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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 26, 2012

Title
Probate Guardianships: Communications Between California Courts on Guardianship Venue Issues.

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rule 7.1014

Recommended by
Probate and Mental Health Advisory Committee
Hon. Mitchell L. Beckloff, Chair

Agenda Item Type
Action Required

Effective Date
January 1, 2013

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August 29, 2012

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Executive Summary

Proposed rule 7.1014 of the California Rules of Court would implement a recent statutory requirement that the court where a petition has been filed for the appointment of a guardian of the person of a minor must communicate with courts in all other California counties where family law child custody or visitation proceedings concerning the minor were previously filed before determining the appropriate venue for the guardianship proceeding. The rule fulfills a statutory directive that the Judicial Council adopt rules of court to implement the inter-court communication mandate by January 1, 2013.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2013, adopt rule 7.1014 of the California Rules of Court, to provide for the communications between courts in different counties required or permitted by Probate Code

section 2204(b) in guardianship cases where there have been prior family law custody actions concerning the ward or proposed ward.

The text of the proposed rule is attached at pages 9–11.

Previous Council Action

On December 14, 2010, the Judicial Council adopted a joint proposal of this advisory committee and the Family and Juvenile Law Advisory Committee that recommended council sponsorship of legislation in 2011 to amend provisions of the Probate Code concerning guardianship venue. Assembly Bill 458 (Atkins; Stats. 2001, ch. 102)[1] was introduced in the 2011 session of the Legislature, approved by both houses, and signed by the Governor on July 25, 2011. The law became effective on January 1, 2012.

Rationale for Recommendation

Before 2012, guardianship venue when the proposed ward had previously been the subject of custody or visitation litigation under the Family Code was the county where the custody matter was filed, regardless of where the proposed ward lived when the guardianship was filed.[2] The council-sponsored legislation changed that rule.

New Probate Code section 2204(a) establishes a presumption in favor of venue in the county where the guardianship case is filed if the proposed guardian and the proposed ward have resided there for at least six months or since the minor's birth if less than six months old. If they have not, the presumption is in favor of venue in a county where a previous family law custody or visitation proceeding was filed concerning the proposed ward.[3] Either presumption can be overcome if the guardianship court determines that a different venue is in the best interests of the minor.

Before the court where the guardianship case was filed makes its venue determination, section 2204(b) requires communications between that court and each court where a family law custody or visitation matter concerning the proposed ward was previously filed. Provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) concerning similar

[1] A link to the legislation follows this report.

[2] See *Greene v. Superior Court* (1951) 37 Cal.2d 307, at 310–312.

[3] A family law custody or visitation proceeding is defined in section 2204(c) as a "proceeding described in Section 3021 of the Family Code that relates to the rights to custody or visitation of the minor under Part 2 (commencing with Section 3020) of Division 8 of the Family Code." Section 3021 identifies seven proceedings. They are: (1) proceedings for dissolution or (2) nullity of marriage, or (3) for legal separation; (4) actions for exclusive custody (Fam. Code, §§ 3120–3121); determinations of physical or legal custody or visitation in proceedings (5) under the Domestic Violence Prevention Act (Fam. Code, § 6200, et seq.) or (6) under the Uniform Parentage Act (Fam. Code, §7600, et seq.); and (7) proceedings brought by a district attorney to determine physical or legal custody or visitation (Fam. Code, §§ 17400–17440).

communications between courts of different states, codified in California in Family Code section 3410, apply to the communications between California courts under section 2204(b).[4]

Proposed rule 7.1014

Section 2204(b)(5) directs the Judicial Council to adopt rules of court to implement the provisions of section 2204(b) by January 1, 2013. Proposed rule 7.1014 is a response to that directive.

Types of communications between courts. The proposed rule provides for two kinds of communications between courts: mandatory substantive communications between judicial officers in the two or more affected courts (rule 7.1014(b)); and optional preliminary communications between these courts (rule 7.1014(c)). Preliminary communications are defined as aids to substantive communications. They may be for collection of information about the prior family law custody proceedings or other routine matters, including calendar management and scheduling (rule 7.1014(c)). Preliminary communications under the rule are modeled on communications between courts on schedules, calendars, court records, and similar matters under the UCCJEA, Family Code section 3410(c) in California. Substantive communications are for the purpose of assisting the judicial officer responsible for the guardianship in determining which county would provide the venue for that proceeding that is in the best interests of the minor (rule 7.1014(b); Prob. Code, § 2201).

