Hearing Date: January 24, 2014
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ITEM 4

TEST CLAIM
FINAL STAFF ANALYSIS

AND

PROPOSED STATEMENT OF DECISION

Probate Code Sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d); 2352(a)-(f), 2352.5(a)-(e), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a), 2620(a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5(a)-(d), 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923

Statutes 2006; Chapter 490 (SB 1116), Statutes 2006, Chapter 492 (SB 1716), and Statutes 2006, Chapter 493 (AB 1363)

Public Guardianship Omnibus Conservatorship Reform

07-TC-05

County of Los Angeles, Claimant

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Judicial Council of California's *Handbook for Conservators*, 2002 Edition, pp. 27-142.

Governor's Bill File, Statutes 1945; Chapter 907, S.B. 522 , Correspondence From Los Angeles County Counsel, dated June 8, 1945, pp. 1-3.

Senate Rules Committee Third Reading Bill Analysis, A.B. No. 1363, as amended August 24, 2006, p. 14.

Administrative Office of the Courts' Summary of Omnibus Conservatorship and Guardianship Reform Act of 2006.

Exhibit A

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
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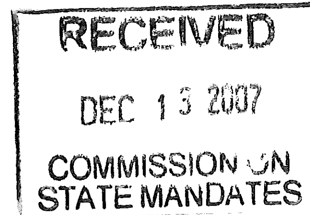
J. TYLER McCAULEY
AUDITOR-CONTROLLER

WENDY L. WATANABE
CHIEF DEPUTY

December 12, 2007



Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

We submit the enclosed claim to recover the costs we are incurring in implementing the landmark Omnibus Conservatorship and Guardianship Reform Act of 2006.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

John Naimo FOR

J. Tyler McCauley
Auditor-Controller

JTM:CY:LK
Enclosures

"To Enrich Lives Through Effective and Caring Service"

County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

Statutes of 2006, Chapter 493 (A.B. No. 1363) amending Sections 1850(a), 1851(a), 2250(a), (b), (c), 2610(a), 2620(a), (b), (c), (d), (e), 2620.2(a), (b), (c), (d), 2623(a), (b), 2640(a), (b), (c), 2640.1(a), (b), (c), 2641(a), (b), 2653(a), (b), (c) and 2920(a), (b), (c) of, to add Sections 2113, 2250.4(a), (b), (c), (d), 2410, and 2923 to the Probate Code; Statutes of 2006, Chapter 492 (S.B. No 1716) amending Sections 1850(a), 1851(a); Statutes of 2006, Chapter 490 (S.BNo1116) amending sections 2352 (a), (b), (c),(d), (e), (f), 2540 (a), (b), 2543 (a), (b), (c), (d), 2590, 2591 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and to add Sections 2352.5(a), (b), (c), (d), (e), and 2591.5(a), (b), (c), (d) to the Probate Code ....

1. TEST CLAIM TITLE

Public Guardian Omnibus Conservatorship Reform

2. CLAIMANT INFORMATION

County of Los Angeles
Name of Local Agency or School District

Leonard Kaye
Claimant Contact

SB90 Coordinator
Title

500 West Temple Street, Room 603
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Los Angeles, CA 90012
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(213) 974-8564
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E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

J. Tyler McCauley
Claimant Representative Name

Auditor-Controller
Title

County of Los Angeles
Organization

500 West Temple Street, Room 525
Street Address

Los Angeles, CA 90012
City, State, Zip

(213) 974-8301
Telephone Number

(213) 626-5427
Fax Number

tmccauley@auditor.lacounty.gov
E-Mail Address

For CSM Use Only
Filing Date:
Test Claim #:

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Statues of 2006, Chapter 493 (A.B. No. 1363) amending sections 1850(a), 1851(a), 2250(a), (b), (c), 2610(a), 2620(a), (b), (c), (d), (e), 2620.2(a), (b), (c), (d), 2623(a), (b), 2640(a), (b), (c), 2640.1(a), (b), (c), 2641(a), (b), 2653(a), (b), (c) and 2920(a), (b), (c), of to add Sections 2113, 2250.4(a), (b), (c), (d), 2410, and 2923 to the Probate Code, Statutes of 2006, Chapter 492 (S.B. No. 1716) amending Sections 1850(a), 1851(a); Statutes of 2006, Chapter 490 (S.B. No. 1116) amending sections 2352 (a), (b), (c), (d), (e), (f), 2540(a), (b), 2543 (a), (b), (c), (d), 2590, 2591(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and to add Sections 2352.5(a), (b), (c), (d), (e), and 2591.5(a), (b), (c), (d) to the Probate Code.

☑ *Copies of all statutes and executive orders cited are attached.*

Sections 5, 6, and 7 are attached as follows:

5. Written Narrative: pages _____ to _____.
6. Declarations: pages _____ to _____.
7. Documentation: pages _____ to _____.

County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

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Notice of Filing

The County of Los Angeles filed the attached Public Guardian Omnibus Conservatorship Reform test claim on December 13, 2007 with the Commission on State Mandates of the State of California at the Commission's Office on 980 Ninth Street, Suite 300, Sacramento, California 95814.

Los Angeles County does herein claim full and prompt payment from the State in implementing the State-mandated local program under the referenced test claim legislation.

County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

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Landmark Reform

The landmark Omnibus Conservatorship and Guardianship Reform Act of 2006[1] specifically directs county public guardians to expand and improve their conservatorship services. This claim details the basis for funding these services under article XIII B, section 6 of the California Constitution[2].

The Omnibus Conservatorship and Guardianship Reform Act made sweeping reforms to California's conservatorship law. The Legislature ordered public and private conservators alike to improve their services. But the Legislature mandated that county public guardians and only public guardians serve those without any other resource.

Specifically, the Act directs county public guardians to become conservator in two types of cases ... as conservators of last resort where no others are available [Probate Code Section 2920(b)] and as conservator for those at high-risk --- those in imminent danger to their health, safety, or economic survival [Probate Code Section 2920(a)(1)].

The impetus for mandating that county public guardians serve the new classifications of persons in need of conservatorships arose from an investigatory series of articles published by the Los Angeles Times. Reading these accounts, the Joint Hearing held by the Assembly and Senate Judiciary Committees noted[2]:

---

[1] This Act co-joined four statutes enacted on September 27, 2006 --- Chapter 493 [Assembly Bill 1363 (Jones)], Chapter 490 [Senate Bill 1116 (Scott)], Chapter 491 [Senate Bill 1550 (Figueroa)], and Chapter 492 [Senate Bill 1716 (Bowen)], which, together constitute the Omnibus Conservatorship and Guardianship Reform Act of 2006. All four statutes are found in Volume II, pages 1-74

[2] Only the provisions affecting counties are included in the 'test claim legislation' here. This specific legislation is: Statutes of 2006, Chapter 493 (A.B. No. 1363) amending Sections 1850(a), 1851(a), 2250(a), (b), (c), 2610(a), 2620(a), (b), (c), (d), (e), 2620.2(a), (b), (c), (d), 2623(a), (b), 2640(a), (b), (c), 2640.1(a), (b), (c), 2641(a), (b), 2653(a), (b), (c) and 2920(a), (b), (c) of, to add Sections 2113, 2250.4(a), (b), (c), (d), 2410, and 2923 to the Probate Code; Statutes of 2006, Chapter 492 (S.B. No 1716) amending Sections 1850(a), 1851(a); Statutes of 2006, Chapter 490 (S.BNo1116)amending sections 2352 (a), (b), (c),(d), (e), (f), 2540 (a), (b), 2543 (a), (b), (c), (d), 2590, 2591 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and to add Sections 2352.5(a), (b), (c), (d), (e) and 2591.5(a), (b), (c), (d) to the Probate Code.

> "The Times' series, "Guardians for Profit," exposed the many failings of California's conservatorship system for elderly and dependent adults. The Times' articles included stories of private conservators who misuse the system and get themselves appointed inappropriately and then either steal or mismanage the money their conservatees spent a lifetime earning; public guardians who do not have resources to help truly needy individuals; probate courts which do not have sufficient resources to provide adequate oversight to catch the abuses; and a system that provides no place for those in need to turn for help. A Times editorial, which ran at the end of the series, called on both the courts and elected officials to "turn this abusive system into the honest guardianship it was meant to be."
>
> "According to the author, the magnitude of reported abuse cases is staggering, demonstrating a system, originally designed to protect vulnerable adults from fraud and abuse, that is not only failing to protect them, but is in fact contributing to their abuse. These problems will only become much more acute as California's population ages."

The Los Angeles Times in their November 2005 review of more than 2,400 cases found that[3]:

> "There are 500 professional guardians handle about 15% of the guardianship cases in Southern California. Among the key findings concerning professional guardianship in LA County were that:
>
> - Some professional guardians actively solicited cases, filed, carried heavy caseloads, in some cases ignored incapacitated clients or even plundered estates, charged hefty fees and were not always closely monitored by the court.

---

[3] State Adult Guardianship legislation: Directions of Reform-2006, Commission on Law and Aging, American Bar Association, Volume II pages 127-128

- More than half of the cases examined began with an "emergency" appointment, which gives short shift to procedural safeguards in place for regular guardianship proceedings.

- In at least 50 instances, professional guardians used their authority to benefit themselves or their friends/relatives.

- Probate courts were swamped with cases and short staff.

- The county public guardianship program was swamped with cases and short staff, forcing it to reject more than four of five cases referred."

The much lauded California system of probate court investigators, whose job it is regularly to check on incapacitated persons under guardianship, was swamped with cases and short of staff, causing investigators to fall behind in making required visits.

A problem is that those needing a conservatorship are inherently vulnerable. As noted in a McGeorge Law review article[4]:

> "Ultimately, the problem with conservatorships and guardianships is that wards, either minors or adults, unable to care for their persons or estate, are inherently vulnerable. The guardian or conservator has great power over the ward, and the ward may have little ability to resist if they discover that their conservator or guardian has breached their trust. A ward cannot simply call an attorney to have a conservator or guardian removed. Many wards are senile, so they will probably not be taken seriously by those with whom they come into contact. Some wards are so severely disabled that they are unable to attend hearings establishing their status as wards. Occasionally, conservators or guardians prevent their wards from seeing other people to avoid the discovery of the conservator's or guardian's nefarious purposes. Essentially, a ward has to rely on the integrity of a conservator or guardian."

---

[4] McGeorge Law Review, Winter 2001, Section III., The Problem, page 102

In January 2006, the Chief Justice of the California Supreme Court acted[5]:

> "He announced the appointment of a statewide task force to make recommendations to improve the management of probate conservatorship cases in California trial courts. As Chief Justice George stated when he initially appointed the task with the exception of that they and their property will be protected by a fair judicial system pursuant to a high standard of fiduciary duty. The task force will seek to improve the quality of service to and protection of conservatees by strengthening the accountability of private and family conservators and improving the courts' oversight of these cases." The task force is chaired by Administrative Presiding Justice Roger W. Boren of the court of Appeal, Second Appellate District (Los Angeles)"

The rationale for the task force is further explained in Judicial Council, September 18, 2007 report, attached in pertinent part in Volume III, page 166:

> "The Probate Conservatorship Task Force engaged in a comprehensive process to address the key issues affecting the management of conservatorship cases in California. The process began with two public hearings to gather information on the public's perceptions and actual experiences in the probate conservatorship system. Participants included conservatees, families, conservators, justice partners, advocacy groups, and the community. The task force then studied conservatorship practices within and outside the state to determine which ideas could be adopted in California to improve the probate conservatorship system. Using the expertise within the task force membership, which consisted of judicial officers, court probate staff, attorneys, justice partners, advocacy groups, and other public members, each idea was thoroughly discussed as to the efficacy and practical application within the current conservatorship system as well as how to attain the optimal probate conservatorship system of the future.
>
> The task force realized that many of the recommendations would require additional funding from outside sources and

> some recommendations would necessitate a substantial change in the culture and practice of superior courts and their justice partners. The task force did not want these factors to dictate whether a recommendation would be forwarded to the council; rather, the task force saw its charge as being one to make recommendations for the best possible system within which conservatees would have greatest level of protection, resulting in a system that would warrant a high level of public trust and confidence. Although these changes may take time, the improvement in the lives of conservatees through improving the oversight and management of the cases within the courts' control is not only the duty of the judicial branch but essential to the strength of the communities that we serve".

And, indeed the Probate Conservatorship Task Force recommended significant changes. To be exact, 85 areas for improvement[5] in serving the needs of California's rapidly aging population were proposed. The Task fiorce also explain the necessity for these changes. Specifically, the Judicial Council noted in their Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases", attached herein in Volume IV, page11 that:

> "In the years ahead, California will face a sharp increase in the age of the state population, which will affect the need for a well-managed probate conservatorship system. According to the California Department of Aging, while the total population will approximately double in size between 1990 and 2040, the oldest old (age 85 and older) will experience nearly a six fold increase, growing from just 300,000 to over 1.7 million persons. While courts are facing this growing caseload, it has become apparent that judicial officers, court staff, and justice partners are often hampered in their responsibility to protect conservatees due to lack of resources and, in some cases, gaps in existing statutes, rules, and guidelines."

The sheer numbers of Californians in need of a conservator and the inadequate resources provided county Public Guardians to help meet this

[5] "Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases", Judicial Counsel of California, Volume IV, page 17

need were addressed by the Legislature in Section 2 of Statutes of 2006, Chapter 493:

"(a) The rate of increase in the number of Californians who are 65 years of age or older is surpassing that in other states. The number of people who are 65 years of age will grow from 3.7 million people in the year 2000, to 6.3 million in the year 2020. The fastest growing segment of California's population, expected to increase by 148 percent between the years 1990 and 2020, is people who are 85 years of age or older. As many as 10 percent of the population over 65 years of age and almost 50 percent of the population over 85 years of age will suffer from Alzheimer's disease.

(b) As the population of California continues to grow and age, an increasing number of persons in the state are unable to provide properly for their personal needs, to manage their financial resources, or to resist fraud or undue influence.

(c) One result of these trends is the growing number of persons acting as conservators on behalf of other persons or their estates. It is estimated that about 500 professional conservators oversee $1.5 billion in assets. Over 5,000 conservatorship petitions are filed each year in California.

(d) Probate courts oversee the work of conservators, but, in part due to a lack of resources and conflicting priorities, courts often do not provide sufficient oversight in conservatorship cases to ensure that the best interests of conservatees are protected.

(e) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect, or the physical or financial abuse, of the clients professional fiduciaries are supposed to serve.

(f) Public guardians do not have adequate resources to represent the best interests of qualifying Californians and, therefore, many in need of the assistance of a conservator go without.

(g) As a result, the conservatorship system in California is fundamentally flawed and in need of reform. [Emphasis added.]"

Accordingly, the lack of adequate resources available to county Public Guardian offices for providing new and enhanced State-mandated conservator services, as noted above, is explicitly recognized by the Legislature. Fortunately, in such a case as here, Californians have provided local government with a right to State reimbursement for State-mandated programs in article XIII B, section 6 of the California Constitution.

The opinion of the Legislative Counsel regarding the costs claimed herein is that such costs are subject to reimbursement under article XIII B, section 6 of the California Constitution. Specifically, the Legislative Counsel explains further in their digest to Chapter 493, Statutes of 2006:

"This bill additionally would require the public guardian to apply for appointment as guardian or conservator if there is an imminent threat to the person's health or safety or the person's estate. The bill would require the court to order the public guardian to apply for appointment on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person, as specified.

Because the bill would impose new duties and educational requirements on the public guardian, a county officer, the bill would impose a state-mandated local program.

(4) The bill would incorporate additional changes to Sections 1850 and 1851 of the Probate Code proposed by both this bill and SB 1716, to take effect only if both bills are enacted and this bill is enacted last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for

making that reimbursement."

The Legislature, itself, also found, in section 27 of Chapter 493, Statutes of 2006, that:

> "If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code."

Accordingly, Counsel has opined that the costs claimed herein are subject to reimbursement.

Further, the bill analyses prepared for the test claim legislation indicates that the costs claimed herein are reimbursable and quantifies those costs. For example, Assembly Bill Analysis, CONCURRENCE IN SENATE AMENDMENTS, AB 1363 (Jones), s Amended August 24, 2006, attached in Volume II, pages 75-77, on page 76 indicates a "FISCAL EFFECT", of "$2.5 million in fiscal year (FY) 2006-07 for state mandated duties of the Public Guardian, and $13.7 million in FY 2007-08 and ongoing for new court duties and investigations and the mandate for the Public Guardian."

The Third Reading Bill Analysis for AB 1363, attached in Volume II, pages 78-93, on page 91, quantifies caseloads and costs under AB 1363 as follows[6]:

> "Judicial Counsel - There is an estimated active caseload of 33,000 probate conservatorship, with 5,500 new filings each year. Judicial Counsel prepared preliminary cost projections associated with additional hearings, expanded reviews and mandated investigations, educational materials and self-help programs required by this bill, and current estimates show first-year costs could rage from as much as $5.2 million to $9 million, with ongoing ranging from $10.3 million to $18 million. These costs were based on a series of assumptions, that 80 percent of the active caseload represents relatively

[6] Comments in support of [Assembly Bill 1363 (Jones), Trial Court trust fund, Conservatorship Registry Fund, Volume II, page 91

> simple cases, that 15 percent would post moderately complex cases, and that the remaining five percent would be the most complex cases and take the most inv4estigativre and court time. Additionally, these estimates were based on a baseline of 33,000 probate conservatorships statewide. This number is likely to increase in the near future due to conservatorship caseload.
>
> Public Guardian – Requirements for public guardians to begin investigations within two business days of receiving a referral for a conservatorship pf guardianship could drive significant reimbursable local costs. Los Angeles County has estimated its workload could increase by as much as 50 percent, at a cost of $1.8 million annually. If that cost were to hold true for the rest of the state, reimbursable costs could be in the $5 million range annually."

There is no funding in the 2006 Budget Act for the activities required by this bill.

Accordingly, county public guardians are now mandated to perform new and costly services, not required under prior law.

County Mandates

The 'test claim legislation'[7] incorporates specific provisions of the Omnibus Conservatorship and Guardianship Reform Act which mandate county public guardians to perform new duties. Reimbursement for performing thes duties is claimed herein pursuant to Government Code section 17500 et seq. and Article XIII B, Section 6 of the California Constitution. This law provides a remedy for local government in recovering their costs of providing new or additional State mandated services without sufficient

[7] The test claim legislation is: Statutes of 2006, Chapter 493 (A.B. No. 1363) amending Sections 1850(a), 1851(a), 2250(a), (b), (c), 2610(a), 2620(a), (b), (c), (d), (e), 2620.2(a), (b), (c), (d), 2623(a), (b), 2640(a), (b), (c), 2640.1(a), (b), (c), 2641(a), (b), 2653(a), (b), (c) and 2920(a), (b), (c) of, to add Sections 2113, 2250.4(a), (b), (c), (d), 2410, and 2923 to the Probate Code; Statutes of 2006, Chapter 492 (S.B. No 1716) amending Sections 1850(a), 1851(a); Statutes of 2006, Chapter 490 (S.BNo1116)amending sections 2352 (a), (b), (c),(d), (e), (f), 2540 (a), (b), 2543 (a), (b), (c), (d), 2590, 2591 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and to add Sections 2352.5(a), (b), (c), (d), (e) and 2591.5(a), (b), (c), (d) to the Probate Code.

funding.

In this case, the Act imposed new duties which are unique to local government, a requirement for finding reimbursable costs.

In particular, the Act clearly mandates that county public guardians, and only county public guardians, serve two new groups of conservatees. Private conservators have discretion to refuse to provide such services. Counties do not.

And when counties serve, service must be provided in accordance with the new provisions for establishing and maintaining conservatorships, as detailed in the test claim legislation herein.

Most importantly, when counties serve, all the necessary services afforded conservatees under California's Probate law, must be provided, including those services not covered under the Omnibus Conservative Reform Act but still-in-effect. As these still-in- effect services are necessary in establishing and maintaining conservatorships, reimbursement for performing these duties is also claimed herein. These services are still necessary in carrying out the test claim legislation.

The test claim legislation created new programs for county public guardians. County public guardians are now mandated to be conservator for two newly defined groups of conservatees.

County public guardians are mandated to serve as conservators of last resort where no others are available [Probate Code Section 2920(b)]. Under prior law, this population group could be served, but public guardians were not required to do so.

County public guardians are mandated to serve those at high-risk --- those in imminent danger to their health, safety, or economic survival [Probate Code Section 2920(a)(1)]. Under prior law, this population group was not identified and consequently there was no mandatory duty to serve them.

In addition to serving two new groups of conservatees, counties must also comply with new requirements and higher standards for providing

conservatorship services... an increased level of service over and above that required under prior law.

Now, among other things, public guardians are required to promptly begin investigations within two business days of receiving referrals for guardianship or conservatorship [Probate code section 2920(c)] and, in emergencies, public guardians are required to quickly assist those in peril by becoming temporary conservators [Probate Code Section 2250].

The Public Guardian is now required to serve the high-risk population, as defined in Probate Code Section 2920(a)(1). This is a newly identified client, not found in prior law and so all costs of complying with related provisions of the test claim legislation and California law are subject to reimbursement.

Section 2920(a)(1) now explicitly mandates that county Public Guardians apply to be conservators in a new category of cases where there is an 'imminent threat to the person's health or safety or [to] the person's estate', if there is 'no one else who is qualified and willing' to do so. Specifically, Probate Code Section 2920(a)(1) states that:

> "(a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person, then either of the following shall apply:
>
> The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate." [Emphasis added].

It should be noted that the cost of providing the entire range of required public guardian and legal services for this 2920(a)(1) population is claimed as this is an entirely new class of individuals to be served.

Another class of individuals which counties were not mandated to serve under prior law, but are so mandated under the test claim legislation is the 2920(b) population.

Under Probate Code Section 2920(b), the County Public Guardian is now mandated to be the conservator of last resort in a new category of cases specified in Section 2920(b)[8] as amended by the Statutes of 2006, Chapter 493. Section 2920(b)3 now requires, in pertinent part, that:

> "The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person." [Emphasis added]

Under prior law[9], there was no requirement that the court appoint the County Public Guardian in any circumstance. The Legislature rewrote section 2920 which had read in its entirety:

> "If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

[8] Section 2920(b), as amended the Statutes of 2006, Chapter 493 states:

"The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator." [Emphasis added.]

[9] The prior version of Section 2920 was added by Statutes of 1988, Chapter 1199 in § 72.

> "(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.
>
> (b) The public guardian shall apply for appointment as guardian or conservator of the person, the state, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator." [Emphasis added.]

As noted above, the Legislature rewrote Section 2920 which had provided that 'the court may make an order...' to the current provision that 'the court shall order the public guardian…'. In so doing, the prior discretionary duty to serve the Section 2920(b) population was transformed to a mandatory duty. As a result, County Public Guardians are now required to serve as the conservator of last resort, as defined in Probate Code Section 2920(b).

Importantly, serving the section 2920(b) population under the test claim legislation, requires reimbursement pursuant to Government Code section 17565 which provides, in pertinent part, that:

> "If a local agency … at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency … for those costs incurred after the operative date of the mandate."

The Section 2920(b) population is then a newly identified population, not found in prior law and, as such, all costs in complying with related provisions of the test claim legislation and as well as the test claim legislation itself are subject to reimbursement.

Therefore, the County Public Guardian is now mandated to be a conservator and case manager under two distinct statutory schemes or categories --- one type of case under Section 2920(a)(1) and the other under Section 2920(b). Accordingly, all services required to serve these two new population groups are claimed herein, including initial case-finding and investigation services pursuant to Probate code section 1800.

Investigations

The initial services provided by the Public Guardian are case-finding investigations. County Public Guardians receive numerous inquiries and referrals from community agencies and others as to whether conservatorship is appropriate in specific cases.

Referrals, as noted in Los Angeles County's procedures[10], attached in pertinent part, on pages 176-197, provide, on page 177, that:

> "A referral for Probate conservatorship may be initiated by family, friends, neighbors, social workers, public officials or any other interested party who becomes aware of an individual who is unable to provide for their own basic needs of food, clothing or shelter; who is unable to manage their own financial affairs; and/or who may be subject to fraud or undue influence in the management of his/her assets.
>
> There is no minimum asset/income requirement for the Public Guardian to investigate a Probate conservatorship referral."

Investigations must be performed in order to assess the needs of the person to determine the appropriateness and extent of a conservatorship. The purpose of these mandatory duties is found in Probate Code Section 1800, as added by Statutes of 1990, Chapter 79:

> "(a) Protect the rights of persons who are placed under conservatorship.
>
> (b) Provide that an assessment of the needs of the person is

[10] The table of contents for the Los Angeles County Pubic Guardian's procedure manual is found on pages 174-175 in volume 3.

performed in order to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible.

(c) Provide that the health and psychosocial needs of the proposed conservatee are met.

(d) Provide that community-based services are used to the greatest extent in order to allow the conservatee to remain as independent and in the least restrictive setting as possible.

(e) Provide that the periodic review of the conservatorship by the court investigator shall consider the best interests of the conservatee.

(f) Ensure that the conservatee's basic needs for physical health, food, clothing, and shelter are met.

(g) Provide for the proper management and protection of the conservatee's real and personal property."

To become the conservator, Public Guardian staff must first conduct an investigation to determine if conservatorship is the only or most appropriate remedy for the presenting problem.

The Public Guardian investigator, must personally interview the individual referred for possible conservatorship. The interview takes place wherever the individual lives, whether in his or her own home, an acute hospital, nursing home, or jail.

The purpose of the interview is to begin gathering information and begin an assessment to determine if the criteria for conservatorship are met and if it is necessary in this instance.

The basic criteria for conservatorship, as noted in Los Angeles County's procedures, attached in pertinent part, on pages 180-183, are stated on page 180:

"The basic criteria for assignment and investigation are that the referred individual is a resident of Los Angeles County and

> appears to meet the legal basis for conservatorship as outlined in probate code section 1801: A conservator may be appointed "for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing or shelter" or for persons "substantially unable" to manage their financial resources "or resist fraud or undue influence." There is no minimum or maximum income or asset requirement to conduct an investigation."

The interview with the client is followed by reviews of available medical records, interviews with family and friends, letters of inquiry to benefit paying agencies, and financial institutions, taking steps, if necessary, to freeze assets and talking to medical staff for a determination of the client's health care needs and recommended living arrangements.

As this simplified summary [above] shows, travel time, court time and investigative activities allow little leeway. The eventual goal of five investigations per month would allow approximately between three and four days per investigation.

Based on Public Guardian experience and an earlier analysis, this is a reasonable yardstick.

Each probate investigation must be meticulously performed. As noted in Los Angeles County's procedures, attached in pertinent part in Volume 3, on pages 184-189, the purpose and specific procedures for an investigation are, as stated on pages 185-186:

> "The Probate Conservatorship Investigation is designed to gather sufficient information about the proposed conservatee to allow the Investigating Deputy to determine whether a conservatorship is warranted or whether the existing problem(s) can be resolved in a less formalized manner.
>
> 4.1(a) The referral must be reviewed for accuracy and problem identification. The referring party must also be contacted to provide any information beyond that shown on the referral form. In some cases, the individual making the referral may also be asked to assist the Deputy in gaining access to the proposed conservatee.

4.1(b) The proposed conservatee should be interviewed within 10 days of receipt of the referral. During the interview the Investigator must ascertain the problem warranting the referral, explain the purpose of the investigation, and attempt to obtain cooperation. If the individual indicates a willingness to voluntarily accept assistance, the Investigator may proceed with the investigation, but should describe alternate services that may be available to the individual.

4.1(c) During the interview, the Investigator must ascertain the individual's cultural background, and language preference.

4.1(d) During the course of the interview, the Investigator must evaluate the proposed conservatee's capacity to provide for his/her physical needs of food, clothing and shelter and their ability to manage financial affairs. A functional assessment of the individual's ability to manage their own ADLS (activities of daily living) should be included in the evaluation.

4.1(e) The Investigating Deputy should gather as much personal information as possible on the client, such as names used as "also known as" (aka's), maiden names, prior addresses, Social Security number, place of birth, names of current or prior spouses, names and addresses of relatives within the second degree of kinship, i.e., parent, child, sibling, or grandchild, and the names and telephone numbers of any health care and medical insurance providers.

4.1(f) Historical information as to the medical, educational, social, and occupational history of the proposed conservatee shall be obtained and documented.

4.1(g) Information pertaining to real and personal property must be obtained during the investigation. This includes the location of any real property, a copy of the trust deed, a title report, and payment and insurance information. Ownership and insurance documentation should also be obtained on all personal property owned by the proposed conservatee. "Personal property" includes household furnishings, clothing, jewelry, bank

> accounts, automobiles, trailers, boats, stocks, mutual funds, burial trusts and pets.
>
> 4.1(h) If the proposed conservatee is cooperative, the Investigator may wish to obtain releases of information from them in order to verify their assets. A release to review medical information should also be obtained.
>
> 4.1(i) Depending on the particular case circumstances, the Investigating Deputy may have to review the proposed conservatee's medical records and consult with treating medical personnel. For most cases, if a conservatorship is going to be established, the proposed conservatee's treating physician will have to complete and sign a Capacity Declaration.
>
> 4.1(j) The Investigator must interview family members and friends to ascertain their willingness to assist the proposed conservatee as well as the validity of the proposed conservatee's statements and their ability to function in the community.
>
> 4.1(k) The Investigating Deputy must explore alternatives to appointment and resources available to assist in the resolution of the problem which resulted in the Public Guardian referral."

After the Probate Conservatorship Investigator has gathered all the relevant information, a determination must be made as to whether the Public Guardian will request appointment or decline to pursue the case.

> "5.1(a) When an appointment is sought, the Investigator will prepare an Investigation Report (Court Report) which will be sent to County Counsel as the basis for the petition requesting Public Guardian appointment. The Court Report must include the current name and address of the proposed conservatee, and the names, addresses and relationship of all relatives within the second degree of kinship. The Report must be accurate and complete. Whenever possible, a valid nomination requesting the Public Guardian to act should be obtained.

5.1(b) On all cases in which conservatorship of the person is requested, the Investigator must obtain a completed and signed Capacity Declaration from the proposed conservatee's attending physician. The Declaration must attest to the proposed conservatee's ability to attend the court hearing, their capacity to give informed medical consent, and their need for secure placement and/or psychotropic medications, if they are diagnosed with dementia.

5.1(c) The Court Report must include specific information about the inability of the proposed conservatee to provide for his/her needs of food, clothing or shelter and/or their inability to manage their own financial affairs. Along with the Court Report, the Investigating Deputy must send a Confidential Status Report. It will be reviewed by the court's Probate Investigator and then by the Judge. It asks specifically about the alternatives to conservatorship considered by the Investigator and the reasons why those alternatives were not viable. It also speaks of recommended care levels and services provided to the proposed conservatee in the prior year. Information regarding things such as alleged abuse should be presented in the Confidential Status Report, rather than in the Court Report/petition, as it does not become part of the public Court record.

5.1(d) When completed, the Investigating Deputy will submit the Court Report, Capacity Declaration and Confidential Status Report to the Supervising Deputy for review. When approved, the packet will be sent to County Counsel for processing. If needed, a request for temporary conservatorship will be submitted with the other documents."

If a determination is made that conservatorship is not appropriate, a letter explaining why not is sent to the referring party. In the event that conservatorship is not recommended, the Public Guardian's services in making that determination would still be reimbursable under article XIII B, section 6 of the California Constitution as such preliminary assessments are mandatory under Section 1800.

If conservatorship is determined to be necessary, the investigator submits a court report to County Counsel with the results of the investigation and all known relevant facts. County Counsel uses this report to prepare a petition asking the Superior Court to appoint the Public Guardian as conservator and to set a hearing date. The investigator must ensure that the client is at the hearing or obtain a medical affidavit that he or she is too ill to attend. The investigator must be present at the court hearing.

As this simplified summary shows, travel time, court time and investigative activities takes time. Los Angeles County's goal is five investigations per month which allows approximately between three and four days per investigation.

It should be noted that a factor increasing the cost of investigations is the new requirement that the public guardian conclude its investigation within two days of receiving a referral [Probate Code Section 2920(c)]. Under prior law, the requirement was that the investigation concluded in 15 days. In order to meet the new very short deadlines, additional staff must be assigned to handle peak workloads and such additional costs are claimed herein for conducting prompt investigations.

Under the test claim legislation, the Public Guardian is now required to conduct prompt investigations, within two business days of receiving a referral for guardianship or conservatorship. Even though investigations may be backlogged due to a shortage of staffing, all investigations must begin within two business days pursuant to Section 2920(c) as amended by the Statutes of 2006, Chapter 493:

> "(c) The public guardian shall begin an investigation within two business days of receiving a referral for conservatorship or guardianship." [Emphasis added.]

Under prior law, there was no time requirement to begin an investigation. The Statutes of 2006, Chapter 493 (A.B.1363), rewrote section 2920, which had read in its entirety in Former § 2920, added by Statutes of 1988, Chapter 1199:

> "If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or

conservator would be in the best interest of the person:

(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator."

Accordingly, under the current version of Section 2920, Public Guardians must employ sufficient staff to ensure that, without exception, investigations are begun within two days of receiving a referral for guardianship or conservatorship.

Now, staffing to initiate investigations must be increased to address peaks in demand. For example, it is rare that all referrals will come in to the Public Guardian's Office spaced evenly among business days. To the contrary, often referrals come in unevenly – many on a few days and few on others. Under prior law, 2 staff could eventually initiate 20 investigations a month. But now, typically, 6 or more of those referrals may come in on a given day and require 3 or more staff to initiate investigations within 2 business days.

After the Public Guardian is appointed as conservator, a different and more daunting set of responsibilities begins. Under Probate Code section 1800 et seq., the Public Guardian becomes responsible for ensuring that the basic needs of the conservatee for food, clothing and shelter are met as well as for arranging necessary medical care. Living arrangements that meet these needs must be arranged and paid for from the conservatee's income and assets. Benefits must be identified and obtained. Personal property must be identified, secured and stored. Real property requires title searches,

insurance, inspections, repairs, and perhaps rental or sale[11]. As the needs of the conservatee change, the Deputy Public Conservator must address them. The Deputy Public Conservator does this in part by making regular personal visits to the conservatee. The Deputy Public Conservator is involved in health care decisions, such as surgery and do-not-resuscitate requests. If the client dies, Public Guardian staff make funeral arrangements in the absence of family. In some instances, the Deputy Public Conservator is the only person paying last respects at the funeral service for the conservatee.

Of great importance, the Legislature added in the Statutes of 2006, chapter 493, Section 2113 which requires that:

> "A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate."

An example of a desire which must be considered is a "do not resuscitate" order. The duties of the county public guardian in this case are detailed in Los Angeles County's Procedure Manual, included in pertinent part, in Volume 3, pages 198-199, as follows:

> "3.1 The public guardian can approve "Do Not Resuscitate (DNR)" requests only for conservatees for whom the public guardian is the probate conservator of the person **and** for whom the public guardian has exclusive authority to consent for medical treatment per court order in accordance with Probate Code Section 2355 **or** with specific court approval of the DNR request.
>
> 3.2 When the public guardian has the exclusive authority to consent to medical treatment, the decision to approve or deny the request for DNR must be made in accordance with this policy.

[11] In exigent circumstances, a "certificate of authority" must be obtained to prevent the loss, misappropriation, injury or waste of assets. See pertinent procedures on pages 190-191, Volume 3.

3.3 Approval of DNR depends upon the conservatee's condition and not where he or she lives. This means that, when approved, the DNR applies to conservatees in hospitals, skilled nursing facilities, private homes or other appropriate living arrangements.

3.4 When the public guardian does not have the exclusive authority to consent for medical treatment but the criteria for DNR are otherwise met, the Public Guardian must petition the court for the necessary exclusive authority to consent to medical treatment and approval of the DNR request.

3.5 Probate Code 2355 requires the conservator to make health care decisions in accordance with the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator. Otherwise, the conservator must make the decision in the conservatee's best interest. The conservator must consider the conservatee's known personal values, including his or her religious beliefs. In the event of a conflict between this general legal instruction and the criteria for approval of a DNR request as contained in this policy, county counsel must be contacted immediately for discussion and advice on how to resolve the conflict.

3.6 It is the intent of the public guardian to minimize needless suffering by the conservatee and to facilitate the decision making process in these sensitive matters. Therefore, it will be the practice of the Public Guardian to document the known wishes and values, including religious beliefs, of the conservatee prior to appointment as conservator or as soon as practical following appointment as conservator of the person. The attempt to document known wishes and values will include discussions by the Deputy with the conservatee, his or her family, significant friends, clergy and the conservatee's primary care physician to discover previously discussed preferences and care decisions. The best time to determine DNR or no DNR is not at the time of crisis. It is best determined when the patient is relatively stable and their wishes or information about their wishes can be ascertained to the degree possible.

3.7 The decision to approve or deny a DNR request must be made by public guardian management at the level of assistant division chief or higher. The decision may include discussion and consultation with county counsel and the Medical Director of the Los Angeles County Department of Mental Health or his designee.

3.8 The request for a DNR order can be considered only if it is made by the primary, treating or attending physician (medical doctor) or doctor of osteopathy (D.O.).

3.9 Nothing in this policy shall be construed to condone, authorize or approve mercy killing, assisted suicide or euthanasia. Nor is it intended to permit any affirmative or deliberate act or omission to end life by any means other than what occurs naturally as a result of a DNR order. Although DNR is an end-of-life matter, our policy distinguishes it from other end-of-life matters, such as the withdrawal of nutrition, hydration or other means of life-support. This policy only deals with DNR orders and does not imply any position on the appropriateness of forgoing other means of life-support at the end of life.

3.10 The wishes of the conservatee as expressed in a valid health care directive or similar instrument or the instructions of a reliable agent named in a valid Durable Power of Attorney for Health Care will be followed. However, county counsel must be contacted immediately to discuss the existence of these circumstances and to ascertain the validity of the document and applicability of the directive or instructions."

While the duties that county public guardians must take in accommodating the desires of conservates may be difficult to measure, it is important to note that great care must be taken and extensive work undertaken to accommodate the desires of the conservatee.

Also, the public guardian is responsible for accommodating the burial desires of the conservatee as well as the final disposition of their assets as set forth in Los Angeles County's Procedure Manual, attached in pertinent part in Volume 3, on pages 266-267:

"3.1 When a conservatee dies, the assigned Deputy must immediately notify the family by telephone or registered mail. Verification of the notification must be filed in the case folder.

3.2 If there are pre-need arrangements, the assigned Deputy must contact the designated mortuary and arrange for the release of the remains to them.

3.2(a) Family members should be advised of the arrangements and be put in contact with the designated mortuary.

3.3 If there are not any pre-need arrangements, the Deputy must consult with known family members to determine if they have any preferences regarding the choice of mortuary, cemetery and/or marker.

3.3(a) The Deputy must advise the family of the funds available to pay the final expenses. If a family member wishes to supplement the cost of the funeral expenses, the Deputy should still consult with the mortuary to confirm the responsibilities and liabilities of each party. All such discussions must be documented in the case file.

3.4 If there are not any pre-need arrangements and no family member is willing to assist with the funeral, the Deputy must make final arrangements based upon the funds available in the decedent's Estate.

3.4(a) If there are sufficient funds in the estate to pay for a funeral and/or burial, the Deputy is to refer the case to the CAA Unit.

3.4(a)(1) CAA staff will then use the Public Administrator's rotational list to select a mortuary and cemetery.

3.4(b) If there are insufficient funds in the Estate to pay for a funeral and/or burial, the Deputy is to refer the case to the CAA Unit to arrange for a "County disposition."

3.4(b)(1) CAA staff will then make arrangements for the disposition through the County morgue.

3.4(c) When the Public Guardian staff has made the final arrangements, family and other interested parties (e.g., friends, care providers) shall be advised of them.

3.5 It is sometimes possible, when a conservatee has little or no estate, for a Deputy to make funeral arrangements on a "scholarship" basis through a church or synagogue. As such an arrangement would be made outside the usual procedures, it must be fully documented in the case narrative to avoid any appearance of impropriety.

3.6 In addition to family, the Deputy must notify other parties of the conservatee's death.

3.6(a) The Accounting section must be notified to stop all budgeted payments and receipts.

3.6(a)(1) Any payments made on a case after the conservatee's death are to be made by check request.

3.6(a)(2) After a conservatee's death, all benefit payments to which the estate is not entitled must be returned to the benefit provider.

3.6(b) If the conservatee had real property on which Letters of Conservatorship were recorded, the County Recorder must be sent notification of the conservatee's death.

3.6(b)(1) If there was real property in the conservatorship, the Public Administrator's Property Management Section must also be notified of the conservatee's death.

3.6(c) Interested parties outside the Office are to be notified of the conservatee's death. Accordingly, the Deputy is to initiate a request to the CAA for "no interest" letters to be sent to the following individuals or entities.

3.6(c)(1) The payor of any source of income or benefit.

3.6(c)(2) The last residence of the conservatee, usually a care facility.

3.6(c)(3) All known relatives of the conservatee.

3.6(d) The Deputy must also notify the Court and County Counsel of the death of a conservatee. Notice should be in written form with a copy filed in the case folder.

3.7 When notified of a conservatee's death, the assigned Deputy must take action on various Estate matters.

3.7(a) The Deputy must determine if there is cash in a patient trust account or valuable personal property at the placement facility.

3.7(a)(1) If there is a patient trust balance, the Deputy must direct the facility to immediately send the balance to the Public Guardian.

3.7(a)(2) If there is personal property of value at the facility, the assigned Deputy must make arrangements with the Property Supervisor to pick up the property.

3.7(a)(3) If the personal property is of no value, arrangements must be made to dispose of the property, usually by donating it to the facility.

3.7(a)(4) If there is known family, any disposal of personal effects should be made only after consulting with them. Property that has only sentimental value may be released to family members directly, as long as a receipt is provided.

3.7(b) The assigned Deputy must request closing bills from care facilities and any other known service providers.

3.7(c) The Accounting Unit must be notified of the death so that any checks to which the estate is not entitled can be returned to the originator.

3.7(d) The assets of the Estate must be reviewed to determine what actions must be taken to preserve them. These actions may include safeguarding any real property or personal property.

3.7(d)(1) If there are sales of property pending they must be cancelled.

3.7(d)(2) Any property in the Estate should be placed in "hold" status on the computer.

3.7(e) Once the foregoing actions have been taken, the case should be transferred to the Closing Desk.

3.8 Upon receipt of a decedent case, the Deputy on the Closing Desk must review it to determine what is needed for a Final Accounting to be prepared.

3.8(a) A determination must be made of whether there is a will.

3.8(a)(1) If there is a will with a named executor, the Deputy must notify the executor of the death of the conservatee.

3.8(a)(2) The Deputy must also advise the executor that certified Letters of Administration will be necessary before the Public Guardian can proceed with the Final Accounting or distribution of assets.

3.8(b) If the conservatee was a recipient of Medi-Cal benefits, the Closing Deputy must send written notification to the Department of Health Services. In some cases, the Department of Health Services may file a claim against the Estate.

3.8(c) Per the Probate Code, the Public Guardian is to pay the expenses of the last illness and the funeral expenses of a deceased conservatee with funds from the conservatee's trust

account. The Closing Desk Deputy must see that these expenses are paid within the legally prescribed time frame prior to requesting preparation of the Final Accounting.

3.8(d) Payment should also be made for any previously approved conservator and/or attorney fees.

3.8(e) The Public Administrators Accounting Section requires that the Public Guardian provide them with a plan for the distribution of all remaining estate assets before they will prepare the Final Accounting. It is up to the Deputy on the Closing Desk to prepare an acceptable plan for the distribution of the conservatee's assets.

3.8(e)(1) If the estate is to be probated pursuant to a will, the executor/administrator must provide the Deputy with certified Letters of Administration. The Letters are then sent to the Accounting Section with the request for the Final Accounting.

3.8(e)(2) If there is no real property and the value of the Estate is less than $100,000, the assets may be distributed without a formal probate of the Estate. When this occurs, the Closing Deputy must secure 13100 affidavits from all persons entitled to inherit from the Estate. The notarized affidavits are then sent with the request for Final Accounting.

3.8(e)(3) If there is real property or the value of the estate is otherwise over $100,000, and there is no one named and/or willing to act as Executor, the case shall be referred to the Public Administrator. A statement verifying the Public Administrator's willingness to handle the case must then be sent with the request for the Final Accounting.

3.8(e)(4) If there is no will, and no one to complete a 13100 affidavit, and the estate is under $100,000, the case may be referred to Final Accounting with the State Department of Health Services claim attached. After fees are paid, any remaining funds will be remitted to DHS in partial payment of their claim.

3.8(e)(5) If the Estate is minimal, but includes personal property, the Closing Deputy must request authority to sell the property. If the request is granted and the property is sold, the Final Accounting may then be requested.

3.9 In order for the Public Guardian to be fully discharged from the conservatorship, a Final Accounting must be filed with, and approved by, the Court.

3.9(a) All Public Guardian accountings are prepared by the Public Guardian's Accounting Section, and filed with the Court by County Counsel.

3.9(b) All accountings are prepared in accordance with approved accounting practices.

3.9(c) Final Accountings for deceased conservatees must essentially cover 3 major areas.

3.9(c)(1) Payments of debts or creditors claims.

3.9(c)(2) Approval of fees and costs for the conservator and Counsel.

3.9(c)(3) Approval of the distribution plan for the assets remaining in the estate after the debts and fees have been paid.

3.10 When the Order approving the Final Accounting is received, it is to be routed to the Public Administrator's Distribution Unit.

3.10(a) Distribution Unit staff will pay any Court ordered fees and costs to Public Guardian, County Counsel or other outside Counsel (i.e., Public Defender, PVP attorney, etc.)

3.10(b) Distribution Unit staff will then distribute all remaining estate funds in accordance with the Court order.

3.11 Any and all actions taken in the closing of the conservatorship case must be documented on the Public Guardian's computer system in a thorough and timely manner.

In addition, the Legislature mandated that county public guardian agencies educate their staff. Specifically, Probate Code section 2923, as added by the Statutes of 2006, Chapter 493, unambiguously requires that:

> "On or before January 1, 2008 the public guardian shall comply with the continuing education requirements that are established by the California Association of Public Administrators, Public Guardians, and Public Conservators." [Emphasis added.]

There are no education requirements for Public Guardians under prior law. Now Public Guardians must incur additional costs in obtaining and/or developing training materials as well as compensating instructors and their trainees.

At this time, in December of 2007, the curriculum for the continuing education requirements has not been established by the California Association of Public Administrators, Public Guardians, and Public Conservators. The complexity of case managing the frail elderly suggests that topics would include, for example, the appropriate use of antipsychotic drugs. In a December 4, 2007 issue of the Wall Street Journal, attached in pertinent part, in Volume 4, page 244, it was noted that:

> "Nearly 30% of the nursing home population is receiving antipsychotic drugs ... In a practice known as "off label" use of prescription drugs, patients can get these powerful medicines whether they are psychotic or not."

Further it was noted in the Judicial Counsel's "Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases", attached herein in pertinent part in Volume IV, on page 48, that:

> "There is no available training or instructions in how to use the Judicial Council forms GC-335, Capacity Declaration-Conservatorship and GC-335A, Dementia Attachment to Capacity Declaration-conservatorship. The forms are "all or none", that is, "has or does not have" capacity. Many adults under consideration

> have impaired, not absent, decisional capacity. There is no standard as to the timing between the assessment and the hearing. Capacity may have changed in two to three months in many cases. Psychologists are not qualified to make medication recommendations required for GC-335A."

Consequently, the Legislature correctly identified education as a key requirement in conservatorship reform and such new duties are subject to reimbursement as claimed herein.

Also there are other mandates imposed on county public guardians as a result of the new court review of probate conservatorships six months after appointment of a conservator and annually thereafter. This means a substantial increase, perhaps a doubling, in procedures, such as accountings required by the court if not waived, filed by the Public Guardian.

Specifically, Probate Code Section 1850(a) as amended by Chapters 492 and 493, Statutes of 2006, now requires:

> "1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court * * *as follows:
>
> (1) At the expiration of <u>six</u> months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances. The court may, in response to the investigator's report, take appropriate action including, but not limited to:
>
> (A) Ordering a review of the conservatorship pursuant to subdivision (b).
>
> (B) <u>Ordering the conservator to submit an accounting</u> pursuant to subdivision (a) of Section 2620." [Emphasis added.]

Under prior law, Section 1850(a) as amended by Chapter 79, Statutes of 1990, merely required:

> "Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter." [Emphasis added.]

Under prior law, there is no mention of ordering the conservator to "submit an accounting" or ordering a "review the conservatorship pursuant to subdivision (b)". These six month duties are new and impose additional work upon the Public Guardian.

In addition, under Probate Code Section 1850(a)(2) et seq., as amended by Chapters 492 and 493, Statutes of 2006, the Public Guardian is required, under the specified circumstances to perform the following activities:

> "(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required.
>
> (b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including

> at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.
>
> (c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822." [Emphasis added.]

Under prior law, Section 1850(b) as amended by Chapter 79, Statutes of 1990, merely indicates that Section 1850(a) does not apply to:

> "(1) A conservatorship for an absentee as defined in Section 1403.
>
> (2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state."

Section 1850, then, now requires the Public Guardian to perform additional work in complying with more frequent and as well as more specific conservatorship reviews.

In addition, the such reviews can now be triggered by any "interested person" under Section 1850(b) as the "court may, on its own motion or upon request by any interested person, take appropriate action". Under prior law, there was no similar provision. So, interested persons, such as family members, can request the court at any time to hold a noticed hearing for a review of the conservatorship and an ad-hoc accounting of the assets. The Public Guardian typically deals with clients and their "interested persons", including dysfunctional "interested persons". Accordingly, the Public Guardian has an additional increase in accountings.

The test claim legislation imposes new documentation requirements on the Public Guardian which are not found under prior law.

Court staff are now required to document, inspect and copy related records of a conservatorship and to interview the conservator on pending conservatorships. This duty on Court staff, in turn, imposes new duties on the Public Guardian as a mandated conservator to provide documentation in compliance with Probate Code section 1851(a), Statutes of 2006, Chapters 492 and 493, as follows:

"(a) When court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship." [Emphasis added.]

Statutes of 2002, Chapter 1008 (A.B.3028), § 28, rewrote this section. It had read:

"(a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of

the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked."

Regarding increased documentation duties, the court now requires additional supporting documentation, meaning additional staff time and effort to gather the information. If the court wishes to inspect and copy court records, accounting staff must be available to obtain the records and monitor the copying of records.

Accordingly, increased documentation requirements are imposed on county public guardians, including new accounting documentation forms and procedures.

Accounting

The test claim legislation imposed new accounting requirements upon county public guardians. Compliance is required when serving populations defined under sections 2920(b) and 2920(a)(1) of the Probate code.

Among other things, Probate Code Section 2620(c) requires accountings submitted by guardians and conservators to include additional specified supporting documentation. Locally, for example, the probate court has ordered the Public Guardian to attach the closing statements from bank accounts we collect. Specifically section 2620(c) requires that:

"2620. Periodic accounting of guardian or conservator; final court accounting; filing of original account statements

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(c) Along with each court accounting, the guardian or conservator shall file supporting documents, as provided in this section.

(1) For purposes of this subdivision, the term "account statement" shall include any original account statement from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited.

(2) The filing shall include all account statements showing the balance as of the close of the accounting period of the court accounting. If the court accounting is the first court accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court all account statements showing the account balance immediately preceding the date the conservator or guardian was appointed and all account statements showing the account through the closing date of the first court accounting.

(3) If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator shall also file all original account statements, as described above, showing the balance as of all periods covered by the accounting. However, courts may instead provide by local rule that the court shall retain all documents lodged with it under this subdivision until the court's determination of the guardian's or conservator's account has become final, at which time the documents shall be returned to the depositing guardian or conservator or delivered to any successor appointed by the court.

(4) The filing shall include the original, closing escrow statement received showing the charges and credits for any sale of real property of the estate.

(5) If the ward or conservatee is in a residential care facility or a long-term care facility, the filing shall include the original bill statements for the facility.

(6) This subdivision shall not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Section 2940 and Article 3 (commencing with Section 7640) of Chapter 4 of Part 1 of

Division 7. Nothing in this section shall affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court.

(7) If any document to be filed or lodged with the court under this section contains the ward's or conservatee's social security number or any other personal information regarding the ward or conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement or other document shall be attached to a separate affidavit describing the character of the document, captioned "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court. The guardian or conservator may redact the ward's or conservatee's social security number from any document lodged with the court under this section."

Section 2620(c) was rewritten by the Statutes of 2006, Chapter 493 and previously read under prior law[12]:

"(c) Along with each court accounting, the guardian or conservator shall file all original account statements from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited, showing the balance as of the close of the accounting period of the court accounting. If the court accounting is the first court accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court the account statement for the account balance immediately preceding the date the conservator or guardian was appointed and the account statement or statements for the account through the closing date of the first court

[12] Stats.2000, c. 565 (A.B.1950), added subd. (c), relating to submission to court, copies of account statements .

> accounting. This subdivision shall not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Section 2940 and Article 3 (commencing with Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in this section shall affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court."

Absent from prior law [section 2620(c)], are the additional duties imposed by Chapter 493, Statutes of 2006 such as the requirement that for the sale of real property of the estate, the filing now must include the original, closing escrow statement received showing the charges and credits for any sale of real property of the estate. Both the prior still-in-effect requirements as well as the additional requirements are included in the test claim legislation as all such requirements must be met in complying with the new mandates to serve the 'high risk" conservatee under section 2920(a)(1) and the 'last resort' conservatee under section 2920(b).

In addition, the test claim legislation requires that accountings submitted by guardians and conservators to be subject to random and full review and verification by the court. Specifically, Section 2620(d) as amended by the Statutes of 2006, Chapter 493, mandates that:

> "(d) Each accounting is subject to random or discretionary, full or partial review by the court. The review may include consideration of any information necessary to determine the accuracy of the accounting. If the accounting has any material error, the court shall make an express finding as to the severity of the error and what further action is appropriate in response to the error, if any. Among the actions available to the court is immediate suspension of the guardian or conservator without further notice or proceedings and appointment of a temporary guardian or conservator or removal of the guardian or conservator pursuant to Section 2650 and appointment of a temporary guardian or conservator."

Section 2620(d) was rewritten by the Statutes of 2006, Chapter 493 and previously read under prior law[13]:

[13] Stats.2001, c. 563 (A.B.1286)

> "(d) If any document to be filed with the court under this section contains the ward or conservatee's social security number or any other personal information regarding the ward or conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement shall be attached to a separate affidavit describing the character of the document in proper form for filing, captioned 'CONFIDENTIAL FINANCIAL STATEMENT' in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court."

Absent from prior law [section 2620(d)], are the additional duties imposed by Chapter 493, Statutes of 2006 such as the requirement that each accounting is subject to random or discretionary, full or partial review by the court where the review may include consideration of <u>any</u> information necessary to determine the accuracy of the accounting. Both the prior still-in-effect requirements as well as the additional requirements are included in the test claim legislation as all such requirements must be met in complying with the new mandates to serve the 'high risk" conservatee under section 2920(a)(1) and the 'last resort' conservatee under section 2920(b).

Los Angeles County has detailed numerous accounting duties in its Procedures Manual, attached in pertinent part in Volume 3, pages 258-259 as follows:

> "3.1 The assigned Deputy must ensure that accountings are prepared on a timely basis. He/she will use a computer-generated report to ensure that required time frames are met.
>
> 3.2 When an accounting petition is received, it will indicate the hearing date on the first page. The Deputy must calendar the hearing date and check the calendar results on or soon after that date.

3.3 Upon receipt of the Court Order approving an accounting, and if sufficient funds are available, fee payments should be made and periodic fees should be budgeted.

3.4 If a Public Guardian Inquiry (PGI) is received on an LPS case the assigned Deputy must respond to it within 10 business days of receipt.

3.4(a) The Deputy must prepare a draft response; consult with their immediate supervisor and with the accounting unit or other agencies in order to respond appropriately.

3.5 If an interested party objects to a probate accounting, the assigned Deputy must consult with County Counsel so that they may respond appropriately to the objection.

3.6 In the event an objector to a Public Guardian accounting is requesting a surcharge, Public Guardian management staff must be notified immediately. Management staff must, in turn, notify County Counsel so they can assist in responding to the request for surcharge.

3.7 Current accountings should be filed on the left side of the estate folder. Accountings may be discarded upon receipt of the order approving them except for the most current accounting. It should be retained until the subsequent accounting is filed.

3.7(a) For Audit purposes, all orders approving accountings must be retained and filed on the left side of the case estate folder."

Also, the Public Guardian is now required to make <u>all</u> books and records, including receipts for <u>any</u> expenditures, available to <u>any</u> person designated by the court to verify the accuracy of the accounting, upon reasonable notice. Specifically, Section 2620(e) as amended by the Statutes of 2006, Chapter 493, requires that:

"(e) The guardian or conservator shall make available for inspection and copying, upon reasonable notice, to any person

designated by the court to verify the accuracy of the accounting, all books and records, including receipts for any expenditures, of the guardianship or conservatorship."

Section 2620(e) was rewritten by the Statutes of 2006, Chapter 493 and previously read under prior law[14]:

> "(e) The petition requesting approval of the account may include additional requests for authorization, instruction, approval, or confirmation authorized by this division, including, but not limited to, a request for any order authorized under Chapter 8 (commencing with Section 2640)."

Absent from prior law [section 2620(e)], are the additional duties imposed by Chapter 493, Statutes of 2006 such as the requirement to make available for inspection and copying, upon reasonable notice, to any person designated by the court to verify the accuracy of the accounting, all books and records, including receipts for any expenditures, of the guardianship or conservatorship . Both the prior still-in-effect requirements as well as the additional requirements are included in the test claim legislation as all such requirements must be met in complying with the new mandates to serve the 'high risk" conservatee under section 2920(a)(1) and the 'last resort' conservatee under section 2920(b).

The number of court accountings performed by public guardians is expected to substantially increase. During the past year and one half (August 2005 through December 2006) the Los Angeles County Public Guardian prepared over 600 probate accountings. This number includes identifying and preparing old and problematic court accountings. Based upon the current caseload the number of court trust accountings that must be prepared each year is 854.

Current staffing is unable to meet this demand without substantial overtime. Failure to timely perform the required accountings, may lead to court surcharges and contempt citations.

New requirements for timely accountings are specified in Section 2620.2 (a),(b),(c),(d) as amended by Statutes of 2006, Chapter 493, as follows:

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[14] Stats.2001, c. 563 (A.B.1286)

"(a) Whenever the conservator or guardian has failed to file an accounting as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator or guardian is a public agency, within 45 days of the date of the notice. The court may, upon cause shown, grant an additional 30 days to file the accounting.

(b) Failure to file the accounting within the time specified * * *under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an * * *accounting with all appropriate supporting documentation and set the accounting for hearing as required by Section 2620, the court shall do one or more of the following and shall report that action to the board established pursuant to Section 6510 of the Business and Professions Code:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required accounting to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be immediately removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and

petition for surcharge if this is in the best interests of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond.* * *

(4)(A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455, to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

* * *(5) If the conservator or guardian is exempt from the licensure requirements of Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, upon

ex parte application or any notice as the court may require, extend the time to file the accounting, not to exceed an additional 30 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the accounting has not been filed, the court shall take action as described in paragraphs (1) to (3), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner."

Sections 2620.2 (a),(b),(c),(d) were rewritten by the Statutes of 2006, Chapter 493 and previously read under prior law[15]:

"(a) Whenever the conservator or guardian has failed to file an account as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an account and to set the account for hearing before the court within 60 days of the date of the notice or, if the conservator or guardian is a public agency, within 120 days of the date of the notice.

(b) Failure to file the account within the time specified in the notice and any additional time allowed by the court under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an account and set the account for hearing as required by Section 2620 the court shall do one or more of the following:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

[15] Stats.2001, c. 359 (S.B.140).

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required account to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interest of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond, unless for good cause shown the court finds that the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be compensated from the estate.

(4)(A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interest of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

(5) Order that money or property in the estate be deposited pursuant to Section 2453, 2453.5, 2454, or 2455 to be subject to withdrawal only upon authorization of the court.

(6) Grant, upon ex parte application or such notice as the court may require, time to file the account, not to exceed an additional 60 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the account has not been filed, the court shall take action as described in paragraphs (1) to (5), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner."

Prior law [sections 2620.2 (a),(b),(c),(d)] as amended by Statutes of 2001, Chapter 359, made non-substantive changes to the provisions imposed by Chapter 493, Statutes of 2006. These still-in-effect requirements are included in the test claim legislation as all such requirements must be met in complying with the new mandates to serve the 'high risk" conservatee under section 2920(a)(1) and the 'last resort' conservatee under section 2920(b).

The Los Angeles County Public Guardian is required to prepare 2,613 accounting each year. This includes both LPS and Probate Conservatorship cases. This takes into account that the court will allow filing probate cases biannually. If not, the number of accountings will increase to 2,913. The Public Guardian has 9 accounting staff whose only job requirement is to

produce court accountings. The average production rate is 18 accounting per month. Even recent changes in the probate code have reduced the number of completed accountings to 15 per month. In order to meet the demand for accountings the accounting staff must be increased to 16 people, an increase of 7 people.

Recently the California Judicial Council released a summary of the new "simplified accounting schedules". The initial impression is that this simplified accounting summary is easier for the court to review, but is cumbersome and duplicative from existing documents currently prepared by court-appointed conservators. The proposed Judicial Council form would be mandated and would require more detailed documentation, the filing of original bank statements, escrow papers and care invoices. It will take longer to produce an accounting with the ancillary documentation. Not only the production of the accounting more time consuming, but it also increases the documentation for receipting income and describing expenses will also increase.

Further, as noted in the Judicial Council Meeting, October, 2007, report, attached herein in Volume II, page 170:

> "The Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt or approve Judicial Council forms for use by conservators and guardians to prepare and file standard and simplified accountings, and adopt a California Rule of Court to define these types of accountings and prescribe the use of the new forms. This proposal would implement a requirement of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

The intent here is to simplify accountings and perhaps less expensive to prepare.

But others feel that the opposite is occurring. For example, consider the comment in SP07-10, "robate: Notice of Conservatee's Rights (adopt form GC-341 and approve form GC-341(MA))", attached herein in pertinent part in Volume II, pages 182-183.

> "While most of our comments address specific issues or suggestions for enhancing the effectiveness of various

> individual provisions, our overreaching concern about this entire enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and takes will preclude conscientious, but nonprofessional, family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you to keep these concerns in mind as you incorporate this comment period into your final work product."

Nevertheless, the new changes as reported in Probate Code Section 2620 list numerous and complex accounting changes, documentation requirements. Moreover court personnel are required to enforce the new rules and to conduct random or discretionary reviews. These changes clearly increase the level of service and costs for county public guardians.

Also, in the event the conservator fails to file an account on a timely basis, the law allows for the conservator to be cited into court to prepare the accounting. The time limits for the public sector were reduced from 120 days to 45 days. Failure to comply with these requirements subjects the conservator to removal, punishment for contempt or other appropriate action.

Estate Management

Accounting is only one aspect of estate management. County public guardians must perform many specific duties in establishing and maintaining estates for the section 2920(b) as well as the section 2920(a)(1) conservatee. The duties in establishing an estate are detailed in the County of Los Angeles Procedure manual attached in pertinent part in volume 3 on pages 207-214, and include on pages 207-209:

> "3.0 The assigned deputy public guardian is responsible for bringing all the conservatee's income and assets under the control of the public Guardian. To avoid any loss to the estate, the deputy must act quickly to identify, locate and marshall

those assets and income which will be necessary to ensure that the conservatee's needs are met.

3.1 Upon receipt of a new case, the assigned case administration deputy must initiate a request to the conservator administrator assistant (CAA) unit asking for "set-up" of the case. Basic actions included in the request should be:

3.1(a) Change of address (postal) – all of the conservatee's mail must be redirected to the Public Guardian's address. Changes should be requested from all known addresses from which the conservatee receives mail.

3.1(b) Benefit applications – Initial applications should be filed for any and all benefits to which the conservatee may be entitled if he/she is not already receiving them. This may include Medi-Cal Long Term Care (LTC), SSI, SSA and/or Veterans Administration (VA) benefits.

3.1(c) Payee changes – Representative payee applications must be filed on behalf of the public guardian for any and all benefits, pensions and/or annuities, which the conservatee may be receiving.

3.1(d) Changes in Level of Care – Certain benefits, particularly SSI and VA, vary by level of care. If the conservatee has moved from one level of care to another, the benefit source must be notified and the case record annotated.

3.1(e) Next-of-Kin Forms – Information must be solicited from the conservatee's family in regard to family structure, emergency contacts and pre-need mortuary and burial preferences.

3.1(f) Verification of Insurance Policies – The current value, beneficiaries, costs and benefits of all known policies of the conservatee must be verified by the issuing company.

3.2 Upon receipt of a new case where the conservatee has bank accounts and upon which letters of conservatorship have been

received, the assigned case administration deputy can proceed with requests/referrals to the Treasurer Tax Collector (TTC) regarding marshalling the conservatee's financial assets.

3.2(a) Bank Accounts

3.2(a)(1) If the conservatee is the sole owner, the deputy should usually request collection of the bank account, which will then be deposited to the conservatorship account. An exception would be a Certificate of Deposit with a high interest rate, which will be maturing within the next 3-6 months. Such situations should be discussed with the deputy's supervisor before collection is requested. If the asset is not immediately marshaled, the deputy must change the vesting to indicate that the public guardian is in control.

3.2(a)(2) If the conservatee's account is a joint account, a written request must be sent to the bank to freeze the account. A determination should then be made on the division of the asset with the other joint tenant. If the joint tenant agrees, the deputy should work with them to close the account, marshalling the conservatee's share. If ownership cannot be determined, the deputy must ask county counsel to petition for a court determination of ownership interests.

3.2(a)(3) If there is an emergent need for funds to meet the conservatee's needs, the deputy may submit a written request to the public guardian property deputy to do a manual collection of the bank account. Such a request, however, should only be done in urgent situations. Otherwise, the Treasurer and Tax Collector should handle the collection."

It should be noted that safeguards are required to protect estate assets. In this regard the Judicial Council reminds, in their September 10, 2007 report, attached in pertinent part in Volume 2, page 3 that:

" ... among the most significant are the duties to (1) keep the conservatee's money and property separate from the conservator's or any other person's (para. (b);(2) keep accurate records of all transactions and, for professional conservators, to

maintain prudent accounting systems and safeguards to guard against embesslement and other cash-asset mismanagement (*para. (b)(8)); and (3) secure the conservatees's real and personal property as soon as possible after appointment, including insuring it at appropriate levels and protecting it against damage, destruction, or loss (para. (b)(10))."

The duties in maintaining an estate with respect to handling income are detailed in the County of Los Angeles Procedure manual attached in pertinent part in volume 3 on pages 215-218, and include thereon:

"3.1 Income

The assigned Deputy must review all income on a regular basis to ensure that the conservatee is receiving all income and/or benefits to which they are entitled.

3.1(a) Income must be budgeted as a "fixed receipt." Once it has been, the Deputy shall monitor receipt of the income through review of the case ledger and/or the computer generated exception reports.

3.1(b) If income is interrupted, immediate steps must be taken to determine the cause of the disruption and to intervene if necessary.

3.1(c) If there is a change in income, the Deputy must ensure that the budget is amended to reflect the change.

3.2 Applications and Benefits

Applications must be filed for all benefits to which the conservatee may be entitled (see Policy # _________ Estate Management – Initial), and, once received, the Deputy must ensure the conservatee's continuing eligibility.

3.2(a) If the conservatee is eligible to Social Security (SSA) benefits and is in pay status, the Deputy need only monitor for continued receipt and annual standard of living increases. The

benefit is not dependent upon level of care, assets or other income.

3.2(b) If the conservatee is eligible to SSI, the benefits will vary by level of care and the amount of other income received.

3.2(b)(1) It is up to the assigned Deputy to notify SSI of any changes in income, assets, or level of care, which may affect the conservatee's eligibility or benefit amount.

3.2(b)(2) It is also up to the Deputy to request an application for SSI when the conservatee moves into an SSI eligible situation (e.g. from an incarceration or state hospitalization into a board and care).

3.2(c) If the conservatee becomes eligible to MediCal, an application for it must be filed. This is particularly important when the conservatee has no other medical insurance (see Policy # ______ Health Insurance).

3.2(c)(1) When the conservatee is eligible to and receiving MediCal benefits, the Deputy must notify MediCal of any increase in assets over $2,000 or change in level of care.

3.2(c)(2) When a conservatee has moved out of a nursing home, they have lost their eligibility to Long-Term Care (LTC) MediCal and other medical insurance arrangements must be made.

3.2(c)(3) If a conservatee's assets increase to such a level that spend down cannot be accomplished in the prescribed time frame (e.g., due to sale of real property), they lose their LTC MediCal eligibility. In such a situation, the Deputy may have to arrange for private care payment to the facility.

3.2(d) The conservatee's eligibility to Veteran's benefits may depend upon whether the V.A. has found them "incompetent" or "competent" by their standards. V.A. benefits may also hinge upon the conservatee's level and specific place of care.

3.2(d)(1) If the conservatee is on a V.A. care contract, the Deputy must ascertain the length of the contract and be prepared to make other payment arrangements when the contract expires.

3.2(e) Conservatees receiving SSA may also be eligible to MediCare benefits, whether due to age (65 and over) or disability. There are also other circumstances that allow an individual to purchase MediCare (see Policy # _______, Health Insurance).

3.2(e)(1) Cases should be reviewed for conservatees approaching their 65th birthday. The MediCare application should be filed 90 days prior to maximize their benefit time.

3.2(e)(2) January – March of each calendar year is an open enrollment period for MediCare. Applications should be filed at that time for older conservatees who failed to apply at the proper time.

3.2(e)(3) If the conservatee is in a MediCare + Choice HMO, the Deputy must determine the provider and coverage. If the conservatee moves from one level of care to another, a change in provider may be necessary (e.g., when a conservatee moves from independent living to a skilled nursing facility).

3.2(e)(3)(1) Monitoring coverage is important since a physician at the skilled nursing facility may be an HMO provider and medications may be covered by the HMO plan. Some HMOs have provisions for mail order prescriptions, which substantially reduce the co-payment expenses."

Regarding health insurance, the duties in maintaining an estate with respect to handling income are detailed in the County of Los Angeles Procedure manual attached in pertinent part in volume 3 on pages 228-231, and include thereon:

"4.1 MediCal – An application for Medi-Cal should be filed for any conservatee who appears to be eligible to its benefits.

Upon request from a Deputy, the CAA Unit will complete and file all necessary application forms.

4.1(a) Basic eligibility requirements are that the individual must be at least 18 years old and disabled for at least one year and have less than $2,000 in assets. The conservatee's home is excluded in the property valuation if the conservatee, their spouse, or their dependent or disabled children are residing in the home. The home is also excluded for a nursing home patient who intends to return to the home when discharged.

4.1(b) Supplemental Security Income (SSI) recipients receive Medi-Cal coverage with a -0- share of cost. An application for SSI should be filed if it appears the conservatee is eligible to it.

4.1(b)(1) To be eligible for SSI, an individual must be at least 65 years of age, or an adult who has been disabled for at least one year.

4.1(b)(2) SSI/Medi-Cal provides for inpatient hospital coverage, outpatient treatment, certain durable equipment, prescriptions, and long-term care. Glasses, hearing aids and dental coverage may also be provided with prior authorization.

4.1(c) If a conservatee meets eligibility requirements, the Deputy must ensure that a MediCal application is prepared and submitted to the Los Angeles County Department of Social Services.

4.1(c)(1) If the conservatee has no other income and is in a nursing home, an IMD, or board and care, an SSI application must be made.

4.1(c)(2) If the conservatee has other income, but he/she is in a board and care or an IMD with income less than the SSI dual income allowance, an SSI application must also be made.

4.1(d) If the conservatee has prior medical expenses, and if the conservatee meets eligibility requirements, an application may

> be made for retroactive coverage for the 3 months prior to the application.
>
> 4.1(d)(1) Special care must be taken to identify any asset that was not available to the conservatee during the retroactive period. Circumstances must be clearly documented so that asset limits can be met.
>
> 4.1(d)(2) If the conservatee had unpaid medical expenses for a period more than 3 months prior to the application, these may still be covered by Medi-Cal. Under the Hunt vs. Kizer decision, prior medical expenses may be paid using current income by reducing the share of cost of the beneficiary to -0- for a specified length of time. If this is needed by the conservatee, an application must be filed for it.
>
> 4.1(e) When eligibility is determined, the conservatee is issued a MediCal card that looks like a credit card. Upon receiving the MediCal, or BIC card, the Deputy must make copies of the card to distribute to all medical care providers. The original should be kept in the case financial folder.
>
> 4.1(f) If a conservatee is eligible to both Medi-Cal and MediCare, Medi-Cal pays the MediCare Part B premiums and also acts as MediCare "gap" insurance, covering all the MediCare co-payments and deductibles.

MediCare is usually provided to individuals who have a work history and are eligible for Social Security retirement benefits. To be eligible, an individual must be over the age of 65 or an adult who has a work history and has been disabled for at least two years. Spouses and disabled children of eligible adults may also be eligible to MediCare.

> "4.2(a) MediCare insurance can be either the traditional MediCare or a MediCare + Choice HMO.
>
> 4.2(a)(1) Traditional MediCare is evidenced by a MediCare card describing Part A and Part B coverage.

4.2(a)(2) MediCare + Choice is an alternative wherein the conservatee elected to participate in an HMO, such as Secure Horizons, or another HMO or PPO carrier.

4.2(b) The assigned Deputy must ascertain the type of MediCare coverage that the conservatee is holding. When the conservatee has an HMO or PPO, the Deputy must ensure that medical care is provided by an authorized health care provider and prescriptions are sought through approved pharmacies or approved mail order programs so as to maximize the benefit of the insurance.

4.2(c) If the conservatee is a resident of a skilled nursing facility, the facility must be notified of the coverage, so that an authorized medical care provider is sought and prescriptions are processed through an approved provider.

4.2(d) The conservator has the option of changing the coverage from the traditional coverage to a choice program and vice versa. When a decision such as this is considered, the Deputy must consult with his/her Supervisor and the decision and rationale for the change must be documented in the conservatee's case file and on the Public Guardian computer system.

4.2(e) In the event a conservatee does not have MediCare coverage but is eligible to it, the Deputy may purchase the coverage for them. Applications are only accepted from January to March of each year for coverage beginning the following July. Each year the Deputy should review his/her caseload to evaluate if an application should be filed for MediCare coverage for any conservatee.

4.2(e)(1) An individual becomes eligible to MediCare on their 65th birthday. The MediCare application must be filed in the 3 months prior to or 3 months following the month of the 65th birthday to avoid paying a penalty for late enrollment."

In the event the conservatee is covered by a health insurance other than MediCare or MediCal, the assigned Deputy must determine the insurance

carrier, ascertain the location of the health insurance card or ask for a duplicate, and ask the carrier for evidence and extent of coverage and a provider directory.

> "4.3(a)The Deputy must determine the scope of the coverage and determine how payment is made for it (i.e., is payment covered by the conservatee's retirement benefits or made by the conservatee privately). If the payment is not made by automatic deduction from income, and if the insurance is to be retained, arrangements must be made to budget the premium payments.
>
> 4.3(b) The Deputy must ensure that health insurance is maintained. In the event the conservatee is moved from one location or level of care to another, the Deputy must ensure that medical providers are changed accordingly so that the conservatee retains access to covered medical care."

The duties in maintaining an estate with respect to budgeting and bill payments are detailed in the County of Los Angeles Procedure manual attached in pertinent part in volume 3 on pages 218-220, and include thereon:

> "3.3 Budgeting and Bill Payments
>
> An integral part of estate management is the disbursement of payments for the cost of the conservatee's care, maintenance and support. This may be done by budget or by check request, but only upon approval of the Deputy.
> Note: In LPS, payments can only be made within the limits set by the rate order for the case. In order to exceed the rate order, the Deputy must request County Counsel petition the court for the authority to do so.
>
> 3.3(a) Budgets: All disbursements that are payable on a regular basis and in a specified amount should be budgeted. Examples include: care, share of cost/liability, rent, and personal needs. Payment is based upon a "Fixed Disbursement Authorization" (FDA) completed by the service or care provider. Monthly bills

are not needed. Changes in amount must be accompanied by a new FDA.

3.3(a)(1) Pre-vouchers: Disbursements for known services that cannot be made automatically, because the amounts vary and are not issued on a regular basis, may be paid via a pre-voucher budget. Examples include pharmacy bills and utility bills. The payments are pre-authorized by the Deputy to an upper payment limit. The Accounting Technician will then be able to pay the bill without a check request, as long as the charges do not exceed the authorized limit.

3.3(a)(2) Periodic Fees: On Probate cases, court ordered monthly fees may be budgeted. A copy of the Court order must accompany the budget for the Accounting Technician to process it.

3.3(a)(3) Personal Needs Allowance: The assigned Deputy must determine the personal needs allowance for the conservatee. Sufficient reserves should be created to allow for additional expenditures for clothing and special events. The personal needs allowance should be budgeted as a fixed disbursement, although no FDA is needed for it.

3.3(b) Property Management: Other than the assigned Deputy, only Property Management may initiate a budget on a case, and then only for property related disbursements. Examples of budgeted property management disbursements include storage charges and gardening costs.

3.3(b)(1) Property Management may also initiate check request payments for individual expenses such as title reports, property taxes and insurance.

3.3(b)(2) Because of Property Management's ability to independently initiate payments requests, it is very important that the Public Guardian Deputy monitor all payments made on a case to ensure that care payments retain first priority over property costs.

3.3(c) Check Requests: Payments of individual bills and one-time-only charges are to be made by check request.

3.3(c)(1) Upon receipt of an invoice, the Deputy must review it and decide whether it should be paid.

3.3(c)(2) A Deputy may initiate a check request or ask that it be done by the CAA Unit after reviewing it for duplication.

3.3(c)(3) An invoice or other documentation must accompany the check request for Accounting to process it.

3.3(d) Compromising Debts: Attempts should always be made to compromise debts which pre-date the conservatorship, which the conservatee cannot afford to pay in full, or which, in LPS, exceed the case's rate order.

3.3(d)(1) In Probate, if the amount is large, or represents a significant portion of the estate, Court authority for the payment should be sought. Otherwise, if the debt is justified, it may be paid without Court involvement.

3.3(d)(2) In LPS, if the debt precedes the conservatorship and/or paying it would exceed the rate order, Court authority must be sought and granted before any payment can be made.

3.3(e) Household employees: For those conservatees living independently with in-home assistance, it is always preferable that their in-home employees come from a licensed agency. However, if the conservatee has household employees who are not employed through an agency, the assigned Deputy must treat the employees as employees of the conservatee

3.3(e)(1) The Deputy must secure an employer ID number in the name of the conservatee and pay appropriate Social Security and employer taxes.

3.3(e)(2) The Deputy must also ensure that there is workers compensation coverage for the employee(s).

3.3(e)(3) Payment to the employee may be budgeted if they are paid a specific rate on a regular basis.

3.3(e)(4) If the employee is paid sporadically or at a varying rate, then they should be paid by check request based upon documentation of the dates of service and the rate of payment agreed upon in advance between the Deputy and the employee."

The duties in maintaining an estate with respect to managing and selling estate assets is detailed in the County of Los Angeles Procedure manual attached in pertinent part in volume 3 on pages 220-222, and include thereon:

"3.4 Managing and Selling Estate Assets

"The assets of the conservatee, such as real and personal property, must be closely monitored to ensure against loss or waste. For specific policies and procedures in the management and sale of estate assets, see Policy # _____ Management of Real Property, Policy # _____ Management of Personal Property, and Policy # _____ on Vehicles.

3.4(a) Particular attention should be given to the conservatee's personal effects, which may have no monetary value, but which may have considerable value to the conservatee and/or his/her family. Whenever possible, such personal items should remain with the conservatee or be given to family for safekeeping.

3.4(b) The Deputy must closely monitor cases with personal property to ensure that the cost of storage does not exceed the actual value of the property being stored.

3.4(c) Decisions on disposition of estate assets must be made as soon as possible in the course of the conservatorship and must be reviewed regularly thereafter.

3.5 Taxes

The estate must be managed in such a way as to minimize any tax liability to the conservatee.

3.5(a) In the sale of real property, consideration must be given to the tax ramifications (i.e., capital gains tax).

3.5(b) For those conservatorships which require income tax returns, the Deputy must ensure that all necessary documentation is provided to the TTC Tax Unit, so they may complete the filings in a timely manner.

3.6 Court Deadlines

The assigned Deputy must ensure that any court required petitions are filed in a timely manner. This includes appointment of a Probate Referee, preparation of the Inventory and Appraisal, requests for authorization to sell personal residences, confirmations of sales, and court accountings.

3.7 Litigations

Some conservatorship estates may be involved in litigation, such as recovering assets fraudulently taken prior to the establishment of the conservatorship. Whenever the estate is involved in litigation, the assigned Deputy must work closely with the attorney handling the case to ensure a successful recovery.

3.8 Documentation

Any and all actions taken in the management of the conservatorship estate must be documented in a thorough and timely manner.

3.9 Case Terminations

When a conservatorship terminates through a court order or death, immediate steps must be taken toward closing the case. Before sending the case to the Closing Desk, the assigned Deputy should notify any appropriate parties, pay any debts which arose in the course of the conservatorship, and delete any ongoing budgets."

Inventories and Appraisals

As noted in the Judicial Counsel's September 10, 2007 reprot , attached herein in pertinent part in Volume II, page 37:

> "Probate Code section 2610 requires a conservator or guardian of the estate to file an Inventory and Appraisal of the assets of the estate. The inventory is a list of all property of the estate of which the conservator or guardian has possession or knowledge. The appraisal states the fair market value of each property as of the date of the fiduciary's appointment.
>
> Until this year, the law did not require copies of the Inventory and Appraisal to be delivered to anyone involved or interested in the proceeding unless they had previously filed and served a formal request to be notified of important filings in the case. The Omnibus Conseervatorship and Guardianship Reform Act of 2006 has changed that. Section 2610 has been amended to require the conservator or guardian of the estate to mail copies of the filed Inventory and Appraisal to the consevatee, the attorneys for the conservatee or ward, and the conservatee's spouse or registered domestic partner and closest relatives."

The conservator, then, is now required to mail a copy of the inventory and appraisal to the conservatee and any known relatives with a copy of a Judicial Council notice instructing either the conservatee or any known relatives on how to object to the Inventory and Appraisal. Section 2610(a), as amended by the Statutes of 2006, Chapter 493, provides that:

> (a) "Within 90 days after appointment, or within any further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court and mail to the conservatee and to the attorneys of record for the ward or conservatee, along with notice of how to file an objection, an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator. A copy of this inventory and appraisal, along with notice of how to file an objection, also shall be mailed to the conservatee's spouse or

registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee."

Section 2610(a)[16] was rewritten by the Statutes of 2006, Chapter 493. It rewrote subd. (a) and added subd. (e). Prior to amendment subd. (a) had read:

"a) Within 90 days after appointment, or within such further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator."

It should be noted that duties imposed under the new [above] provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

Additional inventory and appraisal duties are set forth in Section 2640 as amended by the Statutes of 2006, Chapter 493, as follows:

"2640. (a) At any time after the filing of the inventory and

[16] Prior law includes Former § 2610, added by Stats.1979, c. 726, § 3, amended by Stats.1982, c. 1535, § 11; Stats.1988, c. 1199, § 70.5, relating to similar subject matter, was repealed by Stats.1990, c. 79 (A.B.759), § 13, operative July 1, 1991. Transitional provisions, see Probate Code § 3. For text of former section, see Appendix (App. § 1 et seq.) at end of Code. Former § 1550, enacted by Stats.1931, c. 281, p. 678, § 1550, amended by Stats.1941, c. 447, p. 1739, § 1; Stats.1943, c. 120, p. 821, § 1; Stats.1943, c. 1053, p. 2994, § 3; Stats.1945, c. 1308, p. 2459, § 1; Stats.1953, c. 65, p. 727, § 3; Stats.1970, c. 1282, p. 2330, § 21; Stats.1973, c. 142, p. 411, § 59; Stats.1976, c. 289, p. 599, § 2; Stats.1976, c. 634, p. 1501, § 2. Former § 1901, added by Stats.1957, c. 1902, p. 3313, § 1, amended by Stats.1959, c. 347, p. 2270, § 2; Stats.1970, c. 1282, p. 2331, § 22; Stats.1973, c. 142, p. 413, § 2; Stats.1976, c. 289, p. 599, § 3; Stats.1976, c. 634, p. 1502, § 4. Former § 2610, added by Stats.1979, c. 726, § 3, amended by Stats.1982, c. 1535, § 11; Stats.1988, c. 1199, § 70.5 and, C.C.P. § 1773, amended by Code Am.1880, c. 74, § 14; Stats.1907, c. 514, § 8; Stats.1913, c. 125, § 1.

appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered to that time.

(2) The guardian or conservator of the person for services rendered to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

(d) Notwithstanding the provisions of subdivision (c), the guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee."

Section 2640[17] as amended by the Statutes of 2006, Chapter 493 added subd. (d) relating to compensation to the conservator.

It should be noted that duties imposed under the new [above] provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

The duties of the public guardian in filing an inventory and appraisal are set forth in Los Angeles County's Procedure Manual, attached in pertinent part in Volume 3, pages 224-226, as follows:

"4.1 The Inventory and Appraisal must be filed within 90 days of the conservator's appointment. If it appears that this deadline will not be met, the assigned Deputy Public Conservator may file a -0- (zero) asset Inventory or a partial Inventory and Appraisal of the known assets. If the delay is likely to be lengthy, the Deputy may request an ex parte petition to extend the time period for filing the Inventory and Appraisal. If the petition is granted, the assigned Deputy must

[17] Prior law includes Stats.1998, c. 581, Former § 2640, added by Stats.1979, c. 726, § 3, amended by Stats.1987, c. 358, § 5, relating to similar subject matter, was repealed by Stats.1990, c. 79 (A.B.759), § 13, operative July 1, 1991. Former § 1556, enacted by Stats.1931, c. 281, § 1556, amended by Stats.1951, c. 128, § 1. Former § 1659, enacted by Stats.1931, c. 281, § 1659, amended by Stats.1949, c. 1463, § 1. Former § 2640, added by Stats.1979, c. 726, § 3, amended by Stats.1987, c. 358, § 5. Former § 2910, added by Stats.1979, c. 726, § 3. C.C.P. § 1776, amended by Stats.1907, c. 514, § 10. Stats.1929, c. 633, § 10. Stats.1850, c. 115, § 47. C.C.P. § 1776, amended by Stats.1907, c. 514, § 10. Stats.1929, c. 633, § 10. Stats.1850, c. 115, § 47.

ensure that the Inventory and Appraisal is filed within that time to avoid any adverse court ruling.

4.2 A Supplemental Inventory and Appraisal may be filed any time after the original Inventory and Appraisal is filed, however, the Supplemental Inventory should be filed within 90 days of discovery of an asset or of Public Guardian's taking possession of that newly discovered asset.

4.3 When an Inventory consists of assets which must be appraised, a Probate Referee must be assigned.

4.3(a) In order to have a Referee assigned, the Deputy must initiate a request to the CAA Unit. The assigned CAA must then initiate a request to the Treasurer Tax Collector, as TTC controls the rotational list of Probate Referees. Once the CAA is given the name and address of the assigned Probate Referee, they will mail the necessary asset information to that Referee. When the Referee completes the appraisal, the signed Inventory and Appraisal will be returned to the Public Guardian for filing with the Court.

4.3(b) Once a Probate Referee has been assigned to a case, all subsequent Supplemental Inventories on that case will be sent to the same Referee rather than having to request a new one.

4.4 Certain assets are not to be included in the Inventory and Appraisal:

4.4(a) Income of any kind, whether it be salary, benefits or dividends, is not to be inventoried.

4.4(b) Real property outside the state is not subject to the jurisdiction of California courts and is therefore not included in the Inventory, although income received from, and expenses paid on, the property are included in the conservator's accounting. The conservator may include the real property for informational purposes only, giving the asset a -0- value.

4.4(c) Assets held in a Trust are not part of the conservatorship estate and are, therefore, not to be inventoried. This is particularly important to note in regard to real property.

4.4(d) Assets not in the possession of the Public Guardian, and clearly not under the control of the Public Guardian, should not be inventoried.

4.4(e) Worthless stocks: When the value of stock is doubtful or unknown, an opinion on the value of the stock, or any evidence of potential value, should be obtained from a stockbroker before it is inventoried.

4.5 When the assets of an Estate are very specialized and/or very valuable, use of an expert appraiser may be warranted. Such appraisals may be used to establish values for jewelry, art, coin collections, and stamp collections among other things. Property Management can arrange for the use of an expert appraiser, if so requested.

4.6 In the event one of the conservatee's assets is a business interest, an appraisal as to the value of the business interest is necessary. This may require use of an "expert" appraiser and should be arranged through the Public Administrator's "Business Committee."

4.7 <u>Preparation and Filing of the Inventory and Appraisal</u>

4.7(a) If the conservatorship Estate has no assets, or only cash assets, then a Probate Referee is not required. In such cases, the CAA will complete the Inventory and Appraisal, sign at the appropriate places, and send it to County Counsel for filing. Once a Court conformed copy is received, a copy must be filed in the case and another sent to the Accounting Department for their information.

4.7(b) If a Probate Referee is appointed, the Inventory and Appraisal listing all assets known to be in the Estate must be sent to that Probate Referee. A cover letter must be sent with

the appraisal requesting a return date to comply with the court deadlines.

4.7(b)(1) Upon receipt of the completed Inventory and Appraisal from the Probate Referee, the assigned CAA must make copies of the appraisal, pay the referee and forward the original Inventory to County Counsel for filing. When a Court conformed copy is received, copies are to go to the case file and to Accounting.

4.8 Any interested party may file an objection to the Inventory and Appraisal. An objection can be made questioning the value of the Estate or of a particular asset. The objection must be filed within 30 days after the Inventory and Appraisal has been filed. After notice is given, the Court shall determine the value of any asset to which an objection has been filed. This may require additional appraisals of the asset(s) in question.

4.8(a) If there is no change in the value, or the objections are overruled, the costs of any additional appraisals may be assessed either against the Estate or against any objecting party.

4.9 It is important to note that failure to file an Inventory and Appraisal in a timely manner may be cause for the Court to revoke a conservator's Letters. If the Estate suffered any loss due to the conservator's failure to file an inventory and Appraisal, the conservator may be held liable and surcharged for those losses."

In addition, there are special procedures required for property management, detailed and incorporated herein by reference in volume 3, pages 255-252; and, for the management of personal property detailed and incorporated herein by reference in volume 3, pages 232-241; and, for the management of real property detailed and incorporated herein by reference in volume 3, pages 242-248; and, vehicles detailed and incorporated herein by reference in volume 3, pages 260-264; and, property insurance detailed and incorporated herein by reference in volume 3, pages 2249-251.

Therefore, the public guardian is now required to perform extensive duties in preparing and filing an Inventory and Appraisal of all assets within ninety

(90) after appointment. The new legislation now requires the conservator to send a copy of the court filed inventory and appraisal along with a notice on how to file an objection to the Inventory and Appraisal to the conservatee's spouse, registered domestic partner and relatives within the first degree. This requirement is a new activity. The conservator will now be responsible for photocopying the inventory and appraisal to family members. This may lead to an additional hearing questioning the value of an asset or reporting a missing asset. Objections to the inventory and appraisal are rare. If this new activity prompts additional hearings, the impact will be on the assigned deputy managing the case as well as our county counsel.

Residential Placement

The test claim legislation imposes new duties on the public guardian in evaluating the least restrictive appropriate residential placement of a ward or conservatee.

Probate Code sections 2352 (a) through (e), as amended the Statutes of 2006, Chapter 490, require that the guardian or conservator select the residence of the ward or conservatee that is the least restrictive appropriate residence that is available and necessary to meet the needs of the ward or conservatee and that is in the best interests of the ward or conservatee (consistent with current law). Specifically, sections 2352 (a) through (d) mandate that:

> "(a) The guardian may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.
>
> (b) The conservator may establish the residence of the conservatee at any place within this state without the permission of the court. The conservator shall select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.
>
> c) If permission of the court is first obtained, a guardian or

> conservator may establish the residence of a ward or conservatee at a place not within this state.
>
> (d) An order under subdivision (c) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order." [Emphasis added.]

In addition, section 2352(e)(1) requires that a guardian or conservator file a notice of change of residence with the court, within 30 days of the date of the change, and to include in the notice a declaration that the change of residence is consistent with the above least restrictive-best interest standard. Specifically section 2352(e)(1) states:

> "(e)(1) The guardian or conservator shall file a notice of change of residence with the court within 30 days of the date of the change. The conservator shall include in the notice of change of residence a declaration stating that the conservatee's change of residence is consistent with the standard described in subdivision (b). The Judicial Council shall, on or before January 1, 2008, develop one or more forms of notice and declaration to be used for this purpose." [Emphasis added.]

Also, section 2352(e)(2) requires that a guardian or conservator mail a copy of the above notice to specified persons and to file a proof of service of the notice with the court. In particular, section 2352(e)(2) provides that:

> "(2) The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement pursuant to this paragraph in order to prevent harm to the conservatee or ward." [Emphasis added.]

Further requirements are imposed under the test claim legislation if a guardian or conservator proposes to remove the ward or conservatee from

his or her personal residence:

- The guardian or conservator must mail to specified persons a notice of his or her intention to change the residence.

- In the absence of an emergency, the notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence.

- If the notice is served less than 15 days before the proposed removal of the ward or conservatee, the guardian or conservator shall set forth the emergency basis for the removal.

- The guardian or conservator shall file proof of service of the above notice with the court.

The [above] duties are detailed in section 2352(e)(3) as follows:

> "(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall mail a notice of his or her intention to change the residence of the ward or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence. If the notice is served less than 15 days prior to the proposed removal of the ward or conservatee, the guardian or conservatee shall set forth the basis for the emergency in the notice. The guardian or conservator shall file proof of service of that notice with the court." [Emphasis added.]

Sections 2352 (a) through (e) were rewritten by Statutes of 2006, Chapter 490, which had previously read under prior law[18]:

[18] Former § 2352, added by Stats.1979, c. 726, § 3, amended by Stats.1986, c. 615, § 1, relating to similar subject matter, was repealed by Stats.1990, c. 79 (A.B.759), § 13, operative July 1, 1991

"(a) The guardian or conservator may fix the residence of the ward or conservatee at either of the following:

(1) Any place within this state without the permission of the court. In fixing the residence, the guardian or conservator shall select the least restrictive appropriate setting which is available and necessary to meet the needs of the ward or conservatee, and which is in the best interests of the ward or conservatee. In making a determination of the appropriate level of care for wards or conservatees, guardians or conservators may utilize the statewide nursing home preadmission screening program or a comparable assessment by a community-based case management organization.

(2) A place not within this state if permission of the court is first obtained.

(b) An order under paragraph (2) of subdivision (a) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or such longer or shorter period as is specified in the order.

(c) The guardian or conservator shall promptly mail to the court notice of all changes in the residence of the ward or conservatee.

(d) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to fix his or her own residence."

Further, the Legislature has specified presumptions and requirements which Public Guardians must follow in assessing the least restrictive appropriate residence for each conservatee, including a presumption that the personal residence of the conservatee at the time of commencement of the conservatorship proceeding is the least restrictive appropriate residence for

the conservatee. If necessary, a hearing to determine if removal of the conservatee from his or her personal residence is provided. Specifically, sections 2352.5 (a)-(e), as added by the Statutes of 2006, Chapter 490, provide that:

> "(a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence.
>
> (b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.
>
> (1) That determination shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence.
>
> (2) If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, that determination shall either include a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future.
>
> (c) The determination made by the conservator pursuant to subdivision (b) shall be in writing, signed under penalty of perjury, and submitted to the court within 60 days of appointment as conservator.
>
> (d) The conservator shall evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care." [Emphasis added.]

The new laws require the conservator to conduct "level of care" assessment to determine the least restrictive placement at the time of appointment and at any time there is a material change in circumstances. This assessment must

be submitted to the court 60 days after appointment. In addition to this assessment, whenever a conservatee resides in his/her personal residence at the time of appointment and the conservator wishes to remove the conservatee, additional notices and documentation is required to justify a move outside his/her home.

The Public Guardian will thus be required to conduct level of care assessments, conduct a more though evaluation of the client's needs and capabilities whenever placement is needed outside a conservatee's home and send legal notices of proposed placement not only to the conservatee but other interested parties.

Therefore, public guardians are now mandated to perform assessments and other duties [as specified above] in determining the least restrictive appropriate residence for each conservatee.

Also, new legal provisions in the test claim legislation require the public guardian to justify the sale of the conservatee's personal residence and explain why other alternatives are not available. In addition there are new procedures for the sale and appraisals. Specifically, section 2591.5, as added by the Statutes of 2006, Chapter 490, requires that:

> "(a) Notwithstanding any other provisions of this article, a conservator seeking an order under Section 2590 authorizing a sale of the conservatee's personal residence shall demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the estate, are in all respects in the best interests of the conservatee.
>
> (b) A conservator authorized to sell the conservatee's personal residence pursuant to Section 2590 shall comply with the provisions of Section 10309 concerning appraisal or new appraisal of the property for sale and sale at a minimum offer price. Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the proposed sale of the property, a new appraisal shall be required prior to the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the

proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property.

(c) Within 15 days of the close of escrow, the conservator shall serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice and shall file a copy of the final escrow statement along with a proof of service with the court.

(d) The court may, for good cause, waive any of the requirements of this section, except the requirements regarding appraisal times in subdivision (b)."

The Public Guardian will thus be required to do additional assessments and evaluations in order to seek sale. The delay in sale may impact the use of county revolving funds to pay for mortgage payments, insurance and taxes. This may require the Public Guardian to use County General Fund reimbursements for funds advanced to preserve the estate. The Los Angeles County Public Guardian, is currently responsible for 162 parcels of real property, either developed or vacant land, ranging in value from $5,000 to $1.2 million.

It should be noted that if the reimbursements to the county revolving fund are insufficient to repay the amounts advanced for real property, such expenditures may be recovered pursuant to Section 2623. In this regard, an indigent fund is claimed herein[19].

The Statutes of 2006, Chapter 490 amend provisions relating to residential real property transactions. Section 2540 provides that:

"(a) Except as otherwise provided in Sections 2544 and 2545, and except for the sale of a conservatee's present or former personal residence as set forth in subdivision (b), sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

[19] See "Section 2623" heading following herein for further discussion.

(b) In seeking authorization to sell a conservatee's present or former personal residence, the conservator shall notify the court that the present or former personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee. * * *The conservator shall inform the court whether the conservatee supports or is opposed to the proposed sale and shall describe the circumstances that necessitate the proposed sale, including whether the conservatee has the ability to live in the personal residence and why other alternatives, including, but not limited to, in-home care services, are not available. The court, in its discretion, may require the court investigator to discuss the proposed sale with the conservatee. This subdivision shall not apply when the conservator is granted the power to sell real property of the estate pursuant to Article 11 (commencing with Section 2590)."

Section 2540 under prior law [the Statutes of 1990, Chapter 79] was amended by the statutes of 2006, Chapter 490 in subd. (a), inserted "present or former"; in subd. (b), in the first sentence, inserted "present or former", in the second sentence substituted "The" for "In addition, the" and substituted "personal residence and why other alternatives, including, but not limited to, in-home care services, are not available" for "residence"; and in the third sentence, substituted "Article 11 (commencing with Section 2590)" for "Section 2590".

It should be noted that duties imposed under the new [above] provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

Section 2543, as amended by Statutes of 2006, Chapter 490, specifies that:

"(a) If estate property is required or permitted to be sold, the guardian or conservator may:

(1) Use discretion as to which property to sell first.

(2) Sell the entire interest of the estate in the property or any lesser interest therein.

(3) Sell the property either at public auction or private sale.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, * * * publishing and posting notice of sale, reappraisal for sale, minimum offer price for the property, reselling the * * *property, report of sale and petition for confirmation * * *of sale, and notice and hearing of * * *that petition, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by a personal representative * * *as described in Articles 6 (commencing with Section 10300), 7 (commencing with Section 10350), 8 (commencing with Section 10360), and 9 (commencing with Section 10380) of Chapter 18 of Part 5 of Division 7. The provisions concerning sales by a personal representative as described in the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7 shall not apply to this subdivision.

(c) Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the confirmation hearing, a new appraisal shall be required prior to the confirmation hearing, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the confirmation hearing.

(d) The clerk of the court shall cause notice to be posted pursuant to subdivision (b) only in the following cases:

(1) If posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) If posting of notice of a sale governed by Section 10250 (sales of personal property) is required or authorized.

(3) * * *If posting of notice is ordered by the court."

Section 2543 under prior law [the Statutes of 1990, Chapter 79] was amended by the statutes of 2006, Chapter 490, rewrote subd. (b); inserted subd. (c); recast former subd. (c) as subd. (d); and in newly designated subd. (d), substituted "If" for "Where" two times and substituted "If" for "In any case where". Prior to amendment, subd. (b) had read:

> "(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, giving notice of sale, reselling the same property, return of sale and application for confirmation thereof, notice and hearing of such application, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by a personal representative, other than the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7."

According to the Judicial Council of California, October 12, 2007 report, attached in pertinent part in Volume II, on page 213:

> "The Omnibus Act substantially rewrote existing law concerning notice of change of residence of conservatees or wards within California. Before the new law, conservators or guardians were required merely to "promptly" mail notice to the court of all changes in the conservatee's or wards residence within the state. No specific time period within which to mail the notice was stated, no one other than the court was entitled to receive the notice or otherwise to be advised about a change in residence, and no notice to the court or anyone else in advance of the move was required."

It should be noted that duties imposed under the new provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

Section 2590, as amended by Statutes of 2006, Chapter 490, provides that:

> "The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to the requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or powers, and if consistent with Section 2591, the guardian or conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the ward or conservatee could do if possessed of legal capacity."

Under prior law, section 2590 was similar to current law. Statutes of 2006, Chapter 490 rewrote a similar provision in Statutes of 1979, Chapter 726, in the second sentence, substituted "the requirements," for "such requirements," and inserted "and if consistent with Section 2591,".

It should be noted that duties imposed under the new [above] provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

Section 2591, as amended by Statutes of 2006, Chapter 490, provides that:

> "The powers referred to in Section 2590 are:
>
> (a) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.
>
> (b) The power to operate at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.
>
> (c) The power to grant and take options.

(d)(1) The power to sell at public or private sale real or personal property of the estate, other than the personal residence of a conservatee.

(2) The power to sell at public or private sale the personal residence of the conservatee as described in Section 2591.5. The power granted pursuant to this paragraph is subject to the requirements of Sections 2352.5 and 2541.

(e) The power to create by grant or otherwise easements and servitudes.

(f) The power to borrow money and give security for the repayment thereof.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.

(i) The power to let or lease property of the estate for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.

(j) The power to lend money on adequate security.

(k) The power to exchange property of the estate.

(l) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.

(m) The power to commence and maintain an action for partition.

(n) The power to exercise stock rights and stock options.

(o) The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation,

or other modification or adjustment affecting estate property.

(p) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.

(q) The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense."

Section 2591 under prior law [the Statutes of 1979, Chapter 726] was amended by the statutes of 2006, Chapter 490, recast the paragraph in subd. (d) as subd. (d)(1), added ", other than the personal residence of a conservatee"; and added subd. (d)(2).

It should be noted that duties imposed under the new [above] provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

Section 2591.5 was added to the Probate Code, by Statutes of 2006, Chapter 490, to require that:

"(a) Notwithstanding any other provisions of this article, a conservator seeking an order under Section 2590 authorizing a sale of the conservatee's personal residence shall demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the estate, are in all respects in the best interests of the conservatee.

(b) A conservator authorized to sell the conservatee's personal residence pursuant to Section 2590 shall comply with the provisions of Section 10309 concerning appraisal or new appraisal of the property for sale and sale at a minimum offer price. Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the proposed sale of the property, a new appraisal shall be required prior to the sale of the property, unless the court finds that it is in the best interests of the

conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property.

(c) Within 15 days of the close of escrow, the conservator shall serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice and shall file a copy of the final escrow statement along with a proof of service with the court.

(d) The court may, for good cause, waive any of the requirements of this section, except the requirements regarding appraisal times in subdivision (b). "

Accordingly, section_ 2591.5, as added to the Probate Code, by Statutes of 2006, Chapter 490, imposed new duties upon county public guardians, including:

1. Demonstrating to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the estate, are in all respects in the best interests of the conservatee.

2. If the last appraisal of the conservatee's personal residence was conducted more than six months prior to the proposed sale of the property, a new appraisal is required prior to the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the proposed sale of the property.

3. Within 15 days of the close of escrow, the conservator is now required to serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and to serve a request for special notice, and, file a copy of the final escrow statement along with a proof of service with the court.

Section 2623, as amended by the Statutes of 2006, Chapter 493 provides for the recovery of unreimbursed real property and other expenses made by the public guardian on behalf of the conservatee which are deemed 'just and reasonable' by the court. Specifically, section 2623 provides for compensation of public guardian services and expenditures as follows:

> "(a) Except as provided in subdivision (b) of this section, the guardian or conservator shall be allowed all of the following:
>
> (1) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable).
>
> (2) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.
>
> (3) All reasonable disbursements made before appointment as guardian or conservator.
>
> (4) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the guardianship or conservatorship but prior to the discharge of the guardian or conservator by the court.
>
> (5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.
>
> (b) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request

> or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee."

Under prior law, section 2623 was similar to current law. Statutes of 2006, Chapter 493 recast a similar provision in Statutes of 1979, Chapter 726, in subd. (a) with pars. (1) to (5) beneath; in the introductory paragraph of subd. (a), substituted "Except as provided in subdivision (b) of this section, the" for "The" and added subd. (b).

It should be noted that duties imposed under the new [above] provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

Importantly, Probate Code section 2623, as amended by the Statutes of 2006, Chapter 493 provides for the recovery of unreimbursed real property and other expenses made by the public guardian on behalf of the conservatee which are deemed 'just and reasonable' by the court and if estate assets are not sufficient to provide full reimbursement to the County, such deficiencies are recoverable to the Public Guardian's Indigent Fund as follows:

> "If the court requires the Public Guardian to immediately become involved with personal or estate issues of a conservatee, reimbursable activities include, but are not limited to (1) finding immediate temporary placement, (2) obtaining emergency medical treatment, (3) protecting real property from foreclosure proceedings, (4) protecting the sale of personal property in property is stored. (5) Cleaning a residence that may be uninhabitable. The Public Guardian may not have access to the conservatee's funds for several weeks until bank accountings are closed or income is redirected. The conservatee may not have any funds since they may be stolen by a third party."

Accordingly, in order to facilitate protection of a client and/or property, an indigent fund is needed to pay the above unreimbursed expenses.

Temporary Conservatorships

The Public Guardian seeks temporary conservatorship appointments on selected cases to assist with placement and financial issues. The new law now requires the proposed conservatee to be given personal delivery of the notice of the appointment and that any relatives that are required to be noticed receive such notice by mail.

Section 2250 as amended by the Statutes of 2006, Chapter 493 amends the rules and procedures which public guardians must follow in establishing temporary conservatorships as follows:

> "(a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:
>
> (1) A temporary guardian of the person or estate or both.
>
> (2) A temporary conservator of the person or estate or both.
>
> (b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.
>
> (c) Unless the court for good cause otherwise orders, at least five days before the hearing on the petition, notice of the hearing shall be given as follows:
>
> (1) Notice of the hearing shall be personally delivered to the proposed ward if he or she is 12 years of age or older, to the parent or parents of the proposed ward, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. Notice of the

hearing shall not be delivered to the proposed ward if he or she is under 12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated, and that the petitioner is the nominee of the custodial parent, may constitute good cause for the court to order that this notice not be delivered.

(2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be served on the persons required to be named in the petition for appointment of conservator.

(3) A copy of the petition for temporary appointment shall be served with the notice of hearing."

Section 2250[20] was rewritten by Statutes of 2006, chapter 493 which had read:

"(a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less

[20] Former § 2250, was added by Stats.1979, c. 726, § 3, amended by Stats.1988, c. 1199, § 66.5; Stats.1988, c. 1382, § § 4, 5; Stats.1988, c. 1447, § 3, relating to similar subject matter, was repealed by Stats.1990, c. 79 (A.B.759), § 13, operative July 1, 1991.

than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 12 years of age or older or to the proposed conservatee, to the parent or parents if the proposed ward is a minor, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated and that the petitioner is the nominee of the custodial parent may constitute good cause for the court to order that this notice not be delivered.

(d) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten time for notice of the hearing.

(e) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(f) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or these appointments may be requested in separate petitions.

(g) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(h) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision

(a) or on its own motion, may appoint a temporary guardian or conservator exercise the powers of the guardian or conservator until a new guardian or conservator is appointed."

As noted in Los Angeles County's procedure manual on pages 192-193 in volume 3, the protocol for seeking temporary conservatorship is as follows:

"A temporary conservatorship of the person will be sought when, in the opinion of the Investigating Deputy, a person requires the assistance of a conservator on an expedited basis, in order to secure food, clothing and/or shelter and no other alternative to the conservatorship exists.

2.3. A temporary conservatorship of the estate will be sought when, in the opinion of the Investigating Deputy, a person is unable to manage his or her own financial affairs or is subject to undue influence or financial abuse or exploitation, to such an extent that their assets are at imminent risk of loss, waste or misappropriation.

PROCEDURES: 3.1 Temporary Conservatorship of the Person

3.1(a) When Temporary Letters of Conservatorship are issued over the person, the Investigating Deputy Public Guardian must ensure that the temporary conservatee's needs of food, clothing, and shelter are met.

3.1(b) Placement of a temporary conservatee who is living independently shall not be changed unless an emergency exists. Emergencies exist when the residence is unfit for habitation or when the temporary conservatee requires medical diagnosis or treatment that, according to medical personnel, if not provided will lead to serious disability or death. A separate petition to remove the temporary conservatee from their home must be filed unless the temporary conservatee gives consent to be moved to another location."

In a Probate Conservatorship, the authority granted to a temporary conservator is very much like that granted to a permanent conservator.

When Temporary Letters of Conservatorship are issued over the estate, or a Certificate of Authority is issued, the Investigating Deputy Public Guardian must take immediate action to protect and preserve the estate. Actions may include freezing, or taking into possession, bank accounts, stock accounts, or personal property that may be subject to misappropriation.

> "3.2(a) The Temporary Letters of Conservatorship must be filed/recorded on all real property owned by the temporary conservatee.
>
> 3.2(b) If funds are collected, care and other bill payments can/should be made under the temporary conservatorship."

In cases where the conservator is seeking temporary letters of conservatorship, the proposed conservatee must be present for the court hearing. This new requirement adds work for Public Guardian transportation staff as well as the investigator to ensure that personal legal notices are completed. County Counsel has additional work to mail out notices. Specifically, Section 2250.4, as added by the Statutes of 2006, Chapter 493, provides that:

> "The proposed temporary conservatee shall attend the hearing except in the following cases:
>
> (a) If the proposed temporary conservatee is out of the state when served and is not the petitioner.
>
> (b) If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.
>
> (c) If the court investigator has visited the proposed conservatee prior to the hearing and the court investigator has reported to the court that the proposed temporary conservatee has expressly communicated that all of the following apply:

(1) The proposed conservatee is not willing to attend the hearing.

(2) The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.

(3) The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.

(d) If the court determines that the proposed conservatee is unable or unwilling to attend the hearing, and holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from substantial harm."

Regarding changing the residence of a temporary conservatee, the Los Angeles County's procedure manual, on pages 194-195 in volume 3, specifies that:

"Therefore, the Public Guardian will be required to provide transportation to the temporary hearing. Currently, the Public Guardian transports proposed conservatees to court for the general appointment only."

Further, in fixing the new residence of the conservatee, a number of factors must be considered, as noted in Los Angeles County's procedure manual on pages 195-196 in volume 3, including location within the State, the conservatee's preference, location near prior residence and relatives if feasible, and level of care best suited to the conservatee's physical, mental and functional abilities.

Compensation

Section 2640.1 as amended by the Statutes of 2006, Chapter 493, addresses the requirements for compensation as follows:

"(a) If a person has petitioned for the appointment of a particular conservator and another conservator was appointed while the petition was pending, but not before the expiration of 90 days from the issuance of letters, the person who petitioned

for the appointment of a conservator but was not appointed and that person's attorney may petition the court for an order fixing and allowing compensation and reimbursement of costs, provided that the court determines that the petition was filed in the best interests of the conservatee.

(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order to allow both of the following:

(1) Any compensation or costs requested in the petition the court determines is just and reasonable to the person who petitioned for the appointment of a conservator but was not appointed, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith* * *.

(2) Any compensation or costs requested in the petition the court determines is just and reasonable to the attorney for that person, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith.

Any compensation and costs * * *allowed shall * * *be charged to the estate of the conservatee. If a conservator of the estate is not appointed, but a conservator of the person is appointed, the compensation and costs * * *allowed shall be ordered by the court to be paid from property belonging to the conservatee, whether held outright, in trust, or otherwise.

(d) It is the intent of the Legislature for this section to have retroactive effect."

The Los Angeles County Public Guardian is required to prepare 2,613 accounting each year. This includes both LPS and Probate Conservatorship cases. This takes into account that the court will allow us to continue filing probate cases biannually. If not, the number of accountings will increase to

2,913. The Public Guardian has 9 accounting staff whose only job requirement is to produce court accountings. The average production rate is 18 accounting per month. Even recent changes in the probate code have reduced the number of completed accountings to 15 per month. In order to meet the demand for accountings the accounting staff must be increased to 16 people, an increase of 7 people.

Recently the California Judicial Council released a summary of the new "simplified accounting schedules". The initial impression is that this simplified accounting summary is easier for the court to review, but is cumbersome and duplicative from existing documents currently prepared by court-appointed conservators. The proposed Judicial Council form would be mandated and would require more detailed documentation, the filing of original bank statements, escrow papers and care invoices. It will take longer to produce an accounting with the ancillary documentation. Not only the production of the accounting more time consuming, but it also increases the documentation for receipting income and describing expenses will also increase.

These new changes are reported in Probate Code Section 2620 list the accounting changes, documentation requirements and the ability of court personnel to conduct random or discretionary reviews. These changes clearly increase the level of service and costs.

In the event the conservator fails to file an account on a timely basis, the law allows for the conservator to be cited into court to prepare the accounting. The time limits for the public sector were reduced from 120 days to 45 days. Failure to comply with these requirements subjects the conservator to removal, punishment for contempt or other appropriate action.

Section 2640.1[21] was rewritten by the Statutes of 2006, Chapter 493 which in subd. (a), added ", provided that the court determines that the petition was filed in the best interests of the conservatee"; and rewrote subd. (c), which had read:

> "(c) Upon the hearing, the court shall make an order to allow
> (1) any compensation or costs requested in the petition the court

[21] The Statutes of 1995, Chapter 730 added section 2640.1 which was subsequently amended by the Statutes of 2006, Chapter 493.

determines is just and reasonable to the person who petitioned for the appointment of a conservator but was not appointed, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith, and (2) any compensation or costs requested in the petition the court determines is just and reasonable to the attorney for that person, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith. The compensation and costs so allowed shall thereupon be charged to the estate of the conservatee. If a conservator of the estate is not appointed, but a conservator of the person is appointed, the compensation and costs so allowed shall be ordered by the court to be paid from property belonging to the conservatee, whether held outright, in trust, or otherwise."

It should be noted that duties imposed under the new [above] provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

Additional compensation requirements are specified in Section 2641 of the Probate Code as amended by Statutes of 2006, Chapter 493, as follows:

"(a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing any compensation the court determines is just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged against the estate.

(c) The guardian or conservator shall not be compensated from

the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee."

Section 2641[22], as amended by statutes of 2006, Chapter 493, in subd. (b), substituted "is just" for "just" and added subd. (c).

It should be noted that duties imposed under the new [above] provisions as well as provisions imposed under prior law which are still-in-effect are claimed herein as duties under both types of provisions must be performed in serving the new classes of populations under section 2920(a)(1) and section 2920(b).

Thus, Public Guardian staff will now be required to copy and mail inventories and appraisals to the conservatees and other interested parties. The Los Angeles County Public Guardian prepares at least 354 inventory and appraisals each year. This will increase preparation time and require mailing of notices to an estimated 1,000 persons a year. If a party objects, the Public Guardian and his attorney may be subject to additional hearings.

New legal provisions will require the conservator to justify the sale of the conservatee's personal residence and explain why other alternatives are not available. In addition there will be new procedures for the sale and appraisals.

Further, the Public Guardian will be required to do additional assessments and evaluations in order to seek sale. The delay in sale may impact the use of the TTC revolving fund to pay for mortgage payments, insurance and taxes. This may require the Public Guardian to seek DMH or County General Funds reimbursements for funds advanced to preserve the estate. The Public Guardian is currently responsible for 162 parcels of real

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[22] Prior law includes the former § 2641, added by Stats.1979, c. 726, § 3, relating to similar subject matter, was repealed by Stats.1990, c. 79 (A.B.759), § 13, operative July 1, 1991. Former § 2641, added by Stats.1979, c. 726, § 3.

property, either developed or vacant land, ranging in value from $5,000 to $1.2 million.

Legal Services

The mandatory duties of County Counsel or where county counsel is unavailable to assume the legal duties claimed herein, of court appointed counsel, include those required to establish, maintain and modify conservatorships. The mandated legal services claimed herein are those which are required to serve the 2920(b) and Section 2920(a)(1) populations under current law[23].

Counsels must prepare the petition to establish conservatorship in accordance with Probate Code section 1821[24]:

> "(a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, the petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:
>
> (1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.
>
> (2) The location of the proposed conservatee's residence and the

[23] Current law referred to here includes the test claim legislation and other requirements which counties must comply with in carrying out the test claim legislation such as those specified in Probate Code sections 1471 [appointment, proceedings], 1472 [appointment, compensation, source for payment]; 1801 [conservator of person or estate or person and estate]; 1821 [contents of a petition, supplemental information]; and, 2355 [medical treatment of conservatee adjudicated to lack capacity to make health care decisions].

[24] Added by (Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats. 1991, c. 82 (S.B.896), § 8, eff. June 30, 1991, operative July 1, 1991; Stats.2001, c. 893 (A.B.25), § 18; Stats.2002, c. 784 (S.B.1316), § 577.)

ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

Where any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefore.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court

shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the

petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section."

It should be noted that in Los Angeles County, County Counsel represents the Public Guardian in all legal matters and acts as the attorney of record for the Public Guardian. In this legal role, counsel prepares all the petitions for conservatorship that include but are not limited to appointment petitions, Temporary Letters of Conservatorship, General Letters of Conservatorship, Inventory and Appraisals and Court Accountings. Other special petitions include Authorization to sell the personal residence of the conservatee, authority to sell other personal property including securities, unlawful detainers, restraining orders, actions to quiet title etc.

Not to be forgotten by public guardian staff in designing effective service programs is the effect of conservatorship on conservatees. In this regard the Southern California Law Review January 1988 issue, attached in pertinent part in Volume II, page141, indicates that:

> "The consequences of conservatorship are profound. For the ward, it is a passage into a degraded status. A ward is not fully competent at law. Appointment of a conservator of the person, according to the statute, is a adjudication of factual incapacity; 'inability' to provide properly for ' personal needs.' That adjudication, and the appointment of a conservator of the state, means that the ward, by virtue of the court order, thereafter 'lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.' He or she is not recognized at legally competent to sign a contract, make a gift of property, or in general manage money, real estate, or other assets. The ward is not reduced to *total* legal incompetence. Under the law, it is not impossible for a ward to make out a will marry, vote, or give informed consent for medical treatment, if the ward has actual capacity to do so. It is also possible for a ward to retain some control over an allowance, or over wages and salary. Legal competence to perform these acts, in other words, *may* coexists with conservatorship. These various rights and powers depend on and are subject to the overriding authority of the court, which can assert, deny, or restrict them, by making findings that the actual capacity of the ward does or does not meet legal criteria. The court can also broaden the legal capacity of the ward at the time the conservatorship is established, or later, but this rarely, if ever, happens."

For Los Angeles County, the cost for legal services ranges from $1,500 to $12,000 per conservatee for the first year depending on the level of potential litigation[25]. There may be occasions that a conservator must initiate legal actions to protect the conservatee and his property. By the same token, if a legal action is initiated against the conservatee, the conservator must defend any legal action.

Transportation and other services are required to comply with new hearing requirements under Section 2653, as amended by the Statutes of 2006, Chapter 493, as follows:

> "(a) The guardian or conservator, the ward or conservatee, the spouse of the ward or the spouse or registered domestic partner of the conservatee, any relative or friend of the ward or conservatee, and any interested person may appear at the hearing and support or oppose the petition.
>
> (b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto. If the guardian or conservator fails to file the accounting as ordered, the court may compel the accounting pursuant to Section 2620.2.
>
> (c) If the court removes the guardian or conservator for cause, as described in subdivisions (a) to (g), inclusive, of Section 2650 or Section 2655, both of the following shall apply:
>
> (1) The court shall award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, incurred under this article, unless the court determines that the guardian or conservator has acted in good faith, based on the best interests of the ward or conservatee.

[25] Legal costs for other counties were also surveyed and are detailed in the Statewide Cost Survey Report attached herein to the declaration of Lucille Lyon.

(2) The guardian or conservator may not deduct from, or charge to, the estate his or her costs of litigation, and is personally liable for those costs and expenses."

Section 2653[26] was modified by the Statutes of 2006, Chapter 493. In subd. (a) inserted "registered"; in subd. (b), substituted "accounting" for "account" three times, substituted "2620.2" for "2629"; and added subd. (c).

It should be noted that county public guardians often manage estates with little assets and income resulting in insufficient reimbursements from the estate for the services which must be provided under the test claim legislation. As stated in the Los Angeles Times article "For Most Vulnerable, a Promise Abandoned" , attached herein in Volume II, page 121:

> "Private conservators typically take on wards with sizable estates. e public guardian is often the only source of help for elderly with little or no money.
>
> The agency's 24-member probate staff occupies threadbare offices in the county hall of Records, partly in windowless, bunker-like space called "the stacks".
>
> Until the mid-1980s, the public guardian and public administrator, the ency that manages estates of the dead, received more than $1 million a year from Los Angeles County.
>
> The County broke them apart in 1987 to save money, folding the public guardian into the Department of Mental Health.
>
> The probate program for the elderly and incapacitated, allocated just 200,000, dangled by thread.

[26] Prior law includes Stats.2001, c. 893. Former § 2653, added by Stats.1979, c. 726, § 3, relating to similar subject matter, was repealed by Stats.1990, c. 79 (A.B.759), § 13, operative July 1, 1991. Former § 1581, enacted by Stats.1931, c. 281, p. 681, § 1581. Former § 2653, added by Stats.1979, c. 726, § 3. Stats.1850, c. 115, p. 272, § 37, amended by Stats.1869-70, c. 530, p. 792, § 2. Stats.1851, c. 124, p. 457, § 82, made applicable by Stats.1857, c. 108, p. 120, § 1. C.C.P. § 1801, amended by Code Am.1880, c. 74, p. 71, § 32.

> A 1988 county audit said the program desperately needed more staff, but the county's chief administrative officer, Richard Dixon, blocked the proposal, citing "severe budgetary constraints." Officials discussed killing it or having it refuse the indigent."

Of course now, sufficient funds can be available to reimburse counties for the costs of implementing the test claim legislation as claimed herein, where funds in estates are insufficient.

Costs Mandated by the State

This application for State reimbursement or test claim, details the specific provisions of the Omnibus Conservatorship and Guardianship Reform Act [Act] of 2006 with which county Public Guardians must now comply. These specific provisions or test claim legislation[27], qualify for State reimbursement under article XIII B, section 6 of the California Constitution, which requires, in pertinent part, that:

> "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

[27] The test claim legislation is: Statutes of 2006, Chapter 493 (A.B. No. 1363) amending Sections 1850(a), 1851(a), 2250(a), (b), (c), 2610(a), 2620(a), (b), (c), (d), (e), 2620.2(a), (b), (c), (d), 2623(a), (b), 2640(a), (b), (c), 2640.1(a), (b), (c), 2641(a), (b), 2653(a), (b), (c) and 2920(a), (b), (c) of, to add Sections 2113, 2250.4(a), (b), (c), (d), 2410, and 2923 to the Probate Code; Statutes of 2006, Chapter 492 (S.B. No 1716) amending Sections 1850(a), 1851(a); Statutes of 2006, Chapter 490 (S.BNo1116)amending sections 2352 (a), (b), (c),(d), (e), (f), 2540 (a), (b), 2543 (a), (b), (c), (d), 2590, 2591 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and to add Sections 2352.5(a), (b), (c), (d), (e) and 2591.5(a), (b), (c), (d) to the Probate Code.

(1) Legislative mandates requested by the local agency affected.

(2) Legislation defining a new crime or changing an existing definition of a crime.

(3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975." [Emphasis added.]

Here, the test claim legislation meets the requirements [above]. It was not requested by local government. It did not define a new crime or change an existing definition of a crime. It was enacted in 2006, well after January 1, 1975. And, it constitutes a new State mandated program ... not required under prior law.

County Public Guardians must now implement sweeping reforms in improving conservatorship services and in providing the improved services to many individuals not served under prior law.

Under prior law, County public guardians were not required to be conservator for two population categories. Under the test claim legislation, they are.

County public Guardians are now mandated to be conservators of last resort where no others are available [under Probate Code Section 2920(b)].

And, County Public Guardians are now mandated to be conservators for a high-risk target population [under Probate Code Section 2920(a)(1)].

The costs claimed herein in serving the [above] two population costs are detailed in the attached declarations of Lucille Lyon and James Vuong. Such costs are far in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

It should be noted that the costs claimed herein for Los Angeles County are based on recent caseloads. These may dramatically increase as explained in the "Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases, attached in Volume IV, on page 117:

> "The new licensing requirement and the increase in caseload management standards cause many private conservators to petition the court for discharge. When they are discharged, the public guardian is appointed. The private sector does this on a selective basis; the low paying cases with limited assts are the ones they are not interested in, transferring that burden to the taxpayers. Due to the funding issues, our association respectfully requests that your report include recommendations that exempt public guardians from all unfunded mandates and requests funding for public guardians."

Also, it should be noted that the costs that county public guardians will be required to expend to for computer software to implement the test claim legislation is difficult to quantify at this time. As noted in the Judicial Counsel's report, attached in pertinent part in Volume 3, on pages 130-131:

> "There are a limited number of software programs to choose from to create the forms. All of our judicial Council forms are provided by legal Solutions Plus and contain a considerable number of years worth of client files. This program is technologically inferior in its level of sophistication and manipulation of data. This is true of many forms based programs because they are generally standalone software programs. Legal Solutions Plus cannot import information from our accounting software. We would be unable to merge any data from the accounting software to Judicial Council form software. This would force us to prepare two duplicate accountings for each one required to file with the court.
>
> Previous to the requirements of AB1363, the Judicial Council had not created a mandatory form for accountings for logical reasons. Removing the technical accounting mechanical of money management from an automated process to a manual process will not lead to increased safeguard, higher standards of accountability, or increased proficiency."

Accordingly, county public guardians require reimbursement for the costs claimed herein in order to implement the test claim legislation.

Further, there are no funding disclaimers that would bar reimbursement for the costs claimed herein which are incurred in serving the populations defined in sections 1920(a)(1) and 2920(b).

There are seven disclaimers specified in GC Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in GC Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of GC Section 17556.

(a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given program shall constitute a request within the meaning of this paragraph.

(a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district.

(b) The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.

(b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(c) is not applicable as no federal law or regulation is implemented in the subject law.

(d) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.

(d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments from the estates of conservatees which are sufficient to reimbursement the county for all costs necessarily incurred in complying with the test claim legislation.

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

(e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature. It should be noted that Los Angeles County receives federal funds for performing very specific components of the Medicaid Administrative Activities [MAA] and the Targeted Case Management [TCM] program as noted in the attachment to the cost declaration of James Vuong herein. Such reimbursements for duplicative activities claim herein will be deducted from those claimed under the test claim legislation detailed herein.

(f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

(f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

(g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction."

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the captioned test claim legislation as these disclaimers are all not applicable to the subject claim.

Similar Reimbursable Duties

Similar reimbursable duties to those claimed herein have been found. For example, the "Guardianship and Conservatorship Filings" reimbursement program pursuant to Chapter 1357, Statutes of 1976 found new county public guardian and county counsel conservatorship duties to be reimbursable. According to the State Controller's Office [SCO] claiming instructions, for the Guardianship and Conservatorship Filings program[3]:

"This Chapter revised and expanded the provisions of law governing the procedures for creation of the relationship of guardian and ward and establishment of conservatorship in instances where an adult person by reason of advanced age, illness, injury, mental weakness, intemperance, addiction to drugs, or any other disability or cause is unable to properly care for himself or his property. As a result, the statute provides for appointment of a counsel to represent the interests of a proposed ward or conservatee under designated circumstances, trial by jury on the issue of whether a wardship or conservatorship should be established, a court appointed investigator to interview the potential ward or conservatee if such person is certified as unable to attend hearing proceedings,

> and a court investigator annually to review each guardianship and conservatorship initiated pursuant to this statute."

Further the costs of the county public guardian and county counsel are reimbursable as noted on page 2 of SCO's instructions[28]:

> "Costs of the Public Guardian and County Counsel are reimbursable if they are to develop from their records which document the time spent on cases in which the public guardian was appointed as conservator due to the court investigator's findings. Such costs would be eligible for reimbursement to the extent costs exceed any other court-directed function or any payment received from the estate of the conservatee."

It should be noted that the Legislature in Chapter 1357 not only concluded that this conservatorship program was reimbursable but also set forth funding directions as follows[29]:

> " ... there are state-mandated local costs in this act in subsequent years that <u>require reimbursement</u> under section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process" [Emphasis added.]

Another example of similar reimbursable duties to those claimed herein is the "Conservatorship: Developmentally Disabled Adults" reimbursement program. As noted on the first page of SCO's claiming instructions for this program [30]:

> "This Chapter provides the establishment of limited conservatorship for developmentally disabled adults, for the purpose of promoting and protecting the well-being of the individual and encourage the development of maximum self

[28] Chapter 1357, Statutes of 1976, Guardianship and Conservatorship Filings, Vol. IV, page 219.

[29] See page 217 of volume four for pertinent section of Chapter 1357, Statutes of 1976, Guardianship and Conservatorship Filings, Vol. IV, page 218

[30] Chapter 1304, Statutes of 1980, Conservatorship: Developmentally Disabled Adults, Vo. IV, page 227

reliance and independence of the individual. In any proceeding to establish or modify a limited conservatorship, the court is required to appoint the public defender or private legal counsel to represent the protected person and the protected person is entitled to a jury trial."

Also, when the amount of developmentally disabled, attorney conservatorship services [pursuant to Chapter 694, Statutes of 1975] dramatically increased, the Commission unanimously approved the request of the County of Tulare to remove this state-mandated reimbursement program from the State Mandated Apportionment System [SMAS] which only allows for cost of living increases and allow reimbursements based upon actual costs. In explaining their decision the Commission noted that[31]:

"Prior to 1969, the state housed its committed developmentally disabled and mentally retarded persons in state institutions. In 1969, the Lanterman Mental Retardation Services Act was enacted to move from the state institution system to a community-based system. This shift resulted in a substantial decline in state hospital population as those persons were transferred to local regional facilities.

In addition, the state was under threat of litigation because it had not taken sufficient action to reduce the number of persons residing in state hospitals and move those persons to community facilities. This prompted the state to develop plans to close the Stockton State Hospital and the Camarillo State Hospital. As a result, the legislature enacted legislation to close the Stockton facility in 1995, and Camarillo facility in 1996. Those patients who were judicially committed to the closed facilities were transferred to the Porterville Development Center in Tulare County.

Prior to closure of the Stockton and Camarillo facilities, Tulare County's costs for the Developmentally Disabled – Attorney Services were stable. For Fiscal year (FY) 1995-96, Tulare County's Public Defender represented 67patients from the Porterville facility, and in FY 1996-97 the caseload grew to 90.

---

[31] See Volume IV, pages 240-241

> After patients from the closed facilities were transferred, the caseload grew to 158 in FY 1997-98. Therefore, the requestor asserted that it faced a 135 percent increase in caseload during a two-year period."

A final example of similar reimbursable activities to those claimed herein is the one found in Commission's decision on Chapter 1017, Statutes of 1986. Here the Commissioners concluded that[32]:

> "The Commission on State Mandates concludes that the costs of investigations, and reports required by Chapter 1017, Statues of 1986, which exceed the amount of the allowable assessment, as determined by the State Controller, are costs mandated by the state and such are reimbursable costs."

Accordingly, the "costs mandated by the state" claimed herein meet all the [above] constitutional and statutory requirements and are similar to those found to be reimbursable in the past.

Finally, it should be noted that cost was not a determinative factor in requiring county public guardians to provide additional and expanded conservatorship services. As explained in the Judicial Counsel Task Force's "Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases", attached herein in Volume IV, on page 176:

> "If the Task Force is to accomplish anything meaningful, it must not let cost be the overriding or determinative factor in its recommendation. From the standpoint of those whose lives and basic rights are most directly impacted, fiscal costs to state and local government must be balanced with the costs to these individuals' fundamental interests in personal autonomy, human dignity an, even, liberty. We hope the Task Force will propose real reform and let state and local legislative bodies determine what priority is to be given to safeguarding the interests of those whose rights and quality of life are at stake."

[32] See Volume IV, page 236

We agree but claim herein that it is the State that is responsible for funding these desperately needed conservatorship services.

COUNTY OF LOS ANGELES

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Director

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Acting Chief Deputy Director

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County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

Declaration of Lucille Lyon

Lucille Lyon makes the following declaration and statement under oath:

I, Lucille Lyon, Division Chief, Department of Mental Health, Office of the Public Guardian of the County of Los Angeles, am responsible for implementing provisions of the Omnibus Conservatorship and Guardianship Reform Act including the test claim legislation as detailed in the attached test claim.

I declare that, it is my information or belief that the Public Guardian Department is mandated to perform services for conservatees pursuant to the test claim legislation, not required under prior law.

I declare that, it is my information or belief that the Public Guardian Department and their legal arm, County Counsel or court-appointed legal counsel, are mandated under the test claim legislation to provide conservatorship services to two new populations --- the populations defined in Probate Code Section 2920(b) and Section 2920(a)(1).

I declare that, it is my information or belief that the Probate Code section 2920(a)(1) or high-risk population is a newly identified population, not found in prior law.

I declare that, it is my information or belief that the Probate Code Section 2920(a)(1) now explicitly mandates that county Public Guardians apply to be conservators in a new category of cases where there is an 'imminent threat to the person's health or safety or [to] the person's estate', if there is 'no one else who is qualified and willing' to do so. Specifically, Probate Code Section 2920(a)(1) states that:

"(a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person, then either of the following shall apply:

The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate." [Emphasis added].

I declare that, it is my information or belief that the cost of providing the entire range of required public guardian and legal services for this 2920(a)(1) population, as detailed in the attached test claim, is reimbursable as this population is an entirely new class of individuals to be served, not found in prior law.

I declare that, it is my information or belief that the cost of providing the entire range of required public guardian and legal services for this 2920(b) population, as detailed in the attached test claim, is reimbursable as counties were not mandated to serve this population under prior law, but are now mandated to do so under the test claim legislation.

I declare that, it is my information or belief that Section 2920(b) now mandates that county Public Guardians apply to be conservators in a new category of cases specified in Section 2920(b)[1] as amended by the Statutes of 2006, Chapter 493 and that Section 2920(b)3 now requires, in pertinent part, that:

---

[1] Section 2920(b), as amended the Statutes of 2006, Chapter 493 states:
"The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator." [Emphasis added.]

> “The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person.” [Emphasis added]

I declare that, it is my information or belief that under prior law [2] there was no requirement that the court appoint the county Public Guardian in any circumstance and that the Legislature rewrote section 2920 which had read in its entirety:

> "If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:
>
> "(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.
>
> "(b) The public guardian shall apply for appointment as guardian or conservator of the person, the state, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator." [Emphasis added.]

I declare that, it is my information or belief that the Legislature rewrote Section 2920 which had provided that ‘the court may make an order...’ to the current provision that ‘the court shall order the public guardian…’ and that in so doing, the prior discretionary duty to serve the Section 2920(b) population was transformed to a mandatory duty.

---

[2] The prior version of Section 2920 was added by Statutes of 1988, Chapter 1199 in § 72.

I declare that, it is my information or belief that the newly mandated duties require the Public Guardian and its legal arm, the County Counsel, or court-appointed counsel, to provide all the services due the 2920(b) and Section 2920(a)(1) populations under current law[3].

I declare that it is my information or belief that the Public Guardian Department and its legal arm, the County Counsel, or court-appointed counsel, is mandated to perform services for conservatees under the test claim legislation, which were not required under prior law and that such services cost the County of Los Angeles well in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that it is my information or belief that County Public Guardians must comply with new training requirements, pursuant to Probate Code section 2923 as added by the Statutes of 2006, Chapter 493.

I declare that it is my information or belief that Probate Code section 2623, as amended by the Statutes of 2006, Chapter 493 provides for the recovery of unreimbursed real property and other expenses made by the public guardian on behalf of the conservatee which are deemed 'just and reasonable' by the court and if estate assets are not sufficient to provide full reimbursement to the County, such deficiencies are recoverable to the Public Guardian's indigent Fund as follows:

> If the court requires the Public Guardian to immediately become involved with personal or estate issues of a conservatee, reimbursable activities include, but are not limited to (1) finding immediate temporary placement, (2) obtaining emergency medical treatment, (3) protecting real property from foreclosure proceedings, (4) protecting the sale of personal property in property is stored. (5) Cleaning a residence that may be uninhabitable. The Public Guardian may not have access to the conservatee's funds for several weeks until bank accountings are closed or income is redirected. The conservatee may not have any funds since a third party may steal them.

Accordingly, it is my information or belief that in order to facilitate protection of a client and/or property, an indigent fund is needed to pay the above-unreimbursed expenses and in the case of Los Angeles County, $300,000 per annum is required for these purposes.

[3] Current law referred to here includes the test claim legislation and other requirements which counties must comply with in carrying out the test claim legislation such as those specified in Probate Code sections 1471 [appointment, proceedings], 1472 [appointment, compensation, source for payment]; 1801 [conservator of person or estate or person and estate]; 1821 [contents of a petition, supplemental information]; and, 2355 [medical treatment of conservatee adjudicated to lack capacity to make health care decisions].

I declare that I have conducted the attached statewide cost survey.

I declare that it is my information or belief that the attached description of activities are reasonably necessary in implementing the test claim legislation in a cost efficient manner.

Specifically, I declare that it is my information and belief that the County's State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters, which are stated as information and belief, and as to those matters I believe them to be true.

12-10-07, Los Angeles Calif.
Date and Place

[signature]
Signature

COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM

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SCHEDULE A
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
STATEWIDE COST

Period	2920 (b) "Last Resort" Cases		2920 (a)(1) "High Risk" Cases		Total Cost
1/1/07 to 6/30/07	$ 1,437,745	(A)	$ 2,446,777	(D)	$ 3,884,522
7/1/07 to 6/30/08	3,586,513	(B)	6,835,547	(E)	$ 10,422,061
7/1/08 to 6/30/09	4,133,133	(C)	7,849,127	(F)	$ 11,982,260
Grand Total	$ 9,157,392		$ 17,131,452		$ 26,288,843

Footnotes:
(A) State-wide cost from Schedule III.
(B) State-wide cost from Schedule IV.
(C) State-wide cost from Schedule V.
(D) State-wide cost from Schedule VI.
(E) State-wide cost from Schedule VII.
(F) State-wide cost from Schedule VIII.

Schedule I
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920 (b) "Last Resort" Cases - Time Period January 1, 2007 to June 30, 2007

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
ALAMEDA	1,526,148	4.0522%	$ -	58,260	$ 58,260	-	1,526,148
ALPINE	1,261	0.0033%	-	48	48	-	1,261
AMADOR	38,435	0.1021%	16,278	-	16,278	38,435	-
BUTTE	218,069	0.5790%	8,799	-	8,799	218,069	-
CALAVERAS	46,028	0.1222%	-	1,757	1,757	-	46,028
COLUSA	21,951	0.0583%	-	838	838	-	21,951
CONTRA COSTA	1,042,341	2.7676%	37,000	-	37,000	1,042,341	-
DEL NORTE	29,341	0.0779%	-	1,120	1,120	-	29,341
EL DORADO	178,674	0.4744%	-	6,821	6,821	-	178,674
FRESNO	917,515	2.4361%	-	35,026	35,026	-	917,515
GLENN	28,915	0.0768%	-	1,104	1,104	-	28,915
HUMBOLDT	131,959	0.3504%	-	5,037	5,037	-	131,959
IMPERIAL	172,672	0.4585%	-	6,592	6,592	-	172,672
INYO	18,383	0.0488%	-	702	702	-	18,383
KERN	801,648	2.1285%	-	30,602	30,602	-	801,648
KINGS	151,381	0.4019%	-	5,779	5,779	-	151,381
LAKE	64,276	0.1707%	-	2,454	2,454	-	64,276
LASSEN	36,375	0.0966%	-	1,389	1,389	-	36,375
LOS ANGELES	10,331,939	27.4329%	32,500	-	32,500	10,331,939	-
MADERA	148,721	0.3949%	0.00	5,677	5,677	-	148,721
MARIN	255,982	0.6797%	-	9,772	9,772	-	255,982
MARIPOSA	18,254	0.0485%	-	697	697	-	18,254
MENDOCINO	90,291	0.2397%	0.00	3,447	3,447	-	90,291
MERCED	251,510	0.6678%	-	9,601	9,601	-	251,510
MODOC	9,721	0.0258%	-	371	371	-	9,721
MONO	13,985	0.0371%	-	534	534	-	13,985
MONTEREY	425,960	1.1310%	-	16,261	16,261	-	425,960
NAPA	135,969	0.3610%	0.00	5,191	5,191	-	135,969
NEVADA	99,766	0.2649%	0.00	3,809	3,809	-	99,766
ORANGE	3,098,121	8.2260%	-	118,269	118,269	-	3,098,121
PLACER	324,495	0.8616%	0.00	12,387	12,387	-	324,495
PLUMAS	21,128	0.0561%	-	807	807	-	21,128
RIVERSIDE	2,031,625	5.3943%	53,208	-	53,208	2,031,625	-
SACRAMENTO	1,406,804	3.7353%	-	53,704	53,704	-	1,406,804
SAN BENITO	57,803	0.1535%	-	2,207	2,207	-	57,803
SAN BERNARDINO	2,028,013	5.3847%	-	77,418	77,418	-	2,028,013
SAN DIEGO	3,098,269	8.2264%	258,368	-	258,368	3,098,269	-
SAN FRANCISCO	808,844	2.1476%	36,500	-	36,500	808,844	-
SAN JOAQUIN	679,687	1.8047%	258,400	-	258,400	679,687	-
SAN LUIS OBISPO	264,900	0.7034%	-	10,112	10,112	-	264,900
SAN MATEO	733,496	1.9475%	-	28,001	28,001	-	733,496
SANTA BARBARA	424,425	1.1269%	-	16,202	16,202	-	424,425
SANTA CLARA	1,808,056	4.8007%	-	69,021	69,021	-	1,808,056
SANTA CRUZ	264,125	0.7013%	-	10,083	10,083	-	264,125
SHASTA	181,401	0.4816%	-	6,925	6,925	-	181,401
SIERRA	3,485	0.0093%	-	133	133	-	3,485
SISKIYOU	45,953	0.1220%	-	1,754	1,754	-	45,953
SOLANO	424,823	1.1280%	0.00	16,217	16,217	-	424,823
SONOMA	481,765	1.2792%	-	18,391	18,391	-	481,765
STANISLAUS	521,497	1.3847%	-	19,908	19,908	-	521,497
SUTTER	93,919	0.2494%	600	-	600	93,919	-
TEHAMA	61,774	0.1640%	-	2,358	2,358	-	61,774
TRINITY	14,171	0.0376%	-	541	541	-	14,171
TULARE	429,006	1.1391%	-	16,377	16,377	-	429,006
TUOLUMNE	57,223	0.1519%	-	2,184	2,184	-	57,223
VENTURA	825,512	2.1919%	-	31,513	31,513	-	825,512
YOLO	193,983	0.5151%	-	7,405	7,405	-	193,983
YUBA	70,745	0.1878%	1,286	-	1,286	70,745	-
Total	**37,662,518**	**100.00%**	**$ 702,939**	**$ 734,806**	**1,437,745**	**18,413,873**	**19,248,645**

Schedule I
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920 (b) "Last Resort" Cases - Time Period January 1, 2007 to June 30, 2007

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
Total	37,662,518	100.00%	$ 702,939	$ 734,806	$ 1,437,745	$ 18,413,873	$ 19,248,645

Notes:

[A] Source: From California Department of Finance website, "E-1 City / County Population Estimates with Annual Percent Change - January 1, 2004 and 2005." Located at www.dof.ca.gov/HTML/DEMOGRAP/repndat.htm.

[B] The county population is divided by the Total Population in [A].

[C] Source: Sample cost is the cost as reported by 9 counties that participated in the State-wide cost's survey Item #5 for this test claim.

[D] The cost is based on the percentage of the population of 49 counties that did not respond or did not incur cost's, times the total estimated cost for the entire population less the amount reported by the 9 participating counties. The computation is:
Percentage Allocation [D] = Percentage Population [B] / Non-Participating Population Percentage [I])
* Non-Participating Cost's [J].
(See computations below)

Computation of total cost of the Non-Participating counties:

Participating Population [F] 18,413,873 / Total Population [A] 37,662,518 = 48.89% [H] Participating Population Percentage

Non- Participating Population [G] 19,248,645 / Total Population [A] 37,662,518 = 51.11% [I] Non- Participating Population Percentage

Non-Participating Cost's [J] = (Participating Cost's [C] / Participating Population Percentage [H]) - Participating Cost's [C]

Non-Participating Cost's [J] = ($ 702,939 / 48.89%) - $ 702,939

Non-Participating Cost's [J] = $ 1,437,745 - $ 702,939

Non-Participating Cost's [J] = $ 734,806

Schedule II
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(b) "Last Resort" Cases - Time Period July 1, 2007 to June 30, 2008

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
ALAMEDA	1,526,148	4.0522%	$ -	145,332	$ 145,332	-	1,526,148
ALPINE	1,261	0.0033%	-	120	120	-	1,261
AMADOR	38,435	0.1021%	58,560	-	58,560	38,435	-
BUTTE	218,069	0.5790%	36,269	-	36,269	218,069	-
CALAVERAS	46,028	0.1222%	-	4,383	4,383	-	46,028
COLUSA	21,951	0.0583%	-	2,090	2,090	-	21,951
CONTRA COSTA	1,042,341	2.7676%	81,900	-	81,900	1,042,341	-
DEL NORTE	29,341	0.0779%	-	2,794	2,794	-	29,341
EL DORADO	178,674	0.4744%	-	17,015	17,015	-	178,674
FRESNO	917,515	2.4361%	-	87,373	87,373	-	917,515
GLENN	28,915	0.0768%	-	2,754	2,754	-	28,915
HUMBOLDT	131,959	0.3504%	-	12,566	12,566	-	131,959
IMPERIAL	172,672	0.4585%	-	16,443	16,443	-	172,672
INYO	18,383	0.0488%	-	1,751	1,751	-	18,383
KERN	801,648	2.1285%	-	76,339	76,339	-	801,648
KINGS	151,381	0.4019%	-	14,416	14,416	-	151,381
LAKE	64,276	0.1707%	-	6,121	6,121	-	64,276
LASSEN	36,375	0.0966%	-	3,464	3,464	-	36,375
LOS ANGELES	10,331,939	27.4329%	130,000	-	130,000	10,331,939	-
MADERA	148,721	0.3949%	314,611.18	-	314,611	148,721	-
MARIN	255,982	0.6797%	-	24,377	24,377	-	255,982
MARIPOSA	18,254	0.0485%	-	1,738	1,738	-	18,254
MENDOCINO	90,291	0.2397%	0.00	8,598	8,598	-	90,291
MERCED	251,510	0.6678%	-	23,951	23,951	-	251,510
MODOC	9,721	0.0258%	-	926	926	-	9,721
MONO	13,985	0.0371%	-	1,332	1,332	-	13,985
MONTEREY	425,960	1.1310%	-	40,563	40,563	-	425,960
NAPA	135,969	0.3610%	9,328.00	-	9,328	135,969	-
NEVADA	99,766	0.2649%	0.00	9,500	9,500	-	99,766
ORANGE	3,098,121	8.2260%	-	295,027	295,027	-	3,098,121
PLACER	324,495	0.8616%	15,045.00	-	15,045	324,495	-
PLUMAS	21,128	0.0561%	-	2,012	2,012	-	21,128
RIVERSIDE	2,031,625	5.3943%	70,920	-	70,920	2,031,625	-
SACRAMENTO	1,406,804	3.7353%	-	133,967	133,967	-	1,406,804
SAN BENITO	57,803	0.1535%	-	5,504	5,504	-	57,803
SAN BERNARDINO	2,028,013	5.3847%	-	193,123	193,123	-	2,028,013
SAN DIEGO	3,098,269	8.2264%	567,180	-	567,180	3,098,269	-
SAN FRANCISCO	808,844	2.1476%	151,200	-	151,200	808,844	-
SAN JOAQUIN	679,687	1.8047%	400,300	-	400,300	679,687	-
SAN LUIS OBISPO	264,900	0.7034%	-	25,226	25,226	-	264,900
SAN MATEO	733,496	1.9475%	-	69,849	69,849	-	733,496
SANTA BARBARA	424,425	1.1269%	-	40,417	40,417	-	424,425
SANTA CLARA	1,808,056	4.8007%	-	172,177	172,177	-	1,808,056
SANTA CRUZ	264,125	0.7013%	-	25,152	25,152	-	264,125
SHASTA	181,401	0.4816%	-	17,274	17,274	-	181,401
SIERRA	3,485	0.0093%	-	332	332	-	3,485
SISKIYOU	45,953	0.1220%	-	4,376	4,376	-	45,953
SOLANO	424,823	1.1280%	13,120.00	-	13,120	424,823	-
SONOMA	481,765	1.2792%	-	45,877	45,877	-	481,765
STANISLAUS	521,497	1.3847%	-	49,661	49,661	-	521,497
SUTTER	93,919	0.2494%	895	-	895	93,919	-
TEHAMA	61,774	0.1640%	-	5,883	5,883	-	61,774
TRINITY	14,171	0.0376%	-	1,349	1,349	-	14,171
TULARE	429,006	1.1391%	-	40,853	40,853	-	429,006
TUOLUMNE	57,223	0.1519%	-	5,449	5,449	-	57,223
VENTURA	825,512	2.1919%	-	78,612	78,612	-	825,512
YOLO	193,983	0.5151%	-	18,473	18,473	-	193,983
YUBA	70,745	0.1878%	2,648	-	2,648	70,745	-
Total	**37,662,518**	**100.00%**	**$ 1,851,976**	**$ 1,734,537**	**3,586,513**	**19,447,881**	**18,214,637**

Schedule II
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(b) "Last Resort" Cases - Time Period July 1, 2007 to June 30, 2008

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
Total	37,662,518	100.00%	$ 1,851,976	$ 1,734,537	$ 3,586,513	$ 19,447,881	$ 18,214,637

Notes:

[A] Source: From California Department of Finance website, "E-1 City / County Population Estimates with Annual Percent Change - January 1, 2004 and 2005." Located at www.dof.ca.gov/HTML/DEMOGRAP/repndat.htm.

[B] The county population is divided by the Total Population in [A].

[C] Source: Sample cost is the cost as reported by 9 counties that participated in the State-wide cost's survey Item #5 for this test claim.

[D] The cost is based on the percentage of the population of 49 counties that did not respond or did not incur cost's, times the total estimated cost for the entire population less the amount reported by the 9 participating counties. The computation is:
Percentage Allocation [D] = Percentage Population [B] / Non-Participating Population Percentage [I]) * Non-Participating Cost's [J].
(See computations below)

Computation of total cost of the Non-Participating counties:

Participating Population [F]	19,447,881				Participating
Total Population [A]	37,662,518	=	51.64%	[H]	Population Percentage
Non- Participating Population [G]	18,214,637				Non- Participating
Total Population [A]	37,662,518	=	48.36%	[I]	Population Percentage

Non-Participating Cost's [J] = (Participating Cost's [C] / Participating Population Percentage [H]) - Participating Cost's [C]

Non-Participating Cost's [J] = ($ 1,851,976 / 51.64%) - $ 1,851,976

Non-Participating Cost's [J] = $ 3,586,513 - $ 1,851,976

Non-Participating Cost's [J] = $ 1,734,537

Schudule III
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(b) "Last Resort" Cases - Time Period July 1, 2008 to June 30, 2009

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
ALAMEDA	1,526,148	4.0522%	$ -	167,481	$ 167,481	-	1,526,148
ALPINE	1,261	0.0033%	-	138	138	-	1,261
AMADOR	38,435	0.1021%	92,820	-	92,820	38,435	-
BUTTE	218,069	0.5790%	39,323	-	39,323	218,069	-
CALAVERAS	46,028	0.1222%	-	5,051	5,051	-	46,028
COLUSA	21,951	0.0583%	-	2,409	2,409	-	21,951
CONTRA COSTA	1,042,341	2.7676%	90,200	-	90,200	1,042,341	-
DEL NORTE	29,341	0.0779%	-	3,220	3,220	-	29,341
EL DORADO	178,674	0.4744%	-	19,608	19,608	-	178,674
FRESNO	917,515	2.4361%	-	100,689	100,689	-	917,515
GLENN	28,915	0.0768%	-	3,173	3,173	-	28,915
HUMBOLDT	131,959	0.3504%	-	14,481	14,481	-	131,959
IMPERIAL	172,672	0.4585%	-	18,949	18,949	-	172,672
INYO	18,383	0.0488%	-	2,017	2,017	-	18,383
KERN	801,648	2.1285%	-	87,974	87,974	-	801,648
KINGS	151,381	0.4019%	-	16,613	16,613	-	151,381
LAKE	64,276	0.1707%	-	7,054	7,054	-	64,276
LASSEN	36,375	0.0966%	-	3,992	3,992	-	36,375
LOS ANGELES	10,331,939	27.4329%	195,000	-	195,000	10,331,939	-
MADERA	148,721	0.3949%	394,962.62	-	394,963	148,721	-
MARIN	255,982	0.6797%	-	28,092	28,092	-	255,982
MARIPOSA	18,254	0.0485%	-	2,003	2,003	-	18,254
MENDOCINO	90,291	0.2397%	0.00	9,909	9,909	-	90,291
MERCED	251,510	0.6678%	-	27,601	27,601	-	251,510
MODOC	9,721	0.0258%	-	1,067	1,067	-	9,721
MONO	13,985	0.0371%	-	1,535	1,535	-	13,985
MONTEREY	425,960	1.1310%	-	46,745	46,745	-	425,960
NAPA	135,969	0.3610%	9,328.00	-	9,328	135,969	-
NEVADA	99,766	0.2649%	0.00	10,948	10,948	-	99,766
ORANGE	3,098,121	8.2260%	-	339,992	339,992	-	3,098,121
PLACER	324,495	0.8616%	21,004.00	-	21,004	324,495	-
PLUMAS	21,128	0.0561%	-	2,319	2,319	-	21,128
RIVERSIDE	2,031,625	5.3943%	70,920	-	70,920	2,031,625	-
SACRAMENTO	1,406,804	3.7353%	-	154,384	154,384	-	1,406,804
SAN BENITO	57,803	0.1535%	-	6,343	6,343	-	57,803
SAN BERNARDINO	2,028,013	5.3847%	-	222,557	222,557	-	2,028,013
SAN DIEGO	3,098,269	8.2264%	621,456	-	621,456	3,098,269	-
SAN FRANCISCO	808,844	2.1476%	151,200	-	151,200	808,844	-
SAN JOAQUIN	679,687	1.8047%	426,100	-	426,100	679,687	-
SAN LUIS OBISPO	264,900	0.7034%	-	29,070	29,070	-	264,900
SAN MATEO	733,496	1.9475%	-	80,495	80,495	-	733,496
SANTA BARBARA	424,425	1.1269%	-	46,577	46,577	-	424,425
SANTA CLARA	1,808,056	4.8007%	-	198,418	198,418	-	1,808,056
SANTA CRUZ	264,125	0.7013%	-	28,985	28,985	-	264,125
SHASTA	181,401	0.4816%	-	19,907	19,907	-	181,401
SIERRA	3,485	0.0093%	-	382	382	-	3,485
SISKIYOU	45,953	0.1220%	-	5,043	5,043	-	45,953
SOLANO	424,823	1.1280%	13,120.00	-	13,120	424,823	-
SONOMA	481,765	1.2792%	-	52,870	52,870	-	481,765
STANISLAUS	521,497	1.3847%	-	57,230	57,230	-	521,497
SUTTER	93,919	0.2494%	3,372	-	3,372	93,919	-
TEHAMA	61,774	0.1640%	-	6,779	6,779	-	61,774
TRINITY	14,171	0.0376%	-	1,555	1,555	-	14,171
TULARE	429,006	1.1391%	-	47,080	47,080	-	429,006
TUOLUMNE	57,223	0.1519%	-	6,280	6,280	-	57,223
VENTURA	825,512	2.1919%	-	90,593	90,593	-	825,512
YOLO	193,983	0.5151%	-	21,288	21,288	-	193,983
YUBA	70,745	0.1878%	5,430	-	5,430	70,745	-
Total	**37,662,518**	**100.00%**	**$ 2,134,236**	**$ 1,998,898**	**4,133,133**	**19,447,881**	**18,214,637**

Schudule III
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(b) "Last Resort" Cases - Time Period July 1, 2008 to June 30, 2009

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
Total	37,662,518	100.00%	$ 2,134,236	$ 1,998,898	$ 4,133,133	$ 19,447,881	$ 18,214,637

Notes:

[A] Source: From California Department of Finance website, "E-1 City / County Population Estimates with Annual Percent Change - January 1, 2004 and 2005." Located at www.dof.ca.gov/HTML/DEMOGRAP/repndat.htm.

[B] The county population is divided by the Total Population in [A].

[C] Source: Sample cost is the cost as reported by 9 counties that participated in the State-wide cost's survey Item #5 for this test claim.

[D] The cost is based on the percentage of the population of 49 counties that did not respond or did not incur cost's, times the total estimated cost for the entire population less the amount reported by the 9 participating counties. The computation is:
Percentage Allocation [D] = Percentage Population [B] / Non-Participating Population Percentage [I]) * Non-Participating Cost's [J].
(See computations below)

Computation of total cost of the Non-Participating counties:

Participating Population [F] / Total Population [A]	19,447,881 / 37,662,518	=	51.64%	[H]	Participating Population Percentage
Non- Participating Population [G] / Total Population [A]	18,214,637 / 37,662,518	=	48.36%	[I]	Non- Participating Population Percentage

Non-Participating Cost's [J] = (Participating Cost's [C] / Participating Population Percentage [H]) - Participating Cost's [C]

Non-Participating Cost's [J] = ($ 2,134,236 / 51.64%) - $ 2,134,236

Non-Participating Cost's [J] = $ 4,133,133 - $ 2,134,236

Non-Participating Cost's [J] = $ 1,998,898

Schedule IV
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(a)(1) "High Risk" Cases - Time Period January 1, 2007 to June 30, 2007

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
ALAMEDA	1,526,148	4.0522%	$ -	99,147	$ 99,147	-	1,526,148
ALPINE	1,261	0.0033%	-	82	82	-	1,261
AMADOR	38,435	0.1021%	119,372	-	119,372	38,435	-
BUTTE	218,069	0.5790%	67,874	-	67,874	218,069	-
CALAVERAS	46,028	0.1222%	-	2,990	2,990	-	46,028
COLUSA	21,951	0.0583%	-	1,426	1,426	-	21,951
CONTRA COSTA	1,042,341	2.7676%	1,850	-	1,850	1,042,341	-
DEL NORTE	29,341	0.0779%	-	1,906	1,906	-	29,341
EL DORADO	178,674	0.4744%	-	11,608	11,608	-	178,674
FRESNO	917,515	2.4361%	-	59,607	59,607	-	917,515
GLENN	28,915	0.0768%	-	1,878	1,878	-	28,915
HUMBOLDT	131,959	0.3504%	-	8,573	8,573	-	131,959
IMPERIAL	172,672	0.4585%	-	11,218	11,218	-	172,672
INYO	18,383	0.0488%	-	1,194	1,194	-	18,383
KERN	801,648	2.1285%	-	52,080	52,080	-	801,648
KINGS	151,381	0.4019%	-	9,835	9,835	-	151,381
LAKE	64,276	0.1707%	-	4,176	4,176	-	64,276
LASSEN	36,375	0.0966%	-	2,363	2,363	-	36,375
LOS ANGELES	10,331,939	27.4329%	39,000	-	39,000	10,331,939	-
MADERA	148,721	0.3949%	146,657.82	-	146,658	148,721	-
MARIN	255,982	0.6797%	-	16,630	16,630	-	255,982
MARIPOSA	18,254	0.0485%	-	1,186	1,186	-	18,254
MENDOCINO	90,291	0.2397%	0.00	5,866	5,866	-	90,291
MERCED	251,510	0.6678%	-	16,340	16,340	-	251,510
MODOC	9,721	0.0258%	-	632	632	-	9,721
MONO	13,985	0.0371%	-	909	909	-	13,985
MONTEREY	425,960	1.1310%	-	27,673	27,673	-	425,960
NAPA	135,969	0.3610%	27,984.00	-	27,984	135,969	-
NEVADA	99,766	0.2649%	18,945.00	-	18,945	99,766	-
ORANGE	3,098,121	8.2260%	-	201,272	201,272	-	3,098,121
PLACER	324,495	0.8616%	0.00	21,081	21,081	-	324,495
PLUMAS	21,128	0.0561%	-	1,373	1,373	-	21,128
RIVERSIDE	2,031,625	5.3943%	547,398	-	547,398	2,031,625	-
SACRAMENTO	1,406,804	3.7353%	-	91,394	91,394	-	1,406,804
SAN BENITO	57,803	0.1535%	-	3,755	3,755	-	57,803
SAN BERNARDINO	2,028,013	5.3847%	-	131,752	131,752	-	2,028,013
SAN DIEGO	3,098,269	8.2264%	99,552	-	99,552	3,098,269	-
SAN FRANCISCO	808,844	2.1476%	22,500	-	22,500	808,844	-
SAN JOAQUIN	679,687	1.8047%	120,800	-	120,800	679,687	-
SAN LUIS OBISPO	264,900	0.7034%	-	17,209	17,209	-	264,900
SAN MATEO	733,496	1.9475%	-	47,652	47,652	-	733,496
SANTA BARBARA	424,425	1.1269%	-	27,573	27,573	-	424,425
SANTA CLARA	1,808,056	4.8007%	-	117,462	117,462	-	1,808,056
SANTA CRUZ	264,125	0.7013%	-	17,159	17,159	-	264,125
SHASTA	181,401	0.4816%	-	11,785	11,785	-	181,401
SIERRA	3,485	0.0093%	-	226	226	-	3,485
SISKIYOU	45,953	0.1220%	-	2,985	2,985	-	45,953
SOLANO	424,823	1.1280%	0.00	27,599	27,599	-	424,823
SONOMA	481,765	1.2792%	-	31,298	31,298	-	481,765
STANISLAUS	521,497	1.3847%	-	33,879	33,879	-	521,497
SUTTER	93,919	0.2494%	-	6,102	6,102	-	93,919
TEHAMA	61,774	0.1640%	-	4,013	4,013	-	61,774
TRINITY	14,171	0.0376%	-	921	921	-	14,171
TULARE	429,006	1.1391%	-	27,871	27,871	-	429,006
TUOLUMNE	57,223	0.1519%	-	3,718	3,718	-	57,223
VENTURA	825,512	2.1919%	-	53,630	53,630	-	825,512
YOLO	193,983	0.5151%	-	12,602	12,602	-	193,983
YUBA	70,745	0.1878%	3,215	-	3,215	70,745	-
Total	**37,662,518**	**100.00%**	**$ 1,215,148**	**$ 1,231,630**	**2,446,777**	**18,704,410**	**18,958,108**

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Schedule IV
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(a)(1) "High Risk" Cases - Time Period January 1, 2007 to June 30, 2007

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
Total	37,662,518	100.00%	$ 1,215,148	$ 1,231,630	$ 2,446,777	$ 18,704,410	$ 18,958,108

Notes:

[A] Source: From California Department of Finance website, "E-1 City / County Population Estimates with Annual Percent Change - January 1, 2004 and 2005." Located at www.dof.ca.gov/HTML/DEMOGRAP/repndat.htm.

[B] The county population is divided by the Total Population in [A].

[C] Source: Sample cost is the cost as reported by 9 counties that participated in the State-wide cost's survey Item #5 for this test claim.

[D] The cost is based on the percentage of the population of 49 counties that did not respond or did not incur cost's, times the total estimated cost for the entire population less the amount reported by the 9 participating counties. The computation is:
Percentage Allocation [D] = Percentage Population [B] / Non-Participating Population Percentage [I]) * Non-Participating Cost's [J].
(See computations below)

Computation of total cost of the Non-Participating counties:

Participating Population [F]	18,704,410				Participating
Total Population [A]	37,662,518	=	49.66%	[H]	Population Percentage
Non- Participating Population [G]	18,958,108				Non- Participating
Total Population [A]	37,662,518	=	50.34%	[I]	Population Percentage

Non-Participating Cost's [J] = (Participating Cost's [C] / Participating Population Percentage [H]) - Participating Cost's [C]

Non-Participating Cost's [J] = ($ 1,215,148 / 49.66%) - $ 1,215,148

Non-Participating Cost's [J] = $ 2,446,777 - $ 1,215,148

Non-Participating Cost's [J] = $ 1,231,630

Schedule V
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(a)(1) "High Risk" Cases - Time Period July 1, 2007 to June 30, 2008

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
ALAMEDA	1,526,148	4.0522%	$ -	276,988	$ 276,988	-	1,526,148
ALPINE	1,261	0.0033%	-	229	229	-	1,261
AMADOR	38,435	0.1021%	374,784	-	374,784	38,435	-
BUTTE	218,069	0.5790%	271,064	-	271,064	218,069	-
CALAVERAS	46,028	0.1222%	-	8,354	8,354	-	46,028
COLUSA	21,951	0.0583%	-	3,984	3,984	-	21,951
CONTRA COSTA	1,042,341	2.7676%	3,900	-	3,900	1,042,341	-
DEL NORTE	29,341	0.0779%	-	5,325	5,325	-	29,341
EL DORADO	178,674	0.4744%	-	32,428	32,428	-	178,674
FRESNO	917,515	2.4361%	-	166,524	166,524	-	917,515
GLENN	28,915	0.0768%	-	5,248	5,248	-	28,915
HUMBOLDT	131,959	0.3504%	-	23,950	23,950	-	131,959
IMPERIAL	172,672	0.4585%	-	31,339	31,339	-	172,672
INYO	18,383	0.0488%	-	3,336	3,336	-	18,383
KERN	801,648	2.1285%	-	145,495	145,495	-	801,648
KINGS	151,381	0.4019%	-	27,475	27,475	-	151,381
LAKE	64,276	0.1707%	-	11,666	11,666	-	64,276
LASSEN	36,375	0.0966%	-	6,602	6,602	-	36,375
LOS ANGELES	10,331,939	27.4329%	240,500	-	240,500	10,331,939	-
MADERA	148,721	0.3949%	314,611.18	-	314,611	148,721	-
MARIN	255,982	0.6797%	-	46,459	46,459	-	255,982
MARIPOSA	18,254	0.0485%	-	3,313	3,313	-	18,254
MENDOCINO	90,291	0.2397%	0.00	16,387	16,387	-	90,291
MERCED	251,510	0.6678%	-	45,648	45,648	-	251,510
MODOC	9,721	0.0258%	-	1,764	1,764	-	9,721
MONO	13,985	0.0371%	-	2,538	2,538	-	13,985
MONTEREY	425,960	1.1310%	-	77,309	77,309	-	425,960
NAPA	135,969	0.3610%	46,640.00	-	46,640	135,969	-
NEVADA	99,766	0.2649%	48,631.00	-	48,631	99,766	-
ORANGE	3,098,121	8.2260%	-	562,293	562,293	-	3,098,121
PLACER	324,495	0.8616%	5,015.00	-	5,015	324,495	-
PLUMAS	21,128	0.0561%	-	3,835	3,835	-	21,128
RIVERSIDE	2,031,625	5.3943%	1,672,536	-	1,672,536	2,031,625	-
SACRAMENTO	1,406,804	3.7353%	-	255,327	255,327	-	1,406,804
SAN BENITO	57,803	0.1535%	-	10,491	10,491	-	57,803
SAN BERNARDINO	2,028,013	5.3847%	-	368,074	368,074	-	2,028,013
SAN DIEGO	3,098,269	8.2264%	222,105	-	222,105	3,098,269	-
SAN FRANCISCO	808,844	2.1476%	121,450	-	121,450	808,844	-
SAN JOAQUIN	679,687	1.8047%	138,000	-	138,000	679,687	-
SAN LUIS OBISPO	264,900	0.7034%	-	48,078	48,078	-	264,900
SAN MATEO	733,496	1.9475%	-	133,126	133,126	-	733,496
SANTA BARBARA	424,425	1.1269%	-	77,031	77,031	-	424,425
SANTA CLARA	1,808,056	4.8007%	-	328,153	328,153	-	1,808,056
SANTA CRUZ	264,125	0.7013%	-	47,937	47,937	-	264,125
SHASTA	181,401	0.4816%	-	32,923	32,923	-	181,401
SIERRA	3,485	0.0093%	-	633	633	-	3,485
SISKIYOU	45,953	0.1220%	-	8,340	8,340	-	45,953
SOLANO	424,823	1.1280%	0.00	77,103	77,103	-	424,823
SONOMA	481,765	1.2792%	-	87,438	87,438	-	481,765
STANISLAUS	521,497	1.3847%	-	94,649	94,649	-	521,497
SUTTER	93,919	0.2494%	895	-	895	93,919	-
TEHAMA	61,774	0.1640%	-	11,212	11,212	-	61,774
TRINITY	14,171	0.0376%	-	2,572	2,572	-	14,171
TULARE	429,006	1.1391%	-	77,862	77,862	-	429,006
TUOLUMNE	57,223	0.1519%	-	10,386	10,386	-	57,223
VENTURA	825,512	2.1919%	-	149,826	149,826	-	825,512
YOLO	193,983	0.5151%	-	35,207	35,207	-	193,983
YUBA	70,745	0.1878%	10,560	-	10,560	70,745	-
Total	**37,662,518**	**100.00%**	**$ 3,470,691**	**$ 3,364,856**	**6,835,547**	**19,122,824**	**18,539,694**

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Schedule V
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(a)(1) "High Risk" Cases - Time Period July 1, 2007 to June 30, 2008

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
Total	37,662,518	100.00%	$ 3,470,691	$ 3,364,856	$ 6,835,547	$ 19,122,824	$ 18,539,694

Notes:

[A] Source: From California Department of Finance website, "E-1 City / County Population Estimates with Annual Percent Change - January 1, 2004 and 2005." Located at www.dof.ca.gov/HTML/DEMOGRAP/repndat.htm.

[B] The county population is divided by the Total Population in [A].

[C] Source: Sample cost is the cost as reported by 9 counties that participated in the State-wide cost's survey Item #5 for this test claim.

[D] The cost is based on the percentage of the population of 49 counties that did not respond or did not incur cost's, times the total estimated cost for the entire population less the amount reported by the 9 participating counties. The computation is:
Percentage Allocation [D] = Percentage Population [B] / Non-Participating Population Percentage [I]) * Non-Participating Cost's [J].
(See computations below)

Computation of total cost of the Non-Participating counties:

Participating Population [F]	19,122,824				Participating
Total Population [A]	37,662,518	=	50.77%	[H]	Population Percentage
Non- Participating Population [G]	18,539,694				Non- Participating
Total Population [A]	37,662,518	=	49.23%	[I]	Population Percentage

Non-Participating Cost's [J] = (Participating Cost's [C] / Participating Population Percentage [H]) - Participating Cost's [C]

Non-Participating Cost's [J] = ($ 3,470,691 / 50.77%) - $ 3,470,691

Non-Participating Cost's [J] = $ 6,835,547 - $ 3,470,691

Non-Participating Cost's [J] = $ 3,364,856

Schedule VI
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(a)(1) "High Risk" Cases - Time Period July 1, 2008 to June 30, 2009

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
ALAMEDA	1,526,148	4.0522%	$ -	318,060	$ 318,060	-	1,526,148
ALPINE	1,261	0.0033%	-	263	263	-	1,261
AMADOR	38,435	0.1021%	490,620	-	490,620	38,435	-
BUTTE	218,069	0.5790%	277,740	-	277,740	218,069	-
CALAVERAS	46,028	0.1222%	-	9,593	9,593	-	46,028
COLUSA	21,951	0.0583%	-	4,575	4,575	-	21,951
CONTRA COSTA	1,042,341	2.7676%	8,200	-	8,200	1,042,341	-
DEL NORTE	29,341	0.0779%	-	6,115	6,115	-	29,341
EL DORADO	178,674	0.4744%	-	37,237	37,237	-	178,674
FRESNO	917,515	2.4361%	-	191,216	191,216	-	917,515
GLENN	28,915	0.0768%	-	6,026	6,026	-	28,915
HUMBOLDT	131,959	0.3504%	-	27,501	27,501	-	131,959
IMPERIAL	172,672	0.4585%	-	35,986	35,986	-	172,672
INYO	18,383	0.0488%	-	3,831	3,831	-	18,383
KERN	801,648	2.1285%	-	167,069	167,069	-	801,648
KINGS	151,381	0.4019%	-	31,549	31,549	-	151,381
LAKE	64,276	0.1707%	-	13,396	13,396	-	64,276
LASSEN	36,375	0.0966%	-	7,581	7,581	-	36,375
LOS ANGELES	10,331,939	27.4329%	500,500	-	500,500	10,331,939	-
MADERA	148,721	0.3949%	394,962.62	-	394,963	148,721	-
MARIN	255,982	0.6797%	-	53,348	53,348	-	255,982
MARIPOSA	18,254	0.0485%	-	3,804	3,804	-	18,254
MENDOCINO	90,291	0.2397%	0.00	18,817	18,817	-	90,291
MERCED	251,510	0.6678%	-	52,416	52,416	-	251,510
MODOC	9,721	0.0258%	-	2,026	2,026	-	9,721
MONO	13,985	0.0371%	-	2,915	2,915	-	13,985
MONTEREY	425,960	1.1310%	-	88,773	88,773	-	425,960
NAPA	135,969	0.3610%	46,640.00	-	46,640	135,969	-
NEVADA	99,766	0.2649%	60,333.00	-	60,333	99,766	-
ORANGE	3,098,121	8.2260%	-	645,670	645,670	-	3,098,121
PLACER	324,495	0.8616%	5,251.00	-	5,251	324,495	-
PLUMAS	21,128	0.0561%	-	4,403	4,403	-	21,128
RIVERSIDE	2,031,625	5.3943%	1,672,536	-	1,672,536	2,031,625	-
SACRAMENTO	1,406,804	3.7353%	-	293,188	293,188	-	1,406,804
SAN BENITO	57,803	0.1535%	-	12,047	12,047	-	57,803
SAN BERNARDINO	2,028,013	5.3847%	-	422,652	422,652	-	2,028,013
SAN DIEGO	3,098,269	8.2264%	246,924	-	246,924	3,098,269	-
SAN FRANCISCO	808,844	2.1476%	121,450	-	121,450	808,844	-
SAN JOAQUIN	679,687	1.8047%	146,600	-	146,600	679,687	-
SAN LUIS OBISPO	264,900	0.7034%	-	55,207	55,207	-	264,900
SAN MATEO	733,496	1.9475%	-	152,866	152,866	-	733,496
SANTA BARBARA	424,425	1.1269%	-	88,453	88,453	-	424,425
SANTA CLARA	1,808,056	4.8007%	-	376,811	376,811	-	1,808,056
SANTA CRUZ	264,125	0.7013%	-	55,045	55,045	-	264,125
SHASTA	181,401	0.4816%	-	37,805	37,805	-	181,401
SIERRA	3,485	0.0093%	-	726	726	-	3,485
SISKIYOU	45,953	0.1220%	-	9,577	9,577	-	45,953
SOLANO	424,823	1.1280%	0.00	88,536	88,536	-	424,823
SONOMA	481,765	1.2792%	-	100,403	100,403	-	481,765
STANISLAUS	521,497	1.3847%	-	108,684	108,684	-	521,497
SUTTER	93,919	0.2494%	901	-	901	93,919	-
TEHAMA	61,774	0.1640%	-	12,874	12,874	-	61,774
TRINITY	14,171	0.0376%	-	2,953	2,953	-	14,171
TULARE	429,006	1.1391%	-	89,408	89,408	-	429,006
TUOLUMNE	57,223	0.1519%	-	11,926	11,926	-	57,223
VENTURA	825,512	2.1919%	-	172,042	172,042	-	825,512
YOLO	193,983	0.5151%	-	40,427	40,427	-	193,983
YUBA	70,745	0.1878%	12,670	-	12,670	70,745	-
Total	**37,662,518**	**100.00%**	**$ 3,985,328**	**$ 3,863,799**	**7,849,127**	**19,122,824**	**18,539,694**

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Schedule VI
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
SB 2920(a)(1) "High Risk" Cases - Time Period July 1, 2008 to June 30, 2009

California: County	Population As of 1/1/07 [A]	Population Percentage [B]	Sample Cost [C]	Percentage Allocation [D]	Cost [E = C + D]	Participating Population [F]	Non-Participating Population [G]
Total	37,662,518	100.00%	$ 3,985,328	$ 3,863,799	$ 7,849,127	$ 19,122,824	$ 18,539,694

Notes:

[A] Source: From California Department of Finance website, "E-1 City / County Population Estimates with Annual Percent Change - January 1, 2004 and 2005." Located at www.dof.ca.gov/HTML/DEMOGRAP/repndat.htm.

[B] The county population is divided by the Total Population in [A].

[C] Source: Sample cost is the cost as reported by 9 counties that participated in the State-wide cost's survey Item #5 for this test claim.

[D] The cost is based on the percentage of the population of 49 counties that did not respond or did not incur cost's, times the total estimated cost for the entire population less the amount reported by the 9 participating counties. The computation is:
Percentage Allocation [D] = Percentage Population [B] / Non-Participating Population Percentage [I]) * Non-Participating Cost's [J].
(See computations below)

Computation of total cost of the Non-Participating counties:

Participating Population [F]	19,122,824				Participating
Total Population [A]	37,662,518	=	50.77%	[H]	Population Percentage
Non- Participating Population [G]	18,539,694				Non- Participating
Total Population [A]	37,662,518	=	49.23%	[I]	Population Percentage

Non-Participating Cost's [J] = (Participating Cost's [C] / Participating Population Percentage [H]) - Participating Cost's [C]

Non-Participating Cost's [J] = ($ 3,985,328 / 50.77%) - $ 3,985,328

Non-Participating Cost's [J] = $ 7,849,127 - $ 3,985,328

Non-Participating Cost's [J] = $ 3,863,799

Schedule VII

E-1: State/County Population Estimates with Annual Percent Change
January 1, 2006 and 2007

State/County/City County	Total Population 1/1/2006	 1/1/2007	Percent Change
CALIFORNIA	37,195,240	37,662,518	1.3
ALAMEDA	1,509,981	1,526,148	1.1
ALPINE	1,238	1,261	1.9
AMADOR	38,142	38,435	0.8
BUTTE	215,981	218,069	1.0
CALAVERAS	45,623	46,028	0.9
COLUSA	21,501	21,951	2.1
CONTRA COSTA	1,030,732	1,042,341	1.1
DEL NORTE	29,025	29,341	1.1
EL DORADO	176,637	178,674	1.2
FRESNO	899,872	917,515	2.0
GLENN	28,475	28,915	1.5
HUMBOLDT	131,390	131,959	0.4
IMPERIAL	167,026	172,672	3.4
INYO	18,376	18,383	0.0
KERN	779,490	801,648	2.8
KINGS	148,073	151,381	2.2
LAKE	63,737	64,276	0.8
LASSEN	35,507	36,375	2.4
LOS ANGELES	10,257,994	10,331,939	0.7
MADERA	145,198	148,721	2.4
MARIN	253,818	255,982	0.9
MARIPOSA	18,142	18,254	0.6
MENDOCINO	89,834	90,291	0.5
MERCED	246,114	251,510	2.2
MODOC	9,715	9,721	0.1
MONO	13,842	13,985	1.0
MONTEREY	423,048	425,960	0.7
NAPA	134,326	135,969	1.2
NEVADA	99,392	99,766	0.4
ORANGE	3,071,924	3,098,121	0.9
PLACER	317,498	324,495	2.2
PLUMAS	21,142	21,128	-0.1
RIVERSIDE	1,966,607	2,031,625	3.3
SACRAMENTO	1,387,771	1,406,804	1.4

Obtained from: http://www.dof.ca.gov/html/demograp/reportspapers/Estimates/E1/documents/E-1table.xls

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Schedule VII

E-1: State/County Population Estimates with Annual Percent Change
January 1, 2006 and 2007

State/County/City County	Total Population 1/1/2006	1/1/2007	Percent Change
SAN BENITO	57,513	57,803	0.5
SAN BERNARDINO	1,993,983	2,028,013	1.7
SAN DIEGO	3,064,113	3,098,269	1.1
SAN FRANCISCO	800,099	808,844	1.1
SAN JOAQUIN	668,259	679,687	1.7
SAN LUIS OBISPO	262,594	264,900	0.9
SAN MATEO	726,336	733,496	1.0
SANTA BARBARA	419,989	424,425	1.1
SANTA CLARA	1,780,449	1,808,056	1.6
SANTA CRUZ	261,385	264,125	1.0
SHASTA	179,835	181,401	0.9
SIERRA	3,493	3,485	-0.2
SISKIYOU	45,877	45,953	0.2
SOLANO	421,542	424,823	0.8
SONOMA	478,222	481,765	0.7
STANISLAUS	513,441	521,497	1.6
SUTTER	91,669	93,919	2.5
TEHAMA	60,979	61,774	1.3
TRINITY	14,108	14,171	0.4
TULARE	420,131	429,006	2.1
TUOLUMNE	57,039	57,223	0.3
VENTURA	817,315	825,512	1.0
YOLO	190,500	193,983	1.8
YUBA	69,198	70,745	2.2

Obtained from: http://www.dof.ca.gov/html/demograp/reportspapers/Estimates/E1/documents/E-1table.xls

H:\Sb90\PG's Test Calim 6-5-07-HY\Lucille Lyon Analysis\Public Guardian Test Claim Test Claim Survey [Sch.VII Survey Population Stats]

SCHEDULE VIII
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
ADJUSTED STATEWIDE AVERAGE COST PER CASE (G)

	Case Type	2920 (b) - "Last Resort" Cases			2920 (a)(1) - "High Risk" Cases		
		(D)	(E)	(F)	(D)	(E)	(F)
	Period	1/1/07 to 6/30/07	7/1/07 to 6/30/08	7/1/08 to 6/30/09	1/1/07 to 6/30/07	7/1/07 to 6/30/08	7/1/08 to 6/30/09
	County	Cost	Cost	Cost	Cost	Cost	Cost
1	Amador	$5,426	$11,712	$13,260	$5,426	$11,712	$13,260
2	Butte	984	1,909	1,966	984	1,909	1,966
3	Contra Costa	1,850	1,950	2,050	1,850	1,950	2,050
4	Los Angeles	4,150	4,565	5,022	4,150	4,565	5,022
5	Madera	0	(H)	(H)	10,476	7,491	7,899
6	Mendocino	0	0	0	0	0	0
7	Napa	0	9,328	9,328	9,328	9,328	9,328
8	Nevada	0	0	0	2,105	4,421	4,641
9	Placer	0	5,015	5,251	0	5,015	5,251
10	Riverside	1,970	1,970	1,970	5,122	7,468	7,468
11	San Diego	11,744	12,330	12,947	12,444	0	(H)
12	San Francisco	(H)	12,600	12,600	(H)	12,600	12,600
13	San Juaquin	7,830	6,065	5,918	7,830	6,065	5,918
14	Solano	0	3,280	3,280	0	(H)	0
15	Sutter	696	890	1,686	0	895	(H)
16	Yuba	(H)	(H)	(H)	(H)	(H)	905
Average Costs		$34,650	$71,614	$75,278	$59,714	$73,419	$76,308
Number of Average Cases (B)		8	12	12	10	12	12
State-wide Cost Per Case (C=A/B)		$4,331	$5,968	$6,273	$5,971	$6,118	$6,359

Footnotes:
(A) Also, see itemized survey responses (attached) totaling case cost's in survey responses item #4.
(B) These counties comprise 49% of the total population within the California population as of 1/1/07. See population data on Schedules III to VIII.
(D) Represents actual cost for the time period.
(E) Represents actual and projected cost's.
(F) Represents projected cost's.
(G) Schedule I adjusts Schedule II to reduce the effect of very high and low results. The highest and lowest cost's were removed from Schedule I. The number of counties in (B) were removed accordingly.
(H) These cost's were removed where the method in (G) above was applied.

SCHEDULE IX
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
STATEWIDE AVERAGE COST PER CASE

	Case Type	2920 (b) - "Last Resort" Cases			2920 (a)(1) - "High Risk" Cases		
		(D)	(E)	(F)	(D)	(E)	(F)
	Period	1/1/07 to 6/30/07	7/1/07 to 6/30/08	7/1/08 to 6/30/09	1/1/07 to 6/30/07	7/1/07 to 6/30/08	7/1/08 to 6/30/09
	County	Cost	Cost	Cost	Cost	Cost	Cost
1	Amador	$5,426	$11,712	$13,260	$5,426	$11,712	$13,260
2	Butte	984	1,909	1,966	984	1,909	1,966
3	Contra Costa	1,850	1,950	2,050	1,850	1,950	2,050
4	Los Angeles	4,150	4,565	5,022	4,150	4,565	5,022
5	Madera	0	157,306	131,654	10,476	7,491	7,899
6	Mendocino	0	0	0	0	0	0
7	Napa	0	9,328	9,328	9,328	9,328	9,328
8	Nevada	0	0	0	2,105	4,421	4,641
9	Placer	0	5,015	5,251	0	5,015	5,251
10	Riverside	1,970	1,970	1,970	5,122	7,468	7,468
11	San Diego	11,744	12,330	12,947	12,444	13,065	13,718
12	San Francisco	12,000	12,600	12,600	22,500	12,600	12,600
13	San Juaquin (G)	7,830	6,065	5,918	7,830	6,065	5,918
14	Solano	0	3,280	3,280	0	0	0
15	Sutter	696	890	1,686	0	895	901
16	Yuba	643	880	905	643	880	905
Average Costs		$47,293	$229,799	$207,837	$82,857	$87,364	$90,927
Number of Average Cases (B)		10	14	14	12	14	14
State-wide Cost Per Case (C=A/B)		$4,729	$16,414	$14,846	$6,905	$6,240	$6,495

Footnotes:

(A) Also, see itemized survey responses (attached) totaling case cost's in survey responses item #4.

(B) These counties comprise 49% of the total population within the California population as of 1/1/07. See population data on Schedules III to VIII..

(D) Represents actual cost for the time period.

(E) Represents actual and projected cost's.

(F) Represents projected cost's.

(G) Yearly Legal cost of $233,000 is divided between both types of cases at $116,500 for each.

COUNTY OF LOS ANGELES

MARVIN J. SOUTHARD, D.S.W.
Director

ROBIN KAY, Ph.D.
Acting Chief Deputy Director

RODERICK SHANER, M.D.
Medical Director

BOARD OF SUPERVI
GLORIA MOLINA
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ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONO

DEPARTMENT OF MENTAL HEAL

http://dmh.lacount

550 SOUTH VERMONT AVENUE, LOS ANGELES, CALIFORNIA 90020

Reply To: (213) 974-0527

July 30, 2007

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

Your County Public Guardian and your County Counsel or court-appointed legal counsel, we believe, are entitled to reimbursement for performing new conservatorship duties under the Public Guardian Omnibus Conservatorship Reform Act. I am attaching a narrative which explains why and details the types of costs which are reimbursable.

One of the conditions for receiving reimbursements under this program is that we must include a statewide estimate of costs for performing these new duties along with our test claim filing. We expect to file by the end of August 2007, near the statutory deadline for such filings. So your prompt response will really be appreciated.

We ask that if you are not the appropriate person to complete this survey that you forward the attached survey to your County official(s) responsible for providing public guardian and related legal services as soon as possible.

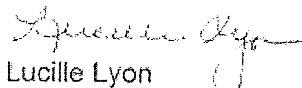
In estimating your reimbursable costs per case, please be sure to indicate your estimates of costs which are recoverable from the estate or fees, charges, and assessments. We cannot recover the same costs twice.

We would appreciate the return of your completed survey form no later than **August 23, 2007**. Please fax, email or send your survey to Lucille Lyon, Office of the Los Angeles Public Guardian, 320 West Temple Street, 15th Floor, Los Angeles, California 90012. Fax number is (213) 687-4539 ~ email is llyon@lacdmh.org.

If you wish to qualify your responses please do so in the comments section of the survey.

If you have questions in this matter, you may contact Lucille Lyon at (213) 974-0527, or llyon@lacdmh.org or Leonard Kaye, County of Los Angeles at (213) 974-8564 or lkaye@auditor.lacounty.gov.

Thanks,



Lucille Lyon

"To Enrich Lives Through Effective And Caring Service"

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Amador County

2. Contact Person(s) Carolyn McDonald, Chief Deputy PA/PC/PG
Phone(s) 209-223-6428
E-Mail(s) cmcdonald@co.amador.ca.us

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	3	22
7/1/07 – 6/30/08	5	32
7/1/08 – 7/30/09	7	37

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)	2920(a)(1)	
	PG // Legal	PG // Legal	(Costs)
1/1/07 – 6/30/07	$4,179 // $1,247	$4,179 // $1,247	
7/1/07 – 6/30/08	$8,784 // $2,928	$8,784 // $2,928	
7/1/08 – 7/30/09	$9,945 // $3,315	$9,945 // $3,315	

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b)		2920(a)(1)		Recovered Costs	
	PG	// Legal	PG	// Legal	PC	// Legal
1/1/07 – 6/30/07	$12,537	// $ 3,741	$ 91,938	// $ 27,434	$11,572	// $3,750
7/1/07 – 6/30/08	$43,920	// $14,640	$281,088	// $ 93,696	$38,000	// $7,726
7/1/08 – 7/30/09	$69,615	// $23,205	$367,965	// $122,655	$46,287	// $8,368

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....

We have calculated our amounts using actual figures from January through June 2007 and estimated our expenses for the next two years. The Legal fees include County Counsel, the Public Defender and another Court Appointed Attorney. There were no fees recovered by the Public Defender or the Court appointed attorney. They were paid through county funds.

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) _Butte County Public Guardian

2. Contact Person(s) __Diane Raitt, Administrative Analyst, Sr.
Phone(s) __(530) 538-6801
E-Mail(s) _draitt@buttecounty.net

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	___9__	____69_
7/1/07 – 6/30/08	__19__	___142_
7/1/08 – 7/30/09	_20__	___146_

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)	2920(a)(1)
	PG // Legal	PG // Legal (Costs)
1/1/07 – 6/30/07	$869.58//$114.12 ($144.93 per month)	$869.58//_$114.11_____ ($144.93 per mo)
7/1/07 – 6/30/08	$1,791.36 //$117.54 ($149.28 per mo)	$1,791.36//$117.54 ($149.28 per mo)
7/1/08 – 7/30/09	$1,845.12 // $121.07 ($153.76 per mo)	$1845.12// $121.07 ($153.76 per mo)

5.Please multiply the number of cases in #3. by the costs in #4.

2920(b)	2920(a)(1)
PG // Legal	PG // Legal(Recovered Costs)

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1/1/07 – 6/30/07	$ 7,772//_$1,027_____	$60,001//__$7,873____
7/1/07 – 6/30/08	$34,036 //_$2,233_____	$254,373//_$16,691_____
7/1/08 – 7/30/09	$36,902// $2,421	$269,388// _$8,352//$17,676

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here….

- #3 indicates referrals for conservatorship
- Butte County has a current active caseload of 257 conservatees

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

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County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Albert Flanagan PG supervisor, and Ednah Friedman, PG/PC Program Manager

2. Contact Person(s) Albert Flanagan

Phone(s) 925-646-2970
E-Mail(s) aflanaga@hsd.cccounty.us

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	20	1
7/1/07 – 6/30/08	42	2
7/1/08 – 7/30/09	44	4

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)	2920(a)(1)
	PG // Legal	PG // Legal (Costs)
1/1/07 – 6/30/07	$1400 //$450	$1400//$450
7/1/07 – 6/30/08	$1500 //$450	$1500//$450
7/1/08 – 7/30/09	$1600 //$450	$1600//$450

5.Please multiply the number of cases in #3. by the costs in #4.

2920(b) 2920(a)(1)

	PG // Legal	PG // Legal (Recovered Costs)
1/1/07 – 6/30/07	$28,000//$9,000______	$1,400//$450______
7/1/07 – 6/30/08	$63,000//$18,900_	$3,000//$900______
7/1/08 – 7/30/09	$70,400//$19,800 _____	$6,4,00//$1,800 ______

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here….
See attachment

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Los Angeles County Public Guardian

2. Contact Person(s) ___Lucille Lyon ___________________
Phone(s) ___213-974-0415 ___________________
E-Mail(s) ___LLyon@lacdmh.org_______________

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	10	12
7/1/07 – 6/30/08	20	37
7/1/08 – 7/30/09	30	77

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to subtract your estimates of costs which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)		2920(a)(1)	
	PG	// Legal	PG	// Legal
1/1/07 – 6/30/07	$1,850	// $2,300	$1,850	// $2,300
7/1/07 – 6/30/08	$2,035	// $2,530	$2,035	// $2,530
7/1/08 – 7/30/09	$2,239	// $2,783	$2,239	// $2,783

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b)		2920(a)(1)	
	PG	// Legal	PG	// Legal
1/1/07 – 6/30/07	$18,500	// $23,000	$22,200	// $27,600
7/1/07 – 6/30/08	$40,700	// $50,600	$75,295	// $93,610
7/1/08 – 7/30/09	$67,170	// $83,490	$172,403	// $214,291

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....

____

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7. Thank you. Please return your responses to:
LLyon etc .... Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s): DENNIS D BLESSING

2. Contact Person(s) DENNIS D BLESSING
Phone(s) (559) 675-7766 x 2651
E-Mail(s) dblessing@madera-county.com

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	0	14
7/1/07 – 6/30/08	2	42
7/1/08 – 7/30/09	3	50

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)	2920(a)(1)
	PG // Legal	PG// Legal (Costs)
1/1/07 – 6/30/07	0.00 // 0.00	$8,975.76//$1,500.00
7/1/07 – 6/30/08	$141,805.59//$15,500.00	$6752.65//$738.10
7/1/08 – 7/30/09	$117,987.54//$13,666.67	$7079.26//$820.00

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b)	2920(a)(1)
	PG // Legal	PG//Legal(Recovered Costs)
1/1/07 – 6/30/07	0.00//0.00	$125,657.82//$21,000.00
7/1/07 – 6/30/08	$283,611.18//$31,000.00	$283,611.18//$31,000.00

7/1/08 – 7/30/09 $353,962.62// $41,00.00 $353,962.62// $41,000.00

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here….

This office because of the increased work load caused by the Public Guardian ombudsman conservatorship Reform Law has requested two new positions for the second year in a row. The first requests for new staff was denied last year. It is unknown at this point if this will be enough staff to fulfill the requirements the new laws have set forth.

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Mendocino Co. PG

2. Contact Person(s) Jack Bauman, DPG
Phone(s) (707) 463-7907
E-Mail(s) baumanj@mcdss.org

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	-0-	-0-
7/1/07 – 6/30/08	Unk.	Unk.
7/1/08 – 7/30/09	Unk.	Unk.

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)		2920(a)(1)		
	PG	// Legal	PG	// Legal	(Costs)
1/1/07 – 6/30/07	______	//______	______	//______	
7/1/07 – 6/30/08	______	//______	______	//______	
7/1/08 – 7/30/09	______	//______	______	//______	

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b)		2920(a)(1)		
	PG	// Legal	PG	// Legal	(Recovered Costs)
1/1/07 – 6/30/07	______	//______	______	//______	
7/1/07 – 6/30/08	______	//______	______	//______	

7/1/08 – 7/30/09 ______// ______ ______// ______

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....

7. Thank you. Please return your responses to: Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Napa County Public Guardian

2. Contact Person(s) Kelli Lyerla (PG) and Linda Holbrook (County Counsel's office)
Phone(s) (707) 253-4049/ (707) 259-8251
E-Mail(s) klyerla@co.napa.ca.us and lholbroo@co.napa.ca.us

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	0	3
7/1/07 – 6/30/08	1	5
7/1/08 – 7/30/09	1	5

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b) PG // Legal	2920(a)(1) PG // Legal (Costs)
1/1/07 – 6/30/07	0 // 0	8100 // 1228
7/1/07 – 6/30/08	8100 // 1228	8100 // 1228
7/1/08 – 7/30/09	8100 // 1228	8100 // 1228

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b) PG // Legal	2920(a)(1) PG // Legal (Recovered Costs)
1/1/07 – 6/30/07	0 // 0	24,300 // 3684

7/1/07 – 6/30/08 8100__//__1228____ 40,500_//_6140_____
7/1/08 – 7/30/09 8100__//_1228_____ 40,500_//_6140___

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here….
_The costs are based on an average amount for a first year's accounting, including bond fees.

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) County of Nevada, Office of the Public Guardian

2. Contact Person(s) Mark Nagafuchi, Program Manager, Dept. of Social Services

Phone(s) (530) 265-1639

E-Mail(s) mark.nagafuchi@co.nevada.ca.us

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07		9
7/1/07 – 6/30/08		11
7/1/08 – 6/30/09		13

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b) PG // Legal	2920(a)(1) PG // Legal	(Costs)
1/1/07 – 6/30/07	//	$1,681//$ 424	
7/1/07 – 6/30/08	//	3,531// 890	
7/1/08 – 6/30/09	//	3,707// 934	

5.Please multiply the number of cases in #3. by the costs in #4.

(Recovered Costs)	2920(b) PG // Legal	2920(a)(1) PG // Legal
1/1/07 – 6/30/07	______//______	$15,129//$ 3,816
7/1/07 – 6/30/08	______//______	38,841/ 9,790
7/1/08 – 6/30/09	______// ______	48,191/ 12,142

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here….

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7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) **Eldon Luce, Placer County**

2. Contact Person(s) **Eldon Luce, Public Guardian Manager**
Phone(s) **(530) 886-3686**
E-Mail(s) **eluce@placer.ca.gov**

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	**0**	**0 weren't tracking increases**
7/1/07 – 6/30/08	**3**	**1**
7/1/08 – 7/30/09	**4**	**1**

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b) PG // Legal	2920(a)(1) PG // Legal	(Costs)
1/1/07 – 6/30/07	______//______	______//______	
7/1/07 – 6/30/08	**4,315 // 700**	**4,315 // 700**	
7/1/08 – 7/30/09	**4,531 // 720**	**4,531 // 720**	

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b) PG // Legal	2920(a)(1) PG // Legal	(Recovered Costs)
1/1/07 – 6/30/07	______//______	______//______	
7/1/07 – 6/30/08	**12,945 // 2,100**	**4,315 // 700**	

7/1/08 – 7/30/09 **18,124 // 2,880** **4,531 // 720**

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here….

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) ____Riverside Co.________________

2. Contact Person(s) __William J. van der Poorten
Phone(s) _951/341-6440____________________
E-Mail(s) _wjvanderpoorten@rcmhapps.org_

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	__27__	___109___
7/1/07 – 6/30/08	__54	___227___
7/1/08 – 7/30/09	__75____	___230___

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)	2920(a)(1)	
	PG // Legal	PG // Legal	(Costs)
1/1/07 – 6/30/07	1,184. // 786.	4,322. // 800.	
7/1/07 – 6/30/08	1,184. // 786.	6,668. // 800.	
7/1/08 – 7/30/09	1,184. // 786.	6,668. // 800.	

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b)	2920(a)(1)
	PG // Legal	PG // Legal (Recovered Costs)
1/1/07 – 6/30/07	31,986.// 21,222.	471,098. // 76,300.
7/1/07 – 6/30/08	42,624.// 28,296.	1,513,636. // 158,900.

7/1/08 – 7/30/09   42,624.// 28,296.   1,513,636. // 158,900.

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....

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7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) San Diego County

2. Contact Person(s) Terrance Corrigan
Phone(s) (858) 694-3568
E-Mail(s) terrance.corrigan@sdcounty.ca.gov

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	22	8
7/1/07 – 6/30/08	46	17
7/1/08 – 7/30/09	48	18

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b) PG // Legal	2920(a)(1) PG // Legal	(Costs)
1/1/07 – 6/30/07	6254 // 5490	6405 // 6039	
7/1/07 – 6/30/08	6566 // 5764	6725 // 6340	
7/1/08 – 7/30/09	6895 // 6052	7061 // 6657	

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b) PG // Legal	2920(a)(1) PG // Legal	(Recovered Costs)
1/1/07 – 6/30/07	137588 // 120,780	51240 // 48312	
7/1/07 – 6/30/08	302,036 // 265,144	114,325 // 107,780	

7/1/08 – 7/30/09 3,096,011 290,496 1,270,811 119,826

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here….

