

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY · GAVIN NEWSOM, GOVERNOR

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MEMORANDUM

DATE	March 9, 2022
ТО	Professional Fiduciaries Bureau – Advisory Committee
FROM	Gregory Pruden, Legislative Manager Division of Legislative Affairs Department of Consumer Affairs
SUBJECT	SB 602 and GC-355

<u>Overview</u>

The Professional Fiduciaries Bureau and the Division of Legislative Affairs were asked to explain the difference between <u>SB 602</u> (Laird) Review of conservatorships: care plans and the <u>GC-355</u>, a form created by the Judicial Council of California.

Background

In 2006, then-Chief Justice Ron George appointed a Probate Conservatorship Task Force to evaluate the court's role in the conservatorship system and to make recommendations for reform, if necessary. Among the Task Force's recommendations were the creation of a requirement for the submission of a care plan by the conservator of the person and/or estate that includes an estimate of the conservator's fees for the first year, which can enable courts to discern whether fees billed exceed that amount. The Task Force also recommended requiring follow-up reports, which may be reviewed by examiners or investigators to make a recommendation as to whether the judicial officer should set a hearing to review the plan. Additionally, it was recommended that the plan, along with the inventory and appraisal, be filed and served within 90 days on all persons required to be listed in the original petition or an order to show cause will automatically issue. Finally, the Task Force recommended adopting a uniform, mandatory Judicial Council form for the submission of the care plan and combining existing level-of-care evaluations with the care plan in one form. The Task Force argued a care plan would give court information on what to expect and a baseline of data to compare against

subsequent experience in each case.¹ These reforms were never codified.

Current Law:

Requires a conservator to submit an inventory and appraisal of the conservatee's assets within 90 days of appointment. Existing law also required, by January 1, 2008, the Judicial Council to develop a form for conservator's to use for the inventory and appraisal requirement. (Probate code § 2610.)

In practice, the Judicial Council has implemented this requirement with the creation of the GC-355. According to the Judicial Council, a conservator's determination must include an evaluation of the level of care that existed when the petition for the appointment as conservator was filed and the steps that would be necessary to keep the conservatee in his or her personal residence. The conservator must reevaluate the conservatee's placement and level of care whenever a significant change occurs in the circumstances affecting the conservatee's needs for placement and care. These reevaluations are not required to be filed with the court, and there is no court form for them, but conservator's may decide to file a reevaluation as part of a report filed with an accounting if they or someone else was appointed as conservator of the estate. In addition to the level-of-care determination, some courts require a care plan, often on local forms adopted by the court. If a local court requires a care plan, conservator's must comply with the requirement in addition to filing the GC-355.²

SB 602: Proposed Law

SB 602 requires a conservator, within 30 days of appointment or 30 days before a hearing to determine the continuation or termination of an existing conservatorship, to submit a care plan for the care, custody, and control of the conservatee using a form developed by the Judicial Council. The plan must be provided to specified parties and family members. Failure to timely submit the care plan may result in a civil penalty, administrative discipline, and removal from the conservatorship.

The form must include a description of:

a) The current living arrangement for the conservatee and any plans to modify this arrangement within the next 12 months;

b) The conservatee's current level of care and any plans to modify this level of care within the next12 months;

c) The conservatee's health status, including medications and medical devices the conservatee needs, as well as their health care providers;

d) The conservator's schedule of visitation with the conservatee and actions to ensure the conservatee is able to exercise their rights to visitation and communications;

¹ Senate Judiciary Committee analysis from April 9, 2021.

² Judicial Council of California, Handbook for Conservators, Revised 2016. https://capapgpc.org/wp-content/uploads/2017/03/HandbookforConservators2016Revised.pdf

e) The conservatee's normal activities;

f) Any problems raised by the court investigator, the court, or by any interested person, and how these problems were or are being addressed.

g) The conservatee's financial needs, including the conservatee's monthly income and expenses;

h) Assets that may be sold within the next 12 months and the reasons for the sale; and

i) Any valuable assets in the conservatee's residence that need to be protected and what steps the conservator has taken or intends to take to protect those items from loss or theft.

The information required by SB 602 appears to go beyond what is currently required in the GC-355. Additionally, the bill includes "shall include, but not be limited to" language, which may allow the Judicial Council to require more information on the form than what is prescribed by the bill.

SB 602 does not appear to repeal the form requirement that exists in current law, located in Probate Code section 2610, which established the GC-355. It is unclear if the form required by SB 602 would replace the currently used GC-355 or if both would be required.

