



# Complaint to Sacramento County Superior Court

Per ADA Title II Regulations  
Sections 35.104, 35.107, 35.170(a)

Per Section 504 of the  
Rehabilitation Act of 1973

Per California Government  
Code Section 11135

Exhibit D

Statutory Right to Counsel  
Probate Code Section 1471(b)



**PROBATE CODE - PROB**

**DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS [1400 - 3925]** ( *Division 4 enacted by Stats. 1990, Ch. 79.* )

**PART 1. DEFINITIONS AND GENERAL PROVISIONS [1400 - 1490]** ( *Part 1 enacted by Stats. 1990, Ch. 79.* )

**CHAPTER 4. Appointment of Legal Counsel [1470 - 1474]** ( *Chapter 4 enacted by Stats. 1990, Ch. 79.* ) ORIGINAL IN 1980

**1471.** (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not that person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of that person in the following proceedings under this division:

- (1) A proceeding to establish or transfer a conservatorship or to appoint a proposed conservator.
- (2) A proceeding to terminate the conservatorship.
- (3) A proceeding to remove the conservator.
- (4) A proceeding for a court order affecting the legal capacity of the conservatee.
- (5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not that person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of that person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.

(c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for that legal service if he or she is able. This subdivision applies irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

(Amended by Stats. 2014, Ch. 553, Sec. 5. (SB 940) Effective January 1, 2015. Operative January 1, 2016, by Stats. 2014, Ch. 553, Sec. 29.)

# California Court of Appeal

Wendland v. Superior Court (1996) 49 Cal.App.4th 44

## Excerpts from the Opinion Relevant to the Duty of the Court to Appoint Counsel Under Probate Code Section 1471(b)

The issue in this case is whether the trial court must appoint independent counsel to represent a conservatee in conservatorship proceedings under Probate Code section 1471, subdivision (b) (hereafter section 1471(b)).

Section 1471(b) requires the trial court to appoint independent counsel for a conservatee or proposed conservatee for specified conservatorship proceedings (including appointment or removal of conservators) if "the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee."

"The standard of review for denial of independent counsel under section 1471(b) is abuse of discretion. Thus, although we find no conservatorship cases on point, this situation is somewhat analogous to the question of appointment of counsel for minors in proceedings to terminate a parental relationship. '[Former] Civil Code section 237.5, subdivision (a) [now Family Code section 7861 fn. 8 requires the trial court in a [Civil Code section] 232 proceeding [to terminate parent-child relationship] to appoint counsel for a minor if it is required to protect the minor's interests. [Former Civil Code] [s]ection 237.5 **"requires counsel be appointed [for the minor] at the commencement of proceedings absent an immediate showing upon which the court can exercise its discretion against making an appointment."** [Citation.]' (In re Melicia L. (1988) 207 Cal. App. 3d 51 54 254 Cal. Rptr. 541, [49 Cal. App. 4th 51] citing In re Richard E. (1978) 21 Cal. 3d 349, 355 [146 Cal. Rptr. 604, 579 P.2d 495].)" (Emphasis added)

"The Richard E. court said: . . . **The rule we adopt of course requires counsel be appointed at the commencement of proceedings absent an immediate showing upon which the court can**

**exercise its discretion against making an appointment.'** (In re Richard E., supra, 21 Cal.3d at pp. 354-355.)" (Emphasis added)

"We recognize there is a distinction between this case and dependency proceedings to terminate a parent-child relationship, because Family Code section 7861 (fn. 8, ante) expressly requires the court to consider whether the interests of the child require the appointment of counsel.

"Section 1471(b) . . . does not expressly require the court to consider whether the interests of the conservatee or proposed conservatee require appointment of counsel. However, **section 1471(b) implicitly so requires when the court is presented with information in a court investigator's report or other source raising the issue.**" (Emphasis added)

"[C]ommunication skills are not a prerequisite for appointment of counsel under section 1471(b)."

**Comment:** Based on statistical knowledge that most conservatorship petitions are granted, coupled with information in the petition and related attachments about the proposed conservatee's actual or alleged cognitive and communication disabilities, the court is put on notice that the proposed conservatee is likely to lack the ability to effectively protect his or her own interests and effectively communicate with the court and all participants in the proceeding. Therefore, once the petition is filed, the court knows that ensuring access to justice, as required by the ADA and due process, can only be achieved through the appointment of counsel. Therefore, it would be an abuse of discretion for the court not to appoint counsel absent an affirmative finding that access to justice can be achieved through other means.

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1979

CALIFORNIA LAW REVISION COMMISSION  
Stanford Law School  
Stanford, California 94305

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### NOTE

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Cite this pamphlet as *Annual Report, 15 CAL. L. REVISION COMM'N REPORTS 1001 (1980)*.

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**LEGISLATIVE HISTORY OF  
RECOMMENDATIONS  
SUBMITTED TO 1979 LEGISLATIVE SESSION**

The Commission recommended one concurrent resolution and eight bills for enactment at the 1979 session. The concurrent resolution was adopted and seven of the eight bills were enacted.

**Creditors' Remedies**

Three bills relating to creditors' remedies were recommended by the Commission for enactment at the 1979 session.

**Wage garnishment.** Assembly Bill 11, which became Chapter 66 of the Statutes of 1979, was introduced by Assemblyman Alister McAlister to delay the operative date of and make technical changes in the wage garnishment legislation enacted in 1978 upon recommendation of the Law Revision Commission. See 1978 Cal. Stats. ch. 1133; *Recommendation Relating to Wage Garnishment*, 13 Cal. L. Revision Comm'n Reports 1703 (1976). Chapter 66 delays the operative date of the wage garnishment legislation to January 1, 1980, and revises provisions relating to service of notices and documents. The bill was enacted as introduced.

