

Introduction to Guardianship Law

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What is a Guardianship?

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- Suspends parents' right to physical custody of child & places custody with another adult
- Not permanent termination of parental rights
 - Valid until minor turns 18, is married, emancipated, or adopted, or judge terminates
- Can be obtained through probate, family, or juvenile court (dependency and delinquency)

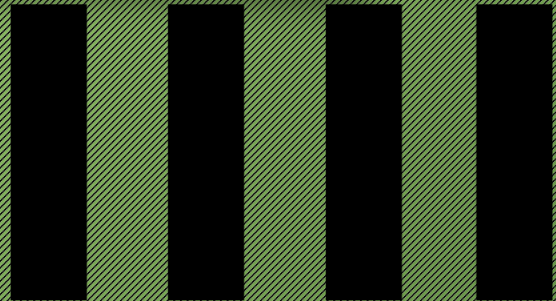
When Guardianship Is Necessary:

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- To provide long-term care
 - Parent(s) incarcerated, ill, deployed, unavailable
- To protect child
 - Abuse, abandonment, neglect
- To obtain private medical insurance
- To get consent to Special Education
- To obtain public benefits in certain circumstances

GUARDIANSHIP CLINIC

- Probate legal guardianships are custody actions where a non-parent is seeking custody of a child, often due to a parent's death or absence, or allegations the parent is unfit.
 - Not Family Court - because the person seeking custody is a non-parent
 - Not Children's Court - because there is no official government action, although DCFS may be guiding behind the scenes
- Our clinic touches between 80 to 90% of all probate guardianships filed in LA County, and provides over 2,000 services each year.
 - We assist both litigants seeking guardianships and litigants opposing them.
 - We prepare many types of pleadings: petitions, notices, ICWA, objections, ex partes, etc.
 - Located in the Stanley Mosk Courthouse
 - Open for walk-ins on Monday through Thursday



Probate Court



Other proceedings

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- Family Court
- Delinquency
 - (children's court / juvenile crime)
- Adoption
- Dependency
 - (children's court / abuse, neglect)

Dependency vs. Probate

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- Petitioner files petition, not agency
- No appointment of counsel
- No goal of reunification or family maintenance services
- No reviews by agency
- Difference in payments

Rights & Duties

PC §§2351-2360

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- General duties (GC-248)
 - Care, custody, control of minor
- Fiduciary relationship governed by the laws of trusts (PC §2101)
- Responsible for education
- Must follow court orders regarding visitation
- May consent to driver's license
- May consent to enlistment in the armed services
- Court and guardian may consent to child's marriage

Rights & Duties cont.

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- May establish residence anywhere in CA
 - Can petition court to approve out of state move
- Pre and Post Move Notice (GC-079 & GC-080)
- Possible liability for willful misconduct of minor or negligent actions
- Two guardians?
 - Both must agree (PC §2105)

Overview of Process of a Guardianship Case

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- 1) Initial Meeting with Client
 - Attorney/client relationship?
 - Why is guardianship needed & overview of guardianship
 - Timeline (temporary v. permanent hearings etc.)
 - Jurisdiction issues
 - Benefits and risks of applying for guardianship
 - Fees involved, alternatives, & parties involved
- 2) Prepare Forms/Client Review/Signature
- 3) File the Forms at the appropriate Courthouse
- 4) Initiate Investigation at first opportunity

Overview of Process

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- 5) Complete Notice Requirements for Temporary Guardianship Hearing
- 6) Attend Temporary Guardianship Hearing
 - Draft Letters & Orders if necessary
- 7) Attend Guardianship Investigation
 - Probate v. DCFS
- 8) Complete Notice Requirements for General Guardianship Hearing
- 9) Attend General Guardianship Hearing
 - Draft Letters & Orders if necessary