County Courts May Have Local Plans Currently in Place

Some county courts have issued local plans which require more detailed information than the existing GC-355 and may require more detailed information that the care plan proposed by SB 602. It is unclear whether the form required by SB 602 would replace these local plans. Marin County, for example, requires a Conservatorship General Plan to be submitted within 90 days of the conservator's appointment. For example, the General Plan requires detailed information about the conservatee's medical condition, financial affairs, including monthly sources of income and monthly expenses, and the frequency of visits the conservator will make. Some of this information, such as the conservator's schedule of visitation, would be required by SB 602, but other items in Marin County's General Plan, may not. For example, Marin County requires information about items held in any safety deposit boxes and information about whether the conservatee receives IHSS or Medi-Cal benefits. For county courts which require local plans, it is unclear if conservator's in those counties would need to submit three forms: the GC-355, the local plan, and the new SB 602 plan.

Other Differences Between SB 602 and GC-355

SB 602 subjects a conservator who fails to timely submit a care plan to a civil penalty of up to \$5,000 unless the court finds good cause not to impose the penalty. The bill also provides that a failure to timely submit is a basis to remove the conservator. If the conservator is a professional fiduciary, they may additionally be subject to an administrative penalty, a suspension or revocation of the conservator's license. The GC-355 is required to be filed under penalty of perjury, but the law does not appear to allow for any civil penalty, as SB 602 would provide. Local plans are also filed under penalty of perjury.

Chart of Changes

	SB 602	GC-355	Local Plans
Days to provide to court	30 calendar days	60 days	Varies. 60 days for Los Angeles. 90 days for Marin.
Subsequent Reports	Yes.	Not required and no form exists.	Unclear.
Trigger	Appointment and before a hearing.	Appointment	Appointment
Penalty	Yes. Up to \$5,000. Possible administrative sanction or license revocation or suspension.	Form is filed under penalty of perjury.	Forms are filed under penalty of perjury.
Information Required	A care plan for the care, custody, and control of the conservatee. Detailed information about health and medications, finances and expenses, schedule of visitation.	Inventory and appraisal of the estate. Determination of level of care and care necessary to keep conservatee in their home.	Varies. Some counties with local plans require detailed information significantly beyond the GC-355. Some counties appear to require more detailed information than proposed by SB 602.

GC-355

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State	Bar number, and address):	FOR COURT USE ONLY
_		
TELEPHONE NO.:		
	FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, CO	OUNTY OF	
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CONSERVATORSHIP OF THE PERSON	AND ESTATE OF	
(Name):		
	CONSERVATEE	
		CASE NUMBER:
DETERMINATION OF CONSERVAT	EE'S APPROPRIATE LEVEL OF CARE	

Notice to Conservator of the Person

You must prepare a written determination of the conservatee's appropriate level of care, sign it under penalty of perjury, and file it with the court within 60 days of the date of the court's order appointing you as conservator. You must use this form for that purpose. Your determination must include an evaluation of the conservatee's level of care on the date the conservatorship proceeding was started (the date the petition for the appointment of a conservator was filed with the court or, if more than one petition was filed, the date the first petition was filed), and the measures that would be necessary to keep the conservatee in his or her **personal residence.** If the conservatee was not living in that residence on the date the proceeding was started, your determination must include either a plan to return the conservatee to that residence or an explanation of the reasons why the conservatee cannot return to that residence in the foreseeable future. **This determination is in addition to, not a replacement for, any written care or placement plan the court may require. Check the court's local rules to see if a care or placement plan must also be filed. The conservatee's personal residence** is the residence he or she understood or believed, or appeared to understand or believe,

was his or her permanent residence is the residence he or she understood or believed, or appeared to understand or believe, was his or her permanent residence on the date the conservatorship proceeding was started, whether or not he or she was living there on that date. If the conservatee could not then form or communicate an understanding or belief about his or her permanent residence, the conservatee's personal residence is the residence he or she last previously understood or appeared to understand was his or her permanent residence. (See Cal. Rules of Court, rule 7.1063.)

