

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 300

**CONSERVATORSHIP:
APPOINTMENT AND POWERS
OF CONSERVATOR**

[REVISED 2016]



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR JUDICIAL EDUCATION AND RESEARCH

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This benchguide discusses appointment of a conservator of the person and the estate, including temporary and successor conservators. It also discusses powers and authority of the conservator that may be applicable or authorized during the appointment process, including capacity to bind the estate, choose the residence, and consent for medical treatment. Management of estate, support of the conservatee, periodic review, accounts, compensation, and termination of conservatorships are discussed in California Judges Benchguide 301: *Conservatorship Proceedings* (Cal CJER) (hereafter Benchguide 301).

II. PROCEDURAL CHECKLISTS: ESTABLISHMENT OF CONSERVATORSHIP

A. [§300.2] Hearing Preparation

(1) *Determine whether conservatorship of a person, of an estate, or of both is being sought.* See Petition for Appointment of Probate Conservator, Judicial Council Form GC-310, 1; §§300.4–300.6.

(2) *Determine whether proper notice of the hearing has been given.* Prob C §1822; see Notice of Hearing—Guardianship or Conservatorship, Judicial Council Form GC-020; §§300.21–300.22. If petitioner is not proposed conservatee, determine whether proposed conservatee has been served with citation to appear. Prob C §1823; §300.22.

(3) *Determine whether jurisdiction and venue are correct.* Prob C §§2200, 2201. Is the proposed conservatee alleged to be a resident of the county in which the action is filed or are sufficient facts alleged to show that it is in the best interests of the proposed conservatee to have the conservatorship in this county? See Judicial Council Form GC-310, 3(a); §300.11. If the proposed conservatee is a nonresident, see §300.11.

(4) *Determine status of proposed conservator; whether nominee, spouse, domestic partner, relative, private professional conservator, bank, or trust company.* See Confidential Conservator Screening Form, GC-314, Judicial Council Form GC-310, 3(c); §§300.29–300.32.

(5) *Determine whether Confidential Conservator Screening Form has been filed.* Judicial Council Form GC-314. Determine whether proposed conservator should not be appointed because of his or her prior crimes or misconduct.

(6) *If proposed conservator is private professional conservator, determine if he or she has a valid, unexpired, unsuspended license as a professional fiduciary under Bus & P C §§6500 et seq; is exempt from the definition of “professional fiduciary” under Bus & P C §6501; or is exempt from the licensing requirements of Bus & P C §6530.* Prob C

§2340; §300.31; see Judicial Council Form GC-314. Examine the fiduciary's file with the Professional Fiduciary Bureau to determine whether there is any reason that the proposed conservator should not be appointed.

(7) *Determine status of petitioner; whether proposed conservator, nominee, spouse, domestic partner, relative, etc.* See Judicial Council Form GC-310, 3(d); §300.13. Determine whether petitioner is creditor or debtor of proposed conservatee. See Judicial Council Form GC-310, 3(b) Creditor of proposed conservatee cannot be petitioner unless also a spouse, relative, or representative of a governmental entity. Prob C §1820(c); §300.13.

(8) *If proposed conservator is the spouse of proposed conservatee, determine whether the spouse is a party to any action or proceeding against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage.* See Judicial Council Form GC-310, 6. If the spouse is a party to such an action, he or she may not be appointed conservator unless the court finds it is in the best interests of the proposed conservatee to do so. Prob C §1813; §300.30.

(9) *If proposed conservator is the domestic partner of proposed conservatee, determine whether the domestic partner has terminated or intends to terminate the domestic partnership.* See Judicial Council Form GC-310, 7. If the domestic partner has or intends to terminate, he or she may not be appointed conservator unless the court finds it is in the best interests of the proposed conservatee. Prob C §1813.1(a); §300.30.

(10) *Determine what special authority is being sought in the petition: independent powers (Prob C §§2590, 2591; §§300.79–300.84), orders relating to capacity of proposed conservatee (Prob C §§1873, 1901; §§300.73–300.78), or orders relating powers of proposed conservator (Prob C §§2351–2358; §§300.99–300.120).* See Judicial Council Form GC-310, 1(d)–(f).

(11) *Determine whether proposed conservator is requesting authority to give consent for medical treatment.* Prob C §§1880 et seq, 2355; see Judicial Council Form GC-310, 1(g), 9. If so, the Capacity Declaration—Conservatorship Form, Judicial Council Form GC-335 must be filed or the reason for failure to file it must be explained. §§300.85–300.92.

(12) *Determine whether orders relating to the proposed conservatee's dementia are being sought.* Prob C §2356.5; see Judicial Council Form GC-310, 1(k); §§300.93–300.98. If so, a Capacity Declaration—Attachment Requesting Special Orders Regarding Dementia, Judicial Council Form GC-313 must be attached to the petition. Use of this attachment requires that the Capacity Declaration—Conservatorship Form, Judicial Council Form GC-335 and Dementia Attachment to

Capacity Declaration—Conservatorship, Judicial Council Form GC-335A, also be filed.

(13) *Determine whether any other orders are being sought.* See Judicial Council Form GC-310, 1(h), (i), (j), (l).

(14) *Determine the character and value of the proposed conservatee's estate.* See Judicial Council Form GC-310, 3(e).

(15) *Determine amount of bond, including a reasonable amount for the cost of recovery and whether amount of bond will be reduced by ordering blocked accounts.* Prob C §§2320, 2328; §300.50.

(16) *Determine whether proposed conservatee will attend hearing.* See Judicial Council Form GC-310, 8. If the proposed conservatee is unable to attend the hearing because of medical inability, a Capacity Declaration—Conservatorship Form GC-335 must be filed. The court can order that the proposed conservatee need not attend the hearing if the investigator reports that the proposed conservatee does not want to attend and does not contest the appointment. Prob C §1825(a); see §300.42.

(17) *Determine whether proposed conservatee is on leave from a state mental health institution, is or is not receiving veteran's benefits, and is or is not competent to complete an affidavit of voter registration.* See Judicial Council Form GC-310, 4. Determine whether Director of Mental Health, the Director of Developmental Services, or Veteran's Administration has been given notice. §300.21.

(18) *Determine whether court investigation is complete and report has been received.* Prob C §1826; §300.27.

(19) *Determine whether proposed conservatee is represented by counsel, and if not, determine whether counsel should be appointed.* Prob C §§1470 et seq; §300.28.

B. [§300.3] Hearing

(1) *Commissioners or attorneys serving as temporary judges should obtain a stipulation from the parties.* Cal Rules of Ct 2.831.

(2) *Determine whether proposed conservatee is present and is represented by counsel.* If not represented by counsel, determine whether hearing should be postponed to allow conservatee to obtain counsel or whether counsel should be appointed. §300.28.

(3) *Inform the proposed conservatee of his or her rights at the hearing.* See Spoken Form §300.151.

(4) *Determine whether proposed conservatee is contesting the appointment or whether any other party has appeared to contest the appointment.*

(5) *If the appointment is contested, determine whether the proposed conservatee is demanding a jury trial. If a jury trial is demanded, follow procedures to set for jury trial.*

(6) *If jury trial is not demanded but hearing is contested:*

- Determine what witnesses will be called.
- Administer oath to all witnesses.
- Take testimony as to proposed conservatee's competence.

(7) *If conservatorship of person is sought, determine whether proposed conservatee is unable to provide properly for personal needs for food, clothing, physical health, and shelter. Prob C §1801(a). Use statutory standards of Prob C §§810 et seq; see §§300.34–300.38.*

(8) *If conservatorship of estate is sought, determine if proposed conservatee is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Prob C §1801(b). Use statutory standards of Prob C §§810 et seq; see §§300.34–300.38.*

(9) *If you find that a conservator of person, estate, or both is appropriate, determine whether the proposed conservatee or any of the witnesses have an objection to the proposed conservator.*

(10) *Determine whether proposed conservator is qualified. Review Confidential Conservator Screening Form GC-314, and if a professional fiduciary is seeking appointment, review the fiduciary's file with the Professional Fiduciaries Bureau.*

(11) *Appoint conservator of person, estate, or both.*

(12) *Determine whether the court orders sought in the petition should be granted.*

(13) *Review Order Appointing Probate Conservator Form GC-340 to ensure that it accurately reflects the court's decision and orders.*

III. APPLICABLE LAW

A. Types of Conservatorships

1. [§300.4] Of the Person

A conservator of the person may be appointed for an adult who cannot care properly for basic personal needs such as food, clothing, physical health, and shelter. Prob C §1801(a). Although generally guardianships, rather than conservatorships, are used for minors (see Prob C §§1500 et seq), the court may appoint a conservator for a minor who has

been married even if the marriage has been dissolved. Prob C §1800.3(a)(2).

But no conservatorship of the person or estate may be granted without an express finding that the conservatorship is the least restrictive alternative needed for the conservatee’s protection. Prob C §1800.3(b).

2. [§300.5] Of the Estate

A conservator may be appointed for the estate of an adult who is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability to manage finances may not be proven by isolated incidents of negligence or improvidence. Prob C §1801(b).

3. [§300.6] Of Both

For prospective conservatees who have difficulties with both activities of daily living and handling finances, the court may appoint a conservator of both the person and the person’s estate. Prob C §1801(c).

4. [§300.7] Conservator of Estate for Missing Person

A conservator of the estate may be appointed for a person who is missing and whose whereabouts is unknown. Prob C §1804. Special provisions apply to the establishment of these conservatorships that are discussed in §§300.134–300.138.

5. [§300.8] Conservator of Estate for Absentee

A conservator of the estate may be appointed for a person who is an absentee. Prob C §1803. “Absentee” means either of the following (Prob C §1403):

- A member of a uniformed service covered by 37 USC chap 10, who is determined by the secretary concerned, or by the secretary’s authorized delegate, to be in missing status.
- An employee of the United States government or an agency thereof covered by 5 USC chap 55, subchap VII, who is determined by the head of the department or agency concerned, or by the authorized delegate thereof, to be in missing status.

Special provisions apply to the establishment of these conservatorships that are discussed in §§300.139–300.142.

6. [§300.9] Limited Conservatorships

A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. Prob C §1801(d). Special

provisions apply to the establishment of these conservatorships that are discussed in §§300.61–300.63 and §300.121.

7. [§300.10] LPS Conservatorships

A conservator of the person, the estate, or both may be appointed for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism and who is unwilling to accept or incapable of accepting voluntary treatment. Welf & I C §5350. Grave disability must be found beyond a reasonable doubt. See *Conservatorship of Roulet* (1979) 23 C3d 219, 235, 152 CR 424. These conservatorships are known as LPS (Lanterman-Petris-Short Act) Conservatorships. Welf & I C §§5000–5550. They result in the conservatee’s involuntary commitment. Welf & I C §5358.

LPS conservatorships are fully discussed in California Judges Bench-guide 120: *LPS Proceedings* (Cal CJER).

B. Initiating the Proceeding

1. [§300.11] Jurisdiction and Venue

Jurisdiction for conservatorships is in the superior court. Prob C §1980 et seq governs which state has jurisdiction of a conservatorship proceeding. Prob C §2200.

Venue, when the proposed conservatee is a California resident, is either in the county where the proposed conservatee resides or a county that would be in the best interest of the proposed conservatee. Prob C §2201. This provision permits the court to determine that venue is proper, even though the place of residence is in dispute and avoids the need to litigate the issue of residence if the court determines that continuance of the proceeding in the county where filed is in the conservatee’s best interests. Cal L Rev Comm’n Comment to Prob C §2201 (1990).

When the proposed conservatee is not a California resident and the petition is for conservatorship of the person, venue may be in the county in which the proposed conservatee is temporarily living or one that may be in the best interest of the proposed conservatee. Prob C §2202(a). But if the petition is for conservatorship of the estate, venue may be in any of the following (Prob C §2202(b)):

- The county in which the proposed conservatee is temporarily living;
- Any county in which the proposed conservatee has property; or
- Any county that might be in the best interest of the proposed conservatee.

The “best interests” provisions enable the court of the county where the property is located to determine that venue is proper with respect to the person as well as to the estate where a conservatorship of the person is necessary in California. Cal L Rev Comm’n Comment to Prob C §2202 (1990).

If proceedings for the conservatorship of the estate are commenced in more than one county, the conservatorship of the estate first granted, including a temporary conservatorship of the estate, governs and extends to all the conservatee’s property in California. The other proceeding must be dismissed. Prob C §2203(a).

If proceedings for the conservatorship of the person are commenced in more than one county, the conservatorship of the person first granted, including a temporary conservatorship of the person, governs. The other proceeding must be dismissed. Prob C §2203(b).

If a proceeding for the conservatorship of the person is commenced in one county and a proceeding for the conservatorship of the estate is commenced in a different county, the court first granting the conservatorship, whether of the person or of the estate, may find that it is in the conservatee’s best interests that the conservatorship of both the person and the estate be maintained in that county or in such other county as the court determines. Thereupon, the conservatorship proceeding in the court of the county found by the court to be in the conservatee’s best interests governs and extends to all the conservatee’s property in California. The other proceeding must be dismissed. Prob C §2203(c).

2. [§300.12] Transfer of Venue

The court in which a conservatorship proceeding is pending, upon petition, may transfer the proceeding to another county within this state. Prob C §2211.

The petition for transfer may be filed by one or more of the following (Prob C §§2210, 2212):

- The conservator or proposed conservator.
- The conservatee or proposed conservatee.
- The spouse or domestic partner of the conservatee or proposed conservatee.
- A relative or friend of the conservatee or proposed conservatee.
- Any other interested person.

The petition for transfer must set forth all of the following (Prob C §2213):

- The county to which the proceeding is to be transferred.
- The name and address of the conservatee.

- A brief description of the character, value, and location of the conservatee's property.
- The reasons for the transfer.
- The names and addresses, so far as they are known to the petitioner, of the spouse or domestic partner and of the relatives of the conservatee within the second degree.
- The name and address of the conservator if other than the petitioner.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). In addition, the petitioner must mail a notice of the time and place of the hearing and a copy of the petition to all persons required to be listed in the petition at least 15 days before the date set for the hearing. Prob C §2214.

The general form of notice of hearing that must be used is Notice of Hearing—Guardianship or Conservatorship, Judicial Council Form GC-020.

The following persons may appear at the hearing to support or oppose the petition and may file written objections to the petition (Prob C §2215(a)):

- Any person required to be listed in the petition.
- Any creditor of the conservatee or of the estate.
- Any other interested person.

If the court determines that the transfer requested in the petition will be in the conservatee's best interests, it must make an order transferring the proceeding to the other county. Prob C §2215(b)(1).

In those cases in which the court has approved a change of the conservatee's residence, it is presumed to be in the conservatee's best interests to transfer the proceedings if the conservatee has moved residence to another county within the state in which any spouse, domestic partner, or relative in the second degree also resides. The presumption that the transfer is in the best interests of the conservatee may be rebutted by clear and convincing evidence that the transfer will harm the conservatee. Prob C §2215(b)(2).

For discussion of interstate transfers of conservatorships, see [§300.143–300.150](#).

3. [§300.13] Who May Initiate

Conservatorship proceedings are initiated by the filing of a petition by any of the following (Prob C §1820(a)):

- The proposed conservatee.

- The spouse or domestic partner of the proposed conservatee. “Domestic partner” means one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State pursuant to Fam C §297, provided that the domestic partnership has not been terminated. Prob C §37(a).
- A relative of the proposed conservatee.
- Any interested state or local entity, or agency of this state, or any interested public officer or employee of this state or of a local public entity of this state.
- Any other interested person or friend of the proposed conservatee.

The proceedings may not be initiated by a creditor of the proposed conservatee, unless that person is also a spouse or domestic partner, relative, or representative of a governmental entity. Prob C §1820(c).

4. [§300.14] Contents of Petition

In the petition, the petitioner must (Prob C §1821(a)):

- State the reasons that the conservatorship is being sought.
- Request that a conservator be appointed.
- Specify the names, addresses, and telephone numbers of the proposed conservator and conservatee.

The petition must set forth, so far as they are known to the petitioner or proposed conservator, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. Prob C §1821(b). If no spouse or domestic partner, or relatives of the proposed conservatee within the second degree are known to the petitioner or proposed conservator, the petition must set forth, so far as they are known, the names and addresses of the following persons who are all deemed to be relatives (Prob C §1821(b)):

- A spouse or domestic partner of a predeceased parent of the proposed conservatee.
- The children of a predeceased spouse or domestic partner of the proposed conservatee.
- The siblings of the proposed conservatee’s parents, if any, but if none, then the natural and adoptive children of the proposed conservatee’s parents’ siblings.
- The natural and adoptive children of the proposed conservatee’s siblings.

If the petition is filed by a person other than the proposed conservatee, the petition must include a declaration of due diligence showing both of the following (Prob C §1821(d)):

- Either the efforts to find the proposed conservatee’s relatives or why it was not feasible to contact any of them.
- Either the preferences of the proposed conservatee concerning the appointment of a conservator and proposed conservator or why it was not feasible to ascertain those preferences.

If the petitioner or proposed conservator is a professional fiduciary, as described in Prob C §2340, who is required to be licensed under the Professional Fiduciaries Act (Bus & P C §§6500 et seq), the petition must include the following (Prob C §1821(c)):

- The petitioner’s or proposed conservator’s proposed hourly fee schedule or another statement of proposed compensation from the estate of the proposed conservatee for services performed as a conservator. This schedule or statement will not preclude the court from later reducing the petitioner’s or proposed conservator’s fees or other compensation.
- Unless already specified in a petition for appointment of a temporary conservator filed along with it, the petition must specify
 - The petitioner’s or proposed conservator’s license information.
 - An explanation of who engaged the petitioner or proposed conservator, or how the petitioner or proposed conservator was engaged to file the petition or agree to accept the appointment as conservator, and what prior relationship the petitioner or proposed conservator had with the proposed conservatee or the proposed conservatee’s family or friends.

Other petition requirements with respect to specific situations, *i.e.*, petitioner is debtor or creditor of conservatee, conservatee is receiving veteran’s benefits, conservatee is a patient in or on leave from a mental institution, conservatee is a member of a federally recognized Indian tribe, and specific requirements if the proposed conservatee is developmentally disabled, are set forth in Prob C §1821(e)–(k).

The petition must be filed using Petition for Appointment of Probate Conservator, Judicial Council Form GC-310.

