



Children's Rights Project/Immigrant Rights Project



# GUARDIANSHIP OF THE PERSON

## ATTORNEY MANUAL

PUBLIC COUNSEL  
610 S Ardmore Avenue  
Los Angeles, CA. 90005  
Phone: 213-385-2977  
Fax: 213-385-9089  
[www.publiccounsel.org](http://www.publiccounsel.org)

ACACIA  
1025 Connecticut Ave, NW,  
Suite 1000A (#1008)  
Washington, DC 20036  
[www.acaciajustice.org/](http://www.acaciajustice.org/)

# CONTENTS

INTRODUCTION .....	4
§ 1: GUARDIANSHIPS IN PROBATE COURT.....	4
A. WHAT IS A GUARDIANSHIP?.....	4
B. STANDARDS FOR APPOINTMENT.....	4
C. ASSEMBLY BILLS 900 AND 2090 .....	5
D. OTHER PROCEEDINGS AFFECTING CUSTODY AND DECISION-MAKING FOR A CHILD.....	6
§ 2: SPECIAL IMMIGRANT JUVENILE STATUS.....	8
A. APPLICABLE FEDERAL LAW.....	8
B. APPLICABLE STATE LAW .....	10
§ 3: INFORMATION NEEDED TO FILE FOR GUARDIANSHIP & SIJ FINDINGS.....	13
A. INFORMATION FOR GUARDIANSHIP.....	14
B. INFORMATION FOR SIJ FINDINGS.....	15
C. SPECIAL ORDERS.....	17
§ 4: REQUIRED FORMS FOR FILING.....	17
A. FORMS REQUIRED FOR GUARDIANSHIP.....	17
B. FORMS REQUIRED FOR SPECIAL IMMIGRANT JUVENILE FINDINGS.....	17
§ 5: STEP 1: PREPARING THE INITIAL FORMS.....	18
A. FORMS REQUIRED FOR GUARDIANSHIP.....	18
B. FORMS REQUIRED FOR SPECIAL IMMIGRANT JUVENILE FINDINGS.....	28
C. SUPPORTING DECLARATIONS.....	32
§ 6: STEP 2: FILING THE FORMS .....	33
§ 7: STEP 3: COMPLETING THE NOTICE REQUIREMENTS .....	34
A. PERSONAL SERVICE .....	34
B. SERVICE BY MAIL.....	36
C. NOTICE OF HEARING-GUARDIANSHIP FORM (GC-020 and GC-020P).....	37
D. NOTICE FOR NATIVE AMERICAN CHILDREN.....	37
E. DILIGENT EFFORTS TO LOCATE THOSE ENTITLED TO NOTICE .....	40
F. IF NOTICE WOULD BE AGAINST THE INTERESTS OF JUSTICE.....	41
§ 8: STEP 4: GUARDIANSHIP INVESTIGATION.....	41
§ 9: STEP 5: PREPARING FOR THE HEARING .....	42
§ 10: STEP 6: THE HEARING/FILING THE ORDERS/AFTER THE ORDERS.....	45
A. CONTINUANCES.....	45
B. THE HEARING .....	45
C. SIJ FINDINGS.....	47

D. AFTER THE HEARING.....	47
§ 11: TEMPORARY GUARDIANSHIP .....	48
A. THE REQUIRED FORMS FOR FILING FOR TEMPORARY GUARDIANSHIP.....	49
B. NOTICES IN A TEMPORARY GUARDIANSHIP .....	49
§ 12: JOINT GUARDIANSHIPS (PEACE OF MIND).....	50
§ 13: TERMINATING REPRESENTATION .....	51
§ 14: POWERS, DUTIES, AND LIABILITIES OF GUARDIANSHIP .....	51
§ 15: HOW GUARDIANSHIP AFFECTS GOVERNMENT BENEFITS .....	52
A. NON-RELATED GUARDIANS - FOSTER CARE BENEFITS.....	52
B. RELATED GUARDIANS - CalWORKs.....	52
§ 16: TERMINATION OF GUARDIANSHIP AND SUCCESSOR GUARDIANSHIP.....	53
A. FORMS NEEDED.....	53
B. SUCCESSOR GUARDIANSHIP .....	54
§ 17: OPPOSING A GUARDIANSHIP .....	54
§ 18: VISITATION .....	55
§ 19: CHANGING RESIDENCES.....	55
A. WHEN THE GUARDIAN IS MOVING WITHIN CALIFORNIA.....	55
B. WHEN THE GUARDIAN IS MOVING OUTSIDE OF CALIFORNIA.....	56
§ 20: TIMELINE.....	56
§ 21: GUARDIANSHIP/SIJ FORMS: CHECKLIST.....	57

# INTRODUCTION

This manual serves as a step-by-step guide for practitioners on how to obtain a guardianship and Special Immigrant Juvenile Findings (SIJ findings) from the probate division of the California Superior Court. Some practitioners will use this manual to seek both a guardianship and SIJ findings from the court, while others will seek guardianship alone for those clients who do not need or are not eligible for SIJ findings.<sup>1</sup>

The manual will introduce guardianships in probate court, followed by an introduction to Special Immigrant Juvenile Status (SIJS) and SIJ findings. It will then provide a detailed guide for seeking guardianships and SIJ findings from start to finish.

Please note that court procedures and practices vary greatly between jurisdictions and judicial officers, and they often change. Here, we include information specific to current procedures before the Los Angeles County Superior Court. You will need to check the local rules at the court where you intend to file for information specific to your case and should also consult with an experienced practitioner in your jurisdiction before filing a case.

## § 1: GUARDIANSHIPS IN PROBATE COURT

### A. WHAT IS A GUARDIANSHIP?

Guardianship of the person is a legal action that gives someone other than the minor's parents the "care, custody, and control" of the minor.<sup>2</sup> A guardianship is generally sought when the minor's parents are unwilling or unable to care for the child, or where parental custody is detrimental to the child. This may occur for a variety of reasons, including when a child immigrates to the United States without their parents and lives with a non-parental caregiver. A guardianship gives the guardian the right to make decisions on behalf of the minor. *See* § 14, of this manual *infra*. While the guardianship is in place, the parents lose the ability to make decisions for the child; however, the parents' rights are only suspended by the guardianship, not permanently terminated. The parent may regain legal and physical custody of the child by filing a petition to terminate the guardianship. *See* § 16, of this manual, *infra*. A guardianship appointment lasts until it is terminated by the court or until the minor turns 18 or is emancipated, adopted, or married. However, in some cases the guardianship can be obtained for a youth between the ages of 18 and 21 or continue until the ward turns 21 years old. Relatives, friends, and minors 12 years of age or older (on their own behalf) may file the petition for the appointment of a guardian. Probate Code, § 1510(a). Guardianship of the person does not give the guardian control over the minor's property or other assets. To do this, guardianship of the estate should be sought in addition to guardianship of the person.

### B. STANDARDS FOR APPOINTMENT

A California probate court shall grant a guardianship if it is "necessary or convenient" as determined by the best interests of the child as defined in §§ 3020 and 3040 of Chapters 1 and 2, respectively, of the Family Code. Prob. Code, § 1514(a); § 1514(b)(1). To assess the "best interests" of the child, the

<sup>1</sup> The manual was developed in partnership between Public Counsel and the Vera Institute of Justice. Ylianna Perez-Guerrero and Sara Van Hofwegen are the primary authors of the manual. Updates made by Rebecca Brown, Jennifer Calderon, Joel Frost-Tift, Leticia Rodriguez with support from Yonny Aguilar in partnership with the Acacia Center for Justice.

<sup>2</sup> In the Probate Code, the minor is often referred to as the "ward." This manual will also use the words "youth" or "child" to refer to the minor/ward. Note that under Probate Code, § 1510.1(d), the definition of minor includes youth between the ages of 18 and 21 who are seeking both a guardianship and SIJ findings.

court will consider: (a) the child's "health, safety, and welfare;" (b) any history of abuse by one parent against the other parent or the child; (c) the nature and amount of contact with both parents; and (d) the habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol by either parent. Fam. Code, § 3011.

The court also will adopt a priority approach to custody determinations, giving first preference to both parents jointly or to either parent. Fam. Code, § 3040(a)(1). However, if the probate court determines that the parent should retain custody of the child, the court will generally not appoint the parent as guardian because the probate court only allows parents to be appointed as a guardian if the child is between the ages of 18 to 21. *See* Prob. Code, § 1514(b)(2), § 1510.1. For custody determinations regarding parents, the family division of the Superior Court has jurisdiction NOT the probate court. The court gives second and third preference to "persons in whose home the child has been living in a stable and wholesome environment" and those deemed to be "suitable and able to provide adequate and proper care and guidance". Fam. Code, § 3040(a)(2)-(3). If the child is sufficiently mature, the court should consider their wishes as well. Prob. Code, § 1514(e); Fam. Code, § 3042(a). In addition, a parent's nomination of a proposed guardian will receive "due weight". Fam. Code, § 3043.

If a parent objects to the appointment of a guardian, the petitioner must establish that: 1) parental control would be detrimental to the child; and 2) the award to a non-parent is required to serve the "best interests" of the child. Prob. Code § 1514(e); Fam. Code § 3041. *See Guardianship of Phillip B.*, (1983) 139 Cal.App.3d 407 (citing three examples of "detriment": (1) lack of bonding between the minor and his parents; (2) potential educational and developmental injury to the child; and (3) evidence of potential physical harm due to the parents' passive neglect of the child's medical needs).

### **C. ASSEMBLY BILLS 900 AND 2090**

In 2016, California passed two laws to provide better support and protection for unaccompanied, undocumented older youth (from ages 18 through 20). These are Assembly Bill 900 (AB 900), which took effect on January 1, 2016, and Assembly Bill 2090 (AB 2090), which took effect on August 27, 2018.

AB 900 gives probate courts jurisdiction to appoint legal guardians for youth ages 18 through 20 (i.e. from age 18 until their 21<sup>st</sup> birthday) who also seek SIJ findings from the court. AB900 provides:

Given the recent influx of unaccompanied immigrant children arriving to the United States, many of whom have been released to family members and other adults in California and have experienced parental abuse, neglect, or abandonment, it is necessary to provide an avenue for these unaccompanied children to petition the probate courts to have a guardian of the person appointed beyond reaching 18 years of age. This is particularly necessary in light of the vulnerability of this class of unaccompanied youth, and their need for a custodial relationship with a responsible adult as they adjust to a new cultural context, language, and education system, and recover from the trauma of abuse, neglect, or abandonment. These custodial arrangements promote permanency and the long-term well-being of immigrant children present in the United States who have experienced abuse, neglect, or abandonment.

California Assembly Bill 900, § 1(a)(6).

To affect this change, AB 900 added section 1510.1 to the probate code, explicitly providing guardianships for youth aged 18 through 20 who are also seeking SIJ findings. Other changes include expanding the definition of child and minor to include 18 to 20-year-olds seeking guardianships and requiring 18 to 20-year-olds to consent to the appointment of a guardian. Prob.

Code, §§ 1510.1(a), 1510.1(d).

AB 2090 expands on the support and protection afforded by AB 900. AB 2090 clarifies that a parent of an unmarried, and undocumented youth between 18 and 20 years of age (in other words, up until their 21<sup>st</sup> birthday) is among the people qualified to file a petition for guardianship on the youth's behalf. Despite confusion surrounding the plain language of the statutes, many judges have appointed a parent as a guardian under AB 2090 and USCIS has regularly approved SIJS petitions based on AB 2090. However, you should check with practitioners in your jurisdiction to see how your local judges view AB 2090 cases.

It is also important to note that the Legislature, by authorizing the court to apply the existing guardianship statutes without amendment to these youth, indicated its intent that existing processes and substantive requirements continue to apply in guardianship matters involving wards 18 years of age or older. For example, a petition would still need to show, and the court would need to find, that appointment of a guardian of the person is necessary or convenient before ordering the appointment. The only difference between a guardianship of a ward under 18 years of age and that of a ward 18 years of age or older lies in the conditions of its formation, modification, and termination, not in the terms of the relationship created by the guardianship order.

**PRACTICE TIP:** In submitting a guardianship petition under AB 900 or AB 2090, it is important to be clear in your petition and supporting declarations why the client is a “particularly vulnerable immigrant youth” who needs a guardian even though they are over 18 and why the proposed guardian is best suited to be a guardian. We recommended mirroring the language of the statute and focusing on the youth's vulnerability and the ways the guardianship is necessary for them to navigate education, health, finances and other aspects of life in the United States. *For sample AB 900 and AB 2090 filings see Appendix C.*

## **D. OTHER PROCEEDINGS AFFECTING CUSTODY AND DECISION-MAKING FOR A CHILD**

Before proceeding with a guardianship in probate court, the practitioner should first determine whether a guardianship is the appropriate action to file and whether the probate court is the appropriate court to bring the action. There are several types of legal proceedings in addition to a probate guardianship, which affect custody of a minor. There are also other types of legal mechanisms that grant decision-making authority, but not custody, over a child. These proceedings include:

### **1. Family Court Custody Determination**

If the child is under 18 and seeking to be placed in the custody of one parent, the child or parent will need to request the custody order from the family division of the California Superior Court. Depending on the child's circumstances, this can be done through a parentage action, Petition for Custody and Support, or other actions in the family court. For more information on seeking custody orders and SIJ findings through the California family court see “Seeking Special Immigrant Juvenile Findings Through California Family Courts” by Public Counsel and the Vera Institute of Justice.

### **2. Adoption**

An adoption is a complete substitution of one parent or set of parents for another. In an adoption, all rights and obligations of the biological parents regarding the child are terminated and the adoptive parents are placed in the same legal position with respect to the minor as the biological parents were previously. In contrast, a guardianship only suspends the biological parents' custodial

rights, and the biological parents retain their obligation to support the child financially. After a guardianship has been granted, ongoing visitation between the minor and biological parents is generally left to the discretion of the guardian.

### **3. Juvenile Court Dependency Proceedings**

In dependency cases, the Department of Children and Family Services (DCFS) asks the Juvenile Court to make the minor a dependent of the court on the grounds of parental abandonment, abuse, or neglect. *See* Welf. & Inst. Code, § 300 et seq. Once the child becomes a dependent of the court, the court will determine the child's placement, which may include (in order of preference) leaving the child in the custody of the parents under DCFS's supervision or placing the child with relatives, non-related foster parents, or in a congregate care setting. Once a dependency petition is filed, all other court proceedings involving the care and custody of the minor child pause while the case in dependency moves forward.

The goal of dependency proceedings is to ensure safety for the child. DCFS is required to make "reasonable efforts" to maintain the child safely in the parents' home or to reunite the child with the parents. Usually, the court order will outline conditions for family maintenance or reunification and require the parents to obtain services, such as counseling or drug treatment. The court then conducts a review hearing every six months. If the parent does not make sufficient and timely progress to fulfill the conditions for reunification, the court may suspend reunification services and order that the child be placed for adoption or in a guardianship through dependency court. The dependency court may also make SIJ findings on behalf of the child once it ends reunification services for one or both parents.

This manual, however, does not address dependency court guardianships resulting from a "permanent plan" after the minor has been declared a dependent of the dependency court. For a detailed discussion of the dependency and probate court systems, please review the Public Counsel manual, *Caring for Another's Child: A Guide for Caregivers in Los Angeles County*, available through the Public Counsel website.<sup>3</sup>

### **4. Authorizing Another Adult to Consent to Medical Care**

A parent may authorize in writing "any adult person into whose care the minor has been entrusted" to consent to medical treatment and hospitalization of their child. Fam. Code, § 6910. Follow this procedure if the parent wants to permit another adult to consent to medical care for the minor, but does not wish to transfer custody. *See Appendix A for a sample Child Care Authorization.*

### **5. Caregiver Affidavit**

Similarly, Family Code sections 6550 et seq. enable an informal caregiver to use a caregiver affidavit to enroll a child in school or to obtain certain medical care for the child. A caregiver affidavit provides that a pupil is deemed to comply with residency requirements if the caregiver signs an affidavit that the pupil lives in the caregiver's home, which is located within the boundaries of the school district. The caregiver can also authorize general medical and dental care if the caregiver is related to the child and school-related medical care if they are not related to the child. *See Appendix A for a sample Caregiver's Affidavit.*

---

<sup>3</sup> Dependency determinations and SIJ findings can also be made through juvenile delinquency proceedings in the juvenile division of the Superior Court. Delinquency proceedings are outside the scope of this manual, but, if you encounter a child who has been subject to juvenile delinquency proceedings, you should consult with an experienced practitioner before proceeding.

## 6. Conservatorship

Custody of a youth between the ages of 18 and 20 may also be placed with a conservator by the court. Typically, a conservator is appointed for a person who is unable to properly provide for his or her personal needs for physical health, food, clothing, or shelter. Prob. Code, § 1800 et seq. In some cases, a conservatorship may be appointed for a developmentally disabled adult. A conservatee who is designated as: 1) being developmentally disabled; 2) having a legal disability; or 3) having a mental and adaptive limitation, will have a conservator appointed to make personal decisions on their behalf and/or a conservator of the estate to make financial decisions on their behalf. Prob. Code, § 1801.

