



ADR Services, Inc. Probate Dispute Resolution Series

An Introduction to Conservatorships

May 10, 2022 | 12:00 p.m. – 1:00 p.m.

Bette Epstein, Esq., Hon. Barbara Johnson (Ret.), Bruce Ross, Esq.

Excerpt from Chapter One, Ross & Cohen, *California Practice Guide: Probate*; copyright 1986-2021 by The Rutter Group, a Division of Thomson Reuters, reprinted by permission.

d.

[1:104] **Conservatorships:** A conservator may be appointed for any person who is unable to manage their financial resources or properly provide for their personal needs (i.e., food, clothing and shelter). [Prob.C. §1801]

Guardianships distinguished: Guardianships are available only for *minors* (Prob.C. §1500 et seq.). But *conservatorship* proceedings apply to *married minors* or minors whose marriages have been dissolved (Prob.C. §1800.3(a)(2)).

(1) [1:104.1] **Conservators' Handbook:** Pursuant to Prob.C. §1835, the Judicial Council has published, and updates periodically, a "Handbook for Conservators." The Handbook is designed to assist typical conservators--i.e., relatives or friends of conservatees with no legal or practical conservator experience. Accordingly, it is presented at the high school reading level in "lay" language.

The Handbook is aimed at aiding conservators in caring for the personal needs and finances of their conservatees. It explains the respective rights and duties of conservatees and conservators, and provides tips on working with the court, attorneys, investigators, etc. The Handbook also includes community resources and sample letters, inventories, accountings and other helpful information.

The Handbook is available online at the California Courts website (www.courts.ca.gov); and copies may be ordered from any superior court clerk.

(All conservators are required to obtain a copy of the Handbook and file an Acknowledgment of Receipt for same before letters issue; see *Par1:133.10*.)

(2)

[1:105] **General types of conservatorships:**

Three general types of conservatorships are authorized by the Probate Code:

(a) [1:106] **Conservator of the person**--where the conservatee is unable to provide properly for their personal needs. [Prob.C. §1801(a)] The conservator's powers may be "limited" or "unlimited" (see *Par1:139 ff.*).

(b)

[1:107] **Conservator of the estate**--where the conservatee is "substantially unable" to manage their financial resources "or resist fraud or undue influence." [Prob.C. §1801(b)--also stating that "substantial inability may not be proved solely by isolated incidents of negligence or improvidence"] The powers of this type of conservator likewise may be "limited" or "unlimited" (see *Par1:143 ff.*).



1) [1:108] An individual may have both a “conservator of the person” and a “conservator of the estate.” [Prob.C. §§1800(a), 1801(c)]

2) [1:109] In the case of dual conservatorships (“of the person” and “of the estate,” *Par1:108*), the conservator ordinarily is, but need not be, the same person. However, banks and trust companies may serve only as conservators of the estate, not of the person. [Prob.C. §300]

(c) [1:110] **Limited conservator for the developmentally disabled:** This is a form of limited conservatorship of the person or estate, or both, of a “developmentally disabled adult.” It “shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual’s proven mental and adaptative limitations.” [Prob.C. §1801(d)]

If the court finds that the proposed limited conservatee lacks the capacity to perform some, but not all, of the tasks necessary to provide properly for their own personal needs for physical health, food, clothing, or shelter, or to manage their own financial resources, the court “shall” appoint a limited conservator. [Prob.C. §1828.5(c)]

1) [1:111] **Legal effect; no presumption of legal incapacity:** The conservatee in this case is not necessarily legally incapacitated. Indeed, no presumption of incapacity may attach by reason of the conservatorship. A “developmentally disabled” conservatee retains all legal and civil rights except those which the court has specifically granted to the conservator. [Prob.C. §1801(d)]

Indeed, upon establishment of a limited conservatorship, the conservator must notify the developmentally disabled conservatee *and their relatives* of the conservatee’s retained rights. A mandatory form *Notice of Conservatee’s Rights* (GC-341) has been adopted by the Judicial Council for this purpose. [Prob.C. §1830(c)]

(d) [1:112] **LPS conservatorships for “gravely disabled”:** Still another type of conservatorship may be established under the Lanterman-Petris-Short Act for the “gravely disabled.” These LPS proceedings govern the involuntary commitment of the gravely disabled to appropriate institutions for treatment and are therefore subject to strict statutory standards. [See generally, *Welf. & Inst.C.* §5350 et seq.; *Conservatorship of Susan T.* (1994) 8 C4th 1005, 1009, 36 CR2d 40, 41; *Conservatorship of Ben C.* (2007) 40 C4th 529, 540, 53 CR3d 856, 862; *Conservatorship of D.P.* (2019) 41 CA5th 794, 803-804, 254 CR3d 512, 517-518 (discussing statutory requirements for “gravely disabled” finding and upholding trial court’s jury instruction on that issue), rev. grntd. 2/11/20 (Case No. S259568), cited for persuasive value pursuant to CRC 8.1115]

“In a nutshell, the LPS is intended to provide prompt, short-term, community-based intensive treatment, without stigma or loss of liberty, to individuals with mental disorders who are either dangerous or gravely disabled.” Because LPS conservatees are detained involuntarily, the Act “scrupulously protects” their due process rights; they retain all rights not specifically denied under the LPS. [See *Conservatorship of Pamela J.* (2005) 133 CA4th 807, 819-823, 35 CR3d 228, 235-239 (internal quotes omitted)--LPS conservatee retains due process right to refuse medical treatment absent judicial determination of incapacity at a hearing where conservatee is present; *Scott S. v. Sup.Ct. (Lyon)* (2012) 204 CA4th 326, 336-338, 138 CR3d 730, 738-739; *K.G. v. Meredith* (2012) 204 CA4th 164, 169, 138 CR3d 645, 651; compare *People v. Barrett* (2012) 54 C4th 1081, 1106-1109, 144 CR3d 661, 679-681 (distinguishing LPS commitments from



commitments for developmentally disabled persons posing a danger to self or others (Welf. & Inst.C. §6500))]

(For a comprehensive discussion of the procedural and substantive protections afforded “gravely disabled” proposed conservatees in LPS proceedings, see *Conservatorship of John L.* (2010) 48 C4th 131, 142-148, 105 CR3d 424, 430-435.)

1)

[1:112.1] **Standing to initiate proceeding:** To prevent unjustified involuntary commitments, only the county’s designated conservatorship officer may initiate an LPS conservatorship proceeding. [See *Conservatorship of Martha P.* (2004) 117 CA4th 857, 868, 12 CR3d 142, 150--public conservator’s exclusive right to petition for reestablishment of LPS conservatorship includes discretion to withdraw or dismiss petition; *People v. Karriker* (2007) 149 CA4th 763, 782-783, 57 CR3d 412, 424-425--court lacked authority to *require* county public conservator to file petition to establish LPS conservatorship for incompetent criminal defendant (statute giving court authority to refer matter for “initiation” of conservatorship only requires public conservator to investigate, leaving decision of propriety of filing LPS petition to conservator’s sole discretion); *Kaplan v. Sup.Ct. (Adler)* (1989) 216 CA3d 1354, 1356, 265 CR 408, 409--husband precluded from initiating proceeding for wife]

2)

[1:112.1a] **Proposed conservatee’s procedural due process rights:**

Proposed LPS conservatees ordinarily must be given notice and an opportunity to respond before their “liberty, personal autonomy and dignity interests” may be limited by appointment of a temporary conservator. [*Edward W. v. Lamkins* (2002) 99 CA4th 516, 541, 122 CR2d 1, 20-21]

The proposed conservatee also has a *due process right* to be heard prior to court determination of their placement and disabilities and the conservator’s duties and powers. [*Conservatorship of John L.*, supra, 48 C4th at 151-152, 105 CR3d at 437-438; *Conservatorship of Christopher A.* (2006) 139 CA4th 604, 613, 43 CR3d 427, 433; see also *Conservatorship of David L.* (2008) 164 CA4th 701, 705-706, 712-713, 79 CR3d 530, 533, 538--proposed LPS conservatee entitled to full opportunity to personally state reasons for request for substitute counsel]

In California, these due process rights are codified in part by statute. Prob.C. §1825 provides that “[t]he proposed conservatee shall be produced at the hearing” except where:

--the proposed conservatee is out of the state when served and is not the petitioner;

--the proposed conservatee is unable to attend the hearing by reason of medical inability; or

--the court investigator has reported to the court that the proposed conservatee has *expressly communicated* that they are not willing to attend the hearing, do not wish to contest the establishment of the conservatorship, and do not object to the proposed conservator (or prefer that another person act as conservator), *and* the court orders that the proposed conservatee need not attend the hearing (Prob.C. §1825(a)). The statute also provides that “[e]motional or psychological instability” is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such inability, attendance at the hearing is likely to cause “serious and immediate physiological damage” to the proposed conservatee. [Prob.C. §1825(c); *Conservatorship of A.E.* (2020) 45 CA5th 277, 282-283, 258 CR3d 565, 567-568--court precluded from ruling on merits of petition to appoint conservator until it complies with §1825]



