



California Rules of Court

(Revised January 1, 2022)

Rule 7.1016. Participation and testimony of wards in guardianship proceedings

(a) Definitions

As used in this rule, the following terms have the meanings specified:

- (1) "Ward" includes "proposed ward."
- (2) A "proceeding" is a matter before the court for decision in a probate guardianship of the person that concerns appointment or removal of a guardian, visitation, determination of the ward's place of residence, or termination of the guardianship by court order.
- (3) "Party," as used in this rule to refer to the ward, means a ward who has filed a petition or opposition to a petition concerning a proceeding or other matter subject to this rule.

(b) Purpose and scope of rule

- (1) This rule applies Family Code section 3042 to the participation and testimony of the ward in a proceeding in a probate guardianship of the person. The testimony of other minors in a guardianship case is governed by Evidence Code sections 765(b) and 767(b).
- (2) The court in its discretion may apply this rule, in whole or in part, to the participation and testimony of a ward in a guardianship of the estate or in a matter before the court in a guardianship of the person that is not a proceeding within the meaning of this rule. The phrase "or other matter subject to this rule" following the term "proceeding" is a reference to the matters described in this paragraph.
- (3) No statutory mandate, rule, or practice requires a ward who is not a party to the proceeding or other matter subject to this rule to participate in court or prohibits him or her from doing so. When a ward desires to participate but is not a party to the proceeding or other matter subject to this rule, the court must balance the protection of the ward, the statutory duty to consider the wishes of and input from the ward, and the probative value of the ward's input while ensuring all parties' due process rights to challenge evidence relied on by the court in making decisions affecting the ward in matters covered by the rule.
- (4) This rule rather than rule 5.250, on children's participation and testimony in family court proceedings, applies in probate guardianship proceedings.

(c) Determining whether the nonparty ward wishes to address the court

- (1) The following persons must inform the court if they have information indicating that a ward who is not a party wishes to address the court in a proceeding or other matter subject to this rule:
 - (A) The ward's counsel;
 - (B) A court or county guardianship investigator;
 - (C) A child custody recommending counselor who provides recommendations to the judicial officer under Family Code section 3183;
 - (D) An expert appointed by the court under Evidence Code section 730 to assist the court in the matter; or
 - (E) The ward's guardian ad litem.

- (2) The following persons may inform the court if they have information indicating that a ward who is not a party wishes to address the court in a proceeding or other matter subject to this rule:
 - (A) A party in the guardianship case; and
 - (B) An attorney for a party in the guardianship case.
- (3) In the absence of information indicating that a ward who is not a party wishes to address the court in a proceeding or other matter subject to this rule, the judicial officer may inquire whether the ward wishes to do so.

(d) Guidelines for determining whether addressing the court is in the nonparty ward's best interest

- (1) When a ward who is not a party indicates that he or she wishes to address the court, the judicial officer must consider whether involving the ward in the proceeding or other matter subject to this rule is in the ward's best interest.
- (2) If the ward is 12 years old or older, the judicial officer must hear from the ward unless the court makes a finding that addressing the court is not in the ward's best interest and states the reasons on the record.
- (3) In determining whether addressing the court is in the ward's best interest, the judicial officer should consider the following:
 - (A) Whether the ward is of sufficient age and capacity to form an intelligent preference as to the matter to be decided;
 - (B) Whether the ward is of sufficient age and capacity to understand the nature of testimony;
 - (C) Whether information has been presented indicating that the ward may be at risk emotionally if he or she is permitted or denied the opportunity to address the court or that the ward may benefit from addressing the court;
 - (D) Whether the subject areas about which the ward is anticipated to address the court are relevant to the decision the court must make;
 - (E) Whether the appointment of counsel under Probate Code section 1470 or a guardian ad litem for the ward would be helpful to the determination or would be necessary to protect the ward's interests; and
 - (F) Whether any other factors weigh in favor of or against having the ward address the court, taking into consideration the ward's desire to do so.

(e) Guidelines for receiving testimony and other input from the nonparty ward

- (1) No testimony of a ward may be received without such testimony being heard on the record or in the presence of the parties. This requirement may not be waived.
- (2) On deciding to take the testimony of a ward who is not a party in a proceeding or other matter subject to this rule, the judicial officer should balance the necessity of taking the ward's testimony in the courtroom with parents, the guardian or proposed guardian, other parties, and attorneys present with the need to create an environment in which the ward can be open and honest. In each case in which a ward's testimony will be taken, the judicial officer should consider:
 - (A) Where the testimony will be taken;
 - (B) Who should be present when the testimony is taken;
 - (C) How the ward will be questioned; and