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Mary Ann Warren/Ann Bellesi_

2. Contact Person(s) Mary Ann Warren/Ann Bellesi
Phone(s) __415-355-2520/415-355- 3532
E-Mail(s) maryann.warren@sfgov.org; ann.bellesi@sfgov.org

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	_3_____	____1_____
7/1/07 – 6/30/08	12	7
7/1/08 – 7/30/09	12	7

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)	2920(a)(1)	
	PG // Legal	PG // Legal	(Costs)
1/1/07 – 6/30/07	7000//5000	12,500//10,000	
7/1/07 – 6/30/08	7350//5250	7350//5250	
7/1/08 – 7/30/09	7350//5250	7350//5250	

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b)	2920(a)(1)	
	PG // Legal	PG // Legal	(Recovered Costs)
1/1/07 – 6/30/07	21,500//15,000	12,500//10,000	

7/1/07 – 6/30/08	88,200//63,000	51,450//70,000
7/1/08 – 7/30/09	88,200//63,000	51,450//70,000

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....
These are rough estimates in terms of both numbers of cases and expenses. Our current hourly fee for conservator services is $125 and for attorney is $225.

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) _Scarlet D. Hughes

2. Contact Person(s) **Scarlet Hughes, M.S.W.**
Public Guardian/Conservator
San Joaquin County - HCS - BHS
Phone: (209) 468-3749
Fax: (209) 468-9931

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	33	1
7/1/07 – 6/30/08	66	5
7/1/08 – 7/30/09	72	7

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)		2920(a)(1)		
	PG	// Legal	PG	// Legal	(Costs)
1/1/07 – 6/30/07	4,300//	______	4,300//	______	
7/1/07 – 6/30/08	4,300//	______	4,300//	______	
7/1/08 – 7/30/09	4,300//	______	4,300//	______	

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b) PG // Legal	2920(a)(1) PG // Legal (Recovered Costs)
1/1/07 – 6/30/07	$141,900//______	$ 4,300//______
7/1/07 – 6/30/08	$283,800//______	$21,500//______
7/1/08 – 7/30/09	$309600// ______	$30,100// ______

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....

I don't know the cost for my County Counsel per case. But my yearly County Counsel cost for probate cases is $233,000. Almost all of this would be for either 2920(b) or 2930(a)(1) cases.

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Solano County Public Guardian

2. Contact Person(s) Emily Smith
Phone(s) 707 -784-8514
E-Mail(s) eosmith2@solanocounty.com

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07		
7/1/07 – 6/30/08	4	
7/1/08 – 7/30/09	4	

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b) PG	// Legal	2920(a)(1) PG	// Legal (Costs)
1/1/07 – 6/30/07				
7/1/07 – 6/30/08	3,280			
7/1/08 – 7/30/09	3,280			

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b) PG	// Legal	2920(a)(1) PG	// Legal (Recovered Costs)
1/1/07 – 6/30/07				
7/1/07 – 6/30/08	13,120			

7/1/08 – 7/30/09 13,120// ______ ______// ______

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....
Please see separate attacements for cooments.

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Janet Wade

2. Contact Person(s) Janet Wade, Sutter County
Phone(s) 530-822-7250
E-Mail(s) jwade@co.sutter.ca.us

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	1	-0-
7/1/07 – 6/30/08	1	1
7/1/08 – 7/30/09	2	1

4. Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations — the 2920(b) population type and the 2920(a)(1) population type.

	2920(b) PG // Legal	2920(a)(1) PG // Legal	(Costs)
1/1/07 – 6/30/07	600.00 // 96.00	-0- // -0-	
7/1/07 – 6/30/08	785.00 // 110.00	785.00 // 110	
7/1/08 – 7/30/09	1570.00 // 116.00	785.00 // 116.00	

5. Please multiply the number of cases in #3. by the costs in #4.

	2920(b) PG // Legal	2920(a)(1) PG // Legal	(Recovered Costs)
1/1/07 – 6/30/07	600.00 // -0-	-0- // -0-	
7/1/07 – 6/30/08	785 // 110	785 // 110.00	

7/1/08 – 7/30/09 3140.00 // 232.00 785.00 // 116.00

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....

SUTTER COUNTY PREPARE COURT ACCOUNTINGS ANNUALLY LPS AND PROBATE CONSERVATEES. FEES ARE TAKEN AT THAT TIME. FEES ARE BASED ON THE BALANCE IN THE CONSERVATEES ACCOUNT. UNDER 400.00 WE TAKE ZERO FEES. OVER $400.00 ITS 30% TO CONSERVATOR - 10% TO ATTORNEY - OR $600.00/250.00 IF BALANCE IS OVER $2001-$50,000.

7. Thank you. Please return your responses to:
Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: (), Attention:

SUTTER COUNTY CASE LOAD IS:

41 LPS
31 PROBATE

STAFF: PUBLIC GUARDIAN CONSERVATOR -
DEPUTY CONSERVATOR -
2 - EXTRA HIRE STAFF:
ACCOUNT CLERK II
OFFICE ASSISTANT II

County of Los Angeles Test Claim Cost Survey
Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) YuBA County Public Guardian

2. Contact Person(s) CHRISTINA R. Billeci FAX - 530-740-4928
Phone(s) 530-749-6306
E-Mail(s) CBilleci @ co. yuba. ca. us

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	2	5
7/1/07 – 6/30/08	4	12
7/1/08 – 7/30/09	6	14

4. Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to indicate your estimates of costs, which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services, which are typically required in carrying out conservatorships for the two populations — the 2920(b) population type and the 2920(a)(1) population type.

	2920(b) PG // Legal	2920(a)(1) PG // Legal (Costs)
1/1/07 – 6/30/07	$526. // 117	$ 526. // 117.
7/1/07 – 6/30/08	545. // 335.	545. // 335.
7/1/08 – 7/30/09	560. // 345.	560. // 345.

5. Please multiply the number of cases in #3. by the costs in #4.

	2920(b) PG // Legal	2920(a)(1) PG // Legal (Recovered Costs)
1/1/07 – 6/30/07	$1052. // 234.	$2630. // 585.00
7/1/07 – 6/30/08	2180. // 468.	6540. // 4020.00

7/1/08 – 7/30/09 $3360. $2070. $7840. $4830.

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....

7. Thank you. Please return your responses to: Llyon@lacdmh.org Or Lkaye@auditor.lacounty.gov and alternatively, fax to: (), Attention:

COUNTY OF LOS ANGELES

MARVIN J. SOUTHARD, D.S.W.
Director

ROBIN KAY, Ph.D.
Acting Chief Deputy Director

RODERICK SHANER, M.D.
Medical Director

550 SOUTH VERMONT AVENUE, LOS ANGELES, CALIFORNIA 90020

BOARD OF SUPERVISORS

GLORIA MOLINA
YVONNE B. BURKE
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

DEPARTMENT OF MENTAL HEALTH

http://dmh.lacounty.gov

Reply To: James Vuong
Fiscal Officer
320 West Temple Street, Room 1500
Los Angeles, California 90012
Telephone: (213) 974-0483
Fax: (213) 687-4539
E-Mail: jvuong@lacdmh.org

County of Los Angeles Test Claim
Public Guardian Ominbus Conservatorship Reform

Declaration of James Vuong

James Vuong makes the following declaration and statement under oath:

I, James Vuong, Fiscal Officer I for the Los Angeles County Department of Mental Health/Public Guardian office, am responsible for recovering the costs of complying with new State mandated programs, including provisions of the Ominbus Conservatorship and Guardianship Reform Act as claimed herein.

I declare that, it is my information or belief that the Los Angeles County Public Guardian is mandated to perform services for conservatees pursuant to the test claim legislation and is incurring costs well in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that I have prepared the attached schedules detailing Los Angeles County's costs in implementing the test claim legislation.

I declare that it is my information and belief that the attached schedules fairly represent Los Angeles County's costs in implementing the test claim legislation.

I declare that it is my information and belief that the County's State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which

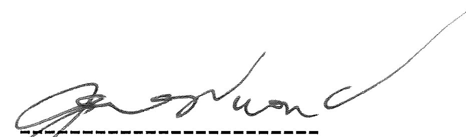
mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

12/5/07 Los Angeles CA

Date and Place



Signature

COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
JAMES VOUNG DECLARATION - COST SCHEDULE

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12/8/2007

SCHEDULE I
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
LOS ANGELES COUNTY COST SUMMARY

Time Period	Case Type					
	2920 (b) - "Last Resort" Cases			2920 (a)(1) - "High Risk" Cases		
	Cost			Cost		
	Cost per Case (A)	Number of Cases (B)	Total Cost	Cost per Case (A)	Number of Cases (B)	Total Cost
1/1/07 to 6/30/07	$ 4,150	10	$ 41,500	$ 4,150	12	$ 49,800
7/1/07 to 6/30/08	4,565	20	91,300	4,565	37	168,905
7/1/08 to 6/30/09	5,022	30	150,645	5,022	77	386,656

Footnotes:
(A) Cost per case is from Schedule II.
(B) Number of cases is from the Los Angeles County Cost Survey.

SCHEDULE II
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
LOS ANGELES COUNTY COSTS (C)

	Time Period	Case Type					
		2920 (b) - "Last Resort" Cases			2920 (a)(1) - "High Risk" Cases		
		Cost			Cost		
		Public Guardian	Legal	(A) Total Cost	Public Guardian	Legal	(A) Total Cost
(B)	1/1/07 to 6/30/07	$ 1,850	$ 2,300	$ 4,150	$ 1,850	$ 2,300	$ 4,150
	7/1/07 to 6/30/08	2,035	2,530	4,565	2,035	2,530	4,565
	7/1/08 to 6/30/09	2,239	2,783	5,022	2,239	2,783	5,022

Footnotes:

(A) Case costs do not include one time costs such as computer hardware, software, procedure and policy modifications, which are necessary in complying with test claim legislation.

(B) The Public Guardian costs are based upon a sample of cases as follows:

Sample Analysis (B)			
Name	Time Period	Cost	
Jane Doe # 1	1/30/07 to 9/14/07	$ 2,238.31	
Jane Doe # 2	2/22/07 to 8/16/07	1,355.33	
Jane Doe # 3	5/31/07 to 8/16/07	1,037.16	
Jane Doe # 4	2/6/07 to 9/14/07	2,767.87	(D)
Total Cost		7,398.67	
Number of Cases		4	
Average Cost		$ 1,849.67	

(C) See Schedule III for possible offsetts to counter costs for performing specific duties.

(D) As an example of computational methodogy, see detailed itemized time and cost for performing activities required under test claim legislation for Jane Doe #4 in Schedule IV.

H:\Sb90\PG's Test Calim 6-5-07-HY\James Voung Cost Analysis\Public Guardian Test Claim Test Claim Survey - Los Angeles [Schedule II]
12/8/2007

SCHEDULE III
COUNTY OF LOS ANGELES
PUBLIC GUARDIAN OMNIBUS CONSERVATORSHIP REFORM TEST CLAIM
COSTS OFFSETS (A)

Period	MAA Billings	TCM Billings	Total Cost
Fiscal Year 2006-07 3rd Quarter 1-1-07 to 3-31-07	$ 282,861	$ 276,677	$ 559,538
Fiscal Year 2006-07 4th Quarter 4-1-07 to 6-30-07	297,004	276,677	$ 573,681
Grand Total	$ 579,865	$ 553,354	$ 1,133,219

Footnotes:
(A) Medi-Cal Administratrive Activities (MAA) and Targeted Case Management (TCM) reimbursements received for performing specified activities and other activities reimbursed by the Federal government. The activities may overlap with the activities found to be reimbursable for Los Angeles in which case those specific Federal reimbursements will be deducted from the those identical activities claimed herein.

Schedule IV (A)

INVESTIGATION ONLY
ESTIMATED COST
CONSERVATORSHIP OF: SIMS, RUSHIE
CASE NUMBER: 2981513G
FOR PERIOD: 02/06/07 TO 09/14/07

Task	ITC	DPG	SR. DPG	TOTAL
Intake Process				
Mail distribution				
Open correspondence		0.25	1.75	
Direct mail to Intake				
Review Referral			1	
Data Entry-Initial				
Assign Referral			0.25	
Conduct Investigation				
Face-to-Face Interview			3.5	
Conduct assessmts				
Interview with ref. party				
Interview with family				
Interview with friends				
Review of Med. Rec				
Review Fin. Rec				
Inspect residence				
Document investigation				
Decide to appoint/reject			3.5	
Rejection				
Write rejection rept				
Rejection reviewed				
Send out decision				
Update data				
Close case file				
Store case file				
HOURS	0	0.25	10	10.25
RATE	16.47	26.07	27.53	70.07
SALARY	-	6.52	275.25	281.77
EB (Salary * 44.7744%)	-	2.92	123.24	126.16
OH (Salary * 11.8793%)	-	0.77	32.70	33.47
TOTAL (SALARY+EB+OH)	$ -	$ 10.21	$431.19	$ 441.40

Footnotes:
(A) The costs for Jane Doe #4 is the sum of $441.40 on this page and $2,326.47 on the last page.

Schedule IV

1ST YEAR
ESTIMATED COST
CONSERVATORSHIP OF: SIMS, RUSHIE
CASE NUMBER: 2981513G
FOR PERIOD: 02/06/07 TO 09/14/07

Task	ITC	STC	CAA	DPG	SDPG	AT 1	AT 2	Acct 2	Acct 3	FO 1	Driver	Asst DC	DC	Director	Counsel	TOTAL
Intake Process																
Mail distribution																
Open correspondence																
Direct mail to Intake																
Review Referral																
Data Entry-Initial																
Assign Referral																
Conduct Investigation																
Face-to-Face Interview				18	6											
Conduct assessmts																
Interview with ref. party																
Interview with family																
Interview with friends																
Review of Med. Rec																
Review Fin. Rec																
Inspect residence																
Document investigation																
Decide to appoint																
Rejection																
Write rejection rept																
Rejection reviewed																
Send out decision																
Update data																
Close case file																
Store case file																
Acceptance																
Write report																
Report reviewed																
Obtain med. Declaration																
Send out decision																
Send report to counsel																
Update data																
Court Process																
Prepare Petition																
Prepare Notice				0.5												
Serve interested persons																
Serve citation											1					
Request PVP apptmt																
Transport client to court																
Appear in Court				6.25												
Appointment approved																
Court Trial Process																
Mediation																

Schedule IV

Task	ITC	STC	CAA	DPG	SDPG	AT 1	AT 2	Acct 2	Acct 3	FO 1	Driver	Asst DC	DC	Director	Counsel	TOTAL
Appointmen denied																
Notification to parties																
Update data																
2900 Powers																
Prepare Certification																
Execute certification																
Collect assets																
Inventory assets																
Deposit assets																
Hold assets																
Document activities																
Temp appointmt																
Update data																
Mail t/c to inter.parties				7.25	3.75											
Prepare case file																
Conduct cursory search																
Secure residence					6											
Marshall PP																
.bank accounts																
.stocks																
.safe deposit box																
.furniture/furnishings																
.pets																
Placement if necessary																
.Placement assessmt				4.5												
.arrange for new residence																
.transport or arrange																
.Move personal effects																
Update data					3											
General appointment																
Conduct cursory search																
Secure residence																
Marshall PP																
.bank accounts																
.stocks																
.safe deposit box																
.furniture/furnishings																
.pets																
Marshall Real Prop																
File letters																
Obtain property profile																
Obtain title report																
Change utilities or close																
Arrange for inventory of pp																
Remove PP from residence																
Develop care plan																
.identify housing needs																
.identify medical needs																
.identify clothing needs																

Schedule IV

Task	ITC	STC	CAA	DPG	SDPG	AT 1	AT 2	Acct 2	Acct 3	FO 1	Driver	Asst DC	DC	Director	Counsel	TOTAL
.identify other social needs																
.Identify educational needs																
Develop service plan																
.address legal issues																
.address placement																
.address clothing/PI needs																
.address treatment																
.det. Personal preferences																
Develop estate plan																
.Benefit application																
.Rdirect benefits																
.Decide on pp disposition																
.Decide on rp disposition																
.Develop montly budget																
.Examine debts																
Compromise debts if needed																
Obtain probate referee																
Inventory assets																
Prepare inventory/appraisal																
Conduct monthly visits																
Document all activities																
Consult with family/friends																
Sign admission agreements																
Sign medical consent auth																
Sign release of information																
Track client's placement																
Obtain/sign k for placement																
Court notifications																
.care plans																
.Placement assessmt																
.Placement changes																
Special Court petitions																
.eviction																
.restraining orders																
.examination of witness-asts																
.recovery of assets																
.quiet title action																
.substitute decisions																
.medical surgery																
.authorization to sell rp																
.authorization to sell pp																
Deposit income																
.record income																
Paying expenses																
.authorize payment																
.process payment																
.maintain documentation																
.sending checks																
.maintaining acct																

Schedule IV

Task	ITC	STC	CAA	DPG	SDPG	AT 1	AT 2	Acct 2	Acct 3	FO 1	Driver	Asst DC	DC	Director	Counsel	TOTAL
Insurance review/processing																
Prepare court accounting																
Processing court account																
Court appearances																
.initial appointment																
.special petitions																
.court accountings																
Documentation																
.investigations																
.demographic information																
.preferences																
.medical condition																
.psychiatric conditions																
.placement																
.relatives																
.case notes																
Terminations																
Notification to parties																
Burial arrangments																
Filing will																
Distribution Process																
.13100 Affidavid																
.Formal estate																
Collection of assets																
Compromise debts if needed																
Final account petition																
Final distribution of assets																
Payment of fees																
Affidavid of Final Distribution																
Revolving Fund																
PVP attorney Fund																
HOURS	0	0	0	36.5	18.75	0	0	0	0	0	1	0	0	0	0	56.25
RATE	16.47	18.55	19.06	26.07	27.53	18.69	20.75	24.94	27.94	40.33	17.46	42.06	48.53			
SALARY	0.00	0.00	0.00	951.59	516.10	0.00	0.00	0.00	0.00	0.00	17.46	0.00	0.00	0.00		1,485.15
EB (Salary * 44.7744%)	0.00	0.00	0.00	426.03	231.06	0.00	0.00	0.00	0.00	0.00	7.82	0.00	0.00	0.00	0.00	664.90
OH (Salary * 11.8793%)	-	-	-	113.04	61.31	-	-	-	-	-	2.07	-	-	-	-	176.43
TOTAL (SALARY+EB+OH)	-	-	-	1,490.66	808.46	-	-	-	-	-	27.35	-	-	-	-	2,326.47

County of Los Angeles Test Claim Cost Survey

Public Guardian Omnibus Conservatorship Reform

1. Name of Survey Respondent(s) Los Angeles County Public Guardian

2. Contact Person(s) ___Lucille Lyon ___________________

Phone(s) ___213-974-0415 ___________________

E-Mail(s) ___LLyon@lacdmh.org______________

3. Please indicate the number of 2920(b) and 2920(a)(1) cases you expect by time period:

	2920(b)	2920(a)(1)
1/1/07 – 6/30/07	_10___	__12_____
7/1/07 – 6/30/08	_20___	__37_____
7/1/08 – 7/30/09	_30___	__77_____

4.Based on the best evidence available, please indicate the average cost by type of case and by case type for public guardian and for related legal services. Please be sure to subtract your estimates of costs which are recoverable from the estate or fees, charges, and assessments. For Public Guardian [PG] case costs, please include investigation, assessment, accounting, and other services which must be provided to care for the conservatee or their estate as well as a proportionate share of the required training and other administrative costs. For legal case costs, please include all legal services which are typically required in carrying out conservatorships for the two populations --- the 2920(b) population type and the 2920(a)(1) population type.

	2920(b)	2920(a)(1)
	PG // Legal	PG // Legal
1/1/07 – 6/30/07	$1,850 // $2,300	$1,850 // $2,300
7/1/07 – 6/30/08	$2,035 // $2,530	$2,035 // $2,530
7/1/08 – 7/30/09	$2,239 // $2,783	$2,239 // $2,783

5.Please multiply the number of cases in #3. by the costs in #4.

	2920(b)	2920(a)(1)
	PG // Legal	PG // Legal
1/1/07 – 6/30/07	$18,500 // $23,000	$22,200 // $27,600
7/1/07 – 6/30/08	$40,700 // $50,600	$75,295 // $93,610
7/1/08 – 7/30/09	$67,170 // $83,490	$172,403 // $214,291

6. We will tally the numbers statewide and share the results with you. Please add any comments you wish here....

____

____

____

____

7. Thank you. Please return your responses to:
LLyon etc .... Or Lkaye@auditor.lacounty.gov and alternatively, fax to: () , Attention:

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
PROBATE DIVISION
350 S. FIGUEROA STREET, SUITE 602
LOS ANGELES, CALIFORNIA 90071

RAYMOND G. FORTNER, JR.
County Counsel

TELEPHONE
(213) 974-0663
FACSIMILE
(213) 617-6786
TDD
(213) 633-0901
E-MAIL
Rtownsend@counsel.lacounty.gov

December 10, 2007

County of Los Angeles Test Claim
Public Guardian Ominbus Conservatorship Reform

Declaration of Richard E. Townsend

Richard E. Townsend makes the following declaration and statement under oath:

I, Richard E. Townsend, Assistant County Counsel, Probate Division, Office of County Counsel, of the County of Los Angeles, am responsible for implementing the legal provisions of the Ominbus Conservatorship and Guardianship Reform Act [Act], including the test claim legislation as detailed in the attached test claim.

I declare that, it is my information and belief that the mandatory duties of County Counsel claimed herein, include those required to establish, maintain and modify conservatorships. The mandated legal services claimed herein are those which are required to serve the 2920(b) and Section 2920(a)(1) populations under current law[1].

I declare that, it is my information and belief that County Counsel must prepare the petition to establish conservatorship in accordance with Probate Code section 1821[2]:

"(a) The petition shall request that a conservator be appointed for the

[1] Current law referred to here includes the test claim legislation and other requirements which counties must comply with in carrying out the test claim legislation such as those specified in Probate Code sections 1471 [appointment, proceedings], 1472 [appointment, compensation, source for payment]; 1801 [conservator of person or estate or person and estate]; 1821 [contents of a petition, supplemental information]; and, 2355 [medical treatment of conservatee adjudicated to lack capacity to make health care decisions].

[2] As added by (Stats.1990, c. 79 (A.B.759), § 14, operative July 1, 1991. Amended by Stats. 1991, c. 82 (S.B.896), § 8, eff. June 30, 1991, operative July 1, 1991; Stats.2001, c. 893 (A.B.25), § 18; Stats.2002, c. 784 (S.B.1316), § 577.)

"(a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, the petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

Where any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations

approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section."

I declare that in Los Angeles County, County Counsel represents the Public Guardian in all legal matters and acts as the attorney of record for the Public Guardian. In this legal role, counsel prepares all the petitions for conservatorship that include but are not limited to appointment petitions, Temporary Letters of Conservatorship, General Letters of Conservatorship, Inventory and Appraisals and Court Accountings. Other special petitions include Authorization to Sell the Personal Residence of the Conservatee, Authority to Sell Other Personal Property including securities, unlawful detainers, restraining orders, actions to quiet title etc.

I declare that, it is my information or belief that in Los Angeles County's case, the cost for legal services ranges from $1,500 to $12,000 per conservatee for the first year depending on the level of potential litigation[3]. There may be occasions that a conservator must initiate legal actions to protect the conservatee and his property. By the same token, if a legal action is initiated against the conservatee, the conservator must defend any legal action.

I declare that it is my information or belief that the Public Guardian and its legal arm, the County Counsel is mandated to perform services for conservatees under the test claim legislation, which were not required under prior law and that such services cost the County of Los Angeles well in excess of $1,000 per annum, the minimum cost that must be incurred to file a claim in accordance with Government Code Section 17564(a).

I declare that it is my information or belief that the County's State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if required, I could and would testify to the statements made herein.

[3] Legal costs for other counties were also surveyed and are detailed in the Statewide Cost Survey Report attached herein to the declaration of Lucille Lyon.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to matters which are stated as information and belief, and as to those matters I believe them to be true.

Date and Place 12/10/07 Los Angeles, Ca. Signature [signature]

RET:scd

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2706
PHONE: (213) 974-8301 FAX: (213) 626-5427

J. TYLER McCAULEY
AUDITOR-CONTROLLER

WENDY L. WATANABE
CHIEF DEPUTY

County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject test claim. .

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

12/12/07; Los Angeles, CA
Date and Place

[signature]
Signature

"To Enrich Lives Through Effective and Caring Service"

8. CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission.**

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

J. Tyler McCauley
Print or Type Name of Authorized Local Agency or School District Official

Auditor-Controller
Print or Type Title

[signature]
Signature of Authorized Local Agency or School District Official

12/12/07
Date

* *If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

J. Tyler McCauley
Claimant Representative Name

Auditor-Controller
Title

County of Los Angeles
Organization

500 West Temple Street, Room 525
Street Address

Los Angeles, CA 90012
City, State, Zip

(213) 974-8301
Telephone Number

(213) 626-5427
Fax Number

tmccauley@auditor.lacounty.gov
E-Mail Address

County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

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CALIFORNIA 2006 LEGISLATIVE SERVICE
2006 Portion of 2005-2006 Regular Session

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Additions are indicated by Text; deletions by
* * *. Changes in tables are made but not highlighted.

CHAPTER 493
A.B. No. 1363
PROBATE PROCEEDINGS--OMNIBUS CONSERVATORSHIP AND GUARDIANSHIP REFORM ACT

AN ACT to amend Sections 1610, 1822, 1826, 1829, 1830, 1850, 1851, 2215, 2250, 2253, 2320, 2321, 2401, 2610, 2620, 2620.2, 2623, 2640, 2640.1, 2641, 2653, 2701, and 2920 of, to add Sections 1456, 1457, 1850.5, 2113, 2250.2, 2250.4, 2250.6, 2250.8, 2410, and 2923 to, and to add and repeal Section 1458 of, the Probate Code, relating to conservatorship and guardianship.

[Filed with Secretary of State September 27, 2006.]
LEGISLATIVE COUNSEL'S DIGEST

AB 1363, Jones Omnibus Conservatorship and Guardianship Reform Act of 2006.

(1) Existing law governs the establishment of conservatorships and guardianships.

The bill would require the Judicial Council, among other things, to adopt specified rules of court relating to conservatorships and guardianships and to develop educational programs for nonlicensed conservators and guardians. The bill would also require the Judicial Council to establish qualifications and educational requirements for any court-employed staff attorney, examiner, and investigator or court-appointed attorney, to require educational classes for these attorneys, and probate judges, to report to the Legislature regarding a study **measuring court effectiveness** in **conservatorship cases**, and to develop forms to provide notice regarding free assistance provided by the court to conservators and how to file an objection to an inventory and appraisal of the estate. The bill would require public guardians to comply with specified continuing education

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requirements by January 1, 2008. The bill would revise the notice requirements regarding a petition for the appointment of a temporary guardian or temporary conservator, except as specified. The bill would also require the Judicial Council to adopt a rule of court to implement a specified provision, effective January 1, 2008, requiring guardians and conservators to provide a bond.

(2) Existing law requires conservators and guardians to present a biennial accounting of the assets of the conservatee or ward and requires a biennial review of each conservatorship.

The bill would require a review of conservatorships at a noticed hearing, and impose new requirements governing the accounting. The bill also would prohibit a court from reducing the amount of a bond in conservatorship proceedings without good cause, impose new duties on court investigators and prohibit the compensation of a guardian or conservator from the estate for costs or fees incurred in unsuccessfully opposing a petition, among other changes. The bill would also specify the circumstances under which a guardian or conservator that is a trust company is required to obtain the authorization of a court prior to exercising its powers.

(3) Existing law authorizes the public guardian to apply for appointment as guardian or conservator of the person, estate, or both, of any person domiciled in the county requiring a guardian or conservator if there is no one else who is qualified and willing to act and whose appointment would be in the best interest of the person. The public guardian is required to apply for appointment if ordered by the court.

This bill additionally would require the public guardian to apply for appointment as guardian or conservator if there is an imminent threat to the person's health or safety or the person's estate. The bill would require the court to order the public guardian to apply for appointment on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person, as specified.

Because the bill would impose new duties and educational requirements on the public guardian, a county officer, the bill would impose a state-mandated local program.

(4) The bill would incorporate additional changes to Sections 1850 and 1851 of the Probate Code proposed by both this bill and SB 1716, to take effect only if both bills are enacted and this bill is enacted last.

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(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would become operative only if SB 1116, SB 1550, and SB 1716 are enacted and become effective on or before January 1, 2007.

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

SECTION 1. This act, together with Senate Bill 1116 (Scott), Senate Bill 1550 (Figueroa), and Senate Bill 1716 (Bowen), shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

SEC. 2. The Legislature finds and declares the following:

(a) The rate of increase in the number of Californians who are 65 years of age or older is surpassing that in other states. The number of people who are 65 years of age will grow from 3.7 million people in the year 2000, to 6.3 million in the year 2020. The fastest growing segment of California's population, expected to increase by 148 percent between the years 1990 and 2020, is people who are 85 years of age or older. As many as 10 percent of the population over 65 years of age and almost 50 percent of the population over 85 years of age will suffer from Alzheimer's disease.

(b) As the population of California continues to grow and age, an increasing number of persons in the state are unable to provide properly for their personal needs, to manage their financial resources, or to resist fraud or undue influence.

(c) One result of these trends is the growing number of persons acting as conservators on behalf of other persons or their estates. It is estimated that about 500 professional conservators oversee $1.5 billion in assets. Over 5,000 conservatorship petitions are filed each year in California.

(d) Probate courts oversee the work of conservators, but, in part due to a lack of resources and conflicting priorities, courts often do not provide sufficient oversight in conservatorship cases to ensure that the best interests of conservatees are protected.

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(e) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect, or the physical or financial abuse, of the clients professional fiduciaries are supposed to serve.

(f) Public guardians do not have adequate resources to represent the best interests of qualifying Californians and, therefore, many in need of the assistance of a conservator go without.

(g) As a result, the conservatorship system in California is fundamentally flawed and in need of reform.

SEC. 3. Section 1456 is added to the Probate Code, to read:

<< CA PROBATE § 1456 >>

1456. (a) In addition to any other requirements that are part of the judicial branch education program, on or before January 1, 2008, the Judicial Council shall adopt a rule of court that shall do all of the following:

(1) Specifies the qualifications of a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to Sections 1470 and 1471.

(2) Specifies the number of hours of education in classes related to conservatorships or guardianships that a judge who is regularly assigned to hear probate matters shall complete, upon assuming the probate assignment, and then over a three-year period on an ongoing basis.

(3) Specifies the number of hours of education in classes related to conservatorships or guardianships that a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to Sections 1470 and 1471 shall complete each year.

(4) Specifies the particular subject matter that shall be included in the education required each year.

(5) Specifies reporting requirements to ensure compliance with this section.

(b) In formulating the rule required by this section, the Judicial Council shall consult with interested parties, including, but not limited to, the California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of

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California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers.

SEC. 4. Section 1457 is added to the Probate Code, to read:

<< CA PROBATE § 1457 >>

1457. In order to assist relatives and friends who may seek appointment as a nonprofessional conservator or guardian the Judicial Council shall develop a short educational program of no more than three hours that is user-friendly and shall make that program available free of charge to each proposed conservator and guardian and each court-appointed conservator and guardian who is not required to be licensed as a professional conservator or guardian pursuant to Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code. The program may be available by video presentation or Internet access.

SEC. 5. Section 1458 is added to the Probate Code, to read:

<< CA PROBATE § 1458 >>

1458. (a) On or before January 1, 2008, the Judicial Council shall report to the Legislature the findings of a study **measuring court effectiveness** in **conservatorship cases**. The report shall include all of the following with respect to the courts chosen for evaluation:

(1) A summary of caseload statistics, including both temporary and permanent conservatorships, bonds, court investigations, accountings, and use of professional conservators.

(2) An analysis of compliance with statutory timeframes.

(3) A description of any operational differences between courts that affect the processing of conservatorship cases, including timeframes.

(b) The Judicial Council shall select three courts for the evaluation mandated by this section.

(c) The report shall include recommendations for statewide performance measures to be collected, best practices that serve to protect the rights of conservatees, and staffing needs to meet case processing measures.

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(d) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, [FN1] deletes or extends that date.

SEC. 6. Section 1610 of the Probate Code is amended to read:

<< CA PROBATE § 1610 >>

1610. (a) The Legislature finds and declares that it is in the best interests of children to be raised in a permanent, safe, stable, and loving environment.

(b) Unwarranted petitions, applications, or motions other than discovery motions after the guardianship has been established create an environment that can be harmful to children and are inconsistent with the goals of permanency, safety, and stability.

SEC. 7. Section 1822 of the Probate Code is amended to read:

<< CA PROBATE § 1822 >>

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be mailed to the following persons:

(1) The spouse, if any, or registered domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the Office of the Veterans Administration referred to in Section 1461.5.

(e) If the proposed conservatee is a person with developmental disabilities, at least 30

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days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

(f) The Judicial Council shall, on or before January 1, 2008, develop a form to effectuate the notice required in subdivision (a).

SEC. 8. Section 1826 of the Probate Code is amended to read:

<< CA PROBATE § 1826 >>

1826. Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(a) Interview the proposed conservatee personally. The court investigator also shall do all of the following:

(1) Interview the petitioner and the proposed conservator, if different from the petitioner.

(2) Interview the proposed conservatee's spouse or registered domestic partner and relatives within the first degree.

(3) To the greatest extent possible, interview the proposed conservatee's relatives within the second degree, as set forth in subdivision (b) of Section 1821, neighbors, and, if known, close friends, before the hearing.

(b) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(d) Review the allegations of the petition as to why the appointment of the conservator is required and, in making his or her determination, do the following:

(1) Refer to the supplemental information form submitted by the petitioner and consider

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the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.

(2) Consider, to the extent practicable, whether he or she believes the proposed conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(e) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(f) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(g) Determine whether the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(h) Determine whether the proposed conservatee is capable of completing an affidavit of voter registration.

(i) If the proposed conservatee has not retained legal counsel, determine whether the proposed conservatee desires the court to appoint legal counsel.

(j) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in any case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(k) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(1) Representation by legal counsel.

(2) Whether the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

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(l) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (k) to all of the following:

(1) The attorney, if any, for the petitioner.

(2) The attorney, if any, for the proposed conservatee.

(3) The proposed conservatee.

(4) The spouse, registered domestic partner, and relatives within the first degree of the proposed conservatee who are required to be named in the petition for appointment of the conservator, unless the court determines that the mailing will result in harm to the conservatee.

(5) Any other persons as the court orders.

(m) The court investigator has discretion to release the report required by this section to the public conservator, interested public agencies, and the long-term care ombudsman.

(n) The report required by this section is confidential and shall be made available only to parties, persons described in subdivision (l), persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The clerk of the court shall provide for the limitation of the report exclusively to persons entitled to its receipt.

(o) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or one who has nominated his or her own conservator, if he or she attends the hearing.

(p) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

(q) Any investigation by the court investigator related to a temporary conservatorship also may be a part of the investigation for the general petition for conservatorship, but the court investigator shall make a second visit to the proposed conservatee and the report required by this section shall include the effect of the temporary conservatorship on the

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proposed conservatee.

SEC. 9. Section 1829 of the Probate Code is amended to read:

<< CA PROBATE § 1829 >>

1829. Any of the following persons may appear at the hearing to support or oppose the petition:

(a) The proposed conservatee.

(b) The spouse or registered domestic partner of the proposed conservatee.

(c) A relative of the proposed conservatee.

(d) Any interested person or friend of the proposed conservatee.

SEC. 10. Section 1830 of the Probate Code is amended to read:

<< CA PROBATE § 1830 >>

1830. (a) The order appointing the conservator shall contain, among other things, the names, addresses, and telephone numbers of:

(1) The conservator.

(2) The conservatee's attorney, if any.

(3) The court investigator, if any.

(b) In the case of a limited conservator for a developmentally disabled adult, any order the court may make shall include the findings of the court specified in Section 1828.5. The order shall specify the powers granted to and duties imposed upon the limited conservator, which powers and duties may not exceed the powers and duties applicable to a conservator under this code. The order shall also specify the following:

(1) The properties of the limited conservatee to which the limited conservator is entitled to possession and management, giving a description of the properties that will be sufficient to identify them.

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(2) The debts, rentals, wages, or other claims due to the limited conservatee which the limited conservator is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage.

(3) The contractual or other obligations which the limited conservator may incur on behalf of the limited conservatee.

(4) The claims against the limited conservatee which the limited conservator may pay, compromise, or defend, if necessary.

(5) Any other powers, limitations, or duties with respect to the care of the limited conservatee or the management of the property specified in this subdivision by the limited conservator which the court shall specifically and expressly grant.

(c) An information notice of the rights of conservatees shall be attached to the order. The conservator shall mail the order and the attached information notice to the conservatee and the conservatee's relatives, as set forth in subdivision (b) of Section 1821. By January 1, 2008, the Judicial Council shall develop the notice required by this subdivision.

SEC. 11. Section 1850 of the Probate Code is amended to read:

<< CA PROBATE § 1850 >>

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court * * *as follows:

(1) At the expiration of six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances. The court may, in response to the investigator's report, take appropriate action including, but not limited to:

(A) Ordering a review of the conservatorship pursuant to subdivision (b).

(B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

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(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

(d) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

SEC. 11.5. Section 1850 of the Probate Code is amended to read:

<< CA PROBATE § 1850 >>

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court * * * as follows:

(1) At the expiration of six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best

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interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances. The court may, in response to the investigator's report, take appropriate action including, but not limited to:

(A) Ordering a review of the conservatorship pursuant to subdivision (b).

(B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interest interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

(d) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(e) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

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SEC. 11.7. Section 1850.5 is added to the Probate Code, to read:

<< CA PROBATE § 1850.5 >>

1850.5. (a) Notwithstanding Section 1850, each limited conservatorship for a developmentally disabled adult, as defined in subdivision (d) of Section 1801, shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action, including, but not limited to, ordering a review of the limited conservatorship, including at a noticed hearing, at any time.

SEC. 12. Section 1851 of the Probate Code is amended to read:

<< CA PROBATE § 1851 >>

1851. (a) When court review is required, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) The findings of the court investigator, including the facts upon which the findings are

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based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

SEC. 12.5. Section 1851 of the Probate Code is amended to read:

<< CA PROBATE § 1851 >>

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth

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in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(f) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 13. Section 2113 is added to the Probate Code, to read:

<< CA PROBATE § 2113 >>

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2113. A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate.

SEC. 14. Section 2215 of the Probate Code is amended to read:

<< CA PROBATE § 2215 >>

2215. (a) Any of the following persons may appear at the hearing to support or oppose the petition and may file written objections to the petition:

(1) Any person required to be listed in the petition.

(2) Any creditor of the ward or conservatee or of the estate.

(3) Any other interested person.

(b)(1) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the other county.

(2) In those cases in which the court has approved a change of residence of the conservatee, it shall be presumed to be in the best interests of the conservatee to transfer the proceedings if the ward or conservatee has moved his or her residence to another county within the state in which any person set forth in subdivision (b) of Section 1821 also resides. The presumption that the transfer is in the best interests of the ward or conservatee, may be rebutted by clear and convincing evidence that the transfer will harm the ward or conservatee.

SEC. 15. Section 2250 of the Probate Code is amended to read:

<< CA PROBATE § 2250 >>

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

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(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, * * *at least five days before the * * *hearing on the petition, notice of the hearing shall be given as follows:

(1) Notice of the * * *hearing shall be personally delivered to the proposed ward if he or she is 12 years of age or older* * *, to the parent or parents of the proposed ward* * *, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. Notice of the hearing shall not be delivered to the proposed ward if he or she is under 12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated, and that the petitioner is the nominee of the custodial parent, may constitute good cause for the court to order that this notice not be delivered.

(2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be served on the persons required to be named in the petition for appointment of conservator.

(3) A copy of the petition for temporary appointment shall be served with the notice of hearing.

(d) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten the time for the notice of the hearing.

(e) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(f) If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the

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general petition for appointment of conservator, the court shall set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship shall be given at least 10 days prior to the hearing. If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of conservator, the court shall set the hearing at the same time that the hearing on the general petition is set.

* * *(g) The appointment of a guardian or conservator and the appointment of a temporary guardian or conservator * * *may be requested in a single petition or by separate petitions. If the appointment of both a guardian or conservator and also a temporary guardian or conservator * * *is requested in a single petition, the court may not appoint a guardian or conservator without the investigations and reviews otherwise required.

(h) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(i) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

(j) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (c), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.

SEC. 15.5. Section 2250.2 is added to the Probate Code, to read:

<< CA PROBATE § 2250.2 >>

2250.2. (a) On or after the filing of a petition for appointment of a conservator, any person entitled to petition for appointment of the conservator may file a petition for appointment of a temporary conservator of the person or estate or both.

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(b) The petition shall state facts which establish good cause for appointment of the temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed conservatee.

(d) One petition may request the appointment of a conservator and also the appointment of a temporary conservator or these appointments may be requested in separate petitions.

(e) If the court suspends powers of the conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary conservator to exercise those powers until the powers are restored to the conservator or a new conservator is appointed.

(f) If for any reason a vacancy occurs in the office of conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary conservator to exercise the powers of the conservator until a new conservator is appointed.

(g) This section shall only apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

SEC. 16. Section 2250.4 is added to the Probate Code, to read:

<< CA PROBATE § 2250.4 >>

2250.4. The proposed temporary conservatee shall attend the hearing except in the following cases:

(a) If the proposed temporary conservatee is out of the state when served and is not the petitioner.

(b) If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.

(c) If the court investigator has visited the proposed conservatee prior to the hearing and the court investigator has reported to the court that the proposed temporary conservatee has expressly communicated that all of the following apply:

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(1) The proposed conservatee is not willing to attend the hearing.

(2) The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.

(3) The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.

(d) If the court determines that the proposed conservatee is unable or unwilling to attend the hearing, and holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from substantial harm.

SEC. 17. Section 2250.6 is added to the Probate Code, to read:

<< CA PROBATE § 2250.6 >>

2250.6. (a) Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator shall do all of the following prior to the hearing, unless it is not feasible to do so, in which case the court investigator shall comply with the requirements set forth in subdivision (b):

(1) Interview the proposed conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821 before the hearing.

(2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to

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retain legal counsel.

(3) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(4) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(5) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(6) Report to the court, in writing, concerning all of the foregoing.

(b) If not feasible before the hearing, the court investigator shall do all of the following within two court days after the hearing:

(1) Interview the conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821 before the hearing.

(2) Inform the conservatee of the nature, purpose, and effect of the temporary conservatorship, as well as the right of the conservatee to oppose the proposed general conservatorship, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) If the investigator does not visit the conservatee until after the hearing at which a temporary conservator was appointed, and the conservatee objects to the appointment of the temporary conservator, or requests an attorney, the court investigator shall report this

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information promptly, and in no event more than three court days later, to the court. Upon receipt of that information, the court may proceed with appointment of an attorney as provided in Chapter 4 (commencing with Section 1470) of Part 1.

(d) If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator shall immediately, and in no event more than two court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion.

SEC. 17.5. Section 2250.8 is added to the Probate Code, to read:

<< CA PROBATE § 2250.8 >>

2250.8. Sections 2250, 2250.4, and 2250.6 shall not apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

SEC. 18. Section 2253 of the Probate Code is amended to read:

<< CA PROBATE § 2253 >>

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided prior to the commencement of the proceedings, that power shall be requested of the court in writing, unless the change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable harm if the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(b) Unless the court * * * for good cause orders otherwise, the court investigator shall do all of the following:

(1) Interview the conservatee personally.

(2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal

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counsel appointed by the court if unable to obtain legal counsel.

(3) Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.

(4) Determine whether the conservatee wishes to oppose the request.

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(6) If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.

(7) Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(8) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.

(c) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court shall hold a hearing on the request.

(d) The conservatee shall be present at the hearing except in the following cases:

(1) Where the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(2) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose the request, and the court makes an order that the conservatee need

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not attend the hearing.

(e) If the conservatee is unable to attend the hearing because of medical inability, that inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(f) At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on his or her own behalf.

(g) The court may approve the request to remove the conservatee from the previous place of residence only if the court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less restrictive of the conservatee's liberty will suffice to prevent that harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator may not be authorized to remove the conservatee from this state unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony.

(h) Subject to subdivision (e) of Section 2252, the court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence.

SEC. 19. Section 2320 of the Probate Code is amended to read:

<< CA PROBATE § 2320 >>

2320. (a) Except as otherwise provided by statute, every person appointed as guardian or conservator shall, before letters are issued, give a bond approved by the court.

(b) The bond shall be for the benefit of the ward or conservatee and all persons interested

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in the guardianship or conservatorship estate and shall be conditioned upon the faithful execution of the duties of the office, according to law, by the guardian or conservator.

(c) Except as otherwise provided by statute, unless the court increases or decreases the amount upon a showing of good cause, the amount of a bond given by an admitted surety insurer shall be the sum of all of the following:

(1) The value of the personal property of the estate.

(2) The probable annual gross income of all of the property of the estate.

(3) The sum of the probable annual gross payments from the following:

(A) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(B) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7 of Title 42 of the United States Code.

(C) Any other public entitlements of the ward or conservatee.

(4) On or after January 1, 2008, a reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs. The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this paragraph.

(d) If the bond is given by personal sureties, the amount of the bond shall be twice the amount required for a bond given by an admitted surety insurer.

(e) The Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) applies to a bond given under this article, except to the extent inconsistent with this article.

SEC. 20. Section 2321 of the Probate Code is amended to read:

<< CA PROBATE § 2321 >>

2321. (a) Notwithstanding any other provision of law, the court in a conservatorship proceeding may not waive the filing of a bond or reduce the amount of bond required, without a good cause determination by the court which shall include a determination by

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the court that the conservatee will not suffer harm as a result of the waiver or reduction of the bond. Good cause may not be established merely by the conservator having filed a bond in another or prior proceeding.

(b) In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may permit the filing of a bond in an amount less than would otherwise be required under Section 2320.

SEC. 21. Section 2401 of the Probate Code is amended to read:

<< CA PROBATE § 2401 >>

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

(c) * * *Notwithstanding any other law, a guardian or conservator who is not a trust company, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing his or her financial interest in the entity. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly held corporation, or (3) being an officer or a director of a corporation.* * *

(d) Notwithstanding any other law, a guardian or conservator who is a trust company, in exercising its powers may not, except upon authorization of the court, invest in securities of the trust company or an affiliate or subsidiary, or other securities from which the trust company or affiliate or subsidiary receives a financial benefit or in a mutual fund, other

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than a mutual fund authorized in paragraph (5) of subdivision (a) of Section 2574, registered under the Investment Company Act of 1940 (Subchapter 1 (commencing with Sec. 80a-1) of Chapter 2D of Title 15 of the United States Code), to which the trust company or its affiliate provides services, including, but not limited to, services as an investment adviser, sponsor, distributor, custodian, agent, registrar, administrator, servicer, or manager, and for which the trust company or its affiliate receives compensation.

Prior to authorization from the court, the guardian or conservator shall disclose to the court in writing the trust company's financial interest.

SEC. 22. Section 2410 is added to the Probate Code, to read:

<< CA PROBATE § 2410 >>

2410. On or before January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers, shall adopt a rule of court that shall require uniform standards of conduct for actions that conservators and guardians may take under this chapter on behalf of conservatees and wards to ensure that the estate of conservatees or wards are maintained and conserved as appropriate and to prevent risk of loss or harm to the conservatees or wards. This rule shall include at a minimum standards for determining the fees that may be charged to conservatees or wards and standards for asset management.

SEC. 23. Section 2610 of the Probate Code is amended to read:

<< CA PROBATE § 2610 >>

2610. (a) Within 90 days after appointment, or within any further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court and mail to the conservatee and to the attorneys of record for the ward or conservatee, along with notice of how to file an objection, an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator. A copy of this inventory and appraisal, along with notice of how to file an objection, also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that

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the mailing will result in harm to the conservatee.

(b) The guardian or conservator shall take and subscribe to an oath that the inventory contains a true statement of all of the estate of the ward or conservatee of which the guardian or conservator has possession or knowledge. The oath shall be endorsed upon or annexed to the inventory.

(c) The property described in the inventory shall be appraised in the manner provided for the inventory and appraisal of estates of decedents. The guardian or conservator may appraise the assets that a personal representative could appraise under Section 8901.

(d) If a conservatorship is initiated pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), and no sale of the estate will occur:

(1) The inventory and appraisal required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory may be appraised by the conservator and need not be appraised by a probate referee.

(e) By January 1, 2008, the Judicial Council shall develop a form to effectuate the notice required in subdivision (a).

SEC. 24. Section 2620 of the Probate Code is amended to read:

<< CA PROBATE § 2620 >>

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court to be more frequent, the guardian or conservator shall present the accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3. By January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, and the California Society of Certified Public Accountants, shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. After January 1, 2008, all accountings submitted pursuant to this section shall be submitted on the Judicial Council form.

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(b) The final court accounting of the guardian or conservator following the death of the ward or conservatee shall include a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the date of death.

(c) Along with each court accounting, the guardian or conservator shall file * * *supporting documents, as provided in this section.

(1) For purposes of this subdivision, the term "account statement" shall include any original account statement from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited.

(2) The filing shall include all account statements showing the balance as of the close of the accounting period of the court accounting. If the court accounting is the first court accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court all account * * *statements showing the account balance immediately preceding the date the conservator or guardian was appointed and all account * * *statements showing the account through the closing date of the first court accounting.

(3) If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator shall also file all original account statements, as described above, showing the balance as of all periods covered by the accounting. However, courts may instead provide by local rule that the court shall retain all documents lodged with it under this subdivision until the court's determination of the guardian's or conservator's account has become final, at which time the documents shall be returned to the depositing guardian or conservator or delivered to any successor appointed by the court.

(4) The filing shall include the original, closing escrow statement received showing the charges and credits for any sale of real property of the estate.

(5) If the ward or conservatee is in a residential care facility or a long-term care facility, the filing shall include the original bill statements for the facility.

(6) This subdivision shall not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Section 2940 and Article 3 (commencing with Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in this section shall affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court.

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(7) If any document to be filed or lodged with the court under this section contains the ward's or conservatee's social security number or any other personal information regarding the ward or conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement or other document shall be attached to a separate affidavit describing the character of the document* * *, captioned "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court. The guardian or conservator may redact the ward's or conservatee's social security number from any document lodged with the court under this section.

(d) Each accounting is subject to random or discretionary, full or partial review by the court. The review may include consideration of any information necessary to determine the accuracy of the accounting. If the accounting has any material error, the court shall make an express finding as to the severity of the error and what further action is appropriate in response to the error, if any. Among the actions available to the court is immediate suspension of the guardian or conservator without further notice or proceedings and appointment of a temporary guardian or conservator or removal of the guardian or conservator pursuant to Section 2650 and appointment of a temporary guardian or conservator.

(e) The guardian or conservator shall make available for inspection and copying, upon reasonable notice, to any person designated by the court to verify the accuracy of the accounting, all books and records, including receipts for any expenditures, of the guardianship or conservatorship.

SEC. 25. Section 2620.2 of the Probate Code is amended to read:

<< CA PROBATE § 2620.2 >>

2620.2. (a) Whenever the conservator or guardian has failed to file an accounting as required by Section 2620, the court shall require that written notice be given to the conservator or guardian and the attorney of record for the conservatorship or guardianship directing the conservator or guardian to file an accounting and to set the accounting for hearing before the court within 30 days of the date of the notice or, if the conservator or guardian is a public agency, within 45 days of the date of the notice. The court may, upon cause shown, grant an additional 30 days to file the accounting.

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(b) Failure to file the accounting within the time specified * * *under subdivision (a), or within 45 days of actual receipt of the notice, whichever is later, shall constitute a contempt of the authority of the court as described in Section 1209 of the Code of Civil Procedure.

(c) If the conservator or guardian does not file an * * *accounting with all appropriate supporting documentation and set the accounting for hearing as required by Section 2620, the court shall do one or more of the following and shall report that action to the board established pursuant to Section 6510 of the Business and Professions Code:

(1) Remove the conservator or guardian as provided under Article 1 (commencing with Section 2650) of Chapter 9 of Part 4 of Division 4.

(2) Issue and serve a citation requiring a guardian or conservator who does not file a required accounting to appear and show cause why the guardian or conservator should not be punished for contempt. If the guardian or conservator purposely evades personal service of the citation, the guardian or conservator shall be immediately removed from office.

(3) Suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, who shall take possession of the assets of the conservatorship or guardianship, investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee. Compensation for the temporary conservator or guardian, and counsel for the temporary conservator or guardian, shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of condition of the bond.* * *

(4)(A) Appoint legal counsel to represent the ward or conservatee if the court has not suspended the powers of the conservator or guardian and appoint a temporary conservator or guardian pursuant to paragraph (3). Compensation for the counsel appointed for the ward or conservatee shall be treated as a surcharge against the conservator or guardian, and if unpaid shall be considered a breach of a condition on the bond, unless for good cause shown the court finds that counsel for the ward or conservatee shall be compensated according to Section 1470. The court shall order the legal counsel to do one or more of the following:

(i) Investigate the actions of the conservator or guardian, and petition for surcharge if this is in the best interests of the ward or conservatee.

(ii) Recommend to the court whether the conservator or guardian should be removed.

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(iii) Recommend to the court whether money or other property in the estate should be deposited pursuant to Section 2453, 2453.5, 2454, or 2455, to be subject to withdrawal only upon authorization of the court.

(B) After resolution of the matters for which legal counsel was appointed in subparagraph (A), the court shall terminate the appointment of legal counsel, unless the court determines that continued representation of the ward or conservatee and the estate is necessary and reasonable.

* * *

* * *(5) If the conservator or guardian is exempt from the licensure requirements of Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, upon ex parte application or any notice as the court may require, extend the time to file the accounting, not to exceed an additional 30 days after the expiration of the deadline described in subdivision (a), where the court finds there is good cause and that the estate is adequately bonded. After expiration of any extensions, if the accounting has not been filed, the court shall take action as described in paragraphs (1) to (3), inclusive.

(d) Subdivision (c) does not preclude the court from additionally taking any other appropriate action in response to a failure to file a proper accounting in a timely manner.

SEC. 26. Section 2623 of the Probate Code is amended to read:

<< CA PROBATE § 2623 >>

2623. (a) Except as provided in subdivision (b) of this section, the guardian or conservator shall be allowed all of the following:

(1) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable).

(2) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

(3) All reasonable disbursements made before appointment as guardian or conservator.

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(4) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the guardianship or conservatorship but prior to the discharge of the guardian or conservator by the court.

(5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

(b) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 27. Section 2640 of the Probate Code is amended to read:

<< CA PROBATE § 2640 >>

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered to that time.

(2) The guardian or conservator of the person for services rendered to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the

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guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

(d) Notwithstanding the provisions of subdivision (c), the guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 28. Section 2640.1 of the Probate Code is amended to read:

<< CA PROBATE § 2640.1 >>

2640.1. (a) If a person has petitioned for the appointment of a particular conservator and another conservator was appointed while the petition was pending, but not before the expiration of 90 days from the issuance of letters, the person who petitioned for the appointment of a conservator but was not appointed and that person's attorney may petition the court for an order fixing and allowing compensation and reimbursement of costs, provided that the court determines that the petition was filed in the best interests of the conservatee.

(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order to allow both of the following:

(1) Any compensation or costs requested in the petition the court determines is just and reasonable to the person who petitioned for the appointment of a conservator but was not appointed, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection therewith* * *.

(2) Any compensation or costs requested in the petition the court determines is just and reasonable to the attorney for that person, for his or her services rendered in connection with and to facilitate the appointment of a conservator, and costs incurred in connection

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therewith.

Any compensation and costs * * *allowed shall * * *be charged to the estate of the conservatee. If a conservator of the estate is not appointed, but a conservator of the person is appointed, the compensation and costs * * *allowed shall be ordered by the court to be paid from property belonging to the conservatee, whether held outright, in trust, or otherwise.

(d) It is the intent of the Legislature for this section to have retroactive effect.

SEC. 29. Section 2641 of the Probate Code is amended to read:

<< CA PROBATE § 2641 >>

2641. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing any compensation the court determines is just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged against the estate.

(c) The guardian or conservator shall not be compensated from the estate for any costs or fees that the guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

SEC. 30. Section 2653 of the Probate Code is amended to read:

<< CA PROBATE § 2653 >>

2653. (a) The guardian or conservator, the ward or conservatee, the spouse of the ward or the spouse or registered domestic partner of the conservatee, any relative or friend of the ward or conservatee, and any interested person may appear at the hearing and support or oppose the petition.

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(b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto. If the guardian or conservator fails to file the accounting as ordered, the court may compel the accounting pursuant to Section 2620.2.

(c) If the court removes the guardian or conservator for cause, as described in subdivisions (a) to (g), inclusive, of Section 2650 or Section 2655, both of the following shall apply:

(1) The court shall award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, incurred under this article, unless the court determines that the guardian or conservator has acted in good faith, based on the best interests of the ward or conservatee.

(2) The guardian or conservator may not deduct from, or charge to, the estate his or her costs of litigation, and is personally liable for those costs and expenses.

SEC. 31. Section 2701 of the Probate Code is amended to read:

<< CA PROBATE § 2701 >>

2701. (a) A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request* * *.

(b) A new request for special notice may be served and filed at any time as provided in the case of an initial request.

SEC. 32. Section 2920 of the Probate Code is amended to read:

<< CA PROBATE § 2920 >>

2920. (a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person, then either of the following shall apply:

(1) The public guardian shall apply for appointment as guardian or conservator of the

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person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate.

(2) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate in all other cases.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

(c) The public guardian shall begin an investigation within two business days of receiving a referral for conservatorship or guardianship.

SEC. 33. Section 2923 is added to the Probate Code, to read:

<< CA PROBATE § 2923 >>

2923. On or before January 1, 2008, the public guardian shall comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.

SEC. 34. Section 11.5 of this bill incorporates amendments to Section 1850 of the Probate Code proposed by both this bill and SB 1716. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1850 of the Probate Code, and (3) this bill is enacted after SB 1716, in which case Section 11 of this bill shall not become operative.

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SEC. 35. Section 12.5 of this bill incorporates amendments to Section 1851 of the Probate Code proposed by both this bill and SB 1716. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1851 of the Probate Code, and (3) this bill is enacted after SB 1716, in which case Section 12 of this bill shall not become operative.

SEC. 36. Sections 8, 11, 11.7, 12, 15, 15.5, 16, 17, 18, and 24 of this act shall become operative on July 1, 2007.

SEC. 37. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 38. This act shall become operative only if Senate Bill 1116, Senate Bill 1550, and Senate Bill 1716 of the 2005-06 Regular Session are enacted and become effective on or before January 1, 2007.

[FN1] So in enrolled bill.

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2006 Portion of 2005-2006 Regular Session

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CHAPTER 492
S.B. No. 1716
PROBATE PROCEEDINGS--OMNIBUS CONSERVATORSHIP AND GUARDIANSHIP REFORM ACT

AN ACT to amend Sections 1850 and 1851 of, and to add Section 1051 to, the Probate Code, and to add Section 5372 to the Welfare and Institutions Code, relating to conservatorships.

[Filed with Secretary of State September 27, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1716, Bowen. Conservatorships.

Existing law requires the court to review each conservatorship one year after the appointment of the conservator and biennially thereafter, except as specified. Existing law also requires the court investigator to visit the conservatee when the court review of the conservatorship is required, and to determine, among other things, whether the present conservator is acting in the best interests of the conservatee.

This bill would authorize the court, on and after July 1, 2007, to take appropriate action, including, but not limited to, ordering a review of the conservatorship, on it's own motion or upon request by any interested person.

The bill would also require, on and after July 1, 2007, the court investigator, in determining whether the conservator is acting in the best interest of the conservatee, **to include** an **examination** of the **conservatee's placement, quality** of **care**, and **finances.**

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The bill would also prohibit, commencing January 1, 2008, and except as specified, ex parte communications between any party or attorney for the party and the court concerning a subject raised in pleadings filed pursuant to the Probate Code, and in proceedings to establish a conservatorship for persons who are gravely disabled as a result of a mental disorder or chronic alcoholism. The bill would require the Judicial Council to adopt a rule of court to implement these provisions by January 1, 2008.

The bill would incorporate additional changes to Sections 1850 and 1851 of the Probate Code proposed by both this bill and AB 1363, to take effect only if both bills are enacted and this bill is enacted last.

The bill would become operative only if AB 1363, SB 1116, and SB 1550 are enacted and become effective on or before January 1, 2007. These acts would be known as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

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

SECTION 1. This act, together with AB 1363 (Jones), SB 1116 (Scott), and SB 1550 (Figueroa), shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

SEC. 2. Section 1051 is added to the Probate Code, to read:

<< CA PROBATE § 1051 >>

1051. (a) In the absence of a stipulation to the contrary between parties who have filed pleadings in a proceeding under this code, there shall be no ex parte communications between any party, or attorney for the party, and the court concerning a subject raised in those pleadings, except as permitted or required by law.

(b) Notwithstanding subdivision (a), in any case upon which the court has exercised its jurisdiction, the court may refer to the court investigator or take other appropriate action in response to an ex parte communication regarding either or both of the following: (1) a fiduciary, as defined in Section 39, about the fiduciary's performance of his or her duties and responsibilities, and (2) a person who is the subject of a conservatorship or guardianship proceeding under Division 4 (commencing with Section 1400). Any action by the court pursuant to this subdivision shall be consistent with due process and the requirements of this code. The court shall disclose the ex parte communication to all parties and counsel. The court may, for good cause, dispense with the disclosure if necessary to protect the ward or conservatee from harm.

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(c) The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this section.

(d) Subdivisions (a) and (b) of this section shall become operative on January 1, 2008.

SEC. 3. Section 1850 of the Probate Code is amended to read:

<< CA PROBATE § 1850 >>

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter. The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(b) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(c) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 3.5. Section 1850 of the Probate Code is amended to read:

<< CA PROBATE § 1850 >>

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court * * *as follows:

(1) At the expiration of six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, The court may, in response to the

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investigator's report, take appropriate action including, but not limited to:

(A) Ordering a review of the conservatorship pursuant to subdivision (b).

(B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interest interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report tin the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interest interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

(d) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(e) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 4. Section 1851 of the Probate Code is amended to read:

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<< CA PROBATE § 1851 >>

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(f) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

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SEC. 4.5. Section 1851 of the Probate Code is amended to read:

<< CA PROBATE § 1851 >>

1851. (a) When court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the quality of care, including physical and mental treatment, and the conservatee's finances. To the greatest extent possible, the court investigator shall interview individuals set forth in subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interest interests of the conservatee. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked. Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of

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the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

(f) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

SEC. 5. Section 5372 is added to the Welfare and Institutions Code, to read:

<< CA WEL & INST § 5372 >>

5372. (a) The provisions of Section 1051 of the Probate Code shall apply to conservatorships established pursuant to this chapter.

(b) The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this section.

(c) Subdivision (a) of this section shall become operative on January 1, 2008.

SEC. 5.5. Section 3.5 of this bill incorporates amendments to Section 1850 of the Probate Code proposed by both this bill and AB 1363. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1850 of the Probate Code, and (3) this bill is enacted after AB 1363, in which case Section 3 of this bill shall not become operative.

SEC. 5.7. Section 4.5 of this bill incorporates amendments to Section 1851 of the Probate Code proposed by both this bill and AB 1363. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2007, (2) each bill amends Section 1851 of the Probate Code, and (3) this bill is enacted after AB 1363, in which case Section 4 of this bill shall not become operative.

SEC. 6. This act shall become operative only if Assembly Bill 1363, Senate Bill 1116, and Senate Bill 1550 of the 2005-06 Regular Session are enacted and become effective on or before January 1, 2007.

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CHAPTER 491
S.B. No. 1550
PROFESSIONS AND OCCUPATIONS--OMNIBUS CONSERVATORSHIP AND GUARDIANSHIP REFORM
ACT

AN ACT to add Chapter 6 (commencing with Section 6500) to Division 3 of the Business and Professions Code, and to add Section 60.1 to, to amend, repeal, and add Article 4 (commencing with Section 2340) to Chapter 4 of Part 4 of Division 4 of, and to amend and repeal Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of, the Probate Code, relating to professional fiduciaries.

[Filed with Secretary of State September 27, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1550, Figueroa Professional Fiduciaries Act.

Existing law requires all private professional conservators, private professional guardians, and private professional trustees to file a specified annual statement, under penalty of perjury, with the clerk of the court. Existing law prohibits a court from appointing a person as a conservator, guardian, or trustee, unless he or she is registered in the Statewide Registry maintained by the Department of Justice and has filed the annual statement with the court.

This bill would enact the **Professional Fiduciaries Act**, which would create the Professional Fiduciaries Bureau in the Department of Consumer Affairs and would require the bureau to license and regulate professional fiduciaries, as specified. The bill

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would also create the Professional Fiduciaries Advisory Committee with specified membership and duties. On and after July 1, 2008, the act would require a person acting or holding himself or herself out as a professional fiduciary to be licensed as a professional fiduciary, unless he or she is licensed as an attorney or a certified public accountant or is enrolled as an agent to practice before the Internal Revenue Service, as specified, and would require a licensee to meet certain other requirements, including filing an application for licensure signed under penalty of perjury, passing a licensing examination, payment of licensing fees set by the bureau, submission of fingerprints for a criminal background check, and annually filing a statement containing specified information under penalty of perjury. The act would provide for the deposit of licensing fees in the Professional Fiduciary Fund, which the bill would create and which would be the successor fund to certain fees in the Statewide Registry. The bureau would become inoperative on July 1, 2011, and be repealed on January 1, 2012, and its responsibilities and jurisdiction would be transferred to the Professional Fiduciaries Advisory Committee.

This bill would also make inoperative, as of July 1, 2008, the provisions of the Probate Code that relate to the registration of private professional conservators and guardians.

This bill would only become operative if SB 1116, SB 1716, and AB 1363 are enacted and become effective on or before January 1, 2007.

Because this bill would require the filing of documents signed under penalty of perjury, it would expand the crime of perjury and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. This act, together with Senate Bill 1116, Senate Bill 1716, and Assembly Bill 1363, shall be known and may be cited as the Omnibus Conservatorship and Guardianship Reform Act of 2006.

SEC. 2. The Legislature finds and declares all of the following:

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(a) California's population is growing at an increasing rate, and the growth in the number of people 65 years of age or older is surpassing that in other states. The number of California's population 65 years of age or older will grow from 3.6 million people in the year 2000, to 6.2 million people in the year 2020, an increase of 72 percent.

(b) As the population of California continues to grow and age, an increasing number of people in the state are unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional, and physical harm. In addition, there is an increasing use of trusts and durable powers of attorney by individuals seeking to provide for potential incapacity. These vulnerable members of society have an expectation that they and their property will be protected by a fair system with high standards of care.

(c) One result of these trends is the growing number of people acting as professional conservators, guardians, trustees, attorneys-in-fact, and estate administrators on behalf of other persons or their estates. The persons acting in one or more of these capacities are known or are commonly referred to as professional fiduciaries.

(d) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect or the physical, emotional or financial abuse of the vulnerable clients that professional fiduciaries are supposed to serve. Unless there is a strengthened accountability, abuses of people who are unable to take care of themselves or their property by professional fiduciaries will increase.

(e) Creation of a program to license and regulate professional fiduciaries is necessary to protect the public health, safety, and welfare.

<< CA BUS & PROF pr. 6500 (c. hd.) >>

SEC. 3. Chapter 6 (commencing with Section 6500) is added to Division 3 of the Business and Professions Code, to read:

Chapter 6. Professional Fiduciaries
Article 1. General Provisions

<< CA BUS & PROF § 6500 >>

6500. This chapter shall be known as the Professional Fiduciaries Act.

<< CA BUS & PROF § 6501 >>

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6501. As used in this chapter, the following terms have the following meanings:

(a) "Act" means this chapter.

(b) "Bureau" means the Professional Fiduciaries Bureau within the Department of Consumer Affairs, established pursuant to Section 6510.

(c) "Client" means an individual who is served by a professional fiduciary.

(d) "Department" means the Department of Consumer Affairs.

(e) "Licensee" means a person who is licensed under this chapter as a professional fiduciary.

(f) "Professional fiduciary" means a person who acts as a conservator or guardian for two or more persons at the same time who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership. "Professional fiduciary" also means a person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three people or more than three families, or a combination of people and families that totals more than three, at the same time, who are not related to the professional fiduciary by blood, adoption, marriage, or registered domestic partnership. "Professional fiduciary" does not include any of the following:

(1) A trust company, as defined in Section 83 of the Probate Code.

(2) An FDIC-insured institution, or its holding companies, subsidiaries, or affiliates. For the purposes of this paragraph, "affiliate" means any entity that shares an ownership interest with, or that is under the common control of, the FDIC-insured institution.

(3) A person employed by an entity described in paragraph (1) or (2) who is acting in the course and scope of that employment.

(4) Any public officer or public agency, including the public guardian, public conservator, or other agency of the State of California or of a county of California, when that public officer or public agency is acting in the course and scope of official duties, or any regional center for persons with developmental disabilities as defined in Section 4620 of the Welfare and Institutions Code.

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(5) Any person whose sole activity as a professional fiduciary is as a broker-dealer, broker-dealer agent, investment adviser representative registered and regulated under the Corporate Securities Law of 1968 (Division 1 (commencing with section 25000) of Title 4 of the Corporations Code), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), or the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or involves serving as a trustee to a company regulated by the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(g) "Committee" means the Professional Fiduciaries Advisory Committee, as established pursuant to Section 6511.. [FN1]

<< CA BUS & PROF § 6502 >>

6502. (a) Every person who is required to register with the Statewide Registry maintained by the Department of Justice under Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code prior to January 1, 2007, shall be required to obtain a license as a professional fiduciary under this chapter.

(b) Every person who is required to file information with the clerk of the court under Article 4 (commencing with Section 2340) of Chapter 3 of Part 4 of Division 4 of the Probate Code prior to January 1, 2007, shall be required to obtain a license as a professional fiduciary under this chapter.

Article 2. Administration

<< CA BUS & PROF § 6510 >>

6510. (a) There is within the jurisdiction of the department the Professional Fiduciaries Bureau. The bureau is under the supervision and control of the director. The duty of enforcing and administering this chapter is vested in the chief of the bureau, who is responsible to the director. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy director or by the chief, subject to conditions and limitations as the director may prescribe.

(b) The Governor shall appoint, subject to confirmation by the Senate, the chief of the bureau, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

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(c) This section shall become inoperative on July 1, 2011, and, as of January 1, 2012, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the bureau subject to the review required by Division 1.2 (commencing with Section 473).

Notwithstanding any other provision of law, upon the repeal of this section, the responsibilities and jurisdiction of the bureau shall be transferred to the Professional Fiduciaries Advisory Committee, as provided by Section 6511.

<< CA BUS & PROF § 6511 >>

6511. (a) There is within the bureau a Professional Fiduciaries Advisory Committee. The committee shall consist of seven members; three of whom shall be licensees actively engaged as professional fiduciaries in this state, and four of whom shall be public members. One of the public members shall be a member of a nonprofit organization advocating on behalf of the elderly, and one of the public members shall be a probate court investigator.

(b) Each member of the committee shall be appointed for a term of four years, and shall hold office until the appointment of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(c) Vacancies shall be filled by the appointing power for the unexpired portion of the terms in which they occur. No person shall serve as a member of the committee for more than two consecutive terms.

(d) The Governor shall appoint the member from a nonprofit organization advocating on behalf of the elderly, the probate court investigator, and the three licensees. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(e) Every member of the committee shall receive per diem and expenses as provided in Sections 103 and 113.

(f) The committee shall do all of the following:

(1) Examine the functions and policies of the bureau and make recommendations with respect to policies, practices, and regulations as may be deemed important and necessary

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by the director or the chief to promote the interests of consumers or that otherwise promote the welfare of the public.

(2) Consider and make appropriate recommendations to the bureau in any matter relating to professional fiduciaries in this state.

(3) Provide assistance as may be requested by the bureau in the exercise of its powers or duties.

(4) Meet at least once each quarter. All meetings of the committee shall be public meetings.

(g) The bureau shall meet and consult with the committee regarding general policy issues related to professional fiduciaries.

(h) Notwithstanding any other provision of law, if the bureau becomes inoperative or is repealed in accordance with Section 6510, or by subsequent acts, the committee shall succeed to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction, not otherwise repealed or made inoperative, of the bureau and its chief. The succession of the committee to the functions of the bureau as provided in this subdivision shall establish the committee as the Professional Fiduciaries Committee in the department within the meaning of Section 22, and all references to the bureau in this code shall be considered as references to the committee.

<< CA BUS & PROF § 6513 >>

6513. The bureau may employ, subject to civil service and other provisions of law, other employees as may be necessary to carry out the provisions of this chapter under the direction of the chief.

<< CA BUS & PROF § 6514 >>

6514. The bureau shall keep a complete record of all its proceedings and all licenses issued, renewed, or revoked, and a detailed statement of receipts and disbursements.

<< CA BUS & PROF § 6515 >>

6515. The duty of administering and enforcing this chapter is vested in the bureau and the chief. In the performance of this duty, the bureau and the chief have all of the powers of, and are subject to all of the responsibilities vested in and imposed upon, the head of a

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department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

<< CA BUS & PROF § 6516 >>

6516. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

<< CA BUS & PROF § 6517 >>

6517. The bureau may adopt, amend, or repeal, in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), regulations necessary to enable the bureau to carry into effect the provisions of law relating to this chapter.

<< CA BUS & PROF § 6518 >>

6518. (a) The bureau shall be responsible for administering the licensing and regulatory program established in this chapter.

(b) The bureau shall approve classes qualifying for prelicense education, as well as classes qualifying for annual continuing education required by this chapter. The bureau shall maintain a current list of all approved classes.

(c) The bureau shall arrange for the preparation and administration of licensing examinations.

<< CA BUS & PROF § 6520 >>

6520. The bureau shall adopt, by regulation, a Professional Fiduciaries Code of Ethics. The Professional Fiduciaries Code of Ethics shall be consistent with all statutory requirements, as well as requirements developed by the courts and the Judicial Council. The Professional Fiduciaries Code of Ethics shall be provided electronically on the bureau's Internet Web site and to persons who request an application for licensure. The bureau may, by regulation, amend the Professional Fiduciaries Code of Ethics from time to time, as it deems necessary, provided that no amendment shall be effective with regard to a licensee until the licensee's next annual license renewal cycle, as specified in subdivision (a) of Section 6542, is completed. Any amendment to the Professional

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Fiduciaries Code of Ethics shall be included in the license renewal materials sent to a licensee.

Article 3. Licensing

<< CA BUS & PROF § 6530 >>

6530. (a) On and after July 1, 2008, no person shall act or hold himself or herself out to the public as a professional fiduciary unless that person is licensed as a professional fiduciary in accordance with the provisions of this chapter.

(b) This section does not apply to a person licensed as an attorney under the State Bar Act (Chapter 4 (commencing with Section 6000)).

(c) This section does not apply to a person licensed as, and acting within the scope of practice of, a certified public accountant pursuant to Chapter 1 (commencing with Section 5000) of Division 3.

(d) This section does not apply to a person enrolled as an agent to practice before the Internal Revenue Service who is acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations.

<< CA BUS & PROF § 6531 >>

6531. No professional fiduciary shall operate with an expired, suspended, or revoked license.

<< CA BUS & PROF § 6532 >>

6532. A person who has been licensed by the bureau may identify himself or herself as a "licensed professional fiduciary."

<< CA BUS & PROF § 6533 >>

6533. In order to meet the qualifications for licensure as a professional fiduciary a person shall meet all of the following requirements:

(a) Be at least 21 years of age.

(b) Be a United States citizen, or be legally admitted to the United States.

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(c) Have not committed any acts that are ground for denial of a license under Section 480 or 6536.

(d) Submit fingerprint images as specified in Section 6533.5 in order to obtain criminal offender record information.

(e) Have completed the required prelicensing education described in Section 6538.

(f) Have passed the licensing examination administered by the bureau pursuant to Section 6539.

(g) Have at least one of the following:

(1) A baccalaureate degree of arts or sciences from a college or university accredited by a nationally recognized accrediting body of colleges and universities or a higher level of education.

(2) An associate of arts or science degree from a college or university accredited by a nationally recognized accrediting body of colleges and universities, and at least five years of experience with substantive fiduciary responsibilities working for a professional fiduciary, public agency, or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(3) Experience of not less than three years, prior to July 1, 2008, with substantive fiduciary responsibilities working for a public agency or financial institution acting as a conservator, guardian, trustee, personal representative, or agent under a power of attorney.

(h) Agree to adhere to the Professional Fiduciaries Code of Ethics and to all statutes and regulations.

(i) Consent to the bureau conducting a credit check on the applicant.

(j) File a completed application for licensure with the bureau on a form provided by the bureau and signed by the applicant under penalty of perjury.

(k) Submit with the license application a nonrefundable application fee, as specified in this chapter.

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<< CA BUS & PROF § 6533.5 >>

6533.5. Criminal offender record information shall be obtained on each applicant as provided in this section.

(a) Each applicant shall submit fingerprint images to the Department of Justice for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests, including arrests where the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a fitness determination to the bureau.

(c) The Department of Justice shall provide a response to the bureau pursuant to subdivision (p) of Section 11105 of the Penal Code.

(d) The bureau shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

<< CA BUS & PROF § 6534 >>

6534. (a) The bureau shall maintain the following information in each licensee's file, shall make this information available to a court for any purpose, including the determination of the appropriateness of appointing or continuing the appointment of, or removing, the licensee as a conservator, guardian, trustee, or personal representative, and shall otherwise keep this information confidential, except as provided in subdivisions (b) and (c) of this section:

(1) The names of the licensee's current conservatees or wards and the trusts or estates currently administered by the licensee.

(2) The aggregate dollar value of all assets currently under the licensee's supervision as a professional fiduciary.

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(3) The licensee's current addresses and telephone numbers for his or her place of business and place of residence.

(4) Whether the licensee has ever been removed for cause as conservator, guardian, trustee, or personal representative or has ever resigned as conservator, guardian, trustee, or personal representative in a specific case, the circumstances causing that removal or resignation, and the case names, court locations, and case numbers associated with the removal or resignation.

(5) The case names, court locations, and case numbers of all conservatorship, guardianship, or trust or other estate administration cases that are closed for which the licensee served as the conservator, guardian, trustee, or personal representative.

(6) Information regarding any discipline imposed upon the licensee by the bureau.

(7) Whether the licensee has ever filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy.

(b) The bureau shall make the information in paragraphs (2), (4), (6), and (7) of subdivision (a) available to the public.

(c) The bureau shall also publish information regarding licensees on the Internet as specified in Section 27. The information shall include, but shall not be limited to, information regarding license status and the information specified under subdivision (b).

<< CA BUS & PROF § 6535 >>

6535. The bureau shall approve or deny licensure in a timely manner to applicants who apply for licensure. Upon approval of a license, the bureau shall notify the applicant of issuance of the license, and shall issue a license certificate identifying him or her as a "licensed professional fiduciary."

<< CA BUS & PROF § 6536 >>

6536. The bureau shall review all applications for licensure and may investigate an applicant's qualifications for licensure. The bureau shall approve those applications that meet the requirements for licensure, but shall not issue a license to any applicant who meets any of the following criteria:

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(a) Does not meet the qualifications for licensure under this chapter.

(b) Has been convicted of a crime substantially related to the qualifications, functions, or duties of a fiduciary.

(c) Has engaged in fraud or deceit in applying for a license under this chapter.

(d) Has engaged in dishonesty, fraud, or gross negligence in performing the functions or duties of a fiduciary, including engaging in such conduct prior to July 1, 2008.

(e) Has been removed as a fiduciary by a court for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference, or has demonstrated a pattern of negligent conduct, including a removal prior to July 1, 2008, and all appeals have been taken, or the time to file an appeal has expired.

<< CA BUS & PROF § 6537 >>

6537. The bureau may deny a license for the reasons specified in Section 480 or 6536. An applicant notified of the denial of his or her application for licensure shall have the right to appeal to the bureau as specified in Chapter 2 (commencing with Section 480) of Division 1.5.

<< CA BUS & PROF § 6538 >>

6538. (a) To qualify for licensure, an applicant shall have completed 30 hours of prelicensing education courses provided by an educational program approved by the bureau.

(b) To renew a license, a licensee shall complete 15 hours of approved continuing education courses each year.

(c) The cost of any educational course required by this chapter shall not be borne by any client served by a licensee.

<< CA BUS & PROF § 6539 >>

6539. As a requirement for licensure, an applicant shall take and pass the licensing examination administered by the bureau. The bureau shall determine the frequency with which the examination will be given. The bureau shall also determine the frequency with which an applicant for reexamination may sit for the examination. The bureau shall

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administer the examination through a computer-based examination process and may also administer the examination through other means.

<< CA BUS & PROF § 6540 >>

6540. Individuals, entities, agencies, and associations that propose to offer educational programs qualifying for the prelicensing educational or continuing educational requirements of this chapter shall apply for and obtain the approval of the bureau.

<< CA BUS & PROF § 6541 >>

6541. (a) A license shall expire one year after it was issued on the last day of the month in which it was issued.

(b) A license may be renewed by filing a renewal application with the bureau, submitting the annual statement required by Section 6561, submitting proof of the licensee's compliance with the continuing education requirements of this chapter, and payment of the renewal fee set by the bureau, provided that the licensee has not engaged in conduct that would justify the bureau's refusal to grant the renewal. Acts justifying the bureau's refusal to renew a license shall include any of the following:

(1) Conviction of a crime substantially related to the qualifications, functions, or duties of a fiduciary.

(2) Fraud or deceit in obtaining a license under this chapter.

(3) Dishonesty, fraud, or gross negligence in performing the functions or duties of a professional fiduciary.

(4) Removal by a court as a fiduciary for breach of fiduciary duty if all appeals have been taken or the time to file an appeal has expired.

Article 4. Practice Provisions

<< CA BUS & PROF § 6560 >>

6560. A licensee shall keep complete and accurate records of client accounts, and shall make those records available for audit by the bureau.

<< CA BUS & PROF § 6561 >>

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6561. (a) A licensee shall initially, and annually thereafter, file with the bureau a statement under penalty of perjury containing the following:

(1) Her or his business address, telephone number, and facsimile number.

(2) Whether or not he or she has been removed as conservator, guardian, trustee, or personal representative for cause. The licensee may file an additional statement of the issues and facts pertaining to the case.

(3) The case names, court locations, and case numbers for all matters where the licensee has been appointed by the court.

(4) Whether he or she has been found by a court to have breached a fiduciary duty.

(5) Whether he or she has resigned or settled a matter in which a complaint has been filed, along with the case number and a statement of the issues and facts pertaining to the allegations.

(6) Any licenses or professional certificates held by the licensee.

(7) Any ownership or beneficial interests in any businesses or other enterprises held by the licensee or by a family member that receives or has received payments from a client of the licensee.

(8) Whether the licensee has ever filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy.

(9) The name of any persons or entities that have an interest in the licensee's professional fiduciary business.

(10) Whether the licensee has been convicted of a crime .

(b) The statement by the licensee required by this section may be filed electronically with the bureau, in a form approved by the bureau. However, any additional statement filed under paragraph (2) of subdivision (a) shall be filed in writing.

<< CA BUS & PROF § 6562 >>

6562. The annual statement shall be filed with the bureau 60 days prior to the expiration

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of the license as provided in subdivision (a) of Section 6541.

Article 5. Enforcement and Disciplinary Proceedings

<< CA BUS & PROF § 6580 >>

6580. (a) The bureau may upon its own, and shall, upon the receipt of a complaint from any person, investigate the actions of any professional fiduciary. The bureau shall review a professional fiduciary's alleged violation of statute, regulation, or the Professional Fiduciaries Code of Ethics and any other complaint referred to it by the public, a public agency, or the department, and may impose sanctions upon a finding of a violation or a breach of fiduciary duty.

(b) Sanctions shall include any of the following:

(1) Administrative citations and fines as provided in Section 125.9 for a violation of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

(2) License suspension, probation, or revocation.

(c) The bureau shall provide on the Internet information regarding any sanctions imposed by the bureau on licensees, including, but not limited to, information regarding citations, fines, suspensions, and revocations of licenses or other related enforcement action taken by the bureau relative to the licensee.

<< CA BUS & PROF § 6582 >>

6582. All proceedings against a licensee for any violation of this chapter or any regulations adopted by the bureau shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall be prosecuted by the Attorney General's office, and the bureau shall have all the powers granted therein.

<< CA BUS & PROF § 6582.5 >>

6582.5. Notwithstanding Section 6582, if any violation occurs, in its discretion, the bureau may refer the case to the Attorney General or to the local district attorney for criminal prosecution. The referral of a case for criminal prosecution shall not preclude the bureau from taking any other action provided for in this chapter.

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<< CA BUS & PROF § 6583 >>

6583. The bureau shall establish a system of administrative citations and fines under Section 125.9 for violations of this chapter, the Professional Fiduciaries Code of Ethics, or any regulation adopted under this chapter.

<< CA BUS & PROF § 6584 >>

6584. A license issued under this chapter may be suspended, revoked, denied, or other disciplinary action may be imposed for one or more of the following causes:

(a) Conviction of any felony or any misdemeanor, if the misdemeanor is substantially related to the functions and duties of a professional fiduciary. The record of conviction, or a certified copy thereof, is conclusive evidence of the conviction.

(b) Failure to notify the bureau of a conviction as required by paragraph (10) of subdivision (a) of Section 6561.

(c) Fraud or misrepresentation in obtaining a license.

(d) Fraud, dishonesty, corruption, willful violation of duty, gross negligence or incompetence in practice, or unprofessional conduct in, or related to, the practice of a professional fiduciary. For purposes of this section, unprofessional conduct includes, but is not limited to, acts contrary to professional standards concerning any provision of law substantially related to the duties of a professional fiduciary.

(e) Failure to comply with, or to pay a monetary sanction imposed by, a court for failure to provide timely reports. The record of the court order, or a certified copy thereof, is conclusive evidence that the sanction was imposed.

(f) Failure to pay a civil penalty relating to the licensee's professional fiduciary duties.

(g) The revocation of, suspension of, or other disciplinary action against, any other professional license by the State of California or by another state. A certified copy of the revocation, suspension, or disciplinary action is conclusive evidence of that action.

(h) Violation of this chapter or of the applicable provisions of Division 4 (commencing with Section 1400), Division 4.5 (commencing with Section 4000), Division 4.7 (commencing with Section 4600), or Division 5 (commencing with Section 5000) of the

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Probate Code or of any of the statutes, rules, or regulations pertaining to duties or functions of a professional fiduciary.

Article 6. Revenue

<< CA BUS & PROF § 6590 >>

6590. All fees collected by the bureau shall be paid into the Professional Fiduciary Fund in the State Treasury, which is hereby created. The money in the fund shall be available to the bureau for expenditure for the purposes of this chapter only upon appropriation by the Legislature.

<< CA BUS & PROF § 6591 >>

6591. The Professional Fiduciary Fund shall be the successor fund to those funds deposited under the Statewide Registry with the Department of Justice pursuant to Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code.

<< CA BUS & PROF § 6592 >>

6592. (a) The fee for a professional fiduciary examination and reexamination shall be set by the bureau through regulation at the amount necessary to recover the actual costs to develop and administer the examination.

(b) The license fee to obtain a professional fiduciary license shall be set by the bureau.

(c) The renewal fee for a professional fiduciary license shall be set by the bureau.

(d) The license and renewal fees under subdivisions (b) and (c) shall be set by the bureau through regulation at an amount necessary to recover the costs to the bureau in carrying out the provisions of this chapter.

SEC. 4. Section 60.1 is added to the Probate Code, to read:

<< CA PROBATE § 60.1 >>

60.1. (a) "Professional fiduciary" means a person who is a professional fiduciary as defined under subdivision (f) of Section 6501 of the Business and Professions Code.

(b) On and after July 1, 2008, no person shall act or hold himself or herself out to the

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public as a professional fiduciary unless he or she is licensed as a professional fiduciary under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

<< CA PROBATE pr. 2340 (a. hd.) >>

SEC. 5. Article 4 (commencing with Section 2340) is added to Chapter 4 of Part 4 of Division 4 of the Probate Code, to read:

Article 4. Professional Fiduciaries

<< CA PROBATE § 2340 >>

2340. On and after July 1, 2008, a superior court may not appoint a person to carry out the duties of a professional fiduciary, unless he or she holds a valid, unexpired, unsuspended license as a professional fiduciary under Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code.

<< CA PROBATE § 2341 >>

2341. This article shall become operative on July 1, 2008.

SEC. 6. Section 2345 is added to the Probate Code, to read:

<< CA PROBATE § 2345 >>

2345. This article shall remain in effect only until July 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 2856 is added to the Probate Code, to read:

<< CA PROBATE § 2856 >>

2856. This chapter shall remain in effect only until July 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. This act shall only become operative if Senate Bill 1116, Senate Bill 1716, and Assembly Bill 1363 of the 2005-06 Regular Session are enacted and become effective on

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or before January 1, 2007.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

[FN1] So in enrolled bill.

CA LEGIS 491 (2006)

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CALIFORNIA 2006 LEGISLATIVE SERVICE
2006 Portion of 2005-2006 Regular Session

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Additions are indicated by Text; deletions by
* * *. Changes in tables are made but not highlighted.

CHAPTER 490
S.B. No. 1116
PROBATE PROCEEDINGS--CONSERVATORS AND CONSERVATORSHIP--PROPERTY

AN ACT to amend Sections 2352, 2540, 2543, 2590, and 2591 of, and to add Sections 2352.5 and 2591.5 to, the Probate Code, relating to conservatorships.

[Filed with Secretary of State September 27, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1116, Scott Conservatorships.

(1) Existing law generally authorizes a guardian or conservator to fix the residence of a conservatee or ward within the state without permission of the court, by selecting the least restrictive appropriate setting, as specified, that is in the best interests of the conservatee. Existing law requires the guardian or conservator to promptly give notice of all changes in the residence of a conservatee or ward.

This bill would revise and recast this provision to permit a guardian or conservator to select the least restrictive appropriate residence of a conservatee or ward. The bill would require a presumption that the least restrictive appropriate residence for the conservatee is the personal residence of that conservatee, except if proven otherwise at a hearing by a preponderance of the evidence. The bill would require a conservator to evaluate the level of care and measures necessary to keep the conservatee in his or her personal residence or explain the limitations or restrictions regarding a return of the conservatee to his or her personal residence. The bill would exempt from these provisions conservatees with developmental disabilities for whom the Director of the Department of Developmental Disabilities or a regional center for the developmentally disabled acts as a conservator, as specified. The bill would require this determination to be made in writing under penalty of perjury. Because the bill would change the definition of the crime of perjury, the bill would impose a state-mandated local program. The bill would require the guardian or conservator to file notice of the change of address for a ward or conservatee in 30 days. The bill would permit the court to waive notice of the change of address in order to prevent harm to the conservatee or ward. The bill would require the Judicial Council to develop one or more forms consistent with this provision by January 1, 2008. If a ward or conservatee is being removed from his or her personal residence, the bill would require the guardian or conservator to give notice 15 days prior to removal, except in an emergency, as specified.

(2) Existing law provides that sales of real or personal property of the estate

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of a conservatee are subject to authorization, confirmation, or direction of the court, except as otherwise provided and except for the sale of a conservatee's personal residence. In seeking authorization to sell a conservatee's present or former personal residence, the conservator is required to notify the court that the personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee, among other requirements.

This bill would revise the provisions for the proposed sale of the personal residence of a conservatee and require a conservator to publish and post a notice of sale, reappraisal for sale, minimum offer price, and other information related to the sale of the personal residence, as specified. The bill would delete restrictions regarding the sale of the personal residence of the conservatee related to contracts with and compensation of agents, brokers, and auctioneers, and restrictions regarding the sale of personal property.

(3) Under existing law, the court, in its discretion, may make an order granting a conservator one or more powers, as specified, for the advantage, benefit, and best interest of the estate of the conservatee. These powers include the sale of real property of the estate.

This bill would additionally require that the sale of the personal residence of a conservatee, including the terms of sale, price, and commissions to be paid from the estate, to be in the best interest of the conservatee, that the sale of that personal residence shall comply with requirements for appraisal and minimum offer price, and other conditions, as specified. The bill would prohibit a court from waiving specified requirements regarding appraisals.

(4) This bill would make related, nonsubstantive and clarifying changes.

(5) This bill would become operative only if SB 1550, SB 1716, and AB 1363 are enacted and become effective on or before January 1, 2007.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 2352 of the Probate Code is amended to read:

<< CA PROBATE § 2352 >>

2352. (a) The guardian * * *may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

* * *(b) The conservator may establish the residence of the conservatee at any place within this state without the permission of the court. * * *The conservator shall select the least restrictive appropriate * * *residence, as described in Section 2352.5, that is available and necessary to meet the needs of the * * *conservatee, and that is in the best interests of the conservatee.* * *

* * *

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(c) If permission of the court is first obtained, a guardian or conservator may establish the residence of a ward or conservatee at a place not within this state.

(d) An order under ~~* * *~~subdivision (c) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or a longer or shorter period ~~* * *~~specified in the order.

(e)(1) The guardian or conservator shall ~~* * *~~file a notice of change of residence with the court within 30 days of the date of the change. The conservator shall include in the notice of change of residence a declaration stating that the conservatee's change of residence is consistent with the standard described in subdivision (b). The Judicial Council shall, on or before January 1, 2008, develop one or more forms of notice and declaration to be used for this purpose.

(2) The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement pursuant to this paragraph in order to prevent harm to the conservatee or ward.

(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall mail a notice of his or her intention to change the residence of the ward or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence. If the notice is served less than 15 days prior to the proposed removal of the ward or conservatee, the guardian or conservatee shall set forth the basis for the emergency in the notice. The guardian or conservator shall file proof of service of that notice with the court.

(f) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to establish his or her own residence.

SEC. 2. Section 2352.5 is added to the Probate Code, to read:

<< CA PROBATE § 2352.5 >>

2352.5. (a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence.

(b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.

(1) That determination shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence.

(2) If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, that determination shall either

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include a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future.

(c) The determination made by the conservator pursuant to subdivision (b) shall be in writing, signed under penalty of perjury, and submitted to the court within 60 days of appointment as conservator.

(d) The conservator shall evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care.

(e)(1) This section shall not apply to a conservatee with developmental disabilities for whom the Director of the Department of Developmental Services or a regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, acts as the conservator and who receives services from a regional center pursuant to the Lanterman Developmental Disabilities Act, Division 4.5 (commencing with Section 4500) of the Welfare and Institutions.

(2) Services, including residential placement, for a conservatee described in paragraph (1) who is a consumer, as defined in Section 4512 of the Welfare and Institutions Code, shall be identified, delivered, and evaluated consistent with the individual program plan process described in Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code.

SEC. 3. Section 2540 of the Probate Code is amended to read:

<< CA PROBATE § 2540 >>

2540. (a) Except as otherwise provided in Sections 2544 and 2545, and except for the sale of a conservatee's present or former personal residence as set forth in subdivision (b), sales of real or personal property of the estate under this article are subject to authorization, confirmation, or direction of the court, as provided in this article.

(b) In seeking authorization to sell a conservatee's present or former personal residence, the conservator shall notify the court that the present or former personal residence is proposed to be sold and that the conservator has discussed the proposed sale with the conservatee. * * *The conservator shall inform the court whether the conservatee supports or is opposed to the proposed sale and shall describe the circumstances that necessitate the proposed sale, including whether the conservatee has the ability to live in the personal residence and why other alternatives, including, but not limited to, in-home care services, are not available. The court, in its discretion, may require the court investigator to discuss the proposed sale with the conservatee. This subdivision shall not apply when the conservator is granted the power to sell real property of the estate pursuant to Article 11 (commencing with Section 2590).

SEC. 4. Section 2543 of the Probate Code is amended to read:

<< CA PROBATE § 2543 >>

2543. (a) If estate property is required or permitted to be sold, the guardian or conservator may:

(1) Use discretion as to which property to sell first.

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(2) Sell the entire interest of the estate in the property or any lesser interest therein.

(3) Sell the property either at public auction or private sale.

(b) Subject to Section 1469, unless otherwise specifically provided in this article, all proceedings concerning sales by guardians or conservators, ~~* * *~~ publishing and posting notice of sale, reappraisal for sale, minimum offer price for the property, reselling the ~~* * *~~property, report of sale and petition for confirmation ~~* * *~~of sale, and notice and hearing of ~~* * *~~that petition, making orders authorizing sales, rejecting or confirming sales and reports of sales, ordering and making conveyances of property sold, and allowance of commissions, shall conform, as nearly as may be, to the provisions of this code concerning sales by a personal representative ~~* * *~~as described in Articles 6 (commencing with Section 10300), 7 (commencing with Section 10350), 8 (commencing with Section 10360), and 9 (commencing with Section 10380) of Chapter 18 of Part 5 of Division 7. The provisions concerning sales by a personal representative as described in the Independent Administration of Estates Act, Part 6 (commencing with Section 10400) of Division 7 shall not apply to this subdivision.

(c) Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the confirmation hearing, a new appraisal shall be required prior to the confirmation hearing, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the confirmation hearing.

(d) The clerk of the court shall cause notice to be posted pursuant to subdivision (b) only in the following cases:

(1) If posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) If posting of notice of a sale governed by Section 10250 (sales of personal property) is required or authorized.

(3) ~~* * *~~If posting of notice is ordered by the court.

SEC. 5. Section 2590 of the Probate Code is amended to read:

<< CA PROBATE § 2590 >>

2590. The court may, in its discretion, make an order granting the guardian or conservator any one or more or all of the powers specified in Section 2591 if the court determines that, under the circumstances of the particular guardianship or conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. Subject only to the requirements, conditions, or limitations as are specifically and expressly provided, either directly or by reference, in the order granting the power or powers, and if consistent with Section 2591, the guardian or conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the ward or conservatee could do if possessed of legal capacity.

SEC. 6. Section 2591 of the Probate Code is amended to read:

<< CA PROBATE § 2591 >>

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2591. The powers referred to in Section 2590 are:

(a) The power to contract for the guardianship or conservatorship and to perform outstanding contracts and thereby bind the estate.

(b) The power to operate at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.

(c) The power to grant and take options.

(d)(1) The power to sell at public or private sale real or personal property of the estate, other than the personal residence of a conservatee.

(2) The power to sell at public or private sale the personal residence of the conservatee as described in Section 2591.5. The power granted pursuant to this paragraph is subject to the requirements of Sections 2352.5 and 2541.

(e) The power to create by grant or otherwise easements and servitudes.

(f) The power to borrow money and give security for the repayment thereof.

(g) The power to purchase real or personal property.

(h) The power to alter, improve, and repair or raze, replace, and rebuild property of the estate.

(i) The power to let or lease property of the estate for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time.

(j) The power to lend money on adequate security.

(k) The power to exchange property of the estate.

(l) The power to sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.

(m) The power to commence and maintain an action for partition.

(n) The power to exercise stock rights and stock options.

(o) The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.

(p) The power to pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship.

(q) The power to employ attorneys, accountants, investment counsel, agents, depositaries, and employees and to pay the expense.

SEC. 7. Section 2591.5 is added to the Probate Code, to read:

<< CA PROBATE § 2591.5 >>

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2591.5. (a) Notwithstanding any other provisions of this article, a conservator seeking an order under Section 2590 authorizing a sale of the conservatee's personal residence shall demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the estate, are in all respects in the best interests of the conservatee.

(b) A conservator authorized to sell the conservatee's personal residence pursuant to Section 2590 shall comply with the provisions of Section 10309 concerning appraisal or new appraisal of the property for sale and sale at a minimum offer price. Notwithstanding Section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the proposed sale of the property, a new appraisal shall be required prior to the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property.

(c) Within 15 days of the close of escrow, the conservator shall serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice and shall file a copy of the final escrow statement along with a proof of service with the court.

(d) The court may, for good cause, waive any of the requirements of this section, except the requirements regarding appraisal times in subdivision (b).

SEC. 8. This act shall become operative only if Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363 of the 2005-06 Regular Session are enacted and become effective on or before January 1, 2007.

SEC. 9. This act, together with Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363, shall be known and may be cited as the **Omnibus Conservatorship** and **Guardianship Reform Act** of **2006.**

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CA LEGIS 490 (2006)

END OF DOCUMENT

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CONCURRENCE IN SENATE AMENDMENTS
AB 1363 (Jones)
As Amended August 24, 2006
Majority vote

ASSEMBLY:	55-10	(January 26, 2006)	SENATE:	40-0	(August 23, 2006)

Original Committee Reference: JUD.

SUMMARY : Establishes the Omnibus Conservatorship and Guardianship Reform Act of 2006 to overhaul California's conservatorship and guardianship system. Specifically, this bill :

1) Limits the waiving of notice before appointment of a temporary conservator or guardian, and limits the duties of a temporary conservator, as specified.

2) Requires the probate court to review conservatorships at a noticed hearing six months after appointment of the conservator and annually thereafter, as specified.

3) Requires accountings to include specified supporting documentation and to be subject to random audit.

4) Requires the Judicial Council to develop qualifications and continuing education requirements for probate court judges, attorneys and court investigators; to establish uniform standards for conservatorships and guardians; and to report to the Legislature, by January 1, 2008, on measures of court effectiveness in conservatorship cases, as specified.

5) Prevents conservators or guardians from receiving costs or fees for unsuccessfully opposing a petition or other action on behalf of the conservatee or ward, without good cause.

6) Requires the public guardian to apply for appointment as conservator or guardian in specified cases.

7) Contains double jointing language with SB 1716 (Bowen) and makes this bill contingent upon enactment of SB 1116 (Scott), SB 1550 (Figueroa) and SB 1716 (Bowen).

8)Makes new court duties effective July 1, 2007.

The Senate amendments delete the licensure requirement for professional conservators and guardians, the Conservatorship Ombudsman, and the self-help program for unrepresented, non-professional conservators and make the bill contingent upon enactment of SB 1116 (Scott), SB 1550 (Figueroa), and SB 1716 (Bowen).

AS PASSED BY THE ASSEMBLY , this bill was substantially similar, except as set forth above, to the version approved by the Senate.

FISCAL EFFECT : According to the Senate Appropriations Committee, $2.5 million in fiscal year (FY) 2006-07 for state mandated duties of the Public Guardian, and $13.7 million in FY 2007-08 and ongoing for new court duties and investigations and the mandate for the Public Guardian.

COMMENTS : This bill is sponsored by Bet Tzedeck Legal Services, California Alliance for Retired Americans and the Older Women's League. It arises out of an in-depth investigatory series published this past November by the Los Angeles Times and a joint hearing held by the Assembly and Senate Judiciary Committees on this issue. "Guardians for Profit," as that series was called, dramatically exposed the failings of California's conservatorship system for elderly and dependent adults. (Robin Fields, Evelyn Larrubia, and Jack Leonard, Guardians for Profit series, Los Angeles Times , November 13-17, 2005.) The Times' articles included stories of private conservators who misuse the system and get themselves appointed inappropriately and then either steal or mismanage the money their conservatees spent a lifetime earning; public guardians who do not have the resources to help truly needy individuals, leaving them, poor, alone, and at risk of severe harm to try and fend for themselves; probate courts which do not have sufficient resources to provide adequate oversight to catch the abuses; and a system that provides no place for those in need to turn to for help. The Times editorial which ran at the end of the series, called on both the courts and elected officials to "turn this abusive system into the honest guardianship it was meant to be." (Deserving of Care, Los Angeles Times , November 17, 2005.)

In response to the series, the Assembly and Senate Judiciary Committees convened an oversight hearing last December and heard from both individuals who had been personally harmed by the system as well as representatives from the courts, the bar, court

investigators, the public guardian, professional conservators, and

groups representing seniors. All participants, without exception, agreed that the system was significantly underperforming and, as a result, harming conservatees and their loved ones. In addition, the witnesses agreed that the problems were only likely to increase exponentially as the baby boom population ages, with a significant increase in the population suffering from Alzheimer's disease or similarly disabling diseases.

This bill, together with SB 1116 (Scott), SB 1550 (Figueroa) and SB 1716 (Bowen), seeks to address the detailed abuses in the conservatorship and guardianship system by making a number of significant reforms. This bill would significantly increase court oversight to prevent abuse. First, it would require specified training for probate court judges, attorneys, and investigators, as well as the public guardian. Second, this bill would require courts to review conservatorships cases more frequently. Conservators would be required to file accountings with specified supporting documentation attached, and such accountings would be subject to full audit by the court. Requirements for appointment of temporary conservators and guardians would be tightened. The Judicial Council (JC) would be directed to establish uniform standards for conduct of conservators and guardians to ensure that the estates of conservatees and wards are maintained and conserved as appropriate, including uniform standards for fees and for asset management.

This bill also seeks to help family members and friends who would like to serve as conservators or guardians, but need a little assistance with the court process. The JC would be directed to develop self-help informational materials for non-professional conservators and guardians.

In response to numerous instances when the Public Guardian has been unable, due to lack of resources, to take the cases of those without resources who desperately need conservators or guardians, leaving them with no other assistance, this bill would direct the Public Guardian to take such cases of those at imminent risk of harm.

Analysis Prepared by : Leora Gershenzon / JUD. / (916) 319-2334
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|SENATE RULES COMMITTEE | AB 1363|
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|327-4478 |

THIRD READING

Bill No: AB 1363
Author: Jones (D), et al
Amended: 8/24/06 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 4-0, 6/27/06
AYES: Dunn, Escutia, Harman, Kuehl
NO VOTE RECORDED: Morrow

SENATE APPROPRIATIONS COMMITTEE : 11-1, 8/17/06
AYES: Murray, Alarcon, Alquist, Ashburn, Battin, Escutia, Florez, Ortiz, Poochigian, Romero, Torlakson
NOES: Aanestad
NO VOTE RECORDED: Dutton

ASSEMBLY FLOOR : 55-10, 1/26/06 - See last page for vote

SUBJECT : Conservatorships

SOURCE : Bet Tzedek Legal Services
California Alliance for Retired Americans
Older Womens League of California

DIGEST : This bill enacts the Omnibus Conservatorship and Guardianship Reform Act of 2006, significantly restructuring the courts' review of conservatorships, imposing new duties on court investigators, and requiring the Judicial Council of California to implement a range of rules, forms and notices. This bill (1) establishes more frequent court reviews of conservatorships (at six months

CONTINUED

and one year after the initial appointment, and annually thereafter) and allows a court to order a review of a conservatorship at any time, (2) imposes new duties on court investigators (new investigations of all temporary conservatorships, full investigations after six months, status or full investigations at one-year intervals, expanded investigatory scope to include conservatees' placements, quality of care and finances, investigating proposed moves of conservatees), (3) requires more frequent accountings and court reviews of each accounting, (4) requires the public guardian of a county to apply for appointment as guardian or conservator if there is imminent threat to a proposed conservatee's health, safety, or estate, (5) requires the Judicial Council to develop by January 1, 2008, user-friendly educational materials for non-professional guardians to be made available to them free of charge, (6) requires probate courts to provide specified self-help services free of charge to non-professional guardians, (7) requires Judicial Council to report to the Legislature by January 1, 2008, the results of a study on court effectiveness in conservatorship cases, (8) eliminates the Statewide Registry of Professional Conservators, deferring instead to the Board of Professional Fiduciaries as established by SB 1550 (Figueroa), and (9) makes its enactment contingent on the enactment of SB 1550, SB 1116 (Scott) and SB 1716 (Bowen).

Senate Floor Amendments of 8/24/06 (1) clarify application of the bill to domestic partners, standards for court investigations of conservatorships review, and frequency of review of conservatorships, (2) add double-jointing language, and (3) make other clarifying changes.

ANALYSIS : Existing law provides a comprehensive scheme for the establishment, oversight, and termination of conservatorships and guardianships.

Judicial Council

Existing law requires the Judicial Council to establish by rule educational requirements for private professional conservators, requires private professional conservators and guardians to meet those educational requirements prior

to appointment, and prohibits private professional conservators or guardians from registering with the Statewide Registry if they have failed to complete the educational requirements.

This bill requires the Judicial Council, in addition to any other requirement that are part of the judicial branch education program:

1. To report to the Legislature on or before January 1, 2008, the findings of a pilot study consisting of three counties designed to measure court effectiveness in conservatorship cases.

2. To specify the number of hours of education in classes related to conservatorships or guardianships that a judge who is regularly assigned to hear probate matters shall complete, upon assuming the probate assignment, and then over a three-year period on an ongoing basis. It also requires the Council to specify the number of hours of education that a court-employed staff attorney, examiner and investigator shall complete each year.

3. To develop a short user-friendly educational program for nonprofessionals who may seek appointment as conservator or guardian of a family member or friend, or as a court-appointed conservator not required to be licensed as a professional fiduciary.

4. To establish in each court an assistance program for self-represented conservators and guardians.

5. To develop appropriate forms as required by new mandates for notices, accountings, and other reports.

6. To adopt a rule of court to implement a specified provision requiring guardians and conservators to provide a bond.

Court Investigator Duties

Existing law requires a court investigator to conduct evaluations of a conservatorship at various stages of the proceedings: prior to the noticed hearing for appointment

of a conservator and at designated intervals during the conservatorship. Existing law requires the court investigator to make specified findings and certify the findings in a written report to the court, copies of which are mailed to the conservator and the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

This bill expands the tasks currently undertaken by a court investigator, including interviewing the proposed conservatee's spouse or registered domestic partner and relatives within the first degree and, "to the greatest extent possible," the conservatee's relatives to the second degree, neighbors, and close friends before the hearing. [Section 1826(a), 2250.2(a) and (b) of the Probate Code (PROB)]

This bill requires the court investigator to inform the conservatee of the nature, purpose and effect of a temporary conservatorship, as well as the conservatee's rights relative to the proposed general conservatorship. [PROB Section 1826(b), 2250.2(a)(2) and (b)(2)]

This bill requires the court investigator, if the investigator does not visit the conservatee until after a temporary conservator had been appointed and the conservatee objects to the conservatorship or requests an attorney, to report this matter to the court within three court days so that the court may proceed with appointment of an attorney as provided under existing law. [PROB Section 2250.2(b)(c)]

This bill requires the court investigator, if it appears that the temporary conservatorship is inappropriate, immediately but no more than two court days later, to inform the court of this determination, so that the court may take appropriate action. [PROB Section 2250.2(d)]

This bill requires a conservator to make available, to any person designated by the court to verify the accuracy of an accounting, for inspection and copying all books and records (including receipts for expenditures) of the conservatorship, upon reasonable notice. [PROB Section 2620(e)] The conservator shall also make available to the

court investigator during the investigation all books and records of the conservatorship, for inspection and copying. [PROB Section 1851(a)]

This bill requires copies of the court investigator's report to be mailed to the conservatee's spouse or domestic partner, the conservatee's relatives in the first degree and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee. [PROB Section 1851(b)]

This bill requires a court investigator, at the expiration of six months after the initial appointment of the conservator, and again at one year after appointment of the conservator and annually thereafter, to visit the conservatee to ascertain whether the conservatorship still appears to be warranted and whether the conservator is acting in the conservatee's best interests, specifically addressing the conservatee's placement, quality of care, including physical and mental treatment, and the conservatee's finances. [PROB Section 1850(a)(1)] The court investigator would prepare a report for each court review scheduled or ordered and mail the report, in addition to the conservator and the attorneys for the conservator and the conservatee, to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and to the next closest relative, unless the court determines that the mailing would result in harm to the conservatee. [PROB Section 1850(a)(2)]

Court Review

Existing law requires each conservatorship to be reviewed by the court one year after the appointment of the conservator and every two years (biennially) thereafter, with certain exceptions. [PROB Section 1850]

This bill changes the timing of the court's review of a conservatorship so that (1) a review occurs one year after appointment of the conservator, and (2) a review occurs annually thereafter, unless at the one-year review the court determines that the conservator is acting in the best interests of the conservatee and sets the next review in

two years. A court investigator's report would be prepared for each review, and if the investigator determines that the conservatorship still appears to be warranted and the conservator is still acting in the best interests of the conservatee, no hearing or court action in response to the investigator's report would be required. [PROB Section 1850(a)(2)]

This bill authorizes a court, at any time, on its own motion or upon request by an interested person, to take appropriate action, including ordering a review of the conservatorship at a noticed hearing, and ordering the conservator to present an accounting of the estate. [PROB Section 1850(a)(3)]

Transfer of Proceedings to a New Venue

Existing law requires the court in which a conservatorship or guardianship proceeding is pending to transfer the proceeding to another county within the state, upon petition by the ward or guardian, the conservator or conservatee, the spouse or domestic partner of the ward or conservatee, a relative or friend of the ward or conservatee, or any interested person, if the court determines that the transfer requested will be for the best interests of the ward or conservatee. [PROB Section 2211, 2215]

This bill creates a presumption that it is in the best interests of the conservatee to transfer the proceedings where the conservatee has moved his/her residence to another county within the state in which any person named in the petition for conservatorship also resides. The presumption may be rebutted by evidence that the transfer will harm the conservatee.

Notices and Noticing

Existing law requires that notice of hearings be made at specified times prior to specific conservatorship hearings, and that notices be mailed to specified individuals for different types of hearings.

This bill makes changes to various types of notices,

expands the list of persons required to receive notice, and requires that certain notices be made upon the happening of specified events.

Existing law provides that a request for special notice filed with the court may be modified or withdrawn and is deemed to be withdrawn three years from the date it was served. [PROB Section 2700]

This bill deletes the presumption that the request is deemed withdrawn three years after it was filed and served.

Bonds of Conservators and Guardians

Existing law requires every person appointed as conservator or guardian, unless excepted by the court, to give a bond approved by the court prior to the issuance of letters. The bond is for the benefit of the ward or conservatee and all persons interested in the estate and, unless varied by the court upon a showing of good cause, must constitute the sum of the value of the personal property of the estate, the probable annual gross income of all of the property of the estate, and the sum of the probable annual gross payments to the estate as specified. [PROB Section 2320]

This bill adds, to the sum constituting the bond that a court must require except for good cause shown, an amount determined reasonable by the court for the cost of recovery to collect on the bond, including attorney's fees and costs.

Existing law prohibits the court from waiving or reducing the bond required of conservators without good cause, and states that good cause may not be established by the conservator having filed a bond in another or prior proceeding. [PROB Section 2321]

This bill requires the court, in determining whether good cause exists to waive or reduce a bond, to also determine that the conservatee will not suffer harm as a result of the waiver or reduction of the bond.

Fiduciary Duties of Conservator, Presentation of Accountings

1. Where there may be a financial interest of the conservator :

   Existing law prohibits a guardian or conservator, in exercising his/her powers, from hiring or referring any business to an entity in which he/she has a financial interest, except upon authorization of the court after disclosure of the financial interest. [PROB Section 2401]

   This bill makes the above prohibition inapplicable to a trust company acting as a conservator or guardian, but instead prohibits the trust company, unless authorized by the court, from investing in securities of the trust company, its affiliate or subsidiary or in other securities from which the trust company receives a financial benefit, or in a mutual fund other than a specified mutual fund to which the trust company provides services for compensation. This bill requires the trust company to disclose to the court its financial interests prior to authorization.

2. Filing of inventory and appraisal :

   Existing law requires the conservator or guardian to file with the court within 90 days after appointment an inventory and appraisal of the estate, made as of the date of the appointment. The inventory must be subscribed to under oath, and the appraisal may be done by the conservator in the same as a personal representative of an estate. [PROB Section 2610]

   This bill requires the conservator to mail the inventory and appraisal, along with notice of how to file an objection, to the conservatee, to the attorneys of record for the ward or conservatee, the conservatee's spouse or domestic partner, the conservatee's relatives to the first degree and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

3. Accountings of the conservatorship or guardianship

estate:

Existing law requires the guardian or conservator, at the end of one year from the date of appointment, and thereafter biennially, unless otherwise ordered by the court, to present the accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance. [PROB Section 2620]

Existing law requires the accounting to be accompanied by supporting documents, including all original account statements from any financial or deposit institution in which moneys or other assets of the estate are held or deposited, for the period of the accounting. [PROB Section 2620(b)]

This bill maintains the existing accounting schedule and recasts this provision for ease of use, but requires, in addition, the following:

A. If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator would be required to file all original account statements, but the court may adopt a local rule allowing retention of all supporting documents to an accounting until the conservatorship or guardianship account has become final, and the return of the lodged documents to the depositing or successor guardian or conservator.

B. The accounting filed would include the original escrow closing statement showing the charges and credits for any sale of real property of the estate.

C. If the ward or conservatee is in a residential care facility or a long-term care facility, the filing would include the original billing statements for the facility.

D. Standard and simplified accounting court forms would be developed for the accountings.

This bill subjects each accounting to random or discretionary, full or partial review by the court,

including a review of all documents necessary to determine the accuracy of the accounting. [Proposed PROB Section 2620(d)]

This bill requires the court, if it finds the accounting has any material error, to make an express finding as to the severity of the error and what action is appropriate in response. This bill provides that the following actions are available to the court: (1) immediate suspension of the guardian or conservator without further notice or proceedings and appointment of a temporary guardian or conservator or (2) removal of the guardian or conservator as specified in existing law and appointment of a temporary guardian or conservator. [Proposed PROB Section 2620(d)]

Existing law provides that if a guardian or conservator fails to file an accounting, the court shall by written notice direct the conservator or guardian and their attorney of record to file an accounting and to set the accounting for a hearing before the court within 60 days of the date of the notice or, if the conservator or guardian is a public agency, within 120 days of the date of the notice. [PROB Section 2620.2]

This bill requires the hearing on the accounting, when directed by the court as prescribed, to be within 30 days of the date of the notice, or, 45 days, if the conservator or guardian is a public agency. This bill authorizes the court, for good cause, to grant an additional 30 days to file an accounting.

Existing law prescribes certain actions a court may take if the conservator or guardian fails to file an accounting as required or after direction by the court within the prescribed time. The court may remove the conservator, issue and serve a citation and order the conservator or guardian to show cause why he or she should not be punished for contempt, suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, or appoint legal counsel to represent the conservatee, as prescribed. [PROB Section 2620.2(b)]

This bill requires the court to take the same actions if the conservator or guardian does not file an accounting with all the supporting documentation, and require the court to report the action taken to the board established to regulate professional fiduciaries (e.g., private professional or licensed conservators, guardians). [PROB Section 2620.2]

This bill authorizes the court, on an ex parte application and upon a showing of good cause and that the estate is adequately bonded, to extend the time to file an accounting, not to exceed an additional 30 days (rather than 60 days, as in existing law) after the expiration of the deadline for filing an accounting, if the conservator or guardian is exempt from the licensing requirements for professional fiduciaries. [PROB Section 2620.2]

Limitations on Compensation to Guardian or Conservator

Existing law requires that a conservator or guardian be allowed payment for reasonable expenses incurred in the exercise of the powers and performance of his/her duties (including costs of surety bonds furnished, reasonable attorney's fees, and other just and reasonable compensation for services rendered to the conservatee or ward) and for other reasonable expenses as specified. [PROB Section 2623]

Existing law provides that, at any time after filing of the inventory and appraisal but not before 90 days after the issuance of the letters of appointment to a conservator or guardian, the court, upon petition and a noticed hearing, shall order just and reasonable compensation to the guardian or conservator of the person or estate for services rendered up to that time, as well as compensation to the attorney for services rendered to the guardian or conservator prior to the date of appointment of the conservator or guardian and other services provided thereafter. All compensation is charged to the estate. [PROB Section 2640, 2641]

This bill prohibits compensation from the estate to the conservator or guardian for any costs or fees that the

guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action made on behalf of a ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward of conservatee. [Proposed PROB Section 2623(b)]

Existing law authorizes a person who files a timely petition for appointment as conservator but was not appointed to file a petition with the court for an order fixing and allowing compensation and reimbursement of costs, including compensation to the person's attorney. [PROB Section 2640.1]
Existing law authorizes the court to allow just and reasonable compensation after noticed hearing.

This bill requires the court to determine that the failed petition was filed in the best interests of the conservatee.

Existing law permits the ward or conservatee, the spouse or domestic partner of the ward or conservatee, or any relative or friend of the ward or conservatee, or any interested person to petition the court for the removal of the guardian or conservator for cause at a noticed hearing. [PROB Section 2650, 2651, 2652]

This bill provides that if the court removes the guardian or conservator for cause, the court shall award the petitioner his or her costs, including expenses of litigation and attorney's fees, incurred, unless the court determines that the guardian or conservator has acted in good faith based on the best interests of the ward or conservatee.

This bill provides that the guardian or conservator so removed for cause may not deduct from or charge to the estate his/her costs of litigation and is personally liable for those costs and expenses.

Public Guardians

Existing law permits the public guardian of a county to apply for appointment as guardian or conservator of the

person, estate, or person and estate, of a resident of the county when the resident requires a conservator or guardian, there is no one else qualified and willing to act, and appointment is in the best interest of the resident. Existing law requires the public guardian to so apply when ordered by the court upon petition by an interested person or on the court's own motion. [PROB Section 2920]

This bill requires the public guardian to apply for appointment as conservator or guardian under the circumstances described above, if there is an imminent threat to the person's health or safety or to the person's estate. Otherwise, the public guardian may apply for appointment in all other cases.

This bill relieves the public guardian from the order of the court directing that the public guardian apply for appointment, where prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator.

This bill requires the public guardian to begin an investigation within two business days of receiving a referral for conservatorship or guardianship.

This bill is joined to three bills: SB 1116 (Scott), SB 1550 (Figueroa) and SB 1716 (Bowen). All provisions requiring Judicial Council actions provide for an effective date of January 1, 2008.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
Court reviews, investigations	Multimillion-dollar annual costs			General*

State mandated local program (public guardians)	Significant costsGeneral	
Statewide Registry Special** elimination	($50)	($50)

* Trial Court Trust Fund
** Conservatorship Registry Fund

Judicial Council . There is an estimated active caseload of 33,000 probate conservatorships, with 5,500 new filings each year. Judicial Council prepared preliminary cost projections associated with additional hearings, expanded reviews and mandated investigations, educational materials and self-help programs required by this bill, and current estimates show first-year costs could range from as much as $5.2 million to $9 million, with ongoing costs ranging from $10.3 million to $18 million.

These costs were based on a series of assumptions, that 80 percent of the active caseload represents relatively simple cases, that 15 percent would post moderately complex cases, and that the remaining five percent would be the most complex cases and take the most investigative and court time. Additionally, these estimates were based on a baseline of 33,000 probate conservatorships statewide. This number is likely to increase in the near future due to an aging population and correlative increase in conservatorship caseload.

Public Guardians . Requirements for public guardians to begin investigations within two business days of receiving a referral for a conservatorship of guardianship could drive significant reimbursable local costs. Los Angeles County has estimated its workload could increase by as much as 50 percent, at a cost of $1.8 million annually. If that cost were to hold true for the rest of the state, reimbursable costs could be in the $5 million range annually.

There is no funding in the 2006 Budget Act for the activities required by this bill.

SUPPORT : (Verified 8/22/06)

Bet Tzedek Legal Services (co-source)
California Alliance for Retired Americans (co-source)
Older Women's League of California (co-source)
AARP California
Adult Services Policy Council of San Luis Obispo County
Advisory Council of Area 4 Agency on Aging
Area 1 on Aging's Advisory Council
Area Agency on Aging Council, San Luis Obispo and Santa Barbara Counties
California Commission on Aging
California for Disability Rights, Inc.
California Seniors Coalition
Contra Costa County Advisory Council on Aging
Elder and Dependent Adult Abuse Prevention Council of Santa Barbara County
Gray Panthers
National Association of Social Workers, California Chapter
Office of the Attorney General
Retired Public Employees Association
San Joaquin County Commission on Aging

ARGUMENTS IN SUPPORT : This bill is co-sponsored by the Bet Tzedek Legal Services, the California Alliance for Retired Americans (CARA), and the Older Women's League (OWL).

CARA states: "Recent articles in the Los Angeles Times have once again exposed serious problems in the systems that are supposed to protect people, especially seniors, when they cannot fend for themselves?[t]he articles and [subsequent] hearings have exposed a broken system which allowed financial, and yes physical abuse in some cases, to be perpetrated on helpless people by those hired to protect these same people?AB 1363 will go a long way to correcting many of the problems in the current inadequate system."

While the Judicial Council expressed reservations about the effect of these sweeping reforms on the current resources of the courts, it is now in support of the bill in order to "appropriately protect conservatees and provide proper oversight, as well as to make the bill workable for the

courts."

ASSEMBLY FLOOR :
AYES: Aghazarian, Arambula, Baca, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Coto, Daucher, De La Torre, Dymally, Evans, Frommer, Goldberg, Hancock, Jerome Horton, Shirley Horton, Houston, Jones, Karnette, Keene, Klehs, Koretz, Laird, Leno, Levine, Lieber, Lieu, Liu, Matthews, Montanez, Mullin, Nation, Nava, Negrete McLeod, Oropeza, Parra, Pavley, Richman, Ridley-Thomas, Ruskin, Saldana, Salinas, Spitzer, Torrico, Umberg, Vargas, Wolk, Yee, Nunez
NOES: DeVore, Haynes, Huff, La Malfa, Mountjoy, Nakanishi, Sharon Runner, Strickland, Walters, Wyland
NO VOTE RECORDED: Bass, Benoit, Blakeslee, Cogdill, Emmerson, Garcia, Harman, La Suer, Leslie, Maze, McCarthy, Niello, Plescia, Tran, Villines

RJG:mel 8/26/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

Date of Hearing: January 18, 2006

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Judy Chu, Chair

AB 1363 (Jones) - As Amended: January 12, 2006

Policy Committee: JudiciaryVote:6-0

Urgency: No State Mandated Local Program:
Yes Reimbursable: No

SUMMARY

This bill significantly overhauls the state's conservatorship and guardianship system. Specifically, this bill:

1)Requires professional conservators and guardians, as defined, to be licensed by a newly-created nine-member board within the Department of Consumer Affairs (DCA).

2)Requires license applicants to meet specified requirements, including educational and training requirements, and pass a licensing examination.

3)Requires applicants to pay an application fee and requires licensees to pay annual renewal fees sufficient to cover the board's operating costs.

4)Reduces the intervals for probate courts to review conservatorships at a noticed hearing to six months instead of one year after appointment of the conservator, and annually instead of biennially thereafter, and similarly reduces the intervals when conservators and guardians must provide an accounting of conservatees' and wards' assets to the court.

5)Subjects the accountings to random and full audits by the court. Failure to properly file an accounting shall be reported to the licensing board.

6)Requires the Judicial Council, by July 1, 2007, to develop qualifications and continuing education requirements for probate court judges, attorneys and court investigators; to establish uniform standards for conservatorships and guardianships with respect to maintaining estates and

preventing risk of loss or harm to conservatees and wards; and, by January 1, 2007, to develop conservatorship accountability measures, as specified, for use by each court.

7) Requires the Judicial Council to develop and make available at no cost a short educational program for conservators and guardians who are not required to be licensed and requires the probate courts to assist to these individuals in understanding the court process.

8) Limits the waiving of notice before appointment of a temporary conservator or guardian, and limits the duties of a temporary conservator, as specified.

9) Requires the court investigator to interview a proposed conservatee and make specified determinations either prior to or immediately after a hearing regarding appointment of a temporary conservator.

10) Prevents conservators or guardians from receiving costs or fees incurred for unsuccessfully opposing a petition or other action on behalf of the conservatee or ward, unless the court determines that the opposition was made in the best interests of the conservatee or ward.

11) Requires the public guardian to apply for appointment as conservator or guardian, where no one is willing to assume this function and according to other criteria to be developed by the Judicial Council. (Current law makes the public guardians' application permissive.)

12) Permits the public guardian to apply for appointment in cases where the proposed conservatee or ward has assets below an as yet unspecified level.

13) Requires the public guardian to visit each proposed conservatee or ward within 48 hours of receiving notice of a need for such assistance.

14) Establishes a Conservatorship Ombudsperson within the Department of Aging, charged with investigating and resolving complaints made by or on behalf of conservatees.

FISCAL EFFECT

1) Licensing . The DCA anticipates initial and ongoing costs of around $600,000 for staff to administer the licensing, examination, and enforcement program. Based on the current number of conservators and/or guardians in the statewide registry (about 800) annual license fees would be about $750. There would also additional, one-time information technology costs, so initial fees would be somewhat higher.

2) Courts-Increased Conservatorship Reviews . By requiring annual instead of biennial court review of conservatorships and accounting statements, the bill will double the court's current workload for these functions. The Judicial Council, based on an active statewide caseload of 33,000 (16,500 additional court reviews annually) estimates ongoing General Fund costs of about $9 million. It is not known to what extent this additional workload could be accommodated within existing court resources. (The proposed 2006-07 budget for the trial courts is about $3 billion.)

3) Other Ongoing Court Costs . The Judicial Council has identified but not yet quantified additional costs to perform investigations prior to appointment of a conservator, provide assistance to non-professional conservators, interview family members of proposed conservatees, and audit of accounting statements. These functions could cost several million dollars annually.

4) One-Time Court Costs . The Council is required to develop qualifications and continuing education requirements for probate court personnel, establish uniform standards for conservatorships and guardianships, develop accountability measures, develop an educational program for non-professionals, and develop criteria for appointment of public guardians. Costs for these tasks will mostly be absorbable, with the possible exception of additional costs for consulting contracts.

5) Public Guardians . The requirements for public guardians to apply for conservatorships and guardianships in some cases and to visit each proposed conservatee or ward within 48 hours could increase their costs statewide by up to several million dollars. (Los Angeles County estimates a 50% workload increase at a cost of around $1.8 million annually.) These additional costs would be offset to some extent by revenues received from the guardians taking cases involving larger assets.

6) Ombudsperson . Ongoing General Fund costs of around $225,000 for the ombudsperson and two part-time support positions.

COMMENTS

Purpose. This bill, the Omnibus Conservatorship and Guardianship Reform Act of 2006, is sponsored by Bet Tzedeck Legal Services and California Alliance for Retired Americans. It follows an in-depth investigatory series published this past November by the Los Angeles Times and a joint hearing held by the Assembly and Senate Judiciary Committees on this issue. The Times series, "Guardians for Profit," exposed the many failings of California's conservatorship system for elderly and dependent adults. The Times' articles included stories of private conservators who misuse the system and get themselves appointed inappropriately and then either steal or mismanage the money their conservatees spent a lifetime earning; public guardians who do not have the resources to help truly needy individuals; probate courts which do not have sufficient resources to provide adequate oversight to catch the abuses; and a system that provides no place for those in need to turn to for help. A Times editorial, which ran at the end of the series, called on both the courts and elected officials to "turn this abusive system into the honest guardianship it was meant to be."

According to the author, the "magnitude of reported abuse is staggering, demonstrating a system, originally designed to protect vulnerable adults from fraud and abuse, that is not only failing to protect them, but is in fact contributing to their abuse." These problems will only become much more acute as California's population ages.

It is estimated that professional conservators oversee $1.5 billion in assets for at least 4,600 adults. (Most conservators are non-professionals, however, and almost always family members.) According to the Judicial Council, approximately 5,500 new conservatorship cases are filed annually in California courts, representing a little more than 10 percent of total probate cases. The Judicial Council estimates that conservatorships last on average approximately six to eight years, thus there are probably around 33,000 to 44,000 active conservatorship cases statewide.

AB 1363 intends to reform this system by implementing state licensing and regulation of professional conservators and guardian, increasing court oversight and establishing statewide uniformity in this area, making assistance available to non-professional conservators, increasing the responsibilities of, and resources available to, the public guardian, and establishing a state ombudsman to investigate and resolve complaints made by, or on behalf of conservatees.

Analysis Prepared by : Chuck Nicol / APPR. / (916) 319-2081

C

McGeorge Law Review
Winter, 2001

Estate and Trust

*647 CHAPTER 565: ONE MORE LAW TO REFORM **CONSERVATORSHIPS** AND GUARDIANSHIPS; BUT IS IT NEEDED?

Erik R. Beauchamp

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Code Sections Affected

Financial Code § § 765.5, 6850.5 (new); Probate Code § § 2111.5, 2401.6 (new); § § 2351, 2359, 2401, 2403, 2620 (amended). AB 1950 (Pacheco); 2000 STAT. Ch. 565I.

INTRODUCTION

Conservatorships have existed for a few decades and guardianships have been in use since at least the middle ages. [FN1] Historically, a guardian had possession of his ward's [FN2] property and, except for the amount needed for the ward's support, all income went to a guardian personally, so that a guardian could profit enormously from the relationship. [FN3] Suspicion of corruption led to reforms. [FN4]

Unfortunately, the reasons for suspicion have not changed even with reform, and the problems associated with guardianships have also developed with **conservatorships**. [FN5] In at least one highly publicized scandal, the operators of a private conservatorship company in Riverside County, who had charge of hundreds of wards, may have bilked their wards' estates out of over $1 million. [FN6] The great *648 power a guardian or conservator has over her ward can lead to abuse. [FN7] Seeking to remedy some of the abuse, mostly from **conservatorships**, the Legislature passed. Chapter 565. [FN8] However, Chapter 565 only addresses a few of the problems arising from **conservatorships** and may not address the core of the problem that led to the Riverside County scandal. [FN9] Moreover, some of the issues that Chapter 565 attempts to clarify have already been addressed in prior law. [FN10]

II. EXISTING LAW

A. General Concepts

Guardianships and **conservatorships** come in two basic forms: *of the person* and *of the estate.* [FN11] A guardian or conservator *of the person* has custody of the ward and ensures that the ward's daily needs are met. [FN12] The guardian or conservator *of the person* also takes care of the ward's educational needs. [FN13] A guardian or conservator *of the estate* has the duty to manage and control a ward's estate and finances. [FN14] Often, one person is in charge of both the person and the estate. [FN15] Sometimes, one person takes on the responsibilities of a person and another person takes on the responsibilities of an estate. [FN16]

Another type of conservatorship, created in 1980, is the limited conservatorship for Developmentally Disabled Adults. [FN17] This conservatorship was "designed to encourage the development of maximum self-reliance and independence" of certain *649 developmentally disabled adults who did not need absolute supervision and could take on more of the responsibility for the care of themselves and their estates. [FN18]

The main difference between a guardianship and a conservatorship is that a guardianship is used for a minor, while a conservatorship is used for an adult who has become incompetent. [FN19] However, for married minors who are incompetent, a court usually appoints a conservator *of the person* for their daily needs, but appoints a guardian *of the estate* to take care of their financial issues. [FN20] Much of the difference between a conservatorship and a guardianship is merely semantics, but guardianship law provides for consideration of the rights of parents, whereas conservatorship law is concerned with the mental and physical capacity of a person. [FN21] The types of **conservatorships** are arranged according to the particular capacity *of the person*, such as a limited conservatorship for the developmentally disabled or a conservatorship for an absentee. [FN22] Generally, the duties of a guardian and conservator are the same and are enacted under the same code sections. [FN23]

B. When an Appointment Should Be Made

A conservator *of the person* can be appointed for a person "who is unable to provide properly for her personal needs for health, clothing, food, or shelter,"

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and a conservator *of the estate* can be appointed "for a person who is substantially unable to manage [her] own financial resources or resist fraud or undue influence." [FN24] Additionally, a conservator *of the estate* can be appointed for an absentee. [FN25] Of course, a guardian is usually appointed when a ward is a minor. [FN26]

A petition for guardianship or conservatorship begins the process. [FN27] Typically, a relative petitions for a conservatorship, but often the process is initiated by a public agency or by a friend of the conservatee. [FN28] A prospective ward can also petition for a conservatorship. [FN29] A prospective ward or a relative petitioning for a ***650** conservatorship may nominate a specific conservator, and courts often grant the request. [FN30] Yet, depending on the circumstances, the court may appoint someone else. [FN31] In the case of a guardianship, parental rights and the wishes of the child are often taken into consideration, but the court makes the final determination of whether the proposed guardian is suitable. [FN32]

After a petition is filed, but before a hearing, a court investigator creates a report regarding the circumstances of the proposed ward and submits it to the appropriate court. [FN33] At the hearing and based on this report, the court appoints a guardian or conservator if the court determines a guardianship or conservatorship is necessary. [FN34]

A guardianship *of the person* or *of the estate* is terminated when the ward dies or reaches the age of majority, but a guardianship *of the person* is also terminated when the ward is married or adopted. [FN35] A conservatorship only terminates upon the death of the ward or by court order. [FN36] A limited conservatorship is also terminated for those reasons but is also terminated by the death of the conservator. [FN37] Nevertheless, most **conservatorships** are continued after the death of the conservator, which protects the ward, so she merely needs another conservator; however, the relationship between the deceased conservator and the ward ends. [FN38]

C. Powers of Guardian or Conservator

A guardian or conservator *of the estate* manages the ward's assets and uses the income for the support and maintenance of the ward. [FN39] If the income is not enough for the support and management of the ward, the guardian or conservator can sell or mortgage estate assets. [FN40] The guardian or conservator may also maintain the ward's home, pay debts, and pay for services for the ward. [FN41]

A guardian or conservator *of the person* has "the care, custody, and control of, and has charge of the education of [the ward]." [FN42] However, the court may limit the powers of a conservator depending on the circumstances. [FN43] These powers relate to the living arrangements, the daily needs, and the medical necessities of the ward. [FN44] ***651** *D. Fiduciary Duties*

The relationship between a guardian or conservator and her ward "is subject to the law relating to trusts." [FN45] The office of a guardian or conservator, as that of a trustee, is onerous, and a guardian or conservator can be personally liable for losses if she neglects her duties. [FN46] In some cases, if a trustee neglects her duties, she is personally liable for losses even if those losses are not a direct result of her neglect. [FN47] For instance, if a trustee commingles trust assets with her own and a loss occurs, she is personally liable. [FN48] A trustee must also invest trust funds prudently, meaning that the assets should be diversified and should not be placed in risky ventures. [FN49] Although letting all the assets sit in a checking account may be safe, it is also imprudent. [FN50] In the modern era of investing, however, as long as a portfolio is well balanced, the trustee is safe from liability. [FN51] A trustee is given some flexibility, but some common investments such as a second mortgage can be considered improper. [FN52]

A trustee must also avoid conflicts of interest and avoid engaging in self-dealing. [FN53] Thus, a trustee cannot use trust property for her own profit or "take part in any transaction in which the trustee has an interest adverse to the beneficiary." [FN54] In other words, a trustee cannot utilize trust assets to employ a business in which she has an interest. [FN55] These fiduciary duties of a trustee are also the fiduciary duties of a guardian or conservatee for the benefit of a ward. [FN56]

***652** Specific provisions also exist for the sale of property by a guardian or conservator. [FN57] A guardian or conservator may sell real property, but only if the court specifically gives approval to the guardian or conservator either for a specific transaction or to sell real estate generally. [FN58] Sales of securities and personal property under $5,000 per calender year can generally be made without court approval, but all other personal property sales require court approval. [FN59]

Leases are subject to similar restrictions. [FN60] A guardian or conservator cannot lease property

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without court approval unless the lease is for $1,500 a month or less and for a term not greater than two years. [FN61] Moreover, the power to lease may be obtained in advance by the court. [FN62] In addition, a guardian or conservator cannot borrow money without court approval, but the court can grant this power in advance. [FN63] A guardian or conservator may only borrow money to "pay, reduce, extend, or renew" an existing loan or to "erect, alter, or repair" buildings or improve property owned by the ward. [FN64] The powers granted in advance to lease, sell, or borrow without the need to petition are given only if they are "to the advantage, benefit, and best interest" of the ward's estate. [FN65]

E. Accountings and Statewide Registry

State law requires that a guardian or conservator make "accountings" [FN66] after one year from the time of appointment and, thereafter at least every two years unless otherwise ordered by a court. [FN67] Upon the death of a ward, a guardian or conservator must make two final accountings for the period before and the period after the date of death. [FN68] Only guardians or conservators *of the estate* need to file an accounting. [FN69] A guardian or conservator can petition the court to have her acts approved or ***653** confirmed. [FN70] A guardian or conservator usually seeks approval or confirmation if she might be subject to liability when doubt is raised about an action. [FN71]

Private professional conservators and guardians are required to register with the county clerk in the jurisdiction where they are appointed, and no court can appoint a private professional conservator or guardian unless they are so registered. [FN72] In 1999, Chapter 409 was signed into law, requiring private professional guardians and conservators to also register with a new statewide registry maintained by the Department of Justice. [FN73] When registering, conservators and guardians must file a "signed declaration" with the registry. [FN74] This declaration includes information about a conservator's or guardian's educational background, professional experience, list of current wards, and the amount of assets under her supervision. [FN75] The declaration must also disclose whether the conservator or guardian has been removed for cause or resigned as well as the circumstances of removal or resignation. [FN76] Similar information was previously required to be filed with the clerk in each county court, but other counties could not access this information easily. [FN77] Since January 1, 2000, any complaint against a conservator or guardian "found to be meritorious by the court" must be forwarded by the clerk of the court to the statewide registry. [FN78] A court must examine the statewide registry before appointing a guardian or conservator unless it is urgent that one be appointed. [FN79]

F. Remedies for Breach

The guardian or conservator can be removed for mismanagement of an estate, failure to file an inventory or account, incapacity, gross immorality, a felonious conviction, adverse interest, or bankruptcy. [FN80] She can also be removed if it is in the best interest of the ward. [FN81]

A ward can also sue the guardian or conservator if a duty is breached. [FN82] If damages occur as a result of a breached duty, the ward can recover those damages plus interest. [FN83] Moreover, a ward can move to set aside acts made by the guardian ***654** or conservator, such as the sale of property. [FN84] In this situation, bona fide purchasers [FN85] may retain their rights in the property; however, if losses occur, the guardian or conservator must pay the difference. [FN86] Moreover, the ward can obtain any profits the guardian or conservator made and any profit the estate would have received but for the breach, plus interest. [FN87] Nevertheless, the court may excuse the damages if the guardian or conservator acted "reasonably and in good faith under the circumstances." [FN88] The ward can also be reimbursed by a surety if the guardian or conservator was required to be bonded. [FN89]

G. Types of Conservators and Guardians

There are many types of conservators and guardians. [FN90] A conservator or guardian may be a relative or friend, a private fiduciary company, a charitable corporation, or the public guardian. [FN91] A relative or friend is someone close to the ward whom the court believes will have the ward's interests at heart. [FN92] Often, the relative or friend was helping the ward even before the petition for conservatorship was filed and may have actually initiated the petition. [FN93] If a relative or friend is willing and able to care for a ward, that person may be appointed by the court. [FN94]

A private fiduciary company is a company that profits by being a conservator of a ward's person or estate. [FN95] Such a fiduciary company will have many wards. [FN96] A private fiduciary company, like all conservators or guardians, is compensated for all "reasonable expenses," but is also compensated for any service by the company ***655** that the court "determines is just and reasonable." [FN97] The

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public guardian is a government agency, usually run by a county, that takes care of those for whom no one else cares. [FN98] Frequently, these individuals are indigent. [FN99]

The reasons why one type of conservator is chosen over another vary from case to case. [FN100] For instance, a private fiduciary company is appropriately chosen if no relative comes forward to take on the responsibilities of a conservator or guardian, and money is available to pay for the company's services. [FN101] However, the public guardian is the last resort when no one else will take on such responsibility. [FN102]

H. Judicial Issues

1. Judicial Conflicts of Interest

Existing law also requires that judges [FN103] refrain from conflicts of interest. [FN104] In fact, judges must follow a higher standard than guardians and conservators because judges oversee the actions of guardians and conservators. [FN105] The rationale is that since the judiciary has such great power over society, the judiciary must be beyond reproach. [FN106] Judges must not be involved in any business or transaction with any person who might come before her or the court in which she serves. [FN107] A judge may only be an executor or trustee for members of her own family, [FN108] and "only if such service will not interfere with proper performance of judicial duties." [FN109] A judge should discourage similar involvement of her own family in order to dispel any hint of impropriety. [FN110] However, a judge is not reasonably expected to know of all the ***656** business dealings in which her family is involved. [FN111] Judges who break these rules can be sanctioned depending on the severity of the offense. [FN112] Such sanctions can range from a reprimand to removal. [FN113]

To guide the ethical conduct of employees of the courts, a Model Code of Ethics for the Court Employees of **California** was created. [FN114] Each trial and appellate court is required to adopt its own rules of ethical behavior based on this Model Code. [FN115]

The Code requires that court employees refrain from any actual impropriety or from the appearance of impropriety; additionally, employees may not use confidential information for their "personal advantage." [FN116]

2. Judicial Immunity

Judges have immunity from defending "civil suit[s] in the exercise of their judicial functions." [FN117] In fact, judges retain immunity even when they act maliciously or corruptly. [FN118] The policy undergirding this rule is that a judge should be free from the possibility of defending suits and personal detriment to himself when exercising his authority, so that justice can be administered properly. [FN119]

However, the rule comes from the common law, and a statute can overturn it. [FN120] In *Frost v. Geernaert*, the plaintiff attempted to sue seven judges and argued that a Government Code Section 822.2 made the judges liable if they were "guilty of fraud, corruption, or actual malice." [FN121] The section merely referred to "public employees," but the term "employee" was defined in Government Code Section 810.2 to include a "judicial officer." [FN122] However, Section 810.2 was amended to include judicial officers in 1977, after the enactment of the Section 822.2, and the legislature's stated intent in the bill amending Section 810.2 did not state that this inclusion was meant to expand judicial liability and, in fact, may have been to confine the liability of government employees. [FN123] Therefore, the court ruled that the ***657** judges had judicial immunity even though a strict reading of the statute may have shown that the judges could be liable. [FN124]

III. THE PROBLEM

Ultimately, the problem with **conservatorships** and guardianships is that the wards, either minors or adults, unable to care for their persons or estates, are inherently vulnerable. [FN125] The guardian or conservator has great power over the ward, and the ward may have little ability to resist if they discover that their conservator or guardian has breached their trust. [FN126] A ward cannot simply call an attorney to have a conservator or guardian removed. [FN127] Many wards are senile, so they will probably not be taken seriously by those with whom they come into contact. [FN128] Some wards are so severely disabled that they are unable to attend the hearings establishing their status as wards. [FN129] Occasionally, conservators or guardians prevent their wards from seeing other people to avoid the discovery of the conservator's or guardian's nefarious purposes. [FN130] Essentially, a ward has to rely on the integrity of a conservator or guardian. [FN131]

Integrity on the part of the conservator was completely missing when the Riverside Conservatorship Scandal was publicized in 1999. [FN132] West Coast **Conservatorships** was a private

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fiduciary company that served as the conservator for many wards, almost all of whom were elderly. [FN133] For a long time, the owner of West Coast was able to obtain assets from wards for her own benefit. [FN134] She often referred business to an in-home health care business that she owned. [FN135] The alleged thefts and ***658** misappropriation of funds totaled close to $1 million. [FN136] Consequently, the owner and some of her associates now face severe criminal and civil penalties for breach of trust and outright theft. [FN137]

West Coast was able to steal so much money from its wards for such a long time because the system failed. [FN138] The district attorney's office failed to investigate even when complaints were made. [FN139] More disconcerting, the County's probate judge, William H. Sullivan, may have trusted West Coast and its owner more than he should have. [FN140] Investigators and relatives notified the judge of possible fraud, but West Coast explained away the allegations in a manner that was suspicious. [FN141] Nevertheless, the judge accepted the explanations. [FN142] The judge assessed a surcharge against West Coast when he discovered that the owner of West Coast was "farming out work to her own health care company," but he did not do much more than that. [FN143]

Additionally, the judge may have had his own conflicts of interest. [FN144] Although no evidence was found indicating that the judge profited from the irregularities at West Coast, his extensive real estate dealings allegedly included buying property from a ward of a conservatorship over which he presided. [FN145] He also was alleged to have acted as a trustee of a trust for a non-relative in violation of the Code of Judicial Ethics. [FN146] After the West Coast scandal broke out, Judge Sullivan asked to be reassigned, but ultimately announced his retirement under a cloud of controversy. [FN147]

*659 The axe fell on more than one head in the scandal; other officials and agencies were also blamed. [FN148] Basically, the system failed to protect the wards. [FN149] West Coast was able to steal from its wards and exercise self-dealing in managing its wards' funds, because the judge, the local Probate Bar, and other institutions looked the other way. [FN150] The owner of West Coast was "well-connected" in Riverside society. [FN151] The community must have had difficulty believing that someone so well-known could have been stealing from her wards. [FN152] To make matters worse, the Probate Bar was so close-knit that when one relative of a ward wanted to remove West Coast, she had to go outside the county to find an attorney. [FN153] In Riverside County, the fraud, interwoven among insiders, was difficult to unravel. [FN154]

Widespread theft by conservatorship companies is not the only cause for concern. [FN155] The relatives of wards who are appointed as conservators or guardians also steal money from their wards and some do not care enough to give the proper care that a ward needs. [FN156] Such neglect is inconsistent with the role of a conservator or a guardian, which requires the exercise of care and concern for the ward. [FN157] Care and concern are primary to the role of a conservator or guardian. [FN158] Without this inherent element, wards of **conservatorships** or guardianships are prone to being abused. [FN159]

In 1996, an estimated 449,924 elderly persons were abused or neglected by others. [FN160] Financial abuse and exploitation [FN161] accounted for 30.2% of all elderly ***660** abuse. [FN162] Family members were the most frequent abusers, as they were responsible for 89.6% of all abuse. [FN163] Friends, neighbors, and professional care-givers made up the rest. [FN164] More than half of the abused were not able to completely take care of themselves, and at least 45% were confused at least part of the time. [FN165] Of course, confused and incapacitated individuals are just the sort of people who need a conservatorship. [FN166] Worse yet, the vast majority of abuse goes unreported. [FN167] This is not surprising, because the victims are confused, unable to care for themselves, and vulnerable. [FN168] Financial abuse and exploitation of the elderly, as well as other types of elderly abuse, are a huge problem. [FN169]

Moreover, the number of elderly Americans is increasing. [FN170] The baby boom generation is becoming older, and as a result, at least one in five Americans will be 65 years old or older in 2030. [FN171] The increase in the elderly population will perpetuate the need for **conservatorships** and conservators. [FN172]

Another problem is that there may not be enough people who want to be a conservator. [FN173] Caring for the elderly is a stressful undertaking. [FN174] The fiduciary duties involved in being a conservator *of the estate* are onerous. [FN175] In his own defense, Judge Sullivan said that he often appointed West Coast as conservator for wards because he had "few other choices for qualified private professional conservators in Riverside." [FN176] Few people really want to be caregivers; therefore, the ***661** choices are truly limited. [FN177] With the increased

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need for **conservatorships**, the lack of those willing to be conservators, and the potential for abuse, it is questionable whether the system can be kept afloat. [FN178]

IV. CHAPTER 565

A. Prohibition Against Referring Business

Chapter 565 prohibits a guardian or conservator *of the estate* or *of the person* who is required to register with the Statewide Registry [FN179] from hiring or referring "any business to an entity in which he or she has a financial interest" without court approval. [FN180] Furthermore, to get court approval, the conservator must disclose any financial interest to the court. [FN181] The financial interests that require disclosure include "ownership interest in a sole proprietorship, a partnership, or a closely held corporation," ownership of more than one percent of the shares in a corporation traded publicly, or the status of "an officer or a director of a corporation." [FN182]

B. Prohibition Against Court Officials Transacting in Estate Property

Chapter 565 also prohibits court officials or employees who have duties or responsibilities related to "(1) the appointment of a conservator or guardian, or (2) the processing of any document related to a conservator or guardian" from "purchasing, leasing, or renting any real or personal property" from the ward's estate. [FN183] This prohibition also extends to persons related by blood or marriage to a court official or employee. [FN184] However, such persons may purchase, but not rent or lease, the ward's real or personal property if the purchase is made at a public sale. [FN185]

On the other hand, if a prohibited transaction is made, "rescission of purchase, lease, or rental of the property" will occur. [FN186] Additionally, the court can impose civil ***662** penalties "equal to three times" the resulting losses, if any, against the guardian, conservator, or the court official or relative. [FN187] If no losses are incurred, the court will impose a $5,000 fine. [FN188] The court can also "assess punitive damages." [FN189] These penalties and punitive damages are assessed in addition to any other rights or remedies provided by law." [FN190]

C. Statement of Family or Affiliate Relationship When Seeking Court Approval

When a guardian or conservator *of the estate* petitions the court for an approval of a "purchase, lease, or rental" of estate property, he or she must give the court a statement of any "family or affiliate relationship between the guardian or conservator and the purchaser, lessee, or renter" and a relationship with any agent the guardian or conservator hires. [FN191] A family relationship is defined as a "person's spouse or relatives within the second degree of lineal or collateral consanguinity of a person or person's spouse." [FN192] An affiliate relationship means an entity, such as a company or other person, with some control, usually financial, over the guardian or conservator. [FN193]

The new law regarding the provision of a statement of a family or affiliate relationship to the court for approval of estate property transactions also applies to guardianships and **conservatorships** *of the person*. [FN194] Upon a violation, the court will impose civil penalties "equal to three times" the resulting losses, if any, against the guardian, conservator, or relative. [FN195] If there are no losses, the court will impose a $5,000 fine. [FN196] The court can also "assess punitive damages." [FN197] Moreover, these penalties and punitive damages are assessed in addition to any other rights or remedies provided by law." [FN198]

D. Fee Reimbursement Prohibition and Accounting Provisions

Chapter 565 further protects wards of guardianships and **conservatorships** through its fee reimbursement prohibition and accounting provisions. [FN199] The new law also prohibits a conservator or guardian from receiving reimbursement from the ***663** ward's estate when the guardian or conservator is assessed a fee or surcharge because she breached a fiduciary duty to the ward. [FN200] The new law requires banks, trust companies, and savings and loan associations to send to courts a copy of each document regarding the status of an account when a guardian or a conservator opens an account or changes the name of an account to reflect the conservatorship or guardianship. [FN201]

When the first accounting is made, the guardian or conservator must give the court a copy of all bank or investment account statements with estate assets for "the period immediately preceding the date" of appointment and the statements "immediately preceding the date the accounting is filed." [FN202] For subsequent accountings and for the final accounting, the guardian or conservator must submit account statements for the most recent period to the

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court. [FN203] These statements are confidential and are only "subject to discovery" by court order. [FN204]

V. ANALYSIS

A. What is Really New?

One problem with the Riverside Conservatorship scandal is that the probate judge for the county seemed to overlook many of the suspicious actions of West Coast **Conservatorships** that ultimately led to the theft of over $1 million. [FN205] Had the judge been cognizant of West Coast's actions, he might have been able to prevent or limit the alleged thefts. [FN206] Chapter 565 prohibits guardians and conservators from referring business to companies in which they have an interest. [FN207] However, state law prior to the enactment of Chapter 565 already prohibited guardians and conservators from profiting from such obvious conflicts of interest. [FN208] Therefore, the enactment of Chapter 565 was not necessary for the judge involved in the Riverside scandal to ***664** have prevented, or at least limited, the losses of the wards. [FN209] The judge already had the power of the law to interrupt such conflicts of interest. [FN210]

Similarly, judges and court employees are prohibited from buying property from wards. [FN211] The **California** Code of Judicial Ethics prevents judges from buying property from wards, and the Model Code of Ethics for Court Employees of **California** requires court employees to refrain from impropriety or hints of impropriety. [FN212] Certainly, buying from an estate of a ward who comes before the court that the employee serves would constitute at least a hint of impropriety and would be prohibited. [FN213]

The prohibition against allowing relatives from engaging in similar activity is new. [FN214] In the Code of Judicial Ethics, a judge is encouraged to make sure relatives do not have dealings with someone coming before a judge's court, but a judge is not expected to know about all of his family's financial dealings. [FN215] Accordingly, a court employee's family is not mentioned in the Code of Ethics for Court Employees of **California**. [FN216] Chapter 565 prohibits relatives of judges and court employees from buying or leasing property in a ward's estate. [FN217] Before Chapter 565, whether the purchase or lease of a ward's estate by a judge or court employee involved in the conservatorship or guardianship was improper was unclear, [FN218] but Chapter 565 ***665** clearly prohibits such purchases and leases and even specifies which relatives are included in the prohibition. [FN219]

The requirement that an individual provide a statement of "family or affiliate relationship" to the court when seeking court approval for a purchase, lease, or other transaction does not add a duty to the job of a conservator or guardian. [FN220] To sell, lease, or transact business with a close relative or with an entity in which a conservator or guardian has a financial interest is surely a conflict of interest. [FN221] The way to avoid the restriction associated with this conflict of interest is to get court approval of the transaction. [FN222] In trying to remedy a conflict of interest by getting the court's approval, a conservator or guardian would likely inform the court of the relationships that create the concern anyway. [FN223] The most significant new provisions of Chapter 565 are the penalties imposing three times the losses or $5,000 if there are no losses due to breaches of duty. [FN224] However, the ward has always been able to rescind the transaction, obtain any profits the guardian or conservator made, and recoup the losses or any profits that the estate should have made but for the breach of duty. [FN225] Therefore, the new penalties may not be necessary because alternate remedies already exist. [FN226]

Chapter 565 also impedes judicial immunity, which is troubling. Since judicial immunity comes from common law, this statute overrules it unless a court can find some way to exclude the term "court official" from the statute. [FN227] However, the statute seems fairly clear that it includes judges. Chapter 565 makes the distinction between court employees and court officials. [FN228] Moreover, the bill analyses make mention of the problem with the conflict of interest of the probate judge in the ***666** Riverside Conservatorship Scandal. [FN229] In one bill analysis, the committee gets more specific by saying that "the intent of the bill is to prevent 'insider deals' similar to the purchase by the probate judge of a home that belonged to a conservatee." [FN230] Most strikingly, the author's comments in the analysis of the Assembly Committee on the Judiciary states that the class mentioned in the statute includes judges. [FN231] Therefore, a court could not so easily find judicial immunity as it did in Frost v. Geernaert. [FN232] Now, a judge can be sued, so proper administration of justice-the goal of judicial immunity-might be compromised. [FN233]

B. Is More Reform Necessary?

With different groups pressuring legislatures to do something about elder abuse and financial

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exploitation, legislatures have tried to reform conservatorship laws. [FN234] Some groups hope that one perfect set of rules will solve all of the problems in the system. [FN235] The reality is that no set of laws can be perfect. [FN236] For instance, if a new law made the standards for becoming a guardian or conservator more stringent, some people who probably do not need a conservatorship might retain their independence; however, some incapacitated people may not get the help that they need. [FN237] These reforms have solved some problems but exacerbated others. [FN238]

Many competing priorities exist that have shaped the law. [FN239] For example, one priority is to protect the ward from unscrupulous people, while another is to keep the ward as independent as possible. [FN240] However, these two priorities are mutually exclusive. [FN241] Additionally, **conservatorships** are expensive because of the need for court supervision. [FN242]

***667** Furthermore, the system does not necessarily need more laws. [FN243] The abuses that took place in Riverside County were already illegal. [FN244] Under the law prior to Chapter 565, the owner of West Coast Conservators and some of her associates face prison time and civil penalties. [FN245] Had Judge Sullivan not stepped down, he could have been reprimanded or even removed for his own alleged improprieties. [FN246] The law that existed before Chapter 565 already provided the means to punish the individuals. [FN247]

The problem centered not on reforming the law, but on enforcing the existing law. [FN248] Had Judge Sullivan used the laws that already existed, West Coast would not have been able to defraud so many wards over such a long period of time. [FN249] Because the majority of judges follow the law, it is unusual for a judge to be disciplined. [FN250] But when a judge pays little attention to questions brought up by investigators and wards' relatives, new laws are irrelevant. [FN251] If a judge performs negligently, exploitation of wards is always possible. [FN252]

C. Other Solutions

Some mechanisms for reform that might improve oversight have been suggested. [FN253] Some call for IRS-style random audits of guardianships and **conservatorships**. [FN254] These audits would be performed by a State agency which would randomly select a small percentage of guardianships or **conservatorships** to review their records and investigate the wards' situation. [FN255] Hopefully, random selection will catch some unscrupulous conservators and guardians and deter others.

***668** Another suggestion is to delegate some of the duties of judges to other officials who specialize in conservatorship and guardianship issues. [FN256] With specialized expertise, these officials can make decisions quicker and at less cost. [FN257] Moreover, they could potentially take their "courts" to the nursing home or wherever the ward resides if necessary. [FN258] The examination of **conservatorships** and guardianships at the ward's residence is not only more comfortable for the ward, but the official can more easily ascertain the ward's situation. [FN259] With a graying population, many jurisdictions may make use of this method to cut costs and increase efficiency. [FN260]

Nonetheless, many commentators suggest that the best solution is to avoid a conservatorship or guardianship altogether. [FN261] Other alternatives are available that are more flexible, less costly, and avoid judicial scrutiny. [FN262] Trusts and durable powers of attorney can be used, and most attorneys strongly favor these instruments over a guardianship or conservatorship. [FN263] However, these instruments also present problems. [FN264] While they are less costly and more flexible, trusts and durable powers of attorney can lack oversight provisions. [FN265] As with many aspects of dealing with incapacity, society may just have to rely on the person who takes care of the vulnerable and hope that that person does not take advantage of her position. [FN266]

VI. CONCLUSION

As the number of people over age 65 increases, many more **conservatorships** will be created within the next few decades. [FN267] Luckily, although the conservatorship system is not perfect, it can produce acceptable results when it is used properly and when existing laws are enforced by judges. [FN268] Chapter 565 was passed to refine the law in the aftermath of an exemplary case of the system gone awry. [FN269] Although much of the law prohibiting judges, court employees, conservators, and guardians ***669** from acting under conflicts of interest and self-dealing already exists, the new provisions under Chapter 565 decrease the likelihood that court officials, judges, conservators, and guardians will be able take advantage of their positions by sending business to their relatives, or by selling or leasing property to their relatives at low prices. [FN270] As the elderly population increases and more people

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need conservators, more caring individuals are needed because caring is the most important qualification of a conservator. However, new laws cannot make people more caring or more diligent in their duties. If the problem is to be solved, individual judges, conservators, or relatives of wards will have to care about the well-being of their wards and keep a sharp lookout for potential abuse.

[FN1]. 12 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* § 819 (9th ed. 1987 & Supp. 1999) [hereinafter *Witkin-Wills*]; Lawrence Friedman & Mark Savage, *Taking Care: The Law of Conservatorship in* ***California***, 61 S. CAL. L. REV. at 273, 273-74 (1988); A. Frank Johns, *Ten Years After: Where is the Constitutional Crisis With Procedural Safeguards and Due Process in Guardianship Adjudication*?, 7 ELDER L.J. 33, 38-58 (1999).

[FN2]. The technical term for the person being tended to by a conservator is a "conservatee," and the technical term for a person being tended to by a guardian is a "ward." Friedman & Savage, *supra* note 1, at 275 n.3. Because the law of **conservatorships** and the law of guardianships are so similar, the term "ward" will be used within this article to refer to a "conservatee" of a conservatorship, as well as a "ward" of a guardianship. *See Witkin-Wills, supra* note 1, § § 890-903 (enumerating many of the provisions common to both guardianships and **conservatorships**).

[FN3]. Robert B. Fleming & Carolyn J. Robinson, *Care of Incompetent Adults: A Brief History of Guardianship*, ARIZ. ATT'Y, Dec. 1993, at 16, 17.

[FN4]. *Id.*

[FN5]. *See* Christopher Manes, *Guardian Angels*, CAL. LAW. (Jan. 2000), at 35 (recounting a scandal in which a conservatorship company was alleged to have bilked wards out of millions of dollars); *see also* Friedman & Savage, *supra* note 1, at 273-90 (describing some of the problems **in California conservatorships** such as elder abuse and neglect).

[FN6]. Manes, *supra* note 5, at 35.

[FN7]. Friedman & Savage, *supra* note 1, at 277; Manes, *supra* note 5, at 35.

[FN8]. *See* ASSEMBLY COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF AB 1950, at 3 (Apr. 25, 2000) (reporting on the problems of the "guardianship and conservatorship system" exposed by the conservatorship scandal in Riverside County and noting that Chapter 565 seeks to help remedy those problems).

[FN9]. *See* Manes, *supra* note 5, at 40 (describing some reform ideas such as IRS-style audits, and lamenting that some reforms may never be satisfactory); *see also* Letter from Christopher S. Manes, Attorney at Law, Law Offices of Howard L. Sanger, to Stephanie Abeyta, Staff Member, Office of **California** Assemblymen Rod Pacheco (February 14, 2000) (on file with *McGeorge Law Review*) (arguing that Chapter 565 does not address some issues such as the hiring of members of a conservator's family where the conservator has no direct financial interest).

[FN10]. *See* CAL. PROB. CODE § 2101 (West 1991) (explaining that guardianship and conservatorship relationships are "subject to the law relating to trusts"); *see also* 11 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, *Trusts*, § 67 (9th ed. 1987 & Supp. 1999) [hereinafter *Witkin-Trusts*] (noting that a trustee breaches his duty by self-dealing or operating under a conflict of interest).

[FN11]. CAL. PROB. CODE § 2400 (West 1991); *id.* at § 2350 (West 1991); *Witkin-Wills, supra* note 1, § 819.

[FN12]. CAL. PROB. CODE § 2351 (West 1991).

[FN13]. *Id.*

[FN14]. *Id.* § 2401 (West 1991).

[FN15]. *Witkin-Wills, supra* note 1, § 819.

[FN16]. Friedman & Savage, *supra* note 1, at 280.

[FN17]. CAL. PROB. CODE § 1801 (West 1991 & Supp. 2000); *Witkin-Wills, supra* note 1, § 980; *see* CAL. PROB. CODE § 1420 (West 1991) (defining developmental disability as a "disability which originates before an individual attains 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial hardship" and can include "mental retardation, cerebral palsy, epilepsy, and autism").

[FN18]. CAL. PROB. CODE § 1801 (West 1991); *Witkin-Wills, supra* note 1, § 980.

[FN19]. *Witkin-Wills, supra* note 1, § 822.

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[FN20]. *Id.* § 851; CAL. PROB. CODE § 1515 (West 1991).

[FN21]. *See Witkin-Wills, supra* note 1, § § 819-820 (comparing the law of guardianships to the law of **conservatorships** and discussing the various types of **conservatorships** each of which are based on a ward's inability to care for herself or her own estate).

[FN22]. *Id.* § 862. An absentee is a person, such as a member of the armed forces stationed overseas, who cannot properly take care of her estate due to her absence. CAL. PROB. CODE § 1840 (West 1991).

[FN23]. *See* CAL. PROB. CODE § 2351 (West 1991) (detailing some of the duties of both guardians and conservators, such as caring for, controlling, taking custody of, and ensuring the education of the ward).

[FN24]. *Id.* § 1801 (West 1991).

[FN25]. *Id.* § 1803 (West 1991).

[FN26]. *Id.* § 1500 (West 1991); *Witkin-Wills, supra* note 1, § 847.

[FN27]. *See Witkin-Wills, supra* note 1, § § 853, 865 (illustrating the procedure involved in petitioning the court for a guardianship or conservatorship-the first step in establishing a guardianship or conservatorship).

[FN28]. CAL. PROB. CODE § 1803; *Id.* § 2900 (West 1991 &Supp. 2000); Friedman & Savage, *supra* note 1, at 280.

[FN29]. CAL. PROB. CODE § 1820 (West 1991).

[FN30]. *Witkin-Wills, supra* note 1, § 864.

[FN31]. CAL. PROB. CODE § § 1810-1812 (West 1991 & Supp. 2000).

[FN32]. *Id.* § § 1500-1501 (West 1991); *Witkin-Wills, supra* note 1, § § 848-850, 852, 859.

[FN33]. CAL. PROB. CODE § 1826 (West 1991 & Supp. 2000).

[FN34]. *Id.* § 1514 (West 1991 & Supp. 2000); *id.* § 1827 (West 1991).

[FN35]. *Id.* § 1600 (West 1991 & Supp. 2000).

[FN36]. *Id.* § 1860 (West 1991).

[FN37]. *Id.* § 1860.5 (West 1991).

[FN38]. *Witkin-Wills, supra* note 1, § 881.

[FN39]. CAL. PROB. CODE § § 2401, 2420 (West 1991).

[FN40]. *Id.* § 2420.

[FN41]. *Id.* § § 2431, 2457 (West 1991).

[FN42]. *Id.* § 2351 (West 1991).

[FN43]. *Id.*

[FN44]. *See Witkin-Wills, supra* note 1, § § 913-918 (detailing the powers of a guardian and conservator *of the person*).

[FN45]. CAL. PROB. CODE § 2101 (West 1991 & Supp. 2000).

[FN46]. *See Witkin-Wills, supra* note 1, § 891 (stressing that a guardian is absolutely liable for losses if she surrenders control over assets).

[FN47]. G. Michael Richwine, *How Individual Trustees Can Avoid Liability and Breaches of Trust,* 24 EST. PLAN.. 481, 482 (1997); *see, e.g., In re* McCabe's Estate, 98 **Cal.** App. 2d 503, 504, 220 P.2d 614, 616 (1950) (finding that although the trustee proved that she had spent money in support of the beneficiary, the trustee was still liable for the amount of assets originally given to the beneficiary plus interest, because the trustee commingled the trust assets with her own).

[FN48]. *See In re* McCabe's Estate, 98 **Cal.** App. 2d at 504, 220 P.2d at 616 (ruling that placing trust funds in accounts that cause these funds to be indistinguishable from the other assets in the account constitutes a mingling of assets, and trustees are liable for the losses that result); *see also Witkin-Trusts, supra* note 10, § 74 (detailing a trustee's duty to keep property separate from her own property and from trusts belonging to others).

[FN49]. *See Witkin-Trusts, supra* note 10, § 79 (defining the prudent investor rule).

[FN50]. *See* Lynch v. Redfield, 9 **Cal.** App. 3d 293, 298, 88 **Cal.** Rptr. 86, 89 (1970) (stating that a trustee should invest funds so that the funds will produce income rather than sit idle for an unreasonable length of time).

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[FN51]. *Witkin-Trusts, supra* note 10, § 82A.

[FN52]. *See id.*, § 79 (stating that second mortgages are not proper investments). Second mortgages can be risky because if the lender of the first mortgage forecloses, the lender of the second mortgage might not be able to recover her investment. RESTATEMENT (THIRD) OF PROPERTY, § 4.5 (1994). However, there may be some circumstances where a second mortgage is permissible. RESTATEMENT (THIRD) OF TRUSTS, PRUDENT INVESTOR RULE § 227 cmt. n (1992).

[FN53]. *Witkin-Trusts, supra* note 10, § 67, 70.

[FN54]. CAL. PROB. CODE § 16004 (West 1991).

[FN55]. *Id.*

[FN56]. *Id.* § 2101 (West 1991 & Supp. 2000).

[FN57]. *See Witkin-Wills, supra* note 1, § § 934-943 (detailing the powers of a guardian or a conservator to sell and lease the ward's property and the procedures for using that power).

[FN58]. *Id.* § 934, 947-49.

[FN59]. *Id.* § § 934-945.

[FN60]. *See id.* § § 934-43 (detailing the sales and lease transaction which require court approval).

[FN61]. *Id.* § 939.

[FN62]. *Id.* § § 947-949.

[FN63]. *Id.* § 938, 947-949.

[FN64]. *Id.* § 938(b).

[FN65]. CAL. PROB. CODE § 2590 (West 1991).

[FN66]. An accounting is a report of all income earned by a ward's estate, the expenses and losses incurred by the ward's estate, the value and contents of any assets in the ward's estate, and any other disbursements made from the estate. CAL. PROB. CODE § 1061 (West Supp. 2000).

[FN67]. 1998 **Cal**. Stat. ch. 581, sec. 22, at 38 (amending Probate code section § 2620).

[FN68]. *Id.*

[FN69]. *See* CAL. PROB. CODE § 2600 (West 1991) (clarifying that only a conservator or guardian *of the estate* is required to file an accounting); Conservatorship of Munson, 87 **Cal**. App. 3d 515, 518, 152 **Cal**. Rptr. 12, 13 (1978) (deciding that no guardianship or conservator *of the person* need file an accounting).

[FN70]. CAL. PROB. CODE § § 2359, 2403 (West 1991).

[FN71]. *Witkin-Wills, supra* note 1, § 925.

[FN72]. CAL. PROB. CODE § 2340 (West 1991 & Supp. 2000).

[FN73]. *Id.* § 2850 (West 1991 & Supp. 2000).

[FN74]. *Id.* § 2850(b) (West 1991 & Supp. 2000).

[FN75]. *Id.*

[FN76]. *Id.* § 2850(b)(8).

[FN77]. CAL. PROB. CODE § 2342 (West 1991 & Supp. 2000); SENATE FLOOR, COMMITTEE ANALYSIS OF AB 925, at 5 (Aug. 27, 2000).

[FN78]. CAL. PROB. CODE § 2850(e).

[FN79]. *Id.* § § 2851, 2853 (West 1991 & Supp. 2000).

[FN80]. *Id.* § 2650 (West 1991 & Supp. 2000).

[FN81]. *Witkin-Wills, supra* note 1, § 967. The best interest of the ward is a catch-all provision giving the court great discretion to remove a guardian or conservator for a reason not enumerated in the statute. *Id.*

[FN82]. *Witkin-Trusts, supra* note 10, § 133.

[FN83]. *Id.*

[FN84]. *Id.*

[FN85]. A bona fide purchaser is defined as one who buys for value without notice of any adverse claims. BLACK'S LAW DICTIONARY 1249 (7th ed. 1999).

[FN86]. CAL. PROB. CODE § 2401.3 (West 1991); *Witkin-Trusts, supra* note 10, § 138.

[FN87]. CAL. PROB. CODE § 2401.3 (West 1991).

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[FN88]. *Id.*

[FN89]. *See Witkin-Wills, supra* note 1, § § 909-911 (illustrating the requirements of bonding of guardians and conservators).

[FN90]. *See id.* § § 848-850, 897, 892, 903-907 (recounting numerous cases in which the guardian was a relative and discussing private fiduciary companies, charitable corporations, and the public guardian); *see also* Friedman & Savage, *supra* note 1, at 279-81 (explaining that the public guardian is called upon when the proposed ward has no family or friends to take care of her and citing an example of a ward whose neighbor and another acquaintance became the conservators of the ward).

[FN91]. Friedman & Savage, *supra* note 1, at 279-81.

[FN92]. *See* CAL. PROB. CODE § 1810 (West 1991) (stating that a court will only appoint a proposed conservator if the appointment is in the best interests of the ward); *see also* Friedman & Savage, *supra* note 1, at 282 (discussing a case in which a neighbor, who was "friendly to the ward," was appointed conservator); *Witkin-Wills, supra* note 1, § 859 (pointing out that a nominee for guardianship will not be appointed if she is deemed unsuitable).

[FN93]. *See* Friedman & Savage, *supra* note 1, at 280 (noting that, if the public guardian does not petition the court, a relative usually petitions the court and proposes to be the conservator). The court investigator usually acquiesces to this arrangement. *Id.*

[FN94]. *Supra* note 92 and accompanying text.

[FN95]. *Witkin-Wills, supra* note 1, § 897.

[FN96]. *See* CAL. PROB. CODE § 2340 (West 1991 & Supp. 2000) (establishing that part of the definition of a private professional conservator is a person or entity with two or more wards).

[FN97]. *Id.* § 2623 (West 1991).

[FN98]. Friedman & Savage, *supra* note 1, at 279-80.

[FN99]. *Id.*

[FN100]. *See, e.g.*, Raymond Smith, *New Conservatorship Claim Family Split, Money Looted, 3 People Say*, PRESS-ENTER. (Riverside, **Cal.**), June 5, 1999, at A1 (exemplifying one **California** case in which a private conservator was appointed when the situation with the ward's mother as conservator became unsatisfactory); *see also Witkin-Wills, supra* note 1, § 897 (defining a private conservator company as a conservator that cares for a ward's person or estate for profit).

[FN101]. *Witkin-Wills, supra* note 1, § 897.

[FN102]. Friedman & Savage, *supra* note 1, at 279-80.

[FN103]. A judge is defined within the **California** Code of Judicial Ethics as "an officer of the state Judicial system ... who performs judicial functions." CAL. CODE OF JUD. ETHICS Canon 6(A) (2000). This definition includes magistrates, court commissioners, referees, court-appointed arbitrators, judges of the State Bar Court, temporary judges, and special masters. *Id.*

[FN104]. *Id.* Canon 4 (1999). A conflict of interest is defined as a "real or seeming incompatibility between one's private interests and one's public or fiduciary duties." BLACK'S LAW DICTIONARY 295 (4th ed. 1999).

[FN105]. *See* CAL. CODE OF JUD. ETHICS Preamble (1999) (stating that judges must be beyond reproach because they "interpret and apply the laws that govern us").

[FN106]. *Id.*

[FN107]. *Id.* Canon 4(D)(1) (1999).

[FN108]. *See id.* Terminology (1999) (defining a member of the judge's family as a "spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship").

[FN109]. *Id.* Canon 4(E)(1) (1999).

[FN110]. *Id.*

[FN111]. *See id.* Canon 4(D)(5) Advisory Committee Commentary (1999) (stating that a judge cannot reasonably be expected to control or know about all the business dealings of her family).

[FN112]. *Id.* Preamble (1999).

[FN113]. Mike Kataoka, *Judge's Actions Questioned: Lawyer Faults Connection to Inland Woman's Trust*, PRESS-ENTER. (Riverside, **Cal.**), May 28, 1999, at A1.

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[FN114]. 2 B.E. WITKIN, CALIFORNIA PROCEDURE, *Courts* § 400 (4th ed. 1996) [[hereinafter *Witkin-Courts*].

[FN115]. *Id.*

[FN116]. MODEL CODE OF ETHICS FOR THE COURT EMPLOYEES OF CALIFORNIA Tenet 4-6 (1994). Copies of the MODEL CODE OF ETHICS FOR COURT EMPLOYEES OF CALIFORNIA are available from the administrative offices of **California** Courts. *Witkin-Courts, supra* note 114, § 400.

[FN117]. Tagliavia v. County of Los Angeles, 112 **Cal.** App. 3d 759, 761, 169 **Cal.** Rptr. 467 (1980).

[FN118]. *Id.*

[FN119]. *Id.*

[FN120]. Frost v. Geernaert, 200 **Cal.** App.3d 1104, 1107, 246 **Cal.** Rptr. 440, 441 (1988).

[FN121]. *Id.* at 1108, 246 **Cal.** Rptr. at 442.

[FN122]. *Id.*

[FN123]. *Id.*

[FN124]. *Id.* at 1109, 246 **Cal.** Rptr. at 443.

[FN125]. *See* CAL. PROB. CODE § 1801 (West 1991 & Supp. 2000) (allowing a conservatorship *of the estate* to be created when the prospective ward cannot resist fraud); *see also* Friedman & Savage, *supra* note 1, at 274 (demonstrating that the wards in one average **California** county are almost always old and vulnerable).

[FN126]. *See* Friedman & Savage, *supra* note 1, at 273-74 (stating that a conservator has great power over a ward and showing examples of wards who have great difficulty communicating because of illnesses like stroke and senility).

[FN127]. *Id.* at 277.

[FN128]. *Id.*

[FN129]. *Id.* at 280-81.

[FN130]. *See* Manes, *supra* note 5, at 36 (giving one egregious example where the conservator made it difficult for relatives to see the ward in order to hide the fact that the conservator was stealing from the ward).

[FN131]. *See* Friedman & Savage, *supra* note 1, at 273 (noting that many wards cannot take care of themselves and cannot complain so they must rely on their conservator); *see also* Manes, *supra* note 5, at 40 (asserting that the conservatorship system relies on the goodwill of others).

[FN132]. *See* Manes, *supra* note 5, at 35-40 (detailing how one conservatorship company may have stolen over $1 million from its wards).

[FN133]. *Id.* at 35.

[FN134]. *Id.*

[FN135]. *Id.* at 37.

[FN136]. Mike Kataoka, *Civil Suit Filed in Trust-Fund Scandal: The Defendants, Accused of Defrauding Clients of a Private Conservatorship Firm in Riverside, Already Face Criminal Charges*, PRESS-ENTER. (Riverside, **Cal.**), May 19, 2000, at B1 [hereinafter Kataoka-Civil Suit Filed].

[FN137]. *Id.*; Manes, *supra* note 5, at 40.

[FN138]. *See id.* (reporting the findings of an investigator who discovered that the system's checks and balances, such as the judge's and district attorney's oversight, may have broken down, allowing West Coast to steal its wards' assets).

[FN139]. *Id.* at 37.

[FN140]. *See id.* at 39 (detailing the judge's dealings with West Coast and emphasizing the judge's failure to address the investigators' suspicion of fraud).

[FN141]. *Id.* at 39.

[FN142]. *Id.*

[FN143]. *Id.*

[FN144]. *See id.* (detailing the judge's conflicts of interest with **conservatorships** over which he presided).

[FN145]. *Id.*; Raymond Smith, *Riverside Conservator Under Investigation: A Riverside County Probe Into Financial Services Company Raises Questions About How People Are Appointed to Protect the Financially Vulnerable*, PRESS-

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ENTER. (Riverside, **Cal.**), Mar. 30, 1999, at A1.

[FN146]. Mike Kataoka, *Probate Judge's Actions Raise Ethical Questions: Sullivan Denies Doing Anything Improper*, PRESS-ENTER. (Riverside, **Cal.**), Apr. 18, 1999, at A3 [hereinafter Kataoka-Probate Judge's Actions].

[FN147]. *Id.*; Mike Kataoka, *Judge in Probate Cases to Retire: Career Brought Questions, Praise*, PRESS-ENTER. (Riverside, **Cal.**), Nov. 19, 1999, at A1.

[FN148]. *See* Manes, *supra* note 5, at 35 (explaining that many people were indicted or lost their jobs in the scandal, and government agencies, including the public defender's office and district attorney's office, were blamed).

[FN149]. *Id.*

[FN150]. *See id.* (explaining an investigator's report that the system broke down and that all concerned, including the judge and the Probate Bar, were to blame).

[FN151]. *Id.* at 38.

[FN152]. *See id.* at 40 (charging that, according to one investigator, all the officials and attorneys involved covered for one another, allowing West Coast to regularly take money from its wards for a long time).

[FN153]. *Id.* at 36, 40.

[FN154]. *Id.*

[FN155]. *See* National Center on Elder Abuse, *The Basics: What Is Elder Abuse, available at* http://www.gwjapan. com/NCEA/basic/index.html (last visited July 14, 2000) (copy on file with *McGeorge Law Review*) [hereinafter Elder Abuse Basics] (stating that family and other caregivers often exploit elders financially).

[FN156]. *See id.* (asserting that caregivers often neglect their wards); *see also Witkin-Wills, supra* note 1, § 847-855, 864 (illustrating that a conservator or guardian may be a relative of the ward).

[FN157]. *See* Manes, *supra* note 5, at 40 (emphasizing that, according to a professional conservator, a conservator must care about her charges).

[FN158]. *See id.* at 35 (revealing that cases of conservator mismanagement slipped through the cracks even when signs of trouble were brought in front of a judge).

[FN159]. *See id.* (same).

[FN160]. NATIONAL CENTER ON ELDER ABUSE AT THE AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION, THE NATIONAL ELDER ABUSE INCIDENCE STUDY Executive Summary 4 (1998) [hereinafter ELDER ABUSE STUDY] (copy on file with *McGeorge Law Review*).

[FN161]. Financial and Material Exploitation is defined as "[i]llegal or improper use of an elder's funds, property, or assets." NATIONAL CENTER ON ELDER ABUSE, *Types of Elder Abuse in Domestic Settings, available at* http:// www.gwjapan.com/NCEA/basic/fact1.pdf (last visited Sept. 7, 2000) (copy on file with *McGeorge Law Review*).

[FN162]. ELDER ABUSE STUDY, *supra* note 160, pt. IV, at 7.

[FN163]. *Id.* at Executive Summary 10.

[FN164]. *Id.*

[FN165]. *Id.* at Executive Summary 9.

[FN166]. *See* CAL. PROB. CODE § 1801 (West 2000) (stating the condition a ward should be in for a conservator *of the estate* and *of the person* to be appointed).

[FN167]. *See* ELDER ABUSE STUDY, *supra* note 160, at Executive Summary 9, 18 (asserting that elder abuse is under-reported, that many elderly people are unable to take care of themselves and are confused, and that elder abuse is difficult to detect because elders are often isolated).

[FN168]. *Id.*

[FN169]. *See* ELDER ABUSE STUDY, *supra* note 160, at Executive Summary 5 (illustrating that in 1996, 21, 427 out of 115, 110 reports of abuse and neglect of the elderly nationwide were reports of financial or material exploitation).

[FN170]. Lynn Friss Feinberg, *Options for Supporting Information and Family Caregiving, Executive Summary, available at* http:// www.asaging.org/pew/feinberg/feinberg-exsum.html (last visited Aug. 8, 2000) (copy on file with

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[FN171]. *Id.* The number of elderly in 2030 will be "more than twice" the number of elderly in 1995. *Id.*

[FN172]. *See id.* (arguing that increased demands will be "placed on family and other information caregivers").

[FN173]. *See* Kataoka-Probate Judge's Actions, *supra* note 146, at A3 (reporting that Judge Sullivan claimed to have few choices available in appointing conservators in Riverside County); *see also* Denise M. Brown, *The Care Giving Years: Six Stages to a Meaningful Journey, available at* http:// www.aarplifeanswers.com/ article_library/ documents /12639.pdf (last visited Aug. 8, 2000) (copy on file with *McGeorge Law Review*) (lamenting that people tend not to provide emotional support to those caring for an elderly relative).

[FN174]. Elder Abuse Basics, *supra* note 155.

[FN175]. *See Witkin-Wills, supra* note 1, § 891 (warning that a guardian is absolutely liable for losses if she surrenders control over the ward's assets); *supra* text accompanying note 46.

[FN176]. Kataoka-Probate Judge's Actions, *supra* note 146, at A3.

[FN177]. *See id.* (reporting that Judge Sullivan complained that he had few choices when appointing conservators); *see also* Denise M. Brown, *supra* note 173 (stating that society does not support the idea of caring for the elderly); *see also* Lawrence A. Frolik, *Guardianship Reform: When the Best is the Enemy of the Good*, 9 STAN. L. & POL'Y REV.. 347, 351 (1998) (lamenting that a court may not have many choices as to who to appoint as a guardian).

[FN178]. Kataoka-Probate Judge's Actions, *supra* note 146, at A3; Feinberg, *supra* note 170; Manes, *supra* note 5, at 40.

[FN179]. *Supra* notes 73-79 and accompanying text.

[FN180]. CAL. PROB. CODE § § 2351, 2401 (amended by Chapter 565).

[FN181]. *Id.*

[FN182]. *Id.*

[FN183]. *Id.* § 2111.5 (enacted by Chapter 565).

[FN184]. *Id.* Chapter 565 legally defines a person related by blood or marriage as a spouse or a relative within "the second degree of lineal or collateral consanguinity" of the person in question or spouse of the relative as defined. *Id.* Second degree of lineal or collateral consanguinity includes grandchildren, grandparents, siblings, and anyone closer. 23 AM. JUR. 2D *Descent and Distribution* § § 53, 55 (1983).

[FN185]. CAL. PROB. CODE § 2111.5 (enacted by Chapter 565).

[FN186]. *Id.*

[FN187]. *Id.*

[FN188]. *Id.*

[FN189]. *Id.*

[FN190]. *Id.*

[FN191]. CAL. PROB. CODE § 2403 (amended by Chapter 565).

[FN192]. *Id.*

[FN193]. *Id.*

[FN194]. *Id.* § 2359 (amended by Chapter 565).

[FN195]. *Id.* § § 2359, 2403 (amended by Chapter 565).

[FN196]. *Id.*

[FN197]. *Id.*

[FN198]. *Id.*

[FN199]. *Id.* § 2401.6 (enacted by Chapter 565). *Id.* § 2620 (amended by Chapter 565).

[FN200]. CAL. PROB. CODE § 2401.6 (enacted by Chapter 565).

[FN201]. CAL. FIN. CODE § § 765.5, 6850.5 (enacted by Chapter 565).

[FN202]. CAL. PROB. CODE § 2620(a) (amended by Chapter 565).

[FN203]. *Id.*

[FN204]. *Id.*

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[FN205]. Manes, *supra* note 5, at 39; Mike Kataoka & Raymond Smith, *Trustees 'Devoured' Estates, Panel Told: Ex-Employees of West Coast* ***Conservatorships*** *Say in Court Documents That Nearly $1 Million Was Taken*, PRESS-ENTER. (Riverside, **Cal.**), May 2, 2000, at A1.

[FN206]. *See* Manes, *supra* note 5, at 39 (noting that the thefts involved in the West Coast scandal were perhaps made possible because Judge Sullivan and other officials did not become suspicious even when irregularities were brought to their attention).

[FN207]. CAL. PROB. CODE § § 2351, 2401 (amended by Chapter 565).

[FN208]. *Witkin-Trusts, supra* note 10, § § 67, 70.

[FN209]. *See* Manes, *supra* note 5, at 40 (quoting investigators who stated that had the judge in the case and others not covered for one another, the scandal might not have occurred); *see also supra* Part II. D-F (enumerating the fiduciary duties of guardians and conservators and the remedies available to wards and their families through the courts).

[FN210]. *See* CAL. PROB. CODE § 2653(b) (West 1991) (stating that a court may remove a guardian or conservator, revoke powers, or require accountings depending on the court's judgment).

[FN211]. CAL. PROB. CODE § 2111.5 (enacted by Chapter 565).

[FN212]. CAL. CODE OF JUD. ETHICS, Canon 4(D)(1)(b) (1999); MODEL CODE OF ETHICS FOR THE COURT EMPLOYEES OF CALIFORNIA Tenet 5-6 (1994).

[FN213]. *See* MODEL CODE OF ETHICS FOR THE COURT EMPLOYEES OF CALIFORNIA, Guidelines for Tenet Six (1994) (mandating that court employees refrain from any "activity that gives the impression that court employees can be improperly influenced in the performance of their official duties").

[FN214]. *Compare* CAL. PROB. CODE § 2111.5 (enacted by Chapter 565) (providing that a relative of a court official or employee with duties "related to the appointment of" or "processing of any document related to" a conservator or guardian is prohibited from purchasing, leasing, or renting property from a ward's estate), *with* CAL. CODE OF JUD. ETHICS, Canon 4(D)(5) Advisory Committee Notes (1999) (noting that a judge cannot reasonably be expected to control or know about all the business dealings of her family), *and* MODEL CODE OF ETHICS FOR THE COURT EMPLOYEES OF CALIFORNIA Tenet 5-6 (1994) (requiring court employees to refrain from impropriety or hints of impropriety, but not mentioning anything regarding an employee's relatives).

[FN215]. CAL. CODE OF JUD. ETHICS, Canon 4(D)(5) Advisory Committee Comments.

[FN216]. *See* MODEL CODE OF ETHICS FOR THE COURT EMPLOYEES Tenet 5-6 (requiring court employees to refrain from impropriety or hints of impropriety, but not mentioning the families of court employees).

[FN217]. CAL. PROB. CODE § 2111.5 (enacted by Chapter 565).

[FN218]. *See* MODEL CODE OF ETHICS FOR THE COURT EMPLOYEES OF CALIFORNIA Tenet 5-6 (prohibiting impropriety or hints of impropriety on part of court employees); *see also* CAL. CODE OF JUD. ETHICS, Canon 4(D)(5) Advisory Committee Comments (requiring a judge to refrain from impropriety or hints of impropriety and to encourage her family to do the same but pointing out that a judge cannot reasonably be expected to control or know about all the business dealings of her family).

[FN219]. CAL. PROB. CODE § 2111.5 (enacted by Chapter 565).

[FN220]. *Compare id.* § 2403(c)(1) (amended by Chapter 565) (stating that when a guardian or conservator seeks approval for a sale or lease of a ward's property, she provides a statement "disclosing the family or affiliate relationship between the guardian and conservator" and the purchaser or lessee), *with id.* § 2101 (West 1991 & Supp. 2000) (stating that the fiduciary duties of conservators and guardians is "governed by the law of trusts"), *and Witkin-Trusts, supra* note 10, § § 67, 70 (stating that a trustee must not engage in conflicts of interests or self-dealing).

[FN221]. *See Witkin-Trusts, supra* note 10, § § 67, 70 (providing that conflicts of interest and self-dealing are prohibited and giving examples of conflicts of interest and self-dealing).

[FN222]. *Witkin-Wills, supra* note 1, § 934.

[FN223]. *See* CAL. PROB. CODE § 2403(a) (West

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1991) (asserting that a conservator or guardian can get approval or confirmation of her acts); *see also id.* § 2401.3(b) (stating that a court may excuse a conservator's or guardian's acts if the guardian "acted reasonably and in good faith").

[FN224]. CAL. PROB. CODE § 2403(c)(3) (amended by Chapter 565); *see supra* Part IV.B (detailing the surcharge created by Chapter 565).

[FN225]. *See* CAL. PROB. CODE § 2401.3(a). (West 1991 & Supp. 2000) (declaring that if a breach of a fiduciary duty is found, the guardian or conservator may be liable for any loss of profit that would not have occurred but for the breach of duty); *id.* § 2401.5 (West 2000) (asserting that if a breach of fiduciary duty is found, the guardian or conservator may be liable for the interest that "accrues at the legal rate of [interest for] judgments" or "interest actually received").

[FN226]. *Id.* § 2401.5 (West 2000).

[FN227]. *See supra* notes 120-24 (illustrating a case where the court determined that the legislature did not intend to overrule the common law policy of judicial immunity).

[FN228]. CAL. PROB. CODE § 2111.5 (enacted by Chapter 565).

[FN229]. FLOOR ANALYSIS OF AB 1950, SENATE RULES COMMITTEE, at 6 (Aug. 10, 2000); FLOOR ANALYSIS OF AB 1950, SENATE RULES COMMITTEE, at 6 (July 6, 2000); COMMITTEE ANALYSIS OF AB 1950, SENATE JUDICIARY COMMITTEE, at 2 (Apr. 24, 2000); COMMITTEE ANALYSIS OF AB 1950, ASSEMBLY COMMITTEE ON THE JUDICIARY, at 4 (Apr. 25, 2000).

[FN230]. COMMITTEE ANALYSIS OF AB 1950, SENATE JUDICIARY COMMITTEE, at 11 (Apr. 24, 2000).

[FN231]. COMMITTEE ANALYSIS OF AB 1950, ASSEMBLY COMMITTEE ON THE JUDICIARY, at 3 (Apr. 25, 2000).

[FN232]. *Supra* notes 120-24.

[FN233]. *See* Tagliavia, 112 **Cal.** App.3d at 761, 169 Cal.Rptr. at 467 (stating that the policy of judicial immunity is to ensure proper administration of justice).

[FN234]. Frolik, *supra* note 177, at 347.

[FN235]. *See id.* (proclaiming that we may "hope for too perfect" a system).

[FN236]. *Id.* at 351.

[FN237]. *Id.* at 350.

[FN238]. *Id.*

[FN239]. *See id.* at 348 (noting that some believe a good system should stress protecting the incapacitated while others believe a good system should stress independence).

[FN240]. *Id.* at 348.

[FN241]. *Id.*

[FN242]. *See* William M. McGovern, Jr., *Trusts, Custodianships, and Durable Powers of Attorney*, 27 REAL PROP. PROB. & TR. J.. 1,4 (1992) (asserting that burdensome court proceedings in **conservatorships** are expensive).

[FN243]. *See* Frolik, *supra* note 177, at 351 (arguing that no matter how many reforms are put in statutes, if the overseers of a conservatorship are corrupt, the statute will be of little use).

[FN244]. *See* Kataoka-Civil Suit Filed, *supra* note 136, at B1 (proclaiming that the owner of West Coast **Conservatorships** and her associates face civil and criminal penalties).

[FN245]. *Id.*

[FN246]. Kataoka-Probate Judge's Actions, *supra* note 146, at A1.

[FN247]. Kataoka-Civil Suit Filed, *supra* note 136, at B1.

[FN248]. *See* Frolik, *supra* note 177, at 351 (arguing that the reformers should reform those responsible for administrating **conservatorships** and not concentrate on reforming the procedures).

[FN249]. *See* Manes, *supra* note 5, at 37 (asserting that in order for West Coast to get away with what it did for so long, "those responsible for the system's integrity had to ignore a number of warning signs").

[FN250]. *See* Kataoka-Probate Judge's Actions, *supra* note 146, at A1 (noting the findings of a judge who

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tracks disciplinary actions against judges, to show that disciplinary actions against probate judges are uncommon).

[FN251]. *See* Frolik, *supra* note 177, at 351 (arguing that no matter how many reforms are enacted, if the overseers of a conservatorship are corrupt, the statute will be of little use).

[FN252]. *See* Manes, *supra* note 5, at 35 (proclaiming that when a judge ignores suspicious activities of conservators, wards can be exploited).

[FN253]. *See id.* at 40 (enumerating some reforms such as a statewide registry of conservators and IRS-style audits).

[FN254]. *Id.*

[FN255]. *See id.* (describing IRS-style audits for conservators).

[FN256]. Frolik, *supra* note 177, at 353.

[FN257]. *Id.*

[FN258]. *Id.*

[FN259]. *Id.*

[FN260]. *Id.*

[FN261]. McGovern, *supra* note 242, at 3.

[FN262]. *See id.* at 3-4 (arguing that powers of attorney and trusts are better instruments when a person becomes incapacitated).

[FN263]. *Id.* at 3.

[FN264]. *See id.* at 4 (maintaining that a trust does not require as much supervision as a conservatorship).

[FN265]. *See id.* at 16 (noting that most trusts are written to avoid court supervision).

[FN266]. *See* Manes, *supra* note 5, at 40 (suggesting that a main qualification for a conservator is that she care about her ward).

[FN267]. *See supra* Part III (warning that the population is getting older and that more **conservatorships** will eventually be needed).

[FN268]. *See supra* Part V.B (arguing that the existing laws can solve many of the problems with **conservatorships** if they are properly enforced).

[FN269]. *See* SENATE COMMITTEE ON THE JUDICIARY, COMMITTEE ANALYSIS OF AB 1950, at 5 (June 13, 2000) (pointing to the Riverside conservatorship scandal when arguing for the need of Chapter 565).

[FN270]. *Supra* Part V.A.

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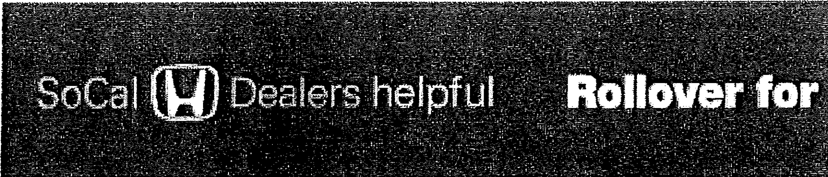
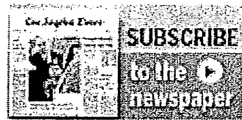




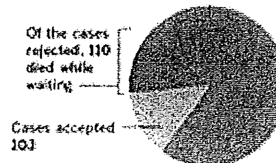
PART FOUR
GUARDIANS FOR PROFIT

For Most Vulnerable, a Promise Abandoned

L.A.'s public guardian, stripped of county funding for over a decade, turns away many in need.

By Robin Fields, Evelyn Larrubia and Jack Leonard, Times Staff Writers
November 16, 2005

INTERACTIVE FEATURE
Part 4: A Public Agency's Painful Decline
(Flash)



GRAPHIC
Little room for the needy
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Pearl Inferrera had $70 to her name when she arrived at Providence St. Joseph Medical Center. At 83, she had fallen in her apartment and broken her wrist. Doctors diagnosed her with dementia and chronic anemia.

Inferrera's meager circumstances and failing health made her the archetypal client for the Public Guardian's Office, Los Angeles County's conservator of last resort.

But Inferrera's treatment over four years as a county ward shows the agency's painful decline.

The public guardian once embodied a commitment to protect elderly men and women no longer able to care for themselves. It now represents something quite different: a broken promise to these fragile adults.

Until September, when the Board of Supervisors allotted $1.1 million to expand the agency's staff, the nation's largest county had not spent a penny of its own money on its program for the elderly since 1990.

It was the only such program in Southern California — and one of the few in the state — abandoned in this manner by elected officials.

The agency now rejects more than four of five aged citizens referred for help. Months or even years have passed before it acts — at least 660 seniors have died since 1998 waiting for the public guardian to decide whether to assist them.

For the comparatively few whose cases are accepted, the office's swamped staff has trouble meeting their basic needs. Seniors have had to do without eyeglasses, hearing aids and dentures. One elderly woman lost much of her small estate when the agency allowed her house to slip into foreclosure.

Three years ago, the public guardian had a waiting list of more than 300 senior citizens, each one in or near a crisis.

It is down to 15 now — but not because more people are being served.

After The Times requested information about the backlog, the agency adopted a new policy: It started rejecting people faster.

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"Can we meet the need?" said Deputy Director Christopher Fierro, the office's top administrator. "No."

Inferrera was a divorcee who lived alone in a small Burbank apartment complex before she was hospitalized.

The public guardian asked a Los Angeles County Probate Court for authority over her affairs in August 1998, saying alcoholism and increasing confusion had left her unable to return to independent living.

As Inferrera's conservator, the agency was responsible for managing her money and seeing to her daily needs.

Its performance fell short.

