

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Submit to JC (without circulating for comment)**

RUPRO Meeting: November 24, 2015

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Civil Law: Disability Access Litigation

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail):

Susan McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov

Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: Approved by RUPRO on October 22, 2015 as amended annual agenda item

Project description from annual agenda: This bill, some of which is effective immediately as emergency legislation, makes several changes to the construction-related disability access statutes, which need to be reflected in several of the current Disability Access litigation (DAL) forms. There are also some changes to the law that will be operative July 1, 2016 that require the council to adopt a new answer form by that date

If requesting July 1 or out of cycle, explain:

Required by legislation. DAL-005, DAL-010, and DAL 012 must be effective January 1, 2016 to be consistent with legislative changes.

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 11, 2015

Title	Agenda Item Type
Civil Law: Disability Access Litigation	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms DAL-005, DAL-010, and DAL-012	January 1, 2016
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Raymond M. Cadei	November 20, 2015
	Contact
	Anne M. Ronan, 415-865-8933 anne.ronan@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise two statutorily mandated Disability Access Litigation (DAL) forms used for parties to apply for and the court to grant stays and mandatory evaluation conferences in construction-related accessibility claims, as well as the related proof of service form. The two forms must be revised to reflect the amendments to the Civil Code made by Assembly Bill 1521. The proof of service form requires revision to reflect names changes to the two forms.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Revise *Defendant's Application for Stay of Proceedings and Early Evaluation Conference* (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010) to add a new category of defendants that may request a stay and early evaluation and another procedure that may be requested at the same time; and

2. Revise *Proof of Service—Disability Access Litigation* (form DAL-012), for construction-related accessibility claims, to reflect the new names of the forms used to apply for and grant stays and mandatory evaluation conferences.

The Civil and Small Claims Advisory Committee also recommends that the Rules and Projects Committee circulate the revised forms for comment during the winter 2016 comment cycle.

The revised forms are attached at pages 6–10.

Previous Council Action

In October 2009, when the provisions of Civil Code section 55.54, on applications for stays of proceedings and early evaluation conferences became operative, the statutorily required application form and notice and stay form—the text of which was set out in the statute—were added to the judicial branch website. Effective January 2013, as mandated by the Legislature, the council revised the statutory application and notice forms and adopted them as *Defendant’s Application for Stay of Proceedings and Early Evaluation Conference* (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010). The forms were further revised, and some additional DAL forms adopted, in 2013, as the result of further legislative actions.

Rationale for Recommendation

Assembly Bill 1521 (Committee on Judiciary; Stats. 2015, ch.755) amended the statutory provisions concerning construction-related disability access claims. This bill was signed into law on October 10, 2015, as urgency legislation and is therefore already in effect. The new law is intended to limit the practice of high-volume lawsuits motivated by quick settlement with business owners—rather than correction of Americans with Disabilities Act violations—by placing new requirements, including substantially higher filing fees, on what the bill refers to as “high-frequency litigants.”¹ The new law also provides some additional rights, which are now in effect, to defendant businesses in cases brought by such litigants.

Certain categories of defendants in construction-related disability access cases have the right to a 90-day stay upon request and to an early evaluation conference held by the court during the stay period. The new law adds an additional category of defendants to those with the right to a stay—business defendants in cases filed by high-frequency litigants. (Civ. Code, § 55.54(b)(2)(D).) *Defendant’s Application for Stay of Proceedings and Early Evaluation Conference* (form DAL-005) is the form mandated for use by defendants to make such a request. The form contains the

¹ New Code of Civil Procedure section 425.55 defines a “high-frequency litigant” as (1) a plaintiff who has filed 10 or more complaints alleging a construction-related accessibility violation within the 12-month period immediately preceding the filing of the current complaint or (2) an attorney who has represented as attorney of record 10 or more high-frequency litigant plaintiffs in actions that were resolved within the 12-month period immediately preceding the filing of the current complaint, with certain exclusions (including successful cases).

statutorily mandated facts that the various categories of defendants must state under penalty of perjury to receive a stay and early evaluation conference.

The proposed revisions to form DAL-005 add item 3.d for the new category of defendants that can seek a stay. Item 3.d includes the information that a defendant must declare under the statute to show that it meets the category's criteria: that it is a business and that it was served with a complaint by a high-frequency litigant as defined by Code of Civil Procedure section 425.55 (Civ. Code, § 55.54(c)(7)). Because the defendant will only be able to assert the second criteria based on the information provided in the complaint, an item has been included to confirm that the complaint includes a statement that it was filed by a high-frequency litigant or a statement in the complaint caption that the action was subject to the supplemental fee for high-frequency litigants set by Government Code section 70616.5 (Code Civ. Proc., § 425.50(a)(4)).

The new law also provides that when issuing the stay and setting the early evaluation conference, the court should, if the defendant requests it, direct the parties to meet in person at the subject premises no later than 30 days after the issuance of the order for a joint inspection of the property. (Civ. Code, § 55.54(d)(6).) The application form DAL-005 has been revised to include this optional request, at item 4(e). The *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010) has also been revised, with a new section, "Notice of Joint Inspection," and new items 8, 9, and 10. Because the court is to direct a joint inspection only if specifically requested to do so, items 8 and 9 on form DAL-010 begin with check boxes that can be checked by the clerk if the request has been made on form DAL-005.

The new law provides that the court may allow a plaintiff who is unable to meet in person at the subject premises to be excused from participating in a site visit or, for good cause, to participate by telephone or other alternative means. (Civ. Code, § 55.54(d)(6).) New item 10 on form DAL-010 therefore informs any plaintiff who is unable to meet at the site that he or she may move the court for leave to be excused.

Also, the titles of the two forms—*Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-005) and *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection* (form DAL-010)—have been revised to include the term "joint inspection." To reflect these changed titles, another form, *Proof of Service—Disability Access Litigation* (form DAL-012), has been revised to add "Joint Inspection" to the titles of the two revised forms.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal has not circulated for comment because the new law is already in effect, allowing a business served with a complaint by a high-frequency litigant to request a stay and early evaluation conference and allowing all defendants to request an inspection of the property. Revising these forms effective January 1, 2016, will allow defendants to take action consistent with this new law.

However, the Civil and Small Claims Advisory Committee has included these forms in a proposal that the committee has recommended be circulated for public comment during the winter comment cycle from December 11, 2015, to January 22, 2016. Following circulation, the advisory committee will consider the comments and recommend any appropriate revisions to these forms, effective July 1, 2016.

Alternatives

The Civil and Small Claims Advisory Committee considered not including a request for joint inspection in *Defendant's Application for Stay of Proceedings and Early Evaluation Conference Pursuant to Civil Code Section 55.54* (form DAL-005) and instead including that request in a new verified answer form to be developed for adoption effective July 1, 2016. The new law amends Civil Code 55.3(b)(2)(A)(iii) to provide that the verified answer include “[a] request to meet in person at the subject premises, if the defendant qualifies for an early evaluation conference pursuant to Section 55.54.” To request a joint inspection at the time of filing the answer, however, is too late. A defendant is entitled to a joint inspection only if it is eligible for a stay, in which case the joint inspection must be held within 30 days of issuance of the stay. The answer would not be filed until after the stay is over, and thus is too late to request the joint inspection. The advisory committee therefore decided to include the request for joint inspection in the stay (form DAL-005).

The advisory committee also discussed limiting the request for joint inspection only to cases filed by high-frequency litigants, as provided in the new Advisory Notice information (which is not a council form). But new section 55.54(d)(6) provides that on the filing of an application for stay and early evaluation conference by a defendant, the court shall issue an order directing the parties to meet at the premises for a joint inspection. It does not limit a joint inspection to cases filed by high-frequency litigants.

Because some of the form changes necessitated by the new law are not required to be in effect until July 1, 2016, the advisory committee considered waiting to revise the three forms in this proposal. (The forms would be circulated and the public comments considered before the forms became effective.) The committee declined to wait until July 1, 2016, because that would leave defendants in cases filed by high-frequency litigants no means to ask for a stay and would leave all defendants without a means to request a joint inspection, to which they are entitled and which the Legislature concluded were rights that should be granted urgently.

Implementation Requirements, Costs, and Operational Impacts

The legislative changes to the disability access litigation procedures will require courts to implement some training in the new procedures for considering requests for a joint inspection. Adding “Joint Inspection” to the titles of DAL-005 and DAL-010, with check boxes to indicate whether it applies, should assist courts in quickly determining if a joint inspection has been requested or granted. Courts that maintain supplies of forms will incur the costs of replacing old forms with the revised forms.

Attachments and Links

1. Forms DAL-005, DAL-010, and DAL-012, at pages 6–10
2. Assembly Bill 1521 (Stats. 2015, ch. 755), leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1521

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
DEFENDANT'S APPLICATION PURSUANT TO CIVIL CODE SECTION 55.54 FOR <input type="checkbox"/> STAY AND EARLY EVALUATION CONFERENCE <input type="checkbox"/> JOINT INSPECTION	CASE NUMBER:


(Information about this application and filing instructions may be obtained at www.courts.ca.gov/selfhelp.htm.)

1. Defendant (name): _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code section 55.54.
2. The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code section 55.52(a)(1).
3. The claim concerns a site that meets one of the following sets of requirements *(All items in one of a, b, c, or d must be checked for the court to order a stay and early evaluation conference. Check a box if the statement is true.):*
 - a. **CASp-Inspected Site**
 - (1) Site has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending, and if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and
 - (2) An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.
 - b. **New Construction**
 - (1) Site has had new construction or improvements on or after January 1, 2008, approved pursuant to the local building permit and inspection process;
 - (2) To the best of defendant's knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim; and
 - (3) All violations have been corrected, or will be corrected within **60** days of defendant's being served with the complaint.
 - c. **Small Business**
 - (1) Site is owned or occupied by a defendant that is a small business that has employed an average of 25 or fewer employees over the past three years and meets the gross receipts eligibility criteria provided in Civil Code section 55.56(2)(f);
 - (2) All violations have been corrected, or will be corrected within **30** days of being served with the complaint; and
 - (3) Evidence showing that all violations have been corrected (*check one*) is attached will be filed with the court within **10** days of the court order setting an early evaluation conference.
 - (4) I am filing the following with the court along with this application *(The documents should be filed separately attached to a Confidential Cover Sheet and Declaration (form DAL-006).):*
 - Proof of the number of defendant's employees as shown by wage reports forms filed with the Employment Development Department over the past three years or for existence of the business if less than three years; and
 - Proof of defendant's average gross receipts as shown by federal or state tax documents for the three years before this application or for existence of the business if less than three years.

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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3. d. **Case Filed by High-Frequency Litigant**
- (1) Site is owned or occupied by a defendant that is a business;
 - (2) The complaint was filed by, or on behalf of, a "high-frequency litigant," as defined in Code of Civil Procedure section 425.55(6), asserting a construction-related accessibility claim including, but not limited to, a claim brought under Civil Code section 51, 54, 54.1, or 55; and
 - (3) The complaint includes a statement that it was filed by or on behalf of a high-frequency litigant, or a statement in the caption that "action subject to the supplemental fee in Government Code section 70616.5."
4. Defendant requests that the court
- a. Stay the proceedings relating to the construction-related accessibility claim.
 - b. Schedule an early evaluation conference.
 - c. Order defendant to
 - (1) File a confidential copy of the Certified Access Specialist (CASp) report with the court and serve a copy of the report on the plaintiff at least **15** days before the date of the early evaluation conference, which shall be kept confidential as set forth in Civil Code section 55.54(d)(4); or
 - (2) File with the court and serve on plaintiff evidence showing correction of all violations within **10** days of completion of the correction or, if seeking relief as a small business, within **10** days after issuance of a court order granting a stay.
 - d. Order plaintiff to file with the court and serve on defendants the statement required by Civil Code section 55.54(d)(6) at least **15** days before the date of the early evaluation conference.
 - e. (*Check only if requesting a joint site inspection*) Order plaintiff and plaintiff's counsel, if any, to meet in person with defendant within 30 days, at the site that is the subject of this action, for a joint inspection to review any issues that plaintiff claims are a violation of construction-related accessibility standards.


Date: _____

_____ (TYPE OR PRINT NAME OF DECLARANT)  _____ (SIGNATURE OF DECLARANT)

DECLARATION OF DEFENDANT

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____ (TYPE OR PRINT NAME OF DECLARANT)  _____ (SIGNATURE OF DECLARANT)

ATTORNEY (Name, State Bar number, and address): STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 11/20/15 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
NOTICE OF <input type="checkbox"/> STAY OF PROCEEDINGS AND EARLY EVALUATION CONFERENCE <input type="checkbox"/> JOINT INSPECTION (Disability Access Litigation)	CASE NUMBER:

Stay of Proceedings

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

1. This action includes a construction-related accessibility claim under Civil Code section 55.52(a)(1) or other provision of law.

Notice of Early Evaluation Conference

2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code section 55.54.
3. The early evaluation conference is scheduled as follows:

a. Date:	Time:	Dept.:	Room:
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- b. The conference will be held at the court address shown above the following address:

4. The plaintiff and defendant must attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant who requested the conference and stay of proceedings must serve on all parties and file with the court the following:
 - a. (For a defendant applying under **CASp-Inspected Site** section) A copy of the CASp report for the site that is the subject of the construction-related accessibility claim. Defendant must serve and file the report at least **15** days before the date set for the early evaluation conference. The CASp report is confidential and only available as set forth below and in Civil Code section 55.54(d)(4).
 - b. (For a defendant applying under **New Construction** section) Evidence showing the correction of all violations giving rise to the construction-related accessibility claim within **60** days of the service of the complaint. Defendant must serve and file the evidence within **10** days following completion of the corrections.
 - c. (For a defendant applying under **Small Business** section) Evidence, if not previously served and filed, showing the correction within **30** days of the service of the complaint of all violations giving rise to the construction-related accessibility claims. Defendant must serve and file the evidence within **10** days of issuance of this order.
6. The CASp report must be marked "CONFIDENTIAL" and may be disclosed only to the court, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case. (File the court's copy attached to Confidential Cover Sheet and Declaration (form DAL-006).)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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7. The plaintiff must at least 15 days before the date set for the early evaluation conference serve and file a statement of, to the extent known, all of the following:
- a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint.
 - b. The amount of damages claimed.
 - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed.
 - d. Any demand for settlement of the case in its entirety.

Notice of Joint Inspection
(only applies if boxes are checked)

8. A defendant has requested a meeting with plaintiff to jointly inspect the site that is the subject of the construction-related accessibility claim.
9. Plaintiff and plaintiff's counsel, if any, must, within 30 days of the date this notice is issued, meet in person with defendant at the site to jointly inspect the premises and review any programmatic or policy issues that are claimed to constitute a violation of a construction-related accessibility standard. (See Civ. Code, § 55.54(d)(6).)
10. If plaintiff is unable to meet in person at the site, he or she may move the court for leave to be excused or to appear telephonically or by other means. (See Civ. Code, § 55.54(d)(6).)

Service of Notice

11. A copy of this notice and defendant's application must be served on the plaintiff by hand-delivering it or mailing it to the address listed on the complaint of plaintiff's attorney or plaintiff, if without an attorney, within 10 days of date that the court issues the *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection*. Defendant must file proof of service with the court at least 15 days before the date of the conference. *Proof of Service—Disability Access Litigation* (form DAL-012) may be used to show service of the documents.

Date: _____ Clerk, by _____, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at www.courts.ca.gov/selfhelp.



Request for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

ATTORNEY (Name, State Bar number, and address): STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	DRAFT 10/15/15 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	CASE NUMBER:
PROOF OF SERVICE—DISABILITY ACCESS LITIGATION Check method of service (only one): <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail	JUDGE: DEPT.:

(This proof of service may only be used to show service of documents in cases with construction-related accessibility claims, as listed below. Do NOT use it to show service of a summons and complaint, or to show electronic service.)

