



## Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688  
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TANI CANTIL-SAKAUYE  
Chief Justice of California  
Chair of the Judicial Council

WILLIAM C. VICKREY  
Administrative Director of the Courts

RONALD G. OVERHOLT  
Chief Deputy Director

March 10, 2011

Hon. Mike Feuer, Chair  
Assembly Judiciary Committee  
State Capitol, Room 2013  
Sacramento, California 95814

Subject: Assembly Bill 458 (Atkins), as introduced – Support/Sponsor  
Hearing: Assembly Judiciary Committee – March 22, 2011

Dear or Assembly Member Feuer:

The Judicial Council is pleased to sponsor AB 458, which would establish new procedures for determining the appropriate venue of a guardianship case when a custody proceeding involving the proposed ward is already on file in another county. The bill also discourages forum shopping by child custody litigants, and preserves the appointing court's exclusive jurisdiction over custody and visitation of the minor while the guardianship remains in effect.

Current guardianship venue statutes do not provide for the situation in which a petition for appointment of a guardian of the person of a minor is filed after one or more custody proceedings under the Family Code involving that minor are on file in different counties. AB 458 would address that situation and in so doing would partially abrogate the California Supreme Court's decision in *Greene v. Superior Court* (1951) 37 Cal.2d 307.

The Supreme Court in *Greene* held that the proper venue for a guardianship proceeding involving a minor who had been the subject of an earlier custody proceeding in a dissolution action between the minor's parents is the county where the dissolution was filed, not the county where the minor and the petitioner and proposed guardian resided when the guardianship action was filed. The majority opinion in *Greene* applied the general rule that when two courts have

concurrent jurisdiction, the first court to assume jurisdiction retains it to the exclusion of all others. The court concluded that this rule is particularly appropriate to prevent conflict that might arise between courts if they were free to make contradictory custody awards. (See *Greene, supra*, 37 Cal.2d at pp. 310–311.) The opinion went on to note that the court’s jurisdiction in guardianship matters is ongoing and exclusive: no other court may interfere with that court’s control over a guardian it has appointed. (*Id.* at p. 311.)

AB 458 modifies the rule of the *Greene* court in most cases, but provides for its continued application in two respects. Specifically, AB 458 creates presumptions for determining venue based on the length of the residence of the proposed ward and proposed guardian in the county where the guardianship action was filed, but preserves the court’s ability to make the ultimate determination based on the best interests of the minor. The bill also establishes a consultative procedure between courts to assist in determining the appropriate venue of a probate guardianship when one or more custody proceedings under the Family Code involving the proposed ward are on file in one or more other counties. In addition, AB 458 discourages forum shopping of the kind condemned in the *Greene* case by a parent of a child disappointed in the outcome of previous child custody litigation by preventing the parent from seeking appointment in most situations as the guardian of the child’s person. The bill further codifies case law establishing exclusive jurisdiction in the guardianship court to determine custody or visitation concerning the ward during the duration of the guardian’s appointment. Finally, language was added to AB 458 to make clear that it does not impact the provisions in current law providing for the consolidation of probate guardianship and adoption proceedings.

For all these reasons, the Judicial Council supports AB 458.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Pone", with a stylized flourish at the end.

Daniel Pone  
Senior Attorney

DP/lp

cc: Members, Assembly Judiciary Committee

Hon. Toni Atkins, Member of the Assembly

Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitke, Deputy Director of Legislation, Governor’s Office of Planning and Research

Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy



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*Administrative Director of the Courts*

RONALD G. OVERHOLT  
*Chief Deputy Director*

March 30, 2011

Hon. Felipe Fuentes, Chair  
Assembly Appropriations Committee  
State Capitol, Room 2114  
Sacramento, California 95814

Subject: Assembly Bill 458 (Atkins), as amended March 29, 2011 – Support/Sponsor  
Hearing: Assembly Appropriations Committee – April 6, 2011

Dear Assembly Member Fuentes:

The Judicial Council is pleased to sponsor AB 458, which would establish new procedures for determining the appropriate venue of a guardianship case when a custody proceeding involving the proposed ward is already on file in another county. The bill also discourages forum shopping by child custody litigants, and preserves the appointing court's exclusive jurisdiction over custody and visitation of the minor while the guardianship remains in effect.

Current guardianship venue statutes do not provide for the situation in which a petition for appointment of a guardian of the person of a minor is filed after one or more custody proceedings under the Family Code involving that minor are on file in different counties. AB 458 creates presumptions for determining venue based on the length of the residence of the proposed ward and proposed guardian in the county where the guardianship action was filed, but preserves the court's ability to make the ultimate determination based on the best interests of the minor.