**Effect of new bankruptcy law on the Attachment Law.** Assembly Bill 617, which became Chapter 177 of the Statutes of 1979, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Effect of New Bankruptcy Law on the Attachment Law* (February 1979), published as Appendix II to this Report. The bill was enacted as introduced.

**Confessions of judgment.** Assembly Bill 714, which became Chapter 568 of the Statutes of 1979, was introduced by Assemblywoman Maxine Waters to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Confessions of Judgment* (March 1979), published as Appendix III to this Report. The bill was enacted as introduced.

**Guardianship-Conservatorship Revision**

Three bills—Assembly Bills 167, 212, and 261—were introduced by Assemblyman McAlister to effectuate the Commission's recommendations on this subject. See *Recommendation Relating to Guardianship-Conservatorship Law*, 14 Cal. L. Revision Comm'n Reports 501 (1978). A number of substantive, technical, and clarifying amendments were made

before Assembly Bills 167 and 261 were enacted. These amendments are not listed here because the Commission, in cooperation with the California Continuing Education of the Bar, plans to publish the new law as enacted.

The Assembly Judiciary Committee and the Senate Judiciary Committee adopted special reports revising the official Comments to Assembly Bills 167 and 261. See *Report of Assembly Committee on Judiciary on Assembly Bills Nos. 261 and 167*, Assembly J. (May 9, 1979) at 4341, republished as Appendix IV to this Report; *Report of Senate Committee on Judiciary on Assembly Bill No. 261*, Senate J. (July 20, 1979) at 6084, republished as Appendix V to this Report.

Assembly Bill 261, which proposed the enactment of a new guardianship-conservatorship law, was enacted after numerous amendments as Chapter 726 of the Statutes of 1979.

Assembly Bill 167, making changes in various codes to conform to the new guardianship-conservatorship law, was enacted after a number of amendments as Chapter 730 of the Statutes of 1979.

Assembly Bill 212, which proposed the inclusion in the Probate Code of standard construction provisions found in various other California codes, was enacted as Chapter 165 of the Statutes of 1979. The bill was enacted as introduced.

#### **Ad Valorem Property Taxes**

Assembly Bill 135, which became Chapter 31 of the Statutes of 1979, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Ad Valorem Property Taxes in Eminent Domain Proceedings*, 14 Cal. L. Revision Comm'n Reports 291 (1978).

After the bill was introduced, the following amendment was made: Revenue and Taxation Code Section 5082 was amended to substitute the word "acquiring" for the word "public" in subdivisions (a), (b), and (c). Technical amendments were also made.

#### **Security for Costs**

Assembly Bill 145 was introduced by Assemblyman Alister McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Security for Costs*, 14 Cal. L. Revision Comm'n Reports 319 (1978). The bill was not enacted. The Commission plans to submit the recommended legislation for enactment by the 1980 Legislature.



proceedings under this division. Some sections of this division incorporate by reference and apply the procedures applicable to executors or administrators which include Section 1200 concerning notice. However, Section 1469 provides that notice is to be given under this chapter rather than as provided in Section 1200. For provisions of this division adopting procedures applicable to executors or administrators, see Sections 2543 (manner of sale) and 2546 (mines and mining claims). See also Section 2100 (law governing where no specific provision of this division applicable).

Subdivision (b) is an exception to the provisions of the sections listed above which incorporate provisions applicable to executors or administrators.

#### **§ 1471. Mandatory appointment of legal counsel**

**Comment.** Section 1471 specifies those instances where appointment of counsel is required under this division. Compensation of counsel appointed under Section 1471 is governed by Section 1472.

Paragraphs (1) and (2) of subdivision (a) continue the substance of the first paragraph of former Section 2006. Paragraph (3) of subdivision (a) continues the substance of the third paragraph of former Section 1851.1. See also Section 1852. Paragraph (4) requires appointment of legal counsel upon request of the conservatee in proceedings under Sections 1890-1901 affecting the legal capacity of the conservatee. Paragraph (5) continues the substance of a portion of the second sentence of the third paragraph of former Section 2201.

Subdivision (b) requires the appointment of legal counsel in the cases listed in subdivision (a) where the conservatee or proposed conservatee does not request the appointment of legal counsel but the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee. Although the court is given discretionary authority under Section 1470 to appoint legal counsel where the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect a person's interests, the appointment under Section 1471(b) is mandatory and makes Section 1472 applicable. Sections 1471-1472 permit appointment of the public defender, compensation of legal counsel by the county in cases where the person furnished counsel is determined by the court

to lack the ability to pay, and installment payments. These provisions are not found in Section 1470 which provides for discretionary appointment of private legal counsel. Subdivision (b) is based in part on the fourth paragraph of former Section 1851.1 (termination of conservatorship or removal of conservator), with the addition of the language authorizing the court to act on information from whatever source it may have been received.

Appointment of the public defender or private counsel under Sections 1471-1472 is also required under some circumstances in a proceeding under Section 1852 (removal of conservator, restoration of conservatee's right to register to vote, making, modification, or revocation of order affecting conservatee's legal capacity, termination of conservatorship), Chapter 3 (commencing with Section 3100) of Part 6 (transaction involving community or homestead property—Section 3140), or Part 7 (commencing with Section 3200) (authorization of medical treatment of an adult who does not have conservator of the person—Section 3205). See also Gov't Code § 27706 (duty of public defender to represent indigent person).