1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:
3. I served the following documents *(check the applicable boxes)*:
 - a. Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection (form DAL-005)
 - b. Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection (form DAL-010)
 - c. Application for Mandatory Evaluation Conference (form DAL-015)
 - d. Notice of Mandatory Evaluation Conference (form DAL-020)
 - e. Inspection report by Certified Access Specialist regarding the site in this action (See Civ. Code, § 55.54(d)(4)(A).)
 - f. Evidence showing correction of violation giving rise to construction-related claims or plans for remediation (See Civ. Code, § 55.54(d)(4)(B) or (C) or § 55.545(c)(3).)
 - g. Plaintiff's statement of issues, damages, attorney's fees, and any settlement demand. (See Civ. Code, § 55.54(d)(6) or § 55.545(c)(2).)
 - h. Other *(describe)*:
4. **By Mail.** I am a resident of or employed in the county where the mailing occurred. I served a copy of the document or documents by mailing them, in a sealed envelope with first-class postage fully prepaid, as follows:
 - a. I deposited the envelope with the United States Postal Service.
 - b. I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
 - c. Date of deposit: _____
 - d. Place of deposit *(city and state)*: _____
 - e. Addressed as follows *(name and address)*: _____
5. **By Personal Service.** I served a copy of the document or documents by personally delivering copies as shown below:
 - a. Name of person served: _____
 - b. Address of person served: _____
 - c. On *(date)*: _____
 - d. At *(time)*: _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: _____

 (TYPE OR PRINT NAME) ▶ _____
 (SIGNATURE)

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (July 1 cycle)**

RUPRO Meeting: November 24, 2015

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Civil Law: Disability Access Litigation

Committee or other entity submitting the proposal:

Civil and Small Claims Advisory Committee

Staff contact (name, phone and e-mail):

Susan McMullan, 415-865-7990, susan.mcmullan@jud.ca.gov

Anne M. Ronan, 415-865-8933, anne.ronan@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: Approved by RUPRO on October 22, 2015 as amended annual agenda item

Project description from annual agenda: This bill, some of which is effective immediately as emergency legislation, makes several changes to the construction-related disability access statutes, which need to be reflected in several of the current Disability Access Litigation (DAL) forms. There are also some changes to the law that will be operative July 1, 2016 that require the council to adopt a new answer form by that date

If requesting July 1 or out of cycle, explain:

Required by legislation.; DAL-001 and DAL-002 must be effective by July 1, 2016

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Civil Forms: Disability Access Litigation	Review and submit comments by January 22, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Approve form DAL-002 and revise forms DAL-001, DAL-005, DAL-010, and DAL-012	July 1, 2016
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Raymond Cadei	Susan R. McMullan, susan.mcmullan@jud.ca.gov, 415-865-7990

Executive Summary and Origin

The Civil and Small Claims Advisory Committee recommends that certain statutorily mandated Disability Access Litigation forms used in construction-related accessibility claims be revised and that a verified answer form be approved for optional use. The forms are used for parties to apply for and the court to grant stays and mandatory evaluation conferences in this type of litigation. The forms must be changed to reflect the amendments to the Civil Code made by Assembly Bill 1521 (Assembly Judiciary Committee; Stats. 2015, ch.755), enacted in October 10, 2015 as urgency legislation (and thus operative on enactment) to (1) add a new category of defendants that may request a stay and early evaluation conference, (2) allow defendants to request a joint inspection, (3) provide certain information in the statutory advisory form for building owners and tenants, and (3) provide a verified answer form.

Background

Assembly Bill 1521 (Assembly Judiciary Committee; Stats. 2015, ch.755) (AB 1521) enacted on October 10, 2015 as urgency legislation and therefore already in effect, amended the statutory provisions concerning construction-related disability access claims. The new law is intended to limit the practice of high-volume lawsuits motivated by quick settlement with business owners—rather than correction of ADA violations—by placing new requirements, including substantially higher filing fees, on what the bill refers to as “high-frequency litigants.”¹ The new law also

¹ New Code of Civil Procedure section 425.55 defines “high-frequency litigant” as (1) a plaintiff who has filed 10 or more complaints alleging a construction-related accessibility violation within the 12-month period immediately preceding the filing of the current complaint or (2) an attorney who has represented as attorney of record 10 or more

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

provides some additional rights to defendant businesses in cases brought by such litigants, which are now in effect. In addition, the new law requires the Judicial Council to make some changes effective July 1, 2016. (Civ. Code, § 55.3(b)(1)(A) and (b)(1)(B).) The council must revise the advisory notice to building owners and tenants to provide certain additional information and to approve a verified answer form that may be used by defendants.

The Proposal

The committee is seeking comments on revisions to forms used in construction-related accessibility claims and a proposed new verified answer to be used by defendants. These changes are urgently needed to respond to a recent change in the law. As noted above, the new law on construction-related disability access claims became effective in October 10, 2015. To comply with this law, the committee has recommended that two forms be revised effective January 1, 2016; without the revisions, the forms would be incomplete or inaccurate. Because of this tight timeframe, there was not time to circulate the changes for public comment before the council revised the forms. These forms are being circulated for public comment now, along with other new and revised forms to be effective July 1, 2016.

Form revisions effective January 1, 2016

Assembly Bill 1521 (Assembly Judiciary Committee; Stats. 2015, ch.755) (AB 1521) amended the statutory provisions concerning construction-related disability access claims. This bill was signed into law on October 10, 2015 as urgency legislation and is therefore already in effect. The new law is intended to limit the practice of high-volume lawsuits motivated by quick settlement with business owners—rather than correction of ADA violations—by placing new requirements, including substantially higher filing fees, on what the bill refers to as “high-frequency litigants.”² The new law also provides some additional rights to defendant businesses in cases brought by such litigants, which are now in effect.

Certain categories of defendants in construction-related disability access cases have the right to a 90-day stay upon request, and to an early evaluation conference held by the court during the stay period. The new law adds an additional category of defendants to those with the right to a stay—business defendants in cases filed by high-frequency litigants. (Civil Code §55.54(b)(2)(D).) *Defendant’s Application for Stay and Early Evaluation Conference Pursuant to Civil Code Section 55.54* (form DAL-005) is the form mandated for use by defendants to make such a request. The form contains the statutorily mandated facts that the various categories of defendants must state under penalty of perjury to receive a stay and early evaluation conference.

high-frequency litigant plaintiffs in actions that were resolved within the 12-month period immediately preceding the filing of the current complaint, with certain exclusions (including successful cases).

² New Code of Civil Procedure section 425.55 defines “high-frequency litigant” as (1) a plaintiff who has filed 10 or more complaints alleging a construction-related accessibility violation within the 12-month period immediately preceding the filing of the current complaint or (2) an attorney who has represented as attorney of record 10 or more high-frequency litigant plaintiffs in actions that were resolved within the 12-month period immediately preceding the filing of the current complaint, with certain exclusions (including successful cases).

The proposed revisions to form DAL-005 would add item 3.d for the new category of defendants that can seek a stay and include all statements defendants must declare under the statute: that it is a business and was served with a complaint by a high frequency litigant as defined by Code of Civil Procedure section 425.55. (Civil Code section 55.54(c)(7).) Under the new law, the complaint in these cases must state whether it is filed by a high frequency litigant and the complaint caption must state whether the action subject to the supplemental fee in for high frequency litigants set by Government Code section 70616.5(Code of Civil Procedure section 425.50(a)(4)). New item 3.d includes a statement for the defendant to check indicating that the complaint included this information.

The new law also provides that when issuing the stay and setting the early evaluation conference, the court should, if defendant requests it, direct the parties to meet in person at the subject premises, no later than 30 days after the issuance of the order, for a joint inspection of the property. (Civil Code section 55.54(d)(6).) The application form has been revised to include this optional request, at item 4(e). See form DAL-005. The *Notice of Stay of Proceedings and Early Evaluation Conference* (form DAL-010) has also been revised, with a new section “Notice of Joint Inspection,” and new items 8, 9, and 10. Because the court is to direct a joint inspection only if specifically requested to do so, items 8 and 9 on form DAL-010 have check boxes in front of them, which can be checked by the clerk if the request has been made on form DAL-005.

The new law provides that the court may allow a plaintiff who is unable to meet in person at the subject premises to be excused from participating in a site visit or, for good cause, to participate by telephone or other alternative means. (Civil Code section 55.54(d)(6).) New item 10 on form DAL-010 therefore informs any plaintiff who is unable to meet at the site that he or she may move the court for leave to be excused.

The titles of the two forms have also been revised, to include the term “joint inspection.” The revised forms are titled *Defendant’s Application for Stay of Proceedings, Joint Inspection, and Early Evaluation Conference* (forms DAL-005) and *Notice of Stay of Proceedings, Joint Inspection, and Early Evaluation Conference* (form DAL-010). To reflect these changed titles, another form, *Proof of Service—Disability Access Litigation* (form DAL-012), has been revised to add “Joint Inspection” to the titles of the two revised forms.

Form revisions effective July 1, 2016

The new law requires the council to revise *Important Information for Building Owners and Tenants* (DAL-001), the form used by an attorney to provide mandated information about the defendant’s legal obligations and rights with the initial demand letter or complaint. The exact language to be added is contained in the legislation. (Civ. Code, § 55.3(b)(1)(A).) The form would be revised to add this information, which concerns attorney conduct, reducing damages, and information for commercial tenants.

The new law also requires the council to develop a verified answer form that could also be used as an informal response to a demand letter or for settlement discussion purposes and to notify the

defendant that the answer can be used in this way. (Civ. Code, § 5.3(b)(2).) Specifically, the answer form must include the following possible affirmative defenses: that (1) the defendant's landlord is responsible for ensuring that the property leased by the defendant is accessible to the public and (2) the defendant qualifies for reduced damages under Civil Code section 55.56 (f)(1) or (f)(2) and facts supporting that assertion. (Civ. Code, § 55.3(b)(2).) These and other required elements of the verified answer form are included in proposed new *Answer—Disability Access* (DAL-002). One item in the legislation concerning the answer has been modified. Civil Code section 55.3(b)(2)(A)(iii) provides that the answer should include a request to meet in person at the subject premises, if the defendant qualifies for an early evaluation conference pursuant to section 55.54. Because the stay and early evaluation conference and inspection at the subject premises would have already taken place before an answer is filed, the option to request to meet for an inspection has been modified to include a check box to indicate whether such a meeting has been requested.

Finally, a minor revision to *Proof of Service—Disability Access Litigation* (form DAL-012), would add a check box for service of the new answer form, *Answer—Disability Access* (DAL-002).

Alternatives Considered

These form revisions and new answer form are required by AB 1521. The advisory committee therefore did not consider alternatives to recommending these revisions and the new form. The advisory committee would have preferred that all forms were circulated for public comment before being revised by the council, but because some of the changes were effective immediately there was not time to circulate them first. Three forms—*Defendant's Application for Stay of Proceedings, Joint Inspection, and Early Evaluation Conference* (forms DAL-005); *Notice of Stay of Proceedings, Joint Inspection, and Early Evaluation Conference* (form DAL-010); and *Proof of Service—Disability Access Litigation* (form DAL-012) are being circulated during the period immediately before and after the effective date of January 1, 2016. The advisory committee will consider the need for further revisions to these three forms (as well as the other forms in this proposal), based on the comments received and will recommend any revisions to be effective July 1, 2016.

Implementation Requirements, Costs, and Operational

The legislative changes to the disability access litigation procedures will require courts to implement some training in the new procedures for considering requests for a joint inspection. Adding "joint inspection" to the title of DAL-005 and DAL-010, with a check box to indicate whether it applies, should assist courts in quickly determining if a joint inspection has been requested or granted. For cases that proceed to the answer stage, *Answer—Disability Access* (DAL-002) may improve the adequacy and quality of answers. Courts that maintain supplies of forms will incur the costs of replacing old forms with the revised forms.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should *Answer—Disability Access* (DAL-002) include additional affirmative defenses? (There is a check box for additional defenses not listed.)

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Judicial Council forms DAL-001, DAL-002, DAL-005, DAL-010, and DAL-012 at pages 6–14
2. Assembly Bill 1521, available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1521

STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUILDING OWNERS AND TENANTS

This information is available in English, Spanish, Chinese, Vietnamese, and Korean through the Judicial Council of California. People with visual impairments can get assistance in viewing this form through the judicial branch website, at www.courts.ca.gov.

California law requires that you receive this information because the demand letter or court complaint you received with this document claims that your building or property does not comply with one or more existing construction-related accessibility laws or regulations protecting the civil rights of people with disabilities to access public places.

YOU HAVE IMPORTANT LEGAL OBLIGATIONS. Compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open for business to the public. You may obtain information about your legal obligations and how to comply with disability access laws through the Division of the State Architect, at www.dgs.ca.gov/dsa. Information is also available from the California Commission on Disability Access at www.cdda.ca.guide.htm.

YOU HAVE IMPORTANT LEGAL RIGHTS. The allegations made in the accompanying demand letter or court complaint do not mean that you are required to pay any money unless and until a court finds you liable. Moreover, RECEIPT OF A DEMAND LETTER OR COURT COMPLAINT AND THIS ADVISORY DOES NOT NECESSARILY MEAN YOU WILL BE FOUND LIABLE FOR ANYTHING. You will have the right if you are later sued to fully present an explanation of why you believe you have not in fact violated disability access laws or have corrected the violation or violations giving rise to the claim.

You have the right to seek assistance or advice about this demand letter or court complaint from any person of your choice. If you have insurance, you may also wish to contact your insurance provider. Your best interest may be served by seeking legal advice or representation from an attorney, but you may also represent yourself and file the necessary court papers to protect your interests if you are served with a court complaint. If you have hired an attorney to represent you, you should immediately notify your attorney.

If a court complaint has been served on you, you will get a separate advisory notice with the complaint advising you of special options and procedures available to you under certain conditions.

ADDITIONAL THINGS YOU SHOULD KNOW: ATTORNEY MISCONDUCT. Except for limited circumstances, state law generally requires that a prelitigation demand letter from an attorney MAY NOT MAKE A REQUEST OR DEMAND FOR MONEY OR AN OFFER OR AGREEMENT TO ACCEPT MONEY. Moreover, a demand letter from an attorney MUST INCLUDE THE ATTORNEY'S STATE BAR LICENSE NUMBER.

If you believe the attorney who provided you with this notice and prelitigation demand letter is not complying with state law, you may send a copy of the demand letter you received from the attorney to the State Bar of California by facsimile transmission to 1-415-538-2171, or by mail to the State Bar of California, 180 Howard Street, San Francisco, CA, 94105, Attention: Professional Competence.

STATE LAW REQUIRES THAT YOU GET THIS IMPORTANT ADVISORY INFORMATION FOR BUILDING OWNERS AND TENANTS

REDUCING YOUR DAMAGES. If you are a small business owner and correct all of the construction-related violations that are the basis of the complaint against you within 30 days of being served with the complaint, you may qualify for reduced damages. You may wish to consult an attorney to obtain legal advice. You may also wish to contact the California Commission on Disability Access for additional information about the rights and obligations of business owners.

COMMERCIAL TENANT. If you are a commercial tenant, you may not be responsible for ensuring that some or all portions of the premises you lease for your business, including common areas such as parking lots, are accessible to the public because those areas may be the responsibility of your landlord. You may want to refer to your lease agreement and consult with an attorney or contact your landlord, to determine if your landlord is responsible for maintaining and improving some or all of the areas you lease.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY: ZIP CODE: BRANCH NAME:	
Plaintiff: Defendant:	
ANSWER—DISABILITY ACCESS	CASE NUMBER:

This form may be filed with the court and served on the plaintiff as an answer to the complaint, or it may be used as an informal response to a demand letter or for settlement discussion purposes.

1. Defendant(s) *(Each defendant for whom this answer is filed must be named and must sign this answer unless his or her attorney signs):*

answers the complaint as follows:

2. **Check ONLY ONE of the next three boxes, a, b, or c:**

- a. Defendant generally denies each statement of the complaint.
- b. Defendant denies that plaintiff has demonstrated that he or she was denied full and equal access to the place of public accommodation on a particular occasion. *(See Civil Code section 55.56.)*
- c. Defendant admits that all of the statements of the complaint are true EXCEPT:
 - (1) Defendant claims the following statements of the complaint are false. *(State paragraph numbers from the complaint or explain below:)* Explanation is on Attachment 2c(1). *(You may use Form MC-025 for this purpose.)*

- (2) Defendant has no information or belief that the following statements of the complaint are true, so defendant denies them. *(State paragraph numbers from the complaint or explain below:)*
 - Explanation is on Attachment 2c(2). *(You may use Form MC-025 for this purpose.)*

3. **AFFIRMATIVE DEFENSES** **(NOTE: For each box checked below, you must state brief facts to support it in item 4.)**

- a. Defendant is not liable because the facility is not open to the public.
- b. Defendant is not liable because defendant's landlord is responsible for ensuring that some or all of the property leased by the defendant, including the areas at issue in the complaint, are accessible to the public. *(Give the name and contact information of defendant's landlord in Item 4.)*
- c. Defendant qualifies for reduced damages. *(See Civil Code section 55.56(f)(1).)*
- d. Other affirmative defenses *(Specify and state facts in support in Item 4.)*

CASE NUMBER:

4. FACTS SUPPORTING AFFIRMATIVE DEFENSES (**NOTE:** For each box checked in Item 3, you must state brief facts to support the defense. Include letters a, b, c, and d from item 3 to make clear which affirmative defense(s) you are supporting.)
- Supporting facts are on Attachment 4. (You may use Form MC-025 for this purpose.)

5. A request for an early evaluation conference and to meet in person with plaintiff at the subject premises has been filed or is being filed concurrently with this answer, on *Defendant's Application for Stay of Proceedings and Early Evaluation Conference, and Joint Inspection* (form DAL-005).

6. Number of pages attached: _____

(Each defendant for whom this answer is filed must be named in item 1 and must sign this answer unless his or her attorney signs.)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT OR ATTORNEY)

VERIFICATION

(Use a different verification form if the verification is by an attorney or for a corporation or partnership.)

