



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CHILD CUSTODY AND GUARDIANSHIP MATTERS JUVENILE, FAMILY, AND PROBATE COURTS - GENERAL INFORMATION

This document provides general information about where child custody and guardianship matters are heard. Depending on the type of proceeding, stage of the case, and other details, the matter may be heard in the Juvenile, Family, or Probate Court.

Note: This form is intended to provide general information and should not be considered legal advice. Any questions about legal rights should be discussed with an attorney.

Forms identified as "JC" are forms created by the Judicial Council of California and may be found at www.courts.ca.gov.

CHILD CUSTODY AND GUARDIANSHIP MATTERS IN JUVENILE COURT:

- If a juvenile dependency petition is pending or the Juvenile Court assumes jurisdiction and declares the child a dependent of the court, the power to determine custody rights lies exclusively with the Juvenile Court, and orders from court proceedings in other departments of the court are void. (Fam. Code, § 7808; Welf. & Inst. Code, §§ 302, 304, 366.26, subds. (a) & (d); Cal. Rules of Court, rule 5.620(a).) In San Diego County, the Juvenile Court also has exclusive jurisdiction over proceedings to have a child declared free from the custody and control of a parent (also known as emancipation) (Fam. Code, § 7800 et seq.; Prob. Code, § 1516.5) and proceedings to terminate parental rights for an adoption (Fam. Code, §§ 7660 et seq., 8604(b); SDSC Local Rules, rules 4.19.4; 6.2.1.) Similarly, if a petition for adoption is filed in San Diego County, the Juvenile Court has exclusive jurisdiction to make custody orders during the pendency of the proceedings. (SDSC Local Rules, rule 6.2.1.)
- If the Juvenile Court orders a guardianship under Welfare & Institutions Code section 300 et seq., such guardianship remains under Juvenile Court jurisdiction. (Welf. & Inst. Code, § 360, subd. (a).)
- If a protective custody issue (for example, an allegation of abuse, abandonment, or neglect) comes to the attention of the Probate or Family Court, the matter may be referred to Child Welfare Services (CWS). (Prob. Code, § 1513, subd. (b).) This may be done by filing an Application to Commence Proceedings by Affidavit and Decision by Social Worker (JC Form #JV-210) or an application in the form of an affidavit (1) alleging that there was or is within the county, or residing therein, a child who falls within the definition of a dependent child (Welf. & Inst. Code, § 300), and (2) setting forth facts in support of that allegation. (See Welf. & Inst. Code, § 329.)

If CWS declines to file a dependency petition or fails to notify the applicant of its decision within three weeks, the applicant may, within one month of making the Welfare & Institutions Code section 329 application, request the Juvenile Court to review the social worker's decision. (Welf. & Inst. Code, § 331.) This request must be made in writing by using either the Application to Review Decision by Social Worker Not to Commence Proceedings form (JC Form #JV-212) or another similar pleading containing all the required information, which must be filed with the business office of the Juvenile Court.

CHILD CUSTODY AND GUARDIANSHIP MATTERS IN FAMILY COURT

“[T]he family law court has continuing exclusive jurisdiction over custody awards of minor children No other court therefore has jurisdiction to appoint a guardian of the persons of such minors.” (*Guardianship of Paduano* (1989), 215 Cal.App.3d 346.) Accordingly, in addition to hearing requests for custody orders brought by parents of children, the Family Court hears non-parent requests for custody of minor children in the following situations (through joinder of the non-parent in the Family Court action), unless the Juvenile Court has already or subsequently assumes jurisdiction over the child:

- In all cases in which the Family Court previously has made custody orders (specifically, where there are outstanding custody orders in parentage actions); custody and visitation actions; or dissolution or legal separation actions, as long as both parents are living at the time of the non-parent request.
- In all cases in which the non-parent had been joined into the Family Court case prior to the death of a parent.
- In all cases in which the Juvenile Court has made an order terminating jurisdiction over a child and returning custody of a child to a parent(s) (hereinafter “Exit Order”) by opening a Family Court case (Welf. & Inst. Code, §§ 362.4, subd. (c) and 726.5, subd. (d)) as long as both parents are living at the time of the non-parent request.
- In all domestic violence restraining order matters, if (1) a child is named as a protected party and the restraining order has not expired; or (2) the order specifically includes custody orders for minors, even if the restraining order itself has expired.

Note: The non-parent seeking joinder must initiate a petition for custody in Family Court, referencing the domestic violence restraining order matter.

CHILD CUSTODY AND GUARDIANSHIP MATTERS IN PROBATE COURT

- In all cases when a petition is filed for appointment as guardian of a child, the petition must state whether there are any existing custody orders issued by the Juvenile Court or the Family Court. (Prob. Code, § 1510, subd. (g).) The Probate Court may not appoint a guardian of the person for a child if the Juvenile Court has assumed jurisdiction or if the Family Court has made a custody order, as described in the Family Court section above. If an order concerning custody remains in effect in Family Court and a non-parent files a petition for guardianship in Probate Court, the Probate Court must dismiss the petition without prejudice, so that the matter can proceed in Family Court.
- The Probate Court hears petitions for guardianship, even if a Family Court custody order had been made previously, if either parent has died since the Family Court made the custody order, unless the non-parent had joined the Family Court action prior to the parent's death. In that instance, the matter should be heard in the Family Court case.
- The Probate Court hears petitions for guardianship if either parent has died since the Juvenile Court opened a Family Court case through its “Exit Orders.”
- The Probate Court hears petitions for guardianship, even if a domestic violence restraining order involving the minor was entered in the past, if (1) the restraining order has expired, and (2) the restraining order did not include specific custody orders.
- Petitions for guardianship may be filed in Probate Court even if there is a past or present Family Support Division (FSD) case regarding the child, unless a custodial order has been made in the case. FSD cases generally do not include custody orders.