the calendar management system in order to determine if the system shows any other cases involving the minor child in this county.

2. Location of Guardianship Hearings where there are cases in both Probate and Family Court

A. If there is an action pending in Family Court regarding the custody of a minor child and a subsequent action for Guardianship of the Person or Person and Estate of the minor child is filed in the Probate Court, the cases should be coordinated for hearing purposes and assigned for hearing to the Probate Court. At the earliest opportunity, the cases shall be linked in the calendar system, so that the judicial officer hearing the matter is made aware of the existence of the other case or cases. The Guardianship file and the Family Court file or files shall be marked to clearly indicate the existence of the other case or cases. Pursuant to California Rules of Court, Rule 5.154, the proposed guardian, temporary guardian, or guardian, may be joined into the Family Court action as a party.

B. If there is a Guardianship of the Person or Person and Estate of a minor child pending in the Probate Court and a subsequent action regarding the custody of the child is filed in Family Court, the cases should be coordinated for hearing purposes and assigned to the Probate Court Judge for hearing in the Probate Court. At the earliest opportunity, the cases shall be linked in the calendar system, so that the judicial officer hearing the matter is made aware of the existence of the other case or cases. The Guardianship file and Family Court file or files shall be marked to clearly indicate the existence of the other case.

C. Petitions for Guardianship of the Estate only of a minor child will be heard in the Probate Court, even if there is a Family Court action on file. The two files shall be coordinated and linked in the computer system, so that both judges are aware of the other case.

3. Location of Hearings on Restraining Orders where there is a pending Guardianship

If there is an application for restraining orders under the Domestic Violence Prevention Act or the Civil Harassment Prevention Act which involves a party to a pending Guardianship matter and is related to the Guardianship matter, the hearing on the restraining orders will be scheduled and heard in the Probate Court. The Family Court and the Probate Court will coordinate scheduling these hearings. The initial restraining order request and any temporary restraining orders shall be filed at Family Court. Any Orders After Hearing that are a result of a hearing at the Probate Court will be filed at the Probate Court Clerk's Office.

4. Background Checks

The Petitioner shall provide information required by Judicial Council forms or by the Court on all adults in the household, so that background checks can be done on each adult (individuals over the age of 18) living in the household where the proposed ward is or will be residing.

5. Attendance at Hearing

The proposed guardian(s) and his or her attorney and the petitioner and his or her attorney are required to attend the hearing to appoint the guardian. Children aged twelve and over are also required to attend the hearing, unless their presence is waived by their counsel and the Court. Children under the age of twelve are not required to be present for the hearing, unless they have been ordered by the Court to be present.

6. Guardianship Orientation

Any guardian appointed as Guardian of the Person or Person and Estate of a Minor is required to attend a Guardianship Orientation. Guardianship Orientation usually follows the Guardianship calendar in the Probate Court.

7. Juvenile Court Matters

A. If a Petition is filed in the Juvenile Court or the Juvenile Court assumes jurisdiction by declaring a minor child a dependent child and there is an active Family Court or Probate Court case involving that minor child, the clerk of the Juvenile Court shall forward a notice to the Family Court or Probate Court that a Petition has been filed or the Juvenile Court has assumed jurisdiction and the notice shall be placed in the Family Court or Probate Court file. A notation shall also be made in the calendar management system that the Juvenile Court has assumed jurisdiction over the child or children in the case. Pursuant to Santa Clara County Superior Court Local Rules, Juvenile Rule 2 F, copies of any Juvenile Custody Orders [exit orders] (form JV-200) issued by the Juvenile Court shall be placed in the applicable Family or Probate Court files. For ongoing cases in which the Juvenile Court assumes jurisdiction and/or issues a

Juvenile Custody Order, a stamp will be placed on the left of the Family Court or Probate file providing the relevant dates for the order or notice in an easily located place.

B. If a social worker has made a written recommendation that a guardianship petition be initiated in the Probate Court in order to avoid the filing of a juvenile dependency petition as a part of the dependency diversion or informal supervision agreement, that recommendation, along with any informal supervision agreement, must be filed in the Probate Court, along with any other supporting data, as a part of the documents submitted to request the guardianship.

