AMENDED IN ASSEMBLY APRIL 21, 2021

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CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL No. 1194

Introduced by Assembly Member Low
(Coauthors: Senators Allen and Laird)

February 18, 2021

An act to add Sections 6563 and 6584.5 to the Business and Professions Code, and to amend Sections 1051, ~~1812,~~ 1826, 1850, 1850.5, 1851, 2250, 2250.4, 2250.6, 2253, 2401, 2620, 2623, 2640, 2641, and 2653 of, to add Sections 1851.6 and 2112 to, and to add and repeal Section 1458 of, the Probate Code, relating to conservatorship.

LEGISLATIVE COUNSEL'S DIGEST

AB 1194, as amended, Low. Conservatorship.

Existing law, the Guardianship-Conservatorship Law generally establishes the standards and procedures for the appointment and termination of an appointment for a guardian or conservator of a person, an estate, or both. Existing law, the Professional Fiduciaries Act, establishes the Professional Fiduciaries Bureau within the Department of Consumer Affairs, and requires the bureau to license and regulate professional fiduciaries. The act defines a "professional fiduciary" as, among other things, a person who acts as a guardian or conservator of the person, the estate, or the person and estate, for 2 or more individuals at the same time who are not related to the professional fiduciary or to

each other. Existing law requires the court to be guided by what appears to be the best interests of the proposed conservatee in selecting a conservator, and sets forth an order of preference for appointment if there are multiple persons equally qualified to be the conservator.

This bill would require a professional fiduciary with an internet website to post a schedule of fees on their internet website. The bill would require the bureau to revoke a professional fiduciary's license if ~~a court finds by a clear and convincing standard that they have not acted in the best interests of their client, or have committed abuse of an elder or a dependent adult.~~ *the licensee is found by the court to have either abused, or breached a fiduciary duty to, a ward or conservatee under their care.* If the court finds that a *professional* conservator has ~~not acted in the best interests of~~ *abused* a conservatee, the bill would make the conservator liable for a civil penalty of up to ~~$25,000,~~ *$5,000,* payable to the estate of the conservatee. ~~The bill would require the court to select a professional fiduciary as the conservator of an estate if the estate is valued at $1,000,000 or more.~~ *The bill would make a nonprofessional conservator who abuses a conservatee liable for civil penalties of up to $1,000, payable to the estate of the conservatee.*

The bill would require a court to report to the bureau when the court takes action to discipline a professional fiduciary, finds that a professional fiduciary has abused the conservatee, sanctions or removes for cause a professional fiduciary, or determines that cause for removal exists for a professional fiduciary.

Existing law requires a court investigator to undertake specified actions regarding a proposed conservatee, including interviewing the proposed conservatee. Existing law authorizes specified persons to petition the court to take specified actions regarding a conservatorship.

This bill would require a court investigator to gather and review relevant medical reports and supplemental information regarding a proposed conservatee, including at least one report from their primary care physician. The bill would require a court investigator to report to the bureau if they undertake an investigation of a fiduciary. The bill would authorize any person to petition the court to investigate an allegation of physical abuse or financial abuse of a ~~conservatee,~~ *conservatee by a conservator,* and would require the court to investigate those allegations.

Existing law prohibits a guardian or trustee who is not a trust company from hiring or referring business to an entity in which the guardian or trustee has a financial interest, except upon authorization of the court.

Existing law prohibits compensating a guardian or trustee from the estate for the costs or fees they incurred in unsuccessfully opposing a petition or other action made by or on behalf of a ward or conservatee, unless the court determines the opposition was made in good faith, based on the best interests of the ward or conservatee. If the court removes the guardian or conservatee for cause, existing law requires the court to award the petitioner for that removal the costs of the petition and other expenses and costs of litigation, unless the court determines the guardian or conservator acted in good faith, based on the best interests of the ward or conservatee.

This bill would eliminate the court's discretion to authorize a guardian or trustee who is not a trust company to hire or refer business to an entity in which they have a financial interest. The bill would eliminate the court's discretion to compensate a guardian or conservator from the estate for the costs or fees they incurred in unsuccessfully opposing a petition or other action made by or on behalf of a ward or conservatee, and would instead prohibit a guardian or conservator from being compensated from the estate for the costs or fees they incurred in unsuccessfully defending a reduction or denial of their compensation. The bill would require the court to award the costs of the petition and other expenses and costs of litigation to a successful petitioner if a guardian or conservatee is removed for cause. The bill would require the Judicial Council to report to the Legislature, on or before January 1, 2023, regarding specified findings and recommendations on court effectiveness in conservatorship cases.

