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 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

[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.

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

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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

[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.

[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]

[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

[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.

[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.

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[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.

Public Comments
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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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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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	

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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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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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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	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**
				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**	

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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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**	

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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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	

Public Comments
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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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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

GENERAL COMMENTS ABOUT THE PROPOSAL		
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.

GENERAL COMMENTS ABOUT THE PROPOSAL		
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.

Public Comments
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GENERAL COMMENTS ABOUT THE PROPOSAL		
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 conservator-ships. 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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

GENERAL COMMENTS ABOUT THE PROPOSAL		
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.

GENERAL COMMENTS ABOUT THE PROPOSAL		
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.

GENERAL COMMENTS ABOUT THE PROPOSAL		
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. 2. The public guardian's office should not be allowed to be the guardian of both the person and the estate. 3. Emergency ex-parte petitions are far too numerous and too frequently roll over and become permanent.	This type of program is recommended in the report. Disagree. The Omnibus Act and task force recommendations regarding changes in temporary conservatorship practice address this concern.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

GENERAL COMMENTS ABOUT THE PROPOSAL		
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. 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	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. No response necessary.

GENERAL COMMENTS ABOUT THE PROPOSAL		
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.

GENERAL COMMENTS ABOUT THE PROPOSAL		
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. 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.	 See above. 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. 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. 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. 4. The appellate courts use unpublished opinions to make conflicting rulings on identical issues in these cases.	Not within scope of the task force. 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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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

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 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. 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. 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. In discussing this issue with physicians and	disclose medical information to a court investigator conducting any investigation in a conservatorship required or authorized under the Guardianship and Conservatorship Law. Disagree. 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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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

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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

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: 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.

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: 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.

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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: 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.

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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: 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.

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

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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

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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. 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 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. 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.

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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

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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.

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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.

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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.

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 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	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.

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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 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.
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

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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.

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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.)

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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.

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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.

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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.

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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

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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

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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

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RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

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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.

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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

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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

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 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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

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

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 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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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

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 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

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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.

Public Comments
RECOMENDED PRACTICES FOR IMPROVING THE ADMINISTRATION OF JUSTICE IN PROBATE CONSERVATORSHIP CASES

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**

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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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.

Appendix C

Senate Bill 800

AMENDED IN ASSEMBLY JUNE 21, 2007

AMENDED IN SENATE MARCH 29, 2007

SENATE BILL No. 800

Introduced by Senator Corbett

February 23, 2007

~~An act to add Section 2351.2 to the Probate Code, relating to~~ *An act to amend Sections 1821, 1822, 2352, and 3140 of, to add Sections 1831, 1832, and 2352.1 to, and to add Chapter 7 (commencing with Section 1970) to Part 3 of Division 4 of, the Probate Code, relating to* conservators and guardians.

LEGISLATIVE COUNSEL'S DIGEST

SB 800, as amended, Corbett. ~~Conservators: care plans.~~ *Conservatorship and guardianship.*

~~Existing~~

(1) Existing law requires that a guardian or conservator of a person be responsible for the care, custody, control, and education of a ward or conservatee, subject to a court's determination of the extent of those powers, as specified. *Existing law requires that a petition to establish conservatorship include specified information.*

Existing law provides that, 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 a temporary guardian or conservator.

This bill would require that, if the petitioner to establish conservatorship is a private professional conservator under certain provisions of law, or licensed under certain other provisions, the petition and all other pleadings related to the petition contain the petitioner's registration information and other specified information. The bill would

require that, if the petition is filed by a person other than the proposed conservatee, the petition include a declaration of due diligence showing efforts to find relatives and to ascertain preferences of the proposed conservatee, or why it was not feasible to contact the relatives or ascertain those preferences.

(2) Existing law requires that notice be given to specified persons before a hearing on a petition for appointment of a conservator or a temporary conservator.

This bill would require, in addition, that if the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and are not nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice be mailed to the public guardian of the county in which the petition is filed.

This bill, *on and after July 1, 2008,* would require a conservator to submit to the court, within 90 days of appointment, a *general* plan, *as specified,* for the care, custody, and control of the conservatee. ~~The bill would require the Judicial Council to develop and adopt a form to be used in preparing the care plan, as specified~~, *and to mail that report to the conservatee, the attorney of record for the conservatee, and certain persons related to the conservatee. The bill would require that, at the expiration of one year from the time of appointment, and thereafter as required by the court, the conservator submit a followup report on the care plan. It would require the Judicial Council to develop and adopt a mandatory form to be used in preparing the care plan and the followup report, as specified.*

(3) Existing law allows a court to take specified actions with respect to a vexatious litigant, as defined.

This bill would provide that, if a person other than the conservatee files a petition for termination of the conservatorship, or instruction to the conservator, that is unmeritorious or intended to harass or annoy the conservator, and the person has previously filed pleadings in the conservatorship proceedings that were unmeritorious or intended to harass or annoy the conservator, the petition shall be grounds for the court to determine that the person is a vexatious litigant for the purposes of the above provisions.

(4) Existing law provides that a conservator may establish the residence of the conservatee at any place within this state without the permission of the court.

This bill would provide, instead, that if permission of the court is first obtained, as specified, or if notice of the action is given and no objection is made, the conservator may remove the conservatee from his or her personal residence at the commencement of the proceeding to establish conservatorship and establish another residence at any place within this state. The bill would provide that neither permission from the court nor prior notice of the action is not required in specified circumstances. The bill would create requirements for giving notice of this action and for objecting to it. The bill would provide that the failure of a conservator to comply with these notice requirements for proposed actions and would not affect the rights of 3rd parties dealing in good faith with the conservator, as specified.

(5) Existing law requires a guardian to file a notice of change of residence with the court within 30 days of the date of change, and to mail a copy of the notice to specified persons.

This bill would delete that requirement.

(6) Existing law provides that, if a 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 specified persons.

This bill would, with respect to a guardian, apply the above provisions if the guardian proposes to remove the ward from his or her personal residence at the commencement of the proceeding to establish guardianship and establish another residence in the state.

The bill would make the above provisions inapplicable with respect to a conservator, and would instead allow the conservator to petition the court for an order authorizing the conservator to remove the conservatee from his or her personal residence at the time of the commencement of the proceeding and establish another residence in the state. It would require a petition for authority to remove the conservatee from his or her personal residence to contain certain information, and would set forth procedures applicable to a hearing on the petition.

(7) Existing law requires a conservator served pursuant to specified provisions of law to appear at a hearing and represent a spouse alleged to lack legal capacity for a proposed transaction involving community property. Existing law allows the court, if the spouse is not otherwise represented, to appoint the public guardian, the public administrator, or a guardian ad litem to represent the interests of the spouse. Existing law requires that, if the spouse is unable to retain legal counsel, upon

request of the spouse, the court appoint specified counsel to represent the spouse.

This bill would permit a court to appoint an investigator to review the proposed transaction and report to the court regarding its advisability. The bill would require, in addition, that if the petition proposes a substantial transfer to the petitioner from the other spouse, counsel be appointed for the other spouse, unless the court finds that the spouse has competently retained independent counsel for the proceeding or the spouse's interests are being protected under the above provisions of law allowing the appointment of the public guardian, the public administrator, or a guardian ad litem to represent the interests of the spouse.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 1821 of the Probate Code is amended to read:

1821. (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 petitioner is a private professional conservator under Section 2341 or licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition and all other pleadings related to the petition shall contain the petitioner's registration information. The petition shall contain a declaration explaining by whom or how the petitioner was engaged to file the petition and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends.

(d) If the petition is filed by a person other than the proposed conservatee, the petition shall include a declaration of due diligence showing efforts to find relatives and to ascertain preferences of the proposed conservatee, or why it was not feasible to contact the relatives or ascertain those preferences.

~~(c)~~

(e) 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)~~

(f) 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)~~

(g) 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)~~

(h) 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)~~

(i) 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)~~

(j) 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.

SEC. 2. Section 1822 of the Probate Code is amended to read:

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 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) If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and are not nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice shall be mailed to the public guardian of the county in which the petition is filed.

~~(f)~~

(g) The Judicial Council shall, on or before January 1, 2008, develop a form to effectuate the notice required in subdivision (a).

SEC. 3. Section 1831 is added to the Probate Code, to read:

1831. (a) Within 90 days of appointment by the court, the conservator shall submit to the court and mail to the conservatee and to the attorney of record for the conservatee a general plan for the care, custody, and control of the conservatee, including a plan for meeting the conservatee's financial needs. A copy of the general plan shall also 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.

(b) The Judicial Council shall develop and adopt a mandatory form to be used in preparing the general plan required by subdivision (a).

(c) A conservator of the person shall complete, at a minimum, the following parts of the Judicial Council form for the general plan:

(1) A description of the current living arrangement for the conservatee and any plan to modify this living arrangement.

(2) A description of the conservatee's current level of care and any plan to modify the level of care to address the conservatee's personal needs.

(3) A description of the status of the conservatee's health.

(4) A description of the conservator's current or proposed schedule of visitation with the conservatee.

(5) A description of the current or proposed schedule of visitation between the conservatee's family and friends and the conservatee, including a description of the positive or negative impact of those visits on the conservatee.

(6) A description of the normal activities of the conservatee, such as outings and social and recreational activities.

(7) A description of any special problem raised by the court investigator, the court, or any other interested person and how the conservator has addressed or intends to address that problem.

(d) A conservator of the estate shall complete, at a minimum, the following parts of the Judicial Council form for the general plan:

(1) A description of the conservatee's usual monthly income and expenses, including prorated estimates of income from all sources and a list of current and anticipated expenses, including taxes, insurance, and living expenses.

(2) A description of any significant change in the overall investment plan for the conservatee's estate to be made in the upcoming year, including a description of the nature of the change and the anticipated cost or benefit to the conservatee.

(3) A list of any asset that may be liquidated for cash in the coming year and the reasons for any sale.

(4) A list of any separately appraised tangible personal property of the conservatee, and a description of the steps the conservator has taken or intends to take to protect that asset from damage, loss, or theft.

(e) A conservator of the person and the estate shall complete, at a minimum, the parts of the Judicial Council form for the general plan described in subdivisions (c) and (d).

(f) If the conservator is a private professional conservator under Section 2341 or licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), a statement of the conservator's estimated fees for services to be rendered through the first

anniversary of the date of appointment. The statement shall describe the manner in which the fees are estimated and any applicable hourly rates.

(g) The provisions of this section shall become operative on July 1, 2008.

