



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2014

Title	Agenda Item Type
Decedents' Estates: Waiver of Bond by Beneficiaries of Estates	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt form DE-142/DE-111(A-3d))	January 1, 2015
Recommended by	Date of Report
Probate and Mental Health Advisory Committee	August 7, 2014
Hon. Mitchell L. Beckloff, Chair	Contact
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Executive Summary

In response to concerns expressed by judicial officers in the probate departments of several superior courts, the Probate and Mental Health Advisory Committee recommends the adoption of a mandatory form that beneficiaries of decedents' estates would be required to sign to waive surety bonds that otherwise would be required of the proposed personal representatives of these estates.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt *Waiver of Bond by Heir or Beneficiary* (form DE-142/DE-111(A-3d)), effective January 1, 2015. This mandatory form is proposed to create for use throughout the state a standard waiver form containing important information that beneficiaries of decedent estates should have before consenting to waive surety bonds the law requires from the personal representatives of the estates.

The proposed form is attached at page 8.

Previous Council Action

California Rules of Court, rules 7.201–7.206, pertain to surety bonds in decedent estates. These rules were adopted effective on January 1, 2000, as part of the first wave of statewide probate rules. All of these rules have been modified in minor ways since then; the latest amendment was to rule 7.201, effective January 1, 2007. Rules 7.201 and 7.202 permit the court to require a bond notwithstanding its waiver by the decedent’s will in two specific situations. No rules of court address the details of a waiver of bond by estate beneficiaries under Probate Code section 8481(a)(2).¹

Rationale for Recommendation

Waivers of surety bonds in decedent estates

The personal representative² of a decedent’s estate must post a surety bond for the benefit of persons interested in the estate, conditioned on the faithful execution of the duties of the office.³ The decedent’s will may require or waive the bond.⁴ If the will neither requires nor waives the bond or there is no will, all beneficiaries of the estate may waive the bond.⁵ The beneficiaries’ waivers must be in writing and are to be attached to the petition for the personal representative’s appointment.⁶ Despite a waiver of bond by the decedent or by all beneficiaries, the court—on its own motion or on the petition of any interested person—may, for good cause, require a bond.⁷

Bond waivers to be signed by estate beneficiaries are usually prepared by the proposed personal representative or his or her counsel; circulated to all beneficiaries, sometimes by mail or e-mail; returned to the personal representative or attorney after execution; and collected for attachment to the appointment petition or for separate filing shortly after that petition is filed. The waivers are usually quite brief and do not explain the voluntary nature of the act or the consequences to estate beneficiaries if the bond is waived and problems that would have been covered by it arise in the administration of the estate. The form for a beneficiary’s bond waiver provided in typical legal forms publications usually reads something like the following:

¹ Unless otherwise stated, all code references are to the Probate Code.

² The term *personal representative* includes executors and general and special administrators. See section 58(a).

³ Section 8480(a), (b).

⁴ Section 8481(a)(1). A copy of section 8481 is provided as Attachment A to this report.

⁵ See section 8481(a)(2). The term *beneficiary* as used in section 8481 refers to both a devisee of real or personal property under a decedent’s will and an heir of an intestate decedent. See sections 24(a) and (b), 32, and 34(a).

⁶ Section 8481(a)(2).

⁷ Section 8481(b).

[Name of beneficiary], [statement of relationship] to [name of decedent], the decedent in the above captioned matter, and beneficiary under the decedent's will, hereby waives posting of bond by [name of proposed personal representative], the proposed personal representative, with respect to the Petition for Probate filed on [date of filing] in this matter.^[8]

Judicial officers in probate assignments in several courts have advised the committee that beneficiaries interested in estates that have had administration problems following bond waivers frequently complain that no one explained the consequences of the waivers they were asked to sign; some even say that they were led to believe that a waiver was necessary to permit administration to begin or continue or to enable them to receive their shares of the estate. The committee has concluded that estate beneficiaries asked to waive bond should be advised of (1) the possible consequences of a bond waiver by all beneficiaries; (2) their right to consult concerning the waiver with counsel independent of the proposed personal representative or the representative's counsel; and (3) their rights to expect commencement or timely completion of administration and to receive their shares of the estate whether or not they waive bond.