Existing law authorizes a court to refer certain issues relating to a conservatorship to a court investigator and prescribes the duties of an investigator in this regard, which include interviewing specified relatives of a proposed conservatee, conducting investigations of, and reporting to a court about, the appropriateness of a conservatorship, and, to the extent practicable, reviewing accountings with a conservatee. Existing law requires a court to review each limited conservatorship one year after the appointment of the conservator and biennially thereafter. Existing law permits specified parties to file a petition for an appointment of a temporary guardian or a temporary conservator and establishes requirements for the petition and for notice of the hearing on the petition. Existing law makes the requirement that a court implement these provisions contingent on the Legislature appropriating moneys for that purpose.

This bill would require the court to implement the above-described provisions, without a specific appropriation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6563 is added to the Business and Professions Code, immediately following Section 6562, to read:

6563. A licensee with an internet website shall post on that internet website a schedule of fees charged for services offered.

~~SEC. 2. Section 6584.5 is added to the Business and Professions Code, immediately following Section 6584, to read:~~

~~6584.5. A license issued under this chapter shall be revoked if the licensee has been found by the court by a clear and convincing standard to have not acted in the best interest of the client or has been found by the court to be in violation of Section 15610.07 of the Welfare and Institutions Code.~~

SEC. 2. Section 6584.5 is added to the Business and Professions Code, to read:

6584.5. The bureau shall immediately revoke a license issued pursuant to this chapter if the licensee has been found by a court to have either abused, or breached a fiduciary duty to, a ward or conservatee under their care. For purposes of this section, "abused" means that the licensee engaged in an act described in Section 15610.07 of the Welfare and Institutions Code.

SEC. 3. Section 1051 of the Probate Code is amended to read:

1051. (a) In the absence of a stipulation to the contrary between parties who have filed pleadings in a proceeding under this code, there shall be no ex parte communications between any party, or attorney for the party, and the court concerning a subject raised in those pleadings, except as permitted or required by law.

(b) Notwithstanding subdivision (a), in any case upon which the court has exercised its jurisdiction, the court may refer to the court investigator or take other appropriate action in response to an ex parte communication regarding either or both of the following:

(1) A fiduciary, as defined in Section 39, about the fiduciary's performance of their duties and responsibilities.

(2) A person who is the subject of a conservatorship or guardianship proceeding under Division 4 (commencing with Section 1400).

(c) An action by the court pursuant to subdivision (b) shall be consistent with due process and the requirements of this code. The court shall disclose the ex parte communication to all parties and counsel. The court may, for good cause, dispense with the disclosure if necessary to protect the ward or conservatee from harm.

(d) If the court ~~investigator undertakes an investigation of a fiduciary pursuant to subdivision (b), the court investigator~~ *takes action to discipline a professional fiduciary, the court* shall report *that action* to the Professional Fiduciaries ~~Bureau if the court has found the fiduciary to have acted inappropriately.~~ *Bureau.*

SEC. 4. Section 1458 is added to the Probate Code, to read:

1458. (a) On or before January 1, 2023, the Judicial Council shall report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases, including the ~~protection of the~~ *effectiveness of protecting the legal* rights and best interests of a ~~ward or~~ conservatee. The report shall include all of the following, with respect to the courts chosen for evaluation pursuant to subdivision (b):

(1) Caseload statistics, for both temporary and ~~permanent~~ *general* conservatorships, including, ~~but not limited to,~~ *at a minimum,* all of the following:

(A) The number of cases ~~for~~ *in the 2018–19 fiscal year in* which a conservator ~~has been~~ *was requested, the number of cases in which a conservator was* appointed, ~~divided by cases with professional fiduciaries and all other cases.~~ *and the number of cases in which a conservator was denied, with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.*

~~(B) The number of cases in the 2021–22 fiscal year in which a conservatorship was requested, a conservatorship was granted, and a conservatorship was denied, divided by cases with professional fiduciaries and all other cases.~~

~~(C)~~

(B) The number of ~~existing~~ cases *under court supervision* in the ~~2021–22~~ *2018–19* fiscal year in which a court investigation was conducted, ~~divided by cases with professional fiduciaries and~~

~~all other cases.~~ *with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.*

~~(D)~~

(C) The number of ~~existing~~ cases in the ~~2021–22~~ *2018–19* fiscal year in which a court review hearing was held and an investigation was conducted, ~~divided by cases with professional fiduciaries and all other cases.~~ *with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.*

~~(E)~~

(D) The number of petitions filed *by or on behalf of a conservatee or a conservatee's estate* challenging ~~an~~ *a conservator's* action, ~~accounting of, or fee charged by, a conservator,~~ *failure to act, accounting, or compensation;* the number of *those* petitions that were ~~granted,~~ *granted;* and the number of petitions that were ~~denied, divided by cases with professional fiduciaries and all other cases.~~ *denied, with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.*

~~(F)~~

(E) The number of ~~existing~~ cases *under court supervision* in the ~~2021–22~~ *2018–19* fiscal year in which accountings were received after they were due, or not received at all, ~~divided by cases with professional fiduciaries and all other cases.~~ *with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.*

~~(G)~~

(F) The number of ~~existing cases~~ *conservatorships of the estate, or of the person and the estate, under court supervision* in the ~~2021–22~~ *2018–19* fiscal year in which bonds were not required of the conservator, ~~divided by cases with professional fiduciaries and all other cases.~~ *with cases in which a professional fiduciary was appointed presented separately from cases in which a nonprofessional conservator was appointed.*

(2) An analysis of compliance with statutory ~~timeframes.~~ *timeframes in the 2018–fiscal year.*

(3) A description of any operational differences between courts that affect the processing of conservatorship cases, including

timeframes and steps taken to protect the *legal* rights and best interests of conservatees.

