

388 Motions On Guardianships by Parents or Guardians

(Revised 05/03/24)

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Related Policies

Additional information can be found in the following policies:

- ICWA Inquiry and Noticing Manual
- Independent Adoption
- Guardianship
- Petitions (Motions) - 388

Forms

The Following forms are referenced in this policy:

- 07-65 Placement Information and Payment Authorization (CWS/CMS Template)
- 04-600 RFA Referral (CWS/CMS Template)
- JV-180 Request to Change Court Order

Policy

A 388 motion is a request for a modification to a current court order and may be filed by social workers (SWs), parents, attorneys, and others with an interest in a child who is a dependent of the juvenile court. For additional information of 388 motions, see Petitions (Motions) - 388.

A 388 motion can be filed on a guardianship case when:

- A guardian wants to adopt the child/youth.
- A guardian wants to name a successor guardian.
- A guardian wants to dissolve the guardianship.
- A parent is asking for termination of the guardianship and return of the child/youth.
- A parent wants to modify visitation orders.

For general information on guardianships and/or case management of guardianship cases, refer to the Guardianship policy.

**Reinstating
Dependency**

The table below outlines when Juvenile Court dependency is reinstated on a guardianship case when a 388 motion is filed:

| If | Then |
|---|---|
| a parent files a 388 motion asking for termination of the guardianship and return of the child/youth, | Child and Family Well-Being (CFWB) will request that there not be any changes in the guardianship or dependency status until an assessment of the parent's ability to care for their child/youth is completed by the guardianship unit. |
| a parent files a 388 motion asking for a modification of visitation orders | CFWB will request that there not be any changes in the guardianship or dependency status. |
| a guardian files a 388 motion because they want to adopt the child/youth or name a successor guardian | CFWB will request the guardianship remain intact, and dependency not be reinstated until the Resource Family Approval (RFA) is completed. This enables funding to the guardian to continue without interruption. |
| A guardian files a 388 motion requesting to terminate the guardianship | the court will usually terminate the guardianship and re-instate dependency at the time the 388 motion is filed. |

**WIC 300 Petition
To Terminate
Guardianship**

If a WIC 300 petition is filed on a guardianship case, in addition to following the normal petition filing procedures, in the Detention Report the SW must address the assessment of termination of guardianship versus keeping the guardianship intact, and the caregivers ability/willingness to accept and engage in services. When in a child/youth's best interest, SWs will attempt to preserve a guardianship by providing the family referrals, services, cultural needs/services, and convening Child and Family Team Meetings (CFTM) and/or Facilitated Mappings.

**Procedures For
Filing A 388
Motion By
Guardian/Parent**

If the guardian or parent wants to file a 388 motion, they can obtain the paperwork from the regional courts' business office listed below, or from the California Courts website at <https://www.courts.ca.gov/>.

| | | |
|---|--|--|
| Meadow Lark Courthouse 2851 Meadow Lark Drive San Diego, CA 92123 858-634-1600 | East County Courthouse 250 East Main Street El Cajon, CA 92021 619-456-4238 | North County Courthouse 325 S. Melrose Drive Vista, CA 92083 760-201-8600 |
|---|--|--|

**Procedures For
Filing A 388
Motion By
Guardian/Parent
(cont.)**

The table below outlines the process for filing a 388 motion:

| STEP | WHO | ACTION |
|------|---|--|
| 1 | Guardian/Parent | File a 388 motion using the JV-180 to request termination of the guardianship. NOTE: The guardian/parent can file in either the court that retains jurisdiction over the case or the juvenile court in the county where the guardian and child/youth currently resides. The decision should be based on the best interests of the child/youth. |
| 2 | Court Business Office | Forward the 388 motion paperwork to a judicial officer for review and consideration. |
| 3 | Judicial officer | Either: <ul style="list-style-type: none"> • Deny the guardian’s/parent’s 388 motion, <li style="text-align: center;">OR • Set the matter for a hearing in 30 days to determine whether to terminate the guardianship. |
| 4 | Court Business Office | If the court sets a hearing, fax the 388 motion to the Child Abuse Hotline and Guardianship Unit. NOTE: 388 motions that are denied will not be faxed to the Child Abuse Hotline. |
| 5 | Hotline, Guardianship Unit Social Worker, and Primary Social Worker | Complete action items outlined in the table below titled “Assignment and Duties on 388 Motions” based on type of 388 motion filed. |

Assignment And Duties On 388 Motions

The table below outlines hotline actions for 388 motions:

| Type of 388 Motion | Case Status When 388 Motion Filed | Actions | Assignment |
|---|-----------------------------------|--|--|
| Guardian Files To Name A Successor Guardian | Open case | <ul style="list-style-type: none"> Change the Intervention Reason to "Disrupted Guardianship." Email a copy of the 388 motion to the assigned primary SW. | Primary: <ul style="list-style-type: none"> Assigned SW Secondary: <ul style="list-style-type: none"> PSS Guardianship Unit |
| | No open case | <ul style="list-style-type: none"> Open a new CWS/CMS case with the Intervention Reason as "Disrupted Guardianship" Upload a copy of the 388 motion paperwork to the case in ERMS. | Primary: <ul style="list-style-type: none"> Court Intervention (CI) Secondary: <ul style="list-style-type: none"> PSS Guardianship Unit |
| Guardian Files To Dissolve Guardianship | Open case | <ul style="list-style-type: none"> Change the Intervention Reason to "Disrupted Guardianship." Email a copy of the 388 motion to the assigned primary SW. | Primary: <ul style="list-style-type: none"> Assigned SW Secondary: <ul style="list-style-type: none"> PSS Guardianship Unit |
| | No open case | <ul style="list-style-type: none"> Open a new case in CWS/CMS using the intervention reason, "Disrupted Guardianship." | Primary: <ul style="list-style-type: none"> CI Secondary: <ul style="list-style-type: none"> PSS Guardianship Unit |