Because due process rights apply whether or not they have been codified by the Legislature, compliance with applicable statutes may not be sufficient to satisfy due process requirements. [*K.G. v. Meredith* (2012) 204 CA4th 164, 183, 138 CR3d 645, 662-663]

a) [1:112.1b] **Notice:** The notice requirements are the same as those generally applicable in guardianship, conservatorship and other protective proceedings (Prob.C. §1460 et seq.). The court may order notice shortened or excused only on an *individualized showing of exigent circumstances* constituting “good cause.” [*Edward W. v. Lamkins*, supra, 99 CA4th at 544, 122 CR2d at 23--public guardian’s routine practice of seeking notice waivers in temporary conservatorship proceedings violated proposed conservatees’ due process rights]

b) [1:112.1c] **Consent/waiver of due process rights:** Because of the statutory safeguards in place, a proposed conservatee’s due process rights in an LPS proceeding do not rise to the level of those afforded a criminal defendant. Nevertheless, absent an emergency, the conservatee must *personally consent* to imposition of a disability before the court may impose one without proper notice or hearing. [*K.G. v. Meredith*, supra, 204 CA4th at 184-185, 138 CR3d at 664--mere absence of objection by unrepresented party to inadequate notice given by Public Guardian not equivalent to “informed consent” to involuntary medication; compare *Conservatorship of John L.*, supra, 48 C4th at 151, 105 CR3d at 437--no due process violation where court imposed conservatorship in proposed conservatee’s absence after court-appointed counsel represented that proposed conservatee did not wish to attend or contest the petition; *Conservatorship of Tian L.* (2007) 149 CA4th 1022, 1031-1032, 57 CR3d 382, 387-389--no due process violation where counsel signed affidavit attesting to conservatee’s agreement to re-establishment of LPS conservatorship without a hearing; *Conservatorship of Deidre B.* (2010) 180 CA4th 1306, 1314-1315, 103 CR3d 825, 832-833--same where consent to stipulated reestablishment confirmed by counsel orally at hearing; compare *Conservatorship of A.E.*, supra, 45 CA5th at 282-283, 258 CR3d at 567-568--due process violated where no evidence that proposed conservatee *expressly communicated* she was unwilling to attend and did not contest the conservatorship or oppose proposed conservator]

[1:112.1d] *Reserved.*

c) [1:112.1e] **No right to self-representation:** On the other hand, prospective LPS conservatees have no due process or other constitutional right to self-representation in proceedings to appoint a conservator. [*Conservatorship of Joel E.* (2005) 132 CA4th 429, 439-440, 33 CR3d 704, 710- 711 & fn. 7]

Nor do they have any statutory “right” of self-representation (see Welf. & Inst.C. §5365--mandating appointment of public defender or other attorney for proposed conservatee). But the court has *discretion* to permit a proposed LPS conservatee to represent himself or herself in appropriate circumstances. [*Conservatorship of Joel E.*, supra, 132 CA4th at 440-441, 33 CR3d at 711-712]

d) [1:112.1f] **Proposed LPS conservatee’s right to refuse to give testimony?** At least two appellate courts have held that LPS conservatees are similarly situated with individuals subject to involuntary civil commitments under criminal statutes (such as persons found not guilty by reason of insanity) which permit a person subject to involuntary commitment to refuse to testify in commitment proceedings, and, as such, may be protected from giving such testimony under the equal protection doctrine. [*Conservatorship of E.B.* (2020) 45 CA5th 986, 997-998, 259 CR3d 281, 291, rev.grntd. 6/24/20 (Case No. S261812), cited for persuasive value pursuant to CRC 8.1115--error in compelling proposed conservatee’s testimony harmless because prospective conservatee’s testimony not essential in light of testimony of two other witnesses; *Conservatorship of J.Y.* (2020) 49 CA5th 220, 231, 262 CR3d 712, 720, rev.grntd. 8/19/20 (Case No.



S263044), cited for persuasive value pursuant to CRC 8.1115]

e)

[1:112.1g] **Required findings--imposition of medical disability:** A court may deprive a conservatee of the right to refuse or consent to treatment relating to their grave disability. [Prob.C. §5357(d); *Conservatorship of D.C.* (2019) 39 CA5th 487, 494, 251 CR3d 847, 851-852]

However, before doing so, the court must find that the conservatee or proposed conservatee is incapable of making rational decisions about medical treatment related to their grave disability--i.e., that they lack the mental capacity to rationally understand the nature of the medical problem, the proposed treatment, and the treatment risks. [*K.G. v. Meredith*, supra, 204 CA4th at 180, 138 CR3d at 659-660 (also setting forth factors court must consider in making this determination)]

f)

[1:112.1h] **Compare--nonroutine, nonemergency treatment requires conservatee's consent or court order:** The conservator does *not* have authority to consent on an LPS conservatee's behalf to nonroutine nonemergency treatment such as surgery. Such treatment requires a court order or the conservatee's consent. [Welf. & Inst.C. §§5358(b), 5358.2; see *Scott S. v. Sup.Ct. (Lyon)* (2012) 204 CA4th 326, 336-337, 138 CR3d 730, 738]

3)

[1:112.2] **"Gravely disabled" prerequisite:** The proposed conservatee must be "gravely disabled" (Welf. & Inst.C. §5008(h)). Adjudication of "gravely disabled" status must be based on two findings proved beyond a reasonable doubt (*Par1:137*):

.That the proposed conservatee is unable to provide for their basic food, clothing and shelter due to a mental disorder; and

.There is no willing and responsible family member, friend or other third party available to assist in furnishing the conservatee with these necessities. [*Conservatorship of K.W.* (2017) 13 CA5th 1274, 1280, 221 CR3d 622, 627-628--case-specific hearsay inadmissible absent independent proof or establishment by hearsay exception; *Conservatorship of Jesse G.* (2016) 248 CA4th 453, 460-461, 203 CR3d 667, 672-673--offer of third-party assistance prevented "gravely disabled" finding; *Conservatorship of Early* (1983) 35 C3d 244, 247, 197 CR 539, 540]

a) Examples

. [1:112.2a] The inability to survive safely with proffered third-party assistance is sufficient to support a "gravely disabled" finding. [See *Conservatorship of Johnson* (1991) 235 CA3d 693, 698, 1 CR2d 46, 48--mentally disordered person's mother incapable of providing assistance necessary to "survive safely"]

[1:112.2b] Substantial evidence that a conservatee cannot provide for himself without medication and that he will not take his medication without the conservator's supervision likewise supports a finding of "gravely disabled." [*Conservatorship of Walker* (1989) 206 CA3d 1572, 1577, 254 CR 552, 554]

Further, evidence that a conservatee will not take medication without supervision is sufficient to *reestablish* a "gravely disabled" conservatorship. [*Conservatorship of Guerrero* (1999) 69 CA4th 442, 446-447, 81 CR2d 541, 542-543]

[1:112.2c] Similarly, a finding of "gravely disabled" was proper where the proposed conservatee had



repeatedly lost community housing due to her paranoia and resulting refusal to eat, drink or take medications. [*Conservatorship of Carol K.* (2010) 188 CA4th 123, 136, 115 CR3d 343, 353]

[1:112.2d-112.2g] *Reserved.*

b)

[1:112.2h] **Fourth Amendment exclusionary rule inapplicable:** The federal exclusionary rule, requiring the suppression of evidence seized in violation of the Fourth Amendment to the U.S. Constitution, does *not* apply in involuntary conservatorship proceedings for the gravely disabled because they are protective and not criminal in nature. Thus, evidence discovered by the government (e.g., county social services workers) in a warrantless search of the proposed conservatee's residence is admissible in a civil proceeding to establish that the proposed conservatee is "gravely disabled." [*Conservatorship of Susan T.* (1994) 8 C4th 1005, 1008, 1018-1020, 36 CR2d 40, 41, 47-49--county mental health worker's photographs of interior of proposed conservatee's apartment properly admitted in LPS proceeding]

c)

[1:112.2i] **Jury trial right:** The proposed conservatee is entitled to demand a jury trial on the issue of their grave disability. [Welf. & Inst.C. §5350(d); *Conservatorship of Ben C.* (2007) 40 C4th 529, 541, 53 CR3d 856, 863; *Conservatorship of P.D.* (2018) 21 CA5th 1163, 1167, 231 CR3d 79, 81; *Conservatorship of Person & Estate of Kevin A.* (2015) 240 CA4th 1241, 1251, 193 CR3d 237, 244--court may not accept counsel's waiver of proposed conservatee's jury trial right unless court finds substantial evidence that conservatee lacked capacity to waive right; see *Conservatorship of Kevin M.* (1996) 49 CA4th 79, 84, 56 CR2d 765, 768--proposed conservatee's jury trial right must be exercised within statutory period (5 days after first hearing on conservatorship petition); *Conservatorship of Joseph W.* (2011) 199 CA4th 953, 964, 131 CR3d 896, 904--conservatee has same right to jury trial on issue of re-establishment of conservatorship; see also *Conservatorship of Jose B.* (2020) 50 CA5th 963, 971, 264 CR3d 500, 506--trial court's failure to commence trial within 10 days of jury trial demand did not warrant dismissal of public guardian's petition for reappointment as conservator; time limit in Welf. & Inst.C. §5350(d)(2) directory, not mandatory]

Before a conservator can be appointed, the jury must *unanimously* agree that the proposed conservatee's "grave disability" has been proven beyond a reasonable doubt. [*Conservatorship of Ben C.*, supra; *Conservatorship of Heather W.* (2016) 245 CA4th 378, 382-383, 199 CR3d 689, 691; see further discussion at Par1:137]

But jury unanimity is unnecessary to find a person *not* gravely disabled: "Such a finding can be supported by a three-fourths majority of the jury." [*Conservatorship of Rodney M.* (1996) 50 CA4th 1266, 1268, 58 CR2d 513, 514]

1/ [1:112.2j] **Not contingent on payment of jury fees:** The proposed LPS conservatee's right to a jury trial is not contingent upon the payment of jury fees. "[B]ecause of the loss of liberty, stigmatization and the public interests promoted by the statutory scheme, including public safety, and the fact that the procedure for demanding LPS jury trials is one of the exceptions to the application of the Probate Code and the Code of Civil Procedure, we do not think the Legislature intended the entitlement to a jury trial in LPS matters be conditioned on the payment of jury fees." [*Conservatorship of John D.* (2014) 224 CA4th 410, 422, 168 CR3d 739, 748-749]