SEC. 4. Section 1832 is added to the Probate Code, to read:

1832. (a) At the expiration of one year from the time of appointment, and thereafter as required by the court, the conservator shall submit a followup report on the care plan required by Section 1831.

(b) The Judicial Council shall develop and adopt a mandatory form to be used in preparing the followup report required by subdivision (a).

(c) In conservatorships of the person, the report described in subdivision (a) shall include, but not be limited to, all the following:

(1) A description of the current living arrangement for the conservatee, any plan to modify this living arrangement, and the reasons for any modification of the living arrangement that was not disclosed in the general plan, in the immediately preceding followup report, or in a petition for authority to remove the conservatee from his or her personal residence under Section 2352 filed after submission of the general plan or the immediately preceding followup report.

(2) A description of the conservatee's current level of care, any plan to modify the level of care, and the reasons for any modification of the level of care that were not disclosed in the general plan or in the immediately preceding followup report.

(3) A description of the conservatee's current health.

(4) A description of the conservator's current schedule of visitation with the conservatee and visitation schedules with the conservatee's family and friends, including an assessment of the value of those visits or their effects on the conservatee's well-being and the reasons for any significant change in the schedule of visitation since submission of the general plan or the immediately preceding followup report.

(5) A description of the current normal activities of the conservatee, such as outings and social and recreational activities, and the reasons for any significant change in those activities since

submission of the general plan or the immediately preceding followup report.

(6) A description of any special problem raised by the court investigator, the court, or any other interested person since submission of the general plan or the immediately preceding followup report, and how the conservator has addressed or intends to address that problem.

(7) A description of any other material changes in the conservatee's situation since submission of the care plan or the last submitted followup report.

(d) In conservatorships of the estate, the report described in subdivision (a) shall include, but not be limited to, all the following:

(1) A description of the conservatee's current and expected future financial needs, stating current and estimated future monthly income from all sources and current and estimated future monthly expenses, including taxes, insurance, and living expenses.

(2) A description of any planned change in investments to be made in the coming year or any longer period before the next followup report is due, and the reason for the planned change.

(3) A list of any asset that may be sold in the coming year or any longer period before the next followup report is due, and the reason for that sale.

(4) A description of any valuable asset in the conservatee's residence that needs to be protected and what steps the conservator has taken or intends to take to protect that item from loss or theft.

(5) A description of any other material changes in the conservatee's situation since submission of the care plan or the last submitted followup report.

(e) In conservatorships of the person and estate, the report described in subdivision (a) shall satisfy the requirements of subdivisions (c) and (d).

(f) If the conservator is a private professional conservator under Section 2341 or licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), a statement of the conservator's estimated fees for services to be rendered during the coming year and an explanation of any significant difference between the fees requested or that will be requested for services rendered and those estimated in the care plan or the immediately preceding followup

report. The statement shall describe the manner in which the fees for the coming year are estimated and any applicable hourly rates.

(g) The followup report required in this section shall be reviewed by the court investigator, who shall recommend to the court whether a hearing should be set for a review of the general plan and the followup report. This recommendation may be included in the investigator's review report under subdivision (b) of Section 1851 or the status report under paragraph (2) of subdivision (a) of Section 1850.

(h) The provisions of this section shall become operative on July 1, 2008.

SEC. 5. Chapter 7 (commencing with Section 1970) is added to Part 3 of Division 4 of the Probate Code, to read:

CHAPTER 7. UNWARRANTED PETITIONS

1970. (a) The Legislature finds that unwarranted petitions, applications, or motions other than discovery motions after a conservatorship has been established create an environment that can be harmful to the conservatee and are inconsistent with the goal of protecting the conservatee.

(b) Notwithstanding Section 391 of the Code of Civil Procedure, if a person other than the conservatee files a petition for termination of the conservatorship, or instruction to the conservator, that is unmeritorious or intended to harass or annoy the conservator, and the person has previously filed pleadings in the conservatorship proceedings that were unmeritorious or intended to harass or annoy the conservator, the petition shall be grounds for the court to determine that the person is a vexatious litigant for the purposes of Title 3A (commencing with Section 391) of Part 2 of the Code of Civil Procedure. For these purposes, the term "new litigation" shall include petitions for visitation, termination of the conservatorship, or instruction to the conservator.

SEC. 6. Section 2352 of the Probate Code is amended to read:

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~~ *If permission of the court is first obtained under subdivision (f), or if notice of the proposed action is given and no objection is made, as provided by Section 2352.1, the conservator may remove the conservatee from his or her personal residence and establish another residence at any place within this state*. 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. *Neither notice of the proposed action nor prior permission of the court is required for removal of the conservatee from his or her personal residence on a temporary basis for medical treatment and convalescence or for changes in the conservatee's residence within this state made after a removal from the conservatee's personal residence at the commencement of the proceeding made in compliance with this section.*

(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)~~

(e) 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) (1) On or after the filing of a petition for appointment of a conservator, the petitioner for appointment of a conservator, or, if the petition under this subdivision is filed after appointment of a conservator, the conservator, may petition the court for an order authorizing the conservator to remove the conservatee from his or her personal residence at the time of commencement of the proceeding and establish another residence in the State of California.

(2) The petition for authority to remove the conservatee from his or her personal residence shall set forth all of the following:

(A) Facts showing that the conservatee's personal residence is not, or is no longer, the least restrictive appropriate residence for the conservatee.

(B) Facts showing that the conservatee's proposed new residence is the least restrictive appropriate residence for the conservatee and is in the best interests of the conservatee.

(C) If a previously submitted general plan for the conservatee pursuant to Section 1831 does not show the proposed change of the conservatee's residence as a planned modification of the conservatee's living arrangement, the changed circumstances since submission of the general plan that make the change of residence necessary or appropriate.

(D) The names and addresses, so far as they are known to the petitioner, of the conservatee, his or her spouse or domestic partner, and his or her relatives within the first degree.

(E) If the conservator is not a petitioner, the written consent of the conservator to the proposed change of residence.

(3) Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. In addition, the petitioner shall mail a notice of the time and place of the hearing and a copy of the petition to all persons required to be listed in the petition at least 15 days before the date set for hearing. In the case of an emergency or other good cause, the court may shorten the time for giving notice of the hearing. In that event, the conservator shall set forth the basis for the emergency or other good cause in the notice of hearing and shall mail a conformed copy of the court's order shortening time with the notice of hearing.

(4) (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:

(i) Any person required to be listed in the petition.

(ii) Any other interested person.

(B) If the court so directs, the court investigator shall do all of the following:

(i) Interview the conservatee personally.

(ii) Inform the conservatee of the nature, purpose, and effect of the petition under this subdivision, and of the right of the conservatee to oppose the petition, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to obtain legal counsel.

(iii) Determine whether the conservatee is willing to attend the hearing.

(iv) Determine whether the conservatee wishes to oppose the petition.

(v) Determine whether the conservatee wishes to be represented by legal counsel at the hearing. If the conservatee wishes to be so represented, the court investigator shall determine whether the conservatee has retained legal counsel and, if not, shall determine the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(vi) 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.

(vii) Determine whether the proposed change of place of residence is required to establish the least restrictive appropriate residence that is available and necessary to meet the needs of the conservatee and is in the best interests of the conservatee.

(viii) Report to the court in writing at least two days before the hearing, or, if the court has shortened time, as soon as reasonably possible 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 petition.

(C) At the hearing, the conservatee shall have the right to be represented by counsel, to confront and cross-examine any witness presented by or on behalf of the petition, and to present evidence on his or her own behalf.

(g) (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 guardian or conservator shall include in the notice of change of residence a declaration stating that the ward's or conservatee's change of residence is consistent with the standard described in subdivision (b).

(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.

(h) As used in this section, "guardian" or "conservator" includes a proposed guardian or proposed conservator and "ward" or "conservatee" includes a proposed ward or proposed conservatee.

(i) The Judicial Council shall, on or before July 1, 2008, develop one or more forms of notice and declaration required by this section.

~~(f)~~

(j) 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. 7. Section 2352.1 is added to the Probate Code, to read:

2352.1. A notice of proposed action, as provided in Section 2352, is subject to all of the following:

(a) (1) The notice of proposed action shall be given to each person listed in the notice, and each person who has filed a request for special notice in the proceeding.

(2) The notice shall be mailed or personally delivered to each person entitled to notice of the proposed action not less than 15 days before the date specified in the notice on or after which the action is to be taken. If mailed, the notice of proposed action shall be addressed to the person at the person's last known address.

(3) Notice of proposed action is not required to be given to a person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) Notice of proposed action is not required to be given to a person who, in writing, waives the right to notice of the proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the proposed action, and may waive particular aspects of the notice, including the delivery, mailing, or time requirements, or the giving of the notice in its entirety.

(5) Use of the notice of proposed action procedure under this section is permitted only after the conservatorship has been established.

(b) The notice of proposed action shall state the addresses of the conservatee's current residence and the proposed new residence, describe the proposed new residence, provide all of the information required to be stated in a petition for authority to change the conservatee's residence under subparagraphs (A) to (D), inclusive, of paragraph (2) of subdivision (f) of Section 2352, and state the name and residence address of the conservator and the telephone number to call for additional information.

(c) (1) The objection to the proposed action shall be made by delivering or mailing a written objection to the proposed action to the conservator at the address stated in the notice of proposed action. The person objecting to the proposed action either may use the Judicial Council form or may make the objection in any other writing that identifies the proposed action with reasonable

certainty and indicates that the person objects to the taking of the proposed action.

(2) The conservator is deemed to have notice of the objection if it is delivered or received at the address stated for the conservator in the notice of proposed action before the later of the following times:

(A) The date specified in the notice of proposed action on or after which the action is to be taken.

(B) The date the proposed action is actually taken.

(d) If the conservator has notice of a written objection under subdivision (c) to the proposed action and desires to take the action, the conservator shall petition for, and obtain, court authority to remove the conservatee from his or her personal residence under subdivision (f) of Section 2352 before taking the action.

(e) A person who objects to a proposed action under this section shall be given notice of any hearing on a petition for court authorization of the proposed action.

(f) (1) The failure of the conservator to comply with this section and the taking of the proposed action without such compliance does not affect the rights of a third party who, dealing in good faith with the conservator, changed his or her position in reliance on the action of the conservator without actual notice of the failure of the conservator to comply with this subdivision.

(2) No person dealing with the conservator has any duty to inquire or investigate whether or not the conservator has complied with the provisions of this section.

