

# Omnibus Conservatorship and Guardianship Reform Act of 2006

## Outline of New Court Investigator Duties, Responsibilities, and Authority

Notes: The new law imposes identical or substantially similar duties on court investigators at multiple phases of a conservatorship. For ease of reference, however, this outline lists the new duties for each type of investigation, even where they may duplicate new duties previously described. The effective date for all of the new provisions listed below is July 1, 2007, unless otherwise indicated.

### I. New Temporary Conservatorship Investigations

A. Timeline for Investigations—The investigation of the proposed conservatee must take place either before the hearing on the appointment of the temporary conservator or, if it is not feasible to do so, within two court days after the hearing. (Prob. Code, § 2250.6(a), (b).)

### B. Scope of Investigations

1. Required Interviews—In cases where the investigation is conducted before the hearing:

a. The court investigator shall interview:

i. The proposed conservatee in person; and

ii. The petitioner and the proposed conservator.

b. To the greatest extent possible, the court investigator shall also interview:

i. The proposed conservatee's spouse or registered domestic partner;

ii. The proposed conservatee's relatives within the first degree;

iii. The proposed conservatee's neighbors; and

iv. The proposed conservatee's close friends, if known.

c. To the extent possible, the court investigator shall also interview the proposed conservatee's relatives within the second degree (as set forth in section 1821(b)) before the hearing. (Prob. Code, § 2250.6(a)(1).)

2. Required Interviews—In cases where it is not feasible to conduct the investigation before the hearing:

- a. The court investigator, within two court days after the hearing, shall interview:
  - i. The proposed conservatee in person;
  - ii. The petitioner and the proposed conservator.
- b. To the greatest extent possible, the court investigator shall also interview:
  - i. The proposed conservatee's spouse or registered domestic partner;
  - ii. The proposed conservatee's relatives within the first degree;
  - iii. The proposed conservatee's neighbors; and
  - iv. The proposed conservatee's close friends, if known.
- c. To the extent possible, the court investigator shall also interview the proposed conservatee's relatives within the second degree (as set forth in section 1821(b)) before the hearing. (Note: The reference to conducting interviews with relatives within the second degree "before the hearing" appears to be a technical drafting error as this provision applies only in cases where it is not feasible to conduct the investigation before the hearing.) (Prob. Code, § 2250.6(b)(1).)

3. Information Required to Be Given to the Conservatee:

- a. In cases where the investigation is conducted before the hearing, the court investigator shall inform the proposed conservatee of:
  - i. The contents of the citation;
  - ii. The nature, purpose, and effect of the proceeding; and
  - iii. The right of the proposed conservator to:
    - (A) Oppose the proceeding;
    - (B) Attend the hearing;
    - (C) Have a jury trial on whether a conservatorship should be established;
    - (D) Be represented by legal counsel if the proposed conservatee so chooses; and
    - (E) Have legal counsel appointed by the court if the conservatee is unable to afford legal counsel. (Prob. Code, § 2250.6(a)(2).)

b. In cases where it is not feasible to conduct the investigation before the hearing, the court investigator, within two court days after the hearing, shall inform the conservatee of:

i. The nature, purpose, and effect of the temporary conservatorship;

ii. The right of the conservatee to:

(A) Oppose the proposed general conservatorship;

(B) Attend the hearing on the general conservatorship petition;

(C) Have a jury trial on whether a conservatorship should be established;

(D) Be represented by legal counsel if the proposed conservatee so chooses;  
and

(E) Have legal counsel appointed by the court if unable to afford legal counsel. (Probate Code section 2250.6(b)(2).)

#### 4. Required Determinations by the Court Investigator and Reports to the Court:

a. In cases where the investigation is conducted before the hearing, the court investigator shall:

i. Determine whether it appears that the proposed conservatee is able to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing;

ii. Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship;

iii. Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator; and

iv. Report to the court, in writing, concerning all of the above. (Prob. Code, § 2250.6(a)(3)–(6).)

b. In cases where the investigator does not visit the conservatee until after the hearing at which the temporary conservator was appointed, the court investigator shall:

i. Determine whether the conservatee objects to the appointment of the temporary conservator or requests an attorney, in which case the investigator must promptly, in no event more than three court days, report

this information to the court (so that the court may proceed with the appointment of an attorney for the conservatee pursuant to section 1470 et seq.); and

- ii. Determine whether the temporary conservatorship appears to be inappropriate, in which case the investigator must immediately, in no event more than two court days later, provide a written report to the court (so that the court can consider taking appropriate action on its own motion). (Prob. Code, § 2250.6(c), (d).)