The proposed waiver form

The new form is modeled after an existing waiver form, the *Waiver of Notice of Proposed Action* (form DE-166), in that it consists of a notice section (a "warning" in form DE-166) followed by the text of the waiver. But a difference between the existing form and the form recommended here is that the latter is designed as both a standalone form (designated as form DE-142) and an attachment to a *Petition for Probate* (form DE-111) (designated as form DE-111(A-3d)).

This unusual design reflects current experience with beneficiary bond waivers. Most are filed as attachments to form DE-111 because section 8481(a)(2) calls for them to be attached to the petition for appointment of a personal representative, which is that form.⁹ However, some waivers are not filed until after the petition has been filed, primarily because they have not been returned by beneficiaries in time to be attached to the petition before it is filed. In that situation, the petitioner has filed the appointment petition before receiving all of the signed waivers in the hope that all will be returned before the initial hearing on the petition, which may be 45 or more days after filing. The standalone form's design features—including full first-page attorney or party, court, and title caption boxes—would help ensure that late-filed waivers get to the proper case file in time for the matter to go forward without delay at the initial hearing.

The notice portion of the form consists of paragraphs A–G. The first three paragraphs summarize the basic requirement of a bond and exceptions to that requirement, including the beneficiary-waiver provisions of section 8481(a)(2). The description of a bond and the source of payment of its cost in paragraph A come from the answer to question 15, "*Should I require a bond?*" in the introduction to the California Statutory Will in section 6240.

⁸ See *West's California Code Forms: Probate* (Thomson West 7th ed.) §8481 Form 1.

⁹ See items 3d(2) and 3d(3) on page 2 of form DE-111.

The most important notice to a beneficiary asked to sign the form is in bold text in paragraph D. This paragraph advises that if an estate with no bond suffers a loss that would have been covered by a bond, all or a part of the loss may not be recoverable from the personal representative and therefore may eliminate or reduce the share of the estate distributable to the beneficiary.

Paragraph E of the form advises beneficiaries that their waivers cannot be withdrawn after the personal representative is appointed without a bond, but they would remain eligible after the appointment to petition the court to require a bond for good cause, the same right held by any person interested in the estate under section 8481(b).

Paragraph F acts as a reminder to a personal representative interested in procuring bond waivers from estate beneficiaries that a guardian ad litem or other legal representative with specific authority to waive bond must sign the waiver for a minor, an incapacitated person, and certain beneficiaries that are unascertained or not yet in being.¹⁰ The phrase *other legal representative* is intended to cover waivers by guardians or conservators of the estates of beneficiaries, as well as attorneys in fact of principal beneficiaries with capacity or under durable powers of attorney.

Paragraph G, in bold text for emphasis, advises beneficiaries not to sign the form until they have consulted with counsel independent of the lawyer for the proposed personal representative if they do not understand the form.

The waiver portion of the form consists of four numbered paragraphs. Perhaps the most important is paragraph 3, which confirms the beneficiary's understanding that he or she is not required to waive bond to allow estate administration to start or proceed or to receive his or her share of the estate. The express waiver in paragraph 4 is specific to a particular personal representative, whose name is to be inserted in the form. This limited waiver means that the signing beneficiary must be consulted again about waiving bond if a successor personal representative is required during the estate administration, and reflects that a waiver decision must be based in part on consideration of a particular personal representative's competence, experience, and integrity.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated as part of the spring 2014 comment cycle. Eight comments were received. All commentators approved the proposal, including the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group.

Two commentators recommended changes, which were largely accepted by the advisory committee.¹¹ A third asked the committee to propose a second new form that would inquire into

¹⁰ See section 1003.

¹¹ More than two commentators recommended changes, but the additional recommendations addressed a second version of the form that was proposed as an alternative if then-pending legislation, Assembly Bill 2567, which

a proposed personal representative's legal and financial history as an aid to a court in evaluating whether to require a bond despite its waiver under section 8481(b), a request that is beyond the scope of this proposal but is worthy of further study as an independent project. A chart of the comments received and the committee's responses is attached at pages 9–18.

The comment of TEXCOM recommended changing the number of paragraphs and the order of the sentences in some of those paragraphs in the Notice section of the form. This comment was entirely accepted; the attached form includes a restated Notice portion that follows the recommendation made by TEXCOM, with minor alterations recommended by Judge Mary E. Wiss, Superior Court of San Francisco County.