5. [§300.15] Orders Sought in Petition

The petition may include an application for any order or orders authorized by statute including (Prob C §1821(h)):

- Orders for independent powers (Prob C §§2590(a), 2591); no powers without court authorization (Prob C §2590(b); §§300.79–300.84).
- Orders relating to the conservatee’s capacity to enter into transactions or to marry. Prob C §§1873, 1901; §300.72, §§300.131–300.132.
- Orders with regard to the conservator’s authority to bind the estate. Prob C §§1870 et seq; §§300.73–300.78.
- Orders relating to the powers and duties of the proposed conservator of the person. Prob C §§2350 et seq; §§300.99–300.120.
- An order determining that the conservatee lacks capacity to consent to medical treatment and giving that authority to the conservatee. Prob C §2355; §§300.105–300.111.
- Orders relating to dementia treatment or placement. Prob C §2356.5; §§300.93–300.98.
- A petition for instructions. Prob C §2359; §300.119.
- A petition for substituted judgment. Prob C §2580; see Benchguide 301.
- A petition for authorization to make expenditures for the conservatee’s support. Prob C §§2420 et seq; see Benchguide 301.
- Orders providing for the care and custody of the conservatee’s property. Prob C §2402; see Benchguide 301.

6. [§300.16] Confidential Supplemental Information Form

In addition to the petition, the petitioner or proposed conservator must file the form Confidential Supplemental Information, Judicial Council Form GC-312, which includes a brief statement of facts addressed to each of the following categories (Prob C §1821(a)):

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee’s residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner or proposed conservator and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner or proposed conservator has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The Confidential Supplement form need not be filed by a petitioner or proposed conservator that is a bank or other entity authorized to conduct the business of a trust company. Prob C §1821(a).

The supplemental information form is separate and distinct from the form for the petition. The supplemental information is confidential and must be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court has discretion at any other time to release the supplemental information to other persons if it would serve the conservatee's interests. The clerk of the court must make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section. Prob C §1821(a).

7. [§300.17] Conservator's Screening Form

Each petitioner, other than a bank or other entity entitled to conduct the business of a trust company, or a public guardian, must submit a completed Confidential Conservator Screening Form, Judicial Council Form GC-314 with the petition. Cal Rules of Ct 7.1050. The form discloses information about the proposed conservator's background and his or her relationship to the proposed conservatee, to assist the court in determining whether the proposed conservator should be appointed.

8. [§300.18] Attachment Requesting Special Orders Regarding Dementia

Petitioners must attach Judicial Council Form GC-313, Attachment Requesting Special Orders Regarding Dementia, to the petition if they request either (Prob C §2356.5):

- That a proposed conservatee with alleged dementia be placed in a secured perimeter residential care facility for the elderly under Health & S C §1569.698, or
- That they be authorized to approve the administration of medications appropriate for the care and treatment of dementia.

This attachment requires that a medical declaration with a dementia attachment be filed. See Judicial Council Forms GC-335, GC-335A; [§300.20](#).

9. [§300.19] Physician’s Capacity Declaration

If the proposed conservatee is unable to attend the hearing or if the petition seeks a determination that the proposed conservatee lacks the capacity to give medical consent or to place the proposed conservatee in a security facility for elderly based on dementia, the petition must be supported by a physician’s, psychologist’s, or religious healing practitioner’s capacity declaration. Prob C §§1825(b), 1890(c). The required form is Capacity Declaration Conservatorship, Judicial Council Form GC-335. If dementia orders are sought, the Dementia Attachment to Capacity Declaration, Judicial Council Form GC-335A, must be attached.

- **JUDICIAL TIP:** If a capacity declaration is not filed by the hearing date, continue the hearing to allow the petitioner to obtain and file the capacity declaration. The hearing may not proceed without the conservatee in attendance unless one of the exceptions in Prob C §1825(a) applies. There are two other exceptions to a proposed conservatee attending the hearing. See Prob C §1844(b) (absentee status of proposed conservatee) and Prob C §§1845(b), 1848(c) (missing person). See §§300.8–300.9, 300.42.

10. [§300.20] Order To Execute Capacity Declaration

If the capacity declaration or dementia attachment cannot be obtained without a court order, an ex parte order authorizing the physician, psychologist, or religious healing practitioner to complete the capacity declaration may be obtained by using Judicial Council Forms GC-333, GC-334. See Ex Parte Application for Order Authorizing Completion of Capacity Declaration—HIPAA, Judicial Council Form GC-333; and Ex Parte Order Re Completion of Capacity Declaration—HIPAA, Judicial Council Form GC-334.

A physician may refuse to execute the capacity declaration because of the nondisclosure of medical information provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 USC §§1320d et seq) and the California Confidentiality of Medical Information Act (CC §§56 et seq). The Acts generally prohibit the release of medical information by a medical provider without authorization from the patient. 42 USC §1320d-6; CC §56.10(a). An exception is provided, however, for probate investigators conducting an investigation in a conservatorship proceeding. CC §56.10(c)(12).

Consent to release can also be given by a person who has authority to act on the patient’s behalf (conservator or agent under advanced health care directive). 45 CFR §164.502(g); CC §56.11(c)(2).

If the patient or conservator cannot or will not authorize the release, there are exceptions for court-ordered disclosure. 45 CFR

§164.512(e)(1)(i); CC §56.10(b)(1). The ex parte order is used to authorize the physician to execute the capacity declaration.

C. Notice and Service

1. [§300.21] Required Notice

Notice of the time and place of the hearing on the petition for appointment of a conservator must be given at least 15 days before the hearing. The notice must be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing. Prob C §1822(a). Notice must be given by Judicial Council Form GC-020.

Notice must be mailed to the following persons (Prob C §1822(b)):

- The spouse, if any, or domestic partner, if any, of the proposed conservatee at the address stated in the petition.
- The relatives named in the petition at their addresses stated in the petition.

Proof of service by mail is made by Attachment to Notice of Hearing Proof of Service by Mail, Judicial Council Form GC-020(MA).

Notice may also have to be given to the Director of State Hospitals or the Director of Developmental Services (Prob C §§1822(c), 1461), the Office of the Veterans Administration (Prob C §§1822(d), 1461.5), and the regional centers for persons with developmental disabilities (Prob C §§1461.4, 1822(e), 1827.5) if the proposed conservatee is subject to their jurisdictions.

If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and are not nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice must be mailed to the public guardian of the county in which the petition is filed. Prob C §§1822(f).

2. [§300.22] Service of Citation on Proposed Conservatee

If the petition is filed by a person other than the proposed conservatee, the clerk must issue a citation directed to the proposed conservatee setting forth the time and place of hearing. Prob C §1823(a). The required form is Citation for Conservatorship, Judicial Council Form GC-320.

The citation and a copy of the petition must be served on the proposed conservatee at least 15 days before the hearing. Service must be made in the manner provided in CCP §415.10 (personal service), CCP §415.30 (acknowledgement of receipt of summons) or in such manner as may be authorized by the court. If the proposed conservatee is outside this state, service may also be made in the manner provided in CCP §415.40, first-class mail with return receipt. Prob C §1824.

The required form is Proof of Personal Service of Notice of Hearing—Guardianship or Conservatorship, Judicial Council Form GC-020(P).

3. [§300.23] General Notice Provisions

If notice of hearing is required but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing must be given at least 15 days before the day of the hearing. Prob C §1460(a). The general form of notice of hearing that must be used is Judicial Council Form GC-020.

The petitioner, who includes a person filing a petition, report, or account, must mail the notice of hearing to each of the following persons (Prob C §1460(b)):

- The conservator;
- The conservatee;
- The spouse of the conservatee, if the conservatee has a spouse, or the domestic partner of the conservatee, if the conservatee has a domestic partner;
- Any person who has requested special notice of the matter, as provided in Prob C §2700; and
- For any hearing on a petition to terminate a conservatorship, to accept the resignation of, or to remove the conservator, the persons described in Prob C §1821(b). See [§300.14](#).

The clerk of the court must cause the notice of the hearing to be posted as provided in Prob C §1230 if the posting is required by Prob C §2543(d). Prob C §1460(c).

This provision does not excuse compliance with the requirements for notice to a person who has requested special notice pursuant to Prob C §§2700 et seq. Prob C §1460(d).

The court for good cause may dispense with the notice otherwise required to be given to a person. Prob C §1460(e). See [§§300.24–300.25](#).

4. [§300.24] Dispensing With Notice

If a person entitled to notice cannot be located after diligent search, the court may prescribe the manner of giving notice to that person or may dispense with notice to that person. Cal Rules of Ct 7.52(c).

Petitioner must file a declaration describing efforts made to locate a person entitled to notice, but whose address is unknown, before the court will prescribe an alternative form of notice or dispense with notice. The declaration must state (Cal Rules of Ct 7.52(a)):

- The name of the person whose address is unknown,

- The last known address of the person,
- The approximate date when the person was last known to reside there,
- The efforts made to locate the person, and
- Any facts that explain why the person's address cannot be obtained.

The declaration must also include a description of the attempts to learn of the person's business and residence addresses by (Cal Rules of Ct 7.52(a)):

- Inquiry of the relatives, friends, acquaintances, and employers of the person entitled to notice and of the person who is the subject of the proceeding;
- Review of appropriate city telephone directories and directory assistance; and
- Search of the real and personal property indexes in the recorder's and assessor's offices for the county where the person was last known or believed to reside.

The form of order is Order Dispensing With Notice, Judicial Council Form GC-021.

- **JUDICIAL TIP:** The court may want additional information about internet, e-mail, and social media searches before making a finding of due diligence. It is good practice to require an affidavit of due diligence to include the results of an internet search for an individuals' address or location. Some counties have created forms that incorporate the criteria under Cal Rules of Ct 7.52(a); self-represented litigants can fill out and sign such a form at the court hearing.

5. [§300.25] Waiver of Notice

A person, including a conservator, trustee, or other fiduciary may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. Prob C §1204.

- **JUDICIAL TIP:** An issue may arise as to competency required to execute a waiver of notice. It can be argued that a person who is incompetent does not have the capacity to waive notice. On the other hand, serving notice on an incompetent person may have no more effect than having them execute a waiver.

6. [§300.26] Special Notice

At any time after the issuance of letters of conservatorship, the conservatee, the spouse or domestic partner of the conservatee, any relative or creditor of the conservatee, or any other interested person, in person or by attorney, may file with the court clerk a written request for special notice. Prob C §2700(a).

The request for special notice must be so entitled and must set forth the name of the person and the address to which notices must be sent. Prob C §2700(b). The required form is Request for Special Notice, Judicial Council Form GC-035.

Special notice may be requested of any one or more of the following matters (Prob C §2700(c)):

- Petitions filed in the conservatorship proceeding;
- Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals;
- Accounts of the conservator; and
- Proceedings for the final termination of the conservatorship proceeding.

Special notice may be requested of (Prob C §2700(d)):

- Any one or more of the matters in Prob C §2700(c) by describing the matter or matters,
- All the matters in Prob C §2700(c) by referring generally to “the matters described in subdivision (c) of Section 2700 of the Probate Code” or by using words of similar meaning.

A copy of the request must be personally delivered or mailed to the conservator or to the attorney for the conservator. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received. Prob C §2700(e).

When the original of the request is filed with the court clerk, it must be accompanied by a written admission or proof of service. Prob C §2700(f).

A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request. Prob C §2701(a).

A new request for special notice may be served and filed at any time as provided in the case of an initial request. Prob C §2701(b).

Unless the court makes an order dispensing with the notice, if a request has been made for special notice of a hearing, the person filing the petition, account, or other paper must give written notice of the filing, together with a copy of the petition, account, or other paper, and the time and place set for the hearing, by mail to the person named in the request at

the address set forth in the request, at least 15 days before the time set for the hearing. Prob C §2702(a). Special notice must be given under this chapter even though the provision under which the petition is filed permits ex parte petitions. Cal L Rev Comm'n Comment to Prob C §2700 (1990).

If a request has been made for special notice of the filing of an inventory and appraisal of the estate or of the filing of any other paper that does not require a hearing, the inventory and appraisal or other paper must be mailed not later than 15 days after the inventory and appraisal or other paper is filed with the court. Prob C §2702(b).

- **JUDICIAL TIP:** Creditors and other parties may try to file a request for special notice before letters of conservatorship are issued. This is improper and should be rejected by the clerk's office with notice that it cannot be accepted for filing until after letters are issued. Filing a request for special notice before letters are issued should not be a basis for continuing the hearing on the petition and delaying appointment of a conservator. Delaying the administration of the estate may be detrimental to the conservatee.

D. Investigator and Attorney

1. [§300.27] Appointment and Duties of Investigator

An investigator must be appointed. The required form is Order Appointing Court Investigator, Judicial Council Form GC-330. Local practice varies as to how the investigator is appointed.

The court investigator must do all of the following (Prob C §1826):

- Interview the proposed conservatee personally;
- Interview the petitioner and the proposed conservator, if different from the petitioner;
- Interview the proposed conservatee's spouse or domestic partner and relatives within the first degree. If the proposed conservatee does not have any, then, to the greatest extent possible, the proposed conservatee's relatives within the second degree;
- To the greatest extent practical and taking into account the proposed conservatee's wishes, interview the proposed conservatee's relatives within the second degree not required to be interviewed under the prior bullet, neighbors, and, if known, close friends;
- Inform the proposed conservatee of:
 - The contents of the citation;
 - The nature, purpose, and effect of the proceeding; and

- The right of the proposed conservatee to oppose the proceeding, 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 he or she is unable to retain legal counsel;
- Determine if the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to do so;
- Review the allegations of the petition as to why the conservator’s appointment is required and, in making the determination, do the following:
 - 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 Prob C §1821(a);
 - Consider, to the extent practicable, whether the petitioner believes the proposed conservatee suffers from any of the mental function deficits listed in Prob C §811(a) that significantly impair the ability to understand and appreciate the consequences of his or her actions in connection with any of the functions described in Prob C §1801(a), (b), and identify the observations that support that belief. §§300.34–300.38.
- Determine if the proposed conservatee wishes to contest the establishment of the conservatorship;
- Determine if the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator;
- 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;
- 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 under Elec C §2208;
- The proposed conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration:
 - Sign the affidavit of voter registration with a mark or cross under Elec C §2150(b);

- Sign the affidavit of voter registration by means of a signature stamp under Elec C §354.5;
- Complete the affidavit of voter registration with the assistance of another person under Elec C §2150(d);
- Complete the affidavit of voter registration with reasonable accommodations;
- If the proposed conservatee has not retained legal counsel, determine if the proposed conservatee desires the court to appoint legal counsel;
- 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 court to appoint legal counsel.

At least 5 days before the hearing, the investigator must report to the court in writing concerning all the foregoing, including the proposed conservatee's express communications concerning both of the following (Prob C §1826(a)(11)):

- Representation by legal counsel; and
- 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.

At least 5 days before the hearing, the investigator must mail a copy of the report to all of the following (Prob C §1826(a)(12)):

- The attorney, if any, for the petitioner;
- The attorney, if any, for the proposed conservatee;
- The proposed conservatee;
- The spouse or 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 mailing will result in harm to the conservatee; and
- Any other persons as the court orders.

The investigator has discretion to release the report to the public conservator, interested public agencies, and the long-term care ombudsman. Prob C §1826(b).

The report required is confidential and may be made available only to parties or persons described to whom it must be mailed, 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 conservatee's interests. The clerk of the court must provide for the limitation of the report exclusively to persons entitled to its receipt. Prob C §1826(c).

This report requirement does not apply to a proposed conservatee who has personally executed the petition for conservatorship or has nominated his or her own conservator, if the proposed conservatee attends the hearing. Prob C §1826(d).

If the court investigator has performed an investigation within the preceding 6 months and furnished a report 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. Prob C §1826(e).

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 must make a second visit to the proposed conservatee, and the report required by this section must include the effect of the temporary conservatorship on the proposed conservatee. Prob C §1826(f).

Each court must assess each conservatee in the county for any investigation or review conducted by a court investigator with respect to that person. Subject to the provisions of Gov C §68631 (waiver of fees and court costs), the court may order reimbursement to the court for the amount of the assessment, unless the court finds that all or any part of the assessment would impose a hardship on the conservatee or the conservatee's estate. There is a rebuttable presumption that the assessment would impose a hardship if the conservatee is receiving Medi-Cal benefits. Prob C §1851.5.

2. [§300.28] Appointment of Counsel

The court may appoint private legal counsel for a conservatee or a proposed conservatee if the court determines that the person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests. Prob C §1470(a).

If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, the court must appoint the public defender or private counsel to represent the interest of that person in the following proceedings (Prob C §1471(a)):

- A proceeding to establish a conservatorship or to appoint a proposed conservator,
- A proceeding to transfer a conservatorship,

- A proceeding to terminate the conservatorship,
- A proceeding to remove the conservator,
- A proceeding for a court order affecting the conservatee’s legal capacity, and
- A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee’s place of residence.

The appointment must be made at or before the hearing, and whether or not such person lacks or appears to lack legal capacity. Prob C §1471(a).

If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, the court must appoint the public defender or private counsel to represent the interests of such person if, based on information contained in the court investigator’s report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee. The appointment must be made at or before the hearing and whether or not such person lacks or appears to lack legal capacity. Prob C §1471(b). In a case in which the conservator was proposing to withhold life support, the court was required to appoint counsel to represent the conservatee to represent his interests. The conservatee’s inability to communicate was not a reason to deny counsel. *Wendland v Superior Court* (1996) 49 CA4th 44, 52, 56 CR2d 595, reversed on other grounds sub nom *Conservatorship of Wendland* (2001) 26 C4th 519, 110 CR2d 412.

The court must appoint counsel when the proposed conservator is the spouse of the proposed conservatee and is a party to an action or proceeding against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage, or has obtained a judgment in any of these proceedings. Prob C §1813(a). The court must appoint counsel when the proposed conservator is the domestic partner of the proposed conservatee and has terminated or is intending to terminate the domestic partnership. Prob C §1813.1(a).

The court must appoint counsel if the petitioner is requesting that the proposed conservatee be placed in a secured perimeter residential care facility for the elderly under Health & S C §1569.698. The court must also appoint counsel if the petitioner is asking for authorization to administer medications appropriate for the care and treatment of dementia. Prob C §2356.5(f)(1). Once the court grants or denies dementia powers to a conservator, it must either discharge the attorney or order continued legal representation, under the standard in Prob C §1470(a). Prob C §2356.5(f)(1).

E. Conservator

1. [§300.29] Preferences for Conservator

If the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the petition is filed. Prob C §1810. There is no requirement that the writing containing the nomination be executed in the same manner as a witnessed will. The only formal requirements are that the nomination be in writing and be signed by the proposed conservatee. Cal L Rev Comm'n Comment to Prob C §1810 (1990).

The court must appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee. Prob C §1810; *Conservatorship of Ramirez* (2001) 90 CA4th 390, 401–403, 108 CR2d 581 (abuse of discretion not to appoint conservatee's nominee son when it was clearly in her emotional and financial best interests to do so).

The spouse, domestic partner, or an adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing. Prob C §1811(a).