The rule makes three primary distinctions between substantive and preliminary communications:

1. A record must be made of the former but not the latter (rules 7.1014(b)(3) & 7.1014(c)(3); Fam. Code, § 3410(c));

2. The parties to the guardianship proceeding must be informed of and given access to the record of the former but not the latter (rules 7.1014(b)(4) & 7.1014(c)(3); Fam. Code, § 3410(c)); and

3. The former must be between judicial officers of each court while the latter (at the discretion of the responsible judicial officer in the guardianship court) may be between judicial officers of each court, staff of each court, or judicial officers of one court and staff of the other court (rules 7.1014(b) & 7.1014(c)(2)).

[4] The reference to Family Code section 3140 in paragraph (4) of Probate Code section 2204(b) is a typographical error in the bill prepared by the Office of Legislative Counsel and eventually signed by the Governor. Corrective legislation sponsored by the Judicial Council was introduced this year (Assem. Bill 2683, § 1, filed on March 12, 2012). This legislation passed both houses of the Legislature, was signed by the Governor on August 27, 2012, and has been chaptered as Chapter 207 of the Statutes of 2012. A link to this legislation follows this report. The proposed rule correctly refers to Family Code section 3410. A link to section 3410, as part of chapter 1 of the UCCJEA, Family Code sections 3400–3412, also follows this report.

Substantive communications. Rule 7.1014(b)(1) addresses the situation when there is no judicial officer identified as currently responsible for one or more of the prior family law matters concerning the minor—a common occurrence because those matters may be many years old and entirely dormant when the guardianship case is filed. In that situation, substantive communications under the rule must be between the guardianship court and each other court's managing or supervising family law judicial officer or his or her designee. If the other court does not have these intermediate-level supervising judicial officers, the communication must be with the presiding judge of the court or his or her designee.

Rule 7.1014(b)(2) applies if there are three or more courts involved as the result of multiple family law proceedings concerning the ward filed in two or more counties. The preference is for simultaneous communications among all affected courts, but if that cannot be accomplished, the record of any substantive communications between courts must be provided to the judicial officer of any family law court that did not participate in such communications at or before the time when later substantive communication occurs between the guardianship court and the latter court.

Rule 7.1014(b)(4) specifies who must be informed of and given access to the record of substantive communications between judicial officers. Family Code section 3410(d) limits the persons so entitled to actual parties—persons who have filed pleadings in the case. The proposed rule extends that limit to include all persons entitled to notice of the hearing on the guardianship appointment petition because:

- Venue determinations under the proposed rule and Probate Code section 2204 will often be made before any parties other than the petitioner have appeared in the case;
- Persons entitled to notice in guardianship and other probate matters retain some of the rights and characteristics of parties in other civil litigation even though they have not filed pleadings in the case; and
- These persons will in most situations include the parties in the prior family law matters.

Rule 7.1014(b)(5) refers to and incorporates Family Code section 3410(b) in defining the rights the persons described above have with respect to substantive communications. Section 3410(b) permits, but does not require, courts to allow eligible persons to participate in the communications. If they do not participate, they must be informed about the communications and given access to the record of them.

Rule 7.1014(e) clarifies the term "record of a communication" by referring to Family Code section 3410(e):

> (e) "[R]ecord" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Preliminary communications. Rule 7.1014(c)(1) offers a list of items of information about the family law proceedings recommended for collection by the guardianship court in preliminary communications. The list is neither mandatory nor exclusive and may include any additional information desired by the judicial officer, but the listed items would provide that officer with a thorough briefing about the prior family law proceedings for use in substantive discussions with judicial officers in other courts and would also help to identify those officers. Responding family law courts are encouraged to provide as much of the listed information as is reasonable under the circumstances.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated as part of the spring 2012 comment cycle. Five comments were received, all of which approved the proposal. Three of these comments recommended changes. A chart of the comments received and the committee's responses is attached at pages 12–23.