I am the defendant in this proceeding and have read this answer. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DEFENDANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name): _____	<p style="font-size: 1.2em; font-weight: bold;">DRAFT 11/13/15</p> <p style="font-size: 1.2em; font-weight: bold;">NOT APPROVED BY JUDICIAL COUNCIL</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
Plaintiff: _____ Defendant: _____	
DEFENDANT'S APPLICATION PURSUANT TO CIVIL CODE SECTION 55.54 FOR <input type="checkbox"/> STAY AND EARLY EVALUATION CONFERENCE <input type="checkbox"/> JOINT INSPECTION	CASE NUMBER: _____

(Information about this application and filing instructions may be obtained at www.courts.ca.gov/selfhelp.htm)

1. Defendant (name): _____ requests a stay of proceedings and early evaluation conference pursuant to Civil Code section 55.54.
2. The complaint in this case alleges a construction-related accessibility claim as defined under Civil Code section 55.52(a)(1).
3. The claim concerns a site that meets one of the following sets of requirements *(All items in one of a, b, c or d must be checked for the court to order a stay and early evaluation conference. Check a box if the statement is true.)*
 - a. **CASp-Inspected Site**
 - (1) Site has been inspected by a Certified Access Specialist (CASp) and determined to be CASp inspected or CASp determination pending and, if CASp inspected, there have been no modifications completed or commenced since the date of inspection that may impact compliance with construction-related accessibility standards to the best of defendant's knowledge; and
 - (2) An inspection report by a Certified Access Specialist (CASp) relating to the site has been issued.
 - b. **New Construction**
 - (1) Site has had new construction or improvements on or after January 1, 2008, approved pursuant to the local building permit and inspection process;
 - (2) To the best of defendant's knowledge, there have been no modifications or alterations completed or commenced since that approval that impacted compliance with construction-related accessibility standards with respect to the plaintiff's claim; and
 - (3) All violations have been corrected, or will be corrected within **60** days of defendant's being served with the complaint.
 - c. **Small Business**
 - (1) Site is owned or occupied by a defendant that is a small business that has employed an average of 25 or fewer employees over the past three years and meets the gross receipts eligibility criteria provided in Civil Code, § 55.56(2)(f);
 - (2) All violations have been corrected, or will be corrected within **30** days of being served with the complaint; and
 - (3) Evidence showing that all violations have been corrected (*check one*) is attached will be filed with the court within **10** days of the court order setting an early evaluation conference.
 - (4) I am filing the following with the court along with this application: *(The documents should be filed separately attached to a Confidential Cover Sheet and Declaration (form DAL-006).)*
 - Proof of the number of defendant's employees as shown by wage reports forms filed with the Employment Development Department over the past three years or for existence of the business if less than three years.
 - Proof of defendant's average gross receipts as shown by federal or state tax documents for the three years before this application or for existence of the business if less than three years.

Plaintiff: Defendant:	CASE NUMBER:
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d. **Case Filed by High-Frequency Litigant**

- (1) Site is owned or occupied by a defendant that is a business.
- (2) The complaint was filed by, or on behalf of a "high-frequency litigant," as defined in Code of Civil Procedure section 425.55(6), asserting a construction-related accessibility claim including, but not limited to a claim brought under Civil Code sections 51, 54, 54.1 or 55.
- (3) The complaint includes a statement that it was filed by or on behalf of a high-frequency litigant, or a statement in the caption that "action subject to the supplemental fee in Government Code section 70616.5."

4. Defendant requests that the court:

- a. Stay the proceedings relating to the construction-related accessibility claim.
- b. Schedule an early evaluation conference.
- c. Order defendant to:
 - (1) File a confidential copy of the Certified Access Specialist (CASP) report with the court and serve a copy of the report on the plaintiff at least **15** days before the date of the early evaluation conference, which shall be kept confidential as set forth in Civil Code section 55.54(d)(4); or
 - (2) File with the court and serve on plaintiff evidence showing correction of all violations within **10** days of completion of the correction or, if seeking relief as a small business, within **10** days after issuance of a court order granting a stay.
- d. Order plaintiff to file with the court and serve on defendants the statement required by Civil Code section 55.54(d)(6) at least **15** days before the date of the early evaluation conference.
- e. Order plaintiff and plaintiff's counsel, if any, to meet in person with defendant within 30 days, at the site that is the subject of this action, for a joint inspection to review any issues that plaintiff claims are a violation of construction-related accessibility standards.

Date: _____

(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

DECLARATION OF DEFENDANT

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME OF DECLARANT) (SIGNATURE OF DECLARANT)

ATTORNEY (Name, State Bar number, and address): STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT 11/13/15 NOT APPROVED BY JUDICIAL COUNCIL
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
NOTICE OF <input type="checkbox"/> STAY OF PROCEEDINGS AND EARLY EVALUATION CONFERENCE <input type="checkbox"/> JOINT INSPECTION (DISABILITY ACCESS LITIGATION)	CASE NUMBER:

Stay of Proceedings

For a period of 90 days from the date of the filing of this court notice, unless otherwise ordered by the court, the parties are stayed from 90 days taking any further action relating to the construction-related accessibility claim or claims in this case.

This stay does not apply to any construction-related accessibility claim in which the plaintiff has obtained temporary injunctive relief which is still in place.

1. This action includes a construction-related accessibility claim under Civil Code Section 55.52(a)(1) or other provision of law.

Notice of Early Evaluation Conference

2. A defendant has requested an early evaluation conference and a stay of proceedings under Civil Code Section 55.54.
3. The early evaluation conference is scheduled as follows:

a. Date:	Time:	Dept.:	Room:
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- b. The conference will be held at the court address shown above at the following address:

4. The plaintiff and defendant must attend with any other person needed for settlement of the case unless, with court approval, a party's disability requires the party's participation by a telephone appearance or other alternate means or through the personal appearance of an authorized representative.
5. The defendant who requested the conference and stay of proceedings must serve on all parties and file with the court the following:
 - a. (For a defendant applying under **CASp-Inspected Site** section) A copy of the CASp report for the site that is the subject of the construction-related accessibility claim. Defendant must serve and file the report at least **15** days before the date set for the early evaluation conference. The CASp report is confidential and only available as set forth below and in Civil Code Section 55.54(d)(4).
 - b. (For a defendant applying under **New Construction** section) Evidence showing the correction of all violations giving rise to the construction-related accessibility claim within **60** days of the service of the complaint. Defendant must serve and file the evidence within **10** days following completion of the corrections.
 - c. (For a defendant applying under **Small Business** section) Evidence, if not previously served and filed, showing the correction within **30** days of the service of the complaint of all violations giving rise to the construction-related accessibility claims. Defendant must serve and file the evidence within **10** days of issuance of this order.
6. The CASp report must be marked "CONFIDENTIAL" and may be disclosed only to the court, the parties to the action, the parties' attorneys, those individuals employed or retained by the attorneys to assist in the litigation, and insurance representatives or others involved in the evaluation and settlement of the case. (File the court's copy attached to Confidential Cover Sheet and Declaration (form DAL-006).)

PLAINTIFF: DEFENDANT:	CASE NUMBER:
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7. The plaintiff must at least 15 days before the date set for the early evaluation conference serve and file a statement of, to the extent known, all of the following:
- a. An itemized list of specific issues on the subject premises that are the basis of the claimed construction-related accessibility violations in the plaintiff's complaint;
 - b. The amount of damages claimed;
 - c. The amount of attorney's fees and costs incurred to date, if any, that are being claimed; and
 - d. Any demand for settlement of the case in its entirety.

Notice of Joint Inspection

(only applies if boxes are checked)

8. A defendant has requested a meeting with plaintiff to jointly inspect the site that is the subject of the construction-related accessibility claim.
9. Plaintiff and plaintiff's counsel, if any, must, within 30 days of the date this notice is issued, meet in person with defendant at the site to jointly inspect the premises and review any programmatic or policy issues that are claimed to constitute a violation of a construction-related accessibility standard. (See Civil Code, section 55.54(d)(6).)
10. If plaintiff is unable to meet in person at the site, he or she may move the court for leave to be excused or to appear telephonically or by other means. (See Civil Code, section 55.54(d)(6).)

Service of Notice

11. A copy of this notice and defendant's application must be served on the plaintiff by hand-delivering it or mailing it to the address listed on the complaint of plaintiff's attorney or plaintiff if without an attorney, within 10 days of date that the court issues the *Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection*. Defendant must file proof of service with the court at least 15 days before the date of the conference. *Proof of Service—Disability Access Litigation* (form DAL-012) may be used to show service of the documents.

Date: _____ Clerk, by _____, Deputy

More information about this Notice and Order and the defendant's application, and instructions to assist plaintiff and defendants in complying with this Notice and Order, may be obtained at www.courts.ca.gov/selfhelp.



Request for Accommodation

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons with Disabilities and Response* (form MC-410). (Civil Code section 54.8.)

ATTORNEY (Name, State Bar number, and address): STATE BAR NO.:
NAME:
FIRM NAME:
STREET ADDRESS:
CITY: STATE: ZIP CODE:
TELEPHONE NO.: FAX NO.:
E-MAIL ADDRESS:
ATTORNEY FOR (name):

DRAFT
10/15/15
NOT APPROVED
BY JUDICIAL
COUNCIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

Plaintiff:
Defendant:

CASE NUMBER:

PROOF OF SERVICE—DISABILITY ACCESS LITIGATION
Check method of service (only one):
[] By Personal Service [] By Mail

JUDGE:
DEPT.:

(This proof of service may only be used to show service of documents in cases with construction-related accessibility claims, as listed below. Do NOT use it to show service of a summons and complaint, or to show electronic service.)

- 1. At the time of service I was over 18 years of age and not a party to this action.
2. My residence or business address is:
3. I served the following documents (check the applicable boxes):
a. [] Defendant's Application for Stay of Proceedings and Early Evaluation Conference, Joint Inspection (form DAL-005)
b. [] Notice of Stay of Proceedings and Early Evaluation Conference, Joint Inspection (form DAL-010)
c. [] Application for Mandatory Evaluation Conference (form DAL-015)
d. [] Notice of Mandatory Evaluation Conference (form DAL-020)
e. [] Inspection report by Certified Access Specialist the site in this action (See Civ. Code, § 55.54(d)(4)(A).) regarding
f. [] Evidence showing correction of violation giving rise to construction-related claims or plans for remediation (See Civ. Code, § 55.54(d)(4)(B) or (C) or § 55.545(c)(3).)
g. [] Plaintiff's statement of issues, damages, attorney's fees, and any settlement demand. (See Civ. Code, § 55.54(d)(6) or § 55.545(c)(2).)
h. [] Other (describe):
4. [] By Mail. I am a resident of or employed in the county where the mailing occurred. I served a copy of the document or documents by mailing them, in a sealed envelope with first-class postage fully prepaid, as follows:
a. [] I deposited the envelope with the United States Postal Service.
b. [] I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
c. Date of deposit: d. Place of deposit (city and state):
e. Addressed as follows (name and address):
5. [] By Personal Service. I served a copy of the document or documents by personally delivering copies as shown below:
a. Name of person served:
b. Address of person served:
c. On (date): d. At (time):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: (TYPE OR PRINT NAME) (SIGNATURE)

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Submit to JC (without circulating for comment)**

RUPRO Meeting: November 24, 2015

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Conservatee Voting: Revise Judicial Council forms GC-310, GC-320, GC-330, and GC-331

Committee or other entity submitting the proposal:

Probate and Mental Health Advisory Committee

Staff contact (name, phone and e-mail): Douglas C. Miller, (818)-558-4178; douglas.c.miller@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: December 10, 2014

Project description from annual agenda: Review and consider recommendations for changes in law, practice, and procedures in limited conservatorships for the developmentally disabled.

If requesting July 1 or out of cycle, explain:

The request is for RUPRO to approve presentation of this proposal to the Judicial Council at its meeting of December 11, 2015, for adoption or approval of the affected forms effective on January 1, 2016; and to permit circulation of this proposal in the Winter 2016 comment cycle, beginning just before the council meeting and extending into January 2016, after the effective date of the proposal. The goal is to have the revised forms effective on the same date that the legislation changing the voting capacity standard becomes effective.

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

This proposal seeks to revise three Judicial Council forms to modify their statements of the standard for a conservatee's capacity to vote because of legislation changing that standard that will be effective on January 1, 2016. The changes in the text of the forms precisely match the changes made in the standard by the legislation. A fourth form, the Petition for Appointment of Probate Conservator (form GC-310) would be changed to delete its reference to a proposed conservatee's ability to vote because that issue is not properly addressed in that form and is not part of the petitioner's case in chief for the appointment of a conservator.



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 11, 2015

Title	Agenda Item Type
Probate Conservatorship: Conservatee's Capacity to Vote	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise Judicial Council forms GC-310, GC-320, GC-330, and GC-331	January 1, 2016
Recommended by	Date of Report
Probate and Mental Health Advisory Committee	November 20, 2015
Hon. John H. Sugiyama, Chair	Contact
Douglas C. Miller	Douglas C. Miller, (818)-558-4178
Attorney	douglas.c.miller@jud.ca.gov
JCC Legal Services Office	

Executive Summary

The Probate and Mental Health Advisory Committee recommends that the Judicial Council revise three Judicial Council forms used in probate conservatorships to state the correct legal standard for a conservatee's capacity to vote, in response to legislation signed by the Governor on October 10, 2015, effective on January 1, 2016, that has changed that standard. The committee also recommends that the council revise a fourth probate conservatorship form to delete its reference to a proposed conservatee's ability to vote because that reference is not required by law and is not needed for the form to accomplish its intended purpose.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2016:

1. Revise the *Petition for Appointment of Probate Conservator* (form GC-310) to delete in its entirety, existing item 4c, on page 4, concerning the proposed conservatee’s capacity to complete an affidavit of voter registration, and redesignate existing item 4d as item 4c;
2. Revise the *Citation for Conservatorship* (form GC-320) by:
 - Removing the sentence from item 3 on page 1 concerning the proposed conservatee’s capacity to complete an affidavit of voter registration and replacing it with a statement of the new standard for a conservatee’s capacity to vote in a new item 4;
 - Restating items 2–5 on page 1 of the form, as modified above, as items 2 through 7; and
 - Moving the clerk’s signature line, space for the court seal, and the textbox containing advice for disabled persons to request accommodations to page 2, and the proof of service to a new page 3.
3. Revise the *Order Appointing Court Investigator* (form GC-330) by:
 - Revising the first sentence of item 1d on page 1 by replacing the existing citation of Probate Code sections 1826(d)–(j) with sections 1826(a)(4)–(7), and (9) and (10)¹;
 - Adding a new item 1e on page 1 to state expressly as a separate item the new standard for determining the capacity of a conservatee to vote;
 - Redesignating current items 1e–g on page 1 as items 1f–h; and
 - Changing the reference to section 1826(l) in current item 1f (item 1g in the revised form) to section 1826(a)(12), reflecting the new location of the cited material in the amended section 1826.

¹ Unless otherwise specified, all code citations are to the Probate Code. Current sections 1826(d)–(j) prescribe the scope of the investigation ordered by the court; subdivision (h) addresses the conservatee’s capacity to vote. The legislation that adopted the new standard for determining that capacity also reorganizes section 1826. These provisions will be found in sections 1826(a)(4)–(10) of the amended section; the provision concerning voting is section 1826(a)(8). Thus the first sentence of revised item 1d would no longer address voting capacity, which is now addressed in item 1e.

4. Revise the *Order Appointing Court Investigator (Review and Successor Conservator Investigations)* (form GC-331) by adding a new item 1c on page 1 to state the new standard for determining the capacity of a conservatee to vote in connection with the investigator's duty to determine whether the conservatee should be either disqualified from voting or restored to voting capacity under section 1851(a)(1)(D), and redesignating items 1c–1m on pages 1 and 2 as items 1d–n.

The committee will recommend to the Rules and Projects Committee that the revised forms be circulated for comment during the winter 2016 comment cycle.

The revised forms are attached at pages 10–25.

Previous Council Action

Form GC-310

The Judicial Council adopted the *Petition for Appointment of Probate Conservator* (form GC-310), effective July 1, 1979. The form has been revised eight times since then. The last revision was made by the council at its meeting of October 27, 2015 (Agenda item A32), effective January 1, 2016. That revision added item 4d on page 4 of the form, concerning the proposed conservatee's ties to federally-recognized Indian tribes, a change mandated by the California Conservatorship Jurisdiction Act. (New item 4d is the item that must be redesignated as item 4c if the current item 4c is deleted, as recommended in this report.)

Form GC-320

The *Citation for Conservatorship* (form GC-320) was adopted effective July 1, 1977. It has been revised four times. The last revision was effective January 1, 2006. As is the case with all of the forms in this proposal, none of the prior revisions concerned a conservatee's capacity to vote.

Form GC-330

The optional *Order Appointing Court Investigator* (form GC-330) was approved effective July 1, 1977. It has been revised five times. Its last revision was effective January 1, 2011.

Form GC-331

The Order Appointing Court Investigator (Review and Successor Conservator Investigations) (form GC-331), also an optional form, was approved effective January 1, 2011. It has not been revised since it was approved.