SEC. 8. Section 3140 of the Probate Code is amended to read:

3140. (a) A conservator served pursuant to this article shall, and the Director of Mental Health or the Director of Developmental Services given notice pursuant to Section 1461 may, appear at the hearing and represent a spouse alleged to lack legal capacity for the proposed transaction.

(b) The court may, in its discretion, appoint an investigator to review the proposed transaction and report to the court regarding its advisability.

~~(b) If~~

(c) If the court determines that a spouse alleged to lack legal capacity ~~is not otherwise represented~~ *has not competently retained independent counsel*, the court may in its discretion appoint the

public guardian, public administrator, or a guardian ad litem to represent the interests of the spouse.

~~(c)~~

(d) (1) If a spouse alleged to lack legal capacity is unable to retain legal counsel, upon request of the spouse, the court shall appoint the public defender or private counsel under Section 1471 to represent the spouse and, if ~~such~~ *that* appointment is made, Section 1472 applies.

(2) If the petition proposes a substantial transfer to the petitioner from the other spouse and the court determines that the spouse has not competently retained independent counsel for the proceeding, the court may, in its discretion, appoint counsel for the other spouse if the court determines that appointment would be helpful to resolve the matter or necessary to protect the interests of the other spouse.

~~(d)~~

(e) Except as provided in subdivision (c), the court may fix a reasonable fee, to be paid out of the proceeds of the transaction or otherwise as the court may direct, for all services rendered by privately engaged counsel, the public guardian, public administrator, or guardian ad litem, and by counsel for such persons.

~~SECTION 1. Section 2351.2 is added to the Probate Code, to read:~~

~~2351.2. (a) Within 90 days of appointment by the court, the conservator shall submit to the court a plan for the care, custody, and control of the conservatee, including a plan for meeting the conservatee's financial needs.~~

~~(b) The Judicial Council shall develop and adopt a form to be used in preparing the care plan required by subdivision (a). The form for a care plan shall include, but not be limited to, all of the following:~~

~~(1) A description of the current living arrangement for the conservatee and any plans to modify this living arrangement.~~

~~(2) A description of the conservatee's current level of care and any plans to modify the level of care.~~

~~(3) A description of the status of the conservatee's health, listing medications currently prescribed for the conservatee.~~

~~(4) A description of the conservator's schedule of visitation with the conservatee and visitation schedules with the conservatee's~~

~~family and friends, including an assessment of the value of those visits or their effects on the conservatee's well-being.~~

~~(5) A description of the normal activities of the conservatee, such as outings and social and recreational activities.~~

~~(6) A description of any special problems raised by the court investigator, the court, or any other interested person and how the conservator has addressed or intends to address those problems.~~

~~(7) A description of the conservatee's financial needs, stating estimated monthly income from all sources and estimated monthly expenses, including taxes, insurance, and living expenses.~~

~~(8) A description of any planned changes in investments to be made in the current and succeeding year and the reason for the planned changes.~~

~~(9) A list of any assets that may be sold in the coming year and the reason for that sale.~~

~~(10) A description of any valuable assets in the conservatee's residence that need to be protected and what steps the conservator has taken or intends to take to protect those items from loss or theft.~~

Appendix D

Assembly Bill 1727

Assembly Bill No. 1727

Passed the Assembly September 4, 2007

_____

Chief Clerk of the Assembly

Passed the Senate August 30, 2007

_____

Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2007, at _____ o'clock ___M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 56.10 of the Civil Code, and to amend Sections 1456, 1457, 1458, 1800.3, 1826, 1830, 1851, 2250, 2250.2, 2250.6, 2257, 2320, 2543, 2590, 2591, 2591.5, 2620.2, and 2628 of, to amend and renumber the headings of Chapter 2 (commencing with Section 2920), Chapter 3 (commencing with Section 2940), and Chapter 4 (commencing with Section 2950) of Part 5 of Division 4 of, to add Sections 1456.5, 1851.2, 2217, 2451.5, 2620.1, and 2647 to, and to add Chapter 2 (commencing with Section 2910) to Part 5 of Division 4 of, the Probate Code, relating to conservators and guardians.

LEGISLATIVE COUNSEL'S DIGEST

AB 1727, Committee on Judiciary. Conservators and guardians.

(1) Existing federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information. Existing state law, the Confidentiality of Medical Information Act, provides that medical information, as defined, may not be disclosed by providers of health care, health care service plans, or contractors, as defined, without the patient's written authorization, subject to certain exceptions, including disclosure to a probate court investigator, as specified. A violation of the act resulting in economic loss or personal injury to a patient is a misdemeanor and subjects the violating party to liability for specified damages and administrative fines and penalties. Existing law provides that if a person in a county requires a guardian or conservator and there is no one else who is qualified and willing to act, then a 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.

This bill would authorize a public guardian or a county's adult protective services agency, upon a showing of probable cause that a person is in substantial danger of abuse or neglect, to petition a court for orders in connection with an investigation of whether the

appointment of the public guardian would be appropriate. These orders would provide for the authorized release of confidential medical information and financial information, and would specify certain conditions to the release of medical information, including the obligation of the public guardian and adult protective services agency to keep information acquired under the order confidential. The bill would revise provisions permitting release of confidential medical information to a probate court investigator. By changing the definition of a crime, this bill would impose a state-mandated local program. The bill would also require the Judicial Council to adopt rules of court necessary for an expedited procedure that would authorize by court order a release of confidential medical information.

(2) Existing law governs the establishment of conservatorships and guardianships. Existing law requires the Judicial Council to create a rule specifying the qualifications of judges and various court personnel connected with probate matters and to develop a specified educational program for nonprofessional conservators and guardians. Existing law creates various notification requirements in connection with conservatorships and temporary conservatorships. Existing law requires guardians and conservators to file inventories and accountings of estates with courts. Existing law regulates the sale of estate property by a guardian or conservator.

This bill, among other things, would require the Judicial Council to consult with specified associations in connection with the establishment of the rule relating to qualifications and educational requirements of court personnel. The bill would require the Judicial Council to develop the educational program for nonprofessional conservators and guardians by January 1, 2008. This bill would prohibit a conservatorship of the person or of the estate from being granted unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee. The bill would create new requirements on courts when guardianships and conservatorships are transferred from other jurisdictions. The bill would require a conservator to mail the order appointing the conservator and a specified notice to the conservatee and the conservatee's relatives within 30 days of the issuance of the order. The bill would establish notice requirements for termination of a temporary conservatorship

under specified circumstances. The bill would require private professional conservators to provide information about themselves and their association with proposed conservatees in certain petitions, unless that information is included in a petition for appointment of a general conservator, as specified. The bill would require courts to ensure compliance with requirements regarding inventories and accountings, and with requirements for submission of a care plan and a report contingent upon the passage of SB 800, in one of 2 specified ways. The bill would revise requirements to which a personal representative must conform in selling estate property. The bill would also make technical corrections.

(3) Existing law requires a court investigator to interview a proposed conservatee's relatives prior to any conservatorship or temporary conservatorship hearing, as specified. Existing law also requires that each conservatorship be reviewed periodically, as specified, estate assets accounted, and requires a court investigator to visit the conservatee and report to the court regarding the appropriateness of the conservatorship.

This bill would revise the time within which a court investigator is to interview a proposed temporary conservatee's relatives, and would require, as part of a review of a conservatorship, that the court investigator review the accounting of the conservatee's estate with the conservatee, to the extent practicable. The bill would also require that specified confidential information be kept in separate attachments and not be provided in reports sent to certain relatives of a conservatee. The bill would require courts to coordinate investigations with filings of accounting if feasible. The bill would revise accounting requirements and require the Judicial Council to develop guidelines for reviewing accounting and detecting fraud. The bill would require the Judicial Council, on or before January 1, 2009, to develop and adopt a rule of court and a Judicial Council form petition for authority to administer psychotropic medications.

(4) Existing law provides that on or after the filing of a petition for appointment of a conservator for a gravely disabled person, 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. Existing law further provides that the petition for appointment of a conservator and the petition for appointment of a temporary conservator may be filed as one petition or as separate petitions.

This bill would delete the provision that provides that those petitions may be filed as one petition or as separate petitions.

(5) Existing law requires every person appointed as a guardian or conservator to post a bond approved by the court before a letter of guardianship or conservatorship is issued.

This bill would provide that attorney's fees and costs incurred in a successful action for surcharge against a conservator or guardian for breach of his or her duties shall be a surcharge against the conservator or guardian and, if unpaid, shall be recovered against the surety on the bond.

(6) Existing law permits a court, in its discretion, to grant a conservator or guardian specified powers to be exercised without further court authorization, including the power to contract, the power to employ certain advisers and agents, the power to employ attorneys, as specified, and the power to purchase tangible personal property. Existing law permits a guardian or conservator to exercise other powers without court authorization unless authorization is otherwise specifically required.

This bill would permit the powers, described above, to be exercised generally without court authorization. The bill would specify that a guardian or conservator does not have certain other powers without express authorization by a court or other provisions of law and would revise the descriptions of these powers. The bill would prohibit payment of any attorney's fees from the estate of a ward or conservatee without prior court order.

(7) This bill would provide that one of its provisions would become operative only if SB 800 is also enacted. The bill would also incorporate additional changes to Section 56.10 of the Civil Code proposed by AB 1178 and AB 1687, to be operative only if any or all of those bills are enacted and this bill is chaptered last.

(8) 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 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal

deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities

specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior

written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court

investigator in the course of any investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the

Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, use for marketing, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 1.5. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to any person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer

review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of any provider of health care or health care service plan may be reviewed by any private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator in the course of any investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, such as the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would be violative of this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to any entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, provided that the disease management services and care are authorized by a treating physician, or (B) to any disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, provided that the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of any well-recognized church or religious denomination who depend

solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, use for marketing, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 1.7. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a

health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would violate this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards

review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that

information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator in the course of any investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining

the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the

adherents of a well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed as described in Section 56.103.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, use for marketing, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 1.9. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or any other provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner's office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent's representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.

(c) A provider of health care or a health care service plan may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or

other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(2) The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient's eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

(3) The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, no information so disclosed shall be further disclosed by the recipient in any way that would violate this part.

(4) The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in

reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in any way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner's office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information may not otherwise be disclosed by a health care service plan except in accordance with the provisions of this part.

(11) Nothing in this part shall prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient's condition and care and treatment provided may be disclosed to a probate court investigator in the course of any investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existent guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, the terms "tissue

bank" and "tissue" have the same meaning as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems.