The comments that led to the most significant changes in the text of the rule came from the Joint Rules Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees (JRWG) and from the Superior Court of Los Angeles County. The rule as circulated required that preliminary communications be initiated and conducted by staff rather than by judicial officers of the guardianship court. This requirement was included because the rule elsewhere required that the parties must be informed about and provided with the record of substantive communications between judicial officers, but not of preliminary communications. The committee believed that if judicial officers of the guardianship court engaged in preliminary communications, there was a chance of misidentifying some substantive communications as preliminary, thus inadvertently and improperly denying eligible persons notice of or access to the record of those communications. There was an exemption from this requirement for smaller courts, defined as those with four or fewer authorized judges, which might lack sufficient staff for these communications.

The circulated rule required that a record also be kept of preliminary communications although the parties in the guardianship case would not have access to these records. This provision was more stringent than its equivalent in the UCCJEA, which requires no record of communications between courts on schedules, calendars, court records, or similar matters (Fam. Code, § 3410(c)).

The JRWG requested that the exemption for smaller courts be expanded to courts with eight or fewer judges, while the Superior Court of Los Angeles County proposed modifying the rule to permit all guardianship courts, large or small, to determine who conducts their preliminary communications under the rule. The JRWG also requested that the rule not extend beyond the requirements of the statute.

The committee accepted both of these recommendations, modifying rule 7.1014(c)(2) to grant discretion to the judicial officer of the guardianship court to determine if preliminary communications under the rule may be between judicial officers of the courts involved, or between staff of the guardianship court and judicial officers of the family law courts, or among

staff of all courts. This change eliminated any need for the exemption for small courts; which was accordingly deleted.

The requirement that a record be made of preliminary communications was also deleted. Rule 7.1014(c)(3) refers to Family Code section 3410(c) for the applicable requirements for preliminary communications.

The Superior Court of Riverside County asked that the entire subdivision (c) of the rule, concerning preliminary communications, be deleted as unnecessary. The court noted that the current UCCJEA form used both in family law custody and guardianship cases, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120), requires guardianship petitioners to provide information on related family law custody matters involving the proposed ward. In the Riverside court's view, this form would provide nearly the same information listed in rule 7.1014(c)(1).

Form FL-105/GC-120 requests the identities of family law courts, case numbers, and names of the children affected but provides only one line for a response. (It also requests attachment of copies of court orders.) To the extent that a form completed by a guardianship petitioner contains any of the information about a prior family law custody proceeding that is listed in the proposed rule, duplicate requests for that information need not be made of the family law courts, except perhaps to verify the information provided by the petitioner. But the form is often prepared by self-represented persons who may not have been involved as parties in the family law action or actions and may not initially have even the limited information requested in the form.

The form remains important because it is the first place the guardianship court looks for any prior history of family law custody litigation involving the proposed ward. However, the form requests only the minimum preliminary information about that history, and was adopted by the Judicial Council before there existed any duty of consultation among multiple California courts in guardianship and family law cases. The committee will observe actual practice under the new guardianship venue provisions and the proposed rule to determine whether the form should be changed to request more information about prior family law custody proceeding in order to reduce the amount of information courts are requested to collect by inter-court inquiry under the rule, but the committee has concluded that the rule's provisions concerning preliminary communications remain necessary.

The Riverside court also requested clarification as to the level of detail required in the record of substantive communications between courts. The committee concludes that rule 7.1014(e)'s reference to Family Code section 3410(e), quoted above, provides sufficient clarity on this issue. Communications between judicial officers by e-mail are records under section 3410(e), as are summaries of oral communications between them reduced to minute orders or contained in confirming e-mails.

The Riverside court's final point urged that the mandatory communication between courts is excessive and unnecessary because the policy considerations that call for communications between courts of different states under the UCCJEA do not apply equally to communications between California courts on venue issues. The court recommended that the rule should not always require communications between courts before an appointment petition is heard, and in any event communications should only be necessary if the guardianship court is inclined to establish venue against the applicable presumption in Probate Code section 2204(a).