The spouse, domestic partner, or a parent of the proposed conservatee may nominate a conservator in a writing signed either before or after the petition is filed, and that nomination remains effective notwithstanding the subsequent legal incapacity or death of the spouse, domestic partner, or parent. Prob C §1811(b).

Subject to Prob C §1810 (conservatee's nominee), Prob C §1813, and Prob C §1813.1 (spouse and domestic partner termination), the selection of a conservator of the person or estate, or both, is solely in the court's discretion, and in making the selection the court is to be guided by what appears to be in the best interests of the proposed conservatee. Prob C §1812(a).

Subject to Prob C §§1810 (conservatee's nominee), Prob C §1813, and Prob C §1813.1 (spouse and domestic partner termination), of persons equally qualified in the court's opinion to appointment as conservator of the person or estate or both, preference is to be given in the following order (Prob C §1812(b)):

- The spouse or domestic partner of the proposed conservatee or the person nominated by the spouse or domestic partner pursuant to Prob C §1811.
- An adult child of the proposed conservatee or the person nominated by the child pursuant to Prob C §1811.
- A parent of the proposed conservatee or the person nominated by the parent pursuant to Prob C §1811.

- A brother or sister of the proposed conservatee or the person nominated by the brother or sister pursuant to Prob C §1811.
- 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.

The preference for any nominee for appointment of an adult child, parent, brother, or sister is subordinate to the preference for any other parent, child, brother, or sister in that class. Prob C §1812(c).

2. [§300.30] Effect of Spouse or Domestic Partner Termination Proceedings

The spouse of a proposed conservatee may not petition for the appointment of a conservator for a spouse or be appointed as conservator of the person or estate of the proposed conservatee unless the petitioner alleges, and the court finds, that the spouse is not a party to any action or proceeding against the proposed conservatee for legal separation of the parties, dissolution of marriage, or adjudication of nullity of their marriage. However, if the court finds by clear and convincing evidence that the appointment of such a spouse is in the best interests of the proposed conservatee, the court may appoint the spouse. Prob C §1813(a)(1). Before making this appointment, the court must appoint counsel to consult with and advise the conservatee, and to report to the court his or her findings concerning the suitability of appointing the spouse as conservator. Prob C §1813(a)(2).

The domestic partner of a proposed conservatee may not petition for the appointment of a conservator for a domestic partner or be appointed as conservator of the person or estate of the proposed conservatee unless the petitioner alleges, and the court finds, that the domestic partner has not terminated and is not intending to terminate the domestic partnership as provided in Fam C §299. However, if the court finds by clear and convincing evidence that the appointment of a domestic partner who has terminated or is intending to terminate the domestic partnership is in the best interests of the proposed conservatee, the court may appoint the domestic partner. Prob C §1813.1(a)(1). Before making this appointment, the court must appoint counsel to consult with and advise the conservatee, and to report to the court his or her findings concerning the suitability of appointing the domestic partner as conservator. Prob C §1813.1(a)(2).

“Domestic partner” means one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State pursuant to Fam C §§297 et seq, provided that the domestic partnership has not been terminated. Prob C §37(a).

3. [§300.31] Private Professional Conservator Requirements

The court may not appoint a person to carry out the duties of a professional fiduciary, or permit a person to continue those duties, unless he or she holds a valid, unexpired, and unsuspended license as a professional fiduciary under Bus & P C §§6500 et seq; is exempt from the definition of “professional fiduciary” under Bus & P C §6501 (trust companies, FDIC insured institutions, public agencies, and certain others); or is exempt from the licensing requirements of Bus & P C §6530 (CPAs, attorneys, and persons enrolled as an agent to practice before the Internal Revenue Service). Prob C §2340.

Professional fiduciaries are now licensed with the Professional Fiduciary Bureau. The form for filing required information with the petition is Professional Fiduciary Attachment to Petition for Appointment of Guardian or Conservator, Judicial Council Form GC-310(A-PF).

4. [§300.32] Joint Conservators

The court, in its discretion, may appoint for a conservatee (Prob C §2105(a)):

- Two or more joint conservators of the person,
- Two or more joint conservators of the estate, or
- Two or more joint conservators of the person and estate.

When joint conservators are appointed, each must qualify in the same manner as a sole conservator. Prob C §2105(b).

When there are two conservators, both must concur to exercise a power. When there are more than two conservators, a majority must concur to exercise a power. Prob C §2105(c).

If one of the joint conservators dies or is removed or resigns, the powers and duties continue in the remaining joint conservators until further appointment is made by the court. Prob C §2105(d).

When joint conservators have been appointed and one or more are:

- absent from the state and unable to act,
- otherwise unable to act, or
- legally disqualified from serving,

the court may, by order made with or without notice, authorize the remaining joint conservators to act as to all matters embraced within its order. Prob C §2105(e).

If joint conservators are appointed, the court may order that separate bonds, or a joint bond, or a combination thereof be furnished. Prob C §2326(a).

5. [§300.33] One Conservator for Several Conservatees

The court, in its discretion, may appoint one conservator for several conservatees. Prob C §2106(a).

The appointment of one conservator for several conservatees may be requested in the initial petition filed in the proceeding or may be requested subsequently upon a petition filed in the same proceeding and noticed and heard with respect to the newly proposed conservatee in the same manner as an initial petition for appointment of a conservator. Prob C §2106(b).

F. Capacity Determination

1. [§300.34] General Statutory Bases for Capacity Determinations

A conservator of the person may be appointed for an adult who cannot care properly for basic personal needs such as food, clothing, health care, and shelter. Prob C §1801(a). A conservator of the estate may be appointed for an adult who is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability to manage finances may not be proven solely by isolated incidents of negligence or improvidence. Prob C §1801(b).

A conservator of the person or estate, or both, may be appointed for a person who voluntarily requests the appointment and who, to the court's satisfaction, establishes good cause for the appointment. Prob C §1802.

2. [§300.35] Guidelines: General Principles

The Legislature has provided guidelines for making capacity determinations in the Due Process in Competence Determinations Act. Prob C §§810 et seq. The Legislature found and declared the following (Prob C §810):

- There is a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.
- A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.
- A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

3. [§300.36] Guidelines: Unsound Mind, Lack of Capacity

A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, must be supported by evidence of a deficit in at least one of the following mental functions and evidence of a correlation between the deficit or deficits and the decision or acts in question (Prob C §811(a)):

- Alertness and attention, including, but not limited to, the following:
 - Level of arousal or consciousness.
 - Orientation to time, place, person, and situation.
 - Ability to attend and concentrate.
- Information processing, including, but not limited to, the following:
 - Short- and long-term memory, including immediate recall.
 - Ability to understand or communicate with others, either verbally or otherwise.
 - Recognition of familiar objects and familiar persons.
 - Ability to understand and appreciate quantities.
 - Ability to reason using abstract concepts.
 - Ability to plan, organize, and carry out actions in one’s own rational self-interest.
 - Ability to reason logically.
- Thought processes. Deficits in these functions may be demonstrated by the presence of the following:
 - Severely disorganized thinking.
 - Hallucinations
 - Delusions.
 - Uncontrollable, repetitive, or intrusive thoughts.
- Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, or apathy or indifference that is inappropriate in degree to the individual’s circumstances.

Judicial Council Form GC-335, 6, Capacity Declaration—Conservatorship, provides information about these functions.

A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question. Prob C §811(b). In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment. Prob C §811(c). The mere diagnosis of a mental or physical disorder is not sufficient alone to support a determination that a person is of unsound mind or lacks the capacity to do a certain act. Prob C §811(d).

4. [§300.37] Guidelines: Lack of Capacity To Make Decision

Except where otherwise provided by law, including, but not limited to, Prob C §813 (§300.38) and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following (Prob C §812):

- The rights, duties, and responsibilities created by, or affected by the decision;
- The probable consequences for the decision maker and, where appropriate, the persons affected by the decision; and
- The significant risks, benefits, and reasonable alternatives involved in the decision.

5. [§300.38] Guidelines: Capacity To Give Informed Consent

For purposes of a judicial determination, a person has the capacity to give informed consent to a proposed medical treatment if the person is able to do all of the following (Prob C §813(a)):

- Respond knowingly and intelligently to queries about that medical treatment;
- Participate in that treatment decision by means of a rational thought process; and
- Understand all of the following items of minimum basic medical treatment information with respect to that treatment:
 - The nature and seriousness of the person's illness, disorder, or defect.
 - The nature of the medical treatment that is being recommended by the person's health care providers.

- The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person’s health care providers, and the consequences of lack of treatment.
- The nature, risks, and benefits of any reasonable alternatives.

A person who has the capacity to give informed consent to a proposed medical treatment also has the capacity to refuse consent to that treatment. Prob C §813(b).

Judicial Council Form GC-335, 7, Capacity Declaration—Conservatorship, provides information about the capacity to give informed consent.

G. Hearing

1. [§300.39] Procedure and Jury Trial

The court hears and determines the matter of establishing a conservatorship according to the law and procedure relating to the trial of civil actions. There is a right to trial by jury if demanded by the proposed conservatee. Prob C §1827. Because the right to a jury trial is statutory, not constitutional, the right may be waived by counsel, and a personal waiver is not required. *Conservatorship of Mary K.* (1991) 234 CA3d 265, 271, 285 CR 618.

The right to jury trial only extends to establishing the conservatorship, not to who should be the conservator or what orders should be made. Cal L Rev Comm’n Comment to Prob C §1827 (1990).

2. [§300.40] Standard of Proof

The standard of proof for the appointment of a conservator is clear and convincing evidence. Prob C §1801(e).

3. [§300.41] Discovery

Because general civil procedure is applicable (Prob C §1827), discovery is available as in any other civil action. This could include a mental examination of the proposed conservatee, which can only be performed by a licensed physician, or licensed clinical psychologist who holds a doctoral degree in psychology and has had at least 5 years of postgraduate experience in the diagnosis of emotional and mental disorders. CCP §2032.020(c).

4. [§300.42] Conservatee’s Attendance at Hearing

The proposed conservatee must be produced at the hearing except in the following cases (Prob C §1825(a)):

- When the proposed conservatee is out of the state when served and is not the petitioner.
- When the proposed conservatee is unable to attend the hearing by reason of medical inability.
- When the court investigator has reported to the court that the proposed conservatee has expressly communicated that the proposed conservatee (i) is not willing to attend the hearing, (ii) does not wish to contest the establishment of the conservatorship, and (iii) does not object to the proposed conservator or prefers that another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing.

In the context of an LPS conservatorship, the California Supreme Court held that the conservatee's due process rights were not violated when the conservatee's nonattendance at the hearing was based on his appointed counsel's representation at the hearing that the conservatee had stated to counsel that the conservatee did not want to attend the hearing. *In re Conservatorship of Person of John L.* (2010) 48 C4th 131, 150–155, 105 CR3d 424.

If the proposed conservatee is unable to attend the hearing because of medical inability, such inability must be established:

- By the affidavit or certificate of a licensed medical practitioner, or
- If the proposed 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 proposed conservatee's inability to attend the hearing and may not be considered in determining the issue of need for the establishment of a conservatorship. Prob C §1825(b). The affidavit must be in Judicial Council Form GC-335, Capacity Declaration—Conservatorship.

Emotional or psychological instability is not good cause for the absence of the proposed conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee. Prob C §1825(c).

If the proposed conservatee fails to appear after having been served with the citation and without having consented to the appointment, the court can have the investigator contact him or her or issue a bench warrant. Appointment of counsel may also be warranted if the proposed conservatee refuses to consent and refuses to attend. See [§300.28](#).

5. [§300.43] Information To Be Given to Proposed Conservatee

Before establishing a conservatorship of the person or estate, or both, the court must inform the proposed conservatee of all of the following (Prob C §1828(a)):

- The nature and purpose of the proceeding;
- Establishing a conservatorship is a legal adjudication of the conservatee’s inability to properly provide for the conservatee’s personal needs or to manage the conservatee’s own financial resources, or both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee’s basic rights;
- The proposed conservatee may be disqualified from voting if not capable of communicating, with or without reasonable accommodations, a desire to participate in the voting process (see §300.27);
- The identity of the proposed conservator;
- The nature and effect on the conservatee’s basic rights of any order requested under Prob C §1870 et seq (§§300.73–300.78), and in the case of an allegedly developmentally disabled adult, the specific effects of each limitation requested in such order; and
- The proposed conservatee has the right to oppose the proceeding, 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.

After the court so informs the proposed conservatee and before establishing the conservatorship, the court must consult the proposed conservatee to determine the proposed conservatee’s opinion concerning all of the following (Prob C §1828(b)):

- Establishing the conservatorship;
- Appointing the proposed conservator; and
- Any order requested under Prob C §§1870 et seq (§§300.73–300.78), and in the case of an allegedly developmentally disabled adult, of each limitation requested in such order.

These requirements are not applicable when both of the following conditions are satisfied (Prob C §1828(c)):

- The proposed conservatee is absent from the hearing and is not required to attend the hearing under the provisions of Prob C §1825(a) (§300.42); and

- A showing of medical inability has been made, if that is the basis for not requiring attendance. Prob C §1825(b) (§300.42).

6. [§300.44] Appearance and Objections

Any of the following persons may appear at the hearing to support or oppose the petition (Prob C §1829):

- The proposed conservatee,
- The spouse or registered domestic partner of the proposed conservatee,
- A relative of the proposed conservatee, or
- Any interested person or friend of the proposed conservatee.

Written responses or objections may be filed before the hearing, and written and oral responses or objections may be made at the hearing. Prob C §1043(a), (b). If a written or oral response or objection is made at the hearing, the court in its discretion may either hear and determine the response or objection at the hearing, or grant a continuance for the purpose of allowing a response or objection to be made in writing. Prob C §1043(b).

7. [§300.45] Consent of Conservator

If the proposed conservator is not the petitioner, the proposed conservator must consent to the appointment. The consent may be in person or in a filed writing.

8. [§300.46] Evidence

Because general civil procedure is applicable, (Prob C §1827), the Evidence Code is applicable, and hearsay is inadmissible unless an exception is applicable. Evid C §§1200 et seq.

There is no patient-physician privilege in a proceeding to commit the patient or otherwise place the patient or patient's property, or both, under the control of another because of the patient's alleged mental or physical condition. Evid C §1004. There is no patient-psychotherapist privilege in a proceeding brought by or on behalf of the patient to establish his or her competence. Evid C §1025.

9. [§300.47] Order Appointing

The order appointing the conservator must contain, among other things, the names, addresses, and telephone numbers of (Prob C §1830(a)):

- The conservator;

- The conservatee’s attorney, if any; and
- The court investigator, if any.

The required form is Judicial Council Form GC-340, Order Appointing Probate Conservator. An information notice of the rights of conservatees must be attached to the order. See Judicial Council Forms GC-341 and GC-341(MA), Notice of Conservatee’s Rights, and Attachment.

The conservator must mail the order and the attached information notice to the conservatee and the conservatee’s relatives, as set forth in Prob C §1821(b), within 30 days of the issuance of the order. Prob C §1830(c); see §300.21.

- **JUDICIAL TIP:** After a conservator of the person is appointed, many courts’ local rules require the conservator to file a general plan, sometimes referred to as a care plan, detailing the conservatee’s proposed personal and financial needs. The conservator must follow these local rules for the plan’s format, timing, and service.

10. [§300.48] Costs and Attorneys’ Fees

The court may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require. Prob C §1002.

If counsel is appointed under the court’s discretionary power to appoint (§300.28), the court must order that fees be paid from the estate. Prob C §1470(c). If the conservatee or proposed conservatee is unable to retain legal counsel, requests the appointment of counsel, and counsel is appointed, the court must order that fees be paid, but the court may determine that the conservatee or proposed conservatee lacks the ability to pay all or a portion the attorneys’ fees, and the county must pay the fees to the private counsel to the extent the court determines that the person is unable to pay. Prob C §1472.

An unsuccessful petitioner or his or her attorney may petition for payment of fees to be paid from the estate. Prob C §2640.1.

H. Oath, Bond, and Letters

1. [§300.49] Oath

Before the appointment of a conservator is effective, the conservator must take an oath to perform the duties of the office according to law, which oath is attached to or endorsed upon the letters. Prob C §2300.

The oath is in the form of Letters of Conservatorship, Judicial Council Form GC-350.

2. [§300.50] Bond

Every person appointed as conservator of the estate must, before letters are issued, give a bond approved by the court. Prob C §§2300, 2320(a). A conservator of the person need not give a bond unless so required by the court. Prob C §2322.

The bond is for the benefit of the conservatee and all persons interested in the conservatorship estate and must be conditioned on the faithful execution of the duties of the office, according to law, by the conservator. Prob C §2320(b).

Unless the court increases or decreases the amount on a showing of good cause, the amount of a bond given by a surety insurer must be the sum of all of the following (Prob C §2320(c):

- The value of the personal property of the estate.
- The probable annual gross income of all of the property of the estate.
- The sum of the probable annual gross payments from the following:
 - Public assistance under Welf & I C §§11000 et seq, foster care payments under Welf & I C §§16000 et seq, or county indigent assistance under Welf & I C §§17000 et seq.
 - Federal Supplemental Security Income for the aged, blind, or disabled under 42 USC §§1382 et seq.
 - Any other public entitlements of the conservatee.
- A reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs. See Cal Rules of Ct 7.207.

The bond does not include the value of real property until the property is sold or used as security for a loan, in which case the bond must be increased to cover the proceeds. Prob C §2330.

A bond may not be required for a small estate where the following conditions exist (Prob C §§2323(a), 2628(a)):

- The estate consists of property, exclusive of the conservatee's residence, of a total net value of less than \$15,000;
- The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than \$2,000; and
- All income of the estate during the accounting period, if not retained, was spent for the conservatee's benefit.

If it appears at any time that the estate does not satisfy these conditions, the court must require the filing of a bond unless the court

determines that good cause exists, as provided in Prob C §2321. Prob C §2323(b).

If funds are deposited in blocked accounts with the condition that the property, including any earnings on the property, will not be withdrawn except on the court's authorization, the court may exclude the property deposited in determining the amount of the required bond or reduce the amount of the bond to be required in respect to the property deposited to such an amount as the court determines is reasonable. Prob C §2328(a).

If the bond is given by personal sureties, the amount of the bond must be twice the amount required for a bond given by an admitted surety insurer. Prob C §2320(d).

The Bond and Undertaking Law, CCP §§995.010 et seq, applies to a conservator's bond. Prob C §2320(e).

The court may not waive the filing of a bond or reduce the amount of bond required, without a good cause determination that must include a determination by the court that the conservatee will not suffer harm as a result of the waiver or reduction of the bond. Good cause may not be established merely by the conservator having filed a bond in another or prior proceeding. Prob C §2321(a).