2/

[1:112.2k] **Time limitations governing jury trial:** The Welfare & Institutions Code requires that a demand for jury trial on the issue of grave disability must be made within five days following the hearing on the conservatorship petition and trial must commence within 10 days of the date of demand, subject to the



court's ability to continue the trial date for a period not to exceed 15 days upon the request of counsel for the proposed conservatee. [Welf. & Inst.C. §§5350(d), 5361; *Conservatorship of Kevin M.* (1996) 49 CA4th 79, 84, 56 CR2d 765, 768]

These limitations are not mandatory but directory, and may be waived. [*Conservatorship of M.M.* (2019) 39 CA5th 496, 500-501, 251 CR3d 855, 857-858]

4)

[1:112.3] **Conservatee's placement determined by court:** When an LPS conservatorship is established, it is the *court's* obligation (not the conservator's) to determine and designate the *least restrictive alternative placement* for the conservatee. [Welf. & Inst.C. §5358(a)(1)(A), (c)(1); *Conservatorship of Amanda B.* (2007) 149 CA4th 342, 351-355, 56 CR3d 901, 906-909--court erred in ordering "either/or" designation of multiple levels of care, leaving conservator to choose the single level of placement]

[1:112.4] *Reserved.*

5)

[1:112.5] **"Third party assistance" precluding conservatorship:** To date, only the help of *family members or friends* has been recognized as the type of "third party assistance" sufficient to preclude a finding of "gravely disabled" (*Par1:112.2*). [See, e.g., *Conservatorship of Walker* (1987) 196 CA3d 1082, 1101, 242 CR 289, 299 (parents) (disapproved on other grounds by *Conservatorship of K.P.* (2021) — C5th —, —, — CR3d —, — (2021 WL 2640595; *10)); *Conservatorship of Everette M.* (1990) 219 CA3d 1567, 1571, 269 CR 182, 184 (fiancée); and *Conservatorship of Jones* (1989) 208 CA3d 292, 300-302, 256 CR 415, 420-422--Corrections Department custody of mentally ill parolee *not* "third party assistance" within meaning of LPS Act]

a) [1:112.6] **Comment:** Dictum in *Jones*, supra, implies that *nonfamilyonfriend* persons or entities *might* be eligible "third party" providers if they properly cared for the conservatee *prior* to the court's finding of "gravely disabled." [See *Conservatorship of Jones*, supra, 208 CA3d at 300, 256 CR at 420 (citing *Conservatorship of Law* (1988) 202 CA3d 1336, 249 CR 415--board and care facility did not qualify as provider of "third party assistance" since its services were unavailable to conservatee *before* "gravely disabled" finding)]

6)

[1:112.7] **Limitation where preexisting conservatorship of the estate:** An LPS conservatorship (under the Welf. & Inst.C.) may not be established if a *probate* conservatorship *of the estate* has already been established. However, concurrent conservatorships *of the person* are permitted. [Welf. & Inst.C. §5350]

[1:112.8-112.14] *Reserved.*

(3)

[1:112.15] **Requirement that conservatorship be "least restrictive alternative":** The court may *not* appoint a conservator of the person or the estate unless it makes an *express finding* that granting of the conservatorship is the *least restrictive alternative needed for the protection of the conservatee*. [Prob.C. §1800.3(b)]

(4)

[1:113] **Who may be appointed; statutory preferences:** The Probate Code expressly provides for the manner in which prospective conservators are to be considered for appointment (Prob.C. §§1810-1813.1):



(a) [1:114] **Nomination by proposed conservatee:** If the proposed conservatee has “sufficient capacity ... to form an intelligent preference,” he or she may nominate a person to act as conservator. (“Capacity” for this purpose is a question of fact, to be determined at the hearing on the petition for appointment of conservator.) [Prob.C. §1810]

FORM: A Nomination of Conservator of Person and Estate (with alternatives) is included in the *Form 1:B* Uniform Statutory Form Power of Attorney.

1) [1:115] **Statutory preference for conservatee’s choice:** The proposed conservatee’s choice is afforded great deference. Such nominee “shall” be appointed, unless the court determines that it would not be in the proposed conservatee’s “best interests.” [Prob.C. §1810; *Conservatorship of Ramirez* (2001) 90 CA4th 390, 403, 108 CR2d 581, 590--abuse of discretion to appoint professional conservator where conservatee nominated competent caring family member willing to serve]

[1:116] *Reserved.*

2)

[1:117] **Procedure:** The nomination is made in the petition for appointment of a conservator or in a separate writing signed before or after the petition is filed. [Prob.C. §1810]

[1:118] **PRACTICE POINTER:** The statute does not require that the written nomination be witnessed. Even so, a witnessed nomination, with an attestation clause similar to that used in a will, is recommended. This will reduce the chances of a successful attack on the validity of the nomination.

(b)

[1:119] **Nomination by spouse, domestic partner or relative:** A conservator similarly may be nominated by the proposed conservatee’s spouse, registered domestic partner, adult child, parent, brother or sister. [Prob.C. §1811]

1) [1:120] **Effect of nomination:** A spouse’s, domestic partner’s or relative’s nominee is subordinated to a choice by the proposed conservatee, subject to the proposed conservatee’s “best interests” (*Par1:115*). Otherwise, the decision is within the court’s discretion, subject to the rules of preference discussed at *Par1:124 ff.* [Prob.C. §§1810, 1812]

a) [1:121] **Limitation re spouse’s or domestic partner’s choice:** The proposed conservatee’s spouse or domestic partner ordinarily may not petition for appointment of a conservator, or be appointed conservator, if a proceeding for legal separation, dissolution or adjudication of nullity is pending between the parties. Nor may the proposed conservatee’s domestic partner petition for appointment of a conservator, or be appointed conservator, if they have terminated, or are intending to terminate, the domestic partnership pursuant to Fam.C. §299. [See Prob.C. §§1813, 1813.1; Fam.C. §§297.5(a), (b), 299(d)]

The only exception to these rules is where the court finds by *clear and convincing* evidence that the spouse’s or domestic partner’s appointment is in the proposed conservatee’s “best interests.” [Prob.C. §§1813(a), 1813.1(a)(1)]

2)

[1:122] **Procedure:** Subject to Prob.C. §§1813 and 1813.1, immediately above:

.Nomination by a spouse, domestic partner, adult child, parent or sibling may be made in the petition for conservatorship or orally at the hearing on the petition. [Prob.C. §1811(a)]



.Alternatively, the proposed conservatee's *spouse, domestic partner or parent* may make a nomination in an independent writing signed before or after the petition is filed. Such nomination remains effective despite the nominator's subsequent legal incapacity or death. [Prob.C. §1811(b)]

[1:123] *Reserved.*

(c)

[1:124] **Rules of preference where conservatee makes no nomination or appointment of nominee is not in conservatee's best interests:** As already stated, a nomination by the proposed conservatee is afforded the highest deference (*Par1:115*). *Subject to that rule*, however, the appointment is within the court's *sole discretion* (Prob.C. §1812), limited by the following statutory guidelines:

1) [1:125] **Best interests:** The court selection must be made in light of the proposed conservatee's "best interests." [Prob.C. §1812(a); see *Conservatorship of Ramirez* (2001) 90 CA4th 390, 403, 108 CR2d 581, 590]

2)

[1:126] **Order of preference:** Of persons equally qualified in the court's opinion, preference is to be given as follows (Prob.C. §1812(b)):

.First, to the spouse or domestic partner of the proposed conservatee or to the spouse's or domestic partner's nominee (but subject to Prob.C. §§1813 and 1813.1, see *Par1:121*);

.Second, to an adult child of the proposed conservatee or to the child's nominee;

.Third, to a parent of the proposed conservatee or to the parent's nominee;

.Fourth, to a brother or sister of the proposed conservatee or to such person's nominee;

.And finally, to any other person or entity eligible for appointment under the Probate Code or, if none, under the Welfare and Institutions Code (Welf. & Inst.C. §§5354-5355). [Prob.C. §1812(b)(1)-(5)]

a)

[1:127] **Limitation re preference for nominee:** The preference for a particular child's, parent's or sibling's *nominee* (*Par1:126*) is *subordinate* to the preference for any other parent, child, brother or sister in the same class. [Prob.C. §1812(c)]

[1:128] *Reserved.*

(5)

[1:129] **Procedures for establishing conservatorship:** As noted, an in-depth review of the procedural aspects of conservatorship proceedings is beyond the scope of this Practice Guide. Briefly, note the following:

(a) [1:129.1] **Superior court jurisdiction:** The superior court has jurisdiction of conservatorship proceedings. [Prob.C. §2200]

1) [1:129.2] **Limitation--jurisdiction as between interested states:** Effective January 1, 2016, as between interested "states" (as defined by Prob.C. §1982(m)), the California Conservatorship Jurisdiction Act (Prob.C. §1980 et seq.) governs *which state* has jurisdiction of a conservatorship proceeding. [Prob.C. §2200] *See discussion at Par1:157.5.*

(b)

[1:130] **Petition for appointment:** The proceeding is initiated by filing a detailed petition for appointment



of a conservator (Prob.C. §1820). The petition may be filed by the proposed conservatee; the proposed conservatee's spouse, domestic partner or relative; or other "interested" persons or state or local entities. [Prob.C. §1820]

The Judicial Council has adopted for *mandatory use* a form Petition for Appointment of Probate Conservator (GC-310), which is available on the California Courts website (www.courts.ca.gov).

(c)

[1:130.1] **Confidential supplemental information re conservatee:** In addition to the data contained in the petition, information explaining why a conservator is required must be set forth in a "Confidential Supplemental Information" form. The form calls for a brief statement of facts relating to the conservatee (e.g., ability to live in their residence, inability to provide for personal needs or manage financial resources, alternatives to conservatorship, etc.). [See Prob.C. §1821(a); CRC 7.1050]

Since the form is "confidential," it may *not be attached* to the petition (which, when filed, becomes a public record). The completed form may be made available only to the parties, persons receiving notice of the petition (who have requested the supplemental information or appeared in the proceedings), their attorneys, and the court. However, the court has discretion to release the supplemental information to others upon finding it would be in the best interests of the conservatee. [Prob.C. §1821(a)]

The form Confidential Supplemental Information (GC-312) is available online at the California Courts website (www.courts.ca.gov).