The committee's response notes that Probate Code section 2204(b)(1) requires communications between courts before the guardianship court makes any venue determination to which the section 2204(a) presumptions apply, not just in situations where the court would otherwise be inclined to rule against the applicable presumption. Section 2204(b) was part of council-sponsored legislation. If actual experience under the new law and the proposed rule supports the Riverside court's view, the committee will consider making a recommendation to amend the statute.

Implementation Requirements, Costs, and Operational Impacts

Implementing rule 7.1014 will increase costs for training judicial officers and court staffs. But the rule will also provide guidance as to what the new venue statute requires; it is, in effect, a training aid. The JRWG estimated only limited training time and cost for probate and family law judicial officers and family law court staff, and moderate time and expense for probate court staff. Additional workload for probate court staff was rated low to moderate. These evaluations, reflected as part of the JRWG's comment in the attached chart, were made before the above-noted changes to the proposed rule, many of which were made in response to that comment and further reduce the rule's costs of implementation and operational impact.

On the other hand, the required consultations between courts should result in venue decisions that eliminate the need in many cases for interested persons to file petitions for transfer and for courts to hear and decide those petitions—including requests for transfer made by guardianship petitioners who sought under the former law to transfer their guardianship cases to the counties where they and their proposed wards currently live, after having been compelled by that law to file their cases in the often remote counties where family law custody matters involving their wards were previously filed. Over time, the new law, including the consultation process implemented by rule 7.1014, should reduce the total cost to interested parties and courts of determining proper venue in applicable guardianship cases.

Relevant Strategic Plan Goals and Operational Plan Objectives

Proposed rule 7.1014, like the Judicial Council-sponsored legislation that led to and requires it, represents an innovative and effective practice to foster more timely, fair, and efficient resolution of guardianship cases (Strategic Plan, Goal IIIB1). Many petitioners for guardianship are unrepresented and without financial resources. The new statutes and the proposed rule will permit these petitioners to file their cases where they and their proposed wards live rather than

requiring that they travel to other counties to file then attempt to transfer the cases back to their home counties. Even though courts may ultimately transfer some of these cases to other counties, they would do so only after determining that the transfers are in the best interests of the wards. Unrepresented petitioners would be able to participate in that determination in their home counties and the proposed wards will be under the courts' protection throughout the transfer process. This procedure should remove or reduce a barrier to access to the courts by unrepresented guardianship petitioners and the children for whose benefit they act (Strategic Plan, Goal I1; Operational Plan, Goal I, Objective 2b; see also Operational Plan, Objective 1f: Improved practices, procedures, and administration of probate conservatorship and guardianship cases).

Attachments

1. Rule 7.1014, at pages 9–11;
2. Chart of comments, at pages 12–23;

Links to AB 458, Stats. 2011, ch. 102; AB 2683, Stats 2012, ch. 207; and chapter 1 of the UCCJEA (Family Code sections 3400–3412), respectively, are:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB458;

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_2651-2700/ab_2683_bill_20120827_chaptered.pdf; and

http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=fam&codebody=3400&hits=20.

Rule 7.1014 of the California Rules of Court is adopted, effective January 1, 2013, to read as follows:

Rule 7.1014. Communications between courts in different California counties concerning guardianship venue.

(a) Purpose of rule

This rule addresses the communications between courts concerning guardianship venue required by Probate Code section 2204(b). These communications are between the superior court in one California county where a guardianship proceeding has been filed (referred to in this rule as the guardianship court), and one or more superior courts in one or more other California counties where custody or visitation proceedings under the Family Code involving the ward or proposed ward were previously filed (referred to in this rule as the family court or courts, or the other court or courts).

(b) Substantive communications between judicial officers

Before making a venue decision on a petition for appointment of a general guardian in a guardianship proceeding described in (a), or a decision on a petition to transfer under Probate Code section 2212 filed in the proceeding before the appointment of a guardian or temporary guardian, the judicial officer responsible for the proceeding in the guardianship court must communicate with the judicial officer or officers responsible for the custody proceeding or proceedings in the family court or courts concerning which county provides the venue for the guardianship proceeding that is in the best interests of the ward or the proposed ward.

