

RESOLUTION 11-07-2007

DIGEST:

Conservatorships: Criminal Background Check on Conservatee

Adds Probate Code section 1836 to require courts to provide certain conservators written information to assist them in obtaining criminal background checks on their conservatees.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution adds Probate Code section 1836 to require courts to provide certain conservators written information to assist them in obtaining criminal background checks on their existing or proposed conservatees. This resolution should be disapproved because it fails to achieve its contemplated objective.

The resolution fails to provide courts and judges the power to make the desired information available to conservators. It also puts an undue burden on courts and judges with unclear and ambiguous procedures, and fails to address existing statutes and laws restricting access to and use of certain criminal records and databases. (See, e.g., Pen. Code, §§ 111.42, 11105.3, 11143, 11076 and 11079; and Gov. Code, § 6200.)

In addition, this resolution benefits only “registered private conservators” rather than all conservators, which limitation further undermines its potential effectiveness. Under already pending legislation which appears headed for passage (Senate Bill No. 340 [2007-2008 Reg. Sess.]), court investigators in all probate conservatorship matters will be added to those persons authorized to receive information concerning a conservatee’s total criminal record history from the Attorney General under Penal Code section 11105. Since the Omnibus Conservatorship and Guardianship Act of 2006 has already expanded the powers and responsibilities of court investigators in conservatorship matters, the presently pending legislation will effectively fulfill the objectives sought by this resolution better than would this resolution.

SECTION/COMMITTEE REPORT

TRUST & ESTATES SECTION

DISAPPROVE

The Trust & Estates Section believes this proposal pits the privacy of the proposed conservatee against the safety of the proposed conservator; the section believes that both positions have merit. However, there is a bill pending in the legislature which would make this information readily available to the court investigator, and that the investigator could provide the gist of this information to both the proposed conservator and the court-appointed attorney, if any, if deemed pertinent.

This position is only that of the TRUST & ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the TRUST & ESTATES SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add section 1836 to the Probate Code to read as follows:

- 1 §1836
2 (a) Every superior court shall provide all private professional conservators registered
3 under Probate Code section 2340 with written information on the procedure and
4 requirements for obtaining a criminal background check on a Conservatee or proposed
5 Conservatee.
6 (b) The written information on the procedure and requirements for obtaining a
7 criminal background check on Conservatee shall include, but need not be limited to the
8 following:
9 (1) An Ex Parte Application and Order with a declaration, filed confidentially.
10 (2) A declaration of the circumstances or facts underlying the private conservator's
11 need for the criminal background check personally signed by the private conservator and
12 including his/her registration number, under penalty of perjury.
13 (3) A processing fee.

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

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: Does not permit a private conservator to obtain a criminal background check on Conservatee or proposed Conservatee.

This Resolution: Would enable a private conservator to obtain a criminal background check on Conservatee or proposed Conservatee in limited circumstances.

The Problem: The private conservators are concerned for their safety. If the factual information suggests a pattern of violent behavior, the private conservator is asking for a means to check the criminal background of those conservatees and potential conservatees who may pose a threat to their safety.

IMPACT STATEMENT

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

AUTHOR AND/OR PERMANENT CONTACT: Alice A. Salvo, 20350 Ventura Boulevard, Suite 110, Woodland Hills, CA 91364, voice 818-887-3333, fax 818-716-9275, aliceann@salvolaw.com

RESPONSIBLE FLOOR DELEGATE: Alice A. Salvo