## § 2: SPECIAL IMMIGRANT JUVENILE STATUS

Special Immigrant Juvenile Status (SIJS) is one of the few child-specific benefits that exists in United States immigration law. Youth who have been granted SIJS are eligible to apply for lawful permanent residency (often called a “green card”) in the United States, subject to visa availability. *See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), Pub. L. No. 110- 457, § 235(d)(1)-(3), 122 Stat. 5044.*

Congress initially created SIJS to provide humanitarian protection for abused, neglected, or abandoned immigrant children who are eligible for long-term foster care, but since its creation, Congress has continually expanded the scope of SIJS. Today, SIJS is available to children who cannot reunify with one or both parents due to abuse, abandonment or neglect or due to a similar basis under state law. Congress has eliminated the requirement that a child be found eligible for long-term foster care and instead requires that a state juvenile court declare the child dependent on the court or place them in custody of an individual or entity appointed by the court. The court must then make predicate findings regarding parental reunification, abuse, abandonment, or neglect, and the child’s best interests. These Special Immigrant Juvenile Findings (SIJ findings) can be made in a wide range of state courts, including probate, family, dependency, and delinquency courts.

The process to obtain SIJS on behalf of a child begins with a state court proceeding where the court makes requested custody orders and SIJ findings, which the child can then use to petition for SIJS with U.S. Citizenship and Immigration Services (USCIS). In California, the probate, family, and juvenile divisions of the superior court can make these required initial findings. This manual will focus specifically on obtaining SIJ findings in the probate division of the superior court.

### A. APPLICABLE FEDERAL LAW

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008 created the most important changes to the SIJ statute. *See TVPRA 2008, § 235.* Among the TVPRA’s most important changes are:

- The possibility of SIJ findings when reunification with one *or* both parents is not viable due to abuse, neglect, abandonment, or a similar basis under state law. This replaced the long-term foster care requirement and enabled children to obtain SIJS based on the actions of just one parent. *See TVPRA 2008, § 235(d)(1)(A).*
- The expansion of SIJS eligibility to include children placed under the custody of a person or entity appointed by a state or juvenile court, which made clear that children placed with a custodial parent or legal guardian can qualify for SIJS. *See id.*



- The simplification of the Department of Homeland Security consent function, which is necessary in order for USCIS to grant a petition for SIJS. *See Practice Tip, infra.*
- Age-out protections for SIJS classified children; as long as a child is under 21 years of age upon filing the petition for classification as a Special Immigrant Juvenile, USCIS cannot deny the petition solely because the child is older than 21 at the time the petition is adjudicated. USCIS Policy Manual, Volume 6, Part J, Chapter 2.C.
- A 180-day timeframe for the adjudication of a SIJS petition. *See TVPRA 2008, § 235(d)(2).*

Today, a child is eligible for SIJS if they are:

- Under 21 years of age on the date the child filed the SIJS petition. 8 CFR § 204.11(c)(1); 8 USC § 1101(b)(1); 8 USC § 1232(d)(6) (creating age-out protections for SIJS classified juveniles. As long as a child is under 21 years old when they file for SIJS, they remain eligible past their 21st birthday). Note that the regulations implementing SIJS have not been updated to reflect the 2008 amendments to the SIJS statute.
- Unmarried until after SIJS Petition approved. 8 CFR § 204.11(b)(2).
- Declared dependent on a state juvenile court, or placed in the custody of a state agency or individual appointed by such a court (such as being placed in the custody of one parent). 8 USC § 1101(a)(27)(J)(i).
- The subject of specific findings that reunification with one or both parents is not viable due to abuse, abandonment, or neglect, and that it is not in the child's best interest to return to their home country. 8 USC § 1101(a)(27)(J)(ii).
- Subject to DHS's consent to the SIJ classification. 8 USC § 1101(a)(27)(J)(iii).

**PRACTICE TIP: Department of Homeland Security Consent Function.**

Practitioners might be tempted to ignore the USCIS consent function, but it should not be taken for granted. USCIS utilizes the consent function to review the juvenile court order solely to determine that the SIJS request is "bona fide" – in other words, that it is "sought to obtain relief from abuse, neglect, abandonment, or a similar basis under law." *See USCIS Policy Manual, Volume 6, Part J, Chapter 2.D.5.* In order to make this determination, "USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the findings necessary for classification as a SIJ." *Id.*

To increase the odds that USCIS will approve a SIJS petition, advocates should clearly "lay out the record" with a bona fide reason for seeking the custody order and include those reasons in the SIJ findings. They should also ensure that the SIJ findings include a factual description of the child's situation that supports the findings.

The required first step to obtain SIJS is seeking SIJ findings from a state juvenile court, defined under the federal regulations as any court with the ability to make determinations about the care or custody of juveniles. *See 8 C.F.R. § 204.11(a).* Federal law requires that the state juvenile court declare the child dependent on the court or place the child in the custody of an individual or entity appointed by the court. 8 USC § 1101(a)(27)(J)(i). Then, the state court must make certain findings regarding the child's history of abuse, abandonment, or neglect, potential parental reunification, and best interests as a necessary predicate for a child to begin the SIJS process. 8 USC § 1101(a)(27)(J)(ii)-(iii). In other words, without a state court proceeding to get these findings, there is no way to petition for federal SIJ classification.

The proceedings that occur in state court must result in the court declaring the child dependent on the court itself or placing the child in the custody of an individual or state agency. 8 USC § 1101(a)(27)(J)(i). Once the court has made that placement, it can then move on to make the required findings.

The findings that a state court makes must consist of the following:

- The child is dependent on the court itself or the child is placed in the custody of an individual or entity that the court appoints. *Id.*
- Reunification with one or both parents is not viable due to abuse, abandonment, neglect, or a similar basis under state law. 8 USC § 1101(a)(27)(J)(ii).
- It is in the child’s best interest to remain in the United States and not be returned to their or their parents’ country of origin or of last habitual residence. 8 USC § 1101(a)(27)(J)(iii).

USCIS should give deference to state court determinations, as long as the state court provides a factual basis to support its legal conclusions. USCIS’s policy guidelines state that:

USCIS relies on the expertise of the juvenile court in making child welfare decisions and does not reweigh the evidence to determine if the child was subjected to abuse, neglect, abandonment, or a similar basis under state law. In order to exercise the statutorily mandated DHS consent function, USCIS requires that the juvenile court order or other supporting evidence contain or provide a reasonable factual basis for each of the findings necessary for classification as a SIJ. The evidence needed does not have to be overly detailed, but must confirm that the juvenile court made an informed decision in order to be considered “reasonable.” USCIS Policy Manual, Volume 6, Part J, Chapter 2.D.5.

USCIS interprets this deference to require an adequate factual basis to show that a custody order was not sought primarily for immigration purposes, but rather for relief from abuse, abandonment, or neglect. *See* discussion of the USCIS consent function, *supra*. The SIJ findings themselves should reflect that the state court considered this factual basis when it made the custody determination and findings regarding abuse, abandonment, or neglect and best interests. *See Appendices B and C* for a sample SIJ findings order.

## **B. APPLICABLE STATE LAW**

California has several laws specific to SIJS that serve to benefit immigrant youth. For purposes of this manual, the most important of those laws is Senate Bill (SB) 873, which passed in 2014. SB 873 added section 155 to the California Code of Civil Procedure (CCP) in order to protect vulnerable children and codify the procedures for them to seek SIJ findings in state juvenile courts. Section 155 clarifies which branches of the Superior Court are “juvenile courts” for purposes of SIJ findings - explicitly including probate courts in the definition - and requiring them to make SIJ findings if the evidence supports the findings. *See* Code Civ. Proc., § 155(a), (b). It also specifies that such evidence can “consist of, but is not limited to, a declaration by the child who is the subject of the petition.” Code Civ. Proc., § 155(c). SB 873 also added provisions to CCP section 155 allowing petitioners to seal records of proceedings that include a request for SIJ findings if they are not otherwise protected by state confidentiality law and requiring the Judicial Council of California to adopt any rules necessary to implement the other provisions of CCP section 155. *See* Code Civ. Proc., § 155(d), (e). CCP section 155 is a powerful tool that practitioners can use to obtain SIJ findings on behalf of their clients. The statute not only clarifies which California courts have jurisdiction to make SIJ findings, but also requires the courts to make those findings if a petitioner submits sufficient evidence to support them.

In making SIJ findings, the state court must determine that the youth has experienced “abuse, abandonment, neglect, or a similar basis under state law” under California state law and thus practitioners must be familiar with a broad range of California laws. The primary definitions of abuse, abandonment, and neglect in California come from both the Family Code and the Welfare and Institutions Code (WIC):

- **Abuse:** Family Code section 6203(a) defines abuse as intentionally or recklessly causing or attempting to cause bodily injury, sexual assault, and placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another. WIC section 300(a) states that abuse is when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian.”
- **Abandonment:** Family Code section 3402(a) states that, “[a]bandoned’ means left without provision for reasonable and necessary care or supervision.” WIC section 300(g) defines abandonment as being “left without any provision for support.” It is important to note that only one of the clauses of § 300(g) – relating to voluntary surrender – has an element of parental intent; all other subsections look at the *child’s* situation of having been left without provision for support. *See id.*; *D.M. v. Superior Court (2009)*, 173 Cal.App.4th 1117, 1128-29. The Court of Appeal has also found abandonment under Family Code section 3402(a) absent the intent of the parents to abandon the child. *In re Jorge G.* (2008) 164 Cal.App.4th 125, 132-33 (finding that a child was abandoned by incarcerated parents). Although there is no appellate case law directly addressing death as a form of abandonment, superior courts throughout California routinely find that the death of a parent constitutes abandonment when the child is left without provision for support by the parent’s death.
- **Neglect:** WIC section 300(b) defines general neglect as “the negligent failure of a parent/guardian or caretaker to provide adequate food, clothing, shelter, or supervision where no physical injury to the child has occurred,” while severe neglect is “where the child’s health is endangered, including severe malnutrition.” *See also* Pen. Code, § 11165.2 (Child neglect is “the negligent treatment or the maltreatment of a child by a person responsible for the child’s welfare under circumstances indicating harm or threatened harm to the child’s health or welfare. The term includes both acts and omissions on the part of the responsible person.”); Fam. Code, § 3200.5(b) (involving the appointment of professional supervised visitations services in situations that include neglect as defined in Penal Code section 11165.6, which in turn references Penal Code section 11165.2); Ed. Code §§ 48200, 49160 (detailing the conditions under which children can seek employment and work).

**PRACTICE TIP:** For any of the relevant code sections you can also argue for a “similar basis” if you think the facts might not fit neatly into abandonment, abuse or neglect. For example *Saul H.* held that a child lives with one parent in the United States and lived with the other parent or both parents in home country and the child has suffered, or there is a substantial risk the child will suffer serious physical harm or illness as a result of the failure or inability of the child’s parent to adequately supervise or protect the child you can argue nonviability of reunification with the non-custodial parent because of “a similar basis.” Furthermore, the Supreme Court erred in failing to find that it would not be workable or practical for Saul to return to his parents based on the provisions he had cited that do not define abandonment, abuse and neglect.

There have also been a number of appellate cases in California specific to SIJ findings. These cases involve the definition of abandonment within the SIJ context, the factors a juvenile court can consider when deciding whether to make SIJ findings, and perhaps most importantly for purposes of this manual, procedures in family court relating to the joinder of absent parents and other important family court-specific issues.

The following are some of the most important appellate decisions in California relating to SIJ findings:

- ***Guardianship of Saul H.*, 13 Cal 5th 827 (2022)**

In *Saul H.*, the California Supreme Court overturned the probate judge and Court of Appeals' denial of the petitioner's request for SIJ findings. The ruling is highly consequential for those seeking SIJ findings in California State Courts.

First the Court held that a denial of SIJ findings is appealable because it "completely disposes" of the petition, rendering the order "the equivalent of a final, appealable judgement." *Saul H.* 13 Cal. 5th at 841, fn. 2 (internal quotations omitted). This clarifies that the appropriate method to challenge a denial of SIJ findings request is appeal, rather than writ review.

Furthermore, the Court held that the default burden of proof standard for civil cases, preponderance of evidence, applies to requests for SIJ findings. *Id.* At 842. The declaration of the youth seeking SIJ findings can, on its own, be sufficient to prove the requisite facts to support SIJ findings. *Id.* at 843. If the youth's declaration fails to provide sufficient factual basis for SIJ findings, a state court judge can require further evidence or an evidentiary hearing, but must be mindful of the "unique features and challenges of such proceedings." *Id.* at 844. Moreover, a state court judge "may not ignore or discredit facts shown by a child's declaration based on surmise or on evidence outside the record or draw speculative inferences against the child." *Id.* The court found that California Code of Civil Procedure Section 155 and appellate precedent impose a "mandatory duty" on trial courts to issue SIJ findings where there is a preponderance of the evidence to support them. *Id.* at 845-836.

In its decision on the merits, the Court held that the purpose of the "nonviability" requirements is to "identify children whom it would not be viable – meaning not workable or practical- to return to live with a parent." *Id.* at 848. The "nonviability" inquiry does not require a showing that it is literally impossible for a child to return to their parents' care but rather that, under the circumstances, it would not be "workable or practical" to do so. *Id.* at fn 5. In assessing "nonviability," a state court should consider "all relevant circumstances, including the ongoing psychological and emotional impact on the child of the past relations between the child and the parent, how forced reunification would affect the child's welfare, the parent's ability and willingness to protect and care for the child, and the parent's living conditions." *Id.* at 848.

With this in mind, the Court rejected the lower court's focus on parental "blameworthiness" in the context of SIJ findings. State court judges should not focus on parental "blameworthiness" but "effect of [the] harm [the child experienced] on the workability or practicality of returning the child to live with the parent." *Id.* at 849. This appellate case confirmed that SIJ findings are possible in California when a

child resides with a custodial parent. In Israel O's case, the juvenile court had declined to make SIJ findings for him because returning to live with his mother remained a feasible option, even though the court acknowledged that his father had abandoned him. The juvenile court based its decision on a Nebraska Supreme Court case that held that the "1 or both" language of the federal SIJS statute prohibited SIJ findings for children who could reunify with a custodial parent. The Court of Appeals disagreed, holding that although the language "1 or both" in the federal statute was ambiguous, the fact that USCIS itself acknowledged that a child could live with a custodial parent and qualify for SIJS carried considerable weight and clarified any ambiguity in the statute. *Israel O, supra*, 233 Cal.App.4th at 290-91.

- **O.C. v. Superior Court (2019) 44 Cal. App. 5th 76**  
Holding that a probate court is required to issue SIJS findings based on state law and to cite to state authority for those findings in its order.
- **Bianka M. v. Superior Court (2018) 5 Cal. 5th 1004**  
Holding that a court can award custody to one parent even if the other parent is outside the court's personal jurisdiction and does not participate in these proceedings, so long as the absent parent receives notice and an opportunity to be heard, and that the child's perceived desire to obtain SIJS findings is not ground for declining to issue the findings.
- **Eddie E. v. Superior Court (2015) 234 Cal. App. 4th 319**  
Holding that the plain language of the SIJS statute means that a petitioner can satisfy the second SIJS finding by showing an inability to reunify with one parent due to abandonment, abuse, neglect or a similar basis.
- **In re Israel O. (2015) 233 Cal. App. 4th 279**  
Holding that a child may be eligible for SIJs even if a safe and suitable parental home in the United States is available.
- **Leslie H. v. Superior Court (2014) 224 Cal. App. 4th 340**  
Finding that the lower court erred in denying the request for SIJs findings for a youth in delinquency proceedings based on policy considerations and that ample, uncontroverted evidence was presented to satisfy the statutory criteria.
- **Eddie E. v. Superior Court (2013) 233 Cal. App. 4th 622**  
Finding that the lower court erred in denying the request for SIJs findings for a youth in delinquency proceedings, even though he had not been declared a dependent on the court but rather was a ward of the court.
- **In re Y.M. (2012) 207 Cal. App. 4th 892**  
Holding, inter alia, that concurrent jurisdiction exists between state and federal systems for a youth who was a dependent of the California Juvenile Court and a victim of human sex trafficking and that the lower court erred in not making findings relevant to her potential eligibility for Special Immigrant Juvenile Status.
- **B.F. v. Superior Court (2012) 207 Cal. App. 4th 621**  
Concluding that the superior court sitting a. Concluding that the superior court sitting as a probate court has the authority and duty to make SIJS findings within the meaning of section 1101(a)(27)(J) and 8 Code of Federal Regulations part 204.11.

- **In re Scarlett V. (2021) 72 Cal. App. 5th 395**

Holding that juvenile dependency court was statutorily required to issue an order containing SIJS findings because Scarlett submitted unimpeached and uncontradicted evidence to support the findings, and rejected the lower court's view that making SIJS findings is discretionary.

- **Alex R. v. Superior Court (2016) 248 Cal. App. 4th 1**

Holding – in a parentage case in which the child also request SIJ findings – that a child was not required by statute, nor in order to satisfy his father's due process rights, to serve his father with a pre-summons notice of his application for appointment of a guardian ad litem.

**NOTE:** It is important that the request for SIJ findings is made in the court with proper jurisdiction over the child.<sup>1</sup>This manual discusses SIJ findings in the context of probate guardianship proceedings. A SIJ Findings request can also be made in juvenile dependency or delinquency proceeding, in adoption proceedings, and in family court. See section 1.C., *supra*, for a discussion of other proceedings impacting youth.

## § 3: INFORMATION NEEDED TO FILE FOR GUARDIANSHIP & SIJ FINDINGS

Listed below is the information you will need to file the initial guardianship and SIJ findings forms to represent your client(s) at the guardianship hearing in Probate Court. If you are working on a case pro bono from Public Counsel, most of this information is in the case summary letter from the Attorney and the Social Worker. See **Appendix E** for a sample case summary letter. You will also need to meet with your client to help them understand the guardianship and SIJ findings process and ensure that they want to proceed with the guardianship and SIJ findings.

