



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

### CHILD CUSTODY AND GUARDIANSHIP MATTERS JUVENILE, FAMILY, AND PROBATE COURTS - POLICY

This policy clarifies 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 policy should not be considered legal advice. Any questions about your 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](http://www.courts.ca.gov).

#### CHILD CUSTODY AND GUARDIANSHIP MATTERS IN JUVENILE COURT:

- "Once a petition has been filed alleging that a child is described by section 300 [of the Welfare and Institutions Code], and until the petition is dismissed or dependency is terminated, the juvenile court has exclusive jurisdiction to hear proceedings relating to the custody of the child and visitation with the child and establishing a legal guardianship for the child." (Cal. Rules of Court, rule 5.620(a); see also Fam.Code, § 7808; Welf. & Inst. Code, §§ 302, 304, 366.26(a) & (d).)
- When a Juvenile Court issues an order returning the custody of a child to a parent or parents and terminating jurisdiction (often referred to as an "Exit Order"), the order "shall be filed" in an existing proceeding between the minor's parents for nullity, dissolution, legal separation, parentage, or custody at the time the juvenile court terminates its jurisdiction over the minor. (Welf. & Inst. Code, §§ 302(d) & 362.4(b).) The order "shall continue until modified or terminated by a subsequent order" of the Family Court. (Welf. & Inst. Code, §§ 302(d) & 362.4(b).) If no action is filed or pending relating to the custody of the minor in the Family Court, the Juvenile Court order shall be used to open a file in the Family Court. (Welf. & Inst. Code, § 362.4(c).)
- 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 (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 and 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.)
- Restraining Orders: If a Family Court Domestic Violence Temporary Restraining Order (DVTRO) or Domestic Violence Restraining Order After Hearing (DVRO) includes custody or visitation orders for a child who is also the subject of a dependency petition in Juvenile Court, any custody or visitation orders in the Family Court restraining order are void for lack of jurisdiction. When the Family Court is made aware that a petition has been or is subsequently filed in Juvenile Court, the Family Court will amend its restraining order by issuing an ex parte minute order which states that the custody and/or visitation orders therein are void for lack of jurisdiction.
- When a Family or Juvenile Court issues a temporary or permanent restraining order and the restrained person or the protected person is known to have another dependency, family law, or probate guardianship case involving the same children, a copy of the restraining order must be sent to the court with the overlapping case.
- When a Family Court issues a DVTRO for parties known to have an active Juvenile Court case, the hearing on the permanent order must be set in the Juvenile Court department to which that case is assigned. When a Family Court has issued a DVRO and it becomes known that the parties have an active Juvenile Court case, any requests for modification must be set in the Juvenile Court department to which that case is assigned.

- Probate Guardianships: Welfare and Institutions Code section 728 permits the Juvenile Court to terminate a probate guardianship “of the person of a minor who is before the [J]uvenile [C]ourt under a petition filed under Section 300, 601, or 602.” (Welf. & Inst. Code, § 728(a).) “The sole criterion for termination of a probate guardianship is whether termination is in the minor's best interests.” (*In re Xavier R.* (2011) 201 Cal.App.4th 1398, 1416.)
- If a child is the subject of independent adoption proceedings in Juvenile Court and is also the subject of guardianship proceedings in a Probate Court case, the adoption proceedings take precedence over guardianship proceedings. (Fam. Code, § 8802(e).) The Juvenile Court will order that the guardianship case be consolidated with the adoption case, and the consolidated case will be heard in the Juvenile Court under the adoption case number.
- If the Juvenile Court orders a guardianship under Welfare and Institutions Code section 300 et seq., the guardianship remains under Juvenile Court jurisdiction. (Welf. & Inst. Code, §§ 360(a) & 366.4.)
- If a protective issue (for example, an allegation of abuse, abandonment, or neglect) comes to the attention of the Family or Probate Court, the matter may be referred to the Child and Family Well Being (CFWB) Department (formerly known as Child Welfare Services (CWS) or Child Protective Services (CPS)). (Welf. & Inst. Code, § 329; Fam. Code, § 3027; Prob. Code, § 1513(b).) This may be done by filing an Application to Commence Proceedings by Affidavit and Decision by Social Worker (Welfare and Institutions Code, § 329) (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.)

**NOTE:** The Family or Probate Court judicial officer must inform the parties of the referral (either at the hearing or through an ex parte minute order), and a copy of the Application to Commence Proceedings by Affidavit and Decision by Social Worker (Welfare and Institutions Code, § 329) (JC Form #JV-210) must be filed in the confidential portion of the Family or Probate Court case file. If the Family or Probate Court receives a response from CFWB, the court must issue an ex parte minute order notifying the parties that the court has received the report for the investigation related to the child and that counsel and/or parties are ordered to sign the protective order located in the file in the business office before viewing and/or copying the report. The order should also admonish counsel and/or parties that the report cannot be disseminated or used for any purpose other than the Family or Probate Court proceeding.