(Name):

, declares as follows:

- 1. I am conservator of the person of the above-named conservatee. I am determining the conservatee's appropriate level of care as of *(date):* , the date of the order appointing me as conservator.
- 2. a. On the date stated in item 1, the conservatee was living at the following residence or facility (address and name of facility, if any):

Telephone:

b. The conservatee has been living in the above residence or facility since (date):

Page 1 of 4

CONSERVATORSHIP OF	CASE NUMBER:
_(Name):	
CONSERVATEE	
2. c. The residence or facility identified in item 2a is described as follows (select all that ap	oly):
Conservatee's single family home, condominium, or apartment	
Relative's or friend's single family home, condominium, or apartment	
Acute care hospital Acute psychiatric hospital Intermediate-care	facility Skilled nursing facility
Licensed residential care facility Assisted living facility (7 or more beds)	
Board and care home (6 or fewer beds) Continuing-care retirement com	munity Secured perimeter
Congregate living health facility—terminal or life-threatening illness type (hospic	ce)
Other (describe):	

3. a. The conservatee's care requirements as of the date given in item 1 are as follows (select all that apply; you may provide additional information concerning any items selected below under "other assistance required"):

No assistance is needed at this time. Light housekeeping help required, hours per wee	ek.
Personal caregivers required, hours per week: 24-hour care Part-time,	hours per day.
Assistance with daily living skills, hours per week.	
Nursing care required, hours per week Meal preparation assistance required,	hours per week.
Assistance with medication required, hours per week: Dispensing Dispensing Set-up only	
Assistance with ambulation: Maximum Standby In-home hospice services.	
Other assistance required, hours per week (describe):	

Continued on Attachment 3a.

b. A professional assessment of the conservatee's care needs has been made. A copy of the assessment, including a statement of the professional's qualifications, is provided on Attachment 3b. (A professional assessment of the conservatee's care needs is not required, but is recommended if the conservatee's circumstances and condition warrant it and the conservatee can afford the expense. Include any written assessment performed by a professional fiduciary proposed for appointment or appointed as conservator.)

CONSERVATORSHIP OF		CASE NUMBER:
(Name):		
	CONSERVATEE	

4. (Complete item 4a if the residence identified in item 2 is the conservatee's personal residence as defined in Cal. Rules of Court, rule 7.1063. Complete item 4b if the residence identified in item 2 is not the conservatee's personal residence.)

a.	

Conservatee living in personal residence

The residence or facility described in item 2 is the conservatee's **personal residence** within the meaning of Cal. Rules of Court, rule 7.1063. The following measures are necessary to keep the conservatee in that residence:

Continued on Attachment 4a.

b. Conservatee not living in personal residence

The residence or facility described in item 2 is not the conservatee's personal residence within the meaning of Cal. Rules of Court, rule 7.1063. The conservatee's personal residence is (address and name of facility, if any):

(Complete either item 4b(1) below or item 4b(2) on page 4. Complete item 4b(1) if you believe the conservatee can be returned to his or her personal residence in the foreseeable future. Complete item 4b(2) if you believe the conservatee cannot be returned to his or her personal residence in the foreseeable future.)

(1) The conservator's plan to restore the conservatee to his or her **personal residence** is as follows:

Continued on Attachment 4b(1).

(Name):	
CONSERVATEE	

4. b.

(2) The limitations or restrictions on the conservatee's return to his or her **personal residence** in the foreseeable future are as follows:

Continued on Attack	hment 4b(2).
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5. Number of pages attached:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF CONSERVATOR OF THE PERSON)



(SIGNATURE OF CONSERVATOR OF THE PERSON)

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY OR PARTY WITHOUT ATTORNEY:	STATE BAR NUMBER	Reserved for Clerk's File Stamp
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY O	F LOS ANGELES	
Name of Court:		
Branch Name:		
Street Address:		
City and Zip Code:		
In the Matter of:		
		CASE NUMBER:
CONSERVATORSHIP CARE I	PLAN	CASE NUMBER.
, the conservator o hereby submits the conservator's General Plar	f the person/estate of	l court rules.

1. Conservatee's current residence address:*

- a Type of facility (i.e. home, skilled nursing, hospital, etc.)
- b. How long has the conservatee been in the present residence?
- c. Do you anticipate making any changes in the conservatee's residence in the next year? No Yes (explain)
- d. What is the plan to return the conservatee to his/her personal residence if not now living at home?
- e. If there are no plans to return the conservatee to his/her personal residence in the foreseeable future, explain the limitations or restrictions for not doing so?

2. Current level of care (mark all that apply):

requires total care has feeding tube has a catheter requires assistance with care able to do own care uses wheelchair/walker urinary/bowel incontinence ambulatory Other relevant information

If residing in a facility or group home, attach copy of the facility's care plan:

If client of a regional center, identify regional center and social worker and telephone number:

*Please note that the Probate Investigator's Office must be notified of any change of address by using the Notification to Court of Address form number PRO 003.