(b) The Judicial Council shall select at least three courts for the evaluation required by this section, including ~~a small, medium,~~ *one small court, one medium-sized court,* and *one* large court.

(c) The report shall include recommendations for statewide performance measures to be collected, best practices that serve to protect the rights of conservatees, and staffing needs to meet case processing measures.

(d) The report shall be submitted pursuant to Section 9795 of the Government Code.

(e) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

~~SEC. 5. Section 1812 of the Probate Code is amended to read:~~

~~1812. (a) Subject to Sections 1810, 1813, and 1813.1, the selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.~~

~~(b) Subject to Sections 1810, 1813, and 1813.1, of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both, preference is to be given in the following order:~~

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

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

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

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

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

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

~~(d) Notwithstanding any other law, the court shall select a professional fiduciary, as defined in Section 6501 of the Business and Professions Code, as the conservator of an estate if the estate is valued at one million dollars ($1,000,000) or more.~~

~~SEC. 6.~~

SEC. 5. Section 1826 of the Probate Code is amended to read:

1826. (a) Regardless of whether the proposed conservatee attends the hearing, the court investigator shall do all of the following:

(1) Conduct the following interviews:

(A) The proposed conservatee personally.

(B) All petitioners and all proposed conservators who are not petitioners.

(C) The proposed conservatee's spouse or registered domestic partner and relatives within the first degree. If the proposed conservatee does not have a spouse, registered domestic partner, or relatives within the first degree, to the greatest extent possible, the proposed conservatee's relatives within the second degree.

(D) To the greatest extent practical and taking into account the proposed conservatee's wishes, the proposed conservatee's relatives within the second degree not required to be interviewed under subparagraph (C), neighbors, and, if known, close friends.

(2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the ~~proceeding,~~ *petition*, to attend the hearing, 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.

(3) Determine if it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(4) Review the allegations of the petition as to why the appointment of the conservator is required and, in making the determination, do the following:

(A) Refer to the supplemental information form submitted by the petitioner and consider the facts set forth in the form that address each of the categories specified in paragraphs (1) to (5),

inclusive, of subdivision (a) of Section ~~1821.~~ *1821, as well as the medical reports received pursuant to paragraph (11).*

(B) Consider, to the extent practicable, whether the court investigator believes the proposed conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the proposed conservatee's ability to understand and appreciate the consequences of the proposed conservatee's actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that ~~belief.~~ *belief, including information in the medical reports received pursuant to paragraph (11).*

(5) Determine if the proposed conservatee wishes to contest the establishment of the conservatorship.

(6) Determine if the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(7) Determine if the proposed conservatee wishes to be represented by legal counsel and, if so, whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(8) If the proposed conservatee does not plan to retain legal counsel, determine if the proposed conservatee desires the court to appoint legal counsel.

(9) Determine if the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in a case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

~~(8)~~

(10) (A) Determine if the proposed conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and may be disqualified from voting pursuant to Section 2208 of the Elections Code.

(B) The proposed conservatee shall not be disqualified from voting on the basis that the proposed conservatee does, or would need to do, any of the following to complete an affidavit of voter registration:

(i) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

(ii) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(iii) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

(iv) Completes the affidavit of voter registration with reasonable accommodations.

~~(9) If the proposed conservatee has not retained legal counsel, determine if the proposed conservatee desires the court to appoint legal counsel.~~

~~(10) Determine if the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed conservatee in a case where the proposed conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.~~

(11) Gather and review relevant medical reports and supplemental information regarding the proposed conservatee, including at least one report from the proposed conservatee's primary care physician. ~~The reports shall be kept confidential pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), unless the court approves a subpoena for the reports.~~

(12) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the proposed conservatee's express communications concerning both of the following:

(A) Representation by legal counsel.

(B) If the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefers that another person act as conservator.

(13) Deliver pursuant to Section 1215, at least five days before the hearing, a copy of the report referred to in paragraph ~~(11)~~ *(12)* to all of the following:

(A) The attorney, if any, for the petitioner.

(B) The attorney, if any, for the proposed conservatee.

(C) The proposed conservatee.

(D) The spouse, registered domestic partner, and relatives within the first degree of the proposed conservatee who are required to

be named in the petition for appointment of the conservator, unless the court determines that the delivery will harm the conservatee.

(E) Any other persons as the court orders.

