

Date of Hearing: May 11, 2020

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 2844 (Obernolte) – As Amended May 4, 2020

PROPOSED CONSENT

SUBJECT: GUARDIANS AND CONSERVATORS: DUTIES: ACCOUNTINGS

KEY ISSUE: IN ORDER TO EASE THE BURDEN ON GUARDIANS AND CONSERVATORS SUBMITTING SUPPORTING DOCUMENTS FOR THEIR BIENNIAL WARD OR CONSERVATEE ESTATE ACCOUNTING TO THE COURT, SHOULD THEY BE ABLE TO SUBMIT A VERIFIED ELECTRONIC FINANCIAL ACCOUNT STATEMENT IN PLACE OF AN ORIGINAL ACCOUNT STATEMENT?

SYNOPSIS

In 2006, in response to shocking reports of abuse of California's frail and elderly, the Legislature passed the Omnibus Conservatorship and Guardianship Reform Act of 2006 (which included AB 1363 (Jones), Chap. 493, Stats. 2006), a landmark bill to overhaul and expand court oversight of California's troubled conservatorship system and better protect the financial, physical and emotional well-being of vulnerable and dependent adults. As part of that increased oversight, conservators and guardians are now required to provide more detailed periodic accountings of their conservatee's or ward's assets to the courts, which must include certain original account statements, including bank account statements. However, since that bill was enacted, more and more people now bank online and may only receive electronic account statements.

This bill, sponsored by the Conference of California Bar Associations, allows a guardian or conservator to submit an electronic statement in place of an original bank statement, provided the statement is verified. The verification, which must be done under penalty of perjury, should help ensure that the electronic statement provided to the court is accurate. And it should ease the burden of doing business for both the court and guardians and conservators across California. In support of the bill, the author states that the "requirement for an original bank statement is outdated and onerous and does not reflect current common banking practices, which include statements being delivered electronically. In fact, requiring original hard copy statements can cause unnecessary expense and delay in guardianship and conservatorship administrations." The Trusts & Estates Section of the California Lawyers Association will support the bill if amended to clarify who must complete the verification. As discussed in the analysis, it seems clear that the guardian or conservator, who is responsible for the accounting and all supporting documentation, including any electronic statements, must complete the verification. There is no reported opposition to the bill.

SUMMARY: Allows the required original account statements that must be included as supporting documents for a guardian's or conservator's biennial accounting of their ward's or conservatee's estate to be provided in a verified electronic format. Specifically, **this bill:**

- 1) Requires that the account statements that must be included as supporting documents as part of a guardian's or conservator's accounting to the court of their ward's or conservatee's

assets, after one year and biennially thereafter, can be a verified electronic statement, as defined.

- 2) Allows the original account statements showing the balance as of all periods covered by the accounting period, which all private professional or licensed guardians or conservators must file, to be filed by verified electronic statements, as defined.

EXISTING LAW:

- 1) Allows the court to appoint a guardian of the person, estate or both, taking into consideration the best interest of the proposed ward. (Probate Code Section 1500 *et seq.* Unless stated otherwise, all further statutory references are to the Probate Code.)
- 2) Allows the court to appoint a conservator to act on behalf of a person who is unable to adequately provide for his or her personal needs (a conservator of the person) or incapable of managing his or her property or other financial assets (a conservator of the estate). (Section 1800 *et seq.*)
- 3) Requires a guardian or conservator, 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, to present the accounting of the assets of the estate of the ward or conservatee to the court for settlement and allowance as provided, including supporting documents. Requires that all accountings must be submitted on a specific Judicial Council form. (Section 2620.)
- 4) Requires the accounting in 3) to include all account statements showing the account balance as of the closing date of the accounting period. If the court accounting is the first court accounting of the guardianship or conservatorship, requires the guardian or conservator to provide the court with 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. (Section 2620 (c).)
- 5) Defines “account statement,” for purpose of 4), to include any original account statement from any institution, as defined, or any financial institution, as defined, in which money or other assets of the estate are held or deposited. (*Id.*)
- 6) Defines “financial institution” as a bank, trust, savings and loan association, savings bank, industrial bank, or credit union. (Section 2892.)
- 7) Defines “institution” as an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment adviser, financial planner, financial adviser, or any other person who takes, holds, or controls an asset subject to a conservatorship or guardianship that is not a financial institution, as provided. (Section 2890.)
- 8) Defines what is required for any matter to be supported, evidenced, established, or proved by a sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same, allowing such matter to with like force and effect be supported,

evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by them to be true under penalty of perjury, is subscribed by them, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California. Provides a certification or declaration form. (Code of Civil Procedure Section 2015.5.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: In 2006, in response to shocking reports of abuse of California's frail and elderly, the Legislature passed the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Omnibus Act, which included AB 1363 (Jones), Chap. 493, Stats. 2006), a landmark bill to overhaul and expand court oversight of California's troubled conservatorship system and better protect the financial, physical and emotional well-being of vulnerable and dependent adults. As part of that increased oversight, conservators and guardians are now required to provide more detailed periodic accountings of their conservatee's or ward's assets to the courts, which must include certain original account statements, including bank account statements. However, since the time of that bill, more people bank online and may only receive electronic statements. This bill allows a guardian or conservator to submit an electronic statement in place of an original bank statement, provided the electronic statement is verified.

In support of the bill, the author writes:

AB 2844 will add verified electronic bank statements to the acceptable bank statements that can be filed in support of accountings for guardianships and conservatorships, which will streamline and modernize the process as well as reduce delays and additional expenses. The digital age has completely changed the way people do business and day-to-day life. Over the past many years, technology has changed rapidly and as a result so has the way banking is done. Many banking activities that were previously done via paper are now done electronically. This includes bank statements. The requirement for an original bank statement is outdated and onerous and does not reflect current common banking practices, which include statements being delivered electronically. In fact, requiring original hard copy statements can cause unnecessary expense and delay in guardianship and conservatorship administrations.

A brief history of conservatorships and guardianships in California. California adopted its first conservatorship statute in 1957. Prior to that time, the court appointed a "guardian" for any person, child or adult, who was deemed "incompetent" to manage his or her daily affairs. After 1957, the law distinguished between a "guardianship," created for a minor, and a "conservatorship," created for an adult. There are also specific types of conservatorships for persons who are considered "gravely disabled" by reason of mental illness or chronic alcoholism and subject to confinement in a locked psychiatric facility under the Lanterman-Petris-Short Act (Welf. & Inst. Code sections 5330 *et seq.*) and for "developmentally disabled adults" (Sections 1801(d), 1828.5, and 1830). In addition, California law provides for the appointment of a Public Guardian for any person "who requires a guardian or conservator and there is no one else who is qualified and willing to act." (Section 2920.)

Court oversight includes review of detailed accountings provided by conservators and guardians. The Omnibus Act of 2006 was designed to overhaul California's troubled conservatorship system, remedy alarming deficiencies in California's conservatorship system, and help protect the financial, physical and emotional well-being of vulnerable and dependent adults. In particular, AB 1363 (Jones), Chap. 493, Stats. 2006, was designed to overhaul and increase court oversight of conservators and guardians. That bill required that court investigators increase investigations, limited the waiving of notice before appointment of a temporary conservator or guardian and limited the duties of a temporary conservator, required the probate court to review conservatorships at a noticed hearing six months after appointment of the conservator and annually thereafter, and required the Judicial Council to develop qualifications and continuing education requirements for probate court judges, attorneys and court investigators. In addition, and of particular relevance to this bill, AB 1363 required accountings to include specified supporting documentation and to be subject to random audit.

It is important to note that many of these court oversight requirements, critically important to protect vulnerable seniors from abuse, may not be enforced in many courts. In 2011, the Judicial Council sought and received relief from the mandates during the height of budget cuts caused by the 2008 financial crisis. (SB 78 (Committee on Budget and Fiscal Review), Chap. 10, Stats. 2011.) Unfortunately, while recent court budget increases have more than made up for the prior budget reductions, court conservatorships oversight requirements have not yet been mandated again, putting frail and vulnerable seniors and dependent adults at risk of abuse.