(d)

[1:130.2] **Confidential conservator screening form:** Each proposed conservator must also submit to the court a "Confidential Conservator Screening Form," designed to assist the court in determining whether a proposed conservator should be appointed. [CRC 7.1050]

In addition to basic identifying information, the form calls for confidential information concerning the proposed conservator's criminal, bankruptcy and conservatorship history, and their personal and financial relationship with the proposed conservatee. [CRC 7.1050]

The Confidential Conservator Screening Form (GC-314) is available online at the California Courts website (www.courts.ca.gov).

(e)

[1:130.3] **Proposed compensation schedule--professional fiduciaries:** If the proposed conservator is a professional fiduciary (*Par1:133.1 ff.*), the petition for appointment must include a proposed hourly fee schedule or another statement of their proposed compensation from the proposed conservatee's estate for services performed as conservator. Compliance with this requirement will not preclude the court from later reducing the fees or other compensation awarded. [Prob.C. §§1821(c) (conservatorship petition), 2250(c) (temporary conservatorship petition)]

An additional fee schedule or compensation statement must be filed concurrently with the inventory and appraisal (Prob.C. §2614.7). Further schedules or statements may be submitted when one year has passed since the last submission (Prob.C. §2614.8). Periodic payment for services can be ordered only if the conservator has submitted the fee schedule or compensation statement and satisfied petition and notice requirements. [Prob.C. §2643.1]

(f)

[1:131] **Hearing:** A noticed hearing is required, wherein the court must determine, first and foremost, whether a conservator is needed (see Prob.C. §1801).



1) [1:132] **Notice:** A minimum 15 days' notice of the hearing must be given to the proposed conservatee's spouse or domestic partner, various relatives and certain statutorily-specified entities. [See Prob.C. §1822]

(g)
[1:133] **Appointment:** On adjudication of the need for a conservatorship, an appointment will be made, subject to various conditions and limitations that might be imposed on the conservator's powers (*Par1:138 ff.*).

The appointment is evidenced by the court clerk's issuance of letters. The order appointing the conservator is not effective until letters have issued (the first page of the order must so indicate in at least 12-point capital letters). [See Prob.C. §2310]

The form Order Appointing Probate Conservator (GC-340) is available online at the California Courts website (www.courts.ca.gov).

1) [1:133.1] **Professional fiduciary licensing requirements:** Pursuant to the Professional Fiduciaries Act (Bus. & Prof.C. §6500 et seq.), anyone holding himself or herself out to the public as a "professional fiduciary" must be *licensed* as such by the Professional Fiduciary Bureau of the Department of Consumer Affairs and must adhere to comprehensive regulatory and ethical standards. [Prob.C. §§60.1, 2340; Bus. & Prof.C. §§6502, 6530, 6533 (qualifications for licensure)]

The Act is enforceable by administrative citations and fines, civil penalties and monetary sanctions, license suspension, probation and revocation or other disciplinary action, and criminal prosecution. [See Bus. & Prof.C. §§6580-6584]

a) [1:133.2] **"Professional fiduciaries":** A "professional fiduciary" is a person who acts as conservator (or guardian) of the person, the estate or the person and estate, 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. [Bus. & Prof.C. §6501(f)(1)(A)]

A "professional fiduciary" is also a personal representative of a decedent's estate for two or more individuals at the same time who are not related to the professional fiduciary or to each other. [Bus. & Prof.C. §6501(f)(1)(B)]

(Certain trustees, and agents under a durable power of attorney for health care or for finances, for more than three individuals at the same time who are not related to the professional fiduciary or each other are also "professional fiduciaries" subject to the licensing requirements.) [Bus. & Prof.C. §6501(f)(2) (but *excluding* trust companies, FDIC-insured institutions, public officers, and certain broker-dealers, as specified; see Bus. & Prof.C. §6501(f)(4))]

b)
[1:133.3] **Exemptions:** Persons licensed as attorneys or CPAs, or enrolled as agents to practice before the IRS, and acting within the scope of their practice, are exempt from the professional fiduciaries licensing requirements. [Bus. & Prof.C. §6530]

[1:133.4-133.9] *Reserved.*

2)
[1:133.10] **Statutorily-required "written information" to private conservators:**



Every superior court is required to give certain information to all “private” (i.e., nongovernmental) conservators relating to a conservator’s statutory rights, duties, limitations and responsibilities. [Prob.C. §1835]

The requisite information is contained in the Judicial Council form “Duties of Conservator,” and the Council’s “Handbook for Conservators” (*Par1:104.1*). Private conservators (except trust companies) must sign and file an acknowledgment of receipt of the form and Handbook *before* letters may issue. [See Prob.C. §1834(a); CRC 7.1051]

The form Duties of Conservator and Acknowledgment of Receipt of Handbook (GC-348) is available online at the California Courts website (www.courts.ca.gov).

a) [1:133.11] **Impact:** Any failure to adhere to the §1835 requirements will not itself relieve conservators of any of their duties, or make the county or other public official liable in damages to any conservatee, conservator, conservatorship or other person or entity. [Prob.C. §1835(d)]

(h) Procedural safeguards in contested conservatorships

1) [1:134] **Right to counsel:** In any contested conservatorship, the proposed conservatee has a statutory right to choose and be represented by counsel, and to have counsel appointed by the court if unable to retain an attorney. [Prob.C. §1828(a)(6); see *Wendland v. Sup.Ct. (Wendland)* (1996) 49 CA4th 44, 49-50, 56 CR2d 595, 599--independent counsel appointed for brain-injured conservatee (family members contested temporary conservator’s petition for permanent appointment and authority to withdraw life support, *Par1:140.7*)]

2)

[1:135] Right to appear and be heard:

The proposed conservatee also has a statutory right to appear at the hearing and to oppose the petition; and, in the case of an alleged developmentally disabled adult (*Par1:110*), to oppose the petition in part, by objecting to any or all of the limited conservator’s proposed duties or powers. [Prob.C. §1823(b)(5)]

3)

[1:135.1] Right to jury trial: The proposed conservatee (and *only* the proposed conservatee) likewise has the statutory right to a jury trial concerning the establishment or termination of a conservatorship. [Prob.C. §§1827, 1863; *Conservatorship of Person & Estate of Kevin A.* (2015) 240 CA4th 1241, 1249, 193 CR3d 237, 242-243; but see *Conservatorship of the Person of B.C.* (2016) 6 CA5th 1028, 1030, 1035-1036, 212 CR3d 180, 182, 185-186--personal waiver of proposed conservatee’s jury trial right not required in probate conservatorship proceedings (if desired, jury trial must be demanded)]

4)

[1:135.2] Right to reports submitted to court: Due process requires that the parties (and “interested persons”) be given access to any “confidential” reports submitted to the court in contested conservatorship proceedings, to permit them to object or otherwise respond to the information contained therein. [See *Conservatorship of Schaeffer* (2002) 98 CA4th 159, 161, 119 CR2d 547, 548--report of conservatee’s appointed counsel improperly withheld from conservatee’s spouse in removal/appointment proceeding]

5)

[1:136] “Clear and convincing” burden of proof for conservatorships under Probate Code: Proof of the need for a conservatorship ordinarily must be shown by “*clear and convincing evidence*.” [See Prob.C. §1801(e); *Conservatorship of O.B.* (2020) 9 C5th 989, 995-996, 1011-1012, 266 CR3d 329, 332, 346--appellate court evaluating sufficiency of evidence under Prob.C. §1801(e) must determine whether



record viewed as a whole contains substantial evidence from which reasonable trier of fact could have found it highly probable that conservatorship was necessary, viewing record in light most favorable to prevailing party below, and giving due deference to how the trier of fact may have evaluated credibility of witnesses, resolved conflicts in evidence, and drawn reasonable inferences from evidence]

a) [1:137] **Compare--LPS conservatorships for the “gravely disabled”:** A higher standard of proof applies in conservatorship proceedings under the LPS Act for the “gravely disabled” (*Par1:112*). Here, the proceedings pose the risk of even greater deprivation of civil liberties than under Probate Code conservatorships, and may place a “lasting stigma” on the individual’s reputation (“mentally ill or disordered”); hence, the safeguard of *proof beyond a reasonable doubt* is required. [*Conservatorship of Roulet* (1979) 23 C3d 219, 235, 152 CR 425, 435; *Conservatorship of Ben C.* (2007) 40 C4th 529, 541, 53 CR3d 856, 863; *Conservatorship of P.D.* (2018) 21 CA5th 1163, 1167, 231 CR3d 79, 81]

Likewise, where a proposed LPS conservator requests the court to impose any *special disability* on the proposed conservatee (e.g., withholding right to vote, to refuse or consent to “routine” medical treatment, to possess a firearm; see *Welf. & Inst.C. §5357*), the burden of proof beyond a reasonable doubt applies to *each such special disability*. [*Conservatorship of Walker* (1989) 206 CA3d 1572, 1577-1578, 254 CR 552, 555; but see *In re Lois M.* (1989) 214 CA3d 1036, 1038, 263 CR 100, 101--lawfulness of detaining proposed conservatee in locked mental ward to determine course of treatment may be proved by preponderance of evidence]

(For further treatment of the procedural aspects of conservatorships, see generally, Prob.C. §§1820-1844, 2300-2335.)

(6)

[1:138] **Specific functions of conservatorships and conservator’s powers:** The powers and duties of conservators, limited and unlimited, are expressly enumerated in the Probate Code.