### **WORKING WITH CHILD CLIENTS:**

It is critical that you are mindful of your child client's unique circumstances and vulnerabilities when you assess their case and help them determine the best course of action.

You should use a child-centered lens when working with the client and try to identify their support system as they work with you. This support system often includes the guardians with which they reside.

Your client may also be a recent arrival to the United States and have suffered extreme trauma in their life. They may not speak English, and may be very intimidated meeting with an attorney or having to talk to another stranger about why they came to the United States and what they have experienced. These factors make child clients particularly vulnerable, underscoring both the importance of a client-centered approach and the need for a stable custodial relationship. For SIJS cases where the child is over 12, your client will typically be the child and not the proposed guardian. Remember that your job is to advocate on the client's behalf and that you owe duties of care and confidentiality to them NOT their proposed guardian.

Even though your client may come to the office with their proposed guardian, you will often want to meet with the client alone in order to do your initial assessment to better protect the client's wishes and preserve confidentiality. You should take the time to build trust with your client and use child-friendly interviewing tools to assess your client's eligibility, explain SIJS and the guardianship process, and explain its relationship to state court custody proceedings.

It is important to ask your client if they want the proposed guardian to have full legal and physical custody over them. For many clients this may be an easy question to answer if they have, or are developing, a healthy relationship with the proposed guardian. However, other clients may be unsure and may not be willing to seek findings of abuse, abandonment or neglect against their parent(s). Remember that your client is in charge of the process and you cannot seek custody orders or SIJ findings against their wishes.

## **A. INFORMATION FOR GUARDIANSHIP**

### **1. Background Information:**

2. Proposed guardian's name, address, telephone number, email address (if applicable), social security number (if applicable), birth date, and driver's license number (if applicable).
3. What is the guardian's relationship to the minor?
4. What is the general situation with the minor?
5. With whom is the minor living?
6. Why do the minor and the guardian think guardianship is necessary/convenient?
7. Is the minor's situation an emergency?
8. Does the proposed guardian or anyone else living in the home have a record of criminal activity, child abuse, or neglect?
9. What is the future placement plan for the minor?
10. If the guardian were not there to care for the minor, would the minor likely go into foster care?
11. For AB 900 or AB 2090 case, why is the client a particularly vulnerable immigrant youth who needs a guardianship?

### **2. Minor's Information:**

3. Full name of minor, current address, phone number, email address (if applicable).
4. Date and place of birth (although the forms ask for the minor's social security number, this information is not required by law).
5. Previous addresses for the last five years, with whom minor resided and that person's current address.
6. Was the minor ever married (if appropriate)?
7. Has the minor ever been removed from the parent's custody because of charges of abuse or neglect?

### **3. Family Information:**

- a. Full names of natural mother and father and any adoptive parents.
- b. Current addresses or last known addresses of parents (or method of contact).
- c. Telephone numbers of parents (both home and work).
- d. How do/would the parents feel about guardianship being granted?
- e. Names and addresses of grandparents (both maternal and paternal).

- f. Names, addresses, and ages of all known siblings, including half-siblings.
- g. Does the minor have any adoptive parents, stepparents, or guardians? Where are they? Is the minor in contact with them?

#### **4. Procedural Questions:**

- a. Are there any Juvenile Court, Marriage, Dissolution, Domestic Relations, Custody, Adoption, other guardianship, or any other proceedings involving the minor? If so, in which county, state or country and which court did the proceeding take place and what is the case number?
- b. Is the minor the owner of any property (except personal items)?
- c. Is the minor receiving Veteran's Administration benefits?
- d. Is the minor receiving public assistance (i.e. CalWORKs, SSI, Food Stamps, MediCal)?
- e. Has anyone ever filed an adoption petition for the minor?
- f. Does the minor have Native American heritage?

#### **5. Medical Questions:**

- a. Does the minor currently require any special medical treatment?
- b. Do you know of any medical condition that might require the minor to receive special medical attention in the future?
- c. Is the minor a patient of a mental institution or on leave from one?
- d. Does the minor have any other needs that should be addressed?

#### **6. Other Pertinent Information:**

- a. Is the proposed guardian receiving public assistance?
- b. Is the proposed guardian's home a licensed foster care home?
- c. Does the proposed guardian have any intention of adopting the minor in the future?

### **B. INFORMATION FOR SIJ FINDINGS**

1. **Special Immigrant Juvenile Findings Questions: If you are requesting SIJ Findings, you will also need the following information**



a. Does the minor have a history of abuse, abandonment or neglect by one or both parents?

**Abuse?**

How did your parent(s) punish you?

Did your parent(s) ever call you names or treat you in a mean way?

Did your parent(s) ever hurt you in any way?

**Abandonment?**

With whom did you live in your home country?

Who takes care of you?

Who pays for your expenses? How often do you communicate with your other parent?

**Neglect?**

Did you go to school?

Did you work? If so, what kind of work? Did you have to work?

When you were sick or had to go to the hospital, what happened?

Did anyone ever harm or threaten you?

**Similar basis**

Did you go to school?

Did you work? If so, what kind of work? Did you have to work?

When you were sick or had to go to the hospital, what happened?

Did anyone ever harm or threaten you?

Were you ever at risk of substantial harm?

Were your parents ever unable to supervise you?

b. Is reunification with one or both parents not viable due to this abuse, abandonment, or neglect, including the death of one or both parents?

c. Would it be in the minor's best interest to be returned to their country of nationality?

**Best Interest**

Would you be safe if you returned to your home country?

Would you have anyone to care for you if you returned to your home country?

Would you be able to go to school or access mental health services if you returned to your home country? Would you have to work?

- d. Has the minor had any contact with USCIS? Has any application or petition ever been filed for the minor with USCIS? What was filed? When was it filed?
- e. Has the minor ever had a USCIS-issued work permit?
- f. Has the minor ever been arrested by immigration officials?
- g. Has the minor ever been deported or ordered to depart from the United States voluntarily but remained in the United States despite the order? If so, when?
- h. Was the minor actually deported or removed from the United States? If so, when? When did the minor return to the United States?
- i. Is the minor currently in immigration court removal proceedings?
- j. Has the minor engaged in any illegal activities since arriving in the United States? If so, and they have been arrested, contact an experienced immigration practitioner immediately to discuss obtaining copies of juvenile delinquency dispositions.

## C. SPECIAL ORDERS

Finally, find out whether the minor or proposed guardian would like to request any special orders in the guardianship petition. For example, the proposed guardian may want to request an order for medical insurance, since the minor's parents remain obligated to financially support the child after the guardianship takes effect. *See § 14, infra.*

# § 4: REQUIRED FORMS FOR FILING

## A. FORMS REQUIRED FOR GUARDIANSHIP

*The forms that must be filed initially include:*

1. Request to Waive Court Fees [FW-001-GC].
2. Order on Court Fee Waiver [FW-003-GC].
3. Order Prescribing Notice [DE-200] (to be stamped with the judge's signature when you file).
4. Petition for Appointment of Guardian of Minor [GC-210].
5. Guardianship Petition - Child Information Attachment [GC-210(CA)] (one for each child subject to the guardianship).
6. Consent of Proposed Guardian, Nomination of Guardian, and Consent to Appointment of Guardian and Waiver of Notice [GC-211].
7. Declaration Under Uniform Child Custody Jurisdiction Act (UCCJEA) [GC-120].

8. Confidential Guardian Screening Form [GC-212].
9. Petition for Appointment of Temporary Guardian of Minor [(GC-110) if needed; *see* §11].

You should also check your local court rules and consult with local practitioners to determine whether there are any local forms that must be filed in your jurisdiction. In Los Angeles county, you must also file the following forms:

10. Notification to Court of Address on Conservatorship/Guardianship [PRO-003].
11. Probate Case Cover Sheet - Certificate of Grounds for Assignment to District [PRO-010].

## **B. FORMS REQUIRED FOR SPECIAL IMMIGRANT JUVENILE FINDINGS**

1. Petition for Special Immigrant Juvenile Findings [GC-220]
2. Supporting Declarations

## **§ 5: STEP 1: PREPARING THE INITIAL FORMS**

A sample set of completed probate guardianship forms can be found in *Appendix F*. You can access fillable forms online at <https://www.courts.ca.gov/forms.htm>.

You can find local forms on the Superior Court website for your local court. The Los Angeles County forms: “Probate Case Cover Sheet” and “Notification to Court of Address on Guardianship” can be accessed at <http://www.lacourt.org/forms/all>.

You may be the attorney for the guardian or the minor if the minor is 12 years old or older and the petitioner; do not list yourself as attorney for both guardian and the minor. The petitioner for the guardianship can be the proposed guardian, the minor (if age 12 or over), or some other person on behalf of the minor. Probate Code, § 1510(a).

We recommend listing the minor as the petitioner when possible if the minor is age 12 or over due to potential conflicts of interest between the minor and proposed guardian. As the attorney bringing the action on behalf of the petitioner, you will enter into an attorney-client relationship with the guardian if the proposed guardian is the petitioner. You will then owe the guardian all of the ethical obligations and duties of care that typically attach to an attorney-client relationship. However, if you already represent the child in their immigration proceedings – or if you plan to represent them in their SIJS petition with USCIS – you may face a conflict of interest between your competing duties to the child and the guardian.

## **A. FORMS REQUIRED FOR GUARDIANSHIP**

### **1. Request to Waive Court Fees (FW-001-GC)**

Because the court fees are very high, you will want to file an Application for Waiver of Court Fees and Costs in most cases. Please note that the petitioner will qualify for a waiver of court fees and costs only if they meet one of the following three requirements:

- a. The minor *and/or* minor’s parent are receiving public financial assistance under one or

more of the following programs:

1. Medi-Cal
2. Cal-Fresh (formerly Food Stamps)
3. SSI or SSP (Supplemental Security Income or State Supplemental Payments Program). This is NOT Social Security Survivors' or Retirement Benefits.
4. IHSS (In-Home Supportive Services)
5. CalWORKS or Tribal TANF
6. CAPI (Cash Assistance Program for Aged, Blind, Disabled).

b. Minor's household gross monthly income (*excluding the guardian's income*) is less than the following amounts:

<u>Number in Family</u>	<u>Family Income</u>
1	\$2,510.00
2	\$3,406.67
3	\$4,303.34
4	\$5,200
5	\$6,096.67
6	\$6,993.34
Each additional family member	\$896.67

**NOTE:** The fee waiver is based on household gross monthly income. A "household" includes anyone who supports the minor and whom the minor supports. The guardian's income is not included in the gross monthly household income of the minor unless they are the parent of the ward. Other adults who live in the home are not considered part of the "household" if their finances are separate (i.e. they pay their own portion of the expenses). Also note that minors are eligible to receive MediCAL in California regardless of their immigration status. Helping your client access MediCAL will enable them to receive a fee waiver and to access important health benefits. Remember always confirm the up to date income guidelines on form FW-001GC

**NOTE:** The list of qualifying income for fee waivers is updated periodically. The most recent qualifying income information is found on Judicial Council Form FW-001 accessible at [www.courts.ca.gov/forms](http://www.courts.ca.gov/forms).

- c. **Minor's household income is not enough to pay for household basic needs for minor and the people supported by minor and also pay court fees and costs (minor's household's monthly expenses exceed minor's household's gross monthly income). This option can be used when Minor's household income exceeds the fee schedule and minor does not qualify for requirement #2.**

To complete the form, add the following information:

- Item 1: Fill in proposed guardian information.**
- Item 2: Fill in attorney's information.**
- Item 3: Fill in proposed ward's (minor's) information.**
- Item 4: Fill in minor's attorney's information (if an attorney was appointed to the minor).**
- Item 5: Fill in minor's employment information.**
- Item 6: Check the first box, indicating that petitioner wishes to waive court filing fees for Superior Court.**
- Item 7: Check if petitioner/minor has asked the court to wave court fees for this case in the last six months.**
- Item 8a: Check if the ward or parents received any of the public benefits listed, and check which public benefit(s) is being received. If you check this box, you do not need to complete items 14 to 18 on page 4.**
- Item 8b: Check if the ward's household income is not more than the amounts listed. If you check this box, complete items 14 to 16 on page 4.**
- Item 8c: Check if the ward's household does not have enough income to pay for basic needs and court fees. If you check this box, complete items 14 to 18 on page 4.**
- Item 9: Check "Person only, no estate" for guardianships of the person.**
- Item 10: Fill in minor's parent's information.**
- Item 11: Check "Person only no estate" for guardianships of the person.**
- Item 12: Leave blank for guardianships of the person.**
- Item 13: Leave blank for guardianships of the person.**
- Item 14: Check if the ward's income is very volatile.**
- Item 15a: Fill in only the ward's monthly finances, if any, separated by sources. Write "0" if the ward has no income.**

- Item 15b: Fill in the total amount of ward’s monthly income. Write “0” if the ward has no income.
- Item 16a: Fill in the ward’s household members’ income, separated by individual members. This includes other children/wards included in the guardianship petition. Each ward requires their own fee waiver, so the wards not included in the current fee waiver should have their income or “0” written here.
- Item 16b: Fill in the total amount of the household’s income. Write “0” if there is none.
- Below Item 16, fill in the total of Items 15b and 16b together. Write “0” if the household and ward’s income is none.
- Item 17: Provide information about the household’s property and assets, but do not include the proposed guardian’s property or assets.
- Item 18: Provide information about the household’s deductions or expenses, but do not include the proposed guardian’s deductions or expenses.

## **2. Order on Court Fee Waiver (FW-003-GC)**

**PRACTICE TIP:** If the petitioner qualifies for a fee waiver under Gov. Code §68632, the court must allow complete waiver of court fees, including reasonably necessary certification and copying. *See* Cal. Rules of Court §3.55. *See* Section 9 about certifying documents.

- Item 1: Fill in guardian’s information.
- Item 2: Fill in information about the attorney for the guardian, if any (this is you if you are representing the guardian)
- Item 3: Fill in ward’s information.
- Item 4: Fill in minor’s attorney’s information (this is you if you are representing the minor).
- Item 5: Check if the court previously waived a fee in this case and include the date of the waiver.
- Item 6: Check “Request to Waive Court Fees.” Leave the rest blank; it will be filled by the clerk.

**PRACTICE TIP:** Fill in the second box on the right hand column with the name and address of court. Fill in the case name as “Guardianship of \_\_\_\_\_ ” (minors/wards).

The Fee Waiver Application should be granted in whole if a parent or minor receives any of the public benefits in Item 8a of the Application or when the petitioner or minor qualifies for a fee waiver based on Item 8b of the Application. Waived fees include the filing and investigation fees, and the additional costs of copying and certification. This Order will be approved at the time of filing. If Petitioner seeks a fee waiver based on Item 8c of the Application, the clerk will accept the

documents for filing and forward the Fee Waiver Application to a judge for review. If the fee waiver is denied, the Petitioner will be notified by mail and must pay the filing fees or submit a Request for Hearing (FW-006) within 10 days of this notification or the filing will be voided. Cal. Rule of Court, § 3.52(1), Gov. Code, § 68634.

### **3. Order Prescribing Notice [DE-200] (to be stamped with the judge's signature when you file)**

Input the information as it is written on the sample form in this manual. The Order specifies that the parents must be personally served and that the relatives of second degree must be served by mail. You should not specifically name any of the persons who need to be served, nor omit any information even if you do not expect to be able to serve that person. Also, in Item 2 add the words "and a copy of the petition."

### **4. Petition for Appointment of Guardian of Minor (GC-210)**

If the Proposed Guardian or ward speaks only Spanish, in the header, on the line next to "Attorney for," write "Spanish Speaking only". This will prompt the court to assign a Spanish-speaking investigator to the case.

Item 1: Do not forget the name of the petitioner on the first line. Remember that the petitioner may be the minor if 12 years old or older, the guardians, or another person on behalf of the minor. Probate Code § 1510(a). If the guardianship is over multiple siblings and the oldest sibling is age 12 or over, the oldest sibling can be the petitioner for all the siblings. Use full legal names as listed on the birth certificate.

Petitioner and/or guardian must sign forms exactly as their names are listed throughout the forms. Only one person needs to be listed as petitioner, even if there is more than one proposed guardian. However, in Peace of Mind cases, discussed in Section 12, *infra*, it is helpful to list another person instead of, or along with the terminally ill parent as a petitioner, in the event that the parent passes away before the guardianship hearing. This would avoid having to re-file the case under a new petitioner.

Item 1a: Type in the name and address of the proposed guardian or guardians, or in a joint guardianship, the name and address of the parent who has a terminal illness and the name and address of the person(s) that the parent chooses to serve as joint guardian(s). Use full legal names as listed on the birth certificate.

Item 1b: Leave blank. This is for guardianship of the estate cases only. If you have more than one guardian of the person, list all proposed guardians in item 1a.

Item 1c: If the guardianship is of the person only, bond is not necessary. Check box 1, "bond not be required" and check "because the petition is for guardian of the person only."

Item 1d&e: Do not check these; they are inapplicable.

Item 1f: Fill in if notice is not possible, (i.e., because the person is deceased or his whereabouts unknown), or more importantly, if notice to certain persons would be detrimental to the interests of the child (i.e., the person is violent), describe those facts in an Attachment 10 (see Item 10 below). Please note that the request to dispense with

notice will not be decided until the hearing. If the judge determines that notice is appropriate, the hearing will be continued so notice can be completed.