Although a doctor concluded that she did not need to live in a locked nursing home, court records show, the public guardian obtained court authority to put her in one anyway. The agency then moved her to a Pasadena facility where many of the patients had serious mental illnesses.

One attacked Inferrera, battering her head with a cane.

Her injuries were minor, but the incident left her traumatized, said Lorraine Woodburn, her grand-niece.

"She was like a whimpering puppy," Woodburn said. "Very sad, very frightened and very alone."

Woodburn helped Inferrera find a board-and-care home she preferred, but a year later, her new landlord sued to evict her: The public guardian hadn't paid her rent.

Fierro said the agency had done its best for Inferrera and that her unpaid rent stemmed from a holdup involving her Social Security benefits, not inattention.

But attorney Trikkia Keel, Inferrera's court-appointed lawyer, told a judge the agency had neglected her client.

"She begins to sob each time she talks about what she has been undergoing," Keel wrote.

Faced with Keel's opposition, the public guardian resigned from Inferrera's case in June 2002, replaced by a nonprofit group until her death in April.

Woodburn's eyes still well up when she recalls what her great-aunt went through.

"I wouldn't want to do that to anyone," she said, "and I wouldn't want it done to me."

A More Urgent Mission

Los Angeles County created the Public Guardian's Office in 1945 to step in when adults had no one else to care for them. Its services were to be provided free, courtesy of county taxpayers.

The agency's mission has become more urgent as the county's elderly population has expanded. Yet today, the public guardian has about 500 wards, compared with 1,200 in 1979.

Between 1998 and 2003, the agency sifted through more than 4,000 requests to take over the affairs of physically or mentally disabled adults. It accepted just 16% of them.

The public guardian's inability to meet the demand has helped fuel the rise of for-profit conservators, some of whom got their start at the agency.

Private conservators typically take on wards with sizable estates. The public guardian is often the only source of help for elderly people with little or no money.

The agency's 24-member probate staff occupies threadbare offices in the county Hall of Records, partly in a windowless, bunker-like space called "the stacks."

Until the mid-1980s, the public guardian and public administrator, the agency that manages estates of the dead, received more than $1 million a year from Los Angeles County.

The county broke them apart in 1987 to save money, folding the public guardian into the Department of Mental Health.

The probate program for the elderly and incapacitated, allocated just $200,000, dangled by a thread.

A 1988 county audit said the program desperately needed more staff, but the county's chief administrative officer, Richard Dixon, blocked the proposal, citing "severe budgetary constraints." Officials discussed killing it or having it refuse the indigent.

The county eliminated funding for the program in 1990.

Since then, agency officials have kept it alive by squeezing revenue from an array of other sources, public and private.

They also have cut costs, shedding clerical employees as well as a part-time doctor and two nurses who helped assess clients' medical needs.

Fierro, 60, who started at the agency in 1975 as an entry-level caseworker, talked about the erosion with a weary acceptance.

"I've always thought that any service is better than no service," he said.

He paused for a moment, then allowed as how, more recently, "I have questioned that."

Attorney Michael Harrison had much the same thought after a court appointed him to represent 83-year-old Tamara Arutunian.

She had been hospitalized after police found her, confused and disoriented, in a McDonald's restaurant in Santa Monica. After diagnosing her with dementia, hypertension and heart problems, the hospital transferred her to a locked nursing home.

The public guardian became her conservator in September 2003.

Arutunian had lived for decades in a rent-stabilized apartment across the street from St. Monica Church, where she had worked as a cook in the rectory.

Eager to go back home, she instructed Harrison to call her bank and make sure her rent was paid. After several conversations with her, Harrison came to believe she was well enough to live on her own. In mid-October, he asked the court to end the conservatorship.

By that time, however, a deputy public guardian had told Arutunian's apartment manager that she would not be returning.

The deputy abandoned all but a few of her belongings, deciding they were not worth the expense of storing. Her furniture, housewares and religious artwork were set out for other tenants to take, or to be hauled away.

Arutunian was crushed when she found out, said Evelyn Tummolo, who knew the elderly woman for years through the church. Arutunian had attended Mass there daily, always dressed neatly and wearing white gloves.

"When she heard that her apartment was gone, she kind of gave up," Tummolo said.

Harrison tried to get Arutunian out of the public guardian's care. Before a hearing on her case, Arutunian suffered a stroke that left her paralyzed and unable to speak. She died in March 2004.

$18 for a $5.79 Bill

The public guardian's thirst for revenue has come to shape every aspect of what it does, from which cases it takes to how it manages clients' care and finances.

The agency collects some income directly from its wards — the comparatively few who have enough assets to pay fees.

The public guardian charges more than $70 an hour, a rate comparable to those of for-profit private conservators. In one case, the office billed a blind 86-year-old $18 to write a check for a $5.79 phone bill.

Wards are charged for the theoretical cost of taking out bonds to insure their assets, even though the agency does not actually buy such bonds — a charge allowed by law.

The public guardian also keeps the difference between the interest rate it receives on clients' cash and the lower rate the law allows it to pass back to them.

Charles Donelon, 91, had an estate of nearly $300,000 when the public guardian took his case in 2003. In almost two years, Donelon has made less in interest ($2,309.52) than his expenses eat up in a single month ($5,708).

Unlike Donelon, most county wards have estates worth less than $2,000. The agency has had to look elsewhere to subsidize their care.

It draws fees from the state Medi-Cal program for visiting impoverished wards living in board-and-care homes. The payments came to more than $462,000 last year.

Though less than 20% of the agency's wards live in board-and-cares, they now get more than 40% of the visits.

Fierro said that the agency checks on those clients more frequently in part because their facilities provide less supervision than hospitals or nursing homes.

But he acknowledged that employees have gone out to see the same wards over and over to pack in the maximum number of visits covered by Medi-Cal. Meanwhile, some wards not eligible for the program went six months or more without visits, records show.

In 1993, at the urging of county Supervisor Mike Antonovich, the public guardian struck a deal with a network of about 25 private hospitals. The hospitals needed a way to transfer patients who were ready for discharge but could not manage on their own. The public guardian agreed to give those cases top priority in return for a fee, currently $977 per case.

Last year, the agency took two of three cases referred by private hospitals that pay fees, looking into them within a few days.

It rejected nine out of 10 cases from community senior-service groups and nursing homes, sometimes after months of delay.

Living in Squalor

The public guardian does not follow up on the elderly people it turns away. They sometimes end up living in squalid conditions, unable to clean their homes, buy food, go to the doctor or pay their bills, social workers with the county and area senior centers said.

"People say, 'Oh, well, they're old, they're going to die anyway,' " said Oleeta Igar, a former county caseworker who chairs an advisory committee of the Area Agency on Aging. "But the things we're talking about are not just part of the aging process. It's not OK for elderly people to live in filth."

In early 2004, social workers told the public guardian that Mid-City resident Easter Moon needed a conservatorship. They said the 68-year-old was unkempt and emaciated, with almost no food in her refrigerator. Her memory was impaired from alcohol abuse.

As it had twice before, the public guardian declined to take her case, records show. Asked why, Fierro said: "We did not believe the criteria for conservatorship were met." He declined to elaborate, citing privacy restrictions.

Months later, social workers found Moon sleeping on a mattress in the living room of her house, too weak to go upstairs. She had no phone service or power, they said. She was placed in a nursing home, the social workers said, speaking on condition of anonymity. Moon died in January.

A nursing home referred 80-year-old Koichi Tagami to the public guardian in April 2000, saying dementia had left him unable to manage his retirement benefits or make healthcare decisions. Months passed. The public guardian never responded, the nursing home said.

In a statement, agency officials said they did not intervene, because "Mr. Tagami's needs were apparently being met."

Tagami's nursing home later transferred him to another home where staff members could help handle his finances. But state and federal inspectors had repeatedly cited that facility for unclean conditions and substandard care.

Three months later, Tagami died of a massive infection after contracting gangrene that required doctors to amputate his right leg.

He had a circulatory ailment, peripheral arterial disease, which can lead to gangrene. Proper care usually prevents it. Because the public guardian takes so few indigent clients who do not come from fee-paying hospitals, a perception has arisen that an elderly person must have at least $100,000 in assets to get in the door.

"Quite frankly, the difference between having money and not having it matters a lot," said Elizabeth Wilson, a longtime geriatric care manager in West Los Angeles. "When there isn't any, those are the people who are really up a creek."

For years, social workers asked the public guardian to assist Betty Lubin.

A secretary at the Department of Veterans Affairs, Lubin worked for years in Washington, D.C., before transferring to the VA's Westwood office in the 1980s to live closer to her brother and his family.

By the time Lubin's health began to falter, however, most of her California relatives had died. So reclusive and tightfisted that she chose not to have a phone, she fell out of touch with the last of them, Renee Morley, a niece.

In 2000, the county's Adult Protective Services program responded to a report that Lubin, then 89, seemed confused and had lost her medical insurance after falling behind on the premiums. The agency referred her case to the public guardian.

An investigator visited Lubin and concluded that she could still feed and groom herself and was up to date on her bills.

Two years later, the public guardian received new reports that Lubin was deteriorating.

When a caseworker from a senior-care group visited her, Lubin greeted her at the door

naked from the waist up. Asked to finish dressing, Lubin wandered into her bedroom, then returned in the same state. Her apartment was filthy and her vision was failing, another social worker told the public guardian.

Again, the agency did not act.

In October 2002, Lubin had hip surgery at County-USC Medical Center. The hospital asked the public guardian to assist her, concerned that she could not manage on her own.

The public guardian rarely offers assistance to people referred by county hospitals, which do not pay fees for each referral. It did not in this instance, closing Lubin's case when she agreed to move into a nursing home.

Three months later, Lubin was referred yet again. This time, she had suffered a near-fatal series of seizures. And this time, paramedics rushed her to Northridge Hospital Medical Center — part of the fee-paying network.

The public guardian took the case. "I'm grateful they stepped in," Morley said. "I just wish she'd had someone to care for her sooner."

Visiting the Wards

When Lubin was entrusted to the public guardian, she become part of a "file" — one of up to 90 wards overseen by a single case administrator.

Los Angeles County's administrators have long juggled the heaviest caseloads in the state.There have been persistent complaints that the crush of cases has led to lapses in both day-to-day care and financial management.

The agency has been consistently late in filing court reports showing how it has handled wards' money, often missing deadlines by a year or more. As of August, reports were overdue in 192 cases.

The agency's goal is to see clients roughly every three months, a crucial element in ensuring their well-being. In a recent performance audit, consultants said many wait far longer. At least one had not been visited in a year.

Deputy Public Guardian Anne Bell tries to make visits one day a week, leaving her house at 7:30 a.m. and packing in seven or eight stops in quick succession.

One day in September, Bell visited 83-year-old William Carpenter at a Burbank care home. Observing that his clothes were faded and worn, she helped him order more through a catalog. She checked with the nursing supervisor, who said Carpenter had been given a "lap buddy" to prevent falls from his wheelchair.

"Is there anything you need?" Bell asked Carpenter.

"Not especially," he said.

Next up was Owen Chalmers, 94, who lives at a Santa Monica nursing facility. Bell has arranged for him to have a supply of birdseed so he won't use his food to feed the birds. Sitting in a sun-washed courtyard, Chalmers complained that he can no longer walk and needed an aide to lift him from his bed.

"Do you think you might be slowing down a little bit because of your age?" Bell asked gently. "I know there are things you wish you could do, but I still think you're doing good."

Bell handles the smallest caseload among the L.A. deputies, 75 clients with larger estates. Still, one week out of four, she estimated, she gets stuck in the office and can't make visits at all.

Beyond looking after her file, she rotates regularly onto the duty desk, picking up urgent

calls for other deputies who are out.

This fall, the staff struggled to care for about 200 wards left without case managers when one deputy took time off to recuperate from knee surgery and another retired without giving notice. The workload has eaten away at morale, current and former employees said. One deputy went on vacation and never returned.

Fierro said his staff often goes above and beyond for wards. When one turned 100, Bell brought her an ice cream cake and balloons, at her own expense.

At times, however, simple tasks fall through the cracks.

A B-movie actress and model in the 1940s, Phyllis Planchard always loved to dress in stylish clothes. A poetry lover, she collected the works of Robert Frost and Shelley. She cherished a 1920s maple bedroom set that once belonged to her parents.

Planchard, then 77, was placed in the public guardian's hands in May 2000 after exhibiting signs of confusion and mental decline. She owned a house in North Hollywood, but police found her living in her car. She was taken to a Burbank hospital, then discharged to a nursing home in Glendale.

After becoming her conservator, the public guardian moved her possessions to a county warehouse in Pico Rivera.

Attorney Lisa MacCarley, appointed to represent Planchard, said in court filings that she had asked that at least a few personal items, particularly clothes, be brought to the nursing home.

On photos from her acting days, Planchard wrote across the bottom: "A beautiful Phyllis loves clothes!"

But for seven months, Planchard lived in an almost bare room.

She wore used clothing — even underwear — donated by her care home, mostly from patients who had died.

"It's about human dignity. She was aware she had clothing and it wasn't brought to her," MacCarley said.

Planchard's nursing home complained about her treatment to professional conservator Dan Stubbs, who asked a probate court to remove the public guardian from the case.

Agency officials said an employee eventually brought Planchard some belongings and ordered her new clothes. Nonetheless, in 2001 a judge decided Planchard was better off out of the public guardian's hands. The court named Stubbs as her caretaker.

Making Do With Less

Frustration with the public guardian reached a boil in 2003.

Senior-service agencies that usually routed referrals to the office began sending them to private attorneys and conservators instead.

County officials formed a task force to air out grievances and propose ways that the agency could clarify how it chose cases.

After months of meetings, many of its members came away convinced that the probate program's inadequacies would get even worse as baby boomers moved into old age. The county's population age 60 and older is expected to double between 2000 and 2010, from 800,000 to 1.6 million.

"We have to look at what we have looming," said Yvette Townsend, the task force's co-

chairwoman and a former top official at the Department of Mental Health. "If we're having problems now, imagine 10 years from now."

Driven by similar concerns, Antonovich brought a board motion last year to commission a more comprehensive examination of the program.

An audit he requested, issued in April by Blue Consulting, was grim: The public guardian's program for the elderly could not perform its basic function, it said.

Auditors blamed not only scant resources, but a lethargic culture and a top-heavy structure in which each manager supervised an average of just three employees.

Fierro took exception, saying that managers handle a lot of casework because of the thin staffing.

The $1.1 million approved by county supervisors last month will pay for 16 new employees, including eight deputies.

But county officials have offered no guarantee that the positions will be paid for beyond this fiscal year. If funding is not renewed, the public guardian could have to lay off all of those it hired come July, Fierro said.

Still, the board's action is "an acknowledgment that if we're going to take care of what is a growing part of the population, more resources will be necessary," said Marvin Southard, head of the Department of Mental Health, the public guardian's parent agency.

It came too late for Leslie Joseph Smith.

Smith, 61, was referred to the Public Guardian's Office in March 1999. A drug user who was often homeless, he had inherited his aunt's house in Watts and, with it, the prospect of a better life.

Attorney Juanita Miller, who represented Smith's cousins in the probate of his aunt's estate, said she called the guardian's office hoping it could find Smith and take care of the home.

Over the next six months, the agency tried just twice to contact Smith after finding his last known address through the Social Security Administration.

In April 1999, an investigator went to see him at the Wilshire Vista Board and Care, but left after 15 minutes when told that Smith had gone for a walk, records show. Three months later, a staff member checked back by phone, but was told Smith had moved out.

Still, that September, the agency decided to extend Smith the services it denies so many others: It went to court and asked to become his conservator, saying he was a missing person with an estate that needed protecting.

In fact, Smith was dead. He had been found face-down in an alley near skid row two weeks earlier. His body lay in the county morgue, waiting to be claimed.

Two years passed before the public guardian, making a routine inquiry at the behest of its lawyer, the county counsel, discovered that Smith had died.

"That's a little tough to swallow," Miller said. "Two Christmases had gone by. Two Easters."

In the meantime, the agency had sold the house Smith inherited and paid itself and its lawyer almost $11,000 for work done on his behalf.

Even after discovering Smith had died, the agency did not notify his relatives, Miller said.

His unclaimed remains had been burned at the county crematory, which waited for

someone to collect his ashes.

No one did.

After four years, the crematory placed them in a common grave for indigents.

The gravestone is marked "2000," the year of his cremation.

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Researcher Maloy Moore contributed to this report.

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(BEGIN TEXT OF INFOBOX)

Little room for the needy

The Los Angeles Public Guardian's Office is the county's conservator of last resort. Once a national model, it is now the only such agency in Southern California that has received no support from county taxpayers.

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Caseloads

Deputy public guardians in Los Angeles juggle the heaviest caseloads in the state.

Open cases: 502

Average caseload per deputy: 84

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Dispositions

The agency rejects more than four of five aged citizens referred for help.

Cases rejected: 675

Of the cases rejected, 110 died while waiting

Cases accepted: 103

(2003 data)

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Referrals

The office takes the highest percentage of its cases from an "access network" of hospitals that pay a fee for each referral.

Access network: 69% appointed

Adult Protective Services: 35%

Nursing homes/community: 10%

L.A. County-USC Hospital: 7%

(2003-2004 data)

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Sources: Times reporting, Los Angeles County Public Guardian, Blue Consulting Report

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STATE ADULT GUARDIANSHIP LEGISLATION: DIRECTIONS OF REFORM – 2006

Commission on Law and Aging
American Bar Association

In 2006, at least eight states passed a total of 16 adult guardianship bills – as compared with 25 bills in 15 states passed in 2005. *California* passed an omnibus package of four bills to improve the administration of the adult guardianship system. *Wisconsin* enacted landmark guardianship and adult protective services reforms. *Florida* passed a gamut of amendments stemming from state reform recommendations. Also, states amended provisions concerning the powers and duties of guardians, guardian reporting and accounting, emergency procedures and transfer between jurisdictions. If you know of additional state guardianship legislation enacted in 2006, please contact Erica Wood, ABA Commission on Law and Aging, ericawood@staff.abanet.org, 202-662-8693.

A. California: Omnibus Conservatorship and Guardianship Reform Act

In November 2005, *The Los Angeles Times* published a hard-hitting exposé called *Guardians for Profit.* The series examined the work of private professional and public guardians in Los Angeles County and other select counties around the state. It was based on extensive interviews, as well as a review of more than 2,400 cases, including every case handled by a professional guardian (called "conservator") in Southern California between 1997 and 2003. There are about 500 professional guardians in the state, responsible for some $1.5 billion in funds and critical decision-making for at least 4,600 vulnerable Californians. Professional guardians handle about 15% of the guardianship cases in Southern California. Among the key findings concerning professional guardianship in LA County were that:

- Some professional guardians actively solicited cases, filed petitions, carried heavy caseloads, in some cases ignored incapacitated clients or even plundered estates, charged hefty fees and were not always closely monitored by the court.
- More than half of the cases examined began with an "emergency" appointment, which gives short shrift to procedural safeguards in place for regular guardianship proceedings.
- In at least 50 instances, professional guardians used their authority to benefit themselves or their friends/relatives.

- Probate courts were swamped with cases and short of staff.

- The county public guardianship program was swamped with cases and short of staff, forcing it to reject more than four of five cases referred.

- The much lauded California system of probate court investigators, whose job it is regularly to check on incapacitated persons under guardianship, was swamped with cases and short of staff, causing investigators to fall behind in making required visits.

The series received nationwide attention and spurred action in California, including legislative hearings, introduction of several substantial legislative measures, and creation by Chief Justice Ronald M. George of a statewide Probate Conservatorship Task Force charged with making recommendations to improve the management of probate conservatorship cases in California trial courts. In September, 2006, Governor Arnold Schwarzenegger signed into law an Omnibus Conservatorship and Guardianship Reform Act, a package of four bills making extensive changes in the state's guardianship ("conservatorship") system, as highlighted below, from a summary by Daniel A. Pone, Senior Attorney, Administrative Office of the Courts, Office of Governmental Affairs. Contact him for further information at daniel.pone@jud.ca.gov.

A.B. 1363 – makes reforms including enhanced court review and expansion of duties of the court investigators:

✓ Increases frequency of court review from one year after appointment and biennially thereafter to six months after appointment and annually thereafter, unless court determines that the conservator is acting in the best interests of the conservatee, in which case the review would be in two years, with a status investigation one year prior to the next scheduled review.

✓ Expands duties of court investigators to include new investigations six months after appointment, status investigations at one-year intervals, as well as in proposed temporary appointments. Expands scope of investigations to include interviews of not only the proposed conservatee, but also the petitioner, conservator, spouse, other relatives, friends, neighbors. Requires that investigations be without prior notice to the conservator unless court orders otherwise. Requires that investigator's report be mailed to relatives unless the court orders otherwise. Provides that upon investigator's request, the conservator must make available for inspection and copying the conservator's books and records concerning the conservatorship.

✓ Strengthens court oversight. Requires the Judicial Council to develop a standard accounting form and a simplified accounting form; and requires that all accountings be submitted on the Council forms. Clarifies and expands the types of supporting documentation submitted with each accounting. Sets out court actions upon material errors in the accounting, including possible suspension and removal. Requires that conservator's books and records be made available for inspection and copying by any person designated by the court, in order to verify the accounting.

✓ Strengthens procedural protections in temporary conservatorships including service of notice on the proposed conservatee and those named in the petition. Provides for a petition to terminate a temporary conservatorship. Requires the Judicial Council to adopt a rule establishing uniform standards for good cause exceptions to the five-day notice requirement. With limited exceptions, requires attendance of proposed conservatee at the hearing.

✓ Makes other changes including but not limited to provisions on conservator compensation, as well as court costs and fees. Requires Judicial Council to adopt a rule specifying qualifications and education in conservatorships and guardianships; develop a self-help educational video; study and make recommendations regarding performance standards in conservatorship cases; develop a form for notice of hearing, for notice of rights of the conservatee, and for objections to inventory and appraisal; and adopt a rule establishing uniform standards of conduct for conservators and guardians regarding fees that may be charged and asset management.

✓ Clarifies role of public guardians to require public guardians to apply for appointment if there is an imminent threat to an individual's health or safety or the estate. If there is no one else qualified and willing to act, the court must appoint the public guardian. The public guardians must begin investigations within two business days of receiving a referral. The public guardian also must meet new continuing educational requirements.

S.B. 1116 increases court oversight of moves of wards and conservatees and the sale of conservatees' personal residences.

✓ Concerning moves, includes provisions about notice of change of residence; safeguards in proposed removal of conservatee from personal residence; presumption that personal residence is the least restrictive setting; determination by conservator of appropriate level of care for the conservatee.

✓ Concerning the conservator's sale of conservatee's personal residence, includes provisions on procedures for sales and appraisals, requires a showing that there is no other alternative available, and specifies limits on the conservator's power to sell.

S.B. 1550 establishes a licensing and disciplinary scheme for professional fiduciaries in the Department of Consumer Affairs; and prohibits, effective July 2008, appointment of a professional fiduciary unless he or she is licensed under the act.

✓ A "professional fiduciary" is a person who acts as a conservator or guardian for two or more persons at the same time who are not related to the professional or to each other. Includes a person who acts as a trustee or agent under a durable power of attorney for health care or finances for more than three people or three families at the same time who are not related to the professional.

✓ Exempted from licensure are trust companies & employees, FDIC-insured institutions & emplyees, public officers or public agencies including public guardians, persons whose sole activity as a fiduciary is as a broker-dealer, broker-dealer agent or an investment adviser representative, licensed attorneys, certified public accountants and enrolled agents authorized to practice before the IRS.

✓ The new law sets out qualifications for licensure including criminal background checks, a licensing examination, specified experience and education (both pre-licensing and continuing).

S.B. 1716 allows the court to take appropriate action in response to informal ex parte communications or complaints concerning the fiduciary's performance of his/her duties and responsibilities and/or a person who is subject to a guardianship or conservatorship proceeding. It provides that the court may refer such complaints to a court investigator or take other responsive action. The court must disclose the ex parte communication to all parties and counsel unless necessary to protect the ward or conservatee.

B. Wisconsin: Landmark Reform

In 2006, attorneys and other advocates for older people and peoples with disabilities in Wisconsin won a "triple crown" with the legislature's passage of three major pieces of legislation affecting guardianship, protective services and placement, and adult protection systems. The summary below was prepared by Betsy Abramson, a Wisconsin attorney and consultant, primarily in the area of abuse and neglect of vulnerable adults, with assistance from attorney Ellen Henningsen of the Coalition of Wisconsin Aging Groups' Elder Law Center and

Jane A. Raymond, Wisconsin Department of Health and Family Services, Advocacy and Protection Systems Developer. While this summary focuses exclusively on the new guardianship law, for an overview of all three measures, see http://www.wisbar.org/AM/Template.cfm?Section=Wisconsin_Lawyer&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=59778.

The new guardianship law, 2005 Wisconsin Act 387 (SB 391) effective December 1, 2006, was the work of a great number of dedicated members of the Wisconsin State Bar's Elder Law Section and others for nearly a dozen years. The work of the Section in creating the draft was a reflection of decades of practice by attorneys who recognized the statute's many problems. Their experience showed that the statute was badly organized, used antiquated terms and contained a "one legal standard fits all" regardless of whether guardianship of the person or guardianship of the estate was sought. It was also lacking in due process and presumed that all rights are removed unless a court specifically retains certain rights, failed to give appropriate deference to previously-executed powers of attorney, did not specify in sufficient detail the duties or responsibilities of guardians of the person or estate, and lacked procedure for removal of a guardian, reinstatement of rights and other post-appointment matters. Highlights of the new chapter (Chap. 54, Wis. Stats) include:

1. Definitions. The definitions section replaces antiquated terms such as "infirmities of aging" and adds new definitions for "least restrictive," "serious and persistent mental illness," "spendthrift" and "interested person." Significantly, the law ceases referring to individuals as a noun -- "an incompetent" -- and instead more sensitively creates a definition for an "individual found incompetent," as "an individual who has been adjudicated by a court as meeting the requirements of sec. 54.10(3), Wis. Stats."

2. Appointment Procedure. The new law greatly strengthens the due process protections for proposed wards by requiring the court, before appointing either a guardian of the person or guardian of the estate, to find that there is no less restrictive means of meeting the need for assistance. Because there are different reasons for appointing the two different types of guardian (guardian of the *person* and guardian of the *estate*) the provisions create different standards for the two different types of guardians.

The new law also will improve selection of a guardian, by listing new (additional) factors for a court to consider, including: whether a proposed ward had done any advance planning (e.g., a power of attorney, trust); whether appointment of a guardian is the least restrictive means of meeting the proposed ward's needs; the individual's preferences; the nature and extent of the individual's care and treatment needs as well as property and financial needs; whether the proposed ward is at risk of abuse, exploitation, neglect or violation of rights; whether the

individual can adequately understand and appreciate the consequences of any impairment; the individual's management of activities of daily living; the individual's understanding and appreciation of the nature and consequences of any inability he or she may have regarding personal needs or property management; any medication and the effect on the individual's behavior, cognition and judgment; and whether the disability is likely to be temporary or permanent.

The court must appoint as guardian of the estate or person the agent under a previously executed durable power of attorney or power of attorney for health care, respectively, unless this would not be in the best interests of the proposed ward. The new law also reverses the former presumption about powers of attorney so that a court now must identify specific reasons why a guardian should be appointed despite the existence of a previously-executed power of attorney. Also, it requires a proposed guardian to submit a sworn and notarized statement to the court indicating whether he or she has ever been convicted of certain crimes, filed for or received bankruptcy protection, or had certain professional licenses or certificates suspended or revoked. The relevance of the proposed guardian's history will then be determined by the court.

3. Limitations, Powers & Duties. Consistent with other states' trends, the law emphasizes limited guardianship and reverses presumptions of full guardianship by limiting the guardian to powers authorized by statute or court order and that are the least restrictive form of intervention. A ward retains all rights not assigned to guardian or otherwise limited by statute. The new law provides a standard of duty for the guardian, separating the guardian's relationship to the ward ("to exhibit the utmost truthworthiness, loyalty and fidelity") and the guardian's standard when acting on behalf of the ward ("...to exercise the degree of care, diligence and good faith...that an ordinarily prudent person exercises in his or her own affairs"), and provides immunity if the guardian does so.

The new statute then clearly and distinctly separates the duties from the powers, and identifies which of the latter require court approval. The statute makes these listings separate for a guardian of the *estate* and a guardian of the *person.* Highlights include a limited gifting provision (only after notice and court approval) and provisions related to consent to psychotropic medication, participation in research and experimental treatment. The law also provides procedures for transfers of foreign guardianship.

4. Procedural Due Process. New due process provisions include providing the proposed ward with additional rights regarding the required physical/psychological examination, the right to remain silent during the examination, the right to request an additional examination, and a required court order to force the [proposed] ward to submit to an examination.

Additional protections are provided through required appointment of a *guardian ad litem* in more situations, e.g., temporary guardianships, any action to expand, review or terminate a guardianship or to review the conduct of a guardian. The new statute also lists the duties of a *guardian ad litem*, including interviewing the proposed guardian and/or stand-by guardian to determine fitness to serve and reviewing any existing powers of attorney, interviewing any previously appointed agent and reporting to the court whether a previously-executed power of attorney is adequate to preclude the need for guardianship and attend all court hearings.

In a change from current statute, the new statute makes it the petitioner's responsibility to ensure that the individual sought to be protected attends the hearing unless the *guardian ad litem*, after a personal interview with the individual, waives attendance and certifies in writing to the court why the individual person is unable to attend. This should not be done lightly. The *guardian ad litem* is required to consider the ability of the individual to understand and meaningfully participate, the effect of attendance on his or her physical or psychological health and the individual's wishes. If the individual is unable to attend only because of residency in a facility, physical inaccessibility or lack of transportation, the hearing must be moved, upon request, to where the individual resides.

The law also tightens up provisions related to the imposition of temporary guardianships. It specifies the process, requiring the appointment of a *guardian ad litem* in all cases. It requires a hearing, to be held no earlier than 48 hours after filing unless good cause is shown. The court must specify the powers delegated to a temporary guardian, and a temporary guardian may not sell real estate or expend more than $2,000 unless court approves and orders bond.

5. Post Appointment Provisions. The new measure requires a guardian of the estate to file the estate's inventory within 60 days, provides that reviews and modifications of guardianships may be requested by wards age 18 and over, the guardian or anyone on the ward's behalf, if at least 180 days has passed since the last request or if there are exigent circumstances. It also requires the appointment of a *guardian ad litem* in these matters and a hearing with the ward present, right to counsel and jury trial. Finally, recognizing the great deal of abuse of vulnerable adults, including by their guardians, the new statutes lists all in one place the specific criteria for removal of guardian, cause for court action against a guardian, and remedies.

C. Florida: Gamut of Changes

The Florida legislature passed two guardianship bills in 2006 – one incorporating the recommendations of the Guardianship Task Force and others; and a second with a focus on monitoring and less restrictive alternatives. The highlights below rely on a summary by Edwin

M. Boyer, Boyer & Jackson, Sarasota FL, as well as the House of Representatives Staff Analysis accompanying each bill.

1. HB 457 – Task Force Recommendations. The 2003 legislature created a Guardianship Task Force within the Department of Elderly affairs to recommend specific statutory and other changes in guardianship. The Task Force report was submitted in 2005. HB 457 enacts many of the recommendations of the Task Force, as well as the Florida State Guardianship Association, the Statewide Public Guardianship Office and the State Long-Term Care Ombudsman Program. Key elements relating to adult guardianship include:

- Professional guardians. Under existing law, professional guardians are required to register with the Statewide Public Guardianship Office annually. HB 457 redefines "professional guardian" to remove a requirement for compensation. A professional guardian is any guardian that serves three or more wards (non-relatives) at one time. It also provides that the Office's director may suspend or revoke registration if a guardian violates the provisions of the code.

- Emergency guardianship. The bill creates new requirements for reporting by emergency temporary guardians. It also extends the automatic expiration of the guardian's authority from 60 to 90 days, with a possible 90-day extension.

- Guardian qualifications and requirements. The bill makes credit and criminal investigation requirements for both private and professional guardians more comprehensive and more frequent, and includes inkless electronic fingerprints. In addition, it requires that guardian education requirements must be completed within four months instead of one year from appointment.

- Rights of incapacitated person. New language emphasizes the importance of an incapacitated person's right to services maximizing the quality of life. The bill also clarifies rights that cannot be delegated to a guardian; and provides that if the right to contract is removed, the right to marry is subject to court approval.

- Counsel for respondent. The bill specifies that a court-appointed attorney for an alleged incapacitated person must be on the attorney registry compiled by the circuit's indigent services committee; and that appointments must be made on a rotating basis. Court appointed attorneys must complete eight hours of education.

- Examining committees. The bill includes new provisions concerning members of examining committees, prohibiting members from being associated with or related to counsel for the

petitioner or proposed guardian and from thereafter being appointed as guardian; increasing educational requirements; and clarifying report requirements. Also, if a majority of examining committee members conclude that the person is not incapacitated, the court must dismiss the petition.

- Visits to incapacitated person. Existing law included no requirements to guardian visits to incapacitated persons under their care. The new provisions mandate quarterly visits by professional guardians and specify areas of assessment.

- Monitoring of guardians. The new law sets out a host of oversight requirements: (1) inclusion of mental health condition as well as treatment and rehabilitation needs in the guardian's annual report; provisions concerning proof of payment for expenditures and disbursements; authority for the clerks of court to audit accountings; a deadline for filing of the final report upon termination; and a requirement that the inventory reflect any trusts of which the incapacitated person is a beneficiary. The bill also amends the removal provisions, setting out a rebuttable presumption that a guardian who is a relative is acting in the person's best interest. In addition, the Statewide Public Guardianship Office must investigate the "practices of each office of public guardian related to the managing of each ward's personal affairs and property."

- Guardian power. The bill permits a guardian to appoint a professional guardian as a surrogate guardian if the guardian will be unavailable. Also, the bill permits guardians, with court approval, to amend trusts in connection with estate planning (but the court retains "oversight" of the assets transferred to the trust; and to challenge trusts.

2. HB 191 – Guardian Authority, Less Restrictive Alternatives and Monitoring. This bill includes three basic changes to protect the interests of incapacitated persons:

- Consideration of less restrictive alternatives. The new measure clarifies that a guardian may not be appointed if the court finds there is a less restrictive alternative, and provides that the court must consider and find whether such an alternative exists. The amendments also specify that when an interested person files a verified statement asserting a good faith belief that the alleged incapacitated person's trust, trust amendment or durable power of attorney is invalid, and gives a reasonable factual basis, the instrument is not considered an alternative to appointment of a guardian. However, this does not preclude the court from determining that certain authority granted by a durable power of attorney remains in effect.

- Trust contests. The new provisions allow a guardian to sue to modify a trust previously created by the ward and which may not be in the ward's best interest. This is an exception to

the prohibition in Florida law on filing an action against a trust prior to that trust becoming irrevocable -- giving the guardian a new tool to address the effects of earlier exploitation. The court must first find that the guardian's action is in the ward's best interest. (An additional amendment concerning trusts provides that if the guardian creates or amends revocable trusts or creates irrevocable trusts of property of the ward's estate for tax planning and estate planning purposes, the court retains oversight of the assets transferred to the trust.)

- Appointment of court monitor. A 2003 Florida Supreme Court Commission on Fairness, Committee on Court Monitoring, recommended steps for stronger court oversight, and HB 191 incorporates some of the Committee recommendations. Florida law allows the court to appoint a court monitor "upon inquiry from any interested person" or on its own motion, to investigate concerning the welfare of the ward and report to the court. The new law requires that the order appointing the monitor be served on the guardian, ward and others; and that the monitor's report be verified, and served on these parties as well. It allows the court to take further protective actions in response to the monitor's report. The amendments also permits the court to appoint an emergency court monitor without notice in the event of imminent danger, for 60 days or upon finding of no probable cause, with a possible extension of 30 days. Upon review of the monitor's report, the court must determine whether there is probable cause for further action -- and if so, must issue an order to show cause to the guardian or other respondent. The law provides for actions the court may take prior to and following the hearing on the show cause order.

D. Virginia & Idaho: Guardian Powers After Ward's Death

Both Virginia and Idaho tackled the issue of guardianship powers following the death of the incapacitated person, if there is no executor or administrator immediately in place. The Virginia measure pertains only to public guardians, while the Idaho law targets all guardians generally. In *Virginia, HB 856* allows public guardians or conservators to make funeral, cremation or burial arrangements after the death of an incapacitated person if the next of kin do not wish to make the arrangements and the public guardian or conservator has made a good faith effort to locate the next of kin. *Idaho SB 1322* similarly authorizes the guardian – or if no guardian at the time of the death of the individual, the conservator – to dispose of the deceased person's remains, including creation, if a hierarchical list of relatives and others fail to exercise their right to do so within 40 days of the death.

E. Maine: Emergency Guardianship

Maine addressed emergency situations, for which the statute and eventually the court must make a difficult balance between procedural safeguards and prevention of irreparable harm. An emergency guardianship, sometimes established without full procedural protections, may open the door for a plenary and permanent appointment. In the landmark case *Grant v. Johnson*, 757 F. Supp. 1127 (D. Or. 1991), a federal district court declared the Oregon temporary guardianship statue unconstitutional in that it did not provide minimum due process protections. Following the *Grant* decision, a number of states revised their temporary guardianship provisions.

Maine's HP 1475/LD 2087 clarifies and strengthens emergency procedures by: (1) defining the need for a temporary guardian or conservator as preventing "serious, immediate and irreparable harm to the health or financial interests of the person. . .;" (2) providing for notice orally and in writing to the respondent and designated others prior to filing a petition; and (3) providing that notice is not required if it would put the person at substantial risk of abuse, neglect or exploitation, would not be effective or for other good cause.

F. Idaho: Guardianship Jurisdiction

Our mobile society frequently creates complex jurisdictional issues in adult guardianship, including: (1) If more than one state is involved, which state should have initial jurisdiction; (2) If the ward is moved to another state, how should the guardianship be transferred; and (3) To what extent should a court in one jurisdiction recognize and enforce a guardianship order in another jurisdiction?

These issues are addressed to some extent by provisions in the Uniform Guardianship and Protective Proceedings Act and the National Probate Court Standards, but gaps remain. Thus, the National Conference of Commissioners on Uniform State Laws has appointed a Guardianship Jurisdiction Drafting Committee for a Uniform Guardianship and Protective Proceedings Jurisdiction Act. Once the model act is completed and is approved by the National Conference (and recognized by the ABA House of Delegates), it will be important for states to consider its adoption, so that maximum reciprocity will be achieved.

However, in the meantime, while the committee deliberates, states continue to act. In 2006, *Idaho SB 1326* enacts a set of provisions on "Foreign Guardianships and Conservatorships." The new law includes specific procedures for receipt and acceptance by the court of a guardianship and a conservatorship from another jurisdiction; as well as the converse -- transfer of guardianships and conservatorship to another jurisdiction. In both cases, the law provides for a petition; notice to the ward, named relatives and to the other jurisdiction; and allows the court to hold a hearing on its own motion or the motion of the ward or any interested

person. The act specifies that the court must determine that the transfer "is in the best interest of the ward" and directs the court to "coordinate with the foreign court."

In receiving a case *from* another state, the court must request the foreign court: (1) certify that it has no knowledge that the guardian engaged in malfeasance, that report filings have been satisfactory and that bond requirements have been performed; and (2) forward copies of all relevant filings. The court must give full faith and credit to the foreign court's determination of incapacity and the powers and duties of the guardian, but may modify the provisions of the guardianship to bring it into compliance with state law or rules. A transfer may not be "for the purpose of avoiding or circumventing the provisions to the guardianship order." The court must review the provisions of the guardianship within a reasonable period of time after the transfer.

A transfer of a case *to* another state occurs in cases in which the ward "has moved permanently to another jurisdiction" – that is, if the ward has resided there for more than 12 consecutive months, if the guardian notifies the court that the ward intends to move or has moved there permanently, or if the court receives notice of a guardianship petition filed there. The court must transfer the guardianship if the guardian is in good standing, is not moving the ward to circumvent the court order, and the transfer is in the ward's best interests. The court must notify the foreign court of any significant problems, indicate satisfactory report filings and compliance with bonding requirements; and must forward copies of all filings to the foreign court. To coordinate the transfer, the court may delay the effective date, make the transfer contingent upon the acceptance of the guardian in the other court, recognize concurrent jurisdiction for a reasonable period, or make other arrangements.

G. Virginia: Additional Measures

In addition to the provisions on powers to make arrangements following the death of the incapacitated person, Virginia enacted three additional small pieces of legislation:

- Public Guardian – Provider of Other Guardianship Services. SB 217 provides that a public guardianship program designated as such by the Virginia Department for the Aging under state law also may serve as a guardian or conservator for other individuals not under the public guardianship program.

- Transitioning Minors. HB 855 provides that when a petition is brought by a parent of a respondent who is under age 18, it may be filed six months before the person turns 18. This allows for a smooth transition and closes any gap in guardianship coverage. Previously, a parent of a child with mental retardation, developmental disabilities or other condition

causing diminished capacity could not file until the child's 18th birthday, and for the period in which the petition was pending, there was no one with decision-making authority.

- Social Security Number Sealed. HB 1583 concerns information listed on the petition. Instead of the respondent's Social Security number being listed, it will now be shown in a sealed filing – thus helping to prevent identity theft and other exploitation.

H. Georgia: Potpourri of Provisions

Georgia's SB 534 is what some legislative mavens might term a "clean up bill" (otherwise known as a "wrinkle bill" to iron things out) – enacting a number of small "fixes" in procedures concerning priority for appointment, payment of costs of the proceeding, evaluation in appointment of emergency guardians, review of petition for emergency conservatorship, sanctions for county guardians, bonds for public guardians, and more.

I. Clarifications

- Kansas SB 354 requires that guardians and conservators in voluntary cases as well as involuntary cases must file reports and accountings.

- Hawaii SB 2608 specifies that the major guardianship reforms enacted in 2004 shall not affect any action begun prior to January 1, 2005.

State Adult Guardianship Legislation at a Glance: 2006

State	Bill	Provisions
California	AB 1363	Enhances court review & expands duties of court investigators.
California	SB 1116	Increases court oversight of ward moves & sale of home.
California	SB 1550	Establishes licensing & disciplinary scheme for professional fiduciaries.
California	SB 1716	Allows court to take action in response to informal ex parte complaints & communications.
Florida	HB 457	Enacts recommendations of Guardianship Task Force.
Florida	HB 191	Enacts amendments concerning less restrictive alternatives, guardian modification of ward trusts, and court monitors.

Georgia	SB 534	Clarifies procedures in adult guardianship law.
Hawaii	SB 2608	Specifies that 2004 changes do not affect actions begun before Jan. 1, 2005.
Idaho	SB 1322	Authorizes guardian to dispose of deceased ward's remains if relatives do not do so.
Idaho	SB 1326	Enacts provisions on foreign guardianships & conservatorships.
Kansas	SB 354	Requires guardians/conservators in voluntary cases to file reports & accounts.
Maine	HP 1475/ LD 2087	Clarifies & strengthens emergency procedures.
Virginia	HB 856	Allows public guardians or conservators to make funeral, cremation or burial arrangements if relatives do not so do.
Virginia	SB 217	Concerns public guardianship programs serving other individuals not under program.
Virginia	HB 855	Concerns petitions for guardianship of transitioning minors.
Virginia	HB 1583	Provides for sealing of respondent's Social Security number instead of listing on petition.

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*273 TAKING CARE: THE LAW OF CONSERVATORSHIP IN **CALIFORNIA**

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The number and proportion of elderly people in our population has been growing; longevity has increased, and the role of the elderly as subjects and objects of the law has increased correspondingly. Federal and state laws against age discrimination, pension and social security law, and many other fields of law touch directly or indirectly on the problems of those who are middle-aged or older. This paper deals with one of the fields that predominantly affects that group: the law of conservatorship.

A conservatorship is one of a number of legal arrangements in which someone handles or manages the affairs of another (personal, business, or both), presumably because that person cannot manage alone. A familiar example is the guardianship of minors. In all these arrangements there is a ward or beneficiary, and a manager who stands in a fiduciary relationship (a relationship of trust) to the ward or beneficiary. The law of conservatorship is part of the law that deals with fiduciary relationships in general-trusteeship, the obligation of corporate officers to their company and stockholders, the rights and duties of executors of estates, and so on. In our legal system, these fiduciary relationships are, *274 at least in theory, under the close supervision of the courts. This is especially true where the beneficiary is legally incompetent, and therefore thought to need special protection.

This Article describes the **California** law relating to conservators and conservatorship, [FN1] and presents data from a study of conservatorship files in the Superior Court of San Mateo County, **California**. Most of the people under conservatorship are elderly. How does the process work? How does it affect the personal lives and business affairs of old people? There has been surprisingly little research on conservatorship. The exploratory project described here is meant to shed a small, flickering light on this rather obscure subject and, one hopes, pave the way for a fuller investigation of this institution.

I. CONSERVATORSHIP: THE LAW

Family law, including family property law and the law relating to fiduciary obligations, is among the most local of local subjects in American federalism. The states control them, and family law rarely reaches the threshold of federal concern. Thus, each of the 50 states (and the District of Columbia) has its own laws on the subject, and probably no two of them are *exactly* alike. Of course, there are strong resemblances among them. A dozen or so states have adopted the Uniform Probate Code, and these states share common rules on the subject. **California** is not among these states. [FN2]

The **California** law is quite complex, and has undergone much transformation in recent years. Until 1957, there was no 'conservatorship' as such iun **California**. Instead, there were two forms of guardianship-guardianship of the person, and guardianship of the estate. A guardian of the person had actual charge of the ward as a human being. A guardian of the estate managed money, property, and business affairs. These two roles could be, and very often were, combined in a single person. A guardian could be appointed for anyone, child or adult, who was 'incompetent.'

*275 In 1957, **California** added a new arrangement, conservatorship, as an alternative to guardianship. Conservatorship was for adults who, 'by reason of advanced age, illness, injury, mental weakness, intemperance, addition to drugs or other disability,' were unable to take proper care of themselves, or their property, and were thus (as the statute rather quanintly put it) 'likely to be deceived or imposed upon by artful or designing persons.' A person could also 'voluntarily' request appointment of a conservator. [FN3] The statutory powers of the conservator were similar to those of a guardian, but not identical. Like guardianship, conservatorship came in two varieties: over the person, and over the estate. **Conservatorships** were under the jurisdiction and control of the same court which handled guardianships, the probate court. In **California**, the probate court is a branch or department of the superior court, the ordinary trial court of the county. It also handles the estates of the dead.

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In 1967, the Lanterman-Petris-Short Act established a third type of conservatorship for people gravely disabled because of some mental disorder or chronic alcoholism [FN4] (we will call these LPS **conservatorships**). LPS conservatorship is a serious matter; it can be invoked only for people who need treatment and are unwilling or unable to accept it voluntarily. LPS wards are thus candidates for involuntary institutionalization, and the conservator can admit the ward to in-patient hospitalization. The LPS law was actually aimed at giving better protection to people who have grave mental disabilities, putting an end to 'inappropriate, indefinite and involuntary commitment.' The law replaced 'civil commitment,' which no longer exists as such in **California**, and it provided, on paper at least, many procedural safeguards. [FN5]

This study deals exclusively with 'ordinary' or probate conservatorship. This is the arrangement most often used for the elderly. The ***276** law of probate **conservatorships** was somewhat recast in 1977, when procedural safeguards were added and the criteria for invoking conservatorship were redefined. A conservator of the person could be appointed for someone who was 'unable properly to provide for his personal needs for physical health, food, clothing or shelter,' and a conservatorship of the estate for someone 'substantially unable to manage his own financial resources, or resist fraud or undue influence.' There were further amendments in 1979.

In 1980, **California** established a third kind of conservatorship, a limited conservatorship specifically for the 'developmentally disabled adult:' [FN6] A fourth type should also be mentioned: temporary conservatorship, which a judge can order while the issue of conservatorship is pending in court. [FN7]

The history of conservatorship reflects, in part, an increased sensitivity to procedural rights; it is an echo of the so-called due process revolution. The law was written shows concern for the rights of the ward, before, during, and after the proceedings. The *theory* of the law (though, as we shall see, not necessarily the practice) is that, at all costs, only those who absolutely need conservatorship should have it imposed, and never against their will, if they have a will. Affairs must always be managed for the *benefit* of wards. A prospective ward has the right to attend the hearing which determines her fate. If she cannot, the court appoints a Court Investigator, who interviews the ward, tells her about her rights, asks whether she might want to contest the conservatorship in any way, whether she would like the help of a lawyer, and in general whether she objects to any aspect of the proceedings. In San Mateo County, as in other counties with large populations, there is an independent office of Court Investigator. The Investigator is a very active player in the drama. [FN8]

The consequences of conservatorship are profound. For the ward, it is a passage into a degraded status. A ward is not fully competent at law. Appointment of a conservator of the person, according to the statute, is ***277** an adjudication of factual incapacity: 'inability' to provide properly for 'personal needs.' That adjudication, and the appointment of a conservator of the estate, means that the ward, by virtue of the court order, thereafter 'lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.' [FN9] He or she is not recognized as legally competent to sign a contract, make a gift of property, or in general manage money, real estate, or other assets. The ward is not reduced to *total* legal incompetence. Under the law, it is not impossible for a ward to make out a will, marry, vote, or give informed consent for medical treatment, if the ward has actual capacity to do so. It is also possible for a ward to retain some control over an allowance, or over wages and salary. Legal competence to perform these acts, in other words, *may* coexist with conservatorship. These various rights and powers depend on and are subject to the overriding authority of the court, which can assert, deny, or restrict them, by making findings that the actual capacity of the ward does or does not meet legal criteria. The court can also broaden the legal capacity of the ward at the time the conservatorship is established, or later, but this rarely, if ever, happens.

The conservator has extensive power. [FN10] For example, if the ward lacks legal capacity, it is the conservator of the person who consents to medical treatment. This is in fact usually the case, because the petitioner often *requests* this power, and files a supporting statement from a doctor; the court then enters the necessary order. The conservator of the estate also has general control over the ward's property. The statute spells out these powers in some detail. Finally, the court can grant extra powers, if the conservator petitions and shows a need. [FN11]

A conservatorship, once established, continues under court control, at least in theory. The Investigator must review the conservatorship one year after the initial appointment of the conservator, and every two years thereafter, filing a written report

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after each investigation. The conservator of the estate files an accounting after the first year, and then every other year unless the court orders otherwise. A conservatorship can be *278 terminated by order of the court. This is supposed to happen when the ward no longer needs protection. However, this kind of termination almost never occurs. Conservatorship is, alas, a one-way street; the files end with death, not with the lifting of the veil.

II. THE STUDY

The data reported are drawn from court records of probate conservatorship proceedings in San Mateo County, **California**. We counted petitions for conservatorship filed in March, June, September, and December of 1982 and 1984, and those filed in 1986 between January and August which the court had adjudicated by September. This count included LPS, probate, and limited **conservatorships**. Out of these, a smaller sample of 214 probate **conservatorships** was drawn. In 178 of these, it was certain or very likely that the proposed ward was over 60. [FN12] The files for these 178 were closely analyzed. In addition, interviews were conducted with the county Investigator, the probate judge, and others active in this field. The Investigator's reports were also examined. These proved to be a rich source of information about the health and condition of the wards.

No attempt was made to study LPS **conservatorships**. The files are sealed documents and were unavailable to us. There are, of course, some elderly among the LPS wards, but most are probably younger. LPS **conservatorships** are used in emergency situations, and generally for psychotic patients in need of hospitalization, or for extremely uncooperative wards. A few wards in our study had been LPS wards, and had gone from one form of conservatorship to another. For example, Helen L. [FN13] was hospitalized in 1983, after a neighbor contacted Adult Protective Services. Helen refused to cooperate or to be helped, and an LPS conservatorship was established. The LPS conservatorship was 'allowed to expire' when the situation stabilized, and a probate conservatorship was set up in 1984. Limited **conservatorships**, for the developmentally disabled, also occur in the files, but are much less frequent. There were only 5 out of the sample of 214.

From 1980 through 1985, petitions for probate **conservatorships** remained fairly stable. The first half of the court index book was *279 scanned, and 97, 79, 73, 89, 112, and 94 petitions for probate conservatorship were found for the respective years. These figures suggest that there are approximately 200 such petitions per year in San Mateo County. The population of San Mateo County was 587,329 according to the 1980 census; the estimated population for 1985 was 607,550. In 1980, some 10.6 percent of the population was 65 years of age or older. We would guess, then, that a conservatorship petition is filed each year in San Mateo County for approximately one-third of one percent of the elderly; the cumulative incidence is of course much higher. Clearly, conservatorship is an important legal institution.

The intensive sample group of 178 files was, as indicated, drawn from the total sample of 214. The overwhelming majority (84 percent) of **conservatorships** were set up for elderly people (here defined as those over 60). There is no way of knowing, of course, if 84 percent of the people who meet the statutory standards for conservatorship are in fact over 60, but this seems rather doubtful. In any event, conservatorship is predominantly an arrangement for people over 60, and predominantly for women (women constituted two thirds of the subjects). In fact, most wards were well over 60-the median age of the group was 80. The median age of women wards was 82, and that of men was 77. The data suggest that conservatorship, unlike the guardianship of minors, is looked upon as a permanent, terminal arrangement. Younger people who show symptoms of incompetence or incapacity are probably more often assisted through other arrangements, or through the efforts of family or friends. Of course, for severely disturbed people, there is always LPS, and there are no doubt many elderly people who *could* be put into conservatorship, but those families and friends work to avoid it. This probably occurs less often for the elderly than for younger people in trouble.

The petitions can be divided into two groups: those filed by private parties (who usually become the conservator), and those filed by the Public Guardian. [FN14] The Guardian is a residual caretaker-the conservator of last resort. Wards on welfare, or those with no relatives or friends nearby, or those living in county facilities, were likely to have the Public Guardian as petitioner and conservator. In some cases, the Investigator *280 recommended the Guardian as a neutral administrator-for example, when the ward's family was racked with dissension and bitterness.

The Guardian handles a substantial percentage of the **conservatorships**. Of the sample files, the

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Guardian petitioned in 45, while private parties petitioned in 133. Wards of the Public Guardian were, as would be expected, poorer on average than private wards; [FN15] the mean amount of personal property (including money in the bank, any stocks and bonds, cars, furniture, silver, and so on) was $41,000 for the charges of the Public Guardian, as opposed to over $122,000 for the private subjects. The real estate disparity was even greater: $22,457 and $139,922 respectively. Some private wards had sizeable estates. Conservatorship of the estate, after all, is not primarily an arrangement for the elderly poor.

A variety of events can trigger a petition to create a conservatorship. In most cases, the ward is quite impaired, and the need is obvious. Business affairs may make conservatorship necessary: some financial or business arrangement is pending and the ward is simply not up to it. Parties to a transaction may want a conservator appointed, to quiet doubts about the legal validity of the deal. Robert R., [FN16] a former doctor, was a 'total care patient,' a victim of multiple strokes. His assets were apparently held in trust. He was a 'part owner of a hospital in Southern **California**,' and the other doctor-owners were 'reluctant to transfer' his share to the trust. Conservatorship eased their doubts. As the Investigator put it, if a person does not have enough 'mentation' to execute a deed, 'the title company, with all the suits title companies have faced, they're not going to put their body on the line for an 'X' or some kind of signature that runs perpendicular with the line, so they're protecting their own tush.' [FN17]

On the private side, the petitioner is usually a relative who proposes to be the conservator, both of the person and of the estate. The Investigator usually, but by no means always, agrees to this arrangement. In a number of files, the Investigator recommended some third party as conservator. Also, conservatorship of the person is occasionally split off from conservatorship of the estate. This was true for Harry K., [FN18] an 86-***281** year-old widower and 'a total care patient.' His neighbor, a retired aircraft mechanic, was willing to act as conservator of the person, but was 'not interested' in handling the estate (a house and about $100,000 in treasury bills and stocks). A young CPA, a member of the neighbor's church, was recruited for this job.

The proposed ward has the right, under law, to be present at the conservatorship hearing. [FN19] It is striking how few actually attend: 35 out of 153 (22.88 percent) in our sample. In 104 cases (68 percent), the court adjudged that the ward was not able to attend the hearing. In a small number of cases (12, or about 8 percent), the ward was able but unwilling. A study of **conservatorships** in Los Angeles County covering July 1, 1973 to June 30, 1974, found that 80 percent of the wards were over 65 years old, and 93 percent were adjudged without appearing in court. [FN20] Changes in the law since then have aimed at greater participation, but despite these changes, participation remains low.

Although most wards make no objection to the proceedings, some objections do occur. In 23 instances in the sample, the ward told the Investigator of an objection, either to the proceeding itself or to some aspect of it. The Investigator also reported a certain reluctance, short of actual objection, on the part of a few wards, sometimes because of the cost or the fuss. *Formal* objections or contests are rare: there were only two in the sample.

In any event, objections are not usually successful. The sample, includes 153 files in which the petition was not withdrawn (because of the ward's death, or for other reasons) before adjudication. Out of these 153 cases, the court denied the petition only once-and that one denial was for lack of jurisdiction. The court was not purely a rubber stamp for the petitioner, however. In five cases, the court granted a different kind of conservatorship and, about 10 percent of the time, a different *person* as conservator.

In fact, one way in which the Investigator exerted influence was by proposing a change in the type of conservatorship or in the identity of the conservator. For example, in one case, [FN21] petitioner was the newphew of the proposed ward, an elderly woman who needed 'assistance with her ***282** daily living activities,' who was 'tearful, confused, and depressed,' and who wanted to die. She had a substantial trust fund, a pension, and social security. The Investigator reported that the woman 'had a very negative reaction to her nephew as proposed conservator and absolutely refused to have him act in this capacity.' At her suggestion, a 62-year-old neighbor, friendly with the ward, was substituted for the nephew.

In some cases, the objection came, not from the ward, but from other family members. Some files reveal ugly family squabbles. Virginia S. [FN22] was 'confused,' and lived in a convalescent hospital. Her daughter filed a petition for conservatorship, but the daughter's nephew-Virginia's grandson-objected and claimed the right. The family was 'polarized'; the Investigator recommended that the grandson be named conservator, but warned about the possibility

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of a 'tug-of-war,' in which event, he felt, the Public Guardian would do better.

In still other cases, the Investigator took pains to choose a conservator who would meet the needs of the ward, and this was not always the petitioner. Jessie C., a 91-year-old widow, [FN23] was a 'total care patient' who could not bathe or dress herself. The original petition proposed her son as conservator. He was 71, a bachelor, and a retired sheet metal worker. The Investigator 'had some concerns about whether his style of handling matters would in his mother's best interests.' Meetings were set up with other family members, and in the end a more complex arrangement was worked out: a daughter would act as conservator of the person, and the son would share responsibility for the estate with the ward's 43-year-old grandson.

Under the law, the court has authority to modify the statutory scheme; the judge can grant extra powers to the conservator or for that matter, broaden the capacity of the ward. [FN24] In fact, however, only conservators take advantage of this opportunity. In only instance was an order issued expanding the ward's capacity. On the other hand, in over one third of the files, the pentitioner asked for extra authority for the conservator; if one adds authority to give informed (medical) consent, then extra authority was sought in 70 percent of the cases. In 49 instances, the conservator sought power to sell property. Indeed, some ***283** of the files make clear that the need to sell property (perhaps the house) was what triggered the petition for conservatorship.

Petitions for extra powers came overwhelmingly from private conservators; the Guardian almost never asked for them. In part, this is no doubt because estates handled by the Public Guardian were generally small. In any event, when conservators asked for extra powers, the judge almost always gave it to them.

The reports of the Investigator are a valuable source of information about the wards and their affairs. Out of 135 files, in only 19 instances (14 percent) was the ward currently married. The rest were single, divorced, or (overwhelmingly) widowed (9o instances, or over 68 percent). The Investigator reported that most (about 60 percent) were able to make 'intelligible' responses to questions; [FN25] most of these wards did not object to the proceedings or to the conservator. Few (about 10 percent) wanted to be represented by a lawyer, and even fewer (only 4) had actually gone so far as to retain a lawyer. In this county, at least, the Investigator found little useful role for lawyers. In nine cases he reported that court appointment of legal counsel would be helpful and necessary, but in 126 cases he claimed such services would not be helpful or necessary. Lawyers were actually present in 21 cases.

It is not always easy to tell from the files exactly what mental or physical condition the wards were in. Some of the Investigator's reports provide fairly rich descriptions, and the high mortality rate tells a kind of tale: in 40 out of 153 cases (26.14 percent), the ward died during the short period covered by the study. The reports recite, with depressing regularity, histories of grave impairment. The impression of decline and serious impairment is confirmed by the 58 reports filed by the Investigator after the first annual review. In 52 out of the 58 instances, the wards were institutionalized-they lived in nursing homes, convalescent hospitals, board and care homes, and so on; a mere handful were living at home or with a relative.

Institutionalization can reflect either mental or physical impairment, or both. It can be argued, as a theoretical and as a legal matter, that conservatorship is appropriate only for *mental* impairment. A person who is physically disabled but mentally alert can arrange for someone to manage his or her affairs, can ratify decisions, make requests, grant powers of attorney, and so on. In practice, it does not seem that ***284** conservatorship is as strictly limited to the mentally impaired as theory and statute might demand. Half or more of the wards were able to give 'intelligible' responses at the time of the annual review. Only one of these wanted the court to put an end to the conservatorship. The Investigator recommended continuation of the conservatorship in every single annual review. And, overwhelmingly, the Investigator reported that the wards at annual review lacked capacity to give informed consent to medical treatment; this was true for 51 out of the 58 wards. In three instances, the ward did have this capacity, and four cases were uncertain. However, these judgments by the Investigator are oddly discordant with his report that most wards gave 'intelligible' responses. [FN26]

The Investigator's opinion, of course, does not *prove* a high degree of impairment, but this impairment likely exists in most cases. Perhaps the practical consequences of the process and what comes after, especially institutionalization, speed up physical and mental decline. In San Mateo County, the Investigator is hand-working, and takes his duties seriously. We found noe vidence of gross abuse of the process. Later, however, we will mention a more

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subtle form of discrimination. The Investigator, at annual review, was generally satisfied with the way the conservatorship was going, and in 51 of the 58 instances, felt that the conservator was acting in the ward's best interests. This was no knee-jerk reaction, however, and negative or mixed reports can certainly be found.

III. WHAT DO WE LEARN?

Modern research is blowing away many stereotypes and misbeliefs about elderly people and the aging process. Most of the elderly are vigorous and unimpaired; some, unfortunately, are not. There are many degrees and shades of impairment. There are also deep-seated social stereotypes about old people. Younger people are prone to exaggerate the impairment of the elderly, and it is likely that the older the person, the more pronounced the exaggeration. [FN27]

***285** Is conservatorship used too much or too little? It is by no means easy to tell. This study was not designed to discover *underuse*, and the files tell us nothing about it. Underuse occurs when a person who needs protection does not get it and is preyed upon by 'designing' people or is physically neglected. Such people would be better off under a benign conservatorship. There is undoubtedly some underuse, but measurement of it is another question. Occasionally, one hears about spectacular instances: physicial abuse, or incidents when some old, rich person is pillaged, cheasted, or induced to make absurdly large gifts. On occasion, such instances do lead to petitions for conservatorship. Law reports are full of cases of real or alleged 'undue influence.' The sensational will contest between the wife and children of J. Seward Johnson, who died in 1983 leaving half a billion dollars, turned on just such an allegation. Johnson, it was said, was old and feeble; he had been victimized and terrorized by his young, grasping wife. In the end, the parties settled.

Perhaps the more important danger is *overuse*. The impulse to ask for a conservatorship does not always arise from a desire to protect the ward. Often the impulse is to protect the conservator, or some nursing home or hospital, or, to be more accurate, to protect someone's financial interests. Most petitions come from relatives of the ward. These relatives may be afraid that a mother, father, or aunt is 'losing it,' and that their inheritance is at risk of poor management, waste, or dilapidation. They may be right, but in this society a person generally has the right to spend, waste, and neglect; there is a thin line between protecting the helpless and imposing unfair restrictions. A careful reading of the files suggests that the boundaries have probably been overstepped in some small number of instances.

The law of conservatorship is meant to be flexible; it is meant to enable the judge to carve out a conservatorship which fits the situation. But in practice, flexibility is in one direction only. Although the present rules are no doubt better and more flexible than their predecessors, and the administration more sensitive to problems than it was in the past, conservatorship still suffers from a certain brittleness. This may be hard to avoid.

Do conservators, once they have control of the property and money, handle it in the interests of the ward, rather than selfishly or carelessly? On paper, the law is full of safeguards: reports, inventories, court supervision, investigations. But even the Investigator felt that abuses occurred. Most conservators are not experienced at playing a fiduciary role, and some tended to act as if the money belonged to them. After all, ***286** they are often the heirs of the ward; they are waiting in the wings and see no harm in treating the money as if it were already theirs. There is no way to know how often this happens. What the files make clear is that there is no iron-clad guarantee against such practices.

In San Mateo County, the Investigator's diligence is a big help. Annual and biennial reviews also turn up problems; these can then be corrected. In one case, the ward was an 83-year-old widow living in a 'locked county-run psychiatric facility.' [FN28] The ward no longer needed that level of care, but her two daughters, acting as co-conservators, seemed unable to mobilize themselves to move her. Financially, they were depleting the estate by keeping the ward at too costly a place. The Investigator recommended removing them as conservators and replacing them with the Public Guardian.

Files and interview material point to another problem. Conservatorship, as we suggested earlier, is most appropriate for the *mentally* impaired; physical weakness alone should not trigger these proceedings. A person in a wheelchair, or even one who is bedridden, can manage property at a distance, and there are devices-powers of attorney and trusteeship, for example-which are adequate to assist these individuals. Yet there may sometimes be a tendency to push the elderly into conservatorship to impose upon them a status more restrictive than is needed or desired.

This impetus may come from outside the family.

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A number of factors trigger conservatorship. People familiar with the practice in San Mateo County describe the following situation: a person is no longer able to live alone, is unsupervised, has fallen, or has suffered injuries. A convalescent hospital is the proper placement, but some convalescent homes refuse to accept such people without a conservatorship. [FN29] They want to deal with a representative who has legal authority. Conservatorship thus becomes part of the placement process. In some cases, this may reflect a kind of prejudice (probably unconscious) against the elderly. It is unlikely that the hospital would think in terms of a conservatorship if the impaired person were 35, or perhaps even 50. A 30-year-old woman ***287** in a wheelchair is not seen with the same eyes as a frail 85-year-old sitting in the same wheelchair.

There is a close connection between conservatorship and the medical problems of the elderly. Informed consent is an important issue. In Anne W.'s case, [FN30] the ward lived in a convalescent hospital. She had a 'history of psychiatric and alcohol abuse problems,' and had undergone heart surgery. Later she had a stroke. Her son, who had 'problems of alcohol abuse' himself, was 'uncooperative about securing medical benefits for mother and arranging for convalescent hospital care.' In this situation, a hospital social worker called in the Public Guardian, 'for appropriate action.'

There is some difference of opinion about the virtues of conservatorship. One lawyer active in 'elderlaw' expressed in an interview a distaste for conservatorship. It was inferior, he felt, to other devices-a durable power of attorney, for example-which have more or less the same functions. The Investigator held the opposite opinion. The holder of a durable power of attorney, he argued, has no obligation to keep records, and no obligation to keep the family informed. If the person who granted the durable power of attorney is incompetent, it cannot be easily revoked. The document 'has no protective measures whatsoever.'

There is merit on both sides of the argument. The problem lies deeper than structural arrangements, though these are surely important. It also lies deeper than the formal law of conservatorship, although that, too, is important and symptomatic.

IV. CARETAKING AND FREEDOM: THE DILEMMA OF AGE

The formal law of conservatorship has been deliberately crafted to be both fair and flexible. Procedural safeguards are carefully written into the law. At the same time, the judge has power to tailor each conservatorship to suit the individual case. This includes power to broaden the rights and capacities of the ward. Yet such individualized tailoring almost never occurs. Why? The text of the law gives a clue.

Contrast, for example, the law relating to conservatorship for the 'developmentally disabled,' that is, retarded adults. This law makes explicit one policy goal: conservatorship should be minimally intrusive-conservators should perform only those functions which wards ***288** cannot perform themselves. [FN31] As with handicapped children under federal law, there is a requirement of 'mainstreaming' and the choice of the least restrictive alternative. But the problems that lead to probate conservatorship are not defined as 'handicaps.' They are defined, socially, as part of a long, irreversible slide down the dark chute of age into death. The ward is treated as being already half-dead.

All too often, alas, this is truly the case. But stereotypes about the elderly can lead to exaggeration. There is little evidence that serious attempts are made to encourage wards to keep control of their lives. Of course, the elderly often share social stereotypes. What are we to make of Bertha R., an 88-year-old widow, described as 'a bright, alert woman who appears to be somewhat physically handicapped'? [FN32] She was very clear in her understanding of the conservatorship proceedings, and was in favor of them. Bertha required 'moderate assistance with all activities of daily living.' This hardly seems to call for conservatorship, as opposed to a helping hand. In this instance, the matter was dropped, but it should never have been suggested. In a few other cases, conservatorship was not strictly needed, yet in the end it was imposed.

Is the problem haste, or bureaucratic indifference? Apparently neither, at least not in *this* county. In matters of administration, and on the question of choosing the right conservator, Investigator and judge were flexible, careful, and diligent. They did not accept at face value statements in the petition; they weighed, researched, considered. In a number of cases they ignored or rejected the petitioner, and chose a different conservator. In general they tried to see that correct arrangements were made *administratively*. But the same flexibility and care are not used to determine the powers and rights of the ward.

It would be naive to pretend that the negative

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images or definitions, grim as they are, do not fit most of the wards in the study. Many were described as severely impaired; in some files, the wards were depicted as bedridden, helpless, or suffering from Alzheimer's disease. The word 'confused' appeared time and again the reports. An 86-year-old man, described as 'confused and disoriented,' claimed he had fought in 'World War I, II, III, IV, and the Vietnam War.' [FN33] Some surely needed ***289** protection-Ruby L., [FN34] for example, whose drunken daughter sometimes became 'verbally abusive,' and whose grandson may have beaten Ruby at times. But just as surely the negative labels do not fit *all* wards. It is part of the problem that there is no way to tell how many wards *could* be given more control over their lives, nor how often the process is a kind of disengagement from life-forced, as it were, from outside. It is difficult for wards to fight the situation, and the process, no matter how it looks on paper, is not as hospitable to resistance in practice as its proponents may have anticipated.

The case of Earl B. [FN35] illustrates one of the social dilemmas of conservatorship. Earl B.-not a typical subject, but by no means unique-was living in a convalescent hospital at the time of the report. He had always been a troublesome person, and was described as 'belligerent.' Earl B. was also obsessive: 'he spent practically a lifetime pursuing one law suit, and his obsession with the case appeared to lead him into one difficulty after another.' In 1984, he gave his daughter power of attorney to settle his lawsuits; six months later, he revoked the power. The daughter and an attorney then petitioned for a conservatorship.

Earl B. can 'manage his own care,' and thinks of himself as able to carry on without assistance. He 'appears resentful of his circumstances.' His daughter is afraid 'that he will dissipate all of his assets in attempting to to reopen the lawsuits.' This fear, the Investigator writes, appears to be well founded. He is unaware of what he has or where he is and seems unconcerned with money. He is forgetful and confused about his financial situation . . . and it definitely appears to be in his best interests that a conservatorship of the estate be established.' [FN36]

Earl B. is a pathetic figure; in some objective sense no doubt his 'best interests' require protection from himself. Should he be declared legally incompetent, or should he be allowed to squander his money? These are tough questions. Would society decide to 'protect' him in this way if he were 25 years younger? Are we really protecting Earl B. here, or his daughter and the estate? [FN37]

***290** In a very small number of cases, there seems to be no mental problem at all. Anna W. [FN38] was described as suffering from 'Parkinson's disease and heart disease.' She too was 'verbally abusive and cantankerous'. But an 80-year-old widow, ill, and living in a convalescent hospital, has a right to be cantankerous. The Investigator described her as 'alert, oriented' and fully able 'to understand her rights.' At the time of annual review, a petition was pending to terminate the conservatorship and replace it with a durable power of attorney, but Anna W. was talked out of it. Undoubtedly, this woman, frail and elderly, needed assistance in managing her affairs, and perhaps she did not want the headache of deciding, for example, whether or not to sell her home. But why a conservatorship? Why the status of incompetence? Some less restrictive alternative seems clearly desirable.

Does the problem lie in the structure of the law? The *words* of the statute point toward a fair, flexible system, and ostensibly this is the goal. But fairness and flexibility are not self-executing. Wards are typically old men and women, in declining health, weak, and relatively powerless. Even when they are rich, they run the risk of losing whatever leverage their money once gave them. The system depends on the good will, competence, and understanding of judges and Investigators, county by county. Some informants told us that San Mateo County was not typical of **California** counties-that the system worked smoothly there, but that elsewhere there were problems and deficiencies on a larger scale. That may well be true, but it underscores the fact that the fate of elderly wards depends on strictly local contingencies. This is hardly due process at its best.

The officials who run the system in San Mateo County are struggling to do their job well. But stereotypes about old age are pervasive in society, and they leave their mark on the system. Structural reforms may indeed be called for, but a deeper reformation of the process must begin with a change in attitude toward people in the twilight of their lives.

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[FN1]. CAL. PROB. CODE § § 1400-1491, 1800-1910, 2100-2808 (West 1981 & Supp. 1987). These sections are within Division 4 of the **California** Probate Code ('Guardianship, Conservatorship, and Other Protective Proceedings'). Sections 1400-1491 treat 'Definitions and General Provisions,' § § 1800-1910 treat 'Conservatorship' and § § 2100-2808 treat 'Provisions Common to Guardianship and Conservatorship.'

[FN2]. Part III of the Uniform Probate Code deals with 'guardians of incapacitated persons,' and Part IV deals with 'protection of property of persons under disability and minors.' UNIF. PROB. CODE pts. III & IV (1969); *see also* Effland, *Caring for the Elderly Under the Uniform Probate Code*, 17 ARIZ. L. REV. 373 (1975).

[FN3]. The **California** Probate Code describes the person under conservatorship as a 'conservatee,' but we will avoid this hodeous word and use the word 'ward' instead (which is shorter and better, even if not strictly correct).

[FN4]. **California** Mental Health Act of 1967, ch. 1667, sec. 36, § § 5350-5368, 1967 **Cal**. Stat. 4074, 4093-98 (codified as amended at CAL. WELF. & INST. CODE § § 5350-5371 (West 1981 & Supp. 1987)).

[FN5]. See the discussion in Alexander, *On Being Imposed Upon by Artful or Designing Persons-The **California** Experience with the Involuntary Placement of the Aged*, 14 SAN DIEGO L. REV. 1083 (1977). See also Morris, Civil Commitment Decisionmaking: A Report on One Decisionmaker's Experience, 61 S. **CAL**. L. REV. 291 (1988) and Morris, *Conservatorship for the 'Gravely Disabled': **California's** Nondeclaration of Nonindependence*, 15 SAN DIEGO L. REV. 201 (1978), for analyses of conservatorship under the Lanterman-Petris-Short Act and subsequent developments, and for comparison with **conservatorships** under the Probate Code.

[FN6]. Act of Sept. 30, 1980, ch. 1304, 1980 **Cal**. Stat. 4398 (codified as amended at CAL. PROB. CODE § § 1410, 1411, 1420, 1431, 1801(d), 1827.5, 1828.5, 1830, 1851(c), 1860.5, 2351.5, 2401 (West 1981 & Supp. 1987)).

[FN7]. CAL. PROB. CODE § § 2250-2258 (West 1981).

[FN8]. See CAL. PROB. CODE § § 1419, 1454, 1823(b)(4), 1826 (West 1981), for provisions concerning the Court Investigator. In practice, the Court Investigator can either take a neutral role, sticking to the letter of the law and informing the proposed ward only as far as the statute or court order directs, or the Court Investigator can take a more active role, as a kind of advocate looking after the ward's interests in court.

[FN9]. CAL. PROB. CODE § 1872 (West 1981); *see also* CAL. CIV. CODE § 40 (West 1982) (powers of persons whose incapacity has been adjudged).

[FN10]. The law allows a ward with sufficient capacity to nominate his or her conservator. The court will then appoint the nominee unless it finds that appointment of the nominee as conservator is not in the 'best interests' of the ward. CAL. PROB. CODE § 1810 (West 1981). Usually, however, the selection of a conservator is vested in the discretion of the court. *Id.* § 1812(a).

[FN11]. The law specifies certain presumptions regarding the ward's capacity, and also sets out the powers of the conservator. Usually, these presumptions and powers are modified only if the petitioner so requests, although occasionally the court acts unilaterally on its own motion or on the Investigator's recommendation.

[FN12]. In all but 10 of these the file specified the age of the ward; in the others, the information in the file (references to grandchildren, and so on) made the general age obvious.

[FN13]. Conservatorship of Helen L., No. 78255 Prob. (San Mateo Co., **Cal**., July 25, 1984) (Court Investigator's Annual Review, Observations and Statements).

[FN14]. *See* CAL. WELF. & INST. CODE § 8006 (West 1984). **California** law authorizes a county board of supervisors to appoint a Public Guardian, who may apply to a court for appointment as conservator of 'any person in the county' who is on welfare and needs a conservator, or for anyone with such a need 'for whom there is no person or corporation qualified and willing to act in such

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capacity.' *Id.* § 8006. The Public Guardian generally must follow the same procedures as would any petitioner for conservatorship.

[FN15]. This was not invariable: one ward of the Public Guardian had assets worth $400,000.

[FN16]. Conservatorship of Robert R., No. 73645 Prob. (San Mateo Co., **Cal.**, terminated Nov. 1, 1983) (Court Investigator's Report, Observations and Statements).

[FN17]. Interview with Jim Kasper, Court Investigator, County of San Mateo, in Redwood City, **California** (Aug. 6, 1986).

[FN18]. Conservatorship of Harry K., No. 73111 Prob. (San Mateo Co., **Cal.**, terminated Oct. 5, 1982) (Court Investigator's Report, Observations and Statements).

[FN19]. CAL. PROB. CODE § 1825 (West 1981). In fact, § 1825(a) specifies that the proposed ward shall be present except in specifies instances.

[FN20]. *See* National Senior Citizens Law Center (Los Angeles Office), Report on Study of Guardianship and Conservatorship Filings (Nov. 1974), *cited in* Alexander, *supra* note 5, at 1087.

[FN21]. Conservatorship of Sibyl C., No. 81817 Prob. (San Mateo Co. **Cal.**, May 22, 1986) (Court Investigator's Report, Observations and Statements).

[FN22]. Conservatorship of Virginia S., No. 77706 Prob. (San Mateo Co., **Cal.**, Jan. 3, 1985) (Court Investigator's Report, Observations and Statements).

[FN23]. Conservatorship of Jessie C., No. 81605 Prob. (San Mateo Co., **Cal.** Mar. 21, 1986) (Court Investigator's Report, Observations and Statements).

[FN24]. *See* CAL. PROB. CODE § § 1873, 235§ (b) (West 1981).

[FN25]. In the 40 percent of the cases where the response was not intelligible to the Court Investigator, the Investigator so indicated in his report to the court and stated his own recommendation.

[FN26]. Of course, 'intelligible' responses may mean anything better than a blank stare. But among those who made such reponses-and initially over 60 percent could do so-it is likely that there were some whose degree of mental impairment fell short of incompetence.

[FN27]. Social stereotyping is not limited to non-professionals. For example, doctors can misdiagnose as Alzheimer's disease what is in fact a treatable disease which minimcs the symptoms of Alzheimer's disease or senile dementia. Only an autopsy can absolutely identify Alzheimer's disease; doctors must use alternative tests and make their judgments as bet they can. Lawyers, who are not often trained in social work with the elderly, usually do not know what questions to ask of the proposed ward and what symptoms to observe when making determinations of the proposed ward's legal capacity. For a discussion of some of these problems, see, e.g., Krauskopf, *New Developments in Defending Commitment of the Elderly*, 10 N.Y.U. REV. L. & SOC. CHANGE 367 (1980-81).

[FN28]. Conservatorship of Audra T., No. 73615 Prob. (San Mateo Co., **Cal.**, modified Mar. 2, 1983) (Court Investigator's Annual Review, Observations and Statements). Involuntary placement in a locked facility requires an LPS conservatorship and the prerequisite judicial determinations, but has occasionally occurred after establishment of probate **conservatorships**.

[FN29]. **California** law does not require this; rather, the hospitals impose such a requirement. Whatever the legalities, the hospitals often have the practical power to impose this requirement: the demand for beds in convalescent hospitals exceeds the number available, and there are waiting lists.

[FN30]. Conservatorship of Anne W., No. 73786 Prob. (San Mateo Co., **Cal.**, Aug. 25, 1982) (Court Investigator's Report, Observations and Statements).

[FN31]. *See* CAL. PROB. CODE § 1828.5(e) (West Supp. 1987).

[FN32]. Conservatorship of Bertha R., No. 81454 Prob. (San Mateo Co., **Cal.**, filed Jan. 27, 1986) (Court Investigator's Report, Observations and Statements).

[FN33]. Conservatorship of Harry K., No. 73111 Prob. (San Mateo Co., **Cal.**, terminated Oct. 5, 1982) (Court Investigator's Report, Observations and Statements).

[FN34]. Conservatorship of Ruby L., No. 81499 Prob. (San Mateo Co., **Cal.**, Mar. 6, 1986) (Court Investigator's Report, Observations and Statements).

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[FN35]. Conservatorship of Earl B., No. 79197 Prob. (San Mateo Co., **Cal.**, Jan. 11, 1985) (Court Investigator's Report, Observations and Statements).

[FN36]. *Id.*

[FN37]. A year or so later, the Investigator looked in on Earl B. who now, at the age of 80, seemed confused and incoherent; he gave nonsensical answers to questions, and was slovenly in his habits. Does this mean that the original decision was correct? That allegations in the petition proved prophetic? Or did the process itself hurry Earl B. along on the road to ruin?

[FN38]. Conservatorship of Anna W., No. 78129 (San Mateo Co., **Cal.**, petition for termination denied Oct. 29, 1985) (Court Investigator's Annual Review, Observations and Statements).

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Revised 10/25/07

JUDICIAL COUNCIL MEETING
Administrative Office of the Courts
Malcolm M. Lucas Board Room
455 Golden Gate Avenue
San Francisco, California 94102-3688
October 26, 2007
8:30 a.m.–1:30 p.m.
Open to the Public

AGENDA

8:30–8:40 a.m. **Public Comment Related to Trial Court Budget Issues***
[Subject to requests]
*This time is reserved for public comment on Discussion Agenda items relating to trial court budgets.

Approval of Minutes
The minutes of the August 31, 2007, business meeting will be submitted for approval at the December 7, 2007, business meeting.

~~8:40–8:50 a.m.~~ **2007 California On My Honor:** ***Civics Institute for Teachers***

NOTE: Due to the current emergency situation in San Diego this item has been deferred for presentation at a future Judicial Council meeting.

The second session of this professional development program took place August 8–10, 2007, in San Diego, educating 24 selected K–12 teachers from around the state on the role and operation of the California court system. Participants explored models of existing court and law-related education curricula and programs, reviewed current K–12 California civics standards, and, since the institute, have created unique lesson plans tailored for use in their own classrooms. The participating teachers, who will be present at the beginning of today's Judicial Council meeting, are conducting their follow-up session today, October 26, to share these lesson plans with one another, display examples of student work, and evaluate the initial implementation of those lesson plans. This year's program was a collaboration between court staff and the California State University at San Marcos, under the leadership of Dr. Fran Chadwick, Assistant Professor of Education, and is an expansion of

a San Diego institute conducted last year. Participating teachers were recruited statewide through various channels, including the California Council for the Social Studies (teachers), county department of education social studies coordinators, and many other organizations.

Presentation/Discussion (10 minutes)
Speakers: Mr. John Larson
Executive Office Programs Division
Dr. Fran Chadwick
Project Director
Assistant Professor of Education
California State University at San Marcos

8:40–8:55 a.m. **Adoption and Permanency for Children in California: A Resolution for the Courts (Action Required)**

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council again declare November "Court Adoption and Permanency Month," as it has since 1999. The month of November was selected so that the state's observance would coincide with National Adoption Month. The goal of Court Adoption and Permanency Month is to highlight innovative efforts aimed at expediting adoption and permanency while raising awareness of the need for safe and permanent homes for children. The Family and Juvenile Law Advisory Committee has worked closely with the Governor's Office and the California Legislature to develop resolutions highlighting adoption and permanency issued by the executive, legislative, and judicial branches every year. With approximately 77,000 children in California living apart from their families in child welfare–supervised out-of-home care, it is important that California's courts continue to make concerted efforts to find them safe and permanent homes.

Presentation/Discussion (15 minutes)
Speakers: Ms. Charlene Depner
Center for Families, Children & the Courts
Ms. Kelly Beck
Center for Families, Children & the Courts
Ms. Stacey Mangni
Center for Families, Children & the Courts

8:55–9:15 a.m. **Judicial Council Committee Presentations**
Executive and Planning Committee
Hon. Richard D. Huffman, Chair
Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
Rules and Projects Committee
Hon. Eileen C. Moore, Chair
[Committee Reports Tab]

9:15–9:25 a.m. **Administrative Director's Report**
Mr. William C. Vickrey, Administrative Director of the Courts, will make a report.

9:25–9:35 a.m. **Chief Justice's Report**
Chief Justice Ronald M. George will report on activities in which he has been involved since the last Judicial Council business meeting.

Consent Agenda (Items A1–A43, B–C, J[1])

A council member who wishes to request that any item be moved from the Consent Agenda to the Discussion Agenda is asked to please notify Nancy Spero at 415-865-7915 at least 48 hours before the meeting.

ITEM A **RULES, FORMS, AND STANDARDS**

Appellate
Item A1

Appellate Procedure: Remittitur, Costs, and Sanctions in Appeals and Writ Proceedings (adopt Cal. Rules of Court, rules 8.278, 8.386, and 8.499; and amend rules 8.272, 8.276, 8.366, and 8.490) (Action Required)

The Appellate Advisory Committee recommends adopting new rules addressing remittitur in habeas corpus and other writ proceedings; amending the rule on costs in civil appeals to clarify that filing fees are among the recoverable costs; amending the rule on sanctions in civil appeals to clarify that sanctions can be awarded for filing frivolous motions; amending the rule on petitions for writs of mandate, certiorari, or prohibition to clarify that the court may impose sanctions for frivolous writ petitions; and making other clarifying changes to these rules. These new and amended rules will fill some gaps in the existing rules and should make the requirments relating to remittitur in writ

[1] Item J appears out of alphabetical order on the consent agenda due to it being added after the Judicial Council agenda item numbers were assigned.

proceedings easier for litigants to find and the procedures relating to costs and sanctions easier for litigants to understand and implement.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A2

Appellate Procedure: Records in Civil and Criminal Cases (amend and renumber Cal. Rules of Court, rule 8.120 as rule 8.122; adopt rules 8.120, 8.121, and 8.123; amend rules 8.124, 8.128, 8.130, 8.134, 8.137, 8.144, 8.147, 8.224, and 8.320; and revise *Notice Designating Record on Appeal* form APP-003) (Action Required)

The Appellate Advisory Committee recommends adopting a new rule and revising the current *Notice Designating Record on Appeal* (formAPP-003) regarding designation of the record in civil appeals to address all the available options for providing the record on appeal; adopting a new rule establishing a procedure for transmitting to the Court of Appeal administrative records that were admitted in evidence, refused, or lodged in the trial court; and making other clarifying changes to the rules and form relating to records in civil and criminal appeals. Adopting rules that more clearly lay out the options for designating the record in a civil appeal and that establish a procedure for transmitting administrative records to the Court of Appeal, and providing a form that encompasses all these options, should make the record designation process easier for civil litigants to understand and implement.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A3

Appellate Procedure: Certificate of Interested Entities and Persons (amend Cal. Rules of Court, rules 8.208 and 8.490; and approve form APP-008, *Certificate of Interested Entities or Persons*) (Action Required)

The Appellate Advisory Committee recommends approving a new optional *Certificate of Interested Entities or Persons* (form APP-008) and amending the rules relating to these certificates to: (1) clarify the types of proceedings in which a certificate is required and when in the life of such proceedings the certificate must be filed; and (2) provide that a party may seek to file a certificate under seal if the identity of a party has not been publicly disclosed. These rule amendments should make the rules easier to understand and use, and the new statewide

form should make compliance with the certificate requirements easier for individuals who practice in more than one appellate district.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A4 **Appellate Procedure: Petitions for Writs of Supersedeas (amend Cal. Rules of Court, rule 8.112) (Action Required)**

The Appellate Advisory Committee recommends amending the rule regarding petitions for writs of supersedeas (which are petitions requesting that the Court of Appeal stay the enforcement of a trial court judgment or order pending a decision on an appeal of that judgment or order) to expand the record that must be filed with a petition for a writ of supersedeas when the record on appeal has not yet been filed. This amendment will make proceedings for writs of supersedeas more efficient by helping ensure that the reviewing court receives sufficient information with a petition for a writ of supersedeas to properly determine whether to issue the writ.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A5 **Appellate Procedure: Miscellaneous Appellate Rules (amend Cal. Rules of Court, rules 8.32, 8.155, and 8.1008) (Action Required)**

The Appellate Advisory Committee recommends (1) amending the rule regarding addresses of record to clarify that each attorney representing a party may use only a single address; (2) amending the rule regarding motions to augment the record to require consecutive numbering of documents attached to such a motion; and (3) amending the rule regarding petitions to transfer a case from the superior court appellate division to the Court of Appeal to give potential petitioners sufficient time to file a petition and to provide that a party may not file an answer to a petition for transfer unless the court requests an answer. The changes to the rules relating to addresses of record and augmentation motions would establish uniform statewide practices in these areas. The changes to the rule relating to petitions for transfer would make these proceedings both fairer to potential petitioners and more efficient.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A6 **<u>Appellate Procedure: Applications to File Amicus Briefs in the Court of Appeal and the Supreme Court (amend Cal. Rules of Court, rules 8.200 and 8.520) (Action Required)</u>**

The Appellate Advisory Committee recommends amending the rule relating to briefs in the Court of Appeal to require that an application to file an amicus brief in the Court of Appeal be filed no later than 14 days after the last appellant's reply brief is filed or could have been filed and amending both this rule and the rule regarding amicus applications in the Supreme Court to provide that the deadline for filing amicus applications can be extended for "good cause." Setting a time frame for filing an amicus application in the Court of Appeal will fill a gap in the current rules and improve court administration by eliminating late applications that either are denied or can delay the processing of appeals.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A7 **<u>Appellate Procedure: Notices of Appeal and Notices of Various Defaults (amend Cal. Rules of Court, rules 8.100, 8.108, 8.140, 8.220, 8.308, and 8.400) (Action Required)</u>**

The Appellate Advisory Committee recommends (1) amending the rule regarding extensions of the time to file a notice of appeal in a civil case to clarify that the rule only operates to extend, not shorten, the normal time to appeal; (2) amending the rules relating to various default procedures to make the notice of default and sanctions provisions more consistent, including requiring the notice to state that the court may, rather than will, impose the specified sanctions if the party does not correct the default; and (3) making other small, clarifying amendments to these rules. Clarifying the time to file a notice of appeal and the sanction rules should make these rules easier to understand and use.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A8 **<u>Appellate Procedure: Overlength Briefs in Capital Cases (amend Cal. Rules of Court, rule 8.630; and adopt rule 8.631) (Action Required)</u>**

The Appellate Advisory Committee recommends amending the rule regarding briefs in capital appeals to increase the permissible length of appellants' opening briefs and respondents' briefs in these appeals and

adopting a new rule regarding applications to file over-length briefs in these cases that sets out the factors that will be considered in determining whether good cause exists for filing an over-length brief and that establishes when such applications must be filed. Increasing the basic brief length should improve efficiency by decreasing the number of cases in which applications to file over-length briefs are needed, and establishing a filing deadline and factors for assessing such applications should improve efficiency by helping counsel assess, early on, whether it is appropriate to file an application and, if so, what needs to be included in such an application and by providing the court with information to assess whether good cause exists for granting the application without having to read the entire record and draft brief.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A9 **Rules Applicable to All Courts: Format of Citations (adopt Cal. Rules of Court, rule 1.200; amend rule 3.1113 and the advisory committee comment to rule 8.204) (Action Required)**

The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend adopting a new rule requiring that citations in all papers filed in the trial or appellate courts be in the style prescribed by either the *California Style Manual* or *The Bluebook: A Uniform System of Citation*, at the option of the filing party, and making conforming amendments to the rules relating to memoranda and briefs. This would establish a uniform statewide rule regarding the format of citations.

Staff: Ms. Heather Anderson
Office of the General Counsel

Civil and Small Claims

Item A10 ***Request and Order to File New Litigation by Vexatious Litigant* (approve form MC-701) (Action Required)**

The Civil and Small Claims Advisory Committee recommends the approval of the *Request and Order to File New Litigation by Vexatious Litigant* (form MC-701), a new form that will standardize vexatious litigants' requests to file new litigation that are currently filed in many different ways.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item A11

Small Claims: Interpreter Instructions (revise forms SC-100 and SC-150) (Action Required)

The Civil and Small Claims Advisory Committee recommends revising two small claims forms to clarify the responsibility of the court and the parties concerning small claims court interpreters. Instructions on the two forms delete reference to a "free" interpreter, reorder the sequence of the instructions, add an instruction to ask the court for an interpreter at least five days before the court date, and add an instruction to ask for a list of interpreters and the fee waiver application form. The revised forms will correct misleading information that implies the court can provide an interpreter for free. Although some courts try to provide interpreter assistance, there is no guarantee that a free interpreter can be provided in all cases. Parties may be disappointed with the court system and the case unnecessarily postponed if the parties are not informed in advance to bring someone to the hearing to interpret for them or to ask the court for an interpreter. Only if a small claims party qualifies for a fee waiver must the court appoint an interpreter at public expense.

Staff: Ms. Cara Vonk
Office of the General Counsel

Item A12

Alternative Dispute Resolution: Mandatory Settlement Conferences (amend Cal. Rules of Court, rule. 3.1380) (Action Required)

The Civil and Small Claims Advisory Committee recommends amending the rule relating to mandatory settlement conferences to (1) clarify that courts have the authority to set more than one settlement conference; (2) prohibit courts from appointing a person to conduct a settlement conference under this rule at the same time that the person is serving as a mediator in the same action; and (3) prohibit courts from appointing a person to conduct a mediation under this rule. The amendment regarding multiple settlement conferences will address concerns raised by recent case law, and the amendments drawing a clearer line between appointing mediators and appointing persons to conduct settlement conferences should help conform practices with the Evidence Code provisions concerning mediation confidentiality.

Staff: Ms. Heather Anderson
Office of the General Counsel

Item A13 **Rules Modernization: Updating Antiquated References to "Attachés" (amend Cal. Rules of Court, rules 2.400, 3.58, and 3.60) (Action Required)**

The Civil and Small Claims Advisory Committee recommends that rules 2.400, 3.58, and 3.60 of the California Rules of Court be modernized and clarified by replacing the terms "attaché" and "attachés" with "authorized court personnel."

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item A14 ***Commission to Take Deposition Outside California* (approve form DISC-030) (Action Required)**

The Civil and Small Claims Advisory Committee recommends the approval of the *Commission to Take Deposition Outside California* (form DISC-030), a new optional form to be used by parties to make requests for, and by courts to issue or order, a commission to take out-of-state depositions.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item A15 ***Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998* (approve form CIV-090) (Action Required)**

The Civil and Small Claims Advisory Committee recommends the approval of the *Offer to Compromise and Acceptance Under Code of Civil Procedure Section 998* (form CIV-090), an optional form that litigants may use to make and accept offers to compromise in simple, two-party civil cases involving only money judgments.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item A16 **Revised Format for Separate Statements in Support of Motion for Summary Judgment (amend Cal. Rules of Court, rule 3.1350) (Action Required)**

The Civil and Small Claims Advisory Committee recommends that rule 3.1350, on the format of separate statements in support of or opposition to motions for summary judgment and summary adjudication of issues, be amended. The amendment will modify the format for separate

statements and reduce the amount of reformatting required to prepare a separate statement in opposition to a motion.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item A17 **Protecting Private Information in Public Court Documents (amend Cal. Rules of Court, rule 1.20 and adopt *Confidential Reference List of Personal Identifiers* form CM-120) (Action Required)**

The Civil and Small Claims Advisory Committee recommends that rule 1.20 of the California Rules of Court be amended to require parties and their attorneys to exclude or redact social security numbers and financial account numbers from documents presented for filing with the court. The committee further recommends the adoption of the *Confidential Reference List of Identifiers* (form CM-120), a form containing a list of complete identifiers that may be filed confidentially if the court so orders on a showing of good cause.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item A18 ***Requests for Admission* (revise form DISC-020) (Action Required)**

The Civil and Small Claims Advisory Committee recommends that the *Requests for Admission* form be revised to include information that explains, among other things, the purpose of the form, the importance of carefully considering whether to admit or deny the truth of facts or the genuineness of documents, and the potential penalties that exist for failing to admit the truth of a matter later proven.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item A19 **Telephone Appearances in Civil Cases (amend Cal. Rules of Court, rules 3.670, 3.722, and 3.1207; amend Cal. Stds. Jud. Admin., std. 3.1; and revise form CM-020) (Action Required)**

The Civil and Small Claims Advisory Committee recommends that rules 3.670, 3.722, and 3.1207 of the California Rules of Court and standard 3.1 of the California Standards of Judicial Administration relating to telephone appearances in civil cases be amended to improve access by telephone to conferences, hearings, and proceedings; to promote uniformity in the procedures relating to telephone

appearances; and to reduce litigation costs. The amendments are consistent with Assembly Bill 500 on telephone appearances in civil cases. The committee also recommends revising the *Ex Parte Application for Extension of Time to Serve Pleading and Orders* (form CM-020) to be consistent with the amended rules.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Court Technology

Item A20 **Appellate Procedure: Copies of Briefs in Civil Appeals (amend Cal. Rules of Court, rule 8.212) (Action Required)**

The Appellate Advisory Committee and the Court Technology Advisory Committee recommend amending the rule regarding the number of copies of briefs that must be served, to give parties in civil appeals the option of serving one electronic copy, rather than four paper copies of their briefs, on the Supreme Court. This amendment would improve efficiency by allowing transmission of the electronic copy to the depository libraries, saving printing, shipping, and digitization costs.

Staff: Ms. Heather Anderson
Office of the General Counsel
Mr. Christopher Smith
Information Services Division

Item A21 **Electronic Filing and Service and Service by Fax (amend Cal. Rules of Court, rules 2.250, 2.253, 2.256, 2.257, 2.259, 2.260, and 2.306) (Action Required)**

The Court Technology Advisory Committee recommends that the rules on electronic service and filing, and the rule on service by fax, be amended to improve their application and reflect changes in practice.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item A22 **Access to Electronic Records (amend Cal. Rules of Court, rule 2.503) (Action Required)**

The Civil and Small Claims and the Court Technology Advisory Committees recommend that rule 2.503 of the California Rules of Court be amended to provide that records in cases involving the abuse

of elder or dependent adults and workplace violence must be made available electronically, to the extent it is feasible to do so, only at the courthouse and not by remote electronic access. This amendment is intended to protect the privacy of persons involved in these cases.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Family and Juvenile Law

Item A23 **Family Law and Juvenile Law: Confidential Intermediary Appointment for Sibling Contact After Adoption (adopt Cal. Rules of Court, rule 5.410; adopt forms ADOPT-330 and ADOPT-331) (Action Required)**

The Family and Juvenile Law Advisory Committee recommends adopting rule 5.410 and two mandatory forms. The rules and forms establish the procedure for siblings to contact each other after at least one of them has been adopted. The rules and forms are necessary for implementation of recent legislation, which authorizes a sibling to ask for court assistance in seeking contact with a sibling who has been adopted.

Staff: Ms. Kelly Beck
Center for Families, Children & the Courts

Item A24 **Family Law: Counsel Appointed to Represent a Child in Family Law Proceedings (amend Cal. Rules of Court, rule 5.10; adopt rules 5.240, 5.241, and 5.242; repeal Cal. Stds. Jud. Admin., stds. 5.10 and 5.11; and approve forms FL-322 and FL-323) (Action Required)**

The Family and Juvenile Law Advisory Committee recommends amending rule 5.10 of the California Rules of Court; adopting rules 5.240, 5.241, and 5.242; repealing standards 5.10 and 5.11 of the California Standards of Judicial Administration; and approving forms FL-322, *Declaration of Counsel for a Child Regarding Qualifications* and FL-323, *Order Appointing Counsel for a Child,* effective January 1, 2008, to establish minimum experience requirements for counsel appointed to represent children in family law cases and to promote greater consistency among the courts by providing criteria for the court to consider when making appointments.

Staff: Ms. Gabrielle Selden
Center for Families, Children & the Courts

Item A25 **Family Law: Summary Dissolution (revise forms FL-800 and FL-810) (Action Required)**

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2008, amend forms FL-800 and FL-810. These summary dissolution forms are being amended to reflect statutory cost-of-living increases and to make minor clarifying changes.

Staff: Ms. Bonnie Hough
Center for Families, Children & the Courts

Item A26 **Family Law: Child Custody Information Sheet (approve form FL-314-INFO) (Action Required)**

The Family and Juvenile Law Advisory committee recommends that the Judicial Council, effective January 1, 2008, approve optional form FL-314-INFO, *Child Custody Information Sheet* as a statewide information sheet to inform litigants of the child custody court process and alternative dispute resolution options.

Staff: Ms. Rita Mah
Center for Families, Children & the Courts

Item A27 **Family, Juvenile, and Probate Law: Enactment of the Federal Indian Child Welfare Act as California Law in the Family, Probate, and Welfare and Institutions Codes (adopt Cal. Rules of Court, rules 5.480–5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, JV-600; adopt forms ICWA-010(A), ICWA-020, and ICWA-030; approve forms ICWA-005-INFO, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135) (Action Required)**

The Family and Juvenile Law and Probate and Mental Health Advisory Committees recommend that the Judicial Council, effective January 1, 2008, adopt California Rules of Court, rules 5.480–5.487 and 7.1015; repeal rule 5.664; revise forms GC-210(CA), JV-100, JV-101(A), JV-110, and JV-600; adopt forms ICWA-010(A), ICWA-020, and ICWA-030; approve forms ICWA-005-INFO, ICWA-030(A), ICWA-040, ICWA-050, and ICWA-060; and revoke forms ADOPT-226, JV-130, and JV-135. All of the proposed changes are necessitated by passage of Senate Bill 678 (Ducheny; Stats. 2006, ch. 838), effective January 1,

2007, which codified the federal Indian Child Welfare Act into state law.

Staff: Ms. Chris Cleary
Center for Families, Children & the Courts

Mr. Douglas C. Miller
Office of the General Counsel

Item A28 **Juvenile and Family Law: Miscellaneous Rule and Form Changes (amend Cal. Rules of Court, rules 5.726, 5.727, 5.728, 8.450, and 8.454; revise forms FL-327, JV-321, JV-323, and JV-324; adopt forms JV-325, JV-326, JV-326-INFO, JV-327, and JV-328; and revoke forms JV-325, JV-325- INFO, JV-720, and JV-730) (Action Required)**

The Family and Juvenile Law Advisory Committee recommends making several changes to miscellaneous family and juvenile law rules and forms. These changes are necessary to comply with statutory mandates and policies and to facilitate consistency and court procedures.

Staff: Ms. Melissa Ardaiz
Center for Families, Children & the Courts
Ms. Aleta Beaupied
Center for Families, Children & the Courts

Item A29 **Child Support: Administration of Title IV-D Child Support Cases (amend Cal. Rules of Court, rule 5.324; revise form FL-679; adopt forms FL-618 and FL-679-INFO; and revoke forms FL-500, FL-505, FL-525, FL-526, FL-556, FL-557, FL-558, FL-559, and FL-571) (Action Required)**

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council amend rule 5.324 and revise form FL-679 to allow the local child support agency to request a telephone appearance in title IV-D child support cases on behalf of a parent, a party, or a witness. The Family and Juvenile Law Advisory Committee further recommends that the Judicial Council adopt form FL-618 to request dismissal of title IV-D actions to promote greater clarity of the reasons for dismissal for parties and court clerks, and that the council revoke nine forms used in the enforcement of interstate child support because they are no longer needed.

Staff: Ms. Anna Maves
Center for Families, Children & the Courts

Item A30 **Juvenile Law: Psychotropic Medication Forms and Rule (amend Cal. Rules of Court, rule 5.640; revise form JV-220; revoke form JV-220A; and adopt forms JV-219-INFO, JV-220(A), JV-221, JV-222, and JV-223) (Action Required)**

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2008, amend rule 5.640, revise form JV-220, revoke form JV-220A, and adopt forms JV-219-INFO, JV-220(A), JV-221, JV-222, and JV-223 to improve the statewide procedure used to seek juvenile court authorization for administering psychotropic medication to children in out-of-home placements.

Staff: Ms. Aleta Beaupied
Center for Families, Children & the Courts

Item A31 **Juvenile Law: Ensuring Foster Children's Educational Rights (amend Cal. Rules of Court, rules 5.502, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and JV-539) (Action Required)**

The Family and Juvenile Law Advisory Committee recommends that, effective January 1, 2008, the Judicial Council amend rules 5.502, 5.518, 5.534, 5.650, 5.668, 5.695, and 5.790 of the California Rules of Court; adopt rule 5.651; revise forms JV-225, JV-365, JV-535, and JV-536; and approve forms JV-537, JV-538, and JV-539 to assist the juvenile court in performing its oversight role of ensuring that children who are dependents or wards of the juvenile court receive the educational services to which they are entitled under state and federal law.

Staff: Ms. Chantal Sampogna
Center for Families, Children & the Courts

Judicial Administration

Item A32 **Judicial Administration: Court Self-Help Centers (adopt Cal. Rules of Court, rule 10.960) (Action Required)**

The Task Force on Self-Represented Litigants recommends that the Judicial Council, effective January 1, 2008, adopt rule 10.960 on

administration of court self-help centers. The rule identifies assistance to self-represented litigants as a core court function and sets out a broad basic architecture for the administration of court self-help centers that will ensure that the public continues to be provided with high quality self-help services.

Staff: Ms. Deborah Chase
Center for Families, Children & the Courts

Probate and Mental Health

Item A33 **Probate: Qualifications for Membership in the Probate and Mental Health Advisory Committee (amend Cal. Rules of Court, rule 10.44) (Action Required)**

The Probate and Mental Health Advisory Committee recommends that the rule of court that states the committee's mission and establishes qualifications for committee membership be amended to clarify certain qualifications for membership and enhance the committee's ability to address important issues in probate and mental health law and practice. The rule would be amended to (1) ensure that at least one court probate investigator is a member of the committee at all times; and (2) increase participation in committee activities of persons knowledgeable in mental health or developmental disability law. These changes would address substantial changes made in recent years in probate conservatorship practice, and would also increase the committee's focus on mental health–related legal issues.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Item A34 **Probate: Written Notice to Conservatees and Others of the Conservatee's Rights (adopt form GC-341 and approve form GC-341(MA)) (Action Required)**

The Probate and Mental Health Advisory Committee recommends that the council adopt and approve Judicial Council forms that would (1) notify and advise a conservatee and his or her close family members of important rights the conservatee retains after the court has appointed a conservator; and (2) help conservators prove to the court that the notice form has been properly mailed. These forms implement a requirement of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Item A35 **Probate: Standards for the Good Cause Exception to Notice of Hearing of a Petition for Appointment of a Temporary Guardian or Conservator (adopt Cal. Rules of Court, rules 7.1012 and 7.1062) (Action Required)**

The Probate and Mental Health Advisory Committee recommends that the council adopt new rules of court to establish uniform standards for the good cause exception to notice of the hearing on petitions for the appointment of temporary conservators or guardians. These rules would implement requirements of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Item A36 **Probate: Additional Surety Bond in Conservatorships and Guardianships to Cover Cost of Recovery on the Bond (adopt Cal. Rules of Court, rule 7.207) (Action Required)**

The Probate and Mental Health Advisory Committee recommends that the council adopt a new rule of court to establish the amount of additional surety bond conservators and guardians must furnish to cover the costs of recovery on the bond, including attorney's fees. The proposed rule would establish the amount of additional bond as a sliding scale of percentages of the total value of bondable income and property in the estate and certain public benefit payments to the conservatee or ward. The rule would implement a requirement of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Item A37 **Probate: Notices of Changes of Residence of Conservatees and Wards (adopt Cal. Rules of Court, rules 7.1013 and 7.1063; revise form GC-080; adopt form GC-079; and approve forms GC-079(MA) and GC-080(MA)) (Action Required)**

The Probate and Mental Health Advisory Committee recommends that the Judicial Council (1) adopt two new California Rules of Court; (2) revise a current Judicial Council form and adopt a new form; and (3) approve two new optional forms, to clarify and implement a new law

that requires written notice to the court and interested persons of moves to new residences made by conservatees or minor children under the care of conservators or guardians appointed by the court. The rules would provide definitions and guidance for conservators and guardians concerning their responsibilities under the new law. The forms would provide the written notices and the means of proving their delivery. This proposal would implement a requirement of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Item A38

Probate: Standards for the Conduct of Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber Cal. Rules of Court, rule 7.756; and adopt rules 7.756, 7.1009, and 7.1059) (Action Required)

The Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt three new rules of court that would establish standards for the conduct of conservators and guardians of estates and for determining reasonable compensation payable to conservators and guardians from the estates of their conservatees and wards. These rules would implement requirements of the Omnibus Conservatorship and Guardianship Act of 2006.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Item A39

Probate: Giving Notice of Filing an Inventory and Appraisal, and Objecting to an Inventory and Appraisal (adopt form GC-042; approve forms GC-042(MA) and GC-045) (Action Required)

The Probate and Mental Health Advisory Committee recommends that the council (1) adopt and approve Judicial Council forms to be used to give notice of the filing of an Inventory and Appraisal in a conservatorship or guardianship and instructions on how to object to the inventory as a whole or to one or more appraisals contained in it, and to prove that the notice form has been mailed; and (2) approve a form of objections to an Inventory and Appraisal. These forms would implement a requirement of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Item A40

Probate: Judicial Council Forms for Standard and Simplified Accountings by Conservators and Guardians and a Rule of Court to Govern Their Use (adopt Cal. Rules of Court, rule 7.575; adopt forms GC-400(SUM)/GC-405(SUM), GC-405(A), and GC-405(C); and approve forms GC-400(PH)(1)/GC-405(PH)(1), GC-400(PH)(2)/GC-405(PH)(2), GC-400(AP)/GC-405(AP), GC-400(A)(1), GC-400(A)(2), GC-400(A)(3), GC-400(A)(4), GC-400(A)(5), GC-400(A)(6), GC-400(B)/GC-405(B), GC-400(OCH)/GC-405(OCH), GC-400(NI), GC-400(C)(1), GC-400(C)(2), GC-400(C)(3), GC-400(C)(4), GC-400(C)(5), GC-400(C)(6), GC-400(C)(7), GC-400(C)(8), GC-400(C)(9), GC-400(C)(10), GC-400(C)(11), GC-400(D)/GC-405(D), GC-400(DIST)/GC-405(DIST), GC-400(OCR)/GC-405(OCR), GC-400(NL), GC-400(E)(1)/GC-405(E)(1), GC-400(E)(2)/GC-405(E)(2)), GC-400(F)/GC-405(F), GC-400(G)/GC-405(G), and GC-400(A)(C)) (Action Required)

The Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt or approve Judicial Council forms for use by conservators and guardians to prepare and file standard and simplified accountings, and adopt a California Rule of Court to define these types of accountings and prescribe the use of the new forms. This proposal would implement a requirement of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Item A41

Probate and Mental Health: Ex Parte Communications in Proceedings Under the Probate Code and in Lanterman-Petris-Short Act Conservatorship Proceedings (adopt Cal. Rules of Court, rule 7.10) (Action Required)

The Probate and Mental Health Advisory Committee recommends that the council adopt a new rule of court that would (1) restrict ex parte communications to the court from parties and attorneys in matters pending in proceedings under the Probate Code and Lanterman-Petris-Short Act conservatorships for the gravely disabled; and (2) prescribe appropriate conduct by the court when ex parte communications are received from persons interested in these proceedings who are not parties. This rule would implement a requirement of the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Staff: Mr. Douglas C. Miller
Office of the General Counsel

Miscellaneous
Item A42

Miscellaneous Technical Changes to the California Rules of Court and Judicial Council Forms (amend Cal. Rules of Court, rules 2.111, 3.300, 3.512, 3.816, 3.867, 3.924, 3.1203, 4.151, 5.475, 8.112, 10.48, 10.780, and 10.951; revise forms CIV-010, CR-110/JV-790, DE 350/GC-100, DISC-001, EJ-001, FL-342(A), FL-692, FL-935, JV-180, JV-505, MC-300, SUBP-025, and WG-003) (Action Required)

AOC staff recommend making technical and minor substantive changes to miscellaneous rules and forms. These changes are necessary to correct inadvertent omissions, typographical errors, improper formatting, and language inconsistencies, and to clarify the rules and forms at issue.

Staff: Ms. Susan McMullan
Office of the General Counsel

Item A43

Code of Judicial Ethics (amend Cal. Rules of Court, rules 1.3 and 1.4; remove Code of Judicial Ethics) (Action Required)

At the request of the Supreme Court, the staff of the Administrative Office of the Courts recommends that the Code of Judicial Ethics be removed from the California Rules of Court and that publishers be advised to place the code in the supplementary materials in their published volumes of rules in a suitable location preceding other Supreme Court rules, policies, and guidelines. The staff further recommends that rules 1.3 and 1.4 of the California Rules of Court be amended to reflect the removal and relocation of the Code of Judicial Ethics.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel

Item B

Court Facilities Planning: Allocation of Fiscal Year 2007–2008 Funding for the Second Group of 50 (Assem. Bill 159) New Trial Court Judgeships (Action Required)

AOC staff recommends approval of the allocation of one-time and ongoing annual facilities funding in the FY 2007–2008 Budget Act for 46 of the 50 Assembly Bill 159 (Jones) new judgeships. The funding

allocation is based on an allocation of full funding needs to seven new judgeships requiring a below-average allocation to meet facility needs and an equal distribution of remaining funds to 39 new judgeships. These allocations are indicated in columns A, B, and C of the attachment to this report. The council must act on this proposal because it is an allocation of appropriated funds for FY 2007–2008.

Staff: Ms. Kelly Popejoy
Office of Court Construction and Management
Mr. Chris Magnusson
Office of Court Construction and Management

Item C **California Collaborative and Drug Court Projects Grant Under the Budget Act for Fiscal Year 2007–2008 (Action Required)**

The Collaborative Justice Courts Advisory Committee requests authorization to distribute the full allocation, set at $1,174,478, in California Collaborative and Drug Court Project funds to local jurisdictions in the form of grants distributed through the Collaborative Justice Courts Project. The Budget Act for Fiscal Year 2007–2008 provides for this allocation of $1,174,478 to California collaborative and drug court projects.

Staff: Ms. Nancy Taylor
Center for Families, Children & the Courts

Item J **Statutory Appointment Under Assembly Bill 900 (Action Required)**

Recently enacted Assembly Bill 900, the Public Safety and Offender Rehabilitation Services Act of 2007, creates a three-member panel composed of the State Auditor, the Inspector General, and an appointee of the Judicial Council. The Executive and Planning Committee recommends that the Judicial Council, effective October 26, 2007, appoint William C. Vickrey, the Administrative Director of the Courts, to the three-member panel created by Assembly Bill 900.

Staff: Executive and Planning Committee
Mr. Joshua Weinstein
Office of the General Counsel

Discussion Agenda (Items D–I)

Item D **Probate Conservatorship Task Force Final Report (Action Required)**
9:35–10:05 a.m.

This report presents the recommendations of the Probate Conservatorship Task Force that was created by the Chief Justice in January 2006, to review the management of probate conservatorship cases in the state trial courts. After an 18-month review of court practices, including taking of public testimony, researching other jurisdictions, interviewing users of the system, and soliciting comments to its draft report, the task force is requesting that the council accept its final report and direct further action on its recommendations.

Presentation (15 minutes)
Speakers: Hon. Roger W. Boren
Chair, Probate Conservatorship Task Force

Ms. Christine Patton
Bay Area/Northern Coastal Regional Office
Discussion/Council Action (15 minutes)

10:05–10:20 a.m. **BREAK**

Item E
10:20–10:50 a.m.

Probate: Education Requirements for Judicial Officers Assigned to Hear Probate Proceedings; Qualifications and Education Requirements for Probate Court Staff Attorneys, Examiners, and Investigators; and Qualifications and Education Requirements for Counsel Appointed in Conservatorships and Guardianships (amend Cal. Rules of Court, rule 10.462; renumber rule 10.463; amend and renumber rules 10.464 and 10.471; and adopt rules 7.1101, 10.468, 10.478, 10.776, and 10.777) (Action Required)

The Probate and Mental Health Advisory Committee recommends that the council, effective January 1, 2008, adopt new rules of court to (1) establish initial and continuing education requirements for judicial officers assigned to hear proceedings under the Probate Code; (2) establish qualifications and education requirements for court staff investigators, examiners, and probate attorneys; and (3) establish qualifications and continuing education requirements that counsel must meet to be appointed by the court to represent minors, conservatees, and proposed conservatees in probate guardianship and conservatorship matters. These rules implement the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Presentation (15 minutes)
Speakers: Hon. Don Edward Green, Chair
Probate and Mental Health Advisory Committee

Mr. Douglas C Miller
Office of the General Counsel
Discussion/Council Action (15 minutes)

Item F
10:50–11:30 a.m.

DRAFT Pilot Program and Court-Appointed Counsel (Action Required)

Staff recommends that the council receive the report on court-appointed counsel and the DRAFT Pilot Program and adopt recommendations related to DRAFT expansion, adoption of court-appointed counsel caseload and compensation standards, and court-appointed counsel funding reform.

Presentation (20 minutes)
Speakers: Mr. Lee Morhar
Center for Families, Children & the Courts
Ms. Leah Wilson
Center for Families, Children & the Courts
Discussion/Council Action (20 minutes)

Item G
11:30 a.m.–
12:00 p.m.

Authorization for the AOC to Administer a Joint Powers Authority (JPA) Formed by Counties to Manage Risk Associated With Seismic-related Damage to Seismic Level V Trial Court Facilities (Action Required)

AOC staff, in cooperation with the State-County SB10 Seismic Issues Working Group, recommends the Judicial Council and the counties jointly implement a new, statewide seismic risk management program that will provide the counties with an opportunity to manage collectively the significant seismic risks associated with the Level V Facilities. This agenda item seeks Judicial Council authorization for participation by the AOC in the implementation of this program, which involves forming a joint powers authority (JPA) to allow counties to accumulate funds, based on engineering and actuarial assumptions, for the purpose of funding the counties' financial obligations for seismic-related damage to level V court facilities.

Presentation (15 minutes)
Speakers: Ms. Kim Davis
Office of Court Construction and Management
Mr. Clifford Ham
Office of Court Construction and Management
Mr. James Mullen
Office of Court Construction and Management

Mr. Brad Heinz
Office of the General Counsel
Discussion/Council Action (15 minutes)

12:00–12:30 pm. **LUNCH BREAK**

Item H 12:30–1:00 p.m.

Report and Recommendations on Phoenix System (Action Required)

Presentation (15 minutes)
Speakers: Mr. William C. Vickrey
Administrative Director of the Courts
Mr. Ronald G. Overholt
Chief Deputy Director
Ms. Jody Patel
Northern/Central Regional Office
Discussion/Council Action (15 minutes)

Item I 1:00–1:30 p.m.

Recommendations on the Conversion of Subordinate Judicial Officer Positions per AB 159 (Action Required)

AB 159 provides for the annual conversion of a maximum of sixteen subordinate judicial officer (SJO) positions to superior court judgeships beginning in fiscal year 2007-2008. In order restore the proper balance between judgeships and SJOs, and to minimize the amount of time that SJO positions eligible for conversion remain vacant, the Administrative Office of the Courts (AOC) recommends a list of vacant SJO positions that should be converted. Because vacancies do not exist at this time to convert all sixteen positions, the AOC will return to the council to seek approval for additional positions to be converted within fiscal year 2007-2008.

Presentation (15 minutes)
Speakers: Ms. Donna S. Hershkowitz
Office of Governmental Affairs
Mr. Dag MacLeod
Executive Office Programs
Discussion/Council Action (15 minutes)

Circulating Orders since the last business meeting.
[Circulating Orders Tab]

Appointment Orders since the last business meeting.
[Appointment Orders Tab]

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: September 10, 2007

SUBJECT: Probate: Written Notice to Conservatees and Others of the Conservatee's Rights (adopt form GC-341 and approve form GC-341(MA)) (Action Required)

Issue Statement

The appointment of a conservator for an individual's person or estate necessarily places severe limits on the conservatee's personal autonomy. But the law also preserves many significant rights for conservatees. However, neither conservatees nor persons close to them are systematically advised of these retained rights after appointment of a conservator.

The Omnibus Conservatorship and Guardianship Reform Act of 2006 added section 1830(c) to the Probate Code to address this situation.[1] Section 1830(c) requires an information notice of the retained rights of a conservatee to be attached to the order appointing a conservator and requires the order and the notice to be mailed by the conservator to the conservatee and other persons close to the conservatee. The legislation directs the Judicial Council to develop the notice by January 1, 2008.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, adopt form GC-341, *Notice of Conservatee's Rights,* a mandatory form containing a statement of a conservatee's retained rights

[1] Stats. 2006, chapters 490–493 (respectively, Senate Bills 1116, 1550, and 1716, and Assembly Bill 1363). Section 1830(c) was added by section 10 of chapter 493 (AB 1363).

after appointment of a conservator, instructions on its mailing, and a proof of mailing; and form GC-341(MA), *Attachment to Notice of Conservatee's Rights,* an optional form designed to show the names and addresses of additional persons to whom the notice form and the appointment order are mailed.

Copies of the proposed forms are attached at pages 7–11.

Rationale for Recommendation

Probate Code section 1830(c) provides:

> An information notice of the rights of conservatees shall be attached to the order [appointing the conservator]. The conservator shall mail the order and the attached information notice to the conservatee and the conservatee's relatives, as set forth in subdivision (b) of Section 1821. By January 1, 2008, the Judicial Council shall develop the notice required by this subdivision.

Form GC-341

The notice portion of the proposed *Notice of Conservatee's Rights,* on the first two pages of the form, is divided into three sections. The first, in narrative form, contains general statements concerning the proper relationship of respect between a conservator and his or her conservatee.

This statement is derived from the statement at page 10 of the 2002 edition of the *Handbook for Conservators,* the Judicial Council publication that newly appointed conservators must acquire in order to qualify to perform the duties of their office.[2] The statement contained in the form, however, has been expanded by the addition of a third paragraph emphasizing the conservatee's right to be afforded the greatest degree of freedom and privacy possible, consistent with the reasons for the conservatorship. The statement concludes with an admonition to the conservator to give due regard to the conservatee's preferences and to encourage the conservatee's involvement in making decisions affecting his or her care, protection, and support.

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[2] See Probate Code sections 1834(a) and 1835. The "written information" mentioned in these sections is the *Handbook for Conservators*. See Judicial Council form GC-348, *Duties of Conservator and Acknowledgment of Receipt of Handbook.* This form contains the statement of duties and liabilities of the conservator required by section 1834(a)(1) and includes a receipt for a copy of the *Handbook for Conservators*. The receipt must be signed by the newly appointed conservator and the signed form must be filed before the conservator can receive Letters of Conservatorship showing his or her authority to act.

The second section of the notice, at the bottom of page 1 of the form, lists specific and unconditional rights that conservatees retain under specific statutes.
The third section, on page 2 of the form, lists specific conditional rights the conservatee may have that are subject to limitation or elimination by the court. These rights are also expressly provided by statute.

The third page of form GC-341 is a proof of mailing similar to such proofs included in other probate forms requiring service by mail. This proof differs from many of those forms, however, in that it calls for completion and execution of the proof of mailing, and the mailing itself, by the conservator, the conservator's attorney, or an employee of the attorney.

Section 1830(c) refers to mailing the notice, not formal service by mail. The committee has concluded that this reference authorizes the conservator, as well as the conservator's attorney or the attorney's employee, to do the mailing and fill out and sign the proof of mailing. Many conservators are unrepresented. The usual prohibition against service of documents by parties, including service by mail, is a difficult concept for unrepresented persons to understand and not easily explained to them. Eliminating that requirement here would improve unrepresented conservators' access to the courts.

The fourth page of the form contains instructions for mailing the notice and attached conformed copies of the *Order Appointing Probate Conservator*.[3] Section 1830(c) is silent concerning a deadline for mailing the notice form required by the statute, and whether the original must be filed with the court. The advisory committee believes that these omissions were inadvertent and inconsistent with the normal expectations in conservatorship practice. Therefore, item 3 of the instructions advises conservators that the mailing must be completed on or before the 30th day after the filing date of the *Order Appointing Probate Conservator*, and the proof of mailing requires that the date of the order be stated. The advisory committee will consider the need for a rule of court to establish this deadline, although no public commentators expressed difficulty with the requirement as expressed in the form.

The instructions also advise that the original form, with completed proof of mailing but without an attached copy of the order, must be filed with the court. Filing the original of a required written notice with a completed proof of service attached is the usual way a party proves that written notice required under the Probate Code has been given. The original *Order Appointing Probate Conservator*

[3] The *Order Appointing Probate Conservator* is a mandatory Judicial Council form, designated as form GC-340.

will be in the court file. There is no need to have another copy of the order filed with the original notice.

Mailing form GC-341
Probate Code section 1821(b) specifies the persons who must be listed in the petition for appointment of a conservator. Section 1830(c) identifies the persons who must be mailed a copy of the *Notice of Conservatee's Rights* and the attached *Order Appointing Probate Conservator* by referring to the conservatee's relatives "set forth in subdivision (b) of section 1821." These are the conservatee's spouse or registered domestic partner;[4] and relatives within the second degree (children, grandchildren, parents, grandparents, and siblings).[5]

If the conservatee has no spouse or registered domestic partner and no (living) relatives within the second degree, section 1821(b) refers to certain relatives of the conservatee's relatives or in-laws, requires their identification in the petition for appointment of a conservator, and treats these persons as relatives of the conservatee for notice purposes.[6] The committee believes that this treatment of "deemed relatives" in section 1821(b) supports their inclusion as relatives for purposes of the notice required by section 1830(c). Therefore, the instructions on page 4 of form GC-341 include instructions to deliver the *Notice of Conservatee's Rights* to these persons where warranted under the circumstances described in section 1821(b).[7]

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[4] Section 1821(b) says "domestic partner," not "registered domestic partner." A domestic partner is defined in Probate Code section 37 as one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State under division 2.5 of the Family Code, commencing with section 297, whose partnership has not been terminated. Family Code section 298.5 requires the Secretary of State to register Declarations of Domestic Partnership filed with her or his office. Some statutes more recently enacted or amended than section 1821 refer to domestic partnerships under the Family Code as *registered* domestic partnerships and domestic partners as *registered* domestic partners (see, e.g., Probate Code section 1822(b)(1)). The advisory committee has decided to use the word "registered" in its reports and in California Rules of Court or Judicial Council forms it proposes for adoption or approval when referring to domestic partnerships or domestic partners under the Family Code, whether or not any specific relevant statute identifying the domestic partnership or partner also uses that term.

[5] Form GC-341 also requires mailing to the attorney for the conservatee. This requirement follows Probate Code section 1214, which requires that copies of any papers served, mailed, or otherwise delivered to a person, must also be delivered to the person's attorney of record.

[6] The "deemed relatives" under section 1821(b) are the spouse or registered domestic partner of a predeceased parent of the conservatee; the children of the conservatee's predeceased spouse or registered domestic partner; the siblings of the conservatee's parents or, if none, their children; and the children of the conservatee's siblings.

[7] Form GC-341 also includes instructions for mailing the notice and order to a person entitled to notice who is under the age of 12. These instructions are derived from standard practice in proceedings under division 4 of the Probate Code, including conservatorships, authorized by Probate Code section 1460.1.

Form GC-341(MA)
Form GC-341(MA) is proposed as an optional attachment to form GC-341 to show persons to whom the *Notice of Conservatee's Rights* is mailed who cannot be listed on the proof of mailing in that form. This type of attachment form has been approved by the Judicial Council frequently in recent years.

Alternative Actions Considered
Because of the statutory imperative, no alternative to creation of the notice form was considered. The committee did consider various alternatives in drafting the rights statement itself, particularly in the general statements preceding the specific statute-based rights. The early drafts of the notice form included instructions placed in the proof of mailing but did not include them in a separate page. Consideration of the needs of unrepresented conservators led to the eventual placement of much more thorough and detailed instructions on a separate page of the form.

Comments From Interested Persons
This proposal was circulated for comment in a special comment cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, and probate-interest sections of the State Bar and local bar associations, in addition to the AOC's list of interested court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Fifteen comments on this proposal were received. All were favorable, but several proposed modifications. A chart showing the comments and the committee's responses follows the proposed forms, beginning at page 12.

Three commentators, committee member Peter Stern, on behalf of the Executive Committee of the State Bar's Trusts and Estates Section; Ms. Donna Bashaw, representing the National Academy of Elder Law Attorneys; and the Superior Court of Los Angeles County point out that the notice form's statement that the conservatee retains the right to enter into *business* transactions to the extent reasonable to provide the necessaries of life to the conservatee and his or her minor children, is misleading or incorrect.

The advisory committee believes these comments are well taken. Under Probate Code section 1871(d), the conservatee retains the right to enter into *transactions*—not business transactions—to the extent reasonable to provide the necessaries of life to himself or herself, his or her spouse, and his or her minor children, and to provide basic living expenses to his or her domestic partner. The statement was modified to conform to section 1871.

Ms. Mary Joy Quinn, manager of the probate department of the Superior Court of San Francisco County and a former member of the committee, proposes the addition of a statement concerning the conservatee's privacy to the preamble on page 1 of the form, by adding the words "and privacy" following "degree of freedom" and before "possible consistent with the underlying reasons for the conservatorship . . ." in the first sentence of the third paragraph of the preamble. The committee supports and has made this change.

The chart contains other comments that the committee addressed by making small changes in the forms. See the remaining comments of Ms. Bashaw, the comments of Sacramento attorney Ms. Jerilyn Paik, and the committee's responses.

Implementation Requirements and Costs

Adoption of these forms will result in the usual costs associated with the creation and distribution of any Judicial Council form. The requirement of mailing the notice forms to the conservatee and possibly to a large number of relatives will slightly increase the cost of administering a conservatorship, and courts will incur additional costs to supervise the fiduciary to the extent necessary to verify compliance with the requirements for mailing and filing the notice form. These additional costs should not be significant.

Probate: Notice of Conservatee's Rights (adopt form GC-341 and approve form GC-341(MA))

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Therese F. Alvillar Occidental, California	AM	N	Agree with proposed changes if modified. Notice of conservatee's rights should be given prior to the appointment of a conservator.	The Omnibus Conservatorship and Guardianship Reform Act of 2006 requires the *Notice of Conservatee's Rights* to be mailed after, not before, the appointment of a conservator. Moreover, the court investigator, the court at the hearing, and counsel for the conservatee will advise the proposed conservatee of his or her procedural and substantive rights before a conservator is appointed.
2.	Ms. Donna R. Bashaw Immediate past President of National Academy of Elder Law Attorneys (NAELA) Laguna Hills, California 92653	AM	Y	Agree with proposed changes if modified. As elder law attorneys committed to the safety and preservation of dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity, and just plain hard work. Thus, our comments are made not in the spirit of criticism but in the spirit of appreciation of the enormity of the task to which you were commissioned. While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will preclude conscientious, but nonprofessional, family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product. Statement of Conservatee's Rights (Proposed Form GC-341) Page 2 of 4 The first four items apply to persons under conservatorships of the person and estate. The last four items may cause considerable confusion to the conservatee. We suggest adding to the fifth item, "unless medical powers are given to the Conservator of the Person". The sixth item on page 2 particularly could lead to problems. We can see third parties	The committee believes the conditional statement at the top of page 2 of Form GC-341 is sufficient to indicate possible limitations on all of the rights listed on page 2. The committee agrees with this comment and other comments concerning this item. It has been

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				contracting with conservatees using the stated ability to "enter into business transactions" as an excuse. We suggest deleting the words "Enter into business transactions".	revised to remove the reference to *business* transactions, and to add provision of necessaries of life for the conservatee's spouse or provision of basic living expenses to the conservatee's registered domestic partner.
				As to the last item, most conservatees are not going to know what a limited conservatee is and will not know what this item means	The statement of rights is intended as a reminder to the conservator of the conservatee's rights, in addition to advice to the conservatee and his or her family members interested in their relative's care and support. The conservator, the conservatee's relatives, and ultimately the conservatee, will benefit from the information conveyed by the notice even if the conservatee does not fully understand every statement in it.
				Page 4 of 4 In item 1 we suggest bolding the words "with attached copies of the Order Appointing Probate Conservator." In item 2c, children should be but are not listed as persons who must be mailed a copy of the notice.	The committee agrees with these comments and has made the recommended changes.
				Conclusions:	The committee has no response to

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				We believe that many of the changes made are unnecessary and merely an overreaction to the *L.A. Times* articles. The main problem in the past has been a lack of funding for the courts, especially to hire investigators. Increased funding is a beneficial part of the changes. However, we believe that the changes have made it more expensive for the ward and conservatee and have effectively priced the protection of guardianships and conservatorships out of the middle class market. This is the most serious and detrimental problem with the new laws and needs to be rectified immediately. The second most serious problem is with the new accounting rules which, we believe, are unnecessary. Thank you for your efforts in implementing this new law. We, as elder law attorneys, are happy to contribute in any way to assist you in your work.	this comment, which appears to be directed at the requirements imposed by the Omnibus Conservatorship and Guardianship Reform Act of 2006.
3.	Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response necessary.
4.	Ms. Malea Chavez Staff Attorney Superior Court of California, County of San Francisco San Francisco, California	A	Y	Agree with proposed changes. This is a good thing, but it is one more technical thing that makes it more difficult for pro pers to do it themselves.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
5.	Ms. Margaret Herring Attorney Herring & Herring, APC Coronado, California	A	N	This is a great form. I think many people will also find it helpful that you included on page 4 the list of persons entitled to receive notice.	No response necessary.
6.	Ms. Jamie Lamborn Retired Sacramento, California 958538	N	N	Do not agree with proposed changes. Notification is incomplete. I have found during my research that in many cases if the estate is of great value, it seems to be no relatives are found until after the conservatee has expired. The attorney goes to court, stating a relative has been located and the case is closed. Who is the relative and where were they while the conservatee was living and needed help? There needs to be a follow-up on where the estate actually goes. I find it interesting in my research when one single relative is located, that relative requests the conservator and her attorney to distribute this estate. The conservatee has passed away, the conservator and her attorney have had control of this estate for, sometimes years, and not only have they collected their exuberant fees, now they continue to keep this control, that is not necessary, considering there is only the one living heir. Something does not look right.	The committee has no response to this comment because it does not address the proposal.
7.	Ms. Jackie A. Miller	A	Y	Agree with proposed changes.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California				
8.	Ms. Jerilyn Paik Attorney at Law Law Offices of Jerilyn Paik Sacramento, California	A	N	Agree with proposed changes. Re "Name and relationship to conservatee of addressee" on proof of mailing:- Delete "of addressee" since it is confusing. change to: Name and Relationship to Conservatee Re: Instructions of What to Mail: Singularize "copies" in items 1. and 5. to read: "The conservator or the conservator's attorney must mail a copy of this Notice of Conservatee's Rights, and attach a copy of the Order Appointing . . ." The language in the Proof of Mailing on page 3 of form GC-341 is correct.	The committee agrees with this comment and has made the recommended change. The committee agrees with this agreement, but has made the following change in response to it: "The conservator or the conservator's attorney must mail a copy . . . , to *each* person identified in item 2 below." (Italics added for emphasis.)
9.	Ms. Mary Joy Quinn	AM	Y	Agree with proposed changes if modified.	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Director, Probate Superior Court of California, County of San Francisco San Francisco, California			Form should include recognition of conservatee's right to privacy. First sentence of the third paragraph of the preamble should be modified to read: The conservatee will be allowed the greatest degree of freedom AND PRIVACY possible consistent with the underlying reasons for the conservatorship.	The committee agrees with this comment and has made this change.
10.	Ms. Lynn Renard Probate Paralegal Chico, California	A	N	Agree with proposed changes. I work as a probate paralegal and previously was employed as a clerk in the probate division of the Superior Court of Butte County. I believe this is long overdue and am happy to see it laid out in black and white for the conservatee.	No response necessary.
11.	Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, California	AM	Y	Agree with proposed changes if modified. The Executive Committee points out that the right of a conservatee to enter into transactions to provide the necessaries of life (Prob. Code, § 1871) does not extend to business transactions, which apparently has been imported from the *Handbook for Conservators*. Use of the word "business" connotes operation of a business by the conservatee. The Executive Committee recommends that the right described in the notice to be attached to the order appointing conservator be made to follow more closely the	The committee agrees with this comment and has made the requested change. See the committee's response to the similar comment of Ms. Donna Bashaw, above.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				wording in section 1871. Adopted by Executive Committee 25-0 with three abstentions, June 16, 2007.	
12.	Superior Court of California County of Los Angeles Los Angeles, California	AM	Y	Agree with proposed changes only if modified. Proposed Judicial Council form GC-341, *Notice of Conservatee's Rights* page 2, bullet 6: The proposed form is inconsistent with Probate Code section 1871(d). Providing for necessities of life is not limited to entering into "business transactions". The conservatee may provide the necessaries of life for his or her spouse in addition to the minor children, and may provide the basic living expenses of his or her registered domestic partner.	The committee agrees with this comment and has made the recommended changes in form GC-341. (See the similar comments of Ms. Donna Bashaw and the State Bar Trusts and Estates Section's Executive Committee, above, and the committee's responses.)
13.	Ms. Michaelle Uzeta Associate Managing Attorney Protection and Advocacy, Inc. Los Angeles, California	AM	Y	Agree with proposed changes if modified. Our agency asks that the third sentence of the first paragraph of the draft *Notice of Conservatee's Rights* form be amended to read: "Every conservatee has all basic human rights as well, and the right to be well cared for by his or her conservator IN THE LEAST	The committee believes the proposed additional statement is too broad. The standard for placement under Probate Code sections 2352 and 2352.5 is the least restrictive appropriate residence *that is*

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				RESTRICTIVE SETTING. (Edits in caps.) We believe it is essential to recognize and expressly state that conservatees have the right to live in the least restrictive setting appropriate to their needs, with the services and supports they require to do so. This right, in our experience, is frequently overlooked.	*available and necessary to meet the needs of the conservatee and is in the best interests of the conservatee.*
14.	Ms. Robin C. Westmiller, J.D. President National Association to Stop Guardian Abuse Thousand Oaks, California	AM	Y	Agree with proposed changes if modified. 1. Section 1830(c) re: mailing. Any notification of this matter MUST be sent out by CERTIFIED, mail, not just first class, to be sure all interested parties, especially out of state family members are notified of the pending order and given a chance to respond and/or object BEFORE conservatorship is ordered. If there is a medical emergency, a TEMPORARY EMERGENCY Conservator may be appointed for a period not exceeding 10 days while family is notified and has a chance to respond.	1. The statute does not require certified mail. Nor does it require this notice to be sent before the conservator is appointed. The *Notice of Conservatee's Rights* is not a notice of the application for conservatorship or the hearing on the application or a substitute for the notice of these events currently required. This proposal makes no provisions concerning appointment of a temporary conservator.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				Otherwise, the victim's family might never know until it is too late, that their loved one has been abducted by the STATE. 2. "Court may also appoint a lawyer to represent the conservatee..." add AT NO COST TO THE CONSERVATEE OR THEIR ESTATE. The court appointed attorney must come from the PUBLIC DEFENDER'S office and not from the private sector. This provision will avoid any accusations of impropriety if it is shown a "court" has repeatedly appointed the same attorney over and over and that attorney is charging huge fees from the conservator's estate to "represent" them.	The committee disagrees with the statements that conservatorships are abductions by the state and conservatees are made victims by their status as conservatees. 2. The recommended statements are not consistent with California law, which requires payment for counsel from the conservatee's estate to the extent it has the ability to pay. Both private counsel and public defenders may be appointed in many cases. Both private counsel and public defenders' counties may be paid from the conservatee's estate.
15.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	A	N	Agree with proposed changes.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: August 10, 2007

SUBJECT: Probate: Standards for the Good Cause Exception to Notice of Hearing of a Petition for Appointment of a Temporary Guardian or Conservator (adopt rules 7.1012 and 7.1062 of the California Rules of Court) (Action Required)

Issue Statement

Probate Code section 2250 governs petitions for the appointment of a temporary guardian or conservator. Section 2250(c), as amended by the Omnibus Conservatorship and Guardianship Reform Act of 2006, effective on July 1, 2007, requires at least five days' notice of the hearing on a petition for appointment of a temporary conservator or guardian to be given to the proposed conservatee or ward (if at least 12 years of age), and certain other persons "[u]nless the court for good cause otherwise orders . . . ."[1]

There are currently no standards for the guidance of petitioners, proposed temporary guardians or conservators, practicing attorneys, and courts concerning the good-cause exception to the notice required under amended section 2250(c).

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, adopt rules 7.1012 and 7.1062 of the California Rules of Court to establish uniform standards for the good cause

[1] Stats. 2006, ch. 490–493 (respectively, Senate Bill 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363), referred to collectively in this report as the Omnibus Act. The amendments to section 2250 were made by sections 15 and 36 of chapter 493 (AB 1363).

exception to the notice of hearing of a petition for appointment of a temporary guardian or temporary conservator required by Probate Code section 2250(c).

The text of the proposed rules is attached at pages 6–9.

Rationale for Recommendation
Probate Code section 2250(j), added by the Omnibus Act, requires the Judicial Council to adopt a rule of court effective on or before January 1, 2008, that establishes uniform standards for the good cause exception to the notice required by section 2250(c).[2] The standards must limit the exception to cases where waiver of notice is essential to protect the proposed temporary conservatee or ward from substantial harm.

The Probate and Mental Health Advisory Committee proposes two rules in response to the statutory directive. Rule 7.1012 would apply to temporary guardianships. Rule 7.1062 would apply to temporary conservatorships. The two rules are substantially the same.

Subdivision (b) of both rules would restate the limitation on the scope of the notice exception required by section 2250(j). Subdivision (c) of the rules is intended to advise persons considering a request for a complete waiver of notice that the court may grant a complete waiver, may instead require a different period of notice than the five days required by section 2250(c), or may permit notice to be given by means other than the personal service required by that section for guardianships or the mailed notice provided for persons other than the proposed conservatee in conservatorships.

Subdivision (d) of both rules would provide a nonexclusive list of the most common expected types of good cause exceptions to notice and would establish limitations on each of them. For example, facts supporting an exception to giving notice based on harm caused by the passage of time must demonstrate that the time involved is the five-day notice period, not the period of the temporary appointment (rules 7.1012(d)(1) and 7.1062(d)(1)). Similarly, facts supporting an exception to giving notice based on harm that a person entitled to notice might cause do not support waiver of notice to another person unless the showing demonstrates that notice cannot be given to the other person without also giving

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[2] Section 2250(j) provides in full as follows:

(j) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (c), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm."

notice to the potentially harmful person. (See rules 7.1012(d)(2) and 7.1062(d)(2)). Two types of emergencies, medical and financial, are provided for identically under both rules (rules 7.1012(d)(4) and (5) and 7.1062 (d)(3)and (4).[3] Rule 7.1012(d)(3), however, presents a situation unique to a guardianship: the death or incapacity of a child's custodial parent and the petitioner for appointment as a temporary guardian is that parent's nominee. That ground for an exception to the notice requirement of section 2250(c) is expressly provided in the last sentence of section 2250(c)(1).

Subdivision (e) of both rules would require that a request for an exception to the notice required by Probate Code section 2250(c) must be separate from the petition for appointment of a temporary guardian or conservator. The required contents of the request are also specified. These are modeled after the requirements for an ex parte application in a civil case under rule 3.1201.[4]

Rules 3.1201 and 3.1204, concerning required notice of an ex parte application, arguably already apply to probate matters under rules 3.10 and 3.1200. The advisory committee has concluded, however, that a restatement of the requirements of rule 3.1201 as applied specifically to requests for relief under section 2250(c) is appropriate because the committee believes that (1) many probate practitioners are not familiar with civil action law and motion practice and procedure and would look to the rules in title 7 of the rules of court for guidance and (2) greater statewide uniformity of practice in connection with temporary guardianships and conservatorships is desirable, in light of the substantial changes in this area made by the Omnibus Act.

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[3] Under both rules, a medical emergency must be immediate and substantial, treatment must be reasonably unavailable unless a temporary guardian is appointed, and treatment cannot be deferred for the notice period because of the ward's or conservatee's pain or discomfort or a significant risk of harm. A financial emergency under both rules must also be immediate and substantial, and other means must be shown likely to be ineffective to prevent loss or further loss to the ward's estate or support or the conservatee's estate during the notice period.

[4] The additional requirements for the request are that it be in writing and must include (1) an application containing a statement of the relief requested; (2) an affirmative factual showing in support of the request presented in a declaration under penalty of perjury containing competent testimony based on personal knowledge; (3) a supplemental declaration under penalty of perjury showing the information required for an ex parte application under rule 3.1204(b)—notice given of the application, efforts made to give notice if notice was not given, or reasons why notice of the application should not be given; (4) a memorandum; and (5) a proposed order. (See proposed rules 7.1012(e)(1)–(5) and 7.1062(e)(1)–(5).)

Alternative Actions Considered

No alternative to the adoption of rules of court in response to the directive of Probate Code section 2250(j) was considered. The proposed rules as originally drafted and as circulated for public comment did not prescribe the contents of an application for an exception to the notice requirement. These provisions were added in response to a commentator's recommendation. (See following discussion.)

Comments From Interested Parties

This proposal was circulated for comment in a special cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters, and probate-interest sections of the State Bar and local bar associations, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Sixteen comments concerning the proposal were received. A chart containing the comments and the committee's responses follows the text of the proposed rules, beginning at page 10.

Fifteen commentators approved of the rules or approved of them if modified. The one comment that disapproved of the proposal recommended that court investigators be "rotated" to prevent them from becoming too friendly with practicing attorneys but had no recommendations concerning the text of the proposed rules.

Two commentators, Judge William H. Kronberger, the presiding judge of the probate department of the Superior Court of San Diego County and a member of the Probate Conservatorship Task Force; and Ms. Mary Malk, the Probate/Mental Health Unit Manager of the Superior Court of Orange County, proposed changes in the rules. The committee supports these recommendations and has changed the rules accordingly.

Judge Kronberger recommends that the rules be amended to require that the showing of good cause for waiver of notice be made in a separate declaration that qualifies under rule 3.1201, concerning applications for ex parte relief in civil actions, in that the declaration must present competent testimony based on personal knowledge.

Ms. Malk similarly recommends that the showing in support of the waiver of notice be separate from the showing in support of the temporary guardianship or conservatorship.

Ms. Donna R. Bashaw, on behalf of the National Academy of Elder Law Attorneys, recommends that a form be developed for a showing of due diligence to locate persons entitled to notice under section 2250(c) who cannot be found. The committee supports this recommendation in principle and will consider development of a due-diligence declaration form for use in all situations covered by existing rule 7.52, concerning service on persons whose address is unknown in all proceedings under the Probate Code. The changes in these proposed rules made by the committee in response to Judge Kronberger's comments include incorporation of the procedure for ex parte applications under rules 3.1201 and 3.1204, including the requirement of a supplemental declaration showing the notice given of the application or the efforts made to give notice if it was not given. These changes should satisfy the immediate concerns about the proposed rules expressed by Ms. Bashaw.

Implementation Requirements and Costs

Adoption of these proposed rules will result in the normal costs associated with the adoption of new Judicial Council rules. The additional costs that will be incurred by parties seeking waivers of the notice requirements of section 2250(c) and the courts in considering their applications are attributable to the statute mandating these rules, not to the rules themselves.

Rules 7.1012 and 7.1062 of the California Rules of Court are adopted, effective January 1, 2008, to read:

1 **Rule 7.1012. The good cause exception to notice of the hearing on a petition**
2 **for appointment of a temporary guardian**
3
4 **(a) Purpose**
5
6 The purpose of this rule is to establish uniform standards for the good cause
7 exception to the notice of the hearing required on a petition for appointment
8 of a temporary guardian under Probate Code section 2250(c).
9
10 **(b) Good cause for exceptions to notice limited**
11
12 Good cause for an exception to the notice required by section 2250(c) must
13 be based on a showing that the exception is necessary to protect the proposed
14 ward or his or her estate from immediate and substantial harm.
15
16 **(c) Court may waive or change the time or manner of giving notice**
17
18 An exception to the notice requirement of section 2250(c) may include one
19 or any combination of the following:
20
21 (1) Waiving notice to one, more than one, or all persons entitled to notice;
22
23 (2) Requiring a different period of notice; and
24
25 (3) Changing the required manner of giving notice, including requiring
26 notice by telephone, fax, e-mail, or a combination of these methods,
27 instead of notice by personal delivery to the proposed ward's parents or
28 to a person with a visitation order.
29
30 **(d) Good cause exceptions to notice**
31
32 Good cause for an exception to the notice requirement of section 2250(c)
33 may include a showing of:
34
35 (1) Harm caused by the passage of time. The showing must demonstrate
36 the immediate and substantial harm to the ward or the ward's estate that
37 could occur during the notice period.
38
39 (2) Harm that one or more persons entitled to notice might do to the
40 proposed ward, including abduction; or harm to the proposed ward's

1 estate if notice to those persons is given. Such a showing would not
2 support an exception to the requirement to give notice to any other
3 person entitled to notice unless it also demonstrates that notice cannot
4 reasonably be given to the other person without also giving notice to
5 the persons who might cause harm.
6
7 (3) The death or incapacity of the proposed ward's custodial parent and the
8 petitioner's status as the custodial parent's nominee.
9
10 (4) Medical emergency. The emergency must be immediate and
11 substantial and treatment (1) must be reasonably unavailable unless a
12 temporary guardian is appointed and (2) cannot be deferred for the
13 notice period because of the proposed ward's pain or extreme
14 discomfort or a significant risk of harm.
15
16 (5) Financial emergency. The emergency must be immediate and
17 substantial and other means shown likely to be ineffective to prevent
18 loss or further loss to the proposed ward's estate or loss of support for
19 the proposed ward during the notice period.
20
21 **(e) Contents of request for good cause exception to notice**
22
23 A request for a good cause exception to the notice requirement of section
24 2250(c) must be in writing, separate from the petition for appointment of a
25 temporary guardian, and must include:
26
27 (1) An application containing the case caption and stating the relief
28 requested;
29
30 (2) An affirmative factual showing in support of the application in a
31 declaration under penalty of perjury containing competent testimony
32 based on personal knowledge;
33
34 (3) A declaration under penalty of perjury based on personal knowledge
35 containing the information required for an ex parte application under
36 rule 3.1204(b);
37
38 (4) A memorandum; and
39
40 (5) A proposed order.
41

1 **Rule 7.1062. The good cause exception to notice of the hearing on a petition**
2 **for appointment of a temporary conservator**
3
4 **(a) Purpose**
5
6 The purpose of this rule is to establish uniform standards for the good cause
7 exception to the notice of the hearing required on a petition for appointment
8 of a temporary conservator under Probate Code section 2250(c).
9
10 **(b) Good cause for exceptions to notice limited**
11
12 Good cause for an exception to the notice required by section 2250(c) must
13 be based on a showing that the exception is necessary to protect the proposed
14 conservatee or his or her estate from immediate and substantial harm.
15
16 **(c) Court may change the time or manner of giving notice**
17
18 An exception to the notice requirement of section 2250(c) may include one
19 or any combination of the following:
20
21 (1) Waiving notice to one, more than one, or all persons entitled to notice;
22
23 (2) Requiring a different period of notice; and
24
25 (3) Changing the required manner of giving notice, including requiring
26 notice by telephone, fax, e-mail, or personal delivery, or a combination
27 of these methods, instead of or in addition to notice by mail to the
28 proposed conservatee's spouse or registered domestic partner and
29 relatives.
30
31 **(d) Good cause exceptions to notice**
32
33 Good cause for an exception to the notice requirement of section 2250(c)
34 may include a showing of:
35
36 (1) Harm caused by the passage of time. The showing must demonstrate
37 the immediate and substantial harm to the conservatee or the
38 conservatee's estate that could occur during the notice period.
39
40 (2) Harm that one or more persons entitled to notice might do to the
41 proposed conservatee or the proposed conservatee's estate if notice is
42 given. Such a showing would not support an exception to the
43 requirement to give notice to any other person entitled to notice unless

it also demonstrates that notice cannot reasonably be given to the other person without also giving notice to the persons who might cause harm.

(3) Medical emergency. The emergency must be immediate and substantial and treatment (1) must be reasonably unavailable unless a temporary conservator is appointed and (2) cannot be deferred for the notice period because of the proposed conservatee's pain or extreme discomfort or a significant risk of harm.

(4) Financial emergency. The emergency must be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the proposed conservatee's estate during the notice period.

(e) Contents of request for good cause exception to notice

A request for a good cause exception to the notice requirement of section 2250(c) must be in writing, separate from the petition for appointment of a temporary conservator, and must include:

(1) An application containing the case caption and stating the relief requested;

(2) An affirmative factual showing in support of the application in a declaration under penalty of perjury containing competent testimony based on personal knowledge;

(3) A declaration under penalty of perjury based on personal knowledge containing the information required for an ex parte application under rule 3.1204(b);

(4) A memorandum; and

(5) A proposed order.

SP07-11

Probate: Standards for the Good Cause Exception to Notice of Hearing of a Petition for Appointment of a Temporary Guardian or Conservator (adopt rules 7.1012 and 7.1062 of the California Rules of Court).

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Therese F. Alvillar Occidental, California	AM	N	Agree with proposed changes if modified. There should be no exception to notice. In December 2000, Stephen Charles Laughton was conserved without notice (Marin County). He was 37 years old, a financial professional and was only conserved because he was going through a divorce and someone in the family wanted his $4 million estate protected. A few months later this man committed suicide. Please NO exceptions for notice. There should be no exception to personal appearance by the proposed conservatee unless all family members have been notified and have commented on the hearing and the proposed conservatee's personal physician of record (prior to conservatorship proceedings were initiated) gives a written report acceptable to the family and to the court.	The committee cannot agree with this comment. The statute provides for waiver of notice. A proposed temporary conservatee must attend the hearing unless unable or unwilling to do so, as ascertained by the court investigator and reported to the court. A proposed conservatee should be permitted to decline to appear, and if he or she is unwilling or unable to appear, the court must be able to hear an application for appointment of a temporary conservator.
2.	Ms. Donna R. Bashaw	AM	Y	Agree with proposed changes if modified.	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Standards for the Good Cause Exception to Notice of Hearing of a Petition for Appointment of a Temporary Guardian or Conservator (adopt rules 7.1012 and 7.1062 of the California Rules of Court).

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Immediate past president of the National Academy of Elder Law Attorneys (NAELA) Laguna Hills, California			As elder law attorneys committed to the safety and preservation of the dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity and just plain hard work. Thus, our comments are made not in the spirit of criticism bur in the spirit of appreciation of the enormity of the task to which you were commissioned. While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire enterprise is that in our zeal to prevent the deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle-class families who will be unable to afford the increased expense that the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will preclude conscientious, but non professional, family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product. We suggest a form to be signed under penalty of perjury concerning the inability to contact someone requiring notice. For example, in a guardianship when the father of the minor is unknown.	 The committee will consider development of such a form, perhaps to be used to comply with the diligent-search requirements in all probate proceedings under rule 7.52. In the meantime, the proposed rules' incorporation of the requirements of rule 3.1204(b) concerning the notice given of the application for the exception to notice of the petition for appointment of a temporary guardian or conservator will often include a showing of why notice of the application cannot be given.
3.	Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response necessary.
4.	Ms. Malea Chavez	A	Y	Agree with proposed changes.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Staff Attorney, Superior Court of San Francisco County, San Francisco, California				
5.	Hon. William H. Kronberger, Jr., Judge of the Superior Court of San Diego County, San Diego, California	A	N	Agree with proposed changes A provision should be added to the rule requiring that good cause be established by a separate, verified declaration making the same factual showing required under current rule 3.1201. I recognize that the requirement of "competent testimony based on personal knowledge" is implied by the rule defining good cause, but the rule is mostly honored in the breach. The requirement of a declaration, based on competent testimony and personal knowledge, cannot be overemphasized.	The committee agrees with this recommendation. It has amended both proposed rules to require an application for a good cause exception to notice under Probate Code section 2250(c) to be separate from the petition for appointment of a temporary guardian or conservator and based on a declaration in support consisting of competent testimony based on personal knowledge. The amended rules also require a showing of notice given of the application consistent with the requirements for notice of ex parte applications in civil litigation under rule 3.1204(b). The rules in title 3 of the rules of court apply in all civil cases, specifically including "probate cases, unless otherwise provided by a statute or rule in the California

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					Rules of Court" (rule 3.10). The requirement of a showing based on competent testimony is consistent with the requirements for the showing in support of a petition for appointment of a general conservator. The supplemental declaration in support of such a petition must be based on facts within the personal knowledge of the declarant. (See Prob. Code, § 1821(a).)
6.	Ms. Jamie Lamborn Retired Sacramento, California	N	N	Do not agree with proposed changes. I have been following one particular attorney for the past four years and I have found the proposed conservatee does not stand much of a chance to object to having a conservator. The attorney controlling the proposed conservator goes to court and says there are no relatives and no party to contact. What do the judges do? They rubber stamp the temporary conservatorship and the elder is doomed and all assets are gone! It is the conservators and their attorneys who are the culprits and need to be reprimanded for their false court filings. Every law I have read so far has exceptions and that gives the greedy attorney and conservator room to rip off assets with no questions. Please stop	The increased notice requirements for temporary conservatorships made by the Omnibus Conservatorship and Guardianship Reform Act of 2006 should reduce the harm of which this commentator complains.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				with the "exception" rule. Get some honest people involved that aren't self serving! I suggest rotating the probate investigators to eliminate close relationships between investigators and the attorneys who seem to be in court on a daily basis. The ex parte application is an easy way to take control of a person's assets and bank accounts. The judge has no way to verify the honesty of the attorney in front of him or her who has filed the request. By rotating the positions of investigators and judges, maybe it would stop forced conservatorships by ex parte hearings.	There is no evidence that improper results occur in temporary conservatorship hearings because of close relationships between court investigators and petitioners' attorneys. Until July 1, 2007, court investigators had no role in temporary conservatorships unless the proposed temporary conservatee's personal residence was to be changed.
7.	Ms. Keeley C. Luhnow Associate Attorney Albence & Associates La Jolla, California	A	N	Agree with proposed changes.	No response necessary.
8.	Ms. Mary Malk Probate/Mental Health Unit Manager Superior Court of California County of Orange Orange, California	AM	Y	Agree with proposed changes if modified. Comments: I propose adding "separate" to define the showing required in both 7.1012(b) and 7.1062(b): "Good cause for an exception to the notice required by section 2250(c) must be based on a separate showing that the exception is essential to protect the proposed ward/conservatee or his or her estate from	The committee supports this recommendation. It has amended both proposed rules to require that the application for a good cause exception to notice must be separate from the petition for appointment of a temporary guardian or

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				immediate and substantial harm." Currently attorneys present a showing for good cause relative to the temporary appointment and consider that sufficient for both the request for temporary appointment and the request for an order shortening time. There should be a separate declaration specifically required for the order shortening time for notice showing the "immediate and substantial harm." Requiring a specific and separate declaration will avoid delays and additional work for both the courts and the attorneys and their staff.	conservator. See the committee's response to the comment of Judge William Kronberger, above.
9.	Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California	A	Y	Agree with proposed changes. PFAC appreciates the clarification provided in this rule.	No response necessary.
10.	Ms. Carol A. Peters Law Office of Carol A. Peters Pasadena, California	AM	N	Agree with proposed changes if modified. Financial abuse is rampant here in Southern California and the legal remedies require us "white hats" to telegraph our plays. I understand that notice is necessary. So, since the people given notice may include nefarious persons unknown to us who are giving notice, I would very much like to see an automatic stay effective the date of the notice on	This proposed change would require legislation and is beyond the scope of this proposal.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				all persons given notice, akin to the automatic stay of the bankruptcy court or the automatic temporary restraining orders in dissolutions under our state's Family Code. The remedy for its violation would be a rebuttable presumption that the outbound conveyance is void, not voidable. We have a lot of highly appreciated real property here in Southern California that is ripe for the picking.	
11.	Ms. Mary Joy Quinn Director, Probate Superior Court San Francisco County San Francisco, California	A	Y, N	Agree with proposed changes.	No response necessary.
12.	Ms. Dominique Sanz-David Access Center San Francisco, California	A	N	Agree with proposed changes if modified. What about if the petitioner has submitted a request to dispense with notice to one of the parents? Does this request apply to the temporary guardianship? We also recently had a conservatorship where	The standards for an exception to the requirement of notice of a petition for a temporary appointment apply to both guardianships and conservatorships. There may be reasons to dispense with notice to a proposed ward's parent, such as concern about harm to or flight with the child. One could certainly apply for an

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				the conservatee was in a coma and had been for five years. It is pointless to serve a petition for temporary conservatorship in that situation. When does the court change the manner or time for giving notice if it chooses to do so? At the hearing? If the court changes the service required at the hearing, does it set a new hearing date on the temporary petition?	order dispensing with notice in the coma situation or simply complete the meaningless delivery of notice. The investigator's report will confirm the proposed conservatee's incapacity. An adjustment in the time and manner of giving notice would occur at the time of an application for an order prescribing notice, not at the hearing on the petition for temporary conservatorship.
13.	Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, California	A	Y	Agree with proposed changes. The Executive Committee unanimously approves this proposed rule setting forth conditions for waiver of notice in temporary conservatorships.	No response necessary.
14.	Superior Court of Los Angeles County Los Angeles, California	A	Y	Agree with proposed changes.	No response necessary.
15.	Ms. Michelle Uzeta	A	Y	Agree with proposed changes.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Associate Managing Attorney Protection and Advocacy, Inc. Los Angeles, California				
16.	Ms. Robin C. Westmiller, J.D. President National Association to Stop Guardian Abuse Thousand Oaks, California	AM	Y	Agree with proposed changes if modified. In order to waive notice, "good cause" must be specifically detailed and documented for a specific person who would not be notified, and that person must also be notified of that decision so that they may be able to appear at a separate hearing on their own behalf in order to repute any allegations. "Essential to protect the conservatee from immediate substantial harm" is not enough without documented proof and evidence that this is the case and not someone's opinion in order to expedite the conservatorship.	The person to whom the court dispenses with notice of a petition for appointment of a temporary guardian or conservator because of possible harm to the proposed ward or conservatee would also be a candidate for waiver of notice of the application, at least until after the appointment of a temporary guardian or conservator and stabilization of the situation leading to the application. The court will evaluate the showing in support of the waiver application, just as it does with all other evidence offered. The proposed rules have been amended to clarify that a showing of good cause for an exception to the notice requirement be based on competent evidence based on personal knowledge. Mere speculation or lay opinion

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					evidence would not be sufficient.

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: October 12, 2007

SUBJECT: Probate: Notice of Changes of Residence of Conservatees or Wards (adopt rules 7.1013 and 7.1063 of the California Rules of Court; revise form GC-080 and adopt form GC-079; and approve forms GC-079(MA) and GC-080(MA)) (Action Required)

Issue Statement
Conservators and guardians of the person are authorized to establish the residence of their conservatees and wards at any place in California without permission of the court. Probate Code section 2352 requires these fiduciaries to select the least restrictive appropriate residence that is available and necessary to meet the needs of the conservatee or ward and is in his or her best interest.

Under former law, a conservator or guardian was merely required to give notice by mail to the court of any change of a conservatee's or ward's residence. No one else was entitled to notice of the move, and no advance notice of a change was necessary. A 2006 amendment of section 2352 has fundamentally altered these requirements.

Recommendation
The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, take the following actions to provide the notices of change of residence required by amended Probate Code section 2352 and to provide guidance concerning the requirements of the new law:

1. Adopt rules 7.1013 and 7.1063 of the California Rules of Court;

2. Revise *Change of Residence Notice* (form GC-080);

3. Adopt *Pre-Move Notice of Proposed Change of Personal* Residence *of Conservatee or Ward* (form GC-079); and

4. Approve *Attachment to Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079(MA) and *Attachment to Post-Move Notice of Change of Residence of Conservatee or Ward* (form GC-080(MA)).

The text of proposed rules 7.1013 and 7.1063 is attached at pages 19–23.

Copies of the proposed new and revised forms and current form GC-080 are attached at pages 24–30.

Rationale for Recommendation

The Omnibus Act substantially rewrote existing law concerning notice of change of residence of conservatees or wards within California. Before the new law, conservators or guardians were required merely to "promptly" mail notice to the court of all changes in the conservatee's or ward's residence within the state. No specific time period within which to mail the notice was stated, no one other than the court was entitled to receive the notice or otherwise to be advised about a change in residence, and no notice to the court or anyone else in advance of the move was required.

Post-move notice

Probate Code section 2352(e)(1) requires (1) notice of a change in a conservatee's or ward's residence to be filed with the court within 30 days of the change; (2) the conservator's declaration that the conservatee's change of residence is consistent with the standard described in section 2352(b), stated in the opening paragraph of this report; and (3) the Judicial Council to develop, on or before January 1, 2008, one or more forms of notice and declaration to be used for this purpose. This notice is referred to in the proposed new rules of court, revised form GC-080, and this report as the "post-move notice" to distinguish it from the advance notice of a change in residence sometimes required under new section 2352(e)(3), discussed below.

New section 2352(e)(2) identifies the persons who must be mailed the post-move notice of a conservatee's or ward's change of residence by referring to section 1822(b) for conservatorships and section 1511(b) for guardianships. These code sections define who must be served with notice of the hearing and a copy of the

petition for appointment of a conservator or guardian at the beginning of the proceeding.

Pre-move notice
Section 2352(e)(3) creates a new duty to give advance notice to the ward (if at least 12 years old), and to the ward's or conservatee's important family members of a proposed change of the ward's or conservatee's residence in some circumstances. This new requirement is referred to in this report and in the proposed rules and forms as the pre-move notice. Not all changes of residence require this notice. The statute refers to changes in the conservatee's or ward's *personal* residence, whereas the post-move notice discussed above applies to any residence.

Section 2352(e)(3) requires notice of a change in the conservatee's or ward's personal residence to be mailed to the same persons entitled to receive the post-move notice: those mentioned in sections 1822(b) (conservatorship) or 1511(b) (guardianship). The notice must be mailed at least 15 days before the move, in the absence of an emergency. If there is an emergency requiring a shorter period of notice, the conservator or guardian must state the basis for the emergency in the written notice.

Rules 7.1013 and 7.1063
Section 2352 does not direct the council to develop rules of court. However, the advisory committee believes the statute requires clarification that would directly affect the post-move notice the council is directed to prepare and the pre-move notice the committee is also proposing. This proposal would clarify the requirements for mailing the pre-move and post-move notices in guardianships. Pre-move notice to the conservatee of a change in his or her personal residence, omitted in the statute, would be required under proposed rule 7.1063. Rules 7.1013 and 7.1063 would not require mailing of the post-move notice to the conservatee or ward as superfluous, although mailed notice to their attorneys would be required.

Perhaps the most important reason for the proposed rules of court is the absence of a definition of "personal residence" in section 2352 for purposes of the pre-move notice required by section 2352(e)(3). The advisory committee infers from section 2352.5, a new code section added by the Omnibus Act, that the personal residence of the conservatee or ward is his or her residence at commencement of the case—when the petition for appointment of a conservator or guardian was filed. Rule 7.1013(b) would, therefore, define a ward's personal residence in this way.

The definition of a conservatee's personal residence is more complex. The committee proposes to define the conservatee's "personal residence" for purposes of the pre-move notice as the residence the conservatee understood or believed, or appeared to understand or believe, to be his or her permanent residence when the conservatorship was commenced. If the conservatee could not at that time form an understanding or belief about a permanent residence or could not communicate such an understanding, the personal residence would be the residence the conservatee last previously considered to be his or her permanent residence. See proposed rule 7.1063(b)(1) and (2).

Paragraph (3) of rule 7.1063(b) would provide guidance in three common situations. Any move from a conservatee's personal residence would clearly be a change of that residence requiring the pre-move notice. A move from a residential care facility or other temporary housing to a residence other than the conservatee's personal residence would also be a change of personal residence requiring this notice. But a move from a residential care facility or other temporary housing to the conservatee's personal residence would not be a change of personal residence under the rule.

For purposes of the post-move notice, the residence of the conservatee or ward would be defined simply as his or her residence at any time after appointment of a fiduciary (rules 7.1013(d) and 7.1063(d)).

Form GC-080

The advisory committee proposes a complete revision of the current Judicial Council form *Change of Residence Notice* (form GC-080), to comply with the new requirements of section 2352(e)(1) and (2) concerning the post-move notice. The revised form would be renamed *Post-Move Notice of Change of Residence of Conservatee or Ward.*

Item 2 of the form would request the conservatee's or ward's new address, telephone number, and another contact telephone number, the same information requested in the current form. Item 3 of the form would apply in all conservatorships. It contains a declaration, that the conservatee's change of residence is consistent with the standard described in section 2352(b).

The second page of this form contains a proof of mailing similar to proofs of service by mail contained in other probate forms, including the basic forms used in decedents' estates, conservatorships, and guardianships to give notice of hearings in those matters (forms DE-120 and GC-020). This proof of mailing, however, is designed to be completed and signed by the fiduciary, his or her attorney, or the employee of the attorney. This design is proposed in order to avoid problems with mailing suffered by many unrepresented fiduciaries. They find it difficult to

understand or comply with the traditional prohibition against a party in litigation proving service of a document by mail.

Form GC-079
The advisory committee proposes adoption of a new mandatory form for the pre-move notice required by section 2352(e)(3), *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079). This form, like revised form GC-080, contains detailed information and instructions for conservators and guardians, including mailing instructions.

The form requests the proposed date of the move, the address of the new residence, and the type of residence. The latter information is not required by the statute, but the advisory committee believes that it is important information for the court and family members entitled to notice, particularly in a conservatorship, where moves to residential care facilities or other institutional housing are common.

Item 4 of the form provides an opportunity for the fiduciary to state the reasons for the emergency that requires a reduced period of notice, as required by section 2352(e)(3).

Form GC-079 provides for mailing and execution of the proof of mailing by the conservator, attorney, or attorney's employee for the same reasons as revised form GC-080.

Forms GC-079(MA) and GC-080(MA)
The advisory committee proposes optional forms to be attached to the two notice forms to show additional addressees. These forms are similar to other attachments to mailing or service forms in probate matters approved in recent years.

Alternative Actions Considered
Probate Code section 2352 requires a form for the post-move notice and the declaration mentioned in section 2352(e)(1). These are provided in revised form GC-080. No alternative to development of a form for these purposes was considered.

The committee considered a single form for both the pre-move and post-move notices required by the new statute but elected to recommend separate notice forms to reduce the complexity and length of a combined form and possible confusion in its use.

The committee also considered proceeding without proposing rules of court. The committee decided, however, that the absence of a statutory definition of a

"personal residence" for purposes of the pre-move notice and the statute's reference to Probate Code sections 1511(b) and 1822(b) to define who should receive the notices requires clarification by means of the proposed rules.

The committee also considered waiting until the passage or failure of Senate Bill 800 in the 2007 Legislature before proceeding with a form or a rule of court concerning the pre-move notice of a change of a conservatee's personal residence. The committee elected, however, to proceed with the rule provisions and the form of pre-move notice without waiting to learn the fate of SB 800.

Comments From Interested Parties

This proposal was circulated for comment in a special cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, and probate-interest sections of the State Bar and local bar associations, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Fourteen comments were received concerning this proposal. A chart showing the comments and the committee's responses is attached beginning at page 33, following the rule text, copies of the forms, and the text of Probate Code sections 2352 and 2352.5.

Most commentators approve the rules and forms with modifications. Two commentators oppose them entirely. Two commentators advise that mailing the post-move notice on conservatees and wards (over 11 years of age) after completion of the move, as originally required by rules 7.1013(c) and 7.1063(c), would be superfluous. The committee agrees with these comments and has amended the rules to delete the requirement of mailing a post-move notice directly on the conservatee or the ward.

Another commentator recommends that the definition of a conservatee's personal residence in proposed rule 7.1063(b) be expanded to include rented residences or living arrangements with family that were in place when the conservatorship was filed. The committee's response advises that the modified definition provided in the rule refers to the residence the conservatee considers to be his or her permanent residence. That residence could certainly include any of the arrangements mentioned by this commentator.

Another commentator requests that the proposed rules of court and the notice forms should include a procedure for objecting to a proposed move on receipt of the pre-move notice. The committee's response notes that the right to object to a conservatee's or ward's move within California and the procedure for doing so are

unclear, as amended sections 2352(a) and (b) continue to authorize the guardian or conservator to establish the residence of the ward or conservatee anywhere in the state without prior court approval. Neither sections 2352 or 2352.5 nor any other provision of the Omnibus Act expressly authorize an objection on this ground, confer standing on anyone to make the objection, or require a hearing to determine the objection. The proposed rules of court, therefore, do not prescribe a procedure for objecting to a change of personal residence.

The State Bar's Trusts and Estates Section disagrees with the proposed pre-move notice form on the ground, among others, that the draft as circulated did not provide for disclosure of the conservatee's or ward's new address. The committee agrees with the objection and modified the form not only to provide for statement of the new address, but also to advise the court and persons who receive the form of the type of residence to which the conservatee will be moved.

Implementation Requirements and Costs

This proposal will result in the normal costs associated with the adoption of new rules of court and the adoption or approval and distribution of new Judicial Council forms. If Senate Bill 800 is enacted in 2008, additional expenses will be incurred to amend rule 7.1063 and revise form GC-079. The committee believes, however, that the rules and the forms will save attorney's fees for the estates of conservatees and wards to comply with, and court staff time and related costs incurred to ensure compliance with, the current requirements of amended section 2352.

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
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Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: October 12, 2007

SUBJECT: Probate: Notice of Changes of Residence of Conservatees and Wards (adopt rules 7.1013 and 7.1063 of the California Rules of Court; revise form GC-080 and adopt form GC-079; and approve forms GC-079(MA) and GC-080(MA)) (Action Required)

Issue Statement

Conservators and guardians of the person are authorized to establish the residence of their conservatees and wards at any place in California without permission of the court. These fiduciaries must select the least restrictive appropriate residence that is available and necessary to meet the needs of the conservatee or ward and is in his or her best interest.[1]

Under former law, a conservator or guardian was merely required to give notice by mail to the court of any change of a conservatee's or ward's residence. No one else was entitled to notice of the move, and no advance notice of a change was necessary. The 2006 amendment of section 2352 referenced in the above note has fundamentally altered these requirements.

[1] Probate Code section 2352(a) (guardians), and (b) (conservators), as amended effective January 1, 2007, by Stats. 2006, ch. 490 (Senate Bill 1116), § 1, part of the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Omnibus Act), consisting of chapters 490–493, respectively, SB 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363. These amended subdivisions substantially restate the standard for establishing the residence of a conservatee or ward under former section 2352(a)(1).

Rationale for Recommendation

The Omnibus Act substantially rewrote existing law concerning notice of change of residence of conservatees or wards within California. Before the new law, conservators or guardians were required merely to "promptly" mail notice to the court of all changes in the conservatee's or ward's residence within the state. No specific time period within which to mail the notice was stated, no one other than the court was entitled to receive the notice or otherwise to be advised about a change in residence, and no notice to the court or anyone else in advance of the move was required.[2] A Judicial Council form, *Change of Residence Notice* (form GC-080), was adopted in 2000 to provide the notice to the court required by former section 2352(c).

Post-move notice

Probate Code sections 2352(e)(1)and (2), new paragraphs added by SB 1116, have replaced former section 2352(c). Section 2352(e)(1) requires (1) notice of a change in a conservatee's or ward's residence to be filed with the court within 30 days of the change; (2) the conservator's declaration that the conservatee's change of residence is consistent with the standard described in section 2352(b), stated in the opening paragraph of this report; and (3) the Judicial Council to develop, on or before January 1, 2008, one or more forms of notice and declaration to be used for this purpose.[3] This notice is referred to in the proposed new rules of court, revised form GC-080, and this report as the "post-move notice" to distinguish it from the advance notice of a change in residence sometimes required under new section 2352(e)(3), discussed below.[4]

New section 2352(e)(2) identifies the persons who must be mailed the post-move notice of a conservatee's or ward's change of residence by referring to section 1822(b) for conservatorships and section 1511(b) for guardianships. These code sections define who must be mailed notice of the hearing and a copy of the petition for appointment of a conservator or guardian at the beginning of the proceeding.[5]

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[2] Former Probate Code section 2352(c), a restatement of prior law added by Stats. 1990, ch. 79, §14 as part of the repeal and reenactment of the entire Probate Code effective July 1, 1991. (See Cal. Law Revision Com. comment, 52A West's Ann. Prob. Code (2002 ed.) foll. § 2352, p. 388.)

[3] Copies of amended section 2352 and a new section 2352.5, added by section 2 of SB 1116, are attached to this report at pages 31–32, following the text of the rules of court and copies of the forms proposed for adoption or approval by the council.

[4] Mailing the notice to the court after rather than before the move was standard practice under former law, and the phrase "within 30 days of the date of the change" plainly permits that practice under the new law.

[5] Section 1822(b) requires mailed service of notice of hearing and a copy of the petition for appointment of a conservator on the conservatee's spouse or registered domestic partner and the

Pre-move Notice
Section 2352(e)(3) creates a new duty to give advance notice to the ward (if at least 12 years old), and to the ward's or conservatee's important family members of a proposed change of the ward's or conservatee's residence in some circumstances. This new requirement is referred to in this report and in the proposed rules and forms as the pre-move notice. Not all changes of residence require this notice. The statute refers to changes in the conservatee's or ward's *personal* residence, whereas the post-move notice discussed above applies to any residence.

Section 2352(e)(3) requires notice of a change in the conservatee's or ward's personal residence to be mailed to the same persons entitled to receive the post-move notice: those mentioned in sections 1822(b) (conservatorship) or 1511(b) (guardianship). The notice must be mailed at least 15 days before the move, in the absence of an emergency. If there is an emergency requiring a shorter period of notice, the conservator or guardian must state the basis for the emergency in the written notice.

Section 2352(e)(3) requires notice of a change in the conservatee's or ward's personal residence to be mailed to the same persons entitled to receive the post-move notice: those mentioned in sections 1822(b)(conservatorship) or 1511(b)(guardianship). The notice must be mailed at least 15 days before the move, in the absence of an emergency. If there is an emergency requiring a shorter period of notice, the conservator or guardian must state the basis for the emergency in the written notice.

Rules 7.1013 and 7.1063
Section 2352 does not direct the council to develop rules of court. However, the advisory committee proposes rule 7.1013 and 7.1063 because it believes the statute requires clarification that would directly affect the post-move notice the council is directed to prepare and the pre-move notice the committee is proposing.

The first clarification concerns the proper application of section 1511(b)—a statute that lists persons who must be notified of a hearing before a guardian has been appointed—to define who should receive the notices required by section 2352,

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conservatee's relatives named in the petition, identified in section 1821(b). These are the conservatee's second-degree relatives (children, grandchildren, siblings, parents, and grandparents). If the conservatee has no spouse, domestic partner, or second-degree relatives, section 1821(b) requires certain in-laws, stepchildren, or more remote relatives to be named in the petition as the conservatee's "deemed relatives." Section 1511(b) requires mailed service of notice of hearing and a copy of the petition for appointment of a guardian on the minor if he or she is at least 12 years old, the minor's parents, any person having legal custody of the child or serving as guardian of his or her estate, and any person nominated as guardian.

which follow the guardian's appointment.[6] Section 1511(b) mentions persons with legal custody of the minor and nominated guardians. But after appointment of a guardian of the person, the guardian has legal custody of the child. Therefore, a post-appointment duty to give notice of a ward's move to a person who has legal custody is either meaningless because the guardian need not notify himself or herself (see Prob. Code, § 1201), or the duty is limited to notification of the person who had legal custody before appointment of the guardian. Proposed rule 7.1013(a)(4) and (c)(3) prescribe the latter alternative for both the pre-move and post-move notices.

If there was a nominated guardian under Probate Code section 1500 (nominee of parents as guardian of the person, estate, or both) or section 1501 (nominee of donor or grantor of property to the minor as guardian of the estate), after appointment of a guardian, the nominee would be either the appointed guardian of the person, the estate, or both, or would not have been appointed. If the nominee is the appointed guardian of the person, self-notification is unnecessary. If the nominee is the appointed guardian of the estate, he or she is entitled to notice under section 1511(b) as guardian, not as a nominee. Therefore, proposed rule 7.1013(a)(6) requires the guardian to give notice only to nominees who were not appointed in the case.

There is another unusual consequence of section 2352(e)(3)'s' reliance on sections 1822(b) and 1511(b) to establish who must be served with the pre-move notice. Section 1511(b) requires mailed service on the proposed ward if he or she is at least 12 years old. However, section 1822(b) does not list the *conservatee* as a person entitled to notice by mail.[7] The advisory committee believes that omission of the conservatee as a person who should receive the pre-move notice is inadvertent; no reason is apparent to treat older wards and conservatees differently in this respect. Proposed rule 7.1063(a)(1) would require the pre-move notice to be mailed to the conservatee. Both rules would also require the pre-move and post-move notices to be mailed to the attorney for the conservatee or ward. (See proposed rules 7.1013(a)(2), (c)(1); and 7.1063(a)(2), (c)(1).)[8]

Despite section 1511(b)'s express requirement of service on a ward who is at least 12 years old, the proposed rules eliminate as unnecessary a requirement to mail the

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[6] See note 5 above.

[7] There is no reason to mention the proposed conservatee in section 1822(b) because section 1823 requires that he or she be personally served with a citation and a copy of the petition for appointment of a conservator. The citation is Judicial Council form GC-320, *Citation for Conservatorship*.

[8] See Probate Code section 1214, which provides that when a person entitled to service of a paper is represented by counsel, copies of the paper must be delivered to both of them.

post-move notice directly to a ward of any age or to the conservatee. They will have already experienced the move; a mailed notice advising them of it would serve no purpose.

The rule would, however, require copies of the post-move notice to be mailed to the ward's or conservatee's attorney. The mailed post-move notice may be the only way that counsel learns where his or her client has moved, particularly, appointed counsel without a prior relationship with the ward or conservatee.

Perhaps the most important reason for the proposed rules of court is the absence of a definition of "personal residence" in section 2352 for purposes of the pre-move notice required by section 2352(e)(3). As noted above, the advisory committee infers from section 2352.5 that the personal residence of the conservatee or ward is his or her residence at commencement of the case—when the petition for appointment of a conservator or guardian was filed.

The committee believes that this inference is sufficient in a guardianship, where the child is usually living at home with a parent or has already moved in with the proposed guardian under a consensual arrangement when the petition for appointment of a guardian is filed. Rule 7.1013(b), therefore, defines a ward's personal residence as his or her residence when the guardianship was commenced.

The definition of a conservatee's personal residence is more complex. In many cases the conservatee will have already moved from independent living to a shared arrangement with a family member or into a residential care facility when the conservatorship petition is filed. Sometimes these changes occur years before a conservatorship becomes necessary.

The intent behind the pre-move notice legislation and the presumption created in section 2352.5 appears to have been the desire to ensure that the conservatee remains in his or her "true" home as long as possible, and that the conservatee and his or her close family have an interest in preserving that living arrangement. It is far from clear, however, that all conservatees live in shared housing or in residential care facilities reluctantly and would wish to return to their previous residence.

The committee proposes to define the conservatee's "personal residence" for purposes of the pre-move notice as the residence the conservatee understood or believed, or appeared to understand or believe, to be his or her permanent residence when the conservatorship was commenced. If the conservatee cannot at that time form an understanding or belief about a permanent residence or cannot communicate such an understanding, the personal residence would be the

residence the conservatee last previously considered to be his or her permanent residence. See proposed rule 7.1063(b)(1) and (2).

Paragraph (3) of rule 7.1063(b) would provide guidance in three common situations. Any move from a conservatee's personal residence would clearly be a change of that residence requiring the pre-move notice. A move from a residential care facility or other temporary housing to a residence other than the conservatee's personal residence would also be a change of personal residence requiring this notice. But a move from a residential care facility or other temporary housing to the conservatee's personal residence would not be a change of personal residence under the rule.

For purposes of the post-move notice, the residence of the conservatee or ward would be defined simply as his or her residence at any time after appointment of a fiduciary (rules 7.1013(d) and 7.1063(d)).

Form GC-080

The advisory committee proposes a complete revision of the current Judicial Council form *Change of Residence Notice* (form GC-080), to comply with the new requirements of section 2352(e)(1) and (2) concerning the post-move notice. The revised form would be renamed *Post-Move Notice of Change of Residence of Conservatee or Ward*, and would feature a text box at the top of page 1 containing advice to conservators and guardians of the person about the use of the form, including detailed instructions for mailing it in both proceedings. In accordance with the provisions of the rules of court discussed above, the instructions include directions not to mail copies of the form directly to the conservatee or ward.

Item 2 of the form requests the conservatee's or ward's new address, telephone number, and another contact telephone number, the same information requested in the current form.[9] Item 3 of the form would apply in all conservatorships. It contains a declaration, required by section 2352(e)(1), that the conservatee's change of residence is consistent with the standard described in section 2352(b).

The second page of this form contains a proof of mailing similar to proofs of service by mail contained in other probate forms, including the basic forms used in

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[9] The current form has space for three names and addresses. This is useful in a guardianship, where two or more siblings are often joined together as wards of the same guardian in a single proceeding (see Prob. Code, § 2106), much less so in a conservatorship. The revised form could not provide for more than one ward if it is to remain a one-page form. Instead, the form includes space in its form title caption box for the name of a ward when there is more than one in the case, and an instruction to the guardian to file and mail separate copies of the form for each ward who has moved. (See the instruction in item 2 of the Information for Conservators and Guardians text box.)

decedents' estates, conservatorships, and guardianships to give notice of hearings in those matters (forms DE-120 and GC-020). This proof of mailing, however, is designed to be completed and signed by the fiduciary, his or her attorney, or the employee of the attorney. This design is proposed in order to avoid problems with mailing suffered by many unrepresented fiduciaries. They find it difficult to understand or comply with the traditional prohibition against a party in litigation proving service of a document by mail.[10]

Section 2352(e)(2) requires the conservator or guardian to *mail,* not *serve,* the notice. The event described in the notice, a change of residence, is not a hearing or other litigation event. Moreover, the party responsible for the mailing is a fiduciary appointed by the court under ongoing court supervision, and the persons who must receive the mailing are not necessarily parties to the proceeding. The committee concluded that these facts are sufficient to support a departure from the traditional method of proving service by mail of notices and other papers in contested litigation.

Form GC-079
The advisory committee proposes adoption of a new mandatory form for the pre-move notice required by section 2352(e)(3), *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079). This form, like revised form GC-080, would have detailed information and instructions for conservators and guardians, including mailing instructions.

The form requests the proposed date of the move, the address of the new residence, and the type of residence. The latter information is not required by the statute, but the advisory committee believes that it is important information that family members entitled to notice, and the court, should know, particularly in a conservatorship, where moves to residential care facilities or other institutional housing are common. The examples of residential care facilities included in the instruction for item 3 of the form are taken from the Judicial Council's *Handbook for Conservators*, which all conservators must acquire at the time of their appointment. Most conservators, whether or not they are represented by counsel, should be familiar with the examples.

Item 4 of the form provides an opportunity for the fiduciary to state the reasons for the emergency that requires a reduced period of notice, as required by section 2352(e)(3). Because of limited space, resort to an attachment is necessary for an explanation longer than the one available line. The committee believes this is a

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[10] Code of Civil Procedure section 1013a requires proofs of service by mail of documents in litigation to recite that the declarant doing the mailing or responsible for placing the mail in the ordinary stream of mail from a business is not a party to the action.

preferable alternative to a multipage form, and also that most moves will not require a reduced period of notice and selection of item 4.

Form GC-079 provides for mailing and execution of the proof of mailing by the conservator, attorney, or attorney's employee for the same reasons as does revised form GC-080.

Forms GC-079(MA) and GC-080(MA)
The advisory committee proposes optional forms to be attached to the two notice forms to show additional addressees. These forms are similar to other attachments to mailing or service forms in probate matters approved in recent years.

Alternative Actions Considered
Probate Code section 2352 requires only a form for the post-move notice and the declaration mentioned in section 2352(e)(1). These are provided in revised form GC-080. No alternative to development of a form for these purposes was considered.

The committee considered a single form for both the pre-move and post-move notices required by the new statute but elected to recommend separate notice forms to reduce the complexity and length of a combined form and possible confusion in its use.

The committee also considered proceeding without proposing rules of court. The committee decided, however, that the absence of a statutory definition of a "personal residence" for purposes of the pre-move notice and the statute's reference to sections 1511(b) and 1822(b) to define who should receive the notices requires clarification by means of the proposed rules.

The committee also considered waiting until the passage or failure of SB 800 in the 2007 Legislature before proceeding with a form or a rule of court concerning the pre-move notice of a change of a conservatee's personal residence. The committee elected, however, to proceed with the rule provisions and the form of pre-move notice without waiting to learn the fate of SB 800.[11]

[11] SB 800 did not pass out of the Legislature. It is expected to be a two-year bill that will be revisited next year. If enacted in its present form in 2008, the procedure surrounding moves of conservatees from their personal residence would be entirely changed. Substantial revisions of rule 7.1063 and form GC-079 would then be required. The bill would require either prior court approval for a conservatee's change of personal residence or, under a new procedure similar to the Notice of Proposed Action in decedents' estates administered under the Independent Administration of Estates Act, the conservator could give written notice of a proposed move and would be authorized to proceed with the move without court approval if he or she does not receive an objection to the move within a specified period of time.

Comments From Interested Parties
This proposal was circulated for comment in a special cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, and probate-interest sections of the State Bar and local bar associations, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Fourteen comments were received concerning this proposal. A chart showing the comments and the committee's responses is attached beginning at page 33, following the rule text, copies of the forms, and the text of Probate Code sections 2352 and 2352.5.

Most commentators approve the rules and forms with modifications. Two commentators oppose them entirely. Two commentators, one who opposes the forms in their entirety; and one, Mr. Joseph L. Chairez, President of the Orange County Bar Association, who would approve of the forms if modified, comment that service of the post-move notice on conservatees and wards (over 11 years of age) after completion of the move, as originally required by rules 7.1013(c) and 7.1063(c), would be superfluous. The committee agrees with these comments and has amended the rules to delete the requirement of service of post-move notices directly on the conservatee or the ward.

Ms. Jackie A. Miller, on behalf of the Professional Fiduciary Association of California, recommends that the definition of a conservatee's personal residence in proposed rule 7.1063(b) be expanded to include rented residences or living arrangements with family that were in place when the conservatorship was filed. This comment was made in response to an earlier draft of rule 7.1063(b) that tried to distinguish between independent and institutional residences of conservatees. The definition has been modified to refer to the residence the conservatee considers to be his or her permanent residence. The permanent residence could certainly include any of the arrangements mentioned by Ms. Miller.

Ms. Mary Joy Quinn, Director of the Probate Department, Superior Court of San Francisco County, requests that the proposed rules of court and the notice forms should include a procedure for objecting to a proposed move on receipt of the pre-move notice. The committee's response to Ms. Quinn notes that the right to object to a conservatee's or ward's move within California and the procedure for doing so are unclear, as amended sections 2352(a) and (b) continue to authorize the guardian or conservator to establish the residence of the ward or conservatee anywhere in the state without prior court approval. Section 2352.5's reference to a presumption in favor of a conservatee's personal residence as the least restrictive appropriate residence that may be overcome by a preponderance of the evidence

suggests that an objection could be made to a proposed change of residence on the ground that the new residence is not the least restrictive appropriate residence, and that there may be a hearing where that issue may be litigated. However, neither sections 2352 or 2352.5 nor any other provision of the Omnibus Act expressly authorize an objection on this ground, confer standing on anyone to make the objection, or require a hearing to determine the objection. The committee's response to Ms. Quinn's comment advises that provisions of SB 800 in the 2007 Legislature would have created the objection procedure she seeks for a change in a conservatee's personal residence. (See footnote 11.)

Mr. Peter S. Stern, Vice-Chair of the Executive Committee of the Trusts and Estates Section of the State Bar, disagrees with the proposed pre-move notice form on the ground, among others, that the draft as circulated did not provide for disclosure the new address. The committee agrees with the objection and modified the form not only to provide for statement of the new address, but also to advise the court and persons who receive the form of the type of residence to which the conservatee will be moved.

Implementation Requirements and Costs

This proposal will result in the normal costs associated with the adoption of new rules of court and the adoption or approval and distribution of new Judicial Council forms. If Senate Bill 800 is enacted in 2008, additional expenses will be incurred to amend rule 7.1063 and revise form GC-079. The committee believes, however, that the rules and the forms will save attorney's fees for the estates of conservatees and wards, and court staff time and related costs incurred to ensure compliance with the current requirements of amended section 2352.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, take the following actions to provide the notices of changes of residence required by amended Probate Code section 2352 and to provide guidance concerning the requirements of the new law:

1. Adopt rules 7.1013 and 7.1063 of the California Rules of Court;

2. Revise *Change of Residence Notice* (form GC-080);

3. Adopt *Pre-Move Notice of Proposed Change of Personal* Residence *of Conservatee or Ward* (form GC-079); and

4. Approve *Attachment to Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079(MA) and *Attachment to*

Post-Move Notice of Change of Residence of Conservatee or Ward (form GC-080(MA)).

The text of proposed rules 7.1013 and 7.1063 is attached at pages 19–23.

Copies of the proposed new and revised forms and current form GC-080 are attached at pages 24–30.

Attachments

Rules 7.1013 and 7.1063 of the California Rules of Court are adopted, effective January 1, 2008, to read:

1 **Rule 7.1013. Change of ward's residence**
2
3 **(a) Pre-move notice of change of personal residence required**
4
5 Unless an emergency requires a shorter period of notice, the guardian of the
6 person must mail copies of a notice of an intended change of the ward's
7 personal residence to the persons listed below at least 15 days before the date
8 of the proposed change, and file the original notice with proof of mailing
9 with the court. Copies of the notice must be mailed to:
10
11 (1) The ward if he or she is 12 years of age or older;
12
13 (2) The attorney of record for the ward;
14
15 (3) The ward's parents;
16
17 (4) Any person who had legal custody of the ward when the first petition
18 for appointment of a guardian was filed in the proceeding;
19
20 (5) A guardian of the ward's estate; and
21
22 (6) Any person who was nominated as guardian of the ward under Probate
23 Code sections 1500 or 1501 but was not appointed guardian in the
24 proceeding.
25
26 **(b) Ward's personal residence**
27
28 The "ward's personal residence" under (a) is the ward's residence when the
29 first petition for appointment of a guardian was filed in the proceeding.
30
31 **(c) Post-move notice of a change of residence required**
32
33 The guardian of the person of a minor must file a notice of a change of the
34 ward's residence with the court within 30 days of the date of any change.
35 Unless waived by the court for good cause to prevent harm to the ward, the
36 guardian, the guardian's attorney, or an employee of the guardian's attorney
37 must also mail a copy of the notice to the persons listed below and file a
38 proof of mailing with the original notice. Unless waived, copies of the notice
39 must be mailed to:
40

1 (1) The ward's attorney of record;
2
3 (2) The ward's parents;
4
5 (3) Any person who had legal custody of the ward when the first petition
6 for appointment of a guardian was filed in the proceeding;
7
8 (4) A guardian of the ward's estate; and
9
10 (5) Any person who was nominated as guardian of the ward under Probate
11 Code sections 1500 or 1501 but was not appointed guardian in the
12 proceeding.
13
14 **(d) Ward's residence**
15
16 The "ward's residence" under (c) is the ward's residence at any time after
17 appointment of a guardian.
18
19 **(e) Use of Judicial Council forms GC-079 and GC-080**
20
21 (1) The *Pre-Move Notice of Proposed Change of Personal Residence of*
22 *Conservatee or Ward* (form GC-079) must be used for the pre-move
23 notice required under (a) and Probate Code section 2352(e)(3). The
24 guardian, the guardian's attorney, or an employee of the attorney may
25 complete the mailing and sign the proof of mailing on page 2 of the
26 form. If the notice is mailed less than 15 days before the date of the
27 move because an emergency requires a shorter period of notice, the
28 basis for the emergency must be stated in the notice.
29
30 (2) The *Post-Move Notice of Change of Residence of Conservatee or Ward*
31 (form GC-080) must be used for the post-move notice required under
32 (c) and Probate Code section 2352(e)(1) and (2). The guardian, the
33 guardian's attorney, or an employee of the attorney may complete the
34 mailing and sign the proof of mailing on page 2 of the form.
35
36 **(f) Prior court approval required to establish ward's residence outside**
37 **California**
38
39 Notwithstanding any other provision of this rule, prior court approval is
40 required before a ward's residence may be established outside the state of
41 California.

1 **Rule 7.1063. Change of conservatee's residence**
2
3 **(a) Pre-move notice of change of personal residence required**
4
5 Unless an emergency requires a shorter period of notice, the conservator of
6 the person must mail copies of a notice of an intended change of the
7 conservatee's personal residence to the persons listed below at least 15 days
8 before the date of the proposed change, and file the original notice with proof
9 of mailing with the court. Copies of the notice must be mailed to:
10
11 (1) The conservatee;
12
13 (2) The conservatee's attorney of record;
14
15 (3) The conservatee's spouse or registered domestic partner; and
16
17 (4) The conservatee's relatives named in the *Petition for Appointment of*
18 *Probate Conservator*, including the conservatee's "deemed relatives"
19 under Probate Code section 1821(b)(1)–(4) if the conservatee has no
20 spouse or registered domestic partner and no second-degree relatives.
21
22 **(b) Conservatee's personal residence**
23
24 (1) The "conservatee's personal residence" under (a) is the residence the
25 conservatee understands or believes, or reasonably appears to
26 understand or believe, to be his or permanent residence on the date the
27 first petition for appointment of a conservator was filed in the
28 proceeding, whether or not the conservatee is living in that residence on
29 that date. A residential care facility, including a board and care,
30 intermediate care, skilled nursing, or secured perimeter facility, may be
31 the conservatee's personal residence under this rule.
32
33 (2) If the conservatee cannot form or communicate an understanding or
34 belief concerning his or her permanent residence on the date the first
35 petition for appointment of a conservator was filed in the proceeding,
36 his or her personal residence under this rule is the residence he or she
37 last previously understood or believed, or appeared to understand or
38 believe, to be his or her permanent residence.
39
40 (3) For purposes of this rule, the following changes of residence are or are
41 not changes of the conservatee's personal residence, as indicated:
42

1 (A) A move from the conservatee's personal residence under this rule to a residential care facility or other residence is a change of the conservatee's personal residence under (a).

(B) A move from a residential care facility or other residence to another residence that is not the conservatee's personal residence under this rule is a change of the conservatee's personal residence under (a).

(C) A move from a residential care facility or other residence to the conservatee's personal residence under this rule is not a change of the conservatee's personal residence under (a).

(c) Post-move notice of a change of residence required

The conservator of the person must file a notice of a change of the conservatee's residence with the court within 30 days of the date of the change. Unless waived by the court for good cause to prevent harm to the conservatee, the conservator must mail a copy of the notice to the persons named below and file a proof of mailing with the original notice filed with the court. Unless waived, the notice must be mailed to:

(1) The conservatee's attorney of record;

(2) The conservatee's spouse or registered domestic partner; and

(3) The conservatee's relatives named in the *Petition for Appointment of Probate Conservator*, including the conservatee's "deemed relatives" under Probate Code section 1821(b)(1)–(4) if the conservatee has no spouse or registered domestic partner and no second-degree relatives.

(d) Conservatee's residence

The "conservatee's residence" under (c) is the conservatee's residence at any time after appointment of a conservator.

(e) Use of Judicial Council forms GC-079 and GC-080

(1) The *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* (form GC-079) must be used for the pre-move notice required under (a) and Probate Code section 2352(e)(3). The conservator, the conservator's attorney, or an employee of the attorney may complete the mailing and sign the Proof of Mailing on page 2 of

1 the form. If the notice is mailed less than 15 days before the date of the
2 move because an emergency requires a shorter period of notice, the
3 basis for the emergency must be stated in the notice.
4
5 (2) The *Post-Move Notice of Change of Residence of Conservatee or Ward*
6 (form GC-080) must be used for the post-move notice required under
7 (c) and Probate Code section 2352(e)(1) and (2). The conservator, the
8 conservator's attorney, or an employee of the attorney may complete
9 the mailing and sign the Proof of Mailing on page 2 of the form.
10
11 **(f) Prior court approval required to establish conservatee's residence**
12 **outside California**
13
14 Notwithstanding any other provision of this rule, prior court approval is
15 required before a conservatee's residence may be established outside the
16 state of California.
17

GC-079

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	**Draft 4, 10/01/07 Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF *(Name):* ☐ CONSERVATEE ☐ MINOR	
PRE-MOVE NOTICE OF PROPOSED CHANGE OF PERSONAL RESIDENCE OF ☐ **CONSERVATEE** ☐ **WARD** *(Name):*	CASE NUMBER:

INFORMATION FOR CONSERVATOR OR GUARDIAN OF THE PERSON:

(1) You must mail, **at least 15 days before the date of the proposed move** (unless you can show that an emergency requires a shorter time), a notice of your intention to change your conservatee's or ward's **personal residence** (his or her residence as defined in rules 7.1063(b) or 7.1013(b) of the Cal. Rules of Court) to the conservatee, the ward if 12 years of age or older, the conservatee's or ward's attorney; and **(a) in a conservatorship,** the conservatee's spouse or registered domestic partner; and the conservatee's relatives named in the petition for appointment of a conservator in your case (the conservatee's second-degree relatives, or if there are no spouse, registered domestic partner, and second-degree relatives, the persons named in Probate Code section 1821(b)(1)–(4) as the conservatee's "deemed relatives"); or **(b) in a guardianship**, the ward's parents; any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in your case, the guardian of the ward's estate, and any person nominated as a guardian for the ward who was not appointed. **Use copies of this form for the notice described above. File the original of the notice form with the court and show proof of mailing. See page 2 of this form for proof of mailing. If there is more than one ward in your case, file and mail copies of a separate form for each ward moved.** (See rules 7.1013(a) and (b), or 7.1063(a) and (b) of the Cal. Rules of Court.)

