

## RESOLUTION 3-13-03

### DIGEST

#### Financial Abuse of Mentally Impaired Elders: Fees Collected by the Public Guardian

Amends Probate Code section 2953 to remove the requirement that fees collected by the Public Guardian during protection of an impaired elder's assets be used only for estate protection activities under section 2952.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

None known.

#### Reasons:

This resolution amends Probate Code section 2953 to remove the requirement that fees collected by the Public Guardian during protection of an impaired elder's assets be used only for estate protection activities under section 2952. This resolution should be disapproved because the statutory scheme it seeks to modify has not existed for a sufficient time to ensure that mandated estate protection activities can be implemented without a dedicated source of funding.

The Legislature enacted Probate Code sections 2950 through 2955 in 2000 and intended these laws to facilitate protection of mentally impaired elder adults who might be victims of financial abuse. (Prob. Code, § 2950, subd. (a).) The Legislature expressly stated the new laws were to "be coordinated with existing mandated programs affecting financial abuse of mentally impaired elders that are administered by the adult protective services agency of the county." (*Ibid.*) However, the enactment did not identify how such coordination would be implemented. The Board of Supervisors in each county has the discretion to create an office of Public Conservator, Guardian and/or Administrator, and to determine whether the office will be independent or operate under an existing county department such as the Sheriff's Department, Department of Mental Health, or Coroner's Office. Therefore, implementation of these new mandates will vary widely from county to county.

Some counties have begun the process of developing policies for the separate agencies to coordinate, but have not yet implemented the estate protection statutes. Although the new enactments apply only to counties that already have an existing law enforcement unit devoted to elder financial abuse, many counties are also dealing with how to fund these new mandates. A few, including Riverside and Orange, have financed new Public Guardian investigators through Adult Protection Services funds, while others have revised their budgets to provide entirely new funding.

Currently, under section 2953, costs collected by the Public Guardian are not dedicated, while "reasonable fees for services" must be used for protection of the assets of mentally impaired elder adults. The proponent asserts the Public Guardian in Orange County does not know what this requirement means, and therefore suggests it would be more appropriate to allow all costs and fees to go into the general fund. This is an insufficient reason to change a system still in its infancy.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 2953 to read as follows:

1 §2953

2 (a)(1) A public guardian who has taken possession or control of the property of an elder  
3 person pursuant to this chapter is entitled to petition a court of competent jurisdiction for the  
4 reasonable costs incurred by the public guardian for the protection of the person or the property,  
5 together with reasonable fees for services, including, but not limited to, reasonable attorneys' fees.  
6 These fees shall be payable from the estate of the elder person if the person is not deemed competent  
7 by the court and if any of the following apply:

8 (A) The public guardian or someone else is appointed as the temporary or general  
9 conservator of the estate.

10 (B) An attorney-in-fact, under a durable power of attorney, or a trustee, takes steps, or is  
11 notified of the need to take steps, to protect the estate of the elder person.

12 (C) An action is brought against the alleged financial abuser by the elder person, his or her  
13 conservator, a trustee, a fiduciary, or a successor in interest of the elder person, arising from a harm  
14 that the public guardian taking charge was intended to prevent or minimize.

15 (2) Any costs incurred by the public guardian pursuant to paragraph (1) shall be  
16 compensable as provided in Section 2902. ~~Fees collected by the public guardian pursuant to this~~  
17 ~~chapter shall be used for the activities described in this chapter.~~

18 (b) When a public guardian has taken possession or control of the property of an elder  
19 person pursuant to this chapter, the public guardian shall exercise reasonable care to ensure that the  
20 reasonable living expenses and legitimate debts of the elder person are addressed as well as is  
21 practical under the circumstances.

22 (c) Any person identified as a victim in a declaration described in Section 2954 may bring an  
23 ex parte petition in the superior court for an order quashing the certification issued by the public  
24 guardian as provided in subdivision (c) of Section 2952.

25 (1) Upon request by the petitioner, the court may defer filing fees related to the petition, and  
26 order the public guardian to authorize the release of funds from a financial institution to reimburse  
27 the petitioner the filing fees from assets belonging to the petitioner, but shall waive filing fees if the  
28 petitioner meets the standards of eligibility established by subparagraph (A) or (B) of paragraph (6)  
29 of subdivision (a) of Section 68511.3 of the Government Code for the waiver of a filing fee.

30 (2) The court shall quash the certification if the court determines that there is insufficient  
31 evidence to justify the imposition on the alleged victim's civil liberties caused by the certification.

32 (3) If the court determines that there is sufficient evidence to justify the imposition on the  
33 alleged victim's civil liberties caused by the certification, the court may, in its discretion, do one or  
34 more of the following:

35 (A) Order disbursements from the alleged victim's assets, as are reasonably needed to  
36 address the alleged victim's needs.

37 (B) Appoint a temporary conservator of the alleged victim's estate, where the facts before the  
38 court would be sufficient for the appointment of a temporary conservator under Section 2250.

39 (C) Deny the petition.

40 (D) Award reasonable attorney's fees to the respondent's attorney from the victim's estate.

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

PROPONENT: Orange County Bar Association

#### STATEMENT OF REASONS

Existing Law: Currently provides that fees awarded to the Public Guardian pursuant to this section shall be "used for the activities described in this Chapter."

This Resolution: Deletes the above described provision so that fees granted would be added to the Public Guardian's general fund.

The Problem: At least in Orange County, the Public Guardian is unsure as to the meaning of this language and believes that the fees awarded, if any, would be used appropriately in the general fund.

IMPACT STATEMENT

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

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