(b) The court investigator has discretion to release the report required by this section to the public conservator, interested public agencies, and the long-term care ombudsperson.

(c) The report required by this section is confidential and shall be made available only to parties, persons described in paragraph ~~(12)~~ *(13)* of subdivision (a), persons given notice of the petition who have requested this report or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the report, if it would serve the interests of the conservatee. The clerk of the court shall provide for the limitation of the report exclusively to persons entitled to its receipt.

(d) This section does not apply to a proposed conservatee who has personally executed the petition for conservatorship, or a proposed conservatee who has nominated their own conservator, if the proposed conservatee attends the hearing.

(e) If the court investigator has performed an investigation within the preceding six months and furnished a report thereon to the court, the court may order, upon good cause shown, that another investigation is not necessary or that a more limited investigation may be performed.

(f) An investigation by the court investigator related to a temporary conservatorship also may be a part of the investigation for the general petition for conservatorship, but the court investigator shall make a second visit to the proposed conservatee and the report required by this section shall include the effect of the temporary conservatorship on the proposed conservatee.

(g) The Judicial Council ~~shall use the Judicial Council forms as necessary to implement an expedited procedure to authorize, by court order, a proposed conservatee's health care provider to disclose confidential medical information about the proposed conservatee to a court investigator pursuant to federal medical information privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).~~ *shall, on or before September 1, 2022, update the rules of court and Judicial Council forms as necessary to implement this section.*

~~SEC. 7.~~

SEC. 6. Section 1850 of the Probate Code is amended to read:

1850. (a) Except as provided in subdivision (b), each conservatorship initiated pursuant to this part shall be reviewed by the court as follows:

(1) At the expiration of six months after the initial appointment of the conservator, the court investigator shall visit the conservatee, conduct an investigation in accordance with the provisions of subdivision (a) of Section 1851, and report to the court regarding the appropriateness of the conservatorship and whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances. The court may, in response to the investigator's report, take appropriate action including, but not limited to:

(A) Ordering a review of the conservatorship pursuant to subdivision (b).

(B) Ordering the conservator to submit an accounting pursuant to subdivision (a) of Section 2620.

(2) One year after the appointment of the conservator and annually thereafter. However, at the review that occurs one year after the appointment of the conservator, and every subsequent review conducted pursuant to this paragraph, the court may set the next review in two years if the court determines that the conservator is acting in the best interests of the conservatee. In these cases, the court shall require the investigator to conduct an investigation pursuant to subdivision (a) of Section 1851 one year before the next review and file a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee. If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action including, but not limited to, ordering a review of the conservatorship, including at a noticed

hearing, and ordering the conservator to present an accounting of the assets of the estate pursuant to Section 2620.

(c) Notice of a hearing pursuant to subdivision (b) shall be provided to all persons listed in subdivision (b) of Section 1822.

(d) This chapter does not apply to either of the following:

(1) A conservatorship for an absentee as defined in Section 1403.

(2) A conservatorship of the estate for a nonresident of this state where the conservatee is not present in this state.

(e) The amendments made to this section by the act adding this subdivision shall become operative on July 1, 2007.

~~SEC. 8.~~

SEC. 7. Section 1850.5 of the Probate Code is amended to read:

1850.5. (a) Notwithstanding Section 1850, each limited conservatorship for a developmentally disabled adult, as defined in subdivision (d) of Section 1801, shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

(b) The court may, on its own motion or upon request by any interested person, take appropriate action, including, but not limited to, ordering a review of the limited conservatorship, including at a noticed hearing, at any time.

~~SEC. 9.~~

SEC. 8. Section 1851 of the Probate Code is amended to read:

1851. (a) (1) If court review is required pursuant to Section 1850, the court investigator shall, without prior notice to the conservator except as ordered by the court for necessity or to prevent harm to the conservatee, 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 all of the following:

(A) If the conservatee wishes to petition the court for termination of the conservatorship.

(B) If the conservatee is still in need of the conservatorship.

(C) If the conservator is acting in the best interests of the conservatee. In determining if the conservator is acting in the best interests of the conservatee, the court investigator's evaluation shall include an examination of the conservatee's placement, the

quality of care, including physical and mental treatment, and the conservatee's finances. To the extent practicable, the investigator shall review the accounting with a conservatee who has sufficient capacity. To the greatest extent possible, the court investigator shall interview individuals set forth in paragraph (1) of subdivision (a) of Section 1826, in order to determine if the conservator is acting in the best interests of the conservatee.

(D) (i) If the conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process and may be disqualified from voting pursuant to Section 2208 or 2209 of the Elections Code.

(ii) The conservatee shall not be disqualified from voting on the basis that the conservatee does, or would need to do, any of the following to complete an affidavit of voter registration:

(I) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of Section 2150 of the Elections Code.

(II) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section 354.5 of the Elections Code.

(III) Completes the affidavit of voter registration with the assistance of another person pursuant to subdivision (d) of Section 2150 of the Elections Code.