In a conservatorship proceeding, when the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may permit the filing of a bond in an amount less than would otherwise be required. Prob C §2321(b).

3. [§300.51] Letters

Before letters are issued, the conservator (other than a trust company or a public conservator) must file an acknowledgment of receipt of (Prob C §1834(a)):

- A statement of duties and liabilities of the office of conservator, and
- A copy of the conservatorship information required under Prob C §1835.

The acknowledgment and the statement form is Judicial Council Form GC-348, Duties of Conservator and Acknowledgment of Receipt of Handbook for Conservators.

The appointment, the taking of the oath, and the filing of the bond, if required, must thereafter be evidenced by the issuance of letters by the clerk of the court. Prob C §2310(a). The form of letters of conservatorship is Judicial Council Form GC-350.

4. [§300.52] Information to Conservators

The court must provide all private conservators with written information concerning a conservator's rights, duties, limitations, and responsibilities. Prob C §1835(a).

The information to be provided must include, but need not be limited to, the following (Prob C §1835(b)):

- The rights, duties, limitations, and responsibilities of a conservator.
- The rights of a conservatee.
- How to assess the needs of the conservatee.
- How to use community-based services to meet the conservatee's needs.
- How to ensure that the conservatee is provided with the least restrictive possible environment.
- The court procedures and processes relevant to conservatorships.
- The procedures for inventory and appraisal, and the filing of accounts.

The failure of any court or any employee or agent thereof, to provide required information to a conservator does not (Prob C §1835(d)):

- Relieve the conservator of any of the conservator's required duties.
- Make the court or the employee or agent thereof, liable, in either a personal or official capacity, for damages to a conservatee, conservator, the conservatorship of a person or an estate, or any other person or entity.

5. [§300.53] Recording

A conservator of the estate must record a certified copy of the letters with the county recorder's office in each county in which the conservatee owns an interest in real property, including a security interest. The conservator must record the letters as soon as practicable after they are issued, but no later than 90 days after the conservator is appointed. A temporary conservator of the estate may record the letters if the conservator deems it appropriate. Prob C §2313.

I. Temporary Conservator

1. [§300.54] Petition for Appointment of Temporary Conservator

On or after the filing of a petition for appointment of a conservator, any person entitled to petition for appointment of the conservator may file

a petition for appointment of a temporary conservator of the person or estate or both. Prob C §2250(a).

The petition must state facts that establish good cause for appointment of the temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary conservator of the person or estate or both, to serve pending the court's final determination upon the petition for the appointment of the conservator. Prob C §2250(b).

The required form is Petition for Appointment of Temporary Conservator, Judicial Council Form GC-111.

Professional Fiduciary. If the petitioner or proposed conservator is a professional fiduciary as described in Prob C §2340, who is required to be licensed under Bus & P C §§6500 et seq, the petition must include the following (Prob C §2250(c)):

- The petitioner's or proposed conservator's proposed hourly fee schedule or another statement of his or her proposed compensation from the estate of the proposed conservatee for services performed as a conservator. This schedule or statement will not preclude the court from later reducing the petitioner's or proposed conservator's fees or other compensation.
- Unless a petition for appointment of a conservator contains the following information and is filed together with a petition for appointment of a temporary conservator, the petition must also include the following:
 - A statement of the petitioner's or proposed conservator's license information.
 - A statement explaining who engaged the petitioner or proposed conservator, or how the petitioner or proposed conservator was engaged to file the petition for appointment of a temporary conservator or to agree to accept the appointment as temporary conservator, and what prior relationship the petitioner or proposed conservator had with the proposed conservatee or the proposed conservatee's family or friends.

Due Diligence. Unless the petition is filed by the proposed conservatee, it must include a declaration of due diligence showing both of the following (Prob C §2250(d)):

- 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; and

- 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.

2. [§300.55] Notice

Unless the court for good cause otherwise orders, at least 5 court days before the hearing on the petition, notice of the hearing must be personally delivered to the proposed conservatee, and notice of the hearing must be served on the persons required to be named in the petition for appointment of conservator. If the petition states that the petitioner and proposed conservator have no prior relationship with the proposed conservatee and has not been nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice of hearing must be served on the public guardian of the county where the petition is filed. A copy of the petition for temporary appointment must be served with the notice of hearing. Prob C §2250(e).

Good cause for an exception to the notice required must be based on a showing that the exception is necessary to protect the proposed conservatee or his or her estate from immediate and substantial harm. Cal Rules of Ct 7.1062(b).

An exception to the notice requirement may include one or any combination of the following (Cal Rules of Ct 7.1062(c)):

- Waiving notice to one, more than one, or all persons entitled to notice;
- Requiring a different period of notice; and
- Changing the required manner of giving notice, including requiring notice by telephone, fax, e-mail, or personal delivery, or a combination of these methods, instead of or in addition to notice by mail to the proposed conservatee's spouse or registered domestic partner and relatives.

Good cause for an exception to the notice requirement may include a showing of (Cal Rules of Ct 7.1062(d)):

- Harm caused by the passage of time. The showing must demonstrate the immediate and substantial harm to the conservatee or the conservatee's estate that could occur during the notice period.
- Harm that one or more persons entitled to notice might do to the proposed conservatee or the proposed conservatee's estate if notice is given. Such a showing would not support an exception to the requirement to give notice to any other person entitled to notice unless it also demonstrates that notice cannot reasonably be given

to the other person without also giving notice to the persons who might cause harm.

- Medical emergency. The emergency must be immediate and substantial and treatment (1) must be reasonably unavailable unless a temporary conservator is appointed and (2) cannot be deferred for the notice period because of the proposed conservatee's pain or extreme discomfort or a significant risk of harm.
- Financial emergency. The emergency must be immediate and substantial and other means shown likely to be ineffective to prevent loss or further loss to the proposed conservatee's estate during the notice period.

A request for a good cause exception to the notice requirement must be in writing, separate from the petition for appointment of a temporary conservator, and must include (Cal Rules of Ct 7.1062(e)):

- An application containing the case caption and stating the relief requested;
- An affirmative factual showing in support of the application in a declaration under penalty of perjury containing competent testimony based on personal knowledge;
- A declaration under penalty of perjury based on personal knowledge containing the information required for an ex parte application under Cal Rules of Ct 3.1204(b);
- A memorandum; and
- A proposed order.

3. [§300.56] Suspension or Vacancy

If the court suspends powers of the conservator under Prob C §2334 or §2654 or under any other provision, the court may appoint a temporary conservator to exercise those powers until the powers are restored to the conservator or a new conservator is appointed. Prob C §2250(i).

If for any reason a vacancy occurs in the office of conservator, the court by petition or on its own motion may appoint a temporary conservator to exercise the powers of the conservator until a new conservator is appointed. Prob C §2250(j).

4. [§300.57] Hearing

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 must 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 must be given at least 10 days before the hearing. Prob C §2250(h)(1).

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 must 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 must be given at least 5 court days prior to the hearing. Prob C §2250(h)(2).

Ex parte appointment of a temporary conservator does not offend the concept of due process of law. *O'Brien v Dudenhoeffer* (1990) 16 CA4th 327, 335, 19 CR2d 826.

5. [§300.58] Conservatee's Attendance at Hearing

The proposed temporary conservatee must attend the hearing except in the following cases (Prob C §2250.4):

- If the proposed temporary conservatee is out of the state when served and is not the petitioner.
- If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.
- If the court investigator has visited the proposed conservatee before 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:
 - The proposed conservatee is not willing to attend the hearing.
 - The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.
 - The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.
- If the court determines that the proposed conservatee is unable or unwilling to attend the hearing, and that holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from substantial harm.

6. [§300.59] Duties of Investigator

Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator must do all of the following before the hearing, unless it is not feasible to do so, in which case the court investiga-

tor must do all of the following except the inquiry about attending the hearing within 2 court days after the hearing (Prob C §2250.6(a), (b)):

- Interview the proposed conservatee personally;
- Interview the petitioner and the proposed conservator, if different from the petitioner;
- To the greatest extent possible, interview the proposed conservatee's spouse or domestic partner, relatives within the first degree, neighbors, and, if known, close friends;
- To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in Prob C §1821(b);
- 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, 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;
- 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 do so;
- Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship;
- Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator; and
- Report to the court, in writing, concerning all of the foregoing.

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 must report this information promptly, and in no event more than 3 court days later, to the court. Upon receipt of that information, the court may proceed with appointment of an attorney as provided in Prob C §§1470 et seq. Prob C §2250.6(c).

If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator must immediately, and in no event more than 2 court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion. Prob C §2250.6(d).

7. [§300.60] Order and Letters

The required form is Order Appointing Temporary Conservator, Judicial Council Form GC-141. The bond requirement is applicable to temporary conservators of the estate. Prob C §§2300, 2320(a), 2322; §300.50.

A temporary conservator must be issued letters of temporary conservatorship upon taking the oath and filing the bond as in the case of a conservator. The letters must indicate the termination date of the temporary appointment. Prob C §2251.

The required form is Letters of Temporary Guardianship or Conservatorship, Judicial Council Form GC-150.

J. [§300.61] Limited Conservator

A limited conservator of the person or of the estate, or both, may be appointed for a developmentally disabled adult. Prob C §1801(d). “Developmental disability” means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. This term includes intellectual disability, cerebral palsy, epilepsy, and autism. This term also includes handicapping conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but does not include other handicapping conditions that are solely physical in nature. Prob C §1420.

A limited conservatorship may be used only as necessary to promote and protect the well-being of the individual, must be designed to encourage the development of maximum self-reliance and independence of the individual, and must be ordered only to the extent necessitated by the individual’s proven mental and adaptive limitations. Prob C §1801(d). The conservatee of the limited conservator is not be presumed to be incompetent and retains all legal and civil rights except those that by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. Prob C §1801(d).

1. [§300.62] Assessment by Regional Center

In the case of any proceeding to establish a limited conservatorship for a person with developmental disabilities, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, must be assessed at a regional center as provided in Welf & I C §§4620 et seq. The regional center must submit a written report of its findings and recommendations to the court. Prob C §1827.5(a). The report must include a description of the specific areas, nature, and degree of disability of the proposed limited conservatee. The

findings and recommendations of the regional center are not binding on the court. Prob C §1827.5(c).

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed limited conservatee, and is not a public entity, the regional center report must include a recommendation concerning the suitability of the petitioners to meet the needs of the proposed limited conservatee. Prob C §1827.5(c).

At least 5 days before the hearing on the petition, the regional center must mail a copy of its report to all of the following (Prob C §1827.5(d)):

- The proposed limited conservatee.
- The attorney, if any, for the proposed limited conservatee.
- If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.
- Such other persons as the court orders.

The report must be confidential and may be made available only to parties listed in Prob C §1827.5(d) (see above) unless the court, in its discretion, determines that the release of the report would serve the interests of the conservatee who is developmentally disabled. Prob C §1827.5(e). The clerk of the court must make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section. Prob C §1827.5(e).

2. [§300.63] Hearing

At the hearing on the petition for appointment of a limited conservator for an allegedly developmentally disabled adult, the court must do all of the following (Prob C §1828.5(a)):

- Inquire into the nature and extent of the general intellectual functioning of the individual alleged to be developmentally disabled.
- Evaluate the extent of the impairment of his or her adaptive behavior.
- Ascertain his or her capacity to care for himself or herself and his or her property.
- Inquire into the qualifications, abilities, and capabilities of the person seeking appointment as limited conservator.
- If a report by the regional center (see §300.62) has not been filed in court because the proposed limited conservatee withheld his or her

consent to assessment by the regional center, the court must determine the reason for withholding such consent.

If the court finds that the proposed limited conservatee possesses the capacity to care for himself or herself and to manage his or her property as a reasonably prudent person, the court must dismiss the petition for appointment of a limited conservator. Prob C §1828.5(b).

If the court finds that the proposed limited conservatee lacks the capacity to perform some, but not all, of the tasks necessary to provide properly for personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court must appoint a limited conservator for the person or the estate or the person and the estate. Prob C §1828.5(c).

If the court finds that the proposed limited conservatee lacks the capacity to perform all of the tasks necessary to provide properly for personal needs for physical health, food, clothing, or shelter, or to manage his or her own financial resources, the court must appoint either a conservator or a limited conservator for the person or the estate, or the person and the estate. Prob C §1828.5(d).

Before the court appoints a limited conservator for the person or estate or person and estate of a developmentally disabled adult, it must inform the proposed limited conservatee of the following (Prob C §1828.5(f)):

- The nature and purpose of the limited conservatorship proceeding;
- The appointment of a limited conservator for his or her person or estate or person and estate will result in the transfer of certain rights set forth in the petition and the effect of such transfer;
- The identity of the person who has been nominated as his or her limited conservator;
- The right to oppose such proceeding;
- The right to have the matter tried by jury.

After communicating such information to the person and prior to the appointment of a limited conservator, the court must consult the person to determine his or her opinion concerning the appointment. Prob C §1828.5(f).

The court must define the powers and duties of the limited conservator so as to permit the developmentally disabled adult to care for himself or herself or to manage his or her financial resources commensurate with his or her ability to do so. Prob C §1828.5(e).

K. Successor Conservator

1. [§300.64] When Successor Appointed

When for any reason a vacancy occurs in the office of conservator, the court may appoint a successor conservator. Prob C §2680.

2. [§300.65] Petition

A petition for appointment of a successor conservator may be filed by any of the following (Prob C §2681):

- The conservatee,
- The spouse or registered domestic partner of the conservatee,
- A relative of the conservatee,
- Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state, or
- Any other interested person or friend of the conservatee.

The petition must request that a successor conservator be appointed for the person or estate, or both, and must specify the name and address of the proposed successor conservator and the name and address of the conservatee. Prob C §2682(a). The petition must set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner and of the relatives of the conservatee within the second degree. Prob C §2682(b).

If the petition is filed by someone other than the conservatee, the petition must state whether or not the petitioner is a creditor or debtor of the conservatee. Prob C §2682(c). If the conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of State Hospitals or the State Department of Developmental Services and that fact is known to the petitioner, the petition must state that fact and name the institution. Prob C §2682(d).

The petition must state, so far as is known to the petitioner, whether or not the conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the conservatee. Prob C §2682(e). The petition must state whether the conservatee will be present at the hearing. Prob C §2682(f). The required form of petition is Judicial Council Form GC-310, the same form as is used for the original petition.

3. [§300.66] Notice

At least 15 days before the hearing on the petition for appointment of a successor conservator, notice of the time and place of the hearing must be given as provided below. The notice must be accompanied by a copy of the petition. Prob C §2683(a).

The notice of hearing must be mailed to each of the following persons (Prob C §§1460, 2683(b)):

- The relatives named in the petition;
- The conservator;
- The conservatee;
- The spouse of the conservatee, if the conservatee has a spouse, or the domestic partner of the conservatee, if the conservatee has a domestic partner; and
- Any person who has requested special notice of the matter.

If notice is required by Prob C §1461 to be given to the Director of State Hospitals or the Director of Developmental Services, notice must be mailed as so required. Prob C §2683(c).

If notice is required by Prob C §1461.5 to be given to the Veterans Administration, notice must be mailed as so required. Prob C §2683(d).

4. [§300.67] Duties of Court Investigator

Unless the petition states that the conservatee will be present at the hearing, the court investigator must do all of the following (Prob C §2684):

- Interview the conservatee personally;
- Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the proposed successor conservator's name, and the conservatee's right to
 - Appear personally at the hearing,
 - Object to the person proposed as successor conservator,
 - Nominate another person to be appointed as successor conservator,
 - Be represented by legal counsel if the conservatee so chooses, and
 - Have legal counsel appointed by the court if unable to retain legal counsel;
- Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed;

- If the conservatee is not represented by legal counsel, determine whether the conservatee wishes to be represented by legal counsel and, if so, determine the name of an attorney the conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel;
- 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 in any case where the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel;
- Report to the court in writing, at least 5 days before the hearing, concerning all of the foregoing, including the conservatee’s express communications concerning representation by legal counsel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be appointed; and
- Mail, at least 5 days before the hearing, a copy of the report to all of the following:
 - The attorney, if any, for the petitioner.
 - The attorney, if any, for the conservatee.
 - Such other persons as the court orders.

5. [§300.68] Absentee

If the conservatee is an “absentee” (Prob C §2689; see §300.8):

- The petition for appointment of a successor conservator must contain the matters required by Prob C §1841 (see §300.140) in addition to the matters required by Prob C §2682.
- Notice of the hearing must be given as provided by Prob C §1842 (see §300.141) in addition to the requirements of Prob C §2683, except that notice need not be given to the conservatee.
- An interview and report by the court investigator is not required.

6. [§300.69] Duties of the Court

If the conservatee is present at the hearing, before making an order appointing a successor conservator, the court must do all of the following (Prob C §2685):

- Inform the conservatee of the nature and purpose of the proceeding;
- Inform the conservatee that the conservatee has the right to object to the person proposed as successor conservator, to nominate a

person to be appointed as successor conservator and, if not represented by legal counsel, to be represented by legal counsel if the conservatee so chooses and to have legal counsel appointed by the court if unable to retain legal counsel; and

- After the court so informs the conservatee, the court must consult the conservatee to determine the conservatee's opinion concerning the question of who should be appointed as successor conservator.

7. [§300.70] If Conservatee Fails To Appear

If the petition states that the conservatee will be present at the hearing and the conservatee fails to appear at the hearing, the court must continue the hearing and direct the court investigator to perform the duties set forth above. Prob C §2686.

8. [§300.71] Who May Appear

The conservatee, the spouse, the domestic partner, any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition. Prob C §2687.

9. [§300.72] Court's Determination and Order

The court determines the question of who should be appointed as successor conservator according to the provisions of Prob C §§1810 et seq. Prob C §2688(a); see §300.29.

The order appointing the successor conservator must contain, among other things, the names, addresses, and telephone numbers of the successor conservator, the conservatee's attorney, if any, and the court investigator, if any. Prob C §2688(b). The required form of order is Judicial Council Form GC-340, which is the same form as for the original appointment of the conservator.

L. Capacity to Bind or Obligate Conservatorship Estate

1. [§300.73] Incapacity of Conservatee

The appointment of a conservator of the estate is an adjudication that the conservatee lacks the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate. Prob C §1872(a).

The lack of capacity may not be construed to deny a conservatee (Prob C §1871):

- The right to control an allowance provided under Prob C §2421.
- The right to control wages or salary to the extent provided in Prob C §2601.

- The right to make a will. Testamentary capacity is determined by a different standard, which depends on soundness of mind. Prob C §6100; see Cal L Rev Comm’n Comment to Prob C §1871 (1990).
- The right to enter into transactions to the extent reasonable to provide the necessities of life to the conservatee and the spouse and minor children of the conservatee, and to provide the basic living expenses to the domestic partner (as defined in Fam C §297) of the conservatee.