(1) If the currently responsible judicial officer in the family court or courts cannot be identified, communication must be made with the managing or supervising judicial officer of the family departments of the other court or courts, if any, or his or her designee, or with the presiding judge of the other court or courts or his or her designee.

(2) If courts in more than two counties are involved, simultaneous communications among judicial officers of all of the courts are recommended, if reasonably practicable. If communications occur between some but not all involved courts, the record of these communications must be made available to those judicial officers of the courts who were not included at or before the time the judicial officer of the guardianship court communicates with them.

(3) A record must be made of all communications between judicial officers under this subdivision.

(4) The parties to the guardianship proceeding, including a petitioner for transfer; all persons entitled to notice of the hearing on the petition for appointment of a guardian; and any additional persons ordered by the guardianship court must promptly be informed of the communications and given access to the record of the communications.

(5) The provisions of Family Code section 3410(b) apply to communications between judicial officers under this subdivision, except that the term "jurisdiction" in that section corresponds to "venue" in this context, and the term "parties" in that section identifies the persons listed in (4).

(c) Preliminary communications

To assist the judicial officer in making the communication required in (b), the guardianship court may have preliminary communications with each family court to collect information about the proceeding in that court or for other routine matters, including calendar management, and scheduling.

(1) The guardianship court should attempt to collect and each family court is encouraged to provide, as much of the following information about the proceeding in the family court as is reasonable under the circumstances:

(A) The case number or numbers and the nature of each family court proceeding;

(B) The names of the parties to each family court proceeding, including contact information for self-represented parties; their relationship or other connection to the ward or proposed ward in the guardianship proceeding, and the names and contact information of counsel for any parties represented by counsel;

(C) The current status (active or inactive) of each family court proceeding, whether any future hearings are set in each proceeding and, if so, their dates and times, locations, and nature;

(D) The contents and dates filed of orders in the each family court proceeding that decide or resolve custody or visitation issues concerning the ward or proposed ward in the guardianship proceeding;

(E) Whether any orders of each family court are final, were appealed from, or were the subject of extraordinary writ proceedings, and the current status of any such appeal or proceeding;

(F) The court branch and department where each family court proceeding was assigned and where the proceeding is currently assigned or pending;

(G) The identity of the judicial officer currently assigned to or otherwise responsible for each family court proceeding; and

(H) Other information about each family court proceeding requested by the judicial officer of the guardianship court.

(2) In the discretion of the judicial officer of the guardianship court, preliminary communications under this rule may be between judicial officers of the courts involved or between staff of the guardianship court and judicial officers or court staff of each other court.

(3) Family Code section 3410(c) applies to preliminary communications under this rule.

(d) Applicability of this rule to petitions to transfer filed after the appointment of a guardian or temporary guardian

Subdivisions (b) and (c) of this rule may, in the discretion of the guardianship court, apply to petitions for transfer described in Probate Code section 2204(b)(2).

(e) "Record" under this rule

"Record" under this rule has the meaning provided in Family Code section 3410(e).

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	Commentator	Position	Comment	Committee Response
1.	Joint Rules Working Group of the Judicial Council's Trial Court Presiding Judges and Court Executives Advisory Committees (TCPJAC/CEAC) San Francisco	AM	The TCPJAC/CEAC Joint Rules Working Group agrees with this proposal if it is modified to: 1. Expand the exemption of small courts from the requirement that preliminary communications be made by court staff of the guardianship court (proposed rule 7.1014(c)(3)) from courts with four or fewer authorized judges to courts with eight or fewer authorized judges; and 2. Exclude provisions that are not mandated by statute. Operational impacts identified by the working group: Potential Fiscal Impact: Although the Invitation to Comment states that over time, the new law, including the consultation process implemented by the proposed rule, should reduce the total cost to interested parties and courts of determining proper venue in guardianship cases subject to the rule (ITC, p. 5), the increased staff costs, in	1. The committee has decided to eliminate the requirement that court staff must make preliminary communications. The revised rule would permit judicial officers to make such communications in all courts, but also permit them to assign this duty, in whole or in part, to court staff. This change would eliminate the need for an exemption provision for small courts. 2. In response to this comment, the committee has modified the rule to provide that a written record of preliminary communications is not required. This change makes the rule consistent with Family Code section 3410(c), concerning communications between courts on schedules, calendars, court records, and similar matters. Elimination of the requirement that preliminary communications are to be made by court staff should reduce any increase in staff costs made by the rule and the statute it implements.