(2) You must also give notice to the court and others, **after the move**, of any change in the conservatee's or ward's residence within the State of California. **Do not use this form for that notice.** Use form GC-080, *Post-Move Notice of Change of Residence of Conservatee or Ward,* for that notice. (See rules 7.1013(c)–(e), and 7.1063(c)–(e) of the Cal. Rules of Court.)

(3) You must obtain court permission **before** the conservatee or ward can move to a new residence outside California.

NOTICE IS GIVEN as follows:

1. I intend to change the above-named conservatee's or ward's personal residence on *(date):*
2. The conservatee's or ward's residence address after the move will be *(street address, including residence or facility name and room or apartment number, if any, and city, county, and zip code):*
3. The new residence will be a *(describe type of residence or facility, for example, single family residence; apartment or condominium; board and care, intermediate care, or skilled nursing):*
4. ☐ I cannot give at least 15 days' notice of this intended change because of the emergency described below *(specify):*

☐ Continued on Attachment 4. *(State name of this case, case number, and title of this form on the top of attached page.)*

Date:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(TYPE OR PRINT NAME OF CONSERVATOR OR GUARDIAN) ▶ (SIGNATURE OF CONSERVATOR OR GUARDIAN)

Form Adopted for Mandatory Use
Judicial Council of California
GC-079 [New January 1, 2008]

PRE-MOVE NOTICE OF PROPOSED CHANGE OF PERSONAL RESIDENCE OF CONSERVATEE OR WARD
(Probate—Guardianships and Conservatorships)

Probate Code, § 2352
Cal. Rules of Court, rules 7.1013, 7.1063
www.courtinfo.ca.gov

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF (Name): ☐ CONSERVATEE ☐ MINOR	CASE NUMBER:

PROOF OF MAILING

1. I am over the age of 18. I am the appointed conservator or guardian of the above-named conservatee or ward, the conservator's or guardian's attorney, or an employee of the attorney. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify):*
3. I mailed the foregoing *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward* to each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ **depositing** the sealed envelope on the date and at the place shown in item 4 with the United States Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: b. Place mailed *(city, state):*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM) ▶ (SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	Name and relationship to conservatee or ward	Address *(number, street, city, state, and zip code)*
1.	Conservatee or ward at least 12 years of age	
2.	Attorney for conservatee or ward	
3.	Spouse or domestic partner of conservatee	
4.	Parent of ward	
5.	Parent of ward	

☐ Continued on an attachment. *(You may use form GC-079 (MA) to show additional addressees.)*

GC-080

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	FOR COURT USE ONLY **Draft 10, 10/01/07 Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF *(Name):* ☐ CONSERVATEE ☐ MINOR	
POST-MOVE NOTICE OF CHANGE OF RESIDENCE OF ☐ **CONSERVATEE** ☐ **WARD** *(Name):*	CASE NUMBER:

INFORMATION FOR CONSERVATOR OR GUARDIAN OF THE PERSON:

(1) Every time your conservatee or ward moves to a new residence in California, you must, **within 30 days of the date of the move**, give written notice of the change to the court and, unless the court excuses you for good cause to prevent harm to the conservatee or ward, mail a copy of the notice to the attorney for the conservatee or ward; and **(a) in a conservatorship**, mail copies of the notice to the conservatee's spouse or registered domestic partner and the conservatee's relatives named in the petition for appointment of a conservator in your case (the conservatee's second-degree relatives, or if there is no spouse, registered domestic partner, and second-degree relatives, the persons named in Probate Code section 1821(b)(1)–(4) as the conservatee's "deemed relatives"); or **(b) in a guardianship**, mail copies of the notice to the ward's parents, any person who had legal custody of the ward when the first petition for appointment of a guardian was filed in your case, the guardian of the ward's estate, and any person nominated as a guardian for the ward who was not appointed.

(2) **Use this form for the notice described above.** Do not mail a copy to the conservatee or ward. To give notice to the court, file the original of this form after filling out the proof of mailing on the second page. (See rules 7.1013(c) and (d), or 7.1063(c) and (d) of the Cal. Rules of Court.) If there is more than one ward in your case, file and mail copies of a separate form for each ward moved.

(3) You must also give notice, **before the move**, of an intent to move the conservatee or ward from his or her personal residence (as defined in rules 7.1063(b) and 7.1013(b) of the Cal. Rules of Court). **Do not use this form for that notice.** Use form GC-079, *Pre-Move Notice of Proposed Change of Personal Residence of Conservatee or Ward,* for that notice.

(4) You must obtain court permission **before** the conservatee or ward can move to a new residence outside California.

NOTICE IS GIVEN as follows:

1. On *(date):* the conservatee or ward named above moved to the residence described in item 2.
2. New address *(street address, city, county, and zip code):*

   Telephone number: Other contact telephone number, if any *(if none, write "None"):*
3. ☐ *(Check this box if this case is a conservatorship.)* The conservatee's new residence identified in 2 is the least restrictive appropriate residence that is available to meet his or her needs and is in the conservatee's best interest.

Date:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(TYPE OR PRINT NAME OF CONSERVATOR OR GUARDIAN) ▶ (SIGNATURE OF CONSERVATOR OR GUARDIAN)

Form Adopted for Mandatory Use
Judicial Council of California
GC-080 [Rev. January 1, 2008]

POST-MOVE NOTICE OF CHANGE OF RESIDENCE OF CONSERVATEE OR WARD
(Probate—Guardianships and Conservatorships)

Probate Code, § 2352
Cal. Rules of Court, rules 7.1013, 7.1063
www.courtinfo.ca.gov

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF (Name): ☐ CONSERVATEE ☐ MINOR	CASE NUMBER:

PROOF OF MAILING

1. I am over the age of 18. I am the appointed conservator or guardian of the above-named conservatee or ward, the conservator's or guardian's attorney, or an employee of the attorney. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify)*:
3. I mailed the foregoing *Post-Move Notice of Change of Residence of Conservatee or Ward* to each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ **depositing** the sealed envelope on the date and at the place shown in item 4 with the United States Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: b. Place mailed *(city, state)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM) ▶ (SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	Name and relationship to conservatee or ward	Address *(number, street, city, state, and zip code)*
1.	Attorney for conservatee or ward	
2.	Spouse or registered domestic partner of conservatee	
3.	Parent of ward	
4.	Parent of ward	
5.	Person with legal custody of ward at beginning of this proceeding	

☐ Continued on an attachment. *(You may use form GC-080(MA) to show additional addressees.)*

Draft 2, 10/01/07 Not Approved by the Judicial Council

GC-079(MA)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF (Name): ☐ CONSERVATEE ☐ MINOR	CASE NUMBER:

ATTACHMENT TO PRE-MOVE NOTICE OF PROPOSED CHANGE OF PERSONAL RESIDENCE OF CONSERVATEE OR WARD

(This attachment is for use with form GC-079.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship to conservatee or ward	Address *(number, street, city, state, and zip code)*
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	

Page ____ of ____

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE PERSON ☐ AND ESTATE OF (Name): ☐ CONSERVATEE ☐ MINOR	CASE NUMBER:

ATTACHMENT TO POST-MOVE NOTICE OF CHANGE OF RESIDENCE OF CONSERVATEE OR WARD

(This attachment is for use with form GC-080.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship to conservatee or ward	Address *(number, street, city, state, and zip code)*
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	

Form Approved for Optional Use
Judicial Council of California
GC-080(MA) [New January 1, 2008]

ATTACHMENT TO POST-MOVE NOTICE OF CHANGE OF RESIDENCE OF CONSERVATEE OR WARD (Probate—Guardianships and Conservatorships)

GC-080

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE NO.: FAX NO.: ATTORNEY FOR *(Name)*:	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE ☐ PERSON ☐ ESTATE OF *(Name)*:	
CHANGE OF RESIDENCE NOTICE	CASE NUMBER:

OBSOLETE FORM

NOTICE IS GIVEN of the following change of residence of:

1. Name:
   New address:
   Telephone number:
   Other contact number:

2. Name:
   New address:
   Telephone number:
   Other contact number:

3. Name:
   New address:
   Telephone number:
   Other contact number:

NOTE: You must notify the court EVERY time there is a change of residence for the minor or conservatee. You must obtain court permission BEFORE any out-of-state move.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . ▶ ____________________________________

(TYPE OR PRINT NAME) (SIGNATURE OF GUARDIAN OR CONSERVATOR)

American LegalNet, Inc.
www.USCourtForms.com

Probate Code sections 2352 and 2352.5

2352. (a) The guardian may establish the residence of the ward at any place within this state without the permission of the court. The guardian shall select the least restrictive appropriate residence that is available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

(b) The conservator may establish the residence of the conservatee at any place within this state without the permission of the court. The conservator shall select the least restrictive appropriate residence, as described in Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee.

(c) If permission of the court is first obtained, a guardian or conservator may establish the residence of a ward or conservatee at a place not within this state.

(d) An order under subdivision (c) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order.

(e) (1) The guardian or conservator shall file a notice of change of residence with the court within 30 days of the date of the change. The conservator shall include in the notice of change of residence a declaration stating that the conservatee's change of residence is consistent with the standard described in subdivision (b). The Judicial Council shall, on or before January 1, 2008, develop one or more forms of notice and declaration to be used for this purpose.

(2) The guardian or conservator shall mail a copy of the notice to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section 1822 and shall file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement pursuant to this paragraph in order to prevent harm to the conservatee or ward.

(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall mail a notice of his or her intention to change the residence of the ward or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence. If the notice is served less than 15 days prior to the proposed removal of the ward or conservatee, the guardian or conservatee shall set forth the basis for the emergency in the notice. The guardian or conservator shall file proof of service of that notice with the court.

(f) This section does not apply where the court has made an order under Section 2351 pursuant to which the conservatee retains the right to establish his or her own residence.

2352.5. (a) It shall be presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence.

(b) Upon appointment, the conservator shall determine the appropriate level of care for the conservatee.

(1) That determination shall include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence.

(2) If the conservatee is living at a location other than his or her personal residence at the commencement of the proceeding, that determination shall either include a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future.

(c) The determination made by the conservator pursuant to subdivision (b) shall be in writing, signed under penalty of perjury, and submitted to the court within 60 days of appointment as conservator.

(d) The conservator shall evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care.

(e) (1) This section shall not apply to a conservatee with developmental disabilities for whom the Director of the Department of Developmental Services or a regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, acts as the conservator and who receives services from a regional center pursuant to the Lanterman Developmental Disabilities Act, Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code.

(2) Services, including residential placement, for a conservatee described in paragraph (1) who is a consumer, as defined in Section 4512 of the Welfare and Institutions Code, shall be identified, delivered, and evaluated consistent with the individual program plan process described in Article 2 (commencing with Section 4640) of Chapter 5 of Division 4.5 of the Welfare and Institutions Code.

SP07-13

Probate: Notice of Changes of Residence of Conservatees or Wards
(adopt rules 7.1013 and 7.1063 of the California Rules of Court; revise form GC-080 and adopt form GC-079; and approve forms GC-079(MA) and GC-080(MA)).

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Donna R. Bashaw Immediate past President of National Academy of Elder Law Attorneys (NAELA) Laguna Hills, California 92653	N	Y	Do not agree with proposed changes. As elder law attorneys committed to the safety and preservation of dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity, and just plain hard work. Thus, our comments are made not in the spirit of criticism bur in the spirit of appreciation of the enormity of the task to which you were commissioned. While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will preclude conscientious but nonprofessional,	

 Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product. Rule 7.1063 Change of Conservatee's residence We believe that protections are already in place if enforced by the court and that these new provisions only add additional cost and will create more family disputes. Conclusions: We believe that many of the changes made are unnecessary and merely an over reaction to the L.A. Times articles. The main problem in the past has been a lack of funding for the courts, especially to hire investigators. Increased funding is a beneficial part of the changes. However, we believe that the changes have made it more expensive for the ward and conservatee and have effectively priced the protection of guardianships and conservatorships out of the middle class market. This is the most serious and detrimental problem with the new laws and needs to be	The duty to notify certain persons about a conservatee's change of residence is a requirement of Probate Code section 2352 as amended by the Omnibus Conservatorship and Guardianship Reform Act of 2006. This comment appears to be addressed to the wisdom of the legislation, not to this rule and form proposal. Therefore, the committee cannot respond with changes to the proposal that would satisfy the commentator's concerns.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				rectified immediately. The second most serious problem is with the new accounting rules which, we believe, are unnecessary. Thank you for your efforts in implementing this new law. We, as elder law attorneys, are happy to contribute in anyway to assist you in your work.	
2.	Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California	AM	Y	Agree with proposed changes if modified. Agree with the requirement of service by mail of notice of intent to change personal residence on conservatee and ward over 11, but service by mail of completed change of address on conservatee or ward over 11 should not be required because change of address will have already been completed when notice is served.	The committee agrees with this comment. Mailing a post-move notice to a ward 12 years of age or older or conservatee who has already experienced the move would make little sense. The committee has eliminated this requirement in rules 7.1010(c) and 7.1063(c). These rules provide for service on a ward's or conservatee's attorney, however.
3.	Ms. Malea Chavez Staff Attorney Superior Court of San Francisco	A	Y	Agree with proposed changes.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	County, San Francisco, California				
4.	Ms. Margaret K. Herring Attorney Herring & Herring, APC Coronado, California	AM	N	Agree with proposed changes if modified. Practitioners need to know that box 4 (least restrictive placement) is required for conservatorship cases— the conservator must sign under penalty of perjury to that statement for every move. Since the form could apply to either guardianship or conservatorship, I am afraid a box that may or may not be checked could cause a lot of unintended problems.	The committee has revised the form that was circulated for comment by breaking it into two separate forms. The new form, designated as form GC-079, would be for the pre-move notice required under Probate Code section 2352(e)(3). Form GC-080 would continue to be used for the post-move notice under section 2352(e)(1) and (2). Item 4 of the form circulated for public comment would become item 3 in the revised form GC-080. That item would be accompanied by an instruction calling for the check box for that item to be checked if the case is a conservatorship. The instructions at the top of the form advise fiduciaries that item 3 applies only to conservatorships.
5.	Ms. Jamie Lamborn Retired Sacramento, California	AM	N	Agree with proposed changes if modified. I find the court-appointed conservator, after gaining control of the conservatee's residence,	The committee cannot respond to this comment, which does not

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				uses the conservatee's finances to upgrade or fix the residence, puts the conservatee into a nursing or care home, and the attorney representing the conservator petitions the court to sell the residence. The judge is told a hard luck story of finances being depleted and the residence is sold. In my opinion, this is the greatest asset of interest to the conservator and her attorney. The system needs oversight.	address the specifics of the proposal or indicate what modifications in the proposed rules or forms would meet with the commentator's approval.
6.	Mr. Keeley C. Luhnow Associate Attorney La Jolla, California	AM	N	Agree with proposed changes if modified. I completely disagree with the council's interpretation of this code section and the decision to treat as a personal residence any residence where the conservatee lives at the establishment of the conservatorship. If the conservatee already lives outside of the home, then he or she lives outside of the home; it should not be decided that suddenly a facility or board and care is the person's personal residence just for convenience. This nullifies the distinction between the 15-day requirement and the 30-day requirement. I completely object to 7.1063(b)(2).	 The proposed rule has been modified to define the conservatee's personal residence as the residence he or she considered or believed, or appeared to consider or believe, to be his or her permanent residence at the time the conservatorship was commenced (the date the first petition for appointment of a conservator was filed), whether or not the conservatee was then actually in that residence. The personal residence could be the home the conservatee had lived in for a long time before moving to a residential care facility shortly before the case was commenced, or

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					could be a care facility the conservatee considers to be home.
7.	Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California	AM	Y	Agree with proposed changes if modified. The definition of "conservatee's personal residence" does not include living in an apartment or with family members or friends. PFAC recommends that the definition of an institutional residential setting be clarified. Does the definition include only a hospital or skilled nursing facility, or is it more broadly defined to include assisted living and other residential care facilities?	The revised definition of "personal residence" in rule 7.1063(b) is based on the conservatee's belief as to its permanence, not on its type. The personal residence could certainly be an apartment or in a family member's home. The definition of an institutional residential setting has been deleted from the proposed rule. The phrase "residential care facility" is used instead, and specifically includes board and care, intermediate care, skilled nursing, and secured perimeter facilities. An assisted living residence would normally be considered an intermediate care facility.
8.	Ms. Cheryl Phillips Court Rules Specialist CompuLaw, LLC Los Angeles, California	AM	Y	Agree with proposed changes if modified. CRC rules 7.1013(c) and 7.1063(c) are ambiguous as to when the 30-day period for	The language of subdivision (c) of both rules is taken from Probate

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				giving notice runs. CRC 7.1013(c) states, "The guardian of the person of a minor must file a notice of a change of the ward's residence with the court within 30 days of the date of the change." The phrase "within 30 days of the date of the change" is somewhat unclear. Does this mean in the 30 days before the date of the change or in the 30 days after the date of the change? Perhaps it would be less confusing if the rule read, "within 30 days after the date of the change."	Code section 2352(e)(1), concerning the post-move notice, language that was contained in section 2352 before the 2006 amendments and always meant within 30 days after the change. The headings placed on amended subdivision (c) of rules 7.1013 and 7.1063 and the title of form GC-080, the form designed for notice of a change of residence, refers to a "post-move" notice. These modifications to the proposed rules and form GC-080 should be sufficient to address this commentator's concerns.
9.	Ms. Mary Joy Quinn Director, Probate Superior Court of San Francisco County, San Francisco, California	AM	N, Y	Agree with proposed changes if modified. The rules and the form should include a procedure for objecting to a proposed move.	It is unclear under current law whether there is a basis to object to a proposed move within California. Probate Code sections 2352(a) and (b) still provide that a conservator or guardian may establish the

 Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					conservatee's or ward's residence anywhere in the state without permission of the court. Presumably, however, a move that does not satisfy the residence standard of section 2352(a) or (b)—the least restrictive appropriate residence available and necessary to meet the needs of the ward or conservatee and in his or her best interests—could be the basis of an objection by the ward or conservatee, or a relative or other interested person on his or her behalf. The procedure for such an objection is also unclear under current law. The 2006 amendment of section 2352 to provide a pre-move notice indicates that the Legislature may have contemplated the possibility of an objection to a proposed move, but the statute does not provide specific grounds for objection or define a procedure for making it. Senate Bill 800 in this year's Legislature would provide two

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					alternatives: (1) a petition for authority to change a conservatee's personal residence brought by a petitioner for appointment of a conservator or an appointed conservator, or (2) a notice of proposed action by an appointed conservator. Under the latter alternative, if a notice of proposed action is given by the fiduciary and no one indicates opposition to the move within a specified period of time, the move could proceed. If opposition is indicated, the conservator would be required to petition the court for authority to make the move. SB 800 would also repeal the general authority of a conservator to establish a conservatee's residence anywhere in the state. That repeal would be necessary to implement the rest of the bill's provisions concerning this subject. SB 800 did not pass the Legislature this year. It is likely to become a two-year bill. If the bill passes next

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					year, both the form and the rule governing conservatorships would have to be rewritten. Because of this uncertainty, the committee decided not to provide guidance on objections to moves of conservatees and wards at this time. The committee will revisit this issue if SB 800 is enacted next year.
10.	Ms. Dominique Sanz-David Access Center San Francisco, California	A	N	Agree with proposed changes. Is there any way for a family member or the court to oppose the residence change?	See the committee's response to the preceding comment.
11.	Mr. Peter S. Stern Vice-Chair, Executive Committee of the Trusts and Estates Section of the Califronia State Bar Palo Alto, Californiaw	N	Y	The Executive Committee does not agree with the proposed changes. **Notice of Change of Address After Move of Conservatee:** Notification to the conservatee that he or she has been moved is superfluous and should be deleted from the proposed form. Prior to Senate Bill 1116, Probate Code section 2352(c) required only that "the guardian or conservator shall promptly mail to the court notice of all changes in the residence of the conservatee." SB 1116 sought to protect the conservatee's personal residence and	The committee agrees that post-move notice to a conservatee (or a ward) is superfluous. The requirement has been deleted from rules 7.1013(c) and 7.1063(c). Conservatees and wards will have learned of the move when they make it. They do not need a written notice of what has already taken place in their presence.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				established a rebuttable presumption that the least restrictive residence of a conservatee was where the conservatee lived at the beginning of the conservatorship procedure. As part of the general goal of making conservatorships more transparent to family members, the bill provided that after a change of residence, notice should be mailed to all persons entitled to notice under Probate Code Section 1822(b)—all persons entitled to notice of the filing of the petition to establish conservatorship. Suggestions for substantial portions of SB 1116 were drafted by the Legislation Subcommittee of the Judicial Council Probate and Mental Health Advisory Committee, including the post-move notice provision. In the discussions about that notice, there was no intention articulated to require notice of the move to the conservatee for the obvious reason that the conservatee had already been moved. **Notice of Intent to Move Conservatee From Personal Residence:** In June 2006, The Executive Committee voted to oppose SB 1116 unless it was amended to provide for notice to family members before the (proposed) conservatee was moved from the personal residence. The Executive Committee had several concerns. First, it was hoped that	

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				providing such notice to the same class of persons who would receive the notice after the move of the conservatee would obviate the need for a mandatory hearing in every case before such a move would take place. Second, it would continue the tendency throughout the conservatorship legislation to make matters of vital interest to the happiness and well being of the conservatee transparent by requiring their disclosure to family members. The Executive Committee's suggestions were incorporated in SB 1116 in its August 7, 2006 amendment. The text of subdivision (e)(3) is the language of the August 7, 2006, amendment, as follows: "(3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, the guardian or conservator shall, in the absence of an emergency, mail a notice of his or her intention to change the residence of the ward or conservatee to a person entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. That notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her	

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				personal residence. The guardian or conservator shall file proof of service of that notice with the court." The Executive Committee believes that the intent of the statute, following as it does the proposed language submitted by the Executive Committee to the legislature in June 2006, was not to provide notice to the conservatee but to make the process of removing a conservatee from his or her personal residence known in advance to family members within the second degree. Sending a written notice to a conservatee is superfluous; either the conservatee knows of the move already, since it is not likely there would be an attempt to move a conservatee without some form of discussion or direct intervention of the conservator, or the conservatee would not benefit from a mere written notice.	The committee believes that exclusion of the conservatee from the list of persons to be mailed the pre-move notice under Probate Code section 2352(e)(3) was inadvertent. The exclusion stems from the statute's reference to Probate Code section 1822(b) to define the persons to receive the notice. The conservatee is not mentioned in section 1822(b) as entitled to mailed notice of the hearing on a petition for appointment of a general conservator because the conservatee must be personally served with the petition and a citation under section 1823. But section 2352(e)(3) also requires service of pre-move notice in a guardianship to the persons entitled to notice under Probate Code section 1511(b), which includes proposed wards over the age of 11. There is no reason to require service on a ward in a

 Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					guardianship but not a conservatee in a conservatorship.
					The committee believes the purpose for the requirement of pre-move notice of a move from a conservatee's personal residence at commencement of the proceeding is to give the conservatee and close family members an opportunity to object to the move before it takes place. The grounds for such an objection are unclear and the procedure for making the objection is uncertain at this time and may not become clear and certain unless and until Senate Bill 800 passes next year as a two-year bill (see response to the comment of Ms. Mary Joy Quinn).
				Further, the statute contemplates providing a notice of changing the residence of the conservatee. It is incomplete, in the opinion of the Executive Committee, merely to state that the residence will be changed; the notice must indicate to where the residence will be changed.	The form for the pre-move notice, new form GC-079, includes space for the new address, plus a description of the type of residence that is proposed.
					The Judicial Council must follow

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				If the Judicial Council believes that the intent of the statute is to provide adequate notice to the conservatee prior to the move, the correct response would be to provide a rule that requires personal notice be given to the conservatee by the conservator, who would then be required to file with the court a document akin to the Citation indicating under penalty of perjury that the conservator had discussed personally with the conservatee the proposed move. It is illusory to believe that mailing a form with a check box to a conservatee is adequate notice of anything; if the Judicial Council believes the intent of the legislation was to give notice to the conservatee, make that notice real, effective, and personal.	the statute, which requires written notice. The committee believes that pre-move notice to the conservatee's attorney of record and to the conservatee's close relatives, who have the right to act in the proceeding for the conservatee's benefit, is not illusory notice.
12.	Superior Court of California County of Los Angeles Los Angeles, California	AM	Y	Agree with proposed changes if modified. Proposed revised Judicial Council form, GC-80, *Notice of Proposed Change of Personal Residence*: The first sentence in paragraph 1 of the **Information for Conservator and Guardian** is confusing. Would it be clearer to state:	The new pre-move notice form, form GC-079, would commence the information statement with the following:

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				"Unless there is an emergency requiring a shorter period of time, you must mail, at least 15 days before the date of the proposed move, a notice of your intention to change the conservatee's or ward's personal residence to the conservatee . . . (The conservatee's or ward's personal residence is . . .) . . . "	"You must mail, at least 15 days before the date of the proposed move (unless you can show that an emergency requires a shorter time) a notice of your intention to change the conservatee's or ward's personal residence (his or her residence as defined in rules 7.1063(b) or 7.1013(b) of the Cal. Rules of Court) . . . " The committee believes this sentence is clearer than the previous version commented upon, and conveys more accurate information to the conservator or guardian.
13.	Ms. Robin C. Westmiller President National Association to Stop Guardian Abuse Thousand Oaks, California	AM	Y	Agree with proposed changes if modified. Add: If a family member objects, by responding to notice, the conservatee may not be relocated until after a formal hearing. There is nothing in this section which provides	Current law would not support the proposed language. If Senate Bill 800 is enacted in 2008, a procedure would be established that would create the remedy this commentator seeks. (See comment of Ms. Mary Joy Quinn and the committee's response.) The committee believes that the

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				any form or information on the process to object to moving the conservatee, only the notification of the move. There is nothing in any of the text which gives family members the opportunity to protest such a move and as long as the conservator sends out notice, they are still free to move the person in spite of what the family may want. As long as the conservator follows the new "rules," there is still nothing a family member can to do to stop the move.	pre-move notice form cannot give information about objections to the proposed move until the fate of SB 800 in the 2008 Legislature is known. If that legislation is enacted, the notice form would be revised accordingly.
14.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	A	N	Agree with proposed changes.	No response necessary.

County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

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JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: September 10, 2007

SUBJECT: Probate: Standards for the Conduct of Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber rule 7.756 of the California Rules of Court and adopt rules 7.756, 7.1009, and 7.1059) (Action Required)

Issue Statement

The Probate Code contains detailed provisions governing the duties and responsibilities of conservators and guardians of estates, and prescribes an overall standard for their exercise: ordinary care and diligence.[1] But these statutes do not provide guidelines for the proper conduct of these fiduciaries.

The Omnibus Conservatorship and Guardianship Reform Act of 2006 (the Omnibus Act) requires the Judicial Council to adopt a rule of court, effective on or before January 1, 2008, to provide these guidelines, referred to in the statute as "uniform standards of conduct," specifically to include, at a minimum, standards for determining compensation that may be charged to conservatees or wards for asset management.[2]

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[1] See Probate Code section 2401(a). The powers and duties of these fiduciaries are prescribed in chapter 6, part 4, division 4 of that code, sections 2400–2595.

[2] Stats. 2006, ch. 490–493 (respectively, Senate Bill 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363). The direction to the Judicial Council is contained in new Probate Code section 2410, added by section 22 of chapter 493 (AB 1363). Section 2410 provides:

> "On or before January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, renumber rule 7.756 of the California Rules of Court as rule 7.776, adopt a new rule 7.756 to provide statewide standards for determining just and reasonable compensation for conservators and guardians from the estates of the persons in their care, and adopt rules 7.1009 and 7.1059 to establish standards for the conduct of guardians and conservators of estates, respectively.

The text of the proposed new and renumbered rules of court is attached at pages 7–13.

Rationale for Recommendation

Proposed rules 7.756, 7.1009, and 7.1059 are the product of direct consultation between this advisory committee and representatives of the organizations mentioned in section 2410.

Rule 7.756

This rule would specify a nonexclusive list of factors courts may consider in determining just and reasonable compensation for conservators or guardians from the estates of their conservatees or wards. (See proposed rule 7.756(a).) The factors listed are modeled after those listed in current rule 7.756 (to be renumbered as rule 7.776 in this proposal), concerning court determination of just and reasonable compensation of trustees;[3] and rule 4-200(B) of the Rules of Professional Conduct of the State Bar, which lists factors to be considered in determining whether an attorney's fee is prohibited as unconscionable. Additional factors are unique to conservatorships and guardianships.[4]

Subdivision (b) of the rule would provide that no single factor listed in the rule is to be exclusively determinative, and subdivision (c) would provide that the rule is

California, the National Guardianship Association, and the National Association of Professional Geriatric Care Managers, shall adopt a rule of court that shall require uniform standards of conduct for actions that conservators and guardians may take under . . . [chapter 6] on behalf of conservatees and wards to ensure that the estate[s] of conservatees or wards are maintained and conserved as appropriate and to prevent risk of loss or harm to the conservatees or wards. This rule shall include at a minimum standards for determining the fees that may be charged to conservatees or wards and standards for asset management."

[3] Renumbered rule 7.776 is based on *Estate of Nazro* (1971) 15 Cal.App.3d 218, 221, and *Estate of McLaughlin* (1954) 43 Cal.2d 462, 467–468.

[4] See proposed rule 7.756(a)(1) and (4): (1) The size and nature of the conservatee's or ward's estate; and (4) The conservatee's or ward's anticipated future needs and income.

not authority for a court to set an inflexible maximum or minimum compensation or a maximum approved hourly rate for compensation.

Rule 7.1059

Rule 7.1059 would state principles to guide conservators of estates. The rule is divided into two main areas of interest. The first pertains to avoidance of actual and apparent conflicts of interest with the conservatee (rule 7.1059(a)). This portion of the rule lists four areas of concern that touch on the conservator's relationships to providers of services to conservatees in his or her care, including in-home caregivers and providers of institutional residential housing to the impaired elderly.

The second area of interest is specific estate management responsibilities, described in rule 7.1059(b). All are important, but among the most significant are the duties to (1) keep the conservatee's money and property separate from the conservator's or any other person's (para. (b)(6)); (2) keep accurate records of all transactions and, for professional conservators, to maintain prudent accounting systems and safeguards to guard against embezzlement and other cash-asset mismanagement (para. (b)(8)); and (3) secure the conservatee's real and personal property as soon as possible after appointment, including insuring it at appropriate levels and protecting it against damage, destruction, or loss (para. (b)(10)). Other paragraphs in rule 7.1059(b) describe a conservator's responsibilities concerning pursuit of claims held by the estate, defense of claims against it, and collection of the conservatee's public and insurance benefits. (See paragraphs (b)(13)–(15).)

Another important responsibility concerns the disposition of the conservatee's property. Rule 7.1059(b)(18) contains a list of factors to be considered by a conservator when he or she must decide whether to retain or dispose of estate property. One of the factors listed in paragraph 18 is consideration of the previously-expressed and current desires of the conservatee concerning the property, "subject to the factors specified in Probate Code section 2113." Section 2113, a new statute added by the Omnibus Act, requires the conservator to accommodate the conservatee's desires in all areas, not just disposition of estate property—except to the extent that doing so would violate the conservator's fiduciary duties or impose an unreasonable expense on the conservatorship estate.

The rule would also require the conservator to consider the conservatee's ability to manage some of his or her assets, and recommends appropriate action to enable the conservatee to do so, consistent with that ability (rule 7.1059(b)(16)).

Paragraph (17) of rule 7.1059(b) would require estate conservators to advise the conservatee's family members in advance of disposition of the conservatee's tangible personal property to give them an opportunity to acquire the property,

which may have considerable sentimental value to family members above and beyond its monetary worth.

One of the most important sources of the standards provided in rule 7.1059(b) is the *Standards of Practice*, copyrighted and published by the National Guardianship Association,[5] one of the organizations consulted by the advisory committee in the development of this rule. The committee recognizes the contribution of the National Guardianship Association and its *Standards of Practice* in an Advisory Committee Comment following proposed rule 7.1059.

Rule 7.1009
This rule would substantially restate the conflict provisions of rule 7.1059(a) and expressly incorporate the standards of practice in proposed rule 7.1059(b), and apply them to guardians of estates, except as the context otherwise requires.[6] Two principles of estate management unique to guardianships are expressly stated in rule 7.1009(b), however. These are (1) management for the long-term benefit of the ward if he or she has a parent available who can provide sufficient support; and (2) consideration of a request for court authority to support the ward from the estate if he or she does not have a parent available to provide sufficient support. (See Prob. Code, § 2422.)

Alternative Actions Considered
Because of the express requirements of section 2410, the advisory committee did not consider alternatives to proposing one or more rules of court to address the issues raised in the statute. The committee decided, however, to go beyond the statutory directive in one respect. Section 2410 requires the council to establish standards for determining compensation for asset management. The factors courts may consider under proposed rule 7.756 would apply equally to services performed by *and* compensation sought from the estate by conservators and guardians of the person.

Comments From Interested Parties
This proposal was circulated for comment in a special cycle to a list of judicial officers, probate court staff interested in probate matters; individuals and organizations concerned about the care and protection of the impaired elderly, and

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[5] The term "guardianship" as used by the National Guardianship Association in its name, publications, and organizational mission, refers primarily to protective proceedings for adults, not minors.

[6] One difference between the conflict provisions for guardians and conservators, for example, pertains to the provision of housing directly by the conservator or guardian for the conservatee or ward. Conservators other than nonprofessional family members are discouraged from providing housing directly, but guardians are not. (Compare rules 7.1059(a)(1) and 7.1009(a)(1).). Rule 7.1009 recognizes that most wards in fact live with their guardians.

probate-interest sections of the State Bar and local bar associations, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Sixteen comments were received. Fifteen commentators approved of the rules or approved of them with modifications. A chart containing the comments and staff's recommended responses is attached beginning at page 15, following the text of the proposed rules of court and Probate Code section 2410.

Judge and advisory committee member F. Clark Sueyres, Jr., points out that the reference to "service providers" in rule 7.1059(a)(2) is unclear and could refer to the employees of a professional fiduciary. The committee intended the term to refer to persons or firms providing services to the conservatee or the estate, not to employees of the conservator providing services to the conservator in the performance of its duties. The committee added a new paragraph (5) to rule 7.1059(a) to clarify that employees of conservators are not service providers for purposes of rule 7.1059(a) if their compensation is payable by the conservator and their services are included in the conservator's request for an award of compensation or are not paid from the conservatorship estate. An identical provision was placed in rule 7.1009(a)(5) to apply to guardians.

Ms. Mary Joy Quinn, the manager of the probate department of the court in San Francisco and a former member of the advisory committee, expresses concern that proposed rule 7.756(c) as circulated for comment would prevent a court from applying an objective standard such as a presumptive hourly rate or a percentage of the value of the estate in its determination of compensation. The committee modified the rule by substituting the term "inflexible" for "fixed." As modified, the rule would permit Northern California courts like San Francisco, which have percentage-of-estate guidelines for compensation for estate management in guardianships and conservatorships, to continue to apply these guidelines as long as the guidelines are not treated as inflexible maximums or minimums or a maximum hourly rate, and as long as the courts also apply other relevant factors listed in rule 7.756(a).

On behalf of the Executive Committee of the State Bar's Trusts and Estates Section, advisory committee member Peter Stern raises a number of issues. First, he seeks clarification of the terms "standards" and "factors" used in the body and headings of proposed rule 7.756 and requests a statement in the rule that a petitioning fiduciary need not relate fees requested to the factors listed in rule 7.756(a) in a fee declaration based on itemized time spent. The committee did not modify the rule in response to this comment but did note that there is no requirement that either the court or the fiduciary relate the fee request to specific factors listed in the rule.

Mr. Stern's second comment requests that rule 7.1059(b)(2) be modified to prohibit "unreasonably speculative investments, as determined by the facts and circumstances of the conservatorship estate" rather than calling for the estate conservator to refrain from speculative investments. In response to this comment, the committee modified the rule to state that an estate conservator must refrain from unreasonably risky investments. Rule 7.1059(b)(2) would not forbid any specific investment. Rather, conservators will continue to be authorized to invest in any vehicle listed in Probate Code section 2574 or approved by the court under section 2590.

Rules 7.1059(b)(9) and (10) call for the fiduciary to undertake as soon as possible after appointment and qualification to locate and safeguard the conservatee's estate planning documents and secure the property of the estate. Mr. Stern requests that these rules be prefaced with the phrase "use ordinary care and diligence," repeating the general standard of Probate Code section 2401(a) for the exercise of all management and control authority by a conservator of the estate. The committee declined to make this change because that standard applies to all actions of the estate conservator. However, the committee did modify the introductory statements of rules 7.1009 and 7.1059 to emphasize that the standards of conduct provided in these rules are all subject to the overall standard of section 2401(a).

Los Angeles attorney Michael Gill makes lengthy comments and objections on a number of topics. His most significant comment is that rule 7.756(a) would place an undue emphasis on the size of the conservatee's estate as a factor in setting compensation payable from it, and that at a minimum this factor should not apply in considering the services of a conservator of the person. The committee disagrees with Mr. Gill's analysis; the size of the conservatorship estate is a factor the court is expressly permitted to consider when determining fees payable from the estate to either a personal or estate conservator under *Conservatorship of Levitt* (2001) 93 Cal.App.4th 544. Moreover, the order of the factors listed in the rule is not an indication of their applicability or importance in an individual case.

Implementation Requirements and Costs

Adoption of these rules will result in the usual costs associated with the adoption of a new rule of court. The new rules should not significantly increase the cost of administering a conservatorship or guardianship or supervising the fiduciary. Publicity about the guidelines and adherence to them should in fact reduce these expenses.

Rule 7.756 of the California Rules of Court is renumbered as rule 7.776, and rules 7.756, 7.1009, and 7.1059 are adopted, effective January 1, 2008, to read:

1 **Rule 7.756. Compensation of conservators and guardians**
2
3 **(a) Standards for determining just and reasonable compensation**
4
5 The court may consider the following nonexclusive factors in determining
6 just and reasonable compensation for a conservator from the estate of the
7 conservatee or a guardian from the estate of the ward:
8
9 (1) The size and nature of the conservatee's or ward's estate;
10
11 (2) The benefit to the conservatee or ward, or his or her estate, of the
12 conservator's or guardian's services;
13
14 (3) The necessity for the services performed;
15
16 (4) The conservatee's or ward's anticipated future needs and income;
17
18 (5) The time spent by the conservator or guardian in the performance of
19 services;
20
21 (6) Whether the services performed were routine or required more than
22 ordinary skill or judgment;
23
24 (7) Any unusual skill, expertise, or experience brought to the performance
25 of services;
26
27 (8) The conservator's or guardian's estimate of the value of the services
28 performed; and
29
30 (9) The compensation customarily allowed by the court in the community
31 where the court is located for the management of conservatorships or
32 guardianships of similar size and complexity.
33
34 **(b) No single factor determinative**
35
36 No single factor listed in (a) should be the exclusive basis for the court's
37 determination of just and reasonable compensation.

(c) No inflexible maximum or minimum compensation or maximum approved hourly rate

This rule is not authority for a court to set an inflexible maximum or minimum compensation or a maximum approved hourly rate for compensation.

Rule ~~7.756.~~ 7.776. Compensation of trustees

* * *

Rule 7.1009. Standards of conduct for the guardian of the estate

Except as otherwise required by statute, in the exercise of ordinary care and diligence in managing and controlling the estates of the ward, the guardian of the estate is to be guided by the following principles:

(a) Avoidance of actual and apparent conflicts of interest with the ward

The guardian must avoid actual conflicts of interest and, consistent with his or her fiduciary duty to the ward, the appearance of conflicts of interest. The guardian must avoid any personal, business, or professional interest or relationship that is or reasonably could be perceived as being self-serving or adverse to the best interest of the ward. In particular:

(1) Except as appropriate for guardians who are not professional fiduciaries with full disclosure to the court, the guardian should not personally provide medical or legal services to the ward;

(2) The guardian must be independent from all service providers, except when (a) no other guardian or service providers are reasonably available, (b) the exception is in the best interest of the ward, (c) the circumstances are fully disclosed to the court, and (d) prior court approval has been obtained;

(3) The guardian must neither solicit nor accept incentives from service providers; and

(4) The guardian must not engage his or her family members to provide services to the ward for a profit or fee when other alternatives are reasonably available. Where family members do provide such services, their relationship to the guardian must be fully disclosed to the court, the terms of engagement must be in the best interest of the ward

1 compared to the terms available from independent service providers,
2 the services must be competently performed, and the guardian must be
3 able to exercise appropriate control and supervision.
4
5 A guardian's employees, including family members, are not service
6 providers and are not providing services to the ward for a profit or fee within
7 the meaning of this rule if their compensation is paid by the guardian and
8 their services are either included in the guardian's petition for allowance of
9 the guardian's compensation or are not paid from the ward's estate.
10
11 **(b) Guardianship estate management**
12
13 In addition to complying with applicable standards of estate management
14 specified in rule 7.1059(b), the guardian of the estate must:
15
16 (1) Manage the estate primarily for the ward's long-term benefit if the
17 ward has a parent available who can provide sufficient support;
18
19 (2) If it would be in the best interest of the ward and the estate, consider
20 requesting court authority to support the ward from the estate if the
21 ward does not have a parent available who can provide sufficient
22 support.
23
24 **Advisory Committee Comment**
25
26 The Probate and Mental Health Advisory Committee consulted with several organizations in the
27 development of rule 7.1009, including the National Guardianship Association, a nationwide
28 voluntary association of professional and family fiduciaries, guardians, and allied professionals.
29 In developing this rule, the Probate and Mental Heath Advisory Committee considered the
30 National Guardianship Association's Standards of Practice. Some of these standards have been
31 incorporated into the rule.

1 **Rule 7.1059. Standards of conduct for the conservator of the estate**
2
3 Except as otherwise required by statute, in the exercise of ordinary care and
4 diligence in managing and controlling the estate of the conservatee, the
5 conservator of the estate is to be guided by the following principles:
6
7 **(a) Avoidance of actual and apparent conflicts of interest with the**
8 **conservatee**
9
10 The conservator must avoid actual conflicts of interest and, consistent with
11 his or her fiduciary duty to the conservatee, the appearance of conflicts of
12 interest. The conservator must avoid any personal, business, or professional
13 interest or relationship that is or reasonably could be perceived as being self-
14 serving or adverse to the best interest of the conservatee. In particular:
15
16 (1) Except as appropriate for conservators who are not professional
17 fiduciaries with full disclosure to the court, the conservator should not
18 personally provide housing, medical, or legal services to the
19 conservatee;
20
21 (2) The conservator must be independent from all service providers, except
22 when (a) no other conservator or service providers are reasonably
23 available, (b) the exception is in the best interest of the conservatee, (c)
24 the circumstances are fully disclosed to the court, and (d) prior court
25 approval has been obtained;
26
27 (3) The conservator must neither solicit nor accept incentives from service
28 providers; and
29
30 (4) The conservator must not engage his or her family members to provide
31 services to the conservatee for a profit or fee when other alternatives
32 are reasonably available. Where family members do provide such
33 services, their relationship to the conservator must be fully disclosed to
34 the court, the terms of engagement must be in the best interest of the
35 conservatee compared to the terms available from independent service
36 providers, the services must be competently performed, and the
37 conservator must be able to exercise appropriate control and
38 supervision.
39
40 A conservator's employees, including family members, are not service
41 providers and are not providing services to the conservatee for a profit or fee
42 within the meaning of this rule if their compensation is paid by the
43 conservator and their services are either included in the conservator's

1 petition for allowance of the conservator's compensation or are not paid
2 from the conservatee's estate.
3
4 **(b) Conservatorship estate management**
5
6 The conservator of the estate must:
7
8 (1) Provide competent management of the conservatee's property, with the
9 care of a prudent person dealing with someone else's property;
10
11 (2) Refrain from unreasonably risky investments;
12
13 (3) Refrain from making loans or gifts of estate property, except as
14 authorized by the court after full disclosure;
15
16 (4) Manage the estate for the benefit of the conservatee;
17
18 (5) Subject to the duty of full disclosure to the court and persons entitled
19 under law to receive it, closely guard against unnecessary or
20 inappropriate disclosure of the conservatee's financial information;
21
22 (6) Keep the money and property of the estate separate from the
23 conservator's or any other person's money or property, except as may
24 be permitted under statutes authorizing public guardians or public
25 conservators and certain regulated private fiduciaries to maintain
26 common trust funds or similar common investments;
27
28 (7) Hold title reflecting the conservatorship in individual securities, mutual
29 funds, securities broker accounts, and accounts with financial
30 institutions;
31
32 (8) Keep accurate records of all transactions. Professional fiduciaries must
33 maintain prudent accounting systems and procedures designed to
34 protect against embezzlement and other cash-asset mismanagement;
35
36 (9) Undertake as soon as possible after appointment and qualification to
37 locate and safeguard the conservatee's estate planning documents,
38 including wills, living trusts, powers of attorney for health care and
39 finances, life insurance policies, and pension records;
40
41 (10) Undertake as soon as possible after appointment and qualification to
42 secure the real and personal property of the estate, insuring it at

1 appropriate levels, and protecting it against damage, destruction, or
2 loss;
3
4 (11) Make reasonable efforts to preserve property identified in the
5 conservatee's estate planning documents;
6
7 (12) Communicate as necessary and appropriate with the conservator of the
8 person of the conservatee, if any, and with the trustee of any trust of
9 which the conservatee is a beneficiary;
10
11 (13) Pursue claims against others on behalf of the estate when it would be in
12 the best interest of the conservatee or the estate to do so. Consider
13 requesting prior court authority to pursue or compromise large or
14 complex claims, particularly those that might require litigation and the
15 assistance of counsel and those that might result in an award of
16 attorneys' fees for the other party against the estate if unsuccessful, and
17 request such approval before entering into a contingent fee agreement
18 with counsel;
19
20 (14) Defend against actions or claims against the estate when it would be in
21 the best interest of the conservatee or the estate to do so. Consider
22 requesting court approval or instructions concerning the defense or
23 compromise of litigation against the estate;
24
25 (15) Collect all public and insurance benefits for which the conservatee is
26 eligible;
27
28 (16) Evaluate the conservatee's ability to manage cash or other assets and
29 take appropriate action, including obtaining prior court approval when
30 necessary or appropriate, to enable the conservatee to do so to the level
31 of his or her ability;
32
33 (17) When disposing of the conservatee's tangible personal property, inform
34 the conservatee's family members in advance and give them an
35 opportunity to acquire the property, with approval or confirmation of
36 the court; and
37
38 (18) In deciding whether it is in the best interest of the conservatee to
39 dispose of property of the estate, consider the following factors, among
40 others, as appropriate in the circumstances:
41
42 (A) The likely benefit or improvement of the conservatee's life that
43 disposing of the property would bring;

1
2 (B) The likelihood that the conservatee would need or benefit from
3 the property in the future;
4
5 (C) Subject to the factors specified in Probate Code section 2113, the
6 previously expressed or current desires of the conservatee
7 concerning the property;
8
9 (D) The provisions of the conservatee's estate plan concerning the
10 property;
11
12 (E) The tax consequences of the disposition transaction;
13
14 (F) The impact of the disposition transaction on the conservatee's
15 entitlement to public benefits;
16
17 (G) The condition of the entire estate;
18
19 (H) Alternatives to disposition of the property;
20
21 (I) The likelihood that the property will deteriorate or be subject to
22 waste if retained in the estate; and
23
24 (J) The benefit versus the cost or liability of maintaining the property
25 in the estate.
26
27 **Advisory Committee Comment**
28
29 The Probate and Mental Health Advisory Committee consulted with several organizations in the
30 development of rule 7.1059, including the National Guardianship Association, a nationwide
31 voluntary association of professional and family fiduciaries, guardians, and allied professionals.
32 In developing this rule, the Probate and Mental Heath Advisory Committee considered the
33 National Guardianship Association's Standards of Practice. Some of these standards have been
34 incorporated into the rules.

Probate Code section 2410

2410. On or before January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers, shall adopt a rule of court that shall require uniform standards of conduct for actions that conservators and guardians may take under this chapter on behalf of conservatees and wards to ensure that the estate[s] of conservatees or wards are maintained and conserved as appropriate and to prevent risk of loss or harm to the conservatees or wards. This rule shall include at a minimum standards for determining the fees that may be charged to conservatees or wards and standards for asset management.

	Commentator	Position	Comment on behalf of group?	Comment	Committee response
1.	Ms. Donna R. Bashaw Immediate past President of National Academy of Elder Law Attorneys (NAELA) Laguna Hills, California 92653	AM	Y	Agree with proposed changes if modified. As elder law attorneys committed to the safety and preservation of dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity and just plain hard work. Thus, our comments are made not in the spirit of criticism but in the spirit of appreciation of the enormity of the task to which you were commissioned. While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will preclude conscientious, but non professional, family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you	

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			to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product. **Rule 7.1059 Standards of Conduct for Conservators of the Estate**	
			In general we believe this is a good rule. In (a)(4), or in an added (a)(5), it might be good to address the situation of when a conservator is also the caregiver, i.e., fees, etc.	The provision of housing, medical, and legal services directly by conservators is addressed in rule 7.1059(a)(1). It is discouraged for professional conservators but permitted for nonprofessionals with complete disclosure. The proposed rule does not specifically address caregiver services by conservators, but the provisions of rule 7.1059(a)(4) concerning use of family members to perform services would apply to such services.
			Conclusions:	
			We believe that many of the changes made are unnecessary and merely an over reaction to the *L.A. Times* articles. The main problem in the past has been a lack of funding for the courts, especially to hire investigators. Increased funding is a beneficial part of the changes. However, we believe that the changes have	The committee believes this comment is more properly addressed to the Legislature.

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				made it more expensive for the ward and conservatee and have effectively priced the protection of guardianships and conservatorships out of the middle class market. This is the most serious and detrimental problem with the new laws and needs to be rectified immediately. The second most serious problem is with the new accounting rules which, we believe, are unnecessary. Thank you for your efforts in implementing this new law. We, as Elder Law attorneys, are happy to contribute in anyway to assist you in your work.	
2.	Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response necessary.
3.	Mr. Michael J. Gill Seaver & Gill, LLP Attorneys at Law Los Angeles, Los Angeles County, California	AM	N	I have the following thoughts or comments relating to the proposed California Rules of Court: **Rule 7.756 - Compensation of Conservators and Guardians** I believe that undue emphasis is often given by the court to the size of the conservatorship estate when, in fact, the primary goal of a conservator is the best interest and benefit of the conservatee, not estate preservation. I would	 The size of the conservatorship estate is a factor the court, in the exercise of its discretion, may consider in determining the reasonable fee of a conservator or

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				hate to see the courts apply standards that would make it more difficult for a conservator, be it an individual or a private professional, to expend the time and effort necessary to improve the life of a Conservatee. The local rules for some courts in California already make a distinction between conservator of the person and conservator of the estate fees.	the attorney for a conservator (see *Conservatorship of Levitt* (2001) 93 Cal.App.4th 544.) The advisory committee supports this authority. The committee believes that consideration of this factor will, in most cases and in the long run, promote the best interest of conservatees. The committee agrees with the commentator that the conservatee's best interest, not estate preservation for his or her heirs or beneficiaries, is the primary value. But preservation of the estate for the benefit of the conservatee and those the conservatee has a duty to support is appropriate.
				It should also be noted that both the current rule and the standards set forth in *Estate of Nazro* (1971) 15 Cal.App.3d 218, relate to trusts and estates and do not refer directly to the size of the estate. Why do so here?	Current rule 7.756, renumbered as rule 7.776 in this proposal, pertains to trusts and was based in part on the *Nazro* opinion. It contains a nonexclusive list of factors the court may consider in determining a trustee's fees, including the gross income of the trust, the usual source of payment of one-half of the trustee's compensation and the first source of support for the trust's primary adult beneficiary in many

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					trusts. (See Prob. Code, § 16370(a).) Consideration of the entire conservatorship estate, principal and income, from which the conservatee's support comes in most cases, is thus consistent with the rule governing trusts. In any event, rule 7.776 does not preclude consideration of the size of the principal of the trust in an appropriate case, particularly if the primary adult beneficiary may be supported from principal and he or she is the trustee's highest priority.
				With the above in mind, I would make the following two minor changes to Rule 7.756(a):	
				1. In rule 7.756(a)(1), the size and nature of the Conservatee's or Ward's estate and rule 7.756(a)(4), the conservatee's or ward's anticipated future needs and income, should be deleted or at least placed at the bottom of the list of standards as subparagraphs (8) and (9).	1. The committee does not support this request. The order of the factors stated in the rule is not intended to be significant.
				If included, I believe a comment should be added that the size and nature of the Conservatee's estate and the future needs and income are factors only in the determination of	If the estate must be preserved for as long as possible for the conservatee's support and care, fees for services of a conservator of the

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			fees for the conservator of the estate. To limit or restrict the amounts of services given due to the lack of the size of the estate short changes the Conservatee when care should be the primary concern. (For an example of an appropriate distinction see Marin County Local Rule 5.84(B) and (C).)	person should be in part guided by the size of the estate from which they must be paid.
			2. **Rule 7.756(c)**—does the use of this rule conflict with Rule 7.756(a)(9) concerning customary fees granted by courts? I note that many courts throughout the state have established some sort of minimum charges be it hourly or percentages for handling conservatorship of the estate issues. (See attachments: Superior Court of Alameda County rule 12.15.10.3; Superior Court of Marin County rule 5.84(B) and (C); Superior Court of San Francisco County rule 14.92, 14.93 and attached letter.) It would seem that the proposed rule unduly limits current local rules especially in the inclusion of the words "minimum compensation". I would suggest, minimally, the removal of those words.	2. "Customary fees granted by courts" is but one of nine factors listed in rule 7.756(a), no one of which is to be exclusively determinative under rule 7.756(b). The local rules cited by this commentator are not, by their express terms, inflexible maximums or minimums. If in practice they were rigidly so applied, there might be a conflict with rule 7.756(c), but there is not a facial conflict.
			Additionally, some thought might be given to creating a court rule that would allow the court to establish a first-year (and possibly subsequent year) statutory fee for the conservator and guardian of the estate. The utilization of a rule	The committee believes the proposed first-year "statutory fee" for conservators and guardians of estates would require legislation.

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				would place emphasis on services rendered to the conservatee and not billing for bookkeeping and other related services. Making the administration of a conservatorship or guardianship more efficient should always be our goal so long as we do not jeopardize the best interests and care of the conservatee or ward. (See Alameda, Marin and San Francisco rules above.) It has always been my belief that the standard and ordinary obligations required of a conservator, especially now under the new law, substantially exceeds what an executor or administrator is required to do, so creating a minimum fee rule based on the statutory probate fees makes some sense especially for private professional fiduciaries and corporate trustees. This proposition was alluded to by the authors of the "Crisis in Conservatorship" article in the Winter 2006 edition of the *California Estates & Trust Quarterly*. I have taken the liberty of attaching a proposal, which I drafted earlier (before the hubbub on the private professional Conservators) relating to a statute change on the fees. This of course could be modified for purposes of a court rule, and I would certainly appreciate any comments as to the propriety and workability of the proposal. **Rule 7.1059 - Standards of Conduct for Conservators of the Estate.** I believe that rule 7.1059(a)(3) and (4) are a trap to both	The committee believes that great care should be exercised by

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			individual and private professional conservators that may be used inappropriately against an innocent or unknowing Conservator. For instance, there is no real way of determining what the phrases "incentives" or "service providers" are designed to encompass. Is having lunch purchased for you by a representative of a bond company a prohibited act? What about the insurance agent, CPA or a favored attorney that conservators use? Can the terms be defined more precisely or tempered so as to not unwittingly put conservators "behind the eight ball" for totally appropriate choices as it relates to service providers. (God forbid that they would be required to use the yellow pages every time they sought a service provider for a conservatee.)	conservators concerning favors or gratuities offered by persons seeking to provide bonds or other services to the conservator that will be paid from the conservatee's estate. The rule seeks to avoid the appearance of conflict as well as actual conflict.
			Rule 7.1059(a)(4)—I believe this rule is duplicative of our existing statute. In any event, I would modify it slightly to use the word "avoid" as opposed to "should not" in the first sentence. Codifying this rule as a prohibition of "should not" places the Conservator in a very awkward position when utilizing family members or employees for menial tasks that would make practical sense but violate the "letter of the law." The current statute already requires the conservator to identify those individuals and explain their services. That should be sufficient. Do we really want to force	The statute (Probate Code section 2410) requires the proposed rule to establish uniform standards of conduct by conservators and guardians of estates. Of necessity, the rule must follow current statutes closely. Rule 7.1059 as modified by the committee would permit family members to act as employees of

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				the use of the ratification or forgiveness provisions contained throughout the Probate Code for innocent and *de minimis* services? Lastly, those really involved with conservatorships on a daily basis (i.e., probate examiners and attorneys, judges and conservatorship practitioners) know that it is the individual (and usually family) conservator that needs supervision and monitoring, not the professional fiduciaries. Implementation of court rules that are unnecessarily rigid or restrictive discourage private professional fiduciaries and corporate trustees from taking on conservatorships, thus driving out the best and efficient from the field and forcing the handling of conservatorships into the hands of inexperienced and inherently conflicted individuals and family members.	conservators if their services are reflected in the conservator's requests for compensation or are not paid from the conservatee's estate.
4.	Mr. Daniel O. Holmes Private Conservator Orinda, California 94563	AM	N	Agree with proposed changes if modified. There have been serious discrepancies in compensation awards by different courts. A minimum compensation schedule for services should be required of every court for each case at initiation so conservators know what to expect. Working without knowing in advance is absurd. Private professional conservators also	 The committee does not believe it has authority under current law to propose adoption of a minimum statewide compensation schedule.

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				need to be compensated for the responsibility they embrace. "Unusual skill" is a vague term-virtually meaningless (rule 7.756(a)(7)).	Demonstration of unusual skill in the performance of services is a long-recognized factor in consideration of reasonable compensation of other professionals, including attorneys.
5.	Ms. Jamie Lamborn Retired Sacramento, California	A	N	Agree with proposed changes. [Complaints about specific case not directed to contents of proposal omitted.]	No response necessary.
6.	Ms. Keeley C. Luhnow Associate Attorney La Jolla, California	AM	N	Agree with proposed changes if modified. Rule 7.1059(a)(1) is phrased awkwardly and should be rephrased. It is hard to understand what is meant without reading it multiple times. Otherwise, I am in agreement.	No response necessary.
7.	Ms. Pat McVey-Ritsick Private Fiduciary PMR Fiduciary Services Benicia, California	AM	N	Agree with proposed changes if modified. Add under conservator of estate – Check with the state comptroller's office (of any state that the ward has resided in) to make sure that the ward's property has not been escheated to the state. If it has, then make application as the conservator to regain these assets.	This recommendation might be a good one if available information supports the possibility of an escheat in another state, but the recommendation seems too narrow and unlikely to be a productive effort in the majority of cases to be

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					included in the rule.
8.	Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California	A	Y	Agree with proposed changes. ***Rule 7.756. Compensation of conservators and Guardians*** ***(a) Standards for determining just and reasonable compensation***	
				PFAC recommends that paragraph (a)(8) be clarified to relate to the monetary value of services of a conservator or guardian, inasmuch as paragraph (a) (2) relates to the benefit to the ward or conservatee. **(c) No fixed compensation or maximum hourly rate authorized**	The committee believes this change is unnecessary. Paragraph (8) allows the court to consider the fiduciary's own estimate of the value of his or her services performed.
				PFAC strongly supports proposed Section (c). **Rule 7.1009. Standards of conduct for guardians of the estate**	The committee has modified this part of the rule by replacing "fixed" with "inflexible," but does not believe this change would change PFAC's support of this part of rule 7.756.
				PFAC supports the language in the proposed Rule.	No response necessary.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee response
				Rule 7.1059. Standards of conduct for conservators of the estate PFAC recommends that Section (a)(4) be revised as follows: In cases where a conservator's family member or members provide services to the conservatee, their relationship to the conservator must be fully disclosed to the court. The terms of employment must be in the best interest of the conservatee, the services must be competently performed, and the conservator must be able to exercise appropriate control and supervision.	The committee prefers to include the statement in the first sentence of paragraph (4), which discourages the practice of engaging family members when other alternatives are reasonably available. The proposed rule has been modified to refer to "engagement" rather than "employment," because true employment of family members should not be discouraged if their compensation is paid by the fiduciary and their services are part of the conservator's request for approval of compensation or they are not paid by the estate.
9.	Ms. Mary Joy Quinn Director, Probate Superior Court of California, County of San Francisco San Francisco, California	AM	Y	Agree with proposed changes if modified. Agree with standards of conduct. Standards for determining compensation, however, will be very difficult to administer. Proposed rule 7.756 should be modified to delete (c). If a court can apply a percentage of estate value or an hourly rate, along with consideration of factors listed in the proposed rule, fees for conservators and guardians of the	The proposed rule would permit Northern California courts that have trust-like percentage-of-estate guidelines to continue to apply them so long as they don't become inflexible maximums or minimums or a maximum hourly rate and they

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				estate will be generally uniform within that court. If, on the other hand, the court cannot begin review of fees with an objective measure such as estate value or hourly rate, each fee request will be subjectively reviewed by the file examiner and judicial officer for compliance with the standards of rule 7.756. The process of determining appropriate fees will be extremely time consuming and will open the court to claims of favoritism. Moreover, application of a percentage base for fees is consistent with Probate Code provisions for compensation of personal representatives in probate estates.	also apply all other relevant factors listed in rule 7.756(a).
10.	Ms. Kathleen U. Poling Attorney Poling & Poling Martinez, California	AM	N	Agree with proposed changes if modified. I agree with the proposed changes for the most part, but would recommend that there be a provision for allowance of local rules for guideline rates to be established by each court for private professional conservators. You may find that using size of the estate as a criteria will deter private professionals from taking cases where there is an obvious need for a conservator, unless they know that there is a sizeable estate. That is often undetermined at the outset.	See response to comment of Ms. Mary Joy Quinn, above.

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Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

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11.	Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, California	AM	Y	Agree with proposed changes if modified. The Executive Committee proposes a number of changes to the proposed rules of court. 1. With regard to fees (Proposed rule 7.776), The Executive Committee seeks clarification of the terms "standards" and "factors," used in the title and the body of the rule, and desires a clarification expressed in the body of the rule that it not be necessary to relate the fees sought in an itemized fee declaration (where line item fees, dates, and services are presented) to a particular factor or standard. Subdivision (b) of the proposed rule is probably the best place to insert such clarification. 2. With regard to standards of conduct for conservators of the estate (proposed rule 7.1059), the Executive Committee recommends the following changes: (b)(2): Rewrite to read as follows: "Refrain from unreasonably speculative investments, as determined by the facts and circumstances of the conservatorship estate." The standard as written prohibits nearly all investments, allowing only those that are insured and guaranteed against loss of principal.	1. The factors listed in rule 7.756(a) are factors the court may consider in approving fees. There is no requirement in the rule that either the petitioning conservator or guardian or the court must relate a showing in an itemized fee declaration to one or more of the listed factors. The committee has modified this portion of rule 7.1059 to provide that estate conservators should refrain from "unreasonably risky investments," in part to satisfy this commentator's concerns. The

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				proposed rule does not limit any particular investment. Conservators or guardians may invest in any vehicle authorized by the court under section 2570 or listed in section 2574.
			(b)(9): Rewrite the beginning: "Use ordinary care and diligence as soon as possible after appointment and qualification . . ." (b)(10): Rewrite the beginning to read as follows: "Use ordinary care and diligence in the management of the real and personal property of the conservatorship estate . . . " The rationale for these changes is to mitigate the duty implied in the word "undertake" and to align the rule with the Probate Code standard in section 2401.	The committee disagrees with the changes recommended by this commentator in rules 7.756(b)(9) and (10). The ordinary care and diligence standard of section 2401 applies to all conduct of the fiduciary, without restating it in every standard of estate management in the proposed rule. Instead of selectively referring to this standard in some paragraphs of the rule, the committee has revised the opening statement of rules 7.1059 and 7.1009 to refer to the statutory standard, indicating that it applies to all provisions of the rule.
			(b)(11): The Executive Committee recommends that this subdivision be stricken as redundant. It is encompassed in (b)(18)(D) (disposition of property), and all property of the conservatee should be managed properly, in any case. Overall, the Executive Committee agrees that	The committee disagrees with this recommendation. Particular emphasis on preserving property mentioned in estate planning documents is appropriate. Subparagraph 18(D) merely lists a factor in deciding whether to

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				the proposed standards are well intentioned and designed to set a high ethical tone, at the risk of setting standards that might serve to intimidate fiduciaries in a manner that would cause them to spend so much time vetting out proposed actions with counsel that they would generate substantial administrative cost to the estate.	dispose of property. The first item emphasizes preservation of the property before a decision is made to dispose of it, the second, factors to be considered in that decision.
12.	Hon. F. Clark Sueyres, Jr., Judge of the Superior Court of California, County of San Joaquin Stockton, California	AM	N	Agree with proposed changes if modified. Rule 7.1059(a)(2) requires a conservator to be independent of all other service providers. As drafted it can be read to exclude the use of subordinate staff by a private professional conservator. Employees of different skills, or lesser qualifications, could spend fewer hours, or be paid at lesser rates, at substantial savings for the estate. The Rule should state, "independent of all other service providers except those directly employed by the conservator and disclosed to the court in the account."	The committee has clarified rule 7.1059(a) by adding new text after paragraph (4) advising that a conservator's employees are not "service providers" within the meaning of the rule if their compensation is paid by the conservator and is either included in the conservator's request for reasonable compensation for its services or is not paid from the conservatee's estate.

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

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13.	Superior Court of California County of Los Angeles Los Angeles, California	AM	Y	Agree with proposed changes if modified.	
				Rule 7.1059(b)(9): Concerned about the application of this provision when the conservator is not the trustee, agent, etc.	This provision, requiring the estate conservator to undertake to locate and safeguard the conservatee's estate planning documents, does not require the conservator to collect the documents from a third party in possession of them, merely to try to locate them and assure that they are safe and secure in responsible hands.
				Subsection (b)(11): Concerned that this rule imposes a duty on the conservator to preserve non-conservatorship assets, e.g. trust assets when the conservator is not a trustee.	The term "reasonable efforts" as used in paragraph (11) indicates that this duty is not contemplated.
				Subsection (b)(13): Appears the last sentence be not be limited to contingent fee agreement and should apply to fee agreements generally.	The committee disagrees with this recommendation. Not all attorney-fee agreements must be pre-approved by the court.
				Subsection (b)(14): Appears this section includes a suggestion that the conservator consider obtaining court approval before entering into a fee agreement with counsel. Suggest adding a sentence, similar to the one subsection (b)(13), re fee agreements.	The committee does not believe paragraph (14) suggests court approval of a defense counsel's fee agreement.
14.	Ms. Robin C. Westmiller, J.D.	N	Y	Do not agree with proposed changes.	

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	President National Association to Stop Guardian Abuse Thousand Oaks, California			This entire section does nothing to protect the rights of the heirs, the family, or the assets of the person conserved. It's full of ambiguous legal language such as "just and reasonable," "recommend," "consider," "may not" instead of "shall not" and allows the conservator carte blanche in liquidating and spending all of the conservatee's assets and paying whatever "reasonable" attorney fees they incur, leaving the family with little recourse to stop the conservator and their attorney from depleting every dime which rightfully belongs to the spouse under California community property law. Rule 7.756(c)—No fixed compensation or maximum hourly rate authorized. There must be fixed maximum hourly rates. Rule 7.1059 (a) 4—Conservator should not employ his or her family members.	The committee does not agree with this commentator's assessment of the proposed rule.
				Change to *must not* employ his or her family members.	Employment of family members may be in the conservatee's best interest. The rule would require full disclosure to the court of the circumstances.

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				Paragraph 2:— . . . To prevent risk of loss or harm to the conservatees," add the line "And their rightful spouse and heirs."	The principal concern is the protection and support of the conservatee and those entitled to support from the conservatee, not the expectations of the conservatee's heirs or beneficiaries.
				Subdivision (c) would advise that the rule is not to be construed as authority for a court to set a fixed maximum compensation or a maximum approved hourly rate for compensation. So, what good is this "rule" if there is no limit to how much a conservator can spend from the assets of the conservatee? Who determines what a "reasonable" hourly rate is for a conservator, or an attorney for that matter? Once one is appointed, they are at liberty to charge whatever they wish with no way the family can prevent or challenge this amount without hiring their own attorney to fight it. Millions of dollars are at risk. Property which rightfully would go to the children and grandchildren of the conserved will now be freely diverted into the pockets of whoever the conservator decides to pay.	The limit is the reasonable value of the services actually rendered, applying the factors specified in the rule.
				Add this wording:	
				"No conservator shall use the assets of their conservatee to pay their own personal expenses or attorney fees, especially to defend themselves against a civil cause of action instigated by the	This proposed language would be inconsistent with statute and thus beyond the power of the Judicial Council to provide in a rule of

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			family of the conservatee."	court.
			Conservators are awarded their powers through the court, a government agency. Any government agency has the power to regulate compensation, such as the notary. There is no competition within the private conservatorship program. Obviously it needs to be regulated, and one aspect of this regulation must be the amount billed to the estate, and the ability of the conservator to have unlimited funds available to them.	The court has authority to approve or disallow requests for compensation based on the reasonable value of the services provided.
			(B) (10)—Undertake as soon as possible to secure the real and personal property of the estate. . . .	
			Change to: After notifying the family and receiving permission in writing of any action placed on real and personal property of the estate.	Permission of family members to secure real and personal property of the conservatee is not required under statute.
			(13) might require litigation and assistance of counsel	
			Add: And that assistance of counsel and any litigation shall not be paid for with the assets of the conservatee	This provision would not comply with statute.
			(14) Defend against claims...etc.	

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				Same as above. Cannot use the assets of the estate to pay for any legal fees. (17)—"Consider" notifying the conservatee's family members in advance... Which give the conservator the option not to notify the family or anyone else. If they "consider" this and decide not to, there is nothing the family can do. Change to *must* notify the conservatee's family members in advance Considering these recommendations were provided by the State Bar of California and the National Guardianship Association, it is not surprising they would protect the cash cow of the conservatee's estate.	This provision would not comply with statute. The committee has revised this paragraph to require the conservator to advise family members and give them an opportunity to acquire the conservatee's tangible personal property.
15.	Mr. Craig Willford Attorney at Law (Certified Specialist: Probate, Est. Planning, and conservatorship Law by the Board of Specialization, State Bar of California) Whittier, California	AM	N	Agree with proposed changes if modified. I believe rule 7.1059(a)(4) should be modified. It starts, "(4) The conservator should not employ his or her family members to provide services to the conservatee for a profit or fee when other alternatives are reasonably available."	

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				I believe it would be better to enable the hiring of a spouse to care for the conservatee, say, while the conservator is out shopping for groceries in instances where the conservator of the estate is also the conservator of the person and is the primary caregiver. Would it be always better to hire an outside person, say when the absence from the home is only an hour long? Perhaps something such as this: "(4) The conservator should not employ his or her family members to provide services to the conservatee for a profit or fee, except when it can be shown to the court that doing so is (1) as economical or more economical than other alternatives reasonably available or (2) in the best interests of the conservatee."	The committee has clarified rule 7.1059(a) by adding a new paragraph (5) advising that a conservator's employees are not "service providers" within the meaning of paragraphs (2) and (4) of the rule if their compensation is paid by the conservator and is either included in the conservator's request for compensation for the conservator's services or is not paid from the conservatee's estate.
16.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	A	N	Agree with proposed changes. While this is probably going to cause the most controversy, I think it's an excellent piece of work.	No response necessary.

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JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: September 10, 2007

SUBJECT: Probate: Giving Notice of Filing an Inventory and Appraisal and Objecting to an Inventory and Appraisal (adopt form GC-042; approve forms GC-042(MA) and GC-045) (Action Required)

Issue Statement

Probate Code section 2610 requires a conservator or guardian of the estate to file an Inventory and Appraisal of the assets of the estate. The inventory is a list of all property of the estate of which the conservator or guardian has possession or knowledge. The appraisal states the fair market value of each item of property as of the date of the fiduciary's appointment.

Until this year, the law did not require copies of the Inventory and Appraisal to be delivered to anyone involved or interested in the proceeding unless they had previously filed and served a formal request to be notified of important filings in the case. The Omnibus Conservatorship and Guardianship Reform Act of 2006 has changed that.[1] Section 2610 has been amended to require the conservator or guardian of the estate to mail copies of the filed Inventory and Appraisal to the conservatee, the attorneys for the conservatee or ward, and the conservatee's spouse or registered domestic partner and closest relatives.[2]

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[1] Stats. 2006, ch. 490–493 (respectively, Senate Bill 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363), collectively referred to as the Omnibus Act.

[2] Section 2610 was amended by Stats. 2006, ch. 493, § 23 (AB 1363). A copy of the amended portions of section 2610 is attached at page 12, immediately following the proposed forms.

Amended section 2610 also requires the conservator or guardian to mail a notice of how to object to the filed Inventory and Appraisal. The Judicial Council was directed by the statute to develop this notice by January 1, 2008.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, take the following actions to provide the notice and instructions required by Probate Code section 2610 and an optional plain-language form of objections to an Inventory and Appraisal that would clarify the instructions and make them easier to follow:

1. Adopt *Notice of Filing of Inventory and Appraisal and How to Object to the Inventory or the Appraised Value of Property* (form GC-042);

2. Approve *Attachment to Notice of Filing of Inventory and Appraisal and How to Object to the Inventory or the Appraised Value of Property* (form GC-042(MA)); and

3. Approve *Objections to Inventory and Appraisal of Conservator or Guardian* (form GC-045).

Copies of the proposed new forms are attached at pages 7–11.

Rationale for Recommendation

Form GC-042

This form would advise of the filing of an Inventory and Appraisal in the proceeding and would be mailed with a copy of the filed inventory. It is to be served with copies of each inventory filed. Therefore, item 1 of the form includes check boxes for designating all of the types of inventories identified on the Judicial Council form *Inventory and Appraisal* (form DE-160/GC-040).[3]

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[3] Section 2610 contemplates the filing of only one inventory containing appraisals of all estate property, which would be the final inventory. The reality is often different. Fiduciaries often file several partial inventories that collectively list all property of the estate because they may become aware of estate property at different times before the deadline for filing the final inventory; they may break the task down to two or more partial inventories to give the probate referee more time to appraise difficult property; or they may separate into different partial inventories the self-appraised cash-equivalent assets and the property to be appraised by the probate referee. In these situations, the last partial inventory filed would be designated as the final inventory.

A supplemental inventory lists property omitted from all prior inventories that were thought to be the complete inventory and certain after-acquired property. (See Prob. Code, § 2613.) A corrected inventory is used to correct the stated value of previously listed and appraised property. A reappraisal for sale inventory must be filed to show property that must be reappraised before its sale at a date closer to the date of the proposed sale than the original valuation date, which is the date the fiduciary was appointed.

Instructions on page 2 of the form would advise conservators and guardians that the form and a copy of the filed inventory must be mailed to the conservatee, the conservatee's or ward's attorney, if any, the conservatee's spouse or registered domestic partner, and the conservatee's first degree relatives (parents and children), if any or, if there are none, to the conservatee's closest relative.[4] These instructions follow the requirements of amended section 2610(a).

Notice of how to file an objection to the inventory is provided as instructions in items 2–5 on page 1 of the form. The instructions are in three parts. The first part, contained in items 2 and 5, refers to objections to the appraisal of one or more properties listed in the inventory, which is the type of objection to an inventory described in Probate Code section 2614. Under section 2614(a), this type of objection must be filed within 30 days of the date the inventory was filed. A warning concerning this short limitation period is stated in bold text in the last sentence of item 2. The warning in item 5 that the cost of a reappraisal may be charged to the objecting party if the objection is not upheld by the court is derived from section 2614(c), which so provides.

The proposed form would go beyond the narrow focus of section 2614. Item 3 of page 1 of the form advises that a person may object to an inventory and appraisal designated as a final inventory or filed on or after the due date of the final inventory under section 2610(a)[5] on the ground that the inventory and all others previously filed do not list property that should have been listed and valued as property of the conservatorship or guardianship estate.

No Probate Code provision expressly provides for this kind of objection to an inventory, and such an objection is not a prerequisite to an action to recover property for the estate, whether by separate civil action or a proceeding in the probate department under Probate Code section 850. However, the absence of an item of property in one or more inventories that purport to list all estate property may be the first indication to a conservatee, a conservatee's or ward's counsel, or a conservatee's close family members that the fiduciary has failed to marshal all of the estate's property or may even claim an interest in property adverse to the estate's interest. An objection to the inventory on this ground would enable the court to promptly investigate the issue and determine whether further action against the fiduciary is warranted.

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[4] Note that the ward in a guardianship is not to receive copies of the inventory and the notice and neither are any of the ward's relatives, including his or her parents, although the child's attorney is to receive them.

[5] The due date is 90 days after the date of the order appointing the fiduciary or the last day of any extension granted by the court.

The third part of the instructions contained in this form is found in item 4 on page 1. This item refers the reader to the proposed new optional form of written objections, proposed form GC-045, discussed in more detail below. Section 2610 does not require development of a form for objections, but the advisory committee decided that provision of such a form would clarify the required instructions and make the objection process as a whole more accessible to persons interested in the conservatee's or ward's welfare, particularly to those unrepresented by counsel.

Form GC-045

The proposed form of objections is drafted in the "plain language" format because the advisory committee believes that most family members of conservatees would not be represented by counsel, at least initially. The form is primarily designed for use by the persons entitled to notice of filing the inventory, but does provide for its use by the fiduciary or by a creditor, who also have standing to object to an appraisal under section 2614 (see item 4 at the bottom of page 1 of the form).

All forms of objections to an inventory contemplated and described in the notice would be possible under item 5 of the form, including an objection to a final inventory for failure to list all estate assets. The latter objection is accompanied by an instruction that an objection on this ground is not a petition for an order under Probate Code section 850 to recover property for the estate.

Form GC-042(MA)

This proposed form would be used as an optional attachment to form GC-042 to show the names and addresses of persons receiving that form and the inventory mailed with it whose names could not be listed in the proof of mailing on the second page of the notice form.

Alternative Actions Considered

The advisory committee considered two options instead of the forms as proposed. The committee first contemplated merely drafting the notice form with instructions concerning filing objections, as required by section 2610. The committee decided instead to proceed with a form for objections in addition to the notice form required by the statute. The committee concluded that the instructions on filing objections would be enhanced by developing a simple form of all-purpose objections for this purpose and then providing instructions in the notice form concerning its use.

The committee also considered limiting the instructions on objections to objections to the appraisal of one or more items of estate property, as provided in Probate Code section 2614. The committee decided against limiting either the instructions or the proposed form of objections in this way because of its conclusion that the Legislature did not contemplate such a limited scope of

objections, and also to give the parties and the court an opportunity to learn of potentially serious problems that might be disclosed if a final inventory purporting to show all assets of the estate does not do so. An objection to a final inventory on the ground that an asset that should be included is not would enable the court and interested parties to determine at the earliest possible time whether additional actions are necessary or appropriate to protect the conservatee or ward.

Comments From Interested Parties

This proposal was circulated for comment in a special comment cycle to a list of judicial officers and other court staff interested in probate matters and probate-interest sections of the State Bar and local bar associations, in addition to the AOC's list of interested court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Eleven comments were received on the proposal. All comments but one agreed with the proposal or agreed if modifications are made. A chart containing the comments and the committee's responses is attached beginning at page 13.

The one commentator who objected to the proposal, Ms. Lois Leflar, a professional fiduciary from Southern California, objected on the ground that the Inventory and Appraisal should not be provided to third parties unless the conservatee, with the capacity to give informed consent, agrees to the delivery. The committee's response to this comment is to advise that the Legislature has resolved this issue in favor of service of the notice and a copy of the Inventory and Appraisal, unless the court determines that service would be harmful to the conservatee.

Ms. Margaret K. Herring, an attorney from Coronado, requests that the notice, form GC-042, be modified to advise the persons to whom it is mailed to serve copies of their objections to the inventory on the attorney for the conservator. The committee agrees with this comment. It has changed the form to advise potential objectors to serve copies of their objections on the conservator or guardian and on his or her attorney, as required by Probate Code section 1214.

Mr. Peter Stern, a member of the Probate and Mental Health Advisory Committee but commenting on behalf of the Executive Committee of the State Bar's Trusts and Estate Section, requests that form GC-042 be modified to advise that the 30 day limit for filing objections applies only to objections to appraisals under Probate Code section 2614. The committee agrees with this recommendation and has changed the form accordingly.

The Superior Court of Los Angeles County requests that the proof of mailing in form GC-042 be modified to permit the conservator to do the mailing because section 2610 refers to mailing by the conservator, not "service by mail," which traditionally could not be done by a party on whose behalf a document is served. The committee agrees with and has made this change.[6]

Implementation Requirements and Costs

Adoption and approval of these forms will incur the usual costs associated with the creation and distribution of any new Judicial Council form. The new statutory notice requirements, the new notice form, and the new form for objections are likely to result in more objections to inventories and more court hearings on the objections. Regardless of the merits of the additional objections, the additional hearings will increase costs to the courts and to the estates of conservatees and wards. On the other hand, early detection of problems with the administration of conservatorships and guardianships because of increased reliance on the objection procedure provided in these forms may ultimately reduce losses that would otherwise be incurred by some of these estates.

[6] The same provision has been made in the proposed new forms for giving notice of conservatees' and wards' changes of residence, proposed forms GC-079 and GC-080, and the new *Notice of Conservatee's Rights*, proposed form GC-341.

GC-042

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	*FOR COURT USE ONLY* **DRAFT 6 10/01/07** **Not Approved by the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE ☐ PERSON AND ESTATE OF *(Name):* ☐ CONSERVATEE ☐ MINOR	
NOTICE OF FILING INVENTORY AND APPRAISAL AND HOW TO OBJECT TO THE INVENTORY OR THE APPRAISED VALUE OF PROPERTY	CASE NUMBER:

1. **NOTICE is given** that *(name):*
   ☐ Conservator ☐ Guardian of the estate of the above-named conservatee or ward, filed with the court a
   ☐ Partial No.: ____ ☐ Final ☐ Supplemental ☐ Corrected ☐ Reappraisal for Sale
   Inventory and Appraisal on *(date filed):* ______ .

2. If you object to the *Inventory and Appraisal* identified above or to the appraised value of any property listed in it, and you want the court to hear your objections, they must be in writing, signed by you under penalty of perjury, and filed with the court at the court's address stated above. **If you object to the appraised value of any property listed in the *Inventory and Appraisal*, you must file your objections with the clerk of the court no later than 30 days after the date specified in item 1 above.**

3. If you object to a Final *Inventory and Appraisal* or to an *Inventory and Appraisal* filed on or after the later of (1) 90 days from the date of the order appointing the conservator or guardian or (2) the last day of any extension granted by the court for filing the *Inventory and Appraisal*, in addition to the objections described above you may also object to that *Inventory and Appraisal* and all others previously filed on the ground that they do not list property that should have been listed and valued as property of the estate.

4. You may prepare your written objections on **form GC-045**, *Objections to Inventory and Appraisal of Conservator or Guardian.* When you file your objections, the court will set a date, time, and place for a hearing on them. Unless the court orders otherwise, you then must arrange for someone other than yourself to mail, at least 15 days before the hearing date, copies of your objections and copies of another form, **form GC-020**, *Notice of Hearing—Guardianship or Conservatorship,* showing the date, time, and place of the court hearing, to (1) the conservator or guardian of the estate; (2) the conservator's or guardian's attorney, if any, at the address shown at the top of this form; (3) the conservatee or the minor (if the minor is at least 12 years of age; if not, to the minor's parents, guardian, or other adult residing with the minor who has legal custody); (4) the spouse or registered domestic partner of the conservatee or the spouse of the minor; (5) any person who has filed **form DE-154/GC-035**, *Request for Special Notice,* in this case; and (6) any probate referee who made an appraisal of property to which you object. (You do not have to ask someone to mail copies to you if you are one of the persons listed above.) You must then arrange for the person who did the mailing to complete and sign the proof of service on page 2 of the original *Notice of Hearing* and file the *Notice* with the court before the date of the hearing.

5. At the hearing the court will consider and determine the merits of your objections and may fix the true value of any property to the appraised value of which you have objected. The court may order an independent reappraisal by one or more additional appraisers at the expense of the conservatorship or guardianship estate, **but if your objection to the appraisal of any property that the court orders to be reappraised is not upheld by the court, the cost of the reappraisal may be charged to you.**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least five days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civ. Code, § 54.8.)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE ☐ PERSON AND ESTATE OF *(Name)*: ☐ CONSERVATEE ☐ MINOR	CASE NUMBER:

INSTRUCTIONS TO CONSERVATOR OR GUARDIAN

Each time you file an *Inventory and Appraisal* in this matter, you must complete this *Notice of Filing Inventory and Appraisal and How to Object to the Inventory or the Appraised Value of Property.* You, your attorney, or an employee of your attorney must mail copies of the completed *Notice* and court file-stamped copies of the filed *Inventory and Appraisal* to the conservatee, the attorney for the conservatee or ward, the conservatee's spouse or registered domestic partner, and the conservatee's first-degree relatives (parents and children) or, if none, to the conservatee's nearest relative. The person who does the mailing must complete and sign the proof of mailing below. You then must file the original *Notice* with the court.

PROOF OF MAILING

1. I am over the age of 18. I am the appointed conservator or guardian, the conservator's or guardian's attorney, or an employee of the attorney. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify)*:
3. I mailed the foregoing *Notice of Filing Inventory and Appraisal and How to Object to the Inventory or the Appraised Value of Property* on each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ **depositing** the sealed envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: b. Place mailed *(city, state)*:
5. **I mailed with this *Notice of Filing Inventory and Appraisal and How to Object to the Inventory or the Appraised Value of Property* a copy of the *Inventory and Appraisal* identified in item 1 on page 1 of this *Notice*, showing the date it was filed with the court.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM) ▶ (SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	Name and relationship to conservatee or ward	Address (number, street, city, state, and zip code)
1.	Conservatee	
2.	Attorney for conservatee or ward	
3.	Spouse or registered domestic partner of conservatee	

☐ Continued on an attachment. *(You may use form GC-042(MA) to show additional persons served.)*

Draft 5, 10/01/07 Not Approved by the Judicial Council

GC-042(MA)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF THE ☐ PERSON AND ESTATE OF *(Name)*: ☐ CONSERVATEE ☐ MINOR	CASE NUMBER:

ATTACHMENT TO NOTICE OF FILING OF INVENTORY AND APPRAISAL AND HOW TO OBJECT TO THE INVENTORY OR THE APPRAISED VALUE OF PROPERTY

(This attachment is for use with form GC-042.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and relationship to conservatee or ward	Address *(number, street, city, state, and zip code)*
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	
Relationship:	

Page ____ of ____

GC-045 Objections to Inventory and Appraisal of Conservator or Guardian

☐ Conservatorship ☐ Guardianship of the Estate of

(Name): ______________________

☐ Conservatee ☐ Minor

Clerk stamps date here when form is filed.

Draft 7
10/01/07

Not Approved by the Judicial Council

(You may use this form to object to an **Inventory and Appraisal** *filed by the Conservator or Guardian of the Estate of the person named above.)*

① **Your name** *(include the names of all persons or organizations that are objecting to the* Inventory and Appraisal *of the conservator or guardian described in* ⑤ *. All persons listed must sign this form.):*

a. ______________________

b. ______________________

c. ______________________

Fill in court name and street address:

Superior Court of California, County of ______________________

② **Your address and telephone number** *(If more than one name is listed in* ① *, choose one address and phone number that will be acceptable for mail and phone calls by all persons or organizations listed):*

Street: ______________________ *Apt. or Suite:* ______

Mailing address (if different): ______________________

City: ______________________

State: ______ *Zip:* ______ *Phone:* ______

Fill in Case Number. When you file this form, the clerk will fill in the hearing date and time, and court department.

Case Number:

Hearing Date and Time:	**Dept.:**

③ ☐ **Your lawyer** *(if you have one):*

Name: ______________________ *Bar No.:* ______

Firm Name, if any: ______________________

Street: ______________________ *Suite:* ______

Mailing address (if different): ______________________

City: ______________________ *State:* ______ *Zip:* ______

Phone: ______ *Fax (optional):* ______ *e-mail (optional):* ______

④ **Your relationship to conservatee or minor** *(check all that apply to the persons listed in* ① *):*

☐ Conservatee or minor ☐ Spouse or registered domestic partner ☐ Conservator or guardian

☐ Relative *(specify):* ______________________

☐ Creditor *(explain on an attached page, titled "Attachment 4," with the name of this case and the case number at the top of the page. You may use* **form MC-025**, Attachment, *for this purpose. Your explanation should include the nature and amount of your claim, the date it became or will become due, whether it is contingent, and whether it is now a judgment or the subject of a pending action.)*

☐ Interested person *(explain your interest below or on an attached page prepared as described above):*

____

____

____

____

☐ Conservatorship ☐ Guardianship of the Estate of

(Name): ______________________________

☐ Conservatee ☐ Minor

Case Number:

(5) **I/We object to the** ☐ **Partial No.:** ___ **Final** ☐ **Supplemental** ☐ **Corrected**

☐ **Reappraisal for Sale Inventory and Appraisal filed on** (date): ______________

by the Conservator or Guardian.

a. ☐ I/We object to the entire *Inventory and Appraisal* because *(check all that apply):*

(1) ☐ The Final *Inventory and Appraisal* or other *Inventory and Appraisal* mentioned above and all prior inventories filed do not list or appraise all assets of the conservatee's or ward's estate. The reasons for this objection are stated in c or in the attachment mentioned there. *(This objection may be made only to the Final* Inventory and Appraisal *or to any* Inventory and Appraisal *filed on or after the later of (1) 90 days after the date of the order appointing a conservator or guardian or (2) the last day of any extension to file granted by the court. This objection and these* Objections to Inventory and Appraisal of Conservator or Guardian *are **not** a petition for an order of conveyance or transfer of property under Probate Code sections 850–859.)*

(2) ☐ The reasons for my objection to all appraisals contained in the *Inventory and Appraisal* mentioned above are stated in c or in the attachment mentioned there.

b. ☐ I/We object to one or more of the appraisals contained in the *Inventory and Appraisal* mentioned above for the reasons stated in c or in the attachment mentioned there.

c. The specific grounds, or reasons, for my/our objections to the entire *Inventory and Appraisal* or the appraisal of particular assets or properties listed in the *Inventory and Appraisal* are ☐ stated on an attached page, titled "Attachment 5." ☐ as follows:

____

____

____

____

____

____

____

____

All persons named in (1) (objectors) and their attorney (if they have one) must read and sign below.

Date: ____________ ______________________ ______________________

Objector's attorney types or prints name here *Objector's attorney signs here*

I/We declare under penalty of perjury under the laws of the State of California that the information stated above is true and correct.

Date: ____________ ______________________ ______________________

Objector types or prints name here *Objector signs here*

Date: ____________ ______________________ ______________________

Objector types or prints name here *Objector signs here*

Date: ____________ ______________________ ______________________

Objector types or prints name here *Objector signs here*

Probate Code Section 2610

2610.

(a) Within 90 days after appointment, or within any further time as the court for reasonable cause upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall file with the clerk of the court and mail to the conservatee and to the attorneys of record for the ward or conservatee, along with notice of how to file an objection, an inventory and appraisal of the estate, made as of the date of the appointment of the guardian or conservator. A copy of this inventory and appraisal, along with notice of how to file an objection, also shall be mailed to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

* * *

(e) By January 1, 2008, the Judicial Council shall develop a form to effectuate the notice required in subdivision (a).

Probate: Notice of Filing Inventory and Appraisal, Instructions on Objecting to an Inventory and Appraisal, and Objections to an Inventory and Appraisal (adopt form GC-042, approve forms GC-042(MA) and GC-045).

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California	AM	Y	Agree with proposed changes if modified. We recommend that the advisement at the end of item 4, *Notice of Filing of Inventory and Appraisal and How to Object to Appraisal* (GC-042) read, "but if your objection to the appraisal of any asset that the court orders to be reappraised is not upheld by the court, the cost of appraisal be charged to you, personally, and you, personally, may be ordered by the court to pay for the cost of such appraisal." In addition, we recommend that a new paragraph 6 should be added to the proposed Objections to Inventory and Appraisal of Conservator or Guardian (GC-045): "6. I/we understand that the court may order an independent appraisal by one or more additional appraisers at the expense of the conservatorship or guardianship, but if my/our objection(s) to the appraisal of any asset that the court orders to be reappraised is not upheld by the court, the cost of appraisal may be charged to me/us, personally, and I/we, personally, may be ordered by the court to pay for the cost of such appraisal."	The committee disagrees with this comment. It believes that the advice given in item 2 on page 1 of the revised form more closely follows the statute (Prob. Code, § 2614(c)) than the language proposed by this commentator. The committee believes that this proposed language appears unnecessary, in light of the advice given in form GC-042. Placement of this statement in the proposed objection form could have an unduly chilling effect on its use. The legislation mandating these forms is a clear expression of a policy encouraging rather than discouraging scrutiny of inventories by means of objections.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
2.	Ms. Margaret K. Herring Attorney Herring & Herring, APC Coronado, California	AM	N	Agree with proposed changes if modified. NO NOTICE OF OBJECTION TO ATTORNEY. Probate Code section 2614 states that notice is to be given as required under Probate Code section 1460, et seq. However, neither section states that notice must be given to the attorney for the fiduciary. As a conservator's attorney, I would surely need notice that an objection has been filed and a hearing set. While the conservator should turn the notice over to us, he or she may not even realize that I was not served with the objection. I just noticed this loophole and see a tremendous problem with it. May the form be changed to advise that notice must be given to the attorney who filed the inventory?	The committee supports this recommendation. It has revised the form to advise that copies of objections and notice of the hearing on them must be served on the conservator or guardian *and* on his or her attorney, if any. Probate Code section 1214 requires service of copies of notices or other papers in proceedings under the Probate Code on a person and his or her attorney of record.
3.	Ms. Jamie Lamborn Retired Sacramento, California	A	N	Agree with proposed changes. This step in changes is needed. The court-appointed conservator involved with my parent's estate printed many untrue statements in her accounting. Nothing I could do except hire an attorney, go to court, and fight for the truth. In my case, I tried but was unsuccessful in finding an attorney willing to represent me in an action against the reputable persons I was questioning. I gave up after a year of searching. The conservator is well established in the	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				probate world and even though her reputation is not good, she has powerful people supporting her. Her charges, in my opinion, and her attorneys' charges were way out of the ball park and, in my opinion, constituted fraud. I had no recourse. With this new law, hopefully, it will clear the way for a layperson to understand their rights and easily pursue them. As for the conservatee with no family, who is the prime target for these predators, should he or she have someone appointed to oversee the activities involved with the estate and accountings? I can't stress enough, the need for oversight by uninterested parties.	
4.	Ms. Keeley C. Luhnow Associate Attorney Albence & Associates La Jolla, California	A	N	Agree with proposed changes.	No response necessary.
5.	Ms. Lois LeFlar Professional Fiduciary Diversifed Applications Rancho Cucamonga, California	N	N	Do not agree with proposed changes. Unless the conservatee is able to give informed consent to copy his or her nearest relative, then I strongly believe the information is private and confidential and should only be shared with the conservatee's attorney.	The Legislature has resolved this question in favor of requiring the notice that would be provided by form GC-042, including delivery of a copy of the *Inventory and Appraisal*, unless the court

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
					determines the mailing would be harmful to the conservatee. Moreover, the *Inventory and Appraisal* is a public document when filed, available to anyone who wishes to see it. Under current law, any person who has filed and served a *Request for Special Notice* (form DE-154/GC-035), including any of the persons entitled to notice under amended section 2610, would be entitled to service of a copy of an Inventory and Appraisal. (See Prob. Code, §§ 1460(b)(4), 2700.)
6.	Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California Sacramento, Sacramento County, California	A	Y	Agree with proposed changes.	No response necessary.
7.	Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, Santa Clara County California	AM	Y	Agree with proposed changes if modified. The Executive Committee seeks one modification of the proposed form GC-042: that the 30 day limit on filing objections applies only to the valuation given to the items listed on the	 The committee agrees with this recommendation and has modified the form accordingly.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				appraisal, to be consistent with Probate Code section 2614.	
8.	Hon. F. Clark Sueyres, Jr., Judge of the Superior Court of California, County of San Joaquin Stockton, San Joaquin County, California	AM	N	Form GC-045 on page 2, at item 5a.(1) advises: "This objection may be made only to the Final Inventory and Appraisal, or to any Inventory and Appraisal filed on or after the later of (1) 90 days after the date of the order appointing a conservator or guardian, or (2) the last day of any extension to file granted by the court . . ." Proposed form GC-045 fails to provide for objection to an Inventory and Appraisal that is not marked Final, Supplemental, or Corrected. With the surge in pro se petitions, it has become common for Inventories and Appraisals to be unmarked, leaving the court to infer they are the Final Inventories because 90 days has expired and only the one Inventory has been filed. Either delete all the quoted language, or amend to "or to any Inventory and Appraisal on file on or after the later of (1) . . ."	The quoted instruction expressly applies to any inventory filed on or after the due date or any extended due date of the final inventory, whether or not the inventory filed is designated as a final inventory. The fact that it also expressly applies to an inventory designated as "final" should not engender any confusion.
9.	Superior Court of Los Angeles County Los Angeles, California	AM	Y	Agree with proposed changes if modified. Proposed Judicial Council form GC-042 *Notice of Filing of Inventory and Appraisal and How To Object to the Inventory or the Appraised Value of Property;* page 2, Instructions to Conservator or Guardian: Probate Code section 2610 allows the conservator to do the mailing,	 The committee agrees with this recommendation and has modified form GC-042 accordingly.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				however the proposed form does not allow for this circumstance.	
10.	Ms. Robin C. Westmiller, J.D. President National Association to Stop Guardian Abuse Thousand Oaks, California	AM	N	Agree with proposed changes if modified. How to Object to Appraisal. This sets up yet another agency who will benefit from the estate of the conservatee. If the family objects to the appraisal, "The court may order an independent reappraisal by one or more additional appraisers at THE EXPENSE OF THE CONSERVATORSHIP OR GUARDIANSHIP ESTATE, and if the object is not upheld by the court, THE COST OF THE REAPPRAISAL MAY BE CHARGED TO YOU. Either way, the victim pays for any objections to this appraisal, leaving it in the hands of the original appraised value, which may be way below market. Any appraiser will now have unlimited access to additional depletion of the estate and again, the family members will be totally left without any means to protest if they do not have the necessary assets to do so.	 The committee believes the advice currently given in item 2 on page 1 of the revised form, taken directly from Probate Code section 2614, is an appropriate allocation of responsibility for the cost of the appraisal if the objector is unsuccessful.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				NO CHARGE TO THE CONSERVATEE'S ESTATE OR ADDITIONAL PENALTIES TO THE FAMILY. ANY FEES SHOULD COME DIRECTLY FROM THE CONSERVATOR.	This recommendation would not comply with current law.
11.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	A	N	Agree with proposed changes.	No response necessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: October 2, 2007

SUBJECT: Probate: Standard and Simplified Accountings by Conservators and Guardians (adopt rule 7.575 of the California Rules of Court; adopt forms GC-400(SUM)/GC-405(SUM), GC-405(A), GC-405(C); and approve forms GC-400(PH)(1)/GC-405(PH)(1), GC-400(PH)(2)/GC-405(PH)(2), GC-400(AP)/GC-405(AP), GC-400(A)(1), GC-400(A)(2), GC-400(A)(3), GC-400(A)(4), GC-400(A)(5), GC-400(A)(6), GC-400(B)/GC-405(B), GC-400(OCH)/GC-405(OCH), GC-400(NI), GC-400(C)(1), GC-400(C)(2), GC-400(C)(3), GC-400(C)(4), GC-400(C)(5), GC-400(C)(6), GC-400(C)(7), GC-400(C)(8), GC-400(C)(9), GC-400(C)(10), GC-400(C)(11), GC-400(D)/GC-405(D), GC-400(DIST)/GC-405(DIST), GC-400(OCR)/GC-405(OCR), GC-400(NL), GC-400(E)(1)/GC-405(E)(1), GC-400(E)(2)/GC-405(E)(2), GC-400(F)/GC-405(F), GC-400(G)/GC-405(G), and GC-400(A)(C)) (Action Required)

Issue Statement

Conservators and guardians of estates must file periodic accountings showing their management of the estates in their charge. These accountings are subject to detailed statutory requirements.[1]

Legislation enacted as part of the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Omnibus Act) directs the council to create forms for the

[1] See Probate Code sections 2620 (requirement of accounting) and 1061–1064 (content and layout requirements for all court accountings, including those of conservators and guardians).

schedules contained in accountings filed by conservators and guardians and a rule of court to prescribe how the forms are to be used.[2]

Recommendation

In response to the mandate of Probate Code section 2620(a) as amended by the Omnibus Act, the Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008:

1. Adopt rule 7.575 of the California Rules of Court to define standard and simplified accountings under Probate Code section 2620(a) and to prescribe how the Judicial Council forms required by that section are to be used;

2. Adopt the following forms for mandatory use:

   Summary of Account—Standard and Simplified Accounts (form GC-400(SUM)/GC-405(SUM));

   Schedule A, Receipts—Simplified Account (form GC-405(A)); and

   Schedule C, Disbursements—Simplified Account (form GC-405(C)); and

3. Approve the following forms for optional use:

   Cash Assets on Hand at Beginning of Account Period—Standard and Simplified Accounts (form GC-400(PH)(1)/GC-405(PH)(1));

   Non-Cash Assets on Hand at Beginning of Account Period—Standard and Simplified Accounts (form GC-400(PH)(2)/GC-405(PH)(2));

   Additional Property Received During Period of Account—Standard and Simplified Accounts (form GC-400(AP)/GC-405(AP));

   Schedule A, Receipts, Dividends—Standard Account (form GC-400(A)(1));

   Schedule A, Receipts, Interest—Standard Account (form GC-400(A)(2));

   Schedule A, Receipts, Pensions, Annuities, and Other Regular Periodic Payments—Standard Account (form GC-400(A)(3));

   Schedule A, Receipts, Rent—Standard Account (form GC-400(A)(4));

   Schedule A, Receipts, Social Security, Veterans' Benefits, Other Public Benefits—Standard Account (form GC-400(A)(5));

   Schedule A, Receipts, Other Receipts—Standard Account (form GC-400(A)(6));

[2] The Omnibus Act is, collectively, Stats. 2006, ch. 490–493 (respectively, Senate Bill 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363). The provision concerning accountings of conservators and guardians is an amendment of Probate Code section 2620(a) made by section 24 of AB 1363.

Schedule B, Gains on Sales—Standard and Simplified Accounts
(form GC-400(B)/GC-405(B));

Other Charges—Standard and Simplified Accounts
(form GC-400(OCH)/GC-405(OCH));

Net Income From Trade or Business—Standard Account
(form GC-400(NI));

Schedule C, Disbursements, Conservatee's Caregiver Expenses —Standard Account (form GC-400(C)(1));

Schedule C, Disbursements, Conservatee's Residential or Long-Term Care Facility Living Expenses—Standard Account (form GC-400(C)(2));

Schedule C, Disbursements, Ward's Education Expenses—Standard Account
(form GC-400(C)(3));

Schedule C, Disbursements, Fiduciary and Attorney Fees—Standard Account
(form GC-400(C)(4));

Schedule C, Disbursements, General Administration Expenses—Standard Account (form GC-400(C)(5));

Schedule C, Disbursements, Investment Expenses—Standard Account
(form GC-400(C)(6));

Schedule C, Disbursements, Living Expenses—Standard Account
(form GC-400(C)(7));

Schedule C, Disbursements, Medical Expenses—Standard Account
(form GC-400(C)(8));

Schedule C, Disbursements, Property Sale Expenses—Standard Account
(form GC-400(C)(9));

Schedule C, Disbursements, Rental Property Expenses—Standard Account
(form GC-400(C)(10));

Schedule C, Disbursements, Other Expenses—Standard Account
(form GC-400(C)(11));

Schedule D, Losses on Sales—Standard and Simplified Accounts
(form GC-400(D)/GC-405(D));

Distributions to Conservatee or Ward—Standard and Simplified Accounts
(form GC-400(DIST)/GC-405(DIST));

Other Credits—Standard and Simplified Accounts
(form GC-400(OCR)/GC-405(OCR));

Net Loss From Trade or Business—Standard Account
(form GC-400(NL));

Cash Assets on Hand at End of Account Period—Standard and Simplified Accounts (form GC-400(E)(1)/GC-405(E)(1));

Non-Cash Assets on Hand at End of Account Period —Standard and Simplified Accounts (form GC-400(E)(2)/GC-405(E)(2));

Schedule F, Changes in Form of Assets—Standard and Simplified Accounts (form GC-400(F)/GC-405(F));

Schedule G, Liabilities at End of Account Period—Standard and Simplified Accounts (form GC-400(G)/GC-405(G)); and

Schedule A and C, Receipts and Disbursements Worksheet—Standard Account (form GC-400(A)(C)).

The text of proposed rule 7.575 is attached at pages 12–14.

Copies of the forms are attached at pages 15–49.

Rationale for Recommendation

The following paragraph has been added to Probate Code section 2620(a) by the Omnibus Act:

> By January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, and the California Society of Certified Public Accountants, shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. *After January 1, 2008, all accountings submitted pursuant to this section shall be submitted on the Judicial Council form.* (Italics added.)

The advisory committee, after consulting with representatives of the organizations identified in the statute, developed and now proposes adoption of rule 7.575 and adoption or approval of the 35 forms listed above in response to the statutory directive.

Rule 7.575

Rule 7.575(a) would define a standard accounting as an accounting that states receipts and disbursements in subject-matter categories, and a simplified accounting as an accounting that shows receipts and disbursements in chronological order, without regard to the subject matter of each receipt and disbursement. The committee concluded that no other differences between standard and simplified accountings can be established by rule because the

contents required of all court accountings, whether standard or simplified, have not been changed by the Omnibus Act. These requirements are specified in detail in Probate Code sections 1061–1064.

Rule 7.575(b) would permit a conservator or guardian to choose to file a standard accounting at all times, but would require a standard accounting in the following situations:

(1) The estate contains income real property;

(2) The estate contains a whole or partial interest in a trade or business;

(3) The appraised value of the estate is $500,000 or more, exclusive of the conservatee's or ward's personal residence;

(4) A receipts or disbursements schedule prepared in a simplified accounting format exceeds five pages in length; or

(5) The court directs that a standard accounting be filed.

All accountings prepared in estates of conservatees or wards not described above may be prepared in the simplified accounting format, at the option of the conservator or guardian. Moreover, if a standard accounting is required under the rule solely because of the length of the accounting's receipts or disbursement schedule (item 4 above), only the particular schedule that exceeds five pages in length would have to be prepared in the standard account format.

Rule 7.575(e)(1) addresses the use of mandatory and optional accounting forms. This paragraph provides that mandatory forms must be used by all conservators and guardians who file accountings; optional forms may be used by all accounting filers. This is consistent with the general rules applicable to all Judicial Council forms. (See Cal. Rules of Court, rules 1.31(a) and 1.35(a).) However, the rule would depart from the general rule for optional accounting forms that are designed to be used both in standard and simplified accountings, forms designated as GC-400/GC-405.[3] These dual-use forms would be required for simplified-account filers despite their designation as optional forms.

The dual-use forms other than the *Summary of Account* and all standard-account forms are proposed as optional forms for standard-account filers in response to comments received concerning the impact of Judicial Council accounting forms on fiduciaries that use accounting software or computer programs to prepare their accounting schedules. The advisory committee believes that these comments

[3] This proposal includes 13 dual-use forms. The *Summary of Account* (form GC-400(SUM)/GC-405(SUM)) is proposed as a mandatory form. The rest of the dual-use forms are proposed as optional forms.

mostly concern fiduciaries who would file standard accountings under the rule. These filers would be permitted to use their software to prepare their accounting schedules so long as their accountings provide the same information as is requested in the Judicial Council forms. (See rule 7.575(e)(2).) On the other hand, most simplified-account filers, including many unrepresented fiduciaries, would not be using sophisticated accounting software. The simplified accounting forms are designed primarily for these account filers.

Rule 7.575 would be placed in chapter 12 of title 7 of the California Rules of Court, currently titled *Accounts and Reports of Executors and Administrators*. The committee proposes that chapter 12 be renamed *Accounts and Reports of Executors, Administrators, Conservators, and Guardians,* and recommends that all future rules of court governing accountings filed by these fiduciaries be placed in that chapter. Accountings filed by executors and administrators in decedents' estates and those filed by conservators and guardians are identical in layout and format and are equally subject to the detailed requirements of Probate Code sections 1061–1063. Placing all accounting rules in one chapter applicable to all court-appointed fiduciaries eliminates the need to propose separate but substantially identical rules of court on accounting-related topics for each fiduciary.

Judicial Council forms
Thirty-five new forms are proposed. All of the forms are assigned the designator numbers 400 or 405, in the Probate—Guardianships and Conservatorships form family (abbreviated "GC"). Forms designated as GC-400 are for use in standard accountings under section 2620(a) and rule 7.575(d); forms designated as GC-405 are for use in simplified accountings. Dual-use forms for both standard and simplified accountings are designated GC-400/GC-405.

Three forms, *Summary of Account* (form GC-400(SUM)/GC-GC-405(SUM)); *Schedule A, Receipts—Simplified Account* (form GC-405(A)); and *Schedule C, Disbursements—Simplified Account* (form GC-405(C)), are proposed as mandatory forms. The remaining 32 forms, including the 12 remaining dual-use forms, are proposed as optional forms (subject to the provisions of rule 7.575(e), discussed above).

The forms other than the *Summary of Account* are subject-matter schedules; arranged and listed above in the order those schedules would appear in the *Summary of Account* in accordance with the requirements of Probate Code section 1061.[4] Suffixes (A) through (E) to the form designators GC-400 or GC-405 are

[4] All schedules for which forms have been prepared are included in the *Summary of Account* required by section 1061 except Schedules F and G, respectively *Changes in the Form of Assets—*

assigned to the accounting schedules that are given these letters: receipts, Schedule A; gains on sales, Schedule B; disbursements, Schedule C; losses on sales, Schedule D; and property on hand at end of account period, Schedule E (separated into schedules for cash and non-cash assets, designated respectively as (E)(1) and (E)(2)).[5]

Other schedules reflected in the *Summary of Account* that do not have assigned schedule letters are designated in the forms by suffixes based on their subject matter. With the exception of the schedules for the cash and non-cash assets on hand at the beginning of the accounting period, these forms would be assigned schedule letters by users at the time they are used.[6]

Although a schedule for cash assets at the beginning of the account period is not required by section 1063 because an estimate of the fair market value of this type of asset is not required, and a schedule of non-cash assets on hand at the beginning of the accounting period is not required by section 1063 for the first account, schedules for both types of assets are provided. The *Summary of Account* does not have room for more than one line for cash and non-cash assets on hand at the beginning of the account period. All assets from several inventories may be shown on the appropriate schedule instead of in the *Summary of Account*. In the first account, all assets may be listed collectively by the inventory in which they

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Standard and Simplified Accounts (form GC-400(F)/GC-405(F)), and *Liabilities at the End of the Account Period--Standard and Simplified Accounts* (form GC-400(G)/GC-405(G)). These schedules are required by Probate Code sections 1063(b) and (g), but they are informational schedules that do not show charges or credits that are included in the calculation of the balances shown in the *Summary of Account*.

[5] The schedules of cash and non-cash assets that together form the schedule of property on hand at the beginning of the account period are not assigned a schedule letter and do not call for the accounting preparer to identify the schedules with a letter. Before 1997, court accountings did not include a separate schedule for property on hand at the beginning of the account period. Such property was identified in the *Summary of Account* by reference to the Inventory and Appraisal filed by the fiduciary that lists the property or, for accounts after the first account, by reference to the property on hand at the end of the previous accounting period. This practice changed for accounts after the first account with the enactment of Probate Code section 1063 in 1997. Section 1063(a) requires accountings after the first account to contain an estimate of the fair market value of each item of non-cash property on hand at the beginning of the accounting period. A schedule of non-cash property on hand at the beginning of the accounting period is therefore not always filed. For this reason, no schedule letter has traditionally been assigned to this schedule even when it is filed with later accountings.

[6] *Net Income* and *Net Loss From Trade or Business* are identified respectively as (NI) and (NL), the cash and non-cash assets schedules that together form property on hand at beginning of account period are identified as (PH)(1) and(PH)(2), *Additional Property Received During Period of Account* as (AP), *Other Charges* and *Other Credits* respectively as (OCH) and (OCR); and *Distributions to Conservatee or Ward* as (DIST).

appear. In subsequent accounts, each non-cash asset on hand at the beginning of the account period must be listed individually, together with its carry value and its estimated fair market value.

Each of the subject-matter categories of the receipts and disbursements schedules for standard accountings is a separate form, identified by numbers following the identifiers GC-400(A) and GC-400(C). There are 6 receipt categories and 11 disbursement categories, including a catchall "other" category in each schedule. The categories are clearly identified on each form, shown above in the full names of these forms. The categories represent types of receipts and expenditures commonly found in conservatorship or guardianship accountings.

The receipts and disbursements schedules for simplified accountings are designated respectively as GC-405(A) and GC-405(C). These forms, and the *Summary of Account*, are the only forms proposed for adoption as mandatory forms.

The advisory committee created these single-page forms with the understanding that users of the forms with multi-page schedules or receipt or disbursement categories would use multiple copies of the forms. All forms for receipt and disbursement categories and schedules that are likely to require more than one page have a check box at the bottom of the page, next to the place where the total for the schedule or the subtotal for the receipt or disbursement category is to be placed. The instructions at the bottom of these forms advise users to check the box on the copy of the form that will be the last page of the schedule or category to indicate that it is the last page, where the total for that schedule or category will be placed. Additional instructions direct users to the line in the *Summary of Account* where the total of the schedule is to be placed.[7]

The committee has designed an additional optional form worksheet that is not to be filed with the accounting, designated as form GC-400(A)(C). This form is designed for use in the preparation of a standard account. The form shows all of the receipt and disbursement categories of the standard account on a single page, with a place for the total of each category and the total of all categories of Schedules A and C at the bottom of the page. This form is proposed primarily as a checklist to ensure that all categories of receipts or disbursements are included in

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[7] The *Summary of Account* has a column of numbers in the left-hand margin corresponding to each line in the summary where a total from a schedule is to go, or where a subtotal or total of items in the summary is to be placed. Instructions in the schedules and in the *Summary of Account* direct accounting preparers to carry the schedule totals to lines in the summary, or add figures contained in the summary, by reference to these numbers.

the total of the schedule of receipts or disbursements that is carried over to the *Summary of Account*.

Alternative Actions Considered
The advisory committee did not consider an alternative to the adoption of a rule of court and the adoption or approval of accounting forms because of the requirements of Probate Code section 2620(a), as amended by the Omnibus Act. The committee did develop and circulate for comment proposed mandatory form summaries of each standard-account schedule because of concern that the last sentence of amended section 2620(a), quoted and in italics on page 4 above, could be interpreted as requiring mandatory forms to show at least the total of each schedule.

The committee later eliminated these summary forms because it concluded that they would serve no useful purpose and would make preparation of accountings more complex, difficult, and expensive. The committee determined that section 2620(a) would be satisfied by requiring standard account preparers to provide the same information in their self-prepared schedules as is required by the forms and by requiring these preparers to show the totals from the schedules in the mandatory *Summary of Account*. (See rule 7.575(e).)

Comments From Interested Parties
This proposal was circulated for comment in a special cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, and probate-interest sections of the State Bar and local bar associations, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts, and representatives of the organizations with which the advisory committee had consulted during the development of the accounting forms.

Twenty-two comments were received. A chart showing the comments received and the advisory committee's responses is attached to this report, beginning at page 51.

Twelve commentators do not agree with the proposal. Nine commentators would agree with a modified proposal. One commentator, Ms. Jamie Lamborn of Sacramento, agrees with the proposal without further comment.

The central issue for commentators who do not agree with the proposal or would approve it if modified, is the incompatibility of the proposed Judicial Council forms with accounting and related software these commentators use to prepare their accounting schedules. Examples of these comments are those of Ms. Connie Draxler and Mr. Richard Bishop, on behalf of the California State Association of

Public Guardians and Public Conservators; Mr. Peter S. Stern, representing the State Bar's Trusts and Estates Section; Mr. Marvin J. Southard, the Public Guardian and Director of the Department of Mental Health of Los Angeles County; and Ms. Jane B. Lorenz, a private professional fiduciary.

The advisory committee's response to these comments was to eliminate as unnecessary forms that would have summarized each schedule in a standard accounting and to make the *Summary of Account* the only Judicial Council form that would be required in a standard account. These changes would permit standard-account preparers to use their current software to prepare their account schedules, subject only to the requirement in rule 7.575(e) that these schedules must provide the same information as is required by the forms.

Many commentators make specific and concrete recommendations for improving the accounting forms. Mr. Dan Crosbie, the Chair of the Committee on Taxation of the California Society of Certified Public Accountants, is a leading example of this type of commentator. One of his most useful comments is to add numbers to some of the forms as references to assist users in carrying entries from one form to another. The committee revised the *Summary of Account* to add numbered lines in the left margin, and modified the instructions in the schedules to refer to these numbers when describing where entries from the schedules are to go in the summary.

Other commentators noted omissions in the original *Summary of Account* that led the committee to create additional schedules and lines in the summary for additional property received during the period of account, "other charges" and "other credits," and a separate schedule for distributions to the conservatee or ward.

Ms. Mary Joy Quinn, Director of the Probate Department of the Superior Court of San Francisco County, recommends that a schedule for reconciliation of bank account statements be provided. Many courts require reconciliations of cash accounts when the account statements filed with the accounting do not match the cash balance on hand shown in the account. The committee elected not to provide a reconciliation schedule at this time, partially in response to other commentators who recommend that they be permitted to provide reconciliations directly on the bank account statements submitted to the court with their accounting.

Many commentators, including some who disapprove of the forms for use by sophisticated practitioners, do support the forms for use in simplified accounts by self-represented fiduciaries.

Implementation Requirements and Costs

The proposed rule and forms will result in the normal expenses associated with the adoption of any rule of the California Rules of Court and the adoption or approval and distribution of any Judicial Council form. Those expenses will be significant with the adoption or approval of 35 new forms at one time. Courts will incur additional staff training expenses as necessary to familiarize their probate department staff members, including examiners, probate staff attorneys, and court investigators, with the large number of new forms and the new rule of court that will define their proper use.

On the other hand, the simplified account forms and the instructions provided in all the forms should make it easier for self-represented conservators and guardians to prepare and file their accountings in a timely and more understandable manner. This in turn would reduce court time that would otherwise be necessary to continue hearings, compel compliance with accounting requirements, and review the accountings prepared and filed by these fiduciaries, and should also reduce the expense of the accounting process imposed on the estates of conservatees and wards.

Attachments

Rule 7.575 of the California Rules of Court is adopted, effective January 1, 2008, to read:

1 **Chapter 12. Accounts and Reports of Executors, ~~and~~ Administrators,**
2 **Conservators, and Guardians**
3
4 **Rule 7.575. Accounts of conservators and guardians**
5
6 This rule defines standard and simplified accountings filed by conservators and
7 guardians under Probate Code section 2620(a), provides when each type of
8 accounting must or may be filed, and prescribes the use of Judicial Council
9 accounting forms in both types of accountings.
10
11 **(a) Standard and simplified accountings**
12
13 A standard accounting lists receipts and disbursements in subject-matter
14 categories, with each receipt and disbursement category subtotaled. A
15 simplified accounting lists receipts and disbursements chronologically, by
16 receipt or payment date, without subject-matter categories.
17
18 **(b) Standard accounting authorized or required**
19
20 A conservator or guardian may file any accounting required or authorized by
21 Probate Code section 2620 as a standard accounting under this rule and must
22 file a standard accounting if:
23
24 (1) The estate contains income real property;
25
26 (2) The estate contains a whole or partial interest in a trade or business;
27
28 (3) The appraised value of the estate is $500,000 or more, exclusive of the
29 conservatee's or ward's personal residence;
30
31 (4) Except as provided in (c), Schedule A (receipts) or Schedule C
32 (disbursements) prepared in a simplified accounting format exceeds
33 five pages in length; or
34
35 (5) The court directs that a standard accounting be filed.

1 **(c) Simplified accounting authorized**
2
3 A conservator or guardian may file a simplified accounting in all cases not
4 listed in (b). If required by this rule to file a standard accounting only
5 because a receipts or disbursements schedule is longer than five pages under
6 (b)(4), a conservator or guardian may file a simplified accounting, except for
7 that schedule, which must be prepared in a standard accounting format.
8
9 **(d) Standard and simplified accounting forms**
10
11 Judicial Council forms designated as GC-400 are standard accounting forms.
12 Forms designated as GC-405 are simplified accounting forms. Forms
13 designated as GC-400/GC-405 are forms for both standard and simplified
14 accountings. Each form is also designated by a suffix following its
15 accounting designator that identifies the form's intended use, based either on
16 the form's schedule letter as shown in the *Summary of Account* (form GC-
17 400(SUM)/GC-405(SUM)) or the form's subject matter.
18
19 **(e) Mandatory and optional forms**
20
21 (1) Judicial Council accounting forms adopted as mandatory forms must be
22 used by standard and simplified accounting filers. Judicial Council
23 accounting forms approved as optional forms may be used by all
24 accounting filers. Judicial Council accounting forms designated as GC-
25 400/GC-405 that are approved as optional forms may be used by
26 standard accounting filers but must be used by simplified accounting
27 filers.
28
29 (2) Standard accounting filers electing not to use optional Judicial Council
30 accounting forms must:
31
32 (A) State receipts and disbursements in the subject-matter categories
33 specified in the optional Judicial Council forms for receipts and
34 disbursements schedules;
35
36 (B) Provide the same information about any asset, property,
37 transaction, receipt, disbursement, or other matter that is required
38 by the applicable Judicial Council accounting form; and
39
40 (C) Provide the information in the same general layout as the
41 applicable Judicial Council accounting form, but instructional
42 material contained in the form and material contained or
43 requested in the form's header and footer need not be provided.

1 **(f) Required information in all accounts**
2
3 Notwithstanding any other provision of this rule and the Judicial Council
4 accounting forms, all standard and simplified accounting filers must provide
5 all information in their accounting schedules or their *Summary of Account*
6 that is required by Probate Code sections 1060–1063 and must provide all
7 information required by Probate Code section 1064 in the petition for
8 approval of their account or the report accompanying their account.

Draft 6 10/12/07 Not Approved by the Judicial Council GC-400(SUM)/GC-405(SUM)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

SUMMARY OF ACCOUNT—STANDARD AND SIMPLIFIED ACCOUNTS

______ ☐ *(Check if final.)* **and Final Account** ☐ *(Check if interim.)* **Account Current**

Account number ("First," etc.)

______ **through** ______

Opening date of account / Closing date of account

CHARGES*

	Property on Hand at Beginning of Account Period, consisting of:		
1a	**Cash Assets**	$	
1b	**Non-Cash Assets** *(carry value)*		
1c	**Total Property on Hand at Beginning of Account Period** *(add 1a and 1b)*		$
2	**Additional Property Received During Period of Account** — **Schedule**		
3	**Receipts During Period of Account** — **Schedule A**		
4	**Gains on Sales During Period of Account** — **Schedule B**		
5	**Other Charges** *(describe):* — **Schedule**		
6	**Net Income From Trade or Business During Period of Account** — **Schedule**		
7	**TOTAL CHARGES** *(add 1c, 2, 3, 4, 5, and 6)*		$

CREDITS*

8	**Disbursements During Period of Account** — **Schedule C**		$
9	**Losses on Sales During Period of Account** — **Schedule D**		
10	**Distributions to Conservatee or Ward** — **Schedule**		
11	**Other Credits** *(describe):* — **Schedule**		
12	**Net Loss From Trade or Business During Period of Account** — **Schedule**		
	Property on Hand at End of Account Period — **Schedule E, consisting of:**		
13a	**Cash Assets**	$	
13b	**Non-Cash Assets** *(carry value)*		
13c	**Total Property on Hand at End of Account Period** *(add 13a and 13b)*		
14	**TOTAL CREDITS** *(add 8, 9, 10, 11, 12, and 13c)*		$

* *(Enter "0" for all categories of charges or credits for which you have no entries. Do not include schedules for these categories, but do not relabel or redesignate the schedules that are included.)*

Form Adopted for Mandatory Use
Judicial Council of California
GC-400(SUM)/GC-405(SUM)
[New January 1, 2008]

**SUMMARY OF ACCOUNT—
STANDARD AND SIMPLIFIED ACCOUNTS
(Probate—Guardianships and Conservatorships)**

Probate Code, §§ 1060–1064, 2620;
Cal. Rules of Court, rule 7.575
www.courtinfo.ca.gov

Draft 4 10/12/07 Not Approved by the Judicial Council GC-400(PH)(1)/GC-405(PH)(1)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Cash Assets on Hand at Beginning of Account Period—Standard and Simplified Accounts

(Cash assets are assets that may be appraised by the conservator or guardian and listed on Attachment 1 of the Inventory and Appraisal. See Probate Code sections 2610(c) and 8901 and the instructions on page 2 of the Inventory and Appraisal *(form DE-160/GC-040). List all cash assets and group them by the inventory in which they appear and identify the inventory by its filing date and type (e.g., Partial No. 1, Final, Supplemental, Correcting, etc.).)*

Cash Assets on Hand as of *(first date of account period):*

Description of Cash Assets	Value
	$
☐ **Total, Cash Assets :**	$

(Add pages as required to list all cash assets. Check the box at the bottom of the last page of this asset category and total the amount of the category. Carry that sum over to line 1a of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in the entire schedule for property on hand at beginning of account period, including both the cash assets and non-cash assets on hand.)*

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Non-Cash Assets on Hand at Beginning of Account Period—Standard and Simplified Accounts

(Non-cash assets are assets that must be appraised by a probate referee and listed on Attachment 2 of the Inventory and Appraisal. See Probate Code sections 2610(c) and 8902 and instructions on page 2 of the Inventory and Appraisal *(form DE-160/GC-040). List all non-cash assets, group them by the inventory in which their latest appraised values appear, or if none, as after-acquired assets in order of their purchase dates, and identify the inventory by its filing date and type (e.g., Partial No. 1, Final, Supplemental, Correcting, etc.).)*

Non-Cash Assets on Hand as of *(first date of account period):*

Description of Non-Cash Assets	Estimated Market Value *	Carry Value †
	$	$
☐ **Totals, Non-Cash Assets:**	$	$

*** Not required for the first account.** † *(The carry value of an asset that is included in an inventory is its appraised value. The carry value of an asset purchased for the estate after appointment of the conservator or guardian is its purchase price.) (Add pages as required to list all non-cash assets. Check the box at the bottom of the last page of this asset category and total the estimated and carry values of the non-cash assets. Carry the sum of the carry values over to line 1b of the* Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in the entire schedule for property on hand at beginning of account period, including both the cash assets and non-cash assets on hand.)*

Page PH _____ **of** _____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule *(specify schedule letter)*: ____ **Additional Property Received During Period of Account— Standard and Simplified Accounts**

(This schedule is for property received during the period of account shown on supplemental inventories filed during the period. See Probate Code section 2613 and the definitions of cash and non-cash assets in Cash Assets on Hand at Beginning of Account Period *and* Non-Cash Assets on Hand at Beginning of Account Period *(forms GC-400(PH)(1)/GC-405(PH)(1) and GC-400(PH)(2)/GC-405(PH)(2)). You do not need to list each asset. Instead, you may identify each* Supplemental Inventory and Appraisal *filed during the period of account and show the total of the cash and non-cash assets shown on each. Include the carry value and estimated fair market value of each non-cash item of this property remaining on hand at the end of the account period in* Schedule E, Non-Cash Assets On Hand at End of Account Period.*)*

Additional Property Received During Period of Account

Description	Value, Cash Assets	Carry Value, Non-Cash Assets *
	$	$
Subtotal, Additional Cash and Non-Cash Property Received During Period of Account :	$ ______	$ ______
☐ **Total, Additional Property Received During Period of Account:**		______

* *(The carry value of a non-cash asset that is included in a supplemental inventory is its appraised value.)*
(Add pages as required. Check the box at the bottom of the last page of this schedule, total the value of all cash and the carry value of all non-cash assets, and total the sum of those values. Carry the sum of the values over to line 2 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in this schedule.)*

Page *(specify schedule letter)*: ____ ____ **of** ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF

(Name):

☐ Conservatee ☐ Minor

CASE NUMBER:

Schedule A, Receipts, Dividends—Standard Account*

***Noncapital items**

(Note returns of principal with the items listed below, but do not include their dollar amounts in the amounts or the total. Report returns of principal on Schedule A1, Return of Principal (there is no form for that schedule), add their dollar amounts to cash assets on hand, and subtract their dollar amounts from the carry values of the securities involved.)

Dividends

Date of Receipt *(mm/dd/yyyy)*	Description* * *(Report dividends from each security separately.)*	Amounts
		$
	☐ **Subtotal, Dividends:**	$

(Add pages as required. Check the box at the bottom of the last page of this receipt category and total the amount of the category. Include that sum in the total of receipts on line 3 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule A.)*

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(A)(2)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule A, Receipts, Interest—Standard Account

Interest

Date of Receipt *(mm/dd/yyyy)*	**Description** * * *(Report interest from each account or security separately.)*	**Amounts**
		$
	☐ **Subtotal, Interest:**	$

(Add pages as required. Check the box at the bottom of the last page of this receipt category and total the amount of the category. Include that sum in the total of receipts on line 3 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule A.)*

Page A _____ **of** _____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(A)(3)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule A, Receipts, Pensions, Annuities, and Other Regular Periodic Payments—Standard Account*

* *(Report veterans' pensions on form GC-400(A)(5),* Schedule A, Receipts, Social Security, Veterans' Benefits, Other Public Benefits.*)*

Pensions, annuities, and other regular periodic payments

Date of Receipt *(mm/dd/yyyy)*	**Description*** * *(Report receipts from each source separately.)*	**Amounts**
		$
	☐ **Subtotal, Pensions, Annuities, Other Regular or Periodic Payments:**	$

(Add pages as required. Check the box at the bottom of the last page of this receipt category and total the amount of the category. Include that sum in the total of receipts on line 3 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule A.)*

Page A ____ **of** ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule A, Receipts, Rent—Standard Account

Rent

Date of Receipt *(mm/dd/yyyy)*	Description * * *(Report rents from each property separately.)*	Amounts
		$
	☐ **Subtotal, Rent:**	$

(Add pages as required. Check the box at the bottom of the last page of this receipt category and total the amount of the category. Include that sum in the total of receipts on line 3 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule A.)*

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(A)(5)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule A, Receipts, Social Security, Veterans' Benefits, Other Public Benefits—Standard Account

Social Security, veterans' benefits, and other public benefit payments

Date of Receipt *(mm/dd/yyyy)*	Description * * *(Report receipts from each source separately.)*	Amounts
		$
	☐ **Subtotal, Social Security, Veterans' Benefits, Other Public Benefits:**	$

(Add pages as required. Check the box at the bottom of the last page of this receipt category and total the amount of the category. Include that sum in the total of receipts on line 3 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule A.)*

Page A ____ of ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(A)(6)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule A, Receipts, Other Receipts—Standard Account*

* *(Use this form for all receipts not described in other Schedule A, Receipts forms.)*

Other receipts *(add general description):* ____________________

Date of Receipt *(mm/dd/yyyy)*	Description * * *(Report receipts from each source separately.)*	Amounts
		$
	☐ **Subtotal, Other Receipts:**	$ ________

(Add pages as required. Check the box at the bottom of the last page of this receipt category and total the amount of the category. Include that sum in the total of receipts on line 3 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule A.)*

Page A ____ of ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council GC-405(A)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (*Name*): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule A, Receipts—Simplified Account

Receipts *(Receipts of noncapital items by the estate of the conservatee or ward)*

Date of Receipt *(mm/dd/yyyy)*	**Description**	**Amounts**
		$
	☐ **Total, Schedule A:**	$

(Add pages if necessary, but if this schedule exceeds five pages, you must prepare it in the Standard Account format. If so, you may use Forms GC-400(A)(1)–(6), the standard account forms for Schedule A, for that purpose. Check the box at the bottom of the last page of this schedule and total the amount of the receipts. Carry that sum over to line 3 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule A.)*

Page A ____ of ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(B)/GC-405(B)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule B, Gains on Sales—Standard and Simplified Accounts

Gains on sales during period of account

Date (mm/dd/yyyy)	Property Sold	Sale Price	Carry Value *	Gain
		$	$	$
			☐ **Total Gains on Sales:**	$

*** See form GC-400(PH)(2)/GC-405(PH)(2) for information about Carry Value.**
(List all property sold during the account period that resulted in gains (gross sale price higher than carry value). Include each property's Inventory and Appraisal item number and the date the Inventory and Appraisal containing the property was filed. Add pages as required. Check the box at the bottom of the last page of this schedule and total the gains. Carry that sum over to line 4 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule B.)*

Draft 2 10/12/07 Not Approved by the Judicial Council GC-400(OCH)/GC-405(OCH)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule *(specify schedule letter):* ____ **Other Charges—Standard and Simplified Accounts**

Other charges not shown on another schedule *(describe):*

Date *(mm/dd/yyyy)*	**Description**	**Amounts**
		$
	☐ **Total, Other Charges:**	$

(Add pages as required. Check the box at the bottom of the last page of this schedule and total the amount. Carry that sum to line 5 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in this schedule.)*

Page *(specify schedule letter):* ____ ____ **of** ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule *(specify schedule letter):* _____ **, Net Income From Trade or Business—Standard Account**

Net income during period of account from *(name of business):*

Date of Receipt *(mm/dd/yyyy)*	Description	Amounts
		$
	Total, Schedule ____	$ ________

(This schedule should include the information about the business disclosed on Schedule C or Schedule F of a business owner's federal income tax return. Add pages as required. Check the box at the bottom of the last page of this schedule and total the net income. Carry that sum over to line 6 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in this schedule.)*

Page *(specify schedule letter):* _____ _____ **of** _____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council **GC-400(C)(1)**

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule C, Disbursements, Conservatee's Caregiver Expenses—Standard Account

Conservatee's caregiver expenses

Date *(mm/dd/yyyy)*	Check No.	Caregiver's Name, Agency, and Services Provided	Amounts
			$
		☐ **Subtotal, Conservatee's Caregiver Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C ____ of ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(C)(2)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule C, Disbursements, Conservatee's Residential or Long-Term Care Facility Expenses—Standard Account

Conservatee's residential or long-term care facility expenses

Date (mm/dd/yyyy)	Check No.	Payee and Purpose of Payment	Amounts
			$
☐		**Subtotal, Conservatee's Residential or Long-Term Care Facility Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C _____ of _____ pages

Draft 4 10/12/07 **Not Approved by the Judicial Council** **GC-400(C)(3)**

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule C, Disbursements, Ward's Education Expenses—Standard Account

Ward's education expenses

Date (mm/dd/yyyy)	Check No.	Payee and Purpose of Payment	Amounts
			$
		☐ **Subtotal, Ward's Education Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)).*

The page total to the right is the number of pages in Schedule C.) Page C ____ of ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council **GC-400(C)(4)**

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule C, Disbursements, Fiduciary and Attorney Fees—Standard Account

Fees of conservator or guardian and his or her attorney paid from estate of conservatee or ward

Date of Payment (mm/dd/yyyy)	**Date of Order Authorizing Payment *** (mm/dd/yyyy)	**Check No.**	**Payee**	**Amounts**
				$
			☐ **Subtotal, Fiduciary and Attorney Fees:**	$

*** Required. Do not pay fees from the estate to the conservator or guardian, or to his or her attorney, without a court order.**

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C ____ of ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF

(Name):

☐ Conservatee ☐ Minor

CASE NUMBER:

Schedule C, Disbursements, General Administration Expenses—Standard Account

General administration expenses paid by the estate other than fees of conservator or guardian, or attorney

Date (mm/dd/yyyy)	Check No.	Payee and Purpose of Payment	Amounts
			$
		☐ **Subtotal, General Administration Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C ____ of ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council GC-400(C)(6)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF

(Name):

☐ Conservatee ☐ Minor

CASE NUMBER:

Schedule C, Disbursements, Investment Expenses—Standard Account

Investment Expenses

Date *(mm/dd/yyyy)*	Check No.	Payee and Purpose of Payment	Amounts
			$

☐ **Subtotal, Investment Expenses:** $

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C ____ of ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule C, Disbursements, Living Expenses—Standard Account

Living expenses *(Living expenses include personal expenses, noninstitutional housing costs, clothing, and food.)*

Date *(mm/dd/yyyy)*	Check No.	Payee and Purpose of Payment	Amounts
			$
		☐ **Subtotal, Living Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C ____ of ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(C)(8)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF	CASE NUMBER:
(Name): ☐ Conservatee ☐ Minor	

Schedule C, Disbursements, Medical Expenses—Standard Account

Medical expenses of conservatee or ward *(Net of direct medical insurance payments, but including insurance premiums paid from estate. Show insurance reimbursements of estate payments as a receipt. You may use form GC-400(A)(6) for that purpose.)*

Date *(mm/dd/yyyy)*	**Check No.**	**Payee and Purpose of Payment**	**Amounts**
			$
		☐ **Subtotal, Medical Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C ____ of ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (*Name*): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule C, Disbursements, Property Sale Expenses—Standard Account

Property sale expenses *(Show sales expenses for each property sold separately. Include expenses of sale shown in escrow or other transaction closing statements for which there are no checks or other direct records of payment.)*

Date *(mm/dd/yyyy)*	Check No.	Payee and Purpose of Payment	Amounts
			$
		☐ **Subtotal, Property Sale Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C ____ of ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule C, Disbursements, Rental Property Expenses—Standard Account

Rental property expenses *(Show expenses for each rental property separately.)*

Date *(mm/dd/yyyy)*	Check No.	Payee and Purpose of Payment	Amounts
			$
		☐ **Subtotal, Rental Property Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule C, Disbursements, Other Expenses—Standard Account

Other expenses *(add general description):*

Date *(mm/dd/yyyy)*	Check No.	Payee and Purpose of Payment	Amounts
			$
		☐ **Subtotal, Conservatee's or Ward's Other Expenses:**	$

(Add pages as required. Check the box at the bottom of the last page of this disbursement category and total the amount of the category. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Page C ____ of ____ pages

Draft 5 10/12/07 Not Approved by the Judicial Council

GC-405(C)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF

(Name):

☐ Conservatee ☐ Minor

CASE NUMBER:

Schedule C, Disbursements—Simplified Account

Disbursements *(payments from the estate of the conservatee or ward)*

Date of Payment *(mm/dd/yyyy)*	Date of Order Authorizing Payment * *(mm/dd/yyyy)*	Check No.	Payee and Purpose of Payment	Amounts
				$
			☐ **Total, Schedule C:**	$

* **Leave blank for disbursements that were not authorized by an order. A court order is not required for every disbursement.**
(Add pages if necessary, but if this schedule exceeds five pages, you must prepare it in the Standard Account format. If so, you may use Forms GC-400(C)(1)–(11), the standard account forms for Schedule C, for that purpose. Check the box at the bottom of the last page of this schedule and total the amount of the disbursements. Include that sum in the total of disbursements on line 8 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule C.)*

Draft 4 10/12/07 Not Approved by the Judicial Council

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF

(Name):

☐ Conservatee ☐ Minor

CASE NUMBER:

Schedule D, Losses on Sales—Standard and Simplified Accounts

Losses on sales during period of account

Date *(mm/dd/yyyy)*	Property Sold	Carry Value *	Sale Price	Loss
		$	$	$
			☐ **Total Losses on Sales:**	$

*** See form GC-400(PH)(2)/GC-405(PH)(2) for information about Carry Value.**

(List all property sold during the account period that resulted in losses (carry value higher than gross sale price). Include each property's inventory item number and the date the inventory containing the property was filed. Add pages as required. Check the box at the bottom of the last page of this schedule and total the losses. Carry that sum over to line 9 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule D.)*

Page D ____ of ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(DIST)/GC-405(DIST)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF

(Name):

☐ Conservatee ☐ Minor

CASE NUMBER:

Schedule *(specify schedule letter):* ____ **Distributions to Conservatee or Ward—Standard and Simplified Accounts**

Distributions to Conservatee or Ward

Date of Payment *(mm/dd/yyyy)*	Date of Order Authorizing Distribution *(mm/dd/yyyy)*	Check No.	Description of Payment	Amounts
				$
			☐ **Total, Distributions to Conservatee or Ward:**	$

(Add pages as required. Check the box at the bottom of the last page of this schedule and total the amount. Carry that sum to line 10 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in this schedule.)*

Page *(specify schedule letter):* ____ ____ of ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule *(specify schedule letter):* ____ **Other Credits—Standard and Simplified Accounts**

Other Credits Not Shown on Another Schedule *(describe):*

Date *(mm/dd/yyyy)*	Check No.	Description	Amounts
			$
		☐ **Total, Other Credits:**	$

(Add pages as required. Check the box at the bottom of the last page of this schedule and total the amount. Carry that sum to line 11 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in this schedule.)*

Page *(specify schedule letter):* ____ ____ **of** ____ pages

Draft 4 10/12/07 Not Approved by the Judicial Council

GC-400(NL)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule *(specify schedule letter):* ____ **, Net Loss From Trade or Business—Standard Account**

Net loss during period of account from *(name of business):*

Date of Loss *(mm/dd/yyyy)*	**Description**	**Amounts**
		$
	Total, Schedule ___	$ ______

(This schedule should include the information about the business disclosed on Schedule C or Schedule F of a business owner's federal income tax return. Add pages as required. Check the box at the bottom of the last page of this schedule and total the net loss. Carry that sum over to line 12 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in this schedule.)*

Page *(specify schedule letter):* ____ ____ **of** ____ pages

Draft 5, 10/12/07 Not Approved by the Judicial Council

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule E, Cash Assets on Hand at End of Account Period—Standard and Simplified Accounts

(Cash assets are assets that may be appraised by the guardian or conservator and listed on Attachment 1 of the inventory. See Probate Code sections 2610(c) and 8901 and instructions on page 2 of Inventory and Appraisal *(form DE-160/GC-040). List all cash assets and group them by the inventory in which they appear and identify the inventory by its filing date and type (e.g., Partial No. 1, Final, Supplemental, Correcting, etc.).)*

Cash Assets on Hand as of *(last date of account period):* ______________

Description of Cash Assets	Value
	$
☐ **Total, Cash Assets:**	$

(Add pages as required to list all cash assets. Check the box at the bottom of the last page of this asset category and total the amount of the category. Carry that sum over to line 13a of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule E, including both Cash Assets and Non-Cash Assets on Hand.)* Page E ____ of ____ pages

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name): ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule E, Non-Cash Assets on Hand at End of Account Period—Standard and Simplified Accounts

(Non-cash assets are assets that must be appraised by a probate referee and listed on Attachment 2 of the inventory. See Probate Code sections 2610(c) and 8902 and instructions on page 2 of the Inventory and Appraisal *(Form DE-160/GC-040). List all non-cash assets, group them by the inventory in which their latest appraised values appear, or if none, as after-acquired assets in order of their purchase dates. Identify the inventory by its filing date and type (e.g., Partial No. 1, Final, Supplemental, Correcting, etc.).)*

Non-Cash Assets on Hand as of *(last date of account period):* ____________________

Description of Non-Cash Assets	Estimated Market Value	Carry Value *
	$	$
☐ **Totals, Non-Cash Assets :**	$	$

* *(The carry value of an asset that is included in an inventory is its appraised value. The carry value of an asset purchased for the estate after appointment of the guardian or conservator is its purchase price.) (Add pages as required to list all non-cash assets. Check the box at the bottom of the last page of this asset category and total the estimated and carry values of the non-cash assets. Carry the total of the carry values over to line 13b of the* Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule E, including both cash assets and non-cash assets on hand.)*

Draft 4 10/12/07 Not Approved by the Judicial Council

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule F, Changes in Form of Assets—Standard and Simplified Accounts

Changes in Form of Assets During the Account Period

Date *(mm/dd/yyyy)*	**Transaction**

(Add pages as required to list all changes in the form of assets. Although this schedule is a required part of an account where there has been a change in the form of an asset, the schedule is not shown in the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule F.)*

Page F _____ **of** _____ pages

Draft 3 10/12/07 Not Approved by the Judicial Council GC-400(G)/GC-405(G)

☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ Conservatee ☐ Minor	CASE NUMBER:

Schedule G, Liabilities at End of Account Period—Standard and Simplified Accounts

Liabilities at End of Account Period

Description of Liabilities*

***Show all liabilities of the estate at the end of the accounting period described in Probate Code section 1063(g).**
(Add pages as required to list all liabilities of the estate at the end of the account period. Although this schedule is required to show liabilities of the estate at the end of the account period, it is not shown in the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). The page total to the right is the number of pages in Schedule G.)*

Page G _____ of _____ pages

Schedules A and C, Receipts and Disbursements Worksheet—Standard Account

Optional Worksheet. Do Not File With Accounting

Form	Receipt Categories	Amount	Form	Disbursement Categories	Amount
GC-400(A)(1)	Dividends	$	GC-400(C)(1)	Conservatee's caregiver expenses	$
GC-400(A)(2)	Interest	$	GC-400(C)(2)	Conservatee's residential or long-term care facility expenses	$
GC-400(A)(3)	Pensions, annuities, and other regular periodic payments	$	GC-400(C)(3)	Ward's education expenses	$
GC-400(A)(4)	Rent	$	GC-400(C)(4)	Fees of fiduciary and attorney	$
GC-400(A)(5)	Social Security, veterans' benefits, and other public benefit payments	$	GC-400(C)(5)	General administration expenses	$
GC-400(A)(6)	Other Receipts	$	GC-400(C)(6)	Investment Expenses	$
			GC-400(C)(7)	Living expenses	$
			GC-400(C)(8)	Medical expenses of conservatee or ward	$
			GC-400(C)(9)	Property sale expenses	$
			GC-400(C)(10)	Rental property expenses	$
			GC-400(C)(11)	Other expenses	$
	Total, Schedule A:	$		**Total, Schedule C:**	$

(Total Schedules A and C above. Carry the total sum of Schedule A over to line 3 of the Summary of Account *(form GC-400(SUM)/GC-405(SUM)). Carry the total sum of Schedule C over to line 8 of the* Summary of Account.*)*

Form Approved for Optional Use
Judicial Council of California
GC-400(A)(C)
[New January 1, 2008]

SCHEDULES A AND C, RECEIPTS AND DISBURSEMENTS WORKSHEET—STANDARD ACCOUNT
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1060–1064, 2620;
Cal. Rules of Court, rule 7.575
www.courtinfo.ca.gov

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms (adopt rule 7.575 of the California Rules of Court; adopt forms GC-400(SUM)/GC-405(SUM), GC-405(A), GC-405(C); and approve forms GC-400(PH)(1)/GC-405(PH)(1), GC-400(PH)(2)/GC-405(PH)(2), GC-400(AP)/GC-405(AP), GC-400(A)(1), GC-400(A)(2), GC-400(A)(3), GC-400(A)(4), GC-400(A)(5), GC-400(A)(6), GC-400(B)/GC-405(B), GC-400(OCH)/GC-405(OCH), GC-400(NI), GC-400(C)(1), GC-400(C)(2), GC-400(C)(3), GC-400(C)(4), GC-400(C)(5), GC-400(C)(6), GC-400(C)(7), GC-400(C)(8), GC-400(C)(9), GC-400(C)(10), GC-400(C)(11), GC-400(D)/GC-405(D), GC-400(DIST)/GC-405(DIST), GC-400(OCR)/GC-405(OCR),GC-400(NL), GC-400(E)(1)/GC-405(E)(1), GC-400(E)(2)/GC-405(E)(2)), GC-400(F)/GC-405(F), GC-400(G)/GC-405(G), and GC-400(A)(C))

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Donna R. Bashaw Immediate past President of National Academy of Elder Law Attorneys (NAELA) Laguna Hills, Orange County, California	AM	Y	Agree with proposed changes if modified. As elder law attorneys committed to the safety and preservation of dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity and just plain hard work. Thus, our comments are made not in the spirit of criticism bur in the spirit of appreciation of the enormity of the task to which you were commissioned. While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear	

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will preclude conscientious, but non professional, family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product.	
				Rule 7.575 Accounts of Conservators and Guardians	
				(b)(4) Suggest four pages in length instead of two.	The committee agrees with this suggestion, and has changed the maximum length of a simplified accounting's receipts or disbursement schedule from two to five pages.
				General comments:	
				There needs to be an Assets Acquired Schedule.	The committee agrees with this comment. Form GC-400(AP)/GC-405(AP) is proposed for this purpose.
				Forms need to be in a software package which calculates and sends to summary sheet	The Judicial Council cannot at this time produce such forms directly. Commercial suppliers of the forms may be able to offer these features.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				Need to be able to override so we can deviate from the norm.	Standard account filers will be required only to use the form *Summary of Account* so long as their supporting schedules provide the same information as requested by the proposed forms.
				The use of these forms will unnecessarily flood the courts with paperwork	The accounting forms will clearly increase the number of pages required in some accountings.
				Does not address the problem of CPAs preparing accountings and rounding off.	The committee agrees that exact figures without rounding must be used, but does not have an understanding that this is a particular problem with CPAs.
				CPAs' fees should also have to be pre-approved by court.	There is no authority in the Probate Code for this proposition.
				The Property on Hand at the opening of the accounting should be designated as Schedule A.	Traditionally, the property on hand at the beginning of the account period was not listed in a separate schedule. The first account would show in its Summary of Account the total values of each Inventory and Appraisal filed during the account period. Later accounts would list the property on hand

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					carried forward from the end of the previous account period. The only reason there is a Property on Hand schedule for the beginning of the account period called for in the Summary of Account is the fairly recent (1997) requirement that the fair market value of the non-cash property on hand at the beginning of the account period must be shown in all accounts after the first account. (See Prob. Code, § 1063(a).) The committee decided against designating the beginning property on hand schedule as Schedule A because it is not required in the first account.
				Requires all forms to be filed even when there is a "0" accounting - too much unnecessary paperwork for the court.	There is no requirement that unnecessary schedules be filed. The *Summary of Account* requests that $0 entries be made in each category shown in the summary for which there are no entrees, but advises that schedules for the $0 categories need not be provided.
				Implementing a requirement to use Judicial Council accounting forms will not solve the problem of novices submitting improper	This comment appears to be more properly addressed to the Legislature.

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Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				accountings and it makes problems for the professionals doing accounting.	
				Forms should state that numbers may not be rounded off, but must be reflected in exact amounts.	The committee has no evidence or understanding that rounding off numbers is a frequent problem in accountings. There is certainly no authority for rounding off.
				Reconciliations should be allowed on original bank statements because it is more readily understood and alleviates cross referencing between different documents. The bank statement and reconciliation would be complete within itself.	The proposed rule and forms do not currently prevent this practice. The fact that fiduciaries often provide reconciliations in this way when reconciliations are required by some local rules is a reason why the committee elected not to provide a form for reconciliation at this time.
				Grouping assets according to Inventory and date of filing complicates the accounting procedure, as it is simpler to list the assets alphabetically. Time would be wasted searching for assets on the forms via date in order to include transactions.	The committee believes that court review of the accounting is promoted by grouping assets on hand by the Inventory and Appraisal in which they are listed and appraised.
				We consider this entire section unnecessary in light of relatively new probate sections requiring standardization of accountings.	This comment appears to be more properly addressed to the Legislature.

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				We suggest waiting one more year before implementing to see if this change is really necessary.	Probate Code section 2620(a), as amended by the Omnibus Conservatorship and Guardianship Reform Act of 2006, precludes this option.
				Conclusions: We believe that many of the changes made are unnecessary and merely an over reaction to the *L.A. Times* articles. The main problem in the past has been a lack of funding for the courts, especially to hire investigators. Increased funding is a beneficial part of the changes. However, we believe that the changes have made it more expensive for the ward and conservatee and have effectively priced the protection of guardianships and conservatorships out of the middle class market. This is the most serious and detrimental problem with the new laws and needs to be rectified immediately. The second most serious problem is with the new accounting rules which, we believe, are unnecessary. Thank you for your efforts in implementing this new law. We, as elder law attorneys, are happy to contribute in anyway to assist you in your work.	The committee cannot respond to this comment, which seems more properly addressed to the Legislature.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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2.	Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California	N	Y	Disagree with proposed changes.	No response can be made to this comment because it does not address any specifics of the committee's proposal.
3.	Mr. James Counts II, CPA, CTFA Hemet, California	AM	N	Agree with proposed changes if modified. Page 10 - Rule 7.575(a) **Standard and Simplified Accountings** I suggest the second word "standard" be changed to state "standard and simplified" and the words "may state" replace the word "states" on the third line of this section. It does change the meaning of this part of the rule but I believe if you look at it from what many nonprofessionals do it would allow for a possible simpler preparation of the simplified accountings. I do not believe many nonprofessionals maintain cash receipts and cash disbursement journals or even enough details in a check register to do a simplified accounting chronologically as proposed to be allowed for the simplified accounting. I know it is recommended in the documents given conservators etc. but I do not think many actually do them. I suggest that the person "may" do a simplified accounting chronologically. Thus they may elect the easier of the two methods (for them) for those	The committee believes that the chronological account would be simpler and more intuitive for unrepresented persons to prepare. The committee believes most persons qualified to become estate guardians or conservators maintain a checking account, so should be familiar with a check register as the foundation of a disbursements schedule, in turn the foundation of any accounting. If a fiduciary is more comfortable with a categorized account (the

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				qualifying to do and wish to do a simplified accounting. Also, for professionals that do an accounting that would qualify for the simplified accounting they could use the "standard" ordering of transactions if they wished to do so when preparing the simplified accounting. Also for instance the layman that has, say 3 savings accounts, might find it easier to list one account and then each of the monthly interest income amounts. Then the second account and then the third. Under the proposed system they would have to look at the dates of the postings to each of the 3 accounts and put then in date order before they could list them on the account. Thus being harder to prepare the simplified account than the standard account format.	standard account), he or she would be free to prepare any accounting in the standard account format under proposed rule 7.575(b).
4.	Mr. Dan Crosbie, Chair, Committee on Taxation, California Society of Certified Public Accountants, Sacramento, California	AM	Y	Agree with proposed changes if modified. On behalf of the California Society of Certified Public Accountants Committee on Taxation we are pleased to have the opportunity to review and comment on the changes proposed in SP07-16. Our recommendations are intended to make the proposed forms easier for laypersons to use and are primarily technical in nature. We have not listed all the forms nor all the cross referencing that needs to be done, but we recommend that all the forms be modified to	

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				address the needs of nonprofessionals who may be trying to complete the forms accurately without professional assistance. We are trying to assist in the design of a form that would allow a reasonable person to prepare the accounting without professional assistance. **1. Page 13 - Form GC-400(SUM)/GC-405 (SUM)** A. We recommend that the top of the form that currently reads: "__________Account _________" be modified to include three (3) check boxes labeled as: ☐"Initial" ☐ Accounting (Enter Second, Third, etc.") ☐"Final." We believe that the current language is confusing to laypersons doing the accounting. B. The line that reads "Property on Hand on (opening date of account): ____________ consisting of:" would be confusing to nonprofessionals and we would suggest that it read "Property on Hand at the opening of the account and consisting of:"	A. This format would not permit the use of the term "Current" for an interim account. The Summary of Account (form GC-400(SUM/GC-405(SUM)) has been modified by placing checkboxes and instructions next to the terms "Final" and Current" so users can easily select the proper title of an account as either a final account or an account current (an interim account). B. The committee agrees with this comment, and has modified the *Summary of Account* to describe the Property on Hand lines as either Property on Hand at Beginning of Account Period or Property on Hand at End of Account Period.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				The second request for the opening date should be eliminated. Nonprofessionals would not understand why they have to reenter it again as they just put it above. Also, the space on the draft form after "consisting of:" looks like something should be entered in that space on that same line. If that is not the intention, the form should be modified so that visually it appears that nothing should be entered on that line after the title. For instance, the drawn lines below "Property on Hand on....", below "Cash Assets" could be taken out. Just leave the lines for the boxes and the one below "Non-Cash Assets". Thus, it now looks like one large box or line with different descriptions for each of the boxes. C. On the line that reads "_________ through __________" We suggest that you change it to be a box where each of the two lines are and then in the top left of each box put a letter. For instance, the letter "A" in the box for the opening date of the account. The letter "B" in	In the revised form, the opening and closing dates of the account would be required only once at the top of the *Summary of Account*, and once at the top of the cash and non-cash asset schedules at the beginning and end of the accounting period (forms GC-400(PH)(1)/GC-400(PH)(1) and (2), and GC-400(E)(1)/GC-405(E)(1) and (2) There is no field for text to be added in the line following "consisting of:" C. The above-referenced change in placement of dates in the *Summary of Account* makes this recommendation unnecessary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				the closing date of the account. Now on the other forms when you need one of these dates you can refer from that form to either Box A or Box B along with the description. For instance, see suggestion 2 below. D. We propose that two lines be added to the form. The first line should be added below the line titled "Non-Cash Assets" which is under the line for "Property on Hand on (opening date of account):" That line asks that the total of the non-cash assets be entered and then the column to the right is the total of the cash and non-cash assets. We would drop, on the line titled "Non-Cash Assets", the box to the right for the total. On the new line to be inserted we would title it "Total, Property on Hand at Beginning of Account Period from Form GC-405(PH)(sum):" (as is on Form GC400(PH)(sum)/GC-405(PH)(sum) page 16 of the handout) and then have a box to the right in the far right column to enter the total. The description for the line should be the reference to the other form, just below the total description and in a little smaller print but in the same box for the line description. This form and the other one referenced do not, on the forms themselves, reference each other but the two amounts should	D. The committee agrees with this recommendation and has made this change. The referenced form has instructions to enter its total in the appropriate numbered line in the Summary. That should be sufficient. There is not enough space in the *Summary of Account* for the addition of the form designators of all the schedules feeding into the Summary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				agree. E. The second line to be inserted would be below "Non-Cash Assets" but above the one for "Property on Hand on (closing date of account):". The same change as above but with the line description of "Total, Property on Hand at End of Account Period: (From Form GC-405(E)(sum)" (as I have proposed later for the total line on Form GC-400(E)(sum)/GC-405(E)(sum) page 47 of handout) and then have a box to the right in far right column to enter the total. Same suggestion as to the description that it be printed on two lines in the box. F. Each line of this form that brings a total from another page or form should have the line reference to the other form. For instance, the line titled "Cash Assets" below the one titled "Property on Hand on (opening date of account):" should be changed to read "Cash Assets - Total, Cash Assets from Form GC-400(PH)(ca)GC-(405(PH)(ca)". Thus, someone would know to bring the total from the other form. Do this for each line on this form. Also, when you reference on each line the schedule change, it should reference the total from that schedule. For example, "- Schedule A" would read Total, Schedule A, Form GC-400(A)	E. The totals lines for both of the property on hand schedules in the *Summary of Account* have been moved down so the user won't have to bring the total over on the same line as one of the subtotal items. This is a common practice in court accountings but might be confusing for some account preparers. F. The referenced forms have instructions to enter their totals in the appropriate numbered line in the Summary. The committee believes that should be sufficient.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				(sum)". Again this change could be in smaller type than the main description for the line. **2. General suggestions on the forms.** Tax agencies forms are prepared so that taxpayers or the general public can understand how to do the computations. A. One thing they do in their forms is to number the lines. Then any time a line is the total of two or more lines they have the formula in the description of that line. For instance, using the form in item 2 above (GC-400(SUM)/ GC-405(SUM)). If you numbered the lines as such: "1. Property on Hand at the opening of the account and consists of:", "l.A. Cash Assets - Total, Cash Assets, from Form GC-00(ph)(ca)/GC405(PH)(ca): "1 .B. Non-Cash Assets - Total, Non-Cash Assets, from Form GC400(PH)(nca)/GC-405 (PH)(nca)", "2. Total, Property on Hand at Beginning of Account Period from Form GC405(PH)(sum): (total of lines l.Aand l.B)". So someone would know that line 2 is the total of the other two lines. We would recommend	A. The committee agrees with this recommendation and has placed numbers on the left margin of the rows of the *Summary of Account* and references to these numbers in the instructions on the total lines for the Summary and on the forms that feed into the Summary.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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				that this approach be used for any forms that have lines being added together. B. Also, where totals from a supporting schedule are carried forward to another schedule, tax agencies tell the person where to put that number on the other schedule. For instance on Page 14 Form GC-400(PH)(ca)/GC-405(PH)(ca) on the line titled "Total, Cash Assets: would be changed to "Total, Cash Assets - Enter here and on Form GC(PH)(sum)/ GC-405(PH)(sum) line 1 and on Form GC-400(SUM)/GC- 405(SUM) line 2." Thus, it shows the one doing the accounting that the total from that page goes to two other pages and where to put them on the other pages. Again professionals will presumably know this but the layperson would not. We would recommend that these references to the other forms and lines be in smaller type and ideally on a second line so that the main purpose of the title of the line is larger and bolder. C. Many schedules on the total line at the bottom have a small box to check if that is the total of all the page(s) for that schedule. We would suggest an " * " be added beside the box and then put the " * " below before the description on why to check the box. We believe that many nonprofessionals would	B. The committee agrees with this recommendation and has modified the supporting schedule forms accordingly. C. Each of the forms with the check boxes also has instructions at the bottom of the page advising when to check the box.

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Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				overlook checking the box as it currently exists. D. Also, on the schedules that have numbers coming from another schedule, the form should refer to that other schedule and the source line number. For instance, on Page 16, Form GC-(PH)(sum)/GC-405(PH)(sum), there is a line named "Cash assets". We recommend that the line description be changed to "Total, Cash Assets, from Form GC-(PH)(ca)/GC-405(PH)(ca)". If a source number line existed, then that number would be inserted. The same should be done for the "Non- Cash Assets (carry value)" line also. Several other forms should be similarly changed. E. You use terms that mean something to attorneys and those knowledgeable about this area but nonprofessionals are not likely to understand the meaning. We would suggest you use standard every day language whenever possible. For instance on Page 13, Form GC-400(SUM)/GC-405(SUM), at the bottom of the page, it states, "* (Enter "0" for all categories of charges or credits for which you have no entries. Do not include schedules for these categories, but do not relabel or redesignate the schedules that are included.)". It might be clearer if that instruction were replaced with something like this, " * " (Enter "0" (zero) for	D. The committee does not agree with this recommendation because of space concerns. In addition, some references would be to two forms, one simplified and the other standard, which might be more rather than less confusing. E. The committee has not made this change. The language of the instruction appears clear enough on this form.

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				each line that does not have an amount. If you do not have an amount for a particular schedule then you are not required to submit that schedule. Please do not change the letter given to a particular schedule.).	
				F. Some schedules use two columns for numbers to be entered. For Instance, Page 15, GC-400(PH)(nca)/GC-405(PH)(nca), has a column for "Estimated Market Value *" and one for "Carry Value". We would suggest that below the titles but in the heading area something like the following be added "Col. A." under the "Estimated Market Value *" and "Col. B" under "Carry Value". Then reference those columns by the column letter and provide them on the other pages when a number is coming from that column.	F. The committee believes this recommendation is unnecessary because only the Carry Values go to other forms, so the estimated fair market value column would never be referenced.
				3. Page 16, Form GC-(PH)(sum)/GC-405(PH)(sum) - in the heading you have "Summary of Property on Hand as of (first date of account period): ____________". We would suggest that it be changed to "Summary of Property on Hand as of :____________'with the underline replaced by a box. Then under that description, in smaller print, say, "First date of account period as shown on Form GC-400(SUM)/GC-405(SUM) in Box A." Thus, another reference to where the	3. The committee disagrees with this recommendation because the information flows from the schedules to the Summary, not the reverse.

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Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				date comes from and where they can get it easily. **4. Page 17 Form GC-400(A)(div) -** A. Under the title of the page "Schedule A, Receipts, Standard Account - Dividends * ," we suggest the following be put in bold but smaller than the title line "Include all transactions for the period of the account as shown on Form GC-400(SUM)/GC- 405(SUM) in Box A and Box B." We would recommend this kind of change for each support schedule. If you review Page 25 Form GC-400(B)/GC-405(B) under the title "Schedule B, Standard and Simplified Accounts - Gains on Sales" you have "Gains on sales during period of account, "but descriptions are not included on the other schedules, For consistency, we suggest it be on all schedules. B. We would recommend the description for the "* Noncapital items" be moved up to begin on the same line as the words "* Noncapital items". **5. Page 23, Form GC-400(A)(sum) -** We would suggest that you have lines pre-entered for each schedule that could have a total that comes to this page and then have a few blank lines for schedule descriptions and totals to be entered. Again this is for consistency and to	A. The committee has deleted the specific schedule summaries as unnecessary, leaving only the *Summary of Account* and an optional worksheet, form GC-400(A)(C), for listing all of the categories of receipts and disbursements so they can be easily totaled and the totals moved to the appropriate place in the *Summary of Account.* B. The instructions following * **Noncapital items** are not a description of that term. 5. All of the schedule summaries have been deleted.

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				help with making it easier for a layperson to complete the accounting. We do understand that this form is for the standard accounting and not the simplified accounting, but laypeople may be doing the standard accounting. 6. **Page 25, Form GC-400(B)/GC-405(B)** The column heading that reads "Appraised Value" is misleading and should read "Carry Value". On Form GC400(PH)(nca)/GC-405 (PH)(nca) there is a column that says "Carry Value". For consistency, we suggest the same terminology. 7. **Page 26, Form GC-400(B)(sum)/GC-405(B)(sum)** We are not sure what purpose the form is designed to serve. The Form GC-400(B)/GC-405(B) has on the total line titled "Total Gains on Sales" a box to check if it is the total for all gains. Then the item has to be entered again on this page. We are not sure of the reason as no other items are being added to it. We would suggest dropping the form and the total that goes to other schedules be sent from the Form GC-400(B)/GC-405(B) and the other schedules that receive it. Reference the Form GC-400(B)/ GC-405(B) as to where the amount came from. We do see that to be consistent between Schedule A, Schedule B, Schedule C etc., there	6. The committee agrees with this recommendation and has made the change. 7. The committee agrees with this comment. All schedule summaries have been deleted, including form GC-400(B)(sum)/GC-405(B)(sum).

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

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				is a summary page, but if nothing is being added together to come up with a total then why have it? **8. Page 27, Form GC-400(NI)** – the total line does not have the box to check that the amount is the total of all pages. We are not sure if this was done on purpose or if it has been overlooked. **9. Page 40, Form GC-400(C)(sum)** -Same as Item 6 above, hut for this schedule, we would suggest that lines be pre-entered for each schedule that could have a total that comes to this page and then have a few blank lines for schedule descriptions and totals to be entered. Again, this is for consistency and to make it easier for the layperson to complete the form. We understand that most individuals completing this form will be professionals, but it is possible that nonprofessionals may also be completing the form and clear instructions would assist them in completing the form accurately. **10. Page 43, Form GC-400(D)(sum)/GC-405(D)(sum)** - We are not sure of the purpose of this form since the Form GC-400(D)/GC-405(D) has on the total line titled "Total Losses on Sales" a box to check if it is the total for all gains. The item then has to be entered again on	8. The committee does not believe that more than one page would ever be needed to show the net income from a business during the period of account. 9. This summary schedule has been deleted. 10. Form 400(C)(sum)/GC-405(D)(sum) has been deleted.

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				this page. If no other items are being added to it, the form appears to be unnecessary and we would recommend eliminating the form and that the total that is to be transferred to other schedules be taken from the Form GC400(D)/ GC-405(D) and the other schedules that receive it should reference the Form GC-400(D)/GC-405(D) as the location to find the transferred amount. We do see that to be consistent between Schedule A, Schedule B, Schedule C etc., there is a summary page, but if nothing is being added together to come up with a total then why have it? **11. Page 44, Form GC-400(NL) -** Same as Item 9, The total line does not have the box to check that the amount is the total of all pages. We are not sure if this is done on purpose or if it has been missed. **12. Page 17, Form GC-400(A)(div) -** The total line reads "Total, Dividends:". It appears that it should read "Subtotal, Dividends:" to be consistent with the other forms in this series (page 18 CG-400(A)(int), page 19 CG-400(A)(o), etc). Thank you for your efforts and for the opportunity to comment.	The committee does not believe that more than one page would ever be needed to show the net loss from a business during the period of account. 12. The committee agrees with this comment and has made this change.

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5.	Ms. Connie Draxler and Mr. Richard Bishop Executive Board Members California State Association of Public Guardians and Public Conservators Volcano, California	AM	Y	Agree with proposed changes if modified. The California State Association of Public Administrators, Public Guardians and Public Conservators would first like to commend the Judicial Council and the Probate Conservatorship Task Force for their diligent work on developing recommendations to meet the new mandates as a result of AB 1363. The efforts of the conservatorship reform legislation and subsequent actions of the Judicial Council to implement the reforms are commendable, especially considering the vast number of issues the legislation addressed. In regard to the Judicial Council Proposed Rule 7.575 Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court governing their use; the Association would like to express its concern on the recommended changes. Unfortunately the recommendations as currently made recognized concerns and issues	Rule 7.575 would permit public guardians to produce standard accountings using their current programs. Only the account summary would have to be prepared on the Judicial Council form, so long as the supporting schedules provide the same

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				raised by the private fiduciaries, the National Guardianship Association and the State Bar but neglected to mention concerns raised by the Public Guardians and Public Conservators. Public Guardians and Public Conservators will be unable to comply with the Judicial Councils proposed changes. Thousands of accountings will not be filed on time, or filed at all. This will create real problems for both the Courts and Public Guardians and Conservators throughout the State. The proposed rule and the new standardized forms will present financial hardships to Public Guardian and Public Conservator offices throughout the state. Currently, PG/PC offices develop court accountings according to long standing practices, local court rules and, of course, in accordance with their uniquely developed accounting computer systems. Offices currently use their own forms, again as part of a computerized system, and these forms and systems are not easily configurable but even if configurable would require time, effort and funds, none of which are in supply at the PG/PC offices statewide.	information as is requested in the equivalent Judicial Council form.
				The content of the accounting, we believe, is of greater importance than the form it is printed on. Many of our associations computerized systems	The committee believes the current versions of the forms would permit the proposed use of current

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				currently provide financial information segregated as the Judicial Council now recommends. We recommend the Council formulate a Judicial Council Cover Page form to be used with all accountings which details the information required to be included in the account itself but allow the counties Public Guardians and Public Conservators to submit their accountings in their current format. The accounting would then not have to concern itself with some arbitrarily designed standardized forms.	accounting programs so long as the same information as is required by the council forms is presented, but with the use of the mandatory Judicial Council Summary of Account form. The statute, Probate Code section 2620(a) as amended by the Omnibus Conservatorship and Guardianship Reform Act of 2006, doesn't appear to permit public guardians or anyone else simply to disregard the council-adopted forms.
				As previously stated by our Association and repeated again here, funds for Public Guardians and Public Conservators have not been included in the state budget to implement the additional requirements of AB 1363. Standardizing accounting forms is another unfunded mandate for the Public Guardians and Public Conservators.	This comment appears to be more properly addressed to the Legislature.
				Many, if not all, of the Public Guardians and Conservators simply will not be able to comply with what is currently proposed. Public Guardians and Public Conservators will be faced with adding manual processes to what has been an automated process in order for the accountings to be done on the Judicial Council	Rule 7.575 would permit public guardians to produce standard accountings using their current programs. Only the account summary would have to be prepared on the Judicial Council form, so long as the supporting

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				forms or in the format they require. This manual processing will delay the production of accountings and increase the chances of errors. This at a time when other mandates of AB 1363 require less time to produce accountings and there is the increased threat of sanctions against guardians/conservators unable to meet the new deadlines. These sanctions will only serve to deplete the insufficient resources that are available which will further curtail the ability of Public Guardians and Public Conservators to serve their clients. We strongly support efforts to standardize practices throughout the state. We suggest attention be paid to content not designing forms. Addendum from the San Francisco County Public Guardians/Public Administrator to the Comment of the California State Association Of Public Administrators, Public Guardians and Public Conservators concerning the proposed Judicial Council accounting forms: The proposed accounting system using Judicial Council forms does not recognize the large amount of funds under management by our department. We require a sophisticated, technically proficient accounting system rather than a basic and primitive system.	schedules provide the same information as is requested in the equivalent Judicial Council form.

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				Funds Managed: The San Francisco PG/PA manages funds for the clients of the PG, PA, and Representative Payee. For just the PG and PA matters, these funds are approximately 45 million dollars in cash and several million more in non-cash inventory assets on hand. These amounts only stand to increase as the number of cases increase with the requirement that we must accept new cases as described in AB 1363. It is prohibitive even in the smallest of counties to manage the funds of their PG and PA cases manually. Public policy dictates that we use the highest level of care in management of client funds. Our current accounting software has built-in checks and balances enabling us to easily find errors and discrepancies. Software Proficiency: The cash assets that have been marshaled are held in a pooled account and tracked by our accounting software. In addition to cash assets, the software allows for the tracking of non-cash items of value and the associated carry and market values. The software is our primary tool to confirm and document the schedules that provide our departments with a list of debits and credits that relate to each of the thousands of individual cases. The accounting software is a sophisticated double-entry accounting system.	The committee believes the current

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				The data can be extracted with a few mouse clicks and minimal input from the user. In addition, the software has multiple relational databases within itself from which data may be extracted and placed in pre-designed, customizable reports. Judicial Council Form Software: There are a limited number of software programs to choose from to create the forms. All of our Judicial Council forms are provided by Legal Solutions Plus and contain a considerable number of years worth of client files. This program is technologically inferior in its level of sophistication and manipulation of data. This is true of many forms based programs because they are generally standalone software programs. Legal Solutions Plus cannot import information from our accounting software. We would be unable to merge any data from the accounting software to the Judicial Council form software. This would force us to prepare two duplicate accountings for each one required to file with the court. Previous to the requirements of AB1363, the Judicial Council had not created a mandatory form for accountings for logical reasons. Removing the technical accounting mechanics of money management from an automated	versions of the forms would permit the proposed use of current accounting software so long as the same information as is required by the council forms is presented. The statute, Probate Code section 2620(a) as amended by the Omnibus Conservatorship and Guardianship Reform Act of 2006, doesn't appear to permit public guardians or anyone else simply to disregard the council-adopted forms.

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				process to a manual process will not lead to increased safeguards, higher standards of accountability, or increased proficiency.	
6.	Ms. Deborah J. Forbeck Independent Probate Paralegal Rancho Santa Margarita, California	N	N	Do not agree with proposed changes. 1. Implementing the requirement to use the Judicial Council accounting forms will not solve the problem of novices submitting improper accountings. An accounting is not a simple matter of filling in blanks or typing out line item entries. Brokerage and annuity statements can be extremely complex and unnecessarily difficult to decipher. Laws should be implemented to require investment companies to produce statements that are easily read and understood and wherein each transaction is shown in an individual line item entry. It is not uncommon for statements to group many transactions together requiring much time to be spent unraveling entries to determine what transactions the groupings are comprised of. The time involved in reading such statements adds additional costs in preparing accountings. 2. The required format is already established by code and some local rules and monitored by	The advisory committee cannot respond to this proposal, which is beyond the committee's purview or authority and beyond the scope of this proposal. 2 and 3. These comments appear more properly addressed to the

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				probate examiners. If the current format is followed, Judicial Council forms are unnecessary.	Legislature.
				3. Many new changes have been implemented this year to safeguard conservatorship assets. Let the dust settle on these current changes prior to creating accounting forms and changing filing procedures.	
				4. CPA's were involved in preparing the proposed forms. Were they apprised that fees paid for preparing accountings must be approved by the court, unlike fees for tax return preparation.	4. The accountants who worked with the advisory committee on the development of these forms were aware of the requirement for court approval of expenditures by court-appointed fiduciaries for all purposes.
				If forms are implemented, a statement should be made on the forms that state no payment for preparing accounts can be paid without court approval.	Prior court approval of payment to an account-preparer other than the fiduciary's attorney is not required under current law. Court approval for this payment would come when the accounting of which the disbursement is a part is approved by the court.
				5. Forms complicate the accountings process, thereby creating more work which will take	5. This comment appears more properly addressed to the

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				more time to prepare and thus be more costly to prepare. The court needs to take this into consideration when approving fees.	Legislature.
				6. If courts cut fees, "professionals" will no longer be willing to perform work required to prepare accountings. If professionals no longer willing to work as conservators, a great many more conservatorships will fall to the county to do.	6. Nothing in this proposal requires a reduction in compensation for conservators and guardians.
				7. Forms are too voluminous. Forms create many more pages being filed with the court and could be a problem for courts that do not currently scan documents.	7. The fact that all forms other than the Summary of Account are optional for standard-account filers should reduce the number of extra pages.
				8. If implemented, the forms need an auto calculation feature built in.	8. Commercial forms publishers should be able to produce versions of these forms with this feature.
				9. If implemented, forms need to state that numbers may not be rounded off, but must be reflected in exact amounts.	9. The committee does not believe that rounding off is a concern.
				10. Requiring a schedule for property on hand at the beginning of the account period is a good idea. This Schedule should then be Schedule A	10. Non-cash property on hand at the beginning of the accounting period must be shown in all

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				and would make the accounting complete within itself and alleviate having to review a prior accounting to ascertain the beginning balances.	accounts after the first account so the market value of the assets on hand at that time can be shown. But because such property need not be shown in detail in the first account, the committee decided not to designate this schedule as Schedule A.
				11. Reconciliations should be allowed on original bank statements because it is more readily understood and alleviates cross referencing between different documents. Again, the bank statement and reconciliation would be complete within itself.	11. The proposed rule and forms do not currently prevent this practice. The fact that fiduciaries often provide reconciliations in this way when reconciliations are required by some local rules is a reason why the committee elected not to provide a form for reconciliation at this time.
				12. Grouping assets according to Inventory and date of filing said Inventory complicates the accounting procedure, as it is simpler to list the assets alphabetically. Time would be wasted searching out assets (on the forms) via date in order to include transactions.	12. The advisory committee believes that grouping the assets as they are reflected as cash or non-cash assets in the Inventory and Appraisal is helpful to court staff reviewing the accountings because they can easily compare the assets listed with those described in the inventory. Only the non-cash assets must show both a fair market value and a carry value, so the cash and

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					non-cash assets should be segregated and placed on different schedules.
7.	Mr. Michael Harig Probate Investigator II Superior Court of California, County of Riverside	N	N	Do not agree with proposed changes. From the viewpoint of an attorney with over 25 years experience, and Probate Examiner (having examined hundreds of accountings) and Investigator II for the past four years, I recommend the following: 1. Proposed Rule 7.575(f) amended to read "...all information required by Probate Code sections 1060-1064." Without the change from "1063" to "1064" many people would get the impression that the 1064 requirements could be excluded, especially section 1064(a)(1) which is necessary re fraud detection. 2. Proposed Form GC-400(SUM)/GC-	Section 1064 was omitted from subdivision (f) of the proposed rule because that section describes information that must be included in the petition or report that accompanies the accounting, not information to be shown in the accounting schedules themselves. However, the following phrase has been added at the end of the subdivision: ". . . and must provide all information required by Probate Code section 1064 in the petition for approval of their account or the report accompanying their account."

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				405(SUM), the Summary of Account, should be amended as follows:	
				(a) Charges should also include an additional line for property received during the account period (from Supplemental inventories/appraisals filed during the period) as such property is not a receipt. Complies with PrC1061a(2).	(a) The committee agrees with this comment and has created an after-acquired property schedule (form GC-400(AP)/GC-405(AP).
				(b) Credits should also include a line for "Reinvestment of Dividends" as most times this is a major problem in reconciling an account.	(b) The committee disagrees with this comment. Reinvestments of dividends are to be shown in the Receipts schedule with the entry for the dividend receipt, described in the petition under Probate Code section 1064(a)(1) or (2), and reflected in the property on hand at the end of the accounting period, per 2 California Conservatorship Practice 939–941 (CEB 2006).
				(c) Credits should also include a line for "Distributions" made to wards, conservatees, beneficiaries, family members (i.e. spouse), as such distributions are not "disbursements, and judicial officers can readily tell if the assets are being consumed/used at an appropriate rate.	(c) The committee agrees with this comment, and has created a form for a separate schedule for distributions (form GC-400(DIST)/GC-405(DIST)) and a separate line for distributions in the

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				Also complies w/ PrC 1061(a)(9) and 1062(e).	Summary of Account.
				3. Proposed Form GC-400(A)(div)should be amended to add a column for allocation as either income or principal (PrC16335); also, a direction at the top somewhere to add the CUSIP number to the source of the dividend, as many times there will be several securities with the same name, making it difficult for the examiner verifying the amount of dividend reported with the actual security.	3. The committee disagrees with the recommendation to add a column for allocation of dividend as principal or income. Conservatorship or guardianship accountings are not required to do this under Probate Code section 1063(c).
				4. Both Proposed Form GC-400(B) and Proposed Form GC-400(D) should also require reference to the Inventory and Appraisal where the asset has been listed, as several times things like "furniture" might be on 2 I&As and there is no telling from which I&A it came. Someone may list "car" as property sold where there would be several cars, requiring the examiner to go through all the I&As to verify carry value. A description including reference to the particular I&A and item # on the attachment will save the examiner valuable time.	4. The advisory committee agrees with this recommendation and has revised forms GC-400(B) and GC-400(D) accordingly.
				5. Proposed Form GC-400(C)(d) should be redesignated and made a separate form with separate itemization on "Credits" in the Summary, for reasons stated--also, the form caption should also include distributions made	5. The committee agrees with this recommendation and has replaced form GC-400(C)(d) with form GC-400(DIST)/GC-405(DIST), a separate schedule for distributions

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				to family members (i.e. spousal support PrC 2423) 6. Proposed Form GC-400(C)(i) should also be supplemented by a Form GC-400(C)(rd) for "Reinvestment of Dividends" showing the amount of received dividend that was reinvested, the number of shares purchased, the CUSIP number and description of the security purchased, as this information saves the examiner much valuable time in reconciling the extent and carry values of property on hand at the end of the account period 7. There should be a Schedule regarding Carry Value versus Market Value, as required by Probate Code section 1063(a) for the property on hand at the end of the account period; this is especially important in those instances where a Conservatee passes away and property is transferred from the Conservator to an Estate personal representative and where reconciliation is necessary to determine whether all of the Conservatorship assets have been transferred.	to the conservatee or ward. 6. The committee disagrees with this recommendation. Reinvestments of dividends are to be reported in Schedule F, Changes in Form of Assets, and the additional shares reflected in Schedule E, Property on Hand. 7. The committee disagrees with this recommendation. Combining the estimated market values and carry values of the non-cash assets on hand at the end of the account period in one schedule is common and requires the assets to be listed only once. Both values are to be listed in form GC-400(E)(2)/GC-405(E)(2).
8.	Ms. Margaret K. Herring Attorney Herring & Herring Coronado, California	N	N	Do not agree with proposed changes 1. If these forms are mandatory, they will be a nightmare. Rather than simplifying things, the	1. The committee believes that the categories are important for the

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				numerous schedules could be confusing. 2. Also, with so many different schedules, it would be easy for someone to lose a few check numbers on the distribution schedules. As it is now, my distributions are on one schedule and are in numerical order by check number so the court can easily review the sequence. 3. The forms won't total the numbers at the bottom of the page like our programs do now; this too leaves a lot of room for errors.	standard account. 2. The commentator may use the chronological account format in her smaller estates. 3. The commentator will be able to use her forms for the schedules of a Standard Account, adding only the form Account Summary.
9.	Ms. Jamie Lamborn Retired Sacramento, California	A	N	Agree with proposed changes.	No response necessary.
10.	Ms. Jane B. Lorenz CPA, CCF Lorenz Fiduciary Services, Inc. Fallbrook, California	N	N	Do not agree with proposed changes. I question the practicality of using Judicial Council forms for accountings. All professional accounting reports are prepared utilizing computer software. In general, they are good, double entry sets of books. Do you expect accountants to copy their work in pencil or pen onto the forms? Modern offices do not even own typewriters today. Each time work is re-	This comment appears more properly addressed to the Legislature. The forms will be available commercially through publishers or from the judicial branch's public

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				copied, the opportunity for errors is magnified. The time required for each accountant to read the forms and determine what is meant by them, to copy, to find errors causes the entire industry to spend a great deal of time and expense which will not benefit the client in any way. Perhaps the judicial system should move toward Generally Accepted Accounting Practices, rather than further away from them.	Website in versions that permit them to be filled out on the computer. The commercially available products should eventually feature relational databases and spreadsheet-type calculation functions.
11.	Superior Court of Los Angeles County, Los Angeles, California	N	Y	Do not agree with proposed changes. There are too many accounting forms. Perhaps standard accounting form should be limited to the Summary of Account and the rule will define what and how information must be presented in the schedules. Judicial Council forms and rule will be useful for the simplified accountings.	Proposed rule 7.575 would permit standard account filers to use their own self-prepared schedules with the form Summary of Account so long as their schedules provide the same information as called for in the form schedules.
12.	Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California	N	Y	Disagree with proposed changes. Comments: The "Summary of Account" is missing "Other Charges" and "Other Credits" line items. It is also missing "After-Acquired" and "After-Discovered" assets line items.	The committee agrees with this comment, has added lines in the Summary of Account for "After-Acquired Property," "Other Charges" and "Other Credits," and developed separate schedules for these items, forms GC-400(AP)/GC-405(AP),

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				Summary pages are mandatory. Detail pages are optional. The proposed rule would require massive revisions to existing, widely accepted accounting programs. PFAC recommends that the only mandatory form be a summary of account form. We acknowledge the need for separate schedules for receipts and disbursements by subject matter categories. We recommend that those schedules be generated by widely accepted and utilized accounting software programs such as QuickBooks, Quicken, Microsoft Money, Excel, etc.	GC-400(OCH)/GC-405(OCH), and GC-400(OCR)/GC-405(OCR). Proposed rule 7.575 provides that the Summary of Account is the only mandatory form for standard-account filers, which include most users of sophisticated accounting programs.
13.	C. Arthur Nisson Attorney at Law Law Offices of C. Arthur Nisson Santa Ana, California	N	Y	Do not agree with proposed changes. 1. Implementing the requirement to use the Judicial Council accounting forms will not solve the problem of novices submitting improper accountings. An accounting is not a simple matter of filling	See responses to the comment of Ms. Deborah Forbeck above. These comments appear more properly addressed to the Legislature.

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				in blanks or typing out line item entries. Brokerage and annuity statements can be extremely complex and unnecessarily difficult to decipher. Laws should be implemented to require investment companies to produce statements that are easily read and understood and wherein each transaction is shown in an individual line item entry. It is not uncommon for statements to group many transactions together requiring much time to be spent unraveling entries to determine what transactions the groupings are comprised of. The time involved in reading such statements adds additional costs in preparing accountings. 2. Required format is already established by code and some local rules and monitored by probate examiners. If the current format is followed, Judicial Council forms are unnecessary. 3. Many new changes have been implemented this year to safeguard conservatorship assets. Let the dust settle on these current changes prior to creating accounting forms and changing filing procedures. 4. CPAs were involved in preparing the proposed forms. Were they apprised that fees paid for preparing accountings must be	The accountants who worked with the advisory committee on the development of these forms were aware of the requirement for court

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				approved by the court, unlike fees for tax return preparation.	approval of expenditures by court-appointed fiduciaries for all purposes.
				If the forms are implemented, a statement should be made on the forms that states no payment for preparing accounts can be paid without court approval.	Prior court approval of payment to an account-preparer other than the fiduciary's attorney is not required under current law. Court approval for this payment would come when the accounting of which the disbursement is a part is approved by the court.
				5. Forms complicate the accountings process, thereby creating more work which will take more time to prepare and thus be more costly to prepare. The court needs to take this into consideration when approving fees.	
				6. If courts cut fees, professionals will no longer be willing to perform work required to prepare accountings. If professionals no longer willing to work as conservators, a great many more conservatorships will fall to the county to do.	6. Nothing in this proposal requires a reduction in compensation for conservators and guardians.
				7. Forms are too voluminous. Forms create many more pages being filed with the court and could be a problem for courts that do not currently scan documents.	7. This comment appears more properly addressed to the Legislature.

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				8. If implemented, they need to have an auto calculation built into the forms.	8. Commercial forms publishers should be able to produce versions of these forms with this feature.
				9. If implemented, forms need to state that numbers may not be rounded off, but must be reflected in exact amounts.	9. The committee does not believe that rounding off is a concern because it has no information or belief that such a practice is common.
				10. Requiring a schedule for property on hand at the beginning of the account period is a good idea. This schedule should then be Schedule A and would make the accounting complete within itself and alleviate having to review a prior accounting to ascertain the beginning balances.	10. Property on hand at the beginning of the accounting period must be shown in all accounts after the first account so the market value of the assets on hand at that time can be shown. But because such property need not be shown in detail in the first account, the committee decided not to designate this schedule as Schedule A.
				11. Reconciliations should be allowed on original bank statements because it is more readily understood and alleviates cross referencing between different documents. Again, the bank statement and reconciliation would be complete within itself.	11. The proposed rule and forms do not currently prevent this practice. The fact that fiduciaries often provide reconciliations in this way when reconciliations are required by some local rules is a reason why the committee elected not to

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				12. Grouping assets according to Inventory and date of filing said Inventory complicates the accounting procedure, as it is simpler to list the assets alphabetically. Time would be wasted searching out assets (on the forms) via date in order to include transactions.	provide a form for reconciliation at this time. 12. The advisory committee believes that grouping the assets as they are reflected as cash or non-cash assets in the Inventory and Appraisal is helpful to court staff reviewing the accountings because they can easily compare the assets listed with those described in the inventory. Only the non-cash assets must show both a fair market value and a carry value, so the cash and non-cash assets should be segregated and placed on different schedules.
14.	Ms. Kelsi Pena Legal Assistant Santa Rosa, California	N	N	Do not agree with proposed changes. 1. Implementing the requirement to use the Judicial Council accounting forms will "not" solve the problem of novices submitting improper accountings. An accounting is not a simple matter of filling in blanks or typing out line item entries. Brokerage and annuity statements can be	See response to comments of Ms. Deborah Forbeck and Mr. C. Arthur Nisson, above.

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				extremely complex and unnecessarily difficult to decipher. Laws should be implemented to require investment companies to produce statements that are easily read and understood and wherein each transaction is shown in an individual line item entry. It is not uncommon for statements to group many transactions together requiring much time to be spent unraveling entries to determine what transactions the groupings are comprised of. The time involved in reading such statements adds additional costs in preparing accountings. 2. The required format is already established by code and some local rules and monitored by probate examiners. If the current format is followed, Judicial Council forms are unnecessary. 3. Many new changes have been implemented this year to safeguard conservatorship assets. Let the dust settle on these current changes prior to creating accounting forms and changing filing procedures. 4. CPAs were involved in preparing the proposed forms. Were they apprised that fees paid for preparing accountings must be approved by the court, unlike fees for tax return preparation.	

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				If forms are implemented, a statement should be made on the forms that state no payment for preparing accounts can be paid without court approval. 5. Forms complicate the accountings process, thereby creating more work which will take more time to prepare and thus be more costly to prepare. The court needs to take this into consideration when approving fees. 6. If courts cut fees, "professionals" will no longer be willing to perform work required to prepare accountings. If professionals no longer willing to work as conservators, a great many more conservatorships will fall to the county to do. 7. Forms are too voluminous. Forms create many more pages being filed with the court and could be a problem for courts that do not currently scan documents. 8. If implemented, they need to have an auto calculation built into the forms. 9. If implemented, forms need to state that numbers may "not" be rounded off, but must be reflected in exact amounts.	

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				10. Requiring a schedule for property on hand at the beginning of the account period is a good idea. This schedule should then be Schedule A and would make the accounting complete within itself and alleviate having to review a prior accounting to ascertain the beginning balances. 11. Reconciliations should be allowed on original bank statements because it is more readily understood and alleviates cross referencing between different documents. Again, the bank statement and reconciliation would be complete within itself. 12. Grouping assets according to Inventory and date of filing said Inventory complicates the accounting procedure, as it is simpler to list the assets alphabetically. Time would be wasted searching out assets (on the forms) via date in order to include transactions.	

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15.	Ms. Kathleen U. Poling Attorney Poling & Poling Martinez, California	N	N	Do not agree with proposed changes. The complexity of the forms is extreme. Although Judicial Council forms are available on the internet, using them on-line is cumbersome. The new rules, therefore, would require a conservator to hire someone to prepare the accounting who has the forms program, or to purchase the forms program each year. This is a needless cost that overburdens conservatorships, which are already far too expensive. My suggestion is that you allow attachment schedules that substantially comply with the format of the judicial council forms. This would allow preparers to use Excel, which many computers have as standard program. I have been using this method for attachments to Inventories for years with excellent success and no complaints.	This comment appears properly addressed to the Legislature. The proposed rule would permit use of schedules for the standard account not prepared on the Judicial Council forms so long as the form *Summary of Account* is used with them.
16.	Ms. Mary Joy Quinn Director, Probate Superior Court of California, County of San Francisco San Francisco, California	AM	N, Y	Agree with proposed changes if modified. **7.575** Add requirement that all forms of accountings must include form or schedule for reconciliation of differences between balance on hand and total balance in account statements.	The committee elected not to prepare or require a form for reconciliation, in part because of other commentators who advised

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					that they prefer the practice of showing reconciliations on the account statements submitted with accountings by conservators and guardians. Reconciliation between the cash shown on hand and the cash shown in bank statements lodged with the court in support of the account are frequently required by local rules, but are not mentioned in Probate Code sections 1060–1064 and 2620–2628.
17.	Pat McVey-Ritsick Private Fiduciary PMR Fiduciary Services Benicia, California	AM	N	Agree with proposed changes if modified. I would like to see the column where the payee and reason for payment/description modified into two columns on the income/disbursements schedules - Most of us use software to track our client spending/income and in the software these two items are separate. It would be easier to put together the accounting if using forms that mimic the software that most fiduciaries use. Additionally, I would like to see a greater	 The committee disagrees with this recommendation because of concern that space available for entries in separate columns would require more pages than the present format. The committee preferred to identify

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				breakdown in categories, similar to tax categories for disbursements/income. Again, the software we use utilizes most tax categories to divide income/disbursements. Thanks for letting all of us review and make suggestions for these forms! You all have done an awesome job developing them.	functional expense categories for conservatorships and guardianships,. The receipts categories are closer to income tax income categories, and feature the most common types of receipts that conservators and guardians encounter.
18.	Mr. Marvin J. Southard, DSW Mental Health Director/Public Guardian County of Los Angeles Department of Mental Health Los Angeles, California	AM	Y	Agree with proposed changes if modified. Judicial Council Forms For Standard And Simplified Accountings Thank you for the opportunity to review the proposed new rules and forms for Public Guardians. We have had our staff review the proposals and our comments are outlined in the body of this letter.	
				We support the much needed reform of guardianship/conservatorship practices. However, we believe that in order for the counties to make any changes, it is critical that funding for the programs be included in the legislation you are proposing. While Adult Protective Services and the Superior Courts	This comment appears more properly addressed to the Legislature.

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				receive state funding, the guardianship program operates on all county funds. While the demands for better service increase, discretionary county funding has continued to decrease and we believe that this funding issue must be addressed. As for the forms, the proposed standard and simplified accounting appears to be duplicative and cumbersome for public agencies using customized software. In addition the proposed format may not address some of the complexities when preparing court accountings. Summary of Account Standard and Simplified Accounts GC-400(Sum)/GC-405 (Sum) The Summary of Account appears to require the conservator to duplicate the Inventory and Appraisal. The new form breaks down the Property on Hand by identifying cash assets and non-cash assets. The conservator will just report the assets already identified in the court filed Inventory and Appraisal. This adds additional work for the conservator.	The Summary of Account carries forward the cash/non-cash dichotomy in the supporting Property on Hand schedules. That distinction is important in those schedules because after the first account, the fiduciary must estimate the fair market value of the non-cash assets. Space is provided in the schedule for those assets for that purpose. The advisory committee also believes it is important, from the court staff's point of view, to

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					have the appraised value of the assets on hand at the beginning of the accounting period stated in the accounting rather than just referring to the inventories.
				The Summary of Accounts does not allow sufficient space to add information from a Supplemental Inventory and Appraisal. This is more of a problem on accountings filed after the first accounting. When a conservator prepares the first accounting all the inventories and appraisals are calculated when preparing the first accounting and this is the beginning balance. On second (or subsequent) accountings the amount "chargeable" is the ending balance from the prior approved court accounting. If the conservator prepares a Supplemental Inventory and Appraisal, there is no space to add both the Property on Hand balance and the additional value added to the estate as a result of the Supplemental Inventory and Appraisal.	The committee agrees with the recommendation and has added a line to the Summary of Account for after-acquired property and a separate schedule for this property (form GC-400(AP)/GC-405(AP)).
				The Summary of Accounts does not address changes in assets. Most conservatorship accounts do not have any	The committee agrees with this

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				trade or business. There should be flexibility by adding a category called, "Other Charges".	comment and has added a line in the *Summary of Account* for "Other Charges" and has created a schedule for this item, form GC-400(OCH)/GC-405(OCH).
				During the course of a conservatorship a conservatee may have stock or mutual funds that are reinvested rather than having a dividend paid. Thus, the number of shares of a stock or mutual fund increases. The changes will affect the value on the Property on Hand Schedule.	But the committee disagrees with the recommendation concerning reinvested dividends. Changes in assets and additional shares of stock purchased through dividend reinvestment are not reflected in the *Summary of Account*. See response to comment 2(b) of Mr. Michael Harig, above.
				Another situation that occurs is the reporting of "stop payment" checks or "stale-dated" checks. The accounting will show an expense paid, however, the conservator may later report that there was a "stop payment" placed on the check that increases the value of the conservatee's cash on hand. Another typical issue is the issue of "stale-dated" checks. Most, if not all, public agencies have a notation on the check that if the check is not cashed within six (6) months the check is null and void. When the check is not cashed, the check is then credited to the conservatee's estate. It is not really a new receipt, but rather money being returned to the	The new Other Charges schedule mentioned above would be available for reporting transactions of this kind.

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				conservatee's estate since it was never cashed. Another common example is the purchase of a capital asset for the conservatee's estate. Typical examples include the purchase of a television set, customized wheelchair, or burial trust. The accounting will show a disbursement for that item, but without other changes the property would not be shown as property on hand.	Schedule F, Changes in Assets, would show these transactions.
				The accounting schedule does not address the changes in credits. Most conservatorship estates do not have trades or businesses. A category called "other credits" would allow flexibility in showing any loss in assets that occur during the course of a conservatorship. Two specific examples come to mind: a stock that is now worthless as a result of a bankruptcy or a capital item in the custody of the conservatee that is lost or broken. In the case of the stock, a sale hasn't occurred so it would not fall under the category of a loss on sale so another category is warranted. In the case of a wheelchair that is broken and the cost to repair is excessive, there needs to be	The committee agrees with the recommendation and has added a line in the Summary of Account for Other Credits, and a separate schedule for them, form GC-400(OCR)/GC-405(OCR).

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				a mechanism to report the change and take this asset off of the Property on Hand schedule.	
				Cash Assets on Hand at Beginning of Account Period, Non-Cash Assets on Hand at Beginning of Account Period, Summary of Property on Hand at Beginning of Account Period These three proposed optional use schedules simply list all the assets on the Inventory and Appraisal. This just adds more work for the conservator and increases costs.	See above discussion. These are the schedules that feed into the Property on Hand lines of the Summary of Account.
				Schedule A, Standard Account -Receipts-Dividends, Interest, Other Receipts, Pensions, Annuities and other Regular Periodic Payments, Rent, Social Security, Veterans' Benefits, and other Public Benefits, Summary The optional schedules would require the use of separate forms for each category of income. Accountings prepared by public agencies are prepared either chronologically, or by category in chronological order. The accountings currently prepared by customized software programs already have the ability to prepare accounting by category in chronological order and summarize the total receipts.	The standard account is a categorical account. The entries within each category are chronological. The proposed rule would require the public guardian preparing a standard account to use the form Summary of Account. The rest of the account could be prepared on the public guardian's existing programs. The committee believes this is necessary to comply with the requirements of amended section 2620.