Rationale for Recommendation

Under current law, a probate conservatee is “mentally incompetent and therefore disqualified from voting” if the court finds, during the course of the conservatorship proceeding, that he or

she is not capable of completing the affidavit of voter registration required of all otherwise eligible voters (Elect. Code, § 2208(a) and (a)(1)).²

The voting capacity standard is repeated in the Probate Code sections that (1) prescribe the contents of the citation that must be served on the proposed conservatee (§ 1823(b)(3)); (2) direct the court investigator to determine the proposed conservatee’s capacity to vote (§ 1826(h)); (3) prescribe the advice the court must give the proposed conservatee at the hearing, before establishment of the conservatorship (§ 1828(a)(3)); and (4) require the court to make an order of disqualification if the court determines that the conservatee fails to meet the standard (§ 1910(a)).

The Judicial Council probate forms that implement the voting capacity standard described above need to be revised, effective January 1, 2016, to reflect the new standard that will go into effect on that date.

Senate Bill 589, effective January 1, 2016

Senate Bill 589 changes the standard for disqualifying a conservatee from voting.³ The new standard is stated in all of the Probate Code sections noted above, and also in an amendment to Elections Code section 2208(a)⁴, as follows:

(a) A person is presumed competent to vote regardless of his or her conservatorship status. A person shall be deemed mentally incompetent, and therefore disqualified from voting, if, during the course of any of the proceedings set forth below, the court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process, and . . .
[a] conservator for the person or the person and estate is appointed pursuant to Division 4 (commencing with Section 1400) of the Probate Code.

² Legislation enacted in 2014 added subdivision (d) to section 2208 to list three methods of completing an affidavit of voter registration with assistance that would not disqualify a person, including a conservatee, from voting (AB 1311 (Stats.2014, ch. 591), § 1). But this legislation retained the standard of incapacity to complete the affidavit. See also Probate Code sections 1826(h)(1) and 1851(a)(1)(D), added by AB 1311, §§ 5 and 7).

³ The Assembly Committee on the Judiciary’s Synopsis of the bill states: “This non-controversial but important voting rights bill seeks to ensure that California state law complies with the Federal Voting Rights Act by removing requirements for filling out an affidavit of voter registration, creating a presumption that all Californians are presumed to be competent, regardless of being subject to a conservatorship, and establishing a process for courts to review past determinations that conservatees are not competent to exercise the right to vote because they were incapable of filling out an affidavit of voter registration.” (Assem. Comm. on Jud., Synopsis of SB 589, at page 1.)

⁴ SB 589 (Stats. 2015, ch. 736), § 6.5). Two versions of an amended section 2208 are contained in the legislation, in sections 6 and 6.5. The version provided in section 6.5 was enacted because another piece of legislation, AB 1020, also became law and was enacted before SB 589, as chapter 728. See SB 589, § 13(d). By a similar process, the versions of amended Elections Code sections 2102, 2150, and 2209 contained, respectively, in sections 3.5, 4.5, and 7.5 of SB 589 became law. The versions of these code sections contained in sections 3, 4, and 7 of SB 589 were not enacted (SB 589, §§ 13(a), (b), (c), and (e)). In the case of Elections Code section 2102, the other bill is AB 1461, not AB 1020. AB 1461 was also enacted before SB 589, as chapter 729.

Section 2208(d) was amended to add a fourth type of assistance in completing an affidavit of voter registration.⁵ It provides that a person is not disqualified from voting if he or she can complete the affidavit of voter registration with reasonable accommodations.

Form GC-320

SB 589 amends Probate Code section 1823, which specifies the content of the citation directed to the conservatee (form GC-320) as follows:

(b) The citation . . . shall state the substance of the following:

(3) (A) The proposed conservatee may be disqualified from voting pursuant to Section 2208 of the Elections Code if he or she is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process.

(B) The proposed conservatee shall not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:

(i) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

(ii) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(iii) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

(iv) Completes the affidavit of voter registration with reasonable accommodations.

The revised form GC-320 contains this text in a new item 4 on page 1. Because of the length of this item, the clerk's signature, court seal, and advice about courtroom accommodations for disabled persons have been moved to page 2, and the proof of service to a new page 3.

Form GC-330

SB 589 amends Probate Code section 1826, concerning the duties of the court investigator at commencement of a conservatorship, which include determining whether the proposed conservatee, has the capacity to vote. The amendment restates the new voting capacity standard stated above in full, including the four methods of completing an affidavit of voter registration with assistance that are not disqualifying.

Form GC-330 is an optional form that includes an order for an initial investigation and contains the requirements for the investigation under section 1826. The form has been revised to add

⁵ See footnote 2 above.

information advising investigators of their responsibilities concerning determination of a conservatee’s voting capacity under amended section 1826. Those responsibilities, set out immediately below, are contained in new item 1(e) on GC-330:

Determine if the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code. The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations.

Form GC-331

Identical statements of the new standard for determining a conservatee’s capacity to vote—including the list of four types of assistance in completing of the affidavit of voter registration that do not disqualify a person from voting—are contained in amended Probate Code section 1828, which prescribes the information the court must give the proposed conservatee at the hearing, before establishment of the conservatorship; in section 1910, concerning the duty of the court to order the conservatee’s disqualification from voting in an appropriate case; and in section 1851, which addresses the duties of court investigators on review investigations in years following establishment of a conservatorship.⁶

The review investigation in a conservatorship is the focus of Elections Code section 2209, also amended by SB 589. The amended section applies the new standard for determining a conservatee’s incapacity to vote, but emphasizes that the investigator will be dealing with conservatees who have and have not previously lost their right to vote. The amended section requires the investigator in the latter case to determine whether the conservatee has lost the ability to communicate a desire to participate in the voting process, and in the former case to determine whether the conservatee continues to lack that ability.⁷ In either situation, the standard is the same: an inability, with or without accommodations, to communicate a desire to participate in the voting process, with the caveat that the legislation’s four methods of completing an affidavit of voter registration with assistance are not disqualifying.

⁶ SB 589, §§ 10–12.

⁷ Amended section 2209 refers only to conservatees who have or have not lost the capacity to vote under the new standard, not to those previously disqualified under the old test. In effect, investigators and the courts must redetermine the capacity of all conservatees in existing conservatorships under the new standard when their matters come up for review investigations. There is no provision in the law that requires a redetermination of existing conservatees’ voting capacity before their first review investigations come up in the ordinary course following the effective date of the legislation.

The review investigation under section 1851 is the topic of item 1 on the first page of form GC-331, an optional form that courts may use to appoint and direct their investigators in the performance of these investigations. The new standard is placed in item 1e of the form. The text is as follows:

Determine if the proposed conservatee is now incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code; or if previously was found incapable of communicating that desire, continues to be incapable of doing so, with or without accommodations. The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations.

The first sentence's text: "now incapable of communicating. . ." and "if previously was found incapable of communicating that desire, continues to be incapable of doing so" addresses the special requirements of amended section 2209.

Form GC-310

The *Petition for Appointment of Probate Conservator* has the following as item 4c on page 4:

- 4. (Proposed) conservatee
...
c. [] is [] is not able to complete an affidavit of voter registration.

The revised form deletes this item entirely, and redesignates the next item, 4d, as 4c.

The item requests the petitioner for the appointment of a conservator—who is usually, but not always, the proposed conservator—to express an opinion on the proposed conservatee's capacity to vote. The committee has concluded that the petitioner's opinion about that capacity is not required and should be deleted from form GC-310, as discussed below.

SB 589 does not amend Probate Code section 1821, which prescribes the contents of the *Petition for Appointment of Probate Conservator*. This omission is likely due to the fact that section 1821 is silent about a proposed conservatee's capacity to vote.

Judicial-officer members of the committee report that virtually all petitioners in their courts select "is not able" to complete the voter affidavit, but do not offer evidence addressed to this

issue at the hearing. The presence or absence of the conservatee's right to vote does not affect any duties or powers the proposed conservator may seek to care for the conservatee or manage his or her estate.

The new standard in Elections Code section 2208 makes it even less likely that a petitioner offer evidence of the proposed conservatee's ability to complete a voter affidavit. The non-professional family-member petitioner unlikely to be able, particularly without the assistance of counsel, to reach a conclusion about the proposed conservatee's ability to "communicate a desire to participate in the voting process," particularly when consideration of "reasonable accommodations," may be required? The latter phrase refers to a complex concept from the federal Americans with Disabilities Act. Even in a case with experienced counsel representing a petitioner, expert testimony may be required to show the reasonable accommodations necessary to sustain the conservatee's right to vote. That benefit may not be significant enough for the petitioner to decide to incur that expense, personally or from the proposed conservatee's estate. That fact emphasizes that the voting capacity issue is really not part of the petitioner's burden; it is for the court to determine, perhaps with the assistance of retained or appointed counsel for the conservatee and experts appointed by the court, if the conservatee strongly desires to retain the right to vote.

It appears from section 1821 that the proposed conservatee's capacity to vote is in fact not part of the petitioner's case in chief. Indeed, the appointment of a conservator, the petitioner's major goal, is required *before* the court is charged with the duty of determining the conservatee's eligibility to vote (see existing Elections Code section 2208(a)(1) and the revised version of that provision in section 6.5 of SB 589). Instead, the issue of voting competence is determined initially by the court investigator under section 1826, and ultimately by the court at the hearing on the petition if, and only if, a conservator is appointed. Those determinations must be made explicitly and on the record in every case in which a conservator is appointed, without regard to which option for the item the petitioner may have selected in his or her petition.

Comments, Alternatives Considered, and Policy Implications

This proposal has not yet circulated for public comment. The committee has asked the Rules and Projects Committee to circulate the proposal during the winter comment cycle from December 11, 2015 to January 22, 2016. Following circulation, the committee will consider the comments and recommend any appropriate revisions to these forms effective July 1, 2016.

Making the Judicial Council form citation (form GC-320) available simultaneously with the effective date of the new law will benefit all probate practitioners. Making the two investigation order forms available on the effective date will primarily benefit the courts that use them. Their immediate availability will also assist other courts that draft their own investigation orders or use local forms for them by providing text for changes necessary in their orders sooner rather than later.

The committee does not expect any controversy about the change in form GC-310. It believes that many petitioners in family conservatorships would actually be relieved at not having to

express a very public negative opinion about their elderly relative's ability to continue voting. The petitioner's evidence of the conservatee's mental incapacities introduced at the hearing may impact the voting capacity decision the court must make, but that evidence is neither developed nor offered for that purpose and the petitioner has no other role in the voting-rights decision.

Implementation Requirements, Costs, and Operational Impacts

There will be the initial costs of distribution of any new or revised form. There will be substantial costs of training court staff—particularly court investigators—and counsel appointed to represent conservatees in the new requirements concerning conservatees' voting rights; but these costs are attributable to the legislation, not the changes in the forms necessary to comply with it. The modified forms should actually aid in the training process.

Attachments and Links

1. Judicial Council forms GC-320, GC-330, GC-331, and GC-310, at pages 10–25;
2. Attachment A: SB 589 (Stats. 2015, ch. 736),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB589

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): _____ PROPOSED CONSERVATEE	
CITATION FOR CONSERVATORSHIP <input type="checkbox"/> Limited Conservatorship	CASE NUMBER: _____

THE PEOPLE OF THE STATE OF CALIFORNIA,

To (name):

1. You are hereby cited and required to appear at a hearing in this court on

a. Date: _____	Time: _____	<input type="checkbox"/> Dept.: _____	<input type="checkbox"/> Room: _____
b. Address of court: <input type="checkbox"/> same as noted above <input type="checkbox"/> other (specify): _____			

and to give any legal reason why, according to the verified petition filed with this court, you should not be found to be unable to provide for your personal needs unable to manage your financial resources and by reason thereof, why the following person should not be appointed conservator limited conservator of your person estate (name):

2. A conservatorship of the person may be created for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter. A conservatorship of the property (estate) may be created for a person who is unable to resist fraud or undue influence, or who is substantially unable to manage his or her own financial resources. "Substantial inability" may not be proved solely by isolated incidents of negligence or improvidence.
3. At the hearing a conservator may be appointed for your person estate.
The appointment may affect or transfer to the conservator your right to contract, to manage and control your property, to give informed consent for medical treatment, to fix your place of residence, and to marry.
4. You may be disqualified from voting if you are found to be incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process. But you will not be disqualified from voting on the basis that you do, or would need to do, any of the following to complete an affidavit of voter registration:
 - a. Sign the affidavit of voter registration with a mark or a cross, pursuant to Section 2150(b) of the Elections Code;
 - b. Sign the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code;
 - c. Complete the affidavit of voter registration with the assistance of another person pursuant to Section 2150(d) of the Elections Code; or
 - d. Complete the affidavit of voter registration with reasonable accommodations.
5. The judge or the court investigator will explain to you the nature, purpose, and effect of the proceedings and answer questions concerning the explanation.
6. You have the right to appear at the hearing and oppose the petition. You have the right to hire an attorney of your choice to represent you. The court will appoint an attorney to represent you if you are unable to retain one. You must pay the cost of that attorney if you are able. You have the right to a jury trial if you wish.
7. (For limited conservatorship only) In addition to the rights stated in item 6 above, you have the right to oppose the petition in part by objecting to any or all of the requested duties or powers of the limited conservator.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): PROPOSED CONSERVATEE	CASE NUMBER:
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Date: _____ Clerk, by _____, Deputy

(SEAL)

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code section 54.8.)



CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): _____ <div style="text-align: center; margin-top: 10px;">PROPOSED CONSERVATEE</div>	CASE NUMBER: _____
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PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this proceeding. I served copies of the *Citation for Conservatorship* and the *Petition for Appointment of Probate Conservator* (form GC-310) as follows:

2. a. Person cited (name):

- b. Person served: (1) person in item 2a
 (2) other (specify name and title or relationship to the person named in item 2a):

c. Address (specify):

3. I served the person named in item 2

- a. by personally delivering the copies (1) on (date): _____ (2) at (time): _____
- b. by mailing the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid,
 (1) on (date): _____ (2) from (city): _____
 (3) with two copies of the *Notice and Acknowledgment of Receipt—Civil* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt—Civil* (form POS-015).)
 (4) to an address outside California with return receipt requested. (Attach completed return receipt.)
- c. other (specify other manner of service, and the authorizing code section and order of the court):

4. a. Person serving (name, address, and telephone number):

- b. Fee for service: \$ _____
- c. Not a registered California process server.
- d. Exempt from registration under Business and Professions Code section 22350(b).
- e. Registered California process server.
 (1) Employee or independent contractor.
 (2) Registration no. (specify): _____
 (3) County (specify): _____
 (4) Expiration (date): _____

5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:



 (SIGNATURE OF PERSON SERVING)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	
ORDER APPOINTING COURT INVESTIGATOR <input type="checkbox"/> Conservatorship <input type="checkbox"/> Limited Conservatorship	CASE NUMBER:

To (name):

You are hereby appointed Court Investigator in the matter entitled above.

1. **Before the appointment of a general conservator** YOU ARE DIRECTED TO:

- a. Conduct the interviews required by Probate Code section 1826(a)(1). Interview the proposed conservatee personally.
- b. Provide to the proposed conservatee the information required by Probate Code section 1826(a)(2).
- c. Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether he or she is willing to attend.
- d. Make the determinations required by Probate Code sections 1826(a)(4)–(7), and (9)–(10). In making those determinations, review the allegations of the *Petition for Appointment of Probate Conservator* (form GC-310) as to why the appointment of a conservator is required and refer to the *Confidential Supplemental Information* (form GC-312) submitted by the petitioner. Consider the facts shown in the latter form that address each of the categories specified in Probate Code section 1821(a)(1)–(5) and consider, to the extent practicable, whether you believe the proposed conservatee suffers from any of the mental function deficits listed in Probate Code section 811(a) that significantly impairs his or her ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in Probate Code section 1801(a) (if a conservator of the person is sought) or section 1801(b) (if a conservator of the estate is sought). If you believe the proposed conservatee suffers from one or more mental function deficits listed in Probate Code section 811(a), identify all observations that support your belief.
- e. Determine if the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code. The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations.
- f. Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning (1) representation by legal counsel; and (2) whether he or she is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefers that another person act as conservator.
- g. Mail, at least five days before the date set for hearing, a copy of your report (1) to all persons listed in Probate Code section 1826(a)(12)
 - except** for the persons listed in attachment 1g(1) because the court has determined that mailing to those persons will result in harm to the proposed conservatee;
 - and** (2) to the other persons ordered by the court listed in Attachment 1g(2) (*specify names and addresses in the attachment*).
- h. Comply with the other orders specified in Attachment 1h.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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2. **On the filing of a *Petition for Appointment of Temporary Conservator* YOU ARE DIRECTED TO:**
- a. To the extent feasible, before the hearing on the petition or, if not feasible, within two court days after the hearing, conduct the interviews required by Probate Code section 2250.6(a)(1) (prehearing) or 2250.6(b)(1) (posthearing). Interview the temporary conservatee or proposed temporary conservatee personally.
 - b. Provide to the temporary conservatee or proposed temporary conservatee the information required by Probate Code section 2250.6(a)(2) (prehearing) or 2250.6(b)(2) (posthearing).
 - c. To the extent feasible, make the determinations required by Probate Code section 2250.6(a)(3)–(5) before the hearing on the petition.
 - d. To the extent feasible, before the hearing on the petition, report to the court in writing concerning all of the matters stated in items 2a–c.
 - e. If you do not visit the temporary conservatee until after the hearing at which a temporary conservator was appointed and the temporary conservatee objects to the appointment of the temporary conservator or requests an attorney, report this information to the court promptly and in no event more than three court days after the date of your interview with the temporary conservatee.
 - f. If it appears to you that the temporary conservatorship is inappropriate, immediately, and in no event more than two court days after you make your determination, make a written report of your determination to the court.

