

Invitation to Comment

Title	Probate: Statement of Conservatee’s Rights (adopt form GC-341 and approve form GC-341(MA)).
Summary	The proposed new <i>Notice of Conservatee’s Rights</i> (form GC-341) is a statement of the rights of a probate conservatee following appointment of a conservator, with a proof of mailing to the conservatee and other interested persons together with a copy of the <i>Order Appointing Probate Conservator</i> (form GC-340). Form GC-341(MA) is an attachment to the new form to provide a list of persons to whom copies of the <i>Notice</i> and the <i>Order</i> were mailed, in addition to those listed in the proof of mailing in form GC-341.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller, Attorney Committee Counsel Office of the General Counsel, Administrative Office of the Courts (415) 865-7535 douglas.miller@jud.ca.gov
Discussion	Probate Code section 1830(c), added by the Omnibus Conservatorship and Guardianship Reform Act of 2006, ¹ requires the Judicial Council to develop a form of notice of a conservatee’s rights by January 1, 2008, and provides that the conservator must mail the notice and an attached <i>Order Appointing Probate Conservator</i> to the conservatee and the conservatee’s relatives mentioned in Probate Code section 1821(b). ²

¹ Stats 2006, chapters 490–493 (respectively, SB 1116, SB 1550, SB 1716, and AB 1363), referred to as the Omnibus Act. Section 1830(c) is added by section 10 of chapter 493 (AB 1363). Section 1830(c) provides as follows:

“(c) An information notice of the rights of conservatees shall be attached to the [O]rder [Appointing Probate Conservator]. The conservator shall mail the order and the attached information notice to the conservatee and the conservatee’s relatives, as set forth in subdivision (b) of Section 1821 [of the Probate Code]. By January 1, 2008, the Judicial Council shall develop the notice required by this subdivision.”

² The conservatee’s spouse or domestic partner and second-degree relatives (grandparents, parents, siblings, children, and grandchildren). If none of these relatives are known, section 1821(b) (1)–(4) substitutes certain relatives of the conservatee’s spouse or domestic partner and parents. The persons identified in section 1821(b), and their addresses, must be listed in the petition for appointment of a conservator, and are entitled to mailed service

The Probate and Mental Health Advisory Committee proposes form GC-341 as the notice required by section 1830(c). The statement of conservatee's rights is contained on pages 1 and 2 of the form, divided into two types of rights, plus a general statement of the conservatee's right to fair treatment, respect, and to be consulted, when appropriate and possible, about important decisions the conservator will make concerning the conservatee and his or her estate.

Six specific rights retained by the conservatee are listed on page 1 of the form, below the general statement. These are rights the conservatee retains in all cases following the appointment of a conservator. Page 2 of the form contains eight specific rights the conservatee retains after appointment of a conservator unless the courts limits or eliminates them.

The general statement of rights is modeled after the statement at page 10 of the 2002 edition of the Judicial Council's *Handbook for Conservators*, a publication that newly-appointed conservators must acquire before they can receive their *Letters of Conservatorship*.³ Local court forms containing similar statements were also reviewed and considered.

Section 1830(c) is silent on proof of mailing, but the advisory committee believes that proof of compliance with the law is necessary and was intended. Therefore, a proof of mailing is provided on page 3 of the form. The original of the form with a completed proof of mailing must be filed with the court. However, to avoid having the court file contain multiple copies of the *Order Appointing Probate Conservator*, the original notice form is to be filed without an attached copy of the order. The proof of mailing includes a recital that a conformed copy of the order was attached to the copies of the notice mailed. That should be sufficient proof that the order as well as the notice form was mailed to the interested persons.

of notice of the hearing on the petition for appointment at their addresses listed in the petition. (See Prob. Code, § 1822.)

³ See Prob. Code, §§ 1834-1835, and *Duties of Conservator and Acknowledgment of Receipt of Handbook* (form GC-348).

Section 1830(c) says that the conservator must “mail” the form and the attached order. The advisory committee interprets this statement to permit mailing by the conservator, the conservator’s attorney, or an employee of the attorney. This interpretation would be consistent with the normal manner of mailing documents to interested persons in probate matters, except that it would permit an unrepresented non-professional conservator to do the mailing personally and sign the proof of mailing, instead of being required to arrange for a friend to do so. The fact that the statute refers to mailing rather than to serving the notice by mail supports the committee’s interpretation that a less technical form of mailing was intended than is normally required by statutes defining mailed service. The proof of mailing on page 3 of the proposed form expressly identifies the persons who can complete the mailing and sign the proof.