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				Schedule B, Standard and Simplified Accounts — Gain on Sale, Summary of Gains on Sales This schedule is clear and understandable. Again, public agencies use a similar format. Net Income from Trade or Business This schedule is useful in the cases where a conservatee owns a business.	The summary of gains on sale, form GC-400(B)(sum), has been deleted.
				Schedule C, Disbursements, Conservatee's Caregiver Expenses, Residential or Long-Term Care Facility Living Expenses, Distributions to Conservatee, Wards Education Expenses, Fiduciary and Attorney Fees, General Administration Expenses. Investment Expenses, Living Expenses, Medical Expenses, Other Expenses, Property Sale Expenses, Rental Property Expenses, Summary The proposed accounting schedules are cumbersome for public agencies. A separate schedule for each expense category may be required. Currently most public agencies will prepare a disbursement schedule by chronological order or by category by chronological order. If a check number is required for each disbursement, public agencies	The proposed rule would require the public guardian preparing a standard account to use the form Summary of Account. The rest of the account could be prepared on the public guardian's existing programs. The committee believes this is necessary to comply with the requirements of amended section 2620. The summary form. GC-400(C)(sum), has been deleted.

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				may need to re-program existing software. Separate schedules would lengthen the time it takes to complete an accounting and increases administrative costs for the conservatee.	
				Schedule D — Losses on Sales, Summary of Losses on Sales This schedule is clear and understandable. Public agencies use a similar format.	The summary form for losses on sales, form GC-400(D)(sum), has been deleted.
				Schedule - Net Loss From Trade or Business This schedule is useful in the cases where a conservatee owns a business.	
				Schedule E - Cash Assets on Hand at End of Account Period, Non-Cash Assets on Hand at End of Account Period, Summary of Property on Hand The use of the optional standardized form would add two schedules instead of the one schedule currently used by public agencies. This would add to the time and costs to prepare an accounting.	The summary of property on hand, form GC-400(E)(sum)/GC-405(E)(sum), has been deleted. Two schedules, one for the cash assets and one for the non-cash assets, are necessary because the non-cash assets must reflect an estimated fair market value.
				Schedule F—Changes in Assets	This schedule is required by

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				This appears to be a new schedule and it is unclear how this schedule will affect the ability to "balance" the account or note any changes in the property on hand schedule.	Probate Code section 1063(b). It does not become part of the *Summary of Account*, but the changes noted would be reflected in differences between the schedules for property on hand at the beginning and at the end of the accounting period.
				Schedule G—Liabilities at End of Account Period	This schedule is required by Probate Code section 1063(g)
				This appears to be a new schedule and would list the conservatee's liabilities. Liabilities could appear in the Conservator's Report of Conservator, but if liabilities were not disclosed, this would be acceptable. Again it would add time and expense to the preparation of the court accounting.	
				<u>Other concerns</u>	
				The overall purpose of the court accounting is to disclose all the activities that occurred in the accounting. In reviewing the various schedules, information such as time period for both receipts and expenses were not requested. It would be helpful to include language that any information should be complete, identify payor, specific service or good provided and the time	The *Summary of Account* calls for the beginning and ending dates for the accounting. The forms contain a considerable number of instructions. The committee does not want to overload the forms with many more

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				period.	of them.
				Another item that may be problematic, but is not often asked about is insurance coverage on real property and personal property. Whenever medical expenses are paid, there should be a reference if any health or dental insurance was used.	The medical expense disbursement form, GC-400(C)(8), contains an instruction to report expenses net of insurance paid directly to providers, but to include insurance premiums paid.
				Whenever caregivers are hired it should be specified if the caregiver works from an agency, or is the conservatee's employee. If the caregiver is an employee there should be evidence of payment of social security funds, state taxes, and workers compensation coverage (usually covered under homeowners' policy.)	The form for the conservatee's caregiver expenses, form GC-400(C)(1), requests disclosure of a caregiver's agency. Employment relationships are to be disclosed in the petition or report that accompanies the accounting (Prob. Code, § 1064(a)(3)).
				Conclusion The preparation of court accountings is time-consuming, complex and requires unique knowledge to prepare. Conservators do understand the difficulty in preparing a court accounting. Public Agencies who act in fiduciary capacities already have software programs that generate this information. While the numerous schedules may be helpful to individuals who take on the responsibility of	Fiduciaries who employ persons who perform caregiver or any other service are subject to the laws and regulations governing employment, including workers' compensation, income tax and social security withholding requirements. These laws and regulations are not a primary focus of enforcement by the court in an accounting. The

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				family members, large public agencies find the schedules to be costly and duplicative. Once again, thank you for the opportunity to comment.	account ordinarily would not show salaries and withholding amounts paid by a fiduciary to an employee. The amounts paid do not come from the estate as they are paid. They would normally be reimbursed from an estate only as part of the fiduciary's own compensation approved by the court.
19.	Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, California	N	Y	Do not agree with proposed changes. The Executive Committee opposes the proposed rule and forms. The changes included in this proposal stem from the addition of the following language to Probate Code section 2620: " . . . the Judicial Council . . . shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. After January 1, 2008, all accountings submitted pursuant to this section shall be submitted on the . . . form."	

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				There are 37 forms presented in the proposal. Nine forms are suggested as mandatory for all standard accountings; a conservator who is preparing a standard accounting with conventional accounting software would have to use the standard forms for summary of account, summary of property on hand at beginning of account, summary of receipts by category, summary of gains on sale, summary of disbursements by category, summary of losses on sale, property on hand at the close of the account period, changes in form of assets, and liabilities. It would be necessary to data load these forms in additional to whatever summary schedules are produced by the program in question, and since the forms required are mandatory Judicial Council forms, accounting software preparers who wish to comply with the requirements must become official publishers of Judicial Council forms. The requirement to use these mandatory forms is burdensome and unnecessary. The conservatorship working group, in its recommendations to the Executive Committee, was unanimous in rejecting the proposed accounting system, suggesting instead that the new rule be rewritten to permit persons using	The total number of forms has been reduced to 35, including an optional worksheet, form GC-400(A)(C). Only three forms, the *Summary of Account* (form GC-400(SUM)/GC-405(SUM)), and the simplified account forms for the receipts and disbursements schedules (forms GC-405(A) and GC-405(C)) are mandatory. All others are optional, including all joint-use forms—those designated GC-400/GC-405—when used by standard account preparers. All summary forms within specific schedules, those that contained the suffix (sum), have been deleted. Users of sophisticated software programs would ordinarily prepare standard-account formatted accountings in any event, so the impact of these forms on their operations should be minimized.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				standard accounting software to submit accountings prepared according to a suggested format, i.e., with specified categories for receipts items and disbursement items, but not on Judicial Council forms.	
				The mandate of 2620 can easily be met by having all accounting preparers submit a summary of accounts using Form GC-400(SUM)/GC-405(SUM, which would comply with the "submitted on the Judicial Council form" mandate. At the same time, the rule can prescribe the format by detailing the categories of receipt items and disbursement and even the order they must appear in, should the Judicial Council wish to be that formalistic. If the Judicial Council sees a problem in compliance or noncompliance with the mandate of the law, it, through its legislative counsel, can suggest a minor amendment or clarification to Prob. C. Sec. 2620(a): "The Judicial Council . . . shall prepare required formats to be used in all accountings submitted pursuant to this section and shall prepare optional forms to be used to comply with the required formats. After (deadline date), all accountings submitted pursuant to this section shall follow the formats promulgated by the Judicial Council," or language to that effect.	This recommendation has been adopted. Standard-account preparers would be required only to use the *Summary of Account*. All standard account preparers could prepare their own schedules so long as the same information as required by the forms is provided (other than material in the headers or footers of the forms and instructional material contained in the forms). See proposed rule 7.575(e)(2).

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				With regard to the simplified accounting, the suggested forms can be of great assistance especially to pro pers with a very simple estate to account for and can be mandatory for simplified accountings. Adopted by Executive Committee, 17-2, with 3 abstentions, June 16, 2007.	Under proposed rule 7.575, all simplified account preparers must use the Judicial Council forms, including dual-use forms that are optional for standard-account preparers. See proposed rule 7.575(e)(1).
20.	Mr. Chris Stevenson Probate Assistant North Fort Myers, Florida	N	N	Do not agree with proposed charges. (Please see comment above for: Ms. Deborah J. Forbeck)	See response to comment of Ms. Forbeck.
21.	Hon. F. Clark Sueyres, Judge of the Superior Court of California, County of San Joaquin Stockton, California	AM	N	Agree with proposed changes if modified. The Summary of Account page has lines for Cash Assets and Non-Cash Assets and their totals for both the opening and close of the period which are taken from the pages listing all those items. There are also pages for merely listing the total of Cash and total of Non-Cash and their total. These latter pages appear to be superfluous.	The committee agrees with this recommendation and has deleted all summary forms for specific schedule, including the summary forms for the property on hand at the beginning and at the end of the account period.
22.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	AM	N	Agree with proposed changes if modified Generally, for non-professional fiduciaries, this should help. However, I think the forms need to	This recommendation would be difficult. Some of the forms are

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

Probate: Judicial Council forms for standard and simplified accountings by conservators and guardians and a rule of court defining these types of accountings and prescribing the use of the forms.

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				be modified to more effectively show which forms are mandatory and which are not. Right now, it appears the only way to distinguish between mandatory and optional is to look at the footer in the lower left corner. The words "mandatory" and "optional" should appear prominently at the top and bottom of the page, as part of the title of each form.	mandatory for simplified account-filers but optional for standard-account filers.
				Further, the rule should be modified to specifically state that handwritten completion of the forms, if legible, will be accepted by the Court (if, in fact that is true...).	Handwritten text may be placed in Judicial Council forms under rule 2.135.
				Finally, it does not appear the forms will have an easy-to-read, easy-to-understand set of instructions accompanying the form set. Conservators who are going to be using the simplified form set are going to need guidance.	The advisory committee will be revising the *Handbook for Conservators* this year (2007–2008), and will consider development of instructional forms or other materials concerning the use of these forms. The committee has also added much more instructional material to the forms than was provided in the forms circulated for comment.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate Conservatorship Task Force
Hon. Roger W. Boren, Chair
Christine Patton, Regional Administrative Director, 415-865-7735, christine.patton@jud.ca.gov

DATE: September 18, 2007

SUBJECT: Final Report of the Probate Conservatorship Task Force (Action Required)

Issue Statement

The administration and management of probate conservatorship cases in the state of California was recently placed under scrutiny through a series of *Los Angeles Times* articles that raised concerns that some conservatees were being subjected to abusive practices. Of particular concern were the inappropriate granting of temporary conservatorships on ex parte petitions, lack of proper oversight of accountings, abusive practices of private professional conservators including improper billings, lack of sufficient notice to conservatees and their families, and inadequate protections of the rights of conservatees. Although there are courts and counties with exemplary programs, many others do not appear to be able to provide the services and oversight necessary to ensure that conservatees are protected and receive proper care and treatment. This inability is often due to a lack of resources and, in some cases, gaps in existing statutes, rules, and guidelines.

Recognizing these challenges, in January 2006 the Chief Justice established the Probate Conservatorship Task Force and charged it with conducting a top-to-bottom review of the probate conservatorship system in California. Over its term, the task force studied conservatorship practices in jurisdictions within and outside the state and developed recommendations for courts, judicial partners, and the community support system for the protection and benefit of conservatees. The task force recommendations that follow in summary form are presented and discussed

in detail in the attached final report, *Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases.*

The 85 task force recommendations include items that will necessitate further study and review, changes in legislation or rules of court, and preparation of training materials and guidelines for the courts. Staff has identified steps the council may take in order to implement the task force's recommendations.

Recommendation

The Probate Conservatorship Task Force recommends that the Judicial Council, effective immediately:

1. Receive and accept the final report from the Probate Conservatorship Task Force;

2. Direct the Administrative Director of the Courts to refer the task force recommendations to the appropriate advisory committee, Administrative Office of the Courts (AOC) division, or other entity for review and preparation of proposals to be considered through the normal judicial branch processes; and

3. Direct the Administrative Director of the Courts to report progress to the council on the implementation of recommendations by December 2008.

Rationale for Recommendations

The Probate Conservatorship Task Force engaged in a comprehensive process to address the key issues affecting the management of conservatorship cases in California. The process began with two public hearings to gather information on the public's perceptions and actual experiences in the probate conservatorship system. Participants included conservatees, families, conservators, justice partners, advocacy groups, and the community. The task force then studied conservatorship practices within and outside the state to determine which ideas could be adopted in California to improve the probate conservatorship system. Using the expertise within the task force membership, which consisted of judicial officers, court probate staff, attorneys, justice partners, advocacy groups, and other public members, each idea was thoroughly discussed as to the efficacy and practical application within the current conservatorship system as well as how to attain the optimal probate conservatorship system of the future.

The task force realized that many of the recommendations would require additional funding from outside sources and some recommendations would necessitate a substantial change in the culture and practice of superior courts and their justice partners. The task force did not want these factors to dictate whether a

recommendation would be forwarded to the council; rather, the task force saw its charge as being one to make recommendations for the best possible system within which conservatees would have the greatest level of protection, resulting in a system that would warrant a high level of public trust and confidence. Although these changes may take time, the improvement in the lives of conservatees through improving the oversight and management of the cases within the courts' control is not only the duty of the judicial branch but essential to the strength of the communities that we serve.

The task force's recommendations seek to attain several goals:

1. Ensure that temporary conservatorships are not unnecessarily granted;
2. Make notice requirements more informative and effective;
3. Ensure that the conservatorship is the least restrictive alternative for the conservatee;
4. Ensure adequate access to information for all of the interested participants;
5. Make increased and better use of short- and long-term care plans;
6. Ensure that there is a system to prevent fraud and improper handling of conservatees' assets;
7. Ensure that the conservatee is being taken care of properly through personal visitation;
8. Ensure that all participants are aware of, and are protecting, the conservatee's rights;
9. Obtain and allocate adequate funding on statewide and local levels for all entities that support the conservatorship process;
10. Adequately train and educate conservators, attorneys, court staff, and judicial officers;
11. Expand self-help services to include help for conservators and families of conservatees;
12. Ensure that conservatees' rights are adequately protected through representation of counsel; and

13. Ensure adequate oversight of both nonprofessional and private professional conservators.

The rationales underlying these major objectives are discussed below.

Ensuring that temporary conservatorships are not granted unnecessarily
The task force proposes a series of recommendations to ensure that the court has sufficient and timely information before granting a temporary conservatorship. These include creation of a standardized ex parte application and order, authorization of disclosure of medical information, due diligence to find relatives, and required follow-up hearings. Not only was this of great concern expressed at the public hearings, it also is imperative that the court have critical information when making a decision to place a person under conservatorship, even temporarily.

Increased notice requirements
The task force recommends expanding the information required on notices and including notice of reports to the conservatee, while allowing for an exemption under certain circumstances. This will help the conservatee and affected family members to understand the proceedings and will enhance confidence in the judicial system while balancing privacy rights of the conservatee.

Least restrictive alternative declarations
The task force recommends that proceedings for the establishment of temporary and general conservatorships include declarations of why a conservatorship is the least restrictive alternative and why the specific powers granted to the conservator are not overly restrictive. This will ensure that the court investigator, attorney, and conservator have explored all alternatives and have requested the least restrictive means necessary to protect the conservatee while preserving his or her liberty when possible.

Access to information
The task force recommends several proposals to ensure that information flows freely between courts, attorneys, regional centers, court investigators, and probate examiners. The requirement that written reports be submitted by attorneys at the same time that the investigators' reports are due prompted concern in the public comments, because it was thought that such a requirement would increase costs and lessen efficiency. However, the task force feels strongly that, although oral reports may be accepted in certain circumstances, written reports provide information that court investigators need to provide sufficient and timely feedback to the courts.

Care plans

The task force recommends that a care plan be submitted in each conservatorship case. Pending legislation—Senate Bill 800 (Corbett)—would codify this requirement. The task force recommendation goes further by requiring that an estimate of fees be included, that the council develop a form to be used statewide, and that the plan be served within 90 days on all interested persons and entities. This will ensure that the elements of the care plan are met and that courts have the information they need to evaluate the plan throughout the years.

Fraud detection in accountings

Misappropriation of funds and inappropriate fees were of great concern to the persons who testified at the public hearings. To give the court better tools for reviewing accountings and the financial transactions that occur within a conservatorship, the task force recommends including the development of a Web-based accounting system, use of fraud detection software programs, more involvement of investigators in watching for irregularities, and use of guidelines for granting fee requests. These recommendations will help protect conservatees' assets under court supervision.

Minimum visitation requirements

The welfare of the conservatee is of utmost importance, especially since conservatees are often unable to speak up for their rights. The task force recommends that conservators or qualified representatives make personal visits at least once per month. This recommendation met with some opposition in the comments, because it would engender increased costs and in many cases it would not be helpful nor would it add anything to the oversight of the situation. Other entities, however, were concerned that a monthly visitation was not frequent enough. The task force feels strongly that many of the allegations of abuse and neglect would be investigated and remedied if conservatees had regular visits, whether they reside in nursing homes or at their personal residences. The recommendation of yearly visits to conservatees of the estate also is reasonable because the responsibility of managing a conservatee's property warrants a personal visit at least on an annual basis so that the conservatee has an opportunity to discuss issues in a personal setting.

Conservatee rights and protections

The task force recommends developing a conservatee "bill of rights." A conservatee bill of rights and other protections will ensure not only that the conservatee is given notice of his or her rights under the law but also will inform the conservator and the conservatee's family of what is expected of them in relation to the conservatorship. Under a conservatorship, the conservatee is deprived of basic liberty rights, and it is imperative that the rights and protections

that are put in their place under the law are clearly outlined so all interested parties are aware of their responsibilities toward the conservatee and the court.

Adequate funding
The task force is aware that in order to implement many of the recommendations, and to provide the oversight necessary for the protection of the conservatees in the system, adequate resources must be made available on a local and statewide basis. Trial courts should evaluate the allocation of current resources to the probate conservatorship system within their own jurisdictions and make changes if necessary and possible. The Judicial Council should take into consideration the need for priority funding, if possible, to encourage courts to put resources into this vital area of probate conservatorship management. On a state level, the council should continue to seek funding outside of the state appropriations limit to enable the courts to implement new legislation, including the Omnibus Conservatorship and Guardianship Reform Act of 2006 and additional proposals that improve the welfare of conservatees.

Training and education
Although the Omnibus Act includes many training and education requirements for judicial officers and court staff, the task force recommendations enhance those requirements to include training for outside counsel. Probate assignments in general and conservatorship matters in particular often are given to judges with no prior experience and rotated on a short-term basis. The task force recommends that in order for judicial officers and staff to provide adequate oversight of these types of cases, they must become familiar with the laws and processes.

Expansion of self-help services
For family members or friends who become conservators, there is a need for education and assistance regarding what is expected of them, for the protection of the conservatee and the conservator. Currently there are very few self-help facilities at the local level that include conservatorship aid. The task force recommends that this area of assistance be made available on a local and statewide basis.

Automatic appointment of counsel for conservatees
The task force recommends automatic appointment of counsel for conservatees in all cases. Conservatees are vulnerable members of society who have been placed under the control of a conservator with oversight duty placed squarely on the superior court. Our current justice system mandates the appointment of counsel where vulnerable parties and defendants risk the loss of liberty and property, not only minors under wardship of the court but also criminal defendants, whether accused of a felony or misdemeanor. Conservatees are similarly vulnerable, if not more so. Their entire lives and dignities are in the hands of others, including where

they live, what their money is spent on, who they see, where they travel, and what property they are allowed to possess. Under current law, the court has discretion to appoint an attorney for a conservatee, the costs of which are paid from the conservatee's assets, if possible, or at the expense of the county or court.[1] To implement this recommendation to require appointment of counsel in every case, a feasibility study would have to be made and funding identified for those conservatees who could not afford the cost. In exploring this idea further, alternatives should be considered, such as "unbundling" of attorney services, allowing limited appearances for matters that require an attorney, or the development of a managed counsel program such as the Dependency Representation, Administration, Funding, and Training (DRAFT) project in the dependency counsel area. The task force realizes this recommendation may take years to implement, but the protections afforded to conservatees would be well worth the time and expense in quality of life, better oversight, and increased attention given to the conservatee.

Administration of probate conservatorship matters

The task force suggests several ways the AOC and the superior courts can better manage the administration of the probate conservatorship system statewide and within the court environment, including reallocating resources when necessary, assigning judicial officers to conservatorship cases for all purposes, coordinating annual reviews and accountings, and making support services available to families, similar to the services available in family law matters. The task force feels strongly that this area of judicial management has long been neglected and, at the least, needs a thorough review by each individual superior court to ensure that the conservatees under its responsibility are being afforded the greatest protection possible.

Nonprofessional and private professional conservator oversight

The Omnibus Act includes a new state body to license and oversee private professional conservators, the Professional Fiduciaries Bureau, within the jurisdiction of the Department of Consumer Affairs.[2] However, the task force feels that the courts have a duty and ability to provide more thorough oversight in individual cases within their jurisdictions. The task force makes several recommendations in this area, including mandating that private professional conservators place their registration information on each document submitted for filing with the court, the court be informed as to how the private professional conservator became involved in the case, and criminal and credit background checks be required for all proposed conservators, private or otherwise. The

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[1] See recommendation 52, "Responsibility for payment of appointed counsel fees," Judicial Council of Cal., Probate Conservatorship Task Force, *Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases*, p. 21.

[2] Bus. & Prof. Code, §§ 6501 and 6510.

recommendations also include a requirement of a statewide system of categories for fee requests. These reforms would give the court the information necessary to perform its oversight responsibilities and prevent many of the abuses cited by the public in the hearings and during the comment period.

Alternative Actions Considered

In developing its recommendations, the task force considered the alternative of relying on the Omnibus Act and pending legislation to resolve the issues raised by the public and the charge. Although many of the issues raised have been addressed in the Omnibus Act and in pending legislation, the task force decided that there were areas that were not addressed, or ones that were addressed but that needed additional amendments to legislation and rules of court to ensure that the goals of maximum protection of the conservatee and oversight of the conservatorship process were accomplished. In addition to legislative solutions, the task force recognized a need for adoption of best practices for courts and justice partners. These recommendations are suggestions for management and administration within each local court's jurisdiction and, as such, go far beyond the requirements of legislation and rules. The task force hopes that courts will realize the advantages of these practices and adopt them voluntarily in their effort to improve the practices and procedures in their own court environments.

Comments From Interested Parties

The task force sought comment on its draft recommendations from the judicial branch, nonprofessional and private professional conservators, public guardians, other stakeholders involved in conservatorships, and the public. The comment period was from April 30 to June 29, 2007.

The number of comments received from 37 persons and entities totaled 204. The task force reviewed each submission and responded to all comments that were specific to the recommendations. In many cases, the recommendations were revised to reflect the commenters' concerns or suggestions. A chart summarizing the comments and responses follows this report.

Implementation Requirements and Costs

It is acknowledged that improving the administration of justice in conservatorship cases will be a systemic endeavor. Many of these proposals are detailed and technical in nature and implementation of some of the task force proposals will require additional resources—in some cases, a considerable funding investment. For this reason, staff recommends that the Administrative Director of the Courts refer the recommendations to the appropriate entities for necessary action.

LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH
OFFICE OF THE PUBLIC GUARDIAN

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PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **NEW CASE SCREENING AND ASSIGNMENT**	POLICY NO. **1.1**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 4**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines for screening and assigning referrals/ applications to the Public Guardian for Conservatorship Investigations or related services.

POLICY:

2.1 This policy applies to LPS and Probate conservatorship investigation referrals as well as to requests for Trustee appointments or Representative Payee Services.

2.2 All referrals will have a case with a unique case number opened and entered into the Public Guardian database system.

2.3 A Supervising Deputy Public Conservator will screen all new referrals for appropriateness and a determination of whether basic eligibility requirements are met.

2.4 Basic eligibility requirements vary by program, but in general the referred client must be: (1) a resident of Los Angeles County and (2) unable to provide for his/her basic needs of food, clothing or shelter and/or unable to manage his/her own financial affairs. There is no minimum or maximum dollar amount required.

2.4(a) All cases that are appropriate and meet basic eligibility requirements for a particular program will be assigned for investigation or assigned to the "back log" file within two business days of receipt of the referral.

2.4(b) All cases that do not meet basic eligibility requirements or are otherwise inappropriate will be non-handled within two business days of receipt of the referral.

2.5 A Lanterman-Petrus-Short (LPS) referral to the Public Guardian may only be initiated by a physician at a county-designated facility for a patient who is gravely disabled, who will not or cannot accept mental health treatment on a voluntary basis, and who will not or cannot accept assistance from a third party. A court of law may also refer certain persons, usually a criminal defendant, for conservatorship proceedings.

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: NEW CASE SCREENING AND ASSIGNMENT	POLICY NO. 1.1	EFFECTIVE DATE 12/01/2006	PAGE 2 of 4

2.6 A referral for Probate conservatorship may be initiated by family, friends, neighbors, social workers, public officials or any other interested party who becomes aware of an individual who is unable to provide for their own basic needs of food, clothing or shelter; who is unable to manage their own financial affairs; and/or who may be subject to fraud or undue influence in the management of his/her assets.

2.6(a) There is no minimum asset/income requirement for the Public Guardian to investigate a Probate conservatorship referral. However, for the Public Guardian to be able to petition for appointment, the proposed conservatee must have sufficient assets, income or benefit eligibility to pay for their care.

2.7 The Public Guardian will also accept Superior Court appointments as Trustee, or as Successor Trustee, of a Trust when no alternative exists.

2.8 Representative Payee cases may be opened and assigned on persons referred by agencies designated or authorized by the Public Guardian as part of an agreement or Memorandum of Understanding (MOU).

PROCEDURES: 3.1 LPS Referrals

3.2 Upon receiving the referral, Opening Desk staff will follow specified procedures to open the case on the Public Guardian database and create a folder for the new case. That folder is then to be given to the designated screener for review.

3.3 A Supervising Deputy Public Conservator will screen/review the referral to ensure that it complies with existing state law. To be further processed, the referral must show that the referring party is authorized to initiate a referral; the referring hospital is a designated facility; and the client has a mental disorder and is a resident of Los Angeles County. Legal timeframes and involuntary holds must be adhered to. The referral must contain sufficient information to legally sustain a finding of grave disability.

4.1 Probate Referrals

4.2 Upon receiving the referral, Opening Desk staff will follow specified procedures to open the case on the Public Guardian database. A

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: NEW CASE SCREENING AND ASSIGNMENT	POLICY NO. 1.1	EFFECTIVE DATE 12/01/2006	PAGE 3 of 4

folder/file will be created for the new case and given to the designated screener for review.

4.3 A Supervising Deputy Public Conservator will screen/review the referral to ensure that it is appropriate. For Public Guardian to proceed on the referral, it must show that the subject is a resident of Los Angeles County and has an inability to provide for his/ her personal needs for physical health, food, clothing or shelter or is substantially unable to manage his/ her financial resources or resist fraud or undue influence. Referrals which include allegations of elder/dependent abuse, severe self-neglect or the imminent, substantial loss of property will be given priority.

5.1 Processing Accepted Referrals

After the Supervising Deputy Public Conservator has screened the referral and determined that the case is meets the criteria for investigation, the case will be assigned to an investigator or to the Probate backlog. Both the assigned investigator's initials and the date the case is accepted will then be entered in the case folder and posted to the Public Guardian database.

5.2 LPS referrals will also be prepared for transmittal to County Counsel.

5.3 On all Probate referrals, a "Referral Receipt Notice" will be sent to the referring party acknowledging receipt of the referral.

5.4 The case folder will then be forwarded to the assigned Investigating Deputy Public Conservator.

6.1 Processing Rejected Referrals

In the event the Supervising Deputy Public Conservator determines the referral is inappropriate for investigation, the referral will be rejected and the case closed.

6.2. The referral will then be returned to the Opening Desk with a "Referral Rejection Notice" and the appropriate closing (non-handle code) written on the referral. (See table of Non-Handle codes for the appropriate code.)

6.3 Designated Opening Desk staff will prepare a letter of rejection to the referring party stating the reason Public Guardian is not processing the referral.

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **NEW CASE SCREENING AND ASSIGNMENT**	POLICY NO. **1.1**	EFFECTIVE DATE **12/01/2006**	PAGE **4 of 4**

6.4 The non-handled case folder will then be processed and forwarded to the Public Administrator's Accounting Section for closing.

AUTHORITY: Probate Code Sections 1800, 1800.3, 1801, 1802, 1812
Welfare and Institutions Code Sections 5350, 5352, 5352.1, 5352.3, 5352.5, 5352.6

FORMS: Application for Mental Health Conservatorship Investigation
Referral for Probate Conservatorship Investigation
Referral Receipt Notice
Referral Rejection Notice

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: NEW CASE SCREENING AND ASSIGNMENT (PROBATE)	POLICY NO. 3.1	EFFECTIVE DATE 12/01/2006	PAGE 1 of 4
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines for screening and assigning referrals/ applications to the Public Guardian for conservatorship investigations or related services.

POLICY:

2.1 All referrals will have a case with a unique case number opened and entered into the Public Guardian database system, as described in policy # 1.9 "Public Guardian Case Opening."

2.2 A Supervising Deputy Public Conservator will screen all new referrals for appropriateness and a determination of whether basic eligibility requirements are met.

2.3 The basic criteria for assignment and investigation are that the referred individual is a resident of Los Angeles County and appears to meet the legal basis for conservatorship as outlined in probate code section 1801: A conservator may be appointed "for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing or shelter" or for persons "substantially unable" to manage their financial resources "or resist fraud or undue influence." There is no minimum or maximum income or asset requirement to conduct an investigation.

2.4(a) All cases that are appropriate and meet basic eligibility requirements for a particular program will be assigned for investigation or assigned to the "back log" file within two business days of receipt of the referral.

2.4(b) All cases that do not meet basic eligibility requirements or are otherwise inappropriate will be closed within two business days of notifying the referring source.

2.4 A referral for Probate conservatorship may be initiated by family, friends, neighbors, social workers, public officials or any other interested party who becomes aware of an individual who is unable to provide for his/her own basic needs of food, clothing or shelter, who is unable to manage his/her own financial affairs, and/or who may be subject to fraud or undue influence in the management of his/her assets.

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: NEW CASE SCREENING AND ASSIGNMENT (PROBATE)	POLICY NO. 3.1	EFFECTIVE DATE 12/01/2006	PAGE 2 of 4

2.6(a) There is no minimum asset/income requirement for Public Guardian to investigate a Probate conservatorship referral.

2.5 The Public Guardian will also accept Superior Court appointments as Trustee, or as Successor Trustee of a Trust when no alternative exists.

DEFINITIONS

Undue influence means any improper or wrongful constraint, machination, or urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely. Undue influence, which deprives the person influenced of free agency or destroys freedom of his will and renders it more the will of another than his own. Misuse of position of confidence or taking advantage of a person's weakness, infirmity, or distress to change improperly that person's actions or decisions.[1]

PROCEDURES

Probate Referrals

3.1 Upon receiving the referral, Opening Desk staff will follow specified procedures to open the case on the Public Guardian database. A folder/file will be created for the new case and given to the designated screener for review.

3.2 If the referral is incomplete, the Supervising Deputy Public Guardian may either direct staff to call the referring party for information or it may be returned to the referring party to complete the information requested.

3.3 A Supervising Deputy Public Conservator will screen/review the referral to ensure that it is appropriate. For the Public Guardian to proceed with the referral, it must indicate that the subject is a resident of Los Angeles County and has an inability to provide for his/ her personal needs for physical health, food, clothing or shelter or is substantially unable to manage his/ her financial resources or resist fraud or undue influence. Referrals which include allegations of elder/dependent abuse, severe self-neglect or the imminent, substantial loss of property will be given priority.

3.4 When a referral alleges abuse of any nature, the Supervising Deputy Public Guardian will contact the referring party, if necessary, to ensure that a report has been made to both the local police department and Adult Protective Services (APS) before the referral is processed. Processing of

[1] Black's Law Dictionary

the referral may be delayed upon the discretion of the Supervising Deputy Public Guardian depending on the nature of the allegations and/or the outcome of any investigations from other mandated investigators.

3.5 In general, all referrals meeting the basic criteria will be assigned for investigation. However, the screening process may identify a viable alternative that would preclude investigation. Such examples include but are not limited to the referring party seeking medical authority to consent to a medical procedure; or a skilled nursing facility assisting a client who qualifies as a Medi-cal beneficiary to redirect income and benefits to pay for care.

3.6 All referrals will either be assigned for investigation or closed without an investigation within 60 days of receipt of the referral.

4.1 Processing Court –Referred Referrals

In the event of court-referred referrals, the court or an attorney representing the proposed conservatee may call the Supervising Deputy Public Guardian about the case. If at all possible, the Supervising Deputy should attempt to have the referring attorney complete a referral. The exact date as to when the Court expects a decision must be noted. The Supervising Deputy Public Guardian must establish a deadline date for the Investigator as to when a report is due. The due date must allow sufficient time to allow Counsel to review the Public Guardian's decision and to still meet the Court imposed due date.

5.1 Processing Accepted Referrals

After the Supervising Deputy Public Guardian has screened the referral and determined that the case is acceptable for investigation, the case will be assigned to an Investigator, or to the Probate backlog. Both the assigned Investigator's initials and the date the case is accepted will then be entered in the case folder and posted to the Public Guardian database.

5.2 On all Probate referrals, a "Referral Receipt Notice" will be sent to the referring party acknowledging receipt of the referral.

5.3 The case folder will then be forwarded to the assigned Investigating Deputy Public Conservator noting the mandated completion date.

5.4 The Supervising Deputy Public Guardian will monitor all referrals to ensure mandated due dates are met.

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SUBJECT: NEW CASE SCREENING AND ASSIGNMENT (PROBATE)	POLICY NO. 3.1	EFFECTIVE DATE 12/01/2006	PAGE 4 of 4

6.1 Processing Rejected Referrals

In the event the Supervising Deputy Public Conservator determines the referral is inappropriate for investigation, the referral will be rejected. However the referring party may request reconsideration of the rejection upon providing additional information. If the referring party does not request reconsideration within 10 working days, the case will be closed.

6.2 The referral will then be returned to the Opening Desk with a Referral Rejection Notice, and the appropriate closing (Non-Handling ode) written on the referral. (See table of Non-Handle codes for the correct code..)

6.3 Designated Opening Desk staff will prepare a letter of rejection stating the reason Public Guardian is not processing the referral. The Opening Desk staff will hold the case for10 working days to allow the referring party to request reconsideration. If a written request is sent, the case is returned to the Supervising Deputy Public Guardian for further review. After carefully reviewing the additional information the Supervising Deputy Public Guardian may assign the case or reject the case. In the event of rejection, the case is sent to the Assistant Division Chief for review. If upon review of the Assistant Division Chief concurs with the rejection, the referring party is notified of the decision not to process the request for investigation and this decision is final.

6.4 The Non-Handled case folder will then be sent to the Public Administrator's Accounting Section for closing.

AUTHORITY: Probate Code Sections 1800, 1800.3, 1801, 1802, 1812
Welfare and Institutions Code Sections 5350, 5352, 5352.1, 5352.3, 5352.5, 5352.6, 14110.8

FORMS: Application for Mental Health Conservatorship Investigation
Referral for Probate Conservatorship Investigation
Referral Receipt Notice
Referral Rejection Notice

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: PROBATE CONSERVATORSHIP INVESTIGATIONS	POLICY NO. 3.2	EFFECTIVE DATE 12/01/2006	PAGE 1 of 6
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines for conducting Probate Conservatorship Investigations.

BACKGROUND:

2.1 Under provisions of the Probate Code, a conservatorship of the person and estate may be established for an individual who is unable to provide properly for his/her personal needs for physical health, food, clothing and/or shelter, and who is substantially unable to manage his/her own financial resources or to resist fraud or undue influence. "Substantial inability" may not be proven solely by isolated incidents of negligence or improvidence. In order to sustain a conservatorship, clear and convincing evidence must exist.

POLICY:

3.1 Probate Cconservatorship Investigations may be initiated by any family, friend, neighbor, social worker, public official or other interested party who believes a particular person is unable to properly provide for his/her own personal needs, or who is substantially unable to manage his/her financial resources, or to resist fraud or undue influence.

3.2 A Probate Guardianship Investigation may be initiated for a minor child who has no natural guardian or relative capable of or willing to serve as guardian, and who has property holdings or other assets which require management on their behalf. Such guardianships are only over the estate. A family member or child services agency will usually act as guardian over the minor's person.

3.3 The Probate Conservatorship Investigation is a comprehensive evaluation of the proposed conservatee's physical, mental, medical and financial condition and situation.

3.4 In conducting the investigation, the Investigating Deputy will consider the preferences of the proposed conservatee, their cultural background and their family situation.

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SUBJECT: **PROBATE CONSERVATORSHIP INVESTIGATIONS**	POLICY NO. **3.2**	EFFECTIVE DATE **12/01/2006**	PAGE **2 of 6**

3.5 In all cases, it must be reiterated that it is legally mandated that an Investigator seek out and evaluate all possible alternatives to conservatorship before seeking to establish one.

PROCEDURES:

4.1 Information Gathering
The Probate Conservatorship Investigation is designed to gather sufficient information about the proposed conservatee to allow the Investigating Deputy to determine whether a conservatorship is warranted or whether the existing problem(s) can be resolved in a less formalized manner.

4.1(a) The referral must be reviewed for accuracy and problem identification. The referring party must also be contacted to provide any information beyond that shown on the referral form. In some cases, the individual making the referral may also be asked to assist the Deputy in gaining access to the proposed conservatee.

4.1(b) The proposed conservatee should be interviewed within 10 days of receipt of the referral. During the interview the Investigator must ascertain the problem warranting the referral, explain the purpose of the investigation, and attempt to obtain cooperation. If the individual indicates a willingness to voluntarily accept assistance, the Investigator may proceed with the investigation, but should describe alternate services that may be available to the individual.

4.1(c) During the interview, the Investigator must ascertain the individual's cultural background, and language preference.

4.1(d) During the course of the interview, the Investigator must evaluate the proposed conservatee's capacity to provide for his/her physical needs of food, clothing and shelter and their ability to manage financial affairs. A functional assessment of the individual's ability to manage their own ADLS (activities of daily living) should be included in the evaluation.

4.1(e) The Investigating Deputy should gather as much personal information as possible on the client, such as names used as "also known as" (aka's), maiden names, prior addresses, Social Security number, place of birth, names of current or prior spouses, names and addresses of relatives within the second degree of kinship, i.e., parent, child, sibling, or grandchild, and the names

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SUBJECT: PROBATE CONSERVATORSHIP INVESTIGATIONS	POLICY NO. 3.2	EFFECTIVE DATE 12/01/2006	PAGE 3 of 6

and telephone numbers of any health care and medical insurance providers.

4.1(f) Historical information as to the medical, educational, social, and occupational history of the proposed conservatee shall be obtained and documented.

4.1(g) Information pertaining to real and personal property must be obtained during the investigation. This includes the location of any real property, a copy of the trust deed, a title report, and payment and insurance information. Ownership and insurance documentation should also be obtained on all personal property owned by the proposed conservatee. "Personal property" includes household furnishings, clothing, jewelry, bank accounts, automobiles, trailers, boats, stocks, mutual funds, burial trusts and pets.

4.1(h) If the proposed conservatee is cooperative, the Investigator may wish to obtain releases of information from them in order to verify their assets. A release to review medical information should also be obtained.

4.1(i) Depending on the particular case circumstances, the Investigating Deputy may have to review the proposed conservatee's medical records and consult with treating medical personnel. For most cases, if a conservatorship is going to be established, the proposed conservatee's treating physician will have to complete and sign a Capacity Declaration.

4.1(j) The Investigator must interview family members and friends to ascertain their willingness to assist the proposed conservatee as well as the validity of the proposed conservatee's statements and their ability to function in the community.

4.1(k) The Investigating Deputy must explore alternatives to appointment and resources available to assist in the resolution of the problem which resulted in the Public Guardian referral.

5.1 Probate Investigation Report.
After the Probate Conservatorship Investigator has gathered all the relevant information, a determination must be made as to whether the Public Guardian will request appointment or decline to pursue the case. ot

5.1(a) When an appointment is sought, the Investigator will prepare an Investigation Report (Court Report) which will be sent to County

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: PROBATE CONSERVATORSHIP INVESTIGATIONS	POLICY NO. 3.2	EFFECTIVE DATE 12/01/2006	PAGE 4 of 6

Counsel as the basis for the petition requesting Public Guardian appointment. The Court Report must include the current name and address of the proposed conservatee, and the names, addresses and relationship of all relatives within the second degree of kinship. The Report must be accurate and complete. Whenever possible, a valid nomination requesting the Public Guardian to act should be obtained.

5.1(b) On all cases in which conservatorship of the person is requested, the Investigator must obtain a completed and signed Capacity Declaration from the proposed conservatee's attending physician. The Declaration must attest to the proposed conservatee's ability to attend the court hearing, their capacity to give informed medical consent, and their need for secure placement and/or psychotropic medications, if they are diagnosed with dementia.

5.1(c) The Court Report must include specific information about the inability of the proposed conservatee to provide for his/her needs of food, clothing or shelter and/or their inability to manage their own financial affairs. Along with the Court Report, the Investigating Deputy must send a Confidential Status Report. It will be reviewed by the court's Probate Investigator and then by the Judge. It asks specifically about the alternatives to conservatorship considered by the Investigator and the reasons why those alternatives were not viable. It also speaks of recommended care levels and services provided to the proposed conservatee in the prior year. Information regarding things such as alleged abuse should be presented in the Confidential Status Report, rather than in the Court Report/petition, as it does not become part of the public Court record.

5.1(d) When completed, the Investigating Deputy will submit the Court Report, Capacity Declaration and Confidential Status Report to the Supervising Deputy for review. When approved, the packet will be sent to County Counsel for processing. If needed, a request for temporary conservatorship will be submitted with the other documents.

5.2 Non-Handled Cases

If, after gathering all the relevant information, the Investigator has decided not to pursue the establishment of a conservatorship, the case will be non-handled.

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5.2(a) When non-handling a case, a Notice of Referral Disposition is prepared by the Investigating Deputy and submitted to the Supervising Deputy for review.

5.2(b) The Notice of Referral Disposition must clearly state the reasons the Probate conservatorship is not being pursued and must address the problems and issues presented by the referring party in their initial referral.

5.2(c) On all cases, the case narrative provides the complete story of the investigation, including all significant contacts, what alternatives were considered, and how the conclusions were reached. Since a Court Report is not required for non-handled Probate cases, the narrative must reflect in detail what actions were taken during the investigation process and the basis for the decision not to petition for Probate Conservatorship.

5.2(d) Once approved by the Supervising Deputy, the Notice of Referral Disposition will be sent to the referring party. A copy will also go with the case folder, and a Non-Handle transmittal to the clerk in Court Services who sends Non-Handled cases to the Public Administrator's Accounting Section for closing.

6.1 Data Entry Requirements
Throughout the course of the investigation, various staff members will enter information on the electronic case file. Data entry must be completed on a regular, time-sensitive and accurate basis.

7.1 Court Hearing Procedure
Unless contested, or assigned to a branch court, all Public Guardian Probate cases are heard in the Civic Center Court House on Fridays. Each Investigating Deputy appears in court on their own cases. On a rotating basis, the Investigators also act as "Court Deputy", monitoring the Court calendar and recording the Court's findings. This information is then given to the Supervising Deputy and Court Services for further action.

7.1(a) The Supervising Deputy Public Conservator will update the case status on the Public Guardian database based upon the Court's decision on the case.

7.1(b) Court Services staff will return the Court Reports to the Deputy, dated and labeled with the appointment or dismissal finding. If the Public Guardian was permanently appointed over the estate, the

PUBLIC GUARDIAN POLICY/PROCEDURE

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clerk will also prepare and forward Estate and Financial folders to the Investigating Deputy.

7.1(c) If the Public Guardian is not appointed, the case will be Non-Handled. In that event, the Investigator will submit the case file with a draft copy of the Notice of Referral Disposition to the Supervising Deputy. The Supervisor reviews the Notice and approves it for typing, or returns it to the Deputy with further instructions for corrective action. Once the Notice has been approved and sent, the case will be sent to the Court Services Unit to be forwarded to the Public Administrator's Accounting Section for processing.

AUTHORITY: Probate Code Sections 1800, 1800.3, 1801, 1802, 1810, 1812, 1820, 1821, 1825

FORMS: Probate Conservatorship Report
Confidential Status Report
Capacity Declaration

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **CERTIFICATE OF AUTHORITY**	POLICY NO. **1.3**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 2**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines for acting under the Public Guardian's Certificate of Authority.

POLICY:

2.1 The Public Guardian will exercise his authority to take into possession or control any real or personal property belonging to an individual when such property is subject to waste, loss or misappropriation, and when a decision has been made to seek a conservatorship of the individual's estate pursuant to the California Probate Code.

2.2 According to recently passed legislation, the Public Guardian may also, upon receiving a signed declaration from a peace officer, take immediate possession or control of any real or personal property belonging to an elder person referred to in the declaration. This includes any property that is held jointly between the elder person and a third party that is subject to loss, injury, waste, or misappropriation. The public guardian may issue a written recordable certification of that fact. However, it should be noted that, as of this writing, this procedure has not been adopted in Los Angeles County. If it is in the future, appropriate procedures will be designed and issued to ensure the Public Guardian's compliance.

PROCEDURES:

3.1 When an investigating Deputy has determined that an individual's estate assets are subject to loss, injury, waste, or misappropriation, the investigator must consult with the supervising deputy regarding whether or not to issue a certificate of authority. The results of this conversation must be documented on the narrative screen of the computer system.

3.2 The written certificate is effective for fifteen days after the date of issuance. Additional certificates may be issued as each expires.

3.3 The Public Guardian should record a copy of the written certificate in any county in which a conservatee's real property is located, and which the Public Guardian is authorized to take possession of or control.

3.4 A financial institution or other person privy to the proposed conseratee's financial affairs, shall, without the necessity of inquiring into the veracity of the written certification, and without court order or letters being issued do the following:

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CERTIFICATE OF AUTHORITY	**1.3**	**12/01/2006**	**2 of 2**

3.4(a) Provide the Public Guardian with information concerning property held in the sole name of the proposed conservatee; and/or

3.4(b) Surrender to the Public Guardian any or all property of the proposed conservatee that may be subject to loss, injury, waste, or misappropriation.

3.5 A receipt of the written certification constitutes sufficient acquittance for providing information and for surrendering property of the proposed conservatee to the Public Guardian.

3.6 Upon receipt of Letters of either temporary or permanent appointment, such Letters must be presented to any financial institution in possession of the conservatee's property as further protection for the financial institution, and a further inducement for them to share information about the proposed conservatee's assets and/or to release, said property to the Public Guardian.

AUTHORITY: Probate Code Sections: 2900, 2901, 2902, 2950, 2951, 2952, 2953
FORMS: Public Guardian Certificate of Authority

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **TEMPORARY APPOINTMENT - PROBATE**	POLICY NO. **3.10**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 2**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines for managing Probate conservatorships of the person and/or estate under temporary authority.

POLICY:

2.2 A temporary conservatorship of the person will be sought when, in the opinion of the Investigating Deputy, a person requires the assistance of a conservator on an expedited basis, in order to secure food, clothing and/or shelter and no other alternative to the conservatorship exists.

2.3. A temporary conservatorship of the estate will be sought when, in the opinion of the Investigating Deputy, a person is unable to manage his or her own financial affairs or is subject to undue influence or financial abuse or exploitation, to such an extent that their assets are at imminent risk of loss, waste or misappropriation.

PROCEDURES:

3.1 Temporary Conservatorship of the Person

3.1(a) When Temporary Letters of Conservatorship are issued over the person, the Investigating Deputy Public Guardian must ensure that the temporary conservatee's needs of food, clothing, and shelter are met.

3.1(b) Placement of a temporary conservatee who is living independently shall not be changed unless an emergency exists. Emergencies exist when the residence is unfit for habitation or when the temporary conservatee requires medical diagnosis or treatment that, according to medical personnel, if not provided will lead to serious disability or death. A separate petition to remove the temporary conservatee from their home must be filed unless the temporary conservatee gives consent to be moved to another location.

3.2 Temporary Conservatorship of the Estate

In a Probate Conservatorship, the authority granted to a temporary conservator is very much like that granted to a permanent conservator.

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **TEMPORARY APPOINTMENT - PROBATE**	POLICY NO. **3.10**	EFFECTIVE DATE **12/01/2006**	PAGE **2 of 2**

When Temporary Letters of Conservatorship are issued over the estate, or a Certificate of Authority is issued, the Investigating Deputy Public Guardian must take immediate action to protect and preserve the estate. Actions may include freezing, or taking into possession, bank accounts, stock accounts, or personal property that may be subject to misappropriation.

3.2(a) The Temporary Letters of Conservatorship must be filed/recorded on all real property owned by the temporary conservatee.

3.2(b) If funds are collected, care and other bill payments can/should be made under the temporary conservatorship.

3.2(c) For further procedures, see Policy # 4.3 Estate Management, Initial, and Policy # 4.10 Management of Real Property.

3.3 Termination of a Temporary Conservatorship

The powers of the temporary conservator terminate upon the appointment of a permanent conservator, or upon the expiration date set on the Letters by the Court. At the pleasure of the Court, a temporary conservatorship may be extended for months, or even years. The order which extends the time for termination shall fix the time when the powers of the temporary guardian or temporary conservator will terminate.

3.3(a) When a temporary conservatorship terminates with the permanent appointment of the Public Guardian, the Investigating Deputy must prepare the case for transfer to the Case Administration Unit.

3.3(b) When a temporary conservatorship terminates without permanent appointment of the Public Guardian, the Investigating Deputy must prepare the case for transfer to the Closing Desk.

3.3(b)(1) Upon receipt of a terminated temporary Probate conservatorship case, the Closing Desk Deputy will request that a Final Accounting be prepared by the Public Guardian's Accounting Unit, and any personal property held by the Public Guardian under the temporary conservatorship be returned by the Distribution Unit to the former conservatee or their legal representative.

AUTHORITY: Probate Code Sections: 2250, 2251, 2252, 2254, 2255, 2257

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **PLACEMENT GUIDELINES FOR CLIENTS UNDER PROBATE CONSERVATORSHIP**	POLICY NO. **3.20**	EFFECTIVE DATE **07/05/05**	PAGE **1 of 4**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines for placing clients on probate Conservatorship.

POLICY:

2.1 The Public Guardian will not change the residence of a temporary conservatee unless there is specific court authorization to place the conservatee or if there is an emergency.

2.2. The Public Guardian will set the residence of the conservatee in the least restrictive appropriate setting which is available and necessary to meet the needs of the conservatee.

2.3 If the conservatee wishes to change residence outside the State of California, a petition to fix residence outside the State of California must be sought and approved before the client is allowed to leave the State.

DEFINITIONS:

Emergency placement means that the conservatee's place of residence is unfit for habitation or if the conservator, based upon medical advice that removal from the place of residence is required to provide medical treatment needed to alleviate severe pain or to diagnose or treat a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

PROCEDURES

Initial Contact

3.1. During the course of the initial probate investigation, the investigator may not place the individual outside his or her residence. If the proposed client appears to be suffering an acute medical episode where there is danger of loss of life, the investigator must call 911 for emergency care. The investigator must remain with the client until medical assistance arrives and a determination is made that hospitalization is necessary.

Temporary Conservatorship

4.1. The temporary personal conservator may only change the residence of the proposed conservatee from where the conservatee resided prior to

the commencement of the proceedings upon an order of the court or in the event of an emergency.

4.2. The request to fix the temporary conservatee's residence must be requested in either the initial conservatorship pleadings or in a separate petition. The written request must specify the recommended placement, and the precise reasons why it is believed that the conservatee would suffer irreparable harm if such change of residence is not permitted and why no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

The temporary conservator must base his/her placement recommendation upon medical advice, which may include but is not limited to the statewide nursing home preadmission screening program or a comparable assessment by a community-based case management organization. A physician, licensed social worker or registered nurse may also make a recommendation.

4.3. The court will assign a court investigator to determine the wishes of the proposed temporary conservator and submit a court report two days prior to the hearing.

4.4. If the court approves the placement, the temporary conservator may place the temporary conservator at the approved placement. If the court denies the request the client must remain in his/her residence.

4.5. In the event of an emergency, the temporary conservator may place the temporary conservator in a health facility for treatment without court authorization when the temporary conservatee has given informed consent to the removal.

4.6. In the event the conservatee is unable to give informed consent, the temporary conservator may remove a temporary conservatee from the temporary conservatee's place of residence without a court authorization if an emergency exists.

General conservatorship (excluding dementia)

5.1. The conservator in fixing residence for the conservatee must consider the following factors:
(a) located within the state of California;
(b) the conservatee's preference if known;
(c) the availability of facilities closest to the conservatee's prior residence or location of the conservatee's closest relatives;

(d) level of care best suited to the conservatee's physical, mental and functional abilities.

5.2. The assigned deputy public guardian shall sign the required admission agreements if applicable, placement package, and send current Letters of Conservatorship.

5.3. The deputy must inform the facility housing the client of the payment provisions including the Public Guardian's practice of payment in arrears consistent with county rules.

5.4. If the client changes residence, the assigned deputy must promptly send the court notice of a placement changes. In addition to notifying the court, the assigned deputy must also notify family and if known, long time friends.

Placement for Dementia Clients

6.1. The conservator may authorize placement of a conservatee in a secured perimeter residential care facility for the elderly or a locked and secured nursing facility which specializes in the care and treatment of people with dementia and which has a care plan that meets requirements of the Section 87724 of Title 22 of the California Code of Regulations.

Authorized Facilities Approved by the Public Guardian

7.1. The Public Guardian is identified as a placement agency and as such can only place clients in licensed community care facilities.

7.2. Clients may only be placed in non-licensed such as the home of a relative, institution, hotel or similar place that supplies board and room only if the client does not require any element of care as determined by the director or upon medical advice.

7.3. The Deputy may inquire upon licensing status of a facility including any past or pending licensing violations filed with State Community Licensing.

Placement outside the State of California

8.1 In the event a family member or long time friend wishes to take responsibility for a conservatee outside the State of California, the deputy must obtain sufficient information from the relative or friend to allow counsel to Petition to Fix Residence Outside of California.

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **PLACEMENT GUIDELINES FOR CLIENTS UNDER PROBATE CONSERVATORSHIP**	POLICY NO. **3.20**	EFFECTIVE DATE **07/05/05**	PAGE **4 of 4**

8.2 The family member or friend must either seek conservatorship appointment in another state or submit a written declaration indicating that he/she will take responsibility for the client.

8.3 After the petition is approved the conservatee may be placed outside California.

8.4 The conservator is required to seek court approval if a conservatee wishes placement outside California for a period exceeding four months. The assigned deputy is required to obtain sufficient information to allow counsel to file a petition to allow the conservator to fix residence outside California. Once approval is granted, the conservatee is allowed placement outside California.

Duty to Report Licensing Violations

9.1 If any Public Guardian staff believes a facility, which is not exempt from licensing, is operating without a license, the deputy must report the facility to Community Care Licensing within one day.

9.2. Public Guardian staff must notify the appropriate licensing agency of any known or suspected incidents that would jeopardize the health or safety of residents in a community care facility. Reportable incidents include, but are not limited to, all of the following:

a. Incidents of physical abuse.
b. Any violation of personal rights.
c. Any situation in which a facility is unclean, unsafe, unsanitary, or in poor condition.
d. Any situation in which a facility has insufficient personnel or incompetent personnel on duty.
e. Any situation in which residents experience mental or verbal abuse.

In addition to notifying the appropriate licensing agency, the assigned Deputy must complete a clinical incident report and file with the Department of Mental Health's Clinical Risk Manager.

AUTHORITY: Probate Code Sections 2253, 2254, and 2352
Health and Safety Code Sections 1536.1, 1505, 1569.691
California Code of Regulations Title 22, Section 87724

FORMS: Judicial Council Form GC-085

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **DO NOT RESUSCITATE (No Code) ORDERS IN PROBATE CONSERVATORSHIP**	POLICY NO. **3.15**	EFFECTIVE DATE **12/01/2006**	PAGE **1of 9**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE **1979**	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish a policy and protocol for the approval or denial of requests by primary physicians for Do Not Resuscitate (DNR) orders for probate conservatees of the public guardian.

APPLICATION:

2.1 This policy applies to probate conservatorship cases only.

POLICY:

3.1 The public guardian can approve "Do Not Resuscitate (DNR)" requests only for conservatees for whom the public guardian is the probate conservator of the person **and** for whom the public guardian has exclusive authority to consent for medical treatment per court order in accordance with Probate Code Section 2355 **or** with specific court approval of the DNR request.

3.2 When the public guardian has the exclusive authority to consent to medical treatment, the decision to approve or deny the request for DNR must be made in accordance with this policy.

3.3 Approval of DNR depends upon the conservatee's condition and not where he or she lives. This means that, when approved, the DNR applies to conservatees in hospitals, skilled nursing facilities, private homes or other appropriate living arrangements.

3.4 When the public guardian does not have the exclusive authority to consent for medical treatment but the criteria for DNR are otherwise met, the Public Guardian must petition the court for the necessary exclusive authority to consent to medical treatment and approval of the DNR request.

3.5 Probate Code 2355 requires the conservator to make health care decisions in accordance with the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator. Otherwise, the conservator must make the decision in the conservatee's best interest. The conservator must consider the conservatee's known personal values, including his or her religious beliefs. In the event of a conflict between this general legal instruction and the criteria for approval of a DNR request as contained in this policy,

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county counsel must be contacted immediately for discussion and advice on how to resolve the conflict.

3.6 It is the intent of the public guardian to minimize needless suffering by the conservatee and to facilitate the decision making process in these sensitive matters. Therefore, it will be the practice of the Public Guardian to document the known wishes and values, including religious beliefs, of the conservatee **prior** to appointment as conservator or as soon as practical following appointment as conservator of the person. The attempt to document known wishes and values will include discussions by the Deputy with the conservatee, his or her family, significant friends, clergy and the conservatee's primary care physician to discover previously discussed preferences and care decisions. The best time to determine DNR or no DNR is **not** at the time of crisis. It is best determined when the patient is relatively stable and their wishes or information about their wishes can be ascertained to the degree possible.

3.7 The decision to approve or deny a DNR request must be made by public guardian management at the level of assistant division chief or higher. The decision may include discussion and consultation with county counsel and the Medical Director of the Los Angeles County Department of Mental Health or his designee.

3.8 The request for a DNR order can be considered only if it is made by the primary, treating or attending physician (medical doctor) or doctor of osteopathy (D.O.).

3.9 Nothing in this policy shall be construed to condone, authorize or approve mercy killing, assisted suicide or euthanasia. Nor is it intended to permit any affirmative or deliberate act or omission to end life by any means other than what occurs naturally as a result of a DNR order. Although DNR is an end-of-life matter, our policy distinguishes it from other end-of-life matters, such as the withdrawal of nutrition, hydration or other means of life-support. This policy only deals with DNR orders and does not imply any position on the appropriateness of forgoing other means of life-support at the end of life.

3.10 The wishes of the conservatee as expressed in a valid health care directive or similar instrument or the instructions of a reliable agent named in a valid Durable Power of Attorney for Health Care will be followed. However, county counsel must be contacted immediately to discuss the existence of these circumstances and to ascertain the validity of the document and applicability of the directive or instructions.

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4.1 **Definitions**

4.1.1 *Do Not Resuscitate (DNR) Order / No Code Order*: refers solely to the suspension of what would otherwise be the automatic initiation of cardiopulmonary resuscitation (CPR) to patients who experience cardiac or respiratory arrest. It does **not** refer to treatment other than CPR. DNR is sometimes referred to as DNAR, "Do Not Attempt Resuscitation."

4.1.2 *Advance Directive.* Usually used as a general term for documents having a patient's instructions for health care in the event of incapacity or incompetence. Advance directives usually are one of two types: The first is a document that provides the patient's wishes but does not name a substitute decision maker. This document is usually called an *"Advance Health Care Directive"* in California but is also known as *"Advance Directive," "Living Will," "Directive to Physicians", "Natural Death Act Document" or "Individual Instruction."*

The other primary type of advance directive is the *"Power Of Attorney For Health Care."* In this document, which in California can be combined with the *"Advance Health Care Directive",* the patient (called the principal) names an adult substitute decision maker (called the agent or attorney-in-fact). If the document meets the legal requirements and is otherwise valid, the named agent has priority even over the conservator's authority in making health care decisions for the patient. The subject of advance directives is complex with many rules and exceptions, requiring discussion with County Counsel.

4.1.3 *Capacity*: means a person's ability to understand the nature and consequences of a decision, to make and communicate a decision and to understand significant benefits, risks, alternatives and consequences of his or her decisions. Capacity is determined by a physician or psychologist.

4.1.4 *Physician*: means a physician and surgeon licensed by the Medical Board of California or the Osteopathic Medical Board of California.

4.1.5 *Primary Physician*: A physician designated by a patient or the patient's agent, conservator, or surrogate, to have primary responsibility for the patient's health care or, in the absence of a designation or if the designated physician is not reasonably available or declines to act as primary physician, a physician who undertakes the responsibility.

4.1.6 *Hospice:* Not a place but a special concept of care. The hospice programs are designed to provide comfort and support to patients and

their families faced with a terminal illness. They neither prolong life nor hasten death. Hospice requires a referral by a physician. It is a covered benefit under Medicare for patients with a prognosis of six months or less to live. Many other insurance policies including Medi-Cal, also cover hospice care in California. The benefit usually covers all services, medications and equipment related to the illness. Hospice care is usually provided in the patient's home or in nursing homes.

4.1.7 *Imminent:* In the phrase as used in this policy in which "death is expected, imminent and inevitable," "imminent" means death is expected within 6 months of when the determination is made by the physician.

4.1.8 *No Code*: See "Do Not Resuscitate (DNR)" order.

4.1.9 *Cardiopulmonary Resuscitation (CPR):* Actions taken, usually by professionals trained in CPR, to revive a person in cardiac or respiratory arrest. The actions may include clearing air passages, mouth-to-mouth resuscitation and stimulation of the heart.

4.1.10 *Persistent or Chronic Vegetative State:* A long-term state of total unconsciousness accompanied by nearly normal cycles of awakening and sleeping. It results when the upper parts of the brain, which control sophisticated mental functions, are destroyed but the thalamus and brain stem, which control sleep cycles, body temperature, breathing, and heart rate, are spared. If a vegetative state persists for more than a few months, recovery of consciousness is unlikely. Nevertheless, a person given skilled nursing care can live for years in this condition. The condition must be diagnosed by a physician. (From the Merck Manual of Medical Information.)

4.1.11 *Power Of Attorney For Health Care:* See "Advance Directives."

4.1.12 *Terminal Condition:* For purposes of this policy, terminal condition means an incurable and irreversible medical condition that, without the administration of life-sustaining treatment, will, according to all reasonable medical judgment, result in death within 6 months.

5.1 Background

The term DNR (do not resuscitate) or "no code" refers solely to the suspension of what would otherwise be the automatic initiation of cardiopulmonary resuscitation (CPR). CPR is viewed as an emergency procedure which is routinely administered to patients who experience cardiac or respiratory arrest. Consent

to administer CPR is presumed since at the moment of cardiac arrest, the patient can't communicate his preferences and failure to provide immediate CPR is certain to result in death.

Any decision to withhold CPR becomes a legal and ethical decision. To help address these concerns, the Los Angeles County Board of Supervisors adopted guidelines in 1979 for county agencies to follow. These guidelines are based on criteria developed by the board appointed Los Angeles Committee on Life Support Policies. The purpose of these guidelines is to establish a uniform method for handling decisions concerning resuscitation and requests for DNR/No Code orders. The guidelines, by necessity, are conservative in nature. They require the existence of a terminal and irreversible illness that makes death imminent and inevitable. If a patient is under guardianship or conservatorship, the patient's guardian or conservator must be consulted. The treating physician should not issue a DNR order without the permission of the patient's guardian or conservator.

6.1 **Temporary Conservatorship and Notification of County Counsel**

If the conservatee is under temporary conservatorship of the person, special considerations are necessary. Because the conservator has no history with the conservatee, it may be difficult to determine what the conservatee's wishes are and other relevant matters. Moreover, temporary conservatorship is generally used as a means to preserve the status quo until the permanent conservatorship can be heard in court. Therefore, county counsel should be notified immediately when the request is made for a DNR order for a temporary conservatee.

7.1 **Primary Criteria for the Approval or Denial of DNR Request**

The treating physician cannot issue a DNR order without the written permission of the conservator. There must exist a confirmed diagnosis of a terminal and irreversible illness that makes death imminent and inevitable. An exception may be made based on the verified wishes of the conservatee as expressed in a valid Durable Power of Attorney for Health Care. Otherwise, the issuance of a DNR order, with either a temporary or permanent conservatorship, will only be considered when either of the following criteria are met:

A. The best medical opinion available indicates that the conservatee is suffering from an incurable medical condition and death is expected, imminent, and inevitable;

or

B. A persistent vegetative state has been diagnosed and the best medical opinion available indicates that there is little or no possibility of recovery and

the conservatee will spend the remainder of his or her life in a bedridden and uncommunicative condition requiring total care and assistance with the activities of daily living.

8.1 Other Criteria For Approval or Denial of DNR Request

There may be a combination of other circumstances that, while not strictly meeting the primary criteria, may justify the approval of a DNR request. Such circumstances may include multiple serious underlying medical conditions in which the likely health risks and burdens of treatment would outweigh the expected health benefits. Related issues include poor quality of life concerns and the frailty of conservatee. In addition, family members may not want to prolong what they see as needless suffering. While these are all legitimate concerns, by themselves they do not justify approval of a DNR request. Requests in these circumstances will be considered only if the institutional bioethics committee where the conservatee is under care has considered the request, agrees that it is ethically appropriate and provides the Public Guardian with a written confirmation of their recommendation. These requests that fall outside the previously approved criteria must be discussed with a supervising deputy and county counsel immediately upon receipt of the request. Requests for DNR under these circumstances will require court approval.

9.1 Family Wishes

The wishes of the immediate family must be given careful consideration in the decision to consent to the DNR order. It is imperative that the deputy contact known family members and document their wishes. Such data should be entered on the computer's case narrative screen. If there are none known, the deputy must do a diligent search for family members as soon as the Deputy is informed that the conservatee is seriously ill and death is imminent. If the family is opposed, the request for a DNR order must be discussed with County Counsel before a decision is made. A copy of the written request for DNR must be provided to county counsel and the discussion documented on the computer's case narrative screen.

10.1 Levels of Review

All requests for DNR orders must be evaluated by the supervising deputy public guardian and approved or denied by the public guardian assistant division chief or higher. County counsel should be advised of the request in writing and be provided with a copy of the request to determine if court approval will be

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necessary. The depth of county counsel's involvement will be determined on a case-by-case basis. In certain cases, court approval may be necessary. For example, there may be issues concerning the family's wishes or interpretation of the conservatee's religious beliefs or validity of a pre-existing Health Care Directive which require review by the court.

11.1 **DNR Orders In Skilled Nursing Facilities**

Authorization for DNR orders extends to any appropriate living arrangement, including skilled nursing facilities. This is noted because it represents a significant change from previous Public Guardian policy.

12.1 **Procedures for DNR Approval:**

Employee	Action	
Deputy Public Guardian	12.1.1	Receives request for DNR order from treating or attending physician, or participates in a discussion about the appropriateness of resuscitation based on the conservatee's known preferences, or because the conservatee's clinical condition is consistent with this policy.
	12.1.2	Determines if a conservatorship over the person has been granted.
	12.1.3	Determines if the court has made a ruling on the conservatee's capacity to give informed consent and whether the public guardian has exclusive medical authority.
	12.1.4	Informs county counsel of request for DNR order to determine if court approval is necessary and sends a copy of the written DNR request.
	12.1.5	Sends "Physician's Evaluation Concerning DNR order" form with cover letter to physician to be completed and returned. (See Forms 5 and 6.)

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	12.1.6	Determines the existence of any health care directives executed by the conservatee and discusses its validity with county counsel.
	12.1.7	Contacts family members, if known, and documents their wishes. This should be done as soon as possible.
	12.1.8	Determines if the conservatee's religion has restrictions on the type of order requested.
	12.1.9	Informs supervising deputy or assistant division chief of the request for a DNR and provides the necessary information and documents.
Supervising Deputy	12.1.10	Receives DNR request from deputy and relevant information.
	12.1.11	Reviews request for completeness, appropriateness, and compliance with criteria.
	12.1.12	Contacts requesting physician to discuss medical condition and public guardian policy.
	12.1.13	Requests additional information or documentation, if necessary.
	12.1.14	Notifies treating physician in writing of public guardian's position and limits on authorization, if given.
	12.1.15	**Note: If court approval is necessary:** **Requests county counsel to file petition for instructions. Provides county counsel with names and addresses of relatives for notice.**

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	12.1.16	Instructs the deputy to do the following: Contact requesting physician to obtain a completed physician's declaration; inform him or her of the possibility of testimony being required; obtain a physician's affidavit waiving the conservatee's appearance; and arrange for physician's testimony on the date of the hearing if necessary.
	12.1.17	Requests physician to inform the deputy of any improvement in conservatee's medical condition.
	12.1.18	Reviews case with assistant division chief and county counsel. All activities listed above, discussions, and decisions must be documented on the case narrative screen.
Assistant Division Chief/ Division Chief	12.1.19	Reviews and discusses request for DNR. Approves or denies request in writing by sending the form "Notice of Approval or Denial for DNR Order."

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PURPOSE:

1.1 To establish guidelines for initial estate management.

POLICY:

2.1 Upon receiving letters of conservatorship of the estate (temporary or permanent), the assigned deputy must marshall and bring all known assets and income under the control of the public guardian. This should be done as quickly as possible to avoid any loss of benefits or depreciation of assets. To avoid loss of property, marshalling of assets should occur during the first thirty days of conservatorship.

2.2 An inventory of the conservatorship assets must be filed within ninety days of the conservatorship appointment. Assets discovered or collected at a later date can be reported to the court in one or more supplemental inventories.

2.3 Payments to care providers should be initiated as soon as possible. A budget should be initiated even prior to income receipt, so that payment will begin as soon as funds are posted to the conservatorship account.

2.4 Referrals to the public administrator's property management section regarding real and personal property should be initiated upon appointment. When letters are received, referrals may also be made for bank account collections and transfer of stock accounts to the brokerage firm currently being used by the public administrator.

PROCEDURES:

3.0 The assigned deputy public guardian is responsible for bringing all the conservatee's income and assets under the control of the public Guardian. To avoid any loss to the estate, the deputy must act quickly to identify, locate and marshall those assets and income which will be necessary to ensure that the conservatee's needs are met.

3.1 Upon receipt of a new case, the assigned case administration deputy must initiate a request to the conservator administrator assistant (CAA) unit asking for "set-up" of the case. Basic actions included in the request should be:

3.1(a) Change of address (postal) – all of the conservatee's mail must be redirected to the Public Guardian's address. Changes should be requested from all known addresses from which the conservatee receives mail.

3.1(b) Benefit applications – Initial applications should be filed for any and all benefits to which the conservatee may be entitled if he/she is not already receiving them. This may include Medi-Cal Long Term Care (LTC), SSI, SSA and/or Veterans Administration (VA) benefits.

3.1(c) Payee changes – Representative payee applications must be filed on behalf of the public guardian for any and all benefits, pensions and/or annuities, which the conservatee may be receiving.

3.1(d) Changes in Level of Care – Certain benefits, particularly SSI and VA, vary by level of care. If the conservatee has moved from one level of care to another, the benefit source must be notified and the case record annotated.

3.1(e) Next-of-Kin Forms – Information must be solicited from the conservatee's family in regard to family structure, emergency contacts and pre-need mortuary and burial preferences.

3.1(f) Verification of Insurance Policies – The current value, beneficiaries, costs and benefits of all known policies of the conservatee must be verified by the issuing company.

3.2 Upon receipt of a new case where the conservatee has bank accounts and upon which letters of conservatorship have been received, the assigned case administration deputy can proceed with requests/referrals to the Treasurer Tax Collector (TTC) regarding marshalling the conservatee's financial assets.

3.2(a) Bank Accounts

3.2(a)(1) If the conservatee is the sole owner, the deputy should usually request collection of the bank account, which will then be deposited to the conservatorship account. An exception would be a Certificate of Deposit with a high interest rate, which will be maturing within the next 3-6 months. Such situations should be discussed with the

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deputy's supervisor before collection is requested. If the asset is not immediately marshaled, the deputy must change the vesting to indicate that the public guardian is in control.

3.2(a)(2) If the conservatee's account is a joint account, a written request must be sent to the bank to freeze the account. A determination should then be made on the division of the asset with the other joint tenant. If the joint tenant agrees, the deputy should work with them to close the account, marshalling the conservatee's share. If ownership cannot be determined, the deputy must ask county counsel to petition for a court determination of ownership interests.

3.2(a)(3) If there is an emergent need for funds to meet the conservatee's needs, the deputy may submit a written request to the public guardian property deputy to do a manual collection of the bank account. Such a request, however, should only be done in urgent situations. Otherwise, the Treasurer and Tax Collector should handle the collection.

3.2(b) Certificates of Deposit - A certificate of deposit is an account held at a financial institution, for a particular term and at a specific rate of interest.

3.2(b)(1) On such an account, the deputy must make a determination as to whether the account should remain where it is until maturity or if it should be closed. In making the decision, the Deputy should consult the Supervisor, and document their decision.

3.2(b)(2) If the decision is made to allow the Certificate to mature, the account must be closely monitored to ensure collection as soon as maturity has been reached. Some banks may try to impose a penalty for early withdrawals; however, under FDIC rules, a conservator may withdraw the funds without a penalty.

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3.2(c) Money Market Accounts - Banks, brokerage firms and other investment firms may hold money market accounts. The interest paid on these accounts may vary according to the financial institution. These accounts may be closed without penalty. The decision on collection should be based upon the needs of the estate and the interest rate being paid. (See 3.2 (a)(1) and 3.2(b)(1) above).

3.3 Upon receipt of a new case on which the conservatee has investment interests, and on which letters of conservatorship have been received, the assigned case administration deputy should initiate a referral to the public administrator stock desk regarding the conservatee's investment holdings.

3.3(a) Stocks - Stock certificates located in the field must be brought into the office. The deputy must then send a referral along with the certificates to the public administrator stock desk. The stock desk staff will determine whether the certificates are valid and, if so, they will notify the issuer of the need to redirect any earned dividends to the public guardian.

3.3(a)(1) If the stocks are held by a brokerage firm, stock desk personnel will arrange for transfer of the portfolio to the brokerage firm which is designated to handle all Public Guardian conservatees' stock portfolios.

3.3(a)(2) For inventory purposes, a request must be submitted to the stock desk to provide the value of the stock(s) at the date of appointment. This is done by the CAA Unit, upon referral from the assigned deputy (see Policy # ________, Inventory and Appraisal).

3.3(b) Bonds

Bonds may be brought in from the field, but most bonds are held by a broker. Bonds may include treasury, municipal or corporate bonds. The handling procedure is the same as the procedure for stocks described under 3.3(a) and 3.3(a)(1) and (a)(2) above.

3.3(b)(1) It should be noted that savings bonds have a maturity date beyond which they cease to earn interest. At the time of maturity, the bonds should be

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negotiated, as they will accrue no further benefit for the conservatee.

3.3(c) Portfolio Investment Accounts

As noted above, (see stocks) the Treasurer and Tax Collector has contracted with a specific brokerage firm to handle all Public Guardian conservatees' stocks, bonds and other investment instruments. Should the conservatee have a brokerage account, the handling procedure is the same as that described above, i.e., information regarding the location of the account along with letters of conservatorshiop are referred to the TTC stock desk. Correspondingly, the CAA Unit is asked to request assignment of a probate referee to appraise the asset's value so that it may be inventoried for the court.

3.4 Deeds of Trust

In the event a conservatee is receiving income from the ownership of a Deed of Trust, the matter must be referred to the public administrator's property management section. The original Deed should accompany the referral if possible. In many cases a financial institution is in possession of the Deed of Trust and receives payment and makes disbursements. If so, the property management section will arrange for the financial institution, or any other responsible party, to redirect payment to the conservatee's public guardian account.

3.5 Vehicles

Automobiles or other vehicles must be referred to the property management section so that arrangements can be made to have the vehicle(s) towed to the Public Administrator's warehouse. (For specific Policy & Procedures on Vehicles, see Policy # ____________.)

3.6 Real Property

All real property in which the conservatee has even a fractional interest must be referred to the property management section.

3.6(a) Letters of conservatorship must be recorded on all real property in which the conservatee has any interest. (For more specific Policy & Procedures on Management of Real Property, see Policy #____.)

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3.7 Safe Deposit Boxes

If the conservatee owns a safe deposit box, the collection request, along with the key to the box and Letters of Conservatorship, should be directed to public guardian's property supervisor. If a key has not been located, he will make arrangements with the institution where the box is held to obtain a locksmith who can break into the box. The contents will be posted to property sheets and brought into the public guardian's office. If the contents are of value, they must then be inventoried. If funds are not available in the conservatee's account to pay for the locksmith, the deputy must request the necessary monies from the revolving fund.

3.8 Documents

Original documents such as birth certificates, marriage licenses, divorce papers, titles to personal property such as automobiles and boats, grant deeds, deeds of trust, Social Security cards, Medicare cards, and insurance cards should always be brought into the office for the deputy to review.

3.8(a) Of those listed, vehicle titles, grant deeds and deeds of trust should be sent to the property management section with the referrals needed for them to be processed. The other documents may be retained in the case.

3.8(b) Credit Cards/ATM Cards/Blank Checks – Credit cards, ATM cards and blank checks must be brought into the office and destroyed at the vault. The deputy must also notify the issuing company or financial institution of the conservatorship and the cancellation of the cards. Copies of the destroyed cards and voided checks should be filed in the case for possible audit purposes.

3.8(c) Taxes

3.8(c)(1) If the conservatee's personal income tax returns are located, they should be forwarded to the public administrator's tax unit to ensure that all tax matters are handled in a timely manner.

3.8(c)(2) If property tax bills are located, they should be immediately sent to the property management section with the real property referral.

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3.8(d) Wills/Trusts – The deputy must review any wills or trust documents belonging to the conservatee.

3.8(d)(1) In regards to a will, it is important to know the named executor, whether any items are specifically bequeathed, the names and locations of beneficiaries, and whether any pre-need arrangements have been made or preferences specified.

3.8(d)(2) In regard to a trust, the deputy must ascertain the type of trust, its assets and beneficiaries, the named trustee, and whether it has a "pour over" will or includes a Power of Attorney. Some trusts include a conservatorship nomination. All trust documents should be referred to county counsel for review.

3.9 Upon receipt of a new case, the case administration deputy must review the conservatee's financial status and determine ongoing maintenance and care costs.

3.9(a) If the conservatee is in a care facility, a Fixed Disbursement Authorization (FDA) must be completed by the facility. When the signed form is returned, the deputy must initiate a budget to begin payment to the facility as soon as funds are posted to the estate.

3.9(b) If the conservatee is living independently, or with others, a maintenance budget should be initiated as soon as possible, so as to not disrupt the conservatee's living arrangement and access to food and other necessities. In such situations, it may also be necessary to either send the conservatee's maintenance allowance to a friend or family member, or not to forward the conservatee's mail to the public guardian (see 3.1(a) above). The choice on which procedure to follow should only be made after discussion with the conservatee and with the unit supervisor. All final decisions should be documented on the case narrative screen of the computer.

3.9(c) For further budgeting and bill paying procedures, please see Policy # ______ Estate Management-Maintaining.

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AUTHORITY: Probate Code Sections

FORMS:
- CAA Referral
- Real Property Referral
- Stock Referral
- Vehicle Referral
- Collection Desk Referral
- Estate Budget

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APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines for the ongoing management of the estate.

POLICY:

2.1 If appointed as conservator of the Estate, the Public Guardian will manage and protect the assets of that estate so as to ensure the financial needs of the conservatee are met.

2.2 In order to best manage the Estate, the Estate Plan is to be reviewed every six (6) months and revised as needed at that time.

2.3 The Public Guardian will always seek to handle the Estate for the benefit of the conservatee. To do so:

2.3(a) Income will be monitored to ensure that it is received on a timely basis and in the proper amount.

2.3(b) Applications will be filed for any and all benefits to which the conservatee may be entitled.

2.3(c) Any payments to be made on behalf of the conservatee will be reviewed first to verify whether the debt is owed.

2.3(d) Sale of any asset will be sought only when the proceeds are required for the care and comfort of the conservatee, and then only with Court authority to do so.

2.3(e) All investments will be prudently managed by competent professionals.

PROCEDURES:

3.1 <u>Income</u>

The assigned Deputy must review all income on a regular basis to ensure that the conservatee is receiving all income and/or benefits to which they are entitled.

3.1(a) Income must be budgeted as a "fixed receipt." Once it has been, the Deputy shall monitor receipt of the income through review of the case ledger and/or the computer generated exception reports.

3.1(b) If income is interrupted, immediate steps must be taken to determine the cause of the disruption and to intervene if necessary.

3.1(c) If there is a change in income, the Deputy must ensure that the budget is amended to reflect the change.

3.2 Applications and Benefits

Applications must be filed for all benefits to which the conservatee may be entitled (see Policy # _________ Estate Management – Initial), and, once received, the Deputy must ensure the conservatee's continuing eligibility.

3.2(a) If the conservatee is eligible to Social Security (SSA) benefits and is in pay status, the Deputy need only monitor for continued receipt and annual standard of living increases. The benefit is not dependent upon level of care, assets or other income.

3.2(b) If the conservatee is eligible to SSI, the benefits will vary by level of care and the amount of other income received.

3.2(b)(1) It is up to the assigned Deputy to notify SSI of any changes in income, assets, or level of care, which may affect the conservatee's eligibility or benefit amount.

3.2(b)(2) It is also up to the Deputy to request an application for SSI when the conservatee moves into an SSI eligible situation (e.g. from an incarceration or state hospitalization into a board and care).

3.2(c) If the conservatee becomes eligible to MediCal, an application for it must be filed. This is particularly important when the conservatee has no other medical insurance (see Policy # ______ Health Insurance).

3.2(c)(1) When the conservatee is eligible to and receiving MediCal benefits, the Deputy must notify MediCal of any increase in assets over $2,000 or change in level of care.

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3.2(c)(2) When a conservatee has moved out of a nursing home, they have lost their eligibility to Long-Term Care (LTC) MediCal and other medical insurance arrangements must be made.

3.2(c)(3) If a conservatee's assets increase to such a level that spend down cannot be accomplished in the prescribed time frame (e.g., due to sale of real property), they lose their LTC MediCal eligibility. In such a situation, the Deputy may have to arrange for private care payment to the facility.

3.2(d) The conservatee's eligibility to Veteran's benefits may depend upon whether the V.A. has found them "incompetent" or "competent" by their standards. V.A. benefits may also hinge upon the conservatee's level and specific place of care.

3.2(d)(1) If the conservatee is on a V.A. care contract, the Deputy must ascertain the length of the contract and be prepared to make other payment arrangements when the contract expires.

3.2(e) Conservatees receiving SSA may also be eligible to MediCare benefits, whether due to age (65 and over) or disability. There are also other circumstances that allow an individual to purchase MediCare (see Policy # _______, Health Insurance).

3.2(e)(1) Cases should be reviewed for conservatees approaching their 65th birthday. The MediCare application should be filed 90 days prior to maximize their benefit time.

3.2(e)(2) January – March of each calendar year is an open enrollment period for MediCare. Applications should be filed at that time for older conservatees who failed to apply at the proper time.

3.2(e)(3) If the conservatee is in a MediCare + Choice HMO, the Deputy must determine the provider and coverage. If the conservatee moves from one level of care to another, a change in provider may be necessary (e.g., when a conservatee moves from independent living to a skilled nursing facility).

3.2(e)(3)(1) Monitoring coverage is important since a physician at the skilled nursing facility may be an HMO provider and medications may be covered by the HMO plan. Some HMOs have provisions for mail order prescriptions, which substantially reduce the co-payment expenses.

3.3 Budgeting and Bill Payments

An integral part of estate management is the disbursement of payments for the cost of the conservatee's care, maintenance and support. This may be done by budget or by check request, but only upon approval of the Deputy.
Note: In LPS, payments can only be made within the limits set by the rate order for the case. In order to exceed the rate order, the Deputy must request County Counsel petition the court for the authority to do so.

3.3(a) Budgets: All disbursements that are payable on a regular basis and in a specified amount should be budgeted. Examples include: care, share of cost/liability, rent, and personal needs. Payment is based upon a "Fixed Disbursement Authorization" (FDA) completed by the service or care provider. Monthly bills are not needed. Changes in amount must be accompanied by a new FDA.

3.3(a)(1) Pre-vouchers: Disbursements for known services that cannot be made automatically, because the amounts vary and are not issued on a regular basis, may be paid via a pre-voucher budget. Examples include pharmacy bills and utility bills. The payments are pre-authorized by the Deputy to an upper payment limit. The Accounting Technician will then be able to pay the bill without a check request, as long as the charges do not exceed the authorized limit.

3.3(a)(2) Periodic Fees: On Probate cases, court ordered monthly fees may be budgeted. A copy of the Court order must accompany the budget for the Accounting Technician to process it.

3.3(a)(3) Personal Needs Allowance: The assigned Deputy must determine the personal needs allowance for the conservatee. Sufficient reserves should be created to allow for additional expenditures for clothing and special events. The personal needs allowance should

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be budgeted as a fixed disbursement, although no FDA is needed for it.

3.3(b) Property Management: Other than the assigned Deputy, only Property Management may initiate a budget on a case, and then only for property related disbursements. Examples of budgeted property management disbursements include storage charges and gardening costs.

3.3(b)(1) Property Management may also initiate check request payments for individual expenses such as title reports, property taxes and insurance.

3.3(b)(2) Because of Property Management's ability to independently initiate payments requests, it is very important that the Public Guardian Deputy monitor all payments made on a case to ensure that care payments retain first priority over property costs.

3.3(c) Check Requests: Payments of individual bills and one-time-only charges are to be made by check request.

3.3(c)(1) Upon receipt of an invoice, the Deputy must review it and decide whether it should be paid.

3.3(c)(2) A Deputy may initiate a check request or ask that it be done by the CAA Unit after reviewing it for duplication.

3.3(c)(3) An invoice or other documentation must accompany the check request for Accounting to process it.

3.3(d) Compromising Debts: Attempts should always be made to compromise debts which pre-date the conservatorship, which the conservatee cannot afford to pay in full, or which, in LPS, exceed the case's rate order.

3.3(d)(1) In Probate, if the amount is large, or represents a significant portion of the estate, Court authority for the payment should be sought. Otherwise, if the debt is justified, it may be paid without Court involvement.

3.3(d)(2) In LPS, if the debt precedes the conservatorship and/or paying it would exceed the rate order, Court authority must be sought and granted before any payment can be made.

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3.3(e) Household employees: For those conservatees living independently with in-home assistance, it is always preferable that their in-home employees come from a licensed agency. However, if the conservatee has household employees who are not employed through an agency, the assigned Deputy must treat the employees as employees of the conservatee

3.3(e)(1) The Deputy must secure an employer ID number in the name of the conservatee and pay appropriate Social Security and employer taxes.

3.3(e)(2) The Deputy must also ensure that there is workers compensation coverage for the employee(s).

3.3(e)(3) Payment to the employee may be budgeted if they are paid a specific rate on a regular basis.

3.3(e)(4) If the employee is paid sporadically or at a varying rate, then they should be paid by check request based upon documentation of the dates of service and the rate of payment agreed upon in advance between the Deputy and the employee.

3.4 Managing and Selling Estate Assets

The assets of the conservatee, such as real and personal property, must be closely monitored to ensure against loss or waste. For specific policies and procedures in the management and sale of estate assets, see Policy # _____ Management of Real Property, Policy # _____ Management of Personal Property, and Policy # _____ on Vehicles.

3.4(a) Particular attention should be given to the conservatee's personal effects, which may have no monetary value, but which may have considerable value to the conservatee and/or his/her family. Whenever possible, such personal items should remain with the conservatee or be given to family for safekeeping.

3.4(b) The Deputy must closely monitor cases with personal property to ensure that the cost of storage does not exceed the actual value of the property being stored.

3.4(c) Decisions on disposition of estate assets must be made as soon as possible in the course of the conservatorship and must be reviewed regularly thereafter.

3.5 Taxes

The estate must be managed in such a way as to minimize any tax liability to the conservatee.

3.5(a) In the sale of real property, consideration must be given to the tax ramifications (i.e., capital gains tax).

3.5(b) For those conservatorships which require income tax returns, the Deputy must ensure that all necessary documentation is provided to the TTC Tax Unit, so they may complete the filings in a timely manner.

3.6 Court Deadlines

The assigned Deputy must ensure that any court required petitions are filed in a timely manner. This includes appointment of a Probate Referee, preparation of the Inventory and Appraisal, requests for authorization to sell personal residences, confirmations of sales, and court accountings.

3.7 Litigations

Some conservatorship estates may be involved in litigation, such as recovering assets fraudulently taken prior to the establishment of the conservatorship. Whenever the estate is involved in litigation, the assigned Deputy must work closely with the attorney handling the case to ensure a successful recovery.

3.8 Documentation

Any and all actions taken in the management of the conservatorship estate must be documented in a thorough and timely manner.

3.9 Case Terminations

When a conservatorship terminates through a court order or death, immediate steps must be taken toward closing the case. Before sending the case to the Closing Desk, the assigned Deputy should notify any

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appropriate parties, pay any debts which arose in the course of the conservatorship, and delete any ongoing budgets.

3.9(a) For specific policies and procedures on terminations, see Policy # _______, Terminations by Court Order and/or Policy # ________, Terminations by Death.

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APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines in preparing the Inventory and Appraisal.

POLICY:

2.1 All assets of a conservatorship Estate which are in the possession/control of the Public Guardian are to be inventoried and appraised in a timely manner.

2.2 Inventories and Appraisals are to be completed so that the Court, the conservator and other interested parties are aware of the extent of the estate, and to serve as the initial amount for which the conservator or guardian is charged.

2.3 Every effort will be made to file the Inventory and Appraisal within 90 days of appointment. In the event there is a delay, the Public Guardian will seek an extension to file the Inventory and Appraisal.

DEFINITIONS:

3.1 Original Inventory: An Inventory and Appraisal representing all the known assets of the Estate. The assets included in the Original Inventory are also known as "corpus", or the original body of the Estate.

3.2 Supplemental Inventory: A Supplemental Inventory is filed and includes any assets discovered after the Original has been filed. Supplemental Inventories are numbered sequentially, with the first being Supplemental 1 and so on. There may be as many Supplemental Inventories filed as there are found assets.

3.3 Corrected Inventory: A corrected Inventory and Appraisal is filed to correct either the description or the value of an asset in an Inventory already filed with the Court.

3.4 Amended Inventory: An Amended Inventory is one filed to include or delete property which was erroneously omitted or included in an Inventory already filed with the Court.

3.5 Reappraisal for Sale: A new Inventory and Appraisal may be requested by the Court to establish the value of real property when the original Inventory and Appraisal of that property is over one year old.

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3.6 Probate Referee: In Los Angeles County, a Probate Referee is the individual appointed by the Court to appraise real and personal property to be inventoried on conservatorship estates.

PROCEDURES:

4.1 The Inventory and Appraisal must be filed within 90 days of the conservator's appointment. If it appears that this deadline will not be met, the assigned Deputy Public Conservator may file a -0- (zero) asset Inventory or a partial Inventory and Appraisal of the known assets. If the delay is likely to be lengthy, the Deputy may request an ex parte petition to extend the time period for filing the Inventory and Appraisal. If the petition is granted, the assigned Deputy must ensure that the Inventory and Appraisal is filed within that time to avoid any adverse court ruling.

4.2 A Supplemental Inventory and Appraisal may be filed any time after the original Inventory and Appraisal is filed, however, the Supplemental Inventory should be filed within 90 days of discovery of an asset or of Public Guardian's taking possession of that newly discovered asset.

4.3 When an Inventory consists of assets which must be appraised, a Probate Referee must be assigned.

4.3(a) In order to have a Referee assigned, the Deputy must initiate a request to the CAA Unit. The assigned CAA must then initiate a request to the Treasurer Tax Collector, as TTC controls the rotational list of Probate Referees. Once the CAA is given the name and address of the assigned Probate Referee, they will mail the necessary asset information to that Referee. When the Referee completes the appraisal, the signed Inventory and Appraisal will be returned to the Public Guardian for filing with the Court.

4.3(b) Once a Probate Referee has been assigned to a case, all subsequent Supplemental Inventories on that case will be sent to the same Referee rather than having to request a new one.

4.4 Certain assets are not to be included in the Inventory and Appraisal:

4.4(a) Income of any kind, whether it be salary, benefits or dividends, is not to be inventoried.

4.4(b) Real property outside the state is not subject to the jurisdiction of California courts and is therefore not included in the Inventory, although income received from, and expenses paid on, the property are included in the conservator's accounting. The

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conservator may include the real property for informational purposes only, giving the asset a -0- value.

4.4(c) Assets held in a Trust are not part of the conservatorship estate and are, therefore, not to be inventoried. This is particularly important to note in regard to real property.

4.4(d) Assets not in the possession of the Public Guardian, and clearly not under the control of the Public Guardian, should not be inventoried.

4.4(e) Worthless stocks: When the value of stock is doubtful or unknown, an opinion on the value of the stock, or any evidence of potential value, should be obtained from a stockbroker before it is inventoried.

4.5 When the assets of an Estate are very specialized and/or very valuable, use of an expert appraiser may be warranted. Such appraisals may be used to establish values for jewelry, art, coin collections, and stamp collections among other things. Property Management can arrange for the use of an expert appraiser, if so requested.

4.6 In the event one of the conservatee's assets is a business interest, an appraisal as to the value of the business interest is necessary. This may require use of an "expert" appraiser and should be arranged through the Public Administrator's "Business Committee."

4.7 Preparation and Filing of the Inventory and Appraisal

4.7(a) If the conservatorship Estate has no assets, or only cash assets, then a Probate Referee is not required. In such cases, the CAA will complete the Inventory and Appraisal, sign at the appropriate places, and send it to County Counsel for filing. Once a Court conformed copy is received, a copy must be filed in the case and another sent to the Accounting Department for their information.

4.7(b) If a Probate Referee is appointed, the Inventory and Appraisal listing all assets known to be in the Estate must be sent to that Probate Referee. A cover letter must be sent with the appraisal requesting a return date to comply with the court deadlines.

4.7(b)(1) Upon receipt of the completed Inventory and Appraisal from the Probate Referee, the assigned CAA must make copies of

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the appraisal, pay the referee and forward the original Inventory to County Counsel for filing. When a Court conformed copy is received, copies are to go to the case file and to Accounting.

4.8 Any interested party may file an objection to the Inventory and Appraisal. An objection can be made questioning the value of the Estate or of a particular asset. The objection must be filed within 30 days after the Inventory and Appraisal has been filed. After notice is given, the Court shall determine the value of any asset to which an objection has been filed. This may require additional appraisals of the asset(s) in question.

4.8(a) If there is no change in the value, or the objections are overruled, the costs of any additional appraisals may be assessed either against the Estate or against any objecting party.

4.9 It is important to note that failure to file an Inventory and Appraisal in a timely manner may be cause for the Court to revoke a conservator's Letters. If the Estate suffered any loss due to the conservator's failure to file an inventory and Appraisal, the conservator may be held liable and surcharged for those losses.

AUTHORITY:

FORMS:

EXHIBIT:

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SUBJECT: **HEALTH INSURANCE**	POLICY NO. **4.8**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 5**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish guidelines for obtaining and maintaining health insurance.

POLICY:

2.1 Health insurance status must be immediately determined so that the conservatee maintains appropriate health care coverage.

2.1 If the conservatee does not have health care insurance, and is eligible for health care benefits, an application must be made immediately.

DEFINITIONS:

3.1 MediCare is a health insurance funded in part by the federal government.

3.1(a) MediCare is separated into two parts: Part A for basic hospital insurance coverage and Part B for medical services such as doctors visits, durable equipment, and home health care.

3.1(b) Prescriptions, routine dental care, glasses and hearing aids are not covered.

3.1(c) MediCare is available to persons over the age of 65, disabled adults, or disabled children, under certain conditions.

3.2 Medi-Cal, California's Medicaid program, is a government sponsored health program designed to provide health insurance for indigent individuals and their families.

3.2(a) MediCal coverage includes inpatient and outpatient medical treatment, as well as prescriptions and some basic dental care, eyeglasses and hearing aids.

3.3 Healthy Families is a state program designed to provide health insurance coverage to children whose parents' income falls within certain poverty guidelines.

3.4 Basic medical insurance covers hospital and outpatient treatment with payments made directly to the provider. Most policies have a deductible and have a participation provision wherein the insurer agrees to pay only a percentage of the insured's bills and the insured must pay the difference (i.e., co-payment).

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3.5 Health Maintenance Organizations (HMO's) and Preferred Provider Organizations (PPO's) provide managed care.

3.5(a) Insurers define managed care as any plan that actively integrates the financing of health-related services and the delivery of health care.

3.5(b) MediCare + Choice HMO plans are HMO's that contract with MediCare to provide all MediCare covered services to MediCare beneficiaries who join the HMO.

3.5(b)(1) MediCare pays the MediCare + Choice HMO a monthly fee for each beneficiary who joins, regardless of how much they use the plan.

3.5(b)(2) MediCare beneficiaries who join a MediCare + Choice HMO are "locked-in" to that HMO and must use them for all their medical care.

3.6 Champus is medical care provided by the Veterans Administration for United States veterans.

PROCEDURES: 4.1 MediCal – An application for Medi-Cal should be filed for any conservatee who appears to be eligible to its benefits. Upon request from a Deputy, the CAA Unit will complete and file all necessary application forms.

4.1(a) Basic eligibility requirements are that the individual must be at least 18 years old and disabled for at least one year and have less than $2,000 in assets. The conservatee's home is excluded in the property valuation if the conservatee, their spouse, or their dependent or disabled children are residing in the home. The home is also excluded for a nursing home patient who intends to return to the home when discharged.

4.1(b) Supplemental Security Income (SSI) recipients receive Medi-Cal coverage with a -0- share of cost. An application for SSI should be filed if it appears the conservatee is eligible to it.

4.1(b)(1) To be eligible for SSI, an individual must be at least 65 years of age, or an adult who has been disabled for at least one year.

4.1(b)(2) SSI/Medi-Cal provides for inpatient hospital coverage, outpatient treatment, certain durable equipment, prescriptions, and long-term care. Glasses, hearing

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aids and dental coverage may also be provided with prior authorization.

4.1(c) If a conservatee meets eligibility requirements, the Deputy must ensure that a MediCal application is prepared and submitted to the Los Angeles County Department of Social Services.

4.1(c)(1) If the conservatee has no other income and is in a nursing home, an IMD, or board and care, an SSI application must be made.

4.1(c)(2) If the conservatee has other income, but he/she is in a board and care or an IMD with income less than the SSI dual income allowance, an SSI application must also be made.

4.1(d) If the conservatee has prior medical expenses, and if the conservatee meets eligibility requirements, an application may be made for retroactive coverage for the 3 months prior to the application.

4.1(d)(1) Special care must be taken to identify any asset that was not available to the conservatee during the retroactive period. Circumstances must be clearly documented so that asset limits can be met.

4.1(d)(2) If the conservatee had unpaid medical expenses for a period more than 3 months prior to the application, these may still be covered by Medi-Cal. Under the Hunt vs. Kizer decision, prior medical expenses may be paid using current income by reducing the share of cost of the beneficiary to -0- for a specified length of time. If this is needed by the conservatee, an application must be filed for it.

4.1(e) When eligibility is determined, the conservatee is issued a MediCal card that looks like a credit card. Upon receiving the MediCal, or BIC card, the Deputy must make copies of the card to distribute to all medical care providers. The original should be kept in the case financial folder.

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4.1(f) If a conservatee is eligible to both Medi-Cal and MediCare, Medi-Cal pays the MediCare Part B premiums and also acts as MediCare "gap" insurance, covering all the MediCare co-payments and deductibles.

4.2 MediCare

MediCare is usually provided to individuals who have a work history and are eligible for Social Security retirement benefits. To be eligible, an individual must be over the age of 65 or an adult who has a work history and has been disabled for at least two years. Spouses and disabled children of eligible adults may also be eligible to MediCare.

4.2(a) MediCare insurance can be either the traditional MediCare or a MediCare + Choice HMO.

4.2(a)(1) Traditional MediCare is evidenced by a MediCare card describing Part A and Part B coverage.

4.2(a)(2) MediCare + Choice is an alternative wherein the conservatee elected to participate in an HMO, such as Secure Horizons, or another HMO or PPO carrier.

4.2(b) The assigned Deputy must ascertain the type of MediCare coverage that the conservatee is holding. When the conservatee has an HMO or PPO, the Deputy must ensure that medical care is provided by an authorized health care provider and prescriptions are sought through approved pharmacies or approved mail order programs so as to maximize the benefit of the insurance.

4.2(c) If the conservatee is a resident of a skilled nursing facility, the facility must be notified of the coverage, so that an authorized medical care provider is sought and prescriptions are processed through an approved provider.

4.2(d) The conservator has the option of changing the coverage from the traditional coverage to a choice program and vice versa. When a decision such as this is considered, the Deputy must consult with his/her Supervisor and the decision and rationale for the change must be documented in the conservatee's case file and on the Public Guardian computer system.

4.2(e) In the event a conservatee does not have MediCare coverage but is eligible to it, the Deputy may purchase the coverage for

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them. Applications are only accepted from January to March of each year for coverage beginning the following July. Each year the Deputy should review his/her caseload to evaluate if an application should be filed for MediCare coverage for any conservatee.

4.2(e)(1) An individual becomes eligible to MediCare on their 65th birthday. The MediCare application must be filed in the 3 months prior to or 3 months following the month of the 65th birthday to avoid paying a penalty for late enrollment.

4.3 Other Medical Insurance, HMOs and PPOs

In the event the conservatee is covered by a health insurance other than MediCare or MediCal, the assigned Deputy must determine the insurance carrier, ascertain the location of the health insurance card or ask for a duplicate, and ask the carrier for evidence and extent of coverage and a provider directory.

4.3(a) The Deputy must determine the scope of the coverage and determine how payment is made for it (i.e., is payment covered by the conservatee's retirement benefits or made by the conservatee privately). If the payment is not made by automatic deduction from income, and if the insurance is to be retained, arrangements must be made to budget the premium payments.

4.3(b) The Deputy must ensure that health insurance is maintained. In the event the conservatee is moved from one location or level of care to another, the Deputy must ensure that medical providers are changed accordingly so that the conservatee retains access to covered medical care.

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SUBJECT: **MANAGEMENT OF PERSONAL PROPERTY**	POLICY NO. **4.9**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 10**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE: 1.1 To establish procedures for collecting and managing personal property.

POLICY: 2.1 Upon the Public Guardian's appointment over an estate, the conservatee's personal property must be inspected as soon as practicable to determine what action must be taken to safeguard it and bring it under the control of the Public Guardian.

2.1(a) "Personal Property" is defined as movable property, or chattel.

2.2 The Public Guardian may also take immediate action, including an initial search for personal property, if the Investigating Deputy has determined that the proposed conservatee has personal property which is subject to waste, loss or misappropriation.

2.2(a) Under such circumstances, a Certificate of Authority should be issued (see Policy # 1.11 Certificate of Authority). This procedure is always necessary when the asset is held by a financial institution.

2.3 In Los Angeles County, the Public Guardian's cursory searches and preliminary personal property evaluations are handled by a designated Supervising Deputy Public Conservator (SDPC) and his staff.

2.3(a) The assigned Deputy Public Conservator/Administrator (DPC/A) will send all cursory search requests to the Property SDPC.

2.3(b) Any specific handling requests must be included in the Search Request (e.g., whether clothing, TVs, photos, etc. are to be brought into the office, taken to the conservatee, or taken to the Public Administrator/Public Guardian Warehouse).

2.3(c) Keys to residences, vehicles or safe deposit boxes must also be sent with the Request, when they are available.

2.4 Whenever Public Guardian staff conducts an initial or cursory search, a witness must be located to assist in the search.

2.4(a) The witness must be advised of their responsibilities as a witness and must sign the witness statement.

2.5 Public Guardian staff conducting a search in a storage facility or residence photograph the premises before taking possession of any property.

2.5(a) All property in the premises being searched must be listed on the cursory search Inventory sheet.

2.5(b) Any personal property removed from the premises must be listed on a Public Guardian property sheet.

2.6 The Supervising Deputy conducting the initial/cursory search of a storage facility or residence will decide upon the disposition of the personal property being evaluated based on the following criteria:

2.6(a) All cash, jewelry and small objects of apparent value, e.g., silverware, stamp collections, etc. will be taken from the premises and brought into the Public Guardian's office to be held at the vault. All such items must be posted to a Property Sheet.

2.6(b) Clothing and other personal items, such as photographs, may be removed from the premises for delivery to the conservatee.

2.6(c) Larger items, such as furniture, appliances, etc. may be drayed to the warehouse for storage, or abandoned at the search site.

2.6(c)(1) If property is to be stored, the Property Supervisor must estimate the number of crates the drayage company will need for the job. The Supervisor must refer that information to the Public Administrator's Property Management Section. They will arrange for the actual drayage.

2.6(c)(2) If the assigned Deputy has not made prior arrangements to the contrary, property that is soiled, damaged, or otherwise not cost-effective to store, may be abandoned/relinquished to the storage facility or property owner.

2.7 The Supervising Deputy conducting the search will make arrangements via the Public Administrator's Property Management Section for the

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drayage to the warehouse of any vehicles belonging to the conservatee (see Policy # 4.30 Vehicles, for further details).

2.8 Once personal property has been marshaled, decisions on its disposition will be made in a timely manner and will be based upon the needs and, when possible, the preferences of the conservatee.

PROCEDURES:

3.1 As part of the conservatorship investigation, the personal property of the conservatee must be identified, and, whenever possible, verified.

3.1(a) Bank Letters must be initiated on all bank accounts or and/or safe deposit boxes so they can be collected.

3.2 From the information provided by the Investigator, and any other reliable source, the assigned Deputy must determine the location of the conservatee's personal property.

3.2(a) Bank accounts, Certificates of Deposit and Investment holdings should be marshaled in accordance with the Policy and Procedures set forth in Policy # 4.3 Estate Management – Initial.

3.2(b) Vehicles should be handled in accordance with Policy # 4.30 Vehicles.

3.2(c) For the most part, personal property other than that specified in 3.2 (a) & (b) must be identified by location and referred to the Public Guardian Property Supervisor.

3.2(c)(1) Personal Property may be located at a care facility, at a storage facility, with friends or relatives of the conservatee, or in a conservatee's prior or current residence.

3.2(c)(2) Personal Property may also be located in a safe deposit box at a financial institution.

3.3 The assigned Deputy will direct all requests for cursory searches and manual collection of assets to the designated Public Guardian Property Supervisor.

3.3(a) Special handling instructions may be included with the Request (see 2.3 above).

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3.3(b) When necessary and available, keys shall accompany the Request. Should keys not be available, the Deputy will need to employee the services of a locksmith.

3.4 When conducting a cursory search, Public Guardian staff must be accompanied by an outside witness when possible. If neither a neighbor, family member, nor friend is available, Public Guardian staff must be utilized.

3.4(a) The witness must be given instructions as to his or her responsibilities, and must sign the Public Guardian Witness Statement, acknowledging their receipt of said instructions.

3.5 When conducting a cursory search, both the Public Guardian personnel and the witnesses must wear appropriate and protective clothing, including gloves, at all times. The Deputy will provide gloves for the witness.

3.6 When the cursory search is being conducted at an unoccupied residence, Public Guardian staff should first inspect the outside perimeter, paying special attention to any broken windows or doors.

3.6(a) Staff should be alert to any evidence of pets in or around the residence.

3.6(b) Upon entering the premises, Public Guardian staff must determine whether it is safe for them to conduct a search. If the premises appear to be too hazardous to conduct an initial search, staff must secure the residence and plan to return only when the proper equipment and/or back up is available to ensure that a safe search may be conducted.

3.6(c) If the premises are deemed safe, the initial search should begin with photographs of the premises.

3.7 A primary purpose of an initial, or cursory, search is the location of small items that may be subject to theft or loss. Such items, along with documents which may verify assets or identify income, shall be posted to a property sheet, tagged when appropriate, and brought into the Public Guardian Office.

3.7(a) Examples of items typically brought into the Office from a cursory search include:

- Cash
- Negotiable checks, stocks, bonds, and other negotiable instruments
- Coin and stamp collections
- Credit cards and ATM cards
- Jewelry
- Guns
- Any identifiably valuable objects such as paintings, antiques, etc.
- Bank statements or brokerage account statements
- Insurance policies
- Wills

3.7(b) All items brought into the Office must be identified by the name and number of the estate. Jewelry and guns must be lead sealed and tagged.

3.7(c) Each item must be listed on a Public Guardian Property sheet, on which property is listed by category (i.e., cash is a C-item, jewelry is a J-item, clothing is a P-item, etc.)

3.7(c)(1) On the Property sheet, each posted item must be described. For purposes of the Property Sheet, an item must only be described by its appearance. For example, when identifying a ring, it may only be identified as "a yellow colored ring with a blue colored stone." Staff may not use descriptions such as "14 carat gold ring with a sapphire stone." An appraiser must make the determination of the ring's true composition.

3.7(c)(2) Other items should be described as precisely as possible using serial numbers, manufacturer's names or other identifying marks.

3.7(c)(3) When listing property on a Property Sheet, staff must begin with the alphabetical letter followed by a number in chronological order. For example, if you find 10 pieces of jewelry, the first item is tagged as J-1, the next item is J-2 and so on.

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3.8 For purposes of identifying property, posting to Property Sheets and/or the Public Guardian computer system, and then the Inventory and Appraisal, property items are divided into categories.

3.8(a) Cash items are posted as "C" items. Included are:

- Cash found in effects, safe deposit boxes, or held by others.
- Bank Accounts (Savings or Checking)
- Retirement Accounts (IRA's)
- Savings and Loan Accounts
- Travelers Checks
- Checks in Effects/Unnegotiated Checks
- Salaries and Wages Due
- Insurance Policies
- Interest in other estates.

3.8(b) Jewelry items are posted as "J" items. Included are:

- Jewelry
- Coin collections
- Foreign coins
- Valuable fountain pens, pencils
- Stamp collections

3.8(c) Stocks, Bonds and other Investment holdings are posted as "S" items. Included are:

- Stocks
- Bonds
- Mutual Funds
- Investment Certificates
- Participating Agreements
- Certificates of Beneficial Interests

3.8(d) Notes are posted as "N" items. Included are:

- Mortgages
- Trust Deeds
- Notes Receivable (Secured)
- Notes Receivable (Unsecured)
- Contracts of Agreements to Purchase Real Property

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3.8(e) Real Property is posted as an "R" item. Included are:

- Real Estate (Improved)
- Real Estate (Unimproved)

3.8(f) Furniture and Household Goods are posted as "F" items. Included are:

- Furniture
- Pianos, radios, etc.
- Household appliances
- Vases, ornaments, dishes, etc.
- Silverware
- Kitchen utensils, etc.
- Mattresses
- Bedding
- Table linen
- Drapes, etc.

3.8(g) Personal Effects are posted as "P" items. Included are:

- Luggage, trunks, suitcases
- Clothing
- Cameras, field glasses
- Books
- Musical instruments
- Miscellaneous personal effects
- Guns
- Copyrights and patents

3.8(h) Vehicles are posted as "A" items. Included are:

- Automobiles
- Trucks
- Motorcycles
- Trailers
- Boats

3.8(i) Non-value items are posted as "X" items. Included are:

- Bank books not belonging to the estate
- Check books
- Wills

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- Credit cards
- ATM cards
- Documents such as birth and marriage certificates

3.9 When personal property is brought into the Office, it must be properly tagged and posted to the Public Guardian computer system.

3.9(a) X-items may be given to the assigned Deputy for evaluation and further action (see Policy # 4.3 Estate Management-Initial, Section 3.8(b)).

3.9(b) All other items should be taken to the vault for storage.

4.0 When personal property is to be brought into the warehouse, the Property Supervisor must arrange for its drayage.

4.0(a) All Public Guardian drayages are handled by the Public Administrator's Property Management Section.

4.0(a)(1) Based upon the cursory search, the Public Guardian's Property Supervisor will advise Property Management of the need to dray the property with an approximation of the size of the job and the number of crates which will be needed.

4.0(b) When the personal property is received at the warehouse, Public Administrator staff will post the stored items to the Public Guardian computer system.

4.1 When all personal property brought into the Office and the warehouse has been posted to the Public Guardian computer system, the assigned Deputy must initiate a request to the CAA Unit for the property to be inventoried and appraised (see Policy # 4.7 Inventory and Appraisal).

4.2 When personal property has been marshaled by the Public Guardian, the assigned Deputy must make decisions on its disposition.

4.2(a) Non-liquid assets will incur storage fees at either the warehouse or the vault.

4.2(b) If it appears that the storage fees will exceed the value of the personal property, serious consideration must be given to selling it as soon as possible.

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4.2(c) Personal effects, which may have no monetary value, but which may have great personal value to the conservatee and/or his/her family, should, if possible, remain with the conservatee or be given to family for safekeeping.

4.3 If a decision is made to sell the conservatee's personal property, it should be discussed with them and any interested family first, and their preferences should be documented in the case narrative.

4.3(a) All sales of personal property on LPS cases must be pre-authorized by the Court.

4.3(a)(1) All requests for authority to sell an LPS conservatee's personal property must be directed to County Counsel for petition.

4.3(b) On Probate cases, Public Guardian must petition the Court for authority to sell personal property with an aggregate value of $5,000 or more. As in LPS cases, the petition request in such cases must be directed to County Counsel.

4.3(b)(1) If the aggregate value of the personal property is less than $5,000, the assigned Deputy may request sale of the property without specific Court authorization or need for confirmation.

4.3(b)(2) In the event of sale without need for Court authorization, the assigned Deputy must document the facts of the matter on the computer case narrative and then change the status of the personal property to "sell".

4.3(c) All petitions for authority to sell personal property should include references to the conservatees preferences in the matter, the storage costs for the property, the maintenance costs for the conservatee, and the value of the property.

4.3(d) If the petition for authority to sell the personal property is denied, the sale cannot proceed.

4.3(e) If the petition for authority to sell is granted, the approval must be documented on the case computer narrative and the status of the personal property items must be changed to "sell".

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4.3(e)(1) The Public Administrator's Property Management Section will handle the sale of the personal property, which is done at public auction.

4.3(e)(2) Property Management will also ensure Court confirmation of the sale.

4.3(e)(3) Upon completion of the sale, Property Management will post the proceeds to the conservatee's Public Guardian account.

AUTHORITY: Probate Code Sections 2541, 2544, 2545

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PURPOSE: 1.1 To establish procedures for managing real property belonging to conservatees.

POLICY:

2.1 Upon appointment, temporary or permanent, Public Guardian staff will take immediate steps to control and secure any real property in which the conservatee has an interest.

2.1(a) Letters of Conservatorship must be filed/recorded on all real property in which the conservatee has an interest.

2.2 The assigned Deputy Public Guardian will refer all such assets to the Public Administrator's Property Management Section for immediate inspection and evaluation.

2.3 Decisions on the disposition of the conservatee's real property will be made in a timely manner and will be based upon the needs, and, when possible, the preferences of the conservatee.

DEFINITIONS:

3.1 Real Property: In common law, real property is defined as things that are permanent, fixed, and immovable, which cannot be carried out of their place, such as lands and buildings. For Public Guardian policy, property includes land, houses, condominiums, townhouses, mobile homes that are attached to land and are not located in a mobile home park, apartment buildings and commercial buildings of any sort.

3.2 Fee Simple: A "fee simple" estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his/her life, and descending to his/her heirs and/or legal representatives upon his/her death intestate.

3.3 Joint Tenants: Joint tenants are individuals who own lands by a joint title created expressly by one and the same deed or will. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession.

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3.4 Tenants in Common: Tenants in common are two or more individuals or entities who hold the same land, with interests accruing under different titles, or accruing under the same title but at different periods, or conferred by words of limitation importing that the grantees are to take in different or distinct shares.

3.5 Life Estate: An estate whose duration is limited to the life of the party holding it, or of some other person. Upon death, the life estate interest reverts to the designated property owner.

PROCEDURES:

4.1 As part of the conservatorship investigation, a property profile must be requested on all real property in which the conservatee has even a fractional interest. The property profile will reflect the title vesting of the real property and will also provide a legal description of the property. Upon appointment over the Estate, the Deputy must record the Letters of Conservatorship, temporary and/or permanent, against any property in California in which the conservatee has a legal interest.

4.2(a) If the real property is in Los Angeles County, the Letters of Conservatorship are filed with the County Recorder.

4.2(b) If the real property is elsewhere in California, the Letters must be filed with the County Recorder of that jurisdiction.

4.2(c) A copy of the verified recording must be maintained in the case file and the date of the recording must be posted to the Public Guardian computer system.

4.2 The Public Guardian's authority does not extend outside of California in regard to the control of real property. Nevertheless, such property belonging to the conservatee must be identified and its nature determined.

4.3(a) The assigned Deputy should utilize the assistance of the Public Administrator's Property Management Section in order to secure a property profile from an out-of-state source.

4.3(b) Depending upon the nature and value of the property, it may be necessary to initiate ancillary proceedings to contract with an out-of-state fiduciary or attorney to manage or sell the property. The assigned Deputy should consult with County Counsel in such an effort, as the Court would have to authorize the proceedings.

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4.3 The assigned Deputy Public Guardian must refer all real property holdings of the conservatee to the Property Management Section. The Real Property Referral should include all known information about the insurance, mortgage, tax and occupancy status of the property.

4.4(a) Public Administrator Property Management personnel will verify the title of the real property. If the property is in Los Angeles or surrounding counties, and if the conservatee is verified as a/the legal owner of the real property, the property will be posted to the Public Guardian computer system in preparation for it being Inventoried and Appraised (see Policy # 4.7 Inventory and Appraisals.)

4.4(b) Based upon the information provided by the Deputy Public Conservator, Property Management will verify whether the real property is insured. If it is, Property Management personnel will evaluate the coverage, maintaining it if possible. Absent any other verifiable insurance, Property Management will arrange for coverage of the property (see Policy #4.8 Property Insurance). If no funds are available in the conservatee's estate account, a request must be made through the revolving fund to provide monies to insure the property.

4.4(c) Based upon the information provided by the assigned Deputy, Property Management will determine the mortgage status of the real property.

4.4(c)(1) If there is a mortgage, Property Management staff will contact the mortgage holder to determine the payment status, payment amount due, and the outstanding balance.

4.4(c)(2) If ongoing mortgage payments are to be made, they will be budgeted by the Property Management Deputy.

4.4(c)(3) When Property Management staff budgets property expenses for the Estate, it is particularly important that the assigned Deputy Public Guardian monitor the case closely to ensure that care payments retain priority over property expense payments.

4.4(d) Based upon data provided by the property profile and the Real Property Referral, Property Management will confirm the property tax status of the conservatee's real property.

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4.4(d)(1) If the property tax bill is available, it should be forwarded to Property Management.

4.4(d)(2) If property taxes are due (or overdue) and funds are available in the Estate, Property Management will initiate payment of the taxes. If funds are not available, use of the Revolving Fund will be considered, especially if the property had delinquent taxes and is in default status.

4.4(e) The Public Administrator controls the funds in the Revolving Fund. Monies from the Fund may be used to pay for property expenses when the Estate lacks funds. However, Revolving Fund monies are considered to be a "loan" to the Estate, and the Fund is to be reimbursed as soon as monies are available.

4.4(e)(1) If the conservatee's only asset is their home, Property Management is likely to require a promise of sale of the home before any sizeable use of the Revolving Fund is granted.

4.4(f) Upon receipt of the Real Property Referral, an assigned Property Management Deputy will do an inspection and evaluation of the real property.

4.4(f)(1) If the real property is occupied by the conservatee, the assigned Deputy Public Conservator must also evaluate the condition and security of the real property at each periodic visit.

4.4(f)(2) If the property is occupied by persons other than the conservatee, the Property Management Deputy will provide the tenants with a Rental Agreement and instructions on how to make payment of the rent to the Public Guardian.

4.4(f)(3) If the property is vacant, the Property Management Deputy will inspect the premises. If necessary, windows may be boarded over, the property may be fenced and sealed, or the door locks may be re-keyed. Funds for such activities should come from the conservatee's trust account. If monies are not

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available necessary funds must be requested from the Revolving Fund.

4.4(g) Whether occupied or vacant, it is usually necessary to maintain some utilities.

4.4(g)(1) If the property is occupied by the conservatee, the Deputy Public Conservator must notify the utility companies of the conservatorship so that the bills are directed to and paid by the Deputy.

4.4(g)(2) If the property is occupied by tenants or if it is vacant, it is up to the Property Management Deputy to arrange for receipt and payment of the utility bills. (Note: Even when a property is vacant, the water may be left on to allow for maintenance of the exterior landscaping).

4.5 The assigned Deputy Public Conservator must decide on the ongoing utilization of the real property. A decision must be made and documented in the Estate Plan as to whether the property is to be maintained for the conservatee or the home is to be rented or sold.

4.5(a) In making the decision, consideration must be given to the conservatee's preferences and the financial needs of the conservatee and their estate.

4.5(b) If the property is to be rented or sold, the assigned Deputy Public Conservator and the Property Management Deputy are to discuss the matter and coordinate future actions.

4.6 In the event a decision is made to rent the property, the assigned Property Management Deputy will handle the arrangements.

4.6(a) The Property Management Deputy will advertise for and interview prospective tenants.

4.6(b) Once a tenant has been selected, the Property Management Deputy will obtain a rental agreement from them.

4.6(b)(1) The rental amount will be determined by the Property Management Deputy, but only after discussion with the Deputy Public Conservator. The amount charged should be sufficient to cover the property expenses without affecting the funds needed for care expenses.

4.6(c) The Property Management Deputy will monitor receipt of the rental payments. If there is a payment problem, the Property Management Deputy will resolve it.

4.6(c)(1) If eviction proceedings become necessary, Property Management will initiate the proceedings referring the matter as expeditiously as possible to County Counsel.

4.6(d) Property Management will arrange for maintenance of the property through their vendors.

4.6(d)(1) The rental agreement must specify who is responsible for maintaining the yard or other outside equipment such as a pool or spa. If the Public Guardian retains the responsibility, then Property Management will decide upon a vendor and ensure that the contractor has adequate workers compensation and general liability insurance.

4.6(d)(2) The Property Management Deputy is responsible for ensuring that invoices for all maintenance work are received and the expenses paid in a timely manner.

4.6(d)(3) In the event of an emergency such as a plumbing or water heater problem, the Property Management Deputy is to be notified so that an approved contractor can be contacted to repair the problem.

4.7 If the determination is made that the real property is to be sold, the assigned Deputy Public Conservator must first determine whether the real property was the personal residence of the conservatee.

4.7(a) In a Probate conservatorship, if the real property was not the conservatee's prior residence, then sale may be requested without specific Court authority. However, if the conservatee or their family opposes the sale, the Public Guardian should utilize County Counsel to petition the Court for the authority to sell it rather than face future objections to the sale.

4.7(a)(1) In an LPS conservatorship, all sales must be pre-authorized by the Court.

4.7(b) If the real property was the conservatee's prior residence, Court authority to sell it is required in both LPS and Probate conservatorships.

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4.7(b)(1) Prior to requesting authority to sell the residence, the assigned Deputy must discuss the proposed sale with the conservatee and his/her family, if any. Their reactions must be documented in the case narrative and on the petition request.

4.7(b)(2) In order to initiate a sale request, the assigned Deputy must complete a form, "Request for Petition for Authority to Sell the Conservatee's Prior Residence." The Request must be reviewed and approved by the Deputy's Supervisor and Assistant Division Chief before it can be sent to County Counsel. A copy of the property Title Report should accompany the Request along with any other relevant documentation.

4.7(c) If the Petition for Authority to Sell is denied, the sale cannot proceed.

4.7(d) If the Petition for Authority to Sell is granted, the approval must be documented on the case computer narrative, and the status of the real property must be changed to "sell".

4.7(d)(1) The Public Administrator's Property Management Section will handle the sale of the property, which is done at public auction.

4.7(d)(2) Property Management will also ensure that the sale is confirmed in Court and that the escrow is completed in a timely manner.

4.7(d)(3) Upon completion of the sale, Property Management staff will post the proceeds to the conservatee's Public Guardian account.

AUTHORITY: Probate Code Sections 2403, 2540, 10150, 10160-10166, 10310-10311, 10304, 10308

FORMS: Real Property Referral
Request for Authority to Sell the Conservatee's Prior Residence

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SUBJECT: **PROPERTY INSURANCE**	POLICY NO. **4.7**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 3**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE: 1.1 To establish guidelines related to real and personal property insurance.

BACKGROUND: 2.1 Homeowners Insurance

When a conservatee owns real property, the home is usually covered by homeowners insurance. Homeowners insurance is divided into two parts, property insurance protection and liability coverage.

2.1(a) Property insurance usually consists of five parts: (a) dwelling; (b) other structures such as a detached garage or swimming pool; (c) personal property; (d) loss of use; and (e) additional coverage. The additional coverage may include endorsements that extend coverage. Examples include jewelry, in a value over the amount covered in the general property value for jewelry, theft extension or home based business property.

2.1(b) Liability coverage usually covers protection from adverse legal judgments and medical payments to those injured by an accident arising at the insured's premises or resulting from the insured's activities. Workers compensation is usually provided for some employees such as gardeners or housekeepers.

2.1(c) A "peril", as stated in an insurance policy, will indicate the perils that can produce an insured loss. Common "peril" coverage is for fire, lightning, explosion, vandalism and theft.

2.2 Renters' Insurance

Renters' insurance generally covers against loss of personal property such as furniture and furnishing and does not cover the dwelling. Coverage may also provide for liability.

2.3 Automobile Insurance

In the event a conservatee retains the privilege to drive a vehicle and is driving a vehicle, the driver and the vehicle must both be insured. The

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insurance should cover property damage, liability and uninsured motorist coverage.

POLICY:

3.1 When a conservatorship of the estate is established, efforts must be made to verify real and/or personal property insurance or, if there is none, to secure property insurance immediately.

3.2 In cases where the conservatee owns a vehicle and retains his/her driving privileges, the assigned Deputy must maintain a copy of the conservatee's driver's license and a copy of the auto policy. A conservatee is not allowed to drive without insurance: If they do not have insurance, it must be secured for them before they are allowed to drive. The policy should include liability coverage of at least $300,000 per incident and property coverage sufficient to replace the vehicle. The Deputy will contact an Insurance Broker and obtain the required amount of insurance for the conservatee.

PROCEDURES:

4.1 If the conservatee owns real property, efforts must be made to verify whether a homeowner's policy is in effect. If it is, a copy should be secured and forwarded to the Public Administrator's Property Management Section with the Real Property Referral. If a policy cannot be verified, the Property Referral should state that. Absent any verified insurance, Property Management will arrange for coverage of the property. If the conservatee's estate account does not have enough monies to pay for insurance, the Deputy must request sufficient funds from the Revolving Fund. The Deputy must also ensure that property insurance is terminated should the property be sold.

4.1(a) It is important that Property Management be advised of whether or not the property is vacant, because the premiums are much higher on unoccupied property.

4.2 If the conservatee is living in rented housing, consideration should be given to the purchase of renter's insurance for the replacement value of the conservatee's furniture and household goods.

4.3 If the conservatee is living independently with caregiver assistance, it is important that there be liability coverage on the dwelling, regardless of whether it is owned or rented. If the caregiver is not bonded, this is particularly important.

4.4 If the conservatee owns a vehicle, and if that vehicle is not in storage, it must be insured. If the conservatee has retained their driving privileges,

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the Deputy must maintain a copy of their current drivers license in the case file.

4.4(a) If the conservatee has automobile insurance, a copy should be in the case file. Premiums must be paid on the policy from the conservatee's estate. If monies are not available, the Deputy must request funds from the Revolving Fund.

4.4(b) If the conservatee had no previous automobile insurance policy or if the policy has lapsed, a new policy must be secured before the conservatee's vehicle may be driven. If there are problems in securing coverage, due to the conservatee's driving record or lack of funds to pay for the policy, the vehicle should be stored to ensure that it is not driven without coverage.

4.4(c) If the conservatee has no automobile insurance policy, but can afford one, the Deputy must contact an Insurance Broker and arrange for necessary coverage. As noted above, if the conservatee does not have sufficient funds in his/her trust account to pay for the insurance, the Deputy must request the necessary monies from the Revolving Fund.

FORMS: Real Property Referral
Vehicle/Automobile Referral

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SUBJECT: **PROPERTY MANAGEMENT DURING INVESTIGATION**	POLICY NO. **4.1**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 4**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE: 1.1. To establish guidelines for managing real and personal property during investigations.

POLICY: 2.1. During the course of an investigation, the Investigator must determine the extent and location of any real or personal property owned by the proposed conservatee. Once the asset(s) are determined, the investigator must ensure that they are protected. This may include securing any real property and ensuring that any bank accounts are not subject to loss.

2.2. Assets are not to be taken into protective custody unless the investigator determines the property may be subject to loss, waste or misappropriation. When this occurs, a determination must be made on whether a certificate of authority should be issued, and a temporary conservatorship of the estate is to be sought.

PROCEDURES:

3.1 Real Property – Lanterman, Petrus, Short (LPS)

3.1(a) LPS conservatorship investigations are usually done when the proposed conservatee is no longer living in his/her residence. The proposed conservatee's residence may have been a home, apartment, mobile home, or board and care home. If the residence was solely occupied by the proposed conservatee, Public Guardian staff must determine the location of the keys, inspect the premises to ensure all utilities have been turned off, ensure that arrangements are made to care for any pets and to take into marshal any cash or uncashed checks.

3.2 Real Property (Probate)

3.2(a) If the proposed conservatee is residing in his/her residence, the investigator should evaluate the condition of the home as well as that of the proposed conservatee. If permitted, the deputy should ensure that the utilities are working and appliances are safely connected so that the premises are safe, and the proposed conservatee is not potentially subject to any physical harm.

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3.2(b) If the proposed conservatee is not residing in his/her own residence, the procedure is the same as noted in section 3.1(a) above.

3.3 Personal Property (LPS)

3.3(a) Personal property such as cash, uncashed checks, ATM cards, and credit cards must be secured and protected during the investigation. Once a referral is received and temporary conservatorship is granted, the investigating Deputy must contact the treating facility to determine if any personal property is being held for the proposed conservatee. If so, the deputy must ensure that the property remains secured at the facility and must advise the facility by letter that, in the event the proposed conservatee is moved, the facility must notify the investigator so arrangements can be made to pick up the property. These instructions must be documented on the case narrative screen of the computer system. Personal clothing can be forwarded to a new facility with the proposed conservatee should he/she be transferred.

3.3(b) In the event the premises are shared with other individuals, such as sharing a room with another individual in a board and care facility, the investigating deputy must ensure that the personal effects of the proposed conservatee are monitored by the operator. The objective is to maintain the status quo of the property pending the placement recommendation of treating staff.

3.3(c) If the proposed conservatee has any household furniture or personal effects in a home, a cursory search of the property may be requested. As part of the search, Public Guardian staff will take pictures of the personal property, and jewelry or other small valuable items that may be subject to possible theft. These items will be marshaled and held at the Public Administrator's vault pending the appointment hearing.

3.3(d) If the conservatorship is established, and the public guardian is appointed, the investigating deputy should advise the property vault clerk via a written communication so that cash and uncashed checks can be deposited to the conservatee's estate account. A copy of the notification shall be filed in the case folder. ATM cards, all credit cards and all personal checks are to be destroyed by the deputy at the vault.

3.3(e) If the conservatorship is dismissed, or someone else is appointed; the Investigator is responsible for returning the property to the client or their newly appointed conservator within 10 business days. Receipts describing the property must be signed by the client, or their conservator and filed in the case file.

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3.4 Personal Property (Probate)

The investigating Probate Deputy's actions during an investigation are to be in keeping with the policy specified in sections 2.1 and 2.2 above.

3.4(a) If the proposed conservatee is residing in his/her home, and during the course of the interview the individual appears to be cognizant of his/her property and capable of securing the property, the investigator will visually note any valuables that may be in clear view. Such information should be documented in the case file.

3.4(b) If the proposed conservatee is residing in his/her home, and during the course of the interview he/she appears to be confused and unaware of his/her surroundings to such an extent that his/her property may be at risk of loss, waste or misappropriation, the investigator may ask for permission to safeguard the property pending determination of the need for conservatorship. If the proposed conservatee consents, the personal property shall be marshaled and placed in the vault for safekeeping. A receipt for the property must be given to the proposed conservatee with a copy filed in the case file.

In the event the proposed conservatee is reluctant to release any property, it should be documented in the case file and a determination made as to whether or not a certificate of authority should be issued and a temporary conservatorship of the estate sought.

3.4(c) If the proposed conservatee is residing outside his/her personal residence, the procedures are the same as those described above in sections 3.3(a), 3.3(b) and 3.3(c).

3.4(d) If the conservatorship is established, and the Public Guardian is appointed, the investigating deputy must notify the property vault clerk via a written communication to deposit all cash and checks into the conservatee's estate account. A copy of the written notification must be filed in the case file. ATM cards, all credit cards and all personal checks are to be destroyed at the vault by the Deputy.

3.4(e) In the event a conservatorship is not established, the investigating Deputy must return the property to the individual, or, if another responsible party is named as conservator or trustee, the property must be given to the legal representative. Receipts for all returned property must be signed and maintained in the case file.

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3.5 Review of Non-Handled Cases

The Supervising Deputy Public Guardian must review all non-handled cases before the case is processed for closing. If any personal property was taken into custody during the investigation, and not returned by the investigating deputy, immediate steps must be taken to return the property to the individual or their legal representative within 10 working days of the disposition of the non-handling. Once the property is returned, and the necessary receipts are signed by the appropriate individual(s) and filed, the case may be sent to accounting for closing.

AUTHORITY: Probate Code Section 2900, 2901

FORMS: Certificate of Authority

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SUBJECT: **COURT ACCOUNTINGS**	POLICY NO. **14.1**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 4**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE: 1.1 To establish the procedure for court accountings.

POLICY: 2.1 Court accountings will be prepared and submitted as required by law.

2.1(a) The conservator has a legal obligation to file an accounting detailing the way all the income and assets belonging to the conservatorship estate have been handled during the accounting period.

2.1(a)(1) In probate, the accounting is due at the expiration of the first year and every two (2) years thereafter.

2.1(a)(2) Accountings for LPS cases must be filed yearly since the term of the conservatorship is one year.

2.2 The court accounting unit will prepare the Public Guardian's accountings.

2.2(a) Completed accounts will be forwarded to County Counsel for review and filing. Staff will monitor the time the accounts are at county counsel, to ensure that they are processed promptly.

2.3 Fee requests will be reviewed at the time of each accounting to ensure that payment is requested for any services not already reimbursed.

2.4 Public Guardian Inquiries (PGI's) arising from the accountings will be responded to by the assigned Deputy Public Guardian. Responses will be completed within 10 business days of receipt, and documented on the appropriate computer screen.

2.5 On zero asset LPS accountings an accounting "Report" may be filed instead of a formal Account Current.

2.6 On successor cases, a court approved final accounting by the prior conservator is required in order to provide the Public Guardian with a starting balance for its 1st Account Current, and so the prior conservator to be discharged.

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2.7 Unless waived by the court, a Final Accounting will be filed on all terminated cases.

2.7(a) Final Accountings are for the period starting from the closing date of the last court approved accounting, and ending on the date of termination or the date of death of the conservatee.

2.7(b) An approved Final Accounting is required for discharge of the Public Guardian as conservator.

2.8 A complete accounting shall include information on all the financial transactions, which have occurred on the conservatorship estate throughout the accounting period and shall be presented in a proper accounting format.

2.8(a) An accounting should include a Summary of Accounts, which summarizes all the schedules used in its preparation. In the Summary, the charges and credits must balance.

2.8(b) An accounting must include a schedule of Receipts, which lists all the money received in the estate during the accounting period.

2.8(c) An accounting must include a schedule of Disbursements, which lists all payments made from the estate. This is usually a listing of all the conservatorship estate's expenses.

2.8(d) If relevant, an accounting shall include information on Gains on Sales or other increases in the account. This schedule shows any gain (over the appraised value) on any estate asset. It may also show increases in the value of a mutual fund where dividends are re-invested. (Expenses of sales are not shown in this schedule.)

2.8(e) An accounting may also include information on Loss on Sales of estate assets. On this schedule the loss is computed from the value stated in the Inventory and Appraisal as opposed to the sale price of the asset. This is also the schedule used to show any estate asset that is lost.

2.8(f) If relevant, an Accounting will also include a schedule of Property on Hand. This is a listing of all the property the conservator is holding at the end of the accounting period. It should be noted that some jurisdictions require the conservator to list the market

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value of some stocks/bonds or mutual funds even though these values do not change the estate value until the asset is sold.

2.8(g) Accountings will include appropriate fee requests.

2.8(g)(1) In probate conservatorship accountings periodic fees will be sought. Designated staff will monitor the receipt of fees to ensure those fees the Public Guardian is entitled to, are received as expeditiously as possible.

2.8(g)(2) If periodic fees have been paid to the Public Guardian and/or County Counsel, they will be reflected in the accounting and deducted from the total fees requested.

2.8(g)(3) When insufficient funds exist to pay requested and awarded fees, collection of the fees will be deferred until sufficient assets are available for payment. If permitted by the Court, previously ordered but not paid fees can be paid whenever sufficient funds are received, without further order from the Court.

2.8.(g)(4) Request(s) for reimbursement for expenditures made from the revolving fund will be included in the accounting.

2.8(g)(5) Should there be insufficient funds in the conservatee's estate to reimburse the Public Guardian for county monies expended, a claim will be filed against any real property belonging to the conservatee's estate, or to the decedent estate should the conservatee have expired.

PROCEDURES:

3.1 The assigned Deputy must ensure that accountings are prepared on a timely basis. He/she will use a computer-generated report to ensure that required time frames are met.

3.2 When an accounting petition is received, it will indicate the hearing date on the first page. The Deputy must calendar the hearing date and check the calendar results on or soon after that date.

3.3 Upon receipt of the Court Order approving an accounting, and if sufficient funds are available, fee payments should be made and periodic fees should be budgeted.

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3.4 If a Public Guardian Inquiry (PGI) is received on an LPS case the assigned Deputy must respond to it within 10 business days of receipt.

3.4(a) The Deputy must prepare a draft response; consult with their immediate supervisor and with the accounting unit or other agencies in order to respond appropriately.

3.5 If an interested party objects to a probate accounting, the assigned Deputy must consult with County Counsel so that they may respond appropriately to the objection.

3.6 In the event an objector to a Public Guardian accounting is requesting a surcharge, Public Guardian management staff must be notified immediately. Management staff must, in turn, notify County Counsel so they can assist in responding to the request for surcharge.

3.7 Current accountings should be filed on the left side of the estate folder. Accountings may be discarded upon receipt of the order approving them except for the most current accounting. It should be retained until the subsequent accounting is filed.

3.7(a) For Audit purposes, all orders approving accountings must be retained and filed on the left side of the case estate folder.

AUTHORITY: Probate Code Sections: 2620, 2620.2, 2622, 2622.5, 2623

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT: **VEHICLES**	POLICY NO. **4.6**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 5**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish procedures for managing vehicles belonging to the estates of conservatees.

BACKGROUND:

2.1 A vehicle belonging to a conservatee should be sold absent a clear showing that the vehicle will be used by the conservatee, or that a family member or other interested person has specifically requested the vehicle not be sold. If there is uncertainty about selling the vehicle, the matter shall be discussed with the Supervising Deputy and County Counsel, if necessary.

2.2 Probate Code Section 2401 provides that the conservator has the management and control of the estate, and in managing and controlling the estate shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

2.3 Probate Code Section 2541 provides that the conservator may sell personal property of the estate in any of the following cases:

(a) Where the income of the estate is insufficient for the comfortable and suitable support, maintenance, and education of the conservatee;

(b) Where the sale is necessary to pay the debts referred to in Probate Codes Sections 2430 and 2431; or

(c) Where the sale is for the advantage, benefit and *best interest* of (1) the conservatee, (2) the estate, or (3) the conservatee and those legally entitled to support, maintenance, or education from the conservatee.

2.4 The average vehicle is a depreciating asset which also incurs storage costs. Accordingly, it is usually in the best interest of the estate to sell the vehicle. Absent some clear business reason, it is not prudent for the Public Guardian to keep a vehicle in storage for a lengthy period of time. The Public Guardian could be subject to a surcharge if storage costs are later determined by the Court

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to have been unnecessarily incurred.

POLICY:

3.1 Any vehicle under the control of the Public Guardian must be towed to the Public Administrator/Public Guardian Warehouse for safekeeping

3.2 Due to the depreciating nature of this asset, a decision must be made on the disposition of any vehicle within 30 days of the Public Guardian's appointment as permanent conservator.

3.3 Vehicles must be inventoried before they can be sold.

3.4 Court authority to sell vehicles must be secured on all LPS cases and on any Probate case in which the aggregate value of the personal property to be sold is $5,000 or more.

DEFINITIONS:

4.1 "Vehicle" includes automobiles, trucks, pick-ups, SUVs, motorcycles, recreational vehicles (RVs), boats and trailers.

4.2 "Pink slip" is a Certificate of Ownership for a vehicle or trailer.

4.3 A "Certificate of Non-Operation" is a form that is submitted to the California DMV indicating that a vehicle will not be driven for a particular period of time.

PROCEDURES:

5.1 Determination of Ownership

Whenever it is reported that a conservatorship estate has a vehicle, the assigned deputy must verify the ownership before it is brought into the Public Guardian storage facility. The following are examples of conservatee ownership.

5.1(a) A Certificate of Ownership will indicate if a vehicle is owned by the conservatee.

5.1(b) The Registration Certificate usually found in a vehicle will indicate the name and address of the registered owner. The Certificate will also indicate if there is a lien holder.

5.1(c) Verification of ownership may be secured through the DMV by requesting a check of the license plate number.

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5.2 Title Issues Related to Vehicles

If there is no Certificate of Ownership and the Registration does not list the conservatee's name, there is an issue of ownership.

5.2(a) If a conservatee claims a vehicle as his/hers, but is not shown on the registration, the registered owner should be contacted to determine if there was a sales transaction. If the registered owner indicates that there was an actual sale the Deputy Public Guardian shall obtain the bill of sale and submit the original to DMV while filing a copy in the case folder.

5.2(b) In the event the registered owner of a vehicle claimed by a conservatee cannot be located, the vehicle should not be marshaled, since taking possession of the vehicle may cause the Public Guardian potential liability. In such circumstances, the Supervising Deputy should be immediately notified of the problem and document his/her findings in the case record.

5.3 Taking Possession of the Vehicle

Once the title has been determined, the vehicle must be towed into storage.

5.3(a) A Vehicle Referral form will be used to request the Public Administrator's Property Management Section to tow the vehicle to the PA/PG Warehouse.

5.3(b) Based upon the Vehicle Referral request, Property Management will have the vehicle towed to the PA/PG Warehouse. It will not be driven under any circumstances, due to potential liability issues.

5.3(c) Once a vehicle has been marshaled, it will be posted to the computer system. It must then be appraised and inventoried. To initiate the process, the Deputy will send a request to the Conservator/Administrator Assistant (CAA) Unit.

5.4 Disposition of the Vehicle

Vehicles are considered depreciating assets. Once a vehicle is towed to the PA/PG Warehouse, the assigned deputy must make a decision as to disposition of the vehicle.

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5.4(a) If the conservatee does not wish to sell the vehicle, and may have future use for it, retaining it in storage must be considered.

5.4(b) If the conservatee will have no future use for the vehicle, and if the vehicle is specifically bequeathed to a family member, consideration must be given to seeking Court authorization to distribute the vehicle directly to the family member, rather than storing it at the expense of the conseratee's estate.

5.4(c) If the conservatee will have no future use for the vehicle, and if it is not specifically bequeathed immediate steps should be taken to sell the vehicle. The sale must first be discussed with the conservatee. The conservatee's wishes, and their capacity to make an informed decision in the matter, should be documented in the case file and on the case narrative.

5.5 LPS Conservatorship

5.5(a) Due to the nature of LPS conservatorship, a Court Order must always be sought for authority to sell or abandon a conservatee's vehicle. Prior to requesting such authority, the sale must be discussed with the conservatee to determine if he/she wants to sell the vehicle. The results of the conversation shall be documented in the case record.

5.5(b) A written request to County Counsel will then be submitted to petition the Mental Health Court for authority to sell or abandon the vehicle. The conservatee's wishes will be reported in the request along with a breakdown of the costs associated with retaining the vehicle, including potential storage charges

5.5(c) Once Court authority is attained, the Public Administrator's Property Management Section will be directed to sell or abandon the vehicle.

5.6 Probate Conservatorship

5.6(a) If the vehicle is the conservatee's only personal property and if the value of the vehicle is less than $5,000, the conservator has the authority to sell the vehicle without requesting Court authorization, confirmation or direction. In such cases, the Deputy will first verify that the vehicle has been Inventoried and

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Appraised. If it has been, the Public Administrator's Property Management Section will be directed to sell the vehicle. The decision to sell the vehicle and the instructions to the Public Administrator must be documented in the case record.

5.6(b) If the vehicle is worth more than $5,000, or is being sold with other personal property so that the aggregate value is more than $5,000, then Court authority must be secured prior to any sale.

5.6(c) If the vehicle is considered worthless, the conservator may request Court authority to abandon the vehicle.

5.6(d) All requests to the Court for authority to sell or abandon a vehicle must include information on the conservatee's wishes in the matter and a breakdown of the costs which would be associated with retaining the vehicle. Special care must be taken to include all current and potential storage charges.

5.6(e) Once Court authority is obtained, the Public Administrator's Property Management Section will be instructed to sell the vehicle or abandon it. As noted above, the instructions to the Public Administrator shall be thoroughly documented in the case record.

5.7 Disposition of the Proceeds of Sale

Vehicles are sold via public auction. When the sale occurs, expenses, such as storage charges, the cost of auctioning the vehicle, and various costs associated with the auction process will be deducted from the gross proceeds. The net proceeds from the sale will be deposited in the conservatee's trust account.

AUTHORITY: Probate Code Section 2541, 2542, 2545,2547

FORM: Vehicle Referral

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SUBJECT: **TERMINATIONS BY DEATH**	POLICY NO. **4.21**	EFFECTIVE DATE **12/01/2006**	PAGE **1 of 8**
APPROVED BY: Deputy Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S)

PURPOSE:

1.1 To establish procedures for processing cases at the time of a conservatee's death.

POLICY:

2.1 Public Guardian staff will handle each conservatee's death with dignity and respect.

2.2 Family members will be notified of the death as quickly as possible so funeral arrangements can be discussed with them if they so desire.

2.2(a) Pre-need arrangements will be followed to the extent possible.

2.2(b) When making final arrangements, family preferences will be honored to the extent possible.

2.2(c) When making final arrangements, Public Guardian staff will comply with the tenets of the decedent's religion, or his family's religion when that information is known.

2.3 In the event a conservatee has no known relatives and no pre-need arrangements, the assigned Deputy will contact the Los Angeles County mortuary for disposition of the remains.

2.4 The Public Guardian shall not authorize cremation unless the decedent left written instructions expressing a desire for cremation, the decedent made pre-need arrangements for a cremation, or the next of kin completes written affidavits authorizing it.

2.5 The Public Guardian does not have legal authority to authorize an autopsy. Only the next of kin, the County Coroner or the County Curator of the Unclaimed Dead can authorize an autopsy.

2.6 The Court, County Counsel, Accounting and, when appropriate, the Public Administrator's Property Management Section, must all be notified of the death within 3 working days. Of the occurrence.

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2.7 If there are any assets that require marshalling, the assigned Deputy will make arrangements to secure those assets within 15 working days of the conservatee's death.

2.8 All decedent conservatorship cases will be transferred to the Closing Desk within 1 business day.

2.8(a) All requests for Final Accountings on decedent cases will be initiated by the Closing Desk Deputy.

2.8(b) Prior to requesting the Final Accounting, the Closing Desk Deputy will determine whether there is a will with a named executor.

2.8(c) If there isn't a will, it will be determined whether the Estate may be distributed pursuant to a 13100 declaration or whether it must be referred to the Public Administrator.

2.9 All Final Accountings for Public Guardian cases will be completed by the Public Guardian's Accounting Unit.

PROCEDURES:

3.1 When a conservatee dies, the assigned Deputy must immediately notify the family by telephone or registered mail. Verification of the notification must be filed in the case folder.

3.2 If there are pre-need arrangements, the assigned Deputy must contact the designated mortuary and arrange for the release of the remains to them.

3.2(a) Family members should be advised of the arrangements and be put in contact with the designated mortuary.

3.3 If there are not any pre-need arrangements, the Deputy must consult with known family members to determine if they have any preferences regarding the choice of mortuary, cemetery and/or marker.

3.3(a) The Deputy must advise the family of the funds available to pay the final expenses. If a family member wishes to supplement the cost of the funeral expenses, the Deputy should still consult with the mortuary to confirm the responsibilities and liabilities of each party. All such discussions must be documented in the case file.

3.4 If there are not any pre-need arrangements and no family member is willing to assist with the funeral, the Deputy must make final arrangements based upon the funds available in the decedent's Estate.

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3.4(a) If there are sufficient funds in the estate to pay for a funeral and/or burial, the Deputy is to refer the case to the CAA Unit.

3.4(a)(1) CAA staff will then use the Public Administrator's rotational list to select a mortuary and cemetery.

3.4(b) If there are insufficient funds in the Estate to pay for a funeral and/or burial, the Deputy is to refer the case to the CAA Unit to arrange for a "County disposition."

3.4(b)(1) CAA staff will then make arrangements for the disposition through the County morgue.

3.4(c) When the Public Guardian staff has made the final arrangements, family and other interested parties (e.g., friends, care providers) shall be advised of them.

3.5 It is sometimes possible, when a conservatee has little or no estate, for a Deputy to make funeral arrangements on a "scholarship" basis through a church or synagogue. As such an arrangement would be made outside the usual procedures, it must be fully documented in the case narrative to avoid any appearance of impropriety.

3.6 In addition to family, the Deputy must notify other parties of the conservatee's death.

3.6(a) The Accounting section must be notified to stop all budgeted payments and receipts.

3.6(a)(1) Any payments made on a case after the conservatee's death are to be made by check request.

3.6(a)(2) After a conservatee's death, all benefit payments to which the estate is not entitled must be returned to the benefit provider.

3.6(b) If the conservatee had real property on which Letters of Conservatorship were recorded, the County Recorder must be sent notification of the conservatee's death.

3.6(b)(1) If there was real property in the conservatorship, the Public Administrator's Property Management Section must also be notified of the conservatee's death.

3.6(c) Interested parties outside the Office are to be notified of the conservatee's death. Accordingly, the Deputy is to initiate a request to the CAA for "no interest" letters to be sent to the following individuals or entities.

3.6(c)(1) The payor of any source of income or benefit.

3.6(c)(2) The last residence of the conservatee, usually a care facility.

3.6(c)(3) All known relatives of the conservatee.

3.6(d) The Deputy must also notify the Court and County Counsel of the death of a conservatee. Notice should be in written form with a copy filed in the case folder.

3.7 When notified of a conservatee's death, the assigned Deputy must take action on various Estate matters.

3.7(a) The Deputy must determine if there is cash in a patient trust account or valuable personal property at the placement facility.

3.7(a)(1) If there is a patient trust balance, the Deputy must direct the facility to immediately send the balance to the Public Guardian.

3.7(a)(2) If there is personal property of value at the facility, the assigned Deputy must make arrangements with the Property Supervisor to pick up the property.

3.7(a)(3) If the personal property is of no value, arrangements must be made to dispose of the property, usually by donating it to the facility.

3.7(a)(4) If there is known family, any disposal of personal effects should be made only after consulting with them. Property that has only sentimental value may be released to family members directly, as long as a receipt is provided.

3.7(b) The assigned Deputy must request closing bills from care facilities and any other known service providers.

3.7(c) The Accounting Unit must be notified of the death so that any checks to which the estate is not entitled can be returned to the originator.

3.7(d) The assets of the Estate must be reviewed to determine what actions must be taken to preserve them. These actions may include safeguarding any real property or personal property.

3.7(d)(1) If there are sales of property pending they must be cancelled.

3.7(d)(2) Any property in the Estate should be placed in "hold" status on the computer.

3.7(e) Once the foregoing actions have been taken, the case should be transferred to the Closing Desk.

3.8 Upon receipt of a decedent case, the Deputy on the Closing Desk must review it to determine what is needed for a Final Accounting to be prepared.

3.8(a) A determination must be made of whether there is a will.

3.8(a)(1) If there is a will with a named executor, the Deputy must notify the executor of the death of the conservatee.

3.8(a)(2) The Deputy must also advise the executor that certified Letters of Administration will be necessary before the Public Guardian can proceed with the Final Accounting or distribution of assets.

3.8(b) If the conservatee was a recipient of Medi-Cal benefits, the Closing Deputy must send written notification to the Department of Health Services. In some cases, the Department of Health Services may file a claim against the Estate.

3.8(c) Per the Probate Code, the Public Guardian is to pay the expenses of the last illness and the funeral expenses of a deceased conservatee with funds from the conservatee's trust account. The Closing Desk Deputy must see that these expenses are paid within the legally prescribed time frame prior to requesting preparation of the Final Accounting.

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3.8(d) Payment should also be made for any previously approved conservator and/or attorney fees.

3.8(e) The Public Administrators Accounting Section requires that the Public Guardian provide them with a plan for the distribution of all remaining estate assets before they will prepare the Final Accounting. It is up to the Deputy on the Closing Desk to prepare an acceptable plan for the distribution of the conservatee's assets.

3.8(e)(1) If the estate is to be probated pursuant to a will, the executor/administrator must provide the Deputy with certified Letters of Administration. The Letters are then sent to the Accounting Section with the request for the Final Accounting.

3.8(e)(2) If there is no real property and the value of the Estate is less than $100,000, the assets may be distributed without a formal probate of the Estate. When this occurs, the Closing Deputy must secure 13100 affidavits from all persons entitled to inherit from the Estate. The notarized affidavits are then sent with the request for Final Accounting.

3.8(e)(3) If there is real property or the value of the estate is otherwise over $100,000, and there is no one named and/or willing to act as Executor, the case shall be referred to the Public Administrator. A statement verifying the Public Administrator's willingness to handle the case must then be sent with the request for the Final Accounting.

3.8(e)(4) If there is no will, and no one to complete a 13100 affidavit, and the estate is under $100,000, the case may be referred to Final Accounting with the State Department of Health Services claim attached. After fees are paid, any remaining funds will be

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remitted to DHS in partial payment of their claim.

3.8(e)(5) If the Estate is minimal, but includes personal property, the Closing Deputy must request authority to sell the property. If the request is granted and the property is sold, the Final Accounting may then be requested.

3.9 In order for the Public Guardian to be fully discharged from the conservatorship, a Final Accounting must be filed with, and approved by, the Court.

3.9(a) All Public Guardian accountings are prepared by the Public Guardian's Accounting Section, and filed with the Court by County Counsel.

3.9(b) All accountings are prepared in accordance with approved accounting practices.

3.9(c) Final Accountings for deceased conservatees must essentially cover 3 major areas.

3.9(c)(1) Payments of debts or creditors claims.

3.9(c)(2) Approval of fees and costs for the conservator and Counsel.

3.9(c)(3) Approval of the distribution plan for the assets remaining in the estate after the debts and fees have been paid.

3.10 When the Order approving the Final Accounting is received, it is to be routed to the Public Administrator's Distribution Unit.

3.10(a) Distribution Unit staff will pay any Court ordered fees and costs to Public Guardian, County Counsel or other outside Counsel (i.e., Public Defender, PVP attorney, etc.)

3.10(b) Distribution Unit staff will then distribute all remaining estate funds in accordance with the Court order.

PUBLIC GUARDIAN POLICY/PROCEDURE

SUBJECT:	POLICY NO.	EFFECTIVE DATE	PAGE
TERMINATIONS BY DEATH	**4.21**	**12/01/2006**	**8 of 8**

3.11 Any and all actions taken in the closing of the conservatorship case must be documented on the Public Guardian's computer system in a thorough and timely manner.

AUTHORITY: Probate Code Sections: 1860, 2630, 2631, 13100

County of Los Angeles Test Claim
Public Guardian Omnibus Conservatorship Reform

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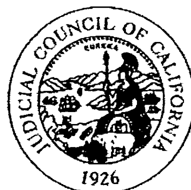
Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases

FINAL REPORT OF THE PROBATE CONSERVATORSHIP TASK FORCE

OCTOBER 2007



JUDICIAL COUNCIL OF CALIFORNIA

PROBATE CONSERVATORSHIP TASK FORCE

Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases

FINAL REPORT OF THE PROBATE CONSERVATORSHIP TASK FORCE

JUDICIAL COUNCIL OF CALIFORNIA

PROBATE CONSERVATORSHIP TASK FORCE

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Introduction to the Probate Conservatorship Task Force Recommendations

Background

In the years ahead, California will face a sharp increase in the age of the state population, which will affect the need for a well-resourced and well-managed probate conservatorship system. According to the California Department of Aging, while the total population will approximately double in size between 1990 and 2040, the oldest old (age 85 and older) will experience nearly a six fold increase, growing from just under 300,000 to over 1.7 million persons.[1] While courts are facing this growing caseload, it has become apparent that judicial officers, court staff, and justice partners are often hampered in their responsibility to protect conservatees due to lack of resources and, in some cases, gaps in existing statutes, rules, and guidelines.

Recognizing the challenges facing the probate conservatorship system, in January 2006 Chief Justice Ronald M. George announced the appointment of a statewide task force to make recommendations to improve the management of probate conservatorship cases in California trial courts. As Chief Justice George stated when he initially appointed the task force members: "Conservatees are vulnerable members of society who enter our system with the expectation that they and their property will be protected by a fair judicial system pursuant to a high standard of fiduciary duty. The task force will seek to improve the quality of service to and protection of conservatees by strengthening the accountability of private and family conservators and improving the courts' oversight of these cases." The task force is chaired by Administrative Presiding Justice Roger W. Boren of the Court of Appeal, Second Appellate District (Los Angeles).

Areas of Inquiry

The official charge of the task force is to:

> Seek input from a broad range of interested and affected stakeholders about how to improve the practices, procedures, and administration of probate conservatorship cases, including:
>
> - Conservatees;
> - Private professional conservators, guardians, and fiduciaries;
> - Family members, including those appointed as conservators;
> - Attorneys who represent conservators and conservatees;
> - Advocacy groups; and
> - Judicial officers and court staff;

[1] California Department of Aging, "The Aging Baby Boomers: Influence on the Growth of the Oldest Old," *www.aging.ca.gov/html/stats/oldest_old_population.html* (accessed September 25, 2007).

Perform a comprehensive review of:

- The law governing conservatorships established under the Probate Code, including the current statutes, case law, rules of court, ethical constraints, standards of judicial administration, and related forms and procedures, as well as the best methods now used in the courts' management of conservatorship cases;
- The assignment of judicial officers to handle conservatorship cases, including any education, training, and other prerequisites for such assignments;
- The laws, practices, and procedures of other jurisdictions, including any national standards that may exist, that pertain to conservatorships, guardianships, or other protective arrangements involving court oversight of dependent adults;
- The educational and training programs on probate conservatorships that are currently being provided for judicial officers and other court personnel through the Education Division/Center for Judicial Education and Research (CJER) of the Administrative Office of the Courts (AOC) or other sources; and
- The staffing and other court resources currently being utilized for probate conservatorships, including investigator, examiner, and attorney positions;

- Make recommendations to the Judicial Council for reforms and improvements to the overall system of conservatorship administration—including but not limited to changes to legislation,[2] rules of court, funding, education, and training—in order to enhance services provided for, and more effectively prevent and deter abuse of, conservatees;

- Create model guidelines for probate courts' practices and procedures in the handling of conservatorship cases; and

- Make other recommendations to the Judicial Council that further the purposes of the task force.

Methodology

The task force's initial efforts included selecting meeting dates, locations, and communication methods that would allow the public access to the task force's process; scheduling two full-day public hearings to give the task force members an in-depth

[2] While the task force was beginning its work, a four-bill package of conservatorship reform bills was introduced in the Legislature. The task force worked closely with the Legislature throughout this process to help ensure that the proposed reforms that were designed to improve the judicial branch's oversight of probate conservatorship cases were workable for the courts. On September 27, 2006, Governor Arnold Schwarzenegger signed into law the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Omnibus Act). (See Appendix B for a summary of some of the key provisions of each of the bills.)

background into the problems faced by users of the conservatorship system; establishing procedural rules for meetings; and organizing three working groups, each with assigned responsibilities and reporting deadlines. The key elements of each of these approaches are described below.

In order to produce recommendations reflecting the broadest possible input, the task force meetings were open to the public, with each agenda including time for public comment. Dedicated voicemail box and e-mail addresses were created to allow interested persons to provide information and materials to the task force. The task force charge, notice of meetings, agendas, minutes, and other materials are posted on the judicial branch's public Web site at *www.courtinfo.ca.gov/jc/tflists/probcons.htm.*

Two public hearings were convened by the task force early in the process. The first hearing was held on March 17, 2006, in Los Angeles at the Ronald Reagan State Building and the second on March 24, 2006, in San Francisco at the Administrative Office of the Courts. Panelists providing testimony at the public hearings included judicial officers, attorneys, adult protective services staff, adult abuse prevention professionals, fiduciaries, a law enforcement officer, mediators and investigators, representatives from the statewide public guardians association, and related experts. Written testimony of these speakers is available to the public on the task force's Web site. The comments and testimony were summarized on a matrix for the members' review and are attached to this report as Appendix A. At the March 17 hearing, 8 members of the general public testified, some on behalf of particular organizations, and on March 24, 11 members of the general public provided testimony.

All task force members participated in at least one of three working groups. The name and focus of each working group is described below.

1. Rules and Laws: The Rules and Laws Working Group was charged with researching, reviewing, and making recommendations regarding statutes and rules of court that relate to conservatorship proceedings, including statutes enacted in the 2006 legislative session.

   The working group reviewed current laws and pending legislation, statewide rules of court, local rules of court from six selected courts (Superior Courts of Alameda, Los Angeles, Orange, Sacramento, San Diego, and San Francisco Counties), and recommendations for change from task force witnesses and the Judicial Council's Probate and Mental Health Advisory Committee concerning the following general topics:

   - Appointment of temporary conservators;
   - Appointment of general conservators, including appointment of counsel;
   - Role of court investigators; and
   - Accounts and reports of conservators.

Three additional topics—private professional conservators, fees of conservators and their attorneys, and powers of conservators and restrictions or incapacities imposed on conservatees—were also reviewed.

2. Education and Training: The Education and Training Working Group was charged with (1) reviewing the education and training programs on probate conservatorships currently being provided for judicial officers and other court personnel through the AOC's Education Division/CJER or other sources and (2) recommending changes in education and training to enhance services provided for conservatees and to more effectively prevent and deter their abuse.

3. Comparative Jurisdiction and Best Practices: The Comparative Jurisdiction and Best Practices Working Group was charged with (1) review of "model" conservatorship statutes adopted by other states or similar foreign jurisdictions and (2) recommendation of best practices and procedures for the state's probate courts to follow in implementing the present statutory scheme.

   The working group reviewed probate conservatorship practices and legislation in several states to determine what practices and procedures could be of help in California. Selected best practices in the management of probate conserveatorships were researched and reviewed, along with new ideas for the implementation of existing statutes. The working group met with representatives from the Administrative Office of the Courts of Arizona to focus on what they learned in recent restructuring of that state's conservatorship practices.

   The working group also met with representatives of the Superior Court of Alameda County to discuss implementation and use of their general plans for conservatees. In addition, the working group met with probate judges from across the state during the Probate and Mental Health Institute in November 2006. Three break-out sessions with probate judicial officers, court investigators, and attorneys were conducted in which practice experiences and ideas for better practices were shared.

Each of the working groups presented to the entire task force their respective recommendations, which were discussed and refined and form the basis for the overall recommendations contained in this report.

Guiding Principles

Development of the task force proposals was guided by reference to key underlying principles as well as to goals previously established by the Judicial Council. The task force determined that the proposals should be framed to further the following objectives:

- Promote the safety of conservatees;
- Ensure accountability of private and family conservators;

- Improve accessibility to the courts for the parties by maximizing convenience, minimizing barriers, and ensuring fairness for a diverse population;
- Promote the use of technology to enhance the administration of justice in cases involving conservatorships; and
- Emphasize the need for adequate resources.

These overarching principles are consistent with and derived from the Judicial Council's strategic plan and three of its primary goals: Goal I—Access, Fairness, and Diversity; Goal III—Modernization of Management and Administration; and Goal IV—Quality of Justice and Service to the Public. Moreover, these principles fit squarely within several of the thematic areas targeted by the council as part of its continuing efforts to improve public trust and confidence in the California courts: barriers to taking a case to court, diversity and the needs of a diverse population, and fairness in procedures and outcomes.

Findings

With input from the public hearings, other communications from interested parties, and research from a variety of jurisdictions, the task force identified a number of areas that need improvement in the management and administration of the probate conservatorship system in California.

As discussed in the body of the report, the task force finds there is a need for improved oversight and accountability measures in order to:

1. Ensure that temporary conservatorships are not unnecessarily granted;

2. Make notice requirements more informative and effective;

3. Ensure that the conservatorship is the least restrictive alternative for the conservatee;

4. Ensure adequate access to information for all of the interested participants;

5. Make increased and better use of short- and long-term care plans;

6. Ensure that there is a system to prevent fraud and improper handling of conservatees' assets;

7. Ensure that the conservatee is being taken care of properly through personal visitation;

8. Ensure that all participants are aware of, and are protecting, the conservatee's rights;

9. Obtain and allocate adequate funding on statewide and local levels for all entities that support the conservatorship process;

10. Adequately train and educate conservators, attorneys, court staff, and judicial officers;

11. Expand self-help services to include help for conservators and families of conservatees;

12. Ensure that conservatees' rights are adequately protected through representation of counsel; and

13. Ensure adequate oversight of both nonprofessional and private professional conservators.

Comment Period

The task force sought comment on its draft recommendations from the judicial branch, family and private professional conservators, public guardians, other stakeholders involved in conservatorships, and the public. The comment period was from April 30–June 29, 2007.

The number of comments received from 37 persons and entities totaled 204. The task force reviewed each submission and responded to all comments that were specific to the recommendations. In many cases, the recommendations were revised to reflect the commenters' concerns or suggestions.

Recommendations

The task force, in developing its recommended practices, acknowledges that improving the administration of justice in conservatorship cases must be a systemic endeavor. Moreover, some of these proposals are detailed and technical in nature because systemic problems often require a detailed analysis and approach. The task force also wishes to emphasize that implementation of some of its proposals will require additional resources—in some cases, a considerable funding investment. The members believe, however, that scarce resources should not serve as a limiting factor at this stage of the process and recognize that some of the recommended system improvements may take a number of years before they can be attained.

It is also important to note that, although some recommendations require changes in legislation or rules of court, many are concerned with how courts manage their probate conservatorship programs and are suggested guidelines, practices, and procedures. The task force members believe that each court should have the opportunity to adopt recommendations in a time frame and manner that is compatible with its local circumstances and resources. The task force hopes that its recommendations will help stimulate new ideas and creative methods to improve the overall management of conservatorship cases in California.

The task force, therefore, recommends that the Judicial Council accept this report and direct the Administrative Director of the of the Courts to move as expeditiously as

possible to work with the appropriate advisory committees or other entities to implement these recommendations and return to the council for further action if necessary.

Recommendations

Preconservatorship

1. Order for expedited investigation

The Judicial Council should sponsor or support legislation and, if necessary, adoption of rules of court or Judicial Council forms to create and implement a procedure under which a public guardian or public conservator could apply on an expedited basis for a court order authorizing that officer to conduct a preliminary prefiling investigation into a person's medical condition or finances in order to determine whether a petition for appointment of a probate conservator would be necessary or appropriate for the person's protection. Recommended features of this procedure would include:

- Provisions in the order authorizing identified medical service providers to disclose private medical information concerning the person for the limited purposes of the investigation sufficient to qualify the disclosure under federal medical privacy regulations such as the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No.104-191) (HIPAA);
- Provisions in the order authorizing identified financial institutions or advisors, accountants, and others to disclose the person's financial information for the limited purposes of the investigation;
- A requirement that medical or financial information would be kept confidential, except as disclosed in a judicial proceeding;
- A requirement that the public guardian or conservator must meet a clear threshold of probable cause to believe that the person is in substantial danger of abuse or neglect for which the officer's intervention may be an appropriate remedy;
- Provision for prior notification to the person of the proposed investigation and application, in the absence of facts showing an immediate threat of substantial harm to the person if notice is given; and
- Provision for destruction of the information obtained during the investigation if a conservatorship proceeding is not commenced within a specified period of time.[3]

[3] Assembly Bill 1727 (Committee on Judiciary), as amended August 27, 2007, contains language that would implement this recommendation. AB 1727 was enrolled and sent to the Governor on September 13, 2007.

Temporary Conservatorships[4]

2. Standardized ex parte application

A standardized ex parte application for a temporary conservatorship should be developed. The application should require a clear statement of the circumstances that are alleged to constitute an "imminent danger" or "substantial harm" to the proposed conservatee's life, health, and/or estate. With respect to estates, there should be a showing of the danger of the immediate dissipation of all or any part of the proposed conservatee's estate.

3. Review of report

A temporary conservatorship of a person should not be established before trial court review of a written report from the probate investigator[5] or a court-appointed attorney, unless the court finds that waiting for a report would cause substantial harm to the proposed conservatee. The goal of this effort is to eliminate unnecessary ex parte appointments.

4. Disclosure of medical information

The Legislature should clarify state law concerning the authority of a health-care provider to disclose confidential medical information regarding a conservatee or proposed conservatee to a court investigator in the course of the investigator's temporary conservatorship investigation or general conservatorship initial or review investigation. The Judicial Council should adopt rules of court or forms as necessary to implement an expedited procedure authorizing the trial court to order the health-care provider to disclose such information to a court investigator under federal medical privacy regulations such as HIPAA.[6]

5. Due diligence to find relatives

Every petition to establish a temporary conservatorship should include a declaration of due diligence showing efforts to (1) find the proposed conservatee's relatives and (2) ascertain the preferences of the proposed conservatee or why it was not feasible to do so.[7]

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[4] This section contains a number of recommendations that also apply to the establishment of general conservatorships, as noted.
[5] Probate Code section 2250.6 currently requires that the court investigator provide a written report to the court either prior to or within two court days of the establishment of a temporary conservatorship.
[6] AB 1727, if enacted, would codify these recommendations.
[7] AB 1727, if enacted, would codify this recommendation. These due diligence requirements are also intended to apply in general conservatorship cases. Senate Bill 800 (Corbett), as amended June 21, 2007, contains language that would codify that recommendation. As of the writing of this report, SB 800 was pending in the Assembly Appropriations Committee and is not eligible for enactment this year.

6. *Ex parte appointment follow-up hearing*

In cases where there is an ex parte (no notice) appointment based on allegations of substantial harm to the proposed conservatee, there must be a follow-up hearing within 5 court days[8] or a procedure for calendaring a court review on 2 days' notice, with notice to second-degree relatives. The task force believes it is a better practice to set a review hearing in advance rather than await a calendared hearing by someone objecting to the temporary conservatorship. Setting a review hearing automatically allows for quicker review by the court. If a temporary conservatorship is to be granted on an ex parte basis, the court should be required to state factual findings in the order demonstrating the nature of the immediate harm or danger that established good cause to waive notice to the conservatee.

7. *Least restrictive alternative declaration*

Every petition to establish a temporary conservatorship should include a declaration as to why a Probate Code section 3201 et seq. petition (petition to determine capacity to make a health-care decision) is not the least restrictive alternative in lieu of a conservatorship. This declaration should be submitted on the Judicial Council *Confidential Supplemental Information* form (form GC-312).

8. *Digital cameras*

Probate investigators should be provided with digital cameras to document assets and the condition of the proposed conservatee at the initial and all subsequent investigations for possible fraud prevention. Each court should establish internal procedures to ensure the chain of custody and integrity of the digital product so that it will qualify as an official record within the meaning of Evidence Code section 1280.

9. *Specific conservator powers*

The petition and supporting documents must demonstrate a nexus between the powers requested and the need for interim protection, and the order granting temporary conservatorship must list the specific powers granted.

10. *Waiver of notice on good cause*

When waiver of notice on good cause is permitted by the Probate Code, judicial officers should allow such waiver only on a clear showing of imminent harm or urgent necessity. Notice for any temporary conservatorship proceedings should only be waived in the rarest of circumstances, and the proceedings should be delayed where possible. The California Rules of Court should be amended to clarify these requirements.[9]

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[8] Probate Code section 2250(f) currently provides a procedure for the review of a petition to terminate a temporary conservatorship within 15 days.

[9] Probate Code section 2250(j) requires the Judicial Council, by January 1, 2008, to adopt a rule of court delineating what constitutes good cause for waiver of notice in temporary conservatorships.

Establishment of General Conservatorships

Notice

11. Supplemental e-mail notice

Legislation should be pursued to provide for supplemental e-mail notice to all who request it in conservatorship matters, similar to the statutory scheme implemented in Arizona. The courts in Arizona are required to provide e-mail notice of all conservatorship proceedings to those who have requested it. The task force recommends that this capability should be incorporated into the statewide case management system. This supplemental e-mail notice is not intended to replace currently required statutory notice provisions.

12. Expanded information on notices

Statutory notice provisions should be expanded to disseminate more information about the conservatorship to the conservatee and family members, including the inventory and appraisal and all accountings. The task force believes that animosity between conservators and family members frequently arises due to the lack of information and transparency. However, in drafting provisions for expanded notice, a mechanism to balance the need for transparency against the privacy considerations of both the conservatee and, where appropriate, the conservatee's spouse should be included.

13. Consistent report distribution

Probate Code sections 1826 and 1827.5 should be made consistent with respect to the provision of reports to proposed conservatees. The regional center report in limited conservatorship cases is currently required to be given to the proposed conservatee, which is not the case with the court investigator's report in general conservatorships.[10] A provision should also be included to allow the court to waive service of the investigator's report on the proposed conservatee upon a showing of harm to the conservatee and/or the conservatee's estate.

14. Fifteen-day notice period before move from principal residence

The Judicial Council should sponsor or support legislation to amend Probate Code section 2352 to replace the current prior notice–only provisions of that section with a requirement that the conservator must obtain court approval, with 15 days' prior notice to the persons now identified in section 2352(e)(3), unless an emergency requires a shorter period of notice, before moving the conservatee from his or her principal residence at the commencement of the conservatorship, except in cases

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[10] Probate Code section 1826(*l*)(3), as amended by the Omnibus Act, now requires the investigator's report to be provided to the proposed conservatee.

where the move is necessary to secure emergency medical treatment for the conservatee.[11]

Reports and Information

15. Required submission and handling of reports from attorneys, investigators, and regional centers

Court-appointed attorneys should be required to file and serve written reports, in conformance with the courts' guidelines, 5 days before hearings, consistent with existing requirements for reports by court investigators and regional centers. There should be no appointment of a conservator without a probate investigator's report and a written report from a court-appointed attorney, unless waiting for a report would cause substantial harm to the proposed conservatee. Specifically, the requirement that the report be filed 5 days before the hearing should be strictly enforced by the courts. The practice of accepting oral reports at hearings should be discouraged. Courts should make a practice of continuing hearings where reports are not timely filed, if possible, so that court investigators and examiners have an opportunity to review the reports and advise the court before the hearings.

16. Inventory and appraisal monitoring

Each court should establish monitoring procedures to ensure that the inventory and appraisal is filed within 90 days of establishment of the conservatorship. Courts may monitor either by setting review hearings, which may be taken off calendar on the filing of the inventory and appraisal, or by an internal monitoring system.[12] In either event, on the failure to file an inventory and appraisal, the courts should follow the procedures found in Probate Code section 2614.5 and issue an appropriate order to show cause. The statute, in subdivision (c), currently provides that the procedures are optional, but it is recommended that courts treat the procedure as mandatory except in circumstances where an order to show cause would clearly not be appropriate. It is the task force's view that the first 90 days of a conservatorship are the time frame in which the assets of conservatees are at the greatest risk and that the requirement of timely filing of the inventory and appraisal will help deter loss. The task force notes that the Judicial Council's current efforts to create a statewide case management system may include the capability for the trial courts to perform the necessary monitoring.

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[11] SB 800 contains language that would codify this recommendation.
[12] AB 1727, if enacted, would codify these recommendations.

Recommendations From Court Investigators

17. Least restrictive alternative recommendation

Court investigators should include in their reports recommendations on the least restrictive alternative for the proposed conservatees.

18. Specify powers to be granted

Court investigators should include in their reports specific recommendations as to which Probate Code sections 2351, 2351.5, and 2591 powers being sought by petitioners should be granted and which should be denied. This practice will assist the court in determining whether to include in its order either limitations on the conservator's powers or a separate listing of the powers granted, as provided in Probate Code section 2351(b).

Findings, Orders, and Reports

19. Due diligence to find relatives

Every petition to establish a conservatorship should be accompanied by a declaration of due diligence showing the petitioner's efforts to both find the relatives of and to ascertain the preferences of the proposed conservatee.[13]

20. Finding of impaired mental function

The Judicial Council should revise the *Order Appointing Probate Conservator* (form (GC-340) to provide for a finding that one or more of the general conservatee's mental functions described in Probate Code section 811(a) is impaired and that this deficit, alone or in combination with other mental function deficits, renders the conservatee unable to provide properly for his or her personal needs for food, clothing, or shelter (conservatorship of the person) or manage his or her financial resources or resist fraud or undue influence (conservatorship of the estate).

21. Least restrictive alternative finding

Legislation should be sought to require in every case a finding stated on the record by the judge that the conservatorship is the least restrictive alternative and that the conservatee lacks capacity. A clear statement of required findings that must be made on the record, in open court, in order to establish a conservatorship should be delineated. The requirements for findings, on the record, should also be addressed in judicial education programs for probate judges and commissioners.

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[13] AB 1727, if enacted, would codify this recommendation.

22. Least restrictive alternative process

Courts should implement processes to ensure that the least restrictive alternative is addressed in every conservatorship case. The issue of least restrictive alternative should be discussed thoroughly by court-appointed counsel in their reports and should be the subject of a separate section in court investigators' reports.

23. Independent powers of conservators and guardians

Legislation should be pursued to amend Probate Code section 2590, concerning the independent powers of conservators and guardians, to list only those powers that these fiduciaries do not already possess under the general authority of their appointments.[14]

Care Plans

24. Care plan requirement

Each court should require the submission of a care plan,[15] like that in use in the Superior Courts of Alameda and Orange Counties, by the conservator of the person and/or estate. (See the Alameda County and Orange County care plans attached to this report as Appendix F.) In addition to planning for the care of the conservatee, the plan should include an estimate of the conservator's fees for the first year, which can be a good tool for the court in situations where the fees billed significantly exceed the estimate. Each follow-up report by the conservator should also contain an estimate of fees for the upcoming report period.

25. Care plan service

The required care plan, coupled with the inventory and appraisal, must be filed and served within 90 days on all persons required to be listed in the original petition, or an order to show cause will automatically issue.

26. Care plan form

The Judicial Council should adopt a uniform, mandatory Judicial Council form for the submission of care plans. The existing level-of-care evaluation should be combined with the care plan in one form.[16]

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[14] AB 1727, if enacted, would codify this recommendation.
[15] SB 800 contains language that would require a care plan and follow-up report be submitted for every conservatee.
[16] SB 800 contains language that would implement these recommendations.

Administration of General Conservatorships

27. Psychotropic medication

The Legislature should amend Probate Code section 2356.5 to require compliance with that section before a conservator of the person may consent to administration of a psychotropic medication for treatment of dementia or for any other purpose.

Investments

28. Reversal of investment provisions

The Legislature should reverse the current investment provisions in Probate Code section 2574 that permit investment by conservators and guardians in individual publicly traded stocks without court approval and require court approval for ownership of mutual funds. Investments in publicly traded mutual funds should be permitted without court approval, and court approval should be required for investments in individual stocks, to reduce speculative investing and increase portfolio diversification.

29. Investment policy for conservators

The Judicial Council should amend the rule of court concerning uniform standards of conduct by conservators and guardians of estates required by Probate Code section 2410 to include an investment policy for conservators that emphasizes the fiduciary's primary responsibility to provide for the current and estimated future needs of the conservatee rather than to preserve the conservatee's estate for potential remainder beneficiaries.

Accountings

30. Fraud detection professionals

A team of forensic accountants and professionals trained in the detection of insurance, medical claim, and similar types of fraud should be retained by the Judicial Council for the purpose of surveying existing procedures and recommending improved practices. The present system of account review is designed to uncover procedural errors and obvious forms of fraud. Best practices employed by private enterprise in fraud prevention should be adopted for use in review of all probate accounts, especially conservatorships. Common areas of potential deception should be quantified and procedures adopted to identify them. The results of the study should be used to produce a statewide set of guidelines for examiners and investigators.

31. Adjustment to qualifying amount for waiver of accountings

To more fairly reduce the expense of administering small estates, the statutory amounts required for waiver of accountings should be increased.[17] Probate Code section 2628(b) currently provides that a conservator does not have to file an accounting if the conservatee's estate during an accounting period does not have a total net value (excluding the conservatee's residence) of $7,500 and income of less than $1,000 (excluding receipt of public benefits). These qualifying amounts, which were established when the statute was enacted in 1990, no longer realistically reflect amounts that qualify as low-income thresholds given our current economy. Legislation should be pursued to increase the qualifying amounts to a net value of the estate of $20,000 and income of $2,000. The order waiving the accounting must state that the waiver only applies as long as the values comply with the code statute. The follow-up care plans should contain a declaration that the estate is still in compliance with Probate Code section 2628(b).

32. Uniform system of accounts

The courts should create and adopt a uniform system of accounts. Expense and income categories should be established for use in all conservatorships and guardianships. Standardization of accounting practices will aid in the efficient evaluation of accounts. In drafting a uniform system of accounts, it is important to note that the majority of estates are small in nature and that most conservators are not professionals. Thus, the accounting system should be simple and understandable. To that end, courts should additionally consider the production of account templates that are compatible with commonly used computerized accounting programs.

33. Web-based accounting filing system

The Judicial Council should immediately embark on the design and implementation of a Web-based filing system for all conservatorship accounts that includes red-flag software for exceptions. The task force specifically recommends creation of a system that would show spikes in activity in expense categories so judicial officers would have the information they need to make reasoned decisions. This was a matter of the highest priority for the task force in order to facilitate fraud detection and analysis. Current practices do not include a review of underlying data, which is seen as a significant need by the task force.

The task force recognizes that electronic filing may not always be appropriate, for example, in large conservatorship estates. It is believed, however, that it would be extremely productive from the courts' oversight perspective in the vast majority of conservatorship accounts and would ultimately inure to the benefit of the conservators themselves in preparation of the accounts. The system should be

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[17] AB 1727, if enacted, would implement this recommendation.

designed to provide for simple bookkeeping by conservators, using readily available off-the-shelf commercial software that provides for the uploading of data to the courts' Web-based filing. Banks have interacted with off-the-shelf software for banking transactions for years, and there is no reason why the vast majority of conservatorship accounts could not be tracked in a similar fashion.

One example of a system that the task force reviewed is the Minnesota model. The task force notes that the system is close to going online in Minnesota and that it was developed in a public/private partnership at a cost of $40,000.

Finally, in creating such a Web-based filing system, it would be preferable if it could be integrated with a statewide case-management system, although that is not a requirement. The system could also operate in a standalone environment. Whatever mode of technology is chosen, the task force recommends that this be a high-priority goal for the Judicial Council and that work on this project begin as soon as practicable.

34. Mandatory reporting by banking institutions

It is the task force's view that the provisions of Probate Code sections 2892 and 2893 are not being uniformly followed. A procedure should be developed to follow up on a statewide basis to ensure that banking institutions comply with mandatory reporting requirements.

35. Random reviews by accounting personnel

The courts should conduct random reviews of conservatorship and guardianship accountings.[18] Courts' staff should include appropriately trained accounting personnel capable of conducting random audits in accordance with generally accepted accounting principles. In urban areas where sufficient skills are available in volunteer pools, volunteer programs could be established to work in conjunction with professional court staff.

Case Review and Supervision

36. Care plan follow-up report

A care plan follow-up report should be submitted to the court by the conservator one year after appointment and then periodically thereafter, at the discretion of the judicial officer.[19] The follow-up reports should be reviewed by examiners or investigators, and a recommendation should be submitted to the judicial officer as to whether or not a hearing should be set to review the plan.

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[18] Probate Code section 2620(d) was recently added by the Omnibus Act to make each conservatorship and guardianship accounting subject to random or discretionary, full or partial review by the court.
[19] SB 800 contains language that would implement this follow-up report recommendation.

37. Minimum visitation for conservatorship of the person

The conservator or a qualified and responsible person designated by the conservator should visit the conservatee monthly at a minimum in a conservatorship of the person case and should be responsive to a conservatee who may wish more contact with the conservator.

38. Minimum visitation for conservatorship of the estate

The conservator or a qualified and responsible person designated by the conservator should visit the conservatee annually at a minimum in a conservatorship of the estate case and should be responsive to a conservatee who may want more contact with the conservator.

39. Court investigator visit required before conservatee's removal from residence

The court investigator should be required to visit a conservatee before any decision is made on removal of the conservatee from his or her residence, and the conservatee's attorney should be required to file a report with the court addressing all removal issues. The court investigator should also interview neighbors as well as the conservatee's relatives regarding the proposed removal. This requirement should be waived in the discretion of the court in emergency situations.

40. Conservatee advocate program

The courts should institute an advocacy program for all conservatees, modeled on the current Court Appointed Special Advocate (CASA) program, which provides volunteer advocates for minors in juvenile cases.

41. Conservatee advocate report

If a conservatee advocacy program is instituted, the advocate must file a report with the court every six months. Reports should be reviewed by examiners or investigators and a recommendation submitted to the judge as to whether or not a hearing should be set to review the report.

Conservatee Rights and Protections

42. Written bill of rights for conservatees

A written bill of rights should be established for conservatees.[20] It should include procedural rights of due process, including the right to contest the establishment of the conservatorship, the right to remove the conservator, the right to terminate the conservatorship, and the right to privacy as well as a clear statement that conservatees be allowed the greatest degree of freedom possible consistent with the underlying reasons for their conservatorships. The bill of rights should include direction to conservators to give as much regard to the wishes of conservatees as permissible under the circumstances so that they might function at the highest level their abilities permit. It should be clear that a conservator is required to give due regard to the preferences of the conservatee and to encourage the conservatee's participation in decisionmaking. The bill of rights should be given to the conservatee and acknowledged by the conservator.

43. Vexatious litigation

Judges should be given the authority to declare that continuing litigation in a conservatorship case is not in the best interest of the conservatee. This would require legislation, perhaps modeled on the vexatious litigant statute. The findings and language stated in Probate Code sections 1610 and 1611 have no counterpart in conservatorship law. Special attention should be paid to those situations when family members continue their lifetime animosity toward one another in the conservatorship arena at the expense of the conservatee's estate.[21]

44. Conservatee review of accountings

Whenever possible, and if the conservatee has the requisite capacity, the accounting should be reviewed by the court investigator with the conservatee to verify specific purchases and expenses.[22]

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[20] The Omnibus Act added Probate Code section 1830(c), which requires the Judicial Council to develop a notice of conservatee's rights. The notice must be attached to the order and served on the relatives and the conservatee. Additionally, Probate Code section 2113 was added to require that the conservator accommodate the desires of the conservatee unless it would violate a fiduciary duty or constitute an unreasonable financial burden on the estate.

[21] The task force notes that many believe the court has the inherent authority to declare a person a vexatious litigant in the context of a conservatorship matter. The task force is suggesting that language similar to Probate Code sections 1610 and 1611 would be helpful to the courts and make clear that persistent litigation is not in the best interest of the conservatee. SB 800 contains language that would implement this recommendation.

[22] AB 1727, if enacted, would require a court investigator, to the extent practicable, to review the accounting with a conservatee who has sufficient capacity.

Termination of Conservatorships

45. Out-of-state transfer process

When the court approves a permanent move of a conservatee to another state, permission should be conditioned on the application for establishment of court supervision in the conservatee's new state of residence. A review hearing should be set within 90 days of the approval of a conservatee's move for a report on the status of the proceedings in the new state of residence. The California conservatorship should be maintained until such time as the court is satisfied with the arrangements and supervision at the conservatee's new residence, at which time the California conservatorship should be terminated. In no circumstances should the court simply approve the move without following up to ensure the care and protection of the conservatee.

46. Interstate cooperation

A system of interstate cooperation should be established similar to that of other interstate compacts. There is no current mechanism for a California court to obtain a follow-up investigation on the well-being of a conservatee who has moved to a sister state on condition that conservatorship proceedings be commenced in that state. Once the conservatee has moved, as a practical matter, judicial oversight is "hit or miss" and dependent on the level of voluntary cooperation offered in the sister jurisdiction. Further, when abuse of conservatees who have moved to other states comes to the attention of California courts, there is no efficient mechanism for referral or communication. This is a long-term issue that should be addressed in the context of overall elder abuse reforms. The process of establishing an interstate mechanism for protection of the elderly should be commenced.

47. Out-of-county transfer process

A transferring court should set a status hearing in 30 days following the transfer of a conservatorship to another county to ensure that an orderly transfer has in fact occurred and that the transferee court has set appropriate hearing dates. The receiving court should, on receipt of a transferred conservatorship, dispatch a court investigator to report on the well-being, care, and status of the conservatee.[23]

[23] AB 1727, if enacted, would codify an out-of-county transfer process based on these recommendations.

General Recommendations

Funding Issues

48. Adequate funding for probate court services

The Legislature should adequately fund probate court services to ensure the ability to carry out all statutory mandates. Due to the nature of probate, it is difficult to isolate the needs for conservatorship funding, for example, versus guardianship funding, and it is critical that sufficient resources be allocated to the probate courts in general, and courts that oversee conservatorships in particular, to accomplish their statutory responsibilities.

49. Adequate funding for county public guardian and public conservator services

Public guardians and public conservators are key justice system partners, and their programs and services should be adequately funded. Discrepancies in funding public guardians and public conservators among the counties in this state present a serious access to justice issue.

50. Budget priority

The Judicial Council should set the area of conservatorship as a budgetary priority in future years, in the same fashion that it has selected other areas for priority in past years.

51. Evaluating budget needs

At the local court level, probate matters should be given a higher priority in the budgetary decision making process. Probate, and consequently conservatorship, is perceived as a small, specialized area by the bench and is not generally understood. For example, staffing of probate courts is generally measured by the same staffing standards that civil courts are measured by, which is highly misleading. In civil court a case is assigned a case number, begins with a complaint, and ends with a judgment. In probate court, however, the opening of a file and assigning of a case number is just the beginning of the process. A typical conservatorship case may have 5 to 10 separate petitions over the lifetime of the conservatee, and probably more. Measuring staffing by "active case" criteria is misleading. Courts should develop a new methodology for evaluating budgetary needs, as a continuation of the current staffing analysis will result in the continued lack of adequate resources for probate courts to provide the scrutiny and protection the statutes envision for conservatees.

52. Responsibility for payment of appointed counsel fees

The Legislature should clarify responsibility between the judicial branch and counties for payment of the public portion of attorney fees and expenses for representing conservatees under the discretionary appointment provisions of Probate Code section 1470.

53. Allocation of cost of incorporating caseload standards

The cost of incorporating statewide conservatorship caseload standards should be allocated as part of the base funding for every trial court.

Training and Education

54. Adoption of proposed qualification and education rules

Probate Code section 1456 requires the Judicial Council to adopt rules of court that prescribe the qualifications of probate court investigators, probate staff attorneys, and probate examiners and require judges and commissioners regularly assigned to hear probate proceedings to participate in guardianship and conservatorship education. The Judicial Council should adopt the four proposed rules of court, submitted by its Probate and Mental Health Advisory Committee, that implement these requirements. The text of the proposed rules is provided in Appendix E.

55. Training for court investigators

The Judicial Council should develop and provide an annual training program for court investigators and hold an annual conference for them comparable to but separate from the current Probate Institute for judicial officers and representatives of probate department legal staffs that is provided by the AOC Education Division/Center for Judicial Education and Research.

56. Statewide standards

The Judicial Council should develop statewide standards of practice for court investigators, including preparation and content of reports, accounting review functions, and caseloads.

57. Probate conservatorship and guardianship curriculum

The Judicial Council should direct CJER to identify the following content as part of its probate conservatorship and guardianship curriculum:

- Aging and gerontology;
- Approval of transfers and closing conservatorship or guardianship matters;
- Compensation and fees for attorneys and fiduciaries;

- Contested and uncontested conservatorship or guardianship matters;
- Examination of the role of both court-appointed and privately retained counsel for conservatees and proposed conservatees, including analysis of possible conflicts of interest;
- Interview and investigation techniques;
- Jurisdiction and sufficiency of notice for conservatorships or guardianships;
- Management of conservatorship and guardianship cases, including compliance with statutory requirements and the role of (1) dependency and delinquency courts in probate guardianships, (2) child protective services, (3) adult protective services, and (4) nonprofit agencies;
- Mental health, dementia, and capacity, including testamentary capacity;
- Organization and management of probate conservatorship or guardianship assignments;
- Protection of elder adults, minors, and persons with developmental disabilities from fraud, abuse, and neglect;
- Protection and preservation of property and assets, including accountings and management of the estate;
- Selection, appointment, and removal of fiduciaries;
- Substituted judgment, including Medi-Cal eligibility; and
- Wills, trusts, and other documents.

58. Distance learning alternatives

The Judicial Council should direct CJER to develop distance-learning means for satisfying content-based conservatorship and guardianship education for probate judges, commissioners, staff attorneys, examiners, and court investigators.

59. New probate benchbook

The Judicial Council should direct CJER to publish a new probate conservatorship and guardianship benchbook for probate court staff, including examiners, staff attorneys, and court investigators.

60. New Probate Conservatorship and Guardianship Institute

The Judicial Council should direct CJER to offer live training biannually that is open to probate judges, commissioners, staff attorneys, examiners, and court investigators. The Probate and Mental Health Institute should serve as the primary venue for judicial officers, staff attorneys, and examiners. The new Probate Conservatorship and Guardianship Institute should serve as the primary venue for court investigators.

61. Mandatory educational requirements for attorneys

Attorneys on an appointment panel should have mandatory educational requirements that include a clear delineation of duties. The Judicial Council should collaborate with

representatives of the State Bar of California to develop general guidelines as to what is expected by the court from counsel.

62. Education requirements for nonprofessional conservators

Mandatory education requirements should be put in place for nonprofessional conservators of the person and the estate. The Superior Court of San Francisco County operates such a program for conservators of the person, and its expansion on a statewide basis is recommended.

Statewide Sharing of Practices and Cooperation

63. Encourage partnerships

The Judicial Council should encourage public/private partnerships to form and provide services such as conservatorship clinics (as done in guardianships) throughout the state for people of modest means.

64. Uniform probate court staff guidelines

Probate court staff guidelines for examiners, investigators, attorneys, and other court staff, similar to those currently being developed in southern California, should be adopted statewide. Uniformity of probate as well as conservatorship practices will provide for greater efficiency for both the courts and the Bar.

65. Regional information sharing

Judicial officers, investigators, examiners, and probate attorneys assigned to conservatorships should meet regularly with their regional counterparts to share information, practices, and experiences. Courts in southern California currently engage in two such conferences each year. The task force recommends that similar conferences be developed on a regional basis throughout the state and that the AOC provide support to these conferences.

66. Out-of-county reciprocal investigations

Courts should develop a system for reciprocal investigations when a conservatee is living in another county. Currently, the ability of one court to track a conservatee under its jurisdiction to another jurisdiction is problematic. A system whereby one court can request another court's investigator to investigate and report on a conservatee's well-being should be implemented. At present, cooperation is spotty, voluntary, and generally dependent on personal relationships. The statewide case management system should be modified to permit the tracking of conservatorship cases across jurisdictions.

Self-Help

67. Expand self-help services

Self-help services in the courts are necessary and important options for people of modest means. Examples of successful models in some courts include EZLegalFile and I-CAN! (San Mateo County, Orange County, and others), which should be expanded to include modules on conservatorships and made available statewide.

68. Allocate funding for self-help services in conservatorships

The Judicial Council should direct that a portion of the funds allocated to the courts for self-help services in the future should be for conservatorships, an area that has not been given a high priority in the past.

69. Review forms for ease of use

The Judicial Council should review all probate forms with the goal that they be more user-friendly for self-represented litigants.

Court-Appointed Attorneys

70. Automatic appointment of counsel

Probate Code section 1471 presently lists limited situations in which representation by counsel is mandated and leaves it to the discretion of the court for all other matters. It is the task force's view that the Judicial Council should adopt a policy that an attorney should be automatically appointed for the proposed conservatee in connection with every petition to establish a conservatorship. A basic premise of the current statute is that counsel be appointed for those who request appointment. The reality is that if the individual truly lacks capacity and cannot request an appointment of counsel, that is when advocacy is most needed. The task force concludes that practices in appointing counsel vary widely within the state, with many jurisdictions appointing attorneys only when mandated and others appointing attorneys in every instance. The needs of conservatees for representation do not vary by physical location within the state and should be met uniformly. This was the most far-reaching policy issue that the task force grappled with. In forming its recommendation, the task force likened the situation of a conservatee to that of others within the judicial system. Conservatees are as vulnerable as dependents in our juvenile dependency system, are as at risk as minors in our family law system, and are as subject to deprivation of personal liberty and property as defendants in our criminal law system. Putting all of these factors together, it became apparent that the most effective way of affording protection to conservatees is to require the appointment of counsel in all cases. This need to safeguard the rights of the conservatee, the task force decided, far outweighs the arguments that it would be too costly or not necessary in all cases. The

situation was likened to the history of mandatory appointment of counsel in juvenile dependency matters. Until recently, appointment was discretionary, but over time the statute has been modified to require appointment in all cases for the welfare of the minor. Similarly, the task force hopes that solutions can be crafted so that the conservatee will be protected while meeting the practical needs of the system.

71. Confidentiality of conservatee's attorney reports

Legislation should be pursued that would afford the same level of confidentiality to the reports of conservatees' or proposed conservatees' attorneys as is currently afforded in Probate Code sections 1826(n), and 1827.5(e), for the reports of court investigators and regional centers.

72. Appointment of counsel in transfer-of-asset cases

For petitions filed under Probate Code section 3100, a report by a court-appointed attorney, investigator, or guardian ad litem should be required before approval of a petition where a substantial portion of the incapacitated spouse's assets are proposed to be transferred. For Probate Code section 2580 and/or 3100 petitions, the court should appoint independent counsel absent a finding that such appointment is not necessary to protect the conservatee's interests. Guidelines should be established for the type of information required by the court. For example, in Medi-Cal Probate Code section 3100 "spend down" cases, where the well spouse is petitioning for the transmutation of community property from the ill spouse to the well spouse, the court-appointed attorney should evaluate and report on the ill spouse's testamentary planning and/or prior intentions, along with recommendations in that regard. The task force notes that guidelines for Probate Code section 2580 substituted judgment petitions are set forth in Probate Code section 2583, whereas no similar guidelines exist for Probate Code section 3100 petitions. The task force suggests that, with respect to attorneys' reports, a statewide panel composed of representatives from the judiciary and the State Bar be formed for the purpose of conveying the court's expectations to the Bar regarding guidelines for these reports.

Caseload Standards

73. Develop caseload standards

Statewide caseload standards should be developed for probate investigators and examiners. Standards should also be developed for clerical personnel. Developed standards should not be prepared solely for conservatorship matters but for probate services as a whole. Even if such standards are not immediately attainable, they would be a good indicator of the needs in this area.

Probate Administration, Monitoring, and Services

74. AOC probate administration review

The AOC should review how it administers probate support and advice to the trial courts to ensure that the needs of conservatees and minors under guardianship receive the appropriate level of attention and resources.

75 Services for enhancement of family relationships

Services should be made available to families of conservatees to assist in the enhancement of family relationships after conservatorships are established. These are difficult times for families, and the conservator should have as a goal the facilitation of a healthy family relationship. The AOC should explore this issue in further depth.

76. Conservatorship petition coordination

To the extent practical in counties with more than one probate calendar per week, petitions establishing a conservatorship should be set on a separate calendar or set together. To the extent practical, and based on size of caseload, conservatorship accounts, fee requests, substituted judgment, and other petitions should also be set on a separate calendar.

77. Conservatorship judicial officer assignment

Conservatorships should be assigned to one judicial officer for all purposes. Because conservatorship involves oversight over more than one petition, it is preferable that the same judge hear all matters, including petitions for establishment, periodic review hearings, substituted judgment petitions, and reviews of accountings.

78. Coordination of annual reviews and accountings

Reviews by court investigators and deadlines for the filing of accountings should be coordinated to allow the investigator to include accounting matters in his or her report to the extent appropriate.[24]

79. Compliance dates set at original hearing

Compliance dates for the inventory and appraisal, the care plan including level-of-care evaluations, and filing of the first accounting should be set at the original hearing granting the conservatorship. Courts should have discretion, however, to either (1) set a review hearing to ensure compliance or (2) have adequate internal procedures established to generate an order to show cause on failure to comply. Future accounting dates should be set when an accounting is approved in both conservatorships and guardianships.