3. **Before the court grants an order under Probate Code section 2253 authorizing the temporary conservator to change the residence of the temporary conservatee**
- a. YOU ARE DIRECTED TO:
 - (1) Personally interview and inform the temporary conservatee of the contents of the request by the temporary conservator for authority to change the temporary conservatee's residence; of the nature, purpose, and effect of the proceedings; and of the right to oppose the request, attend the hearing, and be represented by legal counsel.
 - (2) Make the determinations required by Probate Code section 2253(b)(3)–(7).
 - (3) At least two days before the hearing on change of residence, report your findings concerning the foregoing in writing to the court, including in your report the temporary conservatee's express communications concerning representation by legal counsel and whether he or she is not willing to attend the hearing and does not wish to contest the petition.
 - (4) Comply with the other orders specified in Attachment 3a(4) .
 - b. Good cause appearing, YOU ARE DIRECTED NOT to conduct the investigation and NOT make the report described in Probate Code section 2253(b).
 - c. Good cause appearing, YOU ARE DIRECTED as specified on Attachment 3c, INSTEAD of proceeding with the investigation and report described in Probate Code section 2253(b).

4. **Before the court grants an order relating to medical consent under Probate Code section 1880.**
 The petition for an order determining that there is no form of medical treatment for which the conservatee or proposed conservatee has the capacity to give informed consent alleges that he or she is not willing to attend the hearing, or the court has received an affidavit or certificate attesting to the medical inability of the conservatee or proposed conservatee to attend the hearing.

YOU ARE DIRECTED TO:

- a. Personally interview and inform the conservatee or proposed conservatee of the contents of the petition; of the nature, purpose, and effect of the proceedings; and of the right to oppose the petition, attend the hearing, and be represented by legal counsel.
- b. Make the determinations required by Probate Code section 1894(c)–(g).
- c. At least five days before the hearing on the petition, report your findings concerning the foregoing in writing to the court, including in your report the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.
- d. Comply with the other orders specified in Attachment 4d .

5. Number of pages attached:

Date: _____ JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

FOR PREPARATION BY THE COURT ONLY

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

DRAFT

Not Approved by the
Judicial Council

CONSERVATORSHIP OF THE PERSON ESTATE
of (name): _____ CONSERVATEE

**ORDER APPOINTING COURT INVESTIGATOR
(Review and Successor Conservator Investigations)***

Conservatorship Limited Conservatorship

CASE NUMBER:

To (name):

You are hereby appointed Court Investigator in the matter entitled above.

1. Review investigation

YOU ARE DIRECTED TO:

- a. Without prior notice to the conservator
 With prior notice to the conservator because of necessity or to prevent harm to the conservatee visit and personally inform the conservatee that he or she is under a conservatorship and give the name of the conservator to the conservatee.
- b. Make the determinations required by Probate Code section 1851(a)(1)(A)-(C), including whether the conservator is acting in the best interests of the conservatee. This last determination must include an examination of the conservatee's placement; the quality of care, including physical and mental treatment; and the conservatee's finances and must include, to the greatest extent possible, interviews with the conservator, the conservatee's spouse or registered domestic partner and relatives within the first degree, or, if none, the conservatee's relatives within the second degree.
- c. Determine if the proposed conservatee is now incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code; or if previously was found incapable of communicating that desire, continues to be incapable of doing so, with or without accommodations. The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations.
- d. The court has made an order or orders under (select all that apply):
 Probate Code section 1873 (authority of conservatee to enter into transactions)
 Probate Code section 1880 (conservatee's capacity to give informed consent to medical treatment)
 Probate Code section 1901 (conservatee's capacity to marry).
Determine whether the present condition of the conservatee is such that the terms of the court order or orders identified above should be modified or the order or orders revoked.
- e. To the extent practicable, review the conservator's accounting with the conservatee if he or she has sufficient capacity.
- f. Inform the court immediately if you are unable at any time to locate the conservatee.

* This form is for ordering review investigations and reports under Probate Code sections 1850 and 1851 or investigations and reports concerning appointment of a successor conservator under Probate Code section 2684 or 2686. The *Order Appointing Court Investigator* (form GC-330) may be used to order initial and other investigations and reports under Probate Code sections 1826, 1894, 2250.6, and 2253. The *Order Setting Biennial Review Investigation and Directing Status Report Before Review* (form GC-332) may be used to order a biennial review investigation and status report under Probate Code section 1850(a)(2)). See Cal. Rules of Court, rule 7.1060.

Page 1 of 3

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name):	CASE NUMBER:
CONSERVATEE	

1. g. (If the conservator is authorized to act under Probate Code section 2356.5—dementia treatment or placement) Advise the conservatee specifically that he or she has the right to object to the conservator's powers granted under section 2356.5. Determine whether the conservatee objects to the conservator's powers under section 2356.5, whether the powers granted under section 2356.5 are warranted, and whether some change in those powers is warranted.
- h. (For limited conservatorship only) Make a recommendation regarding the continuation or termination of the limited conservatorship.
- i. (For conservatorships existing on December 31, 1980, in which the conservatee has not been adjudged incompetent) Determine whether an order should be made under Probate Code section 1873 broadening the capacity of the conservatee.
- j. Certify in writing to the court your determinations and findings, including a statement of the facts on which the findings are based, not less than 15 days before the date of review under Probate Code section 1850. Do not disclose confidential medical information or confidential criminal history information from the California Law Enforcement Telecommunications System (CLETS) in the body of your report. Place all such information in one or more separate attachments to the report.
- k. At the same time your report is certified to the court, mail copies to the conservator and to the attorneys of record for the conservator and the conservatee.
- l. Mail copies of your report, modified by deletion of all attachments containing confidential medical information and confidential information from CLETS, to the conservatee's spouse or registered domestic partner and relatives within the first degree or, if there are no such relatives, to the conservatee's next closest relative.
- m. Mail copies of your report, modified by deletion of all attachments containing confidential medical information and confidential information from CLETS, to the conservatee's spouse or registered domestic partner and relatives within the first degree or, if there are no such relatives, to the conservatee's next closest relative
 except the person or persons named in Attachment 1m because the court has determined that mailing to that person or persons will result in harm to the conservatee.
- n. Comply with the other orders specified on Attachment 1n.
2. **Review investigation on the court's own motion or on request by an interested person**
YOU ARE DIRECTED,
 on the court's own motion,
 at the request of (name): _____ an interested person,
to conduct a review investigation of the conservatorship and make a report to the court as follows (specify):

Continued in Attachment 2.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): _____ <div style="text-align: right; margin-top: 10px;">CONSERVATEE</div>	CASE NUMBER: _____
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3. **Successor conservator investigation**

a. A petition for appointment of a successor conservator has been filed in this matter. The petition does not allege that the conservatee will be present at the hearing on the petition, which is scheduled as follows:

Date: _____ Time: _____ Dept.: _____

b. A petition for appointment of a successor conservator has been filed in this matter. The petition alleges that the conservatee would be present at the hearing on the petition, but the conservatee failed to appear at the hearing. The hearing has been continued to the following date, time, and department:

Date: _____ Time: _____ Dept.: _____

c. YOU ARE DIRECTED TO:

- (1) Interview the conservatee personally.
- (2) Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the proposed successor conservator, and the conservatee's rights to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the conservatee chooses, and to have legal counsel appointed by the court if the conservatee is unable to retain legal counsel.
- (3) Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed.
- (4) If the conservatee is not represented by legal counsel, determine whether he or she wishes to be represented by legal counsel and, if so, identify the attorney whom the conservatee wishes to retain or whether he or she desires the court to appoint legal counsel.
- (5) If the conservatee does not plan to retain legal counsel and has not requested appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to resolution of the matter or is necessary to protect the interests of the conservatee.
- (6) Report to the court in writing, at least five days before the hearing or continued hearing, concerning items (2)–(5), including the conservatee's express communications concerning representation by legal counsel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be appointed.
- (7) Mail, at least five days before the hearing or continued hearing, a copy of the report identified in item (6) to the attorneys, if any, for the petitioner and the conservatee and to the following additional persons (*specify*):

Continued in Attachment 3.

4. Number of pages attached:

Date: _____

 JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY Draft Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF (name): <div style="text-align: right;">(PROPOSED) CONSERVATEE</div>	
PETITION FOR APPOINTMENT OF <input type="checkbox"/> SUCCESSOR PROBATE CONSERVATOR OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE <input type="checkbox"/> Limited Conservatorship	CASE NUMBER: HEARING DATE AND TIME: DEPT.:

1. **Petitioner (name):**

requests that

a. (Name):
(Address):

(Telephone):

be appointed successor conservator limited conservator
of the PERSON of the (proposed) conservatee and Letters issue upon qualification.

b. (Name):
(Address):

(Telephone):

be appointed successor conservator limited conservator
of the ESTATE of the (proposed) conservatee and Letters issue upon qualification.

- c. (1) bond not be required because the proposed successor conservator is a corporate fiduciary or an exempt government agency. for the reasons stated in Attachment 1c.
- (2) bond be fixed at: \$ _____ to be furnished by an authorized surety company or as otherwise provided by law. (Specify reasons in Attachment 1c if the amount is different from the minimum required by Probate Code section 2320.)
- (3) \$ _____ in deposits in a blocked account be allowed. Receipts will be filed.
(Specify institution and location):

- d. orders authorizing independent exercise of powers under Probate Code section 2590 be granted. Granting the proposed successor conservator of the estate powers to be exercised independently under Probate Code section 2590 would be to the advantage and benefit and in the best interest of the conservatorship estate. (Specify orders, powers, and reasons in Attachment 1d.)
- e. orders relating to the capacity of the (proposed) conservatee under Probate Code section 1873 or 1901 be granted. (Specify orders, facts, and reasons in Attachment 1e.)
- f. orders relating to the powers and duties of the proposed successor conservator of the person under Probate Code sections 2351–2358 be granted. (Specify orders, facts, and reasons in Attachment 1f.)
- g. the (proposed) conservatee be adjudged to lack the capacity to give informed consent for medical treatment or healing by prayer and that the proposed successor conservator of the person be granted the powers specified in Probate Code section 2355. (Complete item 9 on page 6.)

Do NOT use this form for a temporary conservatorship.

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

1. h. (for limited conservatorship only) orders relating to the powers and duties of the proposed limited successor * conservator of the person under Probate Code section 2351.5 be granted. (Specify orders, powers, and duties in Attachment 1h and complete item 1j.)
- i. (for limited conservatorship only) orders relating to the powers and duties of the proposed limited successor * conservator of the estate under Probate Code section 1830(b) be granted. (Specify orders, powers, and duties in Attachment 1i and complete item 1j.)
- j. (for limited conservatorship only) orders limiting the civil and legal rights of the (proposed) limited conservatee be granted. (Specify limitations in Attachment 1j.)
- k. orders related to dementia placement or treatment as specified in the Attachment Requesting Special Orders Regarding Dementia (form GC-313) under Probate Code section 2356.5 be granted. A Capacity Declaration—Conservatorship (form GC-335) and Dementia Attachment to Capacity Declaration—Conservatorship (form GC-335A), executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure with at least two years experience diagnosing dementia, are filed herewith. will be filed before the hearing.
- (appointment of successor conservator only) will not be filed because an order relating to dementia placement or treatment was filed on (date): . That order has neither expired by its terms nor been revoked.
- l. other orders be granted. (Specify in Attachment 1l.)

2. (Proposed) conservatee is (name): (Telephone):
 (Present address):

3. a. **Jurisdictional facts** (initial appointment only) The proposed conservatee has no conservator in California and is a
- (1) resident of California and
- (a) a resident of this county.
- (b) not a resident of this county, but commencement of the conservatorship in this county is in the best interests of the proposed conservatee for the reasons specified in Attachment 3a.
- (2) nonresident of California but
- (a) is temporarily living in this county, or
- (b) has property in this county, or
- (c) commencement of the conservatorship in this county is in the best interest of the proposed conservatee for the reasons specified in Attachment 3a.
- b. **Petitioner** (answer items (1) and (2) and check all other items that apply)
- (1) is is not a **creditor** or an agent of a creditor of the (proposed) conservatee.
- (2) is is not a **debtor** or an agent of a debtor of the (proposed) conservatee.
- (3) is the proposed successor conservator.
- (4) is the (proposed) conservatee. (If this item is **not** checked, you must also complete item 3f.)
- (5) is the spouse of the (proposed) conservatee. (You must also complete item 6.)
- (6) is the domestic partner or former domestic partner of the (proposed) conservatee. (You must also complete item 7.)
- (7) is a relative of the (proposed) conservatee as (specify relationship):
- (8) is an interested person or friend of the (proposed) conservatee.
- (9) is a state or local public entity, officer, or employee.
- (10) is the guardian of the proposed conservatee.
- (11) is a bank is other entity authorized to conduct the business of a trust company.
- (12) is a professional fiduciary within the meaning of Business and Professions Code section 6501(f) who is licensed by the Professional Fiduciaries Bureau of the Department of Consumer Affairs. Petitioner's license number is provided in item 1 on page 1 of the attached Professional Fiduciary Attachment. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment. You must also complete item 2 on page 2 of that form and item 3d below.)

* See item 5b on page 4.

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

3. c. **Proposed** **successor conservator** is *(check all that apply)*

- (1) a nominee. *(Affix nomination as Attachment 3c(1).)*
- (2) the spouse of the (proposed) conservatee. *(You must also complete item 6.)*
- (3) the domestic partner or former domestic partner of the (proposed) conservatee. *(You must also complete item 7.)*
- (4) a relative of the (proposed) conservatee as *(specify relationship)*:
- (5) a bank. other entity authorized to conduct the business of a trust company.
- (6) a nonprofit charitable corporation that meets the requirements of Probate Code section 2104.
- (7) a professional fiduciary, as defined in Business and Professions Code section 6501(f). His or her statement concerning licensure or exemption is provided in item 1 on page 1 of the attached *Professional Fiduciary Attachment. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment.)*
- (8) other *(specify)*:

d. Engagement and prior relationship with petitioning professional fiduciary *(complete this item if petitioner is licensed by the Professional Fiduciaries Bureau.)*

- (1) Statements of who engaged petitioner, or how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family or friends, are provided in item 2 on page 2 of the attached *Professional Fiduciary Attachment. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment.)*
- (2) A petition for appointment of a temporary conservator is filed with this petition. That petition contains statements of who engaged petitioner, how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family and friends.

e. **Character and estimated value of the property of the estate** *(complete items (1) or (2) and (3), (4), and (5)):*

(1) (For appointment of successor conservator only, if complete Inventory and Appraisal filed by predecessor):
Personal property: \$ _____, per Inventory and Appraisal filed in this proceeding on
(specify dates of filing of all inventories and appraisals):

- (2) Estimated value of personal property: \$ _____
- (3) Annual gross income from
 - (a) real property: \$ _____
 - (b) personal property: \$ _____
 - (c) pensions: \$ _____
 - (d) wages: \$ _____
 - (e) public assistance benefits: \$ _____
 - (f) other: \$ _____
- (4) **Total** of (1) or (2) and (3): \$ _____
- (5) Real property: \$ _____

- (a) per Inventory and Appraisal identified in item (1).
- (b) estimated value.

f. Due diligence *(complete this item if the (proposed) conservatee is not a petitioner):*

- (1) Efforts to find the (proposed) conservatee's relatives or reasons why it is not feasible to contact any of them are described on Attachment 3f(1).
- (2) Statements of the (proposed) conservatee's preferences concerning the appointment of any (successor) conservator and the appointment of the proposed (successor) conservator or reasons why it is not feasible to ascertain those preferences are contained on Attachment 3f(2).

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

3. g. So far as known to Petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee has not has been filed in another jurisdiction concerning the proposed conservatee, including a court of an Indian tribe with jurisdiction (see Prob. Code, § 2031(b)).

(If you answered "has," identify the jurisdiction and state the date the case was filed):

4. (Proposed) conservatee

a. is is not a patient in or on leave of absence from a state institution under the jurisdiction of the California Department of State Hospitals or the California Department of Developmental Services *(specify state institution)*:

b. is receiving or entitled to receive is neither receiving nor entitled to receive benefits from the U.S. Department of Veterans Affairs *(estimate amount of monthly benefit payable)*:

c. is is not, so far as is known to petitioner, a member of a federally recognized Indian tribe. *(If you answered "is," complete items (1)–(4)):*

(1) Name of tribe:

(2) Location of tribe *(if the tribe is located in more than one state, the state that is the tribe's principal location)*:

(3) The proposed conservatee does does not reside on tribal land.*

(4) So far as known to petitioner, the proposed conservatee owns does not own property on tribal land.