- Item 1g: If the petitioner seeks other orders, include them in an Attachment 1g. Examples of other orders include: an order regarding the minor's eligibility for special immigrant juvenile status, order for continued health insurance coverage or an order specifying parental visitation rights.
- Item 2: Fill in each minor's complete name as listed on their birth certificate and date of birth. If there are more than 4 minors at issue, the names and dates of birth of the additional minors should be set forth in Attachment 2.
- Item 3: Check the box that applies to the petitioner.
- Item 4: If the proposed guardian is related to the minor, check box (b). If the proposed guardian is not related to the minor, check box (c)
- Item 5: Although Item 5 literally asks if the petitioner intends to adopt, the relevant inquiry should be whether the proposed guardian intends to adopt. If the proposed guardian intends to adopt, check this box. If proposed guardian is unsure about the answer to this question check "I don't know."
- Item 6: Check the boxes that apply only if a person other than the proposed guardian has been nominated by a will or another written nomination. If so, affix the nomination in an Attachment 6.
- Item 7: Leave blank; it is inapplicable to guardianships of the person.
- Item 8: Check the box by "person." In the space provided, set forth the reasons appointment of a guardian of the minor is necessary and convenient. If needed, continue in Attachment 8. If parental custody of the minor would be detrimental to the minor, check the box and explain the reasons in Attachment 8. Explain why the parents are unable to care for the minor, as well as the relationship between the child(ren) and the proposed guardian(s), and why the proposed guardian(s) would be a suitable caregivers(s) for the child(ren). If guardianship of the person is being sought over a parent's objection, the attachment should state facts establishing that leaving the child in the parent's custody would be detrimental to the child and that granting guardianship would be in the child's best interests. *See* § 1, *supra*. If there is a request for SIJ findings, be sure to also detail facts of abuse, abandonment, or neglect. Keep in mind that all parties, including parents, grandparents, and siblings of the minor over age 12, DCF, and CDSS (if the proposed guardian is unrelated to the child) must be served with this attachment, as it is part of the Petition. Discuss with the minor and proposed guardian what information they wish to include in this attachment.

**PRACTICE TIP:** In submitting a guardianship petition under AB 900 or AB 2090, tailor your response to the language of AB 900 and be clear the youth is a “particularly vulnerable immigrant youth” who needs a guardian even though they are over 18 and why the adult or parent is best suited to be a guardian. We recommended mirroring the language of the statute and focusing on the youth’s vulnerability and the ways the guardianship is necessary for them to navigate education, health, finances and other aspects of life in the United States. ***An example of a strongly worded explanation included in the examples found in Appendix C.***



- Item 9: Leave blank; it is inapplicable to guardianships of the person.
- Item 10: Check this box only if item 1f was checked. A request to dispense with notice may be granted if these persons cannot with due diligence be given notice (i.e., if they are deceased or their whereabouts unknown or doing so would be against the interests of justice. *See* § 7E-F, *infra*. Attachment 10 should include the names of persons that are deceased or have not been located or notified and the diligent efforts made to notify those persons or the reasons why notification would be against the interests of justice.
- Item 11: Complete this section if the proposed guardian is not a relative. If the petitioner is not the proposed guardian, include an Attachment 11b, which includes the following or its equivalent: The undersigned is the proposed guardian of the person of [name], a minor, in these proceedings. The undersigned will promptly furnish all information requested by an agency referred to in Probate Code § 1543.

Dated: \_\_\_\_\_

Signature of proposed guardian

Check the boxes in 11 (c) and/or (d) if appropriate.

- Item 12: Check this box. (Note that depending on your jurisdiction item 12 may not be necessary if proposed ward is 18, 19, or 20.)
- Item 13: Check each appropriate box for the documents filed with the petition.
- Item 14: Note the number of pages that are attached to the Petition.

***Make sure that you sign and date the form and that each petitioner signs and dates the form.***

**5. Guardianship Petition - Child Information Attachment [(GC-210(CA))]  
(one for each child subject to the guardianship)**

A Child Information Attachment must be filled out for each child subject to the guardianship.

Make sure that you write the names of all minors involved at the top of the form, and just below, the name of the specific child that form refers to. Each form should be attached to item 2 of form GC- 210; check the corresponding box. Then check the box just below, indicating if it is a guardianship of a person or of an estate.

- Item 1a-b: Enter the child's full legal name, date of birth, address, and telephone number. Make sure you are using the same name consistently throughout the petition and all attachments.
- Item 1c: Check this box to indicate whether the child has Native American heritage. If the answer is "Not sure" or "No," then answer item (2). If the answer for either (1) or (2) is "Yes," then the Notice of Child Custody Proceeding for Indian Child (Form ICWA-030) must be filled out and notice must be mailed according to the ICWA special notice

procedure. Refer to § 7D, infra, for additional information.

- Item 1d: Check the box that applies.
- Item 1e: Check the box that applies. The child's receipt of public benefits is relevant both to the need for guardianship and the waiver of fees. Specify in the boxes provided the type and amount of aid the child is receiving.
- Item 1f: Complete this item if a court has ordered legal custody or if a parent claims legal custody and give the name and address of the legal custodian. Leave blank if unknown.
- Item 1g: If the child lives with someone who does not have legal custody of the child, check this box and specify who the child lives with. This is usually the proposed guardian(s).
- Item 1h: Check the box if applicable, and enter information concerning any adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceedings involving the minor in the provided boxes. Attach copies of any relevant orders or pending proceedings, if available.
- Item 1i: Check this box if applicable and enter the name of the institution the child is presently at, or on leave from.
- Item 2: List the names and addresses of all relatives within the second degree (parents, grandparents, siblings or half-siblings). Prob. Code, § 1510(c). If space is inadequate for additional siblings, names can be included in an Attachment 2 - Other Siblings. If there is a person nominated to be the child's guardian other than the person you are representing, list their information at the bottom of item 2.
- Item 3: Write the name of the proposed guardian in item 3a. Indicate in item 3b the relationship they have to the child (i.e., "Maternal Aunt", "Step-Sister", etc.). If the proposed guardian is not a relative of the child, include a brief description of their connection to the child.

**NOTE:** A relative is defined as: Any person related to a minor child by blood, marriage, or adoption who is within the 5th degree of kinship to the child. This includes: (1) The father, mother, brother, sister, half-brother, half-sister, uncle, aunt, first cousin, first cousin one-removed, nephew, niece, or any such person of a preceding generation with the prefixes grand, great-, great-great-, or great-great-great who has assumed primary responsibility for the care of a minor child; (2) The stepfather, stepmother, stepbrother, or stepsister; (3) The spouse of any of the above persons, even after marriage has been terminated by death or dissolution.

***It is very important that the proposed guardian be accurately identified as related or not related on the petition. This will impact who will conduct the guardianship investigation (court investigator's office for related guardians, DCFS for unrelated guardians) and which type of government benefits the guardian can apply for (CalWORKs for related guardians, state foster care - a much higher benefit than CalWORKs- for unrelated guardians).***

Item 4: In the space provided, set forth the reasons for appointing the person in item 3 as guardian of the minor. These should be substantially similar to the reasons set forth in item 8 of the petition. Be sure to describe why this person in particular is best suited to care for the minor. If you need more space, continue in Attachment 4 - Best Interest of Child. In the alternative, you can refer back to your reasons in Question 8 (Form GC-210).

**PRACTICE TIP:** In submitting a guardianship petition under AB 900 or AB 2090, tailor your response to the language of AB 900 and be clear the youth is a “particularly vulnerable immigrant youth” who needs a guardian even though they are over 18 and why the adult or parent is best suited to be a guardian. We recommended mirroring the language of the statute and focusing on the youth’s vulnerability and the ways the guardianship is necessary for them to navigate education, health, finances and other aspects of life in the United States. *An example of a strongly worded explanation included in the examples found in Appendix C.*

Item 5: Indicate whether the parents of the child agree to the proposed guardianship. If unknown, check "Not known at this time." If either parent agrees, they can nominate the guardian on the "Nomination of Guardian" form (GC-211).

Item 6: Check the boxes as appropriate.

Item 7: Check this box if the petitioner is not the proposed guardian. If so, specify in the space provided the petitioner's relationship to the child.

Item 8: If the child has no known Native American ancestry, check box (c) and (8). Include an attachment with the names, addresses, and phone numbers of the individuals interviewed to obtain information on Native American heritage, and the date or dates the interview took place.

***Again, be sure to fill out a separate Child Information Attachment (GC-210 (CA)) for each child at issue and attach all forms to the GC-210.***

## **6. Consent of Proposed Guardian, Nomination of Guardian, and Consent to Appointment of Guardian and Waiver of Notice (GC- 211)**

This form is actually three documents printed on the same page. Have the proposed guardian(s) sign both the consent (top) portion of one form and, if appropriate, the waiver of notice (bottom) portion of the same form. If there are two proposed guardians, they can sign the same consent form (simply insert a signature line above the existing proposed guardian signature line). Since minors over the age of 12 are also entitled to notice (see § 7A), have the minor sign the waiver of notice as well (minor can sign on the same form as the proposed guardian). Any relatives entitled to notice (see § 7A and § 7B) can waive that right by signing the waiver portion of the form. You may submit additional Consent and Waiver forms after the initial filing, if additional time is needed to obtain signatures from relatives who are entitled to notice but willing to sign the Consent and Waiver of Notice.

If the parent(s) of the minor consent(s) to the appointment of the proposed guardian, have each parent(s) sign a separate form on the nomination of guardian (middle) portion of the form. Each parent can also sign the waiver of notice portion of the form if they wish to waive notice. If you are filing a joint guardianship, both the parent and proposed guardian must sign the Consent of Proposed Guardian. Some judges will accept the waiver of notice as also waiving notice of the Request for SIJ findings. However, other courts require a separate waiver of notice specific for the SIJ findings request. A sample waiver of notice for SIJ findings is attached at **Appendix B**.

## **7. Declaration Under Uniform Child Custody Jurisdiction Act (UCCJEA) (GC-120)**

List the minor's periods of residence and addresses for the past five years. You will also need to indicate if the youth has been involved in another juvenile court or custody proceeding. If the answer is yes, you should consult with an experienced practitioner to determine whether the prior custody order impacts the jurisdiction of the probate court. (Note that depending on your jurisdiction item 12 may not be necessary if proposed ward is 18, 19, or 20)

## **8. Confidential Guardian Screening Form (GC-212)**

*Each proposed guardian must submit one of these forms.*

- Item 1: Fill in proposed guardian's name, date of birth, social security number, driver's license number, and telephone numbers. If the guardian does not have a social security number or a driver's license, write "none." *The guardian's immigration status is not relevant to the guardianship proceeding.* A separate form must be used for each proposed guardian. In peace of mind / joint guardianship cases (see section 12, below), the parent must also complete this form.
- Item 2-19: Answer all questions and explain "yes" answers in attachments. Please note that a "private professional fiduciary" is defined in Business and Professions Code § 6501(1) means "a person who acts as a conservator or guardian for two or more persons at the same time who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership." If the guardian has a significant criminal history or significant DCFS involvement, consult with an experienced practitioner.

## **9. Petition for Appointment of Temporary Guardian (GC – 110(P)) (only if requesting a temporary guardian)**

- Item 1: Insert name of petitioner on first line.
- Item 1a: Type in the name and address of the proposed temporary guardian, or in a joint guardianship, the name and address of the parent who has a terminal illness and the name and address of the person(s) the parent chooses to serve with the parent as joint guardian(s).
- Item 3: Fill in attorney information.

- Item 4: Check the appropriate box, depending on who the petitioner is. Also check the third box if the petitioner is one of the proposed wards and is at least 12 years old.
- Item 5: Check box for the relationship between the minor(s) and proposed temporary guardian.
- Item 6: Insert each child's information, including name, address, and phone number.
- Item 7: Explain why the temporary guardianship is necessary. If more space is needed, use Attachment 7: Reasons for Appointment of Temporary Guardian. A temporary guardianship is only to be issued in the case of an emergency, such as the child is unable to receive medical care or is in danger of being harmed in some way (i.e. via parental abuse).
- Item 8: Check here that minors will attend hearing--unless there is a very good reason for minors not to attend (illness, standardized tests, minor under age of 4).
- Item 9: Check the appropriate boxes if you are requesting notice to the mother and/or father to be excused for the temporary hearing. If you are requesting that notice be excused, check the appropriate box. You will need to write the parent's name in and explain below why good cause exists to excuse notice.
- Item 10: Indicate the number of pages attached to the temporary guardianship petition. Attorney must sign and date. Petitioner(s) must sign and date.

**10. LOS ANGELES LOCAL FORM: Notification to Court of Address on Conservatorship/Guardianship (PRO-003, Confidential Form)**

The Los Angeles County Superior Court will require this form in the initial filing. If the guardian does not have a social security number or a driver's license, write "none." ***The guardian's immigration status is not relevant to the guardianship proceeding.*** The minor's social security number is not required by law. You do not need to fill out the 2nd page of the form. This form is required in the initial guardianship filing and can be printed on white paper (the filing window at the Central courthouse will accept it even though the form indicates that it should be printed in yellow paper). However, after temporary or permanent guardianship has been ordered, you will need to give an additional yellow copy of this form to the clerk before the Letters of Guardianship will be issued.

**11. LOS ANGELES LOCAL FORM: Probate Case Cover Sheet- Certificate of Grounds for Assignment to District (PRO-010)**

The Los Angeles County Superior Court will require this form in the initial filing. On the first page, check the box for "Petition – Appoint Guardian of Person Only," number 3051. The attorney signs this form at "Step 3" and submits it when filing the petition. Los Angeles County cases may only be filed in the Central District or Antelope Valley courts. *We strongly recommend cases be filed in the Central District.* Fill in "Step 4" if the client speaks a language other than English and requires a court interpreter. Fill in Step 5" on the third page, which includes the ward(s) information.

*See Appendix F for a sample set of completed guardianship forms.*

## **B. FORMS REQUIRED FOR SPECIAL IMMIGRANT JUVENILE FINDINGS**

### **1. Petition for Special Immigrant Juvenile Findings (GC-220) (if you are requesting SIJ findings)**

*Following are the additional documents required if you are requesting that the court make SIJ findings (See Appendix B for samples).*

#### **a. Request for SIJ findings (GC-220)**

- Item 1: The petitioner for the SIJ findings should be the same as the petitioner for the guardianship. As discussed above, we recommend that the minor be the petitioner if the minor is over 12 years old. If they are under 12, they are not allowed to be the petitioner in probate court and the proposed guardian will likely need to be the petitioner.
- Item 2: Put the legal name of the minor and their country of citizenship
- Items 5-6: These questions involve the reasons reunification with one parent is not viable and why the child's best interest is served by staying in the United States. Although the attorney is submitting a declaration with Form GC-220 that contains all of this information, it is important to summarize the bases for these findings in these two sections on the form itself as well. This should include the facts about what happened with the absent parent and why it is not in the child's best interest to return to their country of nationality or of last habitual residence, while also citing to the legal basis under California law to support the findings. See **Appendix B** for a sample Form GC-220.

The following are the key provisions of California law that practitioners can cite for **questions 5-6**. It is important to note that, although these code sections might be the most helpful for practitioners, they are no substitute for independent legal research based on the facts of an individual case. Moreover, while citing to California statutory law should provide a sufficient state law basis for your SIJ findings, practitioners can also cite to California case law to support the SIJ findings as needed<sup>1</sup>.

### **Abuse**

Family Code section 6203(a):

“For purposes of this act, ‘abuse’ means any of the following: (1) To intentionally or recklessly cause or attempt to cause bodily injury. (2) Sexual assault. (3) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another.”

**NOTE:** Family Code section 6203(b) clarifies that abuse “is not limited to the actual infliction of physical injury or assault.”

<sup>1</sup> See Immigrant Legal Resource Center, GUIDANCE FOR SIJS STATE COURT PREDICATE ORDERS IN CALIFORNIA, What You Need to Know in 2024, Katie Annand (Immigrant Legal Defense), Brian Huttenburg (Legal Services for Children), Ashley Melwani (International Rescue Committee) & Rachel Prandini (Immigrant Legal Resource Center).

Welfare & Institutions Code section 300(a):

“The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm.”

Welfare & Institutions Code section 300(c):

“The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent. . .”

Welfare & Institutions Code 300(a):  
Physical harm inflicted nonaccidentally

Welfare & Institutions Code 300(b)(2):  
Victim of sexual trafficking

Welfare & Institutions Code 300(d):  
Sexual Abuse

Welfare & Institutions Code 300(i):  
act of cruelty

Family Code 6203:  
abuse defined – bodily injury, sexual assault, etc.

Family Code 3011(a)(2):  
history of abuse

Family Code 3030(a):  
History of sexual abuse

Family Code 6211:  
Domestic Violence

Penal Code 273a, 11165.1, 11165.3, 11165.4, 11165.6:  
Criminal Child Abuse

**NOTE: Under Welfare and Institutions Code section 300(c) a youth who has suffered emotional abuse may qualify as an abused child and receive SIJ findings.**

## Abandonment

Family Code section 3402(a):

“Abandoned’ means left without provision for reasonable and necessary care or supervision.”

Welfare & Institutions Code section 300(g):

“The child has been left without any provision for support”

Welfare & Institutions Code 300(g): Child left without provision for support [this can include death of parent(s)]

Family Code 7822(a)(3);(b):

Child left in the care of one parent or non-parent, with failure by abandoning parent to provide support, or without communication from the other parent, with intent to abandon

Family Code 3402(a):

Abandoned defined as child left without provision for reasonable and necessary care or supervision

Family Code 3010(b):

Death, inability or refusal to take custody, or abandonment

Penal Code 270:

Criminal child abandonment

**NOTE:** The term “abandonment” under California law looks at a child’s situation of being left without any provision for support – and not at the parent’s situation of having abandoned their child. There is therefore no intent requirement to show abandonment in California. As such, a parent that fails to send their child money or fails to maintain contact with their child can have abandoned their child, even without intending to do so. *See, e.g., D.M. v. Superior Court, supra*, 173 Cal.App.4th at 1128-29 (no parental intent required for a finding that a child falls under Welf. & Inst. Code § 300(g)); *In re Jorge G., supra*, 164 Cal.App.4th at 132-33 (finding that a child was abandoned under Fam. Code § 3402(a) when his parents were incarcerated).