Unless the context otherwise requires, “transaction” includes, but is not limited to, making a contract, sale, transfer, or conveyance, incurring a debt or encumbering property, making a gift, delegating a power, and waiving a right. Prob C §1870.

Except as otherwise provided in the order of the court appointing a limited conservator, the appointment does not limit the legal capacity of the limited conservatee to enter into transactions or types of transactions. Prob C §1872(b).

2. [§300.74] Community Property

If a spouse (which includes a registered domestic partner (Fam C §297.5)) has a conservator of the estate, the conservatee spouse lacks legal capacity to (Prob C §3012(b)):

- Manage and control community property, including legal capacity to dispose of community property;
- Join in or consent to a transaction involving community property.

If one spouse has legal capacity and the other has a conservator of the estate (Prob C §3051(b)):

- The spouse who has legal capacity has the exclusive management and control of the community property including, subject to Prob C §3071, the exclusive power to dispose of the community property; and
- The community property is not part of the conservatorship estate.

If both spouses have conservators of the estate, except as set forth below, an undivided one-half interest in the community property is included in, and, subject to Prob C §3071, managed, controlled, and disposed of as a part of the conservatorship estate of each spouse. Prob C §3051(d).

If both spouses have conservators, when authorized by order of the court in which any of the conservatorship proceedings is pending, the conservators may agree in writing that all or specific parts of the community property must be included in the conservatorship estate of one or the other of the spouses and, subject to Prob C §3071, be managed,

controlled, and disposed of as a part of the conservatorship estate of that spouse. Prob C §3051(e).

3. [§300.75] Court Authorization for Conservatee To Enter Into Transaction

In the order appointing the conservator or upon a petition, the court may, by order, authorize the conservatee to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under Prob C §1872 by broadening or restricting the power of the conservatee to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. Prob C §1873(a).

Unless the context otherwise requires, “transaction” includes, but is not limited to, making a contract, sale, transfer, or conveyance, incurring a debt or encumbering property, making a gift, delegating a power, and waiving a right. Prob C §1870.

In the order, the court may include limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following (Prob C §1873(b)):

- A requirement that for specific types of transactions, or for all transactions authorized by the order, the conservatee obtain prior approval of the transaction by the court or conservator before exercising the authority granted by the order; and
- A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to the authority of the order if the transaction is not one into which a reasonably prudent person might enter.

The court, in its discretion, may provide in the order that the order or specific provisions of the order terminate at a time specified in the order. The court may extend the termination time. Prob C §1873(c).

An authority order continues in effect until the earliest of the following times (Prob C §1873(d)):

- The time specified in the order, if any.
- The time the order is modified or revoked.
- The time the conservatorship of the estate is terminated.

An order may be modified or revoked upon petition filed by the conservator, conservatee, the spouse or domestic partner of the conservatee, or any relative or friend of the conservatee, or any interested person.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b), or otherwise set forth in Prob C §§1460 et seq. Prob C §1873(e). See §300.23.

4. [§300.76] Petition for Court Authorization

After a conservator has been appointed, a petition requesting authority for the conservatee to enter into a transaction may be filed by any of the following (Prob C §1874(a)):

- The conservator.
- The conservatee.
- The spouse, domestic partner, or any relative or friend of the conservatee.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b), or otherwise set forth in Prob C §§1460 et seq. Prob C §1874(b). See §300.23.

5. [§300.77] Supplemental to General Legal Principles

The provisions relating to the legal capacity of a conservatee to bind or obligate the conservatorship estate, and the provisions of any order of the court broadening such capacity, do not displace but are supplemented by general principles of law and equity relating to transactions. The general principles include, but are not limited to, capacity to contract, joinder or consent requirements, estoppel, fraud, misrepresentation, duress, coercion, mistake, or other validating or invalidating cause. Prob C §1876.

6. [§300.78] Bona Fide Purchaser of Real Property

A transaction that affects real property of the conservatorship estate, entered into by a person acting in good faith and for a valuable consideration and without knowledge of the establishment of the conservatorship, is not affected by the statutory provisions governing a conservatee's legal capacity to bind or obligate the conservatorship estate (Prob C §§1870–1876) or any order made under these provisions unless a notice of the establishment of the conservatorship or temporary conservatorship has been recorded before the transaction in the county in which the property is located. Prob C §1875.

M. Independent Powers

1. [§300.79] Grant of Powers

Upon appointment, the conservator of the estate has the following general estate management powers (Prob C §2451.5):

- Contract for the conservatorship, perform outstanding contracts, and, thereby, bind the estate.
- Purchase tangible personal property.
- Subject to Prob C §§2640 et seq, employ an attorney to advise and represent the conservator in all matters, including the conservatorship proceeding and all other actions or proceedings.
- Employ and pay the expense of accountants, investment advisers, agents, depositaries, and employees.
- Operate for a period of 45 days after the issuance of the letters of conservatorship, at the risk of the estate, a business, farm, or enterprise constituting an asset of the estate.

In addition, the court may, in its discretion, make an order granting the conservator any one or more or all of the powers specified below if the court determines that, under the circumstances of the particular conservatorship, it would be to the advantage, benefit, and best interest of the estate to do so. The conservator may exercise the granted power or powers without notice, hearing, or court authorization, instructions, approval, or confirmation in the same manner as the conservatee could do if possessed of legal capacity. The exercise is subject to the requirements, conditions, or limitations as are specifically and expressly provided in the order granting the power or powers. Prob C §2590(a). A conservator does not have a power specified in Prob C §2591 without court authorization or express statutory authority. Prob C §2590(b).

The powers are (Prob C §2591):

- To operate, for a period longer than 45 days, at the risk of the estate, a business, farm, or enterprise constituting an asset of the estate.
- To grant and take options.
- To sell, at public or private sale, real or personal property of the estate without confirmation of the court of the sale, other than the personal residence of a conservatee.
- To sell, at public or private sale, the personal residence of the conservatee as described in Prob C §2591.5 without confirmation of the court of the sale. The power granted pursuant to this paragraph is subject to the requirements of Prob C §§2352.5 and 2541.

Note: Authority to sell property includes the authority to contract for the sale and fulfill the terms and conditions of the contract, including conveyance of the property.

- To create, by grant or otherwise, easements and servitudes.

- To borrow money and give security for the repayment thereof.
- To purchase real or personal property.
- To alter, improve, and repair or raze, replace, and rebuild property of the estate.
- To let or lease property of the estate, or extend, renew, or modify a lease of real property, for which the monthly rental or lease terms exceed the maximum specified in Prob C §§2501 and 2555 for any purpose (including exploration for and removal of gas, oil, and other minerals and natural resources) and for any period, including a term commencing at a future time. See Benchguide 301.
- To lend money on adequate security.
- To exchange property of the estate.
- To sell property of the estate on credit if any unpaid portion of the selling price is adequately secured.
- To commence and maintain an action for partition.
- To exercise stock rights and stock options.
- To participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.
- To pay, collect, compromise, arbitrate, or otherwise adjust claims, debts, or demands upon the conservatorship.

The independent powers provisions permit the court to authorize an experienced and qualified conservator to exercise one or more powers without the need to petition for court authorization. In appropriate cases, use of the authority will save time and expense in managing the estate while preserving adequate safeguards through the requirement of accounting. 20 Cal L Rev Comm'n Rep 1001 (1990).

In determining whether to make an independent powers order, the court must consider (Cal L Rev Comm'n Comment to Prob C §2590 (1990)):

- The circumstances of the case;
- The need to grant the power or powers;
- The qualifications of the conservator; and
- The expense of obtaining court authorization for each exercise of the power or powers requested if the petition were to be denied.

➤ **JUDICIAL TIP:** When granting independent powers, make a record of the findings supporting the grant.

2. [§300.80] Sale of Personal Residence

Notwithstanding any independent powers provisions, a conservator seeking an order authorizing a sale of the conservatee's personal residence must demonstrate to the court that the terms of sale are in all respects in the best interests of the conservatee. The terms include sale price and the commissions to be paid from the estate. Prob C §2591.5(a).

A conservator authorized to sell the conservatee's personal residence must comply with the provisions of Prob C §10309 (decendent estate sale requirements) concerning appraisal or new appraisal of the property for sale, and sale at a minimum offer price. Notwithstanding Prob C §10309, if the last appraisal of the conservatee's personal residence was conducted more than 6 months before the proposed sale of the property, a new appraisal is required before the sale of the property, unless the court finds that it is in the best interests of the conservatee to rely on an appraisal of the personal residence that was conducted not more than 1 year before the proposed sale of the property. For purposes of this section, the date of sale is the date of the contract for sale of the property. Prob C §2591.5(b).

Within 15 days of the close of escrow, the conservator must serve a copy of the final escrow settlement statement on all persons entitled to notice of the petition for appointment for a conservator and all persons who have filed and served a request for special notice. The conservator also must file a copy of the final escrow statement, along with a proof of service, with the court. Prob C §2591.5(c).

The court may, for good cause, waive any of these requirements. Prob C §2591.5(d).

3. [§300.81] Petition

The conservator may petition for an order for independent powers. Prob C §2592(a).

The application for the order may be included in the petition for the appointment of the conservator. In such case, the notice of hearing on the petition must include a statement that the petition includes an application for the grant of one or more independent powers and must list the specific power or powers applied for. Prob C §2592(b).

If the application for the order is made by petition filed after the filing of the petition for the appointment of the conservator, 15 days' notice of the hearing must be given to the persons listed in Prob C §1460(b) (see [§300.23](#)). Prob C §2592(c).

4. [§300.82] Withdrawal

The court, on its own motion or on petition of any interested person, when it appears to be for the best interests of the conservatee or the estate, may withdraw any or all of the independent powers previously granted or

may impose restrictions, conditions, and limitations on the exercise of such powers by the conservator. Prob C §2593(a).

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b) (see §300.23). Prob C §2593(b).

5. [§300.83] Stated in Letters

When independent powers are granted, the letters of conservatorship must state the power or powers granted and the restrictions, conditions, or limitations, if any, prescribed in the order. Prob C §2594(a). When a power or powers are granted by a subsequent order, new letters must be issued. Prob C §2594(b).

If the powers are withdrawn, or if the powers are restricted, conditioned, or limited by a subsequent order after they are granted, new letters must be issued accordingly. Prob C §2594(c).

6. [§300.84] No Effect on Other Provisions

The grant of independent powers does not affect the right of the conservator to petition the court for instructions or confirmation under Prob C §2403 (Benchguide 301) or to petition the court under other provisions, as to a particular transaction or matter, in the same manner as if the independent power or powers had not been granted. Prob C §2595(a).

When authority exists under other provisions of law, either general or specific, for the conservator to do any act or to enter into any transaction described above, the conservator may proceed under such other provisions of law and is not required to obtain independent powers authority. Prob C §2595(b).

N. Capacity To Make Medical Decisions

1. [§300.85] Order to Conservator Power To Make Medical Decisions

If the court determines that there is no form of medical treatment for which the conservatee has the capacity to give an informed consent, the court must (Prob C §1880):

- Adjudge that the conservatee lacks the capacity to give informed consent for medical treatment; and
- By order give the conservator of the person the power to make health care decisions for the conservatee. See Prob C §2355; see §300.107. If such an order is made, the letters must include a statement that the conservator has the powers specified in Prob C §2355.

2. [§300.86] Incapacity of Conservatee

A conservatee is deemed unable to give informed consent to any form of medical treatment if, for all medical treatments, the conservatee is unable to respond knowingly and intelligently to queries about medical treatment or is unable to participate in a treatment decision by means of a rational thought process. Prob C §1881(a).

To determine that a conservatee is unable to respond knowingly and intelligently to queries about his or her medical treatment or is unable to participate in treatment decisions by means of a rational thought process, a court must do both of the following (Prob C §1881(b)):

- Determine that, for all medical treatments, the conservatee is unable to understand at least one of the following items of minimum basic medical treatment information:
 - The nature and seriousness of any illness, disorder, or defect that the conservatee has or may develop.
 - The nature of any medical treatment that is being or may be recommended by the conservatee’s health care providers.
 - The probable degree and duration of any benefits and risks of any medical intervention that is being or may be recommended by the conservatee’s health care providers, and the consequences of lack of treatment.
 - The nature, risks, and benefits of any reasonable alternatives.
- Determine that one or more of the mental functions of the conservatee described in Prob C §811(a) (§300.36) is impaired and that there is a link between the deficit or deficits and the conservatee’s inability to give informed consent. This determination need not be made if the conservatee, after notice by the court of his or her right to object, does not object to the proposed finding of incapacity, or waives any objections. Prob C §1881(e). Such notice must have included at least an interview by a court investigator before the hearing on the petition. See Prob C §1826.

A deficit in the mental functions listed in Prob C §811(a) may be considered only if the deficit by itself, or in combination with one or more other mental function deficits, significantly impairs the conservatee’s ability to understand the consequences of his or her decisions regarding medical care. Prob C §1881(c).

In determining whether a conservatee’s mental functioning is so severely impaired that the conservatee lacks the capacity to give informed consent to any form of medical treatment, the court may take into consideration the frequency, severity, and duration of periods of impairment. Prob C §1881(d).

3. [§300.87] Health Care Decisions Order

A health care decisions order of the court under Prob C §1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator, or the transfer petition pursuant to Prob C §2002, or may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided below. Prob C §1890(a).

No court order of incapacity, whether issued as part of an order granting the original petition for appointment of a conservator or issued subsequent thereto, may be granted unless supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure. The declaration must state that the proposed conservatee or the conservatee lacks the capacity to give an informed consent for any form of medical treatment and give reasons. Prob C §1890(c). The required capacity declaration form is Judicial Council Form GC-335. Forms GC-333 and GC-334 may be used to obtain an ex parte order authorizing the physician or psychologist to complete the capacity declaration. See [§300.20](#).

4. [§300.88] Incapacity Petition

A petition may be filed requesting that the court make a health care decisions order or that the court modify or revoke a health care decisions order. The petition must state facts showing that the order requested is appropriate. Prob C §1891(a).

The petition may be filed by any of the following (Prob C §1891(b)):

- The conservator.
- The conservatee.
- The spouse, domestic partner, or any relative or friend of the conservatee.

The petition must set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner and of the relatives of the conservatee within the second degree. Prob C §1891(c). The required form is Judicial Council Form GC-380, Petition for Exclusive Authority to Give Consent for Medical Treatment.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §1892; see [§300.23](#).

5. [§300.89] Conservatee's Attendance at the Hearing

The conservatee must be produced at the hearing except in the following cases (Prob C §1893):

- If the conservatee is out of state when served and is not the petitioner.
- If the conservatee is unable to attend the hearing by reason of medical inability 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 required capacity declaration form is Judicial Council Form GC-335. Forms GC-333 and GC-334 may be used to obtain an ex parte order authorizing the physician, psychologist, or religious healing practitioner to complete the capacity declaration. See §300.20.
- The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and may not be considered in determining the issue of the legal capacity of the conservatee. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.
- If the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee (1) is not willing to attend the hearing, and (2) does not wish to contest the petition, and the court makes an order that the conservatee need not attend the hearing.

If the petition alleges that the conservatee is not willing to attend the hearing or, upon receipt of an affidavit or certificate attesting to the conservatee's medical inability to attend the hearing, the court investigator must do all of the following (Prob C §1894):

- Interview the conservatee personally.
- Inform the conservatee of the contents of the petition; of the nature, purpose, and effect of the proceeding; and of the right of the conservatee to oppose the petition, attend the hearing, and be represented by legal counsel.
- Determine whether the conservatee appears unable to attend the hearing and, if able to attend, whether the conservatee is willing to do so.
- Determine whether the conservatee wishes to contest the petition.
- Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.

- If the conservatee has not retained counsel, determine whether the conservatee desires the court to appoint legal counsel.
- Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the conservatee's interests in any case where the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel.
- Report to the court in writing, at least 5 days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning both (1) representation by legal counsel, and (2) whether the conservatee is not willing to attend the hearing and does not wish to contest the petition.

6. [§300.90] Incapacity Hearing

There is no right to a jury trial on the incapacity petition. Prob C §§825, 1452. There is a rebuttable presumption affecting the burden of proof that the conservatee has the capacity to make informed medical decisions. Prob C §810(a).

The conservatee, the spouse, the domestic partner, any relative, or any friend of the conservatee, the conservator, or any other interested person may appear at the hearing to support or oppose the petition. Prob C §1895(a).

Except when the conservatee is absent from the hearing and is not required to attend the hearing, the court must, before granting the petition, inform the conservatee of all of the following (Prob C §1895(b)):

- The nature and purpose of the proceeding.
- The nature and effect on the conservatee's basic rights of the order requested.
- The right of the conservatee to oppose the petition, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

After the court informs the conservatee of the above and before granting the petition, the court must consult the conservatee to determine the conservatee's opinion concerning the order requested in the petition. Prob C §1895(c).

7. [§300.91] Order

If the court determines that the order requested in the petition is proper, the court must make the order. Prob C §1896(a). The court, in its discretion, may provide in the order that, unless extended by subsequent

order of the court, the order or specific provisions of the order terminate at a time specified in the order. Prob C §1896(b). The required form is Order Authorizing Conservator to Give Consent for Medical Treatment, Judicial Council Form GC-385.

An order of the court under Prob C §1880 continues in effect until the earliest of the following times (Prob C §1897):

- The time specified in the order, if any.
- The time the order is modified or revoked.
- The time the conservatorship is terminated.

The letters of conservatorship must be modified to reflect the health care decisions order. Prob C §1880.

8. [§300.92] Modification or Revocation

A health care decisions order of the court may be modified or revoked upon a petition made, noticed, and heard by the court in the manner provided above. Prob C §1898.

O. Dementia Placement and Treatment

1. [§300.93] Legislative Intent

With regard to dementia treatment, the Legislature declared its intent (Prob C §2356.5(a)):

- That people with dementia, as defined in the last published edition of the *Diagnostic and Statistical Manual of Mental Disorders*, should have a conservatorship to serve their unique and special needs.
- That, by adding powers to the probate conservatorship for people with dementia, their unique and special needs can be met. This will reduce costs to the conservatee and the family of the conservatee, reduce costly administration by state and county government, and safeguard the basic dignity and rights of the conservatee.
- That it is the intent of the Legislature to recognize that the administration of psychotropic medications has been, and can be, abused by caregivers and, therefore, granting powers to a conservator to authorize these medications for the treatment of dementia requires the protections specified in the statute.