(15) Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in any way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan's contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan's or contractor's network of physicians. Nothing in this paragraph shall be construed to require physician authorization for the care or treatment of the adherents of a well-recognized church or religious denomination who depend solely upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital

events, including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

(19) The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

(20) The information may be disclosed as described in Section 56.103.

(d) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no provider of health care, health care service plan, contractor, or corporation and its subsidiaries and affiliates shall intentionally share, sell, use for marketing, or otherwise use any medical information for any purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by the patient or enrollee or subscriber or as provided by subdivisions (b) and (c), no contractor or corporation and its subsidiaries and affiliates shall further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to any person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2. Section 1456 of the Probate Code is amended to read:

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 California, the National Guardianship Association, the Professional Fiduciary Association of California, the California Association of Public Administrators, Public Guardians and Public Conservators, a disability rights organization, and the Association of Professional Geriatric Care Managers.

SEC. 3. Section 1456.5 is added to the Probate Code, to read:

1456.5. Each court shall ensure compliance with the requirements of filing the inventory and appraisal and the accountings required by this division. Courts may comply with this section in either of the following ways:

(a) By placing on the court's calendar, at the time of the appointment of the guardian or conservator and at the time of approval of each accounting, a future hearing date to enable the court to confirm timely compliance with these requirements.

(b) By establishing and maintaining internal procedures to generate an order for appearance and consideration of appropriate sanctions or other actions if the guardian or conservator fails to comply with the requirements of this section.

SEC. 3.5. Section 1456.5 is added to the Probate Code, to read:

1456.5. Each court shall ensure compliance with the requirements for submitting the care plan described in Section 1831, the followup report described in Section 1832, and filing

the inventory and appraisal and the accountings required by this division. Courts may comply with this section in either of the following ways:

(a) By placing on the court's calendar, at the time of the appointment of the guardian or conservator and at the time of approval of each accounting, a future hearing date to enable the court to confirm timely compliance with these requirements.

(b) By establishing and maintaining internal procedures to generate an order for appearance and consideration of appropriate sanctions or other actions if the guardian or conservator fails to comply with the requirements of this section.

SEC. 4. Section 1457 of the Probate Code is amended to read:

1457. In order to assist relatives and friends who may seek appointment as a nonprofessional conservator or guardian the Judicial Council shall, on or before January 1, 2008, 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 of the Probate Code is amended to read:

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.

(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, 2009, deletes or extends that date.

SEC. 6. Section 1800.3 of the Probate Code is amended to read:

1800.3. (a) If the need therefor is established to the satisfaction of the court and the other requirements of this chapter are satisfied, the court may appoint:

(1) A conservator of the person or estate of an adult, or both.

(2) A conservator of the person of a minor who is married or whose marriage has been dissolved.

(b) No conservatorship of the person or of the estate shall be granted by the court unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative needed for the protection of the conservatee.

SEC. 7. Section 1826 of the Probate Code, as amended by Section 8 of Chapter 493 of the Statutes of 2006, is amended to read:

1826. Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(a) Conduct the following interviews:

(1) The proposed conservatee personally.

(2) All petitioners and all proposed conservators who are not petitioners.

(3) The proposed conservatee's spouse or registered domestic partner and relatives within the first degree. If the proposed conservatee does not have a spouse, registered domestic partner, or relatives within the first degree, to the greatest extent possible, the proposed conservatee's relatives within the second degree.

(4) To the greatest extent practical and taking into account the proposed conservatee's wishes, the proposed conservatee's relatives within the second degree not required to be interviewed under paragraph (3), neighbors, and, if known, close friends.

(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 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.

(*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 proposed conservatee.

(r) The Judicial Council shall, on or before January 1, 2009, adopt rules of court and Judicial Council forms as necessary to implement an expedited procedure to authorize, by court order, a proposed conservatee's health care provider to disclose confidential medical information about the proposed conservatee to a court investigator pursuant to federal medical information privacy regulations promulgated under the Health Insurance Portability and Accountability Act of 1996.

SEC. 8. Section 1830 of the Probate Code is amended to read:

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.

(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, within 30 days of the issuance of the order. By January 1, 2008, the Judicial Council shall develop the notice required by this subdivision.

SEC. 9. Section 1851 of the Probate Code, as amended by Section 12.5 of Chapter 493 of the Statutes of 2006, is amended to read:

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 extent practicable, the investigator shall review the accounting with a conservatee who has sufficient capacity. 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) (1) 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, modified as set forth in paragraph (2), 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.

(2) Confidential medical information and confidential information from the California Law Enforcement Telecommunications System shall be in a separate attachment to the report and shall not be provided in copies sent 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.

(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. 10. Section 1851.2 is added to the Probate Code, to read:

1851.2. Each court shall coordinate investigations with the filing of accountings, so that investigators may review accountings before visiting conservatees, if feasible.

SEC. 11. Section 2217 is added to the Probate Code, to read:

2217. (a) When an order has been made transferring venue to another county, the court transferring the matter shall set a hearing within two months to confirm receipt of the notification described in subdivision (b). If the notification has not been made, the transferring court shall make reasonable inquiry into the status of the matter.

(b) When a court receives the file of a transferred guardianship or conservatorship, the court:

(1) Shall send written notification of the receipt to the court that transferred the matter.

(2) Shall take proper action pursuant to ensure compliance by the guardian or conservator with the matters provided in Section 1456.5.

(3) If the case is a conservatorship, may conduct a review, including an investigation, as described in Sections 1851 to 1853, inclusive.

SEC. 12. Section 2250 of the Probate Code, as amended by Section 15 of Chapter 493 of the Statutes of 2006, is amended to read:

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.

(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) If the petitioner is a private professional conservator under Section 2341 or licensed under the Professional Fiduciaries Act, Chapter 6 (commencing with Section 6500) of Division 3 of the

Business and Professions Code, the petition for appointment of a temporary conservator shall include both of the following:

(1) A statement of the petitioner's registration or license information.

(2) A statement explaining who engaged the petitioner or how the petitioner was engaged to file the petition for appointment of a temporary conservator and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends, unless that information is included in a petition for appointment of a general conservator filed at the same time by the person who filed the petition for appointment of a temporary conservator.

(d) If the petition is filed by a party other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives named in the petition for appointment of a general conservator or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a temporary conservator and the appointment of the proposed temporary conservator or why it was not feasible to ascertain those preferences.

(e) 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. If the petition states that the petitioner and the

proposed conservator have no prior relationship with the proposed conservatee and has not been nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice of hearing shall be served on the public guardian of the county in which the petition is filed.

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

(f) 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.

(g) 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.

(h) (1) 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 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.

(2) 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. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship pursuant to this section shall be given at least five court days prior to the hearing.

(i) 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.

(j) 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.

(k) 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. 12.5. Section 2250.2 of the Probate Code is amended to read:

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.

(b) The petition shall state facts that establish good cause for appointment of the temporary conservator. The court, upon that petition or any 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) 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.

(e) 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.

(f) 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. 13. Section 2250.6 of the Probate Code is amended to read:

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 temporary conservatorship, 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.

(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.

(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 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. 14. Section 2257 of the Probate Code is amended to read:

2257. (a) Except as provided in subdivision (b), the powers of a temporary guardian or temporary conservator terminate, except for the rendering of the account, at the earliest of the following times:

(1) The time the temporary guardian or conservator acquires notice that a guardian or conservator is appointed and qualified.

(2) Thirty days after the appointment of the temporary guardian or temporary conservator or such earlier time as the court may specify in the order of appointment.

(b) With or without notice as the court may require, the court may for good cause order that the time for the termination of the

powers of the temporary guardian or temporary conservator be extended or shortened pending final determination by the court of the petition for appointment of a guardian or conservator or pending the final decision on appeal therefrom or for other cause. The order which extends the time for termination shall fix the time when the powers of the temporary guardian or temporary conservator terminate except for the rendering of the account.

SEC. 15. Section 2320 of the Probate Code is amended to read:

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 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 attorney's fees and costs incurred in a successful action for surcharge against a conservator or guardian for breach of his or her duty under this code shall be a surcharge against the conservator or guardian and, if unpaid, shall be recovered against the surety on the bond. 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. 16. Section 2451.5 is added to the Probate Code, to read:

2451.5. The guardian or conservator may do any of the following:

(a) Contract for the guardianship or conservatorship, perform outstanding contracts, and, thereby, bind the estate.

(b) Purchase tangible personal property.

(c) Subject to the provisions of Chapter 8 (commencing with Section 2640), employ an attorney to advise and represent the guardian or conservator in all matters, including the conservatorship proceeding and all other actions or proceedings.

(d) Employ and pay the expense of accountants, investment advisers, agents, depositaries, and employees.

(e) Operate for a period of 45 days after the issuance of the letters of guardianship or conservatorship, at the risk of the estate, a business, farm, or enterprise constituting an asset of the estate.

SEC. 17. Section 2543 of the Probate Code is amended to read:

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.

(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, including, but not limited to, 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. 18. Section 2590 of the Probate Code is amended to read:

2590. (a) 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.

(b) The guardian or conservator does not have a power specified in Section 2591 without authorization by a court under this article or other express provisions of this code.

SEC. 19. Section 2591 of the Probate Code is amended to read:

2591. The powers referred to in Section 2590 are:

(a) The power to operate, for a period longer than 45 days, at the risk of the estate a business, farm, or enterprise constituting an asset of the estate.

(b) The power to grant and take options.

(c) (1) The power to sell at public or private sale real or personal property of the estate without confirmation of the court of the sale, 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 without confirmation of the court of the sale. The power granted pursuant to this paragraph is subject to the requirements of Sections 2352.5 and 2541.

(3) For purposes of this subdivision, authority to sell property includes authority to contract for the sale and fulfill the terms and conditions of the contract, including conveyance of the property.

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

(e) The power to borrow money.

(f) The power to give security for the repayment of a loan.

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

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

(i) The power to let or lease property of the estate, or extend, renew, or modify a lease of real property, for which the monthly rental or lease term exceeds the maximum specified in Sections 2501 and 2555 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, or otherwise adjust claims, debts, or demands upon the guardianship or conservatorship described in subdivision (a) of Section 2501, Section 2502 or 2504, or to arbitrate any dispute described in Section 2406.

SEC. 20. Section 2591.5 of the Probate Code is amended to read:

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.

