



Judicial Council of California

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March 20, 2008

Hon. Todd Spitzer
Member of the Assembly
State Capitol, Room 5126
Sacramento, California 95814

Subject: AB 2247 (Spitzer), as introduced - Oppose unless amended, neutral if amended

Dear Assembly Member Spitzer:

The Judicial Council regrets to inform you of its opposition to AB 2247. The council's opposition is based on two provisions in the bill. First, the Judicial Council objects to proposed Probate Code section 2574(a)(5)(p. 8, lines 11-12), which would allow a guardian or conservator, without court approval, to invest funds of the ward's or conservatee's estate in "securities listed on the New York Stock Exchange, American Stock Exchange, or NASDAQ." The existing statute contains similar language that allows a guardian or conservator, without authorization of the court, to invest funds of the estate in "[s]ecurities listed on an established stock or bond exchange in the United States which are purchased on such exchange." (Prob. Code sec. 2574(a)(3).) The Judicial Council's objection to this provision is that it is contrary to the following recommendation from the council's Probate Conservatorship Task Force:

The Legislature should reverse the current investment provisions in Probate Code section 2574 that permit investment by conservators and guardians in individual publicly traded stocks without court approval and require court approval for ownership of mutual funds. Investments in publicly traded mutual funds should be permitted without court approval, and *court approval should be required for investments in individual stocks, to reduce speculative*

investing and increase portfolio diversification. (“Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases,” Final Report of the Probate Conservatorship Task Force (October 2007), Recommendation No. 28 at p. 14 (emphasis added).)

The task force’s recommendation in this area was based on concerns that were highlighted by the *Los Angeles Times* in its November 2005 investigative series on conservatorship abuses. The *Times* article reported on a number of instances of conservatees’ estates being depleted through speculative and risky investments by conservators, and that the courts’ oversight in these cases was insufficient to protect the conservatees’ assets. To improve the courts’ oversight of conservatorship and guardianship cases, the Judicial Council recommends that AB 2247 be amended to reverse the investment provision in proposed Probate Code section 2574(a)(5) (and existing law) by requiring court approval for investments in individual stocks.

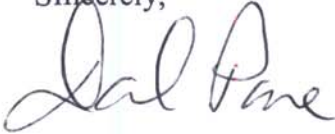
Second, the Judicial Council objects to proposed Probate Code section 2570.5(f)(p.5, lines 28-37), which requires investment plans to be filed by guardians and conservators. The requirement in subdivision (f) to file investment plans with the court would apply in all guardianship and conservatorship cases, even in cases where all of the ward’s or conservatee’s funds are being held in “blocked” bank accounts. Under current law, at the conservator’s or guardian’s request, the court may order money of the estate to be deposited in an account in a California bank, trust company, insured savings and loan, or insured credit union, subject to withdrawal only on court authorization. (See Prob. Code sec. 2456(a).) The Judicial Council believes that AB 2247’s investment plan requirement should not apply in cases where all the estate’s assets are held in blocked accounts because the assets are insured. Additionally, existing court oversight authority includes court approval before withdrawals are permitted.

In an analogous context, current law authorizes the court, when determining the amount of the required bond in guardianship and conservatorship cases, to exclude the amount of the funds being held in blocked accounts since those funds would not be at risk. (See Prob. Code sec. 2328(a).) The requirement for guardians and conservators to file an investment plan in cases where all of the estate’s funds are held in blocked accounts will result in unnecessary expense to the parties and the court, without enhancing the court’s oversight in these cases. For these reasons, AB 2247 should be amended to exempt from the investment plan requirements in proposed Probate Code section 2570.5(f) cases where all of the ward’s or conservatee’s assets are held in blocked accounts.

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For all of these reasons, the Judicial Council opposes AB 2247. If the above two amendments are taken, the Judicial Council would remove its opposition and be neutral on the remaining provisions in the bill. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Pone", written in a cursive style.

Daniel Pone
Senior Attorney

DP/op

cc: Members, Assembly Judiciary Committee
Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mr. Mark Redmond, Senior Consultant, Assembly Republican Caucus Office of Policy
Mr. Chris Ryan, Deputy Legislative Affairs Secretary, Office of the Governor
Mr. Brent Jamison, Director of Legislation, Governor's Office of Planning and Research