5. a. Proposed conservatee *(initial appointment of conservator only)*

(1) is an adult.

(2) will be an adult on the effective date of the order *(date)*:

(3) is a married minor.

(4) is a minor whose marriage has been dissolved.

b. Vacancy in office of conservator *(appointment of successor conservator only. A petition for appointment of a limited conservator after the death of a predecessor is a petition for initial appointment. (Prob. Code, § 1860.5(a)(1).)*

There is a vacancy in the office of conservator of the person estate for the reasons specified in Attachment 5b. specified below.

*"Tribal land" is land that is, with respect to a specific Indian tribe and the members of that tribe, "Indian country," as defined in 18 U.S.C. § 1151.

CONSERVATORSHIP OF (<i>name</i>): <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER:
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5.c. **(Proposed) conservatee** requires a conservator and is

- (1) unable to properly provide for his or her personal needs for physical health, food, clothing, or shelter.
 Supporting facts are specified in Attachment 5c(1) as follows:

- (2) substantially unable to manage his or her financial resources or to resist fraud or undue influence.
 Supporting facts are specified in Attachment 5c(2) as follows:

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

5. d. (Proposed) conservatee voluntarily requests the appointment of a successor conservator.
(Specify facts showing good cause in Attachment 5(d).)
- e. Confidential Supplemental Information (form GC-312) is filed with this petition. *(Initial appointment of conservator only. All petitioners must file this form except banks and other entities authorized to do business as a trust company.)*
- f. **(Proposed) conservatee** is is not developmentally disabled as defined in Probate Code section 1420. Petitioner is aware of the requirements of Probate Code section 1827.5. *(Specify the nature and degree of the alleged disability in Attachment 5f).*
6. **Petitioner or proposed** **successor conservator is the spouse of the (proposed) conservatee.**
(If this statement is true, you must answer a or b.)
- a. The (proposed) conservatee's spouse is not a party to any action or proceeding against the (proposed) conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.
- b. Although the (proposed) conservatee's spouse is a party to an action or proceeding against the (proposed) conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage, or has obtained a judgment in one of these proceedings, it is in the best interest of the (proposed) conservatee that:
- (1) a successor conservator be appointed.
- (2) the spouse be appointed as the successor conservator.
- (If you checked item 6b(1) or (2) or both, specify the facts and reasons in Attachment 6b.)*
7. **Petitioner or proposed** **successor conservator is the domestic partner or former domestic partner of the (proposed) conservatee.** *(If this statement is true, you must answer a or b.)*
- a. The domestic partner of the (proposed) conservatee has not terminated and does not intend to terminate the domestic partnership.
- b. Although the domestic partner or former domestic partner of the (proposed) conservatee intends to terminate or has terminated the domestic partnership, it is in the best interest of the (proposed) conservatee that
- (1) a successor conservator be appointed.
- (2) the domestic partner or former domestic partner be appointed as the successor conservator.
- (If you checked item 7b(1) or (2) or both, specify the facts and reasons in Attachment 7b.)*
8. **(Proposed) conservatee** *(check all that apply)*
- a. will attend the hearing AND is the petitioner is not the petitioner AND has has not nominated the proposed successor conservator.
- b. *(initial appointment of conservator only)* is able but unwilling to attend the hearing AND does does not wish to contest the establishment of a conservatorship, does does not object to the proposed conservator, AND does does not prefer that another person act as conservator.
- c. *(initial appointment of conservator only)*: is unable to attend the hearing because of medical inability. A *Capacity Declaration—Conservatorship* (form GC-335), executed by a licensed medical practitioner or an accredited religious practitioner is filed with this petition. will be filed before the hearing.
- d. *(initial appointment of conservator only)* is not the petitioner, is out of state, and will not attend the hearing.
- e. *(appointment of successor conservator only)* will not attend the hearing.
9. **Medical treatment of (proposed) conservatee**
- a. There is no form of medical treatment for which the (proposed) conservatee has the capacity to give an informed consent.
- b. A *Capacity Declaration—Conservatorship* (form GC-335) executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure, stating that the (proposed) conservatee lacks the capacity to give informed consent for any form of medical treatment and giving reasons and the factual basis for this conclusion,
 is filed with this petition. will be filed before the hearing. will not be filed for the reason stated in c.
- c. *(appointment of successor conservator only)* The conservatee's incapacity to consent to any form of medical treatment was determined by order filed in this matter on *(date)*:
 That order has neither expired by its terms nor been revoked.
- d. (Proposed) conservatee is is not an adherent of a religion that relies on prayer alone for healing, as defined in Probate Code section 2355(b).

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

10. **Temporary conservatorship**

Filed with this petition is a *Petition for Appointment of Temporary Conservator* (form GC-111).

11. **(Proposed) conservatee's relatives**

The names, residence addresses, and relationships of the spouse or registered domestic partner and the second-degree relatives of the (proposed) conservatee (his or her parents, grandparents, children, grandchildren, and brothers and sisters), so far as known to petitioner, are

- a. listed below.
- b. not known, or no longer living, so the (proposed) conservatee's deemed relatives under Probate Code section 1821(b) (1)–(4) are listed below.

	<u>Name and relationship to conservatee</u>	<u>Residence address</u>
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
(10)		
(11)		
(12)		
(13)		
(14)		
(15)		
(16)		

Continued on Attachment 11.

CONSERVATORSHIP OF <i>(name)</i> : <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER:
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12. **Confidential conservator screening form**

Submitted with this petition is a *Confidential Conservator Screening Form* (form GC-314) completed and signed by the proposed successor conservator. *(Required for all proposed conservators except banks and trust companies.)*

13. **Court investigator**

Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).

14. Number of pages attached:

Date:

(TYPE OR PRINT NAME OF ATTORNEY FOR PETITIONER)

(SIGNATURE OF ATTORNEY FOR PETITIONER)

(All petitioners must also sign (Prob. Code, § 1020; Cal. Rules of Court, rule 7.103).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

RUPRO ACTION REQUEST FORM

RUPRO action requested: **Circulate for comment (July 1 cycle)**

RUPRO Meeting: November 24, 2015

Title of proposal (*include amend/revise/adopt/approve + form/rule numbers*):

Conservatee Voting: Revise Judicial Council forms GC-310, GC-320, GC-330, and GC-331

Committee or other entity submitting the proposal:

Probate and Mental Health Advisory Committee

Staff contact (name, phone and e-mail): Douglas C. Miller, (818)-558-4178; douglas.c.miller@jud.ca.gov

Identify project(s) on the committee's annual agenda that is the basis for this item:

Approved by RUPRO: December 10, 2014

Project description from annual agenda: Review and consider recommendations for changes in law, practice, and procedures in limited conservatorships for the developmentally disabled.

If requesting July 1 or out of cycle, explain:

The request is for RUPRO to approve presentation of this proposal to the Judicial Council at its meeting of December 11, 2015, for adoption or approval of the affected forms effective on January 1, 2016; and to permit circulation of this proposal in the Winter 2016 comment cycle, beginning just before the council meeting and extending into January 2016, after the effective date of the proposal. The goal is to have the revised forms effective on the same date that the legislation changing the voting capacity standard becomes effective.

Additional Information: (To facilitate RUPRO's review of your proposal, please include any relevant information not contained in the attached summary.)

This proposal seeks to revise three Judicial Council forms to modify their statements of the standard for a conservatee's capacity to vote because of legislation changing that standard that will be effective on January 1, 2016. The changes in the text of the forms precisely match the changes made in the standard by the legislation. A fourth form, the Petition for Appointment of Probate Conservator (form GC-310) would be changed to delete its reference to a proposed conservatee's ability to vote because that issue is not properly addressed in that form and is not part of the petitioner's case in chief for the appointment of a conservator.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Probate Conservatorships: Conservatees’ Capacity to Vote	Review and submit comments by January 22, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Revise Judicial Council forms GC-310, GC-320, GC-330, and GC-331	January 1, 2016
Proposed by	Contact
Probate and Mental Health Advisory Committee	Douglas C. Miller Attorney
Hon. John H. Sugiyama, Chair	(818)-558-4178; douglas.c.miller@jud.ca.gov

Executive Summary and Origin

The Probate and Mental Health Advisory Committee recommends revisions to Judicial Council forms to make them consistent with legislation enacted in 2015 and effective January 1, 2016 that changed the legal standard for a determination of a conservatee’s capacity to vote. Three Judicial Council forms that refer to the old standard must be revised to conform to the legislation. Another form inquires about a proposed conservatee’s capacity to vote, using the old standard. That inquiry is inappropriate for that form and should be deleted from the form in its entirety.

Background

Current law

A probate conservatee is “mentally incompetent and therefore disqualified from voting” if the court finds, during the course of the conservatorship proceeding, that he or she is not capable of completing the affidavit of voter registration required of all otherwise eligible voters (Elect. Code, § 2208(a) and (a)(1)).¹ The citation that must be served on the proposed conservatee must advise that he or she may be disqualified from voting if not capable of completing this affidavit

¹ Legislation enacted in 2014 added subdivision (d) to section 2208 to list three methods of completing an affidavit of voter registration with assistance that would not disqualify a person, including a conservatee, from voting (AB 1311 (Stats.2014, ch. 591), § 1). But this legislation retained the standard of incapacity to complete the affidavit. See also Probate Code sections 1826(h)(1) and 1851(a)(1)(D), added by AB 1311, §§ 5 and 7.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

(Prob. Code, § 1823(b)(3))²; the court investigator must make a determination of the proposed conservatee's capacity to complete the affidavit, and must report that determination to the court (§§ 1826(h) and (k)); and the court must advise the proposed conservatee at the hearing, before establishment of the conservatorship, that he or she may be disqualified from voting because of this incapacity (§ 1828(a)(3)). If the court determines that the conservatee is not capable of completing the affidavit, it must make an order of disqualification and forward it to the county elections official in the county of the conservatee's residence. (§ 1910(a) and Elect. Code, § 2208(c)).

Senate Bill 589, effective January 1, 2016

The new standard for disqualifying a conservatee from voting is established by SB 589, most prominently in an amendment to Elections Code section 2208(a)³, as follows:

(a) A person is presumed competent to vote regardless of his or her conservatorship status. A person shall be deemed mentally incompetent, and therefore disqualified from voting, if, during the course of any of the proceedings set forth below, the court finds by clear and convincing evidence that the person cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process, and . . . [a] conservator for the person or the person and estate is appointed pursuant to Division 4 (commencing with Section 1400) of the Probate Code..

Section 2208(d) was amended to add a fourth type of assistance in completing an affidavit of voter registration.⁴ It provides that a person is not disqualified from voting if he or she can complete the affidavit of voter registration with reasonable accommodations.

The forms

Form GC-310

The *Petition for Appointment of Probate Conservator* asks the petitioner to state that the proposed conservatee either is or is not capable of completing an affidavit of voter registration (Item 4c on page 4).

² Unless otherwise specified, all code references are to the Probate Code.

³ SB 589 (Stats. 2015, ch. 736), § 6.5. Two versions of an amended section 2208 are contained in the legislation, in sections 6 and 6.5. The version provided in section 6.5 was enacted because another piece of legislation, AB 1020, also became law and was enacted before SB 589, as chapter 728. See SB 589, § 13(d). By a similar process, the versions of amended Elections Code sections 2102, 2150, and 2209 contained, respectively, in sections 3.5, 4.5, and 7.5 of SB 589 became law. The versions of these code sections contained in sections 3, 4, and 7 of SB 589 were not enacted (SB 589, §§ 13(a), (b), (c), and (e)). In the case of Elections Code section 2102, the other bill is AB 1461, not AB 1020. AB 1461 was also enacted before SB 589, as chapter 729.

⁴ See footnote 1 above.

Form GC-320

The *Citation for Conservatorship* gives statutorily-required advice to the proposed conservatee (§ 1823). It contains the following sentence in a single-paragraph item 3, one of five numbered paragraphs on the first page:

You also may be disqualified from voting if you are found to be incapable of completing an affidavit of voter registration.

Form GC-330

Item 1d of the optional form *Order Appointing Court Investigator* directs the investigator to make the determinations specified in Probate Code sections 1826(d)–(j). Section 1826(h)(1) requires the investigator to “[d]etermine whether the proposed conservatee is not capable of completing an affidavit of voter registration . . .”

Form GC-331

Item 1b of the *Order Appointing Court Investigator (Review and Successor Conservator Investigations)*, also an optional form, orders the investigator in a review investigation to make the determinations required by Probate Code section 1851(a). One of these, in section 1851(a)(1)(D)(i), is to determine whether the conservatee is not capable of completing an affidavit of voter registration

The Proposal

The following revisions to forms GC-320, GC-330, and GC-331 are recommended to conform them to the requirements of Senate Bill 589, and to give greater emphasis to the standard for a conservatee’s competence to vote than the forms now give to that issue:

Form GC-320

- Remove the sentence from item 3 on page 1 concerning the proposed conservatee’s capacity to complete an affidavit of voter registration and replace it with the following, in a new separate paragraph 4:⁵

You may be disqualified from voting if you are found to be incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process. But you will not be disqualified from voting on the basis that you do, or would need to do, any of the following to complete an affidavit of voter registration:

- a. Sign the affidavit of voter registration with a mark or a cross, pursuant to Section 2150(b) of the Elections Code;
- b. Sign the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code;

⁵ See amended section 1823(b)(3), in section 8 of SB 589.

- c. Complete the affidavit of voter registration with the assistance of another person pursuant to Section 2150(d) of the Elections Code; or
 - d. Complete the affidavit of voter registration with reasonable accommodations.
- Restate items 2–5 on page 1 of the form, as modified above, as items 2 through 7; and
 - Move the clerk’s signature line, space for the court seal, and the textbox containing advice for disabled persons to request accommodations to page 2, and the proof of service to a new page 3.

Form GC-330:

- Revise the first sentence of item 1d on page 1 by replacing the existing citation of Probate Code sections 1826(d)–(j) with the citation of sections 1826(a)(4)–(7), and (9) and (10);⁶
- Add a new item 1e on page 1 to state expressly as a separate item the new standard for determining the capacity of a conservatee to vote;
- Redesignate current items 1e–g on page 1 as items 1f–h; and
- Change the reference to section 1826(l) in current item 1f (item 1g in the revised form) to section 1826(a)(12), reflecting the new location of the cited material in the amended section 1826.

Form GC-331

- Add a new item 1c on page 1 to state the new standard for determining the capacity of a conservatee to vote, as follows:

Determine if the proposed conservatee is now incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code; or if previously was found incapable of communicating that desire, continues to be incapable of doing so, with or without accommodations. The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section

⁶ Current sections 1826(d)–(j) prescribe the scope of the investigation ordered by the court: subdivision (h) addresses the conservatee’s capacity to vote. In addition to referring to the new standard for a conservatee’s capacity to vote in amended section 1826, SB 589 also reorganizes that section. These provisions will be found in sections 1826(a)(4)–(10) of the amended section: the provision concerning voting is section 1826(a)(8). Thus the first sentence of revised item 1d would no longer address voting capacity because it would be separately stated in item 1e.

2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations; and

- Redesignate items 1c–1m on pages 1 and 2 as items 1d–n.

The review investigation in a conservatorship is the focus of Elections Code section 2209 and Probate Code section 1851(a)(1)(D), which were also amended by SB 589. Amended section 2209 applies the new standard for determining a conservatee’s incapacity to vote, but also emphasizes that in review investigations, investigators must deal both with conservatees who have and have not previously lost their right to vote. The amended section requires investigators in the latter case to determine whether conservatees have lost the ability to communicate a desire to participate in the voting process, and in the former case to determine whether they continue to lack that ability.⁷ Thus the reference to “now incapable of communicating,” and “if previously was found incapable of communicating that desire, continues to be incapable of doing so . . .”

In either situation, the standard is the same: an inability, with or without accommodations, to communicate a desire to participate in the voting process, with the caveat that the four methods of completing an affidavit of voter registration with assistance listed in the statute are not disqualifying.

Form GC-310

The *Petition for Appointment of Probate Conservator* asks the petitioner to state that the proposed conservatee either is or is not able to complete an affidavit of voter registration (item 4c on page 4).

The revised form would delete this item entirely, and redesignate the next item, 4d, as 4c. (Item 4d is a new item, added effective January 1, 2016, concerning the proposed conservatee’s connection with a federally-recognized Indian tribe.)

Item 4c requests the petitioner for the appointment of a conservator—who is usually, but not always—the proposed conservator, to express an opinion on the proposed conservatee’s capacity to vote under the old standard. The committee has concluded that the petitioner’s opinion about that capacity is not required and should be deleted from form GC-310 for the following reasons:

- SB 589 did not amend Probate Code section 1821, which prescribes the contents of the *Petition for Appointment of Probate Conservator*. This omission is likely due to the fact that section 1821 is silent about a proposed conservatee’s capacity to vote.

⁷ Amended section 2209 refers only to conservatees who have or have not lost the capacity to vote under the new standard, not to those previously disqualified under the old test. This means investigators and the courts must redetermine the capacity of all conservatees in existing conservatorships under the new standard when their matters come up for review investigations. There is no provision in the law that requires a redetermination of the voting capacities of conservatees disqualified from voting under the old standard before their first review investigations come up in the ordinary course following the effective date of the legislation.