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			particular for smaller courts, may be burdensome especially during these times of shrinking resources. Impact on Existing Automated Systems: For courts using the SUSTAIN Justice Edition CMS, this proposal may result in a low impact. The proposal relates to communication between courts, which does not lead to a direct impact on this system. However, due to the requirement for the additional communications, courts may consider tracking the other court's information, including contact names, addresses, and phone numbers, which would require the addition of a new record type for this information. For courts using CCMS V3, there appears to be no apparent impact to automated CMS V3 for Civil, Small Claims, Probate, and Mental Health. If Family Law becomes part of CMS V3, there might be some impact because the "other court's matters" will be family law custody matters. Require Development of Local Rules or Forms: A small amount of additional forms and procedures at the local level. Increased Training Needs Requiring the Commitment of Staff Time and Court Resources:	

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			Judicial officers and court staff would need additional training on the requirements of this rule. It is estimated that limited additional training for probate and family law judicial officers and family law staff will be needed. It is estimated that moderate additional training for probate staff on the requirements of the rule concerning preliminary communications, which must be performed, except in the smallest courts, by probate court staff will be necessary. Also, probate staff will likely need moderate additional training on recordkeeping requirements. Recommend review of family court judicial officer experience with inter-court communications under the UCCJEA (Fam. Code, sec. 3400 et seq.) in interstate child custody matters. The proposed new rule is modeled after portions of the UCCJEA Increase to Existing Court Staff Workload: The increased workload required by this rule could be challenging, particularly for smaller courts. This could be mitigated to some degree by the establishment of statewide or regional protocols similar to those established by a large number of Northern California Courts that facilitate communication regarding the inter-county transfer of Juvenile 602 (delinquency) and 300 (dependency) cases. • **Court Investigators:** During the interview,	

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			the investigator would be required to ask if the ward was the subject of a family law custody or visitation matter. Investigator could use a copy of the *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105/GC-120), mandatory when filing a petition for guardianship, to verify information. **Low Impact.** • **Examiners:** When information is presented that ward was the subject of a family law case, a Work Queue or email message would likely be required to alert a judicial officer for the communication with the family law court. This would need to be within a certain amount of time prior the hearing. **Low Impact.** • **Probate Court Staff:** Makes the initial contact with the family law court with case information and schedule a communication appointment for the judicial officers: **Medium Impact.** (Depending on volume of cases and responsiveness of family law court.) • **Judicial Officer:** Review of the guardianship petition (examiner note) and communication with the family law court prior to the hearing. **Medium to High Impact** (depending on	The referenced UCCJEA form has been required for many years. Although primarily intended for disclosure of custody matters in other states under the UCCJEA, the form also asks about other California custody matters involving the proposed ward. Under the former guardianship venue law, if the form disclosed prior family law custody proceedings regarding the ward in another California county, the proper venue was in the other county. Such a history would be expected to generate inquiries about the other court's custody matters by court investigators or other court staff and preparation for a possible transfer of the case to the other county.

	Commentator	Position	Comment	Committee Response
			volume of cases and responsiveness of family law court, may create continuances to the calendars). • **Probate Operations Staff:** Would likely increase transfers in and out of county. Impact depends on volume. Changes in the Responsibilities of the Presiding Judge and/or Supervising Judge: As stated on page 7 of the ITC, the managing/supervising judge or the presiding judge of the family law court or courts will be required to hold the substantive communications with the guardianship judicial officer if there is no judicial officer currently assigned to the family law case. This aspect of the proposal increases the responsibilities of the presiding judge minimally. The presiding judge in the court where the family law case was filed may designate another judicial officer to participate in the communication. The proposal increases the responsibilities of the family law managing or supervising judicial officer moderately as he or she will be required to participate in communications in the many cases in which there is no currently assigned family law judge because the family law custody matter is no longer active. Again, the presiding judge can always designate another judicial officer, thereby reducing the workload of any particular judicial officer.	The committee has revised proposed rule 7.1014(b)(1) to permit managing or supervising family law judges as well as presiding judges to designate a judicial officer of the family law court to participate in the communications. Thus any of the managing judicial officers, whether of the family law department or of the entire court, may designate a responsible judicial officer from the family law court to communicate with the guardianship court under the rule.