#### **§ 1472. Compensation of mandatory court-appointed counsel**

**Comment.** Section 1472 applies where legal counsel is appointed under Section 1471. The section is based on the third paragraph of former Section 2006, with the addition of paragraph (3) of subdivision (a). Section 1472 also applies when legal counsel is appointed under Section 1852 (removal of conservator, restoration of conservatee's right to register to vote, making, modification, or revocation of order affecting conservatee's legal capacity, termination of conservatorship), 3140 (transaction involving community or homestead property) or 3205 (authorization of medical treatment for adult without conservator).

Section 1472 does not refer to the person's "present" ability to pay as did former Section 2006. This omission permits the court to order payment if the person furnished counsel has ability to pay later. This change is consistent with the policy of the 1978 amendments to comparable provisions in Penal Code Section 987.8 and Government Code Section 27712. See 1978 Cal. Stats. ch. 1134.

# **GUARDIANSHIP- CONSERVATORSHIP LAW**

with  
Official Comments

June 1980

California Law Revision Commission  
Stanford Law School  
Stanford, California 94305

Published in Cooperation With  
California Continuing Education of the Bar

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Cite this pamphlet as *Guardianship-Conservatorship Law*,  
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resides in California, the minor may nominate a guardian; however, the court must be satisfied that guardianship is necessary or convenient and that the nominee is a suitable person before it approves the nominee.<sup>55</sup> The proposed law does not continue the provision for nomination of a guardian of the estate by the minor. Instead, a minor who is 14 years of age or older is permitted to file a petition for the appointment of a guardian, specifying in the petition the name of the proposed guardian; and, whether or not the minor is the petitioner, the preference of a minor who is of sufficient age to form an intelligent preference is to be considered. But the minor's preference will not override the court's judgment in selecting a guardian of the estate consistent with the minor's best interest.

### ESTABLISHMENT OF CONSERVATORSHIP

The proposed law reorganizes and clarifies the existing provisions relating to the establishment of the conservatorship and makes a few substantive changes. No substantive change is made in the existing provisions that specify the persons for whom a conservator may be appointed, *but Assembly Bill 2898 relating to limited conservators provides special rules governing the establishment of a limited conservatorship.*<sup>55a</sup> The important substantive changes made in other provisions are noted below.

#### Nomination of Conservator

The nominee of the proposed conservatee or of specified relatives is entitled to a preference for appointment under the existing statute.<sup>56</sup> There is no express provision in the existing statute for testamentary appointment of a conservator.<sup>57</sup>

<sup>55</sup> Guardianship of Kentera, 41 Cal.2d 639, 642-43, 262 P.2d 317, 319 (1953); Guardianship of Turk, 194 Cal. App.2d 736, 741-42, 15 Cal. Rptr. 256, 260 (1961); Guardianship of Rose, 171 Cal. App.2d 677, 680-81, 340 P.2d 1045, 1047-48 (1959). See Prob. Code §§ 1405, 1406; Guardianship of Kostors, 167 Cal. App.2d 389, 390-91, 334 P.2d 305, 306 (1959).

<sup>55a</sup> See discussion of "Limited Conservatorships," *infra*.

<sup>56</sup> See Prob. Code § 1753.

<sup>57</sup> Schlesinger, *Testamentary Guardianships for Minors and Incompetents*, in California Will Drafting § 10.8, at 312 (Cal. Cont. Ed. Bar 1965). If faced with the question under existing law, the court may well give consideration to a testamentary designation of

The proposed law continues the rule of existing law<sup>81</sup> that the marriage of a minor does not preclude appointment of a guardian of the estate or terminate a guardianship of the estate.<sup>82</sup>

## LEGAL COUNSEL FOR WARD OR CONSERVATEE

### Mandatory Appointment of Counsel

**Conservatorship proceedings.** Under existing law, the court must appoint legal counsel (the public defender or some other attorney) if the conservatee or proposed conservatee chooses to be represented by legal counsel but is unable to retain one in a proceeding for:

- appointment of a conservator.<sup>83</sup>
- removal of a temporary conservatee from his or her place of residence.<sup>84</sup>
- termination of the conservatorship.<sup>85</sup>

[Material omitted.]

*The new law continues these provisions and, in addition, permits the court to appoint counsel in any of these proceedings if the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee. A new requirement would be added by Assembly Bill 2898 that the court appoint legal counsel for a ward or conservatee not having legal counsel in a proceeding for a court order requiring medical treatment.*

<sup>81</sup> See Prob. Code §§ 1433, 1500, 1590(1).

<sup>82</sup> It will thus be unnecessary to inquire into the mental capacity of a married minor where the proceedings are for protection of the estate. The minority of the proposed ward, together with a showing of the need for appointment of a guardian of the estate, will constitute the grounds for such an appointment. The result that a married but mentally disabled minor may simultaneously be subject to a conservatorship of the person and a guardianship of the estate, though seemingly anomalous, is recommended as a practical resolution of the conflicting policies involved.

<sup>83</sup> Prob. Code § 2006. See also Prob. Code §§ 1754, 1754.1 (advice of rights). The new law breaks down the proceeding for the appointment of a conservator into three aspects: (1) establishment of the conservatorship, (2) selection of the conservator, and (3) orders expanding the conservatee's legal capacity and modification or revocation of those orders. The right to appointed counsel under the new law applies to all three aspects of the proceeding.