- Judicial-officer members of the committee report that virtually all petitioners in their courts select “is not able” to complete the affidavit, but do not offer evidence addressed to this issue at the hearing. The presence or absence of a proposed conservatee’s capacity to vote, under any standard, does not affect the duties the proposed conservator will have or any powers he or she may seek in order to care for the conservatee or manage his or her estate.
- The non-professional family-member petitioner is not likely to be in a position, especially without the assistance of counsel, to reach a conclusion about the proposed conservatee’s ability to “communicate a desire to participate in the voting process,” particularly when consideration of “reasonable accommodations” may be required. The latter phrase refers to a complex concept from the federal Americans with Disabilities Act.
- Even in a case with experienced counsel representing a petitioner, expert testimony may be required to show the reasonable accommodations necessary to sustain the conservatee’s right to vote. If that right turns on reasonable accommodations for the proposed conservatee merely to be able to express an interest in voting, he or she necessarily will be severely impaired and will be a very strong candidate for conservatorship. The proposed conservatee’s continued ability to vote may not be important enough to the petitioner for him or her to decide to incur that expense, personally or from the proposed conservatee’s estate. These facts emphasize that the voting capacity issue is really not part of the petitioner’s burden; it is for the court to determine, perhaps with the assistance of retained or appointed counsel for the conservatee and experts appointed by the court, when the conservatee appears to want to continue to vote.
- It appears from section 1821 that the proposed conservatee’s capacity to vote is in fact not part of the petitioner’s case in chief. Indeed, the appointment of a conservator, the petitioner’s major goal, is required *before* the court is charged with the duty of determining the conservatee’s eligibility to vote (see existing Elections Code section 2208(a)(1) and the revised version of that provision in section 6.5 of SB 589). Instead, the issue of voting competence is determined initially by the court investigator under section 1826, and ultimately by the court at the hearing on the petition if, and only if, a conservator is appointed.
- That determination must be made explicitly and on the record in every case in which a conservator is appointed, whether or not the petitioner believes the proposed conservatee is competent to vote under any standard.

Alternatives Considered

Because of SB 589, no alternatives to revising forms GC-320, GC-330, and GC-331 were considered. The committee could have continued to merely cite the Probate Code sections that prescribe the duty to determine voting capacity, as do existing forms GC-330 and GC-331, but decided to expressly and prominently state the new very different standard in the forms. This was done to give what the committee concluded would be proper emphasis and publicity to this

important change in the law, and to assist in the prompt and thorough training of court investigators and courts about this change.

The committee considered revising form GC-310 by replacing the reference to the old standard of capacity to vote with the new standard, but concluded that any reference to a proposed conservatee's voting capacity has no place in the petition.

Implementation Requirements, Costs, and Operational Impacts

There will be the initial costs of distribution of any new or revised form. There will be substantial costs of training court staff—particularly court investigators—and counsel appointed to represent conservatees, in the new requirements concerning conservatees' voting rights; but these costs are attributable to the legislation, not the changes in the forms necessary to comply with it. As noted above, the modified forms should actually aid in the training process.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should form GC-310 retain a reference to voting capacity, changed to reflect the change made by SB 589?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Judicial Council forms GC-320, GC-330, GC-331, and GC-310, at pages 8–23;
2. Attachment A: SB 589 (Stats. 2015, ch. 736),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB589

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO.: _____ NAME: FIRM NAME: STREET ADDRESS: CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): _____ PROPOSED CONSERVATEE	
CITATION FOR CONSERVATORSHIP <input type="checkbox"/> Limited Conservatorship	CASE NUMBER: _____

THE PEOPLE OF THE STATE OF CALIFORNIA,

To (name):

1. You are hereby cited and required to appear at a hearing in this court on

a. Date: _____	Time: _____	<input type="checkbox"/> Dept.: _____	<input type="checkbox"/> Room: _____
b. Address of court: <input type="checkbox"/> same as noted above <input type="checkbox"/> other (specify): _____			

and to give any legal reason why, according to the verified petition filed with this court, you should not be found to be unable to provide for your personal needs unable to manage your financial resources and by reason thereof, why the following person should not be appointed conservator limited conservator of your person estate (name):

2. A conservatorship of the person may be created for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter. A conservatorship of the property (estate) may be created for a person who is unable to resist fraud or undue influence, or who is substantially unable to manage his or her own financial resources. "Substantial inability" may not be proved solely by isolated incidents of negligence or improvidence.

3. At the hearing a conservator may be appointed for your person estate.
 The appointment may affect or transfer to the conservator your right to contract, to manage and control your property, to give informed consent for medical treatment, to fix your place of residence, and to marry.

4. You may be disqualified from voting if you are found to be incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process. But you will not be disqualified from voting on the basis that you do, or would need to do, any of the following to complete an affidavit of voter registration:

- a. Sign the affidavit of voter registration with a mark or a cross, pursuant to Section 2150(b) of the Elections Code;
- b. Sign the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code;
- c. Complete the affidavit of voter registration with the assistance of another person pursuant to Section 2150(d) of the Elections Code; or
- d. Complete the affidavit of voter registration with reasonable accommodations.

5. The judge or the court investigator will explain to you the nature, purpose, and effect of the proceedings and answer questions concerning the explanation.

6. You have the right to appear at the hearing and oppose the petition. You have the right to hire an attorney of your choice to represent you. The court will appoint an attorney to represent you if you are unable to retain one. You must pay the cost of that attorney if you are able. You have the right to a jury trial if you wish.

7. (For limited conservatorship only) In addition to the rights stated in item 6 above, you have the right to oppose the petition in part by objecting to any or all of the requested duties or powers of the limited conservator.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): PROPOSED CONSERVATEE	CASE NUMBER:
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Date: Clerk, by _____, Deputy

(SEAL)

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code section 54.8.)



CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): _____ <div style="text-align: center; margin-top: 10px;">PROPOSED CONSERVATEE</div>	CASE NUMBER: _____
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PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this proceeding. I served copies of the *Citation for Conservatorship* and the *Petition for Appointment of Probate Conservator* (form GC-310) as follows:

2. a. Person cited (name):

- b. Person served: (1) person in item 2a
 (2) other (specify name and title or relationship to the person named in item 2a):

c. Address (specify):

3. I served the person named in item 2

- a. by personally delivering the copies (1) on (date): _____ (2) at (time): _____
- b. by mailing the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid,
 (1) on (date): _____ (2) from (city): _____
 (3) with two copies of the *Notice and Acknowledgment of Receipt—Civil* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt—Civil* (form POS-015).)
 (4) to an address outside California with return receipt requested. (Attach completed return receipt.)
- c. other (specify other manner of service, and the authorizing code section and order of the court):

4. a. Person serving (name, address, and telephone number):

- b. Fee for service: \$ _____
- c. Not a registered California process server.
- d. Exempt from registration under Business and Professions Code section 22350(b).
- e. Registered California process server.
 (1) Employee or independent contractor.
 (2) Registration no. (specify): _____
 (3) County (specify): _____
 (4) Expiration (date): _____

5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:



(SIGNATURE OF PERSON SERVING)

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	
ORDER APPOINTING COURT INVESTIGATOR <input type="checkbox"/> Conservatorship <input type="checkbox"/> Limited Conservatorship	CASE NUMBER:

To (name):

You are hereby appointed Court Investigator in the matter entitled above.

1. **Before the appointment of a general conservator** YOU ARE DIRECTED TO:

- a. Conduct the interviews required by Probate Code section 1826(a)(1). Interview the proposed conservatee personally.
- b. Provide to the proposed conservatee the information required by Probate Code section 1826(a)(2).
- c. Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether he or she is willing to attend.
- d. Make the determinations required by Probate Code sections 1826(a)(4)–(7), and (9)–(10). In making those determinations, review the allegations of the *Petition for Appointment of Probate Conservator* (form GC-310) as to why the appointment of a conservator is required and refer to the *Confidential Supplemental Information* (form GC-312) submitted by the petitioner. Consider the facts shown in the latter form that address each of the categories specified in Probate Code section 1821(a)(1)–(5) and consider, to the extent practicable, whether you believe the proposed conservatee suffers from any of the mental function deficits listed in Probate Code section 811(a) that significantly impairs his or her ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in Probate Code section 1801(a) (if a conservator of the person is sought) or section 1801(b) (if a conservator of the estate is sought). If you believe the proposed conservatee suffers from one or more mental function deficits listed in Probate Code section 811(a), identify all observations that support your belief.
- e. Determine if the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code. The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations.
- f. Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning (1) representation by legal counsel; and (2) whether he or she is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefers that another person act as conservator.
- g. Mail, at least five days before the date set for hearing, a copy of your report (1) to all persons listed in Probate Code section 1826(a)(12)
 - except** for the persons listed in attachment 1g(1) because the court has determined that mailing to those persons will result in harm to the proposed conservatee;
 - and** (2) to the other persons ordered by the court listed in Attachment 1g(2) (*specify names and addresses in the attachment*).
- h. Comply with the other orders specified in Attachment 1h.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	CASE NUMBER:
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2. **On the filing of a *Petition for Appointment of Temporary Conservator* YOU ARE DIRECTED TO:**
- a. To the extent feasible, before the hearing on the petition or, if not feasible, within two court days after the hearing, conduct the interviews required by Probate Code section 2250.6(a)(1) (prehearing) or 2250.6(b)(1) (posthearing). Interview the temporary conservatee or proposed temporary conservatee personally.
 - b. Provide to the temporary conservatee or proposed temporary conservatee the information required by Probate Code section 2250.6(a)(2) (prehearing) or 2250.6(b)(2) (posthearing).
 - c. To the extent feasible, make the determinations required by Probate Code section 2250.6(a)(3)–(5) before the hearing on the petition.
 - d. To the extent feasible, before the hearing on the petition, report to the court in writing concerning all of the matters stated in items 2a–c.
 - e. If you do not visit the temporary conservatee until after the hearing at which a temporary conservator was appointed and the temporary conservatee objects to the appointment of the temporary conservator or requests an attorney, report this information to the court promptly and in no event more than three court days after the date of your interview with the temporary conservatee.
 - f. If it appears to you that the temporary conservatorship is inappropriate, immediately, and in no event more than two court days after you make your determination, make a written report of your determination to the court.

3. **Before the court grants an order under Probate Code section 2253 authorizing the temporary conservator to change the residence of the temporary conservatee**
- a. YOU ARE DIRECTED TO:
 - (1) Personally interview and inform the temporary conservatee of the contents of the request by the temporary conservator for authority to change the temporary conservatee's residence; of the nature, purpose, and effect of the proceedings; and of the right to oppose the request, attend the hearing, and be represented by legal counsel.
 - (2) Make the determinations required by Probate Code section 2253(b)(3)–(7).
 - (3) At least two days before the hearing on change of residence, report your findings concerning the foregoing in writing to the court, including in your report the temporary conservatee's express communications concerning representation by legal counsel and whether he or she is not willing to attend the hearing and does not wish to contest the petition.
 - (4) Comply with the other orders specified in Attachment 3a(4) .
 - b. Good cause appearing, YOU ARE DIRECTED NOT to conduct the investigation and NOT make the report described in Probate Code section 2253(b).
 - c. Good cause appearing, YOU ARE DIRECTED as specified on Attachment 3c, INSTEAD of proceeding with the investigation and report described in Probate Code section 2253(b).

4. **Before the court grants an order relating to medical consent under Probate Code section 1880.**
 The petition for an order determining that there is no form of medical treatment for which the conservatee or proposed conservatee has the capacity to give informed consent alleges that he or she is not willing to attend the hearing, or the court has received an affidavit or certificate attesting to the medical inability of the conservatee or proposed conservatee to attend the hearing.

- YOU ARE DIRECTED TO:
- a. Personally interview and inform the conservatee or proposed conservatee of the contents of the petition; of the nature, purpose, and effect of the proceedings; and of the right to oppose the petition, attend the hearing, and be represented by legal counsel.
 - b. Make the determinations required by Probate Code section 1894(c)–(g).
 - c. At least five days before the hearing on the petition, report your findings concerning the foregoing in writing to the court, including in your report the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.
 - d. Comply with the other orders specified in Attachment 4d .

5. Number of pages attached:

Date: _____ JUDICIAL OFFICER
 SIGNATURE FOLLOWS LAST ATTACHMENT

FOR PREPARATION BY THE COURT ONLY

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

DRAFT

Not Approved by the
Judicial Council

CONSERVATORSHIP OF THE PERSON ESTATE
of (name): _____ CONSERVATEE

**ORDER APPOINTING COURT INVESTIGATOR
(Review and Successor Conservator Investigations)***

Conservatorship Limited Conservatorship

CASE NUMBER:

To (name):

You are hereby appointed Court Investigator in the matter entitled above.

1. Review investigation

YOU ARE DIRECTED TO:

- a. Without prior notice to the conservator
 With prior notice to the conservator because of necessity or to prevent harm to the conservatee visit and personally inform the conservatee that he or she is under a conservatorship and give the name of the conservator to the conservatee.
- b. Make the determinations required by Probate Code section 1851(a)(1)(A)-(C), including whether the conservator is acting in the best interests of the conservatee. This last determination must include an examination of the conservatee's placement; the quality of care, including physical and mental treatment; and the conservatee's finances and must include, to the greatest extent possible, interviews with the conservator, the conservatee's spouse or registered domestic partner and relatives within the first degree, or, if none, the conservatee's relatives within the second degree.
- c. Determine if the proposed conservatee is now incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and therefore may be disqualified from voting pursuant to Section 2208 of the Elections Code; or if previously was found incapable of communicating that desire, continues to be incapable of doing so, with or without accommodations. The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: (1) signs the affidavit of voter registration with a mark or a cross (Elections Code section 2150(b)); (2) signs the affidavit of voter registration by means of a signature stamp (Elections Code section 354.5); (3) completes the affidavit of voter registration with the assistance of another person (Elections Code section 2150(d)); or (4) completes the affidavit of voter registration with reasonable accommodations.
- d. The court has made an order or orders under (select all that apply):
 Probate Code section 1873 (authority of conservatee to enter into transactions)
 Probate Code section 1880 (conservatee's capacity to give informed consent to medical treatment)
 Probate Code section 1901 (conservatee's capacity to marry).
Determine whether the present condition of the conservatee is such that the terms of the court order or orders identified above should be modified or the order or orders revoked.
- e. To the extent practicable, review the conservator's accounting with the conservatee if he or she has sufficient capacity.
- f. Inform the court immediately if you are unable at any time to locate the conservatee.

* This form is for ordering review investigations and reports under Probate Code sections 1850 and 1851 or investigations and reports concerning appointment of a successor conservator under Probate Code section 2684 or 2686. The *Order Appointing Court Investigator* (form GC-330) may be used to order initial and other investigations and reports under Probate Code sections 1826, 1894, 2250.6, and 2253. The *Order Setting Biennial Review Investigation and Directing Status Report Before Review* (form GC-332) may be used to order a biennial review investigation and status report under Probate Code section 1850(a)(2)). See Cal. Rules of Court, rule 7.1060.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name):	CASE NUMBER:
CONSERVATEE	

1. g. (If the conservator is authorized to act under Probate Code section 2356.5—dementia treatment or placement) Advise the conservatee specifically that he or she has the right to object to the conservator's powers granted under section 2356.5. Determine whether the conservatee objects to the conservator's powers under section 2356.5, whether the powers granted under section 2356.5 are warranted, and whether some change in those powers is warranted.
- h. (For limited conservatorship only) Make a recommendation regarding the continuation or termination of the limited conservatorship.
- i. (For conservatorships existing on December 31, 1980, in which the conservatee has not been adjudged incompetent) Determine whether an order should be made under Probate Code section 1873 broadening the capacity of the conservatee.
- j. Certify in writing to the court your determinations and findings, including a statement of the facts on which the findings are based, not less than 15 days before the date of review under Probate Code section 1850. Do not disclose confidential medical information or confidential criminal history information from the California Law Enforcement Telecommunications System (CLETS) in the body of your report. Place all such information in one or more separate attachments to the report.
- k. At the same time your report is certified to the court, mail copies to the conservator and to the attorneys of record for the conservator and the conservatee.
- l. Mail copies of your report, modified by deletion of all attachments containing confidential medical information and confidential information from CLETS, to the conservatee's spouse or registered domestic partner and relatives within the first degree or, if there are no such relatives, to the conservatee's next closest relative.
- m. Mail copies of your report, modified by deletion of all attachments containing confidential medical information and confidential information from CLETS, to the conservatee's spouse or registered domestic partner and relatives within the first degree or, if there are no such relatives, to the conservatee's next closest relative
 except the person or persons named in Attachment 1m because the court has determined that mailing to that person or persons will result in harm to the conservatee.
- n. Comply with the other orders specified on Attachment 1n.
2. **Review investigation on the court's own motion or on request by an interested person**
YOU ARE DIRECTED,
 on the court's own motion,
 at the request of (name): _____ an interested person,
to conduct a review investigation of the conservatorship and make a report to the court as follows (specify):

Continued in Attachment 2.