Required accountings must include detailed supporting documentation. As part of court oversight, guardians and conservators, at the expiration of one year from the time of their appointment and not less frequently than biennially thereafter, unless otherwise ordered by the court to be more frequent, must present to the court an accounting of the assets of the ward's or conservatee's estate for settlement and allowance. (Section 2620.) The accounting must be submitted on a Judicial Council form and must include all supporting documents. The supporting documents include all account statements showing the account balance as of the closing date of the accounting period. If the guardian or conservator is a licensed professional, the guardian or conservator must also file all original account statements showing the balance as of all periods covered by the accounting. Account statements include any original account statement from any financial or other institution, including banks, insurance companies and financial advisors.

Today substantial financial business is transacted online and this bill revises accounting statement requirements accordingly. Today banks and other financial institutions, as well as other institutions, maintain all of their records online, and more and more account holders no longer receive paper statements. Monthly statements are accessed online, rather than through the mail. This makes it difficult to comply with the existing law, which requires *original* account statements. This bill allows the account statements that must be included as supporting documents as part of a guardian's or conservator's accounting to the court to be provided as a verified electronic statement. This should ease the burden of doing business for both the court and guardians and conservators across California.

The bill cross-references the Code of Civil Procedure to set out how the verification must be done. Under that section – Code of Civil Procedure Section 2015.5 – if any matter must be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same, then it may be done by

unsworn statement, declaration, verification, or certificate, in writing of such person which states that it is certified or declared by them to be true *under penalty of perjury*, is subscribed by them, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California. The statute provides an attestation form and states that the certification or declaration may be in substantially the following form. The form for a declaration executed in California is:

“I certify (or declare) under penalty of perjury that the foregoing is true and correct”:

(Date and Place)(Signature)

If executed at any place, whether within or outside of California, the form for the declaration is:

“I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct”:

(Date)(Signature)

This verification, which must be done under penalty of perjury, should help ensure that the electronic statements provided to the court are accurate while still minimizing the burden for guardians and conservators, and the courts.

The Trusts & Estates Section of the California Lawyers Association supports the bill if amended to add some requested clarity. The Trusts & Estates Section of the California Lawyers Association will support the bill if amended to address two issues, although the first issue – ensuring that professional guardians and conservators can use electronic statements – has already been included in recent amendments to the bill. The second requested change is that the bill specifies who is required to verify the account statement. While it is not specified in the bill as of now, the individual verifying the accuracy and veracity of the electronic statement must have first-hand knowledge of the statement. The guardian or conservator is responsible for submitting the accounting to the court, as well as all supporting documents (Section 2620 (c)). The verification of the electronic statement is a supporting document. It seems clear, whether or not it is specified in the legislation, that the guardian or conservator is the appropriate individual to verify the electronic statement. The author may, as this bill moves forward, choose to make that explicit in the legislation, but regardless of whether that is made explicit, the guardian or conservator is responsible for the accuracy of the accounting submittal to court, including the verification of any electronic statement that is included.

ARGUMENTS IN SUPPORT: In support of the bill, the sponsor, the Conference of California Bar Associations, writes

Allowing the use of electronic statements and requiring the party submitting the electronic statements to verify authenticity of the same will reduce cost[s] and increase efficiency in the administration of guardianship and conservatorship administrations. For example, if a client sends their attorney bank statements electronically, the attorney can download and save the statements, and then electronically file the statements. Many counties are currently requiring, or will soon be requiring, all pleadings and other documents be “e-filed” with the

court. This negates the need to print out potentially thousands of pages of documents which are then likely to be immediately shredded. From a judicial economy and resources perspective, if paper documents are not filed, staff members do not spend time scanning unnecessary documents into the court system which then may need to be shredded or returned to sender. AB 2844 will move accounting requirements pertaining to conservatorships and guardianships into the electronic age, saving valuable time and resources – which is critical, especially during this challenging time.

REGISTERED SUPPORT / OPPOSITION:**Support**

Conference of California Bar Associations (sponsor)
California Lawyers Association, Trusts and Estates Section (if amended)

Opposition

None on file

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