<sup>84</sup> See Prob. Code § 2201.

<sup>85</sup> Prob. Code § 2006.

*Assembly Bill 2898 also requires that the court appoint legal counsel for a proposed limited conservatee not having legal counsel.*

A special provision of existing law provides for appointment of legal counsel to represent the conservatee to bring proceedings, the need for which is revealed by the biennial review.<sup>86</sup> The proposed law continues this requirement.

The proposed law also continues the existing requirements that the conservatee or proposed conservatee pay the cost of appointed counsel to the extent able to pay<sup>87</sup> and, if unable to pay, that the county bear the cost of the public defender or make the payment to appointed private counsel.<sup>88</sup>

**Proceedings in lieu of conservatorship.** Existing law provides for court authorization of a proposed transaction involving community or homestead property where one of the spouses is incompetent without the need to establish a guardianship or conservatorship.<sup>89</sup> Existing law also provides for a person to represent the incompetent spouse in the proceeding<sup>90</sup> but makes no provision for the appointment of counsel for the incompetent spouse. The proposed law continues these existing provisions in revised form<sup>90a</sup> and adds a requirement that the court appoint the public defender or private counsel for the spouse alleged to lack legal capacity where he or she . . . is unable to retain counsel . . . and requests appointed counsel. This added

<sup>86</sup> Prob. Code § 1851.1. The court is required to notify the attorney of record for the conservatee, if any, or to appoint legal counsel to represent the conservatee if (1) the court investigator determines that the conservatee wishes to petition the court for termination of the conservatorship, for removal of the conservator, or for restoration of the right to vote or (2) the court determines that a hearing for termination or removal is in the best interests of the conservatee.

<sup>87</sup> Prob. Code § 2006.

<sup>88</sup> Probate Code Section 2006 refers to the person's "present ability to pay," while the proposed law refers merely to the person's "ability to pay." Thus, under the proposed law the court may take into account the person's future economic prospects in determining whether the person should be ordered to pay all or a portion of the costs of appointed counsel.

<sup>89</sup> Prob. Code §§ 1435.1-1435.18.

<sup>90</sup> An incompetent spouse may in certain instances be represented by the Director of Mental Health or the Director of Developmental Services (See Prob. Code § 1435.6) or the public guardian, public administrator, or a guardian ad litem (Prob. Code §§ 1435.5, 1435.7).

<sup>90a</sup> See discussion in text accompanying notes 246-65 *infra*.

proposed change of residence, the court may excuse the temporary conservatee from attending the hearing. This will avoid the need to produce the temporary conservatee at the hearing when to do so would serve no useful purpose.

The proposed law also conforms the standard for excusing the temporary conservatee from the hearing for medical reasons to the standard applicable on appointment of a conservator.<sup>113</sup>

### LIMITED CONSERVATORSHIPS

*In 1980, Assembly Bill 2898 proposed that the guardianship-conservatorship law be revised to provide for the establishment of a limited conservatorship for a developmentally disabled adult.<sup>113a</sup> The proposed limited conservatee, with his or her consent, is assessed at a regional center for persons with developmental disabilities and a report is furnished by the regional center to the court concerning the proposed limited conservatee's disability, if any.<sup>113b</sup> If a limited conservatorship is established,<sup>113c</sup> the powers and duties of the limited conservator are specified so as to permit the limited conservatee to care for himself or herself or to manage his or her financial resources commensurate with his or her ability to do so.<sup>113d</sup> In any proceedings to establish a limited conservatorship, the court is required to appoint the public defender or private legal counsel to represent the proposed limited conservatee.<sup>113e</sup>*

<sup>113</sup> See Prob. Code § 1754. "Medical inability" to attend the hearing is substituted for jeopardy to the temporary conservatee's physical survival. See also discussion in text accompanying notes 63-64 *supra*.

<sup>113a</sup> The bill amended Sections 1471, 1801, 1821, 1822, 1823, 1824, 1828, 1829, 1830, 1851, 1860, 1872, 1873, 1890, 2351, 2400, 2401, 2405, 2600, and 3004 of the Probate Code and added Sections 1410, 1411, 1420, 1431, 1827.5, 1860.5, and 2351.5 to the Probate Code.

<sup>113b</sup> See Sections 1822(f), 1827.5, 1828.5.

<sup>113c</sup> See Section 1801(d).

<sup>113d</sup> See Sections 1821(h), 1828.5, 1830(b), 2351.5. As to termination of a limited conservatorship, see Section 1860.5.

<sup>113e</sup> See Section 1471(c).



## POWERS AND DUTIES OF GUARDIAN OR CONSERVATOR OF THE PERSON

### General Duties

A guardian of the person has the care and custody of the ward's person, has charge of the education of a minor ward, may fix the ward's residence . . . at any place within this state but not elsewhere without permission of court, and must advise the court promptly in writing of all changes in the ward's residence . . .<sup>114</sup> A conservator of the person has the same powers and duties except that the conservator lacks express authority to provide for the conservatee's education.<sup>115</sup> The proposed law expressly grants this power to conservators since it may be desirable to provide for the education of the conservatee.

*The new law permits the court to limit the powers and duties that a conservator of the person otherwise would have. The new law also provides that an order giving permission to the guardian or conservator to fix the residence of the ward or conservatee outside California must also require either that the ward or conservatee be returned to California within four months or such longer or shorter period as is provided in the order or that a guardianship or conservatorship proceeding be commenced in the place of the new residence.*

*The powers and duties of a limited conservator under Assembly Bill 2898 differ significantly from those of a conservator generally. These differences are not discussed here.<sup>114a</sup>*

<sup>114</sup> Prob. Code § 1500. Existing law refers to the "residence and domicile" of the ward or conservatee. See Prob. Code §§ 1500, 1851. The new law omits "and domicile."