(IV) Completes the affidavit of voter registration with reasonable accommodations.

(2) If the court has made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine if the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(3) Upon request of the court investigator, the conservator shall make available to the court investigator during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship.

(b) (1) 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 before the date of review. A copy of the report shall be delivered pursuant to Section 1215 to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. A copy of the report, modified as set forth in paragraph (2), also shall be delivered pursuant to Section 1215 to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first

degree, and, if there are no such relatives, to the next closest relative, unless the court determines that the delivery will harm the conservatee.

(2) Confidential medical information and confidential information from the California Law Enforcement Telecommunications System shall be in a separate attachment to the report and shall not be provided in copies sent to the conservatee's spouse or registered domestic partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the next closest relative.

(c) In the case of a limited conservatee, the court investigator shall recommend continuing or terminating the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine if the conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons described in subdivision (b), persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall limit disclosure of the report exclusively to persons entitled to the report under this section.

~~SEC. 10.~~

SEC. 9. Section 1851.6 is added to the Probate Code, to read:

1851.6. Any person may petition the court to investigate an allegation of abuse, as defined by Section 15610.07 of the Welfare and Institutions ~~Code.~~ *Code, of a conservatee by a conservator.* The court shall investigate all *such* allegations of ~~abuse, as defined by Section 15610.07 of the Welfare and Institutions Code.~~ *abuse.* If the court investigator has performed an investigation within the preceding six months and ~~furnished a report thereon~~ *reported the results of that investigation* to the court, the court may order, upon good cause shown, that ~~another~~ *a new* investigation is not necessary or that a more limited investigation ~~may be performed.~~ *is sufficient.*

~~SEC. 11.~~

SEC. 10. Section 2112 is added to the Probate Code, to read:

2112. (a) *(1)* In addition to other remedies available under statutory or common law, if the court finds that a *professional* conservator ~~is in violation of Section 15610.07 of the Welfare and Institutions Code,~~ *licensed by the Professional Fiduciaries Bureau has abused a conservatee,* the conservator shall be liable for a civil penalty of up to ~~twenty-five~~ *five* thousand dollars ~~($25,000),~~ *($5,000),* payable to the estate of the conservatee.

~~(b) If the court does anything to remove for cause or punish a professional fiduciary, it shall be reported to the Professional Fiduciaries Bureau.~~

~~(c) If the court finds, by a clear and convincing standard, that a professional fiduciary has not acted in the best interest of the ward or conservatee or has been found by the court to be in violation of Section 15610.07 of the Welfare and Institutions Code, the Professional Fiduciaries Bureau shall revoke the professional fiduciary's license.~~

(2) In addition to other remedies available under statutory or common law, if the court finds that a conservator who is not a professional conservator licensed by the Professional Fiduciaries Bureau has abused a conservatee, the conservator shall be liable for a civil penalty of up to one thousand dollars ($1,000), payable to the estate of the conservatee.

(b) If the court finds that a professional fiduciary has abused a conservatee, or if the court sanctions or removes the professional fiduciary for cause, the court shall report that fact to the Professional Fiduciaries Bureau.

(c) For purposes of this section, the following definitions apply:

(1) "Abused" means that the conservator engaged in an act described in Section 15610.07 of the Welfare and Institutions Code.

~~(d) For purposes of this section, "professional~~

(2) "Professional fiduciary" has the same meaning as defined in Section 6501 of the Business and Professions Code.

~~SEC. 12.~~

SEC. 11. Section 2250 of the Probate Code is amended to read:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate, or both.

(2) A temporary conservator of the person or estate, or both.

(b) The petition shall state facts that establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate, or both, or a temporary conservator of the person or estate, or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) If the petitioner, proposed guardian, or proposed conservator is a professional fiduciary, as described in Section 2340, who is required to be licensed under the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code), the petition for appointment of a temporary guardian or temporary conservator shall include the following:

(1) The petitioner's, proposed guardian's, or proposed conservator's proposed hourly fee schedule or another statement of their proposed compensation from the estate of the proposed ward or proposed conservatee for services performed as a guardian or conservator. The petitioner's, proposed guardian's, or proposed conservator's provision of a proposed hourly fee schedule or another statement of their proposed compensation, as required by this paragraph, shall not preclude a court from later reducing the petitioner's, proposed guardian's, or proposed conservator's fees or other compensation.

(2) Unless a petition for appointment of a guardian or conservator that contains the statements required by this paragraph is filed together with a petition for appointment of a temporary guardian or temporary conservator, both of the following:

(A) A statement of the petitioner's, proposed guardian's, or proposed conservator's registration or license information.

(B) A statement explaining who engaged the petitioner, proposed guardian, or proposed conservator or how the petitioner, proposed guardian, or proposed conservator was engaged to file the petition for appointment of a temporary guardian or temporary conservator or to agree to accept the appointment as temporary guardian or temporary conservator and what prior relationship the petitioner, proposed guardian, or proposed conservator had with the proposed ward or proposed conservatee or the proposed ward's or proposed conservatee's family or friends.