2. [§300.94] Placement

A conservator may authorize the placement of a conservatee in a secured perimeter residential care facility for the elderly operated pursuant to Health & S C §1569.698 and that has a care plan that meets the require-

ments of 22 Cal Code Reg §87705, upon a court’s finding, by clear and convincing evidence, of all of the following (Prob C §2356.5(b)):

- The conservatee has dementia, as defined in the last published edition of the *Diagnostic and Statistical Manual of Mental Disorders*.
- The conservatee lacks the capacity to give informed consent to this placement and has at least one mental function deficit (see Prob C §811(a)), and this deficit significantly impairs the person’s ability to understand and appreciate the consequences of his or her actions (see Prob C §811(b); §300.36).
- The conservatee needs or would benefit from a restricted and secure environment, as demonstrated by evidence presented by the physician or psychologist referred to in §300.96.
- The court finds that the proposed placement in a locked facility is the least restrictive placement appropriate to the needs of the conservatee.

A conservatee who is to be placed in such a facility may not be placed in a mental health rehabilitation center as described in Welf & I C §5675, or in an institution for mental disease as described in Welf & I C §5900. Prob C §2356.5(e).

3. [§300.95] Treatment

A conservator of a person may authorize the administration of medications appropriate for the care and treatment of dementia, upon a court’s finding, by clear and convincing evidence, of all of the following (Prob C §2356.5(c)):

- The conservatee has dementia, as defined in the last published edition of the *Diagnostic and Statistical Manual of Mental Disorders*.
- The conservatee lacks the capacity to give informed consent to the administration of medications appropriate to the care of dementia, and has at least one mental function deficit (see Prob C §811(a)), and this deficit or these deficits significantly impair the person’s ability to understand and appreciate the consequences of his or her actions (see Prob C §811(b); §300.36).
- The conservatee needs or would benefit from appropriate medication as demonstrated by evidence presented by the physician or psychologist referred to in §300.96.

In the case of a person who is an adherent of a religion whose tenets and practices call for a reliance on prayer alone for healing, the treatment

required by the conservator must be by an accredited practitioner of that religion in lieu of the administration of medications. Prob C §2356.5(d).

4. [§300.96] Petition for Authority

A petition for authority to act under this section is governed by Prob C §2357 (see §300.112), except (Prob C §2356.5(f)):

- The conservatee must be represented by an attorney (see Prob C §1471). See §300.28.
- The conservatee must be produced at the hearing, unless excused (see Prob C §1893).
- The petition must be supported by a declaration of a licensed physician, or a licensed psychologist within the scope of his or her licensure, regarding each of the findings required to be made under this section for any power requested, except that the psychologist must have at least 2 years of experience in diagnosing dementia. The required forms are Judicial Council Forms GC-335 and GC-335A. Forms GC-333 and GC-334 may be used to obtain an ex parte order authorizing the physician or psychologist to complete the capacity declaration. See §300.20.
- The petition may be filed by any of the persons designated in Prob C §1891. See §300.88.

5. [§300.97] Investigator and Attorney

If the conservator is authorized to place or treat the conservatee for dementia, the court investigator must investigate annually and report to the court every 2 years pursuant to Prob C §§1850 and 1851. See Benchguide 301. In addition to the other matters provided in Prob C §1851, the conservatee must be specifically advised by the investigator that the conservatee has the right to object to the conservator's dementia powers, and the report must also include whether powers granted under this section are warranted. If the conservatee objects to the conservator's powers, or the investigator determines that some change in the powers granted under this section is warranted, the court must provide a copy of the report to the attorney of record for the conservatee. Prob C §2356.5(g).

If no attorney has been appointed for the conservatee, one must be appointed pursuant to Prob C §§1470 et seq. Prob C §2356.5(g). The attorney must, within 30 days after receiving this report, do one of the following (Prob C §2356.5(g)):

- File a petition with the court regarding the status of the conservatee.

- File a written report with the court stating that the attorney has met with the conservatee and determined that the petition would be inappropriate.

A petition to terminate authority granted under this section is governed by Prob C §2359. Prob C §2356.5(h).

6. [§300.98] Effect

Nothing in the dementia provisions must be construed to affect a conservatorship of the estate of a person who has dementia. Prob C §2356.5(i). Nor do the dementia provisions affect the laws that would otherwise apply in emergency situations. Prob C §2356.5(j).

The dementia provisions do not affect current law regarding the power of a probate court to fix the residence of a conservatee or to authorize medical treatment for any conservatee who has not been determined to have dementia. Prob C §2356.5(k).

P. Powers of Conservator of Person

1. [§300.99] Grant of Powers

The conservator of the person, but not a limited conservator, has the care, custody, and control of, and has charge of the education of, the conservatee. Prob C §2351(a). This control does not extend to personal rights retained by the conservatee, including, but not limited to, the right to receive visitors, telephone calls, and personal mail, unless specifically limited by court order. The court may issue an order that specifically grants the conservator the power to enforce the conservatee's rights to receive visitors, telephone calls, and personal mail, or that directs the conservator to allow those visitors, telephone calls, and personal mail. Prob C §2351(a). However, if the court determines that it is appropriate in the circumstances of a particular conservatee, it may, in its discretion, limit the powers and duties that the conservator would otherwise have by an order stating either of the following (Prob C §2351(b)):

- The specific powers that the conservator does not have with respect to the conservatee's person and reserving the powers so specified to the conservatee.
- The specific powers and duties the conservator has with respect to the conservatee's person and reserving to the conservatee all other rights with respect to the conservatee's person that the conservator otherwise would have.

Thus, for example, the court has discretion to make an order allowing the conservatee to fix his or her own residence or to make decisions concern-

ing his or her own education. Cal L Rev Comm'n Comment to Prob C §2351 (1990).

Such an order (1) may be included in the order appointing a conservator of the person, or (2) may be made, modified, or revoked upon a petition subsequently filed, 15 days' notice of the hearing on the petition having been given. Prob C §2351(c). See Prob C §§1460 et seq; §300.23.

The conservator, in exercising his or her powers, may not hire or refer any business to an entity in which he or she has a financial interest except upon authorization of the court. Before authorization from the court, the conservator must disclose his or her financial interest in the entity to the court in writing. Prob C §2351(d).

“Financial interest” means (Prob C §2351(d)):

- An ownership interest in a sole proprietorship, a partnership, or a closely held corporation;
- An ownership interest of greater than 1 percent of the outstanding shares in a publicly traded corporation; or
- Being an officer or a director of a corporation.

By its terms, this prohibition only applies to conservators required to register with the Statewide Registry under Prob C §§2850 et seq. Prob C §2351(d). Probate Code §§2850 et seq has been repealed, and professional fiduciaries are now required to be licensed under Bus & P C §§6500 et seq. See §300.31.

2. [§300.100] Elder Abuse Action

If the conservatee has been subject to abuse, either physical or financial, the conservator may bring an action under the Elder Abuse and Dependent Adult Civil Protection Act. Welf & I C §§15610 et seq. The action can be brought in the probate court or the civil court as discussed below.

The Act provides remedies for abuse to elders and dependent adults. Abuse is defined as (Welf & I C §15610.07):

- Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

“Elder” means any person residing in this state, 65 years of age or older. Welf & I C §15610.27. “Dependent adult” means any person between the ages of 18 and 64 years who resides in this state and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited

to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age. Welf & I C §15610.23(a).

When it is proven by clear and convincing evidence that a defendant is liable for physical abuse (Welf & I C §15610.63), or neglect (Welf & I C §15610.57), and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law, the court must award the plaintiff reasonable attorney's fees and costs and defendants also may be liable for pain and suffering and punitive damages. Welf & I C §15657.

The department of the superior court having jurisdiction over probate conservatorships has concurrent jurisdiction over civil actions and proceedings involving a claim for relief arising out of the abduction or abuse of an elderly or dependent adult, if a conservator has been appointed for plaintiff before the initiation of the action for abuse. Welf & I C §15657.3(a). The department of the superior court having jurisdiction over probate conservatorships may not grant relief if the court determines that the matter should be determined in a civil action, but must instead transfer the matter to the general civil calendar of the superior court. The court need not abate any proceeding for relief if the court determines that the civil action was filed for the purpose of delay. Welf & I C §15657.3(b). It is error to dismiss, rather than transfer, an elder abuse action brought in the probate court. *Conservatorship of Kayle* (2004) 134 CA4th 1, 7, 35 CR3d 671.

The death of the elder or dependent adult does not cause the court to lose jurisdiction of any claim for relief for abuse of an elder or dependent adult. Welf & I C §15657.3(c). Upon petition, after the death of the elder or dependent adult, the right to commence or maintain an action must pass to the personal representative of the decedent, or if none, to the person or persons entitled to succeed to the decedent's estate. Welf & I C §15657.3(d).

3. Residence

a. [§300.101] Establishing Residence

The conservator or proposed conservator may establish the residence of the conservatee or proposed conservatee at any place within California without the permission of the court. The conservator must select the least restrictive appropriate residence, as described in Prob C §2352.5 (§300.102), that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee. Prob C §2352(b), (g).

b. [§300.102] Preference for Personal Residence

It is presumed that the personal residence of the conservatee at the time of commencement of the proceeding is the least restrictive appropriate residence for the conservatee. In any hearing to determine if removal of the conservatee from his or her personal residence is appropriate, that presumption may be overcome by a preponderance of the evidence. Prob C §2352.5(a).

Upon appointment, the conservator must determine the appropriate level of care for the conservatee. That determination must include an evaluation of the level of care existing at the time of commencement of the proceeding and the measures that would be necessary to keep the conservatee in the personal residence. If the conservatee is living somewhere other than the personal residence at the commencement of the proceeding, that determination must either include a plan to return the conservatee to the personal residence, or an explanation of the limitations or restrictions on a conservatee's return in the foreseeable future. Prob C §2352.5(b). The determination made by the conservator must be in writing, signed under penalty of perjury, and submitted to the court within 60 days of appointment as conservator. Prob C §2352.5(c).

The conservator must evaluate the conservatee's placement and level of care if there is a material change in circumstances affecting the conservatee's needs for placement and care. Prob C §2352.5(d).

c. [§300.103] Establishing Residence Out of State

If the court's permission is first obtained, a conservator may establish the residence of a conservatee at a place outside California. Notice of the hearing on the petition to establish the residence of the conservatee out of state, together with a copy of the petition, must be given in the manner required by Prob C §1460(a) to all persons entitled to notice under Prob C §1822(b). Prob C §2352(c). See [§300.23](#).

The required form of petition and order are Judicial Council Forms GC-85, Petition to Fix Residence Outside the State of California, and GC-90, Order Fixing Residence Outside the State of California.

When the conservatee has lived in the other state for 4 months, or a longer or shorter period specified in the order, the conservator must either return the conservatee to California, cause a conservatorship proceeding or its equivalent to be commenced in the place of the new residence, or petition for the transfer of the conservatorship to the other state. Prob C §2352(d)(2).

d. [§300.104] Notice of Change of Residence

The conservator must file a notice of change of residence with the court within 30 days of the date of the change. In the notice of change of

residence, the conservator must include a declaration stating that the conservatee's change of residence is consistent with the standard set forth in §300.103. Prob C §2352(e)(1). The required form of notice is Judicial Council Form GC-80, Change of Residence Notice.

The conservator must mail a copy of the notice to all persons entitled to notice under Prob C §1822(b) and must file proof of service of the notice with the court. The court may, for good cause, waive the mailing requirement in order to prevent harm to the conservatee. Prob C §2352(e)(2).

If the conservator proposes to remove the conservatee from his or her personal residence (except out of state), the conservator must mail a notice of the intention to change the residence of the conservatee to all persons entitled to notice under Prob C §1822(b). In the absence of an emergency, that notice must be mailed at least 15 days before the proposed removal of the conservatee from his or her personal residence. If the notice is served less than 15 days before the proposed removal of the conservatee, the conservator must set forth the basis for the emergency in the notice. The conservator must file proof of service of that notice with the court. Prob C §2352(e)(3).

These provisions do not apply if the court has made an order under Prob C §2351 pursuant to which the conservatee retains the right to establish his or her own residence. Prob C §2352(f).

4. Medical Consent

a. [§300.105] Consent by Conservatee

If the conservatee has not been adjudicated to lack the capacity to give informed consent for medical treatment, the conservatee may consent to his or her medical treatment. The conservator may also give consent to the medical treatment, but the conservator's consent is not required if the conservatee has the capacity to give informed consent to the medical treatment, and the conservator's consent alone is not sufficient if the conservatee objects to the medical treatment. Prob C §2354(a).

Thus, if the conservatee consents to the medical treatment (which includes surgery), there is no restriction imposed on providing the medical treatment to the conservatee. Accordingly, medical personnel may safely rely on the conservatee's informed consent as long as the conservatee has not been adjudicated to lack capacity to give informed consent for medical treatment. If the medical practitioner is unwilling to rely on the conservatee's consent, the practitioner may also require the conservator's consent. If the medical practitioner is willing to rely on conservatee's consent alone, a conservator who wishes to forestall the treatment must seek an adjudication under Prob C §1880 (§300.85) that the conservatee lacks capacity to give informed consent for medical treatment. If the

medical practitioner also requires the conservator's consent but the conservator refuses to consent, the conservatee or other interested person may petition the court for an order requiring the conservator to consent. See Prob C §2357(i); §300.117. Consent of the conservator alone is sufficient consent for medical treatment if the conservatee does not object to the treatment. Accordingly, if the conservatee is in such condition that he or she is unable to give consent, the conservator's consent is sufficient because the conservatee's consent is not required—all that is required is that the conservatee not object. Cal L Rev Comm'n Comment to Prob C §2354 (1990).

The conservator may require the conservatee to receive medical treatment, whether or not the conservatee consents to the treatment, if a court order specifically authorizing the medical treatment has been obtained pursuant to Prob C §2357. Prob C §2354(b).

b. [§300.106] Emergency

The conservator may consent to medical treatment for the conservatee, and may require the conservatee to receive the medical treatment, in any case where the conservator determines in good faith based upon medical advice that it is an emergency case that requires the medical treatment because (Prob C §2354(c)):

- The treatment is required for the alleviation of severe pain; or
- The conservatee has a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

In such a case, the conservator's consent alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent. Prob C §2354(c).

c. [§300.107] Conservator's Authority To Make Decision If Conservatee Lacks Capacity

If the conservatee has been adjudicated to lack the capacity to make health care decisions, the conservator has the exclusive authority to make health care decisions for the conservatee that the conservator in good faith based on medical advice determines to be necessary. The determination as to lack of capacity is discussed in §§300.85–300.92. The conservator must make health care decisions for the conservatee in accordance with the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator. Otherwise, the conservator must make the decision in accordance with the conservator's determination of the conservatee's best interest. In determining the conservatee's best interest, the conservator must consider the conservatee's personal values to the extent known to the conservator. The conservator may require the

conservatee to receive the health care, whether or not the conservatee objects. In this case, the health care decision of the conservator alone is sufficient and no person is liable because the health care is administered to the conservatee without the conservatee's consent. Prob C §2355(a).

“Health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a patient's physical or mental condition. Prob C §4615. “Health care decision” means a decision made by a patient or the patient's agent, conservator, or surrogate, regarding the patient's health care, including the following (Prob C §4617):

- Selection and discharge of health care providers and institutions.
- Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication.
- Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation.

If before a conservatorship is established, the conservatee was an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing, the treatment required by the conservator must be by an accredited practitioner of that religion. Prob C §2355(b).

Under Prob C §2355, incapacitated patients retain the right to have appropriate medical decisions made on their behalf. An appropriate medical decision is one that is made in the patient's best interests, as opposed to the interests of the hospital, the physicians, the legal system, or someone else. California law gives persons a right to determine the scope of their own medical treatment; this right survives incompetence in the sense that incompetent patients retain the right to have appropriate decisions made on their behalf, and Prob C §2355 delegates to conservators the right and duty to make such decisions. The necessary determinations are to be made by the conservator, in accordance with the statutory standard. Court control or intervention in this process is neither required by statute, nor desired by the courts. Cal L Rev Comm'n Comment to Prob C §2355 (1999).

When the conservatee is a persistently vegetative patient with a diagnosis establishing that further treatment offers no reasonable hope of returning the patient to cognitive life, the conservator has the right under Prob C §2355 to decide to withhold artificial nutrition and hydration. The decision does not require court approval. *Conservatorship of Drabick* (1988) 200 CA3d 185, 204, 245 CR 840; see *Conservatorship of Morrison* (1988) 206 CA3d 304, 253 CR 530. *Drabick* was decided under an earlier version of Prob C §2355, but the Cal L Rev Comm'n Comment to the amendment of Prob C §2355 states that the amendment of Prob C §2355 to include consideration of the conservatee's wishes was consistent with *Drabick*. Cal L Rev Comm'n Comment to Prob C §2355 (1999).

However, the amendment to Prob C §2355 means that the conservator's decision must be based on the conservatee's individual health care instructions, if any, and other wishes to the extent known to the conservator.

d. [§300.108] Conservator's Authority Subject To Advance Health Care Directive

The conservator's health authority is subject to a valid and effective advance health care directive executed by the conservatee under Prob C §§4600 et seq. Prob C §2356(e). Unless the power of attorney for health care provides otherwise, the agent designated in the power of attorney who is known to the health care provider to be reasonably available and willing to make health care decisions has priority over any other person in making health care decisions for the principal. Prob C §4685. Thus, the designated agent's authority supersedes the conservator's authority. However, the conservator of the person may petition the court to (Prob C §§4765(e), 4766):

- Determine whether or not the patient has capacity to make health care decisions.
- Determine whether an advance health care directive is in effect or has terminated.
- Determine whether the acts or proposed acts of an agent or surrogate are consistent with the patient's desires as expressed in an advance health care directive or otherwise made known to the court or, where the patient's desires are unknown or unclear, whether the acts or proposed acts of the agent or surrogate are in the patient's best interest.
- Declare that the authority of an agent or surrogate is terminated, upon a determination by the court that the agent or surrogate has made a health care decision for the patient that authorized anything illegal.

e. [§300.109] No Placement in Mental Health Treatment Facility

A conservatee may not be placed in a mental health treatment facility under the conservatorship statutes against his or her will. Involuntary civil placement of a conservatee in a mental health treatment facility may be obtained only pursuant to Welf & I C §§5150 et seq, 5350 et seq, the Lanterman-Petris-Short Act. Prob C §2356(a). See California Judges Benchguide 120: *LPS Proceedings* (Cal CJER).

f. [§300.110] No Experimental Drugs or Convulsive Treatment

An experimental drug as defined in Health & S C §111515 may not be prescribed for or administered to a conservatee under the conservatorship statutory provisions. An experimental drug may be prescribed for or administered to a conservatee only as provided in Health & S C §§111515 et seq. Prob C §2356(b).

