

CONSERVATORSHIP—WHAT TO EXPECT

PLEASE READ CAREFULLY

THE FOLLOWING REPRESENTS A LIST OF THINGS THAT YOU SHOULD KNOW *BEFORE* YOU FILE YOUR PETITION FOR PROBATE CONSERVATORSHIP.

What to Expect *When* Filing Your Petition:

When all the paperwork is ready for filing, take your petition to the clerk's office and file the forms with the clerk. The filing fee is currently \$480, unless you qualify for a fee waiver.

When you file your petition, the clerk will indicate the date and time and location of your hearing and assign a case number. It is very important that you take note of your hearing date and mark your calendar! The hearing date for Conservatorships is usually about 4 weeks after the filing date. However, for Limited Conservatorships, the hearing date is usually about 6 to 7 weeks after the filing date.

What to Expect *After* Filing Your Petition:

After filing your petition, several things must happen, as required by law:

You must arrange for a third person, not connected to the Conservatorship petition, to mail a copy of the Notice of Hearing (form GC-020) and a copy of the Petition for Appointment of Probate Conservator (form GC-310) to all first- and second-degree relatives of the proposed Conservatee at least 15 days before the hearing. In some cases, Notice must be mailed to the Veterans Administration also at least 15 days before the hearing. In cases of Limited Conservatorship, Notice must also be mailed to the Regional Center at least 30 days before the hearing. The Proof of Service on the reverse side of the Notice must be completed by the person mailing the Notice and you then must file it with the court. Please note that all the first- and second-degree relatives (*i.e.*, proposed Conservatee's spouse or domestic partner, children, grandchildren, parents, grandparents, siblings) must be notified, even if you think they do not care or if there has not been any contact or if there is friction within the family. If you do not know the relative's whereabouts, you must make a diligent effort to find them and state these efforts in a declaration to the court. It is in the Judge's discretion to waive Notice to that relative if the Judge finds that you made a diligent search. Also, "care-of" (c/o) addresses should not be used unless the individual gave prior written consent.

You must arrange for a third party, not connected to the Conservatorship petition, to personally give a copy of the Citation for Conservatorship (form GC-320) and a copy of the Petition (form GC-310) to the proposed Conservatee at least 15 days before the hearing; this is called service of Citation. The Citation cannot be mailed; it must be given to proposed

Conservatee in person. The Proof of Service on the reverse side of the Citation must be completed by the person serving Citation, and you must file it with the court.

In cases of Limited Conservatorship or Conservatorship with Dementia Powers, and in some other cases, the court will appoint an attorney for the proposed Conservatee. This attorney will need to visit the proposed Conservatee and file a report with the court. The attorney's efforts must be paid by the proposed Conservatee, unless the proposed Conservatee has very little or no income and assets. The attorney's fee is based on his/her hourly rate and will be ordered to be paid at the hearing.

The Court Investigator will also need to visit the proposed Conservatee. The Court Investigator may also visit the Conservator and others, but this is entirely in the discretion of the investigator. The investigator will visit anywhere from 7 to 10 days, or more, after the petition is filed. When the investigator visits, he or she will normally not contact the Conservator beforehand; s/he will arrive unannounced at the Conservatee's residence or program. When the investigator is at the Conservatee's home or program, he or she will meet with the Conservatee alone. If the Conservator or other family members want to talk or meet with the investigator, they can also do so, but the investigator must first meet with the Conservatee alone. If the Conservatee does not speak English, it is the petitioner's responsibility to inform the court in advance, and to get an interpreter. If the Conservatee is in a day program, there may be interpreters on site who can help. Sometimes, the investigator and the Conservatee's court-appointed attorney may visit the Conservatee together. *The investigator will also have to talk to all the Conservatee's relatives of the first degree (i.e., spouse/domestic partner, children, parents).* The Court Investigator then files a report with the court. This court investigation will trigger an "Assessment fee" of \$650, which typically must be paid by the proposed Conservatee, unless the proposed Conservatee has very little or no income and assets, which then will be ordered deferred by the Judge at the hearing.

In Limited Conservatorship cases, the Regional Center will have to make an assessment of the case and file a report with the court as well.