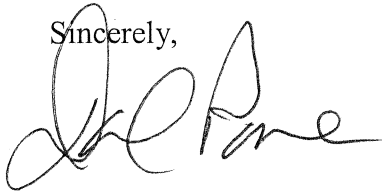
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situations as the guardian of the child's person. The bill further codifies case law establishing exclusive jurisdiction in the guardianship court to determine custody or visitation concerning the ward during the duration of the guardian's appointment. Language was also added to AB 458 to make clear that it does not impact the provisions in current law providing for the consolidation of probate guardianship and adoption proceedings.

*Fiscal Impact:* AB 458 also requires the Judicial Council to adopt rules of court by January 1, 2013, to implement the bill's intercourt communication requirements, which can be accomplished with existing resources. As such, enactment of this bill is not expected to result in any additional costs to the judicial branch.

For these reasons, the Judicial Council supports AB 458.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Pone", written over the word "Sincerely,".

Daniel Pone  
Senior Attorney

DP/lp

cc: Members, Assembly Appropriations Committee

Hon. Toni Atkins, Member of the Assembly

Mr. Chuck Nicol, Principal Consultant, Assembly Appropriations Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitcke, Deputy Director of Legislation, Governor's Office of Planning and Research

Mr. Mark Redmond, Consultant, Assembly Republican Office of Policy

Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office

Mr. Michael Miyao, Budget Analyst, Department of Finance



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Administrative Director of the Courts

RONALD G. OVERHOLT  
Chief Deputy Director

May 31, 2011

Hon. Noreen Evans, Chair  
Senate Judiciary Committee  
State Capitol, Room 4034  
Sacramento, California 95814

Subject: Assembly Bill 458 (Atkins), as amended March 29, 2011 – Support/Sponsor  
Hearing: Senate Judiciary Committee – June 7, 2011

Dear Senator Evans:

The Judicial Council is pleased to sponsor AB 458, which would establish new procedures for determining the appropriate venue of a guardianship case when a custody proceeding involving the proposed ward is already on file in another county. The bill also discourages forum shopping by child custody litigants, and preserves the appointing court's exclusive jurisdiction over custody and visitation of the minor while the guardianship remains in effect.

Current guardianship venue statutes do not provide for the situation in which a petition for appointment of a guardian of the person of a minor is filed after one or more custody proceedings under the Family Code involving that minor are on file in different counties. AB 458 would address that situation and in so doing would partially abrogate the California Supreme Court's decision in *Greene v. Superior Court* (1951) 37 Cal.2d 307.

The Supreme Court in *Greene* held that the proper venue for a guardianship proceeding involving a minor who had been the subject of an earlier custody proceeding in a dissolution action between the minor's parents is the county where the dissolution was filed, not the county where the minor and the petitioner and proposed guardian resided when the guardianship action was filed. The majority opinion in *Greene* applied the general rule that when two courts have

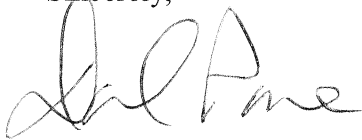
Hon. Noreen Evans  
May 31, 2011  
Page 2

concurrent jurisdiction, the first court to assume jurisdiction retains it to the exclusion of all others. The court concluded that this rule is particularly appropriate to prevent conflict that might arise between courts if they were free to make contradictory custody awards. (See *Greene, supra*, 37 Cal.2d at pp. 310–311.) The opinion went on to note that the court’s jurisdiction in guardianship matters is ongoing and exclusive: no other court may interfere with that court’s control over a guardian it has appointed. (*Id.* at p. 311.)

AB 458 modifies the rule of the *Greene* court in most cases, but provides for its continued application in two respects. Specifically, AB 458 creates presumptions for determining venue based on the length of the residence of the proposed ward and proposed guardian in the county where the guardianship action was filed, but preserves the court’s ability to make the ultimate determination based on the best interests of the minor. The bill also establishes a consultative procedure between courts to assist in determining the appropriate venue of a probate guardianship when one or more custody proceedings under the Family Code involving the proposed ward are on file in one or more other counties. In addition, AB 458 discourages forum shopping of the kind condemned in the *Greene* case by a parent of a child disappointed in the outcome of previous child custody litigation by preventing the parent from seeking appointment in most situations as the guardian of the child’s person. The bill further codifies case law establishing exclusive jurisdiction in the guardianship court to determine custody or visitation concerning the ward during the duration of the guardian’s appointment. Finally, language was added to AB 458 to make clear that it does not impact the provisions in current law providing for the consolidation of probate guardianship and adoption proceedings.