SEC. 21. Section 2620.1 is added to the Probate Code, to read:

2620.1. The Judicial Council shall, by January 1, 2009, develop guidelines to assist investigators and examiners in reviewing accountings and detecting fraud.

SEC. 22. Section 2620.2 of the Probate Code is amended to read:

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.

(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 bureau 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.

SEC. 23. Section 2628 of the Probate Code is amended to read:

2628. (a) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this chapter so long as all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the residence of the ward or conservatee, of a total net value of less than fifteen thousand dollars ($15,000).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than two thousand dollars ($2,000).

(3) All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

(b) Notwithstanding that the court has made an order under subdivision (a), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this chapter or the court on its own motion may make that an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

(c) For any accounting period during which all of the conditions of subdivision (a) are not satisfied, the guardian or conservator shall present the account as otherwise required by this chapter.

SEC. 24. Section 2647 is added to the Probate Code, to read:

2647. No attorney fees may be paid from the estate of the ward or conservatee without prior court order. The estate of the ward or conservatee is not obligated to pay attorney fees established by any engagement agreement or other contract until it has been approved by the court. This does not preclude an award of fees by the court pursuant to this chapter even if the contractual obligations are unenforceable pursuant to this section.

SEC. 25. Chapter 2 (commencing with Section 2910) is added to Part 5 of Division 4 of the Probate Code, to read:

Chapter 2. Prefiling Investigation by Public Guardian

2910. (a) Upon a showing of probable cause to believe that a person is in substantial danger of abuse or neglect and needs a conservator of the person, the estate, or the person and estate for his or her own protection, the public guardian or the county's adult protective services agency may petition for either or both of the

orders of the court provided in subdivision (b) in connection with his or her investigation to determine whether a petition for the appointment of the public guardian as conservator of the person, estate, or the person and estate of the person would be necessary or appropriate.

(b) The petition may request either or both of the following orders for the limited purposes of the investigation concerning a person:

(1) An order authorizing identified health care providers or organizations to provide private medical information about the person to the public guardian's authorized representatives.

(2) An order authorizing identified financial institutions or advisers, accountants, and others with financial information about the person to provide the information to the public guardian's authorized representatives.

(c) Notice of the hearing and a copy of the petition shall be served on the person who is the subject of the investigation in the manner and for the period required by Section 1460 or, on application of the public guardian contained in or accompanying the petition, on an expedited basis in the manner and for the period ordered by the court. The court may dispense with notice of the hearing only on a showing of facts demonstrating an immediate threat of substantial harm to the person if notice is given.

2911. A court order issued in response to a public guardian's petition pursuant to Section 2910 shall do all of the following:

(a) Authorize health care providers to disclose a person's confidential medical information as permitted under California law, and also authorize disclosure of the information under federal medical privacy regulations enacted pursuant to the Health Insurance Portability and Accountability Act of 1996.

(b) Direct the public guardian or the adult protective services agency to keep the information acquired under the order confidential, except as disclosed in a judicial proceeding or as required by law enforcement or an authorized regulatory agency.

(c) Direct the public guardian or the adult protective services agency to destroy all copies of written information obtained under the order or give them to the person who was the subject of the investigation if a conservatorship proceeding is not commenced within 60 days after the date of the order. The court may extend this time period as the court finds to be in the subject's best interest.

SEC. 26. The heading of Chapter 2 (commencing with Section 2920) of Part 5 of Division 4 of the Probate Code is amended and renumbered to read:

CHAPTER 3. APPOINTMENT OF PUBLIC GUARDIAN

SEC. 27. The heading of Chapter 3 (commencing with Section 2940) of Part 5 of Division 4 of the Probate Code is amended and renumbered to read:

CHAPTER 4. ADMINISTRATION BY PUBLIC GUARDIAN

SEC. 28. The heading of Chapter 4 (commencing with Section 2950) of Part 5 of Division 4 of the Probate Code is amended and renumbered to read:

CHAPTER 5. FINANCIAL ABUSE OF MENTALLY IMPAIRED ELDERS

SEC. 29. Section 3.5 of this bill shall become operative only if SB 800 is enacted and becomes effective on or before January 1, 2008, in which case Section 3 shall not become operative.

SEC. 30. (a) Section 1.5 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by both this bill and AB 1178. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 56.10 of the Civil Code, (3) AB 1687 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1178, in which case Sections 1, 1.7, and 1.9 of this bill shall not become operative.

(b) Section 1.7 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by both this bill and AB 1687. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, (2) each bill amends Section 56.10 of the Civil Code, (3) AB 1178 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1687 in which case Sections 1, 1.5, and 1.9 of this bill shall not become operative.

(c) Section 1.9 of this bill incorporates amendments to Section 56.10 of the Civil Code proposed by this bill, AB 1178, and AB 1687. It shall only become operative if (1) all three bills are enacted

and become effective on or before January 1, 2008, (2) all three bills amend Section 56.10 of the Civil Code, and (3) this bill is enacted after AB 1178 and AB 1687, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

SEC. 31. 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.

Approved _____, 2007

_____

Governor

Appendix E

Rule Proposal

Rules 10.462, 10.464, and 10.471 of the California Rules of Court are amended; rules 10.463, 10.464, and 10.471 are renumbered; and rules 7.1101, 10.468, 10.478, 10.776, and 10.777 are adopted effective January 1, 2008, to read:

Title 7.

Probate Rules

Chapter 23. Court-Appointed Counsel in Probate Proceedings

Rule 7.1101. Qualifications and continuing education required of counsel appointed by the court in guardianships and conservatorships

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

(1) "Appointed counsel" or "counsel appointed by the court" are legal counsel appointed by the court under Probate Code sections 1470 or 1471, including counsel in private practice and deputy public defenders actually responsible for the performance of legal services under orders appointing a county's public defender.

(2) A "probate guardianship" or "probate conservatorship" is a guardianship or conservatorship proceeding under Division 4 of the Probate Code.

(3) "LPS" and "LPS Act" refer to the Lanterman-Petris Short Act, Welfare and Institutions Code section 5000 et seq.

(4) An "LPS conservatorship" is a conservatorship proceeding for a gravely disabled person under Chapter 3 of the LPS Act, Welfare and Institutions Code sections 5350–5371.

(5) A "contested matter" in a probate or LPS conservatorship proceeding is a matter that requires a noticed hearing and in which written objections were filed by any party, or made by the conservatee or proposed conservatee orally in open court.

(6) "AOC" is the Administrative Office of the Courts.

(b) Qualifications of appointed counsel in private practice

Except as provided in this rule, each counsel in private practice appointed by the court on or after January 1, 2008, must be an active member of the State Bar of California for at least three years immediately before the date of appointment, with no disciplinary proceedings pending and no discipline imposed within the 12 months immediately preceding the date of first availability for appointment after January 1, 2008;

and

(1) *Appointments to represent minors in guardianships*
For an appointment to represent a minor in a guardianship:

(A) Must have represented, within the five years immediately before the date of first availability for appointment after January 1, 2008, at least three wards or proposed wards in probate guardianships, three children in juvenile court dependency or delinquency proceedings, or three children in custody proceedings under the Family Code;

or

(B) At the time of appointment, must be qualified:

(i) For appointments to represent children in juvenile dependency proceedings under rule 5.660 and the court's local rules governing court-appointed juvenile court dependency counsel;

or

(ii) For appointments to represent children in custody proceedings under the Family Code under rule 5.241, including the alternative experience requirements of rule 5.241(e).

(C) Counsel qualified for appointments in guardianships under (B) must satisfy the continuing education requirements of this rule in addition to the education or training requirements of the rules mentioned in (B).

(2) *Appointments to represent conservatees or proposed conservatees*
For an appointment to represent a conservatee or proposed conservatee, within the five years immediately before the date of first availability for appointment after January 1, 2008, counsel in private practice must have:

(A) Represented at least three conservatees or proposed conservatees, in either probate or LPS conservatorships;

or

(B) Completed any three of the following five tasks:

(i) Represented petitioners for the appointment of a conservator at commencement of three probate conservatorship proceedings, from initial contact with the petitioner through the hearing and issuance of Letters of Conservatorship;

(ii) Represented a petitioner, a conservatee or proposed conservatee, or an interested third party in two contested probate or LPS conservatorship matters. A contested matter that qualifies under this item and also qualifies under (i) may be applied towards satisfaction of both items;

(iii) Represented a party for whom the court could appoint legal counsel in a total of three matters described in Probate Code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;

(iv) Represented fiduciaries in three separate cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedent's estates, or trust proceedings under Division 9 of the Probate Code; or

(v) Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management;

(3) All private counsel qualified under (1) or (2) must also be covered by professional liability insurance satisfactory to the court in the amount of at least $100,000 per claim and $300,000 per year.

(c) Qualifications of deputy public defenders performing legal services on court appointments of the public defender

(1) Except as provided in this rule, beginning on January 1, 2008, each county deputy public defender with actual responsibility for the performance of legal services in a particular case on the appointment of the county public defender under Probate Code sections 1470 or 1471 must:

(A) Be an active member of the State Bar of California for at least three years immediately before the date of appointment;

and

(B) Satisfy the experience requirements for private counsel in (b)(1) for appointments in guardianships or (b)(2) for appointments in conservatorships;

or

(C) Have a minimum of three years' experience representing minors in juvenile dependency or delinquency proceedings or patients in post-certification judicial proceedings or conservatorships under the LPS Act;

and

(D) Be covered by professional liability insurance satisfactory to the court in the amount of at least $100,000 per claim and $300,000 per year, or be covered for professional liability at an equivalent level by a self-insurance program for the professional employees of his or her county.

(2) A deputy public defender who is not qualified under this rule may periodically substitute for a qualified deputy with actual responsibility for the performance of legal services in a particular case. In that event, the county public defender or his or her designee, who may be the qualified supervisor, must certify to the court that the substitute deputy is working under the direct supervision of a deputy public defender who is qualified under this rule.

(d) Transitional provisions on qualifications

(1) Counsel appointed before January 1, 2008 may continue to represent their clients through February 2008, whether or not they are qualified under (b) or (c). After February 2008 through conclusion of the matters for which appointments under this paragraph were made, the court may retain or replace appointed counsel who are not qualified under (b) or (c), or may appoint qualified co-counsel to assist them.

(2) In January and February of 2008, the court may appoint counsel who have not filed the certification of qualifications required under (g) at the time of appointment, but must replace counsel appointed under this paragraph who have not filed the certificate before March 1, 2008.