<sup>114a</sup> In 1980, new provisions were proposed by Assembly Bill 2898 governing the powers and duties of a limited conservator. See discussion under heading "Limited Conservatorships," *supra*.

<sup>115</sup> See Prob. Code § 1851. A conservator of the person also has "control" of the conservatee. Although this word does not appear in the guardianship statute, the omission appears to have no practical significance. W. Johnstone & C. Zillgitt, California Conservatorships § 5.3, at 152-53 (Cal. Cont. Ed. Bar 1968). The proposed law adds "control" to the authority of a guardian of the person for purposes of uniformity.

**OUTLINE**  
**OF**  
**GUARDIANSHIP-CONSERVATORSHIP LAW**  
**DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP,**  
**AND OTHER PROTECTIVE PROCEEDINGS**  
**PART 1. DEFINITIONS AND GENERAL PROVISIONS**

**CHAPTER 1. DEFINITIONS**

- § 1400. Application of definitions
- § 1403. Absentee
- § 1406. Account in an insured savings and loan association
- § 1410. Conservator
- § 1411. Conservatee
- § 1418. Court
- § 1419. Court investigator
- § 1420. Developmental disability
- § 1424. Interested person
- § 1430. Petition
- § 1431. Proceedings to establish a limited conservatorship
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**§ 1431. Proceedings to establish a limited conservatorship**

1431. "Proceedings to establish a limited conservatorship" include proceedings to modify or revoke the powers or duties of a limited conservator.

[Added by 1980 Assembly Bill 2898]

**§ 1471. Mandatory appointment of legal counsel**

1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of such person in the following proceedings under this division:

(1) A proceeding to establish a conservatorship or to appoint a proposed conservator.

(2) A proceeding to terminate the conservatorship.

(3) A proceeding to remove the conservator.

(4) A proceeding for a court order affecting the legal capacity of the conservatee.

(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of such person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.

(c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public

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defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for such legal service if he or she is able. This subdivision shall apply irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

[Amended by 1980 Assembly Bill 2898]

CROSS-REFERENCES

Definition, proceedings to establish a limited conservatorship, § 1431  
 Duty of public defender to represent indigent person, Gov't Code § 27706  
 Removal of temporary conservatee from place of residence, §§ 2253-2254

**§ 1801. Showing required for appointment generally**

1801. Subject to Section 1800:

(a) A conservator of the person may be appointed for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter, except as provided for such person as described in subdivision (d).

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, except as provided for such person as described in subdivision (d). Substantial inability may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

(d) A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult.

(1) Such limited conservatorships shall be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations.

(2) The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal

and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator.

(3) The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives and that such services shall be the underlying mandate of this division in its application to adults alleged to be developmentally disabled.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Definition, developmental disability, § 1420

#### § 1821. Contents of petition

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name and address of the proposed conservator and the name and address of the proposed conservatee, and shall state the reasons why the appointment is required.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the proposed conservatee within the second degree.

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

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

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

**§ 1471. Mandatory appointment of legal counsel**

1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interest of such person in the following proceedings under this division:

(1) A proceeding to establish a conservatorship or to appoint a proposed conservator.

(2) A proceeding to terminate the conservatorship.

(3) A proceeding to remove the conservator.

(4) A proceeding for a court order affecting the legal capacity of the conservatee.

(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not such person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of such person in any proceeding listed in subdivision (a) if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.

**Note.** Section 1471 would be amended by Assembly Bill 2898 of the 1980 session. At the time this publication was printed, this bill had not been enacted, but it appeared likely that the bill would be enacted. The text of the section as amended by Assembly Bill 2898 is set out in the Exhibit at the end of this publication.

## Legislative Committee Comment—Assembly

**Comment.** Section 1471 specifies those instances where appointment of counsel is required under this division. Compensation of counsel appointed under Section 1471 is governed by Section 1472.

Paragraphs (1) and (2) of subdivision (a) continue the substance of the first paragraph of former Section 2006. Paragraph (3) of subdivision (a) continues the substance of the third paragraph of former Section 1851.1. See also Section 1852. Paragraph (4) requires appointment of legal counsel upon request of the conservatee in proceedings under Sections 1890-1901 affecting the legal capacity of the conservatee. Paragraph (5) continues the substance of a portion of the second sentence of the third paragraph of former Section 2201.

Subdivision (b) requires the appointment of legal counsel in the cases listed in subdivision (a) where the conservatee or proposed conservatee does not request the appointment of legal counsel but the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee. Although the court is given discretionary authority under Section 1470 to appoint legal counsel where the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect a person's interests, the appointment under Section 1471(b) is mandatory and makes Section 1472 applicable. Sections 1471-1472 permit appointment of the public defender, compensation of legal counsel by the county in cases where the person furnished counsel is determined by the court to lack the ability to pay, and installment payments. These provisions are not found in Section 1470 which provides for discretionary appointment of private legal counsel. Subdivision (b) is based in part on the fourth paragraph of former Section 1851.1 (termination of conservatorship or removal of conservator), with the addition of the language authorizing the court to act on information from whatever source it may have been received.

