Judicial Council of California Administrative Office of the Courts

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SPR13-33

Title

Probate Guardianship: Eligibility of a Ward for Special Immigrant Juvenile Status Under Federal Immigration Law

Action Requested

Review and submit comments by June 19, 2013

Proposed Rules, Forms, Standards, or Statutes

Adopt form GC-224

Proposed by

Probate and Mental Health Advisory Committee
Hon. Mitchell L. Beckloff, Chair

Clarity on that issue has now been provided. In *B. F., et al., Minors v. Superior Court* (2012) 207 Cal.App.4th 621, the Court of Appeal, Second Appellate District, concluded that for purposes of the Immigration and Nationality Act and SIJS under that law and related regulations, a superior court in a probate guardianship case is a "juvenile court," in that the court in such a case has jurisdiction to make judicial determinations about the custody and care of a juvenile, and does so when it appoints a guardian (*id.* at pp. 627–629, 8 C.F.R. § 204.11(a)). The fact that a probate guardianship is not a juvenile dependency proceeding as defined and governed by the provisions of the Welfare and Institutions Code is of no moment. The superior court, whether exercising jurisdiction in a probate guardianship or in a juvenile dependency or delinquency proceeding is a single court (*id.* at pp. 628–629).[4]

The appointment of a general guardian of the ward's person is "placement of a juvenile under the custody of an individual appointed by a juvenile court" for purposes of the federal law. Such an appointment is also a judicial determination of the ward's entitlement to long-term foster care, which under the relevant federal SIJS regulation is a determination that family reunification is no longer a viable option (*B. F., et al., Minors v. Superior Court, supra,* at p. 626; 8 C.F.R. § 204.11(a)). The superior court sitting as a probate court in a guardianship case that has appointed a general guardian of the person of a minor therefore has the authority and duty to make findings in support of the SIJS of that minor in an appropriate case, within the meaning of the federal law and regulations (*id.*, at p. 630).

The Proposal

The Probate and Mental Health Advisory Committee proposes the adoption, effective January 1, 2014, of the *Order Regarding Eligibility for Special Immigrant Juvenile Status—Probate Guardianship* (GC-224), a court order in a guardianship case that would make findings in support of a ward's eligibility for special immigrant juvenile status under federal immigration law.

- This form is needed to implement the decision of the Court of Appeal in *B. F., et al., Minors v. Superior Court, supra,* 207 Cal.App.4th 621, and is also proposed in response to the referral from the Family and Juvenile Law Advisory Committee and public comments received on the 2010 revision of the juvenile court version of the form.

- Use of a distinct guardianship form instead of reliance on a modified version of the juvenile court form is appropriate in part because the first two sentences of item 1 of t t(i)-.32upr9tbecaue10.22]10(eh

juvenile court of the county . .

If an appointed or proposed guardian is unrepresented by counsel in a case in which his or her ward or proposed ward is an immigrant who may be eligible for SIJS, the court could appoint counsel for the minor under Probate Code section 1470(a) and, if the minor were under the age of 12, perhaps a guardian ad litem (Prob. Code, § 1003; form GC-100), for purposes of the application for the SIJS order.[8]

Implementation Requirements, Costs, and Operational Impacts

Adoption of this form will incur the standard reproduction, training, and distribution costs connected with the creation and dissemination of any new Judicial Council form. The advisory committee believes these costs will be minimal, are made necessary by the decision of the Court of Appeal described above, and should be offset in the long run by improvements in guardianship practice in case involving SIJS applications, as well as better outcomes in the related federal practice for eligible minors and their guardians.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?
- The committee developed a draft application for an SIJS order in a guardianship as an attachment to a guardianship appointment petition, but decided not to proceed with the project at this time. Would such an application, consisting of new optional Judicial Council forms and revisions of the appointment petitions to refer to them, be of interest in the next year or so?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposed form provide cost savings in connection with SIJS applications in probate departments? If so please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

Form GC-224, at page 7.
Title 8, U.S.C. § 1101(a)(27)(J), at page 8.
8 C.F.R. § 204.11 (Jan. 1, 2012), at pages 9 and 10.

1.

Title 8 United States Code section 1101(a)(27)(J)

(a) As used in this chapter—

(27) The term “special immigrant” means—

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and (iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; . . .

8 C.F.R. § 204.11 (Jan. 1, 2012)

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) *Definitions.*

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no TJ 0.002 Tc -0.002 Tw -16.95 -1.15 Td [(a)6(n)2(d)2(ma)6(in)2(ta)6(in)2