(e) Continuing education of appointed counsel

Beginning on January 1, 2008, counsel appointed by the court must complete three hours of education each calendar year that qualifies for mandatory continuing legal education credit for State Bar-certified specialists in estate planning, trust, and probate law.

(f) Additional court-imposed qualifications, education, and other requirements

The qualifications in (b) and (c) and the continuing education requirement in (e) are minimums. A court may establish higher qualification or continuing education requirements, including insurance requirements; require initial education or training; and may impose other requirements, including an application by private counsel.

(g) Certification of qualifications and continuing education

(1) Each counsel appointed or eligible for appointment by the court before January 1, 2008, must certify to the court in writing before March 1, 2008, that he or she satisfies the qualifications under (b) or (c) to be eligible for a new appointment on or after that date.

(2) After February 2008, each counsel must certify to the court that he or she is qualified under (b) or (c) before becoming eligible for an appointment under this rule.

(3) Beginning in 2009, each appointed counsel must certify to the court before the end of February of each year that he or she has completed the continuing education required for the preceding calendar year.

(4) Certifications required under this subdivision must be submitted to and retained by the court, but are not to be filed or lodged in a case file.

(h) Reporting

The AOC may require courts to report appointed counsel's qualifications and completion of continuing education required by this rule to ensure compliance with Probate Code section 1456.

Title 10

Judicial Administration Rules

Rule 10.462. Trial court judges and subordinate judicial officers

(a)–(c)* * *

(d) Hours-based continuing education

(1) * * *

(2) The following education applies toward the expected or required 30 hours of continuing judicial education:

(A) * * *

(B) Any other education offered by a provider listed in rule ~~10.471(a)~~ 10.481(a) and any other education, including education taken to satisfy a statutory or other education requirement, approved by the presiding judge as meeting the criteria listed in rule ~~10.471(b)~~ 10.481(b).

(3)–(5) * * *

(e)–(g)* * *

Rule 10.468. Content-based and hours-based education for superior court judges and subordinate judicial officers regularly assigned to hear probate proceedings

(a) Definitions

As used in this rule, the following terms have the meanings stated below:

(1) "Judge" means a judge of the superior court.

(2) "Subordinate judicial officer" has the meaning specified in rule 10.701(a).

(3) "Judicial officer" means a judge or a subordinate judicial officer.

(4) "Probate proceedings" are decedents' estates, guardianships and conservatorships under Division 4 of the Probate Code, trust proceedings under Division 9 of the Probate Code, and other matters governed by provisions of that code and the rules in title 7 of the California Rules of Court.

(5) A judicial officer "regularly assigned to hear probate proceedings" is a judicial officer who is:

(A) Assigned to a dedicated probate department where probate proceedings are customarily heard on a full-time basis;

(B) Responsible for hearing most of the probate proceedings filed in a court that does not have a dedicated probate department; or

(C) Responsible for hearing probate proceedings on a regular basis in a department in a branch or other location remote from the main or central courthouse, whether or not he or she also hears other kinds of matters in that department, and whether or not there is a dedicated probate department in the main or central courthouse.

(6) "AOC" is the Administrative Office of the Courts.

(7) "CJER" is the AOC's Education Division/Center for Judicial Education and Research.

(8) "CJA" is the California Judges Association.

(b) Content-based requirements

(1) Each judicial officer beginning a regular assignment to hear probate proceedings after the effective date of this rule—unless he or she is returning to this assignment after less than two years in another assignment—must complete, as soon as possible but not to exceed six months from the assignment's commencement date, six hours of education on probate guardianships and conservatorships, including court-supervised fiduciary accounting.

(2) The education required in (1) is in addition to the New Judge Orientation program for new judicial officers and the B. E. Witkin Judicial College required under rule 10.462(c)(1)(A) and (C), and may be applied towards satisfaction of the 30 hours of continuing education expected of judges and required of subordinate judicial officers under rule 10.462(d).

(3) The education required in (1) must be provided by CJER, CJA, or the judicial officer's court. CJER is responsible for identifying content for this education and will share the identified content with CJA and the courts.

(4) The education required in (1) may be by traditional (face to face) or distance-learning means, such as broadcasts, videoconferences, or on-line coursework, but may not be by self-study.

(c) Hours-based continuing education

(1) Each judicial officer regularly assigned to hear probate proceedings must complete 18 hours of continuing education every three years, with a minimum of six hours per year on probate guardianships and conservatorships, including court-supervised fiduciary accounting, beginning on January 1 of the year following completion of the education required in (b)(1) or, if he or she is exempt from that education, beginning in the year the assignment commenced after the effective date of this rule.

(2) The first continuing education period for judicial officers who were regularly assigned to hear probate proceedings before the effective date of this rule and who continue in the assignment after that date is for two years, from January 1, 2008, through December 31, 2009, rather than three years. The continuing education requirements in (1) are prorated for the first continuing education under this paragraph. The first full three-year period of continuing education for judicial officers under this paragraph begins on January 1, 2010.

(3) The number of hours of education required in (1) may be reduced proportionately for judicial officers whose regular assignment to hear probate proceedings is for a period of less than three years, but the education required in any full calendar year in the assignment is a minimum of six hours.

(4) The education required in (1) may be applied towards satisfaction of the 30 hours of continuing education expected of judges or required of subordinate judicial officers under rule 10.462(d).

(5) A judicial officer may fulfill the education requirement in (1) through AOC-sponsored education, a provider listed in rule 10.481(a), or a provider approved by the judicial officer's presiding judge as meeting the education criteria specified in rule 10.481(b).

(6) The education required in (1) may be by traditional (face-to-face) or distance-learning means, such as broadcasts, videoconferences, or on-line coursework, but may not be by self-study.

(7) A judicial officer who serves as faculty for a California court-based audience, as defined in rule 10.462(d)(4), for education required in (1) may be credited with three hours of participation for each hour of presentation the first time a course is given and two hours for each hour of presentation each subsequent time the course is given.

(d) Extension of time

The provisions of rule 10.462(e) concerning extensions of time apply to the content-based and hours-based education required under (b) and (c) of this rule.

(e) Recordkeeping and reporting

(1) The provisions of rule 10.462(f) and (g) concerning, respectively, tracking participation, recordkeeping, and summarizing participation by judges, and tracking participation by subordinate judicial officers, apply to the education required under this rule. However, courts, in addition to individual judges, must track judges' participation and completion of the education required by this rule.

(2) Presiding judges' records of judicial officer participation in the education required by this rule are subject to audit by the AOC under rule 10.462. The AOC may require courts to report participation by judicial officers in the education required by this rule to ensure compliance with Probate Code section 1456.

Rule ~~10.463~~ 10.473. Trial court executive officers

* * *

Rule ~~10.464~~ 10.474. Trial court managers, supervisors, and personnel

(a)–(b) * * *

(c) Hours-based requirements

(1)–(3) * * *

(4) Any education offered by a provider listed in rule ~~10.471(a)~~ 10.481(a) and any other education, including education taken to satisfy a statutory, rules-based, or other education requirement, that is approved by the executive officer or the employee's supervisor as meeting the criteria listed in rule ~~10.471(b)~~ 10.481(a) applies toward the orientation education required under (b) and the continuing education required under (c)(1) and (2).

Rule 10.478. Content-based and hours-based education for court investigators, probate attorneys, and probate examiners

(a) Definitions

As used in this rule, the following terms have the meanings specified below, unless the context or subject matter otherwise require:

(1) A "court investigator" is a person described in Probate Code section 1454(a) employed by or under contract with a court to provide the investigative services for the court required or authorized by law in

guardianships, conservatorships, and other protective proceedings under Division 4 of the Probate Code;

(2) A "probate examiner" is a person employed by a court to review filings in probate proceedings in order to assist the court and the parties to get the filed matters properly ready for consideration by the court in accordance with the requirements of the Probate Code, the rules in title 7 of the California Rules of Court, and the court's local rules;

(3) A "probate attorney" is an active member of the State Bar of California who is employed by a court to perform the functions of a probate examiner and also to provide legal analysis, recommendations, advice, and other services to the court pertaining to probate proceedings.

(4) "Probate proceedings" are decedents' estates, guardianships and conservatorships under Division 4 of the Probate Code, trust proceedings under Division 9 of the Probate Code, and other matters governed by provisions of that code and the rules in title 7 of the California Rules of Court;

(5) "AOC" is the Administrative Office of the Courts.

(6) "CJER" is the AOC's Education Division/Center for Judicial Education and Research.

(b) Content-based requirements for court investigators

(1) Each court investigator must complete 18 hours of education within one year of his or her start date after the effective date of this rule. The education must include the following general topics:

(A) Court process and legal proceedings, including Probate Code provisions governing investigations and other duties of court investigators in guardianships and conservatorships; Family Code provisions governing child custody applicable to guardianships, including detriment to the child in contested guardianships; investigation report requirements; evaluation of alternatives to conservatorship; determination of best interests of the conservatee's person and estate; determination of least restrictive residence alternative necessary to meet the needs of the conservatee, fiduciary accountings; substituted judgment; and testifying in court;

(B) Child abuse and neglect and effect of domestic violence on children (guardianship investigators); elder and dependent adult abuse, including undue influence and other forms of financial abuse (conservatorship investigators);

(C) Medical issues, including developmental disabilities in children and adults; mental health issues in children and adults, including mental function deficits and their relation to the need for a conservatorship; substance abuse—detection, screening, effects, and intervention; reviewing medical records; medical terminology; medications; and drug interactions;

(D) Access to and use of criminal-record information, confidentiality, ethics, conflicts of interest;

(E) Accessing and evaluating community resources for children and mentally impaired elderly or developmentally disabled adults; and

(F) Interviewing children and persons with mental function or communication deficits.

(2) A court investigator may fulfill the education requirement in (1) through AOC-sponsored education, a provider listed in rule 10.481(a), or a provider approved by the court executive officer or the court investigator's supervisor as meeting the education criteria specified in rule 10.481(b).

(3) The education required in (1) may be applied to the specific-job portion of the orientation course required for all new court employees under rule 10.474(b)(2)(D) and the continuing education required for all non-managerial or non-supervisory court employees under rule 10.474(c)(2).

(4) The education required in (1) may be by traditional (face-to-face) or distance-learning means, such as broadcasts, videoconferences, or on-line coursework, but may not be by self-study.

(c) Content-based education for probate attorneys

(1) Each probate attorney must complete 18 hours of education within six months of his or her start date after January 1, 2008 in probate-related topics, including guardianships, conservatorships, and court-appointed fiduciary accounting.

