

RESOLUTION 10-03-2015

DIGEST

Conservatorships: Renewed Petition for Termination

Amends Probate Code section 1861 to require a demonstration of changed circumstances in a renewed petition for termination of a conservatorship when a prior petition has been denied.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Association recommends that legislation be sponsored to amend Probate Code section 1861 to read as follows:

§1861

- 1 (a) A petition for the termination of the conservatorship may be filed by any of the
- 2 following:
- 3 (1) The conservator.
- 4 (2) The conservatee.
- 5 (3) The spouse, or domestic partner, or any relative or friend of the conservatee or other
- 6 interested person.
- 7 (b) The petition shall state facts showing that the conservatorship is no longer required.
- 8 (c) A party who originally filed for a petition to terminate that was denied, may file a
- 9 subsequent petition to terminate upon new or different facts, circumstances, or law, in which
- 10 case it shall be shown by affidavit what petition was made before, what order was made, and
- 11 what new or different facts, circumstances, or law are claimed to be shown.
- 12 (d) If petitioner fails to show that there are new or different facts, circumstances, or law,
- 13 the court may dismiss the petition.
- 14 (e) If petitioner sets forth sufficient facts to show that there are new or different facts,
- 15 circumstances, or law, the petitioner may proceed forward with the petition for termination of the
- 16 conservatorship.

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

PROPONENT: San Bernardino County Bar Association

STATEMENT OF REASONS

The Problem: Under current law, a petition for termination can be filed by the conservatee, or on behalf of the conservatee, at any time during the conservatorship proceedings. In some situations, a conservatee will file a petition for termination and if it is denied by the court, the conservatee will file a subsequent petition a few months later. If that petition is also denied, the conservatee will most likely file another petition for termination. When a conservatee files a petition for termination, the court will set the matter for hearing and this can lead to costly litigation when the conservatee continues to file multiple petitions to terminate the conservatorship. There is nothing in the Probate Code that prevents a conservatee from filing one petition after another to terminate the conservatorship when the initial petition has been denied, which can lead to costly litigation for the conservatee.

The Solution: This resolution would require that the conservatee, or other person petitioning to terminate a conservatorship, must show new or different facts or circumstances, or a change in the law, before they can proceed on a subsequent petition to terminate the conservatorship if the initial petition was denied. This will save the conservatee's estate the costs of unnecessary litigation when the circumstances have not changed since the prior petition to terminate was filed. If a conservatee can show a new or different facts or circumstances, or a change in the law, since the prior petition for termination, then the court can proceed forward on the subsequent petition for termination. This resolution would not harm the conservatee's rights to petition to terminate. This resolution is in line with the long standing concepts of res judicata and collateral estoppel and follows the language set forth in Code of Civil Procedure section 1008(b) seeking a motion for reconsideration.

IMPACT STATEMENT

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

CURRENT OR PRIOR RELATED LEGISLATION

Not known.

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 02-09-2014 which was disapproved.

Reasons:

This resolution amends Probate Code section 1861 to require a demonstration of changed circumstances in a renewed petition for termination of a conservatorship when a prior petition has been denied. This resolution should be approved in principle because when a court has already denied one petition for termination the court and the parties should not be required to endure costly litigation and a hearing on another such petition absent a preliminary showing that circumstances have changed.

The imposition of a conservatorship is a serious matter, involving a determination as to whether a proposed conservatee should be deprived of certain rights. Therefore, it is proper that the conservatee have the right to petition for termination of the conservatorship when the circumstances initially justifying the conservatorship have changed. But it does not follow that the conservatee should be able to burden the interested parties and the court with repetitive and

unnecessary litigation unless there is some actual change in circumstances that would require the court to make a different ruling from its earlier denial of the same petition. Practitioners who regularly represent conservatees report anecdotally that some conservatees want them to repeatedly petition for termination even where it is clear that nothing has changed and that such requests place them in a difficult position. Under this proposed resolution, unless the conservatee pleads changed circumstances, the court would be able to summarily deny an improper renewed petition, thereby relieving respondents of the obligation to respond. By underscoring the requirement that circumstances have changed since the denial of the prior petition this resolution will reduce the number of redundant petitions, without imposing a severe burden on the conservatee.

It is not clear what effect, if any, the addition of proposed new subdivision (e) will have, since it is implicit under subdivision (c) that absent the requisite allegations the petitioner may not proceed with the renewed petition.

SECTION COMMENTS TO RESOLUTION 10-03-2015

TRUSTS AND ESTATES SECTION TO THE STATE BAR OF CALIFORNIA

OPPOSE

TEXCOM opposes this Resolution, which seeks to Amend Probate Code section 1861 to require a demonstration of changed circumstances in a renewed petition for termination of a conservatorship when a prior petition has been denied.

A conservatee's right to petition for termination of conservatorship implicates a fundamental right of personal liberty. The Resolution impacts a fundamental due process right which should not be short-circuited.

DISCLAIMER:

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

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