(a) **Conservatorship of the person**

1) [1:139] **Generally:** A conservator of the person “has the care, custody, and control of, and has charge of the education of” the conservatee. The conservator’s control does not, however, extend to personal rights retained by the conservatee (e.g., the right to receive visitors, telephone calls and personal mail) unless the court has specifically ordered those personal rights curtailed. [Prob.C. §2351(a)]

Conservators of the person are expressly vested with the power to fix the conservatee’s residence (Prob.C. §§2352, 2352.5) and, under prescribed conditions, to give or withhold medical treatment. [See Prob.C. §§1880 et seq., 2354, 2355; and further discussion at *Par1:48.9 ff. & 1:140.5 ff.*]

a) [1:140] **Exception--court may reserve selected powers to conservatee:** The court has discretion to limit these powers and duties by stating the *specific powers* the conservator does *not* have and reserving those specified powers to the conservatee (or vice versa). [See Prob.C. §2351(b)]

2)

[1:140.1] **Self-dealing safeguards:** To guard against the potential for fiduciary self-dealing, a conservator of the person may take the following actions *only* with the court’s informed authorization:

a) [1:140.2] **Transacting business with entity in which conservator has financial interest:** Conservators who are required to register with the Statewide Registry under Prob.C. §2850 et seq. may not “hire or refer any business” to an entity owned by them, or for which they serve as officer or director, without court authorization following written disclosure of that relationship. [Prob.C. §2351(d)]



b)

[1:140.3] **Sale, lease or rental of estate property to conservator's family or "affiliate":** When petitioning the court for approval of a purchase, lease or rental of estate property, the conservator must also provide the court with a statement disclosing any family or "affiliate" relationship between the conservator, lessee or renter and between the conservator and any agent they hired. [Prob.C. §2359(c)]

A family or "affiliate" relationship means a spouse, domestic partner or relative within the second degree, or an entity under the conservator's control. [See Prob.C. §2359(c)(2)]

A violation of the disclosure requirement has serious consequences--including rescission of the transaction and significant *surchage* and *penalty* assessments against the conservator. [See Prob.C. §2359(c)(3)]

[1:140.4] *Reserved.*

3)

[1:140.5] **Conservator's right to withhold life-sustaining medical treatment from conservatee in "persistent vegetative state":** If granted Prob.C. §2355 authority to make health care decisions for the conservatee, and *unless* the court *expressly withheld* the power to do so at the time of appointment (Prob.C. §2351(b), *Par1:140*), the conservator may withdraw artificial life support from a conservatee in a persistent vegetative state with no realistic hope of recovery. No further court approval is required. [*Conservatorship of Drabick* (1988) 200 CA3d 185, 189, 202-203, 245 CR 840, 841, 850-851; see *In re Christopher I.* (2003) 106 CA4th 533, 548-549, 131 CR2d 122, 132--"artificial life support" also includes medical procedures to provide nutrition, hydration and medication]

In such a case, court involvement is limited to review of whether the conservator's decision was made "in good faith based upon medical advice" under Prob.C. §2355(a). Interested persons may invoke judicial review by a Prob.C. §2359 petition for instructions (or may request in the first instance that the power to withhold medical treatment be excluded or limited at the time of the conservator's appointment; *Par1:140*). [*Conservatorship of Drabick*, *supra*, 200 CA3d at 202-204, 245 CR at 850-851]

a) [1:140.6] **Compare--power withheld by court:** On the other hand, where the court has *withheld* the conservator's unilateral authority to terminate life support, and interested persons disagree whether the conservatee would choose to live or die under the circumstances, a court hearing must be held to determine if continued medical intervention is in the conservatee's best interest; and independent counsel must be appointed to represent the conservatee. [*Wendland v. Sup.Ct. (Wendland)* (1996) 49 CA4th 44, 49-50, 56 CR2d 595, 599--brain-injured conservatee with some cognitive function entitled to independent counsel where conservator/spouse sought authority to withdraw life support]

b)

[1:140.6a] **Compare--children adjudicated juvenile court dependents:** A child in a persistent vegetative state who has been adjudicated a dependent of the juvenile court (e.g., due to parental abuse) may be withdrawn from life-sustaining medical treatment only upon the juvenile court's determination, based on clear and convincing evidence, that doing so is in the child's "best interests." [*In re Christopher I.*, *supra*, 106 CA4th at 550-552, 131 CR2d at 133-135 (listing relevant factors)]

c)

[1:140.7] **Constitutional limit on right to withhold life-sustaining treatment from conscious conservatee:** Even when granted Prob.C. §2355 authority to make health care decisions, a conservator's power to withhold life-sustaining treatment from a *conscious* conservatee who is *not terminally ill, comatose or in a persistent vegetative state* is limited by *constitutional* considerations: There must be *clear and convincing evidence* that withholding artificial life support is in accordance with the conservatee's wishes



(if known) or in their best interest. [*Conservatorship of Wendland* (2001) 26 C4th 519, 554-555, 110 CR2d 412, 440--brain-damaged conservatee's preaccident statement that "I don't want to live like a vegetable" insufficient to permit conservator to withhold artificial nutrition and hydration]

d)

[1:140.8] **Physician's right to refuse to withdraw life support:** Even when authorized to discontinue the conservatee's life support measures, conservators may *not* compel an attending physician to do so over the physician's personal moral objection if the conservatee can be transferred to another physician who is willing to follow the conservator's direction. [*Conservatorship of Morrison* (1988) 206 CA3d 304, 311, 253 CR 530, 534]

4)

[1:140.9] **Court authority to refer conservatee for assessment by local mental health system or plan:** The court may refer an existing probate conservatee for an assessment to determine if the conservatee:

.has a treatable mental illness (including whether they are gravely disabled as a result of a mental disorder or impairment by chronic alcoholism); *and*

.is unwilling or incapable of accepting treatment voluntarily. [Welf. & Inst.C. §5350.5(a)]

If a referral is ordered, the local mental health system or plan "shall" file a copy of the assessment with the probate court in the proceeding. [Welf. & Inst.C. §5350.5(b)]

a) [1:140.10] **Evidentiary hearing required:** Section 5350.5 requires an *evidentiary hearing* by the court in consultation with a licensed physician or licensed psychologist providing assessment or treatment of the conservatee prior to ordering a mental health assessment referral. [Welf. & Inst.C. §5350.5(a)]

1/ [1:140.11] **Conservatee's right to appear:** The conservatee has the right to appear at the evidentiary hearing unless they *waive* that right. [Welf. & Inst.C. §5350.5(a)]

2/

[1:140.12] **Right to counsel:**

The conservatee has the right to have counsel appear at the hearing on their behalf. If the conservatee cannot afford counsel, the court "shall" appoint counsel for them. [Welf. & Inst.C. §5350.5(a); Prob.C. §1471]

5)

[1:141] **Limited conservatorship:** A limited conservator of the person also has care, custody and control of the conservatee. In addition, they are required to secure such treatment, training and other services as will assist the limited conservatee in the development of "maximum self-reliance and independence." [Prob.C. §2351.5(a), (b)]

However, a limited conservator does *not* have any of the following powers or controls over the limited conservatee *unless specifically granted* by the court in its appointment order:

.To fix the limited conservatee's residence or specific dwelling (Prob.C. §2351.5(b)(1));

.Access to the limited conservatee's confidential records and papers (Prob.C. §2351.5(b)(2));

.To consent or withhold consent to the limited conservatee's marriage (Prob.C. §2351.5(b)(3));

.The limited conservatee's right to contract (Prob.C. §2351.5(b)(4));



.The limited conservatee's power to give or withhold medical consent (Prob.C. §2351.5(b)(5));

.The limited conservatee's right to control their own social/sexual contacts and relationships (Prob.C. §2351.5(b)(6));

.Decisions concerning the limited conservatee's education (Prob.C. §2351.5(b)(7)).

[1:142] **PRACTICE POINTER--Conservatorship of the person vs. durable powers of attorney:** Recall that an ordinary power of attorney simply authorizes the agent (or "attorney-in-fact") to conduct certain business and personal affairs on behalf of the principal (*Par1:50*). Thus, a conservatorship granting the conservator very broad powers may be preferable to a narrowly drawn power of attorney.

On the other hand, a *durable power of attorney* (*Par1:59 ff.*) and *power of attorney for health care* (*Par1:95*) together may include virtually all of the powers that a conservator of the person or the estate has under the conservatorship provisions of the Probate Code.

Nonetheless, a conservatorship of the person or estate may be more desirable than a durable power of attorney and/or power of attorney for health care if the client's illness or incapacity will probably be of lengthy duration; many decisions about personal care, custody and control and financial affairs are likely to be faced; or, questions are likely to be raised about the date of onset of the client's incapacity (thus affecting the durable power's validity; see *Par1:66*).

Additionally, a conservatorship may be the most desirable choice if there is a likelihood of litigation developing between family members over the incapacitated person's care and the management of their financial affairs. The conservatorship provisions provide a more flexible and authoritative approach toward a resolution of such disputes.

Of course, a conservatorship is a formal judicial proceeding involving ongoing court supervision, court investigators' reports and accountings, and attorney fees as well as other expenses. The use of a durable power of attorney, at least in the first instance, requires no court involvement and only negligible fees and expenses.

(b) **Conservatorship of the estate**

1) [1:143] **General power to manage and control estate:** Generally, a conservator of the estate is responsible for the conservatee's support and maintenance, debts and expenses, and has general management and control of the conservatee's assets and financial affairs, subject to court supervision. (See generally, the statutory "Duties of Conservator and Acknowledgment of Receipt of Handbook," which is available online at the California Courts website (www.courts.ca.gov).