UCCJEA FC §§3400-3465

The Uniform Child Custody Jurisdiction and Enforcement Act

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- CA court will not have jurisdiction to grant a guardianship if:
 - There is a **valid custody order** issued in any other state, or ...
 - The minor has not lived in California for **at least 6 months** prior to the filing of the petition for guardianship.
- Exception for temporary guardianships.
 - Temporary emergency jurisdiction

GENERAL GUARDIANSHIP LEGAL STANDARD - UNCONTESTED

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- The court may appoint a guardian if it appears “necessary or convenient.”
 - PC §1514(a)
 - Generally, the minor should be living with the proposed guardian
 - UNLESS parent objects...
- Probate Court is also governed by parts of the Family Code.
 - PC §1514(b)

GENERAL GUARDIANSHIP LEGAL STANDARD - UNCONTESTED

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- Order of preference when granting custody:
 1. Parents or parent;
 2. Person whose home the child has been living in;
 3. Any other person.

FC §3040
- Guardianship should be in the child's "best interest."

FC §3040

 - Assuring health, safety, and welfare of children shall be the court's primary concern when determining best interest.

FC §3020(a)

GENERAL GUARDIANSHIP LEGAL STANDARD

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- A parent cannot be appointed a guardian. [PC §1514\(b\)\(2\)](#)
 - Except as in [PC §2105](#).
- The minor cannot be married or have had their marriage dissolved.
 - The minor could have a marriage adjudged a nullity.
 - [PC §1515](#)
- If a child is of sufficient age and capacity to reason the court shall consider the wishes of the child. [FC §3042\(a\)](#)
- Due weight to nomination of guardian. [FC §3043](#)

JOINT GUARDIANSHIP

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- A minor's parent may not be appointed as a guardian of the person of the minor. *PC §1514(b)(2)*
 - **Exception:** If a custodial parent has been diagnosed as having a terminal condition the court may appoint the custodial parent and a person nominated by the parent as joint guardians. *PC §2105(f)*
 - Petitioner must provide a declaration executed by a licensed physician as evidence.

JOINT GUARDIANSHIP

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- "Terminal condition" means an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, within reasonable medical judgment, result in death.
- If the noncustodial parent objects, the Court cannot appoint the joint guardians without a finding that the noncustodial parent's custody would be detrimental to the minor. *PC §2105(f)*
- Joint guardians - both must concur to exercise a power

TEMPORARY GUARDIANSHIP

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- The “permanent” guardianship petition must already be on file or filed concurrently.
- The Court may appoint a temporary guardian to serve pending final determination of general guardianship.

PC §2250

- Standard: “for good cause”
- Medical, educational, or other emergency

NOTICE REQUIREMENTS

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Search ID: epen92

"The bad news is - we're being sued... the good news is - they served the papers as origami."

Notice Requirements: General Guardianships

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- **What gets Served?**

- Notice of Hearing (GC-020) along with Copy of Petition for Appointment of Guardian of the Person (GC-210), Child Information Attachment (GC 210(CA)), with any attachments and any confidential declarations
- GC-207INFO Comparison of Guardians with Other Nonparent Caregivers. New Code requires it be included in notice
- Consent and Waiver of Notice (GC-211) (optional)

- **How and When?**

- **Personally:** By someone over 18, not a party to the case; At least 15 days before the hearing on the general guardianship
- **By mail:** By someone over 18, not a party to the case; At least 15 days before the hearing on the general guardianship

Notice Requirements: General Guardianships

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Who Gets Personal Service?

Probate Code § 1511 (b)

- Parents *or* any person with legal custody of minor
- Minor if over age 12
- Any person nominated as guardian

Notice Requirements: General Guardianships

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Who Gets Service by Mail?