## EXHIBIT

### AMENDMENTS AND ADDITIONS MADE BY ASSEMBLY BILL 2898

Editorial note. Set out below are the sections of the guardianship-conservatorship law affected by Assembly Bill 2898 of the 1979-80 Regular Session of the California Legislature. This bill, which related to limited conservatorships, had been reported favorably by the Senate Finance Committee but was awaiting action by the Senate when this publication was sent to the printer. The sections set out below reflect the additions and amendments that would be made by Assembly Bill 2898 as that bill was recommended with amendments by the Senate Finance Committee on July 7, 1980. Later amendments to the bill, if any, are not reflected in the sections set out below.

#### § 1410. Conservator

1410. "Conservator" includes a limited conservator.

[Added by 1980 Assembly Bill 2898]

#### § 1411. Conservatee

1411. "Conservatee" includes a limited conservatee.

[Added by 1980 Assembly Bill 2898]

#### § 1420. Developmental disability

1420. "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

[Added by 1980 Assembly Bill 2898]



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

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

(h) In the case of an allegedly developmentally disabled adult a petitioner 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.

[Amended by 1980 Cal. Stats. ch. 89 and 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Additional contents of petition for conservatorship of absentee, §§ 1813, 1841  
 Definition, developmental disability, § 1420  
 Independent exercise of powers, § 2592  
 Joint conservators, § 2105  
 Nonprofit charitable corporation as conservator, § 2104  
 One conservator for several conservatees, § 2106  
 Petition must be verified, § 1450

#### § 1822. Notice of hearing

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 subdivisions (b), (c), and (d) of this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons (other than the petitioner or persons joining in the petition):

(1) The spouse, 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 petition is for the appointment of a limited conservator, the notice or notices required by this section shall be accompanied by a copy of the petition.

(f) The court shall order that notice be given to the regional center identified in Section 1827.5.

[Amended by 1980 Cal. Stats. ch. 89 and 1980 Assembly Bill 2898]

#### § 1823. Citation to proposed conservatee

1823. (a) If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of hearing.

(b) The citation shall include a statement of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for personal needs or to manage financial resources and, by reason thereof, a conservator may be appointed for the person or estate or both.

(2) Such adjudication may affect or transfer to the conservator the proposed conservatee's right to contract, in whole or in part, to manage and control property, to give informed consent for medical treatment, and to fix a residence.

(3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.

(4) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the

proposed conservatee and will answer questions concerning the explanation.

(5) The proposed conservatee has the right to appear at the hearing and to oppose the petition, and in the case of an alleged developmentally disabled adult, to oppose the petition in part, by objecting to any or all of the requested duties or powers of the limited conservator.

(6) The proposed conservatee has the right to choose and be represented by legal counsel and has the right to have legal counsel appointed by the court if unable to retain legal counsel.

(7) The proposed conservatee has the right to a jury trial if desired.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472

#### Definitions

Court, § 1418

Court investigator, § 1419

Developmental disability, § 1420

#### § 1824. Service on proposed conservatee of citation and petition

1824. The citation and a copy of the petition shall be served on the proposed conservatee at least 30 days before the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the proposed conservatee is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.

[Amended by 1980 Assembly Bill 2898]

#### § 1827.5. Assessment and report in case of proposed limited conservatee

1827.5. In the case of any proceeding to establish a limited conservatorship, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and

Institutions Code. Such regional center shall submit a written report of its findings and recommendations to the court with copies to the proposed limited conservatee and to the petitioner. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability, if any. The findings and recommendations of the regional center shall not be binding upon the court.

[Added by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

##### Definitions

Court, § 1418

Proceedings to establish a limited conservatorship, § 1431

Limited conservatorship, presumption against incompetency, § 1801

#### § 1828. Information to proposed conservatee by court

1828. (a) Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of all of the following:

- (1) The nature and purpose of the proceeding.
- (2) The establishment of a conservatorship is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources, or both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights.
- (3) The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.
- (4) The identity of the proposed conservator.
- (5) The nature and effect on the conservatee's basic rights of any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, the specific effects of each limitation requested in such order.
- (6) The proposed conservatee has the right to oppose the proceeding, 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.

(b) After the court so informs the proposed conservatee and prior to the establishment of the conservatorship, the court shall consult the proposed conservatee to determine the proposed conservatee's opinion concerning all of the following:

- (1) The establishment of the conservatorship.
- (2) The appointment of the proposed conservator.
- (3) Any order requested under Chapter 4 (commencing with Section 1870), and in the case of an allegedly developmentally disabled adult, of each limitation requested in such order.

(c) This section does not apply where both of the following conditions are satisfied:

- (1) The proposed conservatee is absent from the hearing and is not required to attend the hearing under the provisions of subdivision (a) of Section 1825.
- (2) Any showing required by Section 1825 has been made.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Appointment of legal counsel for proposed conservatee, §§ 1471-1472

#### Definitions

Court, § 1418

Developmental disability, § 1420

Disqualification of conservatee from voting, Elec. Code §§ 707.5-707.6

#### Limited conservatee

Additional information, § 1828.5

Mandatory appointment of legal counsel, § 1471

### § 1828.5. Procedure on petition for limited conservatorship

1828.5. (a) At the hearing on the petition for appointment of a limited conservator for an allegedly developmentally disabled adult, the court shall do each of the following:

- (1) Inquire into the nature and extent of the general intellectual functioning of the individual alleged to be developmentally disabled.
- (2) Evaluate the extent of the impairment of his or her adaptive behavior.
- (3) Ascertain his or her capacity to care for himself or herself and his or her property.