However, two TEXCOM recommendations were not accepted. Its draft of paragraph A would have ended with the following phrase after the text shown in the attached form: “which could reduce some or all of the beneficiaries' shares of the estate.” The committee concluded that personal representatives or their counsel seeking bond waivers from beneficiaries are free to advise of the possible effect of bond premiums on the net estate available for distribution, but that effect on any beneficiary's share is usually very slight. A reference to that issue in this form would, in the committee's view, overemphasize its actual effect on a beneficiary's share of the estate.

TEXCOM's paragraph G would have read, “If you have questions about the possible consequences of signing this form, you should consult an attorney of your choice for advice.” The committee decided to retain its draft of paragraph G, reading as follows: “If you do not understand this form, do not sign it until you have asked a lawyer (who is independent of the lawyer for the proposed personal representative) to explain it to you.” The committee prefers this text because it emphasizes the need for advice from a source that is not connected to the attorney for the personal representative and is intended primarily for the beneficiary who may not understand enough about the consequences of a bond waiver to raise questions about it.

Attorney Terence S. Nunan of Los Angeles asked the committee to modify the form to include an estimate of the cost of the bond. The committee decided against that request because of its belief that a personal representative seeking a waiver could easily disclose that cost if significant in a particular estate, but this expense in fact has only a minor effect on beneficiaries' shares of estates in most situations.

Mr. Nunan also requested the development of a second form that would require disclosure to the court of a proposed personal representative's legal and financial history. The committee believes that this request may have merit but is beyond the scope of this proposal and should not interfere

would modify section 8481, were to become law. That legislation failed in the 2014 Legislature. See the following discussion under Alternatives, and the opening comment of the Executive Committee of the Trusts and Estates Section of the State Bar of California (TEXCOM) and the committee's response in the comment chart, at page 9.

with adoption of the waiver form this year. The committee elected to seek permission to study this issue further in the committee's Annual Agenda for next year.

Alternatives

Two alternative forms were circulated for public comment. The first version was based on existing law. The second version would have addressed beneficiary bond waivers under a revised section 8481, which was proposed in legislation introduced in the 2014 Legislature, Assembly Bill 2567. Current section 8481(b) permits the court—for good cause, on its own motion or on the motion of any interested person—to order a bond despite its waiver by the decedent or by all beneficiaries. The legislation would have modified section 8481 to provide that the court must require a bond despite its waiver by the decedent or by all beneficiaries unless the court makes a good faith determination that no harm would come to interested persons by the waiver. Assembly Bill 2567 failed. It never received a vote out of a committee and was not passed out of either house of the Legislature. The form recommended in this report is a slightly modified version of the draft based on existing law.

The committee took no formal position on Assembly Bill 2567 because the bill died before coming to the committee for review and a possible recommendation to the council's Policy Coordination and Liaison Committee. However, the committee believes that providing all estate beneficiaries with the clear, uniform, and important information they need to make intelligent waiver decisions may satisfy or at least alleviate the concerns behind that failed legislation.

Policy implications

This form should reduce the number of estates in which surety bonds are waived by beneficiaries of estates because the risks inherent in doing so will have been disclosed to many more of them before they agree to waive bond. The net result will be fewer uncompensated losses suffered by estate beneficiaries as a result of mismanagement or defalcation by personal representatives.

Implementation Requirements, Costs, and Operational Impacts

This form will require the modest costs of distribution of any new form to the courts. Training costs to court staff concerning the use of the form should also be minimal. The form has no optional or alternative items for users to select and court staff to review, beyond its identification as an attachment (by activation of a check box and filling in a "(2)" or "(3)" in a space provided in the title caption box of the form), if it is attached to and filed with the *Petition for Probate*, and execution by a single identified estate beneficiary. The form should actually reduce current court staff time and expense in their initial reviews of newly filed estates to ascertain whether all beneficiaries have waived bond because it is a single-page waiver of identical appearance for each beneficiary—save only for the identity of the signer—instead of a document with multiple signatures on a single sheet or separate signature blocks following variations of waivers prepared by personal representatives or their counsel.

Relevant Strategic Plan Goals and Operational Plan Objectives

This recommendation supports the Judicial Council's strategic goal to ensure that court forms promote the fair, timely, and effective processing of cases and make court procedures easier to understand (Goal III.B.2); and objective III.B.5.a of the council's operational plan, the development of effective trial case management procedures and practices to promote the fair, consistent, and efficient processing of all types of cases by the creation of new or improved court forms.

Attachments

1. Form DE-142/DE-111(A-3d), at page 8;
2. Chart of comments, at pages 9–18;
3. Attachment A: Probate Code section 8481, at page 19.