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			Positive Impact—More information for the Judicial Officer re: the suitability of the guardianship. Negative Impact—Overall increased workload generating no additional revenue Request for Specific Comments: • Is the proposed exemption of small courts from the requirement that preliminary communications be made by court staff of the guardianship court (proposed rule 7.1014(c)(3)) necessary or helpful for such courts, and is the exemption sufficient to address all special difficulties small courts may have in implementing the rule? **Yes. The exemption could even be expanded from small courts with 4 or fewer judges to small courts with 8 or fewer judges.** • Does the proposed rule appropriately address the legislative mandate? **Yes.** • Should the rule provide for allocation of the cost of responding to preliminary communications from guardianship courts to family law courts requesting information about family law custody proceedings? If so, what provision should be made? **No, as it does not appear any single court would be burdened by the cost.**	The exemption for small courts has been removed as unnecessary because the revised rule would permit judicial officers in all courts to make preliminary communications or assign all or a portion of those communications to court staff.

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			• Would the proposal reduce or increase costs? In the short term (within two years)? Over a longer term? For guardianship courts? Family law courts? Both courts? Neither court? It appears there would be initial increased costs, of time spent in training hours by judicial officers and staff (for both guardianship and family law courts); however, it does not seem that the training in the guardianship court would take an excessively long time as the change from current procedure is not drastic. The increased cost to family law courts would be the labor cost of researching inquiries into custody or visitation proceedings. Transfer costs would increase as this would create additional transfers. • What would the implementation requirements be for guardianship and family law courts? For example, training staff (please identify positions and expected hours of training), revising processes and procedures (please describe), changing docket codes in the case management system, or modifying case management system. Training staff: (1) Court Investigators would make this	The suggested transfer costs would be offset to some extent by the reduction of such costs because the law was changed to favor venue in the county where the minor and the proposed guardian live rather than the county where the older family law custody matter had been filed. The new law may actually result in fewer transfers than were experienced under the former law.

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			additional inquiry in all interviews and document findings in their reports. (2) Probate Examiners would make notes to the judicial officer based on the information provided on the UCCJEA, as they do currently. (3) Possibly the cases could be entered by the Probate Examiner into a case management system, such as Banner, to be tracked as to status of communications between courts.	
2.	Orange County Bar Association, by Dimetra Jackson, President Newport Beach	A	No specific comments.	No response necessary.
3.	Superior Court of California, County of Los Angeles Los Angeles	AM	Rule 7.1014(c)(2) and (c)(3) should be eliminated. It should be left to each court to determined (based on its staffing limitations) how the preliminary communication information should be obtained. The rule is clear that a record of all communications except scheduling must be maintained by the court. Paragraphs (c)(2) and (c)(3) are not needed to eliminate judicial errors. A judicial officer could use the same checklist contemplated in the narrative portion of this proposal. Paragraphs (c)(2) and (c)(3) create unnecessary burdens on staff. Given the financial crisis in the	The requirement that preliminary communications be made by court staff has been removed. Under the revised rule, judicial officers could make such communications or assign all or some of them to court staff. The requirement that preliminary communications be reduced to writing has also been eliminated. Preliminary communications under the rule now conform in all respects to communications concerning scheduling, calendars, etc., under the UCCJEA. (See Fam. Code, § 3410(c).)

