

Assembly Bill No. 458

Passed the Assembly April 14, 2011

Chief Clerk of the Assembly

Passed the Senate July 1, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 1514 of, and to add Sections 2204 and 2205 to, the Probate Code, relating to guardianship.

LEGISLATIVE COUNSEL'S DIGEST

AB 458, Atkins. Guardianship.

Existing law, the Guardianship-Conservatorship Law, authorizes a court, upon hearing of a petition, to appoint a guardian of a person or estate of the proposed ward in accordance with specified provisions of law governing the custody of a minor child.

This bill would prohibit a court from appointing a minor's parent as a guardian of the person of the minor, except as specified. The bill would establish requirements for transferring a proceeding to another court in circumstances in which a proceeding that concerns custody or visitation of a minor child is pending in one or more counties at the time the petition for guardianship is filed, and would specify circumstances under which the court in a guardianship proceeding would maintain exclusive jurisdiction to determine issues of custody or visitation. The bill would also require the court in which a guardianship proceeding is filed to communicate with each court where a custody or visitation proceeding is pending prior to making a determination on maintaining or transferring the guardianship proceeding, and would require the Judicial Council, on or before January 1, 2013, to adopt rules of court to implement this provision.

The people of the State of California do enact as follows:

SECTION 1. Section 1514 of the Probate Code is amended to read:

1514. (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint a guardian of the person or estate of the proposed ward or both.

(b) (1) In appointing a guardian of the person, the court is governed by Chapter 1 (commencing with Section 3020) and Chapter 2 (commencing with Section 3040) of Part 2 of Division 8 of the Family Code, relating to custody of a minor.

(2) Except as provided in Section 2105, a minor's parent may not be appointed as a guardian of the person of the minor.

(c) The court shall appoint a guardian nominated under Section 1500 insofar as the nomination relates to the guardianship of the estate unless the court determines that the nominee is unsuitable.

(d) The court shall appoint the person nominated under Section 1501 as guardian of the property covered by the nomination unless the court determines that the nominee is unsuitable. If the person so appointed is appointed only as guardian of the property covered by the nomination, the letters of guardianship shall so indicate.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate:

(1) The court is to be guided by what appears to be in the best interest of the proposed ward, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the proposed ward.

(2) If the proposed ward is of sufficient age to form an intelligent preference as to the person to be appointed as guardian, the court shall give consideration to that preference in determining the person to be so appointed.

SEC. 2. Section 2204 is added to the Probate Code, to read:

2204. (a) If a proceeding for the guardianship of the person of the minor is filed in one county and a custody or visitation proceeding has already been filed in one or more other counties, the following shall apply:

(1) If the guardianship proceeding is filed in a county where the proposed ward and the proposed guardian have resided for six or more consecutive months immediately prior to the commencement of the proceeding, or, in the case of a minor less than six months of age, since the minor's birth, the court in that county is the proper court to hear and determine the guardianship proceeding, unless that court determines that the best interests of the minor require that the proceeding be transferred to one of the other courts. A period of temporary absence no longer than 30 days from the county of the minor or the proposed guardian shall not be considered an interruption of the six-month period.

(2) If the guardianship proceeding is filed in a county where the proposed ward and the proposed guardian have resided for less than six consecutive months immediately prior to the

commencement of the proceeding, or, in the case of a minor less than six months of age, a period less than the minor's life, the court shall transfer the case to one of the other courts, unless the court determines that the best interests of the minor require that the guardianship proceeding be maintained in the court where it was filed.

(3) If a petitioner or respondent in a custody or visitation proceeding who is an authorized petitioner under Section 2212 petitions the court where the guardianship proceeding is filed for transfer of the guardianship proceeding to the court where the custody or visitation proceeding is on file at any time before the appointment of a guardian, including a temporary guardian, the provisions of this subdivision shall apply to the court's determination of the petition for transfer. Except as provided in this paragraph, the petition for transfer shall be determined as provided in Sections 2212 to 2217, inclusive.

(b) The following shall apply concerning communications between the courts:

(1) The court where the guardianship proceeding is commenced shall communicate concerning the proceedings with each court where a custody or visitation proceeding is on file prior to making a determination authorized in subdivision (a), including a determination of a petition to transfer.

(2) If a petitioner or respondent, who is authorized to petition to transfer under Section 2212, petitions the court where the guardianship proceeding is filed for transfer of the guardianship after the appointment of a guardian, including a temporary guardian, the court in the guardianship proceeding may communicate with each court where a custody or visitation proceeding is on file before determining the petition for transfer.

(3) If the court in the guardianship proceeding appoints a guardian of the person of the minor, including a temporary guardian, the court shall transmit a copy of the order appointing a guardian to each court where a custody or visitation proceeding is on file, and each of those courts shall file the order in the case file for its custody or visitation proceeding.

(4) The provisions of subdivisions (b) to (e), inclusive, of Section 3140 of the Family Code shall apply to communications between courts under this subdivision.

(5) The Judicial Council shall, on or before January 1, 2013, adopt rules of court to implement the provisions of this subdivision.

(c) For purposes of this section, “custody or visitation proceeding” means a proceeding described in Section 3021 of the Family Code that relates to the rights to custody or visitation of the minor under Part 2 (commencing with Section 3020) of Division 8 of the Family Code.

SEC. 3. Section 2205 is added to the Probate Code, to read:

2205. (a) Except as provided in Section 304 of the Welfare and Institutions Code, and subject to the provisions specified in subdivision (b), upon the filing of an order appointing a guardian of the person of a minor in a guardianship proceeding, including an order appointing a temporary guardian of the person of the minor, the court in the guardianship proceeding shall have exclusive jurisdiction to determine all issues of custody or visitation of the minor until the guardianship proceeding is terminated.

(b) This section is subject to the provisions of Sections 1510 of this code, and 8714, 8714.5, and 8802 of the Family Code, relating to consolidation of guardianship and adoption proceedings and the court where the consolidated case is to be heard and decided.

Approved _____, 2011

Governor