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[24] AB 1727, if enacted, adds Probate Code section 1851.2, which would "require each court to coordinate investigations with the filings of accountings, so that investigators may review accountings before visiting conservatees, if feasible."

80. Psychotropic drugs

Legislation should be sought that would provide for court monitoring of psychotropic drugs, much in the same way that dementia drugs are monitored. Overmedication of the elderly sometimes masks as dementia. The system should require supervision of these powerful medications to assure that they are being administered properly and to avoid their misuse.

Enhanced Court Oversight of Conservators

81. Private professional conservators' registration information

Private professional conservators should be required to state their registration or license information, including the expiration date, on all pleadings filed with the court on their behalf.[25]

82. Source of appointment

Every case with a proposed professional conservator should include a declaration by the proposed conservator explaining how the professional conservator became involved.[26] The question of the standing of individuals who have no prior contact with the proposed conservatee and who are not nominated by a member of the conservatee's family or close acquaintances should be addressed. If the proposed conservator has no prior relationship and is not nominated by a family member, friend, or other person with a relationship to the conservatee, notice should be given to the public guardian. Consideration of appointment of the public guardian should be given in those circumstances.

83. Criminal and credit background checks

Judges should be provided with criminal and credit background checks before appointment of either a professional or nonprofessional conservator. The court could accomplish this through the use of the California Law Enforcement Telecommunications System (CLETS) and credit background checking services or through some other means.

[25] AB 1727, if enacted, would require private professional fiduciaries to provide their registration or license information in temporary conservatorship petitions; SB 800 would impose this same requirement on private professional fiduciaries in connection with general conservatorship petitions.
[26] AB 1727, as amended August 27, 2007, contains language implementing this recommendation in temporary conservatorships (see proposed Probate Code section 2250(c)(2)); SB 800, as amended June 21, 2007, contains similar language for general conservatorships (see proposed Probate Code section 1821(c)).

Fees

84. Standardized fee requests

Rules 7.751 and 7.702 of the California Rules of Court should be amended to require the use of a statewide uniform system that would specify categories of service by conservators and their attorneys. Rule 7.702(5) of the California Rules of Court should be revised to require specification of the hours spent and the fee requested for each category of service by each person who performed services.

85. Fee estimates

Fee estimates and a current schedule of charges should be required as components of every care plan to assist the courts in assessing fee requests.

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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

GENERAL POSITIONS AND COMMENTS
List of All Commentators and Their Overall Positions on the Proposal

	Commentator	Position	Comment on behalf of group?	Please see comment excerpts and summaries under specific topic headings below	Please see committee responses under specific topic headings below
1.	Ms. Jackie Miller Executive Director Professional Fiduciary Association of California (PFAC), Sacramento		Yes	Rules and Laws Working Group (OLD Nos. 2,3, 6,7,8,9,10) **NEW Nos. 28, 29, 1, 4, 20, 23, 27** Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 1, 2, 3, 4, 8, 10, 19, 23, 24, 25, 29, 30, 33) **NEW Nos. 48, 49, 63, 50, 51, 70, 61, 11, 42, 43, 80, 81, 78, 31** Pre-Conservatorship Recommendations (OLD Nos. 4, 7, 9, 10, 11,13) **NEW Nos. 82, 8, 9, 19, 15** Establishment of Conservatorships (OLD Nos. 2,3,5,9) **NEW Nos. 18, 62, 24, 79** Case Review and Supervision Recommendations (OLD Nos. 3, 6, 7, 10, and 11) **NEW Nos. 38, 32, 33, 84, 85**	
2.	Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys. Bet Tzedek Legal Services Los Angeles		Yes	Rules and Laws Working Group (OLD Nos.2, 6, 7) **NEW Nos.28, 1, 4** Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 2, 7, 18, 20, 25, 32, 33) **NEW Nos. 63, 69, 10, 12, 80, 65, 31** Pre-Conservatorship Recommendations (OLD Nos. 3,7)**NEW Nos. 5, 8** Process for Permanent Conservatorships (OLD No. 12) **NEW No. 15** Establishment of Conservatorships (OLD Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9) **NEW Nos. 17, 21, 62, 83, 24, 25, 26, 16, 79**	

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				Case Review and Supervision Recommendations (OLD No.1) **NEW No. 36** Other Petitions (OLD No. 13) **NEW No. 39**	
3.	Mr. Orville Thompson Retired Westlake Village		No	General Comment Only	
4.	Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators (CAPAPGPC), Chatsworth		Yes	Rules and Laws Working Group (OLD Nos. 6, 11) **NEW Nos. 1, 14** Comparative Jurisdiction and Best Practices Working Group (OLD No. 1) **NEW No. 48** Establishment of Conservatorships (OLD No. 5) **NEW No. 24** Case Review and Supervision Recommendations (OLD Nos. 1, 2, 3) **NEW Nos. 36, 37, 38** Other Petitions (OLD No. 13) **NEW No. 39**	
5.	Dr. John F. Randolf Director, Geriatric Medicine Arrowhead Regional Medical Center Colton, CA		No	General Comment Only	
6.	Ms. Pamela Wells		No	General Comment Only	

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	Legal Secretary Los Angeles				
7.	Ms. Debra Methany Family Court Services Manager Superior Court of Kern County		No	Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 9, 15, 23, 25) **NEW Nos. 52, 75, 42, 80** Other Petitions (OLD No. 13) **NEW No. 39**	
8.	Mr. Leon J. Owens Los Angeles		No	General Comment Only	
9.	Mr. James D. Frazier, R.N. Redlands		No	General Comment Only	
10.	Mr. Anton Toni Kudjer, Jr. Yucaipa		No	General Comment Only	
11.	Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County		Yes	Rules and Laws Working Group (OLD Nos. 4, 8) **NEW Nos. 55, 20** Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 5, 9, 17, 25, 32) **NEW Nos. 67, 52, 30, 80, 65** Pre-Conservatorship Recommendations (OLD Nos. 5, 7) **NEW Nos.7, 8** Establishment of Conservatorships (OLD No. 3) **NEW No. 62**	
12.	Hon. Dorothy L. McMath Superior Court of San Francisco County		Yes	Rules and Laws Working Group (OLD Nos. 2, 4, 7, 9, 10) **NEW Nos. 28, 55, 4, 23, 27** Education and Training Working Group (OLD Nos. 2, 5) **NEW Nos. 57, 60**	

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				Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 4, 8, 10, 11, 17, 19, 20, 21, 23, 33) **NEW Nos. 51, 70, 61, 71, 30, 11, 12, 13, 42, 31** Pre-Conservatorship Recommendations (OLD Nos. 7, 11, 13) **NEW Nos. 8, 15** Establishment of Conservatorship (OLD Nos.3, 4, 6) **NEW Nos. 62, 83, 25** Case Review and Supervision (OLD Nos. 4, 9) **NEW Nos. 40, 35** Other Petitions (OLD No. 13) **NEW No. 39** Termination of Conservatorships (OLD Nos. 2, 3) **NEW Nos. 46, 47**	
13.	Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco		Yes	Rules and Laws Working Group (OLD Nos. 1, 2, 3, 6, 7) **NEW Nos. 52, 28, 29, 1, 4** Pre- Conservatorship Recommendations (OLD Nos.10, 11) **NEW Nos. 19, 15** Establishment of Conservatorships (OLD Nos. 1, 2) **NEW Nos. 17, 18** Case Review and Supervision (OLD Nos. 2, 3) **NEW Nos. 37, 38**	

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14.	Ms. Vicki Fern de Castro Deputy County Counsel Stanislaus County Modesto		No	Rules and Laws Working Group (OLD Nos.8, 11) **NEW Nos. 20, 14** Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 2, 8, 12, 22) **NEW Nos. 63, 70, 73, 15** Pre-Conservatorship Recommendations (OLD No. 1) **NEW No. 3** Case Review and Supervision (OLD No. 2) **NEW No. 37**	
15.	Ms. Geraldine Wormser Los Angeles		No	Comparative Jurisdiction and Best Practices (OLD Nos. 8, 11) **NEW Nos. 70, 71**	
16.	Mr. Jeffrey P. Lustman Attorney Los Angeles		No	General Comment Only	
17.	Mr. Alfonso Valencia Orange County		No	Comparative Jurisdiction and Best Practices (OLD No. 8) **NEW No. 70**	
18.	Mr. Robert Aronoff South Pasadena		No	General Comment Only	
19.	Ms. Deborah G. Kramer Radin, Attorney at Law Los Altos		No	Rules and Laws Working Group (OLD Nos.6, 7, 8) **NEW Nos. 1, 4, 20** Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 5, 6, 7, 8, 9, 16, 19, 24, 31) **NEW Nos. 41, 32, 33, 70, 52, 64, 11, 43, 44** Pre-Conservatorship Recommendations (OLD Nos. 8, 10) **NEW Nos. 2, 19**	

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20.	Ms. Sherry Donovan Las Vegas, Nevada		No	General Comments Only	
21.	Dr. Stephen L. Read, Geriatric and Forensic Psychiatry San Pedro		No	General Comments Only	
22.	Ms. Anne Hietbrink Deputy Public Guardian Monterey County		No	General Comment Only	
23.	Ms. Diane Harmon Los Angeles		No	General Comments Only	
24.	Paul M. Mahoney Attorney at Law Claremont		No	General Comments Only	
25.	Ms. Elaine Reavis, R.N., Director Private Duty Care at Home Program Glendale		No	General Comment Only	
26.	Mr. Ken A. Miles Surry, British Columbia Canada		No	General Comment Only	
27.	Ms. Sally Acosta Upland		No	General Comments Only	
28.	Ms. Sharon Denney Seattle, Washington		No	General Comments Only	
29.	Ms. Elaine Renoire Abusive Guardianships of		Yes	General Comment only	

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	the Elderly Beech Grove, Indiana				
30.	guardianshipvictims@yahoo.com		No	General Comment Only	
31.	Mr. Peter S. Stern (as an individual) Attorney at Law Palo Alto		No	Comparative Jurisdiction and Best Practices Working Group (OLD No. 8) **NEW No. 70**	
32.	Dr. Laura Moire, Mountain View, Hawaii		No	Education and Training Working Group (OLD No. 2) **NEW No. 57** Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 17, 25) **NEW Nos. 30, 80** Pre-Conservatorship Recommendations (OLD No. 8) **NEW No. 2** Case Review and Supervision (OLD No. 2) **NEW No. 37**	
33.	Ms. Kate Kalstein Legislative Counsel California Judges Association (CJA), San Francisco		Yes	Rules and Laws Working Group (OLD No. 11) **NEW No. 14** Education and Training Working Group (OLD No. 2) **NEW No. 57** Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 4, 8, 10, 19, 20, 23,26,31, 33) **NEW Nos. 51, 70, 61, 11, 12, 42, 21, 44, 31** Preconservatorship Recommendations (OLD Nos. 1, 5, 6, 7, 9, 11, 13) **NEW Nos. 3, 7, 22, 8, 9, 15, 13**	

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				Case Review and Supervision (OLD Nos. 4, 5) **NEW Nos. 40, 41** Other Petitions (OLD Nos. 13, 14) **NEW Nos. 39, 72** Termination of Conservatorships (OLD Nos. 2, 3) **NEW Nos. 46, 47**	
34.	Ms. Monique Quintero Los Angeles		No	General Comments Only	
35.	Ms. Margaret K. Dore Attorney at Law Seattle, Washington		No	General Comment Only	
36.	Ms. Barbara Morris Location unknown		No	General Comment Only	
37.	Ms. Alisa R. Knight Court Attorney/Probate Examiner Superior Court of Kern County		No	Education and Training Working Group (OLD Nos. 4, 5) **NEW Nos. 59, 60** Comparative Jurisdiction and Best Practices Working Group (OLD Nos. 1, 23) **NEW Nos. 48, 49, 42** Establishment of Conservatorships (OLD No. 4) **NEW No. 83**	

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response

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Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC recommends updating the *Handbook for Conservators*.	The Judicial Council's Probate and Mental Health Advisory Committee and the AOC's Office of the General Counsel plan a new edition of the handbook this fiscal year (2007–2008).
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	In the Introduction/Methodology Section on page 9, Goal 1, Access, Fairness, and Diversity, the topic of diversity is identified but not discussed. How do the courts plan to achieve diversity> Information needs to be available in other languages, primarily Spanish. The conservatorship handbook is available only in English.	If funding can be obtained, the Judicial Council plans a Spanish-language version of the new edition of the *Handbook for Conservators* this fiscal year. Diversity as a general Judicial Council goal would be addressed by the third guiding principle cited on page 9: "Improve accessibility to the courts for the parties by maximizing convenience, minimizing barriers, and ensuring fairness for a diverse population."
Mr. Orville Thompson Retired Westlake Village	New policies and procedures in probate conservatorship cases can improve the system, but the system will still suffer from lack of resources. I recommend developing a conservator audit team that gives random cursory reviews of conservators. If more formal reviews are necessary that result in charges, the situation should be publicized in the media.	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general.
Mr. Don Boardman President California Association of Public Administrators, Public Guardians and Public Conservators Chatsworth	CAPAPGPC's major area of concern is insufficient funding. Funds for the public guardian have not been included in the state budget to implement the additional requirements of Assembly Bill 1363 (Jones). The new licensing requirement and the increase in caseload management standards may cause	The task force supports adequate funding for public guardians from their counties but opposes exemption of public guardians from unfunded mandates beyond existing law limitations on such mandates.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	many private conservators to petition the court for discharge. When they are discharged, the public guardian would be appointed in many cases. The private sector does this on a selective basis; the low paying cases with limited assets are the ones they are not interested in, transferring that burden to the taxpayers. Due to our funding issues, our association respectfully requests that your report include recommendations that exempt public guardians from all unfunded mandates and requests funding for public guardians.	
Dr. John F. Randall Director, Geriatric Medicine Arrowhead Regional Medical Center Colton	There is no available training or instructions in how to use the Judicial Council forms GC-335, *Capacity Declaration—Conservatorship* and GC-335A, *Dementia Attachment to Capacity Declaration—Conservatorship*. The forms are "all or none", that is,. "has or does not have" capacity. Many adults under consideration have impaired, not absent, decisional capacity. There is no standard as to the timing between the assessment and the hearing. Capacity may have changed in two to three months in many cases. Psychologists are not qualified to make medication recommendations required for GC-335A. Examiners may introduce bias and produce inaccurate results that undermine patient	The form does not preclude additional statements indicating that the proposed conservatee's capacity is impaired or intermittent rather than constantly absent or indicating when the examination leading to the determination of incapacity was made.

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Commentator	Comment Excerpt or Summary:	Task Force Response
	autonomy. Physicians may apply capacity definitions incorrectly. Cultural differences of the members of ethnic minority groups may influence the methods by which medical decisions are made. Health insurance does not pay for form completion; it is not a medical evaluation per se. Clinicians who are not in government employ lack motivation, training, or confidence in their role in the completion of the forms or the conservatorship process, and are often coerced by public officials or family to complete the forms inappropriately. Recommendation: 1. Develop standards for use of forms GC-335 and GC-335A. 2. Provide training programs for professionals asked to complete the forms. 3. Develop funding mechanisms to support completion of the forms and, if necessary, to control budget, develop fee schedule/guidelines.	Agree in general that training of professionals is important.

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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Pamela Wells Legal Secretary Los Angeles	I have been a legal secretary for 44 years and have had a lot of experience with conservatorships. Here are my suggestions:	
	1. Three licensed physicians, unrelated in any way to the proposed conservator, should give a thorough mental and physical examination of the proposed conservatee, which should result in a written report submitted to the court.	This is a costly alternative. The recommendations address safeguards and written reports.
	2. Senior citizens with impending conservatorships should have the ability to hire their own attorneys or to represent themselves if they feel they can.	Proposed conservatees have these rights now. Due process may require representation.
	3. There must be full disclosure as to who will benefit from a conservatorship.	The conservatee will derive the most benefit.
	4. Courts should have a court-appointed handwriting expert to testify to the validity of documents executed by the proposed conservatee.	Courts currently have authority under Evidence Code section 730 to appoint such experts if the party claiming forgery does not provide its own expert testimony.
	5. The mental capacity of a proposed conservatee should be proven in accordance with California law.	Agree, in particular, the provisions of the Due Process in Competency Determinations Act (DPCDA), Probate Code, Sections 810–813.
	6. Caregivers should be protected from false allegations of abuse.	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general.

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Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Debra Methany Family Court Services Manager Superior Court of Kern County	Task force members should know that most counties participate in a system of reciprocal reviews with each other. For example, Kern County can request a review in Los Angeles County and vice versa. I think mandatory participation in the system which already exists through the California Association of Superior Court Investigators is all that is required. I sincerely hope the task force will adopt provisions to seriously curtail ex parte filings.	The recommendations address these issues.
Mr. Leon J. Owens Los Angeles	Why is there no provision for conservators to owe a duty to living heirs and other beneficiaries of the conservatee to keep them as informed as the conservatee, especially if the conservatee is not able to either comprehend or deal with his/her daily life issues and matters of money management?	The task force recommendations and provisions in the Omnibus Act address these concerns.
Mr. James D. Frazier, R.N. Redlands	I am the conservator for my disabled brother. My concerns are with regard to the proposed mandatory visits to be made by the conservator (monthly or more often at the request of the conservatee). I visit my brother as often as I can. He resides in Riverside County and I reside in San Bernardino County. My brother was placed in the board and care facility by Inland Regional Center in Riverside County. My parents were the original conservators and the	The recommendation of the task force concerning monthly visits by a conservator of the person is a best-practice suggestion, not a mandatory requirement. Moreover, the visit can be made by a qualified and responsible person other than the conservator.

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Commentator	Comment Excerpt or Summary:	Task Force Response
	jurisdiction of the conservatorship remains in Indio, Riverside County. I have no problem with my brother's current placement; it is an excellent facility. My concern is the personal cost for gasoline to go back and forth for the mandatory visits. There has been a dramatic rise in the price of gas. Also my brother's wheelchair is in disrepair. His assets must be limited to under $2,000 in order for him to keep his benefits coverage. I was told I was not able to pay for the repair of the wheelchair or he might lose his benefits. The task force should consider listening to the personal stories of family conservators in addition to the recommendations of experts for what in the system needs to be fixed.	 Issue beyond scope of task force.
Mr. Anton Toni Kudjer, Jr.	The court appointed a professional fiduciary who has not inventoried assets since the appointment two years ago. It is impossible to talk to the professional fiduciary or her staff unless there is a request from an attorney. There are no courtesy calls or correspondence to family members. Families should have some rights where their relatives are involved and they live locally. When large expenditures are made the family should be consulted.	Individual cases are beyond the scope of the task force.
Hon. Dorothy L. McMath Superior Court of San Francisco County	1. While we agree with the task force's identification of many problem areas, we are concerned that the recommendations do not	This issue will be addressed when action items are considered by the Council.

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Commentator	Comment Excerpt or Summary:	Task Force Response
	sufficiently consider three aspects of court management of conservatorships: privacy of the conservatee, expense to the conservatee, and practicality of implementation.	
	2, On page 25, the title at the top of the page is "Process for Permanent Conservatorship." The word permanent should be changed to general. The Probate Code does not refer to permanent conservatorships.	This change was made in the final report.
Mr. Jeffrey P. Lustman Attorney at Law Los Angeles	There should be state employees who make contact, even if just phone contact, with conservatees every time a temporary conservatorship is imposed (or a full conservatorship if for some reason there is no temporary one) to make sure there are no improprieties.	The Omnibus Act requires court investigators to conduct investigations at the time of an application for a temporary conservatorship, to conduct more frequent review investigations and prepare reports after appointment of a general conservator than formerly, and to contact close family members in the course of these investigations. The recommendations also address this concern.
Ms. Sherry Donovan Las Vegas, Nevada	1. A guardianship board made up of average citizens from volunteer organizations along with legal organizations that advocate for the rights of seniors should administer guardianship hearings.	This type of program is recommended in the report.
	2. The public guardian's office should not be allowed to be the guardian of both the person and the estate.	Disagree.
	3. Emergency ex-parte petitions are far too numerous and too frequently roll over and become permanent.	The Omnibus Act and task force recommendations regarding changes in temporary conservatorship practice address this concern.

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Commentator	Comment Excerpt or Summary:	Task Force Response
Dr. Stephen L. Read Geriatric & Forensic Psychiatry San Pedro	1. Under the assumption that the Probate Conservatorship Task Force is not charged with establishing standards of medical practice or levels of skills, I urge that poor training of physicians in the area of dementia and memory loss and capacity and indications for conservatorship be raised and discussed, perhaps to be the basis of concerns expressed to the Medical Board of California and/or to the California Medical Association. I recognize and strongly support the calls of the task force for training of professionals at all levels of the process, but I would urge consideration for calling for considering and emphasizing that the role of physicians is fundamental, although these issues are not generally part of the medical curriculum, even that of specialties one might expect to be most directly involved in this area. I will anticipate a lack of enthusiasm on the part of my colleagues for this call, but I believe that this is attributable to the reason for my call—the relative neglect of these matters—as well as to the other many challenges facing medical professionals in these days.	The task force is in support of increased education and training of medical students and physicians on dementia, legal capacity, and conservatorships and increased cooperation between the legal and medical communities in discussing these issues.
	2. I am pleased to see the calls for attention to family and other nonprofessional conservators. I have been concerned, from my experience, that the coverage of the *Los Angeles Times*, which	No response necessary.

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Commentator	Comment Excerpt or Summary:	Task Force Response
	was admittedly valuable in bringing attention to this matter, very unfairly tarred the reputation of *professional* conservators. Too many of the issues that come to me professionally involve the exploitation of frail and demented elders by family members. In other cases, family members accept the responsibilities of conservatorships, but in fact have no idea what they have committed to. Particular problem areas tend to represent conservators' assumptions that they have the right to use the conservatees' resources essentially as their own.	
	3. I especially strongly support bolstering the role of the court probate investigators. Over the past several years, in Los Angeles County in particular (where the large bulk of my practice occurs), I have found the investigators' reports to be increasingly valuable in terms of observations. The investigators are well-situated, in my opinion, if they are suitably trained and have enough time, to provide very solid, direct observations.	Agree, and largely accomplished in the Omnibus Act and rules of court to be adopted under the Act.
	4. I have major concerns about the calls for care planning and oversight of this process by the courts. In my opinion, this will prove to be unwieldy and practically unworkable within what I would assume are realistic expectations of the efforts that can be made by the court. While the motivation for this level of oversight	A required care plan and periodic follow-up reports are part of SB 800, now pending in the 2007 Legislature. Staff does not believe that the proposed legislation requires close court evaluation of specific care plans at the outset or follow-up reports at later stages, in the form of direct approval or disapproval of them, but the care plans and the follow-up reports give the court information on what to expect and a baseline of data to compare against subsequent experience in each

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	is admirable, care planning by itself is a very involved and complex process. It would seem to me, frankly, that the court should consider expecting this as a standard on the part of the conservators, but NOT calling for direct involvement by the court to evaluate the care plans. Having worked in many settings that have grappled with this process, I urge the task force to consider the labor and complexity involved and the simple laboriousness of the implication that the court would undertake to review and comment on what will of necessity be a lengthy document involving gradations of judgments. The documentation process too often becomes an end in itself, to the relative neglect of actually attending to the patient (conservatee in this case) and the patient's needs.	case. The care plans and follow-up reports would be simplified and standardized Judicial Council forms under the legislation in its current form.
guardianshipvictims@yahoo.com	We urge the task force to audit the public guardian of San Mateo County.	Not within the scope of the task force.
Ms. Anne Hietbrink Deputy Public Guardian Monterey County	I would like to suggest that funds for translation services (and translator training?) be added to the recommendation. Translation services are needed for the probate court investigator as well as for court-appointed counsel. In the same way that a statement of due diligence is being suggested regarding a search for relatives, a declaration regarding appropriate translation services having been provided might also be a good idea. From the perspective of a deputy public guardian, we struggle with translation	Funding for court interpreters in civil cases (including conservatorship cases) is a topic of discussion in the Legislature. Funding for public guardian services is addressed in the recommendations.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	issues. I know that some of our conservatees have not always received translation services they deserve. Particularly when the subject of a conservatorship is having his or her ability to understand anything at issue, it is not fair or just to deny that individual adequate representation in their own language. Any of us could appear to lack capacity if we are trying to understand a complex process in a foreign language.	
Ms. Diane Harmon Los Anngeles	1. Conservators should be audited to ensure that their expenditures are reasonable.	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general.
	2. Within three to six months of appointment as a conservator a budget should be produced showing how the conservatee will be cared for the rest of the conservatee's life.	Proposed provisions in SB 800 address this matter.
	3. The relationship between conservators and their lawyers should be somehow regulated and separated.	The recommendations address this concern by providing additional oversight over conservators, attorneys and the conservatorship in general.
	4. Shortly after a conservatorship is established the conservator should take inventory of the conservatee's personal possessions, together with a family member or a family friend of the conservatee.	This is already statutorily required.
	5. Conservators who are responsible for the conservatee's financial and medical circumstances and are also responsible for their	The recommendations address this concern by providing additional oversight over conservators, attorneys and the conservatorship in general.

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Commentator	**Comment Excerpt or Summary:**	**Task Force Response**
	will and living trust as their executor should be regulated due to potential abuse.	
	6. Conservators should not charge professional fees for attending the funeral of the conservatee.	See above.
	7. A conservatee's family is very important and the conservatorship process must ensure that they are involved in terms of access to the conservatee and also involved in making decisions as to where the conservatee lives and (where appropriate) the conservatee's medical treatment. A major problem is that lawyers make most of their money from dissension (see custody issues in divorce courts) and conservation for the elderly is another area for lawyers to profit from.	The Omnibus Act and task force recommendations provide more opportunitites for families to be involved and have oversight.
Mr. Paul M. Mahoney Attorney at Law Claremont	1. There have been instances where I have had to assist a family member in becoming a conservator of another family member. Lately, the conservator has been treated by the courts as more of an enemy than as a friend of the proposed conservatee.	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general.
	2. Recent court cases that deal with undue influence when it comes to caregivers are now a consideration in the decision of many people to become conservators. In many situations, a	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	friend would take care of an elderly person who had been abandoned by their family. Without any act of undue influence or coercion, the elderly person, out of a sense of gratitude, leaves something to the caregiver. Under the recent cases, the caregiver gets nothing and the kids who abandoned their parents receive the estate after the conservatee dies. Therefore, the conflict between the law and the realities of life may have a depressing effect on friends being caregivers or conservators.	
	3. The courts and Legislature have given a pass to assisted living facilities and skilled nursing facilities that prey on their residents. The law that says that the professional organization itself is "not the caregiver" is wrong. Because of that statute, if an employee pressures the resident to leave his assets to the institution there is no problem. Only if the employee gets something is it wrong.	Not within scope of the task force.
	4. The appellate courts use unpublished opinions to make conflicting rulings on identical issues in these cases.	Not within scope of the task force.
Ms. Elaine Reavis, R.N., Director Private Duty Care at Home Program Glendale	I would appreciate knowing that conservators are licensed and report to a government board/agency, and this would protect seniors. I see fiduciary abuse in some patients I admit to the Care at Home Program. The Care at Home	The Omnibus Act, provides for licensure of professional conservators through the Department of Consumer Affairs beginning on July 1, 2008.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	Program is a program that provides caregivers to elderly patients. The care is non-medical and assists with the activities of daily living. Our seniors are at risk for abuse since they are the most vulnerable population in our society. Most are lonely, frightened, and alone.	
Mr. Robert Aronoff South Pasadena	All conservators aren't bad. In fact I suspect that most aren't. But a few worms can spoil a lot of apples in the bushel. We should have laws that reduce the worms' opportunities to do harm and create injustices that only fuel fires against Sacramento for not having "protected" the public.	The recommendations address this concern by providing additional oversight over conservators, attorneys and the conservatorship in general.
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	1. I am most troubled that the conservatee's privacy rights may be jeopardized in an effort to more closely monitor the activities of the conservator and provide more information to family and interested persons. In an effort to clean up the fraudulent practices that occurred in Southern California and elsewhere, the recommendation is to give the court investigator's office power and control over medical and financial information without regard to the conservatee's right to privacy and, in some cases, without prior approval from the court. 2. The second most troubling aspect is the	This is always an important balance, but protection of the (proposed) conservatee is the highest priority, whether it be protection from the appointment of an inappropriate or unnecessary conservator or protection against abusers and supervision of the actions of the appointed fiduciary. The investigator's access to medical and financial information is necessary to enable him or her to perform the functions of the office, including making recommendations against the appointment of any fiduciary or a particular a fiduciary based on information gained from these sources. The task force, judicial officers, and probate court staff are aware of the potential impact of these protective proceedings on the estates of

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	substantial cost (without provisions for payment) that will be incurred by the addition of numerous court proceedings, investigations, obtaining documentation, etc., making the conservatorship process too expensive except for those with the means to afford it. It exposes more conservatorships to the public guardian or public conservator, rather than, in most cases, the conservatee's choice of he or she would want to take over those responsibilities. In my experience, the conservatorship process already is a major hardship, both emotionally and financially, for families. Many of the recommendations will add to rather than alleviate the trauma of this procedure.	conservatees. The goal is to make the increased costs acceptable because of increased protection and reduction of abuse. There is nothing in the newly enacted law or the task force's recommendations that would place a public guardian or public conservator on a higher priority than a qualified family member or private professional preferred by the proposed conservatee.
Ms. Barbara Morris	Would it be feasible to have an online sign-up sheet for the protection of the disabled/elderly? One would just open the site and add their name.	No recommendation.
Mr. Ken A. Miles Surry, British Columbia, Canada	The system of things regarding the elderly is geared to pad the pockets of a few and a broken adult protective service system.	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general.
Ms. Sally Acosta Upland	1. In Los Angeles probate lawyers are pro tem commissioners and let the lawyers run up legal fees. 2. Senior citizens should get living trusts, it is	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general. No response necessary.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	cheaper than legal fees where a lawyer may want $500 for a plain will.	
Ms. Sharon Denney Seattle, Washington	1. The determination of incapacity needs to be objective. Every constitutional protection must be in place. It should be mandatory that conservatees be represented by counsel and the counsel should not be guardians ad litem who are court employees.	The recommenations address this issue. Neither counsel nor guardians ad litem appointed in conservatorships are court employees.
	2. The monitoring of guardianships must be taken out of the courts. Courts are set up for the litigation model—not for monitoring. There is no medical training in law school, nor is there financial training. A board of medical folks, financial experts, and regular citizens can give the time to the choices and charges of the guardians.	Some supervision of professional fiduciaries will be undertaken by the new Professional Fiduciaries Bureau in the Department of Consumer Affairs, beginning in July 2008. Under the new Omnibus Act and recommendations, the courts should be better equiped to provide oversight of fiduciaries.
	Guardians have too much unfettered power and they use it to isolate the conservatees. Only the conservatee should have the right to restrict visits from family and friends.	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general.
	There should be a provision for limited guardians. If a client needs help with bills, a guardian could be assigned to provide that service only. Capacities don't diminish uniformly.	The recommendations address this concern through requiring findings of least restrictive alternatives within the conservatorship.
	5. There should be a provision for the early termination of any guardianship. If the family or	The recommendations address these concerns.

GENERAL COMMENTS ABOUT THE PROPOSAL		
Commentator	**Comment Excerpt or Summary:**	**Task Force Response**
	client objects the guardian should be changed. If the family changes its mind about having a guardian after seeing how guardians operate, that should be grounds for immediate termination. If a family member becomes available to take over the guardianship, the court should give that family member the highest priority. 6. If a conservatee refuses a guardian, that should be respected.	The recommendations address this concern.
Ms. Elaine Renoire Abusive Guardianships of the Elderly Beech Grove, Indiana	The core problem here is conservatorships have lost their way. Here's a law, a good law, intended to assist the helpless and vulnerable—by literally guarding the incapacitated person and conserving that person's assets. What an American idea! But, what's happened instead? Attorneys and guardians have maneuvered the laws to benefit them at the expense and detriment of the very people they've been court appointed to protect.	The recommendations address this concern by providing additional oversight over conservators, attorneys, and the conservatorship in general.
Dr. Laura Moire Mountain View, Hawaii	The most important current comment I would make about the "Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases," is to allow full access to the full medical records and health-care providers by the family of the conservatee, who can easily contact and interface with investigative probate volunteer attorneys assigned by the court and the court investigators	The recommendations balance need for information with privacy of the conservatee.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	and even the judge if necessary to protect the elder from physical abuse.	
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	We are concerned that the recommendations do not sufficiently consider four aspects of court management of conservatorships: privacy of the conservatee, expense to the conservatee, practicality of implementation, and cost to the court with impact on court services. In addition to the effect of the recommendations on court management of conservatorships, we are concerned about the likely increase in the use of alternatives that avoid court supervision altogether. The courts now devote considerable resources to resolving cases of misuse of unsupervised tools such as powers of attorney and revocable trusts. As the conservatorship process becomes more cumbersome and costly, the use of unsupervised and inappropriate alternatives will no doubt increase, which in turn will lead to increased litigation over the misuse and abuse of these alternatives.	The Omnibus Act requires implementation of complementary recommendations of the task force.
Ms. Monique Quintero Los Angeles	1. I think it is outrageous that conservators are able to pay themselves with just a request to the court without providing documentation or back-up. Same for reimbursements; there should be receipts provided.	The recommendations address these concerns by providing additional oversight over conservators, attorneys, and the conservatorship in general.

GENERAL COMMENTS ABOUT THE PROPOSAL

Commentator	Comment Excerpt or Summary:	Task Force Response
	2. I also do not think it should be allowed for conservators to hire their relatives to care for a conservatee.	
Ms. Margaret K. Dore Attorney at Law Seattle, Washington	In my view, a core problem is court supervision. Please see my article published in the Washington State Bar News: *The Time Is Now: Guardians Should Be Licensed and Regulated Under the Executive Branch, Not the Courts.* There were 13 letters to the editor, most of which were favorable to my position.	The Omnibus Act establishes a new executive-branch licensure and discipline system for professional fiduciaries, including conservators, effective July 1, 2008.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 1 – Order for Expedited Investigation

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC has major privacy concerns. Did the task force consider adult protective services for this role?	This proposal is now included in AB 1727 adding Prob. Code, § 2910
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	This should be available to private parties with a showing of good cause at the prefiling stage. Can probate investigators do a prefiling investigation now?	Disagree. The Omnibus Act requires probate investigators to perform an investigation before or immediately after the hearing on a temporary conservatorship.
Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators Chatsworth	CAPAPGPC appreciates this legislative proposal. The ability for public guardians to obtain needed financial and medical information by court order will enable us to provide timely assistance to consumers of our services.	No response necessary.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco	Order for expedited investigation: While agreeing that an expedited protective and investigative procedure is recommended, the Executive Committee expressed some concern about making these powers available to the public guardian and notes that the revisions to Probate Code, section 2920, as amended last	No response.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 1 – Order for Expedited Investigation

Commentator	Comment Excerpt or Summary:	Task Force Response
	year, give preference to anyone other than the public guardian to petition for appointment if there is someone else willing and qualified to act as conservator. (Note the acronym should be HIPAA, not HIPPA.)	Mr. Stern is correct about HIPAA acronym.
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	While overall implementation of a procedure under which a public guardian or public conservator could apply on an expedited basis for a court order authorizing that officer to obtain medical and financial information concerning a proposed conservatee is a prudent idea under those circumstances, care should be taken to ensure that the scope of the information obtained is limited to the issues warranting the conservatorship in order to protect the privacy of the proposed conservatee. The public guardian already has the authority to seize control of assets, property, and trusts under certain circumstances, so care should be taken in the area of assets held jointly with others, a spouse's community property interest in the conservatee's property, assets held in trust, etc. Destruction of information should also be conducted for failed conservatorship matters (i.e., where conservatee successfully objects to the establishment of a conservatorship).	This concern is addressed in AB 1727.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 2 - Standardized Ex Parte Application

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	The language regarding estates is limited to "danger of the immediate dissipation of the estate"—perhaps this should be expanded to include provisions for "all or any part of the estate," exposure to fraud, loss, or other impact to specific substantive assets unless immediate action is taken such as foreclosure, nonrenewal, assessment of penalties, etc.	Disagree. The task force believes the language is adequate to protect the conservatee.
Dr. Laura Moire Mountain View, Hawaii	The same ex parte complaints against the conservator should trigger immediate removal of the conservator.	There are due process and administrative obstacles to this proposed modification.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 3 – Review of Report

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Vicki Fern de Castro Deputy County Counsel Stanislaus County Modesto	A temporary conservatorship should only be used when the situation is urgent and for good cause shown by specific facts and the court, in its discretion, determines that there is not sufficient time to require written reports. The goal should not be to eliminate ex parte appointments but to eliminate unnecessary temporary conservatorships.	Agree.
Ms. Kate Kalstein Legislative Counsel California Judges Association	1. The proposal for appointed counsel to file a written report appears to require more than a statement of the client's position, i.e., consent or	The proposed recommendation requires that a temporary conservatorship should not be established without review of a written report from either an investigator, which is required by Probate Code

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 3 – Review of Report

Commentator	Comment Excerpt or Summary:	Task Force Response
San Francisco	objection. It may require an attorney to disclose information acquired in confidence or unfavorable to the client's position. If the purpose of the report is to substitute for the investigation by the court's investigator or by the regional center, a practice of some courts in the past, recent legislation has provided the resources for investigation in every case. This proposal puts counsel in an untenable position and requires the court to speculate on the filters employed by counsel. If all that is required is the client's position, the written report imposes unnecessary costs. 2. There is a logical development should this proposal pass, which provides further reason to oppose. Before recent legislation providing resources for probate investigation, it was the practice of a few courts to appoint two lawyers for a proposed conservatee, one for wishes and the other for interests. This permitted, between the opposing positions, all circumstances to be disclosed.	section 2250.6, or a court-appointed attorney unless waiting for a report would cause substantial harm. The intent of the recommendation is to allow court-appointed attorneys to file their reports if an investigators report is not available. See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 4 - Disclosure of Medical Information

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation, but clarification of a conservator's access to medical records is needed.	The task force supports conservators' access to medical records. When access is being denied to medical records because of HIPAA, the current recommendation calls for a procedure by which a conservator could apply for a court order directed to the health care provider to provide access to the records.
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	Investigators should have authority to obtain financial information as well as medical.	Under the Omnibus Act, the enhanced responsibilities for investigators allow greater access to financial records in established cases, however, access to financial records before a conservatorship is established merits further study and will be referred to the appropriate advisory committee.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Strongly support. Current law is ambiguous as to the court investigator's right to review the medical record. Investigators frequently encounter problems getting medical records staff to disclose information, particularly in view of HIPAA and the conversion of medical records to electronic form.	No response necessary.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco	The Trusts and Estates Section's Executive Committee of the California State Bar is not sure that a change to the Confidentiality of Medical Information Act (Civ. Code, §56 et seq.) needs further amendment to permit the access to information sought by this recommendation. It is agreed that such information should be available to the court investigator as well as the petitioner in a conservatorship proceeding.	AB 1727 addresses the issue.
Ms. Deborah G. Kramer Radin Attorney at Law	Allowing the court investigator authority to obtain confidential medical information during	AB 1727 now includes a proposed amendment to Civil Code, section 56.10(c)(12) that would clarify a health-care provider's authority to

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 4 - Disclosure of Medical Information

Commentator	Comment Excerpt or Summary:	Task Force Response
Los Altos	the course of the investigator's temporary or general conservatorship investigations tends to give a feeling of mistrust in the proposed conservator, the physician making the assessment, and the overall judicial process.	disclose medical information to a court investigator conducting any investigation in a conservatorship required or authorized under the Guardianship and Conservatorship Law.
	Alternatively, perhaps it would be better to firm up the law with a mandatory requirement that a Doctor's declaration (with supporting documentation if necessary) be submitted with the initial petition instead of allowing room to have it on file by the time of the hearing as is now indicated in the petition for appointment. The proposed clarification of state law should be limited to situations where that specific information required by the court investigator to make an assessment is not readily available or provided in declaration of capacity and other medical, documentation submitted in support, and only by court order.	Disagree.
	Possible delays could also occur since this is a time-consuming process, it can be difficult to obtain information and documents from doctors, and substantial extra costs are incurred as hospitals and doctors generally charge for records information. Scope should be limited to the underlying issues.	If there are delays caused by inability to timely access medical information, courts can make adjustments. Staff believes that much of the medical information that would be obtained would be orally transmitted rather than by documents.
	In discussing this issue with physicians and	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 4 - Disclosure of Medical Information

Commentator	Comment Excerpt or Summary:	Task Force Response
	psychologists, it is my experience that many find much of the current forms vague, difficult to interpret (as many of the opinions they are asked to render appear legal in nature rather than medical), and extremely time consuming. A recommendation should be made to improve these forms to expedite this process.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No.5 – Due Diligence to Find Relatives

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	This should exclude relatives who permanently reside outside the United States.	Disagree. See prior notice of relatives comments.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No.7 – Least Restrictive Alternative Declaration

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	The recommendation should refer to a Probate Code section 3200 petition and not a 3100 petition.	Agree.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA suggests that the proposed requirement that a declaration that Probate Code section 3100 is not adequate in every case, even though that section is available only to a spouse, should be more narrowly drawn.	This comment may be responding to the typographical error of "3100" petition rather than "3200" petition.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 8 – Digital Cameras

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response required.
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	We are concerned about privacy issues. Does conservatee have the capacity to consent to photos being taken, since this is for a temporary conservatorship and no conservator is in place to consent? If exigent circumstances are involved, the court should approve digital photos rather than leave the issue to the discretion of the investigator.	Agree in part. Protocols for taking and storing photographs should be developed and implemented to ensure the privacy of the conservatee.
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	The California Court Case Management System should be enhanced to accept storage of scanned photos within the case content as part of the	This comment will be forwarded to the managers and designers of the CCMS system.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 8 – Digital Cameras

Commentator	Comment Excerpt or Summary:	Task Force Response
	investigator's notes.	
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose as a serious violation of the conservatee's privacy. Cameras would be intrusive and insulting to the proposed conservatee and could destroy the rapport so carefully built between investigator and proposed conservatee. Embarrassing the conservatee by surprise picture taking could aggravate the conservatee's suspicion of government intrusion into his or her life. Any evidentiary benefit would be greatly outweighed by the potentially negative effect.	Agree in part. Protocols for taking and storing photographs should be developed and implemented to ensure the privacy of the conservatee.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA would oppose mandatory photographing in every case as an unnecessary violation of the conservatee's privacy. Otherwise, this is a useful and appropriate discretionary tool.	Agree in part. Protocols for taking and storing photographs should be developed and implemented to ensure the privacy of the conservatee.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 9 – Specific Conservator Powers

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response required
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	The proposal appears to unnecessarily require written findings and conclusions in every temporary conservatorship. CJA suggests that the proposal be amended to state, 'The court should be required to list the specific powers in the order granting temporary conservatorship. It should only grant a power where there is a demonstrated nexus between the power granted and the need for interim protection, pending a hearing on the final application."	Requiring written findings and conclusions listing the specific powers in every order granting temporary conservatorship and demonstrating a nexus between the power granted and the need for interim protection pending a hearing is the recommended practice to ensure that the conservator is aware of his or her responsibilities and limitations.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 10 – Waiver of Notice on Good Cause

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services	Notice should be waived on second-degree relatives who permanently reside outside the United States. For example, where grandparents are living in the United States and their siblings live in Central America, and when the siblings	Disagree.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 10 – Waiver of Notice on Good Cause

Commentator	Comment Excerpt or Summary:	Task Force Response
Los Angeles	receive notice in English, when their primary language is Spanish, they are not going to appear and contest the conservatorship.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 11 – Supplemental E-mail Notice

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC has privacy and security concerns.	Agree in part. Appropriate protocols for safeguarding confidential information contained in e-mail notices should be developed and implemented.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose notice by the court at this time. Clerks will be overburdened with other new requirements.	Each court should develop a timeline for implementing receipt of email notices in a way that is feasible for the court. Committee acknowledges implementation issues.
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	While e-mail notice only to those who request it may be the modern movement, care should be taken given the confidential nature of information about the conservatee contained in the documents. With the newly legislated expanded notification requirements, more people will receive financial and medical	Agree in part. Appropriate protocols for safeguarding confidential information contained in e-mail notices should be developed and implemented.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 11 – Supplemental E-mail Notice

Commentator	Comment Excerpt or Summary:	Task Force Response
	information and reports about the conservatee's health, mental, and financial status. E-mail to an individual's work computer becomes the property of the business—raises attorney-client confidentiality issues—and it is difficult to control who has access to computers. The conservatee's right to privacy must be protected in the electronic arena.	
Ms.Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA opposes imposing this duty of the parties on the court. The new statewide computer system that has been designed, completed, and installed statewide does not have the capability this proposal requires.	The managers and designers of CCMS will be informed of this requirement for subsequent upgrades to the system.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 12 – Expanded Information on Notices

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	This provision should apply to professional conservators and public guardians, not to private conservators. It is onerous and violates privacy rights.	The recommendation has been revised to apply to all conservators.
Hon. Dorothy L. McMath	Oppose expansion that does not consider the	The recommendation has been revised to reflect this concern.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 12 – Expanded Information on Notices

Commentator	Comment Excerpt or Summary:	Task Force Response
Superior Court of San Francisco County	conservatee's right to privacy. Conservatees may have legitimate reasons not to inform relatives of their wealth. The last sentence on page 19 recognizes that "transparency would have to be carefully balanced against the privacy considerations of a well spouse…." Privacy considerations of the conservatee should be equally important.	
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA opposes this recommendation to provide expanded information on notices because it fails to consider the conservatee's right to privacy. Conservatees may have legitimate reasons not to inform relatives of their wealth. The recommendation notes that transparency would have to be carefully balanced against the privacy considerations of a well spouse; CJA believes that privacy considerations of the conservatee should be equally important.	See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No.13 – Consistent Report Distribution

Commentator	Comment Excerpt or Summary:	Task Force Response
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support only if amended to give court discretion to consider whether receipt of the investigator's report would be harmful to the conservatee; for example, if the conservatee is diagnosed with a paranoid or other psychiatric disorder such that receipt of the report could aggravate the conservatee's condition. Court should have the discretion to determine that the investigator's report should be treated differently from the report of the Regional Center where the conservatee has an existing relationship.	The recommendation has been revised to reflect this concern.

COMMENTS ABOUT SPECIFIC RULES AND FORMS

Circulated item No. 14 – Fifteen-Day Notice Period Before Move From Principal Residence

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators Chatsworth,	CAPAPGPC strongly recommends that an exception be allowed for emergency situations.	Discussion of provisions for emergencies must be addressed in SB 800.
Ms. Vicki Fern de Castro	Current law is sufficiently restrictive. There	This is addressed in SB 800. This is a critical issue and the task force

COMMENTS ABOUT SPECIFIC RULES AND FORMS

Circulated item No. 14 – Fifteen-Day Notice Period Before Move From Principal Residence

Commentator	Comment Excerpt or Summary:	Task Force Response
Deputy County Counsel Stanislaus County Modesto	should be training and education to those involved (as current legislation/laws require) to make practices consistent with the laws. Adding additional court petitions and approval make costs of conservatorships prohibitive. Attorneys won't handle these cases and people will experience increased costs and/or will need to do these on their own.	believes that many people need more protection before being removed from their homes.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	This requires a noticed motion in every case, even when the conservatee and his or her family desire the move. CJA believes that legislation should require notice and then a hearing only if someone objects, similar to Probate Code Section 10850 et seq., Notice of Proposed Action.	Agree. Sections 6 and 7 of SB 800 would add a Notice of Proposed Action–type procedure for premove objections to changing a conservatee's personal residence.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 15 – Required Submission and Handling of Reports from Attorneys, Investigators, and Regional Centers
(Incorporates comments related to topic: Report Deadline of Five Days Prior to Hearing)

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Vicki Fern de Castro Deputy County Counsel Stanislaus County Modesto	Perhaps it is my experience in two counties where the courts and court staff are adequately trained in probate law, so I see systems that work quite well; thus my comments. It will, likely, increase costs to require the reports all be in writing and to routinely continue hearings, if the court has sufficient information and is willing to make a decision based on the information before it. An oral report should be acceptable in the discretion of the court. If the court has questions or concerns that cannot be answered by an oral report, the matter could be continued to allow time for a written report. Suggested language: "Subject to the exception where costs and expedience are taken into consideration and oral reports are sufficient, required reports should be in writing and filed and served five days prior to the hearing. Courts should make a practice of continuing hearings where there are questions or concerns and it would assist the court to have the report in writing and where there is more time needed to review the report which isn't timely filed, so that the court's investigators and examiners also have an opportunity to review the report and comment prior to the court hearing."	Agree that the court should retain discretion to receive an oral report; however, the requirement to have written reports filed five days prior to a hearing establishes the written record of the report and allows the court's investigators and examiners adequate time to review the reports.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 15 – Required Submission and Handling of Reports From Attorneys, Investigators, and Regional Centers
(Incorporates comments related to topic: Access to Information)

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response required.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support sharing so that the court investigator has as much information as possible.	No response required.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA supports this proposal regarding information sharing so that the court investigator has as much information as possible.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 15 – Required Submission and Handling of Reports from Attorneys, Investigators, and Regional Centers
(Incorporates comments related to topic: Required Reports from Investigator and Attorney)

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response required.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose requirement of a written report from conservatee's attorney. Duplication of the investigator's role would be an unnecessary expense for the conservatee. Requirement for investigator's report should be clarified to state either five court days or five calendar days.	Agree in part. The task force consensus is that mandatory representation by court-appointed counsel of proposed conservatees at this early stage in the process is a better practice for safeguarding the rights of the proposed conservatee. The requirement for a written report to be submitted will provide the court with the wishes of the client and a determination of interests by the court-appointed attorney. The recommendation is intended to require submission of written reports five calendar days before the hearing, which is consistent with the requirements for investigator reports.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco	The Trusts and Estates Executive Committee concludes that it is not appropriate to place a written report by the court-appointed attorney on the same level as the court investigator report. Often the attorney is appointed for a specific, and minor, purpose, which can be fully explained in a few minutes of time before the judge. It is without question necessary to have a report by the court investigator before the court.	See comment above..
Ms. Kate Kalstein	The proposal for appointed counsel to file a	See comment above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 15 – Required Submission and Handling of Reports from Attorneys, Investigators, and Regional Centers
(Incorporates comments related to topic: Required Reports from Investigator and Attorney)

Commentator	Comment Excerpt or Summary:	Task Force Response
Legislative Counsel California Judges Association San Francisco	written report appears to require more than a statement of the client's position, i.e., consent or objection. It may require an attorney to disclose information acquired in confidence or unfavorable to the client's position. If the purpose of the report is to substitute for the investigation by the court's investigator or by the regional center, a practice of some courts in the past, recent legislation has provided the resources for investigation in every case. This proposal puts counsel in an untenable position and requires the court to speculate on the filters employed by counsel. If all that is required is the client's position, the written report imposes unnecessary costs. There is a logical development should this proposal pass, which provides further reason to oppose. Before recent legislation providing resources for probate investigation, it was the practice of a few courts to appoint two lawyers for a proposed conservatee, one for wishes and the other for interests. This permitted, between the opposing positions, all circumstances to be disclosed.	

Public Comments

RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 15 – Required Submission and Handling of reports from Attorneys, Investigators, and Regional Centers (Incorporates comments related to topic: Regional Center Report)

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	A form should be developed for regional center reports to expedite the process. Reports should be allowed to be submitted as late as the date of the hearing to alleviate the need for continuances. The case could be placed on the second call or afternoon calendar to allow time to review the late report.	Regional center reports should be timely filed five days prior to the hearing to allow for review and investigation if necessary.

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COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 16 – Inventory and Appraisal Monitoring

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	We agree with this recommendation.	No response required

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 17 – Recommend Least Restrictive Alternative

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	We agree with this recommendation.	No response required.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco	The Trusts and Estates Section Executive Committee agree with this recommendation. We find it appropriate for court investigators to make recommendations about the least restrictive alternative, although the suggestion that a limited conservatorship, which is reserved for persons who are developmentally disabled, might be an appropriate recommendation is inappropriate.	The task force consensus is that limited conservatorships may be a better practice for conservatees with some but not total incapacity.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 18 – Specify Powers to Be Granted

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC recommends that this be revised as follows: Court investigators should respond only to the powers requested by the petitioner.	Disagree. Court investigators should make recommendations as appropriate and should not be limited in the scope of their inquiries.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 18 – Specify Powers to Be Granted

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco	The Trusts and Estates Section Executive Committee finds it appropriate for court investigators to make recommendations about the granting or nongranting of specific powers requested by a conservator, especially those listed as independent powers under Probate Code sections2590 and 2591. Reference to sections 2350 and 2351.5 seem to be misplaced. The powers referred to in section 2351.5, which refer only to limited conservatorships, are always specifically prayed for, if desires, and specifically granted or denied in the order and are conventionally commented upon both by the court investigator and by the regional center. It would not be appropriate, in the opinion of the executive committee, to require a petitioner to cite every specific power of person and/or estate to be granted to the conservator; such a requirement would lead to a petition resembling in length the California Probate Code.	The task force consensus is that requiring that each power granted be specified is a better practice that reinforces the responsibilities and limitations of the conservator.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 19 – Due Diligence to Find Relatives

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response required.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco	The Trusts and Estates Executive Committee agrees with this recommendation. We think this is an appropriate burden to place on petitioners, given the number of cases where nonexistence of relatives is claimed only to be disproved at a later date.	No response required.
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	Due diligence should only be required in cases where no first- and/or second-degree relatives can be located. If you comply and list all relatives to the second degree as required, why the need for a due diligence declaration? Also, if the proposed conservatee has nominated the proposed conservator or the estate planning or other documents contain a nomination, is a due diligence declaration to ascertain the conservatee's wishes necessary? As an attorney primarily involved in the planning side of estate planning, it is very troubling to have the proposed conservatee's wishes regarding choice of conservator be second-guessed or subverted as new "interest parties" come forward during the conservatorship process.	The requirement for a declaration of due diligence to find all relatives including an articulation for the preferences of the potential conservatee is to avoid intentional exclusion of certain relatives and to memorialize the preferences of the proposed conservatee.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 20 – Finding of Impaired Mental Function

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation, but it reveals too much detail regarding a conservatee's physical or mental condition to other parties who do not need to know this information.	The task force believes that statements tied to the conservator should not provide too much detail.
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	The Judicial Council should amend form GC-340, *Order Appointing Conservator*, to include the new determinations and requirements to interview others.	The task force believes there is no need to specify in court orders the requirements imposed on court investigators.
Ms. Vicki Fern de Castro Deputy County Counsel Stanislaus County Modesto	Should add to the order to provide for findings related to appointment of public guardians that are consistent with Probate Code section 2920 as follows: 1. Court finds that there is no one else who is qualified and willing to act; 2. Court finds that appointment of public guardian as conservator is in the best interests of the person; 3. Notice has been given to public guardian 4. Court has considered alternatives to appointment of public guardian, and, finds there are none; 5. Court finds that appointment of the public uardian is necessary.	The task force believes there is no need for these detailed findings in every public guardian case.
Ms. Deborah G. Kramer Radin Attorney at Law	The proposed language to the order is vague and could be applied to the benefit or detriment of	This proposal is intended merely to expressly enforce current law under the Due Process in Competency Determination Act (Prob. Code,

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 20 – Finding of Impaired Mental Function

Commentator	Comment Excerpt or Summary:	Task Force Response
Los Altos	the proposed conservatee and his or her family. Impairment of one mental function (even in combination with other mental functions) does not necessarily warrant the establishment of a conservatorship, nor does it render the proposed conservatee incapable or incapacitated to make decisions in other areas. Because the very nature of a conservatorship removes the ability of a person to make their own living, medical and/or financial decisions, caution should be undertaken in this area to protect the rights of the proposed conservatee. The proposed language almost makes it too easy to have a person conserved. For that reason, sufficient supporting information and documentation should always be provided to support a finding of diminished capacity. If a finding of impairment of one mental function is rendered, the powers appointed to the conservator in the order should be limited.	§ 810–813), which requires a finding of a deficit in at least one mental function listed in section 811 and a correlation between the deficit and the inability to make the decision or take the act in question before a person's legal capacity to do the act or make the decision can be taken away. The required findings should not make it easier to establish a conservatorship. By directing attention to specific mental function deficits and their actual effect on specific conduct, including decision-making, the requirement could instead lead to more limited and focused grants of powers to appointed conservators.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 21 – Least Restrictive Alternative Finding

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA suggests clarification to this proposal to provide that no oral expression of findings and conclusions is required.	Verbal recitation of this finding may be important for the conservatee and laypersons involved in the conservatorship to hear if they wish to object to the finding.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 22 – Least Restrictive Alternative Process

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	1. The proposal for appointed counsel to file a written report appears to require more than a statement of the client's position, i.e., consent or objection. It may require an attorney to disclose information acquired in confidence or unfavorable to the client's position. If the purpose of the report is to substitute for the investigation by the court's investigator or by the regional center, a practice of some courts in the past, recent legislation has provided the resources for investigation in every case. This proposal puts counsel in an untenable position and requires the court to speculate on the filters employed by counsel. If all that is required is the client's position, the written report imposes unnecessary costs.	The proposed recommendation requires that a temporary conservatorship should not be established without review of a written report from either an investigator, which is required by Probate Code section 2250.6, or a court-appointed attorney unless waiting for a report would cause substantial harm. The intent of the recommendation is to allow court-appointed attorneys to file their reports if an investigator's report is not available.
	2. There is a logical development should this proposal pass, which provides further reason to oppose. Before recent legislation providing resources for probate investigation, it was the	The proposed recommendation requires that a temporary conservatorship should not be established without review of a written report from either an investigator, which is required by Probate Code section 2250.6, or a court-appointed attorney unless waiting for a

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 22 – Least Restrictive Alternative Process

Commentator	Comment Excerpt or Summary:	Task Force Response
	practice of a few courts to appoint two lawyers for a proposed conservatee, one for wishes and the other for interests. This permitted, between the opposing positions, all circumstances to be disclosed.	report would cause substantial harm. The intent of the recommendation is to allow court-appointed attorneys to file their reports if an investigator's report is not available.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 23 – Independent Powers of Conservators and Guardians

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation because we expect the court to retain discretion to grant the independent powers only when necessary	No response necessary.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Strongly support. Clarifies requirements for petitioners, attorneys, investigators, and court staff.	No response necessary.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 24 – Care Plan Requirement

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC recommends that an estimate of fees be included for the first year only.	The task force incorporated this suggestion into its recommendation.
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	We agree with this recommendation.	No response required.
Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators Chatsworth	CAPAPGPC is strongly opposed to all of your proposed unfunded mandates. For example: the "care plan" and "care plan follow-up report. Also the "minimum visitation for conservatorship of the person," as well as the "minimum visitation for conservatorship of the estate" depending upon the interpretation of "… should be responsive to the conservatee who may want more contact with the conservator."	Refer to funding comments: Recommend support for more funding for public guardians from their counties but oppose exemption of public guardians from unfunded mandates beyond existing law limitations on such mandates.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 25 – Care Plan Service

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	We agree with this recommendation.	No response required.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose as an invasion of conservatee's privacy.	Disagree—not an invasion of privacy.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 26 – Care Plan Form

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	We agree with this recommendation.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 27 – Psychotropic Medication

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC recommends that an exception be added to this rule for emergency treatment in a hospital setting.	Probate Code section 2356.5 already contains a provision for emergency situations.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose. Too broad and too vague.	The task force believes that similar protection for psychotropic medication should be provided regardless of the conservatee's diagnosis.

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COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 28 – Reversal of Investment Provisions

Commentator	Comment Excerpt or Summary:	Task Force Response of Rules and Laws Working Group
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC recommends legislation be supported that would allow a conservator to purchase open-ended mutual funds and to allow the hiring of a registered investment advisor with trading discretion.	Disagree.
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	This seems very onerous for the court to approve each investment. How is the court to know if an investment is prudent? Some estates may not have adequate funds to meet minimum requirements for mutual fund investments. This provision may be more appropriate for	Only the general authority to invest in individual securities would require court approval. The court would not be reviewing individual transactions.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 28 – Reversal of Investment Provisions

Commentator	Comment Excerpt or Summary:	Task Force Response of Rules and Laws Working Group
	professional conservators. We suggest an addition to mandatory reporters of financial abuse to include accountants who prepare accountings in conservatorship cases.	 Outside scope of task force.
Hon. Dorothy L. McMath Superior Court of San Francisco County	I strongly support this recommendation. The proposed revision would prevent churning of accounts and discourage speculative investments. Accountings would be easier for examiners to review.	No response necessary.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco, CA	Probate Code Section 2574 should be revised along the lines incorporated in Assembly Bill 316 (Spitzer), a legislative proposal of the Trusts and Estates Section, which expands rather than restricts the investment options for conservators and guardians and sets out general principles of investment standards for guardians and conservators. The practice proposal eliminates the ability of guardians and conservators to make investments without prior court approval in stocks and bonds, even those listed on an exchange and purchased through the exchange. The practice proposal is not based on either current investment practice or a reasonable empirical review of the practices of conservators and guardians throughout the state of California. Investment policy for guardians and conservators should be set out in Probate Code Section 2570 et seq., as is presently suggested	Disagree. See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 28 – Reversal of Investment Provisions

Commentator	Comment Excerpt or Summary:	Task Force Response of Rules and Laws Working Group
	by AB 316. While there is opportunity for amending the legislation proposed by the section to provide greater flexibility and to make it accord more with the general philosophy regarding reduction of risk and preservation of estates for the benefit of wards and conservatees, the section's proposal is realistic and workable as a framework for investment guidelines and principles that should be agreed to by the Judicial Council task force. The State Bar Trusts and Estates Section would strongly oppose any legislative attempt to implement this recommended practice.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 29 – Investment Policy for Conservators

Commentator	Comment Excerpt or Summary:	Task Force Response of Rules and Laws Working Group
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC recommends that if the conservator has filed and received court approval of the investment policy statement recommended in number 3, the conservator can invest in any publicly traded securities or open-ended mutual funds.	There is no provision in the rules of court currently proposed in response to Probate Code Section 2410 (proposed rules 7.1059 and 7.1009 of the Cal. Rules of Court) for a conservator to "file" an investment policy statement and get court approval of it. All guardians and conservators would be required to comply with the rules in any event, so this recommendation amounts to a request that all fiduciaries subject to the new proposed rules should have authority to make the

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 29 – Investment Policy for Conservators

Commentator	Comment Excerpt or Summary:	Task Force Response of Rules and Laws Working Group
		suggested investments. The proposed new rules are not limited to investments and are very general respecting that topic, merely calling for fiduciaries to "refrain from speculative investments," competently manage the conservatee's/ward's property, and avoid conflicts of interest.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California	Probate Code Section 2574 should be revised along the lines incorporated in AB 316 (Spitzer), a legislative proposal of the Trusts and Estates Section that expands rather than restricts the investment options for conservators and guardians and sets out general principles of investment standards for guardians and conservators. The practice proposal eliminates the ability of guardians and conservators to make investments in stocks and bonds without prior court approval, even those listed on an exchange and purchased through the exchange. The practice proposal is not based on either current investment practice or a reasonable empirical review of the practices of conservators and guardians throughout the state of California. Investment policy for guardians and conservators should be set out in Probate Code Section 2570 et seq., as is presently suggested by AB 316. While there is opportunity for amending the legislation proposed by the section to provide greater flexibility and to make it accord more with the general philosophy	Disagree.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 29 – Investment Policy for Conservators

Commentator	Comment Excerpt or Summary:	Task Force Response of Rules and Laws Working Group
	regarding reduction of risk and preservation of estates for the benefit of wards and conservatees, the section's proposal is realistic and workable as a framework for investment guidelines and principles that should be agreed to by the Judicial Council task force. The State Bar Trusts and Estates Section would strongly oppose any legislative attempt to implement this recommended practice..	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 30 – Fraud Detection Professionals

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	The Judicial Council should provide yearly training in fraud detection based on the guidelines developed.	Agree.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support formation of teams of experts to examine conservatorship accounting practices. Team members should be permanent state employees who make random audits of conservatorship accounts. Oppose expectation that court examiners should be trained to conduct audits.	Recommendations for implementation will be made to the council after further study and review.
Dr. Laura Moire Mountain View, Hawaii	The same team of professionals assembled for fraud should be used to recommend guidelines	Beyond the scope of recommendation and task force charge.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 30 – Fraud Detection Professionals

Commentator	Comment Excerpt or Summary:	Task Force Response
	for protection from all potential abuse, not only fraud, and should recommend needed core educational content for various certification and educational programs for all who interface with and are charged with the task of protecting seniors. The Office of Criminal Justice Planning was required to establish a uniform approach to document Elder abuse by January 1, 2003, but was never given funding. (The Governor deleted it.) Was this ever accomplished? If so, where are these guidelines?	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 31 – Adjustments to Qualifying Amount for Waiver of Accountings

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response necessary.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 31 – Adjustments to Qualifying Amount for Waiver of Accountings

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	Small estate provisions need to be increased. In Probate Code Section 2628 estates should be increased to $20,000. Income should be increased to $2,000 and exclude public benefits, or, in the alternative, anything over $2,000 per month (combined benefits and income) could go to a blocked account. This is one of the most common problems we see at Bet Tzedek, not enough money to pay attorney fees and accounting fees without depleting the estate to $0. Inability to get a bond without counsel plagues clients who cannot afford counsel because the estate is small.	Agree. Recommendation has been revised to reflect the new amount.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support increase in limits and inclusion of public benefits.	No response required
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA finds that it is appropriate to increase the limits for monthly income and include public benefits as recommended. However, if public benefits are added, the limit for all income for waiver should be raised to $3,000 per month. [The current figure, not adjusted for inflation, is $1,000 plus any amount of public benefits.]	Agree in part. Recommendation has been revised to increase the amount to $20,000 and eliminate the addition of public benefits.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 32 – Uniform System of Accounts

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation; however, the uniform system of accounts requirement should include compatibility with widely used accounting software programs, such as (1) Quickbooks, (2) Quicken, and (3) Microsoft Money.	Agree.
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	More information needs to be provided about this and a study conducted on the feasibility and burden to the preparer.	The task force consensus is that uniformity in accounting systems will increase accuracy and efficiency in monitoring of accountings.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 33 – Web-Based Accounting System

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports the concept of a Web-based accounting filing system.	No response required.
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	More information needs to be provided about this and a study conducted on the feasibility and burden to the preparer.	The task force consensus is that uniformity in accounting systems will increase accuracy and efficiency in monitoring of accountings.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 35 – Random Reviews By Accounting Personnel

Commentator	Comment Excerpt or Summary:	Task Force Response
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose random audits by court personnel. Random audits by a state team of experts would be helpful.	Disagree. Random audits conducted by appropriately trained accounting court personnel recommended.

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COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 36 – Care Plan Follow-up Report

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	The care plan and a confidential screening form should be submitted annually for review by investigators to pick up information on bankruptcies, convictions, etc.	Agree.
Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators Chatsworth	CAPAPGPC is strongly opposed to all of your proposed unfunded mandates. For example: the "care plan" and "care plan follow-up report. Also the "minimum visitation for conservatorship of the person," as well as the "minimum visitation for conservatorship of the estate" depending upon the interpretation of "… should be responsive to the conservatee who may want	Refer to funding comments: Recommend support for more funding for public guardians from their counties but oppose exemption of public guardians from unfunded mandates beyond existing law limitations on such mandates.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 36 – Care Plan Follow-up Report

Commentator	Comment Excerpt or Summary:	Task Force Response
	more contact with the conservator."	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 37 – Minimum Visitation for Conservatorship of the Person

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators Chatsworth	CAPAPGPC is strongly opposed to all of your proposed unfunded mandates. For example: the "care plan" and "care plan follow-up report. Also the "minimum visitation for conservatorship of the person," as well as the "minimum visitation for conservatorship of the estate" depending upon the interpretation of "... should be responsive to the conservatee who may want more contact with the conservator."	See previous response to this comment.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco	It is appropriate to have regular and irregular visits from the conservator of the person and/or estate to the conservatee, but it is not necessarily appropriate to set a monthly minimum either by rule or by legislation. There are instances where a conservator has caregivers in daily or otherwise frequent contact with the conservatee and where there are frequent occasions for feedback from persons in direct contact with the conservatee and it may not be helpful or add anything to the degree of oversight to have the conservator personally visit on a fixed minimum	The intention of the recommendation is to establish a minimum contact guideline to respond to situations where the amount of contact is minimal or nonexistent. More frequent contact if necessary and appropriate would not be precluded.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 37 – Minimum Visitation for Conservatorship of the Person

Commentator	Comment Excerpt or Summary:	Task Force Response
	schedule. The Trusts and Estates Executive Committee questions the necessity of either legislation or statewide rules to deal with the issue of conservator visitation.	
Ms. Vicki Fern de Castro Deputy County Counsel Stanislaus County Modesto	This should be evaluated on a case-by-case basis. The court's investigators, conservators, and courts should review the facts and decide what is appropriate. For example: in some situations, a conservatee may be "needy" and request more visits than are necessary. Another situation would be that a conservatee requires a minimum of daily visits to prevent others from taking undue advantage and causing other harm. These latter situations would not be adequately addressed if visitation was only once per month or as the conservatee requests. Suggested language: "Minimum visitation for conservator-ship of the person. The conservator or a qualified and responsible person designated by the conservator should visit the conservatee at a minimum visitation period determined, in consideration of the facts of the case, by the conservatee, the conservator, the court's investigators, and the court."	The intention of the recommendation is to establish a minimum contact guideline to respond to situations where the amount of contact is minimal or nonexistent. More frequent contact if necessary and appropriate would not be precluded.
Dr. Laura Moire Mountain View, Hawaii	If the conservatee has active medical issues or crises (hospitalization or procedure), the conservator should increase the visits to more frequent as indicated by physician and caregiver or concerned parties' input. The conservatee may be handicapped in voicing his or her own	The intention of the recommendation is to establish a minimum contact guideline to respond to situations where the amount of contact is minimal or nonexistent. More frequent contact if necessary and appropriate would not be precluded.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 37 – Minimum Visitation for Conservatorship of the Person

Commentator	Comment Excerpt or Summary:	Task Force Response
	needs. Consistent regular communications should be set up with these other supportive forces, so the conservatee receives timely care and medical decisionmaking.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 38 – Minimum Visitation for Conservatorship Of The Estate

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators Chatsworth	CAPAPGPC is strongly opposed to all of your proposed unfunded mandates. For example: the "care plan" and "care plan follow-up report. Also the "minimum visitation for conservator-ship of the person," as well as the "minimum visitation for conservatorship of the estate" depending upon the interpretation of "… should be responsive to the conservatee who may want more contact with the conservator."	See previous response to this comment.
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC recommends that the responsible person visit the conservatee quarterly, not annually.	The intention of the recommendation is to establish a minimum contact guideline to respond to situations where the amount of contact is minimal or nonexistent. More frequent contact if necessary and appropriate would not be precluded.
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive	It is appropriate to have regular and irregular visits from the conservator of the person and/or estate to the conservatee, but it is not necessarily	The intention of the recommendation is to establish a minimum contact guideline to respond to situations where the amount of contact is minimal or nonexistent. More frequent contact if necessary and

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 38 – Minimum Visitation for Conservatorship Of The Estate

Commentator	Comment Excerpt or Summary:	Task Force Response
Committee State Bar of California San Francisco	appropriate to set a monthly minimum either by rule or by legislation. There are instances where a conservator has caregivers in daily or otherwise frequent contact with the conservatee and where there are frequent occasions for feedback from persons in direct contact with the conservatee and it may not be helpful or add anything to the degree of oversight to have the conservator personally visit on a fixed minimum schedule. The Trusts and Estates Executive Committee questions the necessity of either legislation or statewide rules to deal with the issue of conservator visitation.	appropriate would not be precluded.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 39 – Court Investigator Visit Required Prior to Conservatee's Removal from Residence

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	There should be an emergency exception to the need for an investigator visit prior to removal from residence in the case of health risks. We are seeing an increase of hoarding cases (self-neglect) and find people need to be moved because of orders from the health department, building and safety department, fire department, etc. There is often no time for an investigator's report.	Agree that the court should have discretion for good cause regarding emergency situations. Recommendation amended.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 39 – Court Investigator Visit Required Prior to Conservatee's Removal from Residence

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators Chatsworth	CAPAPGPC strongly recommends that an exception be allowed for emergency situations.	Agree.
Ms. Debra Methany Family Court Services Manager Superior Court of Kern County	I agree with a requirement that investigators need to visit conservatees before a move is allowed to assess the situation and review options for the court. Often, conservators are not aware of other options that could be explored before a move is made.	No response required.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose duplication of reporting from the court investigator and the conservatee's attorney. Court investigator's visit and report are sufficient. Further invasion of the conservatee's life is not warranted.	The task force consensus is that the recommendation for a required visit from the investigator and a written report from the attorney safeguards the rights and property of the conservatee. Agree one report is enough except when removal from residence prior to establishment in new residence is made.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	The proposal for appointed counsel to file a written report appears to require more than a statement of the client's position, i.e., consent or objection. It may require an attorney to disclose information acquired in confidence, or unfavorable to the client's position. If the purpose of the report is to substitute for the investigation by the court's investigator or by the regional center, a practice of some courts in the past, recent legislation has provided the resources for investigation in every case. This proposal puts counsel in an untenable position and requires the court to speculate on the filters	The task force consensus is that the recommendation for a required visit from the investigator and a written report from the attorney safeguards the rights and property of the conservatee.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 39 – Court Investigator Visit Required Prior to Conservatee's Removal from Residence

Commentator	Comment Excerpt or Summary:	Task Force Response
	employed by counsel. If all that is required is the client's position, the written report imposes unnecessary costs. There is a logical development should this proposal pass, which provides further reason to oppose. Before recent legislation providing resources for probate investigation, it was the practice of a few courts to appoint two lawyers for a proposed conservatee, one for wishes and the other for interests. This permitted, between the opposing positions, all circumstances to be disclosed.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 40 – Conservatee Advocate Program

Commentator	Comment Excerpt or Summary:	Task Force Response
Hon. Dorothy L. McMath Superior Court of San Francisco County	Strongly oppose. Conservatee's needs are thoroughly reported by the court investigator. If the conservatee would benefit from an advocate, the court should appoint an attorney.	This is a best practice recommendation. Volunteer court advocacy programs have proven successful for other populations of vulnerable court users. The task force believes that conservatees may benefit from having an advocate participating in the process. Successful volunteer advocacy programs have coexisted with mandatory appointment of court-appointed counsel, as in juvenile dependency.
Ms. Kate Kalstein	Conservatee's needs are to be thoroughly	See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 40 – Conservatee Advocate Program

Commentator	Comment Excerpt or Summary:	Task Force Response
Legislative Counsel California Judges Association San Francisco	reported by the court investigator. If the conservatee needs an advocate in court, the court should appoint an attorney. Thus, any program should be at a court's option and appointment in any case at the court's discretion. Unlike dependents in the Welfare and Institutions Code Section 300 dependency proceedings, a person may be conserved without any evidence of abuse or neglect, actual or potential. Imposing a nonprofessional volunteer into a conservatee's home and affairs, when the conservatee has not been judicially determined to need protection, unnecessarily infringes on the privacy of the conservatee.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 41 – Conservatee Advocate Report

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	Need to require the reports to be served on the conservatee, the parties entitled, and attorneys also.	Agree.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	Conservatee's needs are to be thoroughly reported by the court investigator. If the conservatee needs an advocate in court, the court should appoint an attorney. Thus, any	Volunteer court advocacy programs have proven successful for other populations of vulnerable court users. The task force believes that conservatees may benefit from having an advocate participating in the process. Successful volunteer advocacy programs have co-existed with

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 41 – Conservatee Advocate Report

Commentator	Comment Excerpt or Summary:	Task Force Response
	program should be at a court's option and appointment in any case at the court's discretion. Unlike dependents in the Welfare and Institutions Code Section 300 dependency proceedings, a person may be conserved without any evidence of abuse or neglect, actual or potential. Imposing a nonprofessional volunteer into a conservatee's home and affairs, when the conservatee has not been judicially determined to need protection, unnecessarily infringes on the privacy of conservatee.	mandatory appointment of court-appointed counsel, as in juvenile dependency.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 42 – Written Bill of Rights for Conservatees

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC believes it is a better practice for the court investigator to serve the conservatee with the bill of rights.	By requiring the conservator to provide the bill of rights to the conservatee and acknowledge the receipt of the document, the conservator is aware of and familiar with the rights provided.
Ms. Debra Methany Family Court Services Manager Superior Court of Kern County	I have a fundamental problem with adding more information for the conservatees to understand when they have diminished capacity to begin with. While I understand the intent of a written	The comprehension of the bill of rights could vary with each conservatee because their cognitive abilities; however, another purpose of the bill of rights is to inform the conservator.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 42 – Written Bill of Rights for Conservatees

Commentator	Comment Excerpt or Summary:	Task Force Response
	bill of rights, my thought is that if a person could really understand this bill of rights, a conservatorship would likely not be needed. I do support improved education and notice to family members who may be able to assist the conservatee.	
Hon. Dorothy L. McMath - Superior Court of San Francisco County	Support with the addition of a statement that the conservatee retains the right to privacy to the greatest extent possible.	Agree. The recommendation has been modified to include the right to privacy.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA supports this recommendation if amended to add a statement that the conservatee retains the right to privacy to the greatest extent possible.	Agree. The recommendation has been modified to include the right to privacy.
Ms. Alisa R. Knight Court Attorney/Probate Examiner Superior Court of Kern County	I would propose modification to the recommended Conservatees' Bill of Rights—I would like to see an additional requirement that the notice of hearing specifically set forth whether dementia powers (psychotropic medications, secured perimeter facility placement) are being requested on its face. This would increase due process to the conservatee and also place the relatives on notice of what is truly being applied for, so that they would not be required to decipher the petition itself in this regard.	The task force believes the procedures are sufficient. (See notice recommendation.)

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 43 – Vexatious Litigation

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC strongly supports this recommendation.	No response necessary.
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	The proposed recommendation is a good idea, but clarification is needed as to whether this means separate litigation or within the conservatorship proceeding itself. This would be especially good in cases where a family member, a nonspousal partner, or other disgruntled person wreaks havoc during the course of a conservatorship; pursues to have someone appointed as conservator that goes against the conservatee's wishes. A party can be involved in a conservatorship proceeding simply by relationship to the conservator without actually filing court papers—can scope be broadened to include persons who attempt to impede the judicial process by constantly creating problems requiring more work for the conservator, cost to the conservatorship estate, or intervention by the court (i.e., attempting to circumvent medical care decisions made by the conservator or repeatedly lodging unfounded and malicious complaints with the court investigator, which any interested party now has the authority to do)?	Agree that the scope of the vexatious litigation should be clarified.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 44 – Conservatee Review of Accounting

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	Good idea, but is this to be included in the requisite court investigator's review or will a separate fee be charged for an additional visit? Also, the laws now state that accounts can be required on demand as well (i.e., someone lodging a complaint with the court investigator). We must be sensitive to the fact that this will add to the cost and attempt efficiency wherever possible.	This recommendation is included in AB 1727 (sec. 9).

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 44 – Conservatee Review of Accounting

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA believes that an item-by-item review in every case is prohibitively consumptive of the investigator's time and suggests that investigators should invite conservatee's comments and, when appropriate, investigate specific items with the conservatee.	This recommendation is included in AB 1727.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 47 – Out-of-County Transfer Process

Commentator	Comment Excerpt or Summary:	Task Force Response
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support coordination between counties but question how the transferring court can enforce a requirement that the transferee court set hearing dates.	Implementation would require cooperation between jurisdictions.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA suggests that the proposed recommendation be amended to provide that a transferring court should set a status hearing in 60 days, rather than 30, because this is a better estimate of the time necessary to complete the transfer and receive the receipt. The sending courts review must be limited to acknowledg-ment of receipt because upon receipt, the sending court loses jurisdiction of the matter. Upon receipt the receiving court should investigate a timely hearing, which turns on the unique circumstances of each case.	This issue is addressed in AB 1727.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No.48 – Adequate Funding for Probate Court Services

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC strongly supports this recommendation.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No.48 – Adequate Funding for Probate Court Services

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Don Boardman President California Association of Public Administrators, Public Guardians, and Public Conservators Chatsworth	CAPAPGPC's major area of concern is insufficient funding. Funds for the public guardian have not been included in the state budget to implement the additional requirements of AB 1363 (Jones). The new licensing requirement and the increase in caseload management standards cause many private conservators to petition the court for discharge. When they are discharged, the public guardian is appointed. The private sector does this on a selective basis; the low paying cases with limited assets are the ones they are not interested in, transferring that burden to the taxpayers. Due to our funding issues, our association respectfully requests that your report include recommendations that exempt public guardians from all unfunded mandates and request funding for public guardians.	Recommend support for more funding for public guardians from their counties but oppose exemption of public guardians from unfunded mandates beyond existing law limitations on such mandates.
Ms. Alisa R. Knight Court Attorney/Probate Examiner Superior Court of Kern County	I wholeheartedly support the pursuit of additional funding by the Legislature and an increased budget for probate conservatorship services to be provided by the court.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 49 – Adequate Funding for County Public Guardian and Public Conservator Services

Public Comments

RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC strongly supports this recommendation.	No response required
Mr. Don Boardman President California Association of Public Administrators, Public Guardians. and Public Conservators Chatsworth	CAPAPGPC's major area of concern is insufficient funding. Funds for the public guardian have not been included in the state budget to implement the additional requirements of AB 1363 (Jones). The new licensing requirement and the increase in caseload management standards cause many private conservators to petition the court for discharge. When they are discharged, the public guardian is appointed. The private sector does this on a selective basis; the low paying cases with limited assets are the ones they are not interested in, transferring that burden to the taxpayers. Due to our funding issues, our association respectfully requests that your report include recommendations that exempt public guardians from all unfunded mandates and requests funding for public guardians.	Recommend support for more funding for public guardians from their counties but oppose exemption of public guardians from unfunded mandates beyond existing law limitations on such mandates.
Ms. Alisa R. Knight Court Attorney/Probate Examiner Superior Court of Kern County	I wholeheartedly support the pursuit of additional funding by the Legislature and increased budget for probate conservatorship services to be provided by the court.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 50 – Budget Priority

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento, CA	PFAC strongly supports this recommendation.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 51 – Evaluating Budget Needs

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC strongly supports this recommendation.	No response required.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Fervently support. Most of the difficulties in conservatorship management could be resolved with better understanding of probate needs and adequate funding.	No response required.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA fervently supports this recommendation. Most of the difficulties in conservatorship management could be resolved with better understanding of probate needs and adequate funding.	No response required.

COMMENTS ABOUT SPECIFIC RULES AND FORMS

Circulated item No. 52 – Responsibility for Payment of Appointed Counsel Fees

Commentator	Comment Excerpt or Summary:	Task Force Response

COMMENTS ABOUT SPECIFIC RULES AND FORMS

Circulated item No. 52 – Responsibility for Payment of Appointed Counsel Fees

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Peter S. Stern Vice-Chair Trusts and Estates Executive Committee State Bar of California San Francisco	The California State Bar's Trusts and Estates Executive Committee concurs with the recommended practice.	No response necessary.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 52 – Responsibility for Payment of Appointed Counsel Fees
(Incorporates comments related to topic: Clarify Court-Appointed Counsel Payment Source)

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Debra Methany Family Court Services Manager Superior Court of Kern County	While I agree with the idea of the appointment of counsel in all cases, adequate funding must be allocated to the court to cover the cost. Trial court funding can only be spread so thin. The appointment of counsel in all cases would help preserve the rights of the proposed conservatees.	No response required.
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	This recommendation is extremely important for the courts. Currently there is a reliance on county funds for the court-appointed attorney program, which in some counties hinders the ability to appoint and/or order appropriate fees. The court should have autonomy to do what is best for the conservatee or minor. The task force should suggest legislation to fix this issue.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 52 – Responsibility for Payment of Appointed Counsel Fees
(Incorporates comments related to topic: Clarify Court-Appointed Counsel Payment Source)

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	Although the task force states it is mindful of the financial issues presented, the proposed language expects payment by the conservatee's estate unless it qualifies for hardship. There is an overwhelming need to establish hardship criteria and guidelines. 1 would imagine that the bulk of conservatorship cases would not qualify for hardship exemption, and families would still be faced with the burden of paying yet another costly expense.	Agree.

COMMENTS ABOUT SPECIFIC RULES AND FORMS

Circulated item No. 55 – Training for Court Investigators
(Also applies to No. 60 – New Probate Conservatorship and Guardianship Institute)

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	Education and training of probate investigators should include information on financial abuse, mediation, and crossover issues between elder abuse and mental illness. In the area of limited conservatorships, there should be more training on the seven powers available.	The recommendations will be referred to CJER and other education entities which will make recommendations for implementation to the Council for further action.
Mr. Michael M. Roddy Executive Officer	The Judicial Council should work with California Association of Superior Court	Support this recommendation.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

COMMENTS ABOUT SPECIFIC RULES AND FORMS

Circulated item No. 55 – Training for Court Investigators
(Also applies to No. 60 – New Probate Conservatorship and Guardianship Institute)

Commentator	Comment Excerpt or Summary:	Task Force Response
Superior Court of San Diego County	Investigators (CASCI) to develop the training program for court investigators. CASCI has been providing this training successfully for many years.	
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support with recommendation that investigator training should be incorporated into the general probate institutes. Investigators need to understand the complete operation of probate departments in supervising conservatorships. Also, interaction and cooperation among all staff of the probate department benefit conservatees.	Investigator training has already been implemented by CJER.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 57 – Probate Conservatorship and Guardianship Curriculum

Commentator	Comment Excerpt or Summary:	Task Force Response
Hon. Dorothy L. McMath	Support with inclusion of the following topics:	The task force supports this recommendation. The recommendations

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 57 – Probate Conservatorship and Guardianship Curriculum

Commentator	Comment Excerpt or Summary:	Task Force Response
Superior Court of San Francisco County	child abuse and neglect, abuse and neglect of developmentally disabled people, role of dependency and delinquency courts in guardianships, role of child protective services and adult protective services, role of nonprofit agencies.	will be referred to CJER and other education entities, which will make recommendations for implementation to the council for further action.
Dr. Laura Moire Mountain View, Hawaii	Attorneys, court investigators, judges, police, adult protective services staff, etc.) should include mandatory training in interviewing and investigation techniques akin to child abuse, taking into account the unique physical and emotional states of older individuals like such aspects as hearing loss, "sun-downing" (older individuals often have a reversal of their time sense and sleeping patterns where they can stay up late into the night and sleep during the day).	See above.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA would like to suggest one addition to the curriculum: substituted judgment, including Medi-Cal eligibility and testamentary capacity, which is necessary for predeath will contests.	See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 59 – New Probate Benchbook

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Alisa R. Knight	I wholeheartedly support creation of a new	No response needed.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 59 – New Probate Benchbook

Commentator	Comment Excerpt or Summary:	Task Force Response
Court Attorney/Probate Examiner Superior Court of Kern County	probate benchbook as proposed.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 60 – New Probate Conservatorship and Guardianship Institute

Commentator	Comment Excerpt or Summary:	Task Force Response
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support if included in a general probate institute (see comment on the probate conservatorship and guardianship curriculum).	See above.
Ms. Alisa R. Knight Court Attorney/Probate Examiner Superior Court of Kern County	I would prefer modification of the proposed Probate and Conservatorship Institute—I believe that these courses should be offered at least every six months in both Northern and Southern California locations (to encourage attendance by personnel statewide and to avoid inclement weather or travel conditions).	Training will be offered at least every six months at probate and conservatorship institutes in addition to Judicial Council–sponsored training at CASCI program and broadcasts.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 61 – Mandatory Educational Requirements for Attorneys

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this proposal.	No response required.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support educational requirements and recommendations that the Judicial Council works with the State Bar to develop general guidelines. Oppose requirement for written reports by attorneys. Court-appointed counsel should not duplicate the role of court investigator or regional center. If the conservatee opposes the conservatorship, conservatee's counsel should file written objections and should argue on conservatee's behalf at the hearing. Another level of investigative reporting, however, is an unnecessary expense to the conservatee.	See response under #15 above.
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA supports this recommendation in part and opposes the recommendation in part. CJA supports the recommended educational requirements and collaboration between the Judicial Council and State Bar to develop general guidelines. However, CJA opposes the requirement for written reports by attorneys.	See response under #15 above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 62 – Education Requirements for Nonprofessional Conservators

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC is training or assisting in the training of family conservators in four counties and is willing to expand to other locales.	The AOC appreciates this offer and will obtain the PFAC training materials for review and possible inclusion in training materials developed by CJER.
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	We agree with this recommendation.	No response required.
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	The recommendation should be modified to note that San Diego County also has a mandatory education requirement and program for conservators.	No response required—some courts have programs already in place.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Support. San Francisco's program includes both conservator of the person and conservator of the estate.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 63 – Encourage Partnerships

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC is training or assisting in the training of family conservators in four counties and is willing to expand to other locales.	The AOC appreciates this offer and will obtain the PFAC training materials for review and possible inclusion in training materials developed by CJER.
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	Partnerships should be encouraged to provide clinics; courts should make themselves available for regular meetings to review issues arising in the clinic setting.	Agree.
Ms. Vicki Fern de Castro Deputy County Counsel Stanislaus County Modesto	A great example is Orange County's program through the partnership of Orange County Bar Association and a local law school: law students acting as conservators of "unbefriended adults." I'd like to see this program expanded to other counties.	Agree.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 64 – Uniform Probate Court Staff Guidelines

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	While statewide uniformity is certainly a good idea, further information regarding the specific guidelines being developed in Southern	No response necessary.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 64 – Uniform Probate Court Staff Guidelines

Commentator	Comment Excerpt or Summary:	Task Force Response
	California is necessary to make an overall assessment as to whether *or* not they would be effective for other areas of the state. The problems experienced in Southern California were largely due to an overwhelmed and ineffective implementation of the system, while other areas of the state, for the most part, complied with the requirements of existing law and did not experience those same problems.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 65 – Regional Information Sharing

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	Meetings and conferences should include staff of clinics and self-represented litigant programs.	Agree. These ideas will be referred to the appropriate entity for recommended implementation.
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	The recommendation should include a suggestion to expand the workshop concept at the regional office level to discuss common issues and, in turn, roundtable discussions at the yearly institute for statewide conformity and feedback.	Agree.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 67 – Expand Self-Help Services

Commentator	Comment Excerpt or Summary:	Task Force Response
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	Courts should also look to existing family law facilitators to expand the self-help services that are available. These types of programs are already available in some counties.	Agree.

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COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 69 – Review Forms for Ease of Use

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	The *Capacity Declaration* should be made more relevant and easier to complete.	Agree. The committee welcomes specific recommendations for improvement of this form.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 70 – Automatic Appointment of Counsel

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation except when there is a good cause showing that representation is not necessary.	Agree in part. Specific criteria would have to be determined as to what good cause would be for representation to be unnecessary.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Strongly oppose loss of court's discretion. Existing law recognizes the conservatee's absolute right to counsel if the conservatee so requests. Existing law recognizes the need for counsel in other circumstances and enables the court to determine whether appointment of counsel would be helpful or in the conservatee's best interest. The court should retain the ability to evaluate individual situations. Imposition of counsel in every conservatorship ignores the individual conservatee's wishes, resources, and need for another layer of intrusion. Moreover, there may not be enough attorneys available to provide adequately trained counsel for every proposed conservatee. The court needs the discretion to determine the best use of its attorney resources.	The task force found that the practice of appointing counsel varies widely throughout the state and, although this recommendation may take time and resources to implement, the protections afforded to conservatees would be well worth the time and expense in quality of life, better oversight, and increased attention given to the conservatee.
Mr. Peter S. Stern (Personal Comment as an Individual) Attorney at Law Palo Alto	The task force recommendation that attorneys should be appointed for all proposed conservatees is inappropriate and wrongly premised. It is inappropriate because it is unnecessary, and it would be a boondoggle for me and my colleagues but an utter waste in most cases, causing another substantial drain on the finances of the counties and the conservatees. In most cases, the courts appoint conservators to handle clear and necessary problems where there is no objection by a proposed conservatee, where family members have adequate notice,	See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 70 – Automatic Appointment of Counsel

Commentator	Comment Excerpt or Summary:	Task Force Response
	where the court investigator can determine whether or not there are special problems that would require appointment of counsel. The proposal is wrongly premised because it overlooks the role of the court investigator, substantially enhanced under the new legislation, to investigate, interview, and recommend necessary steps to the court, including the appointment of counsel for the proposed conservatee where such appointment is necessary. The Probate Code presently provides for mandatory appointment of counsel in a number of instances where the conservatee clearly cannot defend his or her own interest. The code also provides for appointment of counsel upon the request of a proposed conservatee or where the court investigator reports that such appointment will be helpful or necessary. The notion that somehow since a conservatorship amounts to an adjudication that an individual's rights should be restricted the individual must have counsel appointed, whether or not the individual, family members, or the court investigator considers that there are any substantial interests that require the assistance of counsel, is not reasonable. Probate conservatorships are not Lanterman-Petris-Short conservatorships; probate conservatees retain	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 70 – Automatic Appointment of Counsel

Commentator	Comment Excerpt or Summary:	Task Force Response
	substantial rights, have access to the courts on their own, if capable (see both Probate Code Sections 2113 and 1050, the latter effective January 1, 2008), and can ask for counsel if there are issues needing representation. Consider the expense of having independent counsel review all estate planning documents for every conservatee; for having independent counsel prepare written reports in every conservatorship. These proceedings are onerous and in many cases ruinous. I ask the task force to withdraw its proposal.	
Ms. Vicki Fern de Castro Deputy County Counsel Stanislaus County Modesto	This proposal will likely increase costs of conservatorships unnecessarily. The appointment decision should be left to the discretion of the judge in view of the facts of each case and pursuant to the recommendation of the court investigator. With increased trainings and education, even in counties currently not appointing in appropriate cases, they will start to do so! My experience in two counties has been that courts are adept at appointing counsel in appropriate cases. The dementia conservatee may be better served by a guardian ad litem or CASA-type advocate rather than an attorney since he or she may be in need	See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 70 – Automatic Appointment of Counsel

Commentator	Comment Excerpt or Summary:	Task Force Response
	of someone looking out for the best interests rather than providing legal services.	
Ms. Geraldine Wormser Los Angeles	1. If attorneys are appointed for all conservatees, there should be a system of oversight for them. 2. If the court determines that the prospective conservatee can pay for the court appointed-attorney, the court should keep the attorney fees in check and not routinely approve high rates. 3. The attorneys appointed to represent conservatees should be experienced.	See above.
Mr. Alfonso Valencia	Appointing attorneys for all proposed conservatees is unnecessary. This approach would place an additional financial burden on the conservatee. It would also require an added redundant report to be written by an additional attorney, which would generate additional reports to be reviewed by the judge. Court investigators currently request appointment of counsel if the proposed conservatee requests an attorney, if they are opposed to a conservator-ship, or if it appears appointment of counsel would be helpful to the resolution of the matter or to protect the interests of the conservatee per Section 1826 of the Probate Code. This system of safeguards is already in place and the proposed conservatee is already burdened with paying for the petitioner's attorney and court costs. Additional attorney fees should not be imposed on what is usually an elderly person whose life savings are already being spent on	See above

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 70 – Automatic Appointment of Counsel

Commentator	Comment Excerpt or Summary:	Task Force Response
	court costs and attorney fees. If judges would familiarize themselves with and follow the current Probate Code sections, additional attorneys and revisions to the probate code would be unnecessary. A revision to the Probate Code that would benefit conservatees would be to eliminate the confidentiality requirement of the court investigator's report (Section 1826 (n) of the Probate Code.)	
Ms. Deborah G. Kramer Radin Attorney at Law Los Altos	The plan to adopt a policy that an attorney automatically be appointed for the proposed conservatee in every conservatorship matter before the court is problematic. Aside from the additional costs for attorney fees, unless it is the same attorney there would be difficulties with the appointed counsel getting up to speed on the conservatee and the particular issues involved, as well as establishing a relationship with the conservatee. It also may not allow for the conservatees own attorney to serve as counsel. In my experience, for example, in an ongoing conservatorship when we were having a new successor conservator appointed, we contacted the court investigator and asked if the conservator should have counsel for that proceeding. The court investigator met with the conservatee at that time and indicated he did not feel it was necessary to have counsel appointed since there was no change in the conservatee's status, living arrangements, or finances. It would	See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 70 – Automatic Appointment of Counsel

Commentator	Comment Excerpt or Summary:	Task Force Response
	be more cost-effective to leave it in the court's discretion as the new legislation gives more active ongoing involvement by the court investigator who can determine whether counsel is appropriate as the need arises.	
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA strongly opposes this recommendation, which would result in loss of court discretion. This proposal, in conjunction with companion recommendations requiring appointed attorneys to file a report, imposes costs, delay, and privacy infringement on all for the protection of a few. Existing law recognizes the conservatee's absolute right to counsel if the conservatee so requests. Existing law recognizes the need for counsel in other circumstances and enables the court to determine whether appointment of counsel would be helpful or in the conservatee's best interest. If the problem appears to be courts' failure to recognize the need for counsel, this can be addressed with a targeted remedy. A judicial administration rule stating the circumstances requiring appointment of counsel is the appropriate cure. The court should retain the ability to evaluate individual situations. Imposition of counsel in every conservatorship ignores the individual conservatee's wishes and resources and imposes further intrusion. There is also concern whether sufficient	See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 70 – Automatic Appointment of Counsel

Commentator	Comment Excerpt or Summary:	Task Force Response
	qualified attorneys are available to provide every proposed conservatee competent counsel. The proposal for appointed counsel to file a written report appears to require more than a statement of the client's position, i.e., consent or objection. It may require an attorney to disclose information acquired in confidence or unfavorable to the client's position. If the purpose of the report is to substitute for the investigation by the court's investigator or by the regional center, a practice of some courts in the past, recent legislation has provided the resources for investigation in every case. This proposal puts counsel in an untenable position and requires the court to speculate on the filters employed by counsel. If all that is required is the clients position, the written report imposes unnecessary costs. There is a logical development should this proposal pass, which provides further reason to oppose. Before recent legislation providing resources for probate investigation, it was the practice of a few courts to appoint two lawyers for a proposed conservatee, one for wishes and the other for interests. This permitted, between the opposing positions, all circumstances to be disclosed.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item Recommendations of the Comparative Jurisdiction and Best Practices Working Group
No. 71– Confidentiality of Conservatee's Attorney Reports

Commentator	Comment Excerpt or Summary:	Task Force Response
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose requirement for written reports by attorneys. Court-appointed counsel should not duplicate the role of court investigator or regional center. If the conservatee opposes the conservatorship, conservatee's counsel should file written objections and should argue on conservatee's behalf at the hearing. Another level of investigative reporting, however, is an unnecessary expense to the conservatee.	See response under #15 above.
Ms. Geraldine Wormser Los Angeles	The appointed attorneys' reports should not be confidential. In cases where the appointed attorney takes a favorable position toward one family member over another or favors a professional conservator over a family member, the opposed party must be able to defend allegations that the court-appointed attorney has lodged. If the reports are kept confidential, the party adversely affected has no idea of the reason for the opposition and would be unable to defend himself and herself against any allegations made against him or her.	The proposed recommendation would not preclude parties from having access to the report. The recommendation is for access and distribution of attorneys' reports to have the same confidentiality standard as the court investigators' reports under Probate Code Section 1826. The confidentiality in that section specified distribution to parties and discretion for the court to release the report. The report would not be available as part of the public record.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 72 – Appointment of Counsel in Transfer-of-Asset Cases

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Kate Kalstein Legislative Counsel California Judges Association San Francisco	CJA believes that a probate investigator's report is more appropriate and will be more effective than an attorne's report. Please also see response to the items regarding requirement for report by appointed counsel.	See response under #15 above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 73 – Develop Caseload Standards

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Vicki Fern de Castro Deputy County Counsel Stanislaus County Modesto	Different counties, different caseloads, different individual's abilities…all of these should be taken into consideration. You may have one difficult case that is comparable in personnel hours to 15 routine cases. In a county where the population is low, 5 cases may take more time (practice in a new area of law is slower, given a learning factor) and may be comparable to 15 cases in a large county that does them routinely (they may have a system in place to handle larger caseloads). Caseload standards should be set locally, not statewide; however, there should be oversight so that the cases are adequately handled.	Disagree. Local caseload volume and complexity of individual cases should be considered in developing average statewide standards.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 75 – Services for Enhancement of Family Relationships

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Debra Methany Family Court Services Manager Superior Court of Kern County	I have serious concerns about the court's ever-expanding role in the lives of the public. For example, services for enhancement of family relationships is not the business of a court. The court can certainly refer feuding families to counseling, but unless parties all mutually want healthy family relationships, it will not happen. I sincerely hope the AOC does not explore this idea further. The court should engage in less social work, not more.	Enhancement of family relationships when appropriate may be the factor to the well-being of a conservatee and is therefore within the scope of the court's inquiry for certain decisions such as placement and visitation. When courts have resources available to assist a conservatee in a similar way that other vulnerable court users are assisted with court-related services, it is recommended that if a conservatee could benefit from such services they should be made available.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 78 – Coordination of Annual Reviews and Accounting

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response required. AB 1727 section 1851.2 added, coordinating investigations with accountings.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 79 – Compliance Dates Set at Original Hearing

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response required.
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	We agree with this recommendation.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 80 – Psychotropic Drugs

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	This is already covered under the dementia power provisions of the Probate Code (section 2356.5) and the Lanterman-Petris-Short Act in the Welfare and Institutions Code.	This recommendation includes oversight of general psychotropic drugs prescribed for a conservatee even if dementia is not claimed or established. It follows the model of court oversight of other populations of vulnerable court users who are routinely prescribed these types of medications, such as juvenile dependents and delinquents.
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles, CA	Courts are not trained medical professionals. Do we want the courts to come between the doctor and patient? Psychotropic medications require court approval; can or should courts effectively supervise every prescription?	See above

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 80 – Psychotropic Drugs

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Debra Methany Family Court Services Manager Superior Court of Kern County	I have concerns in general about asking people without medical licenses to address the medication needs of the elderly (or anyone else). If the AOC wants to consider funding for each court to be able to obtain an independent evaluation of a conservatee's medical condition and medication needs, a reliable opinion could be obtained.	See above.
Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County	The legislation recommended should be expanded to consider oversight related to the use of psychotropic drugs for behavioral issues in the developmentally disabled population without control or authority.	Agree to the extent that it relates to conservatorships and not all the developmentally disabled population.
Dr. Laura Moire Mountain View, Hawaii	Just as powerful medications can mask dementia and be used to manipulate vulnerable elders, so might withholding of required medications lead to harm (for instance, depression can manifest as dementia and, if treated, the "dementia" clears). Substance abuse is an issue in our aging population and affects competency and can both masquerade as, and contribute to, dementia. Substance abuse has a physical basis involving brain physiology (neuro-psycho-pharmacology) and is often initiated as an attempt at self-treatment for depression. Age alone should never be a cause to withhold treatment for a medical condition, including substance abuse, but the differences in physiology of age respected. How can the courts monitor medication and its effects? This issue may be	See above.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 80 – Psychotropic Drugs

Commentator	Comment Excerpt or Summary:	Task Force Response
	best accomplished by a group of medical paraprofessionals.	

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 81 – Private Professional Conservators' Registration Information

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC supports this recommendation.	No response required.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 82 – Source of Appointment

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento, CA	PFAC supports this recommendation, with the addition that this shall give a private professional fiduciary standing when the public guardian is given notice.	AB 1727 addresses this concern.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 83 – Criminal and Credit Background Checks

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Yolande Erickson Ms. Janet Morris Ms. Sheryl Hayashida Attorneys Bet Tzedek Legal Services Los Angeles	A confidential screening form could be submitted on an annual basis to allow for update on conservators' status regarding bankruptcy, arrests, etc.	Agree.
Hon. Dorothy L. McMath Superior Court of San Francisco County	Oppose requiring credit background checks. Court requires adequate bond for the conservator of the estate. The surety checks the conservator's credit and will not issue a bond if the risk is too high. An additional credit check by the court investigator would be unnecessary, expensive, and time-consuming. Credit status of conservator of the person only is not relevant.	The task force consensus is that requirement of criminal and credit background checks provides more detailed information than reliance on a background check conducted by a third party and provides the most protection to the conservatee.
Ms. Alisa R. Knight Court Attorney/Probate Examiner Superior Court of Kern County	With proper allocation of resources, I support the proposed requirement of a CLETS and credit report pertaining to any proposed conservator, except the public guardian.	Agree.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 84 – Standardized Fee Requests

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	PFAC opposes this recommendation because we believe it would unnecessarily complicate fee reports for conservators.	The task force consensus is that establishing and specifying categories of service will make review of fee reports easier and more effective.

COMMENTS ABOUT SPECIFIC RECOMMENDED PRACTICES

Circulated item No. 85 – Fee Estimates

Commentator	Comment Excerpt or Summary:	Task Force Response
Ms. Jackie Miller Executive Director Professional Fiduciary Association of California Sacramento	Estimating fees is difficult; therefore PFAC would prefer a range of estimated fees, subject to unforeseen obstacles or circumstances.	The task force consensus is that establishing and specifying uniform categories of service will make completion and review of fee reports easier.

PUBLIC COMMENTS REFERENCE

The Probate Conservatorship Task Force solicited public comments on the committee's interim report during the period of April 30, 2007, through June 29, 2007. The interim report was organized into multiple sections based on topic proposals arising out of task force working groups. After the comment period ended, the task force considered public remarks and factors related to the structure and content contained in the interim report.

Subsequently, the Task Force reconfigured the interim report's numbering and topic headings, converting them into a new single numbering system consisting of 85 recommendations. This reorganization allows for a more logical flow of information that relates to the order of conservatorship processes and appears in the final report to the Judicial Council, *Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases.*

For convenience, conversion charts cross-referencing interim to final report numbers and public comment topic summaries are attached.

RECOMMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

CONVERSION CHART: NEW TO OLD NUMBERS

New number **Old number**

Draft Recommendations—Rules and Laws Working Group ....

52. *Responsibility for payment of appointed counsel fees.* 1
28. *Reversal of investment provisions.* 2
29. *Investment policy for conservators.* 3
55. *Training for court investigators.* 4
56. *Statewide standards.* 5
1. *Order for expedited investigation.* 6
4. *Disclosure of medical information.* 7
20. *Finding of impaired mental function.* 8
23. *Independent powers of conservators and guardians.* 9
27. *Psychotropic medication.* 10
14. *Fifteen-day notice period before move from principal residence.* 11

Draft Recommendations—Education and Training Working Group ....

54. *Adoption of proposed qualifications and education rules* 1
57. *Probate conservatorship and guardianship curriculum.* 2
58. *Distance learning alternatives.* 3
59. *New probate benchbook.* 4
60. *New Probate Conservatorship and Guardianship Institute.* 5

Draft Recommendations—Comparative Jurisdiction and Best Practices Working Group ..

General Recommendations ....

Funding ....
48. *Adequate funding for probate court services* 1
49. *Adequate funding for county public guardian and public conservator services* 1
63. *Encourage partnerships.* 2
50. *Budget priority.* 3
51. *Evaluating budget needs.* 4

Self-Help Services ....
67. *Expand self-help services.* 5
68. *Allocate funding for self-help services in conservatorships.* 6
69. *Review forms for ease of use.* 7

Court-Appointed Attorneys ....
70. *Automatic appointment of counsel.* 8
52. *Clarify court-appointed counsel payment source.* 9
61. *Mandatory educational requirements for attorneys.* 10

71. *Confidentiality of conservatee's attorney reports.* 11
Statewide Caseload Standards
73. *Develop caseload standards.* 12
Probate Programs
74. *AOC probate administration review.* 13
53. *Allocation of cost of incorporating caseload standard.* 14
75. *Services for enhancement of family relationships.* 15
Adoption of Statewide Probate Practice Guidelines
64. *Uniform probate court staff guidelines.* 16
30. *Fraud detection professionals.* 17
Notice
10. *Waiver of notice on good cause.* 18
11. *Supplemental e-mail notice.* 19
12. *Expanded information on notices.* 20
13. *Consistent report distribution.* 21
15. *Report deadline of five days prior to hearing*
(New heading "Required submission and handling of reports from attorneys, investigators, and regional centers" 22
Miscellaneous Recommendations
42. *Written bill of rights for conservatees.* 23
43. *Vexatious litigation.* 24
80. *Psychotropic drugs:* 25
21. *Least restrictive alternative finding.* 26
76. *Conservatorship petition coordination.* 27
77. *Conservatorship judicial officer assignment.* 28
81. *Private professional conservators' registration information* 29
78. *Coordination of annual reviews and accountings.* 30
44. *Conservatee review of accountings.* 31
65. *Regional information sharing* 32
31. *Adjustment to qualifying amount for waiver of accountings.* 33

Preconservatorship Recommendations

Process for Temporary Conservatorships
3. *Review of report.* 1
6. *Ex parte appointment follow-up hearing.* 2
5. *Due diligence to find relatives.* 3
82. *Source of appointment.* 4
7. *Least restrictive alternative declaration.* 5
22. *Least restrictive alternative process.* 6
8. *Digital cameras.* 7
2. *Standardized ex parte application.* 8
9. *List specific conservator powers.* 9
Process for Permanent Conservatorships
19. *Due diligence to find relatives.* 10
15. *Required reports from investigator and attorney (New heading "Required submission and handling of reports from attorneys, investigators, and regional centers").* 11
15. *Regional Center report (New heading "Required submission and handling of reports from attorneys, investigators, and Regional Centers").* 12

15. *Access to information (New heading "Required submission and handling of reports from attorneys, investigators, and regional centers").* 13

Recommendations Regarding Establishment of Conservatorships ....

Scope of Conservatorship ....
17. *Recommend least restrictive alternative.* 1
18. *Specify powers to be granted.* 2
Duties and Qualifications of Conservators ....
62. *Education requirements for nonprofessional conservators.* 3
83. *Criminal and credit background checks.* 4
Care Plan ....
24. *Care plan requirement.* 5
25. *Care plan service.* 6
26. *Care plan form.* 7
Inventory and Appraisal ....
16. *Inventory and appraisal monitoring.* 8
79. *Compliance dates set at original hearing.* 9

Case Review and Supervision Recommendations ....

Reports ....
36. *Care plan follow-up report.* 1
Contact and Visitation ....
37. *Minimum visitation for conservatorship of the person.* 2
38. *Minimum visitation for conservatorship of the estate.* 3
40. *Conservatee advocate program.* 4
41. *Conservatee advocate report.* 5
Accounts/Technology ....
32. *Uniform system of accounts.* 6
33. *Web-based accounting filing system.* 7
34. *Mandatory reporting by banking institutions.* 8
35. *Random reviews by accounting personnel.* 9
Fees
84. *Categories of service (New heading "Standardized fee requests").* 10
85. *Fee estimates.* 11
Other Petitions ....
14. *Notice required prior to removal from residence.* 12
39. *Court investigator visit required prior to conservatee's removal from residence.* 13
72. *Appointment of counsel in transfer of asset cases.* 14
N/A. *Supervision of trust. (Deleted / handled in California Rules of Court)* 15

Recommendations Regarding Termination of Conservatorships ....

Out-of-State Transfers ....
45. *Out-of-state transfer process.* 1
46. *Interstate cooperation.* 2
Out-of-County Transfers ....
47. *Out-of-county transfer process.* 3
48. *Out-of-county reciprocal investigations.* 4

RECOMMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

CONVERSION CHART: OLD TO NEW NUMBERS

Old number **New number**

Draft Recommendations—Rules and Laws Working Group ....

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2. *Reversal of investment provisions.* **28**
3. *Investment policy for conservators.* **29**
4. *Training for court investigators.* **55**
5. *Statewide standards.* **56**
6. *Order for expedited investigation.* **1**
7. *Disclosure of medical information.* **4**
8. *Finding of impaired mental function.* **20**
9. *Independent powers of conservators and guardians.* **23**
10. *Psychotropic medication.* **27**
11. *Fifteen-day notice period before move from principal residence.* **14**

Draft Recommendations—Education and Training Working Group ....

1. *Adoption of proposed qualifications and education rules* **54**
2. *Probate conservatorship and guardianship curriculum.* **57**
3. *Distance learning alternatives.* **58**
4. *New probate benchbook.* **59**
5. *New Probate Conservatorship and Guardianship Institute.* **60**

Draft Recommendations—Comparative Jurisdiction and Best Practices Working Group ..

General Recommendations ....

Funding ....

1. *Adequate funding for probate court services.* **48**
1. *Adequate funding forcounty public guardian and public conservatorservices* **49**
2. *Encourage partnerships.* **63**
3. *Budget priority.* **50**
4. *Evaluating budget needs.* **51**

Self-Help Services ....

5. *Expand self-help services.* **67**
6. *Allocate funding for self-help services in conservatorships.* **68**
7. *Review forms for ease of use.* **69**

Court-Appointed Attorneys ....

8. *Automatic appointment of counsel.* **70**
9. *Clarify court-appointed counsel payment source.* **52**
10. *Mandatory educational requirements for attorneys.* **61**

11. *Confidentiality of conservatee's attorney reports.* 71
Statewide Caseload Standards ....
12. *Develop caseload standards.* 73
Probate Programs ....
13. *AOC probate administration review.* 74
14. *Allocation of cost of incorporating caseload standard.* 53
15. *Services for enhancement of family relationships.* 75
Adoption of Statewide Probate Practice Guidelines ....
16. *Uniform probate court staff guidelines.* 64
17. *Fraud detection professionals.* 30
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18. *Waiver of notice on good cause.* 10
19. *Supplemental e-mail notice.* 11
20. *Expanded information on notices.* 12
21. *Consistent report distribution.* 13
22. *Report deadline of five days prior to hearing (New heading "Required submission and handling of reports from attorneys, investigators, and regional centers")* 15
Miscellaneous Recommendations ....
23. *Written bill of rights for conservatees.* 42
24. *Vexatious litigation.* 43
25. *Psychotropic drugs.* 80
26. *Least restrictive alternative finding.* 21
27. *Conservatorship petition coordination.* 76
28. *Conservatorship judicial officer assignment.* 77
29. *Private professional conservators' registration information* 81
30. *Coordination of annual reviews and accountings.* 78
31. *Conservatee review of accountings.* 44
32. *Regional information sharing* 65
33. *Adjustment to qualifying amount for waiver of accountings.* 31

Preconservatorship Recommendations ....

Process for Temporary Conservatorships ....
1. *Review of report.* 3
2. *Ex parte appointment follow-up hearing.* 6
3. *Due diligence to find relatives.* 5
4. *Source of appointment.* 82
5. *Least restrictive alternative declaration.* 7
6. *Least restrictive alternative process.* 22
7. *Digital cameras.* 8
8. *Standardized ex parte application.* 2
9. *List specific conservator powers.* 9
Process for Permanent Conservatorships ....
10. *Due diligence to find relatives.* 19
11. *Required reports from investigator and attorney (New heading "Required submission and handling of reports from attorneys, investigators, and regional centers")* 15
12. *Regional Center report (New heading "Required submission and handling of reports from attorneys, investigators, and regional centers")* 15

13. *Access to information (New heading "Required submission and handling of reports from attorneys, investigators, and regional centers").* **15**

Recommendations Regarding Establishment of Conservatorships ....

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1. *Recommend least restrictive alternative.* **17**
2. *Specify powers to be granted.* **18**

Duties and Qualifications of Conservators ....
3. *Education requirements for nonprofessional conservators.* **62**
4. *Criminal and credit background checks.* **83**

Care Plan ....
5. *Care plan requirement.* **24**
6. *Care plan service.* **25**
7. *Care plan form.* **26**

Inventory and Appraisal ....
8. *Inventory and appraisal monitoring.* **16**
9. *Compliance dates set at original hearing.* **79**

Case Review and Supervision Recommendations ....

Reports ....
1. *Care plan follow-up report.* **36**

Contact and Visitation ....
2. *Minimum visitation conservatorship of the person.* **37**
3. *Minimum visitation conservatorship of the estate.* **38**
4. *Conservatee advocate program.* **40**
5. *Conservatee advocate report.* **41**

Accounts/Technology ....
6. *Uniform system of accounts.* **32**
7. *Web-based accounting filing system.* **33**
8. *Mandatory reporting by banking institutions.* **34**
9. *Random reviews by accounting personnel.* **35**

Fees
10. *Categories of service (New heading "Standardized fee Requests").* **84**
11. *Fee estimates.* **85**

Other Petitions ....
12. *Notice required prior to removal from residence.* **14**
13. *Court investigator visit required prior to conservatee's removal from residence.* **39**
14. *Appointment of counsel in transfer of asset cases.* **72**
15. *Supervision of trust. (deleted — Handled in California Rules of Court)* .... **N/A**

Recommendations Regarding Termination of Conservatorships ....

Out-of-State Transfers ....
1. *Out-of-state transfer process.* **45**
2. *Interstate cooperation.* **46**

Out-of-County Transfers ....
3. *Out-of-county transfer process.* **47**
4. *Out-of-county reciprocal investigations.* **66**

APPENDICES

Appendix A

Public Hearings Summary of Testimony

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

The attached matrix represents a summary of testimony from the following individuals at the March 17 and March 24, 2006 hearings:

Ms. Robin Allen Los Angeles County District Attorney's Office	Mr. Eric Gelber Managing Attorney Protection & Advocacy, Inc.	Ms. Margaret G. Lodise Sacks, Glazier, Franklin & Lodise LLP
Mr. John Bagnall Los Angeles Police Department	Ms. Jennifer Henning Executive Director County Counsels' Association of California	Mr. Russ Marshall Professional Fiduciary Association of California
Hon. Marjorie Laird Carter Superior Court of Orange County	Ms. Naomi Karp Senior Policy Advisor AARP Public Policy Institute Washington DC	Ms. Patricia McGinnis Executive Director California Advocates for Nursing Home Reform
Ms. Yolande Erickson Conservatorship Attorney Bet Tzedek Legal Services	Mr. Dave Kochen Adult Protective Services Planning and Program Development Los Angeles County	Hon. Dorothy L. McMath Superior Court Commissioner Superior Court of San Francisco County
Ms. Jean Farley Public Defender Ventura County Public Defender's Association	Mr. Richard Lambie Professional Fiduciary Association of California (PFAC)	Mr. Barry Melton Public Defender County of Yolo Public Defender's Office
Mr. Terry Flynn California Association of Public Administrators, Public Guardians, and Public Conservators	Mr. James Locke, Probate Manager Superior Court of Sacramento County/California Association of Superior Court Investigators	Mr. Richard L. Narver Assistant Public Guardian/Administrator County of Yolo

Ms. Peggy Osborn Program Manager, Elder and Dependent Adult Abuse Prevention Program Office of the California Attorney General	Mr. F. Clark Sueyres Superior Court of San Joaquin County/ California Judges Association	Dr. Brenda K. Uekert National Center for State Courts
Ms. Mary Joy Quinn Director, San Francisco Probate Court Superior Court of San Francisco County	Ms. Heather C. Tackitt Family Law Mediator/Investigator Probate Court Investigator Superior Court of Madera County	Ms. Michelle Uzeta Associate Managing Attorney Protection & Advocacy, Inc.
Mr. Peter S. Stern Trusts and Estates Executive Committee State Bar of California		

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

Temporary Conservatorships

Panelists	Summary of Testimony
Are the standards for establishment of temporary conservatorship appropriate?	
Jean Farley	1. Petition should include showing that there are no less restrictive alternatives available, same showing now required in the Confidential Supplemental Information statement (form GC-312, item 5) filed with petition for general appointment under Pr. C. 1821. Alternatives include: a. Voluntary acceptance of assistance; b. Special or limited power of attorney; c. Durable powers of attorneys—health care or estate management; and d. Trusts. 2. Temporary conservatorships should never be allowed without an emergency justification.
Eric Gelber and Michelle Uzeta	Support accountability reforms like those proposed in AB 1363, including mandatory tracking of at least: (1) the number of temporary conservatorships requested and granted, and the number in which notice was waived; (2) the number in which the proposed conservatee attended the hearing; (3) the number of contested hearings; and (4) the "type" of conservator being proposed (i.e. family member, professional, public guardian).
Jennifer Henning	1. Appropriate standards exist for the appointment of a temporary conservator. Current standards provide for enough flexibility to remove a person from a potentially dangerous or harmful situation, but still allow a neutral arbitrator to independently review the justification for the appointment. 2. Court has before it at the time of appointment of a temporary conservator all of the material that would show the need for appointment of a general conservator, including allegations of fact by a percipient witness showing the need for appointment of a conservator, and the alternatives considered and the reasons why they were rejected in favor of the conservatorship. 3. Judicial Council forms require factual allegations in support of the "good cause" requirement for appointment of a temporary conservator, and the reasons for a change of residence during the period of the temporary conservatorship. 4. Statutory scheme depends on the parties faithfully executing their duties. Petitioners must rigorously conduct their investigations of facts to be used in support of a temporary appointment, and resort to temporary

	conservatorship should be limited to cases where good cause exists and can be shown. Courts must carefully review the showing made, ask questions where doubts remain, and enforce the good cause standard. 5. Where faithful execution of duties does not exist, reform efforts should be focused on improving the performance of the persons responsible for carrying out the conservatorship process rather than changing the standards.
Naomi Karp	Probate Code should identify the basic criteria for appointment of a temporary conservator: 1. "Good cause" must be concretely defined to require risk of serious, imminent, or emergent harm, and additional harm will result if a temporary appointment is not made; 2. Appointment is necessary because no one currently has authority to act on behalf of the proposed temporary conservatee, or an existing fiduciary is unwilling to act, ineffective, or abusive; 3. Petition states a factual basis for the need for a temporary conservatorship; 4. Court finds facts that constitute the urgent or emergency need; and 5. Conservator is given only those powers necessary to respond to the emergency.
Richard Lambie & Russ Marshall	Existing Probate Code and court rules provide for a temporary conservatorship where "exigent" circumstances exist. PFAC suggests that a comprehensive set of rules and guidelines would give judicial officers and court staff an appropriate framework for temporary conservatorships. 1. With no preexisting relationship with the proposed conservatee, it is almost impossible for a professional conservator to allege facts sufficient to show the need for a temporary conservatorship. 2. Court should require a professional conservator to state his or her prior relationship to a proposed conservatee, if any, and show how he or she learned about the facts alleged. 3. More appropriate in many cases for the petition to be filed by a family member who has actual notice of the supporting facts.
Barry Melton	1. As a general matter, there is no quarrel with the "good cause" standard under Probate Code section 2250. 2. There are concerns about the common practice of extending temporary appointments under the provisions of Probate Code section 2257(b).
Is notice provided to the correct individuals?	
Jean Farley	1. Notice should be as extensive as that required for hearing general petition (primarily second degree relatives). 2. Persons holding durable powers of attorney and trustees of trusts of which proposed temporary conservatees are beneficiaries should also be given notice of hearing on temporary conservatorship.
Jennifer Henning	Notice should be expanded to include close relatives of the proposed temporary conservatee—those entitled to notice of the hearing on the general conservatorship petition.

Richard Lambie & Russ Marshall	PFAC supports the concept that the more persons noticed the better. Persons given notice should include (1) a person nominated as conservator; (2) a trustee or successor trustee [of a trust of which the conservatee is a settlor]; (3) an attorney in fact named in a power of attorney granted by the proposed conservatee, and (3) a person named in an advance directive signed by the proposed conservatee.
Barry Melton	1. Notice to the proposed temporary conservatee under Probate Code section 2250 is devoid of meaning if the proposed conservatee is not capable of understanding the significance of the notice. 2. The task force should consider proposing an amendment to Probate Code sections 1470 and 1471 to authorize appointment of counsel when requested temporary conservatorship powers potentially affect substantial assets of the proposed conservatee.
Should the courts be able to waive notice and, if so, under what circumstances?	
Jean Farley	1. Should never be a waiver of notice by personal service on proposed conservatee and counsel; 2. Waiver should be possible only if court finds from sworn testimony that proposed conservatee would be substantially harmed by giving notice; 3. Should be a requirement of proof of actual service of notice filed within 48 hours after the hearing; and 4. Probate Code section 1825 is often not followed. Conservatee should always be present unless physically unable to attend—completely bedridden, at least at the temporary stage.
Eric Gelber & Michelle Uzeta	1. No notice is given to more than half of proposed temporary conservatees; judges routinely dispense with notice to proposed conservatee when provided unconfirmed assurance that proposed conservatee too feeble to come to court; 2. Support reformed notice procedures in AB 1363, including (a)creation of a rule of court setting standards for good cause exceptions to notice requirements; (b) limiting exceptions to notice to those cases where waiver essential to protect proposed conservatee or estate from irreparable harm; and (c) require proposed conservatee's attendance in absence of very limited exceptional circumstances.
Jennifer Henning	1. A good cause showing for waiver of notice to the conservatee is appropriate. The statute should not define this term too closely or narrowly. 2. If notice is expanded to include notice to relatives, the court should have discretion to waive notice to relative who is an abuser and notice would jeopardize conservatee's financial situation; and 3. Reasons for a request for waiver of notice should be moved from the petition to a confidential document.
Naomi Karp	Except for Texas, all states appear to permit waiver of advance notice of application for temporary conservator-ship in emergency situations. Notice should not be waived except in the most extreme circumstances. The Probate Code currently requires 5 days notice to the proposed conservatee "unless the court for good cause otherwise orders." "Good cause should be defined, and narrowly. Possible justifications for waiving notice:

	1. Proposed conservatee lives with a caregiver who is actively dissipating the conservatee's assets and giving notice is giving notice to the financial abuser; 2. A kidnapping; 3. A severe health problem requires immediate treatment and proposed conservatee can't or won't seek treatment; and 4. Other dire circumstances exist in which waiting even a couple of days may result in irreparable harm. One way to reduce notice waiver cases is to require a shorter notice period when an emergency is alleged: 1. Oregon and Minnesota require two days' notice; 2. Oklahoma requires 72 hours notice. Important to provide for notice and an opportunity for the temporary conservatee to contest the appointment at some point, even after the emergency appointment. For example, Wyoming and Minnesota require notice within 48 hours after an ex parte appointment. This allows immediate protective action and informs the conservatee as soon as it is safe to do so.
Richard Lambie & Russ Marshall	1. The court should continue to have the power to waive notice of a petition for a temporary conservatorship. This power is essential where the health, safety or financial well-being of the proposed conservatee would be risked by giving notice that would enable potential abusers to take actions against the interests of the conservatee. 2. Waiver of notice should be rare but it is now routine. 3. Waiver should be considered only if an individual who would get notice is an abuser and the abuse is the reason for the temporary conservatorship. 4. Other examples of situations where notice should be waived: a. Person is in immediate physical danger and should be moved; b. Need to start eviction proceedings against occupants of property [with the proposed conservatee]; c. Need to serve [domestic violence or elder abuse] restraining orders against abusers; d. When immediate medical attention is necessary; and e. Prevent additional losses in cases of financial abuse.
Barry Melton	Courts should continue to be able to waive notice if temporary powers are requested to provide immediate medical treatment because of accident or illness. It is difficult to support unlimited waivers of notice for other reasons, particularly where there are substantial assets.

What role could and should court investigators play in temporary conservatorships?	
Jean Farley	1. If an attorney is appointed for a proposed temporary conservatee for a temporary conservatorship hearing or ex parte application, a court investigator is not needed; 2. If counsel is not appointed, a court investigator should at a minimum interview the proposed conservatee concerning his or her desires and the issues raised by the petition. 3. Appointment of a court investigator should be mandatory when the proposed conservatee is not going to be present at the hearing or ex parte application.
Eric Gelber & Michelle Uzeta	Support AB 1363's requirement that: 1. Prior to the hearing, or, if feasible, within 48 hours after the hearing, a court investigator must interview the proposed conservatee personally to determine whether he or she wants to oppose the conservatorship or has a preference as to identity of appointed temporary conservator; and 2. Where temporary conservatee's residence to be changed, absent good cause to the contrary, court investigator should be required to personally interview the conservatee to determine his or her views on the change, whether he or she wants counsel, and whether the change is required to prevent irreparable harm. A hearing should be required on all such requests.
Jennifer Henning	1. Funding for court investigators must be increased if they are to be given a larger role in temporary conservatorships; and 2. There should be flexibility in the requirement for a court investigator's report before the hearing on the petition for appointment of a temporary conservator. The court should be able to waive the report or allow it to be filed after the appointment hearing where time is of the essence. 3. Court investigators should have access to the confidential information that is submitted with the general conservatorship petition when they investigate the request for appointment of a temporary conservator.
Naomi Karp	Difficult question due to resource limitations, but investigators play a key role when they inform the proposed conservatee of the case, the right to oppose the appointment, to attend the hearing, to be represented by counsel, and to have counsel appointed by the court. 1. This function of investigators should be included in the temporary conservatorship process, either before the hearing or, in unusual cases requiring an ex parte appointment, within 48 hours after the appointment (Maine procedure); 2. AARP supports requirement in Florida and Arizona for appointment of counsel in every temporary conservatorship matter. Appointed counsel may diminish the need for court investigator involvement at this early stage of the case.

Richard Lambie & Russ Marshall	Court investigators should continue to play a critical role in temporary conservatorships. The proposal to have court investigators interview the proposed temporary conservatee before the appointment would be a tremendous safeguard against the potential for abuse.
Barry Melton	The role of court investigators should be expanded to authorize the immediate appointment of a court investigator to make a financial investigation, including the power to subpoena financial records, when a temporary conservatorship is requested that potentially affects substantial assets of the proposed conservatee.
Are the powers and duties granted to temporary conservators appropriate?	
Jean Farley	Many attorneys request powers at the temporary stage that require 15 days notice. Court should strictly enforce requirements of Pr. C. section 1203(a) (court can't shorten time for notice of a matter where the statute governing notice of that matter does not permit shortening of notice). No powers should be granted unless section 1203(a) is strictly complied with.
Jennifer Henning	1. Caution against attempts to limit the powers currently available to a temporary conservator. 2. Need to prevent or correct financial abuse may support greater powers than now available. 3. Full range of powers should be available, but petitioner obligated to request only those powers currently required to address the needs of the conservatee. 4. An explanation should be required as to why a particular power is necessary, with any specific financial information placed in a confidential form. 5. Court must carefully review requests for powers and make an independent determination of the need for them.
Naomi Karp	Current statutory language granting powers to temporary conservatee is too broad. Temporary conservator's powers should be limited to those necessary to deal with the urgent or emergent situation giving rise to the need for the appointment. (New Jersey: "temporary [conservator] may provide only those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the incapacitated person.) Courts should specify the temporary conservator's limited powers in the Letters of Temporary Conservatorship. A check-off form could facilitate this process. AARP has other suggestions for a temporary conservatorship process that will be forwarded in writing. AARP is working with the ABA on a 2-year study of court monitoring of [conservatorships] We will provide the task force with the findings of this study that are relevant to its work..
Richard Lambie & Russ Marshall	The powers of temporary conservators are appropriate.

Barry Melton	The powers of temporary conservators to dispose or take possession of substantial assets should be commensurate with the amount of a bond the court requires or, alternatively, such powers should be exercised by public authorities. The court should more closely monitor such transactions.
What might be better approaches to emergency intervention?	
Jean Farley	Statute should require appointment of counsel at the beginning of every conservatorship proceeding.
Jennifer Henning	If establishing temporary conservatorships is going to be made more difficult, a mechanism should be developed that permits emergency intervention where warranted. 1. Florida distinguishes between emergency and non-emergency situations. An emergency exists when the vulnerable adult is at risk of death or serious physical injury and lacks capacity to consent to emergency protective services. a. Emergency powers include power to remove the person from the dangerous situation and provision of medical treatment. b. A hearing follows within four days to determine whether the emergency powers should continue, on 24-hour notice to the person involved and next-of-kin. 2. A three-tiered conservatorship system similar to Florida's could work in California. a. First level, emergency powers for a short period of time; b. Second level, a temporary conservatorship that could feature additional hearings and investigation by the court, but would provide the conservator with some power to care for the conservatee while the court determines the need for a permanent conservatorship; and c. Third level, the permanent (general) conservatorship.
Naomi Karp	A paradigm for a well-constructed temporary conservatorship process grounded in due process and an examination of other states' statutes is a two-tiered process, depending on the urgency of the facts on hand. 1. Temporary conservatorship under urgent but not emergent circumstances, includes advance notice and hearing, and short duration; 2. Emergency conservatorship ordered on an ex parte basis only to avoid imminent and major harm—in a very small fraction of cases—with appropriate notice and a hearing to follow in short order. Wyoming incorporates this idea. Analogy in equitable actions to temporary restraining order, with expedited or no notice (emergency conservatorship); preliminary injunction, with additional notice and a hearing (temporary conservatorship); and permanent injunction, with full notice and opportunity to respond and a trial (general conservatorship).

Richard Lambie & Russ Marshall	1. Notice should be given to county Adult Protective Services department (APS) where proposed conservatee is incapable of consenting to APS's intervention. 2. Mandatory family mediation should be required before the hearing on permanent appointment.
Barry Melton	Assuming a commensurate increase in funding, protection against or correction of financial abuse in emergency situations could be accomplished by increasing the role of public agencies, including public administrators/guardians/conservators. A broader role in this area might also be possible for county counsels and public defenders.
Miscellaneous testimony on Temporary Conservatorships	
Hon. Marjorie Laird Carter	Notice and right to rehearing within 5 days should be required if temporary conservatorship was granted without notice.
Eric Gelber	1. The concept of conservatorships is anachronistic and antithetical to current ways of viewing disability and the principles and values embodied in approaches to the provision of services and support to persons with disabilities. 2. Current approaches focus on self-determination, person-centered planning, and autonomy. 3. People with disabilities are capable, with natural and professional supports, of expressing preferences and making choices affecting their lives, including where and with whom they live and the types of services and support they need. 4. "Nothing about us without us."
Jennifer Henning	1. Temporary conservatorship statutory scheme works. Most concerns surrounding appointment of temporary conservators come from lax application of existing standards, not from lapses in statutory scheme. 2. Funding is and remains a concern in public guardian conservatorships. Many temporary conservatees under the care of public guardians have very low incomes; fees and costs of the public guardian and the county counsel are routinely deferred or waived. Simply adding requirements to the temporary conservatorship process without addressing funding will not meet any objectives of the task force. 3. Reforms of the temporary conservatorship process should not be based on anecdotal stories. Changes in the process should be based on sound policy.
Richard Lambie & Russ Marshall	An important issue is the length of time before the hearing on the general petition. PFAC supports a limit on temporary conservatorship appointment of 30 days, as is the case in temporary guardianships granted without notice (Prob. Code, § 2250(d)).

Patricia McGinnis	The law should be amended to more strictly limit temporary conservatorships, and to encourage consistency among all counties. The five-day notice for a temporary conservatorship is insufficient. The duty of the court investigator to interview the conservatee should never be waived, nor should the notice to the conservatee.
Hon. F. Clark Sueyres	Temporary conservatorship statute currently requires notice only to proposed conservatee which for good cause may be waived. Court is authorized to require further notice according to the circumstances of each case, but the statute offers no guidance. Unlike the Rules of Court for general civil matters there are no rules for ex parte application in probate. Local practices have been cultivated which are widely disparate court to court. Guidelines and minimum standards for this dramatic intrusion into a protected person's life would help efficiency and assure better protection from abuse.

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

Permanent Conservatorships

Panelists	Summary of Testimony
Are there sufficient due process safeguards to ensure the rights and interests of conservatees are being protected?	
Hon. Marjorie Laird Carter	The conservatee's right to privacy needs to be weighed against any expanded notice requirements.
Margaret Lodise	Generally supportive of broader range of notice, and right to jury trial should be maintained. LA system of appointment of counsel, which utilizes some volunteer attorneys, works well to help protect rights of conservatees. It should be easier to end a conservatorship with sufficient safeguards to prevent the conservatee from cycling back into the system.
Patricia McGinnis	Findings of exact degrees of incapacity or incompetence should be required so as to impose only the necessary degree of guardianship or conservatorship. Although the current system requires conservators to state in the petition why alternatives are not available, it does not require them to prove the lack of less restrictive alternatives, such as money management, home care, etc. Should make the judge's decision that there is no less restrictive alternative an appealable finding. Waiver of notice happens too frequently; requirements for notice and opportunity to appear should be strictly enforced. The law should be amended to give conservatees immediate access to their funds to pay for legal challenges to their conservatorship, the accountings and/or the conservator, if they wish. Conversely, professional conservators should not be permitted to use a conservatee's funds to fight such challenges, particularly when their opposition to a challenge by a conservatee is unsuccessful.
Richard Narver	Each party must fulfill its statutory role, which has been a significant problem in some counties. There needs to be more monitoring by the court through the court investigator's role.

Peter Stern	Notice provisions should be expanded to disseminate more information about the conservatorship to the conservatee and family members, including the confidential supplemental information form, the inventory and appraisal, and the accountings. The Trusts and Estates Section supports SB 1116, if it is amended to include provisions that would create a presumption that the conservatee's personal residence is the least restrictive residence, would create a fiduciary duty to evaluate residential and care needs focused on keeping the conservatee at home whenever possible, would require all notices of change of residence to state that the change of residence is consistent with the "least restrictive residence" standard, would require mailing all changes of residence to second degree family members, and would create a series of enhanced safeguards regarding the sale of a conservatee's personal residence.
Hon. F. Clark Sueyres	The right to counsel in conservatorships has some fundamental issues in its application. There is no statutory guidance and little case law. This results in disparate application between courts in different counties and between judges in the same court. A petition, or the investigation report, may present facts which show a lack of capacity to manage affairs or resist undue influence, yet counsel may appear as retained. Beyond the capacity issue, there is the question of who is actually controlling the subject's counsel. The extent to which the court may inquire, and if necessary intervene is unclear and should be addressed. Also, what is the appropriate role of appointed counsel? Does the attorney represent the subject's wishes or best interest?
Heather Tackitt	Need to address both the rights/interests of the physical person and the financial/estate issues, especially at the beginning of the conservatorship which is often when financial abuse occurs. There should be more stringent bond requirements, and mandatory court hearings before the sales of certain assets, such as the conservatee's home or assets valued at certain amounts, should be considered. Least restrictive care standards should be strictly adhered to by the courts in order to prevent a conserved person from being placed in a care facility (often locked-down facility) if they are able to remain in their home with adequate medical care. While the "least restrictive care requirement" is an adequate due process safeguard, proper court oversight is lacking, with most counties statewide reporting they are not current in their reviews. Due to this, the courts are not detecting this, and other violations, in adequate time. Other physical abuses (i.e. neglect, abandonment, physical abuse) also take place and without adequate court oversight.

Michelle Uzeta	Support the establishment of accountability measures, like those proposed in AB 1363, that would require tracking of at least: (1) the number of permanent conservatorships requested and the number granted, noting the number in which notice was waived, (2) the number in which the proposed conservatee attended the hearing; (3) the number of contested hearings; and (4) the "type" of conservator being proposed (i.e. family member, professional, public guardian). The collection and analyzing of such data is essential from a quality assurance standpoint, and will help identify problems and trends within the system.
Should court review of conservatorships be conducted more frequently, and what should the focus of these reviews be?	
James Locke	Dues to severe budget constraints, Sacramento County only reviews cases when an accounting is filed (i.e., cases are only reviewed where the conservator is playing by the rules). Some cases have not been reviewed since the mid-eighties and perhaps have never been visited by an investigator after the initial investigation and report. Sacramento County will need 2 or 3 more investigators just to do what we are already required to do and are not doing. Without additional funding any other discussion is moot.
Margaret Lodise	The single biggest reason for problems in this area is a lack of sufficient resources to review the accountings and conservatorships currently in the system. Placing the burden of additional regulation on the courts and the conservators without providing additional resources will not resolve any of the perceived problems.
Patricia McGinnis	Far too often, an elderly person suffers from the effects of malnutrition, of new medications, of a fall, etc., and is only temporarily incapacitated. With the appropriate treatment or therapies, the elder can live and maintain independently within a few months. Unfortunately, our current system provides only for an annual review and biennially thereafter. The procedures should provide for at least a six months review after the conservatorship is approved.
Richard Narver	The court should send out the court investigator more frequently to determine if there is sufficient reason for a hearing. The court investigator would carry out a comprehensive investigation regarding the conservatee's overall welfare as well as determine the appropriateness of the relationship between the conservator and the conservatee. The foregoing would be preferable to a change in the law that would automatically require additional hearings.
Peter Stern	Although the Section has taken positions supporting licensing and certification for professional fiduciaries, we recognize that a licensing system alone is no substitute for vigorous and well funded court reviews by the court investigation units, for thorough review of court accountings by the investigators and the probate examiners, and for oversight by the courts throughout the conservatorship process. These steps do not require new laws; rather they require increased staff and funding.
Hon. F. Clark Sueyres	Statutes fleshing out of the process of person-only reviews would be useful. Currently, the court must review, but there is no requirement that it be done in open court, which would permit interested persons to address the issues. Also, the law currently does not require conservators to cooperate in fact gathering for this review.

Heather Tackitt	The current annual/bi-annual review process may be adequate, but the courts need to adhere to this requirement and this will only be possible if the courts receive earmarked funds for increased probate court investigator staff and training. There is a split of opinion among court investigators regarding increasing the frequency of reviews. Possible compromise: If the court investigators are required to review the Person and Estate status within 6 months of the Permanent Conservatorship being granted, they could detect potential abuses sooner and help to prevent them. Annual checks would be conducted thereafter to assure compliance. After 2 "positive" annual reviews, bi-annuals can then be performed, which would lessen the workload on the courts over time, and also add the necessary initial court oversight at the critical beginning stages of the conservatorship. The focus of the reviews should be in four main areas: (1) Is the conserved living in the least restrictive care home/facility? (2) Are the assets being properly managed? Probate court investigators need to be adequately trained to review/audit financial documents. Also, there have been suggestions for having credit checks on the conserved to see if changes have been posted (3) Is the conserved being medically cared for and is the care plan consistent with diagnosis/prognosis? (4) Interview of the conserved and any listed concerned family members/friends, without intervention from others. This should include a review of the APS system and local law enforcement records to check for any lodged complaints. It is also critical to have adequate time to discuss the issues with family and friends.
Michelle Uzeta	Support reforms that would require more frequent reviews of conservatorships at *noticed* hearings and that would require conservators and guardians to present annual, rather than biennial, accountings. Increasing the frequency of such reviews will improve the chances of identifying and addressing conservator abuses earlier.
What is the appropriate role for court investigators and other court personnel in preventing and deterring abuse?	
Margaret Lodise	Additional resources would enable the courts and court investigators to more fully review the accountings which are presented since, in populous counties, accountings may be subject to only cursory reviews. The lack of resources to investigate family or conservatee complaints outside of accounting issues is similarly problematic. It is critical that a determination be made to adequately fund programs to benefit the aging population which the courts will increasingly be called upon to serve.
Richard Narver	The increased role of the court investigator is critical in preventing and deterring abuse. Accordingly, there is legislation needed which includes additional funding to increase the role of the court investigator.

Peter Stern	SB 1716 (Bowen) would permit the courts to consider ex parte communications concerning conservators and conservatees and mandate more frequent review by court investigators. The Trusts and Estates section is seeking amendment of that bill to permit the ex parte communication to be acted upon, but at the same time to ensure due process and to guarantee that all parties and counsel will receive notice of the communication. The Section also supports the portion of SB 1716 that would permit the court to order a review of a conservatorship on any occasion deemed appropriate by the court. The Section also supports the part of SB 1716 that explicitly mandates the court investigator to report on the appropriateness of the conservatee's placement, the conservatee's quality of care, including physical and mental treatment, and the conservatee's financial condition, all of which, in our opinion, are subjects touched upon in some detail by most court investigation reports we normally see.
Hon. F. Clark Sueyres	In conservatorship cases, independent investigation by the probate court investigator may be the most important tool employed by the court.
Heather Tackitt	Probate court investigators are mandated reporters and required to be involved in the "prevention and deterrence" of abuse.
Michelle Uzeta	Court investigators' evaluations should be required to include assessment of (at a minimum) the appropriateness of a conservatee's placement, a conservatee's quality of care, and a conservatee's financial condition. Appropriateness, for purposes of such evaluations must be defined to take into account least restrictive measures and alternatives, as well as a conservatee's desires and values.
Do court personnel have the requisite education and training to properly perform their jobs?	
Hon. Marjorie Laird Carter	Many of the reported cases of abuse in the LA Times series appeared to involve waiver of bond requirements, which suggests need for greater education of the courts on the importance of bonds to protect against financial abuse of conservatees. The Education Division/CJER audience should be expanded to include court investigators.
Richard Narver	In terms of court personnel, there is some major variability in their properly performing their jobs. It appears to be a matter of developing and maintaining high performance standards. This would most likely require additional funding for increased staffing and increased performance monitoring.
Hon. F. Clark Sueyres	Training of judges and court staff, clerks, examiners and investigators and retention of their expertise is necessary for execution of their statutory duty. Currently, however, judges have no probate court specific education and continuing education requirements. Probate investigators have no court required, statewide standards and no court furnished, statewide training. Support staff training should include some accounting principles.

Heather Tackitt	California Association of Superior Court Investigators (CASCI) is the only known organized training for probate investigators. There is a lack of participation from some counties—reportedly, some CEO's will not support these training efforts, citing budget shortfalls. The AOC does not currently offer probate investigator training. Even for "joint" systems (Probate Investigators in the Family Court Services divisions), the AOC only recently began offering probate training issues at the 2005 AOC statewide training, which only included guardianship investigator training. CASCI has discussed the idea of a working partnership with a CJER committee just as the Family Law Mediators/Custody evaluators attend AOC sponsored Trainings through CFCC. CJER sponsored training could be offered under Probate and Mental Health, Family Law Education or the Collaborative Courts Education committees. The issues involved in conservatorships range from accounting issues to very serious medical issues. The need for training in the vast range of disciplines is obvious. Many court investigators have had some training/experience in perhaps one or some of the possible disciplines involved, but rarely are they experts in ALL fields without a need for further education. CASCI has proposed mandatory education requirements for probate investigator positions. "Grand-fathering" in current probate court investigators is supported. As of May 2003, The Minimum Uniform Standards of Practice for Court Investigators adopted by CASCI was scheduled to be drafted by the Judicial Council to be implemented as a California Rule of Court. To date, this has not been implemented.
Michelle Uzeta	Judges, as well as attorneys and investigators involved in the conservatorship process, need to be better trained so that they are aware of potentially available sources of services and supports that would in many instances prevent the need to establish conservatorships.
How can courts more effectively review accountings?	
Hon. Marjorie Laird Carter	Courts should perform random audits of accountings, utilizing volunteer CPAs if necessary. If accountings were required every 6 months, courts would need to triple the number of staff. Forensic accountings needed to detect fraud in cases where accountings appear to be balanced on their face.
James Locke	The courts should require credit reports on the conservatee, not the conservator, when the review is done. This would be one simple step the court could undertake to protect conservatees.

Margaret Lodise	A requirement for more frequent accountings may be beneficial, although such a requirement must be coupled with the ability of courts to waive or modify require-ments in appropriate cases and with sufficient resources to courts to enable review of required accountings. In conjunction with accountings, the provision of original bank statements for the accounting period may also make sense. However, a requirement that all underlying original records be provided is likely to overwhelm the court with paper. Additionally, the more information that is required to be provided, the more opportunities will exist for sensitive private information to be inadvertently disclosed. The same persons entitled to notice of the original conservatorship petition should probably, absent a finding of good cause not to do so, be provided with notice and a copy of accountings and other filings in the conservatorship.
Patricia McGinnis	Conservators should be sanctioned and fined when accountings are not filed in a timely manner and all accountings should be subject to review and verification, including submission of receipts and invoices for all alleged expenditures.
Richard Narver	The role of the court investigator should be increased to provide needed assistance, which should result in more timely reporting of potential and actual estate management problems.
Peter Stern	While it might be worthwhile to consider requirement of a greater number of statements for each account (rather than only the initial statement and the closing statement for each account period), the Legislature should move cautiously where a change in the law would create a paper deluge in the offices of the court investigators and probate examiners. The best way to increase court oversight and accountability regarding conservatorship assets and the financial transactions performed by a conservator is to enforce the existing law.
Heather Tackitt	Many probate court investigators support more stringent accounting reviews and agree that the financial documents should be available for review within the first 6 months to 12 months of the initial permanent conservatorship. Again, resources cannot be ignored. In addition, it is widely suggested that courts invest in either the hiring of or sub-contracting with Probate Examiners who specialize in this field. Perhaps, the current probate court investigators may perform cursory reviews as an additional layer of protection. Regardless of the duties assigned, all investigators who will be mandated to review accounting documents need continued and mandatory training in this area. In addition, the investigators agree on the need for adequate time to perform proper reviews of complex financial documents if assigned this duty.
Michelle Uzeta	With regard to the review of a conservatee's financial situation, courts and investigators must ensure the prompt and effective review of filed accountings. This will, in part, require the hiring and training of additional court investigators or accounting specialists

What is the appropriate role of the courts in providing assistance to self-represented litigants?	
Hon. Marjorie Laird Carter	Existing guardianship clinics should be expanded to cover probate conservatorships. Recommends "unbefriended elders program" as a possible model.
Yolande Erickson	The Judicial Council's Conservatorship Handbook should be more widely available, even before conservatorship has been established. Courts should provide self-help clinics, which can serve as resource centers with informational guides, including information about community resources and alternatives to conservatorship. When a conservatorship petition is filed, pro per litigants should receive a check list from the court clerk's office with information on items needed to be completed before the hearing on the petition. Courts should offer training to all non-professional conservators, self-represented litigants, and those represented by counsel.
Patricia McGinnis	A written "bill of rights" for conservatees should be provided to every potential conservatee by the court investigator, explaining the process, what it means, what rights the conservatee will have to challenge the conservatorship, etc.
Richard Narver	Given the serious capacity issues usually involved in probate conservatorship proceedings, the appropriateness of self-represented litigants is in grave doubt. Also, given the Task Force's topic of inquiry, it is vital that conservatees have sound legal representation.
Hon. F. Clark Sueyres	Pro per clinics offer assistance not only to litigants but to the court. In addition many more receive direction from "paralegals" and "legal typing services." Replacing their role with court clinics seems a huge budget challenge. Underground legal assistance is a breeding ground for elder abuse and fraud. Reduction of estates, ostensibly to achieve Medi-Cal eligibility and avoid repayment, are more likely found where quasi-lawyers practice.
Heather Tackitt	Courts should provide assistance to family and friends attempting to petition or object to a conservatorship in order to protect an elder or disabled adult. Unless the courts can be provided adequate funding, the burden will be unduly placed on the courts under the already existing "tight" budget.
Miscellaneous testimony on Permanent Conservatorships	
Hon. Marjorie Laird Carter	The overall statutory scheme is basically sound; lack of resources is the main problem, which will be exacerbated with new mandates. Variance and flexibility in good practices may be needed because of differences in rural and urban settings. Modest conservatorship estates can be eaten-up by fees. It is important to strike the appropriate balance with any reforms.

Margaret Lodise	The Los Angeles Times articles were one-sided, failing to fully present the other side of the situation–those persons whose lives are saved by the conservatorship system in the vast majority of the cases where it works exactly as it should. Thus, our bias is toward keeping the system with minor reforms and determining a way to ensure that the many safeguards already in place are fully utilized. As with any law on the books, those intent upon breaking the law may be successful for some period of time and it is questionable whether the system can be so far reformed as to prevent all forms of thievery. Cambalik and other cases highlight that arguably the largest failures of the current system were each entirely different and that they do not point to overall failure of the system but, instead, to individual issues within specific courts. Individuals who come into the conservatorship system have significant problems. This is not to say that the system should not work for them, but to say that relying upon statements from the participants as to supposed abuses may not be a reliable source of history. In other words, while it is important to consider the reports of abuse of the system, it is also important to consider the potential for erroneous reports. While the LA Times series focused on professional conservators, there are many, many instances of abuse of the system by individuals caring for family members that require the intervention and assistance of professionals. Any system of regulation which unduly burdens professionals, will cause them to leave the system and potentially place additional conservatees in danger. On the flip side, any system that is too cumbersome will discourage family members from becoming conservators and thus put more persons into the hands of non-family members. The issue which should be focused on is the implementation of the existing regulatory measures with only some minor revisions to the system. Reforms which the Executive Committee would support (and has supported in the past) include licensing of professional conservators. Licensing, coupled with training, insures that when a professional, rather than a family member, is the conservator, that person will have training in dealing with the issues of the conservatee.

Patricia McGinnis	Simply increasing the standards or training for private conservators or court personnel would be window dressing. We need to ensure that conservatees are protected from inappropriate conservatorships in the first place and that their estates are protected from fraud and abuse; that they can contest the conservatorships, the accountings or the court-appointed conservator; that, in the absence of abuse, their families are given first opportunity to be the conservator; and that they can more easily seek and obtain restitution when they have been wronged. Some measures should be added to ensure that private conservators are appointed as a *last* alternative over qualified, willing family members. There should be some burden to show that a willing family member is unqualified or otherwise unable to serve. The feasibility of incorporating family unification into probate conservatorship proceedings should be explored. We need a state and county reporting system that provides information on all of the key procedural benchmarks. We need to track the name of the conservator; the number of emergency appointments approved annually; the number granted without notice to the conservatees; or before an attorney is appointed; or before the court investigator's report is filed; the number of proposed conservatees who appeared at the initial hearing; the number of conservatorships opposed; the annual accountings and the dates filed. Without this basic information, we have no way to track abuses in the system or to address the problems inherent in the system. Current law has no provisions for a person to obtain restitution when the conservator has plundered the estate or when someone has been wrongfully conserved. Language should be added to the Probate Code to address this omission.
Richard Narver	The Public Guardian's Office is generally subordinated under agencies such as Health, Mental Health, and Social Services. In these situations, the Public Guardian's Office is usually drastically underfunded, understaffed and its voice is rarely heard. Legislation is needed for Public Guardians to be able to obtain medical and financial information when carrying out a probate conservatorship or guardianship investigation. This would allow for a stronger basis on which to determine the appropriateness of a conservatorship or guardianship as well as a suitable alternative. The Task Force may want to recommend more of a scientific study of conservatorship rather than the usual anecdotal accounts. For example, a longitudinal study of conservatorship carried out by a social scientist - who has no ax to grind. We don't need is unfunded mandates. We don't want to create false expectations and unnecessary system failure. Imposition of additional mandates without funding is delusional.

Peter Stern	There is a lot that is right about our existing legislation, and those courts that have vigorous staffs in adequate numbers can enforce the law properly and make the existing legislation work. We urge the Legislature and the Governor to take seriously the problem of staffing and funding, which in our opinion is the real problem in court oversight and accountability. According to the court officials quoted in the *Los Angeles Times* series, there were too many cases, not enough investigators, not enough staff members available to review the cases, accountings that had gone unscreened for years, and essentially a complete failure of the system. What we need is more staff, more funding, and more compliance with existing laws. There should also be a revamping of the archaic investment standards of Probate Code Sections 2570 to 2574. The State Bar has endorsed the Section's legislative proposal for such reform, which would bring current investment standards in line with prudent investor standards of the trust act and permit modern techniques of risk mitigation to be used in the conservatorship forum without costly petitions to the court. Such reform would streamline conservatorship investment standards, cut down on the costs of conventional patterns of investment, and require conservators who wish to make "nonstandard" investments to petition the court for prior authorization of their acts.
Hon. F. Clark Sueyres	Tracking of milestone events, including ones without calendar dates, e.g., the filing of an Inventory and Appraisal, is necessary to complete the court's duty. New software is under development which can provide the necessary tracking. Funding this for all courts would be of great assistance to supervision. It could be helpful to provide an express statute or rule permitting an inventory to be filed without an appraisal, for good cause. Communication directly with the court, even to alert the court of grave danger to the conserved, is grounds for the court to withdraw rather than grounds to act. A Rule of Court for juvenile judges is a paradigm for probate and pending legislation to permit this contact [i.e., SB 1716 (Bowen)] is worthy of support. It would be useful to have express authority for appointment of forensic experts and for reference under CCP 638/639. Demands on court resources not only impact the state budget, they also impact the parties' pocket books, none more so than that of the protected person. Court costs, lawyers and other professionals' fees, with rare exception, are borne by the protected party's estate. Proposals which increase costs to the protected party must be measured against the benefit delivered. Proposals which drive up costs also will have an unintended consequence to consider. Cost increases are an incentive to avoid conservatorship and place reliance on non-lawyer, non-court devices. These may be appropriate, even desirable, in given circumstances, but they are unsupervised. One of the most egregious cases of elder neglect and abuse seen in my court was perpetrated by a former legal secretary doing business as a fiduciary for hire as an

	attorney-in-fact. There may be additional cost for a protected person for new and reformed remedies, a reduction in personal privacy. Who of us wants all our relatives to know all of our personal and financial information? The first step to increased protection is increased budget resources and an incremental approach to legislative improvement.
Heather Tackitt	We cannot address new mandates without guaranteed earmarked funding for the Probate Courts. I propose that if some of the current guardianship cases in probate court are properly returned to the local CPS under Probate Code 1513(c) for further investigation and final adjudication in juvenile dependency court, some of the probate division resources being expended for guardianship investigations can be returned to probate conservatorships cases. Another suggestion to help alleviate the staffing/funding issue would be to work with the UC and CSU systems to develop a "work study" program. Students in related fields (i.e. social work, nursing, gerontology, and accounting) could perhaps earn both units and small financial stipends by working in the Probate divisions.
Michelle Uzeta	Inadequate staffing has resulted in a backlog in needed home visits, which should happen even more frequently, and in the inability of probate attorneys to keep up with the financial reports in which conservators must account for conservatees' money. To rid this backlog of financial reports, many questionable expenses and payments have been rubber-stamped or otherwise gone unnoticed, opening the door to financial abuse. Support the establishment of additional safeguards to protect conservatees from major events, such as the sale of a conservatee's home and/or a change in living arrangement. Prior to the sale of real property of a conservatee and placement of the conservatee in a group home, nursing facility, or other residential care facility, conservators should be required to explore less restrictive alternatives to a facility placement, including but not limited to an at-home placement for the conservatee with necessary services and supports. Conservators should be required to document in writing all alternative placements explored, along with the rationale behind not pursuing/securing those placements. Conservators should also document, in writing, any efforts made to secure the services and supports that would allow their conservatees to remain in the community and/or in their family home, such as in-home support services, regional center services, mental health services, medical and mental health rehabilitation services, home and community-based waivers and alternative property financing methods. Standardizing the educational and training requirements for potential conservators is also a necessary part of conservatorship reform, especially for professional conservators. Support such reforms as: (1) requiring the licensing of professional conservators; (2) the establishment and

	administration of a licensing program for professional conservators and guardians; (3) the establishment of an ombudsman's office to collect and analyze data related to complaints about conservatorships; (4) the development of a conservator's code of ethics; and (5) the establishment of a committee that would take disciplinary action against conservators, and/or make referrals to the Attorney General for violations of law and/or the breaching of a fiduciary duty. [Courts] should be required to start using the *existing* statewide registry to track abusive and inept conservators. If the utilization of the registry is currently too difficult or burdensome – than some other tracking mechanism needs to be developed. Pursuit of a conservatorship, whether temporary or permanent, is a measure that should only be undertaken in the most urgent or extreme of circumstances, and even then, only after less intrusive alternatives have been fully explored. If the Task Force is to accomplish anything meaningful, it must not let cost be the overriding or determinative factor in its recommendations. From the standpoint of those whose lives and basic rights are most directly impacted, fiscal costs to state and local government must be balanced with the costs to these individuals' fundamental interests in personal autonomy, human dignity and, even, liberty. We hope the Task Force will propose real reform and let state and local legislative bodies determine what priority is to be given to safeguarding the interests of those whose rights and quality of life are at stake.

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

Improving Collaboration with Key Justice System Partners

Panelists	Summary of Testimony
What specific steps can courts take to better detect and deter abuse of conservatees by family members?	
Robin Allen	Supports multi-disciplinary team approach, and recommends that every county should have one. Recommends LA model led by manager in department of social services.
Terry Flynn	Revamp accounting procedures to require more detailed information from conservators – no specific recommendation. Provide resources to better train prospective conservators, including public guardian staff. Provide resources to train self-represented litigants. Increase the role of the Court Investigator: have them make more frequent visits, visits between accountings. Increasing the number of accountings is not the way to go; it would clog the courts, create a hardship for under funded PG offices, and create costs that would generally be borne by the very conservatees whose estates we are trying to conserve. Provide better screening of prospective conservators. Current procedures for screening, where they can be said to exist at all, lack clarity and rigor. Often we at the PG's office are obliged to screen a prospective conservator, but in order to recommend against a family member, for example, we need information the family member is not likely to share with us, and which we lack the time, resources, or authority to gather ourselves. Mandate participation of defined entities in multi-disciplinary team. Riverside model led by manager of social services has been successful.
Peggy Osborn	Courts with exemplary programs devote staff for training and oversight of family conservators. Sadly, two-thirds of all abusers are family members. Three exemplary programs have volunteers or social work student interns visit conservatees and report on their condition.
Recommend a place that would receive and investigate complaints of abuse, especially where the public guardian's office is not a party?	
Terry Flynn	Clear channel for handling complaints is needed and currently lacking. Channel for anonymous complaints is needed.

Dave Kochen	Supports licensure and statewide ombudsman (Jones Bill concepts).
Peggy Osborn	AG's Office has established a toll-free statewide hotline for the reporting of suspected elder abuse. One of the items in proposed legislation is the Statewide Registry. Although not an expert on the registry, this database can provide judges with access to centralized information about private conservators and guardians, but she questioned whether courts were using current registry as only 25 judges had requested passwords. Licensure (Jones Bill) is not a solution for family abuse, which is more prevalent.
As proposed in SB 1716, would statutory authorization for courts to take appropriate action in response to ex parte communications be helpful to conservatees?	
Terry Flynn	Supports concept. Not familiar with Bowen Bill specifics.
Miscellaneous testimony on Collaboration with Key Justice System Partners	
Robin Allen	LAPD takes its responsibility very seriously.
John Bagnall	More funding. For example, expanding DA's accounting staff would be helpful because LAPD detectives lack this expertise. Recommended probate fee as funding mechanism.
Terry Flynn	***FUNDING, FUNDING, FUNDING*** Adequate funding to allow the courts to do what they are supposed to do. State association of public guardians has certification program, but there is no outside funding for the trainings. Training dollars have been cut by counties. Great concern about unfunded mandates Legislators should consult in a timely manner with people providing conservatorship services. Increase the authority of PG probate investigators to gather information on prospective conservatees. Often, until we are appointed conservator, we have no right to financial and other information that could materially affect the outcome of our investigation. Our investigators need authority similar to that possessed by law enforcement to do their jobs most effectively. Standardize what qualifies persons to be conservators and what would disqualify them. Currently some information is gathered by the courts, but to my knowledge, there are few if any rules as to what consequences follow from the information gathered.
Dave Kochen	More funding for greater accountability, oversight, and consistency of practice. More effective training of Adult Protective Services (APS) staff to reinforce policies and procedures. Development of a specific complaint form for use by APS.

Peggy Osborn	California has nation's largest population of seniors and it is expected to double by 2030. Elder abuse is one of the most disturbing challenges. Education, public awareness and prevention are essential in helping protect this vulnerable population. Elder abuse is one of the most under recognized and underreported crimes.

NOTE: Written testimony for Ms. Robin Allen is not available. Mr. John Bagnall's testimony is available via Audiocast at http://www.courtinfo.ca.gov/jc/tflists/cons_audiocast_031706.htm

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

Model Programs and Best Practices

Panelists	Summary of Testimony
Are you familiar with any unique practices or procedures that may enhance a court's ability to provide effective oversight in probate conservatorships?	
Hon. Dorothy L. McMath	San Francisco Probate Court Commissioner McMath jointly presented with Mary Joy Quinn, Manager of the Superior Court of San Francisco. She believes that the procedures and protocols of the San Francisco Probate court are a good model for carrying out the statutory mandates, and that the statutory scheme provides adequate oversight. Her written testimony included an overview of procedures in San Francisco with citations to the appropriate probate code sections. San Francisco local court rule 14.91 mandates declaration regarding notice and appearances. San Francisco local court rule 14.93 clarifies the role of court appointed attorneys, to inform the court of the wishes, desires, concerns and objections of the proposed conservatee. If asked by the court the attorney may offer his or her opinion as to the best interests of the proposed conservatee. Probate department relies heavily on court appointed attorneys to help parties, such as contentious families and conservatees, find alternatives that will protect the conservatee's interests while maintaining the maximum independence and privacy of the conservatee and relieving mistrust among family members. Alternatives may include creating a trust, bringing an existing trust under court supervision, finding an alternate acceptable conservator, or preserving some independent power of the conservatee such as management of an allowance or separate checking account. Status Dates (monitoring) Appointment orders include an attachment setting out dates for subsequent filings. The dates are entered into the court's computerized calendaring system. A Probate Examiner reviews the files for the calendared dates and takes the status date off calendar if the required document has been filed. If the document is not filed the matter is on calendar for hearing. The court issues an order to show cause requiring the conservator to appear to show why the conservator should not be removed, or have his or her powers suspended. Accountings: Staff coordinates the hearing date for the accounting with the investigators visit so that the file examiner has the investigator's report when he or she reviews the accounting, and the investigator has the accounting when he or she visits the conservatee. The cross reference enables the investigator to detect

	inconsistencies such as major property repairs, clothing purchases or auto or utility costs reported in the accounting but not evident in the conservatee's home or care facility. Addressing problem conservatorships: The Investigators are available to receive phone calls or letters reporting the problem. Optional responses are setting a hearing, making an additional investigator visit or appointing counsel. General: In considering improvements to the conservatorship process, decision makers should not allow their concern for protection to overshadow conservatees' rights to privacy and maximum independence. General comments – verbal testimony: Guardianships are not "permanent' they should be called general per the statutes She does not support sending accountings to relatives who may abuse information. This would also be a violation of the privacy rights of the conservatees.
Mary Joy Quinn	Per Commissioner McMath's testimony (see above) she believes the staffing, procedures and operation of the SF court implement the statutory scheme and provides an overview of the staffing and operational functions.
Brenda K. Uekert	Should professionalize the professional conservators through registration, certification, or licensing. Certification ensures that minimal education standards are met. Some programs, like Arizona's also include operational audits, a complaint process. Courts need a case management system to implement effective monitoring. Rockingham County, New Hampshire has an automated system that notifies court staff that reports are due. The system also tracks the number of new conservatorships and the total number of active cases. Courts need to conduct audits in addition to routine monitoring. Broward County, Florida uses a three-tiered system. All reports are subject to the first level of review by the Audit Division of the Clerk of the Court's office. A sample of reports is selected for a more intensive second level review. Finally a further sample is selected for detailed in-house and field audits of supporting documents to verify information in the reports. Ramsey County, Minnesota is about to launch a web-based application. When the system becomes fully functional conservators will be able to access software that will assist the preparation of reports, and will allow management of their account and updating the courts records. The National Center for State Courts is developing performance standards which enable courts to manage, oversee, monitor, and enforce conservatorship law. This will be a help in accountability of courts for managing this area. The Michigan AOC audited five probate courts several years ago and concluded that the Michigan courts were not doing a good job of overseeing conservatorship cases. The Michigan AOC developed a review model and had two contractors travel to the State courts to conduct reviews. The courts received feedback about their strengths and weaknesses and were required to pro vide a corrective plan of action to the AOC. Courts are now more aware of their oversight role and how to detect fraud.

How can courts hire and retain sufficient staff to keep up with the workload investigations, reviews, and accountings currently mandated by statute?	
Hon. Dorothy L. McMath	"The task force has a wonderful opportunity to encourage the State of California to provide funding for staff and education for all courts to implement existing [probate] statutes".
Mary Joy Quinn	<u>Staff</u> San Francisco Probate Court is composed of the following: Presiding judge, probate commissioner, a court reporter, a probate attorney, a director and assistant director, five probate conservatorship court investigators (there is also one probate guardianship investigator), six examiners, a calendar clerk, three office clerks. Investigators and examiners are required to have advanced probate experience and education in a relevant field. <u>Workload/Calendaring</u> They hear an average 1000 matters (hearings) per month. They have 7 weekly calendars (for probate & trust), one for appointment /removal of conservators, one for appointment/removal of guardians, one mental health calendar and one law and motion calendar. An average of 1300 conservatorships exists at any given time. Low and no cost programs are used, AARP volunteers staff a guardianship monitoring program, they have a pro bono mediation program, no cost mandatory education for lay conservators and self help clinics for guardianship and conservatorship. Question: Justice Boren inquired specifically "how does the San Francisco court keep up? Ms. Quinn responded that the court had hired contract investigators at an approximate cost of $285,000.
Are there grant programs or other sources of funds available to courts for handling probate conservatorship cases?	
Mary Joy Quinn	Guardianship monitoring program started in 1994 with AARP technical assistance. (City & County ensure volunteers) Classes for lay conservators Mediation Self Help Clinics Three AOC Grants and one Foundation of the State Bar Grant. Products include a brochure, a manual of self-represented proposed guardians, and a report to the AOC regarding Access to the Courts for Elders which is forthcoming.
Brenda K. Uekert	Technical assistance in the forms of performance standards that are being developed for courts

Miscellaneous testimony on Model Programs and Best Practices	
Hon. Dorothy L. McMath	Local court rules institutionalize procedures that effectively implement the probate conservatorship statutory scheme.
Mary Joy Quinn	Recommendations. Hire sophisticated staff that are educated and have experience (investigators – education level equivalent to family court mediators plus conservatorship experience, examiners, experience with court accountings and preparation of documents. Provide opportunities for continuing education for staff. Institute concrete monitoring procedures by forward calendaring. Establish investigation assessment policies on amount and collection source, deferring (not waiving). Establish supervisory measures specific for investigators, such as safety measures for visits, accountability for scheduling Provide up to date technology and ergonomic safety for all. Consider volunteer programs with appropriate training, supervision and support. Require supervisors and managers to carry a caseload (even a small one).
Brenda K. Uekert	Consider developing a certification of licensing program for conservators. Implement a state-wide case management system for probate courts that provides automatic notification and tracks compliance. Create a strategic plan that outlines how technology can be used to improve reporting, monitoring, and auditing of conservatorships. Adopt state-wide performance standards to be used in all courts. Conduct periodic reviews of probate courts and provide training and technical assistance to ensure that courts meet State standards.

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

Miscellaneous Testimony

Panelists	Summary of Testimony
Patricia McGinnis	We had asked a number of consumers to address this Task Force. Unfortunately, all of the consumers I talked to were afraid to testify. They were either fearful of being caught up in the system again or fearful of being sued. I hope that the work of this Task Force will result in making the probate conservatorship system the impartial and accessible system it is supposed to be.

Appendix B

Summary of Omnibus Conservatorship and Guardianship Reform Act of 2006

SUMMARY OF OMNIBUS CONSERVATORSHIP AND GUARDIANSHIP REFORM ACT OF 2006

On September 27, 2006, the Governor signed into law the Omnibus Conservatorship and Guardianship Reform Act of 2006, a four-bill package that makes comprehensive reforms to California's probate system and improves court oversight of probate conservatorship cases. Following is a summary of some of the key provisions in each of the bills.

AB 1363 (Jones); Stats. 2006, ch. 493

This bill imposes a variety of new duties on the courts and the Judicial Council, as well as on public guardians. Except where expressly noted, these provisions take effect on January 1, 2007.

New Judicial Officer Duties

Among other things, the bill:

- Requires the court, on and after July 1, 2007, to review probate conservatorships six months after appointment of the conservator and annually thereafter. However, at the first-year review and every subsequent review conducted under this provision, the court may set the next review in two years if the court determines that the conservator is acting in the best interests of the conservatee. In these cases, the court shall require the investigator to conduct a specified investigation one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship is still warranted and whether the conservator is acting in the best interests of the conservatee. If the court investigator so determines, no further hearing or court action in response to the investigator's status report is required. (§ 11.5;* Prob. Code, § 1850(a).)

  Note: Limited conservatorships for persons with developmental disabilities are exempt from the new review requirements. However, the court may order a review of these cases at any time. (§ 11.7; Prob. Code, § 1850.5.)

  Lanterman-Petris-Short (LPS) Act (mental health) cases also are exempt from the new review requirements, including the new requirements regarding temporary conservatorships. (§ 15.5; Prob. Code, § 2250.2. § 17.5; Prob. Code, § 2250.8.) Under current law, however, the court must review LPS conservatorships annually. (Welf. & Inst. Code, § 5361.)

- Allows the court, on and after July 1, 2007, on the court's own motion or upon request by any interested person, to take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed

* Unless otherwise indicated, all section references are to the bill under discussion.

hearing, and ordering the conservator to present an accounting of the assets of the estate. (§ 11.5; Prob. Code, § 1850(b).)

New Court Investigator Duties

Imposes a variety of new duties on court investigators, effective July 1, 2007, including:

- Conducting new investigations of all temporary conservatorships. (§ 17; Prob. Code, § 2250.6.) The investigation must be undertaken before the hearing on the temporary conservatorship or within two court days after the hearing.

- Mailing a copy of the investigator's report to the court, which was prepared in connection with the initial petition to establish a general conservatorship, to the proposed conservatee, the proposed conservatee's spouse or registered domestic partner, and the proposed conservatee's relatives within the first degree (unless the court determines that the mailing will result in harm to the conservatee). (§ 8; Prob. Code, § 1826(*l*)(3), (4).)

- Conducting new, full investigations six months after the initial appointment of the conservator. (§ 11.5; Prob. Code, § 1850(a) (1).)

- Conducting new status investigations at specified one-year intervals. (§ 11.5; Prob. Code, § 1850(a) (2).)

- Requiring investigations to be conducted without prior notice to the conservator (except as ordered by the court for necessity or preventing harm to the conservatee). (§ 12.5; Prob. Code, § 1851(a).)

- Expanding the scope of investigations to focus on the conservatee's placement, quality of care, and finances. (§ 12.5; Prob. Code, § 1851(a).)

- Conducting interviews in connection with temporary and general conservatorships with the petitioner, the proposed conservator (if different from the petitioner), the proposed conservatee's spouse or registered domestic partner, relatives, neighbors, and, if known, close friends. (§ 8; Prob. Code, § 1826(a). § 12.5; Prob. Code, § 1851(a). § 17; Prob. Code, § 2250.6.)

- Authorizing the investigator, upon his or her request to the conservator, to inspect and copy all of the conservator's books and records, including receipts and any expenditures of the conservatorship. (§ 12.5; Prob. Code, § 1851(a).)

- Complying, effective January 1, 2008, with new qualifications and education standards established by the Judicial Council. (§ 3; Prob. Code, § 1456.)

New Court Accounting Requirements

Imposes various new conditions on accountings that must be submitted to the courts by

guardians and conservators, effective July 1, 2007, as follows:

- Requires accountings submitted by guardians and conservators to include additional specified supporting documentation. (§ 24; Prob. Code, § 2620(c).)
- Requires accountings submitted by guardians and conservators to be subject to random and full review and verification by the court. (§ 24; Prob. Code, § 2620(d).)
- Requires the guardian or conservator to make available for inspection and copying, to any person designated by the court to verify the accuracy of the accounting, upon reasonable notice, all books and records, including receipts for any expenditures, of the guardianship or conservatorship. (§ 24; Prob. Code, § 2620(e).)

New Temporary Conservatorship Requirements

In addition to the new investigation requirements noted above, the bill also makes various other changes to the law governing temporary conservatorships, effective July 1, 2007, including clarifying:

- The circumstances under which a court may waive notice to the proposed conservatee regarding the hearing on the petition for the appointment of a temporary conservator. (§15; Prob. Code, § 2250.)
- The requirements for attendance of proposed temporary conservatees at hearings on petitions for the establishment of temporary conservatorships. (§ 16; Prob. Code, § 2250.4.)

New Judicial Council Duties

- *Qualification and Education Standards*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that specifies qualifications and education in conservatorships and guardianships that court-employed staff attorneys, examiners, investigators, and court-appointed counsel shall complete each year as well as the number of hours of education related to conservatorships or guardianships that a judge who is regularly assigned to probate matters shall complete upon assuming the probate assignment and for every three-year period thereafter. In formulating this rule, the Judicial Council must consult with interested parties, including the California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers. (§ 3; Prob. Code, § 1456.)
- *Educational Self-Help Video*—The Judicial Council shall develop a short, user-friendly educational program to assist nonprofessional conservators and guardians who are not required to be licensed. The program, which must be provided free of

charge and is to be no more than three hours in duration, may be made available via video presentation or Internet access. (§ 4; Prob. Code, § 1457.)

- *Performance Standards*—On or before January 1, 2008, the Judicial Council shall report to the Legislature results of a study measuring effectiveness in conservatorship cases, with recommendations for statewide performance measures to be collected, best practices that serve to protect the rights of conservatees, and staffing needs to meet case processing measures. (§ 5; Prob. Code, § 1458.)

- *Form for Notice to Relatives*—On or before January 1, 2008, the Judicial Council shall develop a form for notice of hearings to the proposed conservatee's spouse or registered domestic partner and relatives on petitions for appointment of conservators. (§ 7; Prob. Code, § 1822(f).)

- *Notice Concerning Rights of Conservatees*—On or before January 1, 2008, the Judicial Council shall develop a form for notice regarding the rights of conservatees, which will be attached to the order appointing the conservator and mailed to the conservatee and the conservatee's relatives. (§ 10; Prob. Code, § 1830(c).)

- *Uniform Standards for Good-Cause Exceptions to Notice in Temporary Conservatorships and Guardianships*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good-cause exceptions to the five-day notice required for hearing petitions in temporary conservatorships and temporary guardianships, limiting those exceptions only to cases where waiver of the notice is essential to protect the proposed ward or conservatee, or the estate of the proposed ward or conservatee, from substantial harm. (§ 15; Prob. Code, § 2250(j).)

- *Uniform Standards of Conduct*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards of conduct for actions that conservators and guardians may take on behalf of conservatees and wards to ensure that their estates are maintained and conserved and to prevent loss or harm to conservatees and wards. This rule shall include, at a minimum, standards for determining the fees that may be charged to conservatees and wards and standards for asset management. In developing this rule, the Judicial Council shall consult with the California Judges Association; the California Association of Superior Court Investigators; the California Association of Public Administrators, Public Guardians, and Public Conservators; the State Bar of California; the National Guardianship Association; and the Association of Professional Geriatric Care Managers. (§ 22; Prob. Code, § 2410.)

- *Notice for Objections to Inventory and Appraisal*—By January 1, 2008, the Judicial Council shall develop a form notice to accompany the inventory and appraisal to be provided to the spouse or registered domestic partner and other

relatives of the conservatee or ward regarding how to file an objection. (§ 23; Prob. Code, § 2610(e).)

- *Accounting Forms*—By January 1, 2008, the Judicial Council shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. In developing these forms and rules, the Judicial Council shall consult with the California Judges Association; the California Association of Superior Court Investigators; the California Association of Public Administrators, Public Guardians, and Public Conservators; the State Bar of California; and the California Society of Certified Public Accountants. (§ 24; Prob. Code, § 2620(a).)

New Public Guardian Duties
Among other things, the bill, effective January 1, 2007:

- Requires the public guardian to apply for appointment as guardian or conservator if there is an imminent threat to the person's health or safety or the person's estate. (§ 32; Prob. Code, § 2920(a) (1).)

- Allows the public guardian to apply for appointment in all other cases. (§ 32; Prob. Code, § 2920(a) (2).)

- Requires the public guardian to apply for appointment if the court so orders (as provided under current law), subject to the following new conditions:

  - The court must determine that there is no one else who is qualified and willing to act and that the appointment of the public guardian to serve as guardian or conservator appears to be in the best interests of the person.

  - However, if, before the petition for appointment is filed, the court determines that there is someone else who is qualified and willing to act as guardian or conservator, the court shall relieve the public guardian of the duty under the order.

  (§ 32; Prob. Code, § 2920(b).)

- Requires the public guardian to begin investigations within two business days of receiving a referral for guardianship or conservatorship. (§ 32; Prob. Code, § 2920(c).)

- Requires the public guardian, by January 1, 2008, to meet continuing education requirements established by the California Association of Public Administrators, Public Guardians, and Public Conservators. (§ 33; Prob. Code, § 2923.)

SB 1116 (Scott); Stats. 2006, ch. 490

This bill seeks to improve court oversight over proposed moves of conservatees and the sale of their personal residences. Among other things, the bill, effective January 1, 2007:

- Requires a guardian or conservator to select the residence of the ward or conservatee that is the least restrictive appropriate residence that is available and necessary to meet the needs of the ward or conservatee and that is in the best interests of the ward or conservatee (consistent with current law). (§ 1; Prob. Code, § 2352(a), (b).)

- Requires a guardian or conservator to file a notice of change of residence with the court, within 30 days of the date of the change, and to include in the notice a declaration that the change of residence is consistent with the above least restrictive–best interest standard. Requires the Judicial Council to develop, by January 1, 2008, one or more forms to implement this provision. (§ 1; Prob. Code, § 2352(e) (1).)

- Requires a guardian or conservator to mail a copy of the above notice to specified persons and to file a proof of service of the notice with the court. The court may, for good cause, waive this mailing requirement in order to prevent harm to the conservatee or ward. (§ 1; Prob. Code, § 2352(e) (2).)

- Provides that if a guardian or conservator proposes to remove the ward or conservatee from his or her personal residence:

  - The guardian or conservator must mail to specified persons a notice of his or her intention to change the residence.

  - In the absence of an emergency, the notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence.

  - If the notice is served less than 15 days before the proposed removal of the ward or conservatee, the guardian or conservator shall set forth the emergency basis for the removal.

  - The guardian or conservator shall file proof of service of the above notice with the court. (§ 1; Prob. Code, § 2352(e) (3).)

- Establishes a presumption that the personal residence of the conservatee at the time of commencement of the conservatorship proceeding is the least restrictive appropriate residence for the conservatee. Provides that in any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of evidence. (§ 2; Prob. Code, § 2352.5(a).)

- Requires a conservator, upon appointment, to determine the appropriate level of care for the conservatee, as follows:

  - The determination must include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence. (§ 2; Prob. Code, § 2352.5(b) (1).)

  - If the conservatee is living at a location other than his or her personal residence at the time of commencement of the proceeding, the determination must include either a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future. (§ 2; Prob. Code, § 2352.5(b) (2).)

- Requires the conservator to make the above determination in writing, signed under penalty of perjury and submitted to the court within 60 days of appointment as conservator. (§ 2; Prob. Code, § 2352.5(c).)

- Requires the conservator to evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care. (§ 2; Prob. Code, § 2352.5(d).)

  Note: Conservatees for whom the director of the Department of Developmental Services or a regional center for the developmentally disabled acts as the conservator and who receive services from a regional center are exempt from the above presumption and evaluation provisions. (§ 2; Prob. Code, § 2352.5(e).)

- Requires the conservator, when seeking authorization to sell the conservatee's present or former personal residence, to inform the court why other alternatives, including but not limited to in-home care services, are not available. (§ 3; Prob. Code, § 2540(b).)

- Provides that if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the confirmation hearing, a new appraisal shall be required prior to the confirmation hearing unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the confirmation hearing. (§ 4; Prob. Code, § 2543(c).)

- Requires a conservator seeking an order under Probate Code section 2590 (independent exercise of powers) authorizing a sale of the conservatee's personal residence to:

  - Demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the

estate, are in all respects in the best interests of the conservatee. (§ 7; Prob. Code, § 2591.5(a).)

– Comply with the provisions of Probate Code section 10309 concerning appraisal or new appraisal of the property for sale, as well as the minimum offer price. Provides that, notwithstanding section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months before the proposed sale of the property, a new appraisal shall be required before the sale of the property unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year before the proposed sale of the property. For purposes of this provision, the date of sale is the date of the contract for sale of the property. (§ 7; Prob. Code, § 2591.5(b).)

– Within 15 days of the close of escrow, serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment of a conservator and all persons who have filed and served a request for special notice, and file a copy of the final escrow statement along with a proof of service on the court. (§ 7; Prob. Code, § 2591.5(c).)

- Allows the court, for good cause, to waive any of the above requirements in Probate Code section 2591.5 *except* the requirements regarding appraisal times in subdivision (b). (§ 7; Prob. Code, § 2591.5(d).)

SB 1550 (Figueroa); Stats. 2006, ch. 491

This bill creates the Professional Fiduciaries Act, which, effective July 1, 2008, requires licensure of private professional conservators, guardians, and other fiduciaries. Among other things, the bill:

- Establishes a licensing and disciplinary scheme for "professional fiduciaries" and defines the term as a person who acts as a conservator or guardian for two or more persons, at the same time, who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership. "Professional fiduciary" also means a person who acts as a trustee or an agent under a durable power of attorney for health care or for finances for more than three people or three families, or a combination of people and families that total more than three, at the same time, who are not related to the professional fiduciary. (§ 3; Bus. & Prof. Code, § 6501(f).)

- Exempts from licensure any regional center for persons with developmental disabilities; brokers or securities dealers, including money market managers and those registered with the Federal Securities and Exchange Commission who by law act as "trustees" on behalf of their clients; enrolled agents acting within their scope of practice; financial institutions; public conservators, public guardians, and

other state agencies; licensed attorneys; and certified public accountants. (§ 3; Bus. & Prof. Code, § 6501(f) (1)–(5).)

- Establishes the Professional Fiduciaries Bureau (bureau), located in the Department of Consumer Affairs, and requires the bureau chief appointed by the Governor to be confirmed by the Senate. (§ 3; Bus. & Prof. Code, § 6510.)
- Establishes a Professional Fiduciaries Advisory Committee (advisory committee) within the bureau. The advisory committee shall have a public-member majority, and its members shall be appointed by the Governor, Speaker of the Assembly, and Senate Rules Committee. The advisory committee must meet at least once a quarter, and its meetings must be public. (§ 3; Bus. & Prof. Code, § 6511.)
- Allows the bureau to adopt regulations pursuant to the Administrative Procedures Act, as specified, and requires the bureau, by regulation, to adopt a Professional Fiduciaries Code of Ethics, which shall comply with all statutory requirements as well as requirements developed by the Judicial Council and the courts. (§ 3; Bus. & Prof. Code, §§ 6517, 6520.)
- Prohibits, on and after July 1, 2008, a person from holding himself or herself out to the public as a professional fiduciary unless he or she is licensed as a professional fiduciary under this act.
- Prohibits, on and after July 1, 2008, a court from appointing a person to carry out the duties of a professional fiduciary unless he or she is licensed as a professional fiduciary under this act. (§ 3; Bus. & Prof. Code, § 6530. § 4; Prob. Code, § 60.1. § 5; Prob. Code, § 2340.)
- Sets forth qualifications for licensure, including submitting to a criminal background check, passing a licensing examination administered by the bureau, having specified experience, and completing prelicensing education (and continuing education for license renewals), as specified. (§ 3; Bus. & Prof. Code, §§ 6533–6533.5, 6538–6539.)
- Requires the bureau to deny a license to persons who meet any of specified criteria related to fraud or deceit, regardless of whether the applicant meets all of the other requirements for licensing. (§ 3; Bus. & Prof. Code, § 6536.)
- Requires a licensee to keep and maintain records and file with the bureau annual statements containing specified information, and requires the bureau to make public specific information on each fiduciary. (§ 3; Bus. & Prof. Code, §§ 6560–6562, 6580(c).)
- Authorizes the bureau to institute disciplinary proceedings and impose sanctions on licensees who violate a statute, regulation, or the Professional Fiduciaries Code of Ethics, or for other specified causes. Sanctions include administrative citations

and fines and license suspension, probation, or revocation. In addition, allows the bureau to refer licensees to the Attorney General or local district attorney for criminal prosecution. (§ 3; Bus. & Prof. Code, §§ 6580–6584.)

- Sunsets the Statewide Registry of Private Conservators and Guardians and the local court registry for professional fiduciaries, effective July 1, 2008. (§ 6; Prob. Code, § 2345. § 7; Prob. Code, § 2856.)
- Contains a sunset date of July 1, 2011, for the act, unless otherwise extended. Provides that if the bureau and chief sunset, the functions, duties, and responsibilities shall be transferred to the advisory committee, and the committee shall be established as a board within the Department of Consumer Affairs. (§ 3; Bus. & Prof. Code, § 6510(c). [See Governor's signing message below.])

Governor's Signing Message

I am signing Senate Bill 1550 because I believe that it is important to protect California's vulnerable population from the financial abuse of unscrupulous professional fiduciaries that seek to do intentional harm.

However, clean-up legislation will be necessary in the next legislative session because of the way the author structured the bill. This bill establishes an unnecessary and complicated mechanism of transferring the responsibilities and jurisdiction of the newly created Professional Fiduciaries Bureau (Bureau) to a newly created Professional Fiduciaries Advisory Committee, which would then be established as a board within the Department of Consumer Affairs, after July 1, 2011. The creation of this arrangement is not justified and will leave consumers and the general public more confused by this regulatory scheme. Moreover, there is no rational, analytical justification to assume that in five years the Bureau would even need to be reconstituted as a full board. I would rather have a future Legislature evaluate that need at the time of the sunset review, instead of establishing the presumption now.

Therefore, my Administration will work with the Legislature to eventually clean up this bill so that the public can have faith that its State government is open, transparent, and easy to understand while protecting the interests of all Californians, especially its most vulnerable citizens.

Sincerely,
Arnold Schwarzenegger

SB 1716 (Bowen); Stats. 2006, ch. 492

Among other things, this bill establishes new procedures governing ex parte communications in probate cases, as follows:

- Provides, commencing January 1, 2008, that, in the absence of a stipulation to the contrary between parties who have filed pleadings in a proceeding under the Probate Code, there shall be no ex parte communications between any party, or attorney for the party, and the court concerning a subject raised in those pleadings, except as permitted or required by law. (§ 2; Prob. Code, § 1051(a),

(d). § 5; Welf. & Inst. Code, § 5372(a), (c).)

- Notwithstanding the above, permits the court, on and after January 1, 2008, to refer a matter to the court investigator or take other appropriate action in response to an ex parte communication regarding (1) a fiduciary (conservator, guardian, trustee, personal representative, attorney-in-fact, custodian under the California Uniform Transfer to Minors Act, or other legal representative) as to the fiduciary's performance of his or her duties and responsibilities, or (2) a person who is the subject of a conservatorship or guardianship proceeding.

- Specifies that any such action taken by the court shall be consistent with due process and requirements prescribed by existing law.

- Requires the court to disclose the ex parte communication to all parties and counsel. However, the court may, for good cause, dispense with the disclosure if necessary to protect the ward or conservatee from harm. (§ 2; Prob. Code, § 1051(b), (d). § 5, Welf. & Inst. Code, § 5372(a), (c).)

- Requires the Judicial Council, by January 1, 2008, to adopt a rule of court implementing the above provisions. (§ 2; Prob. Code, § 1051(c). § 5, Welf. & Inst. Code, § 5372(b).)

Note: The provisions in this bill that would have allowed the court to order a review of the conservatorship at any time (Prob. Code, § 1850) and required the court investigator's evaluation to include an examination of the conservatee's placement, quality of care, and finances (Prob. Code, § 1851) did not become operative as they were also contained in AB 1363, which was chaptered after this bill. (See §§ 5.5 and 5.7.) The versions of these two provisions in AB 1363 were enacted and become operative on July 1, 2007.

For further information or if you have any questions, please contact Daniel A. Pone, Senior Attorney, Administrative Office of the Courts, Office of Governmental Affairs, (916) 323-3121, daniel.pone@jud.ca.gov.

CHAPTER 1356

An act to add Section 26840.3 to the Government Code, relating to marriage.

[Approved by Governor September 29, 1976. Filed with Secretary of State September 30, 1976.]

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

SECTION 1. Section 26840.3 is added to the Government Code, to read:

26840.3. The superior court of any county which maintains a conciliation court may, upon action by the board of supervisors to provide from other sources a substantially equal amount, increase the following fees by the following amounts:

(a) The fee for the filing of a petition for dissolution of a marriage, a petition for legal separation, or a petition for nullity of a marriage, by not to exceed five dollars ($5).

(b) The fee for issuing a marriage license, by not to exceed two dollars ($2).

(c) The fee for filing a marriage certificate pursuant to Section 4213 of the Civil Code, by not to exceed two dollars ($2).

The funds shall be paid to the county treasury and shall be used exclusively to pay the costs of maintaining the conciliation court.

CHAPTER 1357

An act to amend Section 27706 of the Government Code, and to amend Sections 1404, 1405, 1435.2, 1460, 1461, 1461.3, 1461.5, 1462, 1470, 1471, 1472, 1500, 1510, 1553, 1554, 1570, 1580, 1631, 1645, 1751, 1754, 1801, 1851, 1853, 1951, and 2206 of, and to add Sections 1461.1, 1500.1, 1500.2, 1606, 1754.1, 1851.1, 1851.2, and 2006 to, the Probate Code, relating to civil law.

[Approved by Governor September 29, 1976. Filed with Secretary of State September 30, 1976.]

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

SECTION 1. Section 27706 of the Government Code is amended to read:

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, he shall defend, without expense to the defendant, except as provided by Section 987.8 of the Penal Code, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior, municipal or justice courts at all stages of the proceedings, including the preliminary

examination. The public defender shall, upon request, give counsel and advice to such person about any charge against him upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in his opinion, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, he shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars ($100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, he shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, he shall represent any person who is not financially able to employ counsel in proceedings under Divisions 4 (commencing with Section 1400) and 5 (commencing with Section 1701) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, he shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court he shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon the order of the court or upon the request of the person involved, he may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.

SEC. 2. Section 1404 of the Probate Code is amended to read:

1404. Either parent of an unmarried incompetent person may appoint a guardian of the person and estate, or person or estate, of such person, by will or by deed, to take effect upon the death of the parent appointing, with the written consent of the other parent, or if the other parent is dead or incapable of consent. If the incompetent person is married, such appointment may be made by the spouse.

SEC. 3. Section 1405 of the Probate Code is amended to read:

1405. The superior court shall appoint a general guardian of the person and estate, or person or estate, of minors and incompetent persons, whenever necessary or convenient, and when no guardian has been appointed for the purpose by will or by deed. The court, in its discretion, may appoint more than one guardian and shall

require either a separate bond from each or a joint and several bond. Where two or more guardians are appointed as coguardians, each shall be governed and liable in all respects as a sole guardian. If the estate does not exceed ten thousand dollars ($10,000), the court may require that the money in the estate be deposited in a bank or trust company or be invested in an account in an insured savings and loan association subject to withdrawal only upon the order of the court in which case no bond be required of the guardian. The court shall also confirm an appointment made by will or by deed, whenever requested, upon the same procedure and notice as in the case of appointment by the court.

SEC. 4. Section 1435.2 of the Probate Code is amended to read:

1435.2. As used in this chapter the word incompetent shall mean a legal, not a medical disability and shall be measured by functional inabilities. It shall be construed to mean or refer to any adult person who, in the case of a guardianship of the person, is unable properly to provide for his own personal needs for physical health, food, clothing or shelter, and, in the case of a guardianship of the estate, is substantially unable to manage his own financial resources. "Substantial inability" shall not be evidenced solely by isolated instances of negligence or improvidence.

SEC. 5. Section 1460 of the Probate Code is amended to read:

1460. Any superior court to which application is made as hereinafter provided may appoint a guardian for the person and estate or person or estate of an incompetent person, who is a resident of this state. As used in this division and Division 5 of this code, the phrase "incompetent person," "incompetent," or "conservatee" shall mean a legal, not a medical disability and shall be measured by functional inabilities. It shall be construed to mean or refer to any adult person who, in the case of a guardianship of the person, is unable properly to provide for his own personal needs for physical health, food, clothing or shelter, and, in the case of a guardianship of the estate, is substantially unable to manage his own financial resources. "Substantial inability" shall not be evidenced solely by isolated incidents of negligence or improvidence.

SEC. 6. Section 1461 of the Probate Code is amended to read:

1461. Any relative or friend may file a verified petition alleging that a person is incompetent, and setting forth the names and residences, so far as they are known to the petitioner, of the relatives of the alleged incompetent person within the second degree residing within or without the state. The clerk shall set the petition for hearing by the court and issue a citation directed to the alleged incompetent person setting forth the time and place of hearing so fixed by him.

The citation shall include a specific delineation of the legal standards by which the need for a guardianship is adjudged as stated in Section 1460, and shall state that the alleged incompetent person may be adjudged incompetent and by reason thereof a guardian may be appointed for his person and estate or person or estate, that such

adjudication may transfer his right to contract, manage and control his property, and to fix his residence to the appointed guardian, that the court or a court investigator will explain the nature, purpose and effect of the proceeding to the alleged incompetent person and answer questions concerning such explanation, that the alleged incompetent person shall have the right to appear at such hearing and oppose such petition, that he shall have the right to legal counsel of his own choosing, including the right to have legal counsel appointed for him by the court if he is unable to retain one, and that he has the right to a jury trial if he so desires.

The citation, and a copy of the petition, shall be served upon the alleged incompetent person in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court, at least 10 days before the time of the hearing.

Notice of the nature of the proceedings and of the time and place of the hearing shall be mailed by the petitioner to each of the relatives of the alleged incompetent person named in the petition at least 15 days before the time of hearing unless the time is shortened by the court for good cause shown. The court may order that similar notice be given to other persons in such manner as the court may direct. Any relative or friend of the alleged incompetent person or the alleged incompetent person himself may appear and oppose the petition.

If the alleged incompetent person is within the state and is able to attend, he shall be produced at the hearing, and if he is not able to attend by reason of medical inability, such inability shall be evidenced by the affidavit or certificate of a duly licensed medical practitioner, unless such alleged incompetent person is a patient at a county or state hospital in this state in which case the affidavit or certificate shall be by the medical director or medical superintendent or acting medical director or medical superintendent of such county or state hospital. If the proposed ward is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of such religion, an affidavit as to his or her medical inability to attend by the accredited practitioner shall be acceptable.

If the alleged incompetent person is not within the state and if the court determines that his attendance at the hearing is necessary in the interest of justice, the court may order him to be produced at the hearing upon penalty of dismissing the petition if he is not produced. If such an order is made and it is contended that the alleged incompetent person is not able to attend by reason of medical inability such inability shall be evidenced by the affidavit or certificate of a duly licensed medical practitioner.

Emotional or psychological instability shall not be considered good cause for the absence of the alleged incompetent person within the meaning of this section, unless, by reason of such instability,

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attendance at the hearing is likely to cause serious and immediate physiological damage to the alleged incompetent person. The medical affidavit shall be evidence only of the alleged incompetent person's medical inability to attend the hearing and shall not be considered in determining the issue of incompetency.

SEC. 7. Section 1461.1 is added to the Probate Code, to read:

1461.1. Upon receipt of the affidavit or certificate attesting to the proposed ward's inability to attend the hearing, the court shall appoint a court investigator to personally interview the proposed ward and to inform him as to the contents of the citation, the nature, purpose and effect of the proceeding, and of his right to oppose the proceeding, attend the hearing, have the matter tried by jury and be represented by counsel. The investigator shall also determine whether it appears that the proposed ward is unable to attend the hearing, whether the proposed ward wishes to contest the establishment of the guardianship, whether the proposed ward wishes to be represented by counsel, and if so, whether the proposed ward has retained counsel, and if not, the name of an attorney the proposed ward wishes to retain.

If the proposed ward does not wish to contest the establishment of the guardianship, the investigator shall determine if the proposed ward objects to the proposed guardian, or if he prefers another person to act as guardian.

The court investigator shall report his findings, including the proposed ward's express statement concerning representation by counsel, in writing, to the court at least five days before the date set for hearing.

As used in this chapter, a "court investigator" or "investigator" is a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceedings.

SEC. 8. Section 1461.3 of the Probate Code is amended to read:

1461.3. If the alleged incompetent person is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Health and such fact is known to the petitioner, the petitioner shall name the institution in the petition, and shall give notice of the filing of the petition for appointment of a guardian and of the time and place of the hearing by mailing such notice and a copy of the petition to the Director of the State Department of Health at his office in Sacramento at least 15 days before the hearing unless the time is shortened by the court for good cause shown.

SEC. 9. Section 1461.5 of the Probate Code is amended to read:

1461.5. Prior to the appointment of a guardian for the person and estate or person or estate of an incompetent person, the court shall inform the alleged incompetent person as to the nature and purpose of the guardianship proceeding, that the appointment of a guardian for his person and estate or person or estate is a legal adjudication of his incompetence, the effect of such an adjudication on his basic rights the identity of the person who has been nominated as his

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guardian, that he has a right to oppose such proceeding, to have the matter tried by jury, and to be represented by legal counsel if he chooses. After communicating such information to the person and prior to the appointment of his guardian, the court shall consult the person to determine his opinion concerning the appointment. Any adult developmentally disabled person for whom guardianship or conservatorship is sought pursuant to this article shall be informed of his right to counsel by the court; and if he does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him. The person shall pay the cost for such legal service if he is able.

If the alleged incompetent person is unable to attend the hearing and such inability has been medically certified pursuant to Section 1461, the provisions of this section shall not apply.

SEC. 10. Section 1462 of the Probate Code is amended to read:

1462. If, upon the hearing, it appears to the court that the person in question is insane or incompetent, the court must appoint a guardian of his person and estate, or person or estate. In awarding letters of guardianship, the court shall give preference to such person as may have been designated by will or deed, unless good cause to the contrary is shown.