**PRACTICE TIP: Death of a parent as abandonment for SIJS purposes.** The death of a parent *should* be considered abandonment under California law. California treats children that have experienced the death of a parent in the same way that it treats children that have been abandoned for dependency purposes; in both situations, the child has been left “without any provision for support.” *See* Welf. & Inst. Code, § 300(g). *See also D.M. v. Superior Court, supra*, 173 Cal.App.4th at 1128-29 (no parental intent required for a finding that a child falls under Welf. & Inst. Code § 300(g)); *In re Jorge G., supra*, 164 Cal.App.4th at 132-33 (finding that a child was abandoned under Fam. Code, § 3402(a) when his parents were incarcerated). In preparing a SIJS case based on death as abandonment, practitioners should focus on whether the child was left without “provision for support” following a parent’s death – *i.e.*, whether the child received an inheritance or some other form of financial support from the deceased parent. If the deceased parent left the child an inheritance or otherwise provided for them, focus instead on the absence of that parent from the child’s life. How did that parent’s death make the child feel? Did the death of that parent have a continuing impact on the child’s life? Does the child still think about and miss their deceased parent?

Although practitioners should argue that the death of a parent *is* abandonment by that parent, death could



be a similar basis to abandonment under California law as well. Section 11250 of the Welfare & Institutions Code outlines when children can receive aid and other services from the state. It states that, “[a]id, services, or both shall be granted under the provisions of his chapter...to families with related children under the age of 18 years...in need thereof because they have been deprived of parental support or care due to: (a) the death, physical or mental incapacity, or incarceration of a parent...(c) continued absence of a parent from the home due to...desertion ...” See Welf. & Inst. Code, § 11250.

## **Neglect**

Family Code section 3200.5(b):

This section of the Family Code involves supervised visitation of a child – more specifically when the services of a professional provider of supervised visitation services might be necessary. Family Code section 3200.5(b) discusses situations when a court might order supervised visitation with the help of a professional provider, including in “any case in which the court has determined that there is domestic violence or child abuse or neglect, as defined in Section 11165.6 of the Penal Code....” Penal Code section 11165.6 in turn references Penal Code section 11165.2, which is discussed in more detail below.

Welfare & Institutions Code section 300(b)(1):

“The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

Penal Code section 11165.2(a):

“‘Severe neglect’ means the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive. ‘Severe neglect’ also means those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as proscribed by Section 11165.3, including the intentional failure to provide adequate food, clothing, shelter, or medical care.”

Penal Code section 11165.2(b):

“‘General neglect’ means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred.”

**PRACTICE TIP: There is no intent requirement for a finding of neglect in California.** Penal Code section 11165.2 begins by noting that the term “neglect” includes both acts and omissions on the part of the person responsible for a child’s welfare. Thus, there is no intent requirement for neglect under California law, and failing to provide a child with the necessities of life for whatever reason should qualify as neglect.

Education Code sections 48200, 49160:

These code sections both involve the conditions under which children in California can work. Section 48200 states that, “[e]ach person between the ages of 6 and 18 years not exempted under the provisions of this chapter or Chapter 3 (commencing with Section 48400) is subject to compulsory full-time education,” while section 49160 outlines the conditions under which children can work.

**PRACTICE TIP: Working as neglect.** California law clearly requires children to go to school and not to work, unless they work under very specific conditions. Parents who allowed their children to work in their home countries – even if the child asserts that he or she is the one that made that decision – likely did not adequately supervise their children under California law, which is a form of neglect.

Welf & Inst. Code 300(c):

Conduct of parent resulting in serious emotional damage

Fam. Code 7823(a):

Neglect/ cruel treatment

See also Legislative Analyst’s Office, January 1996 Child Abuse and Neglect in California Part I

Penal Code 270, 11165.2:

Criminal child neglect

### **Best Interest Determinations**

Family Code section 3011:

“In making a determination of the best interests of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, and consistent with Section 3020, consider all of the following: (a) The health, safety, and welfare of the child.”

Family Code section 3020(a):

“The Legislature finds and declares that it is the public policy of this state to ensure that the health, safety, and welfare of children shall be the court’s primary concern in determining the best interests of children when making any orders regarding the physical or legal custody or visitation of children.”

### **Similar basis under state law**

Death (leaves the child “without any provision for support” (Welf. & Inst. Code § 300(g)); Harm or substantial risk of harm as a result of failure or inability to supervise or protect (Welf. & Inst. Code § 300(b)(1));<sup>14</sup> Finding that placement with a parent would be detrimental to the child (Fam. Code § 3041)

## C. SUPPORTING DECLARATIONS:

Along with the SIJ findings petition, you should file declarations to provide a factual basis for the guardianship and SIJ findings. CCP section 155(c)(1) is explicit that the declaration of a child alone can provide sufficient evidence to require the superior court to issue SIJ Findings. If the youth is old enough to describe their situation, the declaration should be from the child. If the youth is too young to submit a meaningful declaration, the declaration can be from the proposed guardian and the youth and/or other person who may have pertinent knowledge. The declarations are filed concurrently with the other guardianship forms, but they are not attached to any other form. If the declarant is not fluent in English, you will need to include a certificate of translation, attesting that the declaration was translated to them in their best language. Sample child's declarations are attached at *Appendices B and C*.

Themes the declaration should address include:

- The identity of the child's parents
- Facts surrounding the parent(s)'s abuse, abandonment, and neglect.
  - Describe specific instances of abuse or neglect.
  - If abandonment is the basis for eligibility, describe the lack of contact by the parent(s) and the parent(s) failure to financially provide for the child.
  - If the parent(s) is deceased, describe the parent(s)'s failure to provide for the child through an inheritance or other means or provide for the child during the deceased parent's lifetime (if applicable).
- Why the child cannot return to their home country (what harms they face if they were to return, whether there is anyone who can care, provide, and protect them, etc.).
- The relationship between the child and the proposed guardian whom the child wants to have custody over them (ways the guardian provides for the child, both financially and emotionally, how the child feels living with or being cared for by the parent, etc.).
- Why the child custody order is necessary (ie their parent(s) are not able to care from them and there is no one else to provide for the child or make necessary decisions for them).
- Facts that form the basis for a finding that it is in the child's best interest to remain in the United States and not return to their country of nationality.
  - Is there anyone in the child's country of nationality who could care for them?
  - Even if there is someone who could care for them, would the child's quality of life be significantly worse in their country of nationality?
  - What are the conditions in the child's country of nationality, economic, social or political that may be detrimental to them?
  - What kind of employment and educational options would the child have in their

country of nationality?

- Violence the child has suffered or may suffer if returned to their home country.

**NOTE: AB 900/AB 2090 cases:** For AB 900 and AB 2090 cases, the guardianship can only be granted if the youth consents to the guardianship. In the declaration, the youth should explicitly state that they understand that they have the legal right to make their own decisions, but that they would like to give these rights to their proposed guardian. They should also provide an explanation of why they need a guardian even though they are over 18. We recommended reviewing the language of the AB 900 and focusing on the youth's vulnerability and the ways the guardianship is necessary for them to navigate education, health, finances and other aspects of life in the United States. ***A sample declaration is found at Appendix C.***

**BEFORE FILING:** Check to make sure you did all of the following:

1. Did you use the child and proposed guardian's full names as reflected on their birth certificate or California ID?
2. Did client sign AND date the guardianship petition?
3. Did client sign using EXACTLY the same name as listed on petition?
4. Did you use the EXACT same name (first, middle and last) on each form?
5. If applying for a fee waiver based on #5c on the FW-00 1-GC (not enough money to pay for basic needs and pay filing fee), did you attach proof of income, copies of bills, banks statements, etc.?

## § 6: STEP 2: FILING THE FORMS

You should check your local rules regarding whether electronic filing is mandatory. E-filing is now mandatory for attorneys in the Los Angeles and in most Probate Courts in California. You will need access to an e-filing account to file as an attorney. Electronic filing of court documents occurs through an electronic filing service provider (EFSP). Please *see* <http://www.odysseyfileca.com/index.htm> as the first step to file electronically.

**NOTE:** The Petition will be accepted electronically without payment of a fee if you submit a fee waiver request. If your fee waiver request is based on Item 8a of the FW-001 GC, it will be approved at the time of filing. If the fee waiver request is based on Item 8b or 8c, the request will be forwarded to a judge for review. FW-003GC Will typically be sent to you over email. If you do not receive a decision within a week, you should check with the client to make sure the decision was not sent to them and call the court clerk. ***If the fee waiver is denied, you must pay the filing fee or request a hearing within 10 days. If you fail to do so, your filing will be voided.*** To request a hearing on the fee waiver denial, submit form FW-006. You can call the Probate Filing Window to check on the status of your fee waiver request if you have not received communication from the court within a week after you filed your documents.

If you have questions about probate filings and are filing in Los Angeles the probate clerk's phone number at the Stanley Mosk Courthouse is (213)830-0850. Phone hours are from 8:30-10:30 a.m. and 1:30-3:30 p.m.

***After you file and receive the hearing date, be sure to send your client a "Court Letter" with information regarding the date, time, and location of the hearing. See Appendix G for a sample.***

**PRACTICE NOTE:** Pursuant to Rules 2.550 and 2.551 of the California Rules of Court, records, not otherwise protected by State confidentiality laws, may be sealed.

Rule 2.551 discusses procedures to have your clients records sealed. If you feel the facts of your client's case are particularly sensitive, you may request the case be sealed.

## § 7: STEP 3: COMPLETING THE NOTICE REQUIREMENTS

Notice of the guardianship hearing must be given at least 15 days prior to the hearing to certain individuals and entities entitled to notice. Prob. Code, § 1511(a). However, if any of these persons have consented to the guardianship petition by signing the Waiver of Notice section of the Nomination, Consent, and Waiver form, notice to them is not necessary. If you want the court to waive notice to any other person because: (1) the person cannot with reasonable diligence be found, *see* § 7E *infra*, or (2) notifying the person would be against the interests of justice, *see* § 7F *infra*, you may make that request in the GC-210, items 1 f and 10. You must also submit a declaration of due diligence prior to the hearing describing the ways you attempted to locate the whereabouts of the person, which failed. *See* § 7D, *infra* for additional information.

If you are requesting SIJ findings, you must also serve copies of the GC-220 and supporting declarations on the ward's parents and the proposed guardian. *See* Cal. Rules of Court, Rule 7.1020(c). Notice of the SIJ findings request can also be waived, and a sample is found in **Appendix B**.

### A. PERSONAL SERVICE

Pursuant to Probate Code § 1511(b) the following persons must receive personal notice of the hearing unless they sign the waiver of notice form:

1. Parents of the minor (natural or adoptive);
2. The minor, if age 12 or over;
3. Any person nominated by will or other document to be guardian; and
4. Any person having legal custody of the minor or serving as guardian of the estate.

To arrange for personal service, you must have someone other than the proposed guardian who is at least 18 years old personally hand the Notice of Hearing form and the Petition (including all

attachments) to the persons listed above. In SIJS cases, also serve a copy of the GC-220 and any supporting Declarations. You should also complete the Proof of Service (Personal) (GC-020p) form and give it to the person whom you have arranged to serve the documents. Have that person fill out the items, sign and date the form, and return to you, so it can be filed.

**PRACTICE TIP: Serving Individuals Outside the United States.** Before serving an individual outside of the United States, it is critical that you check the rules governing service in the country where you plan to effectuate service. If the country is a signatory to the Hague Convention, you will likely have to effectuate service through that country's Central Authority. Service under the Hague Convention is outside the scope of this Manual so be sure to consult with experienced family law attorneys. El Salvador, Guatemala, and Honduras are not signatories to the Hague Service Convention, but Mexico is a signatory. Note that service under the Hague Service Convention is not necessary if the individual signs a waiver of notice or if the court waives notice to the individual.

El Salvador, Guatemala, and Honduras are signatories to the Inter-American Convention on Letters Rogatory and Additional Protocol (IACLR). However, under the IACLR, service under California law is acceptable because El Salvador, Guatemala, and Honduras have not required the exclusive use of letters rogatory to effectuate service. *See, e.g., Kreimerman v. Casa Veerkamp* (5th Cir. 1994) 22 D.3d 634 (holding that the text of the convention strongly indicated, not that the IACLR preempts other conceivable methods of service, but that it merely provided a mechanism for transmitting and delivering letters rogatory when and if parties elect to use that mechanism); *Pizzabioche v. Vinelli* (M.D.Fla. 1991) 772 F.Supp. 1245.

## **Incarcerated Parents**

In the event you need to locate a parent who is in **County Jail** (as opposed to State Prison), you may do an inmate search in the county where the person was arrested. If the arrest took place in Los Angeles county you can search at <https://www.inmateaid.com/prisons/los-angeles-county-jail-men-s-central-jail> or by telephone at (213)473-6100 with the person's name and, if known, date of birth. You should be able to get information related to the arrest, charges, and court dates. The Sheriff's Department can personally serve an inmate in Los Angeles County jail. Service is free if the petitioner has a court fee waiver, but you must submit a certified copy of the fee waiver order. Certified copies can be obtained in Room 112.

To locate a prisoner in a **State Prison** in California you may call (916)445-6713 with all the above information or look in the following website: <https://apps.cdcr.ca.gov/ciris/>. Request the prisoner's CDC# (California Department of Corrections' number) and the prison at which the prisoner is located and ask to speak to someone in the legal or litigation office. Ask for the prison's process for completing personal service on an inmate. Each prison has a slightly different process.

If you are unable to arrange for personal service, California allows Substituted Service by Acknowledgment and Receipt Code of Civil Procedure § 415.30 in lieu of personal delivery. You will need to complete the Notice and Acknowledgment of Receipt form and send two copies of it along with the Petition, attachments, Notice of Hearing, and a return envelope, postage prepaid and addressed to the sender. Persons who receive the Notice and Acknowledgment of Receipt are required by law to sign the form and return it to you within 20 days (or they will be required to pay any expenses necessary to arrange to have the documents personally served on them).

## **B. SERVICE BY MAIL**

According to Probate Code sections 1511, 1516, and 1542, the following persons and agencies must be notified by mail. Certified mail is not required, but may be advisable:

1. The grandparents of the minor (both maternal and paternal).
2. The siblings of the minor over the age of 12 (including half and adoptive siblings). Siblings under the age of 12 are considered to be served if a parent or guardian with whom they reside is served, so generally no additional notice to them is necessary.
3. The person with whom the child lives with, even if that person does not have legal custody of the child.
4. Department of Children and Family Services. In Los Angeles County, the address to serve the Department of Children and Families is:

Attn.: Guardianship Section  
201 Centre Plaza Drive  
Monterey Park, CA  
91754

5. California Department of Social Services

744 "P" Street  
Sacramento, CA 95814-6413

**NOTE:** The California Department of Social Services must only be served if the guardian is unrelated to the youth. *See Prob. Code, § 1542.*

6. If the minor is in or on leave from a State Mental Hospital:

California Director of Mental Health  
Department of Health and Welfare 1600 Ninth Street  
Sacramento, CA 95814  
(Prob. Code, §§ 1461, 1511(d)).

7. If the minor is receiving Veteran's Administration Benefits:

Veteran's Administration  
Los Angeles Regional  
Office Benefits Division  
11000 Wilshire  
Boulevard Los Angeles,  
CA 90024  
(Prob. Code, §§ 1461.5; 1511(e)).

8. If the minor has or may have Native American Heritage: PC §§ 1460.2, 1511(i)

**NOTE:** Service of GC-220 and any supporting documents related to the Request for SIJ finding are governed by California Rules of Court, Rule 7.1020(c), and Probate Code section 1460(b). Service of the SIJS-related documents are required on the parents, proposed ward, and proposed guardian. Cal. Rules of Court, Rule 7.1020(c); Prob. Code, § 1460(b). Note that second degree relatives and the child welfare agencies do not need to be served with the SIJS-related documents.

## **C. NOTICE OF HEARING-GUARDIANSHIP FORM (GC-020 and GC-020P)**

For individuals who are being served either by mail or in person, you will need to complete the Notice of Hearing form after you file the initial guardianship forms with the court. You will be sending the Notice of Hearing along with the Petition for Appointment of Guardian and attachments (GC-210 and GC-210(CA)) to all persons served, whether by personal service or by mail.

- Item 1: Indicate the name of the petitioner and the name of the document filed (Petition for Appointment of Guardian). If you have filed a temporary guardianship petition, you should complete a separate Notice of Hearing for the Petition for Appointment of Temporary Guardian. If you are requesting SIJ findings, be sure to refer to the additional documents that the petitioner has filed-for example, the GC-220 and any supporting declarations.
- Item 4: Fill out the date, time, and location of the hearing. At the Los Angeles Central court-house, guardianship hearings are held at 10:30 a.m.

The second page, proof of service by mail, and GC-020P, proof of personal service (attached as the third page) must be completed and signed according to how notice was completed. This document must be e-filed prior to the day of the hearing.