Assignment And Duties On 388 Motions (cont.)

| Type of 388 Motion | Case Status When 388 Motion Filed | Actions | Assignment |
|--|-----------------------------------|---|--|
| Guardian Files To Dissolve Guardianship (cont.) | No open case | <ul style="list-style-type: none"> • Upload a copy of the 388 motion paperwork to the case in ERMS. | |
| Guardian Files To Adopt NOTE: Verify the guardianship was established in dependency court. If the guardianship was not established through dependency, the petitioners will need to file for an Independent Adoption. Refer to the Independent Adoption policy for more information. | Open case | <ul style="list-style-type: none"> • Change the intervention reason to “Adoption Services” • Notify Guardian that they will need to obtain an RFA approval which should be completed prior to terminating the guardianship. • Email a copy of the 388 motion to the primary assigned SW. | Primary: <ul style="list-style-type: none"> • Adoptions |
| | No open case | <ul style="list-style-type: none"> • Open a new CWS/CMS case using “Adoption Services” as the intervention reason. • Notify Guardian that they will need to obtain an RFA approval which should be completed prior to terminating the guardianship. | Primary: <ul style="list-style-type: none"> • Adoptions |

Assignment And Duties On 388 Motions (cont.)

| Type of 388 Motion | Case Status When 388 Motion Filed | Actions | Assignment |
|--|-----------------------------------|---|---|
| Guardian Files To Adopt (cont.) | No open case | <ul style="list-style-type: none"> • Upload a copy of the 388 motion paperwork to the case in ERMS. | Primary: <ul style="list-style-type: none"> • Adoptions |
| Parent Wants To Dissolve Guardianship And Requests Return Of Child/Youth | Open case | <ul style="list-style-type: none"> • Change the Intervention Reason to "Disrupted Guardianship." • Email a copy of the 388 motion to the assigned primary SW. | Primary: <ul style="list-style-type: none"> • Assigned SW Secondary: <ul style="list-style-type: none"> • PSS • Guardianship Unit |
| | No open case | <ul style="list-style-type: none"> • Open a new CWS/CMS case. • Change the Intervention Reason to "Disrupted Guardianship." • Upload a copy of the 388 motion paperwork to the case in ERMS. | Primary: <ul style="list-style-type: none"> • CI Secondary: <ul style="list-style-type: none"> • PSS • Guardianship Unit |
| Parent Wants To Modify Visitation Orders | Open case | <ul style="list-style-type: none"> • Email a hard copy of the 388 motion paperwork to the Assigned Primary SW. | Primary: <ul style="list-style-type: none"> • Assigned SW Secondary: <ul style="list-style-type: none"> • PSS <p>NOTE: Guardianship Unit is not involved in 388 motions regarding modification to visitation orders.</p> |

Assignment And Duties On 388 Motions (cont.)

| Type of 388 Motion | Case Status When 388 Motion Filed | Actions | Assignment |
|--|-----------------------------------|--|--|
| Parent Wants To Modify Visitation Orders (cont.) | No open case | <ul style="list-style-type: none"> • Upload a copy of the 388 motion paperwork to the case in ERMS. | Primary: <ul style="list-style-type: none"> • CI Secondary: <ul style="list-style-type: none"> • PSS NOTE: Guardianship Unit is not involved in 388 motions regarding modification to visitation orders. |
| Court Reinstates Dependency On A Filed 388 Motion Prior To Notifying Hotline | Open case | <ul style="list-style-type: none"> • Create and assign the referral to the assigned SW. • Email a copy of the 388 motion to the assigned primary SW. | Primary: <ul style="list-style-type: none"> • Assigned SW Secondary: <ul style="list-style-type: none"> • PSS • Guardianship Unit |
| | No open case | <ul style="list-style-type: none"> • Open a new case in CWS/CMS • Upload a copy of the 388 motion paperwork to the case in ERMS. | Primary: <ul style="list-style-type: none"> • CI Secondary: <ul style="list-style-type: none"> • PSS • Guardianship Unit |

The primary SW will conduct all case management duties including but not limited to:

- Making monthly in-person contacts.
- Completing 04-600 RFA referrals.
- Scheduling family centered meetings.
- Facilitating visitation.
- Assisting with placement matters.
- Submitting court reports if there are updates on services, etc.
- Submitting 07-65s (for guardians wanting to adopt)

**Assignment And
Duties On 388
Motions (cont.)**

The guardianship unit SW will complete assessments for successor guardian requests or parents requesting return of the child/youth and submitting court reports for the 388 motion hearing.

NOTE: The SW has an on-going duty to inquire whether a child/youth has Native Ancestry regardless if ICWA was found to apply in a prior dependency case. Additionally, If a missing parent or relative is located, ICWA inquiry must be made at that time. See ICWA Inquiry and Noticing Manual for additional information.

**Alignment With
SET**

This policy supports the following SET Values: [Value 1](#): Relationships with Children, Youth, and Families Are the Foundation, by partnering with families to identify family support systems, [Value 2](#): Collaborative Partnerships with Kinship and Resources Families, by offering supportive services for resource families to maintain placements, [Value 3](#): Helping Children and Youth Achieve Their Full Potential and Develop Lifelong Relationships, by prioritizing child safety and permanence and [Value 5](#): A Strong Working Relationship with the Legal System, by collaborating with legal partners with a primarily focus on the child's best interests and right to permanence.