Ordinarily, the powers of a *limited* conservator of the estate will be stated specifically and expressly in the appointing court's order; if not so restricted, the conservatorship is "unlimited" (i.e., conservator has authority to exercise all the statutory powers). [See generally, Prob.C. §§2400-2595]

a) [1:143.1] **"Estate":** The "estate" for which the conservator is responsible is all of the conservatee's personal property, wherever located, and all real property located in California. [Prob.C. §2400(b); see *Conservatorship of Parker* (2014) 228 CA4th 803, 806, 808-809, 175 CR3d 700, 702, 703-704--conservator ordered to pay punitive damages award from conservatee's estate for intentional tort committed by conservatee before creation of conservatorship]



1/ [1:143.2] **Conservatorships and community property:** The court may order a conservatee's spouse (or registered domestic partner) with management or control of the couple's community property to apply community property to the support and maintenance of the conservatee. [Prob.C. §3088; *Conservatorship of Estate of Bower* (2016) 247 CA4th 495, 507-508, 202 CR3d 297, 306-307]

Prob.C. §3089 gives the probate court the authority to divide community assets--even in the absence of dissolution of the marriage (or registered domestic partnership)--if the nonconservatee spouse (or registered domestic partner) with management or control over the community property refuses to comply with an order for the support and maintenance of the conservatee spouse. [Prob.C. §3089; *Conservatorship of Estate of Bower*, supra, 247 CA4th at 497-498, 202 CR3d at 298--authority to divide community estate does not extend to noncompliance with order for payment of conservator or attorney fees]

[1:143.3-143.4] *Reserved.*

2)

[1:143.5] **Self-dealing safeguards:** As with conservators of the person (*Par1:140.1 ff.*), special statutes restrict the exercise of powers by a conservator of the estate to protect against the risk of self-dealing by the conservator and certain others:

a) [1:143.6] **Court approval required for business transactions with entity in which conservator has a financial interest:** See Prob.C. §2401(c), *discussed at Par1:140.2.*

b)

[1:143.7] **Disclosure of sale, lease or rental of estate property to conservator's family or "affiliate":** See Prob.C. §2403(c), *discussed at Par1:140.3.*

c)

[1:143.8] **No sale, lease or rental to court personnel:** Conservators are subject to *surcharge* and *penalties* for selling (*except at a public sale*), leasing or renting estate property to court personnel who have duties or responsibilities related to the appointment of a conservator, or the processing of any document related to a conservator, their employees, spouses, domestic partners, and relatives, except for the purchase of property at a public sale. A violation of this restriction will also result in *rescission* of the purchase, lease or rental. [See Prob.C. §2111.5]

d)

[1:143.9] **Accountings:** Periodic accountings must be filed with the court. Along with each such accounting, the conservator must file (i) original or verified electronic account statements from institutions "in which money or other assets of the estate are held or deposited" showing the account balance as of the closing date of the accounting period; (ii) original closing escrow statements received showing the charges and credits for any sale of real property of the estate; and (iii) if the conservatee is in a residential care or long-term care facility, original billing statements for the facility. [Prob.C. §2620(c) (amended Stats. 2020, Ch. 221; eff. 1/1/21); see also Prob.C. §§2620.2 (citation, contempt, removal, etc. for failure to file required accountings) & 1063(h) (special accounting rules for out-of-state real property)]

(For a discussion of the court's oversight authority with respect to accountings by conservators and, specifically, conservator fee requests, see *Conservatorship of Presha* (2018) 26 CA5th 487, 497-498, 237 CR3d 247, 253-254--court has statutory duty to review conservator's fee request for possible overcharging; review of conservator's billing practices in prior cases was proper.)

e)

[1:143.10] **No offset of surcharges for breach of fiduciary duty:** A Prob.C. §2401.3 or §2401.5



surcharge against the conservator for breach of fiduciary duty *may not* be paid by or offset against future fees or wages payable by the estate to the conservator. [Prob.C. §2401.6]

3)

[1:144] **“Substituted judgment” authority:** The “substituted judgment” doctrine is codified in the Probate Code. [Prob.C. §§2580-2586]

Under these provisions, conservators of the estate are afforded considerable flexibility in estate and personal planning for conservatees unable to do such planning for themselves. The doctrine is based on the theory that, were conservatees “competent,” they would have taken such action for themselves as reasonably prudent persons. [See *Guardianship of Christiansen* (1967) 248 CA2d 398, 424, 56 CR 505, 522; *Conservatorship of Hart* (1991) 228 CA3d 1244, 1251, 279 CR 249, 252; *Murphy v. Murphy* (2008) 164 CA4th 376, 383, 78 CR3d 784, 789]

a)

[1:144.1] **Purpose:** The “substituted judgment” statutes are designed to “protect the conservatorship estate for the benefit not only of the persons who will ultimately receive it from the conservatee or their personal representative but also (and perhaps primarily) of the conservatee himself or herself.” [*Conservatorship of Hart*, supra, 228 CA3d at 1253, 279 CR at 253; *Murphy v. Murphy*, supra, 164 CA4th at 397, 78 CR3d at 800]

b)

[1:145] **Statutory bases for exercise of “substituted judgment”:** The conservator of the estate may petition the court for authority to take specified action (*Par1:146*) for any of the following purposes:

.To benefit the conservatee or the estate (Prob.C. §2580(a)(1));

.To minimize current or prospective taxes or expenses of administration of the conservatorship estate or of the probate estate upon the conservatee’s death (Prob.C. §2580(a)(2); *Conservatorship of Kane* (2006) 137 CA4th 400, 404, 40 CR3d 378, 380);

.To provide gifts for any purposes and to any charities, relatives (including the conservatee’s spouse or domestic partner), friends or “other objects of bounty,” as would be likely beneficiaries of gifts from the conservatee (Prob.C. §2580(a)(3); *Conservatorship of McElroy* (2002) 104 CA4th 536, 552, 128 CR2d 485, 496; *Conservatorship of Romo* (1987) 190 CA3d 279, 284, 235 CR 377, 380; but see *Conservatorship of Hart*, supra, 228 CA3d at 1251, 279 CR at 252--substituted judgment order approving gifts to heirs reversed where court was “significantly misinformed” regarding prior gifts made by conservatee and their effect on conservatee’s unified estate and gift tax credit).

c)

[1:146] **Authorized actions:**

“Substituted judgment” authority which the court may grant includes (but is not limited to):

.Making gifts of principal, income or both, outright or in trust (Prob.C. §2580(b)(1));

.Conveying or releasing contingent and expectant interests in property (including marital property rights and survivorship rights in joint tenancy property) (Prob.C. §2580(b)(2));

.Exercising or releasing powers of appointment (Prob.C. §2580(b)(3));

.Entering into contracts (Prob.C. §2580(b)(4));



.Creating (and funding) revocable or irrevocable trusts for the benefit of the conservatee or others (excluding Prob.C. §3602 “special needs” trusts for minors and incompetent adults; *Par15:251*) (Prob.C. §2580(b)(5); CRC 7.903; see *Conservatorship of Kane*, supra, 137 CA4th at 407, 408, 40 CR3d at 382, 383; *Murphy v. Murphy*, supra, 164 CA4th at 396, 78 CR3d at 799);

.Authorizing transfer of unintentionally omitted assets to inter vivos trusts created by the conservator or conservatee (Prob.C. §2580(b)(6));

.Exercising options (Prob.C. §2580(b)(7));

.Exercising the conservatee’s rights to elect benefit or payment options, to terminate, change beneficiaries, assign, borrow or surrender rights under life insurance policies, annuity policies, mutual funds, retirement, profit sharing and employee welfare plans and benefits (Prob.C. §2580(b)(8)(i)-(iv));

.Exercising the conservatee’s right to take under or against a will (Prob.C. §2580(b)(9));

.Exercising the conservatee’s right to renounce or disclaim any interest acquired by testate or intestate succession or by inter vivos transfer, including surrendering the conservatee’s right to revoke a revocable trust (Prob.C. §2580(b)(10));

.Exercising the conservatee’s right to modify or revoke (or surrender the right to modify or revoke) a revocable trust, unless the instrument creating the trust evidences an intent to reserve the right to modify or revoke exclusively to the conservatee, provides expressly that a conservator may not modify or revoke, or otherwise evidences an intent that would be inconsistent with authorizing the conservator to exercise such right (Prob.C. §2580(b)(11); see *Johnson v. Kotyck* (1999) 76 CA4th 83, 87, 90 CR2d 99, 102; *Brown v. Labow* (2007) 157 CA4th 795, 815-816, 69 CR3d 417, 433);

.Making a Prob.C. §13502 election or a Prob.C. §13503 election and agreement (i.e., those elections available to a surviving spouse or domestic partner under spousal property set-aside law; see *Par4:75 ff.*) (Prob.C. §2580(b)(12));

.Making a will (Prob.C. §2580(b)(13); see also Prob.C. §§6100.5(c), 6110(b)(3));

.Making or revoking a revocable transfer on death deed (*discussed at Par2:165 ff.*) (Prob.C. §2580(b)(14)).

d)

[1:146.1] **“Mentally competent” conservatee’s right to revoke/amend §2580 will:** A conservator’s §2580 authority to make a will on behalf of their conservatee (*Par1:146*) does *not impair* the conservatee’s right to revoke or amend the §2580 will, or even to make a new and inconsistent will ... provided the conservatee is later deemed “mentally competent to make a will.” [See Prob.C. §6100(b)]

1/ [1:146.2] **Testamentary capacity:** Conservatees and proposed conservatees do *not necessarily* lack testamentary capacity. Indeed, conservatorship proceedings neither turn on nor adjudicate the issue of a proposed conservatee’s capacity to execute a will. [*Estate of Mann* (1986) 184 CA3d 593, 605, 229 CR 225, 230-231]

e)

[1:147] **Procedure for obtaining authority to exercise “substituted judgment”:** Authorized exercise of substituted judgment powers requires a petition filed by the conservator or any “other interested person” (Prob.C. §2580), with notice of the hearing thereon as prescribed by Prob.C. §2581.