C. Pursuant to Probate Code §1513 (c), if, during the course of an investigation relating to a guardianship, any party alleges that a minor's parent is unfit, as defined by Section 300 of the Welfare & Institutions Code, the case shall be referred to the Department of Family and Children's Services to investigate a potential dependency action. The guardianship shall not be completed until the investigation required by Welfare & Institutions Code §328 and §329 is completed and a report is provided to the court in which the guardianship is pending. **See Protocol for Probate Court, Department of Family and Children's Services, and Family Court When Issues of Child Abuse or Neglect Surfaces in Probate Guardianship Proceedings.**

D. The Juvenile Court may order a legal guardianship without adjudicating the child a dependent of the Court. This is done pursuant to Welfare & Institutions Code §360(a). The Court determines that a guardianship is in the best interests of the child, the parents are not interested in reunification and the child (if able to give a meaningful response) and parent(s) agree to the guardianship. All cases initiated in this manner and subsequent hearings in the case shall be heard in the Juvenile Court.

8. Mediation

The Probate Court Judge, at his or her discretion, may refer the parties in a guardianship case to mediation at Family Court Services (hereafter referred to as FCS) (bypassing Orientation) which mediation service FCS shall provide as a courtesy and at no cost to the parties, as resources permit. FCS may, at times, inform the Probate Court that mediation services are not available due to resource limitations. The Probate Court Clerk, or other person designated by Court, shall, at the time of the Court's referral when the parties are before the Court, call FCS to obtain a mediation appointment time and date for the parties. Mediation is confidential. If there are allegations of domestic violence in a guardianship matter, the Family Court Services Domestic Violence Protocol procedures will be followed.

9. Family Group Conference

The Court may, in any contested Guardianship of the Person of a Minor Child, contested visitation requests in Guardianships, or contested Petitions to Terminate a Guardianship, order the parties to participate in one or more Family Group Conferences with Family Court Services or a private mental health professional. Family Group Conferences are

not confidential. The parties and counsel, including minor's counsel, may be required to attend Family Group Conferences. The person conducting the Family Group Conference will have the discretion to determine whether the minor child or children shall participate in the Conference. If there are allegations of domestic violence in a guardianship matter, the Family Court Services Domestic Violence Protocol procedures will be followed.

10. Emergency Screenings

A. In any case in which an emergency exists, the Probate Court may order a staff member of FCS to conduct an Emergency Screening, which is a preliminary and limited evaluation. The purpose of the screening shall be to provide the Court with recommendations regarding the temporary custody, visitation, and related conditions for the minor children who are the subject of the guardianship.

If the parties agree to and sign the screening recommendations, they shall be submitted to the Court for review and signature.

B. If a party objects to the screening recommendations, a brief hearing, generally less than 30 minutes, will be held on the day of the screening, or as soon as possible thereafter. If the Emergency Screening occurs at 191 N. First Street, any hearing on a contested screening hearing will be heard in the Probate Department at 191 N. First Street. If the screening occurs at Family Court Services at Park Center Plaza, any contested screening hearing will be heard at 170 Park Center Plaza by the Family Court Supervising Judge or another judge assigned by the Supervising Judge to hear the matter. Once the screening hearing is completed, any future hearings in the guardianship will be heard in the Probate Department, absent orders to hear the matter elsewhere.

C. Fees will be charged for emergency screenings by FCS. Any party may request a Fee Waiver from the Court regarding the fees charged for screenings.

11. Documents provided to evaluator or screener

Any documents provided to an evaluator or screener shall be accompanied by either Judicial Council Proof of Service form or the FCS "Declaration of Mailing or Personal Service" form, except for documents handed to an evaluator or screener in the presence of the other party or counsel (in which case copies shall be provided at the same time to the other party or counsel). Whichever form is used, the number of submitted pages shall be stated. FCS may require a party to index and prioritize the review of submitted documents.

12. Guardianship Evaluations

A. The Court may, in its discretion, order an evaluation by FCS regarding issues relating to a contested guardianship. The Court may, in its discretion, also appoint a private mental health professional to conduct the evaluation. Such an evaluation shall be a supplement to the report of the Court Investigator. All parties and their counsel, along with counsel for the child(ren), shall attend the initial appointment for the evaluation.

