

RESOLUTION 6-01-2002

DIGEST

Conservators: Appointment of Independent Professional Fiduciary or Corporate Fiduciary
Amends Probate Code section 1812 to allow courts to appoint an independent professional fiduciary or corporate fiduciary as conservator when family members file competing petitions.

RESOLUTIONS COMMITTEE RECOMMENDATION DISAPPROVE

Reasons:

This resolution amends Probate Code section 1812 to allow courts to appoint an independent professional fiduciary or corporate fiduciary as conservator when family members file competing petitions. This resolution should be disapproved because it is unnecessary.

Probate Code section 1812 establishes a definite and certain order of priority in the appointment of a conservator. It gives priority to the appointment of the closest relative in degree of consanguinity to the proposed conservatee, when that relative is competent, able and willing to serve. But that statutory priority is comes into play only when there is a tie, i.e., when there are multiple applicants for appointment who are equally qualified. (*Id.* at subd. (b).) It does not prevent the appointment of professional or corporate fiduciaries if they are better qualified than a family member. Indeed, probate courts routinely do so.

This resolution would expressly provide that a professional or corporate fiduciary may be appointed if in the best interests of the conservatee. That amendment is unnecessary, because the statute already provides the best interests of the proposed conservatee control the selection of a conservator (Prob. Code, § 1812, subd. (a)) and that a professional or corporate fiduciary may be appointed if it is better qualified than a family member (*id.* at subd (b)).

Moreover, to the extent that the resolution suggests that a professional or corporate fiduciary may be appointed whenever there is a dispute between two otherwise qualified family members, it would appear to undermine the statutory scheme of favor of qualified family members.

The proponent states that the purpose of this resolution is to overturn the court's decision in *Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390. However, in *Ramirez*, the proposed conservatee nominated a capable, willing and able relative to act as conservator and the court properly upheld that nomination.

SECTION/COMMITTEE REPORT

TRUST AND ESTATE SECTION

Recommendation: Oppose

Reasons: The Section did not believe that the Conservatorship of Ramirez required a legislative response. The current statutes provide the court with broad discretion to act in the best interests of the conservatee under Section 1812 of the Probate Code. While some aspects of the Ramirez decision may appear to limit discretion where the conservatee has nominated a conservator, the

Section believed that the any such appearance of limitation was the result of the peculiar facts and issues of that case.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Probate Code section 1812 to read as follows:

1 §1812

2 (a) Subject to Sections 1810 and 1813, the selection of a conservator of the person
3 or estate, or both, is solely in the discretion of the court and, in making the selection, the
4 court is to be guided by what appears to be for the best interests of the proposed
5 conservatee.

6 (b) Subject to Sections 1810 and 1813, of persons equally qualified in the opinion
7 of the court to appointment as conservator of the person or estate or both, preference is to
8 be given in the following order:

9 (1) The spouse or domestic partner of the proposed conservatee or the person
10 nominated by the spouse or domestic partner pursuant to Section 1811.

11 (2) An adult child of the proposed conservatee or the person nominated by the child
12 pursuant to Section 1811.

13 (3) A parent of the proposed conservatee or the person nominated by the parent
14 pursuant to Section 1811.

15 (4) A brother or sister of the proposed conservatee or the person nominated by the
16 brother or sister pursuant to Section 1811.

17 (5) Any other person or entity eligible for appointment as a conservator under this
18 code or, if there is no person or entity willing to act as a conservator, under the Welfare
19 and Institutions Code.

20 (c) The preference for any nominee for appointment under paragraphs (2), (3), and
21 (4) of subdivision (b) is subordinate to the preference for any other parent, child,
22 brother, or sister in that class.

23 (d) Notwithstanding the preference order for appointment of a conservator set forth
24 in this Section 1812, and the provisions of Sections 1810 and 1813, if competing
25 petitions for appointment are filed by family members, the court, in its discretion,
26 may appoint as conservator a private independent professional fiduciary or a
27 corporate fiduciary if determined to be in the best interests of the proposed
28 conservatee.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

Existing Law: Probate Code section 1812 lists the preferences for appointment as conservator, with family members listed first. Section 1810 provides for a nomination of conservator.

This Resolution: Amends Probate Code section 1812 by adding specific new non-family entities who may also be appointed as conservator and whose appointment may, in the court's discretion, take precedence.

The Problem: When there is a dispute between competing family members as to the preference order or qualifications of various proposed conservators, the court should have the discretion to appoint an impartial professional or corporate fiduciary, if it is in the best interests of the proposed conservatee, who is not a family member. This resolution seeks to legislatively overturn Conservatorship of Ramirez(2001) 90 Cal. App. 4th 390.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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