The advisory committee has also followed its practice in recent years with proofs of service or mailing that may require more names and addresses of recipients than can be listed in the proof of service or mailing. An attachment to form GC-341, designated as form GC-341(MA), is proposed as an optional form for this purpose.

The advisory committee also interprets the reference in section 1830(c) to attaching the notice to the appointment order and mailing the notice and the order as a direction to attach the notice form to a conformed *copy* of the order, showing its date of filing and the judicial officer’s signature, and mailing copies of the notice and attached copies of the order to the persons entitled to receive them.

Section 1830(c) is silent on the time within which the notice and the order must be mailed. Legislation is pending in the 2007 Legislature to clarify the time limit as 30 days after the date of the *Order Appointing Probate Conservator*.⁴ The form includes instructions on page 4 that include this deadline. The committee will follow this legislation and make any changes required by the final version of the bill if it becomes law.

⁴ See section 4 of Assembly Bill 1727, a Judiciary Committee bill, introduced on March 6, 2007.

Detailed instructions are provided on page 4 of form GC-341. These instructions are modeled after a local form developed and now being used in Los Angeles County pending adoption by the Judicial Council of the forms required by section 1830(c). The instructions provide advice on what must be mailed, who must receive the mailing, how to complete the mailing and the proof of mailing, and the filing requirement.

Forms GC-341 and GC-341(MA) are attached beginning at page 5.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY <p style="text-align: center;">DRAFT 4 05/10/07</p> <p style="text-align: center;">Not Approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
<input type="checkbox"/> CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE (Name): _____ <p style="text-align: right;">CONSERVATEE</p>	
NOTICE OF CONSERVATEE'S RIGHTS	CASE NUMBER: _____

When a person becomes a conservatee, he or she does not necessarily lose the right to take part in important decisions affecting his or her property and way of life. Every conservatee has the right to be treated with understanding and respect and to have his or her wishes considered. Every conservatee has all basic human rights as well, and the right to be well cared for by his or her conservator.

The conservatee has the right to ask questions and to express concerns and complaints about the conservatorship and the actions of his or her conservator. The conservatee may ask the court to review the conservator's management of the conservatorship if disputes cannot be worked out between them. Even if the conservatee does not take direct action, the court will periodically send a person, called a **court investigator**, to visit the conservatee, to inquire about his or her circumstances and desires, and to advise the conservatee of his or her rights. The court may also appoint a lawyer to represent the conservatee.

The conservatee will be allowed the greatest degree of freedom possible consistent with the underlying reasons for the conservatorship. The conservator should give as much regard to the wishes of the conservatee as possible under the circumstances so that the conservatee may function at the highest level his or her ability permits. The conservator must give due regard to the preferences of the conservatee, and to encourage the conservatee's participation in decision making.

THE CONSERVATEE'S RIGHTS

After appointment of a conservator, the conservatee keeps the right to:

- Be represented by a lawyer.
- Ask a judge to change conservators.
- Ask a judge to end the conservatorship.
- Make or change his or her will.
- Directly receive and control his or her salary.
- Control an allowance (an allowance is personal spending money the court has authorized the conservator to pay directly to the conservatee).

Conservatee's rights continued on next page.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____ <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER: _____
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THE CONSERVATEE'S RIGHTS (Continued)

Unless the court has limited or taken the right away, the conservatee also keeps the right to:

- Receive personal mail.
- Vote.
- Marry or enter into a registered domestic partnership.
- Receive visits from family and friends.
- Make his or her own medical decisions.
- Enter into business transactions, to the extent reasonable to provide the necessities of life to the conservatee or to the conservatee's minor children.
- Engage in other activities the court expressly allows him or her to do, at the time of the conservator's appointment, or a later time following a court hearing on a request for authority to engage in the activity.
- If the conservatee is a **limited conservatee**, to engage in any activity that the court has not expressly reserved to his or her **limited conservator**.