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<h2 style="margin: 0;">Draft Not Approved by the Judicial Council</h2>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF <i>(Name):</i> _____, DECEDENT	
WAIVER OF BOND BY HEIR OR BENEFICIARY <input type="checkbox"/> Attachment 3d to <i>Petition for Probate*</i>	CASE NUMBER: _____

NOTICE: READ PARAGRAPHS A–G BEFORE YOU SIGN

- A. A bond is a form of insurance to replace assets that may be mismanaged or stolen by the executor or administrator (the estate's **personal representative**). The cost of the bond is paid from the assets of the estate.
- B. A bond may not be required if the decedent's will admitted to probate waives a bond and the court approves.
- C. If the decedent's will does not waive bond, or if the decedent died without a will, the law ordinarily requires the personal representative to give a bond approved and ordered by the court. However, all persons eligible to receive a share of the estate may waive the requirement of a bond. If they all waive bond and the court approves, the personal representative will NOT have to give a bond.
- D. **If bond is not ordered by the court, and the estate suffers loss because the personal representative fails to properly perform the duties of the office, the loss or some part of it may not be recoverable from the personal representative. If so, your share of the estate may be partially or entirely lost.**
- E. You may waive the requirement of a bond by signing this form and delivering it to the petitioner for appointment of a personal representative or to the petitioner's attorney. Your waiver cannot be withdrawn after the court appoints the personal representative without requiring a bond. However, if you sign a waiver of bond, you may later petition the court to require a bond.
- F. A guardian ad litem or other legal representative with specific authority under law to waive bond must sign for a minor, an incapacitated person, an unascertained beneficiary, or a designated class of persons who are not ascertained or not yet in being. See Judicial Council forms DE-350 and DE-351 and Probate Code section 1003.
- G. **If you do not understand this form, do not sign it until you have asked a lawyer (who is independent of the lawyer for the proposed personal representative) to explain it to you.**

WAIVER

1. **I have read and understand paragraphs A through G above.**
2. **I understand that before signing this form, I am free to consult with a lawyer of my choice concerning the possible consequences to me of waiving bond.**
3. **I understand that I do not have to waive bond to allow the estate administration to begin or proceed, or to receive my share of the estate.**
4. **I WAIVE the posting of bond in this estate by *(name of personal representative):*** _____

Date: _____

_____ (TYPE OR PRINT NAME OF BENEFICIARY (AND AUTHORIZED SIGNER, IF BENEFICIARY IS NOT AN INDIVIDUAL))	_____ (SIGNATURE)
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**This form may be filed as a standalone form (as form DE-142) or as Attachment 3d(2) (will) or Attachment 3d(3) (intestacy) to the Petition for Probate (form DE-111) (as form DE-111(A-3d).)*

SPR14-16

Probate Decedents' Estates: Waiver of Bond by Heirs or Beneficiaries of Estates (form DE-142/DE-111(A-3d))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Executive Committee of the Trusts and Estates Section of the State Bar of California By Erin L. Prouty, Hoffman, Sabban & Watenmaker, APC Los Angeles	AM	<p>The Executive Committee of the Trusts and Estates Section of the State Bar of California (TEXCOM) respectfully submits the following comments on SPR14-16.</p> <p>Preliminarily, we understand that Assembly Bill 2567 (Daly) is not being pursued at this time. Accordingly, our comments address only the first alternative form, though they would also apply to the second alternative form.</p> <p>Our committee supports, in concept, the proposal to create a mandatory Judicial Council form (DE-142/DE-111) for waiver of bond by estate beneficiaries, for the reasons expressed in SPR14-16. However, we have some suggested revisions to the proposed form.</p> <p>The language in paragraphs A and B may be confusing to estate beneficiaries. Paragraph A seems to express the only situation where bond may not be required (where the Will waives bond and the court agrees), but then paragraph B goes on to discuss the possibility of waiving bond. To eliminate this potential confusion, we suggest they be replaced with the following three paragraphs A, B and C (and the remaining paragraphs be re-labeled D through</p>	<p>This is also the committee's understanding. Twice the author pulled the bill after hearings were scheduled in the Assembly Judiciary Committee. No hearing concerning the bill by that committee or any other was ever held; the bill will not become law this year. Therefore, the first version of the form attached to the Invitation to Comment is the version now exclusively under consideration for an adoption recommendation.</p> <p>The committee generally agrees with this comment (with exceptions noted below). The form proposed for adoption has been rewritten substantially as proposed by TEXCOM.</p>