ONSERV	ATORSHIP OF (Name):			CASE NUMBER:
		CON	ISERVATEE	
. Conse	ervatee's physical and prob	medical condition:		
a.	T lease list licatil prob			
	Are any other health p			
	visiting nurse		social wo	orker
	podiatrist		dentist	
	counselor		physical	therapist
	speech therapist		other (spe	ecify)
c.	Medications:			
1				
h	Activities concernator	a is involved in?		
	Activities conservated			bes the family visit?
How of Are the	ften do you expect to v ere plans to give the co	isit the conservatee: nservator a rest?	? Do	oes the family visit?
How o Are the	ften do you expect to vi ere plans to give the co respite care	isit the conservatee: nservator a rest? adult da	? Do	
How o Are the	ften do you expect to v ere plans to give the co	isit the conservatee: nservator a rest? adult da	? Do	oes the family visit?
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Total Estimated Monthly Expenses: ______

CONSERVATORSHIP OF (Name):			CASE NUMBER:
		CONSERVATEE	
	<u>_</u>	CONSERVITEE	
b. OTHER EXPENSE	ĊS		
TAXES	Current	Estimate	d Amount
Income Tax	\$	\$	
Property	<u>\$</u> \$	\$	
Payroll	\$	\$	
c. INSURANCE			
	Coverage Amount	Estimated	Premiums
Homeowner	\$	\$	
Renters	\$	\$	
Automobile	\$	\$	
Worker's Comp	\$	\$	
Health	\$	\$	
	C C	Q (
	ive Medi-Cal benefits?		
 What are the contents of a Does the conservatee rece No 	ive Medi-Cal benefits? Yes	_\$sha	re of cost
 What are the contents of a Does the conservatee rece No Do you expect to sell any 	ive Medi-Cal benefits? Yes	sha	re of cost
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case number for the trust:

CONSERVATEE

14. Do you anticipate any unusual activities related to the management of the

conservatee's estate during the next year?

- _____ No _____ Yes (explain) ______
- 15. Are there any special problems or needs raised by the Court Investigation, the Court, or others interested? If yes, how have you addressed them?

The undersigned conservator will:

- a. Inventory all assets in which the conservatee has any interest.
- b. Submit accurate, complete, and timely accountings.
- c. Carry out all mandatory usual and general duties of a conservator.
- d. Maintain periodic contact with the conservatee's physician and other health care providers, if appointed conservator of the person.
- e. Maintain periodic contact with the conservatee's family and friends, if applicable.
- f. Be available to the conservatee on a 24 hour basis for emergencies, or arrange for such coverage by a qualified agent.
- g. Maintain accurate records related to the estate.
- h. Maintain all estate assets in a separate identifiable manner.
- i. Maintain estate cash assets in interest-bearing accounts, except as necessary for every day administration.
- j. Maintain an adequate surety bond as required by law.
- k. Update care plan as needed.
- 1. Refer to the "Conservator's Handbook."

File stamp the original Conservatorship Care Plan with the court and mail a copy to the Probate Investigations Office at: 111 N. Hill Street, Room 208, Los Angeles, CA 90012.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have retained a copy of this case plan for my record.

Dated:

Signature of Conservator

Type or Print Name

Conservatorship Care Plan Page 4 of 4 PC Section 2352.5 (c)

MARIN COUNTY SUPERIOR COURT 3501 Civic Center Drive P.O. Box 4988 San Rafael, CA 94913-4988	FOR COURT USE ONLY
CONSERVATORSHIP OF THE:	
Conservatee	
CONSERVATORSHIP - GENERAL PLAN	CASE NUMBER

The conservator(s) of the person/estate of ______, hereby submits the conservator's General Plan. I understand this General Plan must be filed with the court within 90 days after I am appointed as conservator and that I should retain a copy for my records.

Conservatee's Information:

Name: Date of Birth: Address:	
Telephone:	
Conservatee's Re	sidence:
Skilled n skilled n	ne/apartment ursing home board and care home (medical/psychiatric) other: the Conservatee been in the present residence? the Conservatee been in the present residence in the next year? No If yes, please explain:
Are there any p	plans to return the Conservatee to his or her personal residence? No
Please not	e that the Court Investigator's Office must be notified of any change of address.

Current Level of Care:

requires total care	urinary/bowel incontinence
requires assistance with care	has a catheter
able to do own care	uses wheelchair/walker
has feeding tube	ambulatory

Other relevant information:

71 V	atee's Physical and Medical Condition:		
	in good health confusion/disorientation memory loss in poor health		has mental illness substance abuse issues (alcohol, dru is developmentally disabled unable to read/write
	had head injury takes regular medications (describe):		deaf or communication problem
lea	se list health problems:		
octo the	often does the Conservatee see a doctor? _ or's name: e Conservatee being administered psychotrop /es No		dications for the treatment of dementia
the Yes	or's name:	pic me	dications for the treatment of dementia
the Y yes Y the	or's name: e Conservatee being administered psychotrop fes	oic me ecial de or locł	dications for the treatment of dementia ementia powers" as to medications? and facility with no freedom of egress?
the Yes Yes Yes	or's name: Conservatee being administered psychotrop (es No (has the Court granted the Conservator "spections (es No (e Conservatee placed in a secured perimeter	oic me ecial de or locł	dications for the treatment of dementia ementia powers" as to medications? and facility with no freedom of egress?