Proof of Mailing on page 3
Instructions to Conservator on page 4

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): CONSERVATEE	CASE NUMBER:
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INSTRUCTIONS FOR MAILING COPIES OF NOTICE OF CONSERVATEE'S RIGHTS AND ORDER APPOINTING PROBATE CONSERVATOR

1. **What to mail:** The conservator or the conservator's attorney must mail copies of this *Notice of Conservatee's Rights*, with attached copies of the *Order Appointing Probate Conservator* showing the judicial officer's signature and the date of filing, to the persons identified in item 2 below.
2. **Who must receive the mailing:** The persons to whom copies of this *Notice of Conservatee's Rights* and the *Order Appointing Probate Conservator* must be mailed are:
 - a. The conservatee;
 - b. The conservatee's attorney, if any;
 - c. The following relatives of the conservatee named in Probate Code section 1821(b) (spouse or domestic partner and second degree relatives required to be named in the *Petition for Appointment of Probate Conservator*):
 - (1) Spouse or domestic partner;
 - (2) Parents;
 - (3) Grandparents;
 - (4) Grandchildren at least 12 years of age (see item e below if there are grandchildren under the age of 12); and
 - (5) Brothers and sisters, including half-brothers and half-sisters.
 - d. If the conservator knows of no spouse or domestic partner or second-degree relative of the conservatee, the following persons:
 - (1) Spouse or domestic partner of a predeceased parent of the conservatee;
 - (2) Children of a predeceased spouse or domestic partner of the conservatee at least 12 years of age (see item e below if there are children under the age of 12);
 - (3) Brothers and sisters of the conservatee's parents (conservatee's aunts and uncles), if any, or, if none, to their natural and adoptive children at least 12 years of age (see item e below if there are children under the age of 12); and
 - (4) The natural and adoptive children of the conservatee's brothers and sisters at least 12 years of age (see item e below if there are children under the age of 12).
 - e. If a person named above is under the age of 12, a parent, guardian, or other person having legal custody of the person entitled to notice, with whom the person entitled to notice resides.
3. **When must the mailing be completed:** The mailing described in item 1 must be completed on or before the 30th day following the filing date of the *Order Appointing Probate Conservator*.
4. **Fill out Proof of Mailing:** The conservator or his or her attorney of record must fill out the Proof of Mailing on page 3 of this form, including the correct addresses of the persons to receive the mailing, identified in item 2 above, before making the copies to be mailed. If the Proof of Mailing does not have enough space for the names and addresses of all persons who will receive the mailing, the conservator or his or her attorney must list the names and addresses not shown on the Proof of Mailing on one or more additional pages attached to this form. They may use one or more copies of *Attachment to Notice of Conservatee's Rights* (form GC-341(MA)) for this purpose. After the mailing described in item 5 below, the person who deposited the envelopes with the U.S. Postal Service must date and sign the Proof of Mailing on page 3 of this form.
5. **How to mail:** The conservator, the conservator's attorney of record, or an employee of the attorney, must do the following:
 - a. Place copies of this *Notice of Conservatee's Rights*, with attached conformed copies of the *Order Appointing Probate Conservator* in sealed envelopes, addressed to each person at the address shown for that person on the Proof of Service on page 3 of this form, or on attached additional pages, with postage fully prepaid.
 - b. Deposit (mail) the sealed envelope(s) with the United States Postal Service on the date and from the place (city) shown in item 4 of the Proof of Service on page 3 of this form
6. **Filing Notice of Conservatee's Rights:** The conservator, or his or her attorney of record, must file with the court the original *Notice of Conservatee's Rights*, with a signed and dated Proof of Mailing and all attached additional address pages. **Do not attach a copy of the *Order Appointing Probate Conservator* to the original *Notice of Conservatee's Rights* filed with the court.**

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____ CONSERVATEE	CASE NUMBER:
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ATTACHMENT TO NOTICE OF CONSERVATEE'S RIGHTS

(This Attachment is for use with Form GC-341.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship to conservatee of Addressee

Address (number, street, city, state, and zip code)

_____ Relationship: _____	_____

Item SP07-10 Response Form

Title: Probate: Statement of Conservatee's Rights (adopt form GC-341 and approve form GC-341(MA)).

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or [respond using the Internet](#) to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102

Fax: (415) 865-7664 **Attention:** Camilla Kieliger

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 13, 2007

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*