

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT SPR16-23

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<b>Title</b>	<b>Action Requested</b>
Probate Conservatorships: Notice of the Conservatee's Death	Review and submit comments by June 14, 2016
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Adopt form GC-399	January 1, 2017
<b>Proposed by</b>	<b>Contact</b>
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	Douglas C. Miller JCC Legal Services Office <a href="mailto:douglas.c.miller@jud.ca.gov">douglas.c.miller@jud.ca.gov</a> (818) 558-4178

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### Executive Summary and Origin

To implement a recent statutory change, the Probate and Mental Health Advisory Committee proposes the adoption of a new form to be used by a conservator of the person to give notice to interested persons, and to the court supervising the conservatorship proceeding, that the conservatee has died. .

### Background

Assembly Bill 1085 (Stats. 2015, ch. 92), § 3 added section 2361 to the Probate Code<sup>1</sup>, effective January 1, 2016. The new code section requires the conservator to give written notice of the conservatee's death to interested persons and file a proof of service of the notice with the court. It provides:

A conservator shall provide notice of a conservatee's death by mailing a copy of the notice to all persons entitled to notice under Section 1460 and by filing a proof of service with the court, unless otherwise ordered by the court.

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<sup>1</sup> All code references are to the Probate Code unless otherwise specified.

*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 These proposals are circulated for comment purposes only.*

## The Proposal

The Probate and Mental Health Advisory Committee proposes the adoption of a new mandatory Judicial Council form, *Notice of the Conservatee's Death* (form GC-399), to be used by conservators of the person to comply with section 2361 by giving notice to persons interested in the conservatee and the conservatorship proceeding that the conservatee has died. The proposed form also allows the conservator to prove to the court, by completing the proof of service on page 2 of the form and then filing the form, that the form has been properly served.

Both the notice and proof-of-mailing portions of the form are simple and straightforward, suitable for use by self-represented conservators. The most difficult portion is the proof of service, but the instructions given at the top of page 2 should reduce or eliminate any difficulty a conservator might have. Every self-represented conservator who would be required to use the new form will at least have already successfully completed the appointment process, involving many much more difficult issues and Judicial Council forms than this proposed form presents.

The proof of service by mail in the form is similar to the proof of service that is part of the form for giving notice of any court hearing in a conservatorship or guardianship proceeding, *Notice of Hearing—Guardianship or Conservatorship* (form GC-020). But because section 2361 requires the *conservator* to mail the notice of death, this new proposed form is drafted to reflect that the conservator is doing the mailing.

Under section 1460, a notice from the conservator of the person following the death of the conservatee, must be served on the conservatee's spouse or domestic partner and on the persons who have filed a request for special notice in the proceeding (See sections 1460(b)(3) and (4), and 2700).<sup>2</sup>

Having a mandatory form for the notice would avoid the difficulty of reliance on self- or attorney-drafted notices and ensure statewide uniformity of the contents of the notice. Having a combined form of notice and proof of service of the notice would avoid problems for conservators in attaching a separate proof of mailing.

This form is designed for use only by conservators of the person (note the reference to “conservator of the person” below the name and signature blocks on page 1 of the form, and the “Note to Conservator of the Person” on page 2). Section 2361 does not refer specifically to either a conservator of a person or a conservator of an estate. However, new section 2361 is in Chapter 5 of Part 4 of Division 4 of the Probate Code, *Powers and Duties of Guardian or Conservator of the Person*. In addition, the duty to notify interested persons of the conservatee's death appears

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<sup>2</sup> The extended notice required under section 1460(b)(6) could not apply because the conservatorship terminates upon the death of the conservatee, save only the details of the filing of a final account and a petition for its approval and for discharge if there is an estate, a conservator of the estate, and a bond (§§ 1860(a), 1860.5(a)(2), and 2630). Therefore, after the death of the conservatee, the conservator of the person would never need to seek the court's permission to terminate the conservatorship or resign after the conservatee's death. The conservator also would never file a petition for his or her own removal.

to be more compatible with the responsibility of a conservator of a person than a conservator of an estate, in part because the conservatee's death terminates the duties of the conservator of the person, not those of the conservator of the estate.

### **Alternatives Considered**

The committee considered whether to propose a form for use by a conservator of either the person or the estate, but the committee decided, for the reasons stated above, that the proposed form should be, and was intended by the Legislature, for use by a conservator of the person.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal is not expected to impose any significant costs other than the usual modest cost of adopting and distributing any new Judicial Council form. The proposed new form should actually save the implementation, training, and other staff costs that courts, and attorneys and parties appearing before them, are now incurring during 2016 in reviewing, preparing, mailing, and filing the many variations in party- or attorney-drafted notices and proofs of service before the proposed form can be adopted and before it can be used.

## **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?

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 two months from Judicial Council approval of this proposal until its effective date provide sufficient time for staff training and implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Proposed *Notice of the Conservatee's Death* (form GC-399), at pages 4–5.
2. A link to Probate Code section 2361 is:  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PROB&sectionNum=2361](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=2361).

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="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;"><b>DRAFT</b></p> <p style="text-align: center;"><b>Not Approved by the Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): <p style="text-align: right;">CONSERVATEE</p>	
<b>NOTICE OF THE CONSERVATEE'S DEATH</b>	CASE NUMBER:

TO ALL PERSONS INTERESTED IN THIS CONSERVATORSHIP:

PLEASE TAKE NOTICE that the above-named conservatee died on (date):

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 CONSERVATOR OF THE PERSON)



\_\_\_\_\_  
(SIGNATURE OF CONSERVATOR OF THE PERSON)

CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): _____  <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER   
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**NOTE TO CONSERVATOR OF THE PERSON:**

You must "serve"—deliver—copies of this *Notice of the Conservatee's Death* ("Notice") to each person who has the right under Probate Code section 1460 to be notified of the date, time, place, and purpose of a court hearing in a conservatorship (the conservatee's spouse or domestic partner, and any person who has requested special notice as provided in section 2700 of the Probate Code). Copies of this Notice may be delivered by mail, but they may also be personally delivered instead of mailed. You must show the court that copies of this Notice have been delivered in ways the law allows. You do this by completing and signing a proof of delivery, also called "proof of service," which then is filed with the original Notice. This page contains a proof of delivery that may be used only to show delivery by mail. To show personal delivery, you must complete and sign a proof of personal delivery to all persons to whom you deliver copies of this document and attach the signed copy of that proof of delivery to this Notice when it is filed with the court. You may use *Proof of Personal Service-Civil* (form POS-20) to show personal delivery.

**PROOF OF DELIVERY BY MAIL**

1. I am the conservator of the person of the above-named conservatee. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (*specify*): \_\_\_\_\_
3. I delivered the foregoing *Notice of the Conservatee's Death* to each person named below by enclosing a copy in an envelope addressed as shown below AND
  - a.  depositing the sealed envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.
  - b.  placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: \_\_\_\_\_ b. Place mailed (*city, state*): \_\_\_\_\_

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 PERSON COMPLETING THIS FORM)	▶	(SIGNATURE OF CONSERVATOR OF THE PERSON)
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**NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED**

	Name of person served	Address ( <i>number, street, city, state, and zip code</i> )
1.		
2.		
3.		
4.		

Continued on an attachment. (*You may use form DE-120(MA)/GC-020(MA) to show additional persons served.*)