Convulsive treatment as defined in Welf & I C §5325 may not be performed on a conservatee under conservatorship statutory provisions. Convulsive treatment may be performed on a conservatee only as provided in Welf & I C §§5325 et seq. Prob C §2356(c).

g. [§300.111] Standard of Proof

The California Supreme Court has determined that, when the issue is whether to withdraw life support from a conscious conservatee, the standard of proof is clear and convincing evidence. This standard is applicable to both bases for such a decision in Prob C §2355(a), the conservatee's instructions and wishes and, if those are not clear, the conservatee's best interests. The Supreme Court found that to interpret Prob C §2355 to permit a conservator to withdraw artificial nutrition and hydration from a conscious conservatee based on a finding, by a mere preponderance of the evidence, that the conservatee would refuse treatment creates a serious risk that the law will be unconstitutionally applied in some cases, with grave injury to fundamental rights. Therefore, the Court applied the clear and convincing evidence standard to avoid the unconstitutional application. *Conservatorship of Wendland* (2001) 26 C4th 519, 543–548, 110 CR2d 412.

However, the clear and convincing evidence standard does not apply to the vast majority of health care decisions made by conservators under Prob C §2355. Only the decision to withdraw life-sustaining treatment, because of its effect on a conscious conservatee's fundamental rights, justifies imposing that high standard of proof. Therefore, the clear and convincing standard only affects a narrow class of persons: conscious conservatees who have not left formal directions for health care and whose conservators propose to withhold life-sustaining treatment for the purpose of causing their conservatees' deaths. The standard is not applicable to permanently unconscious patients, including those who are comatose or in a persistent vegetative state (see *Conservatorship of Drabick* (1988) 200 CA3d 185, 204, 245 CR 840 and *Conservatorship of Morrison* (1988) 206 CA3d 304, 253 CR 530); persons who have left legally cognizable instructions for health care (see Prob C §§4670, 4673, 4700); persons who have designated agents or other surrogates for health care (see Prob C §§4671, 4680, 4711); or conservatees for whom conservators have made

medical decisions other than those intended to bring about the death of a conscious conservatee. The usual preponderance of evidence standard is applicable to these other cases. *Conservatorship of Wendland, supra*, 26 C4th at 555.

5. Medical Treatment Not Otherwise Authorized

a. [§300.112] Petition To Authorize Medical Treatment

If the conservatee requires medical treatment for an existing or continuing medical condition that is not otherwise authorized to be performed upon the conservatee, and the conservatee is unable to give an informed consent to this medical treatment, the conservator (including a temporary conservator) may petition the court for an order authorizing the medical treatment and authorizing the conservator to consent on the conservatee's behalf to the medical treatment. Prob C §2357(a)–(b).

The petition must state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed (Prob C §2357(c)):

- The nature of the conservatee's medical condition that requires treatment.
- The recommended course of medical treatment that is considered to be medically appropriate.
- The threat to the conservatee's health if authorization to consent to the recommended course of treatment is delayed or denied by the court.
- The predictable or probable outcome of the recommended course of treatment.
- The medically available alternatives, if any, to the course of treatment recommended.
- The efforts made to obtain an informed consent from the conservatee.
- The name and addresses, so far as they are known to the petitioner, of the persons specified in Prob C §1821(b) (see §300.14) in a conservatorship proceeding.

The ordinary powers of a conservator do not include the ability to consent to a conservatee's sterilization, but sterilization may be requested. It is most likely to arise in limited conservatorships of developmentally disabled persons. The requirements for involuntary sterilization are precise and explicit. See Prob C §§1950 et seq. These requirements do not apply when sterilization is an unavoidable or medically probable consequence of medical treatment or surgery required for other medical reasons. Prob C §1968.

b. [§300.113] Appointment of Attorney

Upon the filing of the petition, unless an attorney is already appointed, the court must appoint the public defender or private counsel under Prob C §1471, to consult with and represent the conservatee at the hearing on the petition and, if that appointment is made, Prob C §1472 (compensation) applies (§300.28). Prob C §2357(d).

c. [§300.114] Notice

Notice of the petition is given as follows (Prob C §2357(e)):

- Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition must be personally served on the conservatee, and on the attorney for the conservatee.
- Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition must be mailed to the following persons:
 - The conservatee’s spouse or domestic partner, if any, at the address stated in the petition.
 - The relatives named in the petition at their addresses stated in the petition.

d. [§300.115] Shorten or Waive Notice

For good cause, the court may shorten or waive the notice of the hearing. In determining the period of notice to be required, the court must take into account both of the following (Prob C §2357(f)):

- The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court.
- The desirability, when the conservatee’s condition permits, of giving adequate notice to all interested persons.

Notwithstanding the notice requirements, the matter may be submitted for the court’s determination upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the conservatee so stipulate and further stipulate that there remains no issue of fact to be determined. Prob C §2357(g).

e. [§300.116] Court’s Determination

The court may make an order authorizing the recommended course of medical treatment and authorizing the conservator to consent on the conservatee’s behalf if the court determines from the evidence all of the following (Prob C §2357(h)):

- The conservatee’s existing or continuing medical condition that requires the recommended course of medical treatment.
- If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the conservatee’s physical or mental health.
- The conservatee is unable to give an informed consent to the recommended course of treatment.

f. [§300.117] Petition of Conservatee or Other Interested Person for Medical Treatment

Upon petition of the conservatee or other interested person, the court may order that the conservator obtain or consent to, or obtain and consent to, specified medical treatment to be performed upon the conservatee. Notice of the hearing on the petition under this subdivision is given for the period and in the manner provided in Prob C §1460 (see §300.23). Prob C §2357(i).

This provision covers the situation where the conservatee or an interested person believes the conservatee needs medical treatment that the conservator is unwilling or has failed to obtain. Cal L Rev Comm’n Comment to Prob C §2357 (1990).

6. [§300.118] Other Conditions and Obligations

When a conservator is appointed, the court may, with the conservator’s consent, insert in the order of appointment conditions not otherwise obligatory providing for the conservatee’s care, treatment, education, and welfare. Any such conditions must be included in the letters. The performance of such conditions is a part of the conservator’s duties for the faithful performance of which the conservator and the sureties on the bond are responsible. Prob C §2358.

7. [§300.119] Authorization and Instruction of Conservator

Upon petition of the conservator or conservatee or other interested person, the court may authorize and instruct the conservator or approve and confirm the conservator’s acts. Prob C §2359(a).

Notice of the hearing on the petition under this subdivision is given for the period and in the manner provided in Prob C §1460 (see §300.23). Prob C §2359(b).

8. [§300.120] Conservator of Person’s Disclosure Requirement for Real Estate Transactions With Estate

When a conservator of the person petitions for the approval of a purchase, lease, or rental of real or personal property from the conservatee’s

estate, the conservator must provide a statement disclosing (Prob C §2359(c)(1)):

- The family or affiliate relationship between the conservator and the purchaser, lessee, or renter of the property; and
- The family or affiliate relationship between the conservator and any agent hired by the conservator.

“Family” means a person’s spouse, domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse. “Affiliate” means an entity that is under the conservator’s direct, indirect, or common control. Prob C §2359(c)(2).

A violation of this disclosure requirement results in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the conservatee’s estate because the property was sold or leased at less than fair market value must be deemed as charges against the conservator under the provisions of Prob C §§2401.3 and 2401.5. See Benchguide 301. The court must assess a civil penalty equal to three times the charges against the conservator or other person in violation and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court must order the conservator or other person in violation to pay a fine of up to \$5000 for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law. Prob C §2359(c)(3).

Q. [§300.121] Powers of Limited Conservator

The limited conservator has the care, custody, and control of the limited conservatee. Additionally, the limited conservator must secure those habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence. Prob C §2351.5(a). However, a limited conservator does not have any of the following powers or controls over the limited conservatee unless specifically requested in the petition and granted by the court in its order appointing the limited conservator (Prob C §2351.5(b)):

- To fix the limited conservatee’s residence or specific dwelling;
- To access the limited conservatee’s confidential records and papers;
- To consent or withhold consent to the marriage of, or the entrance into a registered domestic partnership by, the limited conservatee;
- To contract for the limited conservatee;
- To give or withhold medical consent for the limited conservatee;

- To control the limited conservatee’s social and sexual contacts and relationships;
- To make decisions concerning the limited conservatee’s education.

Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator under Prob C §2351.5(b). Prob C §2351.5(c). The petition must state the facts alleged to establish that the limited conservatorship should be modified. The granting or elimination of those powers is discretionary with the court. Notice of the hearing on the petition must be given for the period and in the manner provided in Prob C §§1460–1469. Prob C §2351.5(c).

The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. Prob C §2351.5(d). The court must hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If any of the powers which must be specifically granted to the limited conservator under Prob C §2351.5(b) are granted or eliminated, new letters of limited conservatorship must be issued reflecting the change in the limited conservator’s powers. Prob C §2351.5(d).

R. Powers of Temporary Conservator

1. [§300.122] Necessary Powers

A temporary conservator has only those powers and duties of a conservator that are necessary to provide for the conservatee’s temporary care, maintenance, and support and that are necessary to conserve and protect the conservatee’s property from loss or injury. Prob C §2252(a).

Unless the court otherwise orders, a temporary conservator of the person has the powers and duties specified in Prob C §2354 (medical treatment; see §300.105). Prob C §2252(b)(2). A temporary conservator of the estate also has the power to marshal assets and establish accounts at financial institutions. Prob C §2252(b)(3).

The temporary conservator has any additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require. Prob C §2252(c). Those additional powers and duties may include relief granted pursuant to Prob C §2580 (substituted judgment; see Benchguide 301) if this relief is not requested in a petition for the appointment of a temporary conservator but is requested in a separate petition. Prob C §2252(c).

The terms of any order dealing with the powers of a temporary conservator must be included in the letters of temporary conservatorship. Prob C §2252(d).

2. [§300.123] Capacity To Contract

It has been held that the appointment of a temporary conservator was an adjudication that the conservatee lacked capacity to contract and specifically to make a gift of the conservatee's property. The court held that Prob C §1872, which provides that the appointment of a conservator of the estate is an adjudication that the conservatee lacked capacity to contract, was applicable to temporary conservators. It found that the legislative history showed that Prob C §1872 was applicable to temporary conservators. *O'Brien v Dudenhoeffer* (1990) 16 CA4th 327, 335, 19 CR2d 826.

3. [§300.124] Sale of Property Interests

A temporary conservator is not permitted to sell or relinquish, on the conservatee's behalf, any lease or estate in real or personal property used as or within the conservatee's place of residence without the court's specific approval. This approval may be granted only if (Prob C §2252(e)):

- The conservatee has been served with notice of the hearing,
- The notice is personally delivered to the temporary conservatee unless the court for good cause otherwise orders, and
- The court finds that the conservatee will be unable to return to the residence and exercise dominion over it and that the action is necessary to avert irreparable harm to the conservatee.

The temporary conservator is not permitted to sell or relinquish on the conservatee's behalf any estate or interest in other real or personal property without the court's specific approval, which may be granted only upon a finding that the action is necessary to avert irreparable harm to the conservatee. A finding of irreparable harm as to real property may be based upon a reasonable showing that (Prob C §2252(e)):

- The real property is vacant,
- It cannot reasonably be rented, and
- It is impossible or impractical to obtain fire or liability insurance on the property.

4. Changing Residence

a. [§300.125] Written Request Required

If a temporary conservator of the person proposes to fix the conservatee's residence at a place other than that where the conservatee resided before the commencement of the proceedings, that power must be requested of the court in writing, unless the conservatee's change of residence is required by a prior court order. The request is filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request must specify (Prob C §2253(a)):

- In particular the place to which the temporary conservator proposes to move the conservatee,
- 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.

This provision does not prevent a temporary conservator from removing a temporary conservatee from the place of residence to a health facility for treatment without court authorization when the temporary conservatee has given informed consent to the removal. Prob C §2254(c). Nor does the provision prevent a temporary conservator from removing a temporary conservatee without court authorization from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care. Prob C §2254(d).

b. [§300.126] Duties of Investigator

Unless the court for good cause orders otherwise, the court investigator is to do all of the following before the hearing (Prob C §2253(b)):

- Interview the conservatee personally.
- Inform the conservatee of the nature, purpose, and effect of the request to fix residence and the conservatee's right 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.
- 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 do so.
- Determine whether the conservatee wishes to oppose the request.

- 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.
- If the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the conservatee's interests.
- Determine 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.
- Report to the court in writing, at least 2 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. [§300.127] Hearing

Within 7 days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court must hold a hearing on the request. Prob C §2253(c).

The conservatee is to be present at the hearing except in the following cases (Prob C §2253(d)):

- When the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the conservatee's absence 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.
- When 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.

If the conservatee is unable to attend the hearing because of medical inability, that inability must 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 is not to be considered in determining the issue of need for the establishment of a conservatorship. Prob C §2253(e). The required form of affidavit is Judicial Council Form GC-335. If the capacity declaration cannot be obtained without a court order, an ex parte order authorizing the physician, psychologist, or religious healing practitioner to complete the capacity declaration may be obtained by using Judicial Council Forms GC-333 and GC-334 (see §300.20).

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 his or her own behalf. Prob C §2253(f).

d. [§300.128] Findings Required To Approve Removal

The court may approve the request to remove the conservatee from the previous place of residence only if the court finds that (Prob C §2253(g)):

- Change of residence is required to prevent irreparable harm to the conservatee, and
- 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 must 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 California 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 the court's authorization is guilty of a felony. Prob C §2253(g).

Subject to the requirement for court approval for sales of property (see Benchguide 301), the court must also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence. Prob C §2253(h).

e. [§300.129] Emergency Removal

Notwithstanding the requirement for court approval of the change of residence of the temporary conservatee, a temporary conservator may remove a temporary conservatee from the temporary conservatee's place of residence without court authorization if an emergency exists. For the

purposes of this section, an emergency exists if the temporary conservatee's place of residence is unfit for habitation or if the temporary conservator determines in good faith based upon medical advice that the case is an emergency case in which removal from the place of residence is required to (Prob C §2254(a)):

- Provide medical treatment needed to alleviate severe pain; or
- Diagnose or treat a medical condition that, if not immediately diagnosed and treated, will lead to serious disability or death.

No later than 1 judicial day after the emergency removal of the temporary conservatee, the temporary conservator must file a written request pursuant to Prob C §2253 (see §300.125) for authorization to fix the residence of the temporary conservatee at a place other than the temporary conservatee's previous place of residence. Prob C §2254(b).

5. [§300.130] Termination of Powers

The powers of a temporary conservator terminate, except for the rendering of the account, at the earliest of the following times (Prob C §2257(a)):

- The time the temporary conservator acquires notice that a conservator is appointed and qualified.
- Thirty days after the appointment of the temporary conservator or such earlier time as the court may specify in the order of appointment.

With or without notice as the court may require, the court may for good cause order that the time for the termination of the powers of the temporary conservator be extended or shortened pending final determination by the court of the petition for appointment of a conservator or pending the final decision on appeal from the order or for other cause. The order that extends the time for termination must fix the time when the powers of the temporary conservator terminate except for the rendering of the account. Prob C §2257(b).

A temporary conservator is subject to the general provisions governing the suspension, removal, resignation, and discharge of a conservator. Prob C §2258; see Benchguide 301.

S. Marriage

1. [§300.131] Right To Marry

The conservator's appointment of the person or estate or both does not affect the conservatee's capacity to marry or to enter into a registered domestic partnership. Prob C §1900. Whether the conservatee has capacity to marry is determined by the law that would be applicable if no

conservatorship has been established. Prob C §6100; see Cal L Rev Comm'n Comment to Prob C §1900 (1990).

2. [§300.132] Court Determination

The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in Fam C §§300 et seq, or to enter into a registered domestic partnership, as provided in Fam C §297, at the time the order is made. Prob C §1901(a).

A petition for an order regarding marriage may be filed by (Prob C §1901(b)):

- The conservator of the person or estate or both,
- The conservatee,
- Any relative or friend of the conservatee, or
- Any interested person.

Fifteen days' notice of the hearing must be given to the persons listed in Prob C §1460(b). Prob C §1901(c); see §300.23.

T. [§300.133] Disqualification From Voting

A person is presumed competent to vote regardless of his or her conservatorship status. Elec C §2208(a). But if the court determines that the conservatee is incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, the court must by order disqualify the conservatee from voting pursuant to Elec C §2208 or §2209. Prob C §1910(a). This determination must be made by clear and convincing evidence. Elec C §2208(a).

The conservatee may not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration (Prob C §1910(b)):

- Sign the affidavit of voter registration with a mark or a cross pursuant to Elec C §2150(b);
- Sign the affidavit of voter registration by means of a signature stamp pursuant to Elec C §354.5;
- Complete the affidavit of voter registration with the assistance of another person pursuant to Elec C §2150(d); or
- Complete the affidavit of voter registration with reasonable accommodations.

During the required review of the conservatorship, the court investigator must review the conservatee's capability of communicating, with or without reasonable accommodations, a desire to participate in the voting process. Elec C §2209(a). If the conservatee has been disqualified

from voting and the investigator determines that the conservatee continues to be incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, the investigator must inform the court, but no court hearing is required. Elec C §2209(b). If the investigator finds that the conservatee is not incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, the court must hold a hearing to determine if, by clear and convincing evidence, the conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. Elec C §2209(b). Unless the person is found incapable of communicating that desire, the person's right to register to vote must be restored, and the court must notify the Secretary of State and the county elections official in the format prescribed by the Secretary of State. Elec C §2209(b).

If the conservatee has not been found incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process, and the court investigator determines that the conservatee is no longer capable of communicating that desire, the investigator must notify the court. Elec C §2209(c). The court must hold a hearing to determine if, by clear and convincing evidence, the conservatee cannot communicate, with or without reasonable accommodations, a desire to participate in the voting process. Elec C §2209(c). If the court determines that the person cannot communicate that desire, the court must order the person to be disqualified from voting pursuant to Elec C §2208, and the court must notify the Secretary of State and the county elections official in the format prescribed by the Secretary of State. Elec C §2209(c).

U. [§300.134] Special Provisions When Proposed Conservatee Is Missing Person

A conservator of the estate may be appointed for a person who is missing and whose whereabouts is unknown. Prob C §1804.

A conservator of the estate of a person who is missing and whose whereabouts is unknown must be appointed by the same procedure as for other conservators provided in Prob C §§1820 et seq or 2001 et seq. Prob C §1845(a). However, the appointment may not be made when the proposed conservatee is an absentee as defined in Prob C §1403 (see §300.8). Prob C §1845(b). Under some circumstances, the court may decline to appoint a permanent conservator pending further developments, but may appoint a temporary conservator. Cal L Rev Comm'n Comment to Prob C §1846 (1990).