A full evidentiary hearing is not necessarily required, however. The court, in its discretion, may decide that the information presented in the verified petition is sufficient to grant the requested relief.



[*Conservatorship of McElroy* (2002) 104 CA4th 536, 554-555, 128 CR2d 485, 498; *Murphy v. Murphy* (2008) 164 CA4th 376, 398, 78 CR3d 784, 800]

The court may order delivery of the conservatee's will and other estate planning documents to a designated custodian for safekeeping or to the court for examination in connection with the proceedings. [See Prob.C. §2586]

[1:148] **PRACTICE**

POINTER: Note that the Code specifically permits any "interested person" to file the petition. This may be especially desirable where a corporate fiduciary serves as conservator; such entities are often reluctant to initiate the "substituted judgment" proceedings.

[1:149] **Requisite determinations:**

The court may authorize or require the proposed action *only if it determines all of the following:*

.The conservatee either is not opposed to the proposed action or, if opposed, lacks legal capacity regarding the proposed action (Prob.C. §2582(a); see also *Guardianship of Christiansen* (1967) 248 CA2d 398, 427, 56 CR 505, 525);

.Either the proposed action will have no adverse effect on the estate, or the estate remaining after action is taken will be adequate to provide for the conservatee's needs and for the support of those legally entitled to support, maintenance and education from the conservatee, taking into account all relevant circumstances of the conservatee and their dependents (Prob.C. §2582(b)).

[1:149.1] **Relevant circumstances:**

In making its requisite determinations (*Par1:149*), the court must consider all "relevant circumstances," which *may* include, but are not limited to:

.Whether conservatee possesses legal capacity to enter into the proposed transaction; if not, the probability of conservatee recovering legal capacity (Prob.C. §2583(a));

.Conservatee's past donative declarations, practices and conduct (Prob.C. §2583(b));

.Conservatee's traits (e.g., frugality toward self/others, generosity, etc.) (Prob.C. §2583(c));

.Relationship and intimacy of prospective donees with conservatee, their standards of living and extent to which they would be natural objects of conservatee's bounty by any objective test based on such relationship, intimacy and standards of living (Prob.C. §2583(d));

.Conservatee's wishes, if known (Prob.C. §2583(e));

.Conservatee's estate plan, if known (e.g., based on conservatee's will or a trust under which conservatee is a settlor or beneficiary) (Prob.C. §2583(f));

.Manner in which estate would devolve upon conservatee's death, giving consideration to the age and mental/physical condition of conservatee, their prospective devisees or heirs and prospective donees (Prob.C. §2583(g));



- .Estate's value, liquidity and productiveness (Prob.C. §2583(h));
- .Minimization of current or prospective income, estate, inheritance or other taxes or administration expenses (Prob.C. §2583(i));
- .Changes to tax and other laws likely to have motivated conservatee to alter estate plan (Prob.C. §2583(j));
- .Likelihood conservatee as a reasonably prudent person would take proposed action if they had capacity to do so (Prob.C. §2583(k));
- .Whether any beneficiary is the spouse or domestic partner of the conservatee (Prob.C. §2583(l)); and
- .Whether any beneficiary has committed physical abuse, neglect, false imprisonment or fiduciary abuse against the conservatee, after the conservatee was substantially unable to manage their financial resources, or resist fraud or undue influence, and the conservatee's disability persisted through the proposed substituted judgment hearing (Prob.C. §2583(m)).

f)

[1:150] **No duty to propose “substituted judgment” actions:**

The substituted judgment provisions simply give the conservator (or other interested person) the right to *request* authority to take certain actions not otherwise allowed. The provisions do not, however, impose a duty on the conservator to propose any action. And, the conservator may not be held liable for a failure to propose any such action. [Prob.C. §2585]

[1:151] **PRACTICE POINTER:** Attorneys representing a terminally ill or soon-to-be incapacitated client should carefully consider the extensive opportunities for premortem estate planning that the “substituted judgment” provisions confer upon a conservator of the estate.

In particular, note that the conservatee's assets may be *transferred into a trust* (Prob.C. §2580(b)(5)), thus avoiding the need to probate such property at death. However, as will be seen, the need for a *conservatorship of the estate* likewise may be avoided by transferring all the client's assets into trust while they are competent. (A successor trustee may take over management of the trust on the client-trustee's incompetence, without need for court intervention and supervision. On the other hand, the court may, and often will, require that trusts created by substituted judgment be subject to continuing court supervision.) *See discussion of trusts at Par2:106 ff.*

4)

[1:152] **Independent exercise of powers:** The court in its discretion may grant the conservator certain administrative powers that are usually exercisable *without notice, hearing or specific court authorization or instruction*. (Distinguish the exercise of such powers from “substituted judgment” action (Par 1:144 ff.), which may not be taken without a noticed hearing and specific court order.) [Prob.C. §§2590-2595; and see specifically, Prob.C. §2592 re procedure to follow in requesting such powers]

(Many courts disfavor granting the above powers absent a showing of good cause. See L.A. Sup.Ct. Rule 4.98; S.F. Uniform Rule 14.48F; Orange Sup.Ct. Rule 611.07; S.D. Sup.Ct. Prob.R. 4.18.6.)

a) [1:153] These powers are enumerated in Prob.C. §2591--e.g., powers to contract for the conservatorship, to operate conservatee's business, to sell estate property or purchase property for the



estate, etc. There are, however, significant restrictions on the sale of a conservatee's personal residence or former residence. [See Prob.C. §§2540, 2541.5, 2591.5]

Also note that in many counties, the power to sell estate real property will be conditioned on court confirmation. [See L.A. Sup.Ct. Rule 4.98; S.F. Uniform Rule 14.48J; Orange Sup.Ct. Rule 611.07; S.D. Sup.Ct. Prob.R. 4.18.6.B]

b)

[1:154] The flexibility thus conferred on the conservator in managing the estate is akin to the broad discretion and authority granted estate representatives under the Independent Administration of Estates Act (Prob.C. §10400 et seq.). (*The Act is discussed in detail in Chapter 9.*)

5)

[1:154.1] **Special proceeding for disabled attorney:** The conservator for the estate of a disabled attorney who was engaged in the practice of law at the time of their disability, or any other person interested in the conservatorship estate, may bring a petition seeking appointment of an active member of the California State Bar as a "practice administrator." The practice administrator takes control of the disabled attorney's files and business assets subject to court supervision. [See Prob.C. §2468; Bus. & Prof.C. §6185; and further discussion at *Par14:148 ff.*]

[1:154.2-154.4] *Reserved.*

6) Effect of conservatee's death

a) [1:154.5] **Continuing probate court jurisdiction:** A conservatee's death does *not* terminate the probate court's jurisdiction over the conservatorship estate. The court retains jurisdiction for the purpose of settling the conservatorship accounts and for any other purpose incident thereto. [Prob.C. §2630; *Conservatorship of O'Connor* (1996) 48 CA4th 1076, 1088-1089, 56 CR2d 386, 392]

b)

[1:154.6] **Conservator's continuing duties and powers:** After the conservatee's death, the conservator has a "duty of custody and conservation" that continues until the estate is delivered to the personal representative of the conservatee's estate or other disposition occurs according to law. The conservator retains those powers necessary to perform this duty. [Prob.C. §2467; *Conservatorship of O'Connor*, supra, 48 CA4th at 1089, 56 CR2d at 393; and see Prob.C. §1860(a)]

[1:154.7-154.9] *Reserved.*

(7) Court oversight

[1:154.10] **Court oversight duties suspended pending funding:** The "court oversight" duties discussed below (*Par1:154.11 ff.*) are suspended until the Legislature appropriates money for those purposes. [See Prob.C. §§1051(e), 1850(f), 1851(g), 2620(f)]

(a) [1:154.11] **Investigation and review:** A court investigator must visit the conservatee, conduct an investigation, and report to the court regarding the appropriateness of the conservatorship, and whether the conservator is acting in the conservatee's best interest regarding placement, quality of care and finances. [Prob.C. §§1850(a)(1), 1851]

A formal court review will ordinarily take place one year after appointment of the conservator and again every year thereafter. [See Prob.C. §1850(a)(2)]

(b)

[1:154.12] **Ex parte communications:** Although ex parte communications between the parties or their counsel and the court are generally prohibited, the court is authorized to receive ex parte communications



regarding a conservatee (or prospective conservatee) or the conservator's performance of their duties, and to take appropriate action consistent with statutory and due process requirements. [Prob.C. §1051; Welf. & Inst.C. §5372 (Prob.C. §1051 applicable to LPS conservatorships)]

(c)

[1:154.13] **Conservator's accountings:** See Prob.C. §§2620, 2620.2; and *Par1:143.9*.

[1:154.14] *Reserved.*

(8)

[1:155] **Temporary conservatorships:** A temporary conservator of the person, of the estate, or both, may be appointed for "good cause" pending final determination on petition for a permanent conservator. In exigent circumstances, a temporary conservator may be appointed ex parte (although ex parte appointments are disfavored). [See generally, Prob.C. §2250 et seq.]

(a) [1:156] **Powers narrowly drawn:** A temporary conservator's powers are severely limited. Absent specific court order to the contrary, he or she "has only those powers and duties of a guardian or conservator that are necessary to provide for the *temporary* care, maintenance, and support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury." [Prob.C. §2252(a) (emphasis added); see *O'Brien v. Dudenhoeffer* (1993) 16 CA4th 327, 330, 19 CR2d 826, 827--ex parte order appointing temporary estate conservator divests conservatee of legal capacity to give away their real property]

(b)

[1:157] **Specific powers of temporary conservator of the person:** In particular, a temporary conservator of the person has only those powers and duties relating to the conservatee's medical treatment that are specified in Prob.C. §2354 (made applicable to temporary conservators by Prob.C. §2252).