(d) If the petition is filed by a party other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives named in the petition for appointment of a general conservator or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a temporary conservator and the appointment of the proposed temporary conservator or why it was not feasible to ascertain those preferences.

(e) Unless the court for good cause otherwise orders, at least five court days before the hearing on the petition, notice of the hearing shall be given as follows:

(1) Notice of the hearing shall be personally delivered to the proposed ward if the proposed ward is 12 years of age or older, to the parent or parents of the proposed ward, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. Notice of the hearing shall not be delivered to the proposed ward if the proposed ward is under 12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated, and that the petitioner or proposed guardian is the nominee of the custodial parent, may constitute good cause for the court to order that this notice not be delivered.

(2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be delivered pursuant to Section 1215 on the persons required to be named in the petition for appointment of conservator. If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and have not been nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice of hearing shall be delivered pursuant to Section 1215 on the public guardian of the county in which the petition is filed.

(3) A copy of the petition for temporary appointment shall be delivered pursuant to Section 1215 with the notice of hearing.

(f) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary

guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten the time for the notice of the hearing.

(g) Visitation orders with the proposed ward granted before the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(h) (1) If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the general petition for appointment of conservator, the court shall set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship shall be given at least 10 days before the hearing.

(2) If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of conservator, the court shall set the hearing at the same time that the hearing on the general petition is set. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship pursuant to this section shall be given at least five court days before the hearing.

(i) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(j) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

~~SEC. 13.~~

SEC. 12. Section 2250.4 of the Probate Code is amended to read:

2250.4. The proposed temporary conservatee shall attend the hearing except in the following cases:

(a) If the proposed temporary conservatee is out of the state when served and is not the petitioner.

(b) If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.

(c) If the court investigator has visited the proposed conservatee prior to the hearing and the court investigator has reported to the court that the proposed temporary conservatee has expressly communicated that all of the following apply:

(1) The proposed conservatee is not willing to attend the hearing.

(2) The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.

(3) The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.

(d) If the court determines that the proposed conservatee is unable or unwilling to attend the hearing, and holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from substantial harm.

~~SEC. 14.~~

SEC. 13. Section 2250.6 of the Probate Code is amended to read:

2250.6. (a) Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator shall do all of the following prior to the hearing, unless it is not feasible to do so, in which case the court investigator shall comply with the requirements set forth in subdivision (b):

(1) Interview the proposed conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors, and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821 before the hearing.

(2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the temporary conservatorship, and of the right of the proposed conservatee to oppose the ~~proceeding,~~ *petition,* to attend the hearing, 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.

(3) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(4) Determine whether the proposed conservatee wishes to ~~contest~~ *oppose* the establishment of the conservatorship.

(5) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(6) Report to the court, in writing, concerning all of the foregoing.

(b) If not feasible before the hearing, the court investigator shall do all of the following within two court days after the hearing:

(1) Interview the conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors, and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821.

(2) Inform the conservatee of the nature, purpose, and effect of the temporary conservatorship, as well as the right of the conservatee to oppose the ~~proposed general conservatorship,~~ *petition to appoint a general conservator,* to attend the hearing, 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.

(c) If the investigator does not visit the conservatee until after the hearing at which a temporary conservator was appointed, and the conservatee objects to the appointment of the temporary conservator, or requests an attorney, the court investigator shall report this information promptly, and in no event more than three court days later, to the court. Upon receipt of that information, the

court may proceed with appointment of an attorney as provided in Chapter 4 (commencing with Section 1470) of Part 1.

(d) If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator shall immediately, and in no event more than two court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion.

~~SEC. 15.~~

SEC. 14. Section 2253 of the Probate Code is amended to read:

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided before the commencement of the proceedings, that power shall be requested of the court in writing, unless the change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in ~~particular~~ *detail* the place to which the temporary conservator proposes to move the conservatee, ~~and~~ the precise reasons why it is believed that the conservatee will suffer irreparable harm if the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(b) The court investigator shall do all of the following:

(1) Interview the conservatee personally.

(2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to obtain legal counsel.

(3) Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.

(4) Determine whether the conservatee wishes to oppose the request.

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the

proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(6) If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.

(7) ~~Determine~~ *Determine, by considering, among other things, the medical information received pursuant to paragraph (8),* whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(8) Gather and review relevant medical reports and supplemental information regarding the conservatee, including at least one report from the conservatee's primary care physician. ~~The reports shall be kept confidential pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), unless the court approves a subpoena for the reports.~~

(9) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.

(c) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from the conservatee's previous place of residence, the court shall hold a hearing on the request.

(d) The conservatee shall be present at the hearing except in the following cases:

(1) Where the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(2) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose

the request, and the court makes an order that the conservatee need not attend the hearing.