- (D) Whether a court reporter is available in all instances, but especially when the ward's testimony may be taken outside the presence of the parties and their attorneys. If the court reporter will not be available, whether there are other means to collect, preserve, transcribe, and make the ward's testimony available to parties and their attorneys.
- (3) In taking testimony from a ward who is not a party to the proceeding or other matter subject to this rule, the court must take the special care required by Evidence Code section 765(b). If the ward is not represented by an attorney, the court must inform the ward in an age-appropriate manner about the limitations on confidentiality of testimony and that the information provided to the court will be on the record and provided to the parties in the case.
 - (4) In the process of listening to and inviting the ward's input, the court must allow but not require the ward to state a preference regarding the matter to be decided in the proceeding or other matter subject to this rule and should provide information in an age-appropriate manner about the process by which the court will make a decision.
 - (5) In any case in which a ward who is not a party to the proceeding or other matter subject to this rule will be called to testify, the court must consider the appointment of counsel for the ward under Probate Code section 1470 and may consider the appointment of a guardian ad litem for the ward. In addition to satisfying the requirements for minor's counsel under rule 7.1101, minor's counsel must:
 - (A) Provide information to the ward in an age-appropriate manner about the limitations on the confidentiality of testimony and indicate to the ward the possibility that information provided to the court will be on the record and provided to the parties in the case;
 - (B) Allow but not require the ward to state a preference regarding the issues to be decided in the proceeding or other matter subject to this rule, and provide information in an age-appropriate manner about the process by which the court will make a decision;
 - (C) If appropriate, provide the ward with an orientation to the courtroom or other place where the ward will testify; and
 - (D) Inform the parties and the court about the ward's desire to provide input.
 - (6) If the court precludes the calling of a ward who is not a party as a witness in a proceeding or other matter subject to this rule, alternatives for the court to obtain information or other input from the ward may include:
 - (A) A court or county guardianship investigator participating in the case under Probate Code section 1513 or 1513.2;
 - (B) Appointment of a child custody evaluator or investigator under Evidence Code section 730;
 - (C) Appointment of counsel or a guardian ad litem for the ward;
 - (D) Admissible evidence provided by the ward's parents, parties, or witnesses in the proceeding or other matter subject to this rule;
 - (E) Information provided by a child custody recommending counselor authorized under Family Code section 3183 to make a recommendation to the court; and
 - (F) Information provided from a child interview center or professional to avoid unnecessary multiple interviews.
 - (7) If the court precludes the calling of a ward who is not a party as a witness in a proceeding or other matter subject to this rule and specifies one of the other alternatives, the court must require that the information or evidence obtained by alternative means and provided by a professional (other than counsel for the ward or counsel for any party) or a nonparty:

- (A) Be in writing and fully document the ward's views on the matters on which he or she wished to express an opinion;
- (B) Describe the ward's input in sufficient detail to assist the court in making its decision;
- (C) Be provided to the court and to the parties by a person who will be available for testimony and cross-examination; and
- (D) Be filed in the confidential portion of the case file.

(f) Responsibilities of court-connected or appointed professionals-all wards

A child custody evaluator, an expert witness appointed under Evidence Code section 730, an investigator, a child custody recommending counselor or other custody mediator appointed or assigned to meet with a ward must:

- (1) Provide information to the ward in an age-appropriate manner about the limitations on confidentiality of testimony and the possibility that information provided to the professional may be shared with the court on the record and provided to the parties in the case;
- (2) Allow but not require the ward to state a preference regarding the issues to be decided in the proceeding or other matter subject to this rule, and provide information in an age-appropriate manner about the process by which the court will make a decision; and
- (3) Provide to the other parties in the case information about how best to support the interest of the ward during the court process.

(g) Methods of providing information to parties and supporting nonparty wards

Courts should provide information to the parties and the ward who is not a party to the proceeding or other matter subject to this rule when the ward wants to participate or testify. Methods of providing information may include:

- (1) Having court or county guardianship investigators and experts appointed under Evidence Code section 730 meet jointly or separately with the parties and their attorneys to discuss alternatives to having the ward provide direct testimony;
- (2) Providing an orientation for the ward about the court process and the role of the judicial officer in making decisions, how the courtroom or chambers will be set up, and what participating or testifying will entail;
- (3) Providing information to parties before the ward participates or testifies so that they can consider the possible effect on the ward of participating or not participating in the proceeding or other matter subject to this rule;
- (4) Appointing counsel under Probate Code section 1470 or a guardian ad litem for the ward to assist in the provision of information to the ward concerning his or her decision to participate in the proceeding or testify;
- (5) Including information in guardianship orientation presentations and publications about the options available to a ward who is not a party to the proceeding or other matter subject to this rule to participate or testify or not to do so, and the consequences of a ward's decision whether to become a party to the proceeding or other matter subject to this rule; and
- (6) Providing an interpreter for the ward.

(h) If the ward is a party to the proceeding

- (1) A ward who is a party to the proceeding or other matter subject to this rule is subject to the law of discovery applied to parties in civil actions and may be called as a witness by any other party unless the court makes a finding that providing information in response to discovery requests or testifying as a witness is not in the ward's best interest and states the reasons on the record.

- (2) The court must consider appointing counsel under Probate Code section 1470 or a guardian ad litem for a ward who is a party to the proceeding or other matter subject to this rule if the ward is not represented by counsel.
- (3) In determining whether providing information in response to discovery requests or testifying as a witness is in the ward's best interest, the judicial officer should consider the following:
 - (A) Whether information has been presented indicating that the ward may be at risk emotionally if he or she is permitted or denied the opportunity to provide information in response to discovery requests or by testimony;
 - (B) Whether the subject areas about which the ward is anticipated to provide information in response to discovery requests or by testimony are relevant to the decision the court must make; and
 - (C) Whether any other factors weigh in favor of or against having the ward provide information in response to discovery requests or by testimony.
- (4) In taking testimony from a ward who is a party to the proceeding or other matter subject to this rule, the court must take the special care required by Evidence Code section 765(b). If the ward is not represented by an attorney, the court must inform the ward in an age-appropriate manner about the limitations on confidentiality of testimony and that the information provided to the court will be on the record and provided to the parties in the case.

(i) Education and training of judicial officers and court staff

Education and training content for court staff and judicial officers should include information on wards' participation in proceedings or other matters subject to this rule, methods other than direct testimony for receiving input from a ward, procedures for taking a ward's testimony, and differences in the application of this rule to wards who are and are not parties to the proceeding or other matters subject to this rule.

Rule 7.1016 adopted effective January 1, 2013.