(4) Inquire into the qualifications, abilities, and capabilities of the person seeking appointment as limited conservator.

(5) If a report by the regional center, in accordance with Section 1827.5, has not been filed in court because the proposed limited conservatee withheld his or her consent to assessment by the regional center, the court shall determine the reason for withholding such consent.

(b) If the court finds that the proposed limited conservatee possesses the capacity to care for himself or herself and to manage his or her property as a reasonably prudent person, the court shall dismiss the petition for appointment of a limited conservator.

(c) If the court finds that the proposed limited conservatee lacks the capacity to perform some, but not all, of the tasks necessary to provide properly for his or her own personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court shall appoint a limited conservator for the person or the estate or the person and the estate, and shall define the powers and duties of the limited conservator so as to permit the developmentally disabled adult to care for himself or herself or to manage his or her financial resources commensurate with his or her ability to do so.

(d) Prior to the appointment of a limited conservator for the person or estate or person and estate of a developmentally disabled adult, the court shall inform the proposed limited conservatee of the nature and purpose of the limited conservatorship proceeding, that the appointment of a limited conservator for his or her person or estate or person and estate will result in the transfer of certain rights set forth in the petition and the effect of such transfer, the identity of the person who has been nominated as his or her limited conservator, that he or she has a right to oppose such proceeding, and that he or she has a right to have the matter tried by jury. After communicating such information to the person and prior to the appointment of a limited conservator, the court shall consult the person to determine his or her opinion concerning the appointment.

[Added by 1990 Assembly Bill 2898]

## CROSS-REFERENCES

## Definitions

Court, § 1418

Developmental disability, § 1420

Presumption against incompetency, § 1801

**§ 1829. Persons who may support or oppose petition**

1829. The proposed conservatee, the spouse or any relative or friend of the proposed conservatee, or any other interested person including, but not limited to, any officer or agency of this state, or of the United States, or any authorized representative thereof, may appear at the hearing to support or oppose the petition.

[Amended by 1980 Assembly Bill 2898]

**§ 1830. Contents of order appointing conservator**

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 shall 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 above-specified property by the limited conservator which the court shall specifically and expressly grant.

[Amended by 1980 Assembly Bill 2898]

#### CROSS-REFERENCES

Appealable orders, § 2750

#### Definitions

Court investigator, § 1419

Developmental disability, § 1420

#### Limited conservatorships

Limitation on using, § 1801

Presumption against incompetency, § 1801

Order of appointment, additional conditions, §§ 2358, 2402

### § 1851. Visitation and findings by court investigator

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.



(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

[Amended by 1980 Assembly Bill 2898]

**§ 1860. When conservatorship terminates generally**

1860. (a) A conservatorship continues until terminated by the death of the conservatee or by order of the court.

(b) If a conservatorship is established for the person of a married minor, the conservatorship does not terminate if the marriage is dissolved or is adjudged a nullity.

(c) This section shall not apply to limited conservatorships.

[Amended by 1980 Assembly Bill 2898]

**CROSS-REFERENCES**

**Allowance for**

Care of estate after conservatee's death, § 2623

Disbursements after termination of conservatorship, § 2623

Care of estate after death of conservatee, § 2467

Definition, court, § 1418

Disposition of estate after death of conservatee, § 2631

Limited conservatorship, termination, §§ 1851, 1860.5

Termination of proceeding upon

Exhaustion of estate, § 2626

Transfer of all assets to foreign guardian or conservator, § 2808

**§ 1860.5. Termination of limited conservatorship**

1860.5. (a) Every limited conservatorship shall continue until the authority of the conservator is terminated by one of the following:

(1) The death of the limited conservator.

(2) The death of the limited conservatee, subject to the duty of the limited conservator to see to the custody and conservation of the estate pending the delivery thereof to the person or representative of the limited conservatee's estate.

(3) By an order appointing a conservator of the former limited conservatee.

(4) By an order of the court stating that the limited conservatorship is no longer necessary for the limited conservatee and terminating the limited conservatorship.

(b) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply

by verified petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship terminated or to have specific powers and duties of the limited conservatorship revoked. The petition shall state the facts alleged to establish that the limited conservatorship is no longer required. The petition shall be set for hearing and notice thereof shall be given to the persons in the same manner as provided in this chapter for a petition for the appointment of a limited conservator. The limited conservator in such case, if he or she is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with notice. The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil action, including trial by jury if demanded. If it is determined that the limited conservatorship is no longer required, the limited conservatorship shall cease. If the petition alleges and if it is determined that the limited conservatee is able to properly care for himself or herself and for his or her property, the court shall make such finding and enter judgment accordingly. The limited conservator may at the hearing, or thereafter on further notice and hearing, be discharged and his or her bond exonerated upon the settlement and approval of his final account by the court.

[Added by 1980 Assembly Bill 2898]

**§ 1872. Effect of conservatorship on legal capacity of conservatee**

1872. (a) Except as otherwise provided in this article, the appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to

enter into or make any transaction that binds or obligates the conservatorship estate.

(b) This section does not apply to limited conservatees.

(c) Except as otherwise provided in the order of the court appointing a limited conservator, the appointment does not limit the legal capacity of the limited conservatee to enter into transactions or types of transactions.