SPR14-16

Probate Decedents’ Estates: Waiver of Bond by Heirs or Beneficiaries of Estates
(form DE-142/DE-111(A-3d))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>G):</p> <p>A. “A bond is a form of insurance to replace assets that may be mismanaged or stolen by the personal representative. The cost of the bond is paid from the assets of the estate, which could reduce some or all of the beneficiaries’ shares of the estate.”</p> <p>B. A bond may not be required if the decedent’s will admitted to probate waives a bond and the court agrees.</p> <p>C. If the decedent’s will does not waive bond, or if the decedent died without a will, the law ordinarily requires the executor or administrator of the estate (the estate’s personal representative) to give a bond approved and ordered by the court. However, all persons eligible to receive a share of the estate may waive the requirement of a bond. If they all waive bond and the court agrees, the personal representative will NOT have to give a bond.</p>	<p>A. The committee has rewritten paragraph A as recommended, with the exception of the last phrase “which could reduce some or all of the beneficiaries’ shares of the estate.” That phrase is deleted. Personal representatives or their counsel seeking bond waivers from beneficiaries will advise of the effect of bond premiums on the net estate available for distribution, but that effect on any beneficiary’s share of the estate is usually very slight. A reference to that issue in this form would, in the committee’s view, overemphasize its effect on a beneficiary’s share of the estate.</p> <p>B. This text as recommended by TEXCOM is accepted, except that “the court <i>approves</i>” is stated instead of “the court agrees,” per the recommendation of Judge Mary Wiss (Comment No. 6 below).</p> <p>C. This text is accepted, except that “the court <i>approves</i>” is stated instead of “the court agrees,” per the recommendation of Judge Wiss.</p>

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Probate Decedents' Estates: Waiver of Bond by Heirs or Beneficiaries of Estates (form DE-142/DE-111(A-3d))

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	Commentator	Position	Comment	Committee Response
			<p>We also suggest that the language of paragraph F (which may be re-labeled as paragraph G if our comment above is implemented) be changed to read as follows:</p> <p>F/G. If you have questions about the possible consequences of signing this form, you should consult an attorney of your choice for advice.</p> <p>We appreciate the opportunity to comment on this matter.</p>	<p>G. The committee decided to keep its draft of this paragraph (Paragraph F of the version circulated for comment, Paragraph G of the revised draft): “If you do not understand this form, do not sign it until you have asked a lawyer (who is independent of the lawyer for the proposed personal representative) to explain it to you.”</p> <p>This text emphasizes the need for advice from a source that is not connected to the attorney for the personal representative, and is intended primarily for the beneficiary who not only has questions, but who may not understand enough about the consequences of a bond waiver to raise questions about it.</p> <p>The committee appreciates the support and helpful assistance TEXCOM has given to this project.</p>
2.	Terence Nunan Parker, Milliken, Clark, O'Hara & Samuelian, APC Los Angeles	AM	I am not sure the legislation is a good idea but if it is adopted I think the current proposed form needs to be modified so the beneficiary who being asked to waive bond has some idea what the cost of the bond would be. My	The legislation described in the Invitation to Comment has failed in this year's Legislature. The first version of the proposed form referenced in the Invitation to Comment is, therefore, the version that will be considered for adoption.

SPR14-16

Probate Decedents' Estates: Waiver of Bond by Heirs or Beneficiaries of Estates (form DE-142/DE-111(A-3d))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>impression is that often beneficiaries waive bond because they think the bond premium is very large.</p> <p>More importantly, I think you need a second form for the proposed fiduciary to fill out giving the court basic information about the fiduciary's legal and financial history. A court can not determine good cause without knowing if the proposed fiduciary has recently filed for bankruptcy, is a convicted felony, has judgments against him exceeding \$100,000; is employed or not employed and is or is not a significant beneficiary of the estate. I have from time to time discussed the randomness with which courts waive or do not waive bond with both judges and bonding companies.</p>	<p>The committee does not support modification of the form to require disclosure of the cost of the bond. A proposed fiduciary or his or her counsel is free to communicate with beneficiaries about a bond waiver and to provide that information in the communication. The cost of the bond is a relatively minor expense that typically does not have much of an effect on a beneficiary's gift from the estate.</p> <p>The request for a statement of the proposed fiduciary's legal history and financial condition is beyond the scope of this proposal, but Mr. Nunan raised an excellent point. If a bond is posted, the surety usually will have conducted a financial investigation to determine whether the proposed personal representative is an appropriate candidate for the bond. If bond is to be waived, the court's decision whether to require the bond despite the waiver and the court does not exercise its power under Probate Code section 8481(b) properly may be based on consideration of the candidate's financial history and condition. The committee will study the issue further.</p>
3.	Orange County Bar Association By Thomas Bienert, Jr., President Newport Beach	A	No specific comment made.	No response required.