Also, a specific court order is required to change the conservatee's residence, absent an emergency or the conservatee's consent. [See Prob.C. §§2253, 2254] Indeed, a temporary conservator's willful removal of the conservatee from California without court authority is a *felony*. [Prob.C. §2253(g)]

(c)

[1:157.1] **Specific powers of temporary conservator of the estate:** A temporary conservator of the estate may marshal assets and establish financial institution accounts. [Prob.C. §2252(b)(3)]

(d)

[1:157.2] **"Substituted judgment" proceedings:** A temporary conservator may also bring a Prob.C. §2580 "substituted judgment" proceeding (*Par1:144 ff.*); but the relief sought must be requested in a petition separate from the petition for appointment of the temporary conservator. [Prob.C. §2252(c)]

(e)

[1:157.3] **Fees and costs not conditioned on granting of permanent conservatorship:** The court has discretion to award compensation, attorney fees and costs to a temporary conservator who acted in good faith and in the best interests of the conservatee, even if the temporary conservatee successfully opposes a proposed permanent conservatorship. [Prob.C. §§2641-2641; *Conservatorship of Cornelius* (2011) 200 CA4th 1198, 1205, 132 CR3d 922, 927]

[1:157.4] *Reserved.*

(9)

[1:157.5] **Interstate jurisdictional issues (California Conservatorship Jurisdiction Act):** A modified version of the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act," titled the



“California Conservatorship Jurisdiction Act” (CCJA, Prob.C. §1980 et seq.) generally conforms California law governing interstate jurisdiction, recognition and transfer of conservatorship proceedings to the Uniform Act. (Further information about the Uniform Act is available online at the Uniform Law Commission website (www.uniformlaws.org).)

A detailed treatment of the CCJA is beyond the scope of this Practice Guide. Briefly, however:

.The CCJA provides standards and procedures for establishing the proper jurisdictional situs as between interested “states” (as defined by Prob.C. §1982(m)) for a proceeding to appoint a conservator of a person, an estate or both. It also establishes conditions for the transfer of a conservatorship established within California to a jurisdiction outside the state, for the transfer of an out-of-state conservatorship into California (Prob.C. §§1991-2002), and for the registration and recognition by California of a conservatorship established by another state, a United States territory, a federally-recognized Indian tribe, or other specified jurisdiction (Prob.C. §§2011-2019).

.In addition, the CCJA authorizes a California court in a conservatorship proceeding to make specific requests of a court in another jurisdiction to take certain actions relating to that proceeding, including, but not limited to, holding an evidentiary hearing or ordering a person to produce testimony. It likewise authorizes a California court to grant similar requests from a court of another jurisdiction (Prob.C. §§1984-1986).

[1:157.6] **Forms:** The Judicial Council has *adopted for mandatory use* the following forms for these purposes:

.Notice of Intent to Register Conservatorship (California Conservatorship Jurisdiction Act) (GC-361);

.Conservatorship Registrant’s Acknowledgment of Receipt of *Handbook for Conservators* (California Conservatorship Jurisdiction Act) (GC-362); and

.Conservatorship Registration Cover Sheet and Attestation of Conservatee’s Non-Residence in California (California Conservatorship Jurisdiction Act) (GC-360).

The forms are available online at the California Courts website (www.courts.ca.gov).

[1:157.7-157.9] *Reserved.*

(10) [1:157.10] **Elder abuse claims of conservatee; concurrent probate court jurisdiction:** The Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst.C. §15600 et seq.) provides special remedies and jurisdictional bases for damages actions involving “abuse” (i.e., physical, fiduciary or financial abuse, neglect, abandonment, isolation, abduction, etc.) of “elders” (age 65 and older) and “dependent adults” (under age 65 with physical/mental limitations).

One of the purposes of the Act is to allow elder abuse cases to be heard in courts experienced in handling such matters--i.e., the department of the superior court that hears conservatorship matters. Accordingly, the probate department has *concurrent jurisdiction* over any civil matter raised in an elder-abuse claim if a conservator has been appointed for the claimant before commencement of the action for abuse. [See Welf. & Inst.C. §15657.3; *Knox v. Dean* (2012) 205 CA4th 417, 434, 140 CR3d 569, 584; *Conservatorship of Kayle* (2005) 134 CA4th 1, 6, 35 CR3d 671, 674]

Cross-refer: The remedies available under the Elder Abuse and Dependent Adult Civil Protection Act, and related issues under the Act, are discussed at *Par15:510 ff.*



An Introduction to Conservatorships: Supplement

The 2021 Conservatorship Legislation

Bruce S. Ross

In the 2021 legislative session, the Legislature passed and the Governor signed into law Assembly Bill 1194, revamping and strengthening various statutes governing the commencement and maintenance of voluntary conservatorships and further regulating the activities of “professional fiduciaries”. [Stats. 2021, Ch. 417, eff. (Except as noted) 1/01/2022]. Briefly summarized, the legislation:

- Will require, on or before January 1, 2023, professional fiduciaries with an internet website to post a schedule or range of the licensee’s fees, including, but not limited to hourly fees, for services offered [Prob.C. Section 6563, added Stats. 2021 Ch. 417];
- Will require, on or after January 1, 2023, professional fiduciaries without a website to provide any prospective client with a schedule or range of fees, including but not limited to hourly fees, for services offered (before the execution of a contract for services); provide such a such a schedule on request, and, if the prospective or current client is a proposed or current conservatee, provide all interested persons (per Section 1822(b) of the Probate Code with such a schedule or range [Prob.C. Section 6563];
- Requires the Professional Fiduciaries Bureau to impose specified sanctions upon a finding of a violation of applicable statutes or regulations, a breach of fiduciary duty where there is a finding of serious financial or physical harm or mental suffering, or that the professional fiduciary has engaged in certain defined acts of abuse and impose civil penalties on professional fiduciaries of up to \$10,000 for each separate act of abuse and make a conservatee who is not a professional fiduciary who abuses a conservatee liable for civil penalties of up to \$1,000 for each separate act of abuse, all such sanctions to be payable to the estate of the conservatee. The Bureau May upon its own and, upon receipt of a complaint from any person, investigate the actions of a professional fiduciary and, as appropriate, impose specified sanctions and report such actions to the court. [Prob.C. Section 6580(a)-(d), amended Stats. 2020, Ch. 417 and Prob.C. Section 1051(d), subd.added by Stats. 2021, Ch.417]

The 2021 legislation also —

- Requires the Judicial Council, on or before January 1, 2024, to provide a detailed report to the Legislature the findings of a detailed study of at least three courts measuring court effectiveness in conservatorship cases, including the effectiveness of protecting the “legal rights and best interests” of a conservatee. [Prob.C. Section 1458, added Stats. 2021, Ch. 417, eff. until its automatic repeal on January 1, 2026]
- Strengthens the notice requirements of Probate Code section 1460 (discussed below);
- Modifies Probate Code section 1471, “Mandatory appointment of legal counsel,” as follows:



Requires the court to appoint private counsel or the public defender in any case where a conservatee or proposed conservatee has not retained or does not plan to retain legal counsel; if the conservatee, proposed conservatee or person alleged to lack capacity expresses a preference for a particular attorney to represent them, the court shall [italicize] allow representation by the preferred attorney, even if the attorney is not on the court's list of court-appointed attorneys, and the attorney shall provide "zealous representation" (see below). However, an attorney who cannot provide zealous advocacy or who has any conflict of interest with respect to the representation of the conservatee, proposed conservatee, or person alleged to lack legal capacity shall [italicize] be disqualified (Prob.C. Section 1471b), amended Stats. 2021, Ch. 417, and Prob.C. Section 1471(d), added Stats. 2020, Ch. 417);

Defines the role of legal counsel to be "that of a zealous, independent advocate representing the wishes of their client, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct (Prob.C. Section 1471(e), added Stats. 2021, Ch. 417); and

In any appeal or writ proceeding, if a conservatee or proposed conservatee is not represented by legal counsel, requires the reviewing court to appoint legal counsel to represent the conservatee or proposed conservatee before the court. (Prob.C. Section 1471(f), added Stats. 2021, Ch. 417).

- Subject to a specific appropriation of funds by the Legislature, expands the role and duties of a court-appointed investigator if a proposed conservatee will not attend the hearing, by revising the information the court investigator is required to gather and review and the determinations the investigator is required to make and permits any interested person with personal knowledge of a conservatee to petition the court to investigate an allegation of physical abuse or financial abuse of a conservatee by a conservator and require the court to investigate those allegations that establish a prima facie case of abuse. [Prob.C. Section 1826(a)-(h), amended Stats. 2021, Ch. 417 and Prob.C. section 1851.6, added Stats. 2021, Ch. 417].
- Subject also to appropriation, expands the required court review of conservatorships and investigations and in appropriate circumstances requires the court to consider terminating a conservatorship or removing a conservator following a report one year after the conservatorship's establishment. [Prob.C. Section 1850(a)-(e), amended and Prob.C. Section 1851(a)(1)(C), added, Stats. 2021, Ch. 417], requirements also made applicable to limited conservatorships for developmentally disabled adults. [Prob.C. 1851, amended Stats. 2021, Ch. 417]
- The procedures surrounding hearings and judgments in conservatorship proceedings are also substantially revised to limit the reasons justifying a conservatee's non-appearance and to strengthen the safeguards around the appointment of a conservator or the modification or termination of the conservatorship. [Prob.C. 1863(b)-(d), amended Stats. 2021, Ch. 417]



Thank you for Attending



Bette Epstein, Esq.
bepstein@adrservices.com

Case Manager:
katy@adrservices.com



Hon. Barbara Johnson (Ret.)
bjohnson@adrservices.com

Case Manager:
christie@adrservices.com



Bruce Ross, Esq.
bross@adrservices.com

Case Manager:
janet@adrservices.com