(e) If the conservatee is unable to attend the hearing because of medical inability, that inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(f) At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on their own behalf.

(g) The court may approve the request to remove the conservatee from the previous place of residence only if the court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less restrictive of the conservatee's liberty will suffice to prevent that harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator may not be authorized to remove the conservatee from this state unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony.

(h) Subject to subdivision (e) of Section 2252, the court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence.

(i) The report required by this section shall be confidential and shall be made available only to parties, their attorneys, and the court. The clerk of the court shall limit disclosure of the report exclusively to persons entitled to the report pursuant to this section.

~~SEC. 16.~~

SEC. 15. Section 2401 of the Probate Code is amended to read:

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.

(c) Notwithstanding any other law, a guardian or conservator who is not a trust company, in exercising their powers, may not hire or refer any business to an entity in which the guardian or conservator has a financial interest. For the purposes of this subdivision, "financial interest" shall mean (1) an ownership interest in a sole proprietorship, a partnership, or a closely held corporation, or (2) an ownership interest of greater than 1 percent of the outstanding shares in a publicly held corporation, or (3) being an officer or a director of a corporation.

(d) (1) Notwithstanding any other law, a guardian or conservator who is a trust company, in exercising its powers may not, except upon authorization of the court, invest in securities of the trust company or an affiliate or subsidiary, or other securities from which the trust company or affiliate or subsidiary receives a financial benefit or in a mutual fund, other than a mutual fund authorized in paragraph (5) of subdivision (a) of Section 2574, registered under the Investment Company Act of 1940 (Subchapter 1 (commencing with Sec. 80a-1) of Chapter 2D of Title 15 of the United States Code), to which the trust company or its affiliate provides services, including, but not limited to, services as an investment adviser, sponsor, distributor, custodian, agent, registrar, administrator, servicer, or manager, and for which the trust company or its affiliate receives compensation.

(2) Before authorization from the court, the guardian or conservator shall disclose to the court in writing the trust company's financial interest.

~~SEC. 17.~~

SEC. 16. Section 2620 of the Probate Code is amended to read:

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court to be more frequent, the guardian or conservator shall present the accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance in the manner provided in Chapter 4 (commencing with Section 1060) of Part 1 of Division 3. By January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, and the California Society of Certified Public Accountants, shall develop a standard accounting form, a simplified accounting form, and rules for when the simplified accounting form may be used. After January 1, 2008, all accountings submitted pursuant to this section shall be submitted on the Judicial Council form.

(b) The final court accounting of the guardian or conservator following the death of the ward or conservatee shall include a court accounting for the period that ended on the date of death and a separate accounting for the period subsequent to the date of death.

(c) Along with each court accounting, the guardian or conservator shall file supporting documents, as provided in this section.

(1) For purposes of this subdivision, the term "account statement" shall include any original account statement or verified electronic statement from any institution, as defined in Section 2890, or any financial institution, as defined in Section 2892, in which money or other assets of the estate are held or deposited. A court may also accept a computer-generated printout of an original verified electronic statement if the guardian or conservator verifies that the statement was received in electronic form and printed without alteration. A verification shall be executed by the guardian or conservator pursuant to Section 2015.5 of the Code of Civil Procedure.

(2) The filing shall include all account statements showing the account balance as of the closing date of the accounting period of the court accounting. If the court accounting is the first court

accounting of the guardianship or conservatorship, the guardian or conservator shall provide to the court all account statements showing the account balance immediately preceding the date the conservator or guardian was appointed and all account statements showing the account balance as of the closing date of the first court accounting.

(3) If the guardian or conservator is a private professional or licensed guardian or conservator, the guardian or conservator shall also file all original account statements or verified electronic statements, as described in paragraph (1), showing the balance as of all periods covered by the accounting.

(4) The filing shall include the original closing escrow statement received showing the charges and credits for any sale of real property of the estate.

(5) If the ward or conservatee is in a residential care facility or a long-term care facility, the filing shall include the original bill statements for the facility.

(6) This subdivision shall not apply to the public guardian if the money belonging to the estate is pooled with money belonging to other estates pursuant to Section 2940 and Article 3 (commencing with Section 7640) of Chapter 4 of Part 1 of Division 7. Nothing in this section shall affect any other duty or responsibility of the public guardian with regard to managing money belonging to the estate or filing accountings with the court.

(7) If any document to be filed or lodged with the court under this section contains the ward's or conservatee's social security number or any other personal information regarding the ward or conservatee that would not ordinarily be disclosed in a court accounting, an inventory and appraisal, or other nonconfidential pleadings filed in the action, the account statement or other document shall be attached to a separate affidavit describing the character of the document, captioned "CONFIDENTIAL FINANCIAL STATEMENT" in capital letters. Except as otherwise ordered by the court, the clerk of the court shall keep the document confidential except to the court and subject to disclosure only upon an order of the court. The guardian or conservator may redact the ward's or conservatee's social security number from any document lodged with the court under this section.