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			courts, the proposed rule should not limit the manner in which the court obtains the information. A guardianship court or the family court may have a part-time judicial assistant with limited hours in that court. A venue decision could be substantially delayed based on staffing issues and an inability of the judicial officer to obtain necessary information. Finally, if paragraphs (c)(2) and (c)(3) limit the judicial officer's ability to obtain the preliminary information, a judicial officer is not permitted to intervene where there has been no response or an inadequate response from a court in another county. Shouldn't a judicial officer be permitted to intervene where he or she believes it would be helpful in obtaining the necessary information?	
4.	Superior Court of California, County of Riverside Riverside	AM	**Disagree as to proposed subsection (c) of 7.1014** Subdivision (c) of proposed rule of court 7.1014 regarding preliminary communication is unnecessary. Probate Code section 2204 is similar to the UCCJEA, codified at Family Code sections 3400 et seq. The UCCJEA requirements have been implemented using Judicial Council form FL-105/GC-120. This form requires the petitioner to provide information on related custody or visitation proceedings. If properly completed, this form	The committee has revised but not eliminated subdivision (c). Preliminary communications must be identified in the rule because, like calendar, and scheduling matters under the UCCJEA, parties need not be informed about them or provided with written copies of the communications, whereas communications between judicial officers on substantive matters must be disclosed and provided to the parties. A properly completed form FL-105/GC-120

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			would provide nearly the same information that would be solicited by court staff in CRC 7.1014(c). There is no need to provide a formal procedure for preliminary communication.	would be helpful but may not in most cases be sufficient. To the extent that the form does provide information listed in rule 7.1014(c)(1), the rule does not require that the same information be collected again from the family law court.
			Clarification may be needed as to the level of detail required in the record of the communication between judicial officers. Would a minute order suffice, or would a reporter's transcript be required?	The committee believes that the rule's reference to Family Code section 3410(e) for a definition of "record" of a communication that must be provided to the parties is sufficient clarification. The committee notes that e-mails between judicial officers, and summaries of oral conversations, transmitted as minute orders or confirming e-mails, would be records under the rule and the statute the rule cites.
			This proposal would increase costs, both in the short term and long term for the guardianship, family law, and juvenile courts.	Neither the proposed rule nor the statute it supports requires participation of juvenile courts. Dependency proceedings are not family law custody actions for purposes of the statute or the rule. See Probate Code section 2204(c) and Family Code section 3021.
			It appears that, by analogy to Family Code section 3426(b), Probate Code section 2204(b)(1) requires communication between courts whenever there is a custody or visitation proceeding in another county concerning the minor. However, making this communication mandatory created an unnecessary burden on the court. The policy considerations involved in the UCCJEA are not the same as those involved	Probate Code section 2204(b)(1) requires communications between courts in all cases described in section 2204(a) and identified in the proposed rule of court. The requirement of communication is not limited to cases where the guardianship court is inclined to depart from the presumptions based on the duration of the time of residency of the minor and the proposed guardian in the guardianship county specified in Probate

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			when a custody order has been made in another county within California. In the situation set forth in 2204(a)(2), it may make sense to require the court to communicate with the other court but only before granting the petition. The court should be able to hear and deny the petition without needing to communicate with the other court. In the situations under paragraphs (a)(1) or (a)(3), communication also would not be necessary. In other words, communication should only be required before a court intends to depart from the "home county" presumptions in 2204 based on a finding that it is in the best interests of the minor. As a practical matter, this would allow the court to conduct an initial hearing to hear reasons to depart from the presumption before incurring the burden of communication. Unless the petitioner met this initial burden at the hearing, the communication would not be necessary. The evidence provided at the hearing would be the basis for the discussion with the other court. This request for comment only concerns the rule of court since the statute was the subject of a prior request for comment and has already been enacted. However, this request for comment notes that corrective legislation is pending concerning a typographical error in Probate Code 2204 (AB 2683). Perhaps this legislation could also consider making this communication discretionary rather than mandatory in these circumstances, especially in	Code sections 2204(a)(1) and (2). This recommendation would require the guardianship court to conduct the full guardianship trial before deciding whether a communication with a family law court is necessary for it to determine whether the case was filed in the proper county. Venue decisions are best made before trials on the merits.

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			light of the increased burden on the courts due to funding cuts.	
5.	Superior Court of California, County of San Diego, by Michael Roddy, Executive Officer San Diego	A	No specific comment.	No response necessary.