

Amendment to 03-10-03

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 2951 to read as follows:

1 §2951

2 The definitions contained in this section shall govern the construction of this chapter, unless
3 the context requires otherwise.

4 (a) "Declaration" means a document that substantially complies with the requirements of
5 Section 2954, and is signed by both a peace officer and ~~a supervisor from the county's adult~~
6 protective services agency ~~the judge or court officer who has been designated to act pursuant to~~
7 Section 6241 of the Family Code and provided to the public guardian in accordance with
8 subdivision (b) of Section 2952.

9 (b) "Elder person" means any person residing in this state, 65 years of age or older.

10 (c) "Financial abuse" means a situation described in Section 15610.30 of the Welfare and
11 Institutions Code.

12 (d) "Financial abuse POST training" means an elder financial abuse training course certified
13 by the Commission on Peace Officer Standards and Training.

14 (e) "Financial institution" means any bank, savings and loan, thrift, industrial loan company,
15 credit union, or any branch of any of these institutions doing business in the state, as defined by
16 provisions of the Financial Code.

17 (f) "Peace officer" means a sheriff, deputy sheriff, municipal police officer, or a peace
18 officer authorized under subdivision (b) of Section 830.1 of the Penal Code, duly sworn under the
19 requirements of state law, who satisfies any of the following requirements:

20 (1) The sheriff, deputy sheriff, municipal police officer, or peace officer authorized under
21 subdivision (b) of Section 830.1 of the Penal Code has completed or participated as a lecturer in a
22 financial abuse POST training program within the last 36 months. The completion of the course
23 may be satisfied by telecourse, video training tape, or other instruction. The training shall, at a
24 minimum, address relevant elder abuse laws, recognition of financial abuse and fraud, assessment of
25 mental competence in accordance with the standards set forth in Part 17 (commencing with Section
26 810) of the Probate Code, reporting requirements and procedures for the investigation of financial
27 abuse and related crimes, including neglect, and civil and criminal procedures for the protection of
28 victims. The course may be presented as part of a training program that includes other subjects or
29 courses.

30 (2) The sheriff, deputy sheriff, municipal police officer, or peace officer authorized under
31 subdivision (b) of Section 830.1 of the Penal Code, has consulted with a sheriff, deputy sheriff,
32 municipal police officer, or peace officer authorized under subdivision (b) of Section 830.1 of the
33 Penal Code, who satisfies the requirements of paragraph (1) concerning the declaration defined in
34 subdivision (a) and obtained the signature of that sheriff, deputy sheriff, municipal police officer, or
35 peace officer authorized under subdivision (b) of Section 830.1 of the Penal Code on a declaration
36 that substantially complies with the form described in Section 2954.

37 (g) "Property" means all personal property and real property of every kind belonging to, or
38 alleged to belong to, the elder.

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

RESOLUTION 3-10-03

DIGEST

Financial Abuse of Mentally Impaired Elders: Declaration Signers

Amends Probate Code section 2951 to authorize an assigned judge or court officer to counter-sign the required declaration for the Public Guardian to take possession of an impaired elder's assets.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

Related to resolutions 3-11-03 and 3-12-03.

Reasons:

This resolution amends Probate Code section 2951 to authorize an assigned judge or court officer to counter-sign the required declaration for the Public Guardian to take possession of an impaired elder's assets. This resolution should be disapproved because, while it eliminates delay in the protection of an impaired elder's assets, it also strikes the language in the statute requiring a peace officer counter-sign the declaration.

Currently, Probate Code section 2952 allows the Public Guardian to collect and hold the assets of a mentally impaired elder for up to fifteen days upon receipt of a declaration signed by both a peace officer and a supervisor from the county adult protection service ["APS"] agency. When a peace officer determines through investigation that financial elder abuse may have occurred or is likely to occur, the officer completes a declaration pursuant to section 2954 specifying the facts of the case. Under all these sections, as currently written, an APS supervisor must counter-sign the declaration before it can be sent to the Public Guardian for action. By this means, the Legislature intended law enforcement, in collaboration with the Public Guardian, to intervene as soon as possible to protect mentally impaired elder adults. However, many Public Guardian offices, law enforcement agencies and attorneys find that some APS supervisors refuse to sign declarations until their own workers have conducted an investigation. Consequently, some elders are placed at risk of financial loss.

This resolution deletes the requirement that an APS supervisor sign the declaration, and replaces it with a requirement that the family court duty judge or court officer, who are available for issuance of emergency protective orders 24 hours per day (see Fam. Code, § 6241), sign the declaration. By so doing, this resolution eliminates the problem posed by reluctant APS supervisors.

However, this resolution also deletes the requirement that the investigating peace officer counter-sign the declaration. (See resolution at line 5.) A peace officer's counter-signature is an important safeguard against unwarranted freezing of a competent elder's assets. It should not be removed and, for this reason only, the resolution should be disapproved.

TEXT OF RESOLUTION

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- 1 §2951
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- 3 the context requires otherwise.
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5 Section 2954, ~~and is signed by both a peace officer and a supervisor from the county's adult~~
6 ~~protective services agency~~ the judge or court officer who has been designated to act pursuant to
7 Section 6241 of the Family Code and provided to the public guardian in accordance with subdivision
8 (b) of Section 2952.

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25 competence in accordance with the standards set forth in Part 17 (commencing with Section 810) of
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27 related crimes, including neglect, and civil and criminal procedures for the protection of victims.
28 The course may be presented as part of a training program that includes other subjects or courses.

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35 that substantially complies with the form described in Section 2954.

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37 alleged to belong to, the elder.

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

PROPOSER: Orange County Bar Association

STATEMENT OF REASONS

Existing Law: Defines the declaration that may be issued by law enforcement in the field to protect an mentally impaired elder's property and further states that said declaration must be executed by both a peace officer and a supervisor from Adult Protective Services.

This Resolution: Replaces a supervisor from Adult Protective Services with the judge or court officer designated to act pursuant to Family Code section 6241 as the declaration co-signer.

The Problem: Generally, Adult Protective Services will not execute a declaration on a matter that they have not previously investigated. In those situations, a needed declaration will not be issued due the inability of APS to act. As a judge or court officer is already designated, pursuant to the Family Code, to issue emergency domestic violence restraining orders, that same judge or court officer could be

designated to take the calls from law enforcement and counter sign declarations prepared and executed in the field, by law enforcement.

IMPACT STATEMENT

This resolution affects Probate Code sections 2952 and 2954.

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RESPONSIBLE FLOOR DELEGATE: Kim R. Hubbard

COUNTERARGUMENT

SAN DIEGO COUNTY BAR ASSOCIATION

The involvement of APS helps assure the power to summarily seize assets will not be used absent adequate investigation of the allegations. The circumstances surrounding allegations of financial elder abuse are frequently more complex than may appear upon superficial investigation, and often benign. The involvement of APS helps weed through such fact patterns. The proponent is in essence requesting the removal of APS from the process because they prefer to investigate prior to rubber-stamping the investigating police officer's findings. The judicial officer substituted in lieu of APS will conduct no such investigation.