(2) A probate attorney may fulfill the education requirement in (1) through AOC-sponsored education, a provider listed in rule 10.481(a), or a provider approved by the court executive officer or the probate attorney's supervisor as meeting the education criteria specified in rule 10.481(b).

(3) The education required in (1) may be applied to the specific-job portion of the orientation course required for all new court employees under rule 10.474(b)(2)(D) and the continuing education required for all non-managerial or non-supervisory court employees under rule 10.474(c)(2).

(4) The education required in (1) may be by traditional (face-to-face) or distance-learning means, such as broadcasts, videoconferences, or on-line coursework, but may not be by self-study.

(d) Content-based education for probate examiners

(1) Each probate examiner must complete 30 hours of education within one year of his or her start date after January 1, 2008 in probate-related topics, of which 18 hours must be in guardianships and conservatorships, including court-appointed fiduciary accounting.

(2) A probate examiner may fulfill the education requirement in (1) through AOC-sponsored education, a provider listed in rule 10.481(a), or a provider approved by the court executive officer or the probate examiner's supervisor as meeting the education criteria specified in rule 10.481(b).

(3) The education required in (1) may be applied to the specific-job portion of the orientation course required for all new court employees under rule 10.474(b)(2)(D) and the continuing education required for all non-managerial or non-supervisory court employees under rule 10.474(c)(2).

(4) The education required in (1) may be by traditional (face-to-face) or distance-learning means, such as broadcasts, videoconferences, or on-line coursework, but may not be by self-study.

(e) Hours-based education for court investigators

(1) Each court investigator must complete 12 hours of continuing education on some or all of the general topics listed in (b)(1) each calendar year. For court investigators employed by or performing services under contract with the court before the effective date of this rule, the first calendar year the education is required begins on January 1, 2008. For court investigators who begin their employment or performance of services under contract with the court after the effective date of this rule, the first year this education is required begins on January 1st of the year immediately following completion of the education required in (b).

(2) A court investigator may fulfill the education requirement in (1) through AOC-sponsored education, a provider listed in rule 10.481(a), or a provider approved by the court executive officer or the court investigator's supervisor as meeting the education criteria specified in rule 10.481(b).

(3) The education required in (1) may be applied to the continuing education required for all non-managerial or non-supervisory court employees under rule 10.474(c)(2).

(4) The education required in (1) may be by traditional (face-to-face) or distance-learning means, such as broadcasts, videoconferences, or on-line coursework, but may not be by self-study.

(f) Hours-based education for probate attorneys

(1) Each probate attorney must complete 12 hours of continuing education each calendar year in probate-related subjects, of which six hours per year must be in guardianships and conservatorships, including court-appointed fiduciary accounting. For probate attorneys employed by or performing services under contract with the court before the effective date of this rule, the first calendar year the education is required begins on January 1, 2008. For probate attorneys who begin their employment with the court after the effective date of this rule, the first year this education is required begins on January 1st of the year immediately following completion of the education required in (c).

(2) A probate attorney may fulfill the education requirement in (1) through AOC-sponsored education, a provider listed in rule 10.481(a), or a provider approved by the court executive officer or the probate attorney's supervisor as meeting the education criteria specified in rule 10.481(b).

(3) The education required in (1) may be applied to the continuing education required for all non-managerial or non-supervisory court employees under rule 10.474(c)(2).

(4) The education required in (1) may be by traditional (face-to-face) or distance-learning means, such as broadcasts, videoconferences, or on-line coursework, but may not be by self-study.

(g) Hours-based education for probate examiners

(1) Each probate examiner must complete 12 hours of continuing education each calendar year in probate-related subjects, of which six hours per year must be in guardianships and conservatorships, including court-appointed fiduciary accounting. For probate examiners employed by the court before the effective date of this rule, the first calendar year the education is required begins on January 1, 2008. For probate examiners who begin their employment with the court after the effective date of this rule, the first year this education is required begins on January 1st of the year immediately following completion of the education required in (d).

(2) A probate examiner may fulfill the education requirement in (1) through AOC-sponsored education, a provider listed in rule 10.481(a), or a provider approved by the court executive officer or the probate examiner's supervisor as meeting the education criteria specified in rule 10.481(b).

(3) The education required in (1) may be applied to the continuing education required for all non-managerial or non-supervisory court employees under rule 10.474(c)(2).

(4) The education required in (1) may be by traditional (face-to-face) or distance-learning means, such as broadcasts, videoconferences, or on-line coursework, but may not be by self-study.

(h) Extension of time

The provisions of rule 10.474(d) concerning extensions of time apply to the content-based and hours-based education required under this rule.

(i) Recordkeeping and reporting

(1) The provisions of rule 10.474(e) concerning the responsibilities of courts and participating court employees to keep records and track the completion of educational requirements apply to the education required under this rule.

(2) The AOC may require courts to report participation by court investigators, probate attorneys, and probate examiners in the education required by this rule as necessary to ensure compliance with Probate Code section 1456.

Rule ~~10.471.~~ 10.481. Approved providers; approved course criteria

(a) Approved providers

Any education program offered by any of the following providers that is relevant to the work of the courts or enhances the individual participant's ability to perform his or her job may be applied toward the education requirements stated in rule 10.462(d), ~~10.463(c)~~ 10.471(c), or ~~10.464(b)-(c)~~ 10.474(b)-(c):

(1)—(21) * * *

(22) California Association of Superior Court Investigators; and

~~(22)~~(23) Superior Court Clerks' Association of the State of California.

(b) Approved education criteria

Education is not limited to the approved providers listed in (a). Any education from a provider not listed in (a) that is approved by the presiding judge as meeting the criteria listed below may be applied toward the continuing education expectations and requirements for judges and subordinate judicial officers or requirements for court executive officers stated in rule 10.462(d) or ~~10.463(c)~~ 10.471(c), respectively. Similarly, any education from a provider not listed in (a) that is approved by the court executive officer or by the employee's supervisor as meeting the criteria listed below may be applied toward the orientation or continuing education requirements for managers, supervisors, and employees in rule ~~10.464~~10.474(b) and (c)(1), (2) or the content-based or continuing education for probate court investigators, probate examiners, and probate attorneys in rule 10.478.

(1)—(2) * * *

Division 4. Trial Court Administration

Chapter 7. Qualifications of Court Investigators, Probate Attorneys, and Probate Examiners

Rule 10.776. Definitions

As used in the rules in this chapter, the following terms have the meanings stated below:

(1) A "court investigator" is a person described in Probate Code section 1454(a) employed by or under contract with a court to provide the investigative services for the court required or authorized by law in guardianships, conservatorships, and other protective proceedings under Division 4 of the Probate Code;

(2) A "probate examiner" is a person employed by a court to review filings in probate proceedings in order to assist the court and the parties to get the filed matters ready for consideration by the court in accordance with the requirements of the Probate Code, title 7 of the California Rules of Court, and the court's local rules;

(3) A "probate attorney" is an active member of the State Bar of California who is employed by a court to perform the functions of a probate examiner and also to provide legal analysis, recommendations, advice, and other services to the court pertaining to probate proceedings.

(4) "Probate proceedings" are decedents' estates, guardianships and conservatorships under Division 4 of the Probate Code, trust proceedings under Division 9 of the Probate Code, and other matters governed by provisions of that code and the rules in title 7 of the California Rules of Court;

(5) An "accredited educational institution" is a college or university, including a community or junior college, accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation;

(6) "AOC" is the Administrative Office of the Courts.

Rule 10.777. Qualifications of court investigators, probate attorneys, and probate examiners

(a) Qualifications of court investigators

Except as otherwise provided in this rule, a person who begins employment with a court or enters into a contract to perform services with a court as a court investigator on or after January 1, 2008, must:

(1) Have a Bachelor of Arts or Bachelor of Sciences degree in a science, social science, behavioral science, liberal arts, or nursing from an accredited educational institution; and

(2) Have a minimum of two years' employment experience performing casework or investigations in a legal, financial, law enforcement, or social services setting.

(b) Qualifications of probate attorneys

Except as otherwise provided in this rule, a person who begins employment with a court as a probate attorney on or after January 1, 2008, must:

(1) Be an active member of the State Bar of California for:

(A) A minimum of five years;

or

(B) A minimum of two years, plus a minimum of five years current or former active membership in the equivalent organization of another state or eligibility to practice in the highest court of another state or in a court of the United States;

and

(2) Have a minimum of two year's total experience, pre- or post-admission as an active member of the State Bar of California, in one or more of the following positions:

(A) Court-employed staff attorney;

(B) Intern, court probate department (minimum six-month period);

(C) Court-employed probate examiner or court-employed or court-contracted court investigator;

(D) Attorney in a probate-related public or private legal practice;

(E) Deputy public guardian or conservator;

(F) Child protective services or adult protective services worker, or juvenile probation officer; or

(G) Private professional fiduciary appointed by a court; or employee of a private professional fiduciary or bank or trust company appointed by a court, with significant fiduciary responsibilities, including responsibility for court accountings.

(c) Qualifications of probate examiners

Except as otherwise provided in this rule, a person who begins employment with a court as a probate examiner on or after January 1, 2008, must have:

(1) A Bachelor of Arts or Bachelor of Sciences degree from an accredited educational institution and a minimum of a total of two years' of employment experience with one or more of the following employers:

(A) A court;

(B) A public or private law office; or

(C) A public administrator, public guardian, or public conservator, or a private professional fiduciary;

(2) A paralegal certificate from an accredited educational institution and a minimum of a total of four years' of employment experience with one or more of the employers listed in (1);

or

(3) A Juris Doctor degree from an educational institution approved by the American Bar Association or accredited by the Committee of Bar Examiners of the State Bar of California and a minimum of six months' of employment experience with an employer listed in (1).

(d) Additional court-imposed qualifications and requirements

The qualifications in (a), (b), and (c) are minimums. A court may establish higher qualification standards for any position covered by this rule, and may require applicants to comply with its customary hiring or personal-service contracting practices, including written applications, personal references, personal interviews, or entrance examinations.

(e) Exemption for smaller courts

The qualifications required under this rule may be waived by a court with four or fewer judges if it cannot find suitable qualified candidates for the positions covered by this rule, or for other grounds of hardship. A court electing to waive a qualification under this subdivision must make express findings showing the circumstances supporting the waiver and disclosing all alternatives considered, including those not selected.