5. Investigations of Proposed Moves of Temporary Conservatees—The investigator must conduct such investigations unless the court for good cause orders otherwise. (Prob. Code, § 2253(b).)

## II. New Duties in Connection With Initial Conservatorship Investigations

### A. Expanded Interviews:

1. In addition to interviewing the proposed conservatee in person, the court investigator shall also interview:
  - a. The petitioner and the proposed conservator, if different from the petitioner;
  - b. The proposed conservatee's spouse or registered domestic partner; and
  - c. The proposed conservatee's relatives within the first degree. (Prob. Code, § 1826(a)(1), (2).)
2. To the greatest extent possible, the court investigator shall also interview before the hearing:
  - a. The proposed conservatee's relatives within the second degree (as set forth in section 1821(b));
  - b. The proposed conservatee's neighbors; and
  - c. The proposed conservatee's close friends, if known. (Prob. Code 1826(a)(3).)

### B. Expanded Mailing of Investigator's Report to the Court—In addition to those listed under current law (i.e., the attorney, if any, for the petitioner; the attorney, if any, for the proposed conservatee; and any other persons as ordered by the court), the court investigator shall also mail a copy of his or her investigation report to:

1. The proposed conservatee;
2. The proposed conservatee's spouse or registered domestic partner; and

3. The proposed conservatee's relatives within the first degree 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. (Prob. Code, § 1826(l)(3), (4).)

C. Use of Temporary Conservatorship Investigations/Second Visits Required—Any 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, in such cases, the court investigator shall make a second visit to the proposed conservatee and include in his or her report the effect of the temporary conservatorship on the proposed conservatee. (Prob. Code, § 1826(q).)

### III. New Six-Month Investigations

A. Timeline for Investigations—For all cases in which the initial appointment of the conservator occurred on or after January 1, 2007, the court investigator must conduct an investigation at the expiration of six months after the initial appointment. (Prob. Code, § 1850(a)(1).)

B. Scope of Investigations—The court investigator shall:

1. Visit the conservatee without prior notice to the conservator (except as ordered by the court for necessity or to prevent harm to the conservatee);
2. Inform the conservatee in person that the conservatee is under a conservatorship and give the name of the conservator to the conservatee;
3. Conduct a full investigation of the conservatorship in accordance with the provisions of subdivision (a) of section 1851 (i.e., determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of conservatorship, whether the conservatee is capable of completing an affidavit of voter registration, and whether the present conservator is acting in the best interests of the conservatee); and
4. Include in his or investigation and report to the court regarding:
  - a. The appropriateness of the conservatorship; and
  - b. Whether the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances. (Prob. Code §§ 1850(a)(1), 1851(a)(1).)

In determining whether the conservator is acting in the best interests of the conservatee, the court investigator shall interview, to the greatest extent possible, the petitioner, the conservator if different from the petitioner, the conservatee's spouse or registered domestic partner, and specified relatives, neighbors, and close friends. (Prob. Code, § 1851(a).)

(Note: The court may, in response to the investigator's report, take appropriate action including, but not limited to, ordering a review of the conservatorship and/or ordering the conservator to submit an accounting. (Prob. Code, § 1850(a)(1).)

#### IV. New Duties in Connection with First-Year and Annual Investigations

- A. **Timeline for Investigations**—The court investigator shall conduct an investigation of a probate conservatorship one year after the appointment of the conservator and annually thereafter (except as described in Status Investigations section below). (Prob. Code, § 1850(a)(2).)
- B. **Scope of Investigations**—For all investigations conducted on and after July 1, 2007 (except for Status Investigations described below), the court investigator shall perform a full investigation, including complying with the following new requirements:
  1. Visits to the conservatee shall be without prior notice to the conservator (except as ordered by the court for necessity or to prevent harm to the conservatee);
  2. The court investigator shall inform the conservatee in person that the conservatee is under a conservatorship and give the name of the conservator to the conservatee; and
  3. In determining whether the conservator is acting in the best interests of the conservatee, the court investigator shall:
    - a. Include, in his or her evaluation, an examination of:
      - i. The conservatee's placement;
      - ii. The conservatee's quality of care, including physical and mental treatment;
      - iii. The conservatee's finances; and
    - b. Interview, to the greatest extent possible, the petitioner, the conservator if different from the petitioner, the conservatee's spouse or registered