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	Commentator	Position	Comment	Committee Response
4.	Superior Court of Los Angeles County Los Angeles	A	No specific comment made.	No response required.
5.	Superior Court of San Diego County By Michael Roddy, Court Executive Officer San Diego	AM	Our court supports these forms. It will simplify the probate examining review with minimal training for the probate examiners. We believe the following change should be made: DE-142/DE-111: Paragraph B: Instead of stating at the second sentence that the court joins the waiver, would it be more appropriate to use the language of AB 2567 that the court agrees after making good cause determination that the beneficiaries and creditors of the estate will not suffer harm as a result of the waiver or reduction in bond?	The proposed change would affect the second version of the form described in the Invitation to Comment, the version based upon passage of Assembly Bill 2567. The legislation has not passed the Legislature; the first version of the form is the one that will go forward, modified as described in response to comments in this chart and in the Judicial Council report on this proposal. Failure of the legislation means that the “good cause determination” standard for the court to support a waiver of bond by the decedent or the beneficiaries of the estate will not become law. However, “good cause” remains in section 8481(b) as the standard for a court to <i>require</i> a bond notwithstanding its waiver by the decedent or by the estate’s beneficiaries.
6.	Superior Court of San Francisco County By Hon. Mary Wiss, Judge of the Superior Court San Francisco	A	These forms are such a substantial improvement over the preliminary draft I recently reviewed that I am in favor of them. I had grave concerns over the earlier version because it was such an easy form to put under someone’s nose (with only page 1 of text with the signature line	

SPR14-16

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	Commentator	Position	Comment	Committee Response
			<p>possibly on a second page) and ask them to sign without any explanation. However, I do have a couple of comments as follows:</p> <p>Section A Form 1: the language “Unless the decedent’s will admitted to probate waives a bond and the court agrees” is awkward. I do not think that by admitting a will to probate that the court “agrees” to waive bond as it sounds like the court is agreeing with the testator.</p> <p>Change to: “and the court permits [accepts?, allows?] the waiver, . . . or It might be helpful to reverse the order of the phrases in Paragraph A and to use the word “obtain instead of “give”:</p> <p>“When a will is admitted to probate, the law requires the executor or administrator of an estate (the estate’s personal representative) to obtain a bond unless the decedent’s will waives bond and the court allows the will to be probated without a bond. A bond is a form of insurance to replace assets that may be mismanaged or stolen by the personal representative. The cost of the bond is paid from the assets of the estate.”</p> <p>Section A Form 2: the language “Unless waived by the decedent’s will admitted to</p>	<p>The committee agrees with this recommendation and has made the change, from “agrees” to “approves” in paragraphs B and C.</p> <p>The committee has decided to adopt the order of paragraphs in the Notice section (those designated with capital letters rather than with numbers) proposed by TEXCOM (Comment No 1 above). That decision makes this recommended change unnecessary.</p> <p>The second form is no longer under consideration because the legislation referenced in the Invitation</p>

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Probate Decedents’ Estates: Waiver of Bond by Heirs or Beneficiaries of Estates
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	Commentator	Position	Comment	Committee Response
			<p>probate and by the court, after the court makes a good faith determination that the waiver will not harm the beneficiaries and creditors of the estate; the law requires . . .” could be revised to: “Unless decedent’s will waives bond, and the court makes a good faith determination that the waiver will not harm the beneficiaries and creditors of the estate, the law requires . . .”</p> <p>It might be helpful to reverse the order of the phrases in Paragraph A Form 2 and use the word “obtain” instead of “give”:</p> <p>“When a will is admitted to probate, the law requires the executor or administrator of an estate (the estate’s personal representative) to obtain a bond unless the decedent’s will waives bond and the court makes a good faith determination that the waiver will not harm the beneficiaries and creditors of the estate. A bond is a form of insurance to replace assets that may be mismanaged or stolen by the personal representative. The cost of the bond is paid from the assets of the estate.”</p> <p>Section B Form 2: the language “and the court joins in the waiver” is also not correct because the court does not “join” in a waiver with the beneficiaries/creditors. The court must make a finding on the waivers, not “join” in them. Change to: “If they all waive bond, and the</p>	<p>to Comment (AB 2567) will not be enacted in 2014.</p>