## **D. NOTICE FOR NATIVE AMERICAN CHILDREN**

Notice requirements for children with actual or possible Native American heritage are complex. Please read the discussion below carefully and contact an experienced practitioner if you have questions. The notices described below must be completed as soon as possible because the agencies and tribal authorities entitled to notice are given up to 60 days response time before a guardianship can be established. Also, proceedings that take place without proper notice may violate the Indian Child Welfare Act, and any action taken in such a proceeding may be subject to invalidation. 25 USC, § 1914

1. The first step is to determine whether the child is a "child of Indian descent" or an "Indian child" pursuant to the Indian Child Welfare Act ("ICWA").
  - a. The Act defines an "Indian Child" as any unmarried person who is under age eighteen and is either:
    - i. a member of a federally-recognized Indian tribe, or
    - ii. is eligible for membership in a federally recognized Indian tribe and is the biological child of a member of a federally recognized Indian tribe. 25 USC § 1903(4).



2. A petitioner knows or has reason to know that the child is an Indian child-and notice is triggered when there is evidence "suggesting" that the minor "may" be an Indian child. Neither the child nor the child's parents must be enrolled in a tribe for a child to qualify as an Indian child. For example, notice requirements under the ICWA are triggered when a parent claims that their grandparents are of Native American ancestry even though neither parent is enrolled in an Indian tribe. *In re Antoinette S.* (2002) 104 Cal. App. 4th 1401.
3. If the petitioner knows or has reason to know that the child is an Indian child and if the petitioner knows the identity and location of the child's parent(s), Indian custodian, and tribe(s), then notice must be given to the following:
  - a. Child's parents, including adoptive parents;
  - b. Child's Indian custodian (if the child is living with an Indian person who has legal custody of the child under tribal law or custom or under state law, or if the parent asked the Indian custodian to take care of the child);
  - c. Child's tribe or tribes (all tribes with which the child is potentially affiliated);
  - d. Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825; and
  - e. Secretary of the Interior, 1849 C. Street, N.W., Washington, D.C. 20240
4. If the petitioner knows or has reason to know that the child is an Indian child and if the petitioner does not know the identity or location of the child's parent(s), Indian custodian, or tribe(s), then notice must be given only to the Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.
5. Method of Notice (Cal. Rules of Court 7.1015(c)):
  - a. Notice must be sent by registered or certified mail with return receipt requested. Additional notice by first-class mail is recommended but not required;
  - b. Notice to the tribe must be to the tribal Chairperson unless the tribe has designated another agent for service in the BIA list of designated agents;
  - c. Notice must be sent as soon as it is known or there is reason to know the child is an Indian child; and
  - d. Notice for all hearings must continue to be sent to all federally recognized tribes of which the child may be a member or eligible for membership until the court makes a determination as to which tribe is the child's tribe or determines that the ICWA does not apply.
6. Contents of Notice (Cal. Rules of Court 7.1015(c)):
  - a. Copy of the original petition for guardianship, which includes the ICWA-010(A), *Indian Child Inquiry Attachment*;

b. Copy of form ICWA-030, *Notice of Child Custody Proceeding for Indian Child*.

7. Form ICWA-030, Notice of Child Custody Proceeding For Indian Child

- a. Fill in the petitioner's contact information at the top. Check the "guardianship" box in the "Notice of child custody proceeding for Indian child" box. Fill in the case number, hearing date and department number in the appropriate boxes.
- b. If the petitioner knows or has reason to know that the child is an Indian child and if the petitioner knows the identity of the child's parent(s) or legal guardian(s), Indian custodian and tribe(s), then check all of the boxes in the "Notice To" section. Notice must be given to the child's parent(s) or legal guardian(s), Indian custodian, tribe(s), the Secretary of the Interior and the Sacramento Area Director.
- c. If the petitioner knows or has reason to know that the child is an Indian child, but the petitioner does not know the identity or location of the child's parent(s), Indian custodian and/or tribe(s), then only check the box labeled "Sacramento Area Director, BIA."

Item 1: Fill in the child's name, date of birth and place of birth.

Item 2: Fill in the hearing information.

Item 3: List all of the Indian tribe names in which the child is or may be eligible to be a member.

Items 5 - 9: Fill in all the information available. This information is important in order to help the tribes determine whether the child is a member or eligible for membership in a tribe or, if notice is only sent to the BIA, in helping the BIA determine in which tribe(s) the child is a member or eligible for membership.

***All the petitioners must sign and date the form.***

**NOTICE INSTRUCTIONS:** You (the attorney) must complete and sign the declaration of mailing on page 9 and the information about the parties notified on page 1.

8. The original ICWA-030 all return receipts, and responses received must be filed with the Court before the hearing. Cal. Rules of Court 7.1015(c).
9. Notice of each hearing must be provided to the appropriate parties until the tribe or BIA provide a conclusive answer (that the child is or is not an Indian child), or the court makes an evidentiary finding that it has no reason to know the child is a member of or eligible for membership in an Indian tribe.
10. If proper notice has been provided and neither a tribe nor the BIA has provided a response on the child's Indian status within 60 days after receiving notice, then the court may determine that the ICWA does not apply to the proceedings. Cal. Rules of Court 5.482(d).

11. If the BIA was the only party notified, the BIA has an initial period of 15 days after receipt of notice to notify the child's parents or Indian custodian, and/or Indian tribe of the pending action. 25 CFR § 23.11(c).
12. The court hearing may not take place until 10 days after receipt of notice by the parent, Indian custodian, tribe, and/or the BIA. Cal. Rules of Court 5.482(a)(l).

If an Indian tribe responds in the affirmative that the child is a member of or eligible for membership in its tribe, then the tribe has a right to intervene in the proceedings. Cal. Rules of Court 5.482(d). On request, the court must grant the parent, Indian custodian, or tribe up to 20 additional days to prepare for the proceeding. Cal. Rules of Court 5.482(a)(3).

## **E. DILIGENT EFFORTS TO LOCATE THOSE ENTITLED TO NOTICE**

The court can waive the notice requirement if the petitioner shows that a person entitled to notice "cannot with reasonable diligence" be given notice. Prob. Code, § 1511 (g)(1). In general, courts require the petitioner to make greater efforts to locate and notify the parents than others entitled to notice. Also, if the minor has had significant contact with the parent, courts will require more evidence of efforts to notify than if the minor never knew the parent.

*To satisfy the requirement of a due diligence search we suggest, a minimum:*

1. Asking all known relatives about the person's last known address and current whereabouts;

**PRACTICE TIP:** We recommend speaking to at least three people to ask them if they know the whereabouts of the individual or know anyone who may be able to locate them.

2. Checking directory assistance in the community where the person was last known to reside;
3. Searching on the Internet, including social media sites if appropriate;
4. Contacting current or former employers, if known;
5. Attempting contact through e-mail, and former phone numbers and addresses;
6. If the individual is a foreign national, contact the consulate for their country.

You also may want to make the following additional efforts. First, find out if a caregiver for the minor receives or received public assistance benefits on behalf of the minor. If so, the agency paying the aid was required to search for the absent parent in order to seek recovery from the parent. The agency's inability to find the parent may provide evidence of a diligent search.

Second, if the parent is on probation or parole, or is in prison or jail, correctional officials should help you locate the parent. In Los Angeles County, inmate information can be obtained through the Sheriff Department website, at <https://www.inmateaid.com/prisons/los-angeles-county-jail-men-s-central-jail>. If the parent is in state prison and you

have the parent's date of birth, you can call the state Department of Corrections at (916) 445-6713 or go to their website at <https://apps.cdcr.ca.gov/ciris/> to determine the parent's "CDC" (inmate identification) number and the prison at which the parent is located.

If you conduct the search before the guardianship petition is filed, you can request to dispense notice in Item 1f of the Petition and set forth your due diligence efforts in Attachment 10 to the petition. The court, however, will want you to continue making diligent efforts to notify the person up until the final hearing. ***You will need to set forth your subsequent efforts in a "Declaration of Due Diligence."*** The declaration must state the name of the person whose address is unknown, the efforts made to locate the person, and any facts that explain why the person's address cannot be obtained. The declaration must include a description of the attempts to learn of the person's address by inquiry of relatives, friends, acquaintances, and employers of the person and review of telephone directories and directory assistance. Cal. Rules of Court 7.52(a). The declaration should be signed by the person who made the efforts to locate the parent or relative and should be submitted at the hearing. See ***Appendix H*** for a sample. Submitting an Order Dispensing with Notice is optional and, in practice, not used because the Order Appointing Guardian includes an Order Dispensing with Notice.

## **F. IF NOTICE WOULD BE AGAINST THE INTERESTS OF JUSTICE**

The court can waive notice to any person if it would be "contrary to the interests of justice". Prob. Code, § 1511(g)(2). Notice may be waived, for example, if the person entitled to notice poses a threat of physical harm to the minor. The person's history of violence must be well documented in Attachment 8 to the petition.

## **§ 8: STEP 4: GUARDIANSHIP INVESTIGATION**

Approximately 2-3 weeks before the hearing, an investigation will be conducted regarding the appropriateness of the guardianship and suitability of the proposed guardian. The ward and proposed guardian need to be present. If the proposed guardian is related to the child, the investigation will be conducted by the court investigator's office. The appointment notice will contain instructions on completing and returning form LASC PROI 72, along with copies of certain documents, including school records, medical records, mortgage statements or rental receipts, birth certificates, and names, social security numbers, dates of birth, and driver license numbers of all adults residing in the household. The notice of the meeting, called a "Case Conference," will be sent to the proposed guardian by mail. See Appendix I for a sample letter. In Los Angeles meetings are conducted in Room 233 of the courthouse. Antelope Valley residents may have their investigation interview conducted at the Lancaster court. Depending on the jurisdiction, the court may send notice of the hearing only to the proposed guardian and not to the attorney. It is important to advise the proposed guardian to check their mail for notice of the investigation and to call the probate investigator's office regularly to see if one has been scheduled.

If the proposed guardian is a non-relative, the DCFS will conduct the investigation at the proposed guardian's home. A social worker from DCFS will contact the proposed guardian by phone to set up the appointment.

If one proposed guardian is a relative and one is a non-relative (for example, an unmarried partner of a relative), you should check with the probate investigators office to see if they will conduct the investigation or if DCFS will conduct it.

Based on this meeting, the investigator or social worker will complete a report which will be considered by the judge in determining whether the guardianship is appropriate. The investigation report must discuss: a social history of the proposed guardian and the minor; the relationship between the proposed guardian and the minor; and the guardian's and the natural parents' future

plans for the minor's home environment. Prob. Code, § 1513(a). See **Appendix I** for more detailed information regarding the probate investigation process for relative and non-relative proposed guardians. Be sure to tell your client the importance of cooperating with the investigator or social worker. Please note that attorneys are generally not allowed to be present during the investigation.

**PRACTICE TIP: Child confidentiality.** Your child client may not feel comfortable sharing the details of their declaration – including the facts of parental abuse, abandonment, or neglect – with their proposed guardian. You should speak to your client about the information they want to share with their guardian. If they would like to keep facts confidential, we recommend calling the probate or DCFS investigator's office prior to the investigation meeting in order to advise the investigator on what information should not be disclosed to the proposed guardian.

If your client has not received notice of a case conference or been contacted by a social worker regarding the home visit at least three weeks prior to the hearing, you should contact either the Probate Court Investigator's office or the DCFS guardianship clerk. To inquire as to the status of the investigation, the contact numbers in Los Angeles are (213) 830-0855 (for related guardians) or the DCFS guardianship clerk at (323) 526-6027 (for unrelated guardians).

You should request a copy of the report from the investigator after the investigation is completed and prior to the hearing to determine whether the recommendation will be favorable and to be prepared to address any issues noted in the report at the hearing. Pursuant to Probate Code section 1513(b), any party may call and examine the person who prepared the report.

**BEFORE THE HEARING:** In addition, if you are in Los Angeles County, about five to seven days before the hearing, you may view the probate notes online at [www.lacourt.org](http://www.lacourt.org) to determine if there are any deficiencies which might delay the hearing, such as defects in proof of service. Probate notes are issued by probate attorneys or probate examiners who review each file prior to the hearing and make notes for the judge to highlight legal issues such as failure to serve. **If there are defects which need to be cured, you may e-mail the probate attorney, following the e-mail parameters on the website.** You should also be able to cure most defects by explaining them to the judge at the hearing. If you are requesting SIJ findings, there will be two calendar numbers before the court; the guardianship petition and the SIJ petition. You should make sure that the Judge to Determine "JTD" section of the probate notes includes the findings required for the SIJ findings order. If the SIJ findings are not included, you may need to ask for the findings on the record at the court hearing, as explained in § 9 below. However, the judge may not hear the SIJ petition without a separate calendar number before the court on the SIJ findings. Make sure you take a copy of the conformed SIJ petition to the court for proof that one was filed and that it was assigned a court date and be familiar with the facts of the case in the event the judge wants to hear from you and your client in lieu of reading the declaration.

## § 9: STEP 5: PREPARING FOR THE HEARING

After giving notice and before the hearing date, you need to file the following forms electronically. The following are the notice forms that may need to be filed:

1. Notice of Hearing (signed by the person who served notice by mail). The GC-020(P) should also be attached as page 3 and signed by the person who completed personal service.
2. Notice of Acknowledgment and Receipt, if needed (signed by person who received notice).

3. Consent and Waiver of Notice/Nomination of Guardian (copies of this form signed by any person who is entitled to notice indicating their consent and waiver of notice).
4. Declaration of Due Diligence.

Before the hearing make sure to prepare the following forms to to either bring to court on the day of the hearing or eFile. You should plan to bring 2 copies of the orders (GC-240 and GC-224) to court on the day of the hearing.

1. Order Appointing Guardian of Minor (GC-240).
2. Letters of Guardianship (GC-250). You should have all guardians sign and date the same form on the day of or prior to the hearing.
3. Duties of Guardian (GC-248). All guardians must sign this form.
4. If Applicable: Special Immigrant Juvenile Findings (GC-224).

**PRACTICE TIP: PREPARING FORM GC-224** Much like Form GC-220, Form GC-224 requires information about the child, the adult into whose custody the court placed the child, the basis or bases for reunification not being viable, and why it is not in the child's best interest to return to their home country. The information in Form GC-224 should generally mirror the information contained in Form GC-220, although much depends on what happens in court the day of the hearing as well. For example, an attorney might argue that a child's father abandoned and neglected her, but the judge is willing only to make the finding based on abandonment alone. If that happens, the proposed Form GC-224 would have to be modified. The same could be true in the best interest section. Form GC-220 might have cited gang threats as a reason the child's best interest is to remain in the United States. If the judge does not base their best interest determination on the gang threats, GC-224 would also need to be modified to reflect the judge's decision.

In addition to facts about the case itself, Form GC-224 must have California legal citations and/or state case law citations to support the judge's findings. DO NOT cite to federal law on the SIJ findings. If SIJ findings do not identify the legal basis that the judge used to make the findings, USCIS could ultimately deny the child's SIJS petition. There should be legal citations in at least three sections of Form GC-224: Question 4, regarding placement of the child in the guardian's custody, question 5, why reunification is not viable, and question 6, why it is not in the child's best interest to be returned to the child's or parent's country of nationality or last habitual residence. The provisions of California law most useful to cite in response to each of these questions can be found in section 5(8), *supra*. Form GC-224 should also contain a complete and carefully drafted explanation of the factual basis for the court's findings. See **Appendix B** for a sample Form GC-224.

***BRING COPIES OF THESE FORMS TO THE HEARING. IF THE COURT DOES NOT SIGN THEM IMMEDIATELY AT THE HEARING, YOU SHOULD FILE THEM ELECTRONICALLY.***

In addition, bring copies of any conformed Proofs of Service, Waivers of Notice, Declarations of Due Diligence, and/or Notices of Acknowledgment and Receipt to the hearing in case the court file is missing any of these documents.

**PRACTICE NOTE:** Please check to make sure you did all of the following prior to your hearing:

1. Did you file a Proof of Service, Notice of Hearing, and Declaration of Due Diligence (if needed) with the court?
2. Did you complete: Letters of Guardianship, Order Appointing Guardian, and Special Immigrant Juvenile Findings (if needed)? You will need to bring two copies of each or efile.
3. Did you call your clients to prepare for the hearing and mail them a letter to remind them of the court date?
4. Did you request and review the probate investigator or DCFS investigator's report?

## **PREPARING YOUR CLIENT FOR THE HEARING**

You should also meet with the child and proposed guardian to help them prepare for the hearing. Attending court is often a new and frightening experience for children and adults, and meeting with the client prior to the hearing is critical to helping your client understand the process and manage their expectations. At the meeting, you should remind the child that the hearing is in front of a probate court judge who has no power to order them removed from the United States. You should review who the people are that will be in the courtroom (the judge, the parties, attorney, court interpreter, judicial assistant, bailiff, and other litigants) and explain the layout of the courtroom. You should also ask your client to dress in courtroom appropriate attire. It is not a problem if your client does not have formal clothing, but you should advise the clients to wear clothing they would consider wearing to church or some other formal event.

Next, you should prepare the client for what will happen when the case is called. Court practice may vary from jurisdiction to jurisdiction or even from judge to judge, so it is always important to consult with local attorneys before the hearing so that you and your client know what to expect. In general, the child and the proposed guardian will be asked to state their complete names for the court and will be placed under oath. The judge may also ask them questions about the guardianship order or SIJ findings or ask you as the petitioner's attorney to examine the parties. Remind your client to answer all questions honestly and to tell the court if they do not understand the question or the interpreter, or if they do not know the answer to a question. You may also want to conduct a brief mock direct examination with the child so they have experience answering questions in court. A mock direct examination can be found at ***Appendix L***.