For all these reasons, the Judicial Council supports AB 458.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel Pone", written in a cursive style.

Daniel Pone  
Senior Attorney

DP/lp

cc: Members, Senate Judiciary Committee

Hon. Toni Atkins, Member of the Assembly

Ms. Elizabeth Dietzen Olsen, Counsel, Senate Judiciary Committee

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Kirsten Kolpitzke, Deputy Director of Legislation, Governor’s Office of Planning and Research

Mr. Mike Petersen, Consultant, Senate Republican Office of Policy



## Judicial Council of California

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WILLIAM C. VICKREY  
*Administrative Director of the Courts*

RONALD G. OVERHOLT  
*Chief Deputy Director*

CURTIS L. CHILD  
*Director, Office of Governmental Affairs*

June 8, 2011

Hon. Christine Kehoe, Chair  
Senate Appropriations Committee  
State Capitol, Room 5050  
Sacramento, California 95814

Subject: AB 458 (Atkins), as amended March 29, 2011 – Support/Sponsor and Fiscal Impact Statement

Dear Senator Kehoe:

The Judicial Council is pleased to sponsor AB 458, which would establish new procedures for determining the appropriate venue of a guardianship case when a custody proceeding involving the proposed ward is already on file in another county. The bill also discourages forum shopping by child custody litigants, and preserves the appointing court's exclusive jurisdiction over custody and visitation of the minor while the guardianship remains in effect.

Current guardianship venue statutes do not provide for the situation in which a petition for appointment of a guardian of the person of a minor is filed after one or more custody proceedings under the Family Code involving that minor are on file in different counties. AB 458 creates presumptions for determining venue based on the length of the residence of the proposed ward and proposed guardian in the county where the guardianship action was filed, but preserves the court's ability to make the ultimate determination based on the best interests of the minor.

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*Fiscal Impact:* AB 458 also requires the Judicial Council to adopt rules of court by January 1, 2013, to implement the bill's intercourt communication requirements, which can be accomplished with existing resources. As such, enactment of this bill is not expected to result in any additional costs to the judicial branch.

For these reasons, the Judicial Council supports AB 458.

Please contact me at 916-323-3121 or [henry.sepulveda@jud.ca.gov](mailto:henry.sepulveda@jud.ca.gov) if you would like further information or have any questions about the fiscal impact of this legislation on the judicial branch.

Sincerely,



Henry Sepulveda

Senior Governmental Affairs Fiscal Analyst

HS/yt

cc: Members, Senate Appropriations Committee

Hon. Toni G. Atkins, Member of the Assembly

Mr. Cody Naylor, Legislative Aide, Office of Assembly Member Atkins

Ms. Jolie Onodera, Consultant, Senate Appropriations Committee

Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office

Mr. Michael Miyao, Budget Analyst, Department of Finance





## Judicial Council of California

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WILLIAM C. VICKREY  
Administrative Director of the Courts

RONALD G. OVERHOLT  
Chief Deputy Director

CURTIS L. CHILD  
Director, Office of Governmental Affairs

July 5, 2011

Hon. Edmund G. Brown, Jr.  
Governor of California  
State Capitol, First Floor  
Sacramento, California 95814

Subject: AB 458 (Atkins) – Request for Signature

Dear Governor Brown:

The Judicial Council is pleased to sponsor AB 458, which would establish new procedures for determining the appropriate venue of a guardianship case when a custody proceeding involving the proposed ward is already on file in another county. The bill also discourages forum shopping by child custody litigants, and preserves the appointing court's exclusive jurisdiction over custody and visitation of the minor while the guardianship remains in effect.

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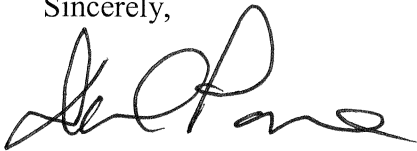
The Supreme Court in *Greene* held that the proper venue for a guardianship proceeding involving a minor who had been the subject of an earlier custody proceeding in a dissolution action between the minor's parents is the county where the dissolution was filed, not the county where the minor and the petitioner and proposed guardian resided when the guardianship action was filed. The majority opinion in *Greene* applied the general rule that when two courts have concurrent jurisdiction, the first court to assume jurisdiction retains it to the exclusion of all

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AB 458 is a non-controversial measure that passed the Legislature without any “no” votes. For all these reasons, the Judicial Council respectfully requests your signature on AB 458.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Pone', with a stylized, cursive script.

Daniel Pone  
Senior Attorney

DP/lp

cc: Hon. Toni Atkins, Member of the Assembly

Mr. Aaron Maguire, Deputy Legislative Affairs Secretary, Office of the Governor