The evaluation report shall be completed within 90 days from the initial appointment with the evaluator.

B. The Director of FCS, or the Director's designee, shall have the exclusive authority to assign the evaluator in an FCS Guardianship Evaluation. The Court shall select any private mental health evaluator, in the absence of a stipulation to such evaluator.

C. Child(ren) must be present for the initial evaluation appointment when (and only when) either a party resides more than 100 miles from San José, or the Court or the evaluator directs that the child(ren) be available. When the child(ren) are required to be present, the custodial party shall bring an adult who can care for the child(ren). All parties shall cooperate with an evaluator in arranging times for the evaluator to see the child(ren) after the initial evaluation appointment, if requested by the evaluator.

D. The evaluator will interview the parties, separately or jointly, as appropriate, and their attorneys, and may schedule additional interviews with the parties, child(ren), or others to complete the evaluation. If one attorney fails to appear at the initial appointment, as required, the evaluator has the discretion to proceed with the parties only and to reschedule the appointment with all attorneys. Sanctions may be imposed, upon notice, for the attorney's failure to appear.

E. **Confidentiality of Evaluation Reports:** Evaluation reports are confidential and shall be sent to attorneys and self-represented parties only. The confidential report shall not be duplicated, disseminated, or in any other way provided or shown to any individual not a party to the proceedings, except consulting experts, court ordered therapists, and court ordered evaluators. The evaluation report shall be placed in the confidential part of the Court file. Evaluation reports, including psychological evaluations, shall not be attached as exhibits to any papers filed with the Court.

F. **Fees:** Fees will be charged by FCS for evaluations, unless a fee waiver is granted. When the Court orders a custody/visitation evaluation through FCS, the parties shall submit deposits or fee waiver requests to FCS within 5 court days of receipt of the Court's order.

G. **Objections:** Any party shall have 15 calendar days after the date of mailing of the evaluation recommendations to file and serve written objections to the recommended order.

(1) If objections are filed, the parties shall contact the evaluator to schedule a meeting to discuss the objections. This meeting shall take place before the Guardianship Settlement Conference (GSC). If any party fails to cooperate in setting, or fails to attend, this meeting after objections, the Court at the GSC may sign the recommended order and may order sanctions.

(2) Objections shall be in writing and shall include the following:

- (a). the specific paragraphs and language to which the party objects;
- (b). the reasons for the objections; and
- (c). the proposed modified language.

(3) Objections shall be filed with the Court, along with a proof of service on all counsel or self-represented parties. FCS or the private evaluator must be served with an endorsed filed copy of the objections, which must also be shown on a proof of service.

(4) If no objections are filed within 15 calendar days from the date of the mailing of the evaluation recommendations, the recommended order shall be submitted to the Court for review and signature.

13. Guardianship Settlement Conference (GSC)

A. If the parties are not able to resolve the objections in the meeting with the evaluator following the filing of the objections, a Guardianship Settlement Conference (GSC) shall be calendared with the Probate Court. The GSC shall be set within 30 calendar days of the meeting with the evaluator.

B. All attorneys and parties and the evaluator shall attend the GSC at the scheduled time and place, to address the settlement of all contested issues or the issues to be tried.

C. Statement of Issues: No settlement conference statement shall be required for a GSC; however, each party shall file and serve a Statement of Issues at least 10 calendar days before the GSC. The Statement of Issues shall clearly set forth any remaining issues and any proposed alternative language. Previously filed objections may be attached and incorporated by reference. In addition, the Statement of Issues shall state the time estimated for trial and provide a list of witnesses anticipated to be called at trial. Each party shall bring 2 copies of the Statement of Issues to the GSC.

D. If agreement is not reached at the GSC, the Probate Court may set the case for hearing.

E. Failure to Appear: If a party fails to appear at the GSC, a hearing may be held that day and custody/visitation orders may be made. In addition, on notice to the parties, the Court may order sanctions for the failure to appear.

14. Court Communication

In accordance with Santa Clara County Superior Court Local Juvenile Rules 3A and 3D, judicial officers in Family, Juvenile, and Probate Court are encouraged to communicate with each other concerning the logistics and case management of contested guardianship matters which cross the boundaries between the courts.