[Amended by 1990 Assembly Bill 2898]

#### CROSS-REFERENCES

Definition, transaction, § 1870

Effect of conservatorship on capacity to marry, § 1900

Limited conservatorships, §§ 1801, 1821, 1823, 1827.5, 1828, 1828.5, 1830, 1873, 2351.5, 2401, 2405, 3004, 3053

#### § 1873. Court order affecting legal capacity of conservatee

1873. (a) In the order appointing the conservator or upon a petition filed under Section 1874, the court may by order authorize the conservatee, subject to Section 1876, to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under Section 1872 by broadening or restricting the power of the conservatee to enter into such transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

(b) In an order made under this section, the court may include such limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following:

(1) A requirement that for specific types of transactions or for all transactions authorized by the order, the conservatee obtain prior approval of the transaction by the court or conservator before exercising the authority granted by the order.

(2) A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to

the authority of the order if the transaction is not one into which a reasonably prudent person might enter.

(c) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(d) An order under this section continues in effect until the earliest of the following times:

(1) The time specified in the order, if any.

(2) The time the order is modified or revoked.

(3) The time the conservatorship of the estate is terminated.

(e) An order under this section may be modified or revoked upon petition filed by the conservator, conservatee, the spouse of the conservatee, or any relative or friend of the conservatee, or any interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

[Amended by 1980 Assembly Bill 2898]

**§ 1890. Time of making an order concerning capacity of conservatee to consent to medical treatment; petitions for orders under this chapter in case of limited conservatee**

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

[Amended by 1980 Assembly Bill 2898]

**§ 2351. Care, custody, control, and education**

2351. (a) Subject to subdivision (b), the guardian or conservator, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the ward or conservatee.

(b) Where the court determines that it is appropriate in the circumstances of the particular conservatee, the court, in its discretion, may limit the powers and duties that the conservator would otherwise have under subdivision (a) by an order stating:

(1) The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee; or

(2) The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have under subdivision (a).

(c) An order under this section (1) may be included in the order appointing a conservator of the person or (2) may be made, modified, or revoked upon a petition subsequently filed, notice of the hearing on such petition having been given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

[Amended by 1980 Assembly Bill 2896]

**§ 2351.5. Powers of limited conservator**

2351.5. (a) The limited conservator has the care, custody, and control of the limited conservatee, except that a limited conservator shall not have any of the following powers or controls over the limited conservatee unless such powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator:

(1) To fix the residence or specific dwelling of the limited conservatee.

(2) Access to the confidential records and papers of the limited conservatee.

(3) To consent or withhold consent to the marriage of the limited conservatee.

(4) The right of the limited conservatee to contract.

(5) The power of the limited conservatee to give or withhold medical consent.

(6) The limited conservatee's right to control his own social and sexual contacts and relationships.

(7) Decisions concerning the education of the limited conservatee.

The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence.

(b) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by verified petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (a) above. The petition shall state the facts alleged to establish that the limited conservatorship should be modified. The granting or elimination of such powers shall be discretionary with the court.

(c) The petition shall be set for hearing and notice thereof given to the persons in the same manner as is provided in this chapter for a petition for the appointment of a limited conservator. The limited conservator, if he or she is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with such notice. The limited conservator or any relative or friend of the limited

conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil action, including trial by jury if demanded. If any such powers are granted or eliminated, new letters of limited conservatorship shall be issued reflecting such change in the limited conservator's powers.

[Added by 1980 Assembly Bill 2898]

**§ 2400. Definitions**

2400. As used in this chapter:

(a) "Conservator" means the conservator of the estate, or the limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator.

(b) "Guardian" means the guardian of the estate.

[Amended by 1980 Assembly Bill 2898]

**§ 2401. Duty to manage estate using ordinary care and diligence**

2401. (a) The guardian or conservator, or limited conservator to the extent specifically and expressly provided in the appointing court's order, has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes use of ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The guardian or conservator:

(1) Shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised.

(2) Shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

[Amended by 1980 Assembly Bill 2898]

**§ 2405. Submitting disputed claim to commissioner, judge pro tempore, or probate judge for summary determination**

2405. If the guardian or conservator, or the limited conservator to the extent specifically and expressly

provided in the order appointing the limited conservator, doubts the correctness of any claim against the ward or conservatee or the estate or rejects a claim against the ward or conservatee or the estate, the guardian, conservator, or limited conservator may do either of the following:

(a) Enter into an agreement in writing with the claimant to refer the matter in controversy to a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The commissioner or referee shall have the powers of a judge pro tempore. The designated person shall proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The designated person shall make and file a decision in writing in which the facts found and conclusions of law shall be separately stated, and cause a copy thereof to be mailed promptly to the parties. Judgment shall be entered on the decision and shall be as valid and effective as if it had been rendered by a judge of the court in a suit against the guardian or conservator commenced by ordinary process.

(b) Enter into an agreement in writing with the claimant that a judge sitting in probate, pursuant to the agreement and with the written consent of the judge, both filed with the clerk, may hear and determine the matter in controversy pursuant to the procedure provided in subdivision (a).

[Amended by 1990 Assembly Bill 2898]

#### § 2600. Definitions

2600. As used in this chapter, unless the context otherwise requires:

(a) "Conservator" means the conservator of the estate, or the limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator.



(b) "Guardian" means the guardian of the estate.

[Amended by 1980 Assembly Bill 2898]

**§ 3004. Conservator**

3004. "Conservator" means conservator of the estate, or limited conservator of the estate to the extent that the powers and duties of the limited conservator are specifically and expressly provided by the order appointing the limited conservator, and includes the guardian of the estate of a married minor.

[Amended by 1980 Assembly Bill 2898]

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