

## RESOLUTION 07-06-2014 (as amended)

### DIGEST

#### Conservatorships: Collection of Court Investigator's Fees

Amends Probate Code section 1851.5 to clarify that payment of the court investigator assessment shall not be required at the outset of a conservatorship proceeding, but only upon court order.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Probate Code section 1851.5 to clarify that payment of the court investigator assessment shall not be required at the outset of a conservatorship proceeding, but only upon court order. This resolution should be approved in principle because it will prevent the collection of such fees by overzealous cash-strapped county clerks before the court determines that the conservatorship estate must, in fact, reimburse the court investigator.

Court investigators are court employees who have the power to investigate all matters related to the establishment of a conservatorship and provide neutral information about it to the judge. (Prob. Code, § 1826.) As written, Probate Code section 1851.5 requires the court to “assess” the conservatee a fee for the investigation and authorizes the court to order reimbursement of the assessment fee to the court, payable from the conservatorship estate, unless the court determines that it would impose a hardship on the conservatee to pay it. Unfortunately, notwithstanding the implicit requirement that the court must first order such reimbursement, some county clerks are requiring payment of the assessment fee on petitioners in advance of any such determination, even in cases where the assessment will not ultimately have to be paid. This resolution would prevent this abuse by making explicit that the clerks may not assess any such fee unless and until an order is made.

Note that the resolution as written would prohibit the payment of fee at the outset of the case, whereas the proponent likely intended to provide that it not be “payable.”

### TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 1851.5 to read as follows:

#### § 1851.5

- 1 Each court shall assess each conservatee in the county for any investigation or review
- 2 conducted by a court investigator with respect to that person. The assessment fee shall not be
- 3 paid to the clerk , and no clerk shall demand such payment, when the initial petition for
- 4 conservatorship is filed. The court may order reimbursement to the court for the amount of the
- 5 assessment, unless the court finds that all or any part of the assessment would impose a hardship

6 on conservatee or the conservatee's estate. There shall be a rebuttable presumption that the  
7 assessment would impose a hardship if the conservatee is receiving Medi-Cal benefits.

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

**PROPONENT:** San Bernardino County Bar Association

### **STATEMENT OF REASONS**

The Problem: Under current law, an assessment fee is not to be paid to the court investigator until the court has ordered reimbursement. However, there are some court clerks who require that the assessment fee be paid at the time the initial petition for conservatorship is filed. This is contrary to existing law and, even though this has been brought to the clerk's attention, they refuse to file the petition without the assessment or a fee waiver

The Solution: This resolution will clarify existing law and ensure that the assessment fee is not collected by the clerk at the initial filing of the petition for conservatorship, but only after reimbursement has been ordered by the court.

### **LEGISLATIVE HISTORY**

Not known.

### **IMPACT STATEMENT**

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

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