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	Commentator	Position	Comment	Committee Response
			<p>court makes a good faith determination that the waiver will not harm the beneficiaries and creditors of the estate, the court may allow the personal representative to act without a bond.” Perhaps you can come up with some better language, but I do not think that the court “joins” in a waiver.</p> <p>Section D on both forms: “but you would remain eligible to petition the court to require a bond after giving your waiver.” Change to: “However, if you signed a waiver of bond, you may later petition the court to require a bond.”</p>	<p>The committee supports and has made this change. This text is now found in paragraph E of the revised form.</p>
7.	Superior Court of Riverside County Riverside	A	<p>Agree with proposal.</p> <p>This proposal implements a new mandatory form for the waiver of bond. Waivers are presently filed on a consistent basis as a pleading-based document. Having bond waivers in a judicial council form should make processing of them easier. The form should also have a positive result for litigants, both procedurally and substantively. Presently, there is no form available to waive a bond. Consequently, self-represented litigants find it difficult to know how to supply a waiver. As indicated in the proposal, the documents presently being used to waive bond do not show whether the party who executed the waiver is</p>	<p>No response necessary.</p>

SPR14-16

Probate Decedents’ Estates: Waiver of Bond by Heirs or Beneficiaries of Estates
 (form DE-142/DE-111(A-3d))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>aware of the potentially negative consequences of waiving bond. This form will assist the court in ensuring that a waiver is an informed decision. It should also eventually reduce continuances of hearings due to lack of a required waiver. The form should eventually decrease workload for our probate paralegals and attorneys because the document will be filed more often with the initial petition. It is necessary to make this a mandatory form to require written disclosure of the risks to be given before a waiver is obtained.</p>	
8.	<p>Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group</p>	A	<p>General comments: Although the proposal is not required by a change of law, it will assist judges and probate staff when reviewing accounts. It will streamline the process. Moreover, beneficiaries frequently complain that no one explained the consequences of waivers they were asked to sign, or even say that they were led to believe that a waiver was necessary to permit administration to begin or continue or to enable them to receive their shares of the estate.</p> <p>This proposal creates a mandatory Judicial Council form for the waiver of bond by heirs or beneficiaries in a probate estate proceeding. The idea is that this form should provide additional warnings to those signing, so they have a better understanding of what rights they are giving up.</p>	<p>No response necessary.</p>

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	Commentator	Position	Comment	Committee Response
			<p>Currently, bond waivers are usually self prepared on pleading paper. The waivers do not explain what bond is, what happens if bond is waived or if a fiduciary steals funds after bond is waived. The information provided should spell out the risk a party is taking by signing.</p> <p>There are two versions of the form, based on whether AB 2567 is passed. AB 2567 would modify Probate Code §8481 to make bond mandatory, unless waived for good cause by the Court. Currently, Probate Code §8481 states that bond is not required if waivers are provided, unless the Court finds good cause to impose a bond. The final version of the form adopted would depend on the passage of AB 2567.</p> <p>The following are responses to the proposal’s Request for Specific Comments:</p> <p>Would the proposal provide cost or time savings in staff review of beneficiary bond waivers? If so please quantify.</p> <p>There would probably be a very minor time savings for review purposes. Having one version of the form is usually helpful in that it is easier to (1) identify the form in the file, and (2) the language of the waiver has already been reviewed. It should also be helpful for the clerks to have a form to hand out upon request.</p>	<p>AB 2567 failed passage in the 2014 Legislature. The form to be recommended for adoption is a revised version of the first of the two drafts of the form circulated with the Invitation to Comment.</p>

Attachment A

Probate Code section 8481

8481.

(a) A bond is not required in either of the following cases:

(1) The will waives the requirement of a bond.

(2) All beneficiaries waive in writing the requirement of a bond and the written waivers are attached to the petition for appointment of a personal representative. This paragraph does not apply if the will requires a bond.

(b) Notwithstanding the waiver of a bond by a will or by all the beneficiaries, on petition of any interested person or on its own motion, the court may for good cause require that a bond be given, either before or after issuance of letters.