Before letters of guardianship may issue, a copy of the order appointing the guardian shall be served by mail upon the ward. The order shall contain the names, addresses, and telephone numbers of the guardian, the ward's attorney, if any, and the court investigator, if any.

The selection of a guardian of the person and estate or person or estate shall be solely in the discretion of the court. Among persons equally qualified in the opinion of the court to be appointed as guardian, preference is to be given as follows:

(1) To the ward's nominee under Section 1463.

(2) To the spouse of a married ward or the nominee of such spouse, unless an action for dissolution of marriage is pending;

(3) To an adult child of the ward or the nominee of such child;

(4) To a parent of the ward or the nominee of such parent;

(5) To a brother or sister of the ward or the nominee of such brother or sister;

(6) To any qualified person or corporation upon the appropriate petition to the court, or if there is no such person or corporation qualified and willing to act in such capacity, to the public guardian under Section 8006 of the Welfare and Institutions Code.

The preference for any nominee to appointment under subdivisions (3), (4), and (5) shall be subordinate to the preference for any other child, parent, brother or sister in such class.

SEC. 11. Section 1470 of the Probate Code is amended to read:

1470. Any person who has been declared incompetent and for whom a guardian has been appointed as an incompetent person, or the guardian, or any relative or friend, may apply, by petition, to the superior court of the county in which such person was declared

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incompetent, or from which letters of guardianship were issued, to have the fact of his restoration to capacity judicially determined. The petition must be verified, and must state that such person is then competent.

SEC. 12. Section 1471 of the Probate Code is amended to read:

1471. The clerk shall set the petition for hearing by the court. At the request of the person so declared incompetent the question of his restoration to capacity must be tried by a jury, which must be summoned and impaneled in the same manner as juries in civil actions. At least five days' notice of the trial or hearing must be given to the person so declared incompetent and to the guardian of such person, and to the person's spouse, if any, and to his or her father and mother, if in the state.

SEC. 13. Section 1472 of the Probate Code is amended to read:

1472. On the trial or hearing, the person so declared incompetent and the guardian of such person, or any relative of such person, and, in the discretion of the court, any other person, may contest the right to the relief demanded. Witnesses may be required to appear and testify, as in civil cases, and may be called and examined by the court on its own motion. If it is found that the person in question is competent and capable of managing and taking care of himself and his property, his restoration to capacity must be adjudged and the guardianship of such person, if not a minor, must cease.

SEC. 14. Section 1500 of the Probate Code is amended to read:

1500. Every guardian has the care and custody of the person of his ward and the management of his estate, or the care and custody of the person of his ward or the management of his estate, according to the order of appointment, until legally discharged, or until his ward is restored to capacity pursuant to Chapter 5 (commencing with Section 1470) of this division, whichever shall occur first, or, in case of the guardianship of the person of a minor, until the minor reaches the age of majority or marries, or, as to the guardianship of his estate, until the ward attains his majority as provided in Section 25 of the Civil Code. The guardian of a minor also has charge of the education of the minor. The guardian of the person of a ward may fix the residence of the ward at any place in the state, but not elsewhere without the permission of the court.

No person for whom a guardian of the person has been appointed shall be placed in a mental health treatment facility against his will. Involuntary civil mental health treatment for a ward shall be obtained only pursuant to the provisions of Article 1 (commencing with Section 5150), Article 1.5 (commencing with Section 5170), Article 2 (commencing with Section 5200), Article 3 (commencing with Section 5225), Article 4 (commencing with Section 5250) Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), Article 7 (commencing with Section 5325), Article 8 (commencing with Section 5340), and Chapter 3 (commencing with Article 5350) of Division 5 of the Welfare and Institutions Code.

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(a) A person who is not a ward shall not be presumed to be incompetent by virtue of his having been a ward under the provisions of this division.

(b) All petitions filed under this chapter shall be set for hearing within 30 days of the filing of such petitions.

(c) The guardian shall promptly advise the court issuing the letters of guardianship in writing of all changes in the residence of the ward.

SEC. 15. Section 1500.1 is added to the Probate Code, to read:

1500.1. Each guardianship initiated pursuant to this chapter shall be reviewed by the court one year after the appointment of the guardian and biennially thereafter. The court investigator shall visit the ward and personally inform the ward that he is under a guardianship and the name of his guardian. The investigator shall also determine whether the ward wishes to petition the court for restoration to capacity, whether the ward is still incompetent, and whether the present guardian is acting in the best interests of the ward.

The findings of the court investigator, including the facts upon which such findings are based, shall be certified in writing to the court within 15 days of the date of review.

If the ward wishes to petition the court for restoration to capacity or for removal of the existing guardian, the court shall notify the attorney of record for the ward, if any, or appoint the public defender or other attorney to file the petition and represent the ward at the hearing or trial.

If, based upon information contained in the court investigator's report, the court determines that a hearing for restoration to capacity or removal of the existing guardian is in the best interests of the ward, the court shall notify the attorney of record for the ward, if any, or appoint the public defender or other attorney to file the petition and represent the ward at the hearing or trial.

If the court investigator is unable to locate the ward, the court shall serve notice upon the guardian to produce the ward within 15 days of the receipt of such notice or show cause why the guardianship should not be terminated. If the ward is not produced within the time prescribed and if no good cause is shown for not producing the ward, the court shall terminate the guardianship and order the guardian to file an accounting, if the guardianship is of the estate.

SEC. 16. Section 1500.2 is added to the Probate Code, to read:

1500.2. For all guardianships established prior to the effective date of the amendments to this division adopted at the 1975–76 Regular Session of the Legislature, review pursuant to the terms of Section 1500.1 shall commence at the time of the next financial accounting, but in all cases within three years from the effective date of such amendments.

SEC. 17. Section 1510 of the Probate Code is amended to read:

1510. If the court approves a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim for damages,

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money or other property, or approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or gives judgment for such a person, and the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment does not exceed ten thousand dollars ($10,000), and there is no guardian of the estate of the minor or incompetent person, such court, in its discretion, may require that the remaining balance of any money paid or to be paid under such compromise, covenant, order or judgment, after payment of all expenses, costs and fees as approved and allowed by the court, be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, or be invested in shares of an insured credit union, subject to withdrawal only upon the order of the court, or it may require a guardian of the estate to be appointed and the money or the other property to be paid or delivered to such guardian, or prescribe such other conditions as the court in its discretion deems to the best interests of the minor or incompetent person; provided, however, that if the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment does not exceed one thousand dollars ($1,000), and such money or property is to be paid or delivered for the benefit of a minor, the court may direct that all or any part of the money or the property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Section 1430 of the Probate Code. If the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment exceeds ten thousand dollars ($10,000), and there is no guardian of the estate of the minor or incompetent person, such court shall require a guardian of the estate to be appointed and shall direct that the money or the other property be paid or delivered to the guardian, or in lieu of the appointment of a guardian of the estate, shall require that the remaining balance of any money paid or to be paid under such compromise, covenant, order or judgment, after payment of all expenses, costs and fees as approved and allowed by the court, be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, or be invested in shares of an insured credit union, subject to withdrawal only upon order of the court, and as to other property to be paid or delivered, the court shall prescribe such conditions as it may deem to the best interests of the minor or incompetent person.

Notwithstanding any other provision of law, upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor is a party, or giving judgment for such a person, providing for the payment or delivery of money or other property, in any case to which this section applies, the court

making the order or giving judgment, and as a part thereof, may expressly retain jurisdiction of any part or all of the money paid, delivered, deposited, or invested until the minor reaches the age of 18 years.

Upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or giving judgment for such a person, providing for the payment or delivery of money or other property, the court making the order or giving judgment, and as a part thereof, shall make a further order authorizing and directing a parent of the minor or guardian of the minor or incompetent person, or the payer of any money to be paid for the benefit of such person, to pay, from the money or other property to be paid or delivered, such reasonable expenses (medical or otherwise and including reimbursement to a parent or guardian), costs and attorney's fees as the court shall approve and allow therein. The remaining balance of such money or other property shall be paid, delivered or deposited as hereinabove provided.

The term "account in an insured savings and loan association" used in this section means shares issued by a federal savings and loan association, or investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act, or shares issued by a state-chartered building and loan association or savings and loan associations doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

The term "shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

Where reference is made in this section to "guardian of the estate" such reference shall be deemed to include "conservator of the estate," and reference to "incompetent person" shall be deemed to include "a person for whom a conservator may be appointed."

SEC. 17.5. Section 1510 of the Probate Code is amended to read:

1510. If the court approves a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim for damages, money or other property, or approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or gives judgment for such a person, and the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment does not exceed ten thousand dollars ($10,000), and there is no guardian of the estate of the minor or incompetent person, such court, in its discretion, may require that the remaining balance of any money paid or to be paid under such compromise, covenant, order or judgment, after payment of all expenses, costs and fees as approved and allowed by

the court, be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, or be invested in shares of an insured credit union, or in a single-premium deferred annuity issued by an admitted life insurer, subject to withdrawal only upon the order of the court, or it may require a guardian of the estate to be appointed and the money or the other property to be paid or delivered to such guardian, or prescribe such other conditions as the court in its discretion deems to the best interests of the minor or incompetent person; provided, however, that if the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment does not exceed one thousand dollars ($1,000), and such money or property is to be paid or delivered for the benefit of a minor, the court may direct that all or any part of the money or the property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Section 1430 of the Probate Code. If the money or the value of other property to be paid or delivered under such compromise, covenant, order or judgment exceeds ten thousand dollars ($10,000), and there is no guardian of the estate of the minor or incompetent person, such court shall require a guardian of the estate to be appointed and shall direct that the money or the other property be paid or delivered to the guardian, or in lieu of the appointment of a guardian of the estate, shall require that the remaining balance of any money paid or to be paid under such compromise, covenant, order or judgment, after payment of all expenses, costs and fees as approved and allowed by the court, be deposited in a bank or banks, or a trust company or companies, or be invested in an account or accounts in an insured savings and loan association or associations, or be invested in shares of an insured credit union, or in a single-premium deferred annuity issued by an admitted life insurer subject to withdrawal only upon order of the court, and as to other property to be paid or delivered, the court shall prescribe such conditions as it may deem to the best interests of the minor or incompetent person.

Notwithstanding any other provision of law, upon approval of a compromise of, or the execution of a convenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor is a party, or giving judgment for such a person, providing for the payment or delivery of money or other property, in any case to which this section applies, the court making the order or giving judgment, and as a part thereof, may expressly retain jurisdiction of any part or all of the money paid, delivered, deposited, or invested until the minor reaches the age of 18 years.

Upon approval of a compromise of, or the execution of a covenant not to sue on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or giving judgment for such a person, providing for

the payment or delivery of money or other property, the court making the order or giving judgment, and as a part thereof, shall make a further order authorizing and directing a parent of the minor or guardian of the minor or incompetent person, or the payer of any money to be paid for the benefit of such person, to pay, from the money or other property to be paid or delivered, such reasonable expenses (medical or otherwise and including reimbursement to a parent or guardian), costs and attorney's fees as the court shall approve and allow therein. The remaining balance of such money or other property shall be paid, delivered or deposited as hereinabove provided.

The term "account in an insured savings and loan association" used in this section means shares issued by a federal savings and loan association, or investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act, or shares issued by a state-chartered building and loan association or savings and loan associations doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

The term "shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

The term "single-premium deferred annuity" means an annuity offered by an admitted life insurer for the payment of a one-time lump-sum premium and for which the insurer neither assesses any initial charges or administrative fees against the premium paid nor exacts or assesses any penalty for withdrawal of any funds by the annuitant after a period of five years.

Where reference is made in this section to "guardian of the estate" such reference shall be deemed to include "conservator of the estate," and reference to "incompetent person" shall be deemed to include "a person for whom a conservator may be appointed."

SEC. 18. Section 1553 of the Probate Code is amended to read:

1553. At the expiration of a year from the time of his appointment, and as often thereafter as he may be required by the court, but no less frequently than biennially, the guardian must present his account to the court for settlement and allowance. When an account is rendered by two or more joint guardians, the court, in its discretion, may allow the same upon the oath of any of them.

SEC. 19. Section 1554 of the Probate Code is amended to read:

1554. No account of the guardian of an incompetent person who is or has been during the guardianship confined in a state hospital in this state shall be settled or allowed unless notice of the time and place of hearing and a copy of the account have been given to the Director of Health at his office in Sacramento at least 15 days before the hearing. The statute of limitations shall not run against any claim of the State Department of Health against the estate of the

incompetent for board, care, maintenance or transportation if the account is settled without giving the notice prescribed above.

SEC. 20. Section 1570 of the Probate Code is amended to read:

1570. The superior court may appoint a guardian of the person and estate, or person or estate, of a minor or incompetent person who resides out of the state and who is within the county, or who has estate within the county, and who has no guardian within the state, upon petition of any relative or friend of such person. A minor may, if he is 14 years of age or older, petition to have a guardian appointed for himself.

If the nonresident ward is an incompetent person, the appointment shall be made in compliance with Section 1461 of this code. If the nonresident ward is a minor, the appointment shall be made in compliance with Section 1441 of this code.

The guardianship which is first granted of a nonresident ward extends to all the estate of the ward within this state, and the court of no other county has jurisdiction.

SEC. 21. Section 1580 of the Probate Code is amended to read:

1580. A guardian however appointed may be removed by the court, after notice and hearing, substantially as provided in Section 1755 of this code, for any of the following causes:

(1) For waste or mismanagement of the estate, or abuse of his trust;

(2) For failure to file an inventory or to render an account within the time allowed by law, or for continued failure to perform his duties;

(3) For incapacity to perform his duties suitably;

(4) For gross immorality or conviction of a felony;

(5) For having an interest adverse to the faithful performance of his trust;

(6) In the case of a guardian of an estate, for insolvency or bankruptcy;

(7) When it is no longer necessary that the ward should be under guardianship; or

(8) In any other case in which the court shall in its discretion deem such removal to be in the best interests of the ward provided, in considering the best interests of the ward, if the guardian was appointed by will or deed, the court shall take that fact into consideration.

(9) In the case of a guardian of the person, failure to comply with the provisions of Section 1500.

SEC. 22. Section 1606 is added to the Probate Code, to read:

1606. In any proceeding for the appointment of a guardian for the person and estate or person or estate of an alleged incompetent person or for restoration of his capacity under this division, the alleged or adjudicated incompetent person shall be represented by legal counsel at the hearing, if he so chooses, irrespective of whether he appears to have capacity to make such choice. If he so chooses, but is unable to retain legal counsel, the court shall, at the time of the

hearing, appoint the public defender or other attorney to represent him.

The court shall hear and determine the matter according to the laws and procedure relating to civil actions, including trial by jury if demanded.

In any case in which the alleged or adjudicated incompetent person is furnished legal counsel, either through the public defender or private counsel appointed by the court, upon conclusion of the hearing, the court shall make a determination of the present ability of the alleged or adjudicated incompetent person to pay all or a portion of the costs of such counsel. If the court determines that the alleged or adjudicated incompetent person has the present ability to pay all or a portion of the costs, it shall order him or the guardian of the estate to pay the sum, in the case of the public defender, to the county, and in the case of private counsel, to such counsel, in any installments and manner which is believed reasonable and compatible with his financial ability. If a guardian is not appointed for the alleged incompetent person, execution may be issued on the order in the same manner as on a judgment in a civil action.

SEC. 23. Section 1631 of the Probate Code is amended to read:

1631. An appeal from an order appointing a guardian for an incompetent person shall stay the power of the guardian, except that, for the purpose of preventing injury or loss to person or property, the court making the appointment may direct the exercise of the powers of the guardian, from time to time, as though no appeal were pending, and all acts of the guardian pursuant to such directions shall be valid, irrespective of the result of the appeal.

SEC. 24. Section 1645 of the Probate Code is amended to read:

1645. (a) The appointment and qualification of a general guardian terminates the powers of the special guardian except for the rendering of his account, unless by reason of an appeal therefrom or other cause the court appointing the general guardian otherwise orders. If so ordered, the court shall fix the time for the termination of the powers of the special guardian.

(b) Except as provided in subdivision (a) the powers of the special guardian shall not extend beyond 30 days unless the court, with or without notice as it may require, for good cause shall extend such powers pending the final determination of the court upon the petition for appointment of a guardian.

SEC. 25. Section 1751 of the Probate Code is amended to read:

1751. Upon petition as provided in this chapter, the superior court, if satisfied by sufficient evidence of the need therefor, shall appoint a conservator of the person and property or person or property of any adult person who, in the case of a conservatorship of the person, is unable properly to provide for his personal needs for physical health, food, clothing or shelter, and, in the case of a conservatorship of the property, is substantially unable to manage his own financial resources, or resist fraud or undue influence, or for whom a guardian could be appointed under Division 4 of this code,

or who voluntarily requests the same and to the satisfaction of the court establishes good cause therefor, or who is an absentee as defined in Section 1751.5. "Substantial inability" shall not be evidenced solely by isolated incidents of negligence or improvidence. The court, in its discretion, may appoint one or more conservators.

SEC. 26. Section 1754 of the Probate Code is amended to read:

1754. Any person or any relative or friend of any person, other than a creditor of the proposed conservatee, may file a verified petition alleging that the appointment of a conservator is required. The petition shall set forth, so far as they are known to the petitioner, the names and residences of the spouse, if any, and of the relatives of the proposed conservatee within the second degree. Upon the filing of the petition, the clerk shall set the petition for hearing by the court. Notice of the nature of the proceedings and of the time and place of the hearing on the petition shall be mailed by the petitioner to the spouse, if any, and to each of such relatives, and if the proposed conservatee is an "absentee" as defined in Section 1751.5, to the secretary concerned or to the head of the United States department or agency concerned, as the case may be, at least 15 days before such hearing date. If the proposed conservatee is an "absentee," as defined in Section 1751.5, such notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held.

If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of the hearing. The citation shall include a specific delineation of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1751, and shall state that the proposed conservator may be adjudged unable to provide for his personal needs or manage his financial resources, and by reason thereof, a conservator may be appointed for his person and property or person or property, that such adjudication may transfer the proposed conservatees' right to contract, manage and control his property, and to fix his residence to the appointed conservator, that the court or a court investigator will explain the nature, purpose and effect of the proceeding to the proposed conservatee and answer questions concerning such explanation, that the proposed conservatee shall have the right to appear at such hearing and oppose such petition, that he shall have the right to legal counsel of his own choosing, including the right to have legal counsel appointed for him by the court if he is unable to retain one, and that he has the right to a jury trial if he so desires.

The citation, and a copy of the petition, shall be served upon the proposed conservatee in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court, at least 10 days before the time of the hearing. No such citation shall, however, be required if the proposed conservatee is an "absentee" as defined in Section 1751.5.

The proposed conservatee, if he is the petitioner, or if he is in the state at date of service and, if able to attend, shall be produced at the hearing, and, if not able to attend by reason of medical inability, such inability shall be established by the affidavit or certificate of a duly licensed medical practitioner. If the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of such religion, an affidavit as to his or her medical inability to attend by an accredited practitioner shall be acceptable. Emotional or psychological instability shall not be considered good cause for the absence of the proposed conservatee within the meaning of this section, unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee. The medical affidavit shall be evidence only of the proposed conservatee's medical inability to attend the hearing and shall not be considered in determining the issue of need for appointment of a conservator. If the proposed conservatee is an "absentee" as defined in Section 1751.5 his inability to attend the hearing shall be established by a certificate complying with Section 1283 of the Evidence Code, showing the determination of the Secretary of the Military Department or the head of the department, or agency concerned or his delegate, as the case may be, that the "absentee" is in missing status.

Upon receipt of the affidavit or certificate attesting to the proposed conservatee's inability to attend the hearing, the court shall appoint a court investigator to personally interview the proposed conservatee and to inform him as to the contents of the citation, the nature, purpose and effect of the proceeding, and of his right to oppose the proceeding, attend the hearing, have the matter tried by jury and be represented by counsel. The investigator shall also determine whether it appears that the proposed conservatee is unable to attend the hearing, whether the proposed conservatee wishes to contest the establishment of the conservatorship, whether the proposed conservatee wishes to be represented by counsel, and if so, whether the proposed conservatee has retained counsel, and if not, the name of an attorney the proposed conservatee wishes to retain.

If the proposed conservatee does not wish to contest the establishment of the guardianship, the investigator shall determine if the proposed conservatee objects to the proposed conservator, or if he prefers another person to act as conservator.

The court investigator shall report his findings, including the proposed conservatee's express statement concerning representation by counsel, in writing, to the court at least five days before the date set for hearing.

As used in this chapter, a "court investigator" or "investigator" is a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceedings.

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Whenever a notice to any officer or agency of this state or of the United States would be required upon a petition for the appointment of a guardian of an alleged incompetent person a like notice shall be given of a petition under this chapter. Any officer or agency of this state or of the United States, or the authorized delegate thereof, or any relative or friend of the proposed conservatee, or the proposed conservatee himself, may appear and oppose the petition.

SEC. 27. Section 1754.1 is added to the Probate Code, to read:

1754.1. If the proposed conservatee is not the petitioner, prior to the appointment of a conservator for the person and estate or person or estate of a proposed conservatee, the court shall inform the proposed conservatee as to the nature and purpose of the proceeding, that the appointment of a conservator for his person and estate or person or estate is a legal adjudication of his inability properly to provide for his personal needs or manage his own financial resources or of his incompetency, the effect of such an adjudication on his basic rights, the identity of the person who has been nominated as his conservator, that he has right to oppose such proceeding, to have the matter tried by jury, and to be represented by legal counsel if he chooses. After communicating such information to the person and prior to the appointment of his conservator, the court shall consult the person to determine his opinion concerning the appointment.

If the proposed conservatee is unable to attend the hearing and such inability has been medically certified pursuant to Section 1754, the provisions of this section shall not apply.

SEC. 28. Section 1801 of the Probate Code is amended to read:

1801. A conservator shall be designated by that title. Before his appointment shall be effective, he must take an oath that he will perform the duties of his office according to law, which oath shall be filed in the proceedings. The appointment as conservator and the taking and filing of such oath shall thereafter be evidenced by the issuance by the clerk of the court of letters of conservatorship in substantially the same form as letters of administration. Before letters of conservatorship may issue, a copy of the order appointing the conservator shall be served by mail upon the conservatee. Such order shall contain the names, addresses, and telephone numbers of the conservator, the conservatee's attorney, if any, and the court investigator, if any.

SEC. 29. Section 1851 of the Probate Code is amended to read:

1851. Every conservator of the person of a conservatee has the care, custody and control of the conservatee and may fix the residence of the conservatee at any place within this state, but not elsewhere without the permission of the court.

No person for whom a conservator of the person has been appointed shall be placed in a mental health treatment facility against his will. Involuntary civil mental health treatment for a conservatee shall be obtained only pursuant to the provisions of

Article 1 (commencing with Section 5150), Article 1.5 (commencing with Section 5170), Article 2 (commencing with Section 5200), Article 3 (commencing with Section 5225), Article 4 (commencing with Section 5250), Article 4.5 (commencing with Section 5260), Article 5 (commencing with Section 5275), Article 6 (commencing with Section 5300), Article 7 (commencing with Section 5325), Article 8 (commencing with Section 5340), and Chapter 3 (commencing with Article 5350) of Division 5 of the Welfare and Institutions Code.

(a) All petitions filed under this chapter shall be set for hearing within 30 days of the filing of such petitions.

(b) The conservator shall promptly advise the court issuing the letters of conservatorship in writing of all changes in the residence of the conservatee.

SEC. 30. Section 1851.1 is added to the Probate Code, to read:

1851.1. Each conservatorship initiated pursuant to this chapter shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter. The court investigator shall visit the conservatee and personally inform the conservatee that he is under a conservatorship and the name of his conservator. The investigator shall also determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, and whether the present conservator is acting in the best interests of the ward.

The findings of the court investigator, including the facts upon which such findings are based, shall be certified in writing to the court within 15 days of the date of review.

If the conservatee wishes to petition the court for termination of the proceeding or for removal of the existing conservator, the court shall notify the attorney of record for the conservatee, if any, or appoint the public defender or other attorney to file the petition and represent the conservatee at the hearing or trial.

If, based upon information contained in the court investigator's report, the court determines that a hearing for termination of the proceeding or removal of the existing conservator is in the best interests of the conservatee, the court shall notify the attorney of record for the conservatee, if any, or appoint the public defender or other attorney to file the petition and represent the conservatee at the hearing or trial.

If the court investigator is unable to locate the conservatee, the court shall serve notice upon the conservator to produce the conservatee within 15 days of the receipt of such notice or show cause why the conservatorship should not be terminated. If the conservatee is not produced within the time prescribed and if no good cause is shown for not producing the conservatee, the court shall terminate the conservatorship and order the conservator to file an accounting, if the conservatorship is of the estate.

SEC. 31. Section 1851.2 is added to the Probate Code, to read:

1851.2. For each conservatorship established prior to the

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effective date of the amendments to this division adopted at the 1975–76 Regular Session of the Legislature, review pursuant to the terms of Section 1851.1 shall commence at the time of the next financial accounting, but in all cases within three years from the effective date of such amendments.

SEC. 32. Section 1853 of the Probate Code is amended to read:

1853. On the application of the conservator, made at any time, which application may be included in a petition filed pursuant to Section 1754, the court may grant to a conservator of the estate or of the person and estate of a conservatee any or all of the following additional powers, which may be exercised with or without notice, hearings, confirmation, or approval of the court and which may be exercised without regard to whether or not other requirements of this code shall have been complied with, except such requirements as shall have been specifically and expressly provided, whether directly or by reference, in the order granting such additional powers:

To institute and maintain all actions and other proceedings for the benefit of and to defend all actions and other proceedings against the conservatee or the conservatorship estate; to take, collect and hold the property of the conservatee; to contract for the conservatorship and to perform outstanding contracts and thereby bind the conservatorship estate; to operate at the risk of the estate any business, farm or enterprise constituting an asset of the conservatorship, to grant and take options; to sell at public or private sale; to create by grant or otherwise easements and servitudes; to borrow money and give security for the repayment thereof; to purchase real or personal property; to alter, improve and repair or raze, replace and rebuild conservatorship property; to let or lease property for any purpose including exploration for and removal of gas, oil and other minerals and natural resources and for any period, including a term commencing at a future time; to loan money on adequate security; to exchange conservatorship property; to sell on credit provided that any unpaid portion of the selling price shall be adequately secured; to vote in person or by proxy all shares and securities held by the conservator; to exercise stock rights and stock options; to participate in and become subject and to consent to the provisions of any voting trust and of any reorganization, consolidation, merger, dissolution, liquidation or other modification or adjustment affecting conservatorship property; to effect necessary insurance for the proper protection of the estate, to pay, collect, compromise, arbitrate or otherwise adjust any and all claims, debts or demands upon the conservatorship, including those for taxes; to abandon valueless property, and to employ attorneys, accountants, investment counsel, agents, depositaries and employees and to pay the expense therefor from the conservatorship estate.

Such additional powers shall be in addition to the general powers of conservators. The granting of said additional powers shall be discretionary with the court. Notice of the hearing of the application

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therefor, except when the application is included in a petition filed pursuant to Section 1754, shall be given in the manner provided in Section 1200, including notice to the conservatee, and whenever any conservatee is or has been during the conservatorship confined in a state hospital in this state, such notice also shall be given by the conservator to the Director of the State Department of Health at his office in Sacramento. When additional powers are granted to a conservator, his letters shall state that he has the powers authorized in this section. If such additional powers are granted by a subsequent order, new letters shall be issued and shall state that he has such power or powers as have been granted. The grant of additional powers to the conservator shall not affect the right of the conservator to petition the court as provided in Section 1860.

SEC. 33. Section 1951 of the Probate Code is amended to read:

1951. A conservator, however appointed, may be removed by the court, after notice and hearing as provided by Section 1755, for any of the following causes:

1. For waste or mismanagement of the estate, or abuse of his trust;
2. For failure to file an inventory or to render an account within the time allowed by law or by court order, or for continued failure to perform his duties;
3. For incapacity to perform his duties suitably;
4. For gross immorality or conviction of a felony;
5. For having an interest adverse to the faithful performance of his trust;
6. In the case of a conservator of an estate, for insolvency or bankruptcy; or
7. When the conservatorship is no longer required.
8. In any other case in which the court shall in its discretion deem such removal to be for the best interests of the conservatee.
9. In the case of a conservator of the person, failure to comply with the provisions of Section 1851.

SEC. 34. Section 2006 is added to the Probate Code, to read:

2006. In any proceeding for the appointment of a conservator for the person and estate or person or estate of a proposed conservatee or for termination of a conservatorship under this division, the proposed conservatee shall be represented by legal counsel at the hearing, if he so chooses, irrespective of whether he appears to have capacity to make such choice. If he so chooses but is unable to retain legal counsel, the court shall, at the time of the hearing, appoint the public defender or other attorney to represent him.

The court shall hear and determine the matter according to the laws and procedure relating to civil actions, including trial by jury if demanded.

In any case in which the proposed conservatee or conservatee is furnished legal counsel, either through the public defender or private counsel appointed by the court, upon the conclusion of the hearing, the court shall make a determination of the present ability of the proposed conservatee or conservatee to pay all or a portion of

0 1417 28 11 215 184

the costs of such counsel. If the court determines that the proposed conservatee or conservatee has the present ability to pay all or a portion of the costs, it shall order him or the conservator of the estate to pay the sum, in the case of the public defender, to the county, and in the case of private counsel, to such counsel, in any installments and manner which is believed reasonable and compatible with his financial ability. If a conservator is not appointed for the proposed conservatee, execution may be issued on the order in the same manner as on a judgment in a civil action.

SEC. 35. Section 2206 of the Probate Code is amended to read:

2206. (a) The appointment and qualification of a conservator terminates the powers of the temporary conservator except for the rendering of his account, unless by reason of an appeal therefrom or other cause the court appointing the conservator otherwise orders. If so ordered the court shall fix the time for the termination of the powers of the temporary conservator.

(b) Except as provided in subdivision (a) the powers of the temporary conservator shall not extend beyond 30 days unless the court, with or without notice as it may require, for good cause shall extend such powers pending the final determination of the court upon the petition for appointment of a conservator.

SEC. 36. There are no state-mandated local costs within the meaning of 2231 of the Revenue and Taxation Code imposed on local governmental entities in 1977–78 by this act. However, there are state-mandated local costs in this act in subsequent years that require reimbursement under Section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process.

SEC. 37. Section 17.5 of this act shall become operative only if this bill and Senate Bill No. 1789 are both chaptered and become effective January 1, 1977, both amend Section 1510 of the Probate Code and this bill is chaptered after Senate Bill No. 1789, in which case Section 17 of this act shall not become operative.

SEC. 38. This act shall become operative on July 1, 1977.

CHAPTER 1358

An act to amend Sections 103021, 103300, 103301, 103302, and 103303 of, to amend the heading of Article 6 (commencing with Section 103300) of Chapter 5 of Part 15 of Division 10 of, and to add Sections 103022, 103301.5, and 103301.6 to, the Public Utilities Code, relating to transit districts.

[Approved by Governor September 29, 1976. Filed with Secretary of State September 30, 1976.]

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

GUARDIANSHIP AND CONSERVATORSHIP FILINGS

1. Summary of Chapter 1357/76

This Chapter revised and expanded the provisions of law governing the procedures for creation of the relationship of guardian and ward and establishment of conservatorship in instances where an adult person by reason of advanced age, illness, injury, mental weakness, intemperance, addiction to drugs, or any other disability or cause is unable to properly care for himself or his property As a result, the statute provides for appointment of a counsel to represent the interests of a proposed ward or conservatee under designated circumstances, trial by jury on the issue of whether a wardship or conservatorship should be established, a court appointed investigator to interview the potential ward or conservatee if such person is certified as unable to attend hearing proceedings, and a court investigator annually to review each guardianship and conservatorship initiated pursuant to this statutes..

Chapter 1357/76 was consolidated and renumbered by provisions contained in Chapter 726/79. These guidelines reflect the changes in Chapter 726/79.

2. Eligible Claimants

Any county which have incurred increased costs as a result of this mandate is eligible to claim reimbursement of costs.

3. Appropriations

Claims may only be filed with the State Controller's Office for programs that have been funded in the State Budget Act or in special legislation. To determine if current funding is available for this program, refer to the schedule "Appropriations for State Mandated Cost Programs" presented in the "Annual Claiming Instructions for State Mandated Costs" issued in mid September of each year to the county auditor's office.

4. Types of Claims

A claimant may file a reimbursement claim or an estimated claim as specified below. A reimbursement claim details the costs actually incurred for the previous fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

- A claim for reimbursement or an estimate must exceed $200 per fiscal year.

4.1. Filing Deadline

Refer to paragraph 3, Appropriations, to determine if the program is funded for the current fiscal year. If the answer is "yes", an estimated claim may be filed as follows:

- An estimated claim must be filed with the State Controller's Office postmarked by **November 30** of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims. After having received payment for an estimated claim, the claimant must file a reimbursement claim by **November 30** of the following fiscal year.

If your agency received payment for an estimated claim for the fiscal year in which costs are to be incurred, a reimbursement claim must be filed in the following fiscal year detailing the actual costs incurred. If your agency failed to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, your agency may file a reimbursement claim detailing the actual costs incurred for that fiscal year, provided there was an appropria-

tion for the program for that fiscal year. This may be determined by referring to that fiscal year's "Annual Claiming Instructions for State Mandated Costs."

- A reimbursement claim must be filed with the State Controller's Office postmarked by **November 30** following the fiscal year in which costs were incurred. If a claim is filed after the deadline but by **November 30** of the succeeding fiscal year, the approved claim will be reduced by a late penalty of 10% but **not** to exceed $ 1,000. If the claim is filed more then one year after the deadline, the claim cannot be accepted.

5. Reimbursable Components

5.1. Court Appointed Counsel

The cost of court appointed counsel, if the proposed ward or conservatee is unable to retain legal counsel in a guardianship or conservatorship proceeding, is reimbursable.

- Reimbursable costs must be reduced by the amount of fees collected from parents, guardians, proposed wards estate or conservatee's estate for services rendered.

5.2. Prehearing and Review Hearing Investigations

The costs of court appointed investigators, who make certain prehearing investigations and review cases after one year and biennially thereafter, are reimbursable.

- Reimbursable costs must be reduced by the amount of fees collected from parents, guardians, proposed wards estate or conservatee's estate for services rendered.

5.3. Jury Trial

The costs of the jurors for a jury trial, where the issue is whether a wardship or conservatorship should be established, are reimbursable.

- Reimbursable costs must be reduced by the amount of fees collected from parents, guardians, proposed wards estate or conservatee's estate for services rendered.

5.4. Public Guardian and County Counsel

Costs of the public guardian and county counsel are reimbursable if they are able to develop from their records which document the time spent on cases in which the public guardian was appointed as conservator due to the court investigator's findings. Such costs whould be eligible for reimbursement to the extent costs exceed any other court-directed function or any payment received from the estate of the conservatee.

6. Reimbursement Limitations

- Any offsetting savings or reimbursement the claimant received from any source, as a result to this mandate, must be deducted from the amount claimed.

- Costs related to "court operations" as defined in Government Code Section 77300 are not reimbursable when the county opts into the Trail Court Funding Program pursuant to Section 77300. In light of Government Code Section 77003, the costs associated with court appointed investigators and any cost for a jury trial shall not be claimed if the county is participating in the Trial Court Funding Program. Pursuant to Section 77203, block grant disbursements to the county shall be in lieu of any reimbursement of state mandated local programs for trial courts during those fiscal years in which it is a participant of the program.

- No cost shall be claimed for cases classified under Lanterman-Petris-Short.

7. Claiming Forms and Instructions

The diagram entitled, "Illustration of Claim Forms", provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for Form GCF-1 and Form GCF-2, provided the format of the report and data fields contained within the report are identical to the claim forms included in this chapter. The claim forms provided in this chapter can be duplicated and used by the claimant to file an estimated or reimbursement claim. The State Controller's Office will revise the manual and claim forms as necessary.

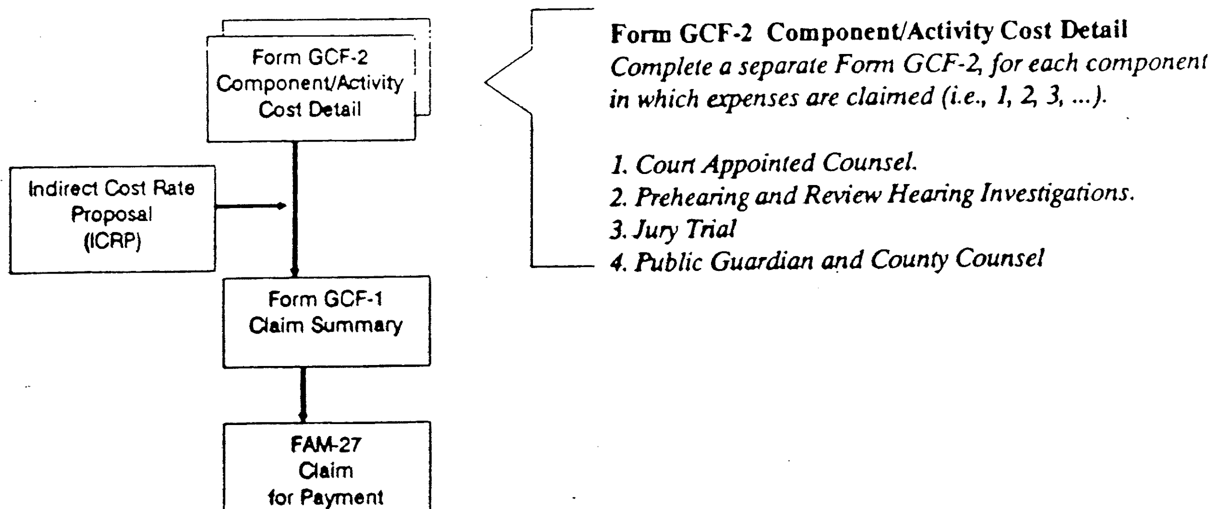
Form GCF-2, Component/Activity Cost Detail, is used to segregate the detail costs by claim component. In some mandates, specific reimbursable activities have been identified for each component. The expenses reported on this form must be supported by cost and time records. Copies of supporting documentation as specified in these instructions must be submitted with the claim. All supporting documents must be retained for a period of not less than three years from the date of the final payment on the claim.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, as long as the direct labor costs are directly related to the cost of performing the mandate. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have their own ICRP for the program.

Form GCF-1, Claim Summary, is used to summarize direct costs by component and compute allowable indirect costs for the mandate. The direct costs summarized on this form are derived from Forms GCF-2 and are carried forward to FAM-27.

Form FAM-27, Claim for Payment, contains a certification that must be signed by an authorized representative of the county. All applicable information from Form GCF-1 must be carried forward onto this form in order for the State Controller's Office to process the claim for payment.

Illustration of Claim Forms



CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
GUARDIANSHIP AND CONSERVATORSHIP FILINGS

For State Controller Use only	
(19) Program Number 00027	
(20) Date File	____/____/____
(21) Signature Present	☐

(01) Claimant Identification Number:

(02) Mailing Address

Claimant Name

County of Location

Street Address or P. O. Box

City | State | Zip Code

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐
Fiscal Year of Cost	(06) 19____/____	(12) 19____/____
Total Claimed Amount	(07)	(13)
Less: 10% Late Penalty, but not to exceed $1000 (if applicable)		(14)
Less: Estimated Claim Payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

Reimbursement Claim Data	
(22) GCF-1, (03)(1)	
(23) GCF1, (03)(2)	
(24) GCF-1, (03)(3)	
(25) GCF-1, (03)(4)	
(26) GCF-1, (03)(5)	
(27) GCF-1, (04)(1)	
(28) GCF-1, (04)(2)	
(29) GCF-1, (04)(3)	
(30) GCF-1, (04)(4)	
(31) GCF-1, (06)	
(32)	
(33)	
(34)	
(35)	
(36)	
(37)	

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 1357, Statutes of 1976; and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there were no applications for nor any grant or payments received, other than from the claimant, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 1357, Statutes of 1976.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 1357, Statutes of 1976, set forth on the attached statements.

Signature of Authorized Representative | Date

Type or Print Name | Title

(39) Name of Contact Person or Claim | Telephone Number ( ) Ext.

GUARDIANSHIP AND CONSERVATORSHIP FILINGS Certification Claim Form Pursuant to Government Code Section 17561	FORM FAM-27

(01) Leave blank

(02) A set of mailing labels with the claimant's I.D. number and address have been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label in the space shown on the Form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you didn't receive labels, print or type your agency's mailing address.

(03) If you are filing an original estimated Claim, enter an " X " in box of line (03) Estimated.

(04) If the county is filing an original estimated Claim on behalf of districts within the county, enter an " X " in box of line (04) Combined.

(05) If you are filing an amended claim to an original estimated or combined, enter an " X " in box of line (05) Amended. Leave boxes (03) and (04) blank.

(06) Enter the current fiscal year in which costs are to be incurred.

(07) Enter the amounts of estimated claim from Form GCF-1, line (11).

(08) Enter the same amount as shown in line (07).

(09) If you are filing an original reimbursement claim, enter an " X " in box of line (09) Reimbursement.

(10) If the county is filing an original reimbursement claim on behalf of districts within the county, enter an " X " in box of line (10) Combined.

(11) If you are filing an amended claim to an original reimbursement claim or a combined claim on behalf of districts within the county, enter an " X " in box of line (11) Amended. Leave boxes (09) and (10) blank.

(12) Enter the fiscal year in which actual costs are being claimed. If actual costs for more than one fiscal year is being claimed, complete a separate Form FAM-27 for each fiscal year.

(13) Enter the amount of reimbursement claim from Form GCF-1, line (11.)

(14) If the reimbursement claim is filed after November 30 of the fiscal year in which the costs were incurred, the claim must be reduced by a late penalty amount. Enter the result of the multiplication of the 10% late penalty times line (13) or $1000, whichever is less.

(15) If you are filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim, otherwise enter a "zero".

(16) Enter the result of subtracting the sum of line (14) and line (15) from line (13).

(17) If line (16) Net Claimed Amount is positive, enter that amount in line (17) Due from State.

(18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.

(22) through (37) for the Reimbursement Claim

Bring forward cost information as specified on the left-hand column of lines (22) through (31) for the reimbursement claim [e.g., GCF-1, (03)(1) means the information is located on Form GCF-1, line (03)(1)]. Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). The claim cannot be processed for payment unless this data block is correct and complete.

(38) Read the statement "Certification of Claim." If the statement is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.

(39) Enter the name of the person and telephone number that this office should contact if additional information is required.

SUBMIT THREE COPIES OF THE CLAIM FORMS AND TWO COPIES OF THE SUPPORTING DOCUMENTS TO:

Address, if delivery by:
U.S. Postal Service

Gray Davis
State Controller
Division of Accounting
P.O. Box 942850
Sacramento, Ca. 94250-5875

Address, if delivery by:
Other delivery service

Gray Davis
State Controller
Division of Accounting
3301 C Street, Suite 500
Sacramento, Ca 95816

MANDATED COSTS
GUARDIANSHIP AND CONSERVATORSHIP FILINGS
CLAIM SUMMARY

FORM GCF-1

(01) Claimant:	(02) Type of Claim: Reimbursement ☐ Estimated ☐	Fiscal Year: 19 ___/___

Claim Statistics

(03) 1. Number of court investigator interviews pursuant to Probate Code Section 1826 and 1850 [adult persons].	
2. Number of cases where the court appointed a public defender or other attorney to represent the person in a guardianship or conservatorship hearing.	
3. Number of cases where a private conservatorship was terminated and the case was reassigned to a public guardian.	
4. Number of court investigator interviews pursuant to Probate Code Section 2253 [minors].	
5. Number of jury trials.	

Direct Costs	Object Accounts			
(04) Reimbursable Components:	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Total
1. Court Appointed Counsel				
2. Prehearing and Review Hearing Investigations				
3. Jury Trial				
4. Public Guardian and County Counsel				
(05) Total Direct Costs				

Indirect Costs

(06) Indirect Cost Rate	[From ICRP]	%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] of [line (06) x {line (05)(a) + line (05)(b)}]	
(08) Total Direct and Indirect Costs:	[Line (05)(d) + line (07)]	

Cost Reduction

(09) *Less:* Offsetting Savings, if applicable		
(10) *Less:* Other Reimbursements, if applicable		
(11) Total Claimed Amount :	{Line (08) - {line (09) + line (10)}}	

GUARDIAN AND CONSERVATORSHIP FILINGS
CLAIM SUMMARY
Instructions

FORM GCF-1

Enter the name of the claimant.

Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.

Form GCF-1 must be filed for a reimbursement claim. If you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by 10%, do not complete Form GCF-1. Simply enter the amount of the estimated claim on Form FAM-27, line (03), Estimated. However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, Form GCF-1 must be completed and attach a statement explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.@NUMBERS = (03)

1. Enter the number of court investigator interviews made pursuant to Probate Code Section 1826 and 1850 [adult persons].
2. Enter the number of cases where the court appointed a public defender or other attorney to represent the person in a guardianship or conservatorship hearing.
3. Enter the number of cases where a private conservatorship was terminated and the case was reassigned to a public guardian.
4. Enter the number of court investigator interviews pursuant to Probate Code Section 2253 [minors].
5. Enter the number of jury trials.

For each of the reimbursable components, enter the total allowable cost from Form GCR-2, line (06) columns (d) and (e) onto Form GCF-1, block (04) in the appropriate row.

Total columns (a) through (d).

Enter the Indirect Cost Rate.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, as long as the direct labor costs are directly related to the cost of performing the mandate. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have their own ICRP for the program.

Multiply Total Salaries, in line (05)(a), by the Indirect Cost Rate, line (06). If both Salaries and Benefits were used in the distribution base for the computation of the indirect cost rate, then multiply Total Salaries and Benefits, line (05)(a) and line (05) (b) by the Indirect Cost Rate, line (06).

Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(d), and Total Indirect Costs, line (07).

Less: Offsetting Savings, if applicable. Enter total savings experienced by the claimant as a direct result of this mandate. Submit a schedule of detailed savings with the claim.

Less Other Reimbursements, if applicable. Enter total other reimbursements received from any source, (i.e., federal, other State programs, foundations, etc.).

Total Amount Claimed. Subtract the sum of line (09) and line (10) from line (08). Enter the difference on this line and carry forward onto Form FAM-27, line (07) for the Estimated Claim, or line (13) for the Reimbursement Claim.

MANDATED COSTS
GUARDIAN AND CONSERVATORSHIP FILINGS
COMPONENT/ACTIVITY COST DETAIL

FORM GCF-2

(01) Claimant:

(02) Fiscal Year costs were incurred:

(03) Reimbursable Components: *Check* **ONLY one** *box per form to identify the component being claimed.*

- ☐ *Prehearing and Review Hearing Investigations*
- ☐ *Court Appointed Counsel*
- ☐ *Public Guardian and County Counsel*
- ☐ *Jury Trial*

(04) Description of Expenses: Complete columns (a) through (e).

(a) Employee Names, Job Classifications and Activities Performed Plus Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	Object Accounts (d) Salaries	Object Accounts (d) Benefits	Object Accounts (e) Services and Supplies

(05) Total ☐ Subtotal ☐ Page ___ of ___

GUARDIAN AND CONSERVATORSHIP FILINGS COMPONENT/ACTIVITY COST DETAIL

Instructions

FORM GCF-2

ɔte: A separate Form GCF-2 should be completed for each component claimed.

1) Enter the name of the claimant.

2) Enter the fiscal year for which costs were incurred.

ı3) Check the box which indicates the cost component being claimed. Check only one box per form. A separate Form GCF-2 shall be prepared for each component which applies.

ı4) The following tables identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in line (03), enter the employee names, position titles, a brief description of their activities performed, productive hourly rate, fringe benefits, supplies used, travel expenses, contracted services, jury costs, etc. Do not claim any costs related to "Court Operation" if the county has opted into the Trial Court Funding Program for that fiscal year in which costs were incurred. All supporting documents must be retained by the claimant for a period of not less than three years from the date of final payment on the claim.

Object/ Subobject Accounts	Columns					Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	
alaries and Benefits Salaries	Employee Name, Title, Activities Performed	Hourly Rate	Hours Worked	(b) x (c) Hourly Rate x Hours Worked +		
Benefits		Benefit Rate	Hours Worked	(b) x (c) Benefit Rate x Hours Worked or Benefit Rate x Salary Claimed		
ervices and Supplies Office Expense	Description of Supplies Used	Unit Cost	Quantity Consumed		(b) x (c) Unit Cost x Quantity Consumed	
Professional and Specialized Services	Name of Contractor, Specific Tasks Performed,	Itemize cost for Services Performed	Time Period for which Services was Provided		Total Cost Claimed	Invoice
Jury Expense	Juror Name, Case Number	Daily Rate	Number of Days		Total Jury Expense Claimed	

(05) Total Line (04), Columns (d) and (e) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from Line (05), columns (d) and (e) to Form GCF-1, block (04) in the appropriate row.

CONSERVATORSHIP: DEVELOPMENTALLY DISABLED ADULTS

1. Summary of Chapter 1304/80

This Chapter provides for the establishment of limited conservatorship for developmentally disabled adults, for the purpose of promoting and protecting the well-being of the individual and to encourage the development of maximum self reliance and independence of the individual. In any proceeding to establish or modify a limited conservatorship, the court is required to appoint the public defender or private legal counsel to represent the protected person and the protected person is entitled to a jury trial.

2. Eligible Claimants

Any county that has incurred increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

3. Appropriations

Claims may only be filed with the State Controller's Office for programs that have been funded in the State Budget Act or in special legislation. To determine if current funding is available for this program, refer to the schedule "Appropriations for State Mandated Cost Programs" presented in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September of each year to the county auditor's office.

4. Types of Claims

A. Entitlement Claims

This program has been included in the State Mandates Apportionment System (SMAS). The SMAS is a process where a claimant receives an annual apportionment, reflective of the program's costs, without further filing of reimbursement claims. A claimant is eligible to be included in the SMAS after having established a base year entitlement for the program. The State Controller's Office determines a base year entitlement by averaging the claimant's actual costs for any three consecutive fiscal years. The actual costs are first adjusted according to any change in the implicit price deflator. With an established base year entitlement, no further claims need to be filed. Claimant will receive annually, by November 30, an apportionment adjusted for any change in the implicit price deflator.

A claimant with no base year entitlement may begin submitting reimbursement claims for a minimum of three consecutive fiscal years or entitlement claims covering the preceding three consecutive fiscal years. The three consecutive fiscal years of costs can be a combination of entitlement and reimbursement claims. There is no statutory deadline for filing entitlement claims. However, entitlement claims and supporting documents should be filed by November 30 to permit an orderly processing of claims. When the claims are approved and a base year entitlement amount is determined, the claimant will receive an apportionment reflective of the program's current year costs. Entitlement claims are only for the purpose of establishing a base year entitlement and not to be used for claiming of reimbursement.

(1) Entitlement claims should be filed with the State Controller's Office by **November 30**. After the claims are approved and a base year entitlement amount is determined, the claimant will receive an apportionment for the current fiscal year.

B. Reimbursement and Estimated Claims

A claimant may file a reimbursement claim and/or an estimated claim. A reimbursement claim details the costs actually incurred for the previous fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year. A claim for reimbursement or an estimate must exceed $200 per program per fiscal year.

C. Filing Deadline

(1) Refer to item 3 "Appropriations" to determine if the program is funded for the current fiscal year. If funding is available, an estimated claim may be filed.

An estimated claim must be filed with the State Controller's Office and postmarked by **November 30** of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.

(2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by **November 30** following the fiscal year in which costs were incurred. If the claim is filed after the deadline, but by November 30 of the succeeding fiscal year the approved claim will be reduced by a late penalty of 10% but not to exceed $1,000. If the claim is filed more than one year after the deadline, the claim cannot be accepted.

If a local agency received payment for an estimated claim, a reimbursement claim must be filed by November 30 regardless if the amount received was more or less than the actual costs. If the agency fails to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, the agency may file a reimbursement claim by November 30 detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. See item 3 above.

5. Reimbursable Components

Eligible claimants will be reimbursed for the increased costs relating to proceedings described in Probate Code Section 1471.

A. Legal Counsel

The cost of providing legal counsel to a protected person under a limited conservatorship, to establish a conservatorship or to appoint a proposed conservator, to terminate the conservatorship, to remove the conservator, for a court order affecting the legal capacity of the protected person and to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place or residence is reimbursable.

B. Jury Trial

The cost of jurors is reimbursable if a jury trial is requested by the protected person.

6. Reimbursement Limitations

A. Any offsetting savings or reimbursement the claimant received from any source as a result of this mandate, must be deducted from the amount claimed.

B. The cost of court investigation for limited conservatorship is not reimbursable under this Chapter, but is reimbursable under Chapter 1357/76, Guardianship and conservatorship Filings.

7. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms CDDA-1 and CDDA-2, provided the format of the report and data fields contained within the report are identical to the claim forms included these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated and reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

A. Form CDDA-2, Component/Activity Cost Detail

This form is used to segregate the detail costs by claim component. A separate form CDDA-2 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

(1) Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate and the related fringe benefits.

Source documents required to be maintained by the claimant may include, but are not limited to, employee time records that show the employee's actual time spent on the mandate.

(2) Materials and Supplies

Only expenditures that can be identified as a direct cost of the mandate can be claimed. List cost of materials that have been consumed or expended specifically for the purpose of this mandate.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase order and other documents evidencing the validity of the expenditures.

(3) Contracted Services

Give the name(s) of contractor(s) who performed the services. Describe the activities performed by each named contractor, actual hours spent on the mandate,

inclusive dates when services were performed and itemize all costs for services performed. Attach consultant invoices with the claim.

Source documents required to be maintained by the claimant may include, but are not limited to, contracts, invoices and other documents evidencing the validity of the expenditures.

(4) Travel Expenses

Travel expenses for mileage, per diem, lodging and other employee entitlement are reimbursable in accordance with the rules of the local jurisdiction. Give the name(s) of the traveler(s), purpose of the travel, inclusive travel dates, destination points and costs.

Source documents required to be maintained by the claimant may include, but are not limited to, receipts, employee's travel expense claims and other documents evidencing the validity of the expenditures.

(5) Jury Expenses

Indicate for each court case, the court case numbers, number of juror days required to try the case, daily juror rate and number of days spent trying the case.

Source documents evidencing the validity of the expenditures must be maintained by the claimants.

For audit purposes, all supporting documents must be retained for a period of four years after the end of the calendar year in which the reimbursement claim is filed or last amended. Such documents shall be made available to the State Controller's Office upon request.

B. Form CDDA-1, Claim Summary

This form is used to summarize direct costs by claim component and compute allowable indirect costs for the mandate. Claim statistics shall identify the amount of work performed during the claim period for which costs are claimed. The claimant must show the following: (1) the number of limited conservatorship cases where a jury trial was requested, and (2) the number of limited conservatorship cases that had legal representation for the protected person. Direct costs on this form are brought forward from form CDDA-2

Indirect costs may be computed as 10% of direct labor, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have their own ICRP.

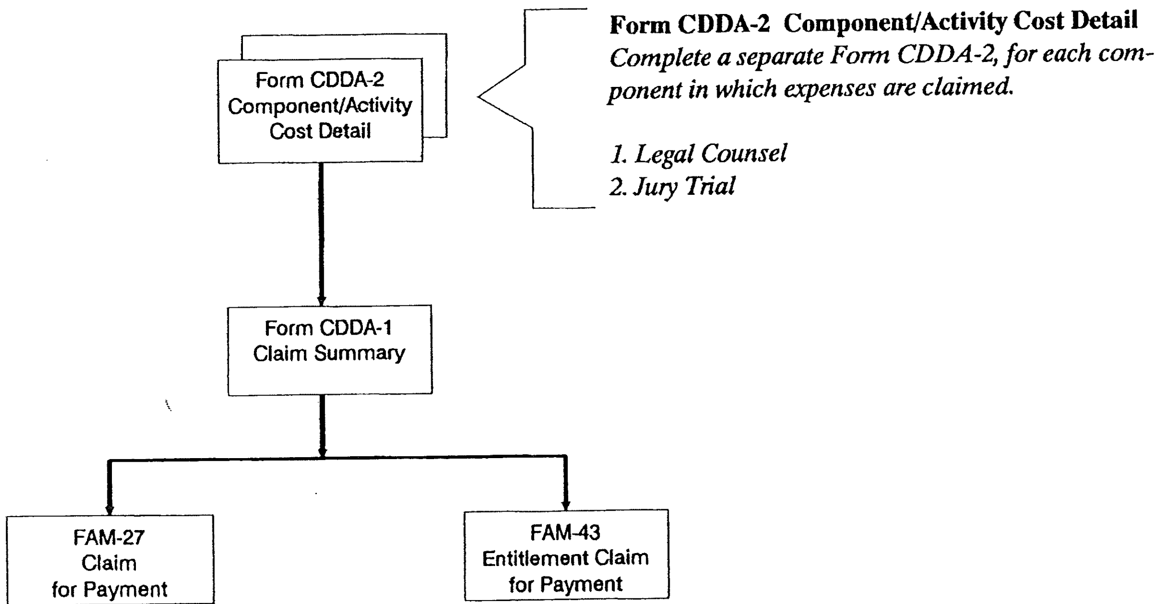
C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the county. All applicable information from form CDDA-1 must be carried forward to this form in order for the State Controller's Office to process the claim for payment.

D. **Form FAM-43, Entitlement Claim**

This form is used to certify the actual costs incurred for a fiscal year for the purpose of establishing a base year entitlement. No payment is made for an entitlement claim.

Illustration of Claim Forms



CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 CONSERVATORSHIP: DEVELOPMENTALLY DISABLED ADULTS	For State Controller Use Only (19) Program Number 00067 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	Program **067**

LABEL HERE

(01) Claimant Identification Number	Reimbursement Claim Data	
(02) Claimant Name	(22) CDDA-1, (03)(1)	
County of Location	(23) CDDA-1, (03)(2)	
Street Address or P.O. Box — Suite	(24) CDDA-1, (04)(1)(d)	
City — State — Zip Code	(25) CDDA-1, (04)(2)(d)	

Type of Claim	Estimated Claim	Reimbursement Claim		
	(03) Estimated ☐	(09) Reimbursement ☐	(26) CDDA-1, (06)	
	(04) Combined ☐	(10) Combined ☐	(27) CDDA-1, (07)	
	(05) Amended ☐	(11) Amended ☐	(28) CDDA-1, (09)	
			(29) CDDA-1, (10)	
Fiscal Year of Cost	(06) 20___/20___	(12) 20___/20___	(30)	
Total Claimed Amount	(07)	(13)	(31)	
Less: 10% Late Penalty, not to exceed $1,000		(14)	(32)	
Less: Prior Claim Payment Received		(15)	(33)	
Net Claimed Amount		(16)	(34)	
Due from State	(08)	(17)	(35)	
Due to State		(18)	(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code §17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer — Date

Type or Print Name — Title

(38) Name of Contact Person for Claim

Telephone Number ( ) - Ext.

E-Mail Address

Form FAM-27 (Revised 09/03)

Program 067	CONSERVATORSHIP: DEVELOPMENTALLY DISABLED ADULTS Certification Claim Form Instructions	FORM FAM-27

(01) Enter the payee number assigned by the State Controller's Office

(02) Enter your Official Name, County of Location, Street or P.O. Box address, City, State, and Zip Code.

(03) If filing an estimated claim, enter an "X" in the box on line (03) Estimated.

(04) If filing a combined estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.

(05) If filing an amended estimated claim, enter an "X" in the box on line (05) Amended.

(06) Enter the fiscal year in which costs are to be incurred.

(07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form CDDA-1 and enter the amount from line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form.

(08) Enter the same amount as shown on line (07).

(09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) If filing a combined reimbursement claim on behalf of districts within the county, enter an " X " in the box on line (10) Combined.

(11) If filing an amended reimbursement claim, enter an "X " in the box on line (11) Amended.

(12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.

(13) Enter the amount of the reimbursement claim from form CDDA-1, line (11). The total claimed amount must exceed $1,000.

(14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), or $1,000, whichever is less.

(15) If filing a reimbursement claim and a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.

(16) Enter the result of subtracting line (14) and line (15) from line (13).

(17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.

(18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.

(19) to (21) Leave blank.

(22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim , e.g., CDDA-1, (03)(1), means the information is located on form CDDA-1, block (03), line (1). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. **Completion of this data block will expedite the payment process.**

(37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**

(38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

SUBMIT A SIGNED ORIGINAL, AND A COPY OF FORM FAM-27, WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

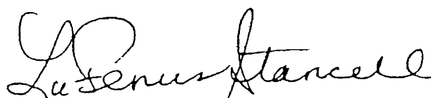
Claim of: County of San Mateo Claimant	)	No. CSM-4256 Chapter 1017, Statutes of 1986 Guardianships

DECISION

The attached Proposed Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on October 22, 1987.

IT IS SO ORDERED October 22, 1987.



LaFenus Stancell, Acting Chairperson
Commission on State Mandates

WP 1730A

BEFORE THE
COMMISSION ON STATE MANDATES

Claim of: County of San Mateo Claimant	)	No. CSM-4256 Chapter 1077, Statutes of 1986 Guardianships

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on September 23, 1987, in Sacramento, California, during a regularly scheduled hearing.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the commission finds:

I.

NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; a specific legislative appropriation for such purposes; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II.

FINDINGS AND CONCLUSIONS

1. The test claim was filed with the commission on April 1, 1987, by the County of San Mateo.

2. The claim alleges that Chapter 1017, Statutes of 1986, imposes costs mandated by the State.

3. Probate Code Section 1513, as added by Chapter 1017, Statutes of 1986, requires for the first time that investigations of certain guardianship petitions be conducted by probate court staff, unless waived by the court. Prior law provided for such investigations when expressly ordered by the court. Probate Code Section 1513 also specifies the content of the report of the guardianship investigation. Prior to the enactment of Chapter 1017, the specific content of the report of the guardianship investigation was not set forth in statute.

4. Chapter 1017, Statutes of 1986, allows for an assessment, in an amount determined by the State Controller's Office, to be used by counties to cover the costs of mandated guardianship activities. The State Controller's Office establishes a statewide rate for the allowable assessment by averaging actual costs for conducting the investigations. The average is derived from actual cost data submitted by counties.

III.

DETERMINATION OF ISSUES

1. The commission has the authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 1017, Statutes of 1986, added Probate Code Section 1513 which requires investigations of guardianship petitions unless such investigation is waived by the court. Chapter 1017 added the requirement that certain specific information be included in the report reflecting the results of the investigation.

3. The Commission on State Mandates concludes that the costs of investigations, and reports, required by Chapter 1017, Statutes of 1986, which exceed the amount of the allowable assessment, as determined by the State Controller, are costs mandated by the state and as such are reimbursable costs.

WP:0114r

BEFORE THE

COMMISSION ON STATE MANDATES

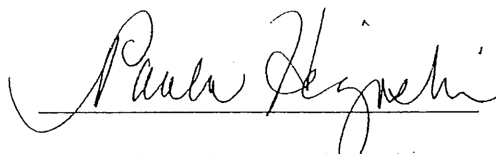
STATE OF CALIFORNIA

IN RE REQUEST FOR REMOVAL FROM THE STATE MANDATES APPORTIONMENT SYSTEM: Statutes of 1975, Chapter 694; Filed on November 4, 1998; By the County of Tulare, Requester.	No. 98-RSMAS-01 *Developmentally Disabled-Attorney Service* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on March 30, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on March 3 1, 2000.



Paula Higashi, Executive Director

Hearing Date: March 30, 2000

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE REQUEST FOR REMOVAL FROM THE STATE MANDATES APPORTIONMENT SYSTEM: Statutes of 1975, Chapter 694; Filed on November 4, 1998; By the County of Tulare, Requester.	No. 98-RSMAS-01 *Developmentally Disabled-Attorney Services* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on March 30, 2000)*

STATEMENT OF DECISION

This Request for Removal from the State Mandates Apportionment System (SMAS) was heard and decided by the Commission on State Mandates (Commission) on February 24, 2000 during a regularly scheduled hearing.

The law applicable to the Commission's determination to remove a program from SMAS is Government Code section 17615 et seq.

The Commission, by a vote of 5 to 0, approved this Request.

Background and Findings of Fact

State Mandate Apportionments System

The process for filing and processing claims for reimbursement with the State Controller is cumbersome. Local governments are required to maintain voluminous records and documentation to support their claims. The Controller may conduct extensive audits. Therefore, in 1985, the Legislature enacted SMAS to allow certain ongoing state-mandated programs to be funded automatically through the State Budget process, without the need for local governments to file annual claims for those costs with the State Controller. [1]

[1] Statutes of 1985, Chapter 1534; Government Codes sections 1761517616

Following is a description of the procedures related to SMAS:

- Reviewing Mandated Cost Programs for Eligibility

  The Department of Finance, State Controller, local governments or school districts may request that the Commission review any mandated cost programs, for which appropriations have been made by the State to local governments and school districts for any three consecutive years, to determine if those programs are eligible for inclusion in SMAS.[2] The requesting agency is required to file a "request for inclusion" with the Commission.

  The Commission must then determine at a public hearing whether to include the subject mandated cost program in SMAS. When considering the request for inclusion, the Commission must determine if the program has a history of stable costs for most claimants, if the program has been recently modified, and if inclusion would accurately reflect the costs of the program. If the Commission determines that the program should be included in SMAS, it then directs the State Controller to include the program in SMAS.[3]

- Calculating Actual Allocations

  Once a program is included in SMAS, the State Controller determines the amount of reimbursement that will be disbursed to local agencies and school districts that submitted reimbursement claims for the program. The amount of reimbursement is computed by taking three consecutive years of actual reimbursement claims for the subject program, adjusting each year's amount by the Implicit Price Deflator for Costs of Goods and Services to Governmental Agencies (IPD), and then averaging those three amounts. This amount is called the base year entitlement. Reimbursements are then allocated to local governments and school districts to the extent money is provided in the State Budget Act .[4]

- Adjusting Allocations

  Allocations for reimbursement for programs included in SMAS must be adjusted annually, according to changes in the IPD, and changes in the workload of the affected local agency or school district.[5] For purposes of this calculation, "workload" is defined as follows:

[2] Government Code section 176 15.1; Title 2, California Code of Regulations, section 1184.6
[3] Title 2, California Code of Regulations, sections 1184.6 and 1184.7
[4] Government Code sections 176 15.2 and 176 15.3
[5] Government Code sections 176 15.4

For cities and counties: changes in population within their boundaries.

- For special districts: *changes in the population of the county in which the largest percentage of the district's population is located.*
- For school districts and county offices of education: *changes in the average daily attendance.*
- For community colleges: *changes in the number of full-time equivalent students.*

- Review of Apportionment or Base Year Entitlement

If local agencies or school districts believe that the total apportionment for all of their SMAS programs is inadequate to cover their actual costs for the programs, they are entitled to request that the Commission review the reimbursement they receive or the base year entitlements of any program included in SMAS. The local agency or school district must file a Request for Review with the Commission. [6]

If the Commission determines that a local agency or school district's apportionment over or under reimburses the agency or district by 20 percent or $1,000 (whichever is less), then the Commision directs the State Controller to adjust the apportionment .[7]

- Removal of Mandated Cost Programs from SMAS

For any mandated cost program included in SMAS that has been modified or amended by the Legislature or by Executive Order, any local agency, school district, or state agency may request that the Commission review that program for removal from SMAS.

The Commission must adopt a finding that the mandated cost program shall or shall not be removed from SMAS, based upon a determination that the program was significantly modified, and as a result, the apportionment no longer accurately reflects actual costs incurred. Upon adoption of a finding that a program should be removed from SMAS, the Commission directs the State Controller to remove the program.[8]

There are currently seven programs in SMAS, including the program for providing attorney representation for developmentally disabled persons. There are currently 36 counties that receive reimbursement through SMAS, 17 of

[6] Government Code section 176 15.8; Title 2, California Code of Regulations, section 1184.10
[7] Government Code section 176 15.8; Title 2, California Code of Regulations, section 1184.10
[8] Title 2, California Code of Regulations, section 1184.11

which receive reimbursement under SMAS for the Developmentally Disabled - Attorney Services Program.

Developmentally Disabled - Attorney Services Program

Under existing law, the Director of the California Department of Developmental Services may be appointed as a guardian or conservator over developmentally disabled persons. In addition, existing law allows a court to commit mentally retarded persons who are a danger to themselves or others to a state hospital. Statutes of 1975, Chapter 694 provides developmentally disabled persons and mentally retarded persons with the right to court-appointed legal counsel prior to entering guardianship or being committed to a state hospital. Chapter 694 requires those persons for whom counsel is appointed to pay the cost of the legal services if he or she is able to do so.

Reauest for Removal from SMAS

The Requester (Tulare County) requested that the Commission remove the Developmentally Disabled - Attorney Services Program from SMAS. The requester contends that since this program was included in SMAS, two state hospitals have closed, causing patients to be relocated to the Porterville State Hospital in Tulare County. Therefore, costs for attorney services has increased, and the reimbursement Tulare County receives under SMAS is inadequate.

Issue 1

DID THE LEGISLATURE MODIFY THE DEVELOPMENTALLY DISABLED - ATTORNEY SERVICES PROGRAM IN A MANNER THAT SIGNIFICANTLY AFFECTED THE COST OF THE PROGRAM?

Prior to 1969, the state housed its committed developmentally disabled and mentally retarded persons in state institutions. In 1969, the Lanterman Mental Retardation Services Act was enacted to move from the state institution system to a community-based system. This shift resulted in a substantial decline in state hospital population as those persons were transferred to local regional facilities.

In addition, the state was under threat of litigation because it had not taken sufficient action to reduce the number of persons residing in state hospitals and to move those persons to community facilities. This prompted the state to develop plans to close the Stockton State Hospital and the Camarillo State Hospital. As a result, the Legislature enacted legislation to close the Stockton facility in 1995, and the Camarillo facility in 1996.[9] Those patients who were judicially committed to the closed facilities were transferred to the Porterville Developmental Center in Tulare County.

[9] Statutes of 1995, Chapter 303, and Statutes of 1996, Chapter 162. These statutes provided revenues for closure costs.

Prior to closure of the Stockton and Camarillo facilities, Tulare County's costs for the Developmentally Disabled - Attorney Services program were stable. For fiscal year (FY) 1995-96, Tulare County's Public Defender represented 67 patients from the Porterville facility, and in FY 1996-97 the caseload grew to 90. After patients from the closed facilities were transferred, the caseload grew to 158 in FY 1997-98. Therefore, the Requester asserted that it faced a 135 percent increase in caseload during a two-year period.

Due to the increased caseload, the amount of reimbursement it receives for this program is inadequate under SMAS. The Requester stated that for FY 1996-97, it received $1,890 in reimbursement, while its actual costs were $8,441.

Based on this information, the Commission found that the Legislature's closure of the two state hospitals, and the subsequent transfer of patients to the Tulare County facility, significantly affected the costs of Tulare County's Developmentally Disabled - Attorney Services program.

Issue 2

DOES REMOVAL OF THE DEVELOPMENTALLY DISABLED - ATTORNEY SERVICES PROGRAM FROM SMAS NEGATIVELY IMPACT THE OTHER PARTICIPATING COUNTIES?

When a program is removed from SMAS, the program is removed for all participating local governments and school districts. Therefore, all counties that receive reimbursement for the Developmentally Disabled - Attorney Services through SMAS will be required to revert to filing annual reimbursement claims for this program if it is removed from SMAS.

There are currently 17 counties that receive reimbursement for this program under SMAS. San Joaquin County does not receive reimbursement for this program through SMAS. Therefore, this request will not negatively impact San Joaquin County. Tulare County, Ventura County, and 15 other counties do receive reimbursement through SMAS. However, while the costs for Tulare County may have increased, there should have been a corresponding reduction in costs in Ventura and San Joaquin Counties where the two state facilities were closed. The Commission notified these participating counties of the Request for Removal from SMAS, but none of these counties responded.

The Commission found that although removing this program from SMAS may result in less revenue for some of the participating counties, those counties may no longer be entitled to the revenues.

Conclusion

The Commission found that the Developmentally Disabled - Attorney Services program has been modified by the Legislature in a manner that significantly affects the cost of the program, and as a result, reimbursement for the program no longer accurately reflects the actual costs of the program. Therefore, the Commission approved Tulare County's Request to Remove the Developmentally Disabled - Attorney Services Program from SMAS.

-244-

WALL STREET JOURNAL.

TUESDAY, DECEMBER 4, 2007 - VOL. CCL NO. 131 ★★

▼0.9% NIKKEI 15628.97 ▼0.3% DJ STOXX 50 3737.75 ▼0.4% 10-YR TREAS ▲21/32, yield 3.893% OIL $89.31 ▲$0.60 GOLD $788.30 ▲$6.10 EURO $1.4668

Prescription Abuse Seen In U.S. Nursing Homes

Powerful Antipsychotics Used to Subdue Elderly; Huge Medicaid Expense

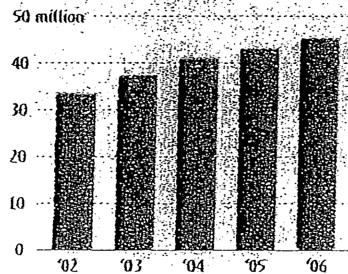
By LUCETTE LAGNADO

In recent years, Medicaid has spent more money on antipsychotic drugs for Americans than on any other class of pharmaceuticals—including antibiotics, AIDS drugs or medicine to treat high-blood pressure.

One reason: Nursing homes across the U.S. are giving these drugs to elderly patients to quiet symptoms of Alzheimer's disease and other forms of dementia.

Nearly 30% of the total nursing-home population is receiving antipsychotic drugs, according to the Centers for Medicare & Medicaid Services, known as CMS. In a practice known as "off label" use of prescription drugs, patients can get these powerful medicines whether they are psychotic or not. CMS says nearly 21% of nursing-home patients who don't have a psychosis diagnosis are on antipsychotic drugs.

That is what happened to a woman listed in New York state health department inspection records as Resident #18. The 84-year-old Alzheimer's patient, who lives at the Orchard Manor nursing home in Medina, N.Y., likes to wander and roll her wheelchair around her unit, according to a report filed earlier this year, and sometimes she nervously taps her foot.



Note: Based on prescription activity in retail, long-term care, mail service, and managed care.
Source: IMS Health

To address her behavior, which was considered disruptive, Resident #18 was given a powerful antipsychotic drug called Seroquel, a drug approved for schizophrenia and bipolar disorder. Resident #18 is not psychotic and Seroquel—like other atypical antipsychotics—carries a "black box" warning that elderly dementia patients using it face a higher risk of death.

"She is a handful," says Thomas Morien, administrator of Orchard Manor. "Other residents complain about her because often at night, she will get up and go to their rooms." The patient has since been taken off the drugs.

The growing off-label use of antipsychotic medicines in the elderly is coming under fire from regulators, academics, patient advocates and even some in the nursing-home industry.

"You walk into facilities where you see residents slumped over in their wheelchairs, their heads are hanging, and they're out of it, and that is unacceptable," says Christie Teigland, director of informatics research for the New

Please turn to page A16

Prescription-Drug Abuse Seen in [

Continued from Page One

York Association of Homes and Services for the Aging, a not-for-profit industry group. Her research, which she believes reflects national trends, shows that about one-third of dementia patients in New York's nursing homes are on antipsychotics; some facilities have rates as high as 60% to 70%. "These drugs are being given way too much to this frail elderly population," Dr. Teigland says.

Federal and some state regulators are pushing back, questioning the use of antipsychotic drugs and citing nursing homes for using them in ways that violate federal rules. New York has increased its focus on antipsychotics in nursing homes, training inspectors to spot signs of medication abuse. Last month, the Arkansas attorney general filed suit against Johnson & Johnson and two of its units, claiming, among other things, that they "engaged in a false and misleading campaign" to promote its antipsychotic drug Risperdal to geriatric patients.

A spokesman for Janssen LP, one of the Johnson & Johnson units that manufactures Risperdal, says, "We are prepared to vigorously defend ourselves against these claims."

Setting Limits

The $122 billion-a-year nursing-home industry's use of drugs raises complex issues in an aging society. Revulsion against practices such as tying down and sedating disruptive elderly patients led in 1987 to a landmark federal law, signed by President Reagan, that set limits on how and when nursing homes can physically, or chemically, restrain a patient. Since then, a rising population of elderly people suffering dementia has entered nursing facilities, many of which have overburdened staff.

The vast majority of antipsychotic medicines paid for by Medicaid are atypical antipsychotic drugs, thought to have fewer of the side effects typical of older drugs. Many were introduced in the 1990s to treat schizophrenia, and have become huge sellers for pharmaceutical companies. Nursing homes turned to the drugs to try to calm dementia patients and to maintain safety and order in their facilities.

The newer antipsychotics are more expensive than older ones. A dose of Seroquel, for instance, can cost more than $4 at retail, while Risperdal can cost more than $5 a pill retail; older antipsychotics can cost less than a dollar per dose.

In all, atypical antipsychotics rang up U.S. sales of $11.7 billion last year, up from $6.6 billion in 2002, according to IMS Health, a health-care information company. Doctors last year filled 45.4 million prescriptions for atypical antipsychotics, compared with 33.6 million five years ago, IMS Health says.

Schizophrenic patients, for whom the drugs were originally intended, make up 1.1% of the U.S. population, or 2.4 million people over 18, according to the National Institute for Mental Health. It says 2.6% of Americans suffer from bipolar disorder, for which the drugs were later also approved.

Marketing atypical antipsychotic drugs for use in treating dementia is banned, since the drugs aren't approved for such use. Still, drug companies have reached out to those who take care of incapacitated patients. For instance, the March 2007 issue of Annals of Long-Term Care, a publication of the American Geriatrics Society that caters to doctors and long-term care specialists, carries a multipage ad for Seroquel. The ad says in large type that the drug has been approved for treatment of bipolar depression.

A spokesman for AstraZeneca Pharmaceuticals, the maker of Seroquel, says "bipolar depression afflicts adults of all ages, including seniors." He noted that the warning of dangers to elderly patients was prominently featured in the ad.

Seroquel had global sales of $3.4 billion last year, making it one of the industry's blockbusters. U.S. sales were $2.5 billion. For the past two years, Seroquel has been the No. 1 drug purchased by Medicaid.

AstraZeneca says it "does not recommend Seroquel for uses other than its approved indications in schizophrenia and bipolar disorder." The company noted the warning on the labels "of all drugs of this class" regarding use in dementia patients. "Decisions about medical treatment are made by physicians," the company says.

Nursing homes often find it difficult to balance the demands of caring for certain patients against the pressure to keep staff costs down. The economics of elderly care can work in favor of drugs, because federal insurance programs reimburse more readily for pills than people.

The use of antipsychotic drugs comes amid a wider debate about how to care for the rising numbers of seniors, many of whom have behavior problems stemming from dementia. They can be difficult to manage, at home or in an institution. They can cry, lash out, wander or even be violent, to themselves or others. There aren't many effective methods to calm them, doctors say.

A big question is whether to use a medical model—administering antipsychotics as the way to alleviate distressing symptoms of dementia—or trying to find other ways to help these patients.

The Centers for Medicare & Medicaid—the federal agency that oversees the two [illegible] tax-funded insurance programs [illegible] the elderly [illegible]—

Big Spenders

Medicaid outlays on atypical antipsychotic drugs in the U.S. have grown consistently.

Year	Medicaid spending on atypical antipsychotic drugs in billions	Percentage of total*
2005	$5.40	13.7%
2003	4.10	12.6
2000	2.14	10.7

* Drug spending by Medicaid program
Note: Doesn't include Tennessee and Washington state; excludes rebates the government obtains for drug purchases
Source: Centers for Medicare & Medicaid Services, tabulation of Medicaid Drug Rebate data.

"initiated a more rigorous process to oversee appropriate use of medicine," says Chief Medical Officer Barry Straube. He says the number of nursing-home inspections that result in citations for violating drug-misuse rules has jumped by nearly 50% between 2004 and this year. Action is being taken and the increased vigilance is working, CMS says.

Dr. Straube says CMS—which both funds and oversees nursing homes—"is very concerned about the quality of care in nursing homes and has taken steps within its authority to discourage inappropriate use of all drugs, including psychotropic medications."

In 2005, the most recent year for which total expenditure figures are available, Medicaid spent $5.4 billion on atypical antipsychotic drugs. It spent less on AIDS drugs ($1.58 billion) and medications to lower cholesterol ($2.1 billion). These figures don't include rebates the government receives.

High use of antipsychotics in a nursing home can be an indicator of inadequate staffing, says Bruce Pollock, president-elect of the American Association of Geriatric Psychiatry. "We know the more staffing there is and the higher quality of care, the less the antipsychotic usage," he says.

Neurological Disease

Psychosis is a severe psychiatric illness which frequently includes delusions or hallucinations. Alzheimer's is a neurological disease that can be accompanied by either psychosis or severe behavioral symptoms, such as aggression or agitation. Dr. Pollock, a professor of neuropsychiatry at the University of Toronto, says one problem is that the psychosis in Alzheimer's disease is not the same as psychosis in younger patients with schizophrenia.

America is facing a public health crisis over the care of those with dementia, Dr. Pollock says. "We are left with the atypicals because we have nothing else," he says. These drugs have a role to play, he says, but "nonpharmacologic treatments" should be tried first.

U.S. Nursing Homes

In New York, the state Health Department is stepping up its focus on antipsychotic use in nursing homes. Two years ago, it issued 16 citations involving medication misuse; this fiscal year, there were 67. Records of a state inspector's visit to the Orchard Manor nursing home earlier this year offer a glimpse of the problem.

The report profiles an 84-year-old woman identified, to protect her privacy, only as "Resident #18." She was confined to a wheelchair with a "lap buddy"—a restraining device that prevents her from getting up. Her "primary" behavior issues are that she "self propels in wheelchair and enters other rooms," the report said. Resident #18 "is usually understood and usually understands," the report said. She suffers from Alzheimer's disease, but isn't psychotic.

Still, she was placed on the antipsychotic drug Seroquel, along with Haldol, an older, less-expensive antipsychotic.

New York regulators found in that case, Orchard Manor violated the federal requirement to refrain from giving patients "unnecessary drugs." The facility was ordered to submit a new plan for treatment. There was no fine.

Mr. Morien, Orchard Manor's administrator, says the facility submitted a plan within 14 days. He says the small, rural home provides excellent care. The facility may not have adequately explained to state officials its reasons for putting Resident #18 on antipsychotics, he says. He says she is off the drugs now.

It comes down to staffing, he says. Taking care of patients such as Resident # 18 requires many more people able to watch them. Yet under the current reimbursement system, where the government spends billions on these drugs, he says it is hard for a facility such as his to make ends meet.

"We are a nonprofit; we have not made a penny in years," he says. Mr. Morien says there are certain patients with behavioral issues, and "no matter what you do, you can't control them, and physicians will try different medications for them." But he says his facility tries to use drugs only as a "last approach to a behavioral problem."

Most dementia patients who become agitated are trying to communicate a deep-felt need or want, says Jeffrey Nichols, vice president for medical services at New York's Cabrini Eldercare Consortium, a nonprofit group. When they cry out, are they simply being combative or are they delusional and in need of a tranquilizer? Maybe neither, says Dr. Nichols: "They may be in pain."

Dr. Nichols, who oversees a 240-bed nursing home, says that for dementia patients, antipsychotic drugs "don't work very well and they are significantly overused." The use of such drugs to care for agitated dementia patients is "like hitting [illegible] on the head," [illegible]

In a statement, the American Health Care Association, which represents for-profit, investor-owned and nonprofit nursing homes, says facilities "work closely with doctors to ensure that medications prescribed are meeting the individual needs of each patient." Nursing homes are "treating an older, more frail population of seniors with increasingly complex care needs," the group says.

The use of atypical antipsychotic drugs in nursing homes continues despite scientific papers that question the benefits of using them on dementia sufferers in light of the risks. Earlier this year, the federal Agency for Health Care Research and Quality reviewed existing research and noted the drugs can trigger strokes, induce body tremors, fuel weight gain and affect an elderly person's gait, increasing their chances of falling.

'Black Box' Warning

The Food and Drug Administration issued a "black box" warning on using the drugs for dementia patients in 2005. But the FDA stopped short of banning such use; officials say they give physicians the leeway to prescribe the drugs if they think it will help this difficult-to-treat population.

Some doctors are now switching back to older, cheaper antipsychotics, such as Haldol, the FDA says. The older drugs had fallen into disuse, but don't have a black-box warning. Now, the FDA says it's weighing putting a black-box warning on those drugs, too.

In Massapequa, N.Y, a nursing home was recently fined by the state for injecting 90 doses of Haldol into a 96-year-old Alzheimer's patient. The woman, identified only as Resident #2, enjoyed listening to music and getting her nails polished, according to a state report. But when agitated, she banged her hand on the table and sometimes yelled.

One aide found it was possible to calm her by offering ice cream and chatting with her, the report said. But other staff gave her the drug Haldol. Between August 2006 to February of this year, she received 90 doses of injectable Haldol, the report said. The facility, Parkview Care and Rehabilitation Center, paid a $2,000 fine for medication misuse.

"It is a unique si[illegible]tuation," says Steve Seltzer, Parkview's [illegible]dministrator. "I know that this is not the na[illegible]ure of this facility." He described Re[illegible]dent #2 as an especially difficult [illegible]ase, who reverted to her native [illegible]pean language, making it hard [illegible]municate. As a result of the stat[illegible]ction, "staffing changes were [illegible]ade," he says. The woman was later given a teddy bear as both a way to calm her down and to provide a cushion so she wouldn't hurt herself.

[illegible]

DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

January 28, 2008

RECEIVED
JAN 3 0 2008
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of December 21, 2007, the Department of Finance (Finance) has reviewed the test claim submitted by Los Angeles County (claimant) asking the Commission of State Mandates (Commission) to determine whether specified costs incurred under Chapter 490, Statutes of 2006; Chapter 492, Statutes of 2006; and Chapter 493, Statutes of 2006 are reimbursable state mandated costs (Claim No. CSM-07-TC-05 "Public Guardian Omnibus Conservatorship Reform"). The claimant has identified new duties they assert are reimbursable state mandates including, but not limited to, the following:

1. The public guardian shall apply for appointment as guardian or conservator of the person and estate, if there is an imminent threat to the person's health or safety or the person's estate, or when ordered by the court.
2. To become the conservator, public guardian staff must first conduct an investigation to determine if conservatorship is the only or most appropriate remedy for the presenting problem.
3. On or before January 1, 2008, the public guardian shall comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians and Public Conservators.
4. Additional duties required by the court, in response to the court investigator's report.

As a result of our review, Finance believes the test claim statutes may have created a reimbursable state mandate for the following activities:

1. Requiring the public guardian to apply for appointment as a guardian or conservator there is an imminent threat to the person's health, safety or estate (Section 2920 (a)(1) of the Probate Code).
2. Requiring the court to order the public guardian to apply for appointment on behalf of any person domiciled in the county if no one else is qualified and willing to act and if that appointment is in the best interest of the person (Section 2920(b) of the Probate Code).
3. Beginning an investigation within two business days of receiving a referral for conservatorship or guardianship (Section 2920(c) of the Probate Code).

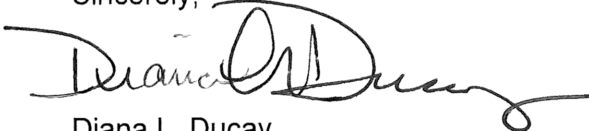
4. Requiring on or before January 1, 2008, the public guardian to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators (Section 2923 of the Probate Code).

We have not identified any additional activities that may be reimbursable in the test claim statutes.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your December 21, 2007 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Carla Castañeda, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,



Diana L. Ducay
Program Budget Manager

Enclosure

Attachment A

DECLARATION OF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-07-TC-05

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

____________________ at Sacramento, CA

Carla Castañeda

PROOF OF SERVICE

Test Claim Name: Public Guardianship Omnibus Conservatorship Reform
Test Claim Number: CSM-07-TC-05

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 12 Floor, Sacramento, CA 95814.

On January 28, 2008, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street,
12 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Mr. Allan Burdick
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

Mr. J. Bradley Burgess
Public Resource Management Group
895 La Sierra Drive
Sacramento, CA 95864

A-15
Ms. Carla Castañeda
Department of Finance
915 L Street, Suite 12th Floor
Sacramento, CA 95814

Ms. Annette Chinn
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, CA 95630

Mr.Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92659

A-15
Ms. Susan Geanacou
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

Ms. Juliana Gmur
MAXIMUS
2380 Houston Avenue
Clovis, CA 93611

Ms. Beth Hunter
Centration, Inc.
8570 Utica Ave. Suite 100
Rancho Cucamonga, CA 91730

Mr. Leonard Kaye, Esq.
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Dale Mangram
Riverside County Sheriff's Office
4080 Lemon Street, 3rd Floor
Riverside, CA 92502

Ms. Mary Roberts
Judicial Council of CaliforniaCenter for Families, Children, and the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3660

B-08
Mr. Jim Spano
State Controller's OfficeDivision of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Ms. BonnieTer Keurst
County of San BernardinoOffice of the Auditor/Controller-Recorder
222 West Hospitality Lane
San Bernardino, CA 92415

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd, Suite 121
Sacramento, CA 95826

B-08
Ms. Ginny Brummels
State Controller's Office Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

On I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 28, 2008, at Sacramento, California.

Kelly Montelongo

Exhibit C

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2706
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
ACTING AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
MARIA M. OMS

April 4, 2008

RECEIVED

APR 10 2008

COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

Review of State Agency Comments
County of Los Angeles Test Claim [07-TC-05]
Public Guardian Omnibus Conservatorship Reform

The enclosed review of State agency comments finds agreement with our test claim contention that the landmark Omnibus Conservatorship and Guardianship Reform Act of 2006 imposes reimbursable costs on local government under Article XIII B, section 6 of the California Constitution

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

Wendy L. Watanabe
Acting Auditor-Controller

WLW:CY:LK

Enclosures

"To Enrich Lives Through Effective and Caring Service"

Review of State Agency Comments
County of Los Angeles Test Claim [07-TC-05]
Public Guardian Omnibus Conservatorship Reform

This review of State agency comments finds agreement with the County of Los Angeles [County] test claim contention that the landmark Omnibus Conservatorship and Guardianship Reform Act of 2006 imposes reimbursable costs on local government under Article XIII B, section 6 of the California Constitution.

On December 21, 2007, Paula Higashi, Executive Director of the Commission on State Mandates [Commission] notified the Judicial Council of California, the State Controller's Office, the State Department of Finance and interested parties that the subject test claim filing was found to be 'complete'. Ms. Higashi requested comments on the claim regarding:

1. Whether the test claim provisions impose a reimbursable new program or higher level of service within an existing program upon local government under pertinent law.

2. Whether there are funding disclaimers that would bar reimbursement under Government Code section 17556.

3. Whether State funds have been appropriated or other sources of funds available for this program. If so, what is the source?

As of April 4, 2008, no State agency or interested party has indicated that there are funding disclaimers that would bar reimbursement under Government Code section 17556. Further, no comments have been received regarding alternate sources of funding for this program.

Regarding whether the test claim provisions impose a reimbursable new program or higher level of service within an existing program upon local government under pertinent law, the State Department of Finance responded in the affirmative.

Specifically, on January 28, 2008, Diana L. Ducay, Program Budget Manager with the State Department of Finance, writing to the Commission, indicated that:

"As requested in your letter of December 21, 2007, the Department of Finance (Finance) has reviewed the test claim submitted by Los Angeles County (claimant) asking the Commission of State Mandates (Commission) to determine whether specified costs incurred under Chapter 490, Statutes of 2006; Chapter 492, Statutes of 2006; and Chapter 493, Statutes of 2006 are reimbursable state mandated costs (Claim No. CSM-07-TC-05 "Public Guardian Omnibus Conservatorship Reform"). The claimant has identified new duties they assert are reimbursable state mandates.

- - -

As a result of our review, Finance believes the test claim statutes may have created reimbursable a state mandate for the following activities:

1. Requiring the public guardian to apply for appointment as a guardian or conservator if there is an imminent threat to the person's health, safety or estate (Section 2920 (a)(1) of the Probate Code).

2. Requiring the court to order the public guardian to apply for appointment on behalf of any person domiciled in the county if no one else is qualified and willing to act and if that appointment is in the best interest of the person (Section 2920(b) of the Probate Code).

3. Beginning an investigation within two business days from receiving a referral for conservatorship or guardianship (Section 2920(c) of the Probate Code).

4. Requiring on or before January 1, 2008, the public guardian to comply with the continuing education requirements that are established by California State Association of Public Administrators, Public Guardians, and Public Conservators (Section 2923 of the Probate Code).

The County concurs in Finance's findings that this reimbursable State mandated program includes the [above] activities. The County has detailed and documented the basis for these findings in a four-volume test claim.

County's Test Claim

The County's test claim[1] incorporates specific provisions of the Omnibus Conservatorship and Guardianship Reform Act which mandate that county public guardians perform new duties. Reimbursement for performing these duties is claimed pursuant to Government Code section 17500 et seq. and Article XIII B, Section 6 of the California Constitution. This law provides a remedy for local government in recovering their costs of providing new or additional State mandated services without sufficient funding.

In this case, the Act imposed new duties which are unique to local government, a requirement for finding reimbursable costs.

In particular, the Act clearly mandates that county public guardians, and only county public guardians, serve two new groups of conservatees. Private conservators have discretion to refuse to provide such services. Counties do not.

And when counties serve, service must be provided in accordance with the new provisions for establishing and maintaining conservatorships, as detailed in the test claim legislation herein.

Most importantly, when counties serve, all the necessary services afforded conservatees under California's Probate law, must be provided, including those services not covered under the Omnibus Conservative Reform Act but still-in-effect. As these still-in- effect services are necessary in establishing and maintaining conservatorships, reimbursement for performing these duties is also claimed herein. These services are still necessary in carrying out the test claim legislation.

[1] The test claim legislation is: Statutes of 2006, Chapter 493 (A.B. No. 1363) amending Sections 1850(a), 1851(a), 2250(a), (b), (c), 2610(a), 2620(a), (b), (c), (d), (e), 2620.2(a), (b), (c), (d), 2623(a), (b), 2640(a), (b), (c), 2640.1(a), (b), (c), 2641(a), (b), 2653(a), (b), (c) and 2920(a), (b), (c) of, to add Sections 2113, 2250.4(a), (b), (c), (d), 2410, and 2923 to the Probate Code; Statutes of 2006, Chapter 492 (S.B. No 1716) amending Sections 1850(a), 1851(a); Statutes of 2006, Chapter 490 (S.BNo1116)amending sections 2352 (a), (b), (c),(d), (e), (f), 2540 (a), (b), 2543 (a), (b), (c), (d), 2590, 2591 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) and to add Sections 2352.5(a), (b), (c), (d), (e) and 2591.5(a), (b), (c), (d) to the Probate Code.

The test claim legislation created new programs for county public guardians. County public guardians are now mandated to be conservator for two newly defined groups of conservatees.

County public guardians are mandated to serve as conservators of last resort where no others are available [Probate Code Section 2920(b)]. Under prior law, this population group could be served, but public guardians were not required to do so.

County public guardians are mandated to serve those at high-risk --- those in imminent danger to their health, safety, or economic survival [Probate Code Section 2920(a)(1)]. Under prior law, this population group was not identified and consequently there was no mandatory duty to serve them.

In addition to serving two new groups of conservatees, counties must also comply with new requirements and higher standards for providing conservatorship services… an increased level of service over and above that required under prior law.

Now, among other things, public guardians are required to promptly begin investigations within two business days of receiving referrals for guardianship or conservatorship [Probate code section 2920(c)] and, in emergencies, public guardians are required to quickly assist those in peril by becoming temporary conservators [Probate Code Section 2250].

The Public Guardian is now required to serve the high-risk population, as defined in Probate Code Section 2920(a)(1). This is a newly identified client, not found in prior law and so all costs of complying with related provisions of the test claim legislation and California law are subject to reimbursement.

Section 2920(a)(1) now explicitly mandates that county Public Guardians apply to be conservators in a new category of cases where there is an 'imminent threat to the person's health or safety or [to] the person's estate', if there is 'no one else who is qualified and willing' to do so. Specifically, Probate Code Section 2920(a)(1) states that:

> "(a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or

conservator would be in the best interests of the person, then either of the following shall apply:

The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate." [Emphasis added].

It should be noted that the cost of providing the entire range of required public guardian and legal services for this 2920(a)(1) population is claimed as this is an entirely new class of individuals to be served.

Another class of individuals which counties were not mandated to serve under prior law, but are so mandated under the test claim legislation is the 2920(b) population.

Under Probate Code Section 2920(b), the County Public Guardian is now mandated to be the conservator of last resort in a new category of cases specified in Section 2920(b)[2] as amended by the Statutes of 2006, Chapter 493. Section 2920(b)3 now requires, in pertinent part, that:

"The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the

[2] Section 2920(b), as amended the Statutes of 2006, Chapter 493 states:

"The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator." [Emphasis added.]

estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person." [Emphasis added]

Under prior law[3], there was no requirement that the court appoint the County Public Guardian in any circumstance. The Legislature rewrote section 2920 which had read in its entirety:

"If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

"(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the state, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator." [Emphasis added.]

As noted above, the Legislature rewrote Section 2920 which had provided that 'the court may make an order...' to the current provision that 'the court shall order the public guardian…'. In so doing, the prior discretionary duty

[3] The prior version of Section 2920 was added by Statutes of 1988, Chapter 1199 in § 72.

to serve the Section 2920(b) population was transformed to a mandatory duty. As a result, County Public Guardians are now required to serve as the conservator of last resort, as defined in Probate Code Section 2920(b).

Importantly, serving the section 2920(b) population under the test claim legislation, requires reimbursement pursuant to Government Code section 17565 which provides, in pertinent part, that:

> "If a local agency ... at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency ... for those costs incurred after the operative date of the mandate."

The Section 2920(b) population is then a newly identified population, not found in prior law and, as such, all costs in complying with related provisions of the test claim legislation and as well as the test claim legislation itself are subject to reimbursement.

Therefore, the County Public Guardian is now mandated to be a conservator and case manager under two distinct statutory schemes or categories --- one type of case under Section 2920(a)(1) and the other under Section 2920(b). Accordingly, all services required to serve these two new population groups are claimed herein, including initial case-finding and investigation services pursuant to Probate code section 1800.

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2706
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
ACTING AUDITOR-CONTROLLER

ASST. AUDITOR-CONTROLLERS

ROBERT A. DAVIS
JOHN NAIMO
MARIA M. OMS

Review of State Agency Comments
County of Los Angeles Test Claim [07-TC-05]
Public Guardian Omnibus Conservatorship Reform

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I Leonard Kaye, SB 90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analysis, and for proposing parameters and guidelines (P's& G's) and amendments thereto, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject review of State agency comments.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the subject test claim, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

> " ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

4/4/08; Los Angeles, CA
Date and Place

[signature]
Signature

"To Enrich Lives Through Effective and Caring Service"

Mr. David Wellhouse
David Wellhouse & Associates, Inc.
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

Ms. Annette Chinn
Cost Recovery System, Inc.
705-2 East Bidwell Street, # 294
Folsom, CA 95630

Ms. Mary Roberts
Judicial Council of California
Center for Families, Children, and Courts
455 Golden Gate Ave.
San Francisco, CA 94102

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Ms. Bonnie Ter Kerst
County of San Bernardino
Office of the Auditor-Controller
222 west Hospitality Lane
San Bernardino, CA 92415

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Dale Mangram
Riverside Auditor-Controller Department
4080 Lemon Street, 3rd Floor
Riverside, CA 92502

Mr. J. Bradley Burgess
Public Resource Management Group
895 La Sierra Drive
Sacramento, CA 95864

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Ms. Susan Geanacou, Sr. Staff Attorney
Department of Finance (A-15)
915 L Street, 11th Floor Suite 1190
Sacramento, CA 95814

Ms. Carla Castaneda
Department of Finance (A-15)
915 L Street, 11th Floor
Sacramento, CA 95814

Mr. Glen Everroad
City of Newport Beach
3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92659

Jim Spano,
State Controller's Office
Division of Audits(B-8)
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Ms. Juliana F. Gmur
MAXIMUS
2380 Houston Avenue
Clovis, CA 93611

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-2706
PHONE: (213) 974-8301 FAX: (213) 626-5427

WENDY L. WATANABE
ACTING AUDITOR-CONTROLLER

DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 7th day of April 2008, I served the attached:

Documents: Review of State Agency Comments, County of Los Angeles Test Claim [07-TC-05], Public Guardian Omnibus Conservatorship Reform, including *a 1 page letter of Wendy L. Watanabe dated 4/4/08, a 7 page narrative, and a 1 page declaration of Leonard Kaye, now* pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

[**X**] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates FAX as well as mail of originals.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[**X**] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of April, 2008, at Los Angeles, California.

Hasmik Yaghobyan

"To Enrich Lives Through Effective and Caring Service"

Exhibit D

Norma Saikhon
Public Guardian
Public Conservator
Area Agency on Aging

Public Administrator

1331 S. Clark Rd. Bldg 11
El Centro, CA 92243
Phone: (760) 339-6425
Fax: (760) 339-6436

May 14, 2008

RECEIVED
MAY 16 2008
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

Interested Party Support
County of Los Angeles -Test Claim [07-TC-05]
Public Guardian Omnibus Conservatorship Reform

This is to request that Norma Saikhon, County of Imperial Public Administrator-Guardian-Conservator at 1331 South Clark Road, # 11, El Centro, CA 92243; Telephone (760) 339-6425 be listed as an interested party in the Commission's deliberations on test claim 07-TC-05.

We also request that this matter be calendared for hearing at the earliest possible time as no funds have been provided for implementing this very large undertaking for county counsels as well as county public guardians. The implementation of the landmark Omnibus Conservatorship and Guardianship Reform Act of 2006, as noted by the State Department of Finance, imposes substantial duties and reimbursable costs on local government.

We would like to participate in person, or via conference calls, in pre-hearing informational conferences to discuss the extensive scope of public guardian and county counsel services that are imposed under this mandated program. We understand that it is important that we now begin to properly record and document our costs to eventually claim our 'SB90' reimbursements.

Thank you for your prompt response. Please call me if you have any questions.

Very truly yours,

Norma Saikhon
County of Imperial
Public Administrator

An Equal Opportunity/Affirmative Action Employer

SAN JOAQUIN COUNTY PUBLIC GUARDIAN/CONSERVATOR

P.O. Box 201063 ♦ 1212 NORTH CALIFORNIA STREET ♦ STOCKTON, CA 95201

Tel: (209) 468-3740 ♦ Fax: (209) 468-3741

DEPARTMENT OF
HEALTH CARE SERVICES

SCARLET D. HUGHES

PUBLIC GUARDIAN/CONSERVATOR

RECEIVED

MAY 29 2008

COMMISSION ON
STATE MANDATES

May 27, 2008

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

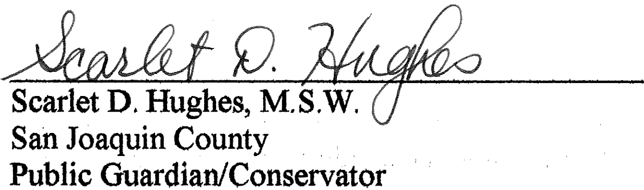
Interested Party Support
County of Los Angeles -Test Claim [07-TC-05]
Public Guardian Omnibus Conservatorship Reform

This is to request that I, Scarlet D. Hughes, San Joaquin County Public Guardian/Conservator (address: P.O. Box 201063, Stockton, CA 95201, phone: (209) 468-3749), be listed as an interested party in the Commission's deliberations on test claim 07-TC-05.

I also request that this matter be calendared for hearing at the earliest possible time as no funds have been provided for implementing this very large undertaking for county counsels as well as county public guardians. The implementation of the landmark Omnibus Conservatorship and Guardianship Reform Act of 2006, as noted by the State Department of Finance, imposes substantial duties and reimbursable costs on local government.

I would like to participate in person, via conference calls, or in pre-hearing informational conferences to discuss the extensive scope of public guardian and county counsel services that are imposed under this mandated program. I understand that it is important that I now begin to properly record and document our costs to eventually claim our 'SB90' reimbursements. Thank you.

Very truly yours,



Scarlet D. Hughes, M.S.W.
San Joaquin County
Public Guardian/Conservator

Cc: Lucille Lyons, L.A. County PG's Office

JOHN J. SANSONE
COUNTY COUNSEL

THOMAS E. MONTGOMERY
ASSISTANT COUNTY COUNSEL

NATHAN C. NORTHUP
CLAUDIA ANZÚRES
DEBORAH A. McCARTHY
WILLIAM D. SMITH
CHIEF DEPUTIES

County of San Diego
OFFICE OF COUNTY COUNSEL

COUNTY ADMINISTRATION CENTER
1600 PACIFIC HIGHWAY, ROOM 355
SAN DIEGO, CALIFORNIA 92101-2469
(619) 531-4860 FAX (619) 531-6005

WRITER'S DIRECT NUMBER:
(619) 531-5801
WRITER'S E-MAIL ADDRESS:
William.Johnson@sdcounty.ca.gov

DEPUTIES
C. ELLEN PILSECKER
GEORGE W. BREWSTER JR.
WILLIAM A. JOHNSON, JR.
WILLIAM W. TAYLOR
STEPHEN R. MAGRUDER
MORRIS G. HILL
RICKY R. SANCHEZ
TIMOTHY M. BARRY
WILLIAM L. PETTINGILL
JUDITH A. McDONOUGH
JAMES R. O'DAY
RODNEY F. LORANG
DAVID J. SMITH
THOMAS D. BUNTON
ELIOT ALAZRAKI
LAUREL G. TOBAR
MIRIAM E. BREWSTER
WILLIAM H. SONGER
JANICE INGOLD LAU
MARK C. MEAD
PAUL J. MEHNERT
DENNIS FLOYD
LISA MACCHIONE
KEVIN G. KENNEDY
DAVID G. AXTMANN
JAMES M. CHAPIN
MARY JO LANZAFAME
ALEC S. BEYER
DAVID BRODIE
LEONARD W. POLLARD II
STEPHANIE KISH
THOMAS DEÁK
THOMAS L. BOSWORTH
WALTER J. DE LORRELL III
JAMES M. TOPPER
RACHEL H. WITT
CARRA L. RHAMY
B. GEORGE SEIKALY
JAMES G. BOYD
PAULA FORBIS
BRYAN M. ZIEGLER
SALVADOR M. SALAZAR
WILLIAM W. WITT
KAREN F. LANDERS

June 5, 2008

RECEIVED
JUN 09 2008
COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Interested Party Support
County of Los Angeles -Test Claim [07-TC-05]
Public Guardian Omnibus Conservatorship Reform

Dear Ms. Higashi:

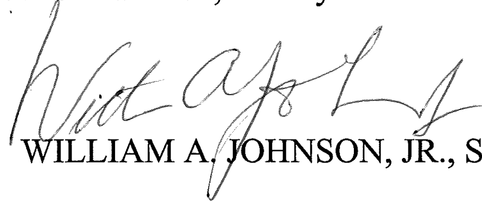
This is to request that the Public Administrator/Public Guardian of San Diego County be listed as an interested party in the Commission's deliberations on test claim 07-TC-05. This party should be contacted as follows: c/o William A. Johnson, Jr., Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, California 92101, (619) 531-5801.

We also request that this matter be calendared for hearing at the earliest possible time as no funds have been provided for implementing this very large undertaking for county counsels as well as county public guardians. The implementation of the landmark Omnibus Conservatorship and Guardianship Reform Act of 2006, as noted by the State Department of Finance, imposes substantial duties and reimbursable costs on local government.

We would like to participate in person, or via conference calls, in pre-hearing informational conferences to discuss the extensive scope of public guardian and county counsel services that are imposed under this mandated program. We understand that it is important that we now begin to properly record and document our costs to eventually claim our 'SB90' reimbursements.

Very truly yours,

JOHN J. SANSONE, County Counsel

By 
WILLIAM A. JOHNSON, JR., Senior Deputy

WAJ:vp
08-90147
cc: Lori Bays, Public Administrator/Public Guardian (O95)

STATE OF CALIFORNIA | EDMUND G. BROWN JR., Governor

COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

October 11, 2013

Ms. Wendy Watanabe
County of Los Angeles Auditor-Controller
500 West Temple Street, Room 525
Los Angeles, CA 90012

Ms. Hasmik Yaghobyan
County of Los Angeles Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**
Public Guardianship Omnibus Conservatorship Reform, 07-TC-05
Probate Code Sections 1850 et al.
County of Los Angeles, Claimant

Dear Ms. Watanabe and Ms. Yaghobyan:

The draft staff analysis and proposed statement of decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft staff analysis by **November 1, 2013.** You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, December 6, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about November 22, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Tyler Asmundson at (916) 323-3562 if you have any questions

Sincerely,

Heather Halsey
Executive Director

J:\MANDATES\2007\TC\07-TC-05 (Pub.Grd. Reform)\Correspondence\tcdsatrans.docx

ITEM ___

TEST CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Probate Code Sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d); 2352(a)-(f), 2352.5(a)-(e), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a), 2620(a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5(a)-(d), 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923

Statutes 2006; Chapter 490 (SB 1116), Statutes 2006, Chapter 492 (SB 1716), and Statutes 2006, Chapter 493 (AB 1363)

Public Guardianship Omnibus Conservatorship Reform

07-TC-05

Los Angeles County, Claimant

EXECUTIVE SUMMARY

Attached is the draft proposed statement of decision for this matter. This executive summary and the draft proposed statement of decision also function as the draft staff analysis, as required by section 1183.07 of the Commission on State Mandates' (Commission) regulations.

Overview

This test claim addresses the Omnibus Conservatorship and Guardianship Reform Act of 2006 ("OCRA"), which made comprehensive reforms to California's probate conservatorship program.

Background

A probate conservatorship is a court proceeding where a judge appoints: (1) a conservator of the person for an adult who cannot "provide properly for his or her personal needs for physical health, food, clothing, or shelter"; (2) a conservator of the estate for a person who is substantially unable to manage financial resources or resist fraud or undue influence; or (3) a conservator of the person and the estate. A conservator of the person has custody of the conservatee, ensures that the conservatee's daily needs are met, and has charge of the conservatee's educational needs. A conservator of the estate has the duty to manage and control a conservatee's estate and finances.

The court's appointment of a guardian or conservator affects an individual's liberty interests and, thus, due process rights must be afforded to the proposed conservatee. Under these principles, the court may not establish a conservatorship unless there is clear and convincing evidence that a conservator or guardian is required. The court's determination of these issues begins with the

filing of a petition for conservatorship, investigation into the matter, a trial on the merits of the petition (which, if requested by the proposed conservatee, may be a jury trial), and the appointment of a conservator or guardian. Once a guardian or conservator is appointed, the court maintains jurisdiction over the case and guides the rights of the parties. The relationship of conservator (both of the person and of the estate) and conservatee is a fiduciary relationship. Conservators are required to make accountings of the assets of the estate to the court for settlement and allowance after one year from the time of appointment and, thereafter at least every two years unless otherwise ordered by the court. Upon the death of a conservatee, a conservator must make two final accountings for the period before and the period after the date of death. A conservator can be removed by the court for mismanagement of an estate, failure to file an inventory or account, incapacity, gross immorality, a felonious conviction, adverse interest, or bankruptcy. A conservator can also be removed if it is in the best interest of the conservatee.

Test claim statutes

The OCRA was enacted in response to an in-depth investigatory series published by the *Los Angeles Times* and a joint hearing held by the Assembly and Senate judiciary committees, which brought to light the following abuses in conservatorship proceedings: misuse of California's conservatorship system by private conservators; public guardians who lack the necessary resources to help truly needy individuals; probate courts which do not have sufficient resources to provide adequate oversight to catch abuses of conservatees; and a system that provides no place for those in need to turn to for help. Although the OCRA made sweeping changes to the conservatorship process as a whole, including reforms aimed at professional conservators, probate court proceedings, and educating the public regarding conservatorships, the test claim seeks reimbursement only for those costs incurred as a result of changes made to statutes directly affecting county public guardians.

Claimant asserts that the test claim statutes impose the following new mandated activities upon public guardians:

- On or before January 1, 2008, comply with continuing education requirements established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.
- Begin an investigation within two business days of receiving a referral for conservatorship or guardianship.
- File a petition for appointment as guardian or conservator for the person, the estate, or the person and the estate where there is an imminent threat to the person's health or safety or to the person's estate, and if appointed to serve as guardian or conservator, comply with all activities and incur all costs imposed by Probate Code sections 1400 through 3925, which set forth requirements for all guardianships and conservatorships established under the Probate Code.
- File a petition for appointment as guardian or conservator for the person, the estate, or the person or the estate *when ordered by the court* because there is no one else qualified and willing to act as conservator and it appears to be in the best

interests of the person, and if appointed to serve as guardian or conservator, comply with all activities and incur all costs imposed by Probate Code sections 1400 through 3925, which set forth requirements for all guardianships and conservatorships established under the Probate Code.

- For all cases where the public guardian serves as guardian or conservator, whether voluntarily or as required by statute or court order, comply with new accounting, estate management, inventory and appraisal, residential placement, and temporary conservatorship requirements set forth in the Probate Code.

The test claim states that the amount claimant will incur to serve new populations of conservatees will be: (1) $71,500 during the 2006-2007 fiscal year; (2) $370,500 during the 2007-2008 fiscal year; and (3) $695,500 during the 2008-2009 fiscal year. The statewide cost estimate submitted by claimant indicates that the total statewide cost for counties to serve new populations of conservatees will be: (1) $3,884,522 during the 2006-2007 fiscal year; (2) $10,422,061 during the 2007-2008 fiscal year; and (3) $11,982,260 during the 2008-2009 fiscal year.

Procedural History

Claimant filed the test claim on December 13, 2007. Based on the December 13, 2007 filing date, the potential period of reimbursement for this test claim begins on July 1, 2006. On December 21, 2007, Commission staff deemed the filing complete and numbered it 07-TC-05. On January 30, 2008, the Department of Finance submitted comments agreeing that the test claim statutes require county public guardian to perform some, but not all, of the activities allegedly mandated by the test claim statutes. On April 4, 2008, claimant filed rebuttal comments on the test claim. On May 16, 2008, the Imperial County Public Administrator filed comments supporting the test claim. On May 29, 2008 the San Joaquin County Public Guardian/Conservator filed comments supporting the test claim. On June 9, 2008 the San Diego County Counsel filed comments supporting the test claim.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies, including school districts, are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions: all members of the class have the opportunity to participate in the test claim process, and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

Claims

The following chart provides a summary of the claims and issues raised and staff's recommendation.

Subject	**Description**	**Staff Recommendation**
Probate Code sections 2920 and 2923, amended by Statutes of 2006, Chapters 492 and 493	Probate Code section 2920 was amended by the 2006 test claim statute to (1) require the public guardian file a petition for appointment as guardian or conservator for the person, the estate, or the person or the estate in the following circumstances: the person is domiciled in the county and requires a guardian or conservator; there is no one else qualified and willing to act; the appointment as guardian or conservator would be in the best interests of the person; and there is an imminent threat to the person's health or safety or to the person's estate; (2) require the court to order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person; and (3) require the public guardian to begin an investigation within two business days of receiving a referral for conservatorship or guardianship. Probate Code section 2923 requires the public guardian to comply with the continuing education requirements established by the California State Association of Public Administrators, Public Guardians, and Public Conservators on or before January 1, 2008.	***Deny*** – These code sections do not impose a state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution. The test claim statutes require the public guardian to perform several activities. However, the activities required by state statute are not eligible for reimbursement. Government Code section 27430 authorizes, but does not require, the county to create the office of public guardian. This authority is based on the county's *parens patriae* power "to protect incompetent persons." The courts have made clear that reimbursement is not required when requirements imposed by statute are triggered by local government's discretionary decision to participate in a program. In addition several of the requirements pled are not required by state statute, but are required by court order. Appropriations required to comply with mandates of the courts are

		not eligible for reimbursement under article XIII B, section 6. (Cal. Const., art. XIII B, § 9.)
Probate Code sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d), 2352(a)-(f), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a); 2620 (a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5 (a)-(d), 2623 (a)-(b), 2640 (a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), as added and amended by Statutes of 2006, Chapters 490, 492, and 493.	These code sections require conservators, courts, and court investigators to perform various activities once a conservatorship is established.	***Deny*** – These code sections do not impose a state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution. The activities pled from these code sections are either not required of local government, or are mandated or triggered by a court order. Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6. (Cal. Const., art. XIII B, § 9.) Even if the activities performed by the public guardian were required by the state, they would not impose a state-mandated program because of the county's discretionary authority to create the office of public guardian.

Analysis

Staff finds that the following activities are new requirements imposed by the state on the county office of public guardian:

- Comply with the continuing education requirements established by the California State Association of Public Administrators, Public Guardians, and Public Conservators on or before January 1, 2008. (Prob. Code, § 2923.)

- Begin an investigation within two business days of receiving a referral for conservatorship or guardianship. (Prob. Code, § 2920(c).)
- File a petition for appointment as guardian or conservator for the person, the estate, or the person or the estate in the following circumstances: the person is domiciled in the county and requires a guardian or conservator; there is no one else qualified and willing to act; the appointment as guardian or conservator would be in the best interests of the person; and there is an imminent threat to the person's health or safety or to the person's estate. (Prob. Code, § 2920(a)(1).)

All other activities pled are either not required of local government, or are triggered by a court order. Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6.[1]

Although the activities bulleted above are required by the state, they are triggered by the county's discretionary decision to create the office of public guardian and therefore, the requirements do not create a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 27430 states that:

(a) In any county the board of supervisors *may* by ordinance create the office of the public guardian and subordinate position which may be necessary and fix compensation therefor.

(b) The board of supervisors *may* by ordinance terminate the office of public guardian.[2] [Emphasis Added.]

That decision to create the office of public guardian is a local discretionary decision based on the county's *parens patriae* power "to protect incompetent persons." Like the police powers held by local government, local legislative bodies have broad discretion in the exercise of these powers, both in determining what the interests of the public require and what measures are reasonably necessary for the protection of those interests.

The courts have made clear that reimbursement is not required when requirements imposed by the statute are triggered by local government's discretionary decision to participate in a program.[3]

Thus, staff finds that the test claim statutes do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Conclusion

Staff concludes that Probate Code sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d), 2352(a)-(f), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a); 2620 (a)-(e), 2620.2(a)-(d), 2590, 2591(a)-

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[1] Article XIII B, section 9 of the California Constitution.

[2] Government Code Section 27430 (Stats. 1988, ch. 1199, § 17).

[3] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355.

(q), 2591.5 (a)-(d), 2623 (a)-(b), 2640 (a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923, as added and amended by Statutes 2006, chapters 490, 492, and 493 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to deny this test claim. Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the statement of decision following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Probate Code Sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d); 2352(a)-(f), 2352.5(a)-(e), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a), 2620(a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5(a)-(d), 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923; Statutes 2006; Chapter 490 (SB 1116) Statutes 2006, Chapter 492 (SB 1716) Statutes 2006, Chapter 493 (AB 1363) Filed on December 13, 2007 By the County of Los Angeles, Claimant.	Case No.: 07-TC-05 *Public Guardianship Omnibus Conservatorship Reform* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted December 6, 2013*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on December 6, 2013. [Witness list will be included in the final statement of decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

The Commission finds that the following activities are new requirements imposed by the state on the county office of public guardian:

- Comply with the continuing education requirements established by the California State Association of Public Administrators, Public Guardians, and Public Conservators on or before January 1, 2008. (Prob. Code, § 2923.)

- Begin an investigation within two business days of receiving a referral for conservatorship or guardianship. (Prob. Code, § 2920(c).)
- File a petition for appointment as guardian or conservator for the person, the estate, or the person or the estate in the following circumstances: the person is domiciled in the county and requires a guardian or conservator; there is no one else qualified and willing to act; the appointment as guardian or conservator would be in the best interests of the person; and there is an imminent threat to the person's health or safety or to the person's estate. (Prob. Code, § 2920(a)(1).)

All other activities pled are either not required of local government, or are triggered by a court order. Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6.[4]

Although the activities bulleted above are required by the state, they are triggered by the county's discretionary decision to create the office of public guardian and therefore, the requirements do not create a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 27430 states that:

> (a) In any county the board of supervisors *may* by ordinance create the office of the public guardian and subordinate position which may be necessary and fix compensation therefor.
>
> (b) The board of supervisors *may* by ordinance terminate the office of public guardian.[5] [Emphasis Added.]

The decision to create the office of public guardian is a local discretionary decision based on the county's *parens patriae* power "to protect incompetent persons." Like the police powers held by local government, local legislative bodies have broad discretion in the exercise of these powers, both in determining what the interests of the public require and what measures are reasonably necessary for the protection of those interests.

The courts have made clear that reimbursement is not required when requirements are triggered by local government's voluntary decision to participate in a program, reimbursement is not required.[6]

Accordingly, the Commission finds Probate Code sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d), 2352(a)-(f), 2352.5 (a)-(e), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a); 2620 (a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5 (a)-(d), 2623 (a)-(b), 2640 (a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923, as added and amended by the test claim statutes do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

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[4] Article XIII B, section 9 of the California Constitution.

[5] Government Code Section 27430 (Stats. 1988, ch. 1199, § 17).

[6] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355.

COMMISSION FINDINGS

I. Chronology

12/13/2007	Claimant, Los Angeles County, filed the test claim with the Commission.
12/21/2007	Commission staff deemed the filing complete and issued a notice of complete test claim filing and schedule for comments.
01/30/2008	Department of Finance (Finance) filed comments on the test claim.
04/10/2008	Claimant filed rebuttal comments on the test claim.
05/16/2008	The Imperial County Public Administrator filed comments on the test claim.
05/29/2008	The San Joaquin County Public Guardian/Conservator filed comments on the test claim.
06/09/2008	The San Diego County Counsel filed comments on the test claim.
10/11/2013	Commission staff issued the draft staff analysis and proposed statement of decision.

II. Background

This test claim addresses three 2006 test claim statutes which are part of the Omnibus Conservatorship and Guardianship Reform Act of 2006 ("OCRA"), a package of four bills that made comprehensive reforms to California's probate system and court oversight of probate conservatorships. The test claim statutes amended and added code sections affecting county public guardians, which are county officers authorized to act as conservators in certain instances.

A probate conservatorship is a court proceeding where a judge, based upon clear and convincing evidence, appoints: (1) a conservator of the person for an adult who cannot "provide properly for his or her personal needs for physical health, food, clothing, or shelter"; (2) a conservator of the estate for "a person who is substantially unable to manage [her] own financial resources or resist fraud or undue influence"; or (3) a conservator of the person and the estate.[7] A conservator of the person has custody of the conservatee, ensures that the conservatee's daily needs are met, and has charge of the conservatee's educational needs.[8] A conservator of the estate has the duty to manage and control a conservatee's estate and finances.[9]

The OCRA was enacted in response to an in-depth investigatory series published by the *Los Angeles Times* and a joint hearing held by the Assembly and Senate judiciary committees, which brought to light the following abuses in conservatorship proceedings: misuse of California's conservatorship system by private conservators; public guardians who lack the necessary resources to help truly needy individuals; probate courts which do not have sufficient resources

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[7] Probate Code section 1801.

[8] Probate Code sections 2350 through 2359.

[9] Probate Code sections 2400 through 2595.

to provide adequate oversight to catch abuses of conservatees; and a system that provides no place for those in need to turn to for help.[10]

A. History of Probate Conservatorships in California and Description of the Legal Process

Conservatorship laws are generally derived from the *parens patriae* power of the state to protect incompetent persons.[11] In 1850, the Legislature first authorized the probate court to appoint guardians for the insane, minors, and incompetents.[12] Although the guardianship law was amended many times, guardianships remained limited to the insane, minors, and incompetents until 1957.[13]

In 1957, the Legislature established a new protective relationship of conservatorship based on the belief that the stigma of the label "incompetent" discouraged people from seeking appointment of a guardian. A fifth division was added to the Probate Code to address probate conservatorships.[14] The 1957 statutes "provided that the court could appoint a conservator for a person who was neither insane nor incompetent, but who, for a variety of other reasons, needed direction in the management of his affairs."[15] As originally enacted, conservators could be appointed for "any adult person who by reasons of advanced age, illness, injury, mental weakness, intemperance, addiction to drugs or other disability, or other cause is unable to properly care for himself or for his property, or who for said causes or for any other cause is likely to be deceived or imposed upon by artful or designing persons …."[16]

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[10] Exhibit E, Assembly Third Reading Bill Analysis, A.B. No. 1363, as amended January 24, 2006, p. 4.

[11] *Conservatorship of Wendland* (2001) 26 Cal.4 th 519, 535, where the California Supreme Court stated that "decisions made by conservators typically derive their authority from a different basis—the *parens patriae* power of the state to protect incompetent persons."

Under English law at the time of the settling of the American colonies, the King, as *parens patriae*, had the authority to act as "the general protector of all infants, idiots, and lunatics." (*Hawaii v. Standard Oil Co*. (1972) 405 U.S. 251, 257; *Sullivan v. Dunne* (1926) 198 Cal. 183, 189-190.) After the American Revolution, the *parens patriae* power was vested in the state legislatures, which often delegated the authority to protect minors and incompetents to the courts. (*Hawaii v. Standard Oil Co*., *supra*, 405 U.S. 251, 257.) In *Late Corporation of the Church of Latter Day Saints v. United States,* the Supreme Court suggested that the *parens patriae* power is like government's police power, "inherent in the supreme power of every state … and often necessary to be exercised in the interest of humanity." ((1890) 136 U.S. 1, 57-58.)

[12] Statutes 1850, chapter 115.

[13] *Board of Regents v. Davis* (1975) 14 Cal.3d 33, 37-38.

[14] *Id.*; former Probate Code sections 1701-2207 (Stats. 1957, ch. 1902).

[15] *Board of Regents, supra*, 14 Cal.3d 33, 39.

[16] Former Probate Code section 1751.

Today, a probate conservator may be appointed by the court for "a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter," or for "a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence," or for a person who needs both types of services.[17] The appointment of a conservator affects an individual's liberty interests and, thus, due process rights must be afforded to the proposed conservatee.[18] Under these principles, the court may not establish a conservatorship unless there is clear and convincing evidence that a conservator is required.[19] The court's order granting or refusal to grant letters of conservatorship is an appealable order.[20]

Under current law, a petition for the appointment of a conservator filed with the court begins the process. A petition may be filed by the proposed conservatee; spouse or domestic partner of the proposed conservatee; a relative of the proposed conservatee; any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state; or any other interested person or friend of the proposed conservatee.[21] The petition must state the reasons why a conservatorship is required, and the alternatives to conservatorship considered by the petitioner and why those alternatives are not available. The petition must set forth the names and addresses of the proposed conservatee's spouse or domestic partner, relatives within the second degree, or other family members to the extent a spouse, domestic partner, or close relative is unknown. The petition must also state facts, if applicable, that the proposed conservatee is a patient of the State Department of Mental Health (DMH) or the State Department of Developmental Services (DDS), or receives benefits payable by the

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[17] Probate Code section 1801, as last amended by Statutes 1995, chapter 842. See also, *Conservatorship of Sanderson* (1980) 106 Cal.App.3d 611, 619-620, where the court explained the reason for the clear and convincing standard as follows:

> Balancing the benefit and purpose of the probate conservatorship proceedings against the adverse consequences to the individual clearly suggests the proper standard is clear and convincing proof. [Footnote omitted.] The deprivation of liberty and stigma which attaches under a probate conservatorship is not as great as under an LPS conservatorship [Lanterman-Petris-Short Act, which concerns the involuntary civil commitment to a mental health institution]. However, to allow many of the rights and privileges of everyday life to be stripped from an individual "under the same standard of proof applicable to run-of-the-mill automobile negligence actions" cannot be tolerated.

[18] *Conservatorship of Valerie N.* (1985) 40 Cal.3d 143, 162. By statute, a proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration, and may be adjudged unable to provide for personal needs or to manage financial resources. In addition, the adjudication may affect or transfer to the conservator the conservatee's right to contract, to manage and control property, to give informed consent for medical treatment, and to fix a residence. (Prob. Code, § 1823.)

[19] Probate Code section 1801(e), as last amended by Statutes 1995, chapter 842.

[20] Probate Code section 1301, as last amended by Statutes 2001, chapter 417.

[21] Probate Code section 1820, as last amended by Statutes 2001, chapter 893.

Veterans Administration (VA), and notice must be provided to all these individuals and entities.[22] If the petition is filed by a person other than the proposed conservatee, the clerk of the court is required to issue a citation to the proposed conservatee setting forth the time and place of hearing; the legal standards of conservatorship; the affects of a conservatorship; and notice that the court or a court investigator will assist in the understanding of the process and rights, that the person has the right to appear at the hearing and oppose the petition, the right to choose and be represented by legal counsel, the right to have legal counsel appointed by the court if unable to retain legal counsel, and the right to a jury trial.[23]

After the petition is filed, a court investigator is assigned to interview the proposed conservatee personally, and explain the assertions in the petition and the elements of the citation issued by the clerk. The investigator also must determine whether it appears that the proposed conservatee suffers from mental health issues that impair the ability to understand the consequences of his or her actions; whether the proposed conservatee is unable to attend the hearing or is willing to attend; and determine whether the proposed conservatee wishes to contest the petition, or needs or desires legal counsel. The court investigator is then required to report the findings to the court in writing, at least five days before the hearing.[24]

The court is required to hear and determine the matter of the establishment of the conservatorship according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the proposed conservatee.[25] Current law requires that the proposed conservatee be produced at the hearing, except where the proposed conservatee is out of the state when served and is not the petitioner, or the proposed conservatee is unable to attend the hearing by reason of medical inability established by affidavit or certificate of a licensed medical practitioner. Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing, unless the instability is likely to cause serious and immediate physiological damage to the proposed conservatee. The court may order that the proposed conservatee need not attend the hearing, however, in circumstances where the court investigator reports that the proposed conservatee has expressly communicated that he or she is unwilling to attend the hearing, does not wish to contest the petition, does not object to an order of conservatorship, and either does not object to the person proposed for appointment as conservator or states a preference that another person act as conservator.[26] If the proposed conservatee attends the hearing, the court is required to inform the proposed conservatee of the effect of an order of conservatorship and shall consult with the proposed conservatee to determine his or her opinion concerning the establishment of the conservatorship, the appointment of the proposed conservator, and any order requested in the petition.[27] In addition,

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[22] Probate Code section 1821, as last amended by Statutes 2002, chapter 784; Probate Code section 1822, as last amended by Statutes 2001, chapter 893.

[23] Probate Code section 1823, as last amended by Statutes 1990, chapter 79.

[24] Probate Code section 1826, as last amended by Statutes 2002, chapter 784.

[25] Probate Code section 1827, as last amended by Statutes 2000, chapter 17.

[26] Probate Code section 1825, as added by Statutes 1990, chapter 79.

[27] Probate Code section 1828, as added by Statutes 1990, chapter 79.

the following persons may appear at the hearing to support or oppose the petition: the spouse or domestic partner of the proposed conservatee, a relative of the proposed conservatee, or any interested person or friend of the proposed conservatee.[28]

The petitioner has the burden of proof by clear and convincing evidence that a conservatorship is necessary and required, and the court's determination is based on that standard.[29] On appeal, the court will look to see if there is substantial evidence in the record to support the lower court's determination.[30] In reviewing the trial court's decision, the court of appeal will view the record in the light most favorable to the judgment below and determine if a reasonable trier of fact could find that denial or approval of the petition for conservatorship is appropriate in light of the petitioners' heightened "clear and convincing" burden of proof.[31]

If there is clear and convincing evidence that the appointment of a conservator is required, the trial court exercises its discretion in selecting a conservator for the proposed conservatee, and is guided by what appears to be in the best interests of the proposed conservatee.[32] If the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in writing signed either before or after the petition is filed. The court is required to appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee.[33] The order of preference for the selection of conservator is (1) the proposed conservatee's nominee, the conservatee's spouse, domestic partner, or the person nominated by the spouse or domestic partner; (2) an adult child of the proposed conservatee or the person nominated by the adult child; (3) a parent of the proposed conservatee or the person nominated by the parent; (4) a sibling of the proposed conservatee or the person nominated by the sibling; (5) any other person or entity eligible for appointment or willing to act as a conservator under the Probate Code and the Welfare and Institutions Code.[34] Entities eligible for appointment as a conservator, depending on the facts, include trust companies,[35] nonprofit charitable corporations,[36] DDS,[37] DMH,[38] the VA,[39] and the county public guardian.[40] On appeal, the trial

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[28] Probate Code section 1829, as last amended by Statutes 2001, chapter 893.

[29] Probate Code section 1801.

[30] *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 880-881, where the court stated that "the sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal."

[31] *In re Jasmon O*. (1994) 8 Cal.4th 398, 423.

[32] Probate Code section 1812, as last amended by Statutes 2001, chapter 893.

[33] Probate Code section 1810, as added by Statutes 1990, chapter 79.

[34] Probate Code section 1812, as last amended by Statutes 2001, chapter 893.

[35] Probate Code section 83.

[36] Probate Code section 2104.

court's order appointing a conservator is reviewed for abuse of discretion, and will be reversed only if there was no reasonable basis for the trial court's action.[41]

The court order appointing the conservator identifies the duties of the conservator.[42] Before the appointment is effective, the conservator is required to take an oath to perform the duties of the office according to law and file a bond, if required.[43] The appointment is then evidenced by the issuance of letters by the clerk of the court. The appointment of conservatorship is not effective until letters have issued.[44]

Once a conservator is appointed, the conservatorship is subject to the supervision of the court and most actions require court authorization.[45] The relationship of conservator (both of the person and of the estate) and conservatee is a fiduciary relationship.[46] Consequently, every conservator assumes the basic obligation of a fiduciary to act prudently and in good faith. A conservator of the person is responsible for "the care, custody, and control of, and has charge of the education of [the conservatee]."[47] A conservator of the person generally must:

- Determine the needs and level of care of the conservatee and develop a plan for meeting those needs;
- Manage the conservatee's living situation;
- Manage the conservatee's health care;
- Arrange for the for the conservatee's meals;
- Arrange for the for the conservatee's clothing;
- Arrange for the for the conservatee's personal care;
- Arrange for the for the conservatee's housekeeping;
- Arrange for the for the conservatee's transportation;
- Arrange for the for the conservatee's recreation and social contact.[48]

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[37] Health and Safety Code section 416.

[38] Welfare and Institutions Code section 7284.

[39] Military and Veterans Code section 1046.

[40] Probate Code sections 2900, 2920, and 2922.

[41] *Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 403; *Garcia v. County of Sacramento* (2002) 103 Cal.App.4th 67, 81.

[42] Probate Code section 1830, as added by Statutes 1990, chapter 79.

[43] Probate Code section 2300, as added by Statutes 1990, chapter 79.

[44] Probate Code section 2310, as last amended by Statutes 1996, chapter 862.

[45] Probate Code sections 2351, 2400, et seq.

[46] Probate Code section 2101.

[47] Probate Code section 2431.

[48] Judicial Council of California's *Handbook for Conservators*, p. 27-67.

A conservator of the estate manages the conservatee's assets and uses the income for the support and maintenance of the conservatee.[49] If the income is not enough for the support and management of the conservatee, the conservator can sell or mortgage estate assets.[50] The conservator may also maintain the conservatee's home, pay debts, and pay for services for the conservatee.[51] A conservator of the estate generally must:

- Post a bond;
- Determine the needs and level of care of the conservatee and develop a plan for meeting those needs;
- Locate and take control of the assets and make sure they are adequately protected against loss;
- Make an inventory of the assets for the court;
- Collect all of the conservatee's income and other money due and apply for government benefits to which the conservatee is entitled;
- Make a budget for the conservatee, working with the conservator of the person, or, if there isn't one, working with the conservatee or his or her caregiver;
- Pay the conservatee's bills and expenses on time and in line with the conservatee's budget;
- Keep track of how trustees or other parties are managing any of the conservatee's assets;
- Invest the estate assets and income in safe investments that will meet the conservatee's needs and the court's requirements;
- Make funeral and burial arrangements;
- Periodically account to the court and to other interested persons regarding income coming into the estate, expenditures, and the remaining conservatorship property;
- Prepare a final report and accounting of the estate when the conservatorship ends.[52]

Conservators are required to make accountings of the assets of the estate to the court for settlement and allowance after one year from the time of appointment and, thereafter at least every two years unless otherwise ordered by the court.[53] Upon the death of a conservatee, a conservator must make two final accountings for the period before and the period after the date of death.[54] Only conservators of the estate need to file accountings of the assets.[55]

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[49] Probate Code sections 2401, 2420.

[50] Probate Code section 2420.

[51] Probate Code sections 2431, 2427.

[52] Judicial Council of California's *Handbook for Conservators*, pp. 77-142.

[53] Probate Code section 1061, as last amended by Statutes 1997, chapter 724; Probate Code section 2620, as last amended by Statutes 2001, chapter 563.

[54] Probate Code section 2620, as last amended by Statutes 2001, chapter 563.

[55] *Ibid.*; *Conservatorship of Munson* (1978) 87 Cal.App.3d 515, 518 (deciding that no guardianship or conservator *of the person* need file an accounting).

A conservator can be removed for mismanagement of an estate, failure to file an inventory or account, incapacity, gross immorality, a felonious conviction, adverse interest, or bankruptcy.[56] A conservator can also be removed if it is in the best interest of the conservatee.[57]

B. County Public Guardians

As set forth in detail above, conservatorships of the person or estate require conservators to perform many duties in order to care for and manage conservatees and their assets. Although conservators are often either friends or relatives of the conservatee or private professional conservators retained to serve as conservator for an individual, there are instances where no one is willing or able to serve as conservator. The Legislature has authorized counties to create and terminate the office of the public guardian and appoint a public guardian to fill this position and for the public guardian to act as a guardian or conservator in certain cases, including where no one else is willing or able to serve in that capacity.[58]

In 1945, before probate conservatorships were established, Los Angeles County sponsored Senate Bill 522, which authorized the board of supervisors to create the office of the public guardian in order to allow the county to act as guardian for indigent individuals with mental disorders committed pursuant to the former Welfare and Institutions Code.[59] According to correspondence sent by the Los Angeles County Counsel recommending that the Legislature create the office of the public guardian, County Counsel stated that:

> In a county as large as Los Angeles County and particularly in the City of Los Angeles there are many people who become mentally ill and who have considerable property but who are without friends or relatives and the public interest requires that these people and their property be protected. It is for such cases that it is necessary and essential that there be a public guardian who will be in a position to look after the person and the estate of any such person who requires such assistance.[60]

Before the 1945 bill sponsored by Los Angeles County, former Welfare and Institution Code section 5077 provided that if a mentally disordered person was committed and found to be indigent, the county was responsible for paying for that person's maintenance.[61] Although the prior code made the county responsible for paying for such maintenance, the former Welfare and

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[56] Probate Code section 2650, as added by Statutes 1990, chapter 79.

[57] *Ibid*.

[58] See Government Code sections 27430-27436 (Stats. 1988, ch. 1199, § 17) and Former Probate Code section 2920 (enacted by Stats. 1988, ch. 1199, § 72.) Government Code sections 27430-27436 and Probate Code section 2920 are derived from Former Welfare and Institutions Code sections 5175-5189 (Stats. 1945, ch. 907, § 1).

[59] Exhibit F, Govenor's Bill File, Statutes 1945; Chapter 907, S.B. 522 , Correspondence From Los Angeles County Counsel, dated June 8, 1945, pp. 1-3.

[60] *Id*. at p. 2.

[61] Former Welfare and Institutions Code sections 5077, enacted by Statutes 1937, chapter. 369.

Institutions Code did not provide a means for counties to recover the costs of treatment from the person committed, who had assets, or from their estate.[62] On the other hand, section 6660 of the former Welfare and Institutions Code provided that the State Department of Institutions could be appointed guardian of the estate of an incompetent person committed to a state hospital if such incompetent person has no guardian.[63] The purpose of section 6660 was to place the state in a position to reimburse itself from the property of its wards, and for this reason, the Department was authorized to act, under given circumstances, as guardian of the estate of the ward or as administrator of the estate of a deceased ward.[64]

In response, the Legislature authorized counties to create the office of the public guardian in 1945 with the enactment of Welfare and Institutions Code sections 5175 through 5189.[65] Former Welfare and Institutions Code section 5175 authorized the board of supervisors of any county "create the office of the public guardian…" and to "appoint a public guardian to fill such office…," but limited the authority to counties with a population of at least one million.[66] A later amendment removed the population-based limitation. The authority to establish and terminate the office of the public guardian is currently in Government Code section 27430, which provides the following:

> (a) In any county the board of supervisors may by ordinance create the office of public guardian and subordinate positions which may be necessary and fix compensation therefor.
>
> (b) The board of supervisors may by ordinance terminate the office of public guardian.[67]

In addition, former Welfare and Institutions Code section 5181, as enacted by Statutes 1945, Chapter 907, section 1, provided that:

> In proper cases any such public guardian *may apply* to a court of competent jurisdiction for appointment as guardian of the person and estate or person or estate of any person in the county who is a patient under the provisions hereof or who is a recipient of aid under any of the provisions of this code where it appears that such person requires a guardian and where it appears that such person's estate does not exceed five thousand dollars ($5,000) in probable value.

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[62] *Ibid*.

[63] Former Welfare and Institutions Code sections 6660, enacted by Stats.1937, chapter 369.

[64] *In re Abdale's Estate* (1943) 59 Cal.App.2d 445, 446.

[65] Statute of 1945, chapter 907, section 1.

[66] Former Welfare and Institutions Code section 5175, enacted by Statutes 1945, ch. 907, § 1. Former Welfare and Institutions section 5177 also provided that the board of supervisors "may by ordinance terminate the office of the public guardian."

[67] Government Code section 27430 (Stats. 1988, ch. 1199 § 17, operative July 1, 1989).

In 1965, the Legislature expanded the scope of the office of the public guardian by allowing the public guardian to apply in proper cases as guardian *or conservator* under the probate conservatorship program.[68] Statutes of 1988, Chapter 1199, section 72, added Probate Code section 2920, which superseded the portions of former Welfare and Institutions Code section 8006.[69] Probate Code section 2920, as enacted in 1988, similarly provided that, in cases where a person requires a conservator and there is no one else who is qualified and willing to act, the public guardian may apply for appointment as conservator and the court may appoint the public guardian if the appointment is in the best interest of the person. In addition, the statute provided that the public guardian was required to apply for appointment when ordered by the court, upon determination by the court that the appointment was necessary. Probate Code section 2920, as last amended before the 2006 test claim statutes, stated the following:

> If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:
>
> (a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.
>
> (b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.[70]

Under current law, if the public guardian is appointed guardian or conservator, the public guardian may recover its costs and fees from the estate or ward.[71] The amount recoverable by the public guardian includes reasonable expenses in execution of the guardianship or conservatorship, as well as compensation for services provided by the public guardian and the attorney of the public guardian, in the amount the court determines is just and reasonable.[72]

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[68] Former Welfare and Institutions Code section 5081, enacted by Statutes of 1965, chapter 2055.

[69] 19 Law.Rev.Comm.Reports 721 (1988).

[70] Section 2920 superseded the first, second, and a portion of the third sentences of former Welfare and Institutions Code section 8006.

[71] Probate Code section 2942, as added by Statutes 1999, chapter 866.

[72] *Ibid*. In addition, Probate Code section 2640.1 authorizes a petitioner to file a petition for an order allowing compensation and reimbursement of costs, in specified circumstances, if the petitioner is not the one appointed by the court.

C. Test Claim Statutes – Omnibus Conservatorship and Guardianship Reform Act of 2006

The test claim statutes, as enacted by the OCRA, amended and added several sections to the Probate Code, including Probate Code section 2920. Probate Code section 2920, as amended by the test claim statutes, provides the following (additions or changes indicated by underline):

> (a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person, then either of the following shall apply:
>
> (1) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate.
>
> (2) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate in all other cases.
>
> (b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.
>
> (c) The public guardian shall begin an investigation within two business days of receiving a referral for conservatorship or guardianship.[73]

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[73] Probate Code section 2920, as amended by Statutes 2006, chapter 493. The legislative history of Assembly Bill 1363 indicates that the legislature believed that the "requirements for public guardians to begin investigations within two business days of receiving a referral for conservatorship or guardianship could drive significant reimbursable local costs." (Exhibit E, Senate Rules Committee Third Reading Bill Analysis, A.B. No. 1363, as amended August 24, 2006, p. 14.)

In addition to amending Probate Code section 2920, the OCRA amended and added multiple other statutes to the Probate Code. Claimant asserts that the following provisions of the Probate Code, as added or amended by the OCRA, impose new duties or higher levels of service upon public guardians:

- Probate code section 1850 requires that the court review each conservatorship at set time periods. Probate Code section 1850, as amended by the OCRA[74]: (1) requires that the court investigator visit the conservatee six months after the initial appointment of the conservator, conduct an investigation regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interest of the conservatee; (2) permits the court, upon its own motion or upon the request of any interested person, to order a review of the conservatorship; (3) permits the court to order an accounting of the estate pursuant to Probate Code section 2620; and (4) permits the court to set a timeline for subsequent review of the conservatorship.[75]
- Probate code section 1851 establishes how court investigators shall conduct investigations ordered pursuant to Probate Code 1850. Probate Code section 1851, as amended by the OCRA, requires that "[u]pon request of the investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship."[76]
- Probate Code section 2113, as added by the OCRA, states: "A conservator shall accommodate the desires of the conservatee, except to the extent that doing so would violate the conservator's fiduciary duties to the conservatee or impose an unreasonable expense on the conservatorship estate."[77]
- Probate Code section 2250(a)-(c), which allows for the temporary guardians and conservators, was amended by the OCRA to impose new notice requirements when filing a petition for temporary guardianship or conservatorship.[78]

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[74] Statutes 2006, chapters 492 (S.B. No. 1716) and 493 (A.B. No. 1363) enacted alternate versions of Probate Code sections 1850 and 1851. As A.B No. 1363 was chaptered after S.B. Bill No. 1716, the amendments codified by Statutes 2006, chapters 493, section 11.5 and 12.5 (A.B. No. 1363) are operative. See Government Code section 9605.

[75] Statutes 2006, chapter 492.

[76] Statutes 2006, chapter 492.

[77] Probate Code section 2113 (Stats. 2006, ch. 493, § 13) makes explicit a requirement that already existed in other Probate Code sections regarding a conservators fiduciary duties to a conservatee. See Probate Code sections 1800(e) (Stats. 1990, ch. 79) and 2101 (as amended by Stats. 1993, ch. 293).

[78] Probate Code section 2250 (a), (b), and (c) (Stats. 2006, ch. 493, § 15).

- Probate Code section 2250.4, as added by the OCRA, exempts proposed temporary conservatees from attending the hearing on a petition for appointment of a temporary guardian or conservator.[79]
- Probate Code Section 2352, which provides a means for fixing the residence of a ward or conservatee and requires that the guardian select the least restrictive appropriate setting that is both available and necessary to meet the needs of the conservatee and is in the best interests of the conservatee, was amended by the OCRA to: (1) require that the residence of a ward or conservatee is the "least restrictive appropriate residence" as described in new Probate Code section 2352.5; and to (2) impose new notice requirements when the ward or conservatee's address is or may be changed.[80]
- Probate Code section 2352.5, as added by the OCRA: (1) creates a presumption that the personal residence of a proposed conservatee is the least restrictive residence for the conservatee; and (2) requires that the conservator, upon appointment, determine the appropriate level of care for the conservatee.[81]
- Probate Code section 2410, as added by the OCRA, requires the judicial council to adopt a rule of court that establishes uniform standards of conduct for actions that conservators and guardians may take on behalf of conservatees and wards to ensure that their estates are maintained and conserved and to prevent loss or harm to conservatees and wards.[82]
- Probate Code section 2540 states that the sale of a conservatee's present or former personal residence, and real or personal property, are subject to court authorization. Probate Code section 2540, as amended by the OCRA, requires the conservator to inform the court why other alternatives to the sale of a conservatee's home, "including, but not limited to, in-home care services, are not available."[83]
- Probate Code section 2543, which established the manner of sale of conservatorship property, was amended by the OCRA to require that sales and other related transactions conform to the provisions of the Probate Code concerning sales by a personal representative "as described in Articles 6 (commencing with Section 10300), 7 (commencing with Section 10350), 8 (commencing with Section 10360), and 9 (commencing with Section 10380) of Chapter 18 of Part 5 of Division 7." Probate Code section 2543 also established a new requirement for appraisal of the conservatee's personal residence before sale.[84]

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[79] Probate Code section 2250.4 (Stats. 2006, ch. 493, § 16).

[80] Probate Code section 2352 (Stats. 2006, ch. 490, § 1).

[81] Probate Code section 2352.5 (Stats. 2006, ch. 490, § 2).

[82] Probate Code section 2410 (Stats. 2006, ch. 493, § 22).

[83] Probate Code section 2540 (Stats. 2006, ch. 490, § 3).

[84] Probate Code section 2543 (Stats. 2006, ch. 490, § 4).

- Probate Code section 2590 allows the court the power to grant guardians and conservators the powers listed in section 2591. OCRA made minor non-substantive changes to section 2590.[85]
- Probate Code section 2591 contains the list of powers the court may grant to guardians and conservators pursuant to Probate Code section 2590. OCRA amended section 2591(d) to distinguish between the sale of generic real or personal property and sale of a conservatee's personal residence. The amendment of section 2591 also makes the power to sell the private residence of the conservatee subject to the requirements of new Probate Code Section 2591.5 and Probate Code Sections 2352.5 and 2541.[86]
- Probate Code section 2591.5, as added by the OCRA, requires conservators seeking an order under Probate Code section 2590 authorizing a sale of the conservatee's personal residence to "demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the estate, are in all respects in the best interests of the conservatee." New Probate Code section 2591.5 also establishes appraisal requirements for the sale of a personal residence, requires that notice be given prior to the close of escrow, and provides for a good cause exception for applying all the requirements of section 2591.5, except for the appraisal requirements.
- Probate Code section 2610(a), which requires that guardians and conservators file an inventory and appraisal of the estate with the court, was amended by the OCRA to require that the inventory and appraisal is mailed to the ward or conservatee and other interested parties. [87]
- Probate Code section 2620, which requires guardians and conservators to file accountings of the assets of the estate with the court, was amended by the OCRA to: (1) impose new documentation requirements for accountings; (2) make each accounting subject to random and discretionary review by the court; and (3) require guardians and conservators to make all books and records available to any person designated by the court to verify the accuracy of the accounting.[88]
- Probate Code section 2620.2, provides a remedy if the guardian or conservator fails to file an accounting as required by Probate Code section 2620. The OCRA made minor non-substantive changes to section 2620.2.[89]
- Probate Code sections 2623, 2640, 2640.1, and 2641 allow guardians and conservators to recover certain costs, expenses, and compensation for services rendered. Probate code sections 2623, 2640, 2640.1, and 2641, as amended by the OCRA, prohibit guardians and

[85] Probate Code section 2590 (Stats. 2006, ch. 490, § 5).

[86] Probate Code section 2591 (Stats. 2006, ch. 490, § 6).

[87] Probate Code section 2610 (a) (Stats. 2006, ch. 493, § 23).

[88] Probate Code section 2620 (Stats. 2006, ch. 493, § 24).

[89] Probate Code section 2620.2 (Stats. 2006, ch. 493, § 25).

conservators from recovering costs, expenses, and compensation for services rendered unless the court determines that the services are in the best interest of the ward or conservatee.[90]

- Probate Code section 2653 allows the court to remove guardians and conservators, revoke the letters of guardianship or conservatorship, and order the guardian or conservator to file an accounting. Probate Code section 2653, as amended by the OCRA: (1) allows the court to award the party that has petitioned to remove a guardian or conservator costs and attorney's fees; and (2) prohibits guardians and conservators from deducting from, or charging to, the estate his or her cost of litigation.[91]
- Probate Code section 2923, as added by the OCRA, requires that "On or before January 1, 2008, the public guardian shall comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators."[92]

III. Positions of the Parties and Interested Parties

A. Claimant's Position

Claimant alleges that the test claim statutes constitute a reimbursable state-mandated program or higher level of service within an existing program.[93] Claimant asserts that under prior law, public guardians were not required to serve as conservator for any person or estate unless ordered by the court. Although the OCRA made sweeping changes to the conservatorship process as a whole, including reforms aimed at professional conservators, probate court proceedings, and educating the public regarding conservatorships, the test claim seeks reimbursement only for those costs incurred as a result of changes made to statutes directly affecting county public guardians.[94]

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[90] Probate Code sections 2623, 2640, 2640.1, and 2641 (Stats. 2006, ch. 493, §§ 26-29).

[91] Probate Code section 2653 (Stats. 2006, ch. 493, § 30).

[92] Probate Code section 2923 (Stats. 2006, ch. 493, § 33).

[93] Although claimant asserts that one prior test claim (*Guardianship Petitions* (CSM-4256) and two prior legislatively-determined mandates (*Developmental Disabled Attorneys' Service* (04-LM-03); *Guardianship/Conservatorship Filings* (04-LM-15)) support this test claim, the prior test claim and legislatively-determined mandates are not relevant to this test claim. The legislatively-determined mandates cited by claimant are irrelevant because the statutes at issue were not before the Commission and do not relate in any way to the public guardian's duties or functions. Prior test claim CSM-4256, regarding investigations of certain guardianship petitions, sought reimbursement for costs incurred by court staff during guardianship investigations. The Commission found that these activities were not contained in prior law and thus constituted a new program or higher level of service and a reimbursable state mandate. However, test claim CSM-4256 did not relate in any way to duties or function of public guardians.

[94] A full summary of the changes made by OCRA has been provided by the Administrative Office of the Courts. (Exhibit ---.)

Claimant asserts that the OCRA imposes the following new requirements upon public guardians:

- File a petition for appointment as guardian or conservator for the person, the estate, or the person or the estate where there is an imminent threat to the person's health or safety or to the person's estate, and if appointed to serve as guardian or conservator, comply with all activities and incur all costs imposed by Probate Code sections 1400 through 3925, which set forth requirements for all guardianships and conservatorships established under the Probate Code.
- File a petition for appointment as guardian or conservator for the person, the estate, or the person or the estate when ordered by the court because there is no one else qualified and willing to act as conservator and it appears to be in the best interests of the person, and if appointed to serve as guardian or conservator, comply with all activities and incur all costs imposed by Probate Code sections 1400 through 3925, which set forth requirements for all guardianships and conservatorships established under the Probate Code.
- Begin an investigation within two business days of receiving a referral for conservatorship or guardianship.
- On or before January 1, 2008, comply with continuing education requirements established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.
- For all cases where the public guardian serves as guardian or conservator, whether voluntarily or as required by statute or court order, comply with new accounting, estate management, inventory and appraisal, residential placement, and temporary conservatorship requirements set forth in Probate Code sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d), 2352(a)-(f), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a); 2620 (a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5 (a)-(d), 2623 (a)-(b), 2640 (a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923, as added and amended by the OCRA. Claimant also asserts that these code sections require public guardians to provide higher levels of service to guardianships and conservatorships established before the enactment of the OCRA.

Claimant alleges that the test claim statutes have caused claimant to incur additional costs to serve new populations of conservatees pursuant to Probate Code section 2920(a) and (b).[95] The test claim states that the amount claimant will incur to serve new populations of conservatees pursuant to Probate Code section 2920(a) and (b) will be: (1) $71,500 during the 2006-2007 fiscal year; (2) $370,500 during the 2007-2008 fiscal year; and (3) $695,500 during the 2008-2009 fiscal year.[96] The statewide cost estimate submitted by claimant, which was developed by surveying other counties, indicates that the total statewide cost for counties to serve new

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[95] Exhibit A, test claim, dated December 12, 2007, section VI ("State-Wide Cost Survey"), pp. 126-176.

[96] *Id.* at section VI, pp. 128-139.

populations of conservatees pursuant to Probate Code section 2920(a) and (b) will be: (1) $3,884,522 during the 2006-2007 fiscal year; (2) $10,422,061 during the 2007-2008 fiscal year; and (3) $11,982,260 during the 2008-2009 fiscal year.[97]

B. Department of Finance's Position

Finance submitted written comments on December 28, 2007. Finance believes that the test claim statutes "may have" created a reimbursable state mandate for the following activities:

- Requiring the public guardian to apply for appointment as a guardian or conservator when there is an imminent threat to a person's health, safety or estate.
- Requiring the court to order the public guardian to apply for appointment on behalf of any person domiciled in the county if no one else is qualified and willing to act and if that appointment is in the best interest of the person.
- Beginning an investigation to determine if a conservatorship is necessary within two business days of receiving a conservatorship referral.
- Requiring the public guardian to comply with continuing education requirements.[98]

C. Position of Interested Parties

The Imperial County Public Administrator submitted written comments on May 16, 2008. The San Joaquin County Public Guardian/Conservator submitted written comments on May 29, 2008. The San Diego County Counsel submitted written comments on June 9, 2008.[99] The interested parties support the approval of this test claim as a reimbursable state-mandated program.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature *may, but need not*, provide a subvention of funds for the following mandates:
>
> (1) Legislative mandates requested by the local agency affected.
>
> (2) Legislation defining a new crime or changing an existing definition of a crime.
>
> (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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[97] *Id*. at section VI, p. 127.

[98] Exhibit B, Department of Finance Comments, pp. 1-2.

[99] Exhibit C, Imperial County Public Administrator's comments in support of test claim; Exhibit D, San Joaquin County Public Guardian/Conservator's comments in support of test claim; Exhibit E, San Diego County Counsel's comments in support of test claim.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[100] Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] …"[101]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[102]
2. The mandated activity either:
    a. Carries out the governmental function of providing a service to the public; or
    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[103]
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[104]
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[105]

The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[106] The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[107] In making its decisions, the Commission must strictly construe article XIII

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[100] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[101] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[102] *San Diego Unified School Dist. v. Commission on State Mandates* (*San Diego Unified School Dist.*) (2004) 33 Cal.4th 859, 874.

[103] *Id*. at 874-875 (reaffirming the test set out in *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.)

[104] *San Diego Unified School Dist*., *supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

[105] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[106] *County of San Diego*, *supra*, 15 Cal.4th 68, 109.

[107] *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[108]

B. The 2006 Test Claim Statutes Do Not Impose a Reimbursable State-Mandated Program or Higher Level of Service Upon Local Agencies Because the Required Activities are Triggered by Local Discretionary Decisions.

As described below, the test claim statutes impose new requirements on the county public guardian. The Commission finds, however, that these requirements do not result in a state-mandated new program or higher level of service on counties within the meaning of article XIII B, section 6 of the California Constitution.

1. The test claim statutes impose some new requirements on the public guardian.

a) Probate Code sections 2920 and 2923

Probate Code section 2923, as amended in 2006, requires that the public guardian comply with the continuing education requirements established by the California State Association of Public Administrators, Public Guardians, and Public Conservators on or before January 1, 2008. This requirement is new.

In addition, Probate Code section 2920(c), as added by the 2006 test claim statute, requires that "[t]he public guardian shall begin an investigation within two business days of receiving a referral for conservatorship or guardianship." The claimant acknowledges that investigations were conducted before the 2006 legislation to determine whether a petition for conservatorship should be filed by the public guardian's office, and under county policies and procedures, investigations began within *ten days* of the referral and took three to four days to complete.[109] Although an investigation would have been necessary to make that determination, investigations were not expressly required by state law for probate conservatorships before the enactment of the 2006 test claim statutes.[110] The Senate Floor Analysis of the 2006 bill that added this requirement, acknowledged that the requirement to begin an investigation within two business days of the referral could increase county costs as follows:

> Requirements for public guardians to begin investigations within two business days of receiving a referral for a conservatorship of guardianship could drive significant reimbursable local costs. Los Angeles County has estimated its workload could increase by as much as 50 percent, at a cost of $1.8 million annually. If that cost were to hold true for the rest of the state, reimbursable costs could be in the $5 million range annually.

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[108] *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280 [citing *City of San Jose*, *supra*].

[109] Test claim, pages 17-20.

[110] With respect to guardianships for minors, prior state law required investigations be done by "the county agency designated to investigate potential dependency" in cases where the proposed guardian is a non-relative. (Prob. Code, § 1513.) This test claim does not seek reimbursement for the duties or appointment as guardian of a minor.

> There is no funding in the 2006 Budget Act for the activities required by this bill.[111]

The Commission finds the requirement to begin an investigation within two business days of receiving a referral for conservatorship is new.

The 2006 test claim statute also amended Probate Code section 2920(a) and (b), which now provides the following (new language reflected in underline):

> (a) If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interests of the person, then either of the following shall apply:
>
> (1) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if there is an imminent threat to the person's health or safety or the person's estate.
>
> (2) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate in all other cases.
>
> (b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. However, if prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator, the public guardian shall be relieved of the duty under the order. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

Section 2920(a)(1), as amended, now requires the public guardian to file a petition for appointment as guardian or conservator for the person, the estate, or the person or the estate in the following circumstances: the person is domiciled in the county and requires a guardian or conservator; there is no one else qualified and willing to act; the appointment as guardian or conservator would be in the best interests of the person; and there is an imminent threat to the

[111] Senate Floor Analysis, AB 1363 (2005-2006 Leg. Sess.), dated August 26, 2006.

person's health or safety or to the person's estate. In such cases, the public guardian is required to comply with the statutory process to draft and file a petition for appointment with the court, and the law and procedure for the civil trial on the petition, including a trial by jury if demanded by the proposed conservatee.[112] The public guardian has the burden of proof by clear and convincing evidence that a conservatorship is necessary and required. The requirements to file a petition for conservatorship and act as the petitioner at trial when there is no one else willing or qualified to act and there exists an imminent threat to the person's health and safety or to the person's estate, are new requirements imposed on the public guardian. Under prior law, the public guardian had the discretion to decide whether to file a petition in these circumstances.

The claimant also alleges that Probate Code section 2920(b), as amended in 2006, imposes a new requirement on county public guardians to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person, *when ordered by the court*. The Commission disagrees and finds that section 2920(b) does not impose new require counties to perform any activities. Probate Code section 2920, as it existed immediately before the 2006 amendment, gave the court the authority to require the public guardian to apply for appointment as guardian or conservator in the same circumstances. Before the 2006 amendment, section 2920 stated in relevant part the following:

> If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:
>
> [¶]
>
> (b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

The 2006 amendment, with the language that begins "the court shall order," now requires *the court* to order the public guardian to apply for appointment as guardian or conservator of the person, the estate, or the person and estate, on behalf of any person domiciled in the county who appears to require a guardian or conservator, if it appears that there is no one else who is qualified and willing to act, and if that appointment as guardian or conservator appears to be in the best interests of the person. The statute continues to provide, as it did under prior law, that

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[112] Probate Code 1820, et seq., 1827.

"the court shall not make an order under this subdivision except after notice to the public guardian …, consideration of the alternatives, and a determination by the court that the appointment is necessary." Thus, the findings of the court remain the same and the requirement for the public guardian to file a petition following the court's order is not new. Therefore, 2920(b), as amended in 2006 does not require public guardians to perform any new activities,

b) The downstream activities required by remaining code sections pled are triggered by the court's order appointing the public guardian.

The claimant contends that once the court approves a petition filed pursuant to Probate Code section 2920(a)(1) or (b), then the county is mandated by the state to comply with *all* activities and incur all costs imposed by Probate Code sections 1400 through 3925 to act as conservator or guardian of the person, the estate, or of the person and estate. The Commission disagrees with this position. Although the public guardian has fiduciary duties once appointed, all duties of the conservator are triggered by a court order and are not a mandate of the state.

Article XIII B, section 6 does not require reimbursement for activities or costs required by the courts. The plain language of section 6 requires state reimbursement whenever "the Legislature or any State agency" mandates a new program or higher level of service. That section was specifically designed to preclude the state from shifting financial responsibility for governmental functions to local agencies, which are ill-equipped to undertake increased financial responsibilities because they are subject to taxing and spending limitations under articles XIII A and XIII B.[113] In this regard, local revenues subject to the spending limit of article XIII B include "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes."[114] However, some local expenditures are specifically *excluded* from the spending limit, including "appropriations required to comply with mandates of the courts or the federal government, which without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."[115] There is no spending limit on costs incurred to comply with the mandates of the courts. Accordingly, it has been held that state subvention is not required when the expenditures are *not* subject to limitation.[116]

In this case, Probate Code section 2920 imposes requirements only for filing a petition for appointment and does not change the court's authority to appoint a guardian or conservator under existing law, or its authority and jurisdiction once the appointment has been ordered. Pursuant to Probate Code section 1812, the selection of a conservator of the person or estate, or both, is "solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be in the best interests of the proposed conservatee." Once the court has selected

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[113] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[114] Article XIII B, section 8(b); *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986-987.

[115] Article XIII B, section 9(b), defining appropriations that are "not" subject to limitation.

[116] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581.

the conservator, the court issues an order of appointment, which establishes the powers granted to and duties imposed on the conservator. The guardian or conservator has management and control of the estate "only to the extent specifically and expressly provided in the appointing court's order."[117] Where the court determines it appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit or expand the powers and duties of the conservator by order of the court.[118] The court may also insert in the order of appointment conditions for providing for the care, treatment, education, and welfare of the conservatee.[119] In addition, the court has the authority to include in the order modifications of the legal capacity of the conservatee by broadening or restricting the power of the conservatee, or by including limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate.[120] The court may also "insert in the order of appointment conditions not otherwise obligatory providing for the care and custody of the property of the ward or conservatee."[121]

After the initial order of appointment, the court "may authorize and instruct the guardian or conservator, or approve and confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith."[122] Requests to move the conservatee's residence out of state, sell the conservatee's residence, and requests to have certain medical procedures performed, are subject to the court's prior order and approval.[123]

While some actions of the conservator are authorized or required by statute without the need of a specific court order (including those related to filing and serving an inventory and appraisal of the assets 90 days after appointment, presenting an accounting of the assets of the estate to the court for settlement and allowance, and participating in the court's review of the conservatorship six months after appointment), these activities occur as a direct result of the court's order of appointment.[124]

The courts have made clear that the proper focus when determining if a state-mandated program exists is to look at the nature of the claimant's participation in the underlying program itself.[125]

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[117] Probate Code section 2401.

[118] Probate Code sections 1830, 2351, and 2590.

[119] Probate Code section 2358.

[120] Probate Code section 1873.

[121] Probate Code section 2402.

[122] Probate Code section 2403.

[123] Probate Code sections 2352, 2357, and 2591.5.

[124] See, for example, Probate Code 2450 et seq., 2610, and 2620.

[125] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 743.

Here, these activities are triggered by court order and not a mandate of the state. Appropriations required to comply with mandates of the courts are not eligible for reimbursement under article XIII B, section 6.

The claimant also contends that reimbursement is required for all new activities imposed by the test claim statutes following the appointment of the public guardian by the court based on the local discretionary decisions to file a petition for conservatorship pursuant to Probate Code section 2920(a)(2), or a petition to act as a temporary guardian or conservator pursuant to Probate Code section 2250. The Commission disagrees. As stated above, the downstream activities are triggered by an order of the court, and are based on the continuing jurisdiction of the court during the term of the conservatorship or guardianship. Moreover, these costs are further triggered by the local discretionary decisions of the public guardian's office to file a petition and start the legal process. Requirements triggered by local discretionary decisions are not mandated by the state.[126]

c) Probate Code sections 1850(a), 1851(a), 2410, 2590, 2591(a)-(q), 2623 (a)-(b), 2640 (a)-(c), 2640.1(a)-(c), 2641(a)-(b), and 2653(a)-(c) do not require local agencies to perform activities, but impose requirements on the courts, court investigators, and judicial council.

And, finally, claimant asserts that Probate Code section 1850(a), 1851(a), 2410, 2590, 2591(a)-(q), 2623 (a)-(b), 2640 (a)-(c), 2640.1(a)-(c), 2641(a)-(b), and 2653(a)-(c), require the public guardian to perform new activities or higher levels of service when serving as guardian or conservator pursuant to the Probate Code. However, these Probate Code sections, as amended by the test claim statutes, do not apply to the public guardian. Rather, they require courts, court investigators, and the judicial council perform the following activities:

- Probate code section 1850(a) requires that the *court* review each conservatorship at set time periods. Probate Code section 1850(a), as amended by the OCRA[127]: (1) requires that the *court investigator* visit the conservatee six months after the initial appointment of the conservator, conduct an investigation regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interest of the conservatee; (2) permits the *court*, upon its own motion or upon the request of any interested person, to order a review of the conservatorship; (3) permits the *court* to order an accounting pursuant to Probate Code section 2620; and (4) permits the *court* to set a timeline for subsequent review of the conservatorship.[128]
- Probate code section 1851(a) establishes how *court investigators* shall conduct investigations ordered pursuant to Probate Code 1850. Probate Code section 1851(a), as

[126] *Ibid.*

[127] Statutes 2006, chapters 492 (S.B. No. 1716) and 493 (A.B. No. 1363) enacted alternate versions of Probate Code sections 1850 and 1851. As A.B No. 1363 was chaptered after S.B. Bill No. 1716, the amendments codified by Statutes 2006, chapters 493, section 11.5 and 12.5 (A.B. No. 1363) are operative. See Government Code section 9605.

[128] Probate Code section 1850 (Stats. 2006, chapter 493 § 11.5)

amended by the OCRA, requires that "[u]pon request of the investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship."[129]

- Probate Code section 2410, as added by the OCRA, requires the *judicial council* to adopt a rule of court that establishes uniform standards of conduct for actions that conservators and guardians may take on behalf of conservatees and wards to ensure that their estates are maintained and conserved and to prevent loss or harm to conservatees and wards.[130]
- Probate Code section 2590, as last amended before the 2006 test claim statutes, allows the *court* to grant guardians and conservators the powers listed in section 2591. The OCRA made minor non-substantive changes to section 2590.[131]
- Probate Code section 2591(a)-(q) contains the list of powers the *court* may grant to guardians and conservators pursuant to Probate Code section 2590. The OCRA amended section 2591(d) to distinguish between the sale of generic real or personal property and sale of a conservatee's personal residence. The amendment of section 2591 also makes the power to sell the private residence of the conservatee subject to the requirements of new Probate Code Section 2591.5 and Probate Code Sections 2352.5 and 2541.[132]
- Probate Code sections 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), and 2641(a)-(b), as last amended before the 2006 test claim statutes, allow guardians and conservators to recover certain costs, expenses, and compensation for services rendered. Probate code sections 2623(a)-(b), 2640(a)-(c), 2640.1(a)-(c), and 2641(a)-(b), as amended by the OCRA, prohibit guardians and conservators and guardians from recovering costs, expenses, and compensation for services rendered unless the *court* determines that the services were in the best interest of the ward or conservatee.[133]
- Probate Code section 2653(a)-(c), as last amended before the 2006 test claim statutes, allows the *court* to remove guardians and conservators, revoke the letters of guardianship or conservatorship, and order the guardian or conservator to file and accounting. Probate Code section 2653, as amended by the OCRA: (1) allows the court to award the party that has petitioned to remove a guardian or conservator to recover costs and attorney's fees; and (2) prohibits guardians and conservators from deducting from, or charging to, the estate his or her cost of litigation.[134]

d) New requirements imposed by the test claim statutes on the county public guardian

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[129] Probate Code section 1850 (Stats. 2006, chapter 493 § 12.5)

[130] Probate Code section 2410 (Stats. 2006, chapter 493 § 22).

[131] Probate Code section 2590 (Stats. 2006, chapter 490 § 5).

[132] Probate Code section 2591 (Stats. 2006, chapter 490 § 6).

[133] Probate Code sections 2623, 2640, 2640.1, and 2641 (Stats. 2006, chapter 493 §§ 26-29).

[134] Probate Code section 2653 (Stats. 2006, chapter 493 § 30).

Based on the above analysis, the Commission finds that only the following requirements are new and are imposed on the county public guardian:

- Comply with the continuing education requirements established by the California State Association of Public Administrators, Public Guardians, and Public Conservators on or before January 1, 2008. (Prob. Code, § 2923.)
- Begin an investigation within two business days of receiving a referral for conservatorship or guardianship. (Prob. Code, § 2920(c).)
- File a petition for appointment as guardian or conservator for the person, the estate, or the person or the estate in the following circumstances: the person is domiciled in the county and requires a guardian or conservator; there is no one else qualified and willing to act; the appointment as guardian or conservator would be in the best interests of the person; and there is an imminent threat to the person's health or safety or to the person's estate. (Prob. Code, § 2920(a)(1).)

2. **The new requirements imposed upon the public guardian by the test claim statutes are not mandated by the state, since they are triggered by the counties' decision to establish the office of public guardian.**

The new requirements imposed on the public guardian are not mandated by the state. Government Code section 27430 authorizes the county to create and terminate the office of the public guardian as follows:

> (a) In any county the board of supervisors <u>may</u> by ordinance create the office of the public guardian and subordinate position which may be necessary and fix compensation therefor.
>
> (b) The board of supervisors <u>may</u> by ordinance terminate the office of public guardian.[135] [Emphasis Added.]

Pursuant to Government Code section 14, which states that "may is permissive," the plain language of Government Code section 27420 must be interpreted as authorizing the county to create the office of the public guardian and terminate the office of the public guardian at any time.[136] As stated the California Supreme Court, the creation of the office of public guardian is permissive:

> The provisions relating to the office of public guardian are contained in Article 9, Ch. 1, part 1, Div. 6, sections 5175-5189, added to the Welfare and Institutions Code in 1945. Stats. 1945, ch. 907. Section 5175 permitted the board of supervisors of Los Angeles county to 'create the office of public guardian and such subordinate positions as may be necessary and fix compensation therefor', and to make the necessary appointments. The use of the word 'create' does not constitute the provision an unlawful delegation of the power vested in the

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[135] Government Code Section 27430 (Stats. 1988, ch. 1199, § 17).

[136] See also *Martello v. Superior Court of Los Angeles* (1927) 200 Cal. 400, 408 (holding that a sovereign power may abolish any office that it creates).

> legislature by Article XI, section 5, of the State Constitution. *The effect of the legislative language is to create the office of public guardian with permissive utilization thereof in accordance with the Code provisions depending on subsequent local action*. There are familiar instances of the creation of offices by the state legislature with permissive establishment thereof depending on future action of the local political entity… The legislative choice of language in describing the local action is merely fortuitous. The effect of the board's ordinance was to exercise the right to establish the office of public guardian created by the legislature in adding the pertinent sections to the Welfare and Institutions Code.[137]

Thus, there is no requirement in state law forcing counties to create the office of public guardian. That decision is a local discretionary decision based on the county's *parens patriae* power "to protect incompetent persons."[138] Like the police powers held by local government, local legislative bodies have broad discretion in the exercise of these powers, both in determining what the interests of the public require and what measures are reasonably necessary for the protection of those interests.[139]

The courts have held in similar cases that reimbursement is not required in these circumstances. In *City of Merced v. State of California*, the city argued that it was subject to a reimbursable mandate when required by statute to compensate a business owner for the loss of business goodwill pursuant to exercising the power of eminent domain to take the underlying property. The court of appeal concluded that the underlying exercise of the eminent domain power was a discretionary act, and that therefore no downstream activities required by statute were mandated by the state.[140]

In accord is *Department of Finance v. Commission on State Mandates* (*Kern*), in which a state statute required districts maintaining school site councils to comply with the state's open meetings laws, including preparing and posting an agenda in advance, and keeping council meetings open to the public. The court recognized that the notice and hearing requirements could be found to generate activities not previously required, but there was no mandate under the law to establish a school site council in the first instance, and therefore the activities and costs claimed were not mandated by the state. The California Supreme Court reaffirmed *City of Merced*, and held that where activities alleged to constitute a mandate are conditional upon participation in another or an underlying voluntary or discretionary program, or upon the taking of discretionary action, there can be no finding of a state-mandate program.[141]

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[137] *Brown v. Overshiner* (1952) 38 Cal.2d 432, 435 (emphasis added; internal citations omitted).

[138] *Conservatorship of Wendland*, *supra,* 26 Cal.4th 519, 535, where the California Supreme Court stated that "decisions made by conservators typically derive their authority from a different basis—the *parens patriae* power of the state to protect incompetent persons."

[139] *Saunders v. City of Los Angeles* (1969) 272 Cal.App.2d 407, 412.

[140] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777.

[141] *Department of Finance v. Commission on State Mandates* (*Kern*) (2003) 30 Cal.4th 727, 743.

More recently, the court in *Department of Finance v. Commission on State Mandates* held that school districts that choose to employ peace officers and have a school police department are not mandated by the state to comply with the requirements of the Peace Officer Procedural Bill of Rights Act (POBRA).[142] Consistent with the prior decisions of the court, the court stated that "[t]he result of the cases discussed above is that, if a local government participates 'voluntarily,' i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement."[143] The court further held that the Legislature's recognition of the need for local governmental entities to employ peace officers when necessary to carry out their basic functions did *not* persuasively supported a claim of practical compulsion. The "necessity" that is required is facing "certain and severe penalties such as double taxation or other draconian consequences," based on concrete evidence in the record.[144] "Instinct is insufficient to support a legal conclusion" of a state-mandated program.[145]

The discretion to create the office of the public guardian is a policy decision of the county and is not mandated by the state.

Accordingly, the Commission finds that the test claim statutes do not impose a state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution.

V. Conclusion

Based on the foregoing, the Commission concludes that Probate Code sections 1850(a), 1851(a), 2113, 2250(a)-(c), 2250.4(a)-(d), 2352(a)-(f), 2410, 2540(a)-(b), 2543(a)-(d), 2610(a); 2620 (a)-(e), 2620.2(a)-(d), 2590, 2591(a)-(q), 2591.5 (a)-(d), 2623 (a)-(b), 2640 (a)-(c), 2640.1(a)-(c), 2641(a)-(b), 2653(a)-(c), 2920(a)-(c), and 2923, as added and amended by Statutes 2006, chapters 490, 492, and 493 do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

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[142] *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1357.

[143] *Id.* at pp. 1365-1366.

[144] *Id*. at p. 1367.

[145] *Id.* at p. 1369, concurring opinion by Justice Blease and Presiding Justice Scotland.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

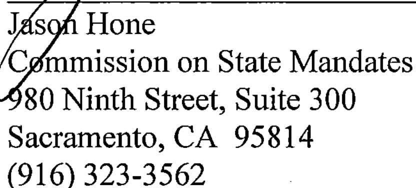
I am a resident of the County of Yolo and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 11, 2013, I served the:

> **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**
> *Public Guardianship Omnibus Conservatorship Reform*, 07-TC-05
> Probate Code Sections 1850 et al.
> County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 11, 2013 at Sacramento, California.



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Original List Date:
Last Updated: 10/11/2013
List Print Date: 10/11/2013
Claim Number: 07-TC-05
Issue: Public Guardianship Omnibus Conservatorship Reform

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Exhibit H

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FINANCE

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Received
October 25, 2013
Commission on
State Mandates

October 25, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Draft Staff Analysis and proposed Statement of Decision for test claim Public Guardianship Omnibus Conservatorship Reform, 07-TC-05

Dear Ms. Halsey:

The Department of Finance (Finance) has reviewed the Draft Staff Analysis and Proposed Statement of Decision for the test claim entitled Public Guardianship Omnibus Conservatorship Reform, 07-TC-05. Staff has recommended to the Commission that this claim be denied because the activities that form the basis of the test claim are either not required of local government because they are borne out of the local agency's discretionary decision to create an office of public guardian or are triggered by a court order. The Department of Finance concurs with the staff recommendation.

Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents that are e-filed with the Commission on State Mandates need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Michael Byrne, Principal Program Budget Analyst at (916) 445-3274.

Sincerely,

for
TOM DYER
Assistant Program Budget Manager

Enclosure

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. ▪ GOVERNOR

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Enclosure A

DECLARATION OF MICHAEL BYRNE
DEPARTMENT OF FINANCE
CLAIM NO. CSM-07-TC-05

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

10/25/2013
at Sacramento, CA

Michael Byrne

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 28, 2013, I served the:

> **DOF Comments;**
> **Claimant Request for Extension and Postponement; and**
> **Notice of Approval of Requests for Extension and Postponement**
> *Public Guardianship Omnibus Conservatorship Reform*, 07-TC-05
> Probate Code Sections 1850 et al.
> County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 28, 2013 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

Original List Date:
Last Updated: 10/28/2013
List Print Date: 10/28/2013
Claim Number: 07-TC-05
Issue: Public Guardianship Omnibus Conservatorship Reform

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

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BILL ANALYSIS

ASSEMBLY THIRD READING
AB 1363 (Jones)
As Amended January 24, 2006
Majority vote

JUDICIARY	6-0		APPROPRIATIONS	13-5
Ayes:	Jones, Evans, Laird, Levine, Lieber, Montanez		Ayes:	Chu, Bass, Berg, Calderon, De La Torre, Karnette, Klehs, Leno, Nation, Oropeza, Jones, Saldana, Yee
			Nays:	Sharon Runner, Emmerson, Haynes, Nakanishi, Walters

SUMMARY : Establishes the Omnibus Conservatorship and Guardianship Reform Act of 2006 to overhaul California's conservatorship and guardianship system. Specifically, among other things, this bill :

1) Creates a regulatory scheme for professional conservators and guardians, as defined within the Department of Consumer Affairs (DCA), and provides that no person may serve as a professional conservator or guardian without being licensed by the board. Specifies that applicants to become professional conservators and guardians must first meet certain requirements, including educational and training requirements, and passing a licensing examination. Requires a complaint committee to review complaints against professional conservators or guardians and, if appropriate, to impose sanctions, as specified, or refer the matter to the Attorney General for prosecution.

2) Limits the waiving of notice before appointment of a temporary conservator or guardian, and limits the duties of a temporary conservator, as specified.

3) Requires the probate court to review conservatorships at a

noticed hearing six months after appointment of the conservator and annually thereafter.

4) Requires conservators and guardians to submit accountings to the court six months after appointment and annually thereafter. Requires accountings to include all supporting documentation and to be subject to full audit.

5) Requires the Judicial Council to develop qualifications and continuing education requirements for probate court judges, attorneys and court investigators; to establish uniform standards for conservatorships and guardians; and to develop conservatorship accountability measures, as specified, for use by each court.

6) Prevents conservators or guardians from receiving costs or fees for unsuccessfully opposing a petition or other action on behalf of the conservatee or ward, without good cause.

7) Removes professional conservators and guardians from the Statewide Registry and from the local court registries, and transfers responsibility for the Statewide Registry from the Department of Justice to DCA.

8) Requires the public guardian to apply for appointment as conservator or guardian in specified cases and requires the Judicial Council to develop specific criteria for making such

determination. Permits the public guardian to apply for appointment in cases where the proposed conservatee or ward has assets below a specified level.

9) Establishes a Conservatorship Ombudsman (Ombudsman) within the Department of Aging, charged with investigating and resolving complaints made by or on behalf of conservatees.

FISCAL EFFECT : According to the Assembly Appropriations analysis:

1) Licensing: DCA anticipates initial and ongoing costs of around $600,000 for staff to administer the licensing, examination, and enforcement program. Based on the current number of conservators and/or guardians in the statewide registry (about 800) annual license fees would be about $750. There would also additional, one-time information technology

costs, so initial fees would be somewhat higher.

2) Courts-increased conservatorship reviews: By requiring annual instead of biennial court review of conservatorships and accounting statements, the bill will double the court's current workload for these functions. The Judicial Council, based on an active statewide caseload of 33,000 (16,500 additional court reviews annually), estimates ongoing General Fund (GF) costs of about $9 million. It is not known to what extent this additional workload could be accommodated within existing court resources. (The proposed 2006-07 Budget for the trial courts is about $3 billion.)

3) Other ongoing court costs: The Judicial Council has identified but not yet quantified additional costs to perform investigations prior to appointment of a conservator, provide assistance to non-professional conservators, interview family members of proposed conservatees, and audit of accounting statements. These functions could cost several million dollars annually.

4) One-time court costs: The Judicial Council is required to develop qualifications and continuing education requirements for probate court personnel, establish uniform standards for conservatorships and guardianships, develop accountability measures, develop an educational program for non-professionals, and develop criteria for appointment of public guardians. Costs for these tasks will mostly be absorbable, with the possible exception of additional costs for consulting contracts.

5) Public guardians: The requirements for public guardians to apply for conservatorships and guardianships in some cases and to visit each proposed conservatee or ward within 48 hours could increase their costs statewide by up to several million dollars. (Los Angeles County estimates a 50% workload increase at a cost of around $1.8 million annually.) These additional costs would be offset to some extent by revenues received from the guardians taking cases involving larger assets.

6) Ombudsperson: Ongoing GF costs of around $225,000 for the ombudsperson and two part-time support positions.

COMMENTS : This bill, the Omnibus Conservatorship and Guardianship Reform Act of 2006, is sponsored by Bet Tzedeck Legal Services, California Alliance for Retired Americans and the Older Women's League. It arise out of an in-depth investigatory series published this past November by the Los Angeles Times and a joint hearing held by the Assembly and

Senate Judiciary Committees on this issue. "Guardians for Profit," as that series was called, dramatically exposed the failings of California's conservatorship system for elderly and dependent adults. (Robin Fields, Evelyn Larrubia, and Jack Leonard, Guardians for Profit series, Los Angeles Times , November 13-17, 2005.) The Times' articles included stories of private conservators who misuse the system and get themselves appointed inappropriately and then either steal or mismanage the money their conservatees spent a lifetime earning; public guardians who do not have the resources to help truly needy individuals, leaving them - poor, alone and at risk of severe harm - to try and fend for themselves; probate courts which do not have sufficient resources to provide adequate oversight to catch the abuses; and a system that provides no place for those in need to turn to for help. The Times editorial which ran at the end of the series, called on both the courts and elected officials to "turn this abusive system into the honest guardianship it was meant to be." (Deserving of Care, Los Angeles Times , November 17, 2005.)

In response to the series, the Assembly and Senate Judiciary Committees convened an oversight hearing in this past December and heard from both individuals who had been personally harmed by the system as well as representatives from the courts, the bar, court investigators, the public guardian, professional conservators, and groups representing seniors. All participants, without exception, agreed that the system was significantly underperforming and, as a result, harming conservatees and their loved ones. In addition, the witnesses agreed that the problems were only likely to increase exponentially as the baby boom population ages, with a significant increase in the population suffering from Alzheimer's disease or similarly disabling diseases.

It is estimated that professional conservators oversee $1.5 billion in assets for at least 4,600 adults. Most conservators are non-professionals, almost always family members. According to the Judicial Council, approximately 5,500 new conservatorship

cases are filed annually in the courts in California, representing a little more than 10 percent of total probate cases. Judicial Council estimates that conservatorships last on average approximately 6 to 8 years, which implies that there are 33,000 to 44,000 active conservatorship cases statewide.

This bill seeks to address the detailed abuses in the conservatorship and guardianship system by making a number of significant reforms:

First, this bill would require that professional conservators and guardians, with specified exemptions, be licensed and regulated through DCA. Currently, professionals are only required to register with the Statewide Registry and the local court registries, and, for new conservators only, to satisfy specified education and training requirements.

This bill would also significantly increase court oversight to prevent abuse. First, it would require specified training for probate court judges, attorneys, and investigators, as well as the public guardian. Second, this bill would require courts to review conservatorships cases more frequently. Conservators would be required to file accountings for each review period, with all supporting documentation attached, and such accountings would be subject to full audit by the court. Requirements for appointment of temporary conservators and guardians would be tightened. The Judicial Council would be directed to establish uniform standards for conduct of conservators and guardians to ensure that the estates of conservatees and wards are maintained and conserved as appropriate, including uniform standards for fees and for asset management.

This bill Harman, Haynes, Houston also seeks to help family members and friends who would like to serve as conservators or guardians, but need a little assistance with the court process. The Judicial Council would be directed to develop self-help informational materials for non-professional conservators and guardians. Courts would also be required to provide free assistance to non-professionals in completing court forms.

In response to numerous instances when the Public Guardian has

been unable, due to lack of resources, to take the cases of those without resources who desperately need conservators or guardians, leaving them with no other assistance, this bill

would direct the Public Guardian to take such cases, under uniform standards to be developed by the Judicial Council.

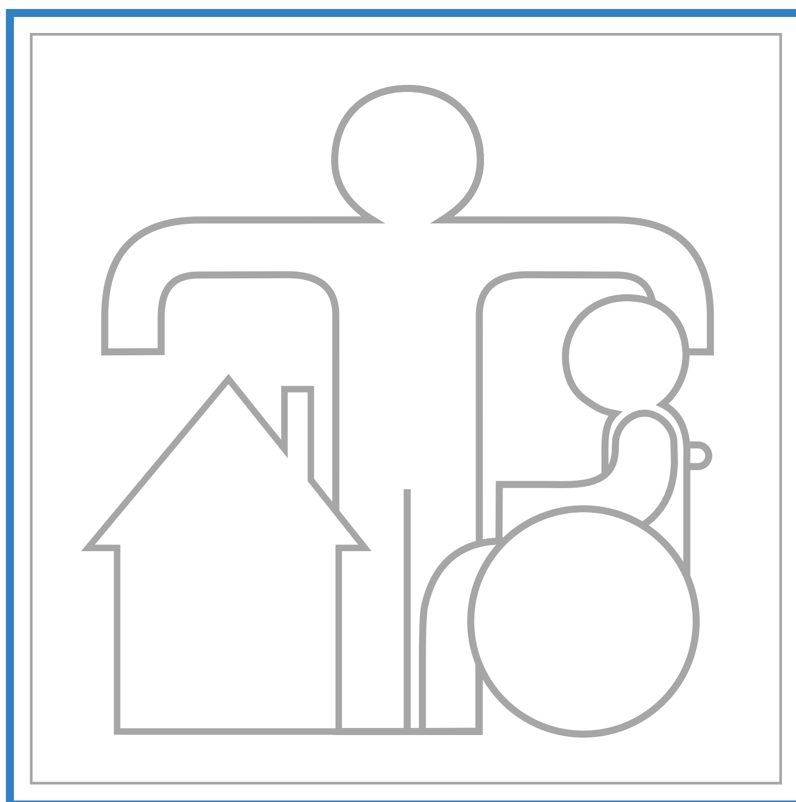
One of the issues raised repeatedly by experts is that the conservatorship system is effectively a closed system that has, in many cases, allowed abuse to go undetected for too long. Conservatees, family and friends have repeatedly said they had no place to turn to when the system failed them or their loved ones. In order to ensure there is a check on the system, this bill would establish a Conservatorship Ombudsman within the Department of Aging. The Conservatorship Ombudsman would be charged with investigating and resolving complaints made by, or on behalf of, conservatees.

Analysis Prepared by : Leora Gershenzon / JUD. / (916) 319-2334

FN: 0013655

2002 Revised Edition

Handbook for Conservators



Judicial Council of California

HANDBOOK FOR CONSERVATORS

2002 Revised Edition

Published by

JUDICIAL COUNCIL OF CALIFORNIA

Chief Justice Ronald M. George, Chair

Prepared by

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Hon. Stephen D. Cunnison, Chair

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The Judicial Council has developed this handbook for statewide use by private conservators under Probate Code sections 1834–1835. The points of view, concepts, and practices expressed in this handbook do not necessarily represent the official position of the Judicial Council or its members.

This handbook is based on information available as of July 2002. Although the handbook is updated periodically, it is not possible to reprint it every time California conservatorship laws change. You should, therefore, consult your lawyer before you make important decisions as a conservator.

If you have suggestions or comments regarding this handbook, please write to the Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, CA 94102-3660.

To order copies of this book, see page vi. The text is also available on the California Courts Web site: *www.courtinfo.ca.gov*

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4

CONSERVATOR OF THE PERSON

Caring for the Conservatee's Personal Needs

As a **conservator of the person,** you are responsible for making sure that the conservatee's physical health, food, clothing, shelter, safety, comfort, recreation, and social needs are met. Your goal is to provide the best quality of life possible for the conservatee. You must treat the conservatee with respect, making choices that encourage this person's self-esteem and dignity.

Special Note for Limited Conservators

If you are a conservator of the person in a **limited conservatorship,** the order appointing you and your Letters of Conservatorship will specify those areas you are allowed to manage.

Read Chapter 3 on limited conservatorships and then look through this chapter to read about the particular areas you are authorized to handle.

SUMMARY OF TIMELINE AND RESPONSIBILITIES FOR A CONSERVATOR OF THE PERSON

Step 1 You are appointed and qualify as conservator of the person.

Step 2 Obtain your Letters of Conservatorship and use certified copies of these Letters to notify the conservatee's doctors, health insurers, and other interested parties that you are authorized to act on the conservatee's behalf.

Step 3 Figure out what help the conservatee needs and draw up a plan for meeting those needs (your plan of conservatorship). Your court may require you to file this plan or a status report concerning the conservatee's present condition and circumstances. Check with your lawyer to see what requirements your court has. **L**

Step 4 Take care of the conservatee's urgent needs.

Step 5 Arrange for the conservatee's

- Living situation
- Health care
- Meals
- Clothing
- Personal care
- Housekeeping
- Transportation
- Recreation

Step 6 You will serve as conservator until a judge officially releases you from your duties. This may happen if you resign and the court accepts your resignation, the conservatee dies, a judge replaces you with a new conservator, or a judge decides the conservatee doesn't need a conservator any longer.

1. Getting Started

Once you have been appointed conservator of a person, you will need to take certain steps to qualify to serve and obtain your **Letters of Conservatorship** authorizing you to act as conservator. Next, you should give **certified copies** of your Letters to the conservatee's doctor, dentist, and other key people to let them know that you are handling the conservatee's personal affairs. Then you should evaluate the conservatee's abilities and needs and develop a plan for meeting your responsibilities on an ongoing basis. If you are represented by a lawyer, you should discuss all of the tasks involved and decide who will be responsible for each. L

A. Qualifying to Serve as Conservator of the Person

Once you have been appointed as either limited or **general conservator** of a person, you must qualify by

- Signing an acknowledgment that you received a statement of the duties and liabilities of the office of conservator, and also that you received a copy of this handbook. (This acknowledgment is on the official statement of a conservator's duties and liabilities, **Judicial Council** form GC-348, entitled ***Duties of Conservator and Acknowledgment of Receipt of Handbook***. A copy of this form is included in Appendix F, at the back of this handbook.)

- Signing an oath, also called an affirmation, that you will perform your duties as conservator according to law. (This affirmation is on Judicial Council form GC-350, ***Letters of Conservatorship.***)

- Satisfying any other requirements that your local probate court may have.

See Chapter 1, Section 6, concerning the duties of a spouse or domestic partner of a conservatee when there are possible changes in the conservatee's marital or domestic partnership status.

B. Obtaining and Using Letters of Conservatorship

When you have qualified, you must obtain your Letters of Conservatorship from the court clerk's office. The Letters authorize you to act as conservator and are proof to others of your authority.

You will often need certified copies of your Letters to prove that you are authorized to act on behalf of the conservatee. For example, doctors, hospitals, health insurance companies, and nursing homes may not honor your requests on the conservatee's behalf until they have seen certified copies of your Letters.

See Chapter 1, Section 3, for more information about qualifying, Letters of Conservatorship, and obtaining certified copies of your Letters.

C. Assessing the Conservatee's Needs

Helping the conservatee stay self-reliant and active requires different forms of assistance for every individual. The conservatee's emotional and physical needs must be taken into account. Even if you've been close to the person you are going to help, now that you are conservator, take a fresh look at his or her needs and find out what services are available to meet them.

Chapter 6 includes a worksheet to help you assess the conservatee's needs. You also may want to have a professional assist you; check with the social work department of your local hospital, a **regional center,** or the **court investigator** to get a referral to a community-based agency that provides **assessment** services. If there is a fee for this assessment service, the court may allow estate funds to be used to reimburse you for the cost. L

D. Working with the Conservator of the Estate

You need to find out what financial resources are available for taking care of the conservatee. If someone else, such as a **conservator of the estate** or a **trustee,** is handling the conservatee's property, the two of you must work together. Talk with this person to be sure you make arrangements for care that the conservatee can afford. This is important because you may have to pay out of your own pocket for expenditures that were not approved by the person who handles the conservatee's finances.

E. Working with the Conservatee

Help the conservatee do as much as possible for himself or herself, and let the conservatee have as much independence as he or she can handle. You should involve the conservatee as much as possible in your decisions. Even seriously impaired people can choose the color of their clothing or a type of hand lotion, for example. When you must decide for the conservatee, try to make choices that respect the conservatee's stated preferences, personal independence, dignity, and lifestyle.

Remember, though, that in the end, you are the decision maker, and the court will hold you responsible.

F. Developing Your Plan of Conservatorship

Chapter 6, Section 1, of this handbook explains how you can prepare a plan for the care of your conservatee and the value of such a plan. Whether you are conservator of the person, conservator of the estate, or both, the plan will be extremely useful in helping you identify the conservatee's needs and keep track of all your duties. Some courts require conservators in all cases to prepare formal written plans and to **file** them with the court, and all courts may direct preparation and filing of formal plans in some cases. For example, a court may order a formal plan when the judge believes that the conservatee's estate will be sufficient to support him for the rest of his life only if the conservator makes specific plans to meet that goal. Whether or not the court directs you to prepare and file a formal **conservatorship plan,** it is recommended that you prepare and maintain one for your own use, at least informally. Speak with your lawyer about your court's specific requirements. **L**

It is also a very good idea to review and adjust your plan periodically, particularly if you are conservator of the estate as well as conservator of the person. Periodic review and adjustment is useful because changing financial conditions or other unexpected events can affect the estate. A conservatee's daily needs are also likely to change over time. For more information, read Chapter 6, Section 2.

G. Keeping the Court Informed of Address Changes

If the conservatee's residence address or telephone number changes after your appointment, you must promptly notify the court of the change by completing and delivering to the court, in person or by mail, a form notice of the change. A sample of this form is included in Appendix F, at the back of this handbook. It is Judicial Council form GC-080, called ***Change of Residence Notice.***

Your lawyer will have, or can get, copies of the change-of-address form. Your lawyer will prepare it and will arrange for its delivery to the court, so you must be sure your lawyer is informed before the conservatee's residence address or telephone number is changed. L

If you don't have a lawyer, you can get copies of the form from the court, or you can get them from the other sources described in Appendix F. Your court may impose a time limit for you to give the information to the court. The Superior Court of Los Angeles County, for example, requires that it be supplied within 30 days of the date of the change.

You must notify the court of any change in your address or telephone number if you are representing yourself. Your court may also require that you provide this information even if you are represented by a lawyer, or it may require that you provide current statements of your address and telephone number, and those of the conservatee, with every **accounting**, even if the information has not changed. The court may have a local form for this purpose. If not, you may provide the information by letter. Even if it is not a requirement of your court, it is a good idea to advise the court of any changes in your address and telephone number. Advise the court investigator as well.

Include the conservatorship case name and the court's case number in any letter you send to the court. Address your letter to the clerk of the court, not to the judge. If you are in a large county, address it to the probate clerk. Send it to the address of the court where your appointment hearing was held. Send a copy of your correspondence to the court investigator's office. That office will usually be in the same location as the court, but you should check to make sure.

2. Deciding Where the Conservatee Will Live

One of your most important duties as conservator of a person is to decide where the conservatee should live, unless the judge has told you that you may not move the conservatee to a new home. A conservatee must remain in California unless a judge says otherwise.

It's usually best for the conservatee to stay in his or her home if help and equipment are available and affordable to make the residence safe and comfortable. But wherever the conservatee lives, you are responsible for seeing that the home is safe and comfortable and allows the conservatee as much independence as possible.

A. Arranging for the Least Restrictive, Appropriate Home Setting

When you are deciding where the conservatee will live, remember that California law requires you to choose the “least restrictive, appropriate” home available that is in the conservatee’s best interests and meets his or her needs.

To find the least restrictive, appropriate living situation, choose a place that offers the services that the conservatee needs to live as independently as possible. In some cases, the conservatee’s home may be the least restrictive, appropriate setting with help from an **aide** and the use of community services. The conservatee may have more freedom and feel less threatened at home than in any other setting. However, you should also consider whether the conservatee has enough contact with other people and receives enough mental stimulation at home.

On the other hand, consider a frail conservatee who can walk but wanders and could be hurt by a fall. In a care facility that has adequate staff and a safe environment, this person can enjoy the freedom to walk around.

If the conservatee suffers from **dementia,** a form of mental impairment of which Alzheimer’s disease is an example, you may have to move him or her to a special kind of care facility, known as a **secured-perimeter residential care facility**. This is a care facility that specializes in the care and treatment of people with dementia. It is designed to prevent patients from wandering off the premises while impaired. If you want to arrange for this kind of placement, you must first ask the court for its permission, after a hearing for which the court must appoint a lawyer for the conservatee. If you have been advised or believe that the conservatee may be suffering from dementia, you should talk to your lawyer before you make any placement decision. L

In deciding where the conservatee should live, consider the conservatee’s finances, desires, tastes, lifestyle, care or personal assistance needs, and medical condition. Most people prefer to stay in their own homes rather than move into a care facility, but individual preferences vary. Determine where and how the conservatee would like to live, and see if those wishes make sense in view of the conservatee’s needs and finances. Remember to check with the person who handles the conservatee’s finances to find out what the conservatee can afford.

WAYS TO HELP THE CONSERVATEE LIVE AT HOME AS INDEPENDENTLY AS POSSIBLE

- If the conservatee owns his or her home, there are ways to borrow against it to pay for extra help needed to keep the conservatee at home. There also are ways to sell the home and allow the conservatee to live there as a tenant. Chapter 5, Section 7(G), explains these alternatives.

- Hire part-time or full-time in-home aides to prepare meals, do laundry, help the conservatee take medicine, and perform other personal-care tasks.