Probate Code §§ 1511(c), 1516, 1542

- Grandparents
- Siblings over age 12
- Person having care of minor (if no legal custody)
- Emergency Response Services (County Social Services Office)
- Department of Family and Children's Services i.e., county agency designated to investigate potential dependencies
- Cal. Department of Social Services (**non-relative/unrelated guardians only**)

Notice Requirements: General Guardianship

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- Rule of Court 7.52 requires diligent search
- Due Diligence:
 - Must state last known address, when person was known to reside there, efforts to locate person, and facts to explain why person cannot be located.
 - Must talk to friends, relatives, employers, search internet, directory assistance, real property records
 - Court can then prescribe alternate form of service (in a manner “reasonably calculated” to give actual notice *or* dispense with notice (see PC § 1212 and CCP § 413.30)

Declaration of Due Diligence

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- MUST include an internet search
 - If you can locate people via Facebook, send message with date, time, location, and purpose of hearing.
- Don't let your client talk you out of efforts to locate relatives...

Notice: ICWA

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- **Indian Child Welfare Act (ICWA)** 25 U.S.C. 1901, 1912(a): Tribe must be given notice of proceedings.
- **Probate Code § 1460.2 and § 1511(i); Cal. Rule of Court 7.1015**
- **Purpose:** Promote stability and security of Indian tribes and family.
- **Duty to Inquire**
- Complete **ICWA-030** and send to Sacramento Area Director, Bureau of Indian Affairs, or Department of the Interior

Fee Waivers

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- 2014 Legislation: **AB 2747**
- **Fee waivers based on the financial condition of the proposed ward, not the petitioner.**
- Financial condition of the proposed ward would include the financial condition of any person against whom he or she has a claim for support including the parents of a proposed ward.
- Assessments for investigations in guardianships are subject to the fee waiver provisions.

Public Benefits for Guardians and Caregivers

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- Related Guardians and informal caregivers: Non-Needy Caregiver (CalWorks) and Medi-Cal
- Unrelated Guardians: Foster Care AFDC-FC cash and Medi-Cal
- Other Benefits
 - Social Security Disability
 - Survivor's Benefits
 - Food Stamps
 - SSI
 - CAPI

Guardianship Investigation

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- **Probate Code § 1513**

- Court *may* require an investigation and report by local services agency (non-relative) or court investigator (relative) before establishing a guardianship
- Non-related guardians are investigated by county agency designed to investigate potential dependency
- Look at local requirements as they vary by county: (some counties routinely waive, some never, etc.)

Contents of Guardianship Report

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- Report is confidential, but can be viewed by persons who were served (PC § 1513(d))
 - *Try to get a copy before the hearing!*
- Person who prepares the report can be called as a witness and examined (PC § 1513(c))
- Referral can be made to county agency designated to investigate potential dependencies in certain circumstances (PC § 1513 (a) and (b))

Contents of Guardianship Report

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- Social history of proposed guardian and proposed ward
 - Including any developmental, emotional, psychological, or educational needs.
- Relationship of the proposed ward to the guardian
 - Including ward's attitude about the guardianship.
- Anticipated duration of the guardianship
 - The plans of the parents and proposed guardian for the stable and permanent home for the child.

Guardianship Status Report (Annual Review) GC-251

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- Every year after permanent guardianship is granted, the Court requires the guardian to complete and file a Guardianship Status Report ([Probate Code § 1513.2](#))
- The Court will typically set a hearing for 12 months after the guardianship is granted.
- The Report requests the following information to determine the status of the guardianship:
 - (1) Guardian's present address and electronic address
 - (2) The name and birthdate of the child under the guardianship
 - (3) The name of the child's school, if any
 - (4) If the child is not in the guardian's home, the name and information of the person(s) with whom the child resides
 - (5) If the child is not in the guardian's home, why the child was moved.

Guardianship Status Report (Annual Review) GC-251

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- If the guardian fails to complete, sign and return the form, he or she may be removed as the guardian. (PC § 1513.2)
- If the Court has any concerns, they may monitor the guardian's situation. (PC § 1513.2)

Thank you!

For anyone interested in volunteering, please
contact Sibongile Enchill at
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