1. [§300.135] Contents of Petition

In addition to the other required contents of the petition, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the petition must state all of the following (Prob C §1846):

- The proposed conservatee owns or is entitled to the possession of real or personal property located in this state. In a proceeding to transfer a conservatorship of a missing person to this state under Prob C §§2100 et seq, this requirement is also satisfied if the petition states that the proposed conservatee owns or is entitled to the possession of personal property that is to be relocated to this state upon approval of the transfer.
- The time and circumstance of the person's disappearance and that the missing person has not been heard from by the persons most likely to hear (naming them and their relationship to the missing person) since the time of disappearance and that the whereabouts of the missing person is unknown to those persons and to the petitioner.
- The last known residence of the missing person.
- A description of any search or inquiry made concerning the whereabouts of the missing person.
- A description of the estate of the proposed conservatee that requires attention, supervision, and care.

A petition may be filed for a missing person regardless of when the proposed conservatee became missing or how long the proposed conservatee has been missing. Prob C §1849.5(a).

2. [§300.136] Notice

In addition to the persons and entities to whom notice of hearing is required under Prob C §§1822 and 2002, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the following is required (Prob C §1847):

- A copy of the petition for appointment of a conservator and notice of the time and place of the hearing on the petition must be mailed at least 15 days before the hearing to the proposed conservatee at the last known address of the proposed conservatee.
- Notice of the time and place of the hearing must also be published pursuant to Govt C §6061 in a newspaper of general circulation in the county in which the proposed conservatee was last known to reside if the proposed conservatee's last-known address is in this state. Compare Prob C §1842 (regarding absentees, §§300.139–300.142), which requires notice to be published in the county

where the hearing will be held. If the last known address is not in California, Prob C §1847 does not require publication of notice, but, in such a case, the court may require publication within or outside California. Cal L Rev Comm'n Comment to Prob C §1847 (1990).

- The court may require that further or additional notice of the hearing be given. Prob C §1202.

Probate Code §1847 does not limit the court's authority in determining the need for conservatorship to require that a search be made for the missing person before a conservator is appointed. Whether to require such a search and the type of search to be required is left to the court's discretion. In exercising this discretion, the court may consider all the circumstances, including the nature of the disappearance, the character and amount of the estate, and the circumstances of persons who have an interest in the proceeding. For example, the court may dispense with a search if the missing person's estate is nominal, there are dependents entitled to support, and the funds necessary for support would be significantly reduced by the cost of the search. In other cases, no purpose would be served by a court-ordered search, such as when the proposed conservatee is lost at sea. Cal L Rev Comm'n Comment to Prob C §1847 (1990).

3. [§300.137] Acts Not Required

In a proceeding to appoint a conservator of the estate of a person who is missing and whose whereabouts is unknown, the following acts are not required (Prob C §1848):

- Issuance of a citation to the proposed conservatee (see Prob C §1823).
- Service of a citation and petition (see Prob C §1824).
- Production of the proposed conservatee at the hearing (see Prob C §1825).
- Performance of the court investigator's duties (see Prob C §1826).
- Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

In a proceeding to transfer a conservatorship of a missing person to this state under Prob C §§2001 et seq, the following acts are not required:

- Notice to the proposed conservatee (see Prob C §2002).
- Production of the proposed conservatee at the hearings (see Prob C §2002).
- Performance of the court investigator's duties (see Prob C §1851.1).

- Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

4. [§300.138] Required Findings

A conservator of the estate of a person who is missing and whose whereabouts is unknown may be appointed only if the court finds all of the following (Prob C §1849):

- The proposed conservatee owns or is entitled to the possession of real or personal property located in this state. In a proceeding to transfer a conservatorship of a missing person to this state under Prob C §§2001 et seq, this requirement is also satisfied if the court finds that the proposed conservatee owns or is entitled to the possession of personal property that is to be relocated to this state upon approval of the transfer.
- The proposed conservatee remains missing and his or her whereabouts remains unknown.
- The estate of the proposed conservatee requires attention, supervision, and care.

V. [§300.139] Special Provisions When Proposed Conservatee Is an Absentee

A conservator of the estate may be appointed for a person who is an absentee, as defined in Prob C §1403. Prob C §1803; see §300.8.

Except as otherwise provided below, a conservator for an absentee must be appointed by the same procedure as for other conservators provided in Prob C §§1820 et seq or §§2001 et seq. Prob C §1840.

1. [§300.140] Contents of Petition

In addition to the other required contents of the petition, if the proposed conservatee is an absentee, the petition must (Prob C §1841):

- Set forth the last known military rank or grade and the social security account number of the proposed conservatee; and
- State whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.

2. [§300.141] Notice

In addition to the persons and entities to whom notice of hearing is required under Prob C §§1822 and 2002, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the

hearing must be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice must also be published pursuant to Govt C §6061 in a newspaper of general circulation in the county in which the hearing will be held. Prob C §1842.

No citation is required under Prob C §1823, and no notice is required under Prob C §2002 to the proposed conservatee if the proposed conservatee is an absentee. Prob C §1843.

3. [§300.142] Proof of Status of Conservatee

An official written report or record complying with Evid C §1283 that a proposed conservatee is an absentee must be received as evidence of that fact, and the court may not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record. Prob C §1844(a).

The inability of the proposed conservatee to attend the hearing is established by the official written report or record. Prob C §1844(b).

W. [§300.143] Interstate Transfer of Conservatorship

The California Conservatorship Jurisdiction Act is intended to be a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The amended and new statutes provide standards and procedures for establishing the proper jurisdiction for a proceeding to appoint a conservator of a person, an estate, or both. The amended and new statutes also establish conditions for the transfer of a conservatorship established within this state to a jurisdiction outside the state, and a transfer of a conservatorship into this state, and for the registration and recognition by this state of a conservatorship established by another state, a United States territory, a federally recognized Indian tribe, or other specified jurisdiction. Legislative Counsel's Digest, 2014 ch 553 (SB 940). The new Act is at Ch 8 of Div 4, Prob C §§1980 et seq.

The California Conservatorship Jurisdiction Act is the exclusive basis for determining whether the California courts, as opposed to courts of another state, have jurisdiction to appoint a conservator of the person, estate or both. Prob C §1992. Probate Code §1993 sets forth those standards.

1. [§300.144] Limitation on Scope of Act

The California Conservatorship Jurisdiction Act does not apply to the following persons:

- Minors, regardless of whether the minor is or was married (Prob C §1981(a));

- Persons involuntarily committed to a mental health facility or other involuntary mental health care (such as LPS conservatees) (Prob C §1981(b));
- Adults with developmental disabilities, including those subject to a limited conservatorship (Prob C §1981(c)); or
- A proposed conservatee who is a member of an Indian tribe with jurisdiction (Prob C §2032). Petitions for the conservatorship of persons who are members of a federally recognized Indian tribe are subject to Prob C §§2031–2033.

Application of these provisions to conservatees with dementia is subject to the express limitations of Prob C §§2002 and 2016. Prob C §1981(d).

2. [§300.145] Transfers to Another State

A conservator appointed in California can petition the court to transfer the conservatorship to another state. Prob C §2001(a). Notice must be given to the persons entitled to notice of a hearing on a petition for the appointment of a conservator. Prob C §2001(b). See §300.21.

The court must issue a provisional order granting a petition to transfer a conservatorship of the person, and must direct the conservator of the person to petition for acceptance of the conservatorship in the other state, if the court is satisfied the conservatorship will be accepted in the other state and the court finds all of the following (Prob C §2001(d)):

- The conservatee is physically present in or reasonably expected to move permanently to the other state;
- No objection was made to the transfer, or if an objection was made, the court determines that the transfer would not be contrary to the conservatee's interests; and
- Plans for care and services for the conservatee in the other state are reasonable and sufficient.

The court must issue a provisional order granting a petition to transfer a conservatorship of the estate, and must direct the conservator of the estate to petition for acceptance of the conservatorship in the other state, if the court is satisfied the conservatorship will be accepted in the other state and the court finds all of the following (Prob C §2001(e)):

- The conservatee is physically present in or reasonably expected to move permanently to the other state, or the conservatee has a significant connection to the other state considering the factors of Prob C §1991(b);

- No objection was made to the transfer, or if an objection was made, the court determines that the transfer would not be contrary to the conservatee’s interests; and
- Adequate arrangements will be made to manage the conservatee’s property.

The court must issue a provisional order granting a petition to transfer a conservatorship of the person and estate, and must direct the conservator of the estate to petition for acceptance of the conservatorship in the other state, if the requirements of Prob C §§2001(d) and (e) above are satisfied.

The court must issue a final order confirming the transfer and terminating the conservatorship upon receipt of both of the following (Prob C §2001(g)):

- A provisional order from the court to which the proceeding is to be transferred that is issued under provisions similar to Prob C §2002; and
- The documents required to terminate a conservatorship in this state, including, but not limited, to an accounting.

3. [§300.146] Transfers From Another State

Where a conservator wants to transfer a conservatorship into California, he or she must petition the court. Prob C §2002(a)(1). The petition must include all of the following (Prob C §2002(a)(2)–(4)):

- A certified copy of the other state’s provisional transfer order.
- A statement on the first page of the petition that the conservatorship does not fall within the limitations of Prob C §1981. The body must allege facts showing that the requirements for transfer are satisfied.
- It must specify any modifications necessary to conform the conservatorship to California law, and the terms of a proposed final order accepting the conservatorship.

A petition for appointment of a temporary conservator under Prob C §1994 (special jurisdiction for certain cases) and Prob C §2550 et seq may be filed while a petition to transfer the conservatorship into California is pending. Prob C §2002(a)(5).

a. [§300.147] Notice

The petitioner must give notice of a hearing on this petition to the following (Prob C §2002(b)):

- Those persons who would be entitled to notice if the petition were for the appointment of a conservator in both the transferring state and California.
- Any attorney of record for the conservatee in the transferring state and any attorney appointed or appearing for the conservatee in California.

Notice must be given in the same manner as required for notice of a petition for the appointment of a conservator, except that notice must be mailed to the conservatee instead of personal service of a citation. Prob C §2002(b).

Any person entitled to notice as set forth above may object to the petition on any of the following grounds (Prob C §2002(c)):

- Transfer of the proceeding would be contrary to the conservatee's interests.
- Under the law of the transferring state, the conservator is ineligible for appointment in California.
- Under California law, the conservator is ineligible for appointment as a conservator, and the transfer petition does not identify a replacement who is willing and eligible to serve in California.
- The transfer is improper as the conservatee is a person described in Prob C §1981.

b. [§300.148] Court Investigator Report

After a petition to transfer a case into California is filed, the court promptly must appoint an investigator. The investigator then must promptly commence a preliminary investigation of the conservatorship, which focuses on the matters described in Prob C §2002(f). Prob C §2002(d); see §300.149.

In conducting an investigation and preparing a report under this section, the court investigator must do all of the following (Prob C §1851.1(b)):

- Comply with the requirements of Prob C §1851.
- Interview the conservator.
- Interview the conservatee's spouse or domestic partner, if any.
- Inform the conservatee of the nature, purpose, and effect of the conservatorship.
- Inform the conservatee and all other persons entitled to notice under Prob C §2002(b) of the right to seek termination of the conservatorship.

- Determine whether the conservatee objects to the conservator or prefers another person to act as conservator.
- Inform the conservatee of the right to attend the hearing under Prob C §1851.1(c).
- Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to do so.
- Inform the conservatee of the right to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if the conservatee is unable to retain legal counsel.
- Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.
- If the conservatee has not retained legal counsel, determine whether the conservatee desires the court to appoint legal counsel.
- Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the conservatee's interests in any case where the conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel.
- Consider all of the categories specified in Prob C §§1821(a)(1)–(5). See §300.16.
- Consider, to the extent practicable, whether the investigator believes the conservatee suffers from any of the mental function deficits listed in Prob C §811(a) that significantly impairs the conservatee's ability to understand and appreciate the consequences of the conservatee's actions in connection with any of the functions described in Prob C §§1801(a) or (b) and identify the observations that support that belief.

The court must review the conservatorship petition and hold a hearing. Prob C §2002(a), (e). The conservatee must attend the hearing unless the conservatee's attendance is excused. See §300.42. The court may take appropriate action in response to the court investigator's report. Prob C §1851.1(c).

The court investigator's report under this section must be confidential. See Prob C §§1851, 1851.1(d).

Except as provided in Prob C §1850(a)(2), the court must review the conservatorship again 1 year after the review conducted pursuant to Prob

C §1851.1(c), and annually thereafter, in the manner specified in Prob C §1850. Prob C §1851.1(e).

The first time that the need for a conservatorship is challenged by any interested person or raised on the court's own motion after a transfer under Prob C §2002, whether in a review pursuant to this section or in a petition to terminate the conservatorship under Prob C §§1860 et seq, the court must presume that there is no need for a conservatorship. This presumption is rebuttable, but can only be overcome by clear and convincing evidence. The court must make an express finding on whether continuing the conservatorship is the least restrictive alternative needed for the conservatee's protection. Prob C §1851.1(f).

c. [§300.149] Hearing

The court must hold a hearing on the petition (Prob C §2002(e)). and issue an order provisionally granting the petition unless any of the following occurs (Prob C §2002(f)):

- The court determines that transfer of the proceeding would be contrary to the conservatee's interests.
- The court determines that, under the law of the transferring state, the conservator is ineligible for appointment in California.
- The court determines that, under California law, the conservator is ineligible for appointment and the transfer petition does not identify a replacement who is willing and eligible to serve in this state.
- The court determines that the transfer is improper as the conservatee is a person described in Prob C §1981.

If the court issues an order provisionally granting the petition, the investigator must promptly commence an investigation and review of the order under Prob C §1851.1. Prob C §2002(g).

Not more than 60 days after issuance of an order provisionally granting the petition, the court must determine whether the conservatorship needs to be modified to conform to California law. The court may take any action necessary to achieve compliance with California law, including, but not limited to, striking or modifying any conservator powers that are not permitted under the law of this state. Prob C §2002(h)(1).

At the same time that it makes the determination above, the court must review the conservatorship as provided in Prob C §1851.1. Prob C §2002(h)(2).

The conformity determination and the review required must occur at a hearing, which must be noticed as described in Prob C §2002(b). Prob C §2002(h)(3).

d. [§300.150] Issuance of Final Order

The court must issue a final order accepting the proceeding and appointing the conservator in this state on (1) completion of the conformity determination and review, or (2) on its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Prob C §2001 transferring the proceeding to California, whichever occurs later. In appointing a conservator, the court must comply with Prob C §1830 (see §300.47). Prob C §2002(i)(1).

A transfer to this state does not become effective unless and until the court issues a final order as set forth above. A conservator may not take action in this state pursuant to a transfer petition unless and until the transfer becomes effective and all of the following steps have occurred (Prob C §2002(i)(2)):

- The conservator has taken an oath (§300.49).
- The conservator has filed the required bond, if any (§300.50).
- The court has provided the information required by Prob C §1835 to the conservator (§300.52).
- The conservator has filed an acknowledgment of receipt as required by Prob C §1834 (§300.51).
- The clerk of the court has issued the letters of conservatorship.

The above does not preclude a person who has been appointed as a temporary conservator under Prob C §§2250 et seq from taking action in this state pursuant to the order establishing the temporary conservatorship. Prob C §2002(i)(3).

When a transfer to this state becomes effective, the conservatorship is subject to California law and must thereafter be treated as a conservatorship under California law. Prob C §2002(i)(4).

Except as otherwise provided by Prob C §§1851.1, 1860 et seq, 2650 et seq, and other law, when the court grants a transfer petition, the court must recognize a conservatorship order from the other state, including the determination of the conservatee's incapacity and the appointment of the conservator. Prob C §2002(j).

The denial by a court of this state of a petition to accept a conservatorship transferred from another state does not affect the conservator's ability to seek appointment as conservator in this state under Prob C §§1800 et seq if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer. Prob C §2002(k).

If a conservatorship is transferred from a court of this state to the court of a California tribe or from the court of a California tribe to a court of this state, the order that provisionally grants the transfer may expressly provide that conservator's specified powers will not be transferred.

Jurisdiction over the specified powers will be retained by the transferring state and will not be included in the powers that are granted to the conservator in the state that accepts the transfer. Prob C §2003.

If a conservator of the person, the estate, or the person and estate has been appointed in another state and a conservatorship petition is not pending in California, the conservator appointed in the other state may register the conservatorship order in California. See Prob C §§2011–2019. This may be necessary if a nonresident conservatee owns real property, conducts transactions, or spends time in California. See Prob C §2012. Registration is effective only while the conservatee resides in another state. Prob C §2014(c). After giving 15 days' notice to the court and those required to be noticed in a petition for appointment (see Prob C §2014), the court clerk must register the out of state conservatorship. See Prob C §§2011–2013. The out of state conservator acknowledges being subject to California laws and court procedures. Prob C §§2014(b), 2015. An out of state conservator who registers an out-of-state conservatorship may exercise all of the powers that would be permitted if the conservatee lived in California, as long as the conservatee lives outside of California. Prob C §2016.

IV. [§300.151] SPOKEN FORM: CONSERVATEE'S RIGHTS

The purpose of this proceeding is to consider appointing a conservator for you based on *either* [your inability to care properly for your own daily personal needs for such basics as food, clothing, physical health, and shelter,] *or* [your substantial inability to manage your own financial resources or because you may be unable to resist fraud or undue influence] *or both*.

[*If personal*] If appointed, the conservator will have the authority to make personal decisions for you and the duty to provide for your care. You will lose the right to make such decisions for yourself. [*If estate*] If appointed, the conservator will have the power to manage your property. You will lose the right to make your own financial decisions. You may also be disqualified from voting if you are adjudged incapable of communicating, with or without reasonable accommodations, a desire to participate in the voting process.

[*If conservator of estate is sought*] If a conservator of your estate is appointed, it is an adjudication or finding that you lack the legal capacity to enter into or make any transaction that binds or obligates the conservatorship estate.

[*If order under Prob C §1873 is sought*] However, the petition proposes to allow you to enter into the following transactions: [*transactions sought to be allowed and conditions thereon*].

Do you understand the purpose of the proceeding and do you have any questions?

You have certain rights at this proceeding. You have the right to oppose the proceeding. You have a right to a jury trial on the issue of your incompetency. You have the right to be represented by an attorney and to have an attorney appointed to represent you if you are unable to retain legal counsel. Do you understand these rights and do you have any questions about them?

[*If no attorney*] Do you want the court to consider appointing an attorney for you?

_____ was appointed as the investigator in this proceeding. Did you talk to him *or* her?

The petition proposes to appoint _____ as conservator of your [person *or* estate *or* person and estate].

Do you object to the appointment of a conservator?

Do you object to the appointment of _____? Would you prefer that someone else be appointed conservator?

Do you object to the entry of the orders allowing you to [*transactions sought to be allowed and conditions thereon under Prob C §1873*]?

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