- Make changes to the building such as replacing stairs with ramps or widening doorways to accommodate a wheelchair, walker, or hospital bed. You may have to move the conservatee temporarily during major cleaning or repairs.

- Have the conservatee's home and yard thoroughly cleaned, to get rid of debris and unsanitary conditions.

- Remove fire hazards and buy fire extinguishers and smoke detectors.

- Have the locks changed or a security system installed, or both.

- Contact the gas, electricity, water, garbage, and telephone companies to continue service.

- If the conservatee is a renter, ask the landlord to make needed repairs.

- Ask nearby family members, friends, and neighbors to look in on the conservatee and help with shopping or take the conservatee to medical and dental appointments or on recreational outings. You might offer to pay their reasonable out-of-pocket expenses.

B. Moving the Conservatee to a Care Facility

The time may come when it is necessary because of physical or financial limitations to move a conservatee from his or her own home. This is a drastic step and should not be taken simply for the convenience of others. The decision must be based on the conservatee's needs, preferences, and best interests. Avoid making last-minute decisions by thinking through this possibility in advance.

If you decide that the conservatee can no longer live at home, it is your responsibility to find the most appropriate living situation. To help you decide, do the following:

- Work with the conservator of the estate to figure out how much the conservatee can afford to pay for care, housing, and other living expenses.

- Speak with the conservatee and his or her doctors and relatives to decide what kinds of help the conservatee needs each day. You also might consult an agency that can help with this assessment.

- Decide what type of facility can best take care of the needs you have identified.

- Contact a senior center or the local long-term care **ombudsman** program of the California Department of Aging for recommendations (see Appendix B, "How to Find and Use Community Resources," at the back of this handbook).

- Visit the recommended care facilities and use the "Checklist for Selecting a Care Facility," later in this chapter.

The more care a facility offers, the more it costs to live there. For example, skilled-nursing facilities are much more expensive than board-and-care homes.

TYPES OF CARE FACILITIES

➤ ***Board-and-care facilities*** provide a room, maid service, and meals. Sometimes they offer recreational opportunities or transportation assistance.

➤ ***Intermediate-care facilities*** provide a room; meals and mealtime assistance; and help with dressing, bathing, grooming, and other personal hygiene and with medication management and other personal-care needs. Nursing care is available every day, but not around the clock.

➤ ***Skilled-nursing facilities*** provide the services of an intermediate-care facility plus physical and occupational therapy and 24-hour-a-day nursing care, supervised by a doctor.

➤ ***Secured-perimeter*** or locked facilities provide the same types of services as board-and-care, intermediate-care, and skilled-nursing facilities, with the addition of a security system that prevents residents from leaving the facility. **Secured-perimeter facilities** are designed for people with dementia who

otherwise might wander off the grounds and become lost while confused. The security systems range from simple locked doors or gates to a complex alarm system. These facilities can be chosen only when the conservatee needs this safety precaution and only when the court has given the conservator specific authority to place the conservatee in this type of facility.

- ***Continuing-care retirement communities,*** sometimes called life-care communities, offer a variety of living situations and levels of care. The community may have independent apartments or cottages with kitchens as well as a skilled-nursing facility. There may be a dining room to serve residents in the independent-living units, or meals may be delivered to residents. The community may offer maid service and other assisted-living services.

Care facilities must be licensed by appropriate state agencies. A license means that the facility meets minimum safety standards. Licensing inspectors visit the facility each year, and they respond to complaints about the care facility. If you choose a care facility, be sure it's licensed.

The California Department of Social Services licenses board-and-care homes. The California Department of Health Services licenses intermediate-care and skilled-nursing facilities.

The Continuing Care Contracts Program of the California Department of Social Services also must certify a continuing-care facility whenever it promises to provide **life care** (usually personal care and health care) for more than one year in exchange for an entrance fee, monthly fees, or both. Check with this office before signing up with a continuing-care facility, to make sure the facility is certified. It is very important to check the facility's financial stability, to make sure it is financially strong enough to stay in operation long enough to fulfill its long-term promises.

For telephone numbers and other information regarding licensing and certification agencies for care facilities, see Appendix B, "How to Find and Use Community Resources," at the back of this handbook.

With respect to care facilities, remember:

- As with any change of the conservatee's residence address or telephone number, when you move the conservatee to a care facility for the first time, or when you move him or her to a different care facility, you must complete and deliver to the court Judicial Council form GC-080, ***Change of Residence Notice,*** referred to in Section 1(G).

- You may not move the conservatee to a facility outside California without first getting a judge's approval. The petition you must file for this approval is Judicial Council form GC-085, ***Petition to Fix Residence Outside the State of California.*** The court's order approving the move is prepared on Judicial Council form GC-090, ***Order Fixing Residence Outside the State of California.*** Blank copies of both forms are included in Appendix F, at the back of this handbook.

- You need a judge's approval before you may sell the conservatee's home or former home. This is in addition to the court's involvement in the sale process itself. See Chapter 5 for more information about selling a conservatee's property.

CHECKLIST FOR SELECTING A CARE FACILITY

If you decide that the most appropriate, least restrictive setting for the conservatee is a care facility, visit recommended facilities to decide which one to choose. The following questions will help you find out about the facility. Many of these questions are reprinted with permission from the American Association of Retired Persons. Most of them apply to skilled-nursing facilities, but you will find many of them useful in evaluating other kinds of care facilities as well.

GENERAL QUESTIONS

YES	NO	Ask the Facility Administrator:
☐	☐	Is the facility licensed by the appropriate state department? The license should be posted in an obvious place. (California Department of Social Services licenses board-and-care homes; California Department of Health Services licenses intermediate-care and skilled-nursing facilities).
☐	☐	If it is a skilled-nursing facility, is the administrator licensed by the state Board of Nursing Home Administrators? The license should be posted in an obvious place.
☐	☐	If the facility is advertised as a life-care or continuing-care facility, does it have a valid certificate of authority from the Continuing Care Program of the California Department of Social Services?

GENERAL QUESTIONS

YES	NO	Ask the Facility Administrator (continued):
☐	☐	Have there been any citations by the licensing authority?
☐	☐	If so, have the problems been corrected?
☐	☐	Is the facility certified to receive Medicare and Medi-Cal payments? Ask for a copy of the facility's last certification report.
☐	☐	Does the facility offer rehabilitation therapies such as occupational, physical, and speech therapy?
☐	☐	Are residents allowed to wear their own clothes?
☐	☐	Are residents allowed to decorate their rooms?
☐	☐	Are residents allowed to keep some of their own possessions, including furniture?
☐	☐	Is there a place for private visits with family and friends?
☐	☐	Are the visiting hours convenient for residents and visitors?
☐	☐	Is a list of residents' rights posted in an obvious place?
☐	☐	Are the rooms well-ventilated? At what temperature are rooms kept? _________°F.
☐	☐	Can residents have a say in choosing roommates?
☐	☐	Are social services available to residents and their families?
☐	☐	Does the facility have recreational, cultural, intellectual, or religious activities?
☐	☐	Are there group and individual activities? Ask to see a schedule of events.
☐	☐	Are activities offered for residents who are confined to their rooms?
☐	☐	Is there an activities coordinator on staff?

☐ ☐ Are residents encouraged—but not forced—to take part in activities?

☐ ☐ Do staff members assist residents in getting from their rooms to activities?

☐ ☐ Are residents encouraged to participate in activities outside the facility?

☐ ☐ Do residents have the opportunity to attend religious services and talk with clergy in and out of the facility?

☐ ☐ Are barber and beautician services available?

☐ ☐ Does the facility provide transportation for residents?

Does each resident have:

☐ ☐ A reading light?

☐ ☐ A comfortable chair?

☐ ☐ A closet?

☐ ☐ A chest of drawers for personal belongings?

YES	NO	**Ask Yourself:**
☐	☐	If the facility is a locked or secured-perimeter facility, do you have the specific court authorization to place the conservatee in this type of facility?
☐	☐	Is the facility near the conservatee's family and friends?
☐	☐	Is the facility conveniently located on a bus route?
☐	☐	Is the atmosphere warm, pleasant, and cheerful?
☐	☐	Is there a sense of fellowship among the residents?
☐	☐	Is the facility administrator courteous and helpful?
☐	☐	Are staff members cheerful, courteous, and enthusiastic?

GENERAL QUESTIONS

YES	NO	Ask Yourself (continued):
☐	☐	Do staff members show residents genuine interest and affection?
☐	☐	Do staff members seem attentive to residents' needs? (If they are watching TV, for example, they may not be attentive to residents.)
☐	☐	Do the residents look well cared for and content?
☐	☐	Do staff members appear to treat residents with dignity and respect? (For example, do staff members knock before they enter residents' rooms?)
☐	☐	Do residents, visitors, and volunteers speak favorably about the facility?
☐	☐	Is the facility clean and orderly?
☐	☐	Does the temperature seem comfortable and the rooms well ventilated?
☐	☐	Is the facility reasonably free of unpleasant odors?
☐	☐	Do bathing and toilet facilities offer adequate privacy?
☐	☐	Is there a curtain or screen available to give each bed privacy?
☐	☐	Is there a public telephone for residents' use?
☐	☐	Is fresh drinking water within reach?
☐	☐	Is suitable space available for recreational activities?
☐	☐	Are tools and supplies provided for recreational activities?
☐	☐	Is there a lounge where residents can talk, read, play games, watch television, or just relax away from their rooms?
☐	☐	Does the facility have a yard or outdoor area where residents can get fresh air and sunshine?
☐	☐	Are there wheelchair ramps?

☐ ☐ Are toilet and bathing facilities easy for physically impaired residents to use?

SAFETY QUESTIONS

YES NO Ask the Facility Administrator:

☐ ☐ Is the furniture attractive, comfortable, and easy for physically impaired people to get into and out of?

☐ ☐ Is there an automatic sprinkler system?

☐ ☐ Are there portable fire extinguishers?

☐ ☐ Is there automatic emergency lighting?

☐ ☐ Are the smoke detectors, automatic sprinkler system, and automatic emergency lighting in good working order?

☐ ☐ Are there fire drills for staff and residents?

☐ ☐ Is there a smoking policy for staff, residents, and visitors?
What is it?
____

Are there nurse call buttons and emergency call buttons:

☐ ☐ At each resident's bed?

☐ ☐ At each toilet?

☐ ☐ At each bathing facility?

YES NO Ask Yourself:

☐ ☐ Are smoking policy rules observed?

☐ ☐ Is the facility free of obvious risks, such as obstacles, hazards, and unsteady chairs?

SAFETY QUESTIONS

YES	NO	Ask Yourself (continued):
☐	☐	Are there grab bars in toilet and bathing facilities and on both sides of hallways? Ask to see the bathrooms.
☐	☐	Do bathtubs and showers have nonslip surfaces?
☐	☐	Do all rooms open onto a hallway?
☐	☐	Are exits clearly marked and exit signs illuminated?
☐	☐	Are exit doors unobstructed and can they be unlocked from inside?
☐	☐	Are doors to stairways kept closed?
☐	☐	Is the facility well lighted?
☐	☐	Are hallways wide enough to allow wheelchairs to pass each other easily?
☐	☐	Is an emergency evacuation plan posted in a prominent place?

HEALTH SERVICE QUESTIONS

YES	NO	Ask the Facility Administrator:
☐	☐	In case of medical emergencies, is a doctor available at all times, either on staff or on call? Ask for the names of doctors on staff or on call.
☐	☐	Does the facility allow residents to be treated by doctors of their own choosing?
☐	☐	Are residents involved in planning their own care?
☐	☐	Is confidentiality of medical records assured?
☐	☐	Has the facility made arrangements with a nearby hospital for quick transfer in an emergency?

☐ ☐ Is emergency transportation available?

☐ ☐ Does the facility have an arrangement with a dentist to provide residents with dental care on a routine basis or on an as-needed basis? Ask for the names of dentists who provide care for residents.

☐ ☐ Are pharmaceutical services supervised by a pharmacist? Ask for the pharmacist's name.

☐ ☐ Does a pharmacist maintain and monitor a record of each resident's drug therapy?

☐ ☐ Are residents allowed to choose their own pharmacy?

☐ ☐ Has a separate room been set aside for storing and preparing drugs?

☐ ☐ Is there at least one registered nurse (RN) or licensed vocational nurse (LVN) on duty day and night?

☐ ☐ Is an RN on duty during the day, seven days a week?

☐ ☐ Does an RN serve as director of nursing services?

☐ ☐ If the conservatee requires special services such as physical therapy or a special diet, can the facility provide them?

YES NO Ask Yourself:

☐ ☐ Is the conservatee's doctor willing to visit the facility?

MEAL QUESTIONS

YES NO Ask the Facility Administrator:

☐ ☐ Are at least three meals served each day?

☐ ☐ Are meals served at normal hours, with plenty of time for leisurely eating? Ask to see the meal schedule.

☐ ☐ Are more than 14 hours scheduled between the evening meal and the next day's breakfast?

MEAL QUESTIONS

YES	NO	Ask the Facility Administrator (continued):
☐	☐	May I visit the dining room during mealtime?
☐	☐	Are nutritious between-meal and bedtime snacks available? What is served?___________________________________
☐	☐	Are special meals prepared for patients on therapeutic diets?
☐	☐	Can visitors join residents at mealtime?
☐	☐	Is there a charge for visitors' meals?

YES	NO	Ask Yourself:
☐	☐	Ask to sample a meal. Does the meal that is served match the posted menu?
☐	☐	Are residents given enough food?
☐	☐	Do the meals look appetizing?
☐	☐	Does the food taste good?
☐	☐	Is food served at the proper temperature?
☐	☐	Is the dining area attractive and comfortable?
☐	☐	Do residents who need help eating receive it, either in the dining room or in their own rooms?
☐	☐	Is the kitchen clean and reasonably tidy?
☐	☐	Is food that should be refrigerated left standing out on counters?
☐	☐	Is waste properly disposed of?
☐	☐	Do kitchen staff follow good standards of food handling?

FINANCIAL QUESTIONS

YES NO Ask the Facility Administrator:

What is covered by the basic monthly fee, and what isn't covered?

____

____

☐ ☐ Is there a list of fees for specific services that aren't included in the basic rate?

☐ ☐ Is there a refund for unused days that were prepaid?

☐ ☐ Is there a minimum period (sometimes called a private pay period) before the facility will accept Medi-Cal?

YES NO Ask Yourself:

Does the contract between the resident and the facility clearly state:

☐ ☐ Costs?

☐ ☐ The admission dates?

☐ ☐ Services that will be provided?

☐ ☐ Discharge and transfer conditions?

How does the cost compare with that of other facilities?

____

____

C. Caring for the Conservatee in a Care Facility

If you move the conservatee to a care facility, it is still up to you to make sure that he or she gets proper health care, nutrition, social stimulation, grooming, and recreation. Visit the facility periodically. Review the conservatee's file with the nursing shift supervisor and speak with the doctors frequently to make sure the conservatee is being well cared for. If you think the conservatee isn't being cared for adequately or is being abused, contact the local long-term care ombudsman office for help.

For telephone numbers and other information regarding local long-term care ombudsman offices, see Appendix B, "How to Find and Use Community Resources," at the back of this handbook.

WAYS TO ENHANCE THE CONSERVATEE'S QUALITY OF LIFE AT HOME OR IN A CARE FACILITY

- Arrange a network of visitors. The more people who show concern, the happier the conservatee will be. Care facility staff are also often most attentive to those residents who have frequent visitors.
- If the conservatee has been active in a church or synagogue, arrange for congregation members or clergy to visit on a regular schedule.
- Decorate the area around the conservatee's bed with familiar objects. Care facility residents have the right to have personal belongings from home in their rooms.
- Place a bulletin board near the bed. Put up photos showing family and friends with the conservatee. Include photos of the conservatee at different ages and in happy times.
- Put diplomas, letters of appreciation that were written to the conservatee in earlier years, and other mementos on the bulletin board.
- Encourage family and friends to write letters and cards. Post them on the bulletin board and help the conservatee write back.
- Hire a part-time aide to help, to keep the conservatee company, or to take the conservatee on outings.

- Arrange for the conservatee to be taken out for activities such as day-care programs, described in Section 7(E) later in this chapter; entertainment; family gatherings; and beauty or barber services.

- Provide favorite foods and beverages.

- Provide a radio, stereo, television, or VCR, with a remote control if the conservatee can't move around easily. If the conservatee shares a room, provide earphones.

- Rent old movies with the conservatee's favorite stars and show them on the VCR.

- Provide ear plugs if the conservatee shares a room in a care facility.

- Arrange for a telephone with a private line.

- Arrange parties for the conservatee on birthdays and other special occasions. Have the conservatee act as host.

- Thank the conservatee's caregivers often.

- Nearby family members, friends, and neighbors often are willing to look in on the conservatee and help with shopping or take the conservatee to medical and dental appointments or on recreational outings. You might offer to pay their reasonable out-of-pocket expenses.

3. Keeping the Conservatee Healthy

Often conservatees have health problems that require medical care. Special health problems might include Alzheimer's disease, cancer, or alcoholism. Learn about the conservatee's particular health conditions so you know what to expect and how to help.

You may wish to consult a support group or organization that provides information about the conservatee's specific disease or disability. The list of health information organizations at the end of Section 3(A) includes toll-free phone numbers for many of these organizations.

A. Securing Health Insurance

Every conservatee should have health insurance, if at all possible. Make every attempt to obtain health insurance for the conservatee, including dental insurance.

Find out what kind of coverage the conservatee already has. If he or she has no health insurance, or if present insurance is not adequate, find out if the conservatee is eligible for additional or alternative coverage. Possible sources of coverage, in addition to private insurers such as health maintenance organizations (HMOs), include Medicare, Medicare supplemental (Medigap) insurance, Medi-Cal, and veterans' or retired military health benefits. California Major Risk Medical Insurance is a last resource for persons who cannot obtain any other health insurance. It is limited in its annual and lifetime coverage. You should be careful not to cancel any existing health insurance coverage before you are certain you can replace it if you need to.

CAUTION Be careful if you are considering a change in medical insurance. Make sure any new medical plan will accept the conservatee and has the same or better benefits than the old plan.

The California Department of Aging sponsors the Health Insurance Counseling and Advocacy Program (HICAP), which can answer questions about health insurance for elderly people. You should discuss health insurance issues thoroughly with a HICAP health insurance counselor and with your lawyer before you commit to any course of action. **L**

For more information regarding health insurance, see Appendix A, "Guide to Medicare, Medi-Cal, and Other Health Insurance," at the back of this handbook.

For information about contacting HICAP, see Appendix B, "How to Find and Use Community Resources," at the back of this handbook.

If you are not handling the conservatee's money, contact the person who is. Find out what the conservatee can afford to spend on health insurance and who will file insurance claims, sign authorizations to release medical information, and keep the records necessary to make sure that all insurance payments are received.

HEALTH INFORMATION ORGANIZATIONS

AIDS and HIV Information (CDC National AIDS Hotline)	(800) 342-AIDS	*www.ashastd.org/nah*
Al-Anon	(Check local directory)	*www.al-anon.org*
Alcoholics Anonymous	(Check local directory)	*www.alcoholics-anonymous.org*
ALS Association (Lou Gehrig's Disease)	(800) 782-4747	*www.alsa.org*
Alzheimer's Association Information Line	(800) 272-3900	*www.alz.org*
American Cancer Society	(800) 227-2345	*www.cancer.org*
American Diabetes Association	(800) 232-3472	*www.diabetes.org*
American Heart Association	(800) 242-8721	*www.americanheart.org*
American Kidney Fund	(800) 638-8299	*www.akfinc.org*
American Lung Association	(800) 586-4872	*www.lungusa.org*
American Parkinson Disease Association	(800) 223-2732	*www.apdaparkinson.com*
Arthritis Foundation	(800) 283-7800	*www.arthritis.org*
Brain Injury Association	(800) 444-6443	*www.biausa.org*
HICAP (California Department of Aging, Health Insurance Counseling and Advocacy Program)	(800) 434-0222	*www.cda.ca.gov/html/programs/hicap.htm*
Huntington's Disease Society of America	(800) 345-HDSA	*www.hdsa.org*
Muscular Dystrophy Association	(800) 572-1717	*www.mdausa.org*
National Kidney Foundation	(800) 747-5527	*www.kidney.org*
National Multiple Sclerosis Society	(800) 344-4867	*www.nmss.org*
National Parkinson Foundation	(800) 327-4545	*www.parkinson.org*
Veterans Health Administration	(877) 222-VETS	*www.va.gov/vbs/health*

B. Consenting to Medical Treatment

In most cases, the conservator and the conservatee share the right to make decisions about the conservatee's health care. In other words, you or the conservatee may authorize medical treatments. However, you may not arrange for a particular treatment if the conservatee objects to it.

If you think the conservatee is making a mistake by refusing treatment, talk to your lawyer about your options. **L**

Exclusive authority If you believe at some point that the conservatee has lost the ability to make sound medical choices, check with your lawyer about asking a judge to take away the conservatee's right to make medical treatment decisions and to give that right to you. **L**

If a judge is persuaded that the conservatee is not capable of making health care decisions, the judge may give you **exclusive authority** to make these decisions. If you or the person who petitioned for your appointment as conservator asked that you be granted exclusive authority when you were appointed and the court granted the request, your Letters will show that you have this authority. The request was made in the petition for your appointment.

You may also ask for exclusive authority at any time after your appointment if it wasn't granted at that time. To do so, you must complete, sign, and file Judicial Council form GC-380, ***Petition for Exclusive Authority to Give Consent for Medical Treatment.*** The court's order granting that authority is filed on Judicial Council form GC-385, ***Order Authorizing Conservator to Give Consent for Medical Treatment.*** Blank copies of both forms are included in Appendix F at the back of this handbook.

If the court grants your request for exclusive authority after your appointment, you would then need to get the court clerk to issue a new set of Letters showing that you have this authority. Your lawyer would prepare and file the petition, obtain the court's order, and see that you receive your new Letters. **L**

You should give certified copies of your Letters showing your authority to the conservatee's hospital, doctors, and care facility. Often these people and institutions will be willing to accept, or make, a copy of a certified copy for their files.

The authority to make health care decisions for the conservatee is very important and should not be taken lightly. Try to involve the conservatee in your decisions and respect his or her desires as much as possible. Talk with

the conservatee's family and friends to figure out how the conservatee would have wanted things arranged.

Treatment of dementia A conservator must obtain specific authorization from a judge to give exclusive consent for the treatment of dementia by the use of **psychotropic drugs.** These may be prescribed by a psychiatrist or by the conservatee's regular physician. It is important for the conservator to conduct a regular review of this type of treatment, with all the conservatee's doctors, to monitor carefully the effect that such drugs may have on the conservatee.

Spiritual healing If the conservatee practices a religion that relies on prayer alone for healing, the conservatee's religious beliefs must be respected. You should speak with your lawyer about how to observe these beliefs while you take care of the conservatee's health needs.

Use of life support The decision to use or withdraw life support is a difficult and sensitive one. If you are faced with this issue, talk with your lawyer, the conservatee's doctor, the hospital, and family members to help you decide what to do.

Advance health care directive Check to see if the conservatee has signed an **advance health care directive,** which includes individual health care instructions as informal as a handwritten note, and also a very formal document called a **durable power of attorney for health care.** Another commonly seen individual health care instruction is a one-page document, sometimes called a **living will,** that gives instructions concerning the conservatee's maintenance on life-support devices.

The conservatee may have chosen someone to make medical decisions if he or she becomes unable to make them. This person has the exclusive power to make the medical decisions for the conservatee spelled out in the directive unless the court takes away that power. The conservatee's use of an advance health care directive may limit or take away completely the conservator's authority to make such decisions. As conservator, you must respect the conservatee's wishes. The directive may also describe the conservatee's intended or completed funeral and burial arrangements.

You should keep a copy of the directive and learn who has the original. The conservatee's hospital and doctors should be given a copy, and, if the conservatee is in a care facility, make sure the facility has a copy, too. If you think that the person who was chosen to make health care decisions is not acting in the conservatee's best interests, check with your lawyer to learn what you can do.

In the following situations, you can never give consent for medical treatment:

- You may not have the conservatee sterilized; only a judge may make that decision.
- You may not make the conservatee have mental health treatment if he or she objects.
- You may not place the conservatee in a mental health treatment facility against his or her will.
- You may not authorize electroshock therapy.
- You may not authorize the use of experimental drugs.
- You may not authorize involuntary administration of psychotropic drugs to treat dementia without specific court authority.

C. Working with Doctors and Pharmacists

It is your responsibility to understand the care that is being given and why. Don't consent to treatment unless you feel fully informed. Even if the treating physician has been the conservatee's doctor for a long time, you are still the legally responsible person.

See "Tips for Working with Doctors and Pharmacists" later in this chapter.

D. Improper Medicines and Dosages

Make sure that the conservatee is not being given medication just for the caregiver's convenience, to keep the conservatee "easy to manage." It is not right to drug people to make them docile or to stop their complaining.

Older people may need smaller and less frequent dosages of many medicines than do younger people. This is because people's bodies slow down as they age, and many medicines stay in the system longer. The conservatee's doctor may have to adjust the dosage of prescribed medicines for this reason. Ask the doctor to tell you what symptoms might indicate that a dosage of prescribed medication is too strong for the conservatee.

TIPS FOR WORKING WITH DOCTORS AND PHARMACISTS

- ➤ Let the conservatee's health care providers know that they should contact you about any medical matters, and talk with them regularly. When you can't reach the doctor, the nurse or physician's assistant may be able to keep you informed.
- ➤ Find out how often the conservatee should see the doctor.
- ➤ Be sure you know if the conservatee should be on a special diet or needs to avoid any particular food.
- ➤ Review the doctor's plan for treating the conservatee, and ask why a treatment is needed. Think about the long-range effects. Ask if the doctor has considered other treatments. If you have any doubts, get a second opinion from another doctor.
- ➤ Make sure that all the conservatee's doctors are in contact with one another and are aware of each other's treatments of the conservatee.
- ➤ You have the right to change the conservatee's doctor or to get another opinion. Consider, however, how the change will affect the conservatee. If you do change doctors, make sure that the new doctor sees all the conservatee's medical records.
- ➤ Know what medicines the conservatee is taking.
- ➤ Learn what side effects these medicines could cause, how to control them, and what kinds of reactions should be reported to the doctor at once.
- ➤ Take all of the conservatee's medicines to the pharmacy. Ask the pharmacist if the prescriptions are current and whether this combination of medicines could cause a bad reaction.
- ➤ Set up a system for keeping track of the conservatee's use of medicines. You need to be sure that the conservatee is taking the proper dosages at the right times. "Tips for Working with Aides" later in this chapter has more information about how to do this.

A doctor should examine an older person who is taking medicine at least once a month. You should talk to the doctor to find out

- What the examination showed
- What medicines are being given
- How long the medicines are to be given
- The reasons for giving the medicines
- How the medicines may affect the conservatee

If you are not satisfied with the answers, get a second medical opinion.

E. Arranging Dental Care

Make arrangements for the conservatee to have regular dental care. Regular dental care is important because healthy teeth or well-fitting dentures allow the conservatee to eat well-balanced meals. If the conservatee wears false teeth, he or she should see a dentist periodically to have the dentures relined.

If someone else handles the conservatee's money, find out whether the conservatee has dental insurance and, if so, the services that it covers.

Many older people have had negative, even frightening, experiences with dentists. Dental practice today is much improved over what the conservatee may remember and emphasizes relieving pain and preserving, rather than removing, teeth. If the conservatee expresses fears about going to a dentist, do the following:

- Find a dentist who has a good reputation for caring for older people.
- Set up an appointment for the conservatee just to meet the dentist.
- Ask the dentist to ease into difficult treatments by doing the simple, less painful work first.

F. Obtaining Hearing Aids, Eyeglasses, and Other Devices

You may significantly improve your conservatee's quality of life by making sure that he or she has all the aids needed and readily available to enhance enjoyment of many ordinary daily activities or even to make them possible. The fol-

lowing are examples of common situations in which a very small action by you may make a tremendous difference to your conservatee.

Hearing aids If the conservatee has hearing problems, make sure he or she has a properly working hearing aid with good batteries. A good hearing aid can help the conservatee stay aware of his or her surroundings and stay connected to other people, especially in a care facility. Some conservatees need to be encouraged to wear their hearing aids regularly. If the conservatee won't use the hearing aid, try to find out why. It may need an adjustment to fit comfortably or to work at the right sound level.

Eyeglasses Well-fitting, frequently cleaned eyeglasses with the right prescription and comfortable frames help the conservatee get around without injury, recognize familiar faces, and read or watch television independently. Prescriptions for glasses should be rechecked every two years.

Other devices The conservatee may need special equipment to carry out daily living activities independently or with a little help. Special equipment includes

- Walkers
- Canes
- Wheelchairs
- Equipment for eating or reading
- Commodes
- Colostomy bags
- Oxygen

Many of these things may be available through the conservatee's medical insurance carrier. Otherwise, they may be rented or bought from medical equipment and supply companies. Check your local Yellow Pages under "Medical Equipment and Supplies."

G. Caring for Feet

Proper foot care helps the conservatee get around with only a little help or no help at all. As people grow older, their nails become tougher and grow faster and become harder to care for without aid. Foot care is especially important if the conservatee has diabetes or circulatory problems. Although the pain of circulatory problems can make walking difficult, these problems can be treated and sometimes healed completely.

H. Encouraging Personal Cleanliness and Grooming

It can be hard for impaired people to stay clean and well groomed. Tactfully figure out how to help. Don't criticize or embarrass the conservatee. Give him or her good reasons to change clothes, such as special occasions, photographs you want to take for the family, and compliments.

Bathing If the conservatee forgets or refuses to bathe, try to find out why. Is he or she afraid of slipping or falling? Do physical limitations make it hard to bathe? Is the bathing area warm enough? Does the conservatee feel that there's no one or nothing to clean up for?

WAYS TO ENCOURAGE CLEANLINESS

- ➤ Install grab bars in the bathtub or shower or provide a shower seat.
- ➤ Make sure the bathing area is well heated.
- ➤ Remind the conservatee to bathe.
- ➤ Hire an in-home aide who will help the conservatee bathe and who will trim fingernails and toenails. Think about whether the conservatee would prefer a male or female aide.
- ➤ Provide incentives such as a shopping trip or dinner out.
- ➤ Make sure the conservatee has soap, shampoo, a comb or hairbrush, a toothbrush, and toothpaste. Some people may also want bath salts, mouthwash, cosmetics, or shaving supplies.

Bladder and bowel control If the conservatee is incontinent, make sure he or she has an adequate supply of disposable undergarments. To prevent accidents, schedule regular trips to the toilet.

4. Maintaining a Good Diet

Good nutrition means eating right to stay healthy. The conservatee needs a good diet to feel well. If the conservatee doesn't eat enough good, fresh food every day, he or she may become weak and have trouble walking or staying alert and awake.

Medicines may not work as well. The conservatee may become depressed or confused or may have hallucinations.

An important part of your job is to keep track of how much and what the conservatee eats. See "Ways to Help the Conservatee Eat Well at Home" and "Ways to Help the Conservatee Eat Well in a Care Facility" later in this chapter. A good diet contains bread and cereal, dairy products, fresh fruit and vegetables, and meat or meat substitutes such as cheese or beans.

A. Arranging Special Diets

Many conservatees have medical problems that require special foods, specially prepared foods, or both. For example, low-salt and low-fat diets are two kinds of special diets.

Ask the conservatee's doctor or a nutritionist about the conservatee's special needs. Organizations such as the American Heart Association and the American Diabetes Association have information about special diets. Refer to the list of health information organizations at the end of Section 3(A) earlier in this chapter. You may want to check bookstores and libraries for books with recipes for special diets.

B. Watching for Problems That May Lead to Poor Nutrition

People often stop eating well when they have a problem. You and others who see the conservatee regularly—personal-care aides, for example—should pay attention to any changes or problems in the conservatee's life that could lead to poor nutrition, such as

- Loneliness
- Depression
- Stress or agitation
- The death of a loved one
- A fear of spending money
- A lack of money
- Memory problems that prevent the conservatee from remembering whether he or she has eaten

- A fear that food is poisoned
- Drinking too much alcohol or taking drugs that interfere with appetite
- Taking medicines that take away the conservatee's appetite or make the conservatee feel nauseous
- False teeth that don't fit
- A lack of interest in shopping for food or cooking
- An inability to shop or cook

Ways to Help the Conservatee Eat Well at Home

- Ask the conservatee which foods he or she likes.
- Learn about the conservatee's special eating problems. For instance, people with tender teeth or gums can't chew hard food. People with stomach problems may feel ill after eating a large meal or hard-to-digest foods.
- Be sure the conservatee has enough fresh food on hand that he or she likes and can prepare and eat easily.
- Check the refrigerator regularly and remove old, spoiled, or stale foods.
- Arrange for somebody—you or a friend or neighbor—to be with the conservatee for at least one meal a day. Loneliness at meal times can hurt the appetite.
- Provide transportation to a senior nutrition site where meals are served.
- Arrange for Meals on Wheels or a similar program to deliver one meal a day. Find out whether the conservatee eats most of this meal.
- Provide nutritious snacks. Some people do better with smaller, more frequent eating. Include soft fruits or juices and whole-grain cereals.
- If there is an aide in the conservatee's home, ask that person to write down what the conservatee eats and drinks and how much of it. See "The Communications Notebook" at the end of Section 7(C) later in this chapter.

WAYS TO HELP THE CONSERVATEE EAT WELL IN A CARE FACILITY

- ➤ Visit the conservatee at meal times to see what is being offered and how it is served.
- ➤ Ask the facility administrator for a meal so that you can eat with the conservatee.
- ➤ Review the conservatee's medical chart to see how much and what types of food the conservatee is eating. This is very important if the conservatee has special dietary needs or can't feed himself or herself.
- ➤ See whether a record is being kept of the conservatee's weight gain or loss.
- ➤ Ask about dietary supplements if you think the conservatee is eating poorly. Liquid supplements can be helpful.
- ➤ Take along the conservatee's favorite foods and beverages when you visit.
- ➤ Take the conservatee out for meals and picnics.
- ➤ Put a small refrigerator in the conservatee's room, if it's allowed, and keep it stocked.
- ➤ Think about the conservatee's culture when you provide food. Does the conservatee want kosher, Chinese, or vegetarian dishes?

5. Providing Clothing

Clothing may create special problems. The conservatee may

- Gain or lose so much weight that clothes no longer fit
- Have clothing that needs to be repaired, altered, washed, or dry cleaned
- Change clothes infrequently
- Refuse to buy new clothes or be unable to afford them

- Mix things up; for example, wear underwear on the outside or clothes that aren't right for the weather or occasion
- Wear shoes that hurt so much that he or she may refuse to walk

CLOTHING TIPS

- ➤ Make a list of the conservatee's clothes, including shoes and underwear.
- ➤ Don't discard anything without considering the conservatee's wishes.
- ➤ Write down what clothes the conservatee needs, making sure you know the right sizes.
- ➤ Look through catalogs with the conservatee to find out which colors and styles he or she likes.
- ➤ Consider buying clothing in a limited number of colors so most of the clothes will match.
- ➤ Take the conservatee shopping during the least busy times.
- ➤ Look through a medical supply catalog for impaired people to find clothing that's designed to be easy to get on and off.
- ➤ Buy properly fitting shoes that are comfortable and safe for walking.
- ➤ Make sure the conservatee has clothes that are appropriate for various activities.
- ➤ Lay out outfits for the conservatee to wear on special occasions.
- ➤ Help the conservatee get dressed, or arrange for an aide to help.
- ➤ Arrange for regular washing and dry cleaning of the conservatee's clothes.
- ➤ Place compatible clothes together on hangers or in dresser drawers.
- ➤ If the conservatee lives in a care facility, label all clothes, shoes, and other property with the conservatee's name to prevent theft.
- ➤ If the conservatee lives in a care facility, ask the facility administrator whether a staff person, shopping service, or volunteer is available to shop

for clothes. If so, provide a list of the conservatee's sizes and preferred colors and styles.

6. Arranging Recreation and Social Contact

A conservatee may be able to continue activities and hobbies that have brought pleasure for many years. Chat with the conservatee and friends or family to find out what things the conservatee likes and still may be able to do. If the conservatee can't do things that he or she enjoyed doing in the past, such as dancing, suggest new activities such as card games, checkers, or listening to the radio.

A. Providing Reading Material and Eyeglasses

If the conservatee likes to read, make sure that he or she has interesting things to read, properly fitted eyeglasses for reading, and a good reading light. If the conservatee's eyeglasses are old, set up an eye examination. Find out which magazine subscriptions the conservatee has and whether he or she wants them renewed. Large-print books and magazines and books on audiotape can be found in many libraries and bookstores.

B. Helping the Conservatee Enjoy Music

Make sure that a radio or stereo is available if the conservatee enjoys music. If the conservatee has trouble hearing, be sure he or she has a properly working hearing aid with good batteries and encourage the conservatee to use it. Give the conservatee earphones if he or she shares a room.

C. Encouraging Contact with Family and Friends

When a person becomes a conservatee, he or she does not lose the right to visit with friends or family. Encourage the conservatee to keep in touch with family members, friends, and neighbors. You or someone else may need to help the conservatee write letters or make phone calls. Encourage family and friends to visit and write back, and suggest that they take the conservatee on regular outings and trips. Even extremely impaired people enjoy going to a restaurant or a park or out for a drive.

Do not isolate the conservatee by keeping friends or family away. However, if someone continually upsets the conservatee or the household in which he or

she lives, or if you believe someone may be attempting to take advantage of or harm the conservatee, contact your lawyer to find out how you may ask a judge to restrict that person's access to the conservatee. L

D. Outings and Trips

The conservatee may enjoy outings and trips. Many California conservatees were born and raised in other parts of the country, and they enjoy going home. For others, travel has been an important experience in their lives.

An important early consideration is whether the conservatee can afford to travel. Conservatee travel arrangements tend to be more complex, and more expensive, than other travel arrangements. Someone may need to accompany the conservatee. There may be questions about who will pay for travel and lodging costs for persons other than the conservatee. The conservatee must be physically able to travel and may need to have a number of special accommodations.

Consider the benefit that the conservatee will receive from travel arrangements, and consult the conservatee's doctor and your lawyer before arranging a trip. L Court authorization or medical clearance, or both, may be necessary.

E. Finding Structured Activities Away from Home

Organized by community agencies, structured day activities such as adult day health care, adult social day care, and senior centers help maintain the conservator's physical and mental health. A number of these programs and services are described in Section 7, which follows.

7. Tapping Helpful Resources

Several community service agencies are available to help conservators in carrying out their duties to conservatees, especially in urban areas. Some provide free services, while others charge fees based on the conservatee's **income.**

See Appendix B Appendix B, "How to Find and Use Community Resources," at the back of this handbook, has more information about locating the local services and resources described in this section.

Ask the court for its local supplement Many superior courts have a local supplement to this handbook. This may have additional information about local court requirements, and many also have important information about local community resources that may be available to assist you or the conservatee. If you did not receive a local supplement when you received this handbook, check with the court clerk to make sure you have all of the local materials you need.

A. Case Management Services

Case managers can help you figure out what types of assistance the conservatee needs and refer you to personal, health, mental health, and social services. **Case management** and assessment services may be especially helpful to you in preparing your plan of conservatorship, and case managers can help you carry out your plan. These services may be provided in your area by private professionals and by community-based agencies.

B. Meal Services

Services such as Meals on Wheels deliver food to the homes of elderly people who can't or won't cook for themselves, or who can't leave home. In many communities, public agencies run group dining rooms that provide meals and social contact. Transportation often is available to take people to these meal sites.

C. Homemaker, Home Health, and Personal-Care Services

Trained in-home aides are helpful for conservatees whose problems do not require nursing care or 24-hour supervision. They can help with household chores, personal care, and health care and can keep the conservatee from hurting himself or herself. They may clean the house, do the laundry, shop for food, or cook. They also may feed, bathe, groom, and dress the conservatee; care for prosthetic devices; and help the person get around. See "Tips for Working with Aides" later in this chapter for ways to get the best help from an aide.

Sometimes conservators and conservatees are reluctant to hire an in-home aide because they worry that the person may steal the conservatee's money or possessions. Some conservatees feel that anyone would steal from them, and they readily accuse others of theft, even when nothing is missing. The tips in Chapter 5, Section 7(A), "Ways to Protect the Conservatee's Valuable Possessions," can help you put your mind at ease.

Medi-Cal or Medicare may pay for some home health services. In-home help is available to frail, low-income people without charge from the county Department of Social Services (In-home Supportive Services) or from individuals and agencies on a fee-for-service basis.

You are responsible for giving instructions and making sure that the aide follows them. Before you hire an aide, you and the conservator of the estate must agree on all details of hiring, paying, and monitoring in-home assistants. You can directly find, hire, pay, and supervise an aide to help the conservatee. Or you can go through an agency that will recruit, hire, pay, and supervise the aide for you.

Agencies Usually a full-service homemaker, home health, or personal-care agency recruits, hires, and pays aides who are employees of the agency. Using an agency can save you time and bother.

An agency screens applicants and checks their references and U.S. residency status. The agency withholds income and other taxes from the aide's wages. It provides all required insurance, such as workers' compensation, and it bonds the aide. The agency supervises the aide, taking disciplinary action or terminating the employee if necessary, and it will send a temporary replacement aide if the regular aide is ill or otherwise unable to work.

For these services, you pay the agency a fee that covers both the aide's wages and the agency's expenses and profit. Since the aide continues to be the agency's employee, you are not allowed to hire the aide directly without the agency's permission. The agency may charge you a fee if you wish to hire the aide away from the agency.

Hiring directly You can hire an aide through a registry. For a fee, registries will give you a list of aides to interview. If you hire one, you will be the employer, not the registry.

Or you can find an aide through a friend or community service organization's referral, an ad, or some other way. If you hire an aide directly, you will have a number of responsibilities as an employer, including paying taxes, checking the person's immigration status, and obtaining workers' compensation insurance. See

Chapter 5, Section 7(J), "Hiring and Paying Aides for the Conservatee," particularly the checklist, for more information on hiring and employing aides. If you intend to hire an aide directly, consult with your lawyer concerning employer responsibilities and liabilities. L

TIPS FOR WORKING WITH AIDES

- ➤ Make up a list of specific tasks for the aide to do, including the times that these tasks should be done.
- ➤ Go over the list with the aide to make sure it's clear.
- ➤ Check periodically to make sure the tasks are being done properly and on time.
- ➤ Show the aide where you've posted instructions for emergencies. Include phone numbers for the conservatee's doctor; the hospital; your workplace and home; and fire, police, and ambulance services (911).
- ➤ Show the aide where to find the conservatee's social security number, Medicare card, and any other health insurance cards.
- ➤ Tell the aide what he or she may buy for the conservatee; ask the aide to keep receipts, and pay back the aide promptly.
- ➤ If you, not an agency, pay the aide, pay him or her promptly at the end of the pay period.
- ➤ Have a backup plan if the aide is sick or can't work for any reason. Make sure that the aide notifies you, not the conservatee, if he or she can't work on a particular day or shift.
- ➤ Although only a licensed vocational nurse (LVN) or other licensed health professional may dispense prescription medicines, other attendants may assist the conservatee and remind the conservatee to take his or her medicine.
- ➤ Set up a notebook to keep track of doctors' instructions, medications, and the conservatee's activities. Ask each aide to make regular entries in the notebook and to read it every day for new instructions. See "The Communications Notebook" at the end of this section for an example of a communications notebook.

➤ Regularly read the notebook so that you know what is happening in the conservatee's everyday life.

D. Senior Centers

Senior centers offer a variety of daily activities, which may include card games, travelogues, movies, dances, exercise classes, and daylong bus trips to nearby places of interest. Many senior centers provide one or more hot meals each day for a small fee.

E. Adult Social Day-Care Programs

Adult social day care provides planned, supervised social, recreational, and nutritional services for adults who need some supervision. Activities may include cooking; exercise classes; practice in daily living activities; arts and crafts; art, music, poetry, and movement therapies; memory training; and current events discussion groups. Meals or snacks usually are included in the fee. Insurance policies rarely pay for adult social day care.

F. Adult Day Health Care Services

Adult day health care (ADHC) is useful for people such as stroke victims who are mobile but may need physical, speech, or occupational therapy or other services. Medi-Cal may pay for ADHC services because ADHC centers are staffed by health care professionals.

G. Day Programs for People with Developmental Disabilities

Several types of day programs are designed to meet the needs of adults with developmental disabilities:

- **Activity centers** Activity centers teach the basic skills that a developmentally disabled person needs to work, to integrate into the community at large, and to advocate for himself or herself.

- **Adult development centers** Adult development centers teach people with developmental disabilities basic self-help skills such as how to interact with others, how to make one's needs known, and how to respond to instructions.

- **Behavior management programs** These programs focus on behavior problems that prevent a person with a developmental disability from participating in other day programs.

- **Independent-living programs** These programs teach skills that a person with a developmental disability needs to live independently.

- **Social recreation programs** These programs offer leisure and recreational activities that integrate people with disabilities into the community at large.

(Continued on page 72)

THE COMMUNICATIONS NOTEBOOK

It is important that you and the conservatee's aide share significant information about the conservatee's health, condition, and activities. A communications notebook is a great way to do this.

Buy a three-ring loose-leaf binder and set up three separate sections:

- Log of Doctors' Instructions
- Medications Log
- Activity Log

Make sure that every aide checks the notebook every day for new information and make sure that the aides make daily entries in each section, as appropriate. Look over the notebook every time you visit the conservatee.

SECTION 1: LOG OF DOCTORS' INSTRUCTIONS

Every time the conservatee sees a doctor, the person who accompanies the conservatee, whether you or an aide, should write down any instructions the doctor gives. The log for this section of the notebook should include the following items of information, for example, in a separate column for each item:

- Date of instructions
- Name of doctor who gave instructions
- Instructions: The person accompanying the conservatee must write down the instructions in detail and read them back to the doctor to make sure they are correct. The doctor will likely give instructions regarding medicines, such as their timing, dosage, and duration; the type and frequency of recommended exercise or physical therapy; the frequency and manner of changing surgical dressings or taking vital signs; or the date, location, and preparations for scheduled tests, examinations, or other medical procedures. The person recording the instructions should sign his or her name or initials to each entry.

Section 1: Doctors' Instructions

Date	Doctor	Instructions
2/9/02	*Dr. Patel*	*Continue giving conservatee one mg*
		tablet of Elavil three times a day
		(8 am, 2 pm, 8 pm) until further notice.
		Continue giving conservatee one 20 mg
		tablet of Septra two times a day
		(10 am, 4 pm) until 2/22/02. Continue
		giving conservatee one 100 mg tablet
		of Theragram M Multivitamin after
		breakfast.
2/14/02	*Dr. Moore*	*Soak conservatee's left elbow in warm*
		water for 15 minutes twice a day
		(9 am, 3 pm).

SECTION 2: MEDICATIONS LOG

When anyone gives medicine to the conservatee, whether prescribed or over-the-counter, that person should record the details in a medications log. This log should include the following items of information, for example, in a separate column for each item:

- Date and time medication given
- Name of medication and amount or dosage given
- Comments, including notes of any refusal to take medication, any medication dosages accidentally skipped, and any unusual reactions to the medication (nausea, dizziness, behavior changes, changes in vital signs, and so on)
- Name or initials of person who gave medication

Section 2: Record of medications

Date	Time	Medications Administered	By Whom	Comments
2/15/02	*8:05 am*	*1 tablet Elavil*	*Connie*	
2/15/02	*8:25 am*	*1 tablet Theragram*	*Connie*	
2/15/02	*10:02 am*	*1 tablet Septra*	*Connie*	
2/15/02	*11:25 am*	*1 tablet aspirin*	*Connie*	
2/15/02	*2:03 pm*	*1 tablet Elavil*	*Connie*	
2/15/02	*4:02 pm*	*1 tablet Septra*	*Connie*	
2/15/02	*8:03 pm*	*1 tablet Elavil*	*Susan*	
2/15/02	*9:06 pm*	*1 tablespoon cough syrup*	*Susan*	

SECTION 3: ACTIVITY LOG

Each aide should record details about the events that occurred during each shift. This log should include the following items of information, for example, in a separate column for each item:

- Date and time of event or shift
- Name or initials of person making the entry
- Details about activity or condition of conservatee: Details should include, depending on the conservatee's current physical and mental condition and circumstances, observations about the conservatee at the beginning of the shift, such as what the conservatee was doing; what (and how much) he or she ate and drank; bathroom visits and results; and what he or she did during the shift; It should mention events occurring during the shift, such as telephone calls or visitors; and it should describe any changes in the conservatee's condition, behavior, or mood.

Section 3: Activity Log

Date	Time	Aide	Activity
2/15/02	*7:15 am*	*Connie*	*Conservatee awakened, washed, and dressed.*
2/15/02	*7:35 am*	*Connie*	*Prepared breakfast per weekly menu.*
			Conservatee ate all of toast, half of
			oatmeal, half a glass of juice, and half a
			banana. Conservatee in bed.
2/15/02	*8:30 am*	*Connie*	*Barbara Lewis called conservatee, who*
			appeared to be upset by call.
2/15/02	*8:45 am*	*Connie*	*Conservatee voided approximately 300 cc,*
			was washed. Changed underpads on bed.
2/15/02	*9:05 am*	*Connie*	*Soaked conservatee's elbow in warm water*
			for 15 minutes, followed by 10 minutes of
			exercise and massage.
2/15/02	*9:35 am*	*Connie*	*Gave conservatee 4 ounces of cranberry*
			juice. Drank half.

Section 3: Activity Log

Date	Time	Aide	Activity
2/15/02	*9:40 am*	*Connie*	*Read newspaper to conservatee*
			(in bed) for 35 minutes and
			discussed sports results.
2/15/02	*10:15 am*	*Connie*	*Conservatee began one-hour nap.*
2/15/02	*11:30 am*	*Connie*	*Dr. Patel visited (see doctor's new*
			instructions).
2/15/02	*12:05 pm*	*Connie*	*Conservatee drank half of 4 ounces*
			of water.
2/15/02	*12:30 pm*	*Connie*	*Prepared lunch per weekly menu.*
			Conservatee ate 3/4 of tuna, all
			of the grapes, half a glass of milk,
			and half a piece of pie.

H. Transportation Services

In many communities, public or private agencies offer transportation for people who have trouble getting around because of physical or mental problems. Specially equipped vehicles may be available that can be scheduled to pick up the conservatee and take him or her to medical and social service appointments. Some agencies furnish an escort who can take the conservatee to an appointment or to the park or a shopping mall.

If the conservatee can get around alone, buy a bus pass or taxi coupons for his or her use. This lets the conservatee travel independently without carrying cash.

I. Personal Contact Programs

Some agencies will phone people who are confined to their homes, or they will send someone on a regular basis (a "friendly visitor") to visit them to see how they are doing and to make personal contact. This is called social reassurance. Some agencies offer free services, while others charge a fee. Or you can ask neighbors and friends to stop by and to call.

J. Emergency Response Devices

Electronic emergency response devices allow a person to alert someone to an emergency in the home—for example, if the person has fallen and can't get up. Some of these systems are for sale; others can be rented by the month. Hospital social service departments may offer this service or be able to refer you to a reputable company.

K. Counseling

A conservatee's emotional state affects how well he or she performs on a day-to-day basis. Many conservatees are depressed, and counseling can help them lead happier lives. Counseling may be available through community organizations such as family service agencies, mental health clinics, or hospitals.

L. Respite Care: Giving the Caregiver a Break

Caring for dependent people can be exhausting; those who do need to take time off now and then. Hiring help or sending the conservatee to a day-care center or to stay in a care facility for a short time can give the caregiver a break.

This is called respite care and can last from a few hours to a few weeks. It may offer the conservatee a welcome change as well. The Department of Veterans Affairs, some board-and-care homes, and some nursing homes offer respite care, and regional centers may make referrals for respite care.

M. Work-Training Programs

The California Department of Rehabilitation offers vocational rehabilitation services for people with physical or mental disabilities. These services are designed to help people with disabilities work at full-time or part-time jobs.

The Department of Rehabilitation provides the following services:

- Counseling
- Job placement
- Job training
- Rehabilitation
- Transportation
- Attendants
- Specialized equipment and devices

The department also provides supported employment services to help people with severe disabilities work in the general community. For example, the department might arrange for an aide to help the person get to and from work. State-funded regional centers (see Chapter 3, Section 6) arrange work-training programs geared to the special needs of people with developmental disabilities.

N. Schools and Colleges

Check with the local high school and community college to find classes that may benefit the conservatee. For example, a local community college may offer a stroke recovery program.

See if there are any other classes that interest the conservatee. Some community colleges and adult education programs offer exercise, art, music, psychology, and other classes off-campus in retirement communities and at senior centers.

School districts must provide special educational programs and services to people with disabilities until they turn 22. The unique needs of each disabled student must be met with specially designed instruction and with services that are needed to help the student get an education, such as transportation, speech therapy, physical therapy, and counseling.

8. Protecting the Conservatee from Harm

Unfortunately, those with physical and mental problems sometimes are abused or neglected. Be on the lookout for signs that the conservatee is not being cared for properly or is being mistreated. Sometimes unexplained bruises or injuries, trouble sleeping, poor personal hygiene, or fear of a particular person or place may be signs of a problem.

If you are concerned that the conservatee may have been abused, neglected, or overmedicated in a care facility, do the following:

- Talk to care facility staff or the administrator.
- Speak with the conservatee's doctor or pharmacist about the problem.
- Complain to the care facility's licensing agency or the local long-term care ombudsman program office. Appendix B, "How to Find and Use Community Resources," at the back of this handbook lists these resources.
- Ask your county's social services department or the police for help.
- Think about moving the conservatee to another facility.

9. Keeping the Conservatee from Causing Harm

It is your responsibility to take whatever reasonable steps you can to stop the conservatee from hurting someone or damaging someone else's property. Your lawyer can suggest courses of action. L

For example, if the conservatee has a driver's license, but you have seen the conservatee drive dangerously, you should

- Let the Department of Motor Vehicles know so that it can start the process of canceling the conservatee's driver's license.
- Consider having the conservatee's vehicle disabled so that he or she can't use it. Consider also storing the vehicle where the conservatee can't get it, or even selling it before it depreciates if the conservatee will not be using it in the foreseeable future. Coordinate storage or sale with the conservator of the estate if that is a separate person.

- Arrange for another means of transportation, so the conservatee doesn't need to drive. For example, you might buy a bus pass or taxi coupons for the conservatee or arrange for community van service, if it's available.

If you don't take all the reasonable steps that you can to stop the conservatee from causing harm, you may have to pay out of your own pocket for the cost of any damage to people or property.

You or the conservator of the estate may be able to obtain insurance that will reduce the risk that you or the conservatee will have to pay out money for such harm. If you are worried that there is a serious risk that the conservatee may cause harm, check with your lawyer. **L**

10. Conservators Who Live Out of the Area

Even though you don't live near the conservatee, you still must carry out your duties as if you lived nearby. If you can't do certain things personally, you must make other arrangements and have them approved by the court.

HINTS FOR PERSONAL CONSERVATORS WHO LIVE OUT OF THE AREA

- Have a nearby friend, neighbor, or relative visit the conservatee frequently and report back to you. You may want to offer to pay the friend or neighbor reasonable out-of-pocket expenses.
- Regularly telephone the place where the conservatee lives and speak to people in charge and to the conservatee. Try to speak to the conservatee in private, if possible.
- Send frequent cards and letters that can be read aloud to the conservatee if he or she is not able to see or read. Whenever possible, include photographs.
- Arrange for regular visits by a priest, minister, or rabbi or others from the conservatee's religion.
- Send flowers from time to time.
- Have a telephone put in the conservatee's room if he or she lives in a care facility.
- Frequently thank the care facility staff.

- Consult a private case manager, the social work department of a hospital, or the court investigator in the conservatee's community if you need information, referrals, or assistance.

- Visit the conservatee periodically.

Reimbursement for travel expenses It's possible that your travel expenses to visit the conservatee could be paid from the conservatee's assets, depending on the distance traveled, but it is generally safer to pay travel expenses yourself if you can afford it, at least during the first year of the conservatorship, and then to seek court approval for reimbursement from the conservatee's assets at the time you ask for fees as compensation for your services as conservator.

Reimbursement for purely local travel expenses, including the cost of fuel or mileage and parking charges, is usually not approved by the court if you intend to request fees for your services, as this kind of expense is considered paid by an award of compensation. If you are not going to ask for fees, the court will probably authorize you to reimburse yourself from the conservatee's assets for local travel expenses. However, you should not reimburse yourself until the court has authorized you to do so.

5

Conservator of the Estate

Managing the Conservatee's Finances

As **conservator of the estate,** you are responsible for managing the conservatee's finances. Your role is to protect the conservatee's **income** and **assets** by making sure the conservatee's bills are paid, investing the conservatee's money, making sure that the conservatee's property is insured, seeing that the conservatee is receiving all the income and benefits to which he or she is entitled, and being sure that tax returns are filed on time.

Special Note for Limited Conservators

If you are a conservator of the estate in a **limited conservatorship**, the order appointing you and your Letters of Conservatorship will specify those areas you are allowed to manage.

Read Chapter 3 on limited conservatorships, and then look through this chapter to read about the particular areas you are authorized to handle.

SUMMARY OF TIMELINE AND RESPONSIBILITIES FOR A CONSERVATOR OF THE ESTATE.

Step 1 You **qualify** and are appointed conservator of the **estate.** You may be required to obtain a **bond** to qualify.

Step 2 Obtain your **Letters of Conservatorship** and use **certified copies** of the Letters to notify the conservatee's banks, creditors, stockbrokers, and others (such as the Social Security Administration or Veterans Affairs) that you are authorized to act on the conservatee's behalf.

Step 3 Figure out what assets the conservatee owns and locate them. Take immediate steps to protect assets. Consult your lawyer about any urgent steps that may be necessary to prevent loss, such as freezing the assets so that no one but you has access to them. L Change the conservatee's mailing address so that financial correspondence and billing comes to you.

Step 4 Prepare an **Inventory and Appraisal** of the conservatee's assets and **file** it with the court clerk within *90 days* after your appointment. L

Step 5 Evaluate the conservatee's financial needs and draw up a plan for meeting those needs (your conservatorship plan).

Step 6 Set up a simple, accurate system for keeping records of conservatorship income and expenditures.

Step 7 Protect and manage the conservatee's finances by

- Taking control of the conservatee's assets
- Collecting income due to the conservatee
- Making a budget for the conservatee to live on
- Paying the conservatee's bills with the conservatee's money
- Investing the conservatee's money
- Protecting the conservatee's assets
- Keeping good records of income and expenditures

Step 8 You must file an **accounting** showing how you handled the conservatee's income and property within one year after your appointment and at least every two years after that. (Conservators of small estates may be relieved of this task, but don't assume that unless the court excuses you.) L

Step 9 You will serve as conservator until you have filed a **final accounting** and a judge officially **discharges** you as conservator. This may happen if you resign, the conservatee dies, a judge withdraws your appointment and replaces you with a new conservator, or a judge decides the conservatee doesn't need a conservator any longer.

1. Getting Started

Once you have been appointed conservator of an estate, you must take certain steps to qualify to serve. When you have qualified, you must obtain your Letters of Conservatorship (often just called Letters) from the court, authorizing you to act as conservator.

The next step is to let the people and institutions involved with the conservatee's property and finances know that you have been appointed conservator, by delivering to them certified copies of your Letters. You then take control of the conservatee's assets, prepare an inventory for the court listing them, and develop a plan for how you will manage the **conservatorship estate.**

At the outset, you may need to take fast action to protect assets and prevent confusion or financial loss. If you are represented by a lawyer, you should discuss all of the tasks involved and decide who will be responsible for each. **L**

A. Qualifying to Serve as Conservator of the Estate

Once you have been appointed as either **limited** or **general conservator** of an estate, you must qualify before you start to manage the conservatee's property and finances.

To qualify, you must obtain a bond (unless the judge hasn't required it in your particular case) and file it with the court clerk; see Section 1(B) later in this chapter. You must also do the following:

- Sign and file an acknowledgment that you received a statement of the duties and liabilities of the office of conservator, and also that you received a copy of this handbook. (This acknowledgment is on the statement of your duties and liabilities, **Judicial Council** form GC-348, entitled ***Duties of Conservator and Acknowledgment of Receipt of Handbook.*** A blank copy of this form is included in Appendix F at the back of this handbook.)

- Sign an oath, also called an affirmation, that you will perform your duties as conservator according to law. (This affirmation is on Judicial Council form GC-350, ***Letters of Conservatorship.*** See Appendix F at the back of this handbook.)

- Satisfy any other requirements that your local probate court may have.

See Chapter 1, Section 6, concerning the duties of a spouse or domestic partner of a conservatee when there are possible changes in the conservatee's marital or domestic partnership status.

B. Obtaining a Conservator's Bond

A conservator's bond is like an insurance policy for the conservatee's estate. Money from the estate is used to pay the premium to a special kind of insurance company, called a **surety company,** each year. If the premium is not paid, a judge may remove the conservator—that is, terminate the conservator's authority to act.

If the estate loses value and a judge decides that the conservator's dishonesty, misconduct, or negligence was to blame, the surety company will pay the estate for the loss, and then it will attempt to collect the amount it paid from the conservator's own money or property.

A bond is issued for a specific dollar amount. That amount is the maximum amount the surety company agrees to pay the estate if necessary. The premium payable to the surety company is based on that amount. The bond is usually set at an amount equal to the total of the estimated value of the conservatee's personal property plus the estimated annual income from the conservatee's real and personal property plus the estimated annual amount of certain public benefits the conservatee is expected to receive. The court may allow a conservator to file a smaller bond if he or she elects to put some of the conservatee's money in a **blocked account,** a special kind of bank account that does not permit withdrawals unless the court authorizes them.

There are two Judicial Council forms used to create a blocked account. The court's order authorizing the account is Judicial Council form MC-355, ***Order to Deposit Money into Blocked Account.*** The second form is MC-356, ***Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account.*** This document must be signed by an authorized representative of the bank where the account has been opened, stating that the bank received the court's order author-

izing the account and that the bank recognizes the account as a blocked account that requires a court order before a withdrawal is permitted, and providing other information about the account. Copies of these forms are included in Appendix F, at the back of this handbook.

There is no Judicial Council form for a petition for authority to establish the blocked account. This authority is usually requested in the petition for appointment of conservator because that petition contains the estimated value of the conservatee's estate that the court relies on to determine the size of the bond. However, you may ask for this authority at any time. If you want to do so after your appointment, you or your lawyer must prepare your petition without using a form. L

Once the blocked account has been established, you must petition the court for authority to make a withdrawal from the account. This is done on Judicial Council form MC-357, ***Petition for Withdrawal of Funds from Blocked Account.*** The court's order authorizing the withdrawal is Judicial Council form MC-358, ***Order for Withdrawal of Funds from Blocked Account.*** Copies of these forms are included in Appendix F, at the back of this handbook.

The amount of the bond in your case was set by the court at the time you were appointed conservator of the estate. It was based on the estimated size and composition of your conservatee's estate shown in the petition for appointment of conservator.

The initial estimated value of the estate may turn out to be too low, or the kind of assets held may change, for instance, if you sell the conservatee's real property for cash. The amount of bond on file may become less than the amount required by law. If that happens you must immediately apply to the court for an order increasing the amount of the authorized bond. You then must obtain and file the increased bond with the court.

Sometimes the amount of bond on file becomes greater than the amount required by law. This can happen if the original estimate was too high, or if expenditures approved by the court for the support of the conservatee reduce the estate below its estimated size. If that happens, you may apply to the court for an order reducing the amount of the required bond. If the court orders the bond reduced, the surety company will issue a new bond in a lower amount to replace the original bond, and you may receive a refund of unused bond premium on the original bond in the year of the change. The bond premium will also be lower in future years.

You should consult with your lawyer on any questions about bonds, and both of you should always be aware of the required amount of bond for your conservatee's estate and the value and kind of property in the estate at any given time. L

C. Obtaining and Using Letters of Conservatorship

When you have qualified, you must obtain your Letters of Conservatorship from the court clerk's office. They authorize you to act as conservator.

The Letters also show others that you are the duly appointed conservator with authority to act for the conservatee. You will prove your authority to act by showing or delivering certified copies of your Letters to persons, companies, or government agencies concerned with the conservatee's property or financial affairs. For example, banks, stockbrokers, insurance companies, other businesses, and many public agencies will ask for certified copies of your Letters before they will accept your instructions concerning the conservatee.

See Chapter 1, Section 3, for more information about qualifying, Letters of Conservatorship, and obtaining certified copies of your Letters.

To protect the conservatee's home and other real estate, you or your lawyer must **record** a certified copy of your Letters with the county recorder in each county where you think the conservatee owns an interest in any real property, including a security interest, such as a mortgage or trust deed securing a promissory note the conservatee receives payments on. Recording the Letters keeps the real property from being sold, transferred, or offered as security for a loan without your knowledge and prevents anyone from claiming that he or she did not know about the conservatorship when he or she dealt with the conservatee or the conservatee's real property. See the sample letter that follows.

Note that the sample letter sends both a certified copy of the Letters and an uncertified photocopy of them. That is always a good idea when sending anything to be recorded. The recorder will conform the uncertified copy by placing the recording information on it (the date and time of recording and the document number assigned by the recorder). The copy will then be returned in the envelope you have provided, often within a few days. The certified copy actually recorded will eventually also be returned to the person identified at the top of the document (usually your lawyer, if you have one). However, this may take several weeks. In the meantime, the conformed copy is good proof that the document has in fact been recorded on the date shown.

SAMPLE LETTER TO COUNTY RECORDERS

2230 Montezuma
Napa, CA 94558
June 3, 2002

Napa County Recorder Office
1195 Third St., Room 110
Napa, CA 94559

If the conservatee sometimes uses a variation on his or her name, such as a middle initial or maiden name, provide that information after "also known as."

RE: Conservatorship of the Estate of Luigi Oreste Rossi, also known as Lou O. Rossi

Dear County Recorder:

Please record the enclosed certified copy of the Letters of Conservatorship. I am enclosing a certified copy and a photocopy. Kindly conform the photocopy and return it in the self-addressed, stamped envelope enclosed.

I am enclosing a check in the amount of $______to cover the recording fee.

Call the recorder's office to find out the proper amount, and fill in that figure here.

Thank you for your assistance and cooperation.

Sincerely,

Angela Mello
Conservator of the Estate
of Luigi Oreste Rossi

Enclosures:

- Certified copy of Letters of Conservatorship
- Photocopy of Letters of Conservatorship
- Check
- Self-addressed, stamped envelope

D. Working with the Conservator of the Person

If someone else is conservator of the person, you should begin working with that person as soon as possible. You will need to stay in touch with the conservator of the person to decide which arrangements for the conservatee's care are needed and are affordable.

E. Working with the Conservatee

Try to involve the conservatee in your decisions. You must treat the conservatee with respect, making choices that benefit the conservatee and encourage self-esteem. However, in the end you must make the necessary decisions. The court will hold you, not the conservatee, responsible.

F. Developing Your Plan of Conservatorship

Chapter 6, Section 1, of this handbook explains how you can prepare a plan for the conservatorship. Whether you are conservator of the estate, conservator of the person, or both, the plan will help you keep track of all of your duties and fulfill them on a regular basis. Although formal conservatorship plans are not required in all cases in California, some courts require conservators to prepare and file them in all cases, and all courts may require them in any given case. Speak to your lawyer about your court's specific requirements. L

Whether or not you are required to prepare and file a formal plan, it is recommended that you keep at least an informal one, in the manner suggested in Chapter 6. It is also a very good idea to review and adjust your plan periodically. Periodic review and adjustment is essential because changing financial conditions or other unexpected events can affect the estate. For more information, read Chapter 6, Section 2.

G. Keeping the Court Informed of Address Changes

If the conservatee's residence address or telephone number changes after your appointment, you must promptly notify the court of the change by completing and delivering to the court, in person or by mail, a form notice of the change. A sample of this form is included in Appendix F, at the back of this handbook. It is Judicial Council form GC-080, called ***Change of Residence Notice.***

Your lawyer will have, or can get, copies of the change-of-address form. Your lawyer will prepare it and will arrange for its delivery to the court, so you

must be sure your lawyer is informed before the conservatee's residence address or telephone number are changed. **L**

If you don't have a lawyer, you can get copies of the form from the court, or you can get them from the other sources described in Appendix F. Your court may impose a time limit for you to give the information to the court. The Superior Court of Los Angeles County, for example, requires that it be supplied within 30 days of the date of the change.

You must notify the court of any change in your address or telephone number if you don't have a lawyer. The court may require that you provide this information even if you are represented by a lawyer, or it may require that you provide current statements of your address and telephone number, and those of the conservatee, with every account and report you file, even if the information has not changed. The court may have a local form for this purpose. If not, you may provide the information by letter.

Even if it is not required, it is a good idea to advise the court of any changes in your address and telephone number. Include the conservatorship case name and the court's case number in any letter you send to the court. Address your letter to the clerk of the court, not to the judge. If you are in a large county, address it to the probate clerk. Send it to the address of the court where your appointment hearing was held. Send a copy of your correspondence to the court investigator's office. That office will usually be in the same location as the court, but you should check to make sure.

2. Responsibilities of a Conservator of the Estate

The conservatee's assets and most of his or her income are known as the conservatorship estate, or just the estate. As conservator of the estate, you must protect and manage the estate for the conservatee's benefit. The court also may authorize you to use estate assets for the benefit of the conservatee's spouse or other relatives, such as minor children.

As protector and manager of the conservatee's assets, you must do the following:

- Locate and take control of the assets and make sure they are adequately protected against loss.

- Make an inventory of the assets for the court.

- Collect all of the conservatee's income and other money due and apply for government benefits to which the conservatee is entitled.

- Make a budget for the conservatee, working with the conservator of the person, or, if there isn't one, working with the conservatee or his or her caregiver.

- Pay the conservatee's bills and expenses on time and in line with the budget you have made.

- Keep track of how a trustee or other party is managing any of the conservatee's assets in his or her control.

- Invest the estate assets and income in safe investments that will meet the conservatee's needs and the court's requirements. You should consult with your lawyer concerning any investments of the conservatorship estate. Some investments require prior court approval or may not be authorized under any circumstances. L

- Periodically account to the court and to other interested persons about income coming into the estate, expenditures, and the remaining conservatorship property.

- Prepare a final report and accounting of the estate when the conservatorship ends.

3. Giving Notice of the Appointment

As you locate the conservatee's assets (see Section 4 later in this chapter) and acquire knowledge of the people and institutions that have a financial relationship with the conservatee, notify them promptly about your appointment as conservator.

People and institutions that need to be notified may include

- The conservatee's employer, if the conservatee is working

- Banks, savings and loans, credit unions, and other financial institutions

- Stockbrokers

- Companies in which the conservatee owns stock

- Insurance companies and agents
- All companies and banks where the conservatee has charge accounts, credit cards, or an ATM card
- Government agencies, such as the Social Security Administration, from which the conservatee receives payments
- Retirement plans
- The conservatee's accountant or tax return preparer
- Trustees, if the conservatee has trusts or is a beneficiary of someone else's trust; see Section 7(M) later in this chapter
- Creditors, or people to whom the conservatee owes money
- Debtors, or people who owe the conservatee money
- Anyone else who sends the conservatee money: for example, the tenants of any rental property owned by the conservatee
- Anyone involved in a lawsuit by or against the conservatee, especially any lawyer who is representing the conservatee in a lawsuit
- The post office, if you want the conservatee's mail to be forwarded to your address

Be sure to include the new address to which such people and institutions should send any future correspondence, bills, or payments. See the sample notice letter that follows.

SAMPLE LETTER OF NOTICE OF APPOINTMENT

Use the address of your local Social Security office.

If the conservatee sometimes uses a variation on his or her name, such as a middle initial or maiden name, provide that information after "also known as."

53980 W. Petaluma Ave.
Fresno, CA 93711
March 9, 2002

Social Security Administration
5090 N. West Avenue
Fresno, CA 93711

RE: Conservatorship of the Estate of Barton George Krikorian, also known as Bart Krikorian

Conservatee's Birth Date: August 12, 1907

Conservatee's Social Security Number: 333-22-1111

Dear Administrator:

Please be advised that I have been appointed conservator of the estate of Barton George Krikorian. Please have all future checks made out to me, Harold Krikorian, Conservator of the Estate of Barton G. Krikorian, and sent to me at the above address.

I have enclosed a certified copy of my Letters of Conservatorship for your records.

Sincerely yours,

Harold Krikorian
Conservator of the Estate
of Barton George Krikorian

Enclosure: Certified copy of Letters of Conservatorship

Signing letters and other documents You've just seen the second of several sample letters disclosing to others a person's position as the conservator of an estate. Please note in this sample how the conservator's signature block is set up, just below the space for the conservator's actual signature:

Harold Krikorian
Conservator of the Estate of Barton George Krikorian

When you sign a contract as the conservator of an estate, you bind, or obligate, the conservatee's estate, not your own. The other party to the contract must look to the conservatee's estate, not to your property, for payment.

If the other party to a contract didn't know that you were acting as a conservator when the contract was signed, he or she will assume that you signed the contract as an individual, with the intent to obligate your own property or credit. If that assumption is reasonable under the circumstances, you might be held personally responsible.

It is important to make sure that the people or organizations you deal with when you act as conservator know that you are acting in that capacity. One way to do that is to deliver copies of your Letters. Another way is to identify yourself as the conservator of the estate in all letters that you send to anyone concerning your conservatee's financial affairs, in the way noted here. You can, of course, simply tell anyone you deal with that you are acting as a conservator. However, to protect yourself in case of a dispute later, you should make sure there is some written record that shows that you clearly advised the other person that you were acting as a conservator at the time of the transaction between you.

In particular, make sure any written lease, contract, or agreement you sign for the benefit of your conservatee identifies you throughout the document as the conservator of his or her estate. At the very least, add the line "Conservator of the Estate of [conservatee's name]" just below the place where you sign the document, even if you have to handwrite this at the time you sign.

You should also be careful not to agree to be personally responsible for, or guarantee, any payments due under any contract you sign as conservator. Language imposing this obligation may be buried in the fine print. If you have any questions about a contract you are thinking of signing or are not sure of any of its terms, you should have your lawyer review it ***before*** you sign. L

Finally, all checks you write for the benefit of the conservatee, including all payments under any contract, should identify you as conservator of his or her estate. You should make no payments from your own checking account or charged to your own credit card.

4. Locating the Conservatee's Assets

Find and take control of the conservatee's income and assets. This means identifying the assets the conservatee owns and the income he or she receives and is entitled to receive, finding the assets and the sources of income, taking all necessary immediate steps to protect them from loss or damage; and marshalling, or collecting, them, usually by transferring them into your name as conservator. L

The information you gain from taking control of the conservatee's assets will help you prepare an Inventory and Appraisal. You should begin the inventory as you go through the process of identifying and locating assets. It must be submitted to the court within 90 days of your appointment (see Section 6 of this chapter and Appendix C at the back of this handbook).

Assets to Look For

- Cash
- Uncashed checks and refunds
- Bank accounts (checking, savings, certificates of deposit)
- Stocks
- Bonds
- Promissory notes and other legal claims on others, whether or not reduced to court judgments L
- Partnerships
- Other business interests
- Pensions, **Keogh plans, 401k plans, Individual Retirement Accounts,** and other retirement plans
- Life insurance policies
- Real estate
- Furniture
- Antiques

- Artwork
- Jewelry
- Valuable dogs or other pets
- Valuable collections
- Vehicles

INCOME TO LOOK FOR

- Government benefits such as social security, **SSI,** veterans', disability, or welfare
- Insurance benefits
- Wages; severance pay; or disability, vacation, or sick leave owed to the conservatee
- Pensions
- Retirement plan payments or withdrawals
- Settlements from divorce, injury, or other lawsuits
- Payment of debts owed to the conservatee
- Money from trusts
- Rental income
- Annuities
- Reparations from foreign countries

A. Assets That Aren't Part of the Conservatorship Estate

Certain assets or income of the conservatee are not part of the conservatorship estate. You can't take control of them. You are also not responsible for them and do not have to account to the court for them.

Current salary or wages If the conservatee is working, the salary or pay from that work is the conservatee's to use as if the conservatorship did not exist. The conservator neither collects nor accounts to the court for the conservatee's current wages.

Assets in a living trust If the conservatee has created a **revocable living trust**, the assets held by the trustee of that trust will be handled as provided in the trust documents and not as part of the conservatorship.

Community property of a married conservatee If the conservatee is married and his or her wife or husband has legal capacity, the capable spouse has the exclusive right to manage and control the couple's **community property.** That property is not part of the conservatorship estate unless the capable spouse consents in a writing filed with the court in the conservatorship that some or all of it is to be included.

However, the capable spouse has a legal duty to support the conservatee spouse. If the capable spouse is managing some or all of the couple's community property outside the conservatorship, this duty may be enforced against that property in the conservatorship proceeding rather than in a marital support proceeding under family law. In addition, the court in the conservatorship may order the capable spouse to apply community property that he or she is managing to the support of the conservatee, at the request of the conservator, the conservatee, a relative or friend of the conservatee, or any other interested person. L

If the capable spouse has **separate property,** he or she may still have a duty to support the conservatee spouse from that property. However, that obligation must be enforced by a family law department of the superior court, not the probate court. If you have any questions concerning a capable spouse's separate property, you (and possibly your lawyer in the conservatorship proceeding) should talk to a lawyer experienced in family law. L

If you are married to your conservatee, you should consult closely with your lawyer about the character (community or separate) of your property, about which portions of your community property you should manage inside or outside the conservatorship, and about the support you provide the conservatee from that property or from your separate property. L

Even if you are not the spouse of your married conservatee, you should consult frequently with your lawyer about the questions mentioned in this section, particularly questions about the character of the property held by the

conservatee or his or her spouse and questions concerning support from the conservatee's community property or from the spouse's separate property. **L**

If both spouses have conservators of their estates, one-half of the community property of the couple is included in each conservatorship estate and is managed by the conservator of that estate, unless the two conservators agree otherwise and the court in either conservatorship proceeding has approved the agreement. If your conservatee's spouse also has a conservator, you should cooperate and work as closely together as you can.

B. How to Find the Conservatee's Assets

Look through the conservatee's accumulated mail. Make sure to contact all senders of mail to ensure that new mail is sent directly to you, and check all mail that is forwarded or sent directly to you.

Carefully look through the conservatee's home for cash, ownership papers, financial records, recent mail, income tax returns, deeds, insurance policies, and other valuables. Look in the conservatee's safe deposit box; see Section 5(B) later in this chapter.

The best sources of information are the conservatee and his or her close friends, relatives, business associates, and accountant or lawyer. If the conservatee is confused or forgetful, double-check everything he or she tells you.

If you believe someone else has some of the conservatee's assets or records that you should have, but that person won't cooperate with you, consult your lawyer to find out about court procedures that can help you. **L**

C. Assets Owned by the Conservatee and Others

The community property of a married conservatee doesn't become part of the conservatorship estate unless both spouses are conservatees or the spouse who isn't in conservatorship agrees in writing that all or part of the community property may go into the conservatorship estate; see Section 4(A) earlier in this chapter.

Real estate, bank accounts, and other property owned with others create special problems. Co-owners should be contacted immediately to figure out how much of the property belongs to the conservatee and how much belongs to the co-owners.

Co-ownership is a complicated legal area. Whenever you change the owner of an asset from the conservatee to the conservatorship estate, the rights of

co-owners are affected. The consequences may happen after the conservatee's death or while the conservatee is alive. Consult your lawyer about property owned with others. L

5. Taking Control of the Conservatee's Assets

You must take control of the conservatee's assets and transfer them into the conservatorship estate.

A. Bank Accounts

Open a checking account right away in this name:

Conservatorship of [conservatee's name], [your name],
Conservator of the Estate

It is important to use this name. Use the conservatee's social security number, not your own, to open this account. Instruct the bank to send all statements and canceled checks directly to you.

Consider also opening a savings or money-market account in the same way. Money not needed for current ongoing expenses should be deposited in an interest-bearing savings or money-market account.

Asking financial institutions for information Send a letter, along with a certified copy of your Letters, to all banks, savings and loans, and other financial institutions where you think the conservatee had accounts on the date you were appointed. Ask what accounts, if any, the conservatee has there and how the conservatee's name appears on them. Also ask the bank to give you the current balance of each account and the balance on the date you were appointed. If you don't have the conservatee's original statement for each account for the period that includes the date of your appointment, ask for a copy of that statement.

The bank will have to send information on a required Judicial Council form directly to the court concerning these accounts when you change any of them to show the conservatorship, or when you close any of them and replace them with new accounts in the name of the conservatorship. Although the bank is not required to send you a copy of this form, it is a good idea to ask it to do so. The copy may be useful when you prepare your first accounting with the court. See the discussion following the sample letter, and Section 8 of this chapter, which follow.

SAMPLE LETTER SEEKING ACCOUNT INFORMATION

6 Puente Terrace
La Jolla, CA 92037
July 5, 2002

Operations Officer
Hometown Federal Bank
900 Washington Boulevard
Los Angeles, CA 90053

If the conservatee sometimes uses a variation on his or her name, such as a middle initial or maiden name, provide that information after "also known as."

RE: Conservatorship of the Estate of Rose Gertrude Weinstein, also known as Rose Gradsky

Bank account number 120-03255

Social security number 333-33-3333

Dear Operations Officer:

I have been appointed conservator of the estate of Rose G. Weinstein. Enclosed is a certified copy of my Letters of Conservatorship.

Please confirm that Mrs. Weinstein holds the account identified above. Please also advise me of the rate of interest, if any, paid on this account and the balances in the account as of May 7, 2002 (the date I was appointed conservator), and as of the date of this letter.

I revoke any signature authorization and any power of attorney applicable to this account, to the fullest extent allowed by law. Please advise me immediately if there is a durable power of attorney applicable to this account.

Please provide me with the information and forms I need to transfer the money in the above-identified account to a checking account in my name as conservator of Mrs. Weinstein's estate. Please contact me immediately for additional instructions if the opening balance of the new account would exceed $100,000.

I understand that all accounts in FDIC institutions may be withdrawn before they mature with no early withdrawal penalty if a court has ruled that the account holder is no longer capable of managing her own financial affairs, and if the account was issued before the court's decision and not extended or renewed after that date. If these regulations do not apply to the above-identified account, please let me know.

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I also understand that you are required to complete and file a form directly with the court identified in the enclosed Letters when the above-identified account is transferred to me as conservator. I ask that you send a copy of the completed form to me when you send the original to the court.

If you haven't found the conservatee's original statement for the account for the period that includes the date of your appointment, add the following paragraph.

I also ask that you provide me with a copy of your account statement for the above-identified account for the period that includes May 7, 2002. I have been unable to find any of Mrs. Weinstein's original statements for this account.

I have found an unidentified safe deposit key in Mrs. Weinstein's home. Can you advise whether she had a safe deposit box in your institution? If so, I will be pleased to meet with you to see if this key fits a box in your bank, to enter the box, and to inventory its contents. I would like to be present when that is done. If Mrs. Weinstein has a box at your institution but the key does not fit, I would also like to be present when the box is drilled.

Last, can you advise me as to whether Mrs. Weinstein has any accounts in any branch of your institution in addition to the account identified above? If so, can you also provide me with the same information concerning each account as requested above, plus the branch name and address where each account is located?

I am enclosing this information and a self-addressed, stamped envelope for your use in returning these documents to me. If there is a charge for this service, please let me know.

Thank you for your prompt assistance in this matter.

Yours truly,

Martin S. Weinstein
Conservator of the Estate
of Rose Gertrude Weinstein

Enclosure: Certified copy of Letters of Conservatorship

Revocation of powers of attorney concerning bank accounts Some bank or savings and loan accounts create rights in a person other than the owner of the account to withdraw from the account, by language on the signature card for the account that creates a **power of attorney.** Depending on the language used on the card, the power of attorney is either durable or nondurable.

A **nondurable power of attorney** is not effective once the **principal** (the person who created the power and for whom the **attorney in fact** acts under it) loses legal capacity. The appointment of a conservator of the estate for a principal establishes the principal's incapacity. But a nondurable power of attorney over a bank account remains effective if the bank relies on the power before it has been given written notice of the principal's incapacity.

The Letters of Conservatorship mentioned in the sample letter would give sufficient written notice to the bank of the principal's incapacity. The suggested language in the sample letter revoking all powers of attorney is not necessary to end the effectiveness of a nondurable power if the bank acts correctly. The language is intended to emphasize to the bank that it should act correctly, by preventing any attorney in fact appointed under a nondurable power from continuing to act on the conservatee's accounts at that bank.

A **durable power of attorney** remains effective upon the principal's incapacity. A conservator of the estate can revoke a durable power of attorney created by the conservatee only with prior authority of the court.

The suggested language in the sample letter would revoke only nondurable powers because the court has not given authority to revoke durable powers. If the court had granted this authority, the letter to the bank would mention that fact and would enclose a copy of the court's order. However, the bank will have the signature cards for its accounts and should be willing to respond to the request in the letter by advising the conservator whether any durable powers of attorney have been created affecting accounts at that bank.

Changing the name of the owner of existing bank accounts and time deposits You should change the ownership of bank accounts and time deposits that you discover in the conservatee's name to this name:

> Conservatorship of [conservatee's name], [your name],
> Conservator of the Estate

It is important to use this name. Make this change as soon as possible.

Some banks will waive penalties for early withdrawal of time deposits to establish conservatorship accounts. If the institution won't waive the penalty, wait

until the deposit matures to withdraw funds or close the account. Change the name of the account's owner to the conservatorship, unless doing so would cause the account to lose interest. In any event, notify the bank of your appointment.

Each financial institution must advise the court that ownership of an existing account has been changed to show a conservatorship, or that a new account has been opened showing a conservatorship, and must provide other required information. This is done on a required Judicial Council form called ***Notice of Opening or Changing a Guardianship or Conservatorship Account or Safety Deposit Box,*** form GC-051. A blank copy of this form is included in Appendix F at the back of this handbook. The bank should have its own supply of these forms and is responsible for preparing and filing them directly with the court. It is a good idea to ask the bank to send you a copy of the completed form when it sends the original to the court, although the law does not require the bank to do so.

Conservatee's personal checking account Some conservatees are capable of paying for everyday expenses such as utilities, food, rent, clothing, or other incidental expenses. If so, the judge may have approved an allowance for the conservatee. If the conservatee can manage a small checking account, you may want to keep one account open in the conservatee's name, into which you deposit the allowance payments. Have the bank send you all the statements and canceled checks on this account, so that you can see how the conservatee is spending the money and so that you can control the amount in the account. You must show approved allowance payments to the conservatee in your accounting, but you do not have to show the court what the conservatee did with the allowance payments.

Accounts the conservatee owns with someone else If you discover that any of the conservatee's accounts are owned with someone else—for example, as a **joint tenant**—do not remove funds from the account or remove the other person's name without checking with your lawyer. **L** In the meantime, let the bank know you have been appointed conservator and ask that no withdrawals be permitted from the account without your consent.

If the bank won't cooperate, contact your lawyer immediately. **L** You may need a court order to freeze the account while a judge decides the rights of the other person whose name is on the account.

If you withdraw funds, or if you remove the other person's name, you may be affecting the conservatee's intended estate plan. Some or all of the money remaining in such accounts is supposed to go to the other person named on the account if the conservatee dies first. You may also be affecting the other person's rights during the conservatee's lifetime, which will be especially

important if some of the money in the joint account originally belonged to the other person named on the account. L

Accounts the conservatee owns with a designated beneficiary If you discover that any of the conservatee's accounts have a **beneficiary,** or payee, named on the account, for example, a **Totten trust account** or a **Pay on Death (POD) account,** be sure to keep the beneficiary or payee designation when you change the account name to the conservatorship and to you as conservator. Otherwise, you may be seriously affecting the conservatee's estate plan. The money remaining in such accounts is supposed to go to the named beneficiary or payee when the conservatee dies. You should also be reluctant to withdraw money from these accounts without first talking to your lawyer, because if you withdraw money from one account and not from another, and each account has a different named beneficiary or payee, you will be affecting the conservatee's estate plan. Often a court order is needed to solve this problem. L

Where to deposit money You may deposit conservatorship funds in any California bank or any insured savings and loan or credit union. Don't put more money in any one institution than its Federal Deposit Insurance Corporation (FDIC) insurance limit (currently $100,000).

Checkbook records Put all income in the conservatorship checking account and use it to pay expenses. Avoid making out checks to "Cash," except for petty cash or for a court-authorized allowance paid directly to the conservatee. Section 7(C) later in this chapter explains how to use checkbook records to prepare your reports to the court.

Keeping the conservatee's money separate Mixing the conservatee's money with your own can get you into serious trouble. For example, never deposit into your own bank account a check that is made out to the conservatee, even though it may seem convenient at the time. A judge may remove you as conservator and make you pay for any losses out of your own pocket if you can't account for all of the conservatee's money. It's even a good idea to set up the conservatorship bank accounts at a different bank than your own so even an unintended or accidental deposit into the wrong account is unlikely.

CAUTION None of the conservatee's money should ever go into your personal accounts, and none of your own money should ever go into any of the conservatee's accounts or into any account in your name as conservator.

B. Safe Deposit Boxes

Banks will make you show a certified copy of your Letters before you may open the conservatee's safe deposit box to review the contents. When you first open the box, be sure to ask a bank employee to watch you and to sign a list of what you find there.

If you close the box or change title to it to show the name of the conservatorship, the bank must complete and file with the court the same form required for changes in bank accounts, Judicial Council form GC-051. This form requires the bank to describe the contents of the box. You should ask for a copy of the completed form the bank sends to the court.

If you can't find a safe deposit box key, the bank may have to arrange for a locksmith to come to the bank to drill the lock on the box so it may be opened to allow the bank to identify its contents for the court form or to inventory and deliver those contents to you. You should try to be present when that is done.

The bank will hire a locksmith to come to the bank to perform that service and will bill you for its cost. The bill may be paid from the conservatee's assets. However, you should write a check for this cost rather than permit the bank to withdraw the money from a conservatorship account opened at the bank. This will ensure that your record of expenditures is accurate and complete.

If the conservatee rented the box with someone else If the conservatee's safe deposit box is rented with someone else, ask that person to come with you when the box is opened. Separate the items in the box so that it contains only the conservatee's belongings. If there is a question or disagreement about who owns a particular item, leave it in the box and check with your lawyer. L

If you are going to keep the box for storing conservatorship property, you should change the name on the box, as you did with the bank accounts (see Section A earlier in this chapter), to this name:

> Conservatorship of [conservatee's name], [your name],
> Conservator of the Estate

You should be the only one to have a key to the box. Not even the conservatee should have a key.

If the conservatee doesn't have a box If the conservatee doesn't already have a safe deposit box, think about renting one. If you rent a box in the name of the conservatorship, the bank must notify the court that you have done so and must tell the court what went into the box on the day it was rented.

Never store the conservatee's assets in your own safe deposit box.

What to keep in the box A safe deposit box is useful for keeping small but valuable objects, such as precious jewelry, stamp collections, and coin collections. If you are unsure about whether it is more important for the conservatee to have such an item rather than to have it stored in a safe deposit box, consult your lawyer. Remember that you may have to pay out of your own pocket for any loss of valuables. **L**

Important papers should also be kept in the box.

PAPERS TO KEEP IN A SAFE DEPOSIT BOX

- ➤ The conservatee's will or other estate planning documents
- ➤ Stock certificates
- ➤ Bonds
- ➤ Real estate deeds
- ➤ Vehicle or vessel registration documents
- ➤ Promissory notes
- ➤ Insurance policies
- ➤ Birth, marriage, and death certificates
- ➤ The conservatee's passport
- ➤ Photographs of the conservatee's valuable personal belongings
- ➤ Any other papers that would be hard or impossible to replace

C. Stocks and Bonds

Although the conservatee's stocks and bonds usually will be in a safe deposit box or with a broker, it is not uncommon to find certificates in the conservatee's home, so you should carefully look for them. You may also learn of stocks and bonds from brokers' statements, income tax returns, Internal Revenue Service (IRS) 1099 forms, and dividend checks.

Lost certificates If you find dividends reported on an income tax return, but you can't find a stock or bond certificate, write to the company and ask for a replacement certificate. Be sure to tell the company to send future dividends to you.

Dividend reinvestments If the conservatee owns the stock of a company that has a dividend reinvestment program, a plan under which cash dividends are not distributed but are instead used to buy more shares of the company's stock, immediately ask the company to give you a statement of the current number of shares owned by the conservatee. You may want to discontinue the reinvestment program because it is hard to keep track of reinvested dividends for your account to the court. Check with your lawyer if you're not sure what to do. **L**

Changing ownership Have the stocks or bonds reissued to this name:

Conservatorship of [conservatee's name], [your name],
Conservator of the Estate

Use the conservatee's social security number on IRS Form W-9. See the sample letter that follows.

If any of the conservatee's stocks or bonds are held in a brokerage account by a stockbroker, you can change the record ownership of the brokerage account in the same way that you change ownership of bank accounts. The broker must complete and file Judicial Council form GC-050, ***Notice of Taking Possession or Control of an Asset of Minor or Conservatee,*** when you have changed the title to any brokerage account to show the conservatorship, or when you open a new account showing the conservatorship. A blank copy of this form is included in Appendix F at the back of this handbook. As with the similar form used by banks, it is a good idea to ask the broker to provide you with a copy of the completed form when the original is sent to the court.

If the conservatee owns a number of stocks or bonds that are publicly traded, you will find them easier to deal with by opening a brokerage account in your name as conservator and placing the conservatee's shares into the account. The broker will handle all aspects of the transfer procedure, the share certificates will be safe, the broker will receive cash dividends or bond interest and will either send them to you or place them into a money-market account attached to the brokerage account, and you will receive periodic statements showing the current value of the shares and all dividend activity. If you later sell any of the shares, the broker will handle all aspects of the transfer procedure.

SAMPLE LETTER FOR STOCKS AND BONDS

P. O. Box 4392
Yreka, CA 96067
November 18, 2002

Retrodate Technology
44 Sea Lake Way
Mountain View, CA 94040

Attn: Stock Transfer Department

RE: Conservatorship of the Estate of Mary Jane Orr,
also known as M. J. Orr

Shares of Stock in Retrodate Technology,
Certificate Number 210008070940

Dear Transfer Agent:

Enclosed please find a certified copy of Letters of Conservatorship that verify that I have been appointed conservator of the estate of Mary Jane Orr.

Ms. Orr apparently owned the stock certificate identified above. Please advise me of the number of shares she now owns and your requirements for transferring this stock to the conservatorship estate. Please forward all forms that must be completed. Please also send all future dividends to me.

Thank you for your assistance.

Sincerely,

Elaine MacArthur
Conservator of the Estate
of Mary Jane Orr

Enclosure: Certified copy of Letters of Conservatorship

If the conservatee sometimes uses a variation on his or her name, such as a middle initial or maiden name, provide that information after "also known as."

If, however, you discover that any of the conservatee's stocks, bonds, or mutual funds are owned with someone else or have another person named as beneficiary, be careful when changing ownership. Do not remove the co-owner or beneficiary without first checking with your lawyer. You should also check with your lawyer before selling these stocks or bonds or withdrawing from these mutual funds. You could be affecting the conservatee's estate plan or affecting the rights of the co-owner or beneficiary. For more information, see the discussion in Section 5(A) earlier in this chapter about bank accounts owned with someone else or having a designated beneficiary. L

D. Real Estate

Real estate, including the conservatee's home, vacation homes, rental property, undeveloped land, and deeds of trust, should be left in the conservatee's name. Record a certified copy of your Letters with the county recorder in each California county where you think the conservatee owns real estate. See the sample letter to county recorders in Section 1(C) earlier in this chapter. Recording the Letters should prevent the conservatee from selling the real estate or giving it away to someone who doesn't know about the conservatorship. It also should stop any loans the conservatee, or anyone else improperly influencing or controlling the conservatee, tries to get using the property as collateral.

If the conservatee's property has a building on it, make sure the insurance is current. You should consider removing unsafe structures that may be a source of legal liability.

E. Cars and Other Vehicles

Get the ownership certificates ("pink slips") of all the conservatee's cars and other vehicles such as boats, motorcycles, campers, and planes.

Transfer ownership to this name:

> Conservatorship of [conservatee's name], [your name],
> Conservator of the Estate

Keep vehicles safely stored and control their use. No one should use the conservatee's car or other vehicle except for the conservatee's benefit, and only if it is adequately insured and the insurance covers all drivers. Even if vehicles are stored and not used, remember to keep them insured. Renew the registration for any vehicle that is driven.

Vehicles, especially cars, lose value over time, so consider selling any vehicle that will not be used in the foreseeable future.

F. Debts Owed to the Conservatee and Missing Assets

Try to collect debts owed to the conservatee and try to get back assets that were taken from the conservatee wrongfully. If you are faced with either of these situations, speak with your lawyer to find out what can be done. L

G. Charge Accounts

Try to eliminate ways the conservatee could get into debt. For this reason, it is generally not advisable for any conservatee to have a credit card or an ATM card.

In rare situations, you may want to leave a charge account open for the conservatee's use. If so, put dollar limits on the use of the account and exercise careful control over it.

Cancel credit cards and ATM machine cards that are open in the conservatee's name. Collect and destroy all of these cards except those, if any, that you decide the conservatee can keep and use. See the sample letter that follows.

6. Inventorying and Appraising the Estate

As you locate the conservatee's property, make a list describing each item in detail. Use this list to help you prepare your Inventory and Appraisal.

> See Appendix C at the back of this handbook for a sample Inventory and Appraisal. It is prepared on Judicial Council forms GC-040 and GC-041. Blank copies of these forms are also included in Appendix F.

The Inventory and Appraisal lists all of the assets owned by the conservatee on the date you were appointed and states their value on that date. The conservator lists the value of cash items such as bank accounts. The **probate referee** appraises all other items according to their fair market value. See Chapter 7, Section 1(C), for more information about the probate referee.

SAMPLE LETTER FOR CREDIT CARDS

If the conservatee sometimes uses a variation on his or her name, such as a middle initial or maiden name, provide that information after "also known as."

599 Tyler Avenue
Los Angeles, CA 90004
October 1, 2002

National Express Card Company
P. O. Box 8823
Wilmington, DE 19805

RE: Conservatorship of the Estate of Kazuo Carl Nishikawa, also known as Kaz Nishikawa

Account No. 98-505-70-113

Dear National Express Card:

Please be advised that a conservatorship has been granted for the estate of Kazuo Carl Nishikawa. Enclosed please find a certified copy of Letters appointing me conservator of the estate. Please immediately cancel this account and do not allow further charges to be made to it.

I have located and cut in half the credit cards for this account. The pieces are enclosed.

Please contact me if you have any questions.

Sincerely yours,

Suzanne Nishikawa
Conservator of the Estate
of Kazuo Carl Nishikawa

Enclosures:
Certified copy of Letters of Conservatorship
Credit cards

A. When to File

The Inventory and Appraisal must be filed with the court within 90 days after your appointment. To avoid being late, start the inventory well before the filing date so that the probate referee will have enough time to appraise the non-cash assets, complete the Inventory and Appraisal, and return it to you or to your lawyer for filing with the court.

Preparing an Inventory and Appraisal may not be a one-time obligation. Any time you discover assets owned by the conservatee when you were appointed but that you didn't know about until later, or you receive assets payable to the conservatee after your appointment (other than assets you obtain as a result of your own actions to invest and manage the estate, such as when you buy stocks or mutual funds with conservatorship funds), you must prepare and file a Supplemental Inventory and Appraisal describing these assets, in the same way you did the original Inventory and Appraisal, including appraisal by a probate referee if required. Assets shown in a Supplemental Inventory and Appraisal are valued as of the date you discovered or received them.

If you have collected assets and have prepared an Inventory and Appraisal, but you are close to the 90-day deadline because the referee is having difficulty completing the appraisal of some of the assets, you could prepare one or more Partial Inventories and Appraisals listing all of the cash assets and any other assets the referee can appraise in time to meet the deadline, to be followed later by a Final Inventory and Appraisal that includes the other assets. All of the partial inventories and the final inventory together must contain all of the conservatorship estate assets valued as of the date of your appointment.

If you sell estate real property more than one year after the date you were appointed conservator, you must obtain a probate referee's current appraisal of the property. This is called a Reappraisal for Sale, and is prepared on the same form and in the same manner as the initial inventory, except that the actual date of the reappraisal is identified on the form.

B. Why the Inventory and Appraisal Is Required

Preparing the Inventory and Appraisal is an important task. The Inventory and Appraisal has several purposes:

- To help you and the judge estimate how much income may be available over the course of the conservatorship to cover the cost of meeting the conservatee's needs

- To let the judge and other interested people know how much the conservatorship estate is worth
- To provide a list of the property for which you are accountable
- To help the judge determine the amount of your bond

C. Establishing the Value of Personal Belongings

It may be hard to establish the value of some personal belongings. With your inventory, give the probate referee your own informal opinion of how much items such as jewelry, coins, antiques, and artwork are worth. If you believe that these items have unusual value that isn't obvious—as with paintings or sculptures, for example—consider hiring a professional appraiser to value them. Send a copy of the appraiser's opinion to the probate referee with your inventory.

D. Challenging the Probate Referee's Appraisal

The more detail you give the probate referee, the more likely it will be that the appraisal is correct. In your inventory, or in correspondence to the probate referee accompanying it, alert the referee to any facts about the conservatee's assets that may reduce their value. For example, let the referee know if the roof on the conservatee's home needs repair.

No matter how much information you provide, the referee's appraisal may not meet your expectations. You have the right to question the appraisal, and, if your concerns aren't resolved, you may file a **petition** in the conservatorship proceeding asking the judge to resolve the dispute. L

7. Managing and Protecting the Estate

You will need a judge's approval before you do certain things. If you are not sure whether you need court approval, check with your lawyer. L If you act without a judge's permission and a loss results, you may have to pay for the loss out of your own pocket.

A. Storing and Protecting Assets

Store valuable furs, antiques, artwork, and excess furniture in an insured warehouse if the conservatee has no immediate need for them. For insurance purposes, take photographs of the conservatee's valuable personal belongings and household items and keep the photographs in the conservatorship safe deposit box. The conservatorship estate may pay the costs of storage and insurance.

WAYS TO PROTECT THE CONSERVATEE'S VALUABLE POSSESSIONS

- ➤ Remove valuables such as silver, art, jewelry, and furs from the house unless the conservatee wants to keep them at home.
- ➤ If the conservatee wants to wear jewelry, substitute less expensive jewelry. For example, if the conservatee wants to wear expensive pearls on a regular basis, substitute costume jewelry.
- ➤ If the conservatee insists on wearing valuable jewelry, alert the conservatee's relatives, friends, and lawyer that you are allowing the conservatee to wear his or her jewelry.
- ➤ Take an inventory of all valuables that remain in the home and photograph them. Keep this information in the conservatorship safe deposit box. Let everyone who comes into the house know that an inventory has been taken.
- ➤ Go through the house annually to check the inventory.
- ➤ Put locks on valuables when you can—for example, on china closets or closets in which valuables such as silver or jewelry are stored.
- ➤ Insure valuables; these can be added to homeowners' or tenants' policies. List and describe these items individually. Consider taking this step no matter who is in possession of these items.
- ➤ Engrave identification numbers on the television and on stereo equipment. You might use the conservatee's social security number. Be sure to let everyone know that these items are marked.
- ➤ If you hire an **aide** directly or through an agency, be sure to check references.
- ➤ If you hire an aide through an agency, make sure the agency screens, bonds, and insures its employees.

B. Preparing a Budget

In preparing the budget, your primary concern is to arrange for care and comfort that the conservatee can afford. Plan the budget with the conservator of the person and, if possible, with the conservatee. The budget should include estimates of expenses and income from all sources and take into consideration free or low-cost services available from community agencies.

The budget will be an important part of your overall plan for the conservatorship. See Chapter 6 for information about your plan.

C. Setting Up and Keeping Good Records

If you have access to a computer, the best way to keep records of the conservatorship checking account and other estate investments is with a personal-finance computer program such as Quicken®. The program will help you track all of the information you need about income and disbursements. It can be tailored to fit your exact requirements. For example, if you want to keep track of expenditures by category, you can easily set up the program to do that. You can keep track of income receipts associated with the properties that generated them, such as stock dividends from each company and rental income from each parcel of real property or from each rental unit of a single property. You can also buy checks that the program will print as needed. This feature is particularly helpful because the program requires you to enter information about each expenditure into your records when you write each check. You should also be able to use the program to prepare at least some of the schedules to be attached to your accounting. See Section 8 later in this chapter and Appendix D, a sample account and report. Be sure to save copies of your estate records on separate floppy or Zip® disks, not just on the computer's hard drive.

If you don't have a computer, the check register for the conservatorship checking account is your indispensable tool for keeping track of income and expenditures. The large type of register, called an executive or deskmaster register, is the best. It allows plenty of room for complete and detailed entries, particularly of deposits. The check register sample that follows was taken from a deskmaster register.

This type of register is offered with the desktop type of checkbook, which has three or more checks on each page. It's less convenient to carry around than a pocket or purse checkbook, but you will be glad you chose the desktop model when you or your lawyer prepare your accounting for the court.

For the check register to give you the most help when your accounting is prepared, it must be a complete record of all estate cash receipts and disbursements. ***You should deposit all income into the conservatorship checking account first,*** even if you immediately write a check for the entire deposit to one of the other accounts, such as a savings or money market account. Clearly identify the source of each deposit in the check register. ***You should also make all expenditures by check from the checking account,*** for the same reason. The important thing is to try to keep a complete record in one place of all receipts and expenditures of the conservatee's money.

If you can, arrange with the bank where the conservatorship checking and savings accounts are held to pay savings account interest into the checking account. Check the account statements frequently and add the amount of interest paid in from the savings account as a deposit in the checkbook register.

Cash Courts do not approve cash expenditures by conservators that do not show how the money was spent. For generic items such as groceries, write a check rather than spend cash. When you must use cash, keep a detailed receipt of each cash expenditure in case a judge or someone interested in the estate questions you about it later.

You can buy petty cash receipts in tear-off pads in any office supply store. Keep a pad of these with you at all times, fill one out for each cash expenditure, and attach the store's invoice or cash register receipt to it. Fully describe what was bought on each receipt if the store's invoice or cash register receipt doesn't say.

Keep only small amounts of cash on hand as needed for small day-to-day expenses, and keep it separate from your own cash. You may set up a petty cash system with a fairly low ceiling, say, $50. Save the receipts for cash expenditures for a month, or for some other, shorter period, or until the total of the receipts approaches the ceiling. Replenish the petty cash fund by a check payable to "Cash" for the total amount of your receipts, so the total fund is restored to the ceiling amount. You should make a notation on the check and in the check register that the check is for replenishment of petty cash. Your accounting would show the actual expenditures of cash shown on the receipts, not the replenishment checks.

If you can afford it, it's better to pay all cash sums from your own pocket and then to reimburse yourself by check from the estate. You must still keep the detailed records described above. When you list the check in the schedule of **disbursements,** or payments, in your accounting, you should show yourself as the payee, describe the check as a reimbursement, and list the expenditures for which the check is reimbursement. See examples of reimbursement checks to the conservator and to the lawyer for the conservator in Schedule C of the sample account and report in Appendix D, at the back of this handbook.

If you believe that your conservatee can handle small amounts of cash for personal expenses, you can ask the court for permission to pay a monthly allowance directly to him or her. You may then write a check for cash in the allowance amount each month, give the cash to the conservatee, and enter the check in your records as an allowance payment. You will then be excused from accounting further for this sum. You should try to find out how the conservatee spends the money, however, in case you need to make adjustments later, and you should keep the allowance amount modest. Don't give the conservatee cash unless you have received court permission to pay an allowance.

Income Record all income paid to the conservatee, including the date it was received, the amount, and its source. If it isn't too hard to do, photocopy every incoming check.

Expenditures For every check you write on the conservatorship account, write down the date, to whom it was paid, and what it was for. Keep receipts for all purchases in chronological order, and write the check number and the date paid on each receipt.

Your record of income and expenditures should look like this:

PLEASE BE SURE TO DEDUCT ANY PER CHECK CHARGES OR SERVICE CHARGES THAT MAY APPLY TO YOUR ACCOUNT

CHECK NO.	DATE	CHECKS ISSUED TO OR DESCRIPTION OF DEPOSIT	(-) AMOUNT OF CHECK		✔	(-) CK FEE	(+) AMOUNT OF DEPOSIT		BALANCE	
									229	73
-	4/1	Social Security (April)					540	00	769	73
401	4/2	Pacific Bell for 3/02	26	00					743	73
-	4/3	Hamilton Federal Bank Interest (1st Quarter)					85	90	829	63
402	4/3	Ben Casey, MD (3/15) Office Visit - earache	53	00					776	63
-	4/5	Rental Income 110 Church Street #A (Mar.)					995	00	1,771	63
-	4/5	Rental Income 110 Church Street #B (Mar.)					875	00	2,646	63
403	4/7	Millard Fillmore Savings Mortgage Payment (4/02)	850	00					1,796	63
-	4/8	ABC Mfg. Co. Pension (Feb.)					320	00	2,116	63
404	4/9	Clerk of Superior Court - Certified Letters	4	00					2,112	63
405	4/10	Cash to housekeeper for misc. personal ex. (3/02)	20	00					2,092	63
-	4/11	Medicare Reimbursement for Ben Casey, MD (2/5 visit)					41	00	2,113	63

The importance of keeping complete records If you follow the record-keeping tips in this handbook, it will be easier for you and your lawyer to prepare reports required by the court. ***The importance of keeping complete records can't be overstated.*** Conservators often regret not setting up an adequate record-keeping system from the start, because trying to piece together the information later from memory and old bank statements is difficult and time consuming, and it may be expensive as well. The court has the authority to make you pay for this added expense out of your own pocket.

Transactions involving key assets You may be asked by a judge to explain transactions that involve key estate assets. Be prepared by keeping accurate records and keeping all documents related to transactions involving the following:

- Stock or bonds owned by the conservatee

Transactions involving stocks and bonds Keep track of all cash dividends or bond interest, stock dividends, and stock splits and make sure that you make note of any automatic cash dividend reinvestments. These transactions often don't show up in your check register and therefore are easy to overlook.

If the estate includes stock of a number of publicly traded companies, or a large number of shares of one or two public companies, you should consider opening a stock brokerage account in your name as conservator and depositing the stock into the account. The broker's regular account statements will help you when you prepare your account and report.

- Rentals of property owned by the conservatee
- Sales of the conservatee's real estate and personal property
- Insurance claims that have been paid
- Debt repayments—write down the interest rate and list the security for the debt

D. Monitoring the Conservatee's Actions

As conservator, you are responsible for knowing what your conservatee is doing or wants to do about financial or property matters, and whether anyone is trying to influence or pressure him or her. If you think that the conservatee

is doing things that might damage him or her financially, or that you might have to fix later, check with your lawyer right away. **L** You are the person who is ultimately responsible for the conservatee's finances.

E. Monitoring the Conservatee's Assets That Are Controlled by Others

Sometimes some of the conservatee's property may be controlled by another person or institution—for example, a husband, wife, or trustee. As conservator, you must know how this property is being invested and used for the conservatee. If you have questions or concerns, ask this other person or institution. If you still aren't satisfied, bring your concerns to the attention of a judge with your lawyer's help. **L** Section 7(M) later in this chapter has more information about trusts.

F. Managing Investments and Retirement Plans

When you invest the conservatee's money and make decisions about his or her retirement plans, you are held to a higher standard of careful conduct than when you invest your own money or decide about your own retirement.

Making investments As conservator, you are expected to invest prudently and to protect estate assets. This means avoiding risky investments, but planning for reasonable growth, usually with a variety of investments.

Review the conservatee's existing investments to see whether they are still appropriate for his or her age, life expectancy, income requirements, and financial resources. Discuss any changes with the conservatee if this is possible. You should also discuss your investment plans with your lawyer, tax advisor, and stockbroker before taking action. Be sure to include in these discussions any plans to sell estate assets, whether you plan to reinvest the money from the sale or have some other purpose. There can be serious income tax consequences, for example, when you sell an asset the conservatee has owned for a long time. See also the discussion about selling assets in Section 7(G) later in this chapter. **L**

Automatic reinvestment of cash dividends is allowed, but this sort of transaction is difficult to keep track of for purposes of your accounting to the court. (See Section 8 later in this chapter and Appendix D for more on your account and report.)

Handling retirement plans Many conservatees have one or more pension plans, Individual Retirement Accounts (IRAs), or other retirement plans, such as a 401(k) plan, a Keogh plan, or a plan for **deferred compensation.**

You will need to determine the conservatee's rights and benefits under any plan. You should discuss such plans with your lawyer, especially if money is not already being withdrawn or distributed from a plan on a regular basis. It is your duty to take any action necessary to protect the conservatee's interests in such plans, taking into account his or her financial needs and the tax consequences of withdrawals or distributions. L

If the conservatee is already withdrawing money or receiving distributions from a retirement plan, check with the plan administrator to find out about any rights the conservatee has under the plan. Indeed, you should do this even if the conservatee is not yet withdrawing or receiving money from a plan. You will still need to determine the conservatee's future rights under it. For example, when the conservatee reaches a certain age, certain elections may have to be made, or a minimum withdrawal or distribution may be required.

G. Selling or Borrowing against Estate Assets

You may need to sell estate assets if, for example, there isn't enough money to support the conservatee, or an unused car is losing its value. You may need a judge's approval to sell or borrow against certain assets, so check with your lawyer before you act. L

Selling the conservatee's assets or using them to borrow money for the conservatee's living expenses can have consequences in a number of areas:

- The conservatee's current or future eligibility for public assistance programs such as SSI, Medi-Cal, and In-home Supportive Services may be affected by receipt of the proceeds of a sale or loan, or by increased income earned on those proceeds when they are reinvested.
- There may be income tax consequences, such as a large capital gains tax.
- There may be less property for the conservatee's heirs.

Think these consequences through carefully and get the advice of your lawyer, your tax advisor, and any involved public assistance agencies. L

Selling the conservatee's home or former home Because selling the conservatee's home will have an enormous effect on the conservatee, you must explore all other alternatives first. If no other solution can be found, you must obtain special court permission for the sale. A judge will not allow you to sell the conservatee's home unless you have discussed the proposed sale with the conservatee and have told the judge what the conservatee wants. The court

may send a court investigator to interview the conservatee to be sure the conservatee knows about the sale and to find out what he or she wants. If the conservatee does not want the home sold, the court may appoint a lawyer, at conservatorship estate expense, to represent the conservatee at the time you request court authority for the sale.

Alternatives to giving up the conservatee's home When the conservatee is low on cash, there are several ways to use the conservatee's home to get money to pay for in-home care and other things the conservatee needs to stay at home. Each of these methods has advantages and disadvantages. You will need a judge's approval before taking any action. Ask your lawyer and your tax advisor about these alternatives:

- **Sale of a remainder interest** The home is sold to a new owner. The conservatee is allowed to live in the home for the rest of his or her life. Often the buyer and seller will agree that the conservatee's estate will be responsible for upkeep. The selling price will be less than it would be if the conservatee's entire interest in the property was sold because the conservatee becomes a "free tenant," and the new owner has to wait to use the property.

- **Sale with leaseback** The home is sold for its full value, and the conservatee becomes a rent-paying tenant.

- **Rental** Sometimes it makes more financial sense to retain the conservatee's home and rent it out rather than sell it. That is especially true if the conservatee has owned the home for a long time. The sale of the home in that situation may incur a large capital gains tax. See also Section 7(K) later in this chapter for information about managing rental property.

- **Home equity loan** If the conservatee qualifies, a home equity loan will provide a lump sum of cash. The estate will then have to make monthly loan repayments. If the value of the home increases, it can be sold for full market value at a later date.

- **Reverse-annuity mortgage (RAM)** In many respects a RAM is the reverse of a regular mortgage. With a RAM, the lender gives the conservatee monthly loan installments. At the end of the loan, often when the conservatee dies, the debt usually is repaid by selling the home. The size of the monthly installments depends on the value of the home, the loan's interest rate, the length of the loan, and the loan's closing costs and related expenses.

For more information on these alternatives, read a free publication called ***Home-Made Money: Consumer's Guide to Home Equity Conversion,*** published by the American Association of Retired Persons, listed in Appendix E, "Suggested Readings for Conservators," at the back of this handbook.

Conservatorship sale requirements Once you have decided to sell some of the conservatee's property, and after you have obtained permission from the court if that is required, you must follow detailed and often complicated rules and procedures to complete the sale. These vary depending on the type of property sold and the reasons for its sale, but the following are highlights:

- The sale must be for a purpose authorized under the law. The authorized purposes are
  - Sales that are necessary because the estate's income is insufficient for the comfortable support and maintenance of the conservatee
  - Sales that are necessary to pay some (but not all) of the conservatee's debts
  - Sales that are for the advantage, benefit, and best interests of the conservatee or his or her estate
- For some sales that take place more than a year after your appointment, you must prepare a Reappraisal for Sale, using the same forms you used for the Inventory and Appraisal. You then must get the probate referee's appraisal of the property's current value and file the reappraisal with the court.
- To sell some kinds of personal property and all real property, you must post a notice of intent to sell in the courthouse and publish the notice in a newspaper.
- The terms of sale may be for all cash or part cash and part deferred payments, subject to approval of the court and subject to requirements for the security received by the conservatorship estate for the deferred payments.
- Most sales of real property, and personal property sold with it as a unit, must be confirmed by the court. This is a form of court approval after the conservator has agreed to sell the property to a specific buyer on agreed terms. The order confirming sale follows a hearing at which interested buyers other than the original buyer may appear and bid on the property. The court actually conducts an auction at the hearing. The order confirming sale is in addition to any required prior court

approval for the sale. Once a sale has been confirmed by the court, its propriety and terms cannot be questioned.

The petition for confirmation of sale and the order confirming sale are Judicial Council forms GC-060, ***Report of Sale and Petition for Order Confirming Sale of Real Property,*** and GC-065, ***Order Confirming Sale of Real Property.*** Blank copies of these forms are included in Appendix F, at the back of this handbook.

- Stocks or bonds that are listed on established exchanges or traded in the over-the-counter market may be sold without prior court approval or subsequent confirmation. However, such sales are subject to review and may be questioned at the time of the next account and report.

- Stocks or bonds that are not eligible for sale under the previous paragraph, and personal property, such as an unused car, that is depreciating in value or would incur loss or expense if kept, may be sold with prior court approval. However, that approval can be obtained immediately on application, without a fully noticed hearing. That kind of application is called ***ex parte,*** meaning without notice to other parties. The applications and orders authorizing the sale are Judicial Council forms GC-070, ***Ex Parte Petition for Authority to Sell Securities and Order,*** and GC-075, ***Ex Parte Petition for Approval of Sale of Personal Property and Order.*** Blank copies of these forms are included in Appendix F, at the back of this handbook.

In addition to court approval and other requirements, the sale of a conservatee's property may require unique language in agreements with real estate brokers, escrow companies, buyers, and others. All parties should be aware of the specific requirements of these sales. Try to deal with real estate brokers and others who have prior experience with them. You should also consult closely with your lawyer concerning all aspects of a sale of any of your conservatee's property.

CAUTION Selling or borrowing against estate assets can affect a conservatee's eligibility for SSI, Medi-Cal, In-home Supportive Services, and other public assistance programs. Check with these public assistance agencies to find out how additional cash proceeds of a sale or loan, or additional income earned on the proceeds, might affect the conservatee's eligibility.

H. Securing Adequate Health, Life, and Property Insurance

Check with the conservatee's insurance agent to see whether the conservatee and his or her property are adequately insured. If the conservatee doesn't have enough, or the right kind of, insurance, decide what's needed and arrange to buy it.

Pay any past-due premiums right away to avoid a lapse of coverage.

If the conservatee has duplicate or unnecessary insurance policies (which often happens when a confused person responds to television or newspaper ads), discuss them with your lawyer and the conservator of the person to decide which policies, if any, should be canceled. L

Health insurance Adequate health insurance for the conservatee is very important. You and the conservator of the person should figure out what care the conservatee will need so that appropriate health insurance is obtained. The conservatee may need supplemental Medicare insurance, for example. However, don't cancel an existing policy that provides coverage until you have completed arrangements for alternative coverage.

See Chapter 4, Section 3(A), for more information about health insurance. See also Appendix A, "Guide to Medicare, Medi-Cal, and Other Health Insurance," at the back of this handbook.

Life insurance Review the conservatee's life insurance policies. Before you change the amount of coverage or the beneficiary or borrow against the policy, ask your lawyer whether court approval is needed. L

You must have court approval to change the beneficiary of an insurance policy, even when the beneficiary is deceased.

Employer's liability insurance and workers' compensation If the conservatee or conservatorship estate employs anyone, for example, an aide, housecleaner, gardener, driver, handyman, or other service provider, make sure that there is proper worker's compensation insurance protection in case the employee is injured on the job. Do not assume that this will be covered under the conservatee's homeowner's insurance. If the employee comes from an agency or registry, do not assume that the agency or registry is providing the necessary coverage. It is your responsibility to verify that there is proper coverage.

Property insurance If the conservatee owns a building, make sure that it has enough fire and public liability insurance. Cars driven by the conservatee or the conservatee's spouse must be insured. Cars, real estate, and household belongings should be insured for their replacement value against fire, theft, and other hazards and against harm to third parties. Include coverage for work-related injuries of household help. You don't need a judge's approval to take out these types of policies.

If the conservatee owns a vacant building, verify with the conservatee's insurance broker, if known to you, or if not, with an agent for the insurance company identified in an insurance policy that concerns the vacant property, that there is insurance coverage in place for the property. Try to get any representations that there is existing coverage in writing.

If there is no existing coverage, check with the broker or agent, or your own insurance broker or agent, to see if insurance coverage is available for the property. You may find it impossible to get insurance for a vacant building, particularly if it is in a dilapidated condition. In that event, you may have to demolish the building or sell the property quickly. You should consult closely with your lawyer when there is a vacant building in the conservatorship estate. L

I. Paying Taxes

You are responsible for filing income tax returns for the conservatee. File tax returns for the conservatee on federal Form 1040 and California Form 540. You may hire a tax preparer to help. Make sure that real estate taxes, personal property taxes, gift taxes, and employment taxes are paid on time. The "Checklist for Hiring and Paying an Aide," in Section 7(J) later in this chapter, discusses employment taxes for aides.

If you can't find a copy of the conservatee's past two federal and state tax returns, write to the Internal Revenue Service and the California Franchise Tax Board to request copies and to find out if all returns have been filed. See the sample letter that follows.

You may request copies of federal income tax returns by completing and delivering IRS Form 4506, ***Request for Copy or Transcript of Tax Form.***

You must also notify the IRS that you are the person now responsible for tax filing and payment on behalf of the conservatee. You may use IRS Form 56 for this purpose.

SAMPLE LETTER FOR TAX RETURNS

2451 Folsom
Oakland, CA 94619
January 8, 2002

Internal Revenue Service
Fresno, CA 93888

—or—

Franchise Tax Board
Sacramento, CA 94267-0031

If the conservatee sometimes uses a variation on his or her name, such as a middle initial or maiden name, provide that information after "also known as."

RE: Conservatorship of the Estate of Edna Mae Washington, also known as Edna Mae Johnson

Conservatee's social security number: 111-22-3333

Dear Conservatorship Coordinator:

I have been appointed conservator of the estate of Edna Mae Washington. A copy of my Letters of Conservatorship is enclosed.

Please send all future correspondence concerning the conservatee to me at the above address. Also please send me a copy of the last two income tax returns that were filed by the conservatee, or a copy of any form necessary to obtain these returns.

Thank you.

Truly yours,

Earl Washington
Conservator of the Estate
of Edna Mae Washington

Enclosure: Certified copy of Letters of Conservatorship

J. Hiring and Paying Aides for the Conservatee

If you or the conservator of the person have employed an aide for the conservatee, you are responsible for paying the aide; paying payroll taxes such as social security, Medicare, and unemployment; filing tax reports; and obtaining workers' compensation insurance. If you hire an aide through an agency, you will be spared most of these duties.

See the "Checklist for Hiring and Paying an Aide" that follows.

For more information on in-home aides, see Chapter 4, Section 7(C).

Keeping Good Employment Records

Keep these records for at least four years:

- Your employer identification number
- The amounts and dates of all wage payments
- The value of noncash compensation such as meals or lodging
- The aide's name, address, social security number, and a forwarding address
- Copies of all W-4 forms
- The amounts and dates of tax deposits you have made
- Copies of all employment tax returns you have filed
- The dates of employment for each aide
- The reason for an aide's termination (If you fire an aide, be sure to record the reasons.)
- Detailed records of the aide's job-related illnesses or injuries

CHECKLIST FOR HIRING AND PAYING AN AIDE

Done?

☐ **Check the aide's U.S residency document.**

You must ask all new employees to give you Immigration and Naturalization Service (INS) Form I-9. The purpose of this completed form is to prove that the aide is a legal U.S. resident or citizen. If you hire someone without getting this form, you could be fined as much as $10,000.

If you need more information, contact the nearest INS office to request INS Booklet M-274, *Handbook for Employers.*

☐ **Obtain workers' compensation insurance.**

Anyone who works in the conservatee's home must be covered for injuries that take place on the job. You can usually get workers' compensation coverage from the conservatee's homeowner's or renter's insurance company for an additional premium.

☐ **Follow federal and state wage and hour rules.**

☐ **Pay or withhold employment taxes.**

You may be responsible for several employment taxes. These taxes are based on the aide's taxable wages. Wages may include meals, lodging, health insurance, and other items provided by you as employer, unless they are for your convenience and are not compensation.

For help employed in the home, federal and state income taxes need not be withheld unless you and the aide agree to withhold them. Possible withholding taxes are as follows:

1. Federal income tax
If you and the aide agree that you should do so, withhold federal income tax. Use the current year's Internal Revenue Service (IRS) Publication 15 to calculate this tax.

2. California income tax
If you and the aide agree that you should do so, withhold state income tax. Use the current year's Employment Development Department (EDD) Publication 44 to calculate this tax.

Done?

3. Social security and Medicare
The conservatorship estate must pay half of this tax; the other half is withheld from the aide's wages. Use the tables in the current year's IRS Publication 15.

4. California disability insurance fund
Use EDD Publication 44 or 4525 to figure this withholding tax.

5. State and federal unemployment insurance
The conservatorship estate, and not the employee, pays these unemployment insurance taxes.

☐ **Get a federal employer identification number.**

You can obtain Form SS-4, *Application for Employer Identification Number*, from the nearest IRS office.

☐ **Have the aide complete federal tax Form W-4.**

If you and the aide agree to withhold income taxes, the W-4 form gives you the information you need to know how much tax to withhold from the aide's pay. If the aide hasn't given you a completed W-4 form by the time you first pay him or her, and the two of you have agreed that you will withhold federal and state income taxes, you must withhold the maximum tax (single with no withholding allowances).

☐ **Register with the California Employment Development Department.**

You can obtain Form DE-1 from an EDD office. This form must be filed within 15 days of employing and paying a household worker wages of $750 or more in any calendar quarter.

☐ **File tax reports.**

☐ **Deposit withheld taxes with the appropriate agency.**
At set times, you must deposit withheld state and federal income taxes and social security, Medicare, and disability insurance taxes with the state and federal governments. Check with the IRS or the EDD to find out when payments are due.

☐ **File a summary of employment taxes paid.**
By April 30, July 31, October 31, and January 31, you must file a sum-

mary of state and federal employment taxes that you have paid to the government in a calendar quarter. Use Form 941SS for federal taxes and Form DE-3BHWX for California taxes.

You must file every quarter, even if you didn't employ anyone for a particular quarter. There may be a penalty if you don't file. If you stop employing aides, write "FINAL RETURN" on the top of your last quarterly return.

☐ **Give the aide a W-2 form.**
You must give the aide a federal Form W-2 by the end of January of each year. Send a copy of the W-2 form to the Social Security Administration by the last day of February.

☐ **Report unemployment tax.**
Mail federal unemployment insurance tax returns on Form 940 for the previous year by January 31. File California unemployment insurance tax returns quarterly on Form DE-3HWX.

You might want to consider hiring a payroll services firm to handle some or all of this employment paperwork.

Online forms and publications Many tax forms, tax publications, and other agency forms or publications may be obtained through Internet sites maintained by the agency.

IRS: *www.irs.gov* (or telephone [800] 829-1040)

Franchise Tax Board: *www.ftb.ca.gov* (or telephone [800] 852-5711)

INS: *www.ins.usdoj.gov* (or telephone [800] 375-5283)

K. Managing Real Property

The most challenging task for a conservator of an estate that includes real property is to manage property that is or will be occupied by residential or business tenants. There are also other difficult issues that may affect estate real property whether or not it is leased or rented.

Rental property The estate may contain property that is being rented or should be prepared for rental. Perhaps you have decided to lease or rent the conservatee's home rather than sell it, or the conservatee already owns rental property. As conservator, you now have all of the legal responsibilities of a landlord regarding this property. Whether the property is small or large, you must comply with all of the laws regulating the rental of property.

Property management can be very complicated. There is a risk of loss to the estate if you do not handle it properly. If the estate has, or plans to have, rental property, you should discuss the situation fully with your lawyer to make sure you have the necessary information and advice. One of the things you and your lawyer will want to consider is whether you should hire a professional property management firm to manage the rental property. See the discussion that follows. L

Some of your responsibilities relating to rental property are

- Making sure that you have proper leases or rental agreements with all new tenants
- Reviewing existing leases or rental agreements, or obtaining new written agreements if the conservatee did not do so
- Making sure that the conservatee has set aside all legally required tenant deposits in a separate account
- Making sure that the property is safe and in compliance with all fire, building, and safety codes (see also following discussion on disposal of toxic waste.)
- Making sure that there is proper and sufficient fire and liability insurance covering the property ***as rental property*** (especially when converting the conservatee's home to rental property for the first time)
- Collecting all rents due to the conservatee, and taking necessary actions against all nonpaying tenants

- Paying all expenses of the property, such as insurance, property tax, mortgage, gardening, repairs, and utilities if the tenant does not pay them

- Keeping clear records of all rental property income and expenses, for use when the conservatee's tax returns and your accounting are prepared

- Respecting tenants' legal rights

- Learning about and complying with all local rent control ordinances or regulations

Owners of large residential rental properties often hire professional property managers to handle these tasks. Unless you are an experienced property manager, live near all of the conservatee's properties, and have the time to devote to property management, you should seriously consider using a property manager for residential rental property of any size, and for any leased or rented commercial or industrial property.

If you hire or retain a property manager, remember that you as the conservator are still the person responsible for supervising the manager's activities, making sure that all of the necessary work is done properly, and that the manager gives you clear, complete, and correct reports.

Megan's Law requirements Megan's Law requires registration of the names and area of residence of known sex offenders against children. Anyone who sells or rents out any real property must disclose to buyers or renters that they can look up this information at local police stations. You need to check to see that the sale or rental listing form you are using contains information about this law.

Property containing toxic waste or causing pollution Property owned by the conservatee may contain toxic waste or materials. There are very strict laws, federal, state, and local, about how such materials must be handled and about pollution generally. Violating any of these laws can result in prosecution or large fines. Payment for fines could come out of your own pocket if a court determines that you did not act properly in observing these laws as conservator.

It is important for you to learn how property has been used or is currently used and to determine whether it may contain toxic materials or whether it is causing pollution. If there is any risk that toxic materials may affect estate property, check with your lawyer to find out how to comply with the law and protect both the estate and yourself. L

Toxic materials and pollution may include the following:

- **Residential property** Old paint, household or garden chemicals, pest poisons, waste motor oil, used batteries, automotive chemicals, and asbestos

- **Commercial or undeveloped property** Chemical waste, medical waste, underground fuel or chemical tanks, water or air pollution, improper dumping, and improper sewage disposal

Vacant property If the conservatorship estate owns vacant houses, buildings, or land, it is your responsibility to make sure that the property is properly insured, fenced, or otherwise secured, and kept clean and in compliance with all local fire and safety laws. If you can't do these things, you may have to sell the property. See Section 7(H) earlier in this chapter for information on insurance for vacant property. Consult your lawyer about how to handle vacant real property of any kind. L

L. Conservatee's Will

A will is an important and very private document. If you find the original or a copy of the conservatee's will, store it in the safest possible place, such as in the conservatorship safe deposit box or with your lawyer, particularly if he or she has an office safe. Keep all wills you find—not just the latest one, the one you think is the "fairest," or the one you think the conservatee really wants.

CAUTION California recognizes handwritten wills. They don't have to be witnessed or follow any particular format. What you think is merely a note, a memo, or an unmailed letter may be a legally valid will. Check with your lawyer if there is any possibility that a handwritten document you find might be a will. L

Do not talk about any of the conservatee's wills with anyone but the conservatee and your lawyer. Make sure that you discuss the conservatee's wills with your lawyer. L

You may find that the conservatee already has given his or her will to a lawyer for safekeeping. If you need to know what is in the will and the lawyer won't tell you, ask your own lawyer what to do. L

The will may contain information you need such as the following:

- The name of the **executor.**
- The conservatee's request for specific funeral or burial arrangements and who is supposed to make them.
- Whether the conservatee wants to leave someone a specific piece of real or personal property. You need to know this if you are planning to sell or make a gift of any property so you won't sell the property left to someone in the will or give that property to someone else.

The conservatee does not lose the legal right to make a new will or to amend an existing will because of the conservatorship. However, whether any change in a will made by a conservatee is effective will depend on the conservatee's mental competence at the time the change is made. The fact that a conservatorship is in place will be a factor in resolving that issue.

If the conservatee asks you to help him or her change a will or prepare a new one, contact your lawyer for advice about what to do. L If the conservatee has a court-appointed lawyer, let him or her know as well.

If you believe that the conservatee's proposed change is appropriate but his or her mental competence is likely to be questioned by someone adversely affected by the change, you may request the court to authorize you to sign a new will or an amendment to an existing will on behalf of the conservatee. This kind of request is known as a **substituted judgment petition.** Such petitions are made in a wide variety of situations. However, they can be very complex and are often difficult to prepare. You should not try to prepare and file a substituted judgment petition without a lawyer. L

M. Trusts

The conservatee may be involved in a trust that contains some or all of his or her assets, or that pays money or distributes property to him or her. It is your responsibility to protect all trusts that concern the conservatee. Trust papers should be kept in a safe deposit box. Trusts should be kept confidential—discuss them only with your lawyer, and, if your lawyer recommends, with the trustee. L

Look carefully at any trust that affects the conservatee, especially one that the conservatee set up. Contact the trustee identified in the trust documents and your lawyer. L Ask yourself these questions:

- Did the conservatee understand what he or she was doing when the trust was set up, when it was amended, or when he or she transferred property to the trustee?
- Is the trustee administering the trust and its property in the manner called for in the trust documents?
- Is the trustee acting in the conservatee's best interests?

If the answer to any of these questions is no, get your lawyer's advice about what to do. In any event, stay informed about what the trustee is doing. L

If the trust documents give the conservatee powers over the trust or over property held by the trustee, such as the power to modify or to revoke the trust or the power to designate who receives trust property (a **power of appointment**), you may ask the court for authority to exercise the power. This request would be another example of a substituted judgment petition, discussed in Section 7(L) earlier in this chapter. L

Sometimes the court will authorize a conservator to establish a new trust for the benefit of the conservatee and others and to transfer some or all of the conservatee's property to the trustee of the trust. This is often a better way of creating an estate plan for the conservatee than signing a new will and is one of the more common uses of the substituted judgment petition. L

N. Making Funeral and Burial Arrangements

When you look for assets and important papers, try to find out what arrangements, if any, have been made for funeral services, burial, or cremation. Documents describing these arrangements are often found in the conservatee's home or in a safe deposit box. These arrangements may be mentioned in the conservatee's will or in a document known as a **power of attorney for health care.** You also may find a funeral or burial prepayment receipt or insurance policy.

If the conservatee had a spouse or other close family member who recently died, ask the funeral home or cemetery that handled those arrangements whether the conservatee has made funeral arrangements. The death certificates of deceased family members usually note the name of the funeral home and cemetery.

Ask the funeral home if the conservatee has signed all the necessary papers, such as a cremation authorization. Some documents may be signed only by the conservatee or his or her next of kin.

If your research doesn't turn up anything, ask the conservatee what he or she prefers, if the conservatee is able to discuss it comfortably and clearly. If you can't discuss this with the conservatee, plan what you will do when the conservatee dies.

If the conservatee's will says that the executor should make funeral or burial arrangements, contact him or her as soon as you learn of the conservatee's death. If there is a person with authority to act concerning these arrangements under a power of attorney for health care, contact him or her as soon as you can. If the conservatee is in a **care facility,** its business office will ask you for the name of the funeral home. In any case, don't leave the conservatee's funeral or burial arrangements until the last minute.

8. Reporting and Accounting to the Court

Even if you read nothing else in this handbook, you should read and consider very carefully the following discussion of your accounting responsibilities as the conservator of an estate. If you have any questions about anything you read in this section of the handbook, discuss them with your lawyer immediately. **L**

What accounts are and when they are due You must report to the court on your activities as conservator of the estate no later than one year after your appointment, at least once every two years after that, and when your duties as conservator end. The report must be typewritten or prepared on a computer and contained in a document called a petition or a petition and report. The petition and report must describe what you have done during the time period covered by it and should petition, or ask, the judge to approve your actions. It should also describe the general physical condition, type of residence, level of care, and other circumstances of the conservatee.

The petition and report must be accompanied by a detailed accounting of all transactions in the conservatee's property that occurred in the period covered by the report. The accounting is similar to a business's financial statements, explaining the estate in dollar figures and giving details of estate receipts and expenditures.

The petition and report should explain any entries in the accounting that cannot be readily understood and should describe any sales or other changes in the assets of the conservatorship estate and any other unusual financial transactions. If you or your lawyer want the court to authorize payment of compensation from the conservatee's estate for your services during the period of the report, your request would also be included in the petition and report.

The accounting, the report, and the petition are parts of one document. They are sometimes referred to together as the **accounting,** the **account,** or the **account and report.** In this chapter, the term **accounting** refers to the accounting portion of the document only, **report** or **petition and report** refers to the report portion of the document only, and **account** or **account and report** refers to the entire document.

WHAT MUST BE INCLUDED IN AN ACCOUNTING

- The value of assets on hand at the start of the reporting period
- The amount of any supplemental appraisals during the reporting period
- All income received by the conservatorship estate during the reporting period
- Gains and losses from sales of assets during the reporting period
- All expenditures of conservatorship funds during the reporting period
- The value of assets on hand at the end of the reporting period

Format of the accounting The accounting must be prepared in a special format required for probate accountings. The petition and report are narrative statements. If you have a lawyer, he or she will generally prepare the petition and report, although you will provide the lawyer with most of the information needed to complete that task. You and your lawyer should work out who will prepare the accounting. The rest of this section of the handbook will help you do that. L

See Appendix D, "Sample Account and Report," at the back of this handbook.

The first and subsequent accounts and reports Each account covers a period of time with specific beginning and ending dates. When the conservatorship ends and the conservator has been discharged, every day it was in effect will have been included in a period covered by an account and report.

The first account and report covers a period that begins on the date that Letters of Conservatorship were issued or sometimes on the earlier date that Letters of Temporary Conservatorship were issued. The period usually ends on the last day of the month before or including the first anniversary of the beginning date. Subsequent accounts may cover up to two-year periods, beginning

with the day after the ending date of the prior account, although the conservator may choose to account for shorter periods. The final account covers the period from the day after the ending date of the last prior account to the date that the conservatorship ends, either by the conservatee's death or restoration to capacity or by removal of the conservator. An account that is not a final account is also called an **account current.**

Some courts schedule hearing dates near the due dates of accounts and reports to monitor their preparation and to see that they have been filed on time. If your court does this and you miss the deadline, you and your lawyer may have to appear in court on the scheduled date and explain why you failed to file your account and report on time. If the account is on file by the scheduled hearing date, the court usually excuses attendance in court on that date.

Courts that do not regularly schedule this kind of hearing still monitor their conservatorship files. If an account and report becomes seriously past due, the court may order you to appear to give an explanation, may order you to file the account and report by a specific future date, or may even remove you as conservator. If you are removed, you will still have to complete and file your account and report.

Whether or not the court schedules a hearing to monitor the completion and filing of an account, every account and report that is filed is assigned a hearing date, usually about a month after it is filed. Your lawyer is generally expected to attend this hearing to answer any questions the court may have concerning the account. If your lawyer attends the hearing, he or she may need your presence in court as well. **L**

Your lawyer must mail advance written notice of the time and place of the hearing on your account and report to the conservatee and to others interested in the conservatorship, and he or she may also be required to send complete copies of the account and report to these persons. **L** The written notice is prepared on Judicial Council form GC-020, ***Notice of Hearing Guardianship or Conservatorship.*** A copy of this form is included in Appendix F, at the back of this handbook.

If you do not have a lawyer, you will generally be required to attend the hearing on your account and report and will have to see that the written notice is sent.

If the persons given notice don't object to the account and report, you or your lawyer may be excused from attending court, and the account and report will be approved by the judge without a hearing.

On the other hand, if the conservatee or someone else with an interest in the conservatorship files written objections to the account and report or appears at the hearing and advises the court that he or she intends to file them, the hearing will be postponed to give that person an opportunity to do so. After the objections have been filed, the account and report will proceed as a contested matter.

Each court has its own way of handling contested accounts. At the very least, however, the matter will not be resolved quickly unless the parties involved can settle their differences in a way satisfactory to the court. You should not attempt to defend your account and report against objections without a lawyer. **L**

Preparation of the accounting Presentation of your account and report to the court is the most important step in your management of the conservatorship estate. You can't afford to wait until the last minute to prepare the accounting portion of the account and report. Therefore, your preparation of the accounting should begin as soon as you begin managing the conservatee's assets. All financial transactions must be carefully documented and organized so the accounting can be thoroughly, promptly, and accurately prepared. The following suggestions will help you reach this goal.

- Place each statement or other document that is received or created by you for each conservatorship asset or bank account in chronological order in a separate file for that asset or account. Review these documents periodically to make sure that none are missing. If any are missing, take steps immediately to obtain replacement copies so that your records remain complete.

- Check statements from banks, stockbrokers, and other institutions promptly on receipt and **reconcile** the cash accounts. Delay in reconciliation may result in the loss of the right to recover missing funds caused by bank errors. Personal finance computer programs are very useful for reconciling cash accounts.

- Investigate automatic deposits and payments to and from the conservatee's existing bank accounts as soon as you become aware of them because they may disclose additional assets or estate obligations you didn't previously know about.

- You should not generally arrange for automatic payments from any conservatorship account you establish because it is too easy to forget that such payments have been made when you prepare your accounting many months later.

- Automatic deposits to an account, like social security payments, cause fewer difficulties than automatic payments from the account, but you should enter them in your check register at the same time every month, no

later than the time you get your statement for the account showing the deposit, and you should be alert to periodic changes in the amounts deposited. All automatic deposits should be made to the main conservatorship checking account rather than to a savings account.

- You must keep track of interest deposits to savings accounts that are not reflected in your check register. Don't rely on passbook-type accounts. You should arrange for all savings accounts to provide monthly or quarterly statements showing interest income and withdrawal activity.

- Withdrawals from savings accounts to meet estate expenses should be deposited into the estate checking account and spent from there rather than directly from the savings account.

- You should try to pay every expense by check rather than cash. If you find it necessary to spend small amounts of cash, it is better to spend your own cash and seek reimbursement from the estate by check rather than to carry estate cash with you for this purpose. In any event, make sure that you get a receipt for all cash purchases and make a note of what was bought, the amount of cash spent, the purpose of the purchase, and the date of the transaction.

- Note the source of each deposit to the checking account in the check register so you will be able to reconstruct the transaction when you prepare your accounting. Most of the time, it is a good idea to use only one checking account for all of the conservatee's finances. However, if you are managing one or more pieces of real property that generate income as well as expenses, you might consider using a separate checking account for each property. If you do that, make sure that each account receives deposits only from income received from the property assigned to it, and that payments are made from that account only for expenses associated with that property. Be alert to bank charges deducted directly from these separate accounts.

- Stock brokerage accounts may come with money-market accounts attached to them that earn interest and allow check writing privileges. This kind of account is useful because it enables the estate to earn interest on amounts invested with a broker that are temporarily not being used to purchase stocks, bonds, mutual fund shares, or other investments sold by the broker. However, you should not routinely pay estate expenses directly from this account. Instead, you should periodically transfer excess cash from it to your regular conservatorship bank account, and then pay all expenses from that account. You should also be alert to automatic interest deposits to this account and automatic deductions from it for the broker's fees and other charges.

Court requirements for accountings The law and the court impose high standards on you as conservator in the management of the conservatee's estate. Each transaction must be accounted for in sufficient detail to inform the court how the conservatee's money was spent, what was sold or purchased, and how well income was collected during the period of the account. Every item of income and every expenditure must be described in your records and in the accounting, showing the following about each transaction, in addition to its date and its amount:

- To whom a disbursement was paid, or from whom income was received
- The time period covered by the payment (example: "Rent for May 2002")
- The purpose of the expenditure (example: "Clothing for conservatee")

If you reimburse yourself for expenses paid from your own funds, describe to whom you paid the funds on behalf of the conservatee, the amount of each expenditure, and what was purchased for the conservatee. You must obtain and retain receipts for all of these expenditures and organize them so you can retrieve them if you are required to show them to the court.

At the time you file your accounting, the court will require you to file ***original*** account statements from banks and other financial institutions or from other institutions such as stockbrokers for all accounts containing cash or assets of the conservatorship estate. The statements must show the balance in each bank account as of the last day of the period covered by the account and report.

The first account and report must also be accompanied by ***original*** bank statements showing the account balance of each of the conservatee's bank accounts immediately before the date you were appointed conservator. (That is, the date of the court's order appointing you, not the date that your Letters of Conservatorship were issued.) If your account and report shows a balance for any bank account different than the balance shown in the bank's statement for that account, you must explain the differences in your accounting or in your report.

If you could not find the original statements from the conservatee's accounts in his or her papers, you will have to obtain duplicates from the banks or other institutions and explain to the court why you can't file original statements. The time to start arranging for this is as soon as you qualify as conservator, not just before your accounting is due. See the sample letter to the conservatee's bank in Section 5(A) of this chapter.

The court or a person interested in the conservatorship may demand that you produce the records that support the transactions shown in your accounting. Keeping your records organized and complete early in the process and thereafter for as long as you are the conservator will enable you to satisfy the requirements imposed on you when you file and present your accounts and reports.

Use of an accountant Accountings must be prepared in a format unique to probate court accountings. Many accountants are unfamiliar with court accountings, which are considerably different from the business financial statements they usually prepare. If you want to use an accountant, you should try to find one who prepares federal estate tax returns for the estates of people who have died. The format of conservatorship accountings is identical to the format used in decedent's estates. It is to some extent based on the requirements of the federal estate tax return.

You may find that the conservatee's estate is too small to support an accountant's fee for maintaining estate records and preparing accountings, particularly if you are also going to request compensation for your services. Even if you can't afford an accountant for all services, you may be able to consult one on an as-needed basis, particularly for advice on how to set up and maintain your record-keeping system.

You should check with your lawyer before you attempt to prepare your accounting yourself or before you hire someone to do it for you. **L**

Accountings prepared by your lawyer Your lawyer may prefer to prepare the accounting, have his or her staff prepare it, or may bring in another professional familiar with probate court accountings for this task. **L** If so, you should consider delivering your records or copies of them to your lawyer on an ongoing basis during the year—say, monthly or quarterly, instead of just before an account is due. If you do that, when the due date comes, whoever prepares the accounting should be able to complete it quickly. If records delivered months before the accounting's due date show a problem, there will be more time to resolve it.

Use of a computer If you plan to prepare the accounting portion of the account and report yourself, it is recommended that you maintain your records using a personal-finance computer program. You will be able to keep detailed records of income or expenses tailored to your needs, you can easily reconcile your cash accounts, and you may be able to print directly from the program, in final form suitable for filing, some or all of the schedules of your accounting, particularly the schedule of expenditures.

Small-estate waivers Conservators of small estates may be excused from making regular reports to the court, but they still must keep complete records of how they manage their conservatee's income and assets. The court may ask for an accounting at any time, and the conservator will have to give a final accounting at the end of the conservatorship. Ask your lawyer whether the estate you are managing qualifies for a small-estate waiver. **L**

9. Making Payments from the Estate

A judge will not automatically approve expenditures that you may believe are in the conservatee's interest. Other people involved in the conservatorship may have a legal right to object to particular expenditures as well. If you aren't sure whether an expenditure is proper, or if you think someone might object, speak with your lawyer before you spend the money.

A. Paying Lawyer's and Conservator's Fees

You, the conservator of the person, the lawyers for each of you, and the conservatee's lawyer, will be entitled to receive reasonable fees—compensation for your services—from the conservatorship estate if they are requested and ***if a judge first approves them.*** Never pay these fees without prior court authorization. If you do, you may have to reimburse the conservatorship estate or the surety company on your bond from your own pocket, plus interest, and you could be removed as conservator.

You may pay without prior court approval costs incurred by your lawyer at the beginning of the conservatorship, including the court's filing fee and the first year's bond premium. This kind of expense is called an expense of administration, a direct cost of the conservatorship proceeding. Once the conservatorship has been set up and you have collected the conservatee's funds, you may directly pay expenses of administration without prior court approval.

However, many courts will not allow you to reimburse your or your lawyer's photocopy and ordinary postage costs, mileage or other local travel and parking expenses, or your lawyer's secretarial and word processing expenses if you or your lawyer also ask for fees. These costs are considered overhead expenses, to be reimbursed in the compensation approved by the court. Paralegal costs are treated as lawyers' fees, payable only on order of the court.

If you do not ask for compensation for your services, the court may allow you to reimburse yourself for overhead expenses. You will have to keep good

records of these expenses and should not reimburse yourself for them until they have been approved by the court.

Other costs, such as long-distance telephone charges, express-mail charges, or extraordinary travel expenses, may be allowed in the discretion of the court. If there is any question, you should defer direct payment by the estate or estate reimbursement of discretionary costs paid by you or by your lawyer until the court has approved them.

You may not ask the court for fees until 90 days after you have been appointed and you have filed the Inventory and Appraisal with the court. However, if you have good cause, you can ask the court to allow you to request compensation within that time.

You or anyone else eligible to request fees from the conservatorship estate may petition the court for an award of compensation, together or separately, at any time after the initial 90-day period without prior court permission. However, the court may require you as conservator of the estate to file an account and report whenever any eligible person requests fees because the court prefers to consider fee requests when it can see the current condition of the estate as shown in an up-to-date account and report. For this reason, fee requests are usually made as part of accounts and reports, and the requests of conservators of the person and of the estate and their lawyers are usually combined.

Your petition should request specific amounts to be paid to you and your lawyer and should show the judge how you calculated these amounts by describing in detail the number of hours worked, the hourly rate, and the work that was done. The sample account and report in Appendix D includes a declaration from the lawyer supporting his fee request. It does not include a similar statement from the conservator because he is asking for a nominal amount to handle his mother's affairs. However, if you are going to ask for full compensation for your services, you would prepare (or your lawyer would prepare for you, based on information you provide) a declaration describing your services in detail.

To support your request for compensation, you will need to keep a good record of the services you provide. Immediately following is an example of such a record, showing the date each service was performed, a description of each service, and the amount of time spent performing each service, stated in tenths of hours.

You may not ask for fees for 24-hour-a-day care. If the conservatee lives with you, keep track of the time you actually spend tending to his or her needs and affairs. You may be paid only for these hours.

SAMPLE RECORD OF SERVICE TO CONSERVATEE

2002 SERVICES

Conservatorship of John Jones
Lucy Jones, Conservator

DATE	DESCRIPTION	DURATION OF SERVICE
4/2/02	Took John to grocery store	.75
4/3/02	Phone call to attorney's office about accounting	.2
4/5/02	Reviewed bills, wrote and mailed checks for payment	.9
4/6/02	Sorted through mail and documents, filed, paid bills	2.5
4/8/02	Inventoried furniture in John's house	6.0
4/10/02	Phoned Social Security re late checks	.3
4/12/02	Took John shopping at Target	1.75
4/13/02	Prepared for income tax preparation appointment	1.5
4/16/02	Took John to appointment with Dr. Leone	1.8
4/17/02	Met with accountant for income tax preparation	1.5
4/20/02	Phoned John's sister to report his wishes for birthday party	.3
4/21/02	Picked up completed income tax forms from accountant	.4
4/23/02	Took John to dentist appointment with Dr. Marshall	1.8
4/24/02	Discussed rental of John's house with property manager	.7
4/28/02	Cleaned and repaired John's residence in preparation for rental	5.0
4/30/02	Phoned attorney regarding lease signing	.25
	Total hours:	25.65

The judge will review your and your lawyer's requests for fees and will decide what amounts are reasonable that may be paid from the estate. One of the factors the court considers is the estate's size. Even if the court believes that a request for fees is otherwise reasonable, it may award less than requested because the court believes that the estate is too small to support the requested amount plus all other demands on it.

B. Making Gifts from the Estate

You may not give gifts of estate money or assets to yourself or anyone else without a judge's prior approval. You need court approval, even if the conservatee asks you to give the gift, and even if he or she has given similar gifts in the past.

C. Reimbursing Yourself for Expenses You Have Paid

You may reimburse yourself for small, reasonable expenses that you've paid for the conservatee with your own money, but it's not a good idea to make this a regular practice. Use your own money only in emergencies or as a cash advance for small amounts, even though it may seem convenient at other times, and make sure that you have records and receipts to prove that you've spent your money on the conservatee's behalf.

D. Borrowing from the Estate

You may not borrow the conservatee's money or loan it to anyone else without prior court approval.

E. Loaning Money to the Estate

You may loan money to the conservatorship estate and pay yourself back, but you need court approval to charge interest. Keep good records showing that you've loaned your own money to the estate.

Avoid These Serious Mistakes

➤ **Never mix your own investments and money with the conservatee's.** Even though it may seem convenient at the time to deposit a check made out to the conservatee into your own bank account, it could get you into

trouble. The conservatee's assets should be kept in accounts in your name as conservator of the estate, using the conservatee's social security number.

- **Do not manage the conservatorship estate so that you or your family or friends profit from it.** For example, if you were to sell the conservatee's car to your son for less than what it was worth without getting a judge's approval, you would be violating your duty as conservator of the estate. Similarly, you may not give your friends the conservatee's furniture or other possessions, nor may you move into the conservatee's home without paying fair rent.

- **Never borrow money from the estate.** You must not use estate funds or the estate's credit to get loans or credit for yourself, even if you will inherit the estate when the conservatee dies.

- **Do not give yourself or anyone else a gift from estate funds without getting a judge's approval first.**

- **Do not pay yourself or the conservator of the person fees from the estate without a judge's approval first.**

- **Do not pay fees with estate funds to your lawyer, to the lawyer for the conservator of the person, or to the lawyer for the conservatee, without getting a judge's approval first.**

J. H. O'CONNOR
COUNTY COUNSEL

MUTUAL 9211

OFFICE OF THE COUNTY COUNSEL

SUITE 1100 HALL OF RECORDS
LOS ANGELES 12, CALIFORNIA

Senator Hotel, Room 944
Sacramento, California

June 8, 1945

Hon. Earl Warren
Governor of the State of California
State Capitol
Sacramento, California

Re: S.B. 522

Dear Governor Warren:

On June 4, 1945 you sent us a memorandum requesting our recommendation on the above numbered bill.

This bill was sponsored by the Board of Supervisors of Los Angeles County. This bill authorizes a board of supervisors to make provision, by ordinance, for the office of Public Guardian, such guardian to apply to the Probate Court in proper cases for letters of guardianship of patients who have been committed to the care of the Psychopathic Probation Officer by the Superior Court and also for persons who may be receiving aid under the Welfare and Institutions Code. The bill provides that no estate is to be handled by any such guardian where the probable value thereof exceeds $5,000. Where the District Attorney or the County Counsel acts as attorney for the Public Guardian and where the Public Guardian acts no fees are to be collected or received by the District Attorney, County Counsel or the Public Guardian for any service which may be rendered in the guardianship estate. No fees are to be collected or received by the County Clerk for the filing of any such guardianship petition. The bill further provides that if there are sufficient assets in any such estate and private counsel is desirable the Public Guardian may engage such counsel and he shall receive such fees as may be approved by the court.

The only cases in which it is proposed that a Public Guardian will be appointed will be in those cases where no other persons desire to act. The Public Guardian will have no priority over any relative or friend and his appointment will rest in the discretion of the Judge of the Probate Court. An official bond is provided for and the amount thereof is to be fixed by the board of supervisors. Such bond is to inure to the benefit of the guardianship estates and the county. At a previous session of the Legislature similar authority was given to the Department of Institutions so that letters of guardianship could be taken out for those persons committed to State institutions whose

estates require the appointment of a guardian. At the present time there is a provision found in Section 5077 of the Welfare and Institutions Code to the effect that a county employee may become a guardian in certain cases but the provisions of this section are inadequate and do not meet many of the conditions which have arisen. In Los Angeles County, prior to and since the enactment of the Section mentioned, an employee of the county has received letters of guardianship in a great number of cases and the work which he has done in such cases has been of great value to the public welfare.

In a county as large as Los Angeles County and particularly in the City of Los Angeles there are many people who become mentally ill and who have considerable property but who are without friends or relatives and the public interest requires that these people and their property be protected. It is for such cases that it is necessary and essential that there be a public guardian who will be in a position to look after the person and the estate of any such person who requires such assistance.

The $5,000 limitation found in the bill together with the limitation that it apply only to those persons who are patients or who receive aid under the Welfare and Institutions Code was placed in the bill at the request of the representative of certain trust companies so that the public guardian would be limited in his duties to those cases wherein the public interest would best be served.

There is no priority given by the bill to the public guardian and his appointment by the court as a guardian in any case will rest with the court where application for letters is made.

This bill is an important one to Los Angeles County where the need for such an office in the public welfare has been and is great. Effort has been made over the past few years to meet the situation by resorting to the provisions of Section 5077 of the Welfare and Institutions Code. That provision has not been completely adequate and it has been necessary that bonds be purchased and filed in each guardianship estate.

No difficulty has arisen with the State or Federal Government in the guardianship estates which have been handled in the past under the section of the Code mentioned and we do not anticipate any if this bill becomes law. Guardianship estates far in excess of 700 have been handled under Section 5077 of the Welfare and Institutions Code and pending guardianship estates have averaged approximately 335 such cases in the last few years.

We have been informed that the Legislative Counsel entertains some doubt on the validity of this bill. We have discussed the bill with two members of his staff and have pointed out our views respecting its validity. We believe that the framework of the bill is clearly within the decision of Ogle vs. Eckles and that the bill in effect makes provision for the appointment by the board of supervisors of a public guardian as does the Code provision authorizing the board of supervisors to appoint a county counsel. The duties of the public guardian are all specifically set out in the bill and there is nothing left for the board of supervisors to do other than to take the necessary action to bring the office into operation. While it may be true that apt language was not used in Section 5175, still we believe that the language contained therein is surplusage and may be disregarded. We are completely satisfied that the bill if enacted into law will be constitutional and that the court, if called upon, would so hold.

We have not yet seen the opinion of the Legislative Counsel concerning the bill and we are therefore not in a position to express our views except as to the matters which were discussed with the representatives referred to. Should you receive a written opinion which you would desire our views on, we would be very happy to present them to you.

We urge that you give this bill your favorable consideration.

Very truly yours,

C. Earl O. Lippold

EARL O. LIPPOLD
Deputy County Counsel
Los Angeles County

EOL/c

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|SENATE RULES COMMITTEE            |                  AB 1363|
|Office of Senate Floor Analyses   |                         |
|1020 N Street, Suite 524          |                         |
|(916) 651-1520         Fax: (916) |                         |
|327-4478                          |                         |
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THIRD READING

Bill No: AB 1363
Author: Jones (D), et al
Amended: 8/24/06 in Senate
Vote: 21

SENATE JUDICIARY COMMITTEE : 4-0, 6/27/06
AYES: Dunn, Escutia, Harman, Kuehl
NO VOTE RECORDED: Morrow

SENATE APPROPRIATIONS COMMITTEE : 11-1, 8/17/06
AYES: Murray, Alarcon, Alquist, Ashburn, Battin, Escutia, Florez, Ortiz, Poochigian, Romero, Torlakson
NOES: Aanestad
NO VOTE RECORDED: Dutton

ASSEMBLY FLOOR : 55-10, 1/26/06 - See last page for vote

SUBJECT : Conservatorships

SOURCE : Bet Tzedek Legal Services
California Alliance for Retired Americans
Older Womens League of California

DIGEST : This bill enacts the Omnibus Conservatorship and Guardianship Reform Act of 2006, significantly restructuring the courts' review of conservatorships, imposing new duties on court investigators, and requiring the Judicial Council of California to implement a range of rules, forms and notices. This bill (1) establishes more frequent court reviews of conservatorships (at six months
CONTINUED

and one year after the initial appointment, and annually thereafter) and allows a court to order a review of a conservatorship at any time, (2) imposes new duties on court investigators (new investigations of all temporary conservatorships, full investigations after six months, status or full investigations at one-year intervals, expanded investigatory scope to include conservatees' placements, quality of care and finances, investigating proposed moves of conservatees), (3) requires more frequent accountings and court reviews of each accounting, (4) requires the public guardian of a county to apply for appointment as guardian or conservator if there is imminent threat to a proposed conservatee's health, safety, or estate, (5) requires the Judicial Council to develop by January 1, 2008, user-friendly educational materials for non-professional guardians to be made available to them free of charge, (6) requires probate courts to provide specified self-help services free of charge to non-professional guardians, (7) requires Judicial Council to report to the Legislature by January 1, 2008, the results of a study on court effectiveness in conservatorship cases, (8) eliminates the Statewide Registry of Professional Conservators, deferring instead to the Board of Professional Fiduciaries as established by SB 1550 (Figueroa), and (9) makes its enactment contingent on the enactment of SB 1550, SB 1116 (Scott) and SB 1716 (Bowen).

Senate Floor Amendments of 8/24/06 (1) clarify application of the bill to domestic partners, standards for court investigations of conservatorships review, and frequency of review of conservatorships, (2) add double-jointing language, and (3) make other clarifying changes.

ANALYSIS : Existing law provides a comprehensive scheme for the establishment, oversight, and termination of conservatorships and guardianships.

Judicial Council

Existing law requires the Judicial Council to establish by rule educational requirements for private professional conservators, requires private professional conservators and guardians to meet those educational requirements prior

to appointment, and prohibits private professional conservators or guardians from registering with the Statewide Registry if they have failed to complete the educational requirements.

This bill requires the Judicial Council, in addition to any other requirement that are part of the judicial branch education program:

1. To report to the Legislature on or before January 1, 2008, the findings of a pilot study consisting of three counties designed to measure court effectiveness in conservatorship cases.

2. To specify the number of hours of education in classes related to conservatorships or guardianships that a judge who is regularly assigned to hear probate matters shall complete, upon assuming the probate assignment, and then over a three-year period on an ongoing basis. It also requires the Council to specify the number of hours of education that a court-employed staff attorney, examiner and investigator shall complete each year.

3. To develop a short user-friendly educational program for nonprofessionals who may seek appointment as conservator or guardian of a family member or friend, or as a court-appointed conservator not required to be licensed as a professional fiduciary.

4. To establish in each court an assistance program for self-represented conservators and guardians.

5. To develop appropriate forms as required by new mandates for notices, accountings, and other reports.

6. To adopt a rule of court to implement a specified provision requiring guardians and conservators to provide a bond.

Court Investigator Duties

Existing law requires a court investigator to conduct evaluations of a conservatorship at various stages of the proceedings: prior to the noticed hearing for appointment

of a conservator and at designated intervals during the conservatorship. Existing law requires the court investigator to make specified findings and certify the findings in a written report to the court, copies of which are mailed to the conservator and the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

This bill expands the tasks currently undertaken by a court

investigator, including interviewing the proposed conservatee's spouse or registered domestic partner and relatives within the first degree and, "to the greatest extent possible," the conservatee's relatives to the second degree, neighbors, and close friends before the hearing. [Section 1826(a), 2250.2(a) and (b) of the Probate Code (PROB)]

This bill requires the court investigator to inform the conservatee of the nature, purpose and effect of a temporary conservatorship, as well as the conservatee's rights relative to the proposed general conservatorship. [PROB Section 1826(b), 2250.2(a)(2) and (b)(2)]

This bill requires the court investigator, if the investigator does not visit the conservatee until after a temporary conservator had been appointed and the conservatee objects to the conservatorship or requests an attorney, to report this matter to the court within three court days so that the court may proceed with appointment of an attorney as provided under existing law. [PROB Section 2250.2(b)(c)]

This bill requires the court investigator, if it appears that the temporary conservatorship is inappropriate, immediately but no more than two court days later, to inform the court of this determination, so that the court may take appropriate action. [PROB Section 2250.2(d)]

This bill requires a conservator to make available, to any person designated by the court to verify the accuracy of an accounting, for inspection and copying all books and records (including receipts for expenditures) of the conservatorship, upon reasonable notice. [PROB Section 2620(e)] The conservator shall also make available to the

court investigator during the investigation all books and records of the conservatorship, for inspection and copying. [PROB Section 1851(a)]

This bill requires copies of the court investigator's report to be mailed to the conservatee's spouse or domestic partner, the conservatee's relatives in the first degree and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee. [PROB Section 1851(b)]

This bill requires a court investigator, at the expiration of six months after the initial appointment of the conservator, and again at one year after appointment of the conservator and annually thereafter, to visit the conservatee to ascertain whether the conservatorship still appears to be warranted and whether the conservator is acting in the conservatee's best interests, specifically addressing the conservatee's placement, quality of care, including physical and mental treatment, and the conservatee's finances. [PROB Section 1850(a)(1)] The court investigator would prepare a report for each court review scheduled or ordered and mail the report, in addition to the conservator and the attorneys for the conservator and the conservatee, to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and to the next closest relative, unless the court determines that the mailing would result in harm to the conservatee. [PROB Section 1850(a)(2)]

Court Review

Existing law requires each conservatorship to be reviewed by the court one year after the appointment of the conservator and every two years (biennially) thereafter, with certain exceptions. [PROB Section 1850]

This bill changes the timing of the court's review of a conservatorship so that (1) a review occurs one year after appointment of the conservator, and (2) a review occurs annually thereafter, unless at the one-year review the court determines that the conservator is acting in the best interests of the conservatee and sets the next review in

two years. A court investigator's report would be prepared for each review, and if the investigator determines that the conservatorship still appears to be warranted and the conservator is still acting in the best interests of the conservatee, no hearing or court action in response to the investigator's report would be required. [PROB Section 1850(a)(2)]

This bill authorizes a court, at any time, on its own motion or upon request by an interested person, to take appropriate action, including ordering a review of the conservatorship at a noticed hearing, and ordering the conservator to present an accounting of the estate. [PROB Section 1850(a)(3)]

Transfer of Proceedings to a New Venue

Existing law requires the court in which a conservatorship or guardianship proceeding is pending to transfer the proceeding to another county within the state, upon petition by the ward or guardian, the conservator or conservatee, the spouse or domestic partner of the ward or conservatee, a relative or friend of the ward or conservatee, or any interested person, if the court determines that the transfer requested will be for the best interests of the ward or conservatee. [PROB Section 2211, 2215]

This bill creates a presumption that it is in the best interests of the conservatee to transfer the proceedings where the conservatee has moved his/her residence to another county within the state in which any person named in the petition for conservatorship also resides. The presumption may be rebutted by evidence that the transfer will harm the conservatee.

Notices and Noticing

Existing law requires that notice of hearings be made at specified times prior to specific conservatorship hearings, and that notices be mailed to specified individuals for different types of hearings.

This bill makes changes to various types of notices,

expands the list of persons required to receive notice, and requires that certain notices be made upon the happening of specified events.

Existing law provides that a request for special notice filed with the court may be modified or withdrawn and is deemed to be withdrawn three years from the date it was served. [PROB Section 2700]

This bill deletes the presumption that the request is deemed withdrawn three years after it was filed and served.

Bonds of Conservators and Guardians

Existing law requires every person appointed as conservator or guardian, unless excepted by the court, to give a bond approved by the court prior to the issuance of letters. The bond is for the benefit of the ward or conservatee and all persons interested in the estate and, unless varied by the court upon a showing of good cause, must constitute the sum of the value of the personal property of the estate, the probable annual gross income of all of the property of the estate, and the sum of the probable annual gross payments to the estate as specified. [PROB Section 2320]

This bill adds, to the sum constituting the bond that a

court must require except for good cause shown, an amount determined reasonable by the court for the cost of recovery to collect on the bond, including attorney's fees and costs.

Existing law prohibits the court from waiving or reducing the bond required of conservators without good cause, and states that good cause may not be established by the conservator having filed a bond in another or prior proceeding. [PROB Section 2321]

This bill requires the court, in determining whether good cause exists to waive or reduce a bond, to also determine that the conservatee will not suffer harm as a result of the waiver or reduction of the bond.

Fiduciary Duties of Conservator, Presentation of Accountings

1. Where there may be a financial interest of the conservator :

   Existing law prohibits a guardian or conservator, in exercising his/her powers, from hiring or referring any business to an entity in which he/she has a financial interest, except upon authorization of the court after disclosure of the financial interest. [PROB Section 2401]

   This bill makes the above prohibition inapplicable to a trust company acting as a conservator or guardian, but instead prohibits the trust company, unless authorized by the court, from investing in securities of the trust company, its affiliate or subsidiary or in other securities from which the trust company receives a financial benefit, or in a mutual fund other than a specified mutual fund to which the trust company provides services for compensation. This bill requires the trust company to disclose to the court its financial interests prior to authorization.

2. Filing of inventory and appraisal :

   Existing law requires the conservator or guardian to file with the court within 90 days after appointment an inventory and appraisal of the estate, made as of the date of the appointment. The inventory must be subscribed to under oath, and the appraisal may be done by the conservator in the same as a personal representative of an estate. [PROB Section 2610]

   This bill requires the conservator to mail the inventory and appraisal, along with notice of how to file an objection, to the conservatee, to the attorneys of record for the ward or conservatee, the conservatee's spouse or domestic partner, the conservatee's relatives to the first degree and, if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee.

3. Accountings of the conservatorship or guardianship

   estate:

   Existing law requires the guardian or conservator, at the end of one year from the date of appointment, and thereafter biennially, unless otherwise ordered by the court, to present the accounting of the assets of the estate of the ward or conservatee to the court for

settlement and allowance. [PROB Section 2620]

Existing law requires the accounting to be accompanied by supporting documents, including all original account statements from any financial or deposit institution in which moneys or other assets of the estate are held or deposited, for the period of the accounting. [PROB Section 2620(b)]

This bill maintains the existing accounting schedule and recasts this provision for ease of use, but requires, in addition, the following:

A. If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator would be required to file all original account statements, but the court may adopt a local rule allowing retention of all supporting documents to an accounting until the conservatorship or guardianship account has become final, and the return of the lodged documents to the depositing or successor guardian or conservator.

B. The accounting filed would include the original escrow closing statement showing the charges and credits for any sale of real property of the estate.

C. If the ward or conservatee is in a residential care facility or a long-term care facility, the filing would include the original billing statements for the facility.

D. Standard and simplified accounting court forms would be developed for the accountings.

This bill subjects each accounting to random or discretionary, full or partial review by the court,

including a review of all documents necessary to determine the accuracy of the accounting. [Proposed PROB Section 2620(d)]

This bill requires the court, if it finds the accounting has any material error, to make an express finding as to the severity of the error and what action is appropriate in response. This bill provides that the following actions are available to the court: (1) immediate suspension of the guardian or conservator without further notice or proceedings and appointment of a temporary guardian or conservator or (2) removal of the guardian or conservator as specified in existing law and appointment of a temporary guardian or conservator. [Proposed PROB Section 2620(d)]

Existing law provides that if a guardian or conservator fails to file an accounting, the court shall by written notice direct the conservator or guardian and their attorney of record to file an accounting and to set the accounting for a hearing before the court within 60 days of the date of the notice or, if the conservator or guardian is a public agency, within 120 days of the date of the notice. [PROB Section 2620.2]

This bill requires the hearing on the accounting, when directed by the court as prescribed, to be within 30 days of the date of the notice, or, 45 days, if the conservator or guardian is a public agency. This bill authorizes the court, for good cause, to grant an additional 30 days to file an accounting.

Existing law prescribes certain actions a court may take if the conservator or guardian fails to file an accounting as required or after direction by the court within the prescribed time. The court may remove the conservator, issue and serve a citation and order the conservator or guardian to show cause why he or she should not be punished for contempt, suspend the powers of the conservator or guardian and appoint a temporary conservator or guardian, or appoint legal counsel to represent the conservatee, as prescribed. [PROB Section 2620.2(b)]

This bill requires the court to take the same actions if the conservator or guardian does not file an accounting with all the supporting documentation, and require the court to report the action taken to the board established to regulate professional fiduciaries (e.g., private professional or licensed conservators, guardians). [PROB Section 2620.2]

This bill authorizes the court, on an ex parte application and upon a showing of good cause and that the estate is adequately bonded, to extend the time to file an accounting, not to exceed an additional 30 days (rather than 60 days, as in existing law) after the expiration of the deadline for filing an accounting, if the conservator or guardian is exempt from the licensing requirements for professional fiduciaries. [PROB Section 2620.2]

Limitations on Compensation to Guardian or Conservator

Existing law requires that a conservator or guardian be allowed payment for reasonable expenses incurred in the exercise of the powers and performance of his/her duties (including costs of surety bonds furnished, reasonable attorney's fees, and other just and reasonable compensation for services rendered to the conservatee or ward) and for other reasonable expenses as specified. [PROB Section 2623]

Existing law provides that, at any time after filing of the inventory and appraisal but not before 90 days after the issuance of the letters of appointment to a conservator or guardian, the court, upon petition and a noticed hearing, shall order just and reasonable compensation to the guardian or conservator of the person or estate for services rendered up to that time, as well as compensation to the attorney for services rendered to the guardian or conservator prior to the date of appointment of the conservator or guardian and other services provided thereafter. All compensation is charged to the estate. [PROB Section 2640, 2641]

This bill prohibits compensation from the estate to the conservator or guardian for any costs or fees that the

guardian or conservator incurred in unsuccessfully opposing a petition, or other request or action made on behalf of a ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward of conservatee. [Proposed PROB Section 2623(b)]

Existing law authorizes a person who files a timely petition for appointment as conservator but was not appointed to file a petition with the court for an order fixing and allowing compensation and reimbursement of costs, including compensation to the person's attorney. [PROB Section 2640.1]
Existing law authorizes the court to allow just and reasonable compensation after noticed hearing.

This bill requires the court to determine that the failed petition was filed in the best interests of the conservatee.

Existing law permits the ward or conservatee, the spouse or domestic partner of the ward or conservatee, or any relative or friend of the ward or conservatee, or any interested person to petition the court for the removal of

the guardian or conservator for cause at a noticed hearing. [PROB Section 2650, 2651, 2652]

This bill provides that if the court removes the guardian or conservator for cause, the court shall award the petitioner his or her costs, including expenses of litigation and attorney's fees, incurred, unless the court determines that the guardian or conservator has acted in good faith based on the best interests of the ward or conservatee.

This bill provides that the guardian or conservator so removed for cause may not deduct from or charge to the estate his/her costs of litigation and is personally liable for those costs and expenses.

Public Guardians

Existing law permits the public guardian of a county to apply for appointment as guardian or conservator of the

person, estate, or person and estate, of a resident of the county when the resident requires a conservator or guardian, there is no one else qualified and willing to act, and appointment is in the best interest of the resident. Existing law requires the public guardian to so apply when ordered by the court upon petition by an interested person or on the court's own motion. [PROB Section 2920]

This bill requires the public guardian to apply for appointment as conservator or guardian under the circumstances described above, if there is an imminent threat to the person's health or safety or to the person's estate. Otherwise, the public guardian may apply for appointment in all other cases.

This bill relieves the public guardian from the order of the court directing that the public guardian apply for appointment, where prior to the filing of the petition for appointment it is discovered that there is someone else who is qualified and willing to act as guardian or conservator.

This bill requires the public guardian to begin an investigation within two business days of receiving a referral for conservatorship or guardianship.

This bill is joined to three bills: SB 1116 (Scott), SB 1550 (Figueroa) and SB 1716 (Bowen). All provisions requiring Judicial Council actions provide for an effective date of January 1, 2008.

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

Fiscal Impact (in thousands)

Major Provisions	2006-07	2007-08	2008-09	Fund
Court reviews, investigations	Multimillion-dollar annual costs			General*

Major Provisions	2006-07	2007-08	2008-09	Fund
State mandated local program (public guardians)	Significant costs			General
Statewide Registry	($50)	($50)		

Special**
elimination

* Trial Court Trust Fund
** Conservatorship Registry Fund

Judicial Council . There is an estimated active caseload of 33,000 probate conservatorships, with 5,500 new filings each year. Judicial Council prepared preliminary cost projections associated with additional hearings, expanded reviews and mandated investigations, educational materials and self-help programs required by this bill, and current estimates show first-year costs could range from as much as $5.2 million to $9 million, with ongoing costs ranging from $10.3 million to $18 million.

These costs were based on a series of assumptions, that 80 percent of the active caseload represents relatively simple cases, that 15 percent would post moderately complex cases, and that the remaining five percent would be the most complex cases and take the most investigative and court time. Additionally, these estimates were based on a baseline of 33,000 probate conservatorships statewide. This number is likely to increase in the near future due to an aging population and correlative increase in conservatorship caseload.

Public Guardians . Requirements for public guardians to begin investigations within two business days of receiving a referral for a conservatorship of guardianship could drive significant reimbursable local costs. Los Angeles County has estimated its workload could increase by as much as 50 percent, at a cost of $1.8 million annually. If that cost were to hold true for the rest of the state, reimbursable costs could be in the $5 million range annually.

There is no funding in the 2006 Budget Act for the activities required by this bill.

SUPPORT : (Verified 8/22/06)

Bet Tzedek Legal Services (co-source)
California Alliance for Retired Americans (co-source)
Older Women's League of California (co-source)
AARP California
Adult Services Policy Council of San Luis Obispo County
Advisory Council of Area 4 Agency on Aging
Area 1 on Aging's Advisory Council
Area Agency on Aging Council, San Luis Obispo and Santa Barbara Counties
California Commission on Aging
California for Disability Rights, Inc.
California Seniors Coalition
Contra Costa County Advisory Council on Aging
Elder and Dependent Adult Abuse Prevention Council of Santa Barbara County
Gray Panthers
National Association of Social Workers, California Chapter
Office of the Attorney General
Retired Public Employees Association
San Joaquin County Commission on Aging

ARGUMENTS IN SUPPORT : This bill is co-sponsored by the Bet Tzedek Legal Services, the California Alliance for Retired Americans (CARA), and the Older Women's League (OWL).

CARA states: "Recent articles in the Los Angeles Times have once again exposed serious problems in the systems that are supposed to protect people, especially seniors, when they cannot fend for themselves?[t]he articles and [subsequent] hearings have exposed a broken system which allowed financial, and yes physical abuse in some cases, to be perpetrated on helpless people by those hired to protect these same people?AB 1363 will go a long way to correcting many of the problems in the current inadequate system."

While the Judicial Council expressed reservations about the effect of these sweeping reforms on the current resources

of the courts, it is now in support of the bill in order to "appropriately protect conservatees and provide proper oversight, as well as to make the bill workable for the

courts."

ASSEMBLY FLOOR :
AYES: Aghazarian, Arambula, Baca, Berg, Bermudez, Bogh, Calderon, Canciamilla, Chan, Chavez, Chu, Cohn, Coto, Daucher, De La Torre, Dymally, Evans, Frommer, Goldberg, Hancock, Jerome Horton, Shirley Horton, Houston, Jones, Karnette, Keene, Klehs, Koretz, Laird, Leno, Levine, Lieber, Lieu, Liu, Matthews, Montanez, Mullin, Nation, Nava, Negrete McLeod, Oropeza, Parra, Pavley, Richman, Ridley-Thomas, Ruskin, Saldana, Salinas, Spitzer, Torrico, Umberg, Vargas, Wolk, Yee, Nunez
NOES: DeVore, Haynes, Huff, La Malfa, Mountjoy, Nakanishi, Sharon Runner, Strickland, Walters, Wyland
NO VOTE RECORDED: Bass, Benoit, Blakeslee, Cogdill, Emmerson, Garcia, Harman, La Suer, Leslie, Maze, McCarthy, Niello, Plescia, Tran, Villines

RJG:mel 8/26/06 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

SUMMARY OF OMNIBUS CONSERVATORSHIP AND GUARDIANSHIP REFORM ACT OF 2006

On September 27, 2006, the Governor signed into law the Omnibus Conservatorship and Guardianship Reform Act of 2006, a four-bill package that makes comprehensive reforms to California's probate system and improves court oversight of probate conservatorship cases. Following is a summary of some of the key provisions in each of the bills.

AB 1363 (Jones); Stats. 2006, ch. 493

This bill imposes a variety of new duties on the courts and the Judicial Council, as well as on public guardians. Except where expressly noted, these provisions take effect on January 1, 2007.

New Judicial Officer Duties

Among other things, the bill:

- Requires the court, on and after July 1, 2007, to review probate conservatorships six months after appointment of the conservator and annually thereafter. However, at the first-year review and every subsequent review conducted under this provision, the court may set the next review in two years if the court determines that the conservator is acting in the best interests of the conservatee. In these cases, the court shall require the investigator to conduct a specified investigation one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship is still warranted and whether the conservator is acting in the best interests of the conservatee. If the court investigator so determines, no further hearing or court action in response to the investigator's status report is required. (§ 11.5;[*] Prob. Code, § 1850(a).)

  Note: Limited conservatorships for persons with developmental disabilities are exempt from the new review requirements. However, the court may order a review of these cases at any time. (§ 11.7; Prob. Code, § 1850.5.)

  Lanterman-Petris-Short (LPS) Act (mental health) cases also are exempt from the new review requirements, including the new requirements regarding temporary conservatorships. (§ 15.5; Prob. Code, § 2250.2. § 17.5; Prob. Code, § 2250.8.) Under current law, however, the court must review LPS conservatorships annually. (Welf. & Inst. Code, § 5361.)

- Allows the court, on and after July 1, 2007, on the court's own motion or upon request by any interested person, to take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed

[*] Unless otherwise indicated, all section references are to the bill under discussion.

hearing, and ordering the conservator to present an accounting of the assets of the estate. (§ 11.5; Prob. Code, § 1850(b).)

New Court Investigator Duties

Imposes a variety of new duties on court investigators, effective July 1, 2007, including:

- Conducting new investigations of all temporary conservatorships. (§ 17; Prob. Code, § 2250.6.) The investigation must be undertaken before the hearing on the temporary conservatorship or within two court days after the hearing.

- Mailing a copy of the investigator's report to the court, which was prepared in connection with the initial petition to establish a general conservatorship, to the proposed conservatee, the proposed conservatee's spouse or registered domestic partner, and the proposed conservatee's relatives within the first degree (unless the court determines that the mailing will result in harm to the conservatee). (§ 8; Prob. Code, § 1826(*l*)(3), (4).)

- Conducting new, full investigations six months after the initial appointment of the conservator. (§ 11.5; Prob. Code, § 1850(a) (1).)

- Conducting new status investigations at specified one-year intervals. (§ 11.5; Prob. Code, § 1850(a) (2).)

- Requiring investigations to be conducted without prior notice to the conservator (except as ordered by the court for necessity or preventing harm to the conservatee). (§ 12.5; Prob. Code, § 1851(a).)

- Expanding the scope of investigations to focus on the conservatee's placement, quality of care, and finances. (§ 12.5; Prob. Code, § 1851(a).)

- Conducting interviews in connection with temporary and general conservatorships with the petitioner, the proposed conservator (if different from the petitioner), the proposed conservatee's spouse or registered domestic partner, relatives, neighbors, and, if known, close friends. (§ 8; Prob. Code, § 1826(a). § 12.5; Prob. Code, § 1851(a). § 17; Prob. Code, § 2250.6.)

- Authorizing the investigator, upon his or her request to the conservator, to inspect and copy all of the conservator's books and records, including receipts and any expenditures of the conservatorship. (§ 12.5; Prob. Code, § 1851(a).)

- Complying, effective January 1, 2008, with new qualifications and education standards established by the Judicial Council. (§ 3; Prob. Code, § 1456.)

New Court Accounting Requirements

Imposes various new conditions on accountings that must be submitted to the courts by

guardians and conservators, effective July 1, 2007, as follows:

- Requires accountings submitted by guardians and conservators to include additional specified supporting documentation. (§ 24; Prob. Code, § 2620(c).)

- Requires accountings submitted by guardians and conservators to be subject to random and full review and verification by the court. (§ 24; Prob. Code, § 2620(d).)

- Requires the guardian or conservator to make available for inspection and copying, to any person designated by the court to verify the accuracy of the accounting, upon reasonable notice, all books and records, including receipts for any expenditures, of the guardianship or conservatorship. (§ 24; Prob. Code, § 2620(e).)

New Temporary Conservatorship Requirements

In addition to the new investigation requirements noted above, the bill also makes various other changes to the law governing temporary conservatorships, effective July 1, 2007, including clarifying:

- The circumstances under which a court may waive notice to the proposed conservatee regarding the hearing on the petition for the appointment of a temporary conservator. (§15; Prob. Code, § 2250.)

- The requirements for attendance of proposed temporary conservatees at hearings on petitions for the establishment of temporary conservatorships. (§ 16; Prob. Code, § 2250.4.)

New Judicial Council Duties

- *Qualification and Education Standards*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that specifies qualifications and education in conservatorships and guardianships that court-employed staff attorneys, examiners, investigators, and court-appointed counsel shall complete each year as well as the number of hours of education related to conservatorships or guardianships that a judge who is regularly assigned to probate matters shall complete upon assuming the probate assignment and for every three-year period thereafter. In formulating this rule, the Judicial Council must consult with interested parties, including the California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers. (§ 3; Prob. Code, § 1456.)

- *Educational Self-Help Video*—The Judicial Council shall develop a short, user-friendly educational program to assist nonprofessional conservators and guardians who are not required to be licensed. The program, which must be provided free of

charge and is to be no more than three hours in duration, may be made available via video presentation or Internet access. (§ 4; Prob. Code, § 1457.)

- *Performance Standards*—On or before January 1, 2008, the Judicial Council shall report to the Legislature results of a study measuring effectiveness in conservatorship cases, with recommendations for statewide performance measures to be collected, best practices that serve to protect the rights of conservatees, and staffing needs to meet case processing measures. (§ 5; Prob. Code, § 1458.)

- *Form for Notice to Relatives*—On or before January 1, 2008, the Judicial Council shall develop a form for notice of hearings to the proposed conservatee's spouse or registered domestic partner and relatives on petitions for appointment of conservators. (§ 7; Prob. Code, § 1822(f).)

- *Notice Concerning Rights of Conservatees*—On or before January 1, 2008, the Judicial Council shall develop a form for notice regarding the rights of conservatees, which will be attached to the order appointing the conservator and mailed to the conservatee and the conservatee's relatives. (§ 10; Prob. Code, § 1830(c).)

- *Uniform Standards for Good-Cause Exceptions to Notice in Temporary Conservatorships and Guardianships*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good-cause exceptions to the five-day notice required for hearing petitions in temporary conservatorships and temporary guardianships, limiting those exceptions only to cases where waiver of the notice is essential to protect the proposed ward or conservatee, or the estate of the proposed ward or conservatee, from substantial harm. (§ 15; Prob. Code, § 2250(j).)

- *Uniform Standards of Conduct*—On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards of conduct for actions that conservators and guardians may take on behalf of conservatees and wards to ensure that their estates are maintained and conserved and to prevent loss or harm to conservatees and wards. This rule shall include, at a minimum, standards for determining the fees that may be charged to conservatees and wards and standards for asset management. In developing this rule, the Judicial Council shall consult with the California Judges Association; the California Association of Superior Court Investigators; the California Association of Public Administrators, Public Guardians, and Public Conservators; the State Bar of California; the National Guardianship Association; and the Association of Professional Geriatric Care Managers. (§ 22; Prob. Code, § 2410.)

- *Notice for Objections to Inventory and Appraisal*—By January 1, 2008, the Judicial Council shall develop a form notice to accompany the inventory and appraisal to be provided to the spouse or registered domestic partner and other

relatives of the conservatee or ward regarding how to file an objection. (§ 23; Prob. Code, § 2610(e).)

- *Accounting Forms*—By January 1, 2008, the Judicial Council shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. In developing these forms and rules, the Judicial Council shall consult with the California Judges Association; the California Association of Superior Court Investigators; the California Association of Public Administrators, Public Guardians, and Public Conservators; the State Bar of California; and the California Society of Certified Public Accountants. (§ 24; Prob. Code, § 2620(a).)

New Public Guardian Duties
Among other things, the bill, effective January 1, 2007:

- Requires the public guardian to apply for appointment as guardian or conservator if there is an imminent threat to the person's health or safety or the person's estate. (§ 32; Prob. Code, § 2920(a) (1).)

- Allows the public guardian to apply for appointment in all other cases. (§ 32; Prob. Code, § 2920(a) (2).)

- Requires the public guardian to apply for appointment if the court so orders (as provided under current law), subject to the following new conditions:

  - The court must determine that there is no one else who is qualified and willing to act and that the appointment of the public guardian to serve as guardian or conservator appears to be in the best interests of the person.

  - However, if, before the petition for appointment is filed, the court determines that there is someone else who is qualified and willing to act as guardian or conservator, the court shall relieve the public guardian of the duty under the order.

  (§ 32; Prob. Code, § 2920(b).)

- Requires the public guardian to begin investigations within two business days of receiving a referral for guardianship or conservatorship. (§ 32; Prob. Code, § 2920(c).)

- Requires the public guardian, by January 1, 2008, to meet continuing education requirements established by the California Association of Public Administrators, Public Guardians, and Public Conservators. (§ 33; Prob. Code, § 2923.)

SB 1116 (Scott); Stats. 2006, ch. 490

This bill seeks to improve court oversight over proposed moves of conservatees and the sale of their personal residences. Among other things, the bill, effective January 1, 2007:

- Requires a guardian or conservator to select the residence of the ward or conservatee that is the least restrictive appropriate residence that is available and necessary to meet the needs of the ward or conservatee and that is in the best interests of the ward or conservatee (consistent with current law). (§ 1; Prob. Code, § 2352(a), (b).)

- Requires a guardian or conservator to file a notice of change of residence with the court, within 30 days of the date of the change, and to include in the notice a declaration that the change of residence is consistent with the above least restrictive–best interest standard. Requires the Judicial Council to develop, by January 1, 2008, one or more forms to implement this provision. (§ 1; Prob. Code, § 2352(e) (1).)

- Requires a guardian or conservator to mail a copy of the above notice to specified persons and to file a proof of service of the notice with the court. The court may, for good cause, waive this mailing requirement in order to prevent harm to the conservatee or ward. (§ 1; Prob. Code, § 2352(e) (2).)

- Provides that if a guardian or conservator proposes to remove the ward or conservatee from his or her personal residence:

  - The guardian or conservator must mail to specified persons a notice of his or her intention to change the residence.

  - In the absence of an emergency, the notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence.

  - If the notice is served less than 15 days before the proposed removal of the ward or conservatee, the guardian or conservator shall set forth the emergency basis for the removal.

  - The guardian or conservator shall file proof of service of the above notice with the court. (§ 1; Prob. Code, § 2352(e) (3).)

- Establishes a presumption that the personal residence of the conservatee at the time of commencement of the conservatorship proceeding is the least restrictive appropriate residence for the conservatee. Provides that in any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of evidence. (§ 2; Prob. Code, § 2352.5(a).)

- Requires a conservator, upon appointment, to determine the appropriate level of care for the conservatee, as follows:

  – The determination must include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in his or her personal residence. (§ 2; Prob. Code, § 2352.5(b) (1).)

  – If the conservatee is living at a location other than his or her personal residence at the time of commencement of the proceeding, the determination must include either a plan to return the conservatee to his or her personal residence or an explanation of the limitations or restrictions on a return of the conservatee to his or her personal residence in the foreseeable future. (§ 2; Prob. Code, § 2352.5(b) (2).)

- Requires the conservator to make the above determination in writing, signed under penalty of perjury and submitted to the court within 60 days of appointment as conservator. (§ 2; Prob. Code, § 2352.5(c).)

- Requires the conservator to evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care. (§ 2; Prob. Code, § 2352.5(d).)

  Note: Conservatees for whom the director of the Department of Developmental Services or a regional center for the developmentally disabled acts as the conservator and who receive services from a regional center are exempt from the above presumption and evaluation provisions. (§ 2; Prob. Code, § 2352.5(e).)

- Requires the conservator, when seeking authorization to sell the conservatee's present or former personal residence, to inform the court why other alternatives, including but not limited to in-home care services, are not available. (§ 3; Prob. Code, § 2540(b).)

- Provides that if the last appraisal of the conservatee's personal residence was conducted more than six months prior to the confirmation hearing, a new appraisal shall be required prior to the confirmation hearing unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year prior to the confirmation hearing. (§ 4; Prob. Code, § 2543(c).)

- Requires a conservator seeking an order under Probate Code section 2590 (independent exercise of powers) authorizing a sale of the conservatee's personal residence to:

  – Demonstrate to the court that the terms of sale, including the price for which the property is to be sold and the commissions to be paid from the

estate, are in all respects in the best interests of the conservatee. (§ 7; Prob. Code, § 2591.5(a).)

- Comply with the provisions of Probate Code section 10309 concerning appraisal or new appraisal of the property for sale, as well as the minimum offer price. Provides that, notwithstanding section 10309, if the last appraisal of the conservatee's personal residence was conducted more than six months before the proposed sale of the property, a new appraisal shall be required before the sale of the property unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than one year before the proposed sale of the property. For purposes of this provision, the date of sale is the date of the contract for sale of the property. (§ 7; Prob. Code, § 2591.5(b).)

- Within 15 days of the close of escrow, serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment of a conservator and all persons who have filed and served a request for special notice, and file a copy of the final escrow statement along with a proof of service on the court. (§ 7; Prob. Code, § 2591.5(c).)

- Allows the court, for good cause, to waive any of the above requirements in Probate Code section 2591.5 *except* the requirements regarding appraisal times in subdivision (b). (§ 7; Prob. Code, § 2591.5(d).)

SB 1550 (Figueroa); Stats. 2006, ch. 491

This bill creates the Professional Fiduciaries Act, which, effective July 1, 2008, requires licensure of private professional conservators, guardians, and other fiduciaries. Among other things, the bill:

- Establishes a licensing and disciplinary scheme for "professional fiduciaries" and defines the term as a person who acts as a conservator or guardian for two or more persons, at the same time, who are not related to the professional fiduciary or to each other by blood, adoption, marriage, or registered domestic partnership. "Professional fiduciary" also means a person who acts as a trustee or an agent under a durable power of attorney for health care or for finances for more than three people or three families, or a combination of people and families that total more than three, at the same time, who are not related to the professional fiduciary. (§ 3; Bus. & Prof. Code, § 6501(f).)

- Exempts from licensure any regional center for persons with developmental disabilities; brokers or securities dealers, including money market managers and those registered with the Federal Securities and Exchange Commission who by law act as "trustees" on behalf of their clients; enrolled agents acting within their scope of practice; financial institutions; public conservators, public guardians, and

other state agencies; licensed attorneys; and certified public accountants. (§ 3; Bus. & Prof. Code, § 6501(f) (1)–(5).)

- Establishes the Professional Fiduciaries Bureau (bureau), located in the Department of Consumer Affairs, and requires the bureau chief appointed by the Governor to be confirmed by the Senate. (§ 3; Bus. & Prof. Code, § 6510.)

- Establishes a Professional Fiduciaries Advisory Committee (advisory committee) within the bureau. The advisory committee shall have a public-member majority, and its members shall be appointed by the Governor, Speaker of the Assembly, and Senate Rules Committee. The advisory committee must meet at least once a quarter, and its meetings must be public. (§ 3; Bus. & Prof. Code, § 6511.)

- Allows the bureau to adopt regulations pursuant to the Administrative Procedures Act, as specified, and requires the bureau, by regulation, to adopt a Professional Fiduciaries Code of Ethics, which shall comply with all statutory requirements as well as requirements developed by the Judicial Council and the courts. (§ 3; Bus. & Prof. Code, §§ 6517, 6520.)

- Prohibits, on and after July 1, 2008, a person from holding himself or herself out to the public as a professional fiduciary unless he or she is licensed as a professional fiduciary under this act.

- Prohibits, on and after July 1, 2008, a court from appointing a person to carry out the duties of a professional fiduciary unless he or she is licensed as a professional fiduciary under this act. (§ 3; Bus. & Prof. Code, § 6530. § 4; Prob. Code, § 60.1. § 5; Prob. Code, § 2340.)

- Sets forth qualifications for licensure, including submitting to a criminal background check, passing a licensing examination administered by the bureau, having specified experience, and completing prelicensing education (and continuing education for license renewals), as specified. (§ 3; Bus. & Prof. Code, §§ 6533–6533.5, 6538–6539.)

- Requires the bureau to deny a license to persons who meet any of specified criteria related to fraud or deceit, regardless of whether the applicant meets all of the other requirements for licensing. (§ 3; Bus. & Prof. Code, § 6536.)

- Requires a licensee to keep and maintain records and file with the bureau annual statements containing specified information, and requires the bureau to make public specific information on each fiduciary. (§ 3; Bus. & Prof. Code, §§ 6560–6562, 6580(c).)

- Authorizes the bureau to institute disciplinary proceedings and impose sanctions on licensees who violate a statute, regulation, or the Professional Fiduciaries Code of Ethics, or for other specified causes. Sanctions include administrative citations

and fines and license suspension, probation, or revocation. In addition, allows the bureau to refer licensees to the Attorney General or local district attorney for criminal prosecution. (§ 3; Bus. & Prof. Code, §§ 6580–6584.)

- Sunsets the Statewide Registry of Private Conservators and Guardians and the local court registry for professional fiduciaries, effective July 1, 2008. (§ 6; Prob. Code, § 2345. § 7; Prob. Code, § 2856.)

- Contains a sunset date of July 1, 2011, for the act, unless otherwise extended. Provides that if the bureau and chief sunset, the functions, duties, and responsibilities shall be transferred to the advisory committee, and the committee shall be established as a board within the Department of Consumer Affairs. (§ 3; Bus. & Prof. Code, § 6510(c). [See Governor's signing message below.])

Governor's Signing Message

I am signing Senate Bill 1550 because I believe that it is important to protect California's vulnerable population from the financial abuse of unscrupulous professional fiduciaries that seek to do intentional harm.

However, clean-up legislation will be necessary in the next legislative session because of the way the author structured the bill. This bill establishes an unnecessary and complicated mechanism of transferring the responsibilities and jurisdiction of the newly created Professional Fiduciaries Bureau (Bureau) to a newly created Professional Fiduciaries Advisory Committee, which would then be established as a board within the Department of Consumer Affairs, after July 1, 2011. The creation of this arrangement is not justified and will leave consumers and the general public more confused by this regulatory scheme. Moreover, there is no rational, analytical justification to assume that in five years the Bureau would even need to be reconstituted as a full board. I would rather have a future Legislature evaluate that need at the time of the sunset review, instead of establishing the presumption now.

Therefore, my Administration will work with the Legislature to eventually clean up this bill so that the public can have faith that its State government is open, transparent, and easy to understand while protecting the interests of all Californians, especially its most vulnerable citizens.

Sincerely,
Arnold Schwarzenegger

SB 1716 (Bowen); Stats. 2006, ch. 492

Among other things, this bill establishes new procedures governing ex parte communications in probate cases, as follows:

- Provides, commencing January 1, 2008, that, in the absence of a stipulation to the contrary between parties who have filed pleadings in a proceeding under the Probate Code, there shall be no ex parte communications between any party, or attorney for the party, and the court concerning a subject raised in those pleadings, except as permitted or required by law. (§ 2; Prob. Code, § 1051(a),

(d). § 5; Welf. & Inst. Code, § 5372(a), (c).)

- Notwithstanding the above, permits the court, on and after January 1, 2008, to refer a matter to the court investigator or take other appropriate action in response to an ex parte communication regarding (1) a fiduciary (conservator, guardian, trustee, personal representative, attorney-in-fact, custodian under the California Uniform Transfer to Minors Act, or other legal representative) as to the fiduciary's performance of his or her duties and responsibilities, or (2) a person who is the subject of a conservatorship or guardianship proceeding.

- Specifies that any such action taken by the court shall be consistent with due process and requirements prescribed by existing law.

- Requires the court to disclose the ex parte communication to all parties and counsel. However, the court may, for good cause, dispense with the disclosure if necessary to protect the ward or conservatee from harm. (§ 2; Prob. Code, § 1051(b), (d). § 5, Welf. & Inst. Code, § 5372(a), (c).)

- Requires the Judicial Council, by January 1, 2008, to adopt a rule of court implementing the above provisions. (§ 2; Prob. Code, § 1051(c). § 5, Welf. & Inst. Code, § 5372(b).)

Note: The provisions in this bill that would have allowed the court to order a review of the conservatorship at any time (Prob. Code, § 1850) and required the court investigator's evaluation to include an examination of the conservatee's placement, quality of care, and finances (Prob. Code, § 1851) did not become operative as they were also contained in AB 1363, which was chaptered after this bill. (See §§ 5.5 and 5.7.) The versions of these two provisions in AB 1363 were enacted and become operative on July 1, 2007.

For further information or if you have any questions, please contact Daniel A. Pone, Senior Attorney, Administrative Office of the Courts, Office of Governmental Affairs, (916) 323-3121, daniel.pone@jud.ca.gov.