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE of (name): _____ <div style="text-align: right; margin-top: 10px;">CONSERVATEE</div>	CASE NUMBER: _____
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3. **Successor conservator investigation**

a. A petition for appointment of a successor conservator has been filed in this matter. The petition does not allege that the conservatee will be present at the hearing on the petition, which is scheduled as follows:

Date: _____ Time: _____ Dept.: _____

b. A petition for appointment of a successor conservator has been filed in this matter. The petition alleges that the conservatee would be present at the hearing on the petition, but the conservatee failed to appear at the hearing. The hearing has been continued to the following date, time, and department:

Date: _____ Time: _____ Dept.: _____

c. YOU ARE DIRECTED TO:

- (1) Interview the conservatee personally.
- (2) Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the proposed successor conservator, and the conservatee's rights to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the conservatee chooses, and to have legal counsel appointed by the court if the conservatee is unable to retain legal counsel.
- (3) Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed.
- (4) If the conservatee is not represented by legal counsel, determine whether he or she wishes to be represented by legal counsel and, if so, identify the attorney whom the conservatee wishes to retain or whether he or she desires the court to appoint legal counsel.
- (5) If the conservatee does not plan to retain legal counsel and has not requested appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to resolution of the matter or is necessary to protect the interests of the conservatee.
- (6) Report to the court in writing, at least five days before the hearing or continued hearing, concerning items (2)–(5), including the conservatee's express communications concerning representation by legal counsel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be appointed.
- (7) Mail, at least five days before the hearing or continued hearing, a copy of the report identified in item (6) to the attorneys, if any, for the petitioner and the conservatee and to the following additional persons (*specify*):

Continued in Attachment 3.

4. Number of pages attached:

Date: _____

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY Draft Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF (name):	(PROPOSED) CONSERVATEE
PETITION FOR APPOINTMENT OF <input type="checkbox"/> SUCCESSOR PROBATE CONSERVATOR OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE <input type="checkbox"/> Limited Conservatorship	CASE NUMBER: HEARING DATE AND TIME: DEPT.:

1. **Petitioner (name):** _____ **requests that** _____
 a. (Name): _____ (Telephone): _____
 (Address): _____

be appointed successor conservator limited conservator
 of the PERSON of the (proposed) conservatee and Letters issue upon qualification.

 b. (Name): _____ (Telephone): _____
 (Address): _____

be appointed successor conservator limited conservator
 of the ESTATE of the (proposed) conservatee and Letters issue upon qualification.

 c. (1) bond not be required because the proposed successor conservator is a corporate fiduciary
 or an exempt government agency. for the reasons stated in Attachment 1c.
 (2) bond be fixed at: \$ _____ to be furnished by an authorized surety company or as otherwise provided by
 law. (Specify reasons in Attachment 1c if the amount is different from the minimum required by Probate Code
 section 2320.)
 (3) \$ _____ in deposits in a blocked account be allowed. Receipts will be filed.
 (Specify institution and location): _____

 d. orders authorizing independent exercise of powers under Probate Code section 2590 be granted.
 Granting the proposed successor conservator of the estate powers to be exercised independently under
 Probate Code section 2590 would be to the advantage and benefit and in the best interest of the conservatorship
 estate. (Specify orders, powers, and reasons in Attachment 1d.)
 e. orders relating to the capacity of the (proposed) conservatee under Probate Code section 1873 or 1901 be granted.
 (Specify orders, facts, and reasons in Attachment 1e.)
 f. orders relating to the powers and duties of the proposed successor conservator of the person under Probate
 Code sections 2351–2358 be granted. (Specify orders, facts, and reasons in Attachment 1f.)
 g. the (proposed) conservatee be adjudged to lack the capacity to give informed consent for medical treatment or healing by
 prayer and that the proposed successor conservator of the person be granted the powers specified in Probate
 Code section 2355. (Complete item 9 on page 6.)

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

- 1. h. (for limited conservatorship only) orders relating to the powers and duties of the proposed limited successor * conservator of the person under Probate Code section 2351.5 be granted. (Specify orders, powers, and duties in Attachment 1h and complete item 1j.)
- i. (for limited conservatorship only) orders relating to the powers and duties of the proposed limited successor * conservator of the estate under Probate Code section 1830(b) be granted. (Specify orders, powers, and duties in Attachment 1i and complete item 1j.)
- j. (for limited conservatorship only) orders limiting the civil and legal rights of the (proposed) limited conservatee be granted. (Specify limitations in Attachment 1j.)
- k. orders related to dementia placement or treatment as specified in the Attachment Requesting Special Orders Regarding Dementia (form GC-313) under Probate Code section 2356.5 be granted. A Capacity Declaration—Conservatorship (form GC-335) and Dementia Attachment to Capacity Declaration—Conservatorship (form GC-335A), executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure with at least two years experience diagnosing dementia, are filed herewith. will be filed before the hearing.
 (appointment of successor conservator only) will not be filed because an order relating to dementia placement or treatment was filed on (date): . That order has neither expired by its terms nor been revoked.
- l. other orders be granted. (Specify in Attachment 1l.)

2. (Proposed) conservatee is (name): (Telephone):
(Present address):

- 3. a. **Jurisdictional facts** (initial appointment only) The proposed conservatee has no conservator in California and is a
 - (1) resident of California and
 - (a) a resident of this county.
 - (b) not a resident of this county, but commencement of the conservatorship in this county is in the best interests of the proposed conservatee for the reasons specified in Attachment 3a.
 - (2) nonresident of California but
 - (a) is temporarily living in this county, or
 - (b) has property in this county, or
 - (c) commencement of the conservatorship in this county is in the best interest of the proposed conservatee for the reasons specified in Attachment 3a.
- b. **Petitioner** (answer items (1) and (2) and check all other items that apply)
 - (1) is is not a **creditor** or an agent of a creditor of the (proposed) conservatee.
 - (2) is is not a **debtor** or an agent of a debtor of the (proposed) conservatee.
 - (3) is the proposed successor conservator.
 - (4) is the (proposed) conservatee. (If this item is **not** checked, you must also complete item 3f.)
 - (5) is the spouse of the (proposed) conservatee. (You must also complete item 6.)
 - (6) is the domestic partner or former domestic partner of the (proposed) conservatee. (You must also complete item 7.)
 - (7) is a relative of the (proposed) conservatee as (specify relationship):
 - (8) is an interested person or friend of the (proposed) conservatee.
 - (9) is a state or local public entity, officer, or employee.
 - (10) is the guardian of the proposed conservatee.
 - (11) is a bank is other entity authorized to conduct the business of a trust company.
 - (12) is a professional fiduciary within the meaning of Business and Professions Code section 6501(f) who is licensed by the Professional Fiduciaries Bureau of the Department of Consumer Affairs. Petitioner's license number is provided in item 1 on page 1 of the attached Professional Fiduciary Attachment. (Use form GC-210(A-PF)/GC-310(A-PF) for this attachment. You must also complete item 2 on page 2 of that form and item 3d below.)

* See item 5b on page 4.

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

3. c. **Proposed** **successor conservator** is *(check all that apply)*

- (1) a nominee. *(Affix nomination as Attachment 3c(1).)*
- (2) the spouse of the (proposed) conservatee. *(You must also complete item 6.)*
- (3) the domestic partner or former domestic partner of the (proposed) conservatee. *(You must also complete item 7.)*
- (4) a relative of the (proposed) conservatee as *(specify relationship)*:
- (5) a bank. other entity authorized to conduct the business of a trust company.
- (6) a nonprofit charitable corporation that meets the requirements of Probate Code section 2104.
- (7) a professional fiduciary, as defined in Business and Professions Code section 6501(f). His or her statement concerning licensure or exemption is provided in item 1 on page 1 of the attached *Professional Fiduciary Attachment*. *(Use form GC-210(A-PF)/GC-310(A-PF) for this attachment.)*
- (8) other *(specify)*:

d. Engagement and prior relationship with petitioning professional fiduciary *(complete this item if petitioner is licensed by the Professional Fiduciaries Bureau.)*

- (1) Statements of who engaged petitioner, or how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family or friends, are provided in item 2 on page 2 of the attached *Professional Fiduciary Attachment*. *(Use form GC-210(A-PF)/GC-310(A-PF) for this attachment.)*
- (2) A petition for appointment of a temporary conservator is filed with this petition. That petition contains statements of who engaged petitioner, how petitioner was engaged to file this petition, and a description of any prior relationship petitioner had with the (proposed) conservatee or his or her family and friends.

e. **Character and estimated value of the property of the estate** *(complete items (1) or (2) and (3), (4), and (5))*:

(1) (For appointment of successor conservator only, if complete Inventory and Appraisal filed by predecessor):
Personal property: \$ _____, per Inventory and Appraisal filed in this proceeding on
(specify dates of filing of all inventories and appraisals):

- (2) Estimated value of personal property: \$ _____
- (3) Annual gross income from
 - (a) real property: \$ _____
 - (b) personal property: \$ _____
 - (c) pensions: \$ _____
 - (d) wages: \$ _____
 - (e) public assistance benefits: \$ _____
 - (f) other: \$ _____
- (4) **Total** of (1) or (2) and (3): \$ _____
- (5) Real property: \$ _____

- (a) per Inventory and Appraisal identified in item (1).
- (b) estimated value.

f. Due diligence *(complete this item if the (proposed) conservatee is not a petitioner)*:

- (1) Efforts to find the (proposed) conservatee's relatives or reasons why it is not feasible to contact any of them are described on Attachment 3f(1).
- (2) Statements of the (proposed) conservatee's preferences concerning the appointment of any (successor) conservator and the appointment of the proposed (successor) conservator or reasons why it is not feasible to ascertain those preferences are contained on Attachment 3f(2).

CONSERVATORSHIP OF <i>(name)</i> : <div style="text-align: right; padding-right: 20px;">CONSERVATEE</div>	CASE NUMBER:
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3. g. So far as known to Petitioner, a conservatorship or equivalent proceeding concerning the proposed conservatee has not has been filed in another jurisdiction concerning the proposed conservatee, including a court of an Indian tribe with jurisdiction (see Prob. Code, § 2031(b)).

(If you answered "has," identify the jurisdiction and state the date the case was filed):

4. (Proposed) conservatee

a. is is not a patient in or on leave of absence from a state institution under the jurisdiction of the California Department of State Hospitals or the California Department of Developmental Services *(specify state institution)*:

b. is receiving or entitled to receive is neither receiving nor entitled to receive benefits from the U.S. Department of Veterans Affairs *(estimate amount of monthly benefit payable)*:

c. is is not, so far as is known to petitioner, a member of a federally recognized Indian tribe.
(If you answered "is," complete items (1)–(4)):

(1) Name of tribe:

(2) Location of tribe *(if the tribe is located in more than one state, the state that is the tribe's principal location)*:

(3) The proposed conservatee does does not reside on tribal land.*

(4) So far as known to petitioner, the proposed conservatee owns does not own property on tribal land.

5. a. Proposed conservatee *(initial appointment of conservator only)*

(1) is an adult.

(2) will be an adult on the effective date of the order *(date)*:

(3) is a married minor.

(4) is a minor whose marriage has been dissolved.

b. Vacancy in office of conservator *(appointment of successor conservator only. A petition for appointment of a limited conservator after the death of a predecessor is a petition for initial appointment. (Prob. Code, § 1860.5(a)(1).)*

There is a vacancy in the office of conservator of the person estate for the reasons specified in Attachment 5b. specified below.

*“Tribal land” is land that is, with respect to a specific Indian tribe and the members of that tribe, “Indian country,” as defined in 18 U.S.C. § 1151.

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

5.c. **(Proposed) conservatee** requires a conservator and is

- (1) unable to properly provide for his or her personal needs for physical health, food, clothing, or shelter.
Supporting facts are specified in Attachment 5c(1) as follows:

- (2) substantially unable to manage his or her financial resources or to resist fraud or undue influence.
Supporting facts are specified in Attachment 5c(2) as follows:

CONSERVATORSHIP OF (name):	CASE NUMBER:
CONSERVATEE	

5. d. (Proposed) conservatee voluntarily requests the appointment of a successor conservator.
(Specify facts showing good cause in Attachment 5(d).)
- e. Confidential Supplemental Information (form GC-312) is filed with this petition. (Initial appointment of conservator only. All petitioners must file this form except banks and other entities authorized to do business as a trust company.)
- f. **(Proposed) conservatee** is is not developmentally disabled as defined in Probate Code section 1420. Petitioner is aware of the requirements of Probate Code section 1827.5. (Specify the nature and degree of the alleged disability in Attachment 5f).
6. **Petitioner or proposed** **successor conservator is the spouse of the (proposed) conservatee.**
(If this statement is true, you must answer a or b.)
- a. The (proposed) conservatee's spouse is not a party to any action or proceeding against the (proposed) conservatee for legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.
- b. Although the (proposed) conservatee's spouse is a party to an action or proceeding against the (proposed) conservatee for legal separation, dissolution, annulment, or adjudication of nullity of their marriage, or has obtained a judgment in one of these proceedings, it is in the best interest of the (proposed) conservatee that:
- (1) a successor conservator be appointed.
- (2) the spouse be appointed as the successor conservator.
(If you checked item 6b(1) or (2) or both, specify the facts and reasons in Attachment 6b.)
7. **Petitioner or proposed** **successor conservator is the domestic partner or former domestic partner of the (proposed) conservatee.** (If this statement is true, you must answer a or b.)
- a. The domestic partner of the (proposed) conservatee has not terminated and does not intend to terminate the domestic partnership.
- b. Although the domestic partner or former domestic partner of the (proposed) conservatee intends to terminate or has terminated the domestic partnership, it is in the best interest of the (proposed) conservatee that
- (1) a successor conservator be appointed.
- (2) the domestic partner or former domestic partner be appointed as the successor conservator.
(If you checked item 7b(1) or (2) or both, specify the facts and reasons in Attachment 7b.)
8. **(Proposed) conservatee** (check all that apply)
- a. will attend the hearing AND is the petitioner is not the petitioner AND has has not nominated the proposed successor conservator.
- b. (initial appointment of conservator only) is able but unwilling to attend the hearing AND does does not wish to contest the establishment of a conservatorship, does does not object to the proposed conservator, AND does does not prefer that another person act as conservator.
- c. (initial appointment of conservator only): is unable to attend the hearing because of medical inability. A *Capacity Declaration—Conservatorship* (form GC-335), executed by a licensed medical practitioner or an accredited religious practitioner is filed with this petition. will be filed before the hearing.
- d. (initial appointment of conservator only) is not the petitioner, is out of state, and will not attend the hearing.
- e. (appointment of successor conservator only) will not attend the hearing.
9. **Medical treatment of (proposed) conservatee**
- a. There is no form of medical treatment for which the (proposed) conservatee has the capacity to give an informed consent.
- b. A *Capacity Declaration—Conservatorship* (form GC-335) executed by a licensed physician or by a licensed psychologist acting within the scope of his or her licensure, stating that the (proposed) conservatee lacks the capacity to give informed consent for any form of medical treatment and giving reasons and the factual basis for this conclusion,
 is filed with this petition. will be filed before the hearing. will not be filed for the reason stated in c.
- c. (appointment of successor conservator only) The conservatee's incapacity to consent to any form of medical treatment was determined by order filed in this matter on (date):
That order has neither expired by its terms nor been revoked.
- d. (Proposed) conservatee is is not an adherent of a religion that relies on prayer alone for healing, as defined in Probate Code section 2355(b).

CONSERVATORSHIP OF <i>(name)</i> :	CASE NUMBER:
CONSERVATEE	

10. **Temporary conservatorship**

Filed with this petition is a *Petition for Appointment of Temporary Conservator* (form GC-111).

11. **(Proposed) conservatee's relatives**

The names, residence addresses, and relationships of the spouse or registered domestic partner and the second-degree relatives of the (proposed) conservatee (his or her parents, grandparents, children, grandchildren, and brothers and sisters), so far as known to petitioner, are

- a. listed below.
- b. not known, or no longer living, so the (proposed) conservatee's deemed relatives under Probate Code section 1821(b) (1)–(4) are listed below.

	<u>Name and relationship to conservatee</u>	<u>Residence address</u>
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
(10)		
(11)		
(12)		
(13)		
(14)		
(15)		
(16)		

Continued on Attachment 11.

CONSERVATORSHIP OF <i>(name)</i> : <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER:
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12. **Confidential conservator screening form**

Submitted with this petition is a *Confidential Conservator Screening Form* (form GC-314) completed and signed by the proposed successor conservator. *(Required for all proposed conservators except banks and trust companies.)*

13. **Court investigator**

Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).

14. Number of pages attached:

Date:

(TYPE OR PRINT NAME OF ATTORNEY FOR PETITIONER)

▶

(SIGNATURE OF ATTORNEY FOR PETITIONER)

(All petitioners must also sign (Prob. Code, § 1020; Cal. Rules of Court, rule 7.103).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PETITIONER)

▶

(SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME OF PETITIONER)

▶

(SIGNATURE OF PETITIONER)