CASE NO: PR				
Are any other health providers involved? visiting nurse hospice care worker psychiatrist / counselor podiatrist speech therapist 	 Yes No social worker dentist physical therapist other: 			
Personal Caregiver:				
If the Conservatee has a personal caregiver, please	state:			
Is the care provider a family member(s)? If yes, is the family member(s) paid? Is the care provider employed by an agency? If yes, what agency? Is the care provider(s) a private hire?	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No ────────────────────────────────────			
	pr payroll (wages, state & federal taxes, SDI, FICA, etc.)?			
Does the conservatee receive IHSS benefits? If yes, how many hours a month? Who is the IHSS social worker?	☐ Yes ☐ No			
Describe the normal activities of Conservatee:				
 outings television social educational other (i.e., reading material, etc.): 	 day program employment unwilling to participate unable to participate 			
How often do you expect to visit the Conservate	e?			
Will other family or friends visit the Conservatee				
Are visitations from family or friends valued or upsetting?				
Do you plan to request conservator fees at the e If yes, anticipated amount of request? \$				

CASE NO: PR _____

Conservatee's Estimated Monthly Income (complete even if a conservatorship of the person only):

Social Security/SSI		\$
Veteran's Benefits		\$
Dividends		\$
Rental		\$
Interest		\$
Pension (source) Other (specify) Other (specify)		\$ \$ \$
	Total Estimated Monthly Income	\$

Describe any planned changes in investments to be made in the next year and the reason for any change.

Identify any major asset that may be sold in the coming year and explain the reason for such sale.

Identify the contents of any safety deposit box.

Are there any valuable assets in the conservatee's residence that need to be protected? If so, describe them and specify what steps have been taken to protect these items from loss or theft.

CASE NO: PR _____

Conservatee's Estimated Monthly Expenses (complete even if a conservatorship of the person only):

Living Expenses:

Rent/Mortgage	\$	Medical/Dental	\$
Food	\$	Medications	\$
Utilities	\$	Nursing/Care Home	\$
Clothing	\$	In-Home Care	\$
Transportation	\$		
Entertainment	\$		
Other (specify)			\$
	Tota	al Estimated Monthly Expenses	\$
Other Expenses:			
TAXES:	Taxes Current	?	Estimated Amount
Income Tax	🗌 Yes 🗌 I	No	\$
Property	🗌 Yes 🗌 I	No	\$
Payroll	🗌 Yes 🗌 I	No	\$
INSURANCE:	Company	Coverage Amount	Estimated Premium
Homeowner		\$	\$
Renters		\$	\$
Automobile		\$	\$
Health		\$	\$
Life		\$	\$
Worker's Comp		\$	\$
Long-Term Care			\$
Long-Term Care Be	nefits:		
	ell any of the Conservation of the Conservatio	tee's real or personal property	in the next year?
Does the conserva	o If yes, is it rented?	th he/she does not live?	

If the Conservatee's monthly expenses are greater than monthly income, explain how the shortfall will be met:

Does the Conservatee have a trust or is he/she entitled to	o receive income from a trust?			
If yes, please provide an attachment with the name of the t trust, the name(s) of the trustee(s) and their contact inform				
Does the conservatee have a Representative Payee? If yes, name of payee?	🗌 Yes 🗌 No			
Does the conservatee receive Medi-Cal benefits? What is the Medi-Cal share of cost?	☐ Yes ☐ No <u>\$</u>			
Do you anticipate any unusual activities related to the ma estate during the next year? If yes, please explain:	anagement of the Conservatee's			
What is the surety bond amount? \$ Does the bond meet the requirements for cost of recovery to collect on the bond, including attorney's fees and costs? Yes No				
The undersigned Conservator will periodically review the <i>D</i> consult with an attorney if needed.	Duties of Conservator Form GC-348 or			
I declare under penalty of perjury under the laws of the Sta and correct, and that I have retained a copy of this case pla				
DATE				
PRINT NAME CONSE	RVATOR'S SIGNATURE			
DATE				
PRINT NAME CONSE	RVATOR'S SIGNATURE			