Approximately 1 week before the hearing you can check the "Probate Examiner Notes" at <http://riverside.courts.ca.gov/calendar.shtml> then click on "Probate Calendar Notes" for the department in which your matter is set. The notes are available to the public for all cases set for that department for approximately 30 days. The easiest way to find your particular notes are to use your browser's "edit" tab, and click on "find on this page, and then enter your case number. Usually this information is available ten days prior to your hearing, but sometimes it is available later, and sometimes earlier, depending on the Probate Examination staff's workflow. Probate Examiner notes are summaries prepared by the Probate Examiner after reviewing your petition. This summary is transmitted to the Probate Judge and assists him/her during their review of your matter. These notes inform the judge of the requests that are made in the petition, as well as any defects that the petition may have. You can call the examiner's office to ask questions about your notes at (951) 777-3147, or you can e-mail at probateexaminers@riverside.courts.ca.gov. Emails are generally answered within one business day.

What to Expect *At the Hearing*:

Be on time for the hearing and bring the proposed Conservatee to the hearing, unless proposed Conservatee's doctor marked in the Capacity Declaration (form GC-335) that proposed Conservatee is not able to attend the hearing because of medical inability.

If the proposed Conservatee is present, please ask the deputy for "priority" before the hearing starts.

The Judge will typically start the proceeding with an admonition to the proposed Conservatee, which includes the proposed Conservatee's right to object to the conservatorship and even have a jury trial on the issue. Be ready to face this possibility.

Further, there is a chance that one or some of the proposed Conservatee's relatives may object or contest the proceedings. Be ready to face this possibility.

What to Expect *After the Hearing*:

If you were not appointed, please note that fees and costs for an unsuccessful petition to appoint a conservator might only be compensated if the unsuccessful petitioner can show to the court that the filing of the petition was in the Proposed Conservatee's best interest.

If you were appointed:

You have to file Letters of Conservatorship (form GC-350) and Order Appointing Probate Conservator (form GC-340) as soon as possible after the hearing.

You have to file a Determination of Conservatee's Appropriate Level of Care (GC-355) with the court within 60 days from the hearing.

You have to give Notice of Conservatee's Rights and the Order Appointing Probate Conservator (GC-341) within 30 days from the hearing to Conservatee and Conservatee's first- and second-degree relatives (*i.e.*, proposed Conservatee's spouse or domestic partner, children, grandchildren, parents, grandparents, siblings) and file Proof of Service.

The court will set a review Hearing 100 days from the hearing, which it will vacate if you are in compliance with the filing requirements. However, if you are not in compliance, you will have to appear at the hearing and show good cause why the court should not remove you as Conservator, sanction, or fine you.

The Court Investigator may, at the discretion of the court, visit the Conservatee *6 months after the hearing*. *There is a mandatory review at one year from the date of appointment, and then visits are every two years, unless the court determines that there should be more often reviews*. These review visits cost \$650 for each visit, which is to be paid out of the Conservatee's estate. This fee is waived if the conservatee is a Medi-Cal recipient. If the conservatee is not a Medi-Cal recipient but cannot afford this fee, an application for a fee waiver can be filed with the

court to waive this fee. As with the first visit, all these visits will be unannounced and will be at the Investigator's discretion.

Always remember that you must give 30 days' notice to the court and to everyone entitled to notice if the Conservatee moves, and you must declare to the court that the move meets the "least restrictive standard." If the move involves removal from personal residence (*i.e.*, Conservatee's own home) you must give 15 days' advance notice if the Conservatee changes his/her address within the State of California. If you want to move the Conservatee outside the State of California, you must petition the court to do so, and the court will require you to establish a conservatorship (or guardianship) in that new state of residence within 4 months, before the Riverside Court will terminate the conservatorship here. Also make sure that your address with the court is current.

What to Expect—*Conservatorship of Estate*:

You must get your bond issued as ordered by the court.

You must file your inventory and appraisal within 90 days of being appointed, and a review hearing will be scheduled to ensure that you have done so, and if you did not, you must appear and state why you should not be removed and/or sanctioned/fined. If the estate contains real property, you must record your Letters of Conservatorship with the County Recorder where there is real property within 90 days of the date they are issued.

You must file your accounting within 1 year of being appointed and every year thereafter, and a review hearing will be scheduled to ensure that you have done so, and if you did not, you must appear and state why you should not be removed and/or sanctioned/fined. If the account was not filed on time, the court must take action.

The court can perform random audits.

PLEASE REMEMBER, EVERY CASE IS DIFFERENT, AND WE CANNOT FORESEE ALL SITUATIONS.

THIS DOES NOT REPRESENT LEGAL ADVICE. TO FIND A CONSERVATORSHIP LAW ATTORNEY, CALL THE LAWYER REFERRAL AND INFORMATION SERVICE OF THE RIVERSIDE COUNTY BAR ASSOCIATION AT (951) 682-7520.