If CFWB 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 application, request that the Juvenile Court review CFWB's decision. (Welf. & Inst. Code, § 331.) This request must be made in writing by using the Application to Review Decision by Social Worker Not to Commence Proceedings (JC Form #JV-210) or another similar pleading containing all the required information, which must be filed with the business office of the Juvenile Court.

The Juvenile Court may either affirm the decision of CFWB, or if it finds that there is a prima facie showing that the child is at risk of abuse or neglect as described by Welfare and Institutions Code section 300, the Juvenile Court may order the social worker to commence Juvenile Court proceedings. (Welf. & Inst. Code, § 331(b).)

The Juvenile Court shall, within five days of completing its review, transmit its decision, in writing, to the Family or Probate Court.

If a situation arises that falls outside of this policy, the Family or Probate Court Judicial Officer will confer with the Juvenile Court Presiding Judge.

### **CHILD CUSTODY AND GUARDIANSHIP MATTERS IN FAMILY COURT:**

In addition to hearing requests for custody orders brought by parents, 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):

- In Family Court cases with existing custody orders as long as both parents are living at the time of the non-parent request.
- In all cases in which the non-parent has been joined into the Family Court case prior to the death of a parent.

- In all cases where a Family Court case is opened following the Juvenile Court's Exit Order as long as both parents are living at the time of the non-parent request. (See Welf. & Inst. Code, §§ 362.4(c) & 726.5(d).)

NOTE: If the Exit Order includes an order for no visitation or for supervised visitation, Reasons for No or Supervised Visitation - Juvenile (JC Form #JV-206) must be attached to the order providing the reasons for the no visitation or supervised visitation order. The Family Court will not modify the order unless it finds there has been a significant change of circumstances and the modification is in the child's best interest. See Welf. & Inst. Code, § 302(d):

“Any custody or visitation order issued by the juvenile court at the time the juvenile court terminates its jurisdiction pursuant to Section 362.4 regarding a child who has been previously adjudged to be a dependent child of the juvenile court shall be a final judgment and shall remain in effect after that jurisdiction is terminated. The order shall not be modified in a proceeding or action described in Section 3021 of the Family Code unless the court finds that there has been a significant change of circumstances since the juvenile court issued the order and modification of the order is in the best interests of the child.” (Welf. & Inst. Code, § 302(d).)

- When there is a standalone Family Court domestic violence case that contains a restraining order (whether temporary or after hearing) between a child's parents, a request for custody made by a non-parent will be heard in Probate Court because the non-parent cannot seek joinder in the domestic violence case. If the restraining order contained custody or visitation orders and the Probate Court makes orders that impact the custody or visitation of the child, the Family Court will amend the restraining order to be consistent with or reflect the Probate Court order(s) when the Family Court becomes aware of the Probate Court order(s).
- When a child seeks a restraining order against their parent, the restraining order cannot include custody orders. Therefore, if a request for custody is made by a non-parent and there is an underlying Family Court custody case, the request for custody must be filed in the Family Court custody case. If the parents do not have an underlying Family Court custody case, a request for custody by a non-parent must be filed in Probate Court.

If a situation arises that falls outside of this policy, the Probate Court Judicial Officer will confer with the Family Court Supervising Judge.

#### **CHILD CUSTODY AND GUARDIANSHIP MATTERS IN PROBATE COURT:**

- When a petition is filed for appointment as guardian of a child, the petition must state whether a Welfare and Institutions Code section 300 petition has been filed in the Juvenile Court and whether there are any existing custody orders issued by the Juvenile Court or the Family Court in a marriage dissolution, domestic relations, custody, or other similar proceeding affecting the proposed ward. (Prob. Code, § 1510(g).) The Probate Court may not appoint a guardian of the person for a child if the Juvenile Court has assumed jurisdiction as described in the Juvenile Court section above, or if the Family Court has made a custody order, as described in the Family Court section above. If a custody order 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 may proceed in Family Court.
- The Probate Court hears petitions for guardianship by a non-parent, even if a Family Court custody order has been made if either parent has died since the Family Court made the custody order, unless the non-parent was joined to the Family Court action prior to the parent's death. In that instance, the matter will be heard in the Family Court.
- If a Juvenile Court Exit Order is filed in Family Court and either parent subsequently dies, the Probate Court will hear the petition for guardianship of the child.
- 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.