(f) Recordkeeping and reporting

The AOC may require courts to report on the qualifications of the court investigators, probate attorneys, or probate examiners hired or under contract under this rule, and on waivers made under (e), as necessary to ensure compliance with Probate Code section 1456.

Chapter ~~7~~ 8. Alternative Dispute Resolution Programs

Chapter ~~8~~ 9. Trial Court Budget and Fiscal Management

Chapter ~~9~~ 10. Trial Court Records Management

Chapter ~~10~~ 11. Trial Court Automation

Chapter ~~11~~ 12. Trial Court Management of Civil Cases

Chapter ~~12~~ 13. Trial Court Management of Civil Cases

Appendix F

General Plan and Care Plan

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

In the Conservatorship of:	Case No. PRIVATE PROFESSIONAL CONSERVATOR'S CARE AND MANAGEMENT PLAN

Petitioner, _____, a Private Professional Conservator, submits the following Care and Management Plan in the above referenced matter. This plan is based upon Petitioner's opinion and estimate of the services necessary to maintain and manage the person and estate of the Conservatee.

NOTICE IS HEREBY GIVEN to all interested persons that the Court's approval of this plan will insure that the Conservator will be entitled to receive the requested compensation at the end of the next accounting period as long as the services herein approved have been performed. Any interested person who fails to object to this petition will not be entitled to object to the services or rate of compensation, other than objections based on non-performance of the services, at the next accounting. However, at such accounting, Objections may be filed regarding any request for additional compensation not approved at this time.

CURRENT STATUS OF THE CONSERVATEE

1. Petitioner alleges as follows:

2. The Conservatee is _____ years of age.

3. The Conservatee is residing in:

- ☐ Own home / apartment
- ☐ Relative's home (relationship)_____
- ☐ Board and care
- ☐ Nursing home
- ☐ Hospital or medical facility
- ☐ Other (specify)_____

  _____

4. The Conservatee has been residing in the present residence since (date)_____

- ☐ There is no plan to change the Conservatee's residence.
- ☐ There are plans to change the Conservatee's residence.

  If so, please describe and explain the anticipated change:

  _____

  _____

  _____

5. (If the Conservatee is residing in his or her own home). The care providers employed to assist the Conservatee are the following:

  _____

  _____

  _____

6. The Conservatee's medical status is as follows:

_____

_____

_____

_____

_____

_____

_____

7. The Conservatee's current socialization and visitation needs are as follows:

☐ Family and/or friends regularly visit (at least twice weekly.)

☐ Family and/or friends visit irregularly (at least twice per month.)

☐ The Conservatee receives few visits from others and the Conservator must plan for and provide this service.

8. The Conservatee has the following special needs or problems which substantially effect the Conservator's duties, anticipated services or compensation:

_____

_____

_____

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Management Plan

9. It is anticipated that it will be necessary for the Conservator to visit the Conservatee _____ times per month for a total of _____ hours per month.
Petitioner is requesting the Court to approve these services and further to approve compensation for these services at the rate of $_____ per hour, for a total of $_____ per month.

10. Petitioner believes it will be necessary to provide the following additional services to properly care for and maintain the personal needs of the Conservatee: (Describe the services planned, hours anticipated per month, hourly rate for each service, and total compensation to be earned per month.)

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11. The Conservatee's income is derived from monthly receipts from _____sources which requires the Conservator to receive, deposit, maintain and account for same. Petitioner anticipates that _____ hours per month will be expended to properly manage these receivables. Petitioner therefore requests that the court approve compensation at the hourly rate of $_____ per hour for a total of $_____ per month.

12. The Conservatee's monthly living expenses include the handling of approximately _____ accounts payable per month. Petitioner anticipates that _____ hours per month will be expended to properly manage these payables. Petitioner therefore requests that the Court approve compensation at the hourly rate of $_____ per hour, for a total of $_____ per month.

13. It is further anticipated that the Conservator's estate will receive on the average periodic receivables and be required to pay _____ periodic payables per year. On that basis the Conservator will be required to expend approximately _____ hours per year in addition to the regular monthly expenditures described above. Petitioner therefore requests the Court to approve compensation based on the above hourly rates in the total amount of $_____ per year.

14. It is anticipated that it will be necessary to expend approximately_____hours per year maintaining and organizing the Conservator's financial records for the purpose of assisting a professional tax preparer in the preparation of the Conservatee's tax returns. Petitioner therefore requests that the Court approve an annual compensation of $_____ for such services.

15. Petitioner believes it will be necessary to provide the following additional services to properly manage and account for the estate of the Conservatee: (Describe the services planned, hours anticipated per month. hourly rate for each service, and total compensation to be earned per month or per year.)

_____

_____

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Services and Compensation Earned to Date

16. (Optional) Petitioner requests approval for periodic (monthly) payments, on account, in the amount of $_____ , for services to be rendered in accordance with this Management Plan. Said payment represents no more than _____ % of the anticipated compensation. Petitioner understands and agrees that should the actual reasonable compensation decrease during the accounting period, the actual periodic payment will not exceed _____ % of the compensation actually earned.

17. Petitioner requests approval of commissions earned to date for services rendered toward the establishment of the Conservatorship, marshaling the assets and other services unique to the process of establishment of this matter, including the preparation of this Petition. Petitioner attaches herewith his/her declaration in support of this request and lodges with the Court the itemized billing for the Court's review.

18. (Optional) Petitioner has incurred attorney's fees and costs in the establishment of this Conservatorship, including the preparation of this Petition, in the amount of $_____. Petitioner attaches the Declaration of his/her attorney in support of said fees, and Petitioner's attorney lodges herewith an itemized billing for the Court's review.

WHEREFORE, Petitioner requests the following:

1. For approval of the above-described Management Plan.
2. For approval of periodic payments on account in the amount of $_____ or _____% of the actual monthly compensation, whichever is less.
3. For payment for services rendered in the establishment of this Conservatorship, in the amount of $_____.
4. For payment of attorney's fees in the amount of $_____ and for costs in the amount of $_____.

_____
Conservator

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ATTORNEY OF RECORD: TO BE COMPLETED BY THE CONSERVATOR AND FILED THIRTY DAYS PRIOR TO THE GENERAL PLAN HEARING DATE. THE CONSERVATOR SHOULD RETAIN A COPY. A COPY OF THE PLAN AND INVENTORY AND APPRAISMENT MUST BE SENT TO THE COURT INVESTIGATORS OFFICE.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

Conservatorship of the [person/and/estate] of _____ conservatee)	Probate No. CONSERVATORSHIP GENERAL PLAN Date: Time: Department:

_____, the conservator of the person/estate of _____ hereby submits the conservator's General Plan in compliance with local court rules.

1. **Conservatee's name, date of birth and Social Security Number:**

2. **Address and telephone:**

3. **Conservatee's residence:**

____own home/apartment _____conservator's home/apartment

____skilled nursing home _____board and care home

____hospital (medical/psychiatric)_____other (specify)_____

How long has the Conservatee been in the present residence?_____

Do you anticipate making any changes in the Conservatee's residence in the next year? _____No _____Yes (explain)_____

Please note that the Court Investigator's Office must be notified of any change of address.

4. **Current level of care**:

_____requires total care _____requires assistance with care
_____able to do own care _____has feeding tube
_____ambulatory _____uses wheelchair/walker
_____urinary/bowel incontinence _____has a catheter
Other relevant information_____

5. **Conservatee's physical and medical condition:**

_____in in good health _____is developmentally disabled
_____confusion/disorientation _____unable to read/write
_____memory loss _____deaf or communication problem
_____takes regular medications (describe_____)
Please list health problems_____
_____

How often does the Conservatee see a doctor?_____
Doctor's name_____

Are any other health providers involved? ____No ____Yes
_____visiting nurse _____social worker
_____podiatrist _____dentist
_____counselor _____physical therapy
_____speech therapy _____other (specify)_____

6. **How often do you expect to visit the Conservatee?**

7. **Does the Conservatee have other family or friends that will visit?**

8. **Do you plan to request conservator fees at the end of the first year?**

_____No _____Yes (anticipated amount of request) $_____

9. **Conservatee's Estimated Monthly Income (complete even if a conservatorship of the person only)**

Social Security/SSI $_____ Dividends $_____

Pension (source)_____ $_____ Rental $_____

Veteran's benefits $_____ Interest $_____

Other (specify)_____ $_____

Total Estimated Monthly Income $_____

10. **Conservatee's Estimated Monthly Expenses (complete even if a conservatorship of the person only)**

LIVING EXPENSES

Rent/Mortgage	$_____	Utilities	$_____
Nursing/Care Home	$_____	In-home care	$_____
Food	$_____	Clothing	$_____
Medical/Dental	$_____	Medications	$_____
Transportation	$_____	Entertainment	$_____
Other (specify)_____			$_____

Total Estimated Monthly Expenses $_____

11. **Other Expenses**

TAXES	Current		Estimated Amount
Income Tax	___Yes	___No	$_____
Property	___Yes	___No	$_____
Payroll	___Yes	___No	$_____

INSURANCE

	Company	Coverage Amount	Estimated premium
Homeowner	_____	$_____	$_____
Renters	_____	$_____	$_____
Automobile	_____	$_____	$_____
Worker's Comp	_____	$_____	$_____
Health	_____	$_____	$_____
Life	_____	$_____	$_____

Does the Conservatee receive Medi-Cal benefits?

_____No _____Yes $_____ share of cost

12. **Do you expect to sell any of the Conservatee's real or personal property in the next year?** _____No _____Yes

If yes, explain reason_____

13. **Do you anticipate any unusual activities related to the management of the conservatee's estate during the next year?**

_____No _____Yes (explain)_____

_____

The undersigned conservator will:

a. Inventory all assets in which the conservatee has any interest;

b. Render timely, accurate and complete accountings to the court;

c. Carry out all mandatory usual and general duties of a conservator;

d. Maintain periodic contract with the conservatee's physician and other health care providers, if appointed conservator of the person;

e. Maintain periodic contract with the conservatee's family and friends, if applicable;

f. Be available to the conservatee on a 24-hour basis for emergencies, or arrange for such coverage by a qualified agent;

g. Maintain accurate records related to the estate;

h. Maintain all estate assets in a separate identifiable manner;

i. Maintain estate cash assets in interest-bearing accounts, except as necessary for everyday administration;

j. Maintain an adequate surety bond as required by law.

k. Update case plan as needed.

l. Refer to the "Conservator's Handbook".

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I have retained a copy of this case plan for my records.

Dated: _____

_____
Signature of Conservator

_____
Type or print name