domestic partner, and specified relatives, neighbors, and close friends.  
(Prob. Code §§ 1850(a)(2), 1851(a)(1).)

C. Expanded Mailing of Investigator’s Report to the Court—In addition to those listed under current law (i.e., the conservator and the attorneys of record for the conservator and conservatee), the court investigator shall also mail a copy of his or her investigation report to:

1. The conservatee’s spouse or registered domestic partner; and
2. The conservatee’s relatives within the first degree, and if there are no such relatives, to the next closest relative, unless the court determines that the mailing will result in harm to the conservatee. (Prob. Code, § 1851(b).)

V. New Status Investigations

A. Timeline for Investigations—In cases where the court has set the next review of the conservatorship in two years, the court investigator must conduct a status investigation one year before the next scheduled review. (Prob. Code, § 1850(a)(2).)

B. Scope of Status Investigations—The court investigator shall:

1. Visit the conservatee without prior notice to the conservator (except as ordered by the court for necessity or to prevent harm to the conservatee);
2. Inform the conservatee personally that the conservatee is under a conservatorship and give the name of the conservator to the conservatee; and
3. Conduct a full investigation of the conservatorship in accordance with the provisions of section 1851(a) (i.e., determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of conservatorship, whether the conservatee is capable of completing an affidavit of voter registration; and whether the present conservator is acting in the best interests of the conservatee);
4. In determining whether the conservator is acting in the best interests of the conservatee, include, in his or her evaluation, an examination of:
  - a. The conservatee’s placement;
  - b. The conservatee’s quality of care, including physical and mental treatment;
  - c. The conservatee’s finances; and

5. Interview, to the greatest extent possible, the petitioner, the conservator if different from the petitioner, the conservatee's spouse or registered domestic partner, and specified relatives, neighbors, and close friends; and
6. File a status report in the conservatee's court file regarding whether the conservatorship still appears to be warranted and whether the conservator is acting in the best interests of the conservatee.

(Note: If the investigator determines pursuant to this investigation that the conservatorship still appears to be warranted and that the conservator is acting in the best interests of the conservatee regarding the conservatee's placement, quality of care, including physical and mental treatment, and finances, no hearing or court action in response to the investigator's report is required. However, in cases where the investigator determines either that the conservatorship no longer appears to be warranted or that the conservator is not acting in the best interests of the conservatee, the investigator should immediately report such information to the court so that the court may set a review hearing or take other appropriate action.) (Prob. Code sections 1850(a)(2), 1851(a)(1).)

- VI. Additional Court-Ordered Investigations—In addition to the above circumstances, an investigation may also be ordered by the court:
  - A. At any time, on and after July 1, 2007, on the court's own motion or upon request by any interested person (Prob. Code, § 1850(b)); or
  - B. In response to ex parte communications, on and after January 1, 2008, regarding:
    1. A fiduciary (conservator, guardian, trustee, personal representative, attorney-in-fact, custodian under the California Uniform Transfer to Minor's Act, or other legal representative) about the fiduciary's performance of his or her duties and responsibilities; and/or
    2. A person who is the subject of a guardianship or conservatorship proceeding (Prob. Code, § 1051(b), (d); Welf. & Inst. Code, § 5372(a), (c)).
- VII. New Qualification and Educational Responsibilities—Effective January 1, 2008, court investigators will be responsible for meeting new qualification and educational standards established by the Judicial Council. (Prob. Code, § 1456(a)(1), (3).)
- VIII. New Authority of Court Investigators to Access Books and Records—New law requires the conservator, upon request of the court investigator, to make available during the investigation for inspection and copying all books and records, including receipts and any expenditures, of the conservatorship. (Prob. Code, § 1851(a).)



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