Prior to the state court hearing, you will want to familiarize yourself with the judge who will be hearing the case and their procedures and practices. If possible, you should consult with other attorneys who have pursued custody orders and SIJ findings before the judge, and you may want to visit the courtroom and observe the judge yourself. This information can be invaluable to ensuring that you are prepared to address common issues raised by the judge.

## **§ 10: STEP 6: THE HEARING/FILING THE ORDERS/AFTER THE ORDERS**

### **A. CONTINUANCES**

If you or your clients are unable to appear for a hearing, you may request a continuance. Practices around continuances vary among jurisdictions, and you should consult your local court rules and experienced practitioners for more information. In Los Angeles County, effective January 15, 2020, a Request to Continue Petition Hearing and Order (Form PRO-080), must be used to request a continuance of petition hearing dates for contested and uncontested petitions at the Los Angeles Superior Court. The form must be submitted no less than five court days from the scheduled hearing date. Requests submitted less than five days must be made by filing an Ex Parte Application or by making the request at the hearing. More details are available at <http://www.lacourt.org/forms/pdf/PRO081.pdf>. If you had the hearing continued once already, the clerk may ask you to appear in person and ask for the continuance or otherwise show good cause for the additional continuance.

### **B. THE HEARING**

The proposed guardian(s) must attend the hearing. The minor should also attend if age four or older. Although the Probate Code does not explicitly require the minor to be at the hearing, in most cases, the judge will want to know how the child feels about the proposed guardian and SIJ Findings.

On the day of the hearing, plan to meet your client at the court early. Entering the courthouse and passing through the courthouse security may be intimidating to your client, so you may want to meet them outside the building and accompany them through the security line. Once you arrive at the judge's courtroom, check the calendar outside the courtroom – if there is one – and find your docket number(s) for the day. Then check-in with the judge's clerk. Make sure to bring business cards with you, since many courtrooms require you to check in with a business card. If you need an interpreter, alert the clerk that an interpreter is needed. Some courts require you to request an interpreter prior to the hearing, particularly when a party speaks a language other than Spanish. If you are unsure of the court's requirements, call the clerk as soon as you get a hearing date to let the court know you will need an interpreter. Finally, ask the clerk if the judge would prefer your client to wait outside the courtroom until their case is called; many courtrooms have rules against minors in the courtroom. If you plan to ask the court to clear the courtroom for your client's hearing, you should alert the clerk that you would like the courtroom cleared when your case is called. *See* Cal. Rules of Court 5.250(f). Clearing the courtroom may help the child feel more comfortable providing testimony before the court and prevent the release of sensitive information, but it may also cause the court to hold your case to the end of their calendar or otherwise delay your proceeding.



Once court is in session, wait until an interpreter is present and the judge calls your case. Once the judge calls your case, you, the child, and the proposed guardian will move to the front of the courtroom. The judge will ask for appearances. Introduce yourself with your name and firm's name and say that you are appearing pro bono on behalf of the petitioner. Your client and the proposed guardian will also state their name for the record. Next, the court clerk will place the parties under oath, if they have not already.

After appearances and the oath, several things may happen. The judge may issue the requested guardianship orders and SIJ findings without asking any questions. The judge may want to elicit testimony from the child or the proposed guardian or ask you to elicit testimony from your client. If the judge wants your client to testify, consider objecting to the client's testimony and asking the court to rely on the declaration. You can point to the Rules of Court concerning testimony of children, which require the court to consider the child's best interest before requiring that they testify. Cal. Rules of Court 5.250. *See also* Fam. Code, § 3042(b); *In re Jennifer J* (1992) 8 Cal.App. 4th 1080, 1088-89 (recognizing the trauma caused by requiring a child to testify in court and allowing the court to find the child unavailable to testify or decline to hear testimony in order to protect the child).

If the judge insists that you conduct an examination of the child, keep your questions simple and to the point. Ask about the child's relationship with their parents and the proposed guardians in order to establish that the proposed guardian is the appropriate caretaker. Also, ask the child to express their wishes about who should have custody over them. A mock direct examination can be found at ***Appendix L***.

The judge may also raise legal concerns about the case. Be prepared to argue your case orally in front of the court. Courts frequently raise questions about notice and service of the documents. The court may also inquire why a custody order is necessary for a youth who is over 18, and may ask questions regarding the child's school attendance or other issues raised in the probate investigator's report.

Finally, be prepared to argue that the guardianship is necessary and convenient, in the child's best interest and best promotes the child's health, safety, and welfare under the factors outlined in the Family Code and Probate Code. Explain that the guardian needs the guardianship order in order to ensure that they have the legal authority to make all necessary medical, educational, and legal decisions for the child, and to promote the child's stability and sense of security. If the court asserts that the custody order is not necessary because the guardian has not run into legal barriers exercising authority over the child, point out that there is no guarantee that a hospital or other setting will allow the proposed guardian to make decisions for the child, and that it is in the child's best interest to have a clear custodial relationship. *See Appendix L* for a sample mock hearing script.

Hopefully, the judge will be persuaded by your arguments and appoint the proposed guardian as guardian of the youth. If the judge is not willing to make the guardianship order, you can either ask for time to brief the issues for the court before it makes a final decision, or be heard on the record and make final arguments orally to the court. You want to be careful to outline all of your arguments and create a record in case you need to file a writ or an appeal of the judge's decision.

**A NOTE ABOUT CONTESTED HEARINGS:** Some Guardianship cases will be contested. It is possible that a parent or other relative might contest the guardianship. In contested cases, the judge may order another investigation and continue the hearing, assign minor's counsel to represent the child(ren), refer the case to mediation or to Dependency Court, or schedule a trial.

## **C. SIJ FINDINGS**

The SIJ findings portion of the hearing can be short and simple with minimal questions, or can involve a great deal of questioning and even testimony from your client or their guardian. Many judges focus on whether there is enough evidence to support a finding of abuse, abandonment, or neglect. Advocates should read the relevant California statutes and applicable case law and be prepared to show why the facts of a particular case fit into the state definitions of abuse, abandonment, and neglect. You should also remind the court that CCP section 155 requires the court to make the findings if the evidence supports them.

Advocates should also prepare their clients to answer simple questions about their case, keeping in mind that children generally do *not* need to testify in state court proceedings and that a child's declaration containing facts to show abuse, abandonment, or neglect should be sufficient to support the SIJ findings. Children may be asked questions about their relationship with their parents, including about the nature of their current relationship with the parents, and about their life in the United States with the proposed guardian, including questions about school and whether their needs are met. Mock hearing transcripts can be found at **Appendix L**.

## **D. AFTER THE HEARING**

These practices differ greatly depending on the jurisdiction. Here, as an example, we include information specific to current procedures before the Los Angeles County Superior Court. You will need to check the local rules at the court where you intend to file for information specific to your case and should also consult with an experienced practitioner in your jurisdiction before filing a case. At the Los Angeles Superior Court Central courthouse, the hearings for guardianship are held in Departments 5 (Room 236), 9 (Room 244), 11 (Room 246), and 29 (Room 240) on the second floor and Departments 67 (Room 614), 79 (Room 610), and 99 (Room 615) on the sixth floor. After arriving, check the docket list outside the courtroom. Scheduled times are referenced by a code next to the case name. In Los Angeles, guardianship cases are normally scheduled during the 10:30/11 a.m. calendar and will be indexed by a number starting from 4001.

At the Los Angeles Court, once the orders are signed, you need to get the Letters of Guardianship issued. You can eFile the signed Letters of Guardianship (GC-250) and a new Notification to Court of Address on Guardianship (PRO-003) form the day prior to the hearing or try take physical copies and ask the clerk to issue the Letters. The Order Appointing Guardian is not effective until the Letters are issued. You should ask the clerk for certified copies of the Letters of Guardianship and Order Appointing Guardian. To get free certified copies, you must have a valid fee waiver and fill out the white "no fee" request for copies form. If you do not have a fee waiver, use the yellow form to request certified copies. If the guardian is ever required to show proof of custody, some agencies only accept a certified Order and Letters as proof.

The SIJ findings order should technically be filed electronically. However, as a courtesy, the court may sign the orders so that they can be processed immediately. You should hand the clerk two copies of the SIJ Order when you give them the Order Appointing Guardian and ask the clerk to scan it.

## **1. Certification costs are as follows:**

Document: \$25.00

Each page: \$.50

Example: Order Appointing Guardian of Minor:

2 pages at \$.50 each = \$ 1.00

General certification fee = \$ 25.00

Total cost for Order Appointing Guardian of Minor = \$26.00

NOTE: There is no cost for certified documents if you have a fee waiver on file with the court.

**PRACTICE TIP- EX PARTE Hearing for Youth Turning 21:** In cases involving AB900 and AB2090 youth nearing the age of 21, it may be necessary to expedite the guardianship and accompanying SIJ petition as both petitions must be granted prior the ward's birthday. Here, you would file an ex parte application asking the Court to grant the petitions, or in the alternative advance the hearing date, so that the orders are granted before the youth turns 21. For more information on ex parte hearings, see section 11, *infra*, and **Appendix K** for a sample.

## **§ 11: TEMPORARY GUARDIANSHIP**

Temporary guardianship is an option in cases where the interests of the minor must be protected immediately and cannot wait until the permanent guardianship becomes effective. (Hearings for permanent guardianships are typically scheduled approximately 6-8 weeks after the date of the initial filing.) Temporary guardianship may be granted when "good cause" is shown. Prob. Code, §2250(b) Examples of good cause include an immediate need for emergency medical treatment and immediate safety or educational needs. The court will only grant a temporary guardianship if immediate and substantial harm to the child is demonstrated. The temporary guardianship will be effective pending the final determination of a regular petition for guardianship.

Although a temporary petition may be filed any time after a regular petition for guardianship is filed, in most cases it is most convenient to file the temporary guardianship concurrently with the regular petition (See below). An additional \$90.00 fee will be charged if there is not a fee waiver. Please note that you cannot file a standalone temporary guardianship petition.

### **A. THE REQUIRED FORMS FOR FILING FOR TEMPORARY GUARDIANSHIP:**

1. Petition for Appointment of Temporary Guardian (GC-110)).
2. Order Appointing Temporary Guardian (GC-140) plus a copy to take to the hearing.
3. Letters of Temporary Guardianship (GC-150) plus a copy to take to the hearing and which you will have the guardian sign and date on the day of the hearing.

These forms can be filled out in much the same way as the forms for guardianship. In an Attachment

3 to the petition or in the space provided at the bottom of the petition, you should add a brief explanation of the emergency reasons the temporary guardianship must be granted before the regular guardianship hearing can be held.

If you are filing the request for temporary guardianship after the regular petition has already been filed, file the conformed copy of the fee waiver order, if one has been granted, and a conformed copy of the general guardianship petition with the temporary guardianship petition. If you are filing the temporary and regular petitions concurrently, please refer to §6. Temporary hearing dates are usually set about 5-7 days from the time of filing.

***Urgent Need: File the Petition for Temporary Guardianship on an Ex Parte basis.***

In Los Angeles, *Ex Parte* matters are heard daily at 8:30 a.m. and must be e-filed no later than 10:00 a.m. the date before you wish to be heard. In addition to the Petition for Appointment of Temporary Guardian and Order and Letters of Temporary Guardianship, you must submit a Declaration of Urgency and must attempt to notify all individuals normally entitled to notice at least 24 hours prior to the hearing, though shorter or no notice may be approved in limited circumstances (please see paragraph below for notice requirements in temporary guardianships).

Pursuant to California Rules of Court, Rule 2.257, an applicant must appear on the date the petition will be heard. The minor and proposed guardian should come with you. Refer to the court's website at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) for additional information regarding *Ex Parte* applications. The court's hearing of the temporary petition without notice has been held not to violate the requirements of due process. Conservatorship of Gray (1970) 12 Cal. App. 3d 513, 524, 90 Cal. Rptr. 776, 783. However, it is easier to obtain an Order for Temporary Guardianship if a parent is consenting to the guardianship. If you submit a waiver of notice with the temporary guardianship, that same notice can be used to fulfill the notice requirement on the general guardianship petition.

## **B. NOTICES IN A TEMPORARY GUARDIANSHIP**

Notice of the petition must be personally delivered to the minor's parents, to the minor, if 12 or older, and to any person having a valid visitation order at least five days before the hearing on the appointment of temporary guardian. Prob. Code, § 2250(e)(1). If personal notice cannot be completed within that time period, the petitioner may request a good cause exception to notice. Cal. Rules of Court 7.1012.

### **1. The required forms for good cause exception to notice in a temporary guardianship include:**

- a. Application and Memorandum for Good Cause Exception to Notice
- b. Declaration
- c. Proposed order

NOTE: The request for good cause exception to notice can also be made directly on Form GC-110p.

***Please see Appendix J for sample forms.***

In most jurisdictions, the proposed temporary guardian and minor must attend the temporary

guardianship hearing to impress upon the court the need for the temporary order. In Los Angeles County, the temporary hearings are held at 10:30am and are run in a similar manner as the hearing on the permanent petition (*see* § 9, *supra*). After the judge grants the temporary guardianship, give the original order and a copy to conform to the judge's clerk to stamp with the judge's signature. Take the order to Room 429 to have the Letters of Temporary Guardianship issued. A non-related temporary guardian will need the Letters in order to obtain foster care, Medi-Cal, or other benefits. You may also request certified copies from the clerk in Room 429 (*see* § 9, *supra*).

In many cases, but not always, the temporary guardianship will be in effect until the date of the regular guardianship hearing. If temporary letters are issued, make sure to enter the date of the regular guardianship hearing in item 3a on the left column of the Letters of Temporary Guardianship. If more than one temporary guardian is appointed, put signature lines above or below the signature line in the right column. If the judge does not grant the general guardianship at the general guardianship hearing and continues the matter to another day, make sure to ask the judge to extend the temporary guardianship order to the next hearing. The judge's clerk should provide you with that new order at the hearing.

## § 12: JOINT GUARDIANSHIPS (PEACE OF MIND)

In cases where a parent has a terminal illness, it is possible for the parent to request that the court appoint an individual to act as a joint guardian with the parent. This allows the joint guardian to have authority to step in to care for the child when the parent becomes too ill or passes away. Prob. Code, § 2105(f). The parent maintains custody over the child in a joint guardianship. A terminal condition is defined as "an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, within a reasonable medical judgment, result in death."

Public Counsel's Peace of Mind Program places joint guardianship cases for terminally ill parents with *pro bono* attorneys. Joint guardianship cases require these additional steps:

1. The parent who will be the joint guardian as well as the joint guardian should be listed as a proposed guardian on item 1.a of the Petition for Appointment of Guardian (GC-210).
2. The parent and joint guardian should both sign item 1, Consent of Proposed Guardian, on the GC- 210.
3. The parent and joint guardian should both be listed in the "Guardian" box on the Notification to Court of Address on Conservatorship/Guardianship (PRO 003)
4. The parent and joint guardian should each sign (separate) Confidential Screening Forms (GC- 212).
5. The parent and joint guardian should both be listed in item 7.a of the Order Appointing Guardian (GC-240).
6. The parent and joint guardian should both be listed in item 1 of the Letters of Guardianship (GC- 250) and sign these as well.
7. You will need to file a Declaration from a Physician confirming the parent's terminal condition. *See Appendix D* for an example.

For additional information please *see* Public Counsel's publication "Peace of Mind Program: Joint

Guardianship of the Person,” available on [www.publiccounsel.org](http://www.publiccounsel.org). Go to Practice Areas, then Children's Rights Project, then Publications.

## § 13: POWERS, DUTIES, AND LIABILITIES OF GUARDIANSHIP

Under Probate Code section 2351 (a), the guardian has the care, custody, control, and charge of the education of the minor. This means that the guardian is empowered to make the everyday decisions concerning the minor's living arrangements, education, safety, and medical needs (with some exceptions). The guardian may decide where the child will attend school and may request special educational services on behalf of the child. The relationship between the guardian and the minor is fiduciary and is subject to the law of trusts. Prob. Code, § 2101. Through special orders, the court may expand or limit the powers and duties granted.

Under Family Code section 3900, ultimate legal responsibility for the financial support of the minor remains with the parents after guardianship is granted. The guardian is not personally responsible for the financial support of the minor. However, in most instances, the guardian will want to help and/or take over these obligations (*see* § 15, *infra*, for a discussion of how guardianship affects government benefits).

### *Other important rights and responsibilities include:*

1. Determining visitation arrangements between child and parent unless the court directs otherwise.
2. Consenting to the minor's participation in the armed forces.
3. Consenting to the minor's marriage (the court must also consent).
4. Consenting in writing to the minor's application for a driver's license.
5. Liability in tort for the minor's willful or negligent actions.
6. Decisions relating to the minor's residence. If the minor's residence is changed within the state, the guardian must notify the court. The guardian must obtain the court's permission before moving the minor's residence out of the state. Note that the guardian is not obligated to live with the minor. Prob. Code, § 2352.
7. Decisions regarding the medical treatment of the minor. However, if the minor is over the age of 14, surgery upon them cannot be performed except with the consent of both the guardian and the minor, or through a court order obtained pursuant to Probate Code section 2353(b). This requirement does not apply in cases of emergency where the guardian in good faith determines the treatment to be necessary. Prob. Code, § 2353(c). In addition, in some cases, the minor may consent to certain treatments without the consent of the guardian. These may include blood donations, Health & Safety Code, § 1607.5, treatment for the prevention or treatment of pregnancy, Fam. Code, § 6925, treatment related to the diagnosis or treatment of rape, Fam. Code, § 6927, treatment related to the prevention of contagious diseases, Fam. Code, § 6926, and treatment when the minor lives apart from the guardian Fam. Code, § 6922.