(8) Courts may provide by local rule that the court shall retain all documents lodged with it under this subdivision until the court's

determination of the guardian's or conservator's account has become final, at which time the supporting documents shall be returned to the depositing guardian or conservator or delivered to any successor appointed by the court.

(d) Each accounting is subject to random or discretionary, full or partial review by the court. The review may include consideration of any information necessary to determine the accuracy of the accounting. If the accounting has any material error, the court shall make an express finding as to the severity of the error and what further action is appropriate in response to the error, if any. Among the actions available to the court is immediate suspension of the guardian or conservator without further notice or proceedings and appointment of a temporary guardian or conservator or removal of the guardian or conservator pursuant to Section 2650 and appointment of a temporary guardian or conservator.

(e) The guardian or conservator shall make available for inspection and copying, upon reasonable notice, to any person designated by the court to verify the accuracy of the accounting, all books and records, including receipts for any expenditures, of the guardianship or conservatorship.

~~SEC. 18.~~

SEC. 17. Section 2623 of the Probate Code is amended to read:

2623. (a) Except as provided in subdivision (b), the guardian or conservator shall be allowed all of the following:

(1) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees, and such compensation for services rendered by the guardian or conservator of the person as the court determines is just, reasonable, and in the best interest of the ward or conservatee).

(2) Such compensation for services rendered by the guardian or conservator as the court determines is just, reasonable, and in the best interest of the ward or conservatee.

(3) All reasonable disbursements made before appointment as guardian or conservator.

(4) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the

termination of the guardianship or conservatorship, but before the discharge of the guardian or conservator by the court.

(5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred before the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the personal representative of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

(b) If the court reduces or denies the compensation requested in the petition, the guardian or conservator shall not be compensated from the estate for the costs or fees that the guardian or conservator incurred in defending *any challenge to* the compensation in the petition.

~~SEC. 19.~~

SEC. 18. Section 2640 of the Probate Code is amended to read:

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters or any other period of time as the court for good cause orders, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services in the best interest of the ward or conservatee rendered to that time.

(2) The guardian or conservator of the person for services in the best interest of the ward or conservatee rendered to that time.

(3) The attorney for services in the best interest of the ward or conservatee rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided for in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both. The compensation allowed to the guardian or conservator of the person, the guardian or conservator

of the estate, and to the attorney may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

(d) Notwithstanding subdivision (c), if the court reduces or denies the compensation requested in the petition, the guardian or conservator shall not be compensated from the estate for the costs or fees that the guardian or conservator incurred in defending *any challenge to* the compensation in the petition.

(e) Notwithstanding subdivision (c), the guardian, conservator, or attorney shall not be compensated with any government benefits program moneys unless deemed by the court as necessary to sustain the support and maintenance of the ward or conservatee, but in no event may this exceed the amount permitted by federal laws and regulations.

~~SEC. 20.~~

SEC. 19. Section 2641 of the Probate Code is amended to read:

2641. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services in the best interest of the ward or conservatee rendered to that time.

(b) Upon the hearing, the court shall make an order allowing any compensation the court determines is just and reasonable to the guardian or conservator of the person for services rendered in the best interest of the ward or conservatee. The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged against the estate.

(c) Notwithstanding subdivision (b), if the court reduces or denies the compensation requested in the petition, the guardian or conservator shall not be compensated from the estate for the costs

or fees that the guardian or conservator incurred in defending *any challenge to* the compensation in the petition.

(d) Notwithstanding subdivision (b), the guardian or conservator of the person shall not be compensated with any government benefits program moneys unless deemed by the court as necessary to sustain the support and maintenance of the ward or conservatee, but in no event may this exceed the amount permitted by federal laws and regulations.

~~SEC. 21.~~

SEC. 20. Section 2653 of the Probate Code is amended to read:

2653. (a) The guardian or conservator, the ward or conservatee, the spouse of the ward or the spouse or registered domestic partner of the conservatee, a relative or friend of the ward or conservatee, and any interested person may appear at the hearing and support or oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto. If the guardian or conservator fails to file the accounting as ordered, the court may compel the accounting pursuant to Section 2620.2.

(c) If the court removes the guardian or conservator for cause, as described in subdivisions (a) to (g), inclusive, of Section 2650 or Section 2655, all of the following shall apply:

(1) The court shall award the petitioner the costs of the petition and other expenses and costs of litigation, including attorney's fees, incurred under this article.

(2) The guardian or conservator may not deduct from, or charge to, the estate the guardian's or conservator's costs of ~~litigation,~~ *opposing the petition for removal,* and is personally liable for those costs and expenses.

(3) ~~The court shall report the findings of the investigation~~ *If the court determines that cause for removal exists for a professional fiduciary, the court shall report that determination, and whether*

or not the professional fiduciary was removed, to the Professional Fiduciaries Bureau.

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