The guardian also can become liable for some intentional acts of the minor. For example, the guardian can be held liable for the minor's use of firearms or willful misconduct if it results in personal injury or property damage, Civil Code, §§ 1714.1, 1714.3, and for the minor's petty theft, Pen.

Code, § 490.5. If the guardian is aware of the minor's behavior and/or dangerous tendencies, the guardian may be liable for the resulting damages if he or she fails to exercise reasonable care in controlling the minor's actions. *Poncher v. Brackett* (1966) 246 Cal.App.2d 769, 55 Cal.Rptr. 59; *Costello v. Hart* (1972) 23 Cal.App.3d 898, 100 Cal.Rptr. 554.

## § 14: HOW GUARDIANSHIP AFFECTS GOVERNMENT BENEFITS

### A. NON-RELATED GUARDIANS - FOSTER CARE BENEFITS

Most non-related guardians are eligible for state foster care benefits. Welf. & Inst. Code, §400 *et seq.* Non-related legal guardians may apply for state foster care once the court has granted temporary or permanent guardianship. In Los Angeles County, the guardian initiates the application process by calling DCFS at (213) 765-7260. The guardian should inform DCFS that they are a non-relative, were appointed guardian in probate court, and want to apply for state foster care. In order to qualify, the child must be a citizen, resident, or other qualified immigrant. Please refer to the publication, "Caring for Another Person's Child", available on the Public Counsel website, for additional information.

### B. RELATED GUARDIANS - CalWORKs

A caregiver who is related to the minor does not need to be the minor's guardian in order to apply for CalWORKs benefits on behalf of the child. The applicant need only be a related "caregiver." See the California Department of Social Services Manual of Policies and Procedures (M.P.P.) Sections 82-and 82-808.2 to determine whether the guardian is "related" or is a "caretaker." The guardian must apply in person for CalWORKs at their local Department of Public Social Services (welfare) office. In order to qualify, the child must be a citizen, resident, or other qualified immigrant. Please refer to the publication, "Caring for Another Person's Child", available on the Public Counsel website, for additional information.

**NOTE:** If the guardian of the child's person is also the guardian of the child's estate, the guardian's income may affect the child's eligibility and benefit levels because guardians of the estate are required to pay for the child's support. *In Re Preston's Estate* (1966) 243 Cal.App.2d 803 (1966).

## § 15: TERMINATION OF GUARDIANSHIP AND SUCCESSOR GUARDIANSHIP

A guardianship automatically terminates when the minor dies, is adopted, marries, or turns 18 (unless the guardianship was granted under AB 900 or AB 2090, which allow immigrant youth to seek guardianship until age 21). Prob. Code, § 1600; Fam. Code, § 7002. The guardian, parent, or ward over the age of 12 can petition the court to terminate the guardianship if the guardianship is no longer necessary or no longer in the minor's best interest. Prob. Code, § 1601. If the guardianship was issued past the age of 18 pursuant to AB 900 or AB2090, the court must terminate the guardianship if the ward requests termination. *Id.* When preparing the Petition for Termination of Guardian, use the case number from the original guardianship petition. If filed by a parent, there is no fee for a Petition for Termination of Guardianship, although it still may be helpful to prepare and file a fee waiver.

## A. FORMS NEEDED

1. Petition for Termination of Guardian (GC-255).
2. Notification to Court of Address on Guardianship (PRO-003) – Filled out with information about the parent when the parent is the petitioner requesting a Termination of guardianship.
3. Notice of Other Cases Involving Minor Children (if applicable) (UCF-001).
4. Notice of Hearing/Proof of Service (GC-020).
5. Order Terminating Guardianship (GC260).

***You should file the petition and wait for the Court to notify you of the hearing date.***

Termination of guardianship gives custody of the child back to the parents unless the guardianship is pursuant to AB 900 or AB 2090, in which case the youth will no longer be subject to a custody order. If a parent wishes to establish primary custody of the child over the other parent, a family law action will need to be filed after the guardianship has been terminated. In Los Angeles, the Family Law Resource Center in Room 426 provides assistance to pro per litigants in family law matters.

**NOTE: Termination and SIJS.** Terminating a guardianship before a client is able to adjust their status (received their green card) through SIJS could result in the denial of the SIJS petition or prevent your client from obtaining their green card. USCIS requires the guardianship or other custody to remain in effect until the client receives their green card, and considers SIJS status automatically revoked if the custody order is terminated *unless* the termination is due to age. USCIS Policy Manual, Volume 6, Part J, Chapter 2.C(4).

## B. SUCCESSOR GUARDIANSHIP

If a person wishes to have the court appoint a replacement guardian, they should file a Petition for Appointment of Successor Guardian rather than a Petition for Termination. In conjunction with this petition, the person must file a Petition for Removal of Guardian, Prob. Code, § 2651, if the current guardian does not consent to the replacement, or a Resignation of Guardianship, Prob. Code, § 2660, if the current guardian consents to the replacement. ***Causes for removal include*** continued failure to perform duties, conviction of a felony, and "gross immorality." Prob. Code, § 2650.

A petition for successor guardianship requires all the same paperwork as a regular guardianship petition. You should insert the word "SUCCESSOR" in the heading of the Petition for Appointment of Guardian, form GC-210.

In Los Angeles County all forms must include the original case number from the original guardianship. Due to centralization, all cases previously filed in branch courts (with the exception of Lancaster), must now be filed at the Central court. If the original guardianship was granted in a different county, but the successor guardians live in Los Angeles County, you need to file a Petition to Transfer Proceedings to Another County in the county where the guardianship was originally filed before filing a successor guardianship in Los Angeles County. Prob. Code, § 2211. The guardian, proposed guardian, minor, minor's spouse, relative, friend, or any other interested person may



petition to transfer. Prob. Code, § 2212. The court will transfer the proceedings if it finds that the transfer will be for the best interests of the minor. Prob. Code, § 2215(b)).

The Petition to Transfer Proceedings to Another County is a verified petition that must state (Prob. Code, § 2213):

1. The county to which the proceeding is to be transferred.
2. The name and address of the minor.
3. If there is a guardian of the estate, a brief description of the character, value, and location of the minor's property, if any.
4. The reasons for the transfer.
5. The names and addresses, so far as they are known to the petitioner, of the spouse and of the relatives of the ward within the second degree.
6. The name and address of the guardian if other than the petitioner. *See* §7 for notice requirements.

## § 16: OPPOSING A GUARDIANSHIP

Any interested person may oppose a petition for guardianship. There are no existing judicial forms to file an objection. A pleading stating the factual and legal basis for the opposition should be filed. If the person filing the objection wants to be appointed guardian of the child, this person should also file a competing guardianship petition, following the instructions in §5 of this manual, using the case number already assigned to the case.

## § 17: VISITATION

Absent a court order, visitation with the child is at the guardian's discretion. It is generally a good idea to attempt to work out visitation informally before filing a petition for visitation. If informal visitation cannot be worked out, a petition for visitation should be filed. Any interested person (including a non-relative) may file a petition for visitation if a probate guardianship is in place. There are no judicial forms for filing a petition for visitation. A pleading stating the factual and legal basis for the visitation request, including any attempts that were made to work out visitation with the guardian, and a proposed visitation schedule, should be filed.

## § 18: CHANGING RESIDENCES

### A. WHEN THE GUARDIAN IS MOVING WITHIN CALIFORNIA

If the guardian and child are moving to a new residence within the State of California, Cal. Rules of Court 7.1013 requires that pre- and post-move notices be mailed to the following individuals: (1) the ward if they are 12 years or older (only for pre-move notice), (2) the child's attorney, (3) the child's

parents, (4) anyone who had legal custody of the child when the guardian first petitioned for appointment of guardianship, (5) the guardian of the ward's estate, and (6) anyone who was nominated for guardianship of the child but was not appointed.

The pre-move notification must be given at least 15 days prior to the date of move. Use the following forms:

1. Pre-move Notice of Proposed Change of Personal Residence of Conservatee or Ward (GC-079).
2. Attachment to Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward (GC-079(MA)).

The post-move notification must be given within 30 days of the date of the move. Use the following forms:

1. Post-Move Notice of Change of Residence of Conservatee or Ward (GC-080).
2. Attachment to Post-Move Notice of Change of Residence of Conservatee or Ward (GC-080 (MA)).

Pre- and Post-Move notification does not require court approval when moving within the state of California.

## **B. WHEN THE GUARDIAN IS MOVING OUTSIDE OF CALIFORNIA**

When moving outside of California, the guardian **MUST** obtain court permission before the move. Use the Petition to Fix Residence (Judicial Council Form GC-085).

**NOTE: Moving and SIJS.** It may be possible to maintain SIJS eligibility when moving out of state provided that the child remains under the jurisdiction of the state court or jurisdiction is transferred to the new state where the child will reside. USCIS Policy Manual, Volume 6, Part J, Chapter 2.C(4). However, youth over 18 should be particularly mindful of the rules of the new state. Many states do not allow for guardianships once a youth turns 18 and they may not be able to transfer the guardianship to the new state.

## **§ 19: TIMELINE**

1. 1-2 weeks after receiving case: Interview client.
2. 2-3 weeks after receiving case: Complete documents and get signatures.
3. 3-4 weeks after receiving case: File documents and conform copies.
4. Immediately after filing case: Mail client court letter with information on court date, hearing, and location.
5. If temporary guardianship, serve notice on non-consenting parents if possible, attend hearing

and file orders.

6. As soon as possible, but no later than 15 days before the court hearing, serve notice of hearing and prepare proof of service documents.
7. 2-3 weeks before the hearing, call appropriate office to inquire as to the status of the investigation if one has not yet been scheduled.
8. Preferably at least 1 week before hearing: File consents, notice of hearing, and proof of service.
9. Also approximately 1 week to a few days before the hearing, you should meet with your client to prepare the guardian and minor for the hearing. This meeting is essential if the minor or applicant is asking for SIJ findings.
10. 5-7 days before the hearing check probate notes (in Los Angeles at <https://www.lacourt.org/>) to find out if there are any deficiencies which could delay the hearing.
11. 4-5 days before the hearing, call appropriate office to determine whether the guardianship investigation has been filed with the court and to request a copy of thereport.
12. 2-3 days before the hearing, call the proposed guardian(s) and the child to remind them of the hearing date, time and place.
13. Attend hearing.
14. File orders and have letters issued, certified and given to client.
15. If SIJS case, submit application for Special Immigrant Juvenile Status to USCIS.

**PRACTICE TIP:** Filing an I-360 petition and eventually an application for adjustment of status are beyond the scope of this manual. Practitioners that need guidance on the USCIS phase of a SIJS case should consider purchasing the Immigrant Legal Resource Center’s Special Immigrant Juvenile Status manual, available by going to <https://www.ilrc.org/special-immigrant-juvenile-status>. If you have received the case as a pro bono case from Public Counsel, please consult with your Public Counsel mentor about filing the SIJS petition.

## § 20: GUARDIANSHIP/SIJ FORMS: CHECKLIST

### FORMS NEEDED PRE-FILING GUARDIANSHIP

### Judicial Council Form Number

- |                                                  |                   |
|--------------------------------------------------|-------------------|
| 1. Request to Waive Court Fees                   | FW- 001-GC        |
| 2. Order on Court Fee Waiver                     | FW – 003-GC       |
| 3. Order Prescribing Notice                      | DE - 200          |
| 4. Petition for Appointment of Guardian of Minor | GC - 210          |
| 4a. Attachments to Petition                      | Use word document |
| 5. Child Information Attachment                  | GC - 210(CA)      |

6. Consent of Guardian, Nomination, and Waiver of Notice	GC-211
7. Declaration under Uniform Child Custody Jurisdiction Act	GC - 120
10. Petition for Appointment of Temporary Guardian (If applicable)	GC - 110
11. Attachments	MC-025
12. Confidential Guardian Screening Form	GC - 212
13. Parental Notification of Indian Status	ICWA—020

**FORMS NEEDED PRE-FILING SIJ**

Judicial Council Form Number

1. Petition for SIJ Findings	GC - 220
2. Supporting Declarations	use pleading paper
3. SIJ Findings	GC - 224

**FORMS NEEDED FOR TEMPORARY HEARING**

Judicial Council Form Number

1. Petition for Appointment of Temporary Guardian <i>(filed concurrently with or after the GC- 210)</i>	GC -110
2. Order Appointing Temporary Guardian	GC - 140
3. Letters of Temporary Guardianship	GC - 150

**FORMS NEEDED FOR TEMPORARY HEARING**

Judicial Council Form Number

1. Notice of Hearing/ Proof of Service	GC – 020
2. Proof of Service (Personal) or Notice of Good Cause Exception to Notice	GC - 020P

**IF AN INDIAN CHILD MAY BE INVOLVED**

1. Notice of Child Custody Proceeding for Indian Child	ICWA – 030
--------------------------------------------------------	------------

**LOCAL FORMS (Los Angeles County)**

1. Notification to Court of Address on Guardianship	PRO-003
2. Probate Case Cover sheet	PRO 010

**PRACTICE TIP:** Each jurisdiction may have its own local forms. You should check with practitioners in your jurisdiction and on the superior court website to determine if you need to file local forms.

**FORMS NEEDED PRIOR TO HEARING**

Judicial Council Form Number

1. Notice of Hearing/ Proof of Service (for parties served by mail)	GC – 020
---------------------------------------------------------------------	----------

- |    |                                                                                                         |           |
|----|---------------------------------------------------------------------------------------------------------|-----------|
| 2. | Proof of Service (Personal) or Notice of Good Cause Exception to Notice (for parties personally served) | GC - 020P |
| 3. | Consent of Guardian, Nomination, and Waiver of Notice (for parties waiving notice)                      | GC-211    |

**FORMS NEEDED AT HEARING**

**Judicial Council Form Number**

- |    |                                                                                 |                    |
|----|---------------------------------------------------------------------------------|--------------------|
| 1. | Order Appointing Guardian of Minor                                              | GC - 240           |
| 2. | Letters of Guardianship                                                         | GC - 250           |
| 3. | Notification to Court of Address on Guardianship (LA County (local form)        | PRO-003            |
| 4. | Declaration of Due Diligence (if needed)                                        | Use pleading paper |
| 5. | Duties of Guardian                                                              | GC - 248           |
| 6. | If applicable (SIJS cases only) - Order re: Special Immigrant Juvenile Findings | GC-224             |

**TERMINATION OF GUARDIANSHIP**

**Judicial Council Form Number**

- |    |                                                                                    |          |
|----|------------------------------------------------------------------------------------|----------|
| 1. | Request to Waive Court Fees                                                        | FW - 001 |
| 2. | Order on Court Fee Waiver                                                          | FW - 003 |
| 3. | Petition for Termination of Guardianship                                           | GC – 255 |
| 4. | Notification to Court of Address on Guardianship (if the parent is the petitioner) | PRO-003  |
| 5. | Notice of Other Cases Involving Minor Children                                     | UCF 001  |
| 6. | Notice of Hearing/Proof of Service, Mail                                           | GC-020   |
| 7. | Order Terminating Guardianship                                                     | GC-230   |

**PRE - AND POST - MOVE FORMS**

**Judicial Council Form Number**

- |    |                                                                                               |            |
|----|-----------------------------------------------------------------------------------------------|------------|
| 1. | Pre-move Notice of Proposed Change of Personal Residence of Conservatee of Ward               | GC-079     |
| 2. | Attachment to Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward | GC-079(MA) |
| 3. | Post-Move Notice of Change of Residence of Conservatee or Ward                                | GC-080     |
| 4. | Attachment to Post-Move Notice of Change of Residence of Conservatee or Ward                  | GC-080(MA) |

# CONGRATULATIONS!

## Thank you for taking the time to handle this case.

Public Counsel is the nation's largest not-for-profit law firm specializing in delivering *pro bono* legal services.

Founded in 1970, Public Counsel strives to achieve three main goals: protecting the legal rights of disadvantaged children; representing immigrants who have been the victims of torture, persecution, domestic violence, trafficking, and other crimes; and fostering economic justice by providing individuals and institutions in underserved communities with access to quality legal representation.

Through a *pro bono* model that leverages the talents and dedication of thousands of attorney and law student volunteers, Public Counsel annually assists more than 30,000 families, children, immigrants veterans, and nonprofit organizations and addresses systemic poverty and civil rights issues through impact litigation and policy advocacy.

Public Counsel Publications are available at [www.publiccounsel.org](http://www.publiccounsel.org).

The Acacia Center for Justice is a non-profit, non-governmental organization that **builds, strengthens, and expands immigrant legal defense programs for adults and children at risk of detention or deportation across the country.**

No person in detention or facing deportation should have to navigate the U.S. immigration system alone and without legal support. Acacia partners with a national network of human rights defenders to expand legal defense for all immigrants at risk of detention or deportation, regardless of age, ability, gender identity, sexual orientation, religion, nationality, race, the perceived strength of a case, previous interaction with the criminal system, or any other factor.

Find out more about Acacia at [acaciajustice.org](http://acaciajustice.org) or on social media @acaciajustice.

While this publication is designed to provide accurate and current information about the law, readers should contact an attorney or other expert for advice in particular cases, and should also consult the relevant statutes and court decisions when relying on cited material, as the laws might change.

The content of this manual may be reprinted. Public Counsel and Acacia must authorize any adaptations or translations of the contents of this manual.