



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

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RONALD M. GEORGE
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June 15, 2006

Hon. Joseph L. Dunn, Chair
Senate Judiciary Committee
State Capitol, Room 2080
Sacramento, California 95814

Subject: AB 1363 (Jones), as proposed to be amended – Support if amended and funded
Hearing: Senate Judiciary Committee – June 20, 2006

Dear Senator Dunn:

The Judicial Council supports AB 1363, as proposed to be amended, which would enact the Omnibus Conservatorship and Guardianship Reform Act of 2006, contingent upon the resolution of several areas of concern outlined below. The bill contains a variety of new mandates that would require additional resources for the judicial branch, including but not limited to increasing the frequency of probate conservatorship reviews and court reviews of accountings, expanding the duties and responsibilities of court investigators at the temporary and general conservatorship phases of the process, and requiring each court to provide self-help assistance to non-professional guardians and conservators.

The Judicial Council supports the author's overall goal of improving oversight of California's probate conservatorship system, and we support many of the provisions in the bill provided sufficient new funding is made available to cover the costs of complying with the new mandates on the courts and the council. The Judicial Council appreciates the author's willingness to take a number of amendments we requested regarding various operational aspects of the bill.

Additional court reviews: Under current law, probate conservatorships are reviewed by the court one year after the appointment of the conservator and biennially thereafter. AB 1363 would double their frequency by requiring conservatorship reviews, at noticed hearings, six months after they are established and annually thereafter. The Judicial Council believes that the current review scheme should be maintained, but that the statute should be amended to specifically

authorize the court, on its own motion or upon request of any interested person, to order a review of the conservatorship at any other time. This alternative approach, especially when coupled with the ability of the court to take action in response to ex parte communications (as currently proposed in SB 1716 (Bowen)), is a more flexible and cost effective method of assisting the courts in detecting and preventing abuse in those specific cases in which it may be occurring, without risking depleting the estates of conservatees in the majority of cases where there is no abuse. We remain open, however, to alternative approaches to the court review provision that the author or committee may suggest to appropriately protect conservatees and provide proper oversight, as well as to make the bill workable for the courts.

Increased frequency of accountings: Under current law, the conservator must present an accounting of the assets of the conservatee's estate to the court one year from the time of appointment and biennially thereafter. AB 1363 increases the frequency of accountings from one year to six months for the first report and annually thereafter. The Judicial Council believes that the current accounting review scheme should be maintained. Accountings result in a major expense for both conservatees' estates and the courts. Financial abuse by conservators does not appear to be widespread. Increased staffing for investigators and other court personnel, together with the enhanced training programs being proposed and the expanded role of the investigators in performing evaluations should go a long way in improving the court's oversight of accountings. We remain open, however, to alternative approaches to the accounting provision that the author or committee may suggest to appropriately protect conservatees and provide proper oversight, as well as to make the bill workable for the courts.

New duties of court investigators: AB 1363 contains a number of new duties and responsibilities for probate court investigators, including the following:

- Expanded evaluations – Under current law, the court investigator is required to include in his or her evaluation whether the conservator is acting in the best interests of the conservatee. AB 1363 would require the investigator's evaluation to include an examination of the conservatee's placement; quality of care, including physical and mental treatment; and the conservatee's finances. The Judicial Council supports clarifying and expanding the role of court investigators in these cases provided sufficient new funding is made available for this purpose, so that their evaluations can focus more specifically on the well-being of the conservatee, rather than simply on whether continuing the conservatorship may still be warranted.
- New court investigations and expedited hearings during temporary conservatorships – Current law does not require a court investigation as part of the temporary conservatorship process. AB 1363 would require specific investigative steps in connection with a temporary conservatorship that are modeled after the investigation of a general conservatorship. The bill requires the court investigator to interview the proposed temporary conservatee either prior to or within 48 hours of the appointment of the temporary conservator, and make a report to the court. The Judicial Council supports this provision, provided sufficient new funding is made available for this purpose, since it would provide the court with information

at the earliest possible opportunity regarding whether a temporary conservatorship is warranted.

The bill also provides that if the investigator does not visit the conservatee until after the temporary conservator has been appointed, and the conservatee objects to this appointment, the court must set the matter for an expedited hearing within 10 days of the investigator's visit. The Judicial Council supports this provision, provided sufficient new funding is made available for this purpose, since it would protect the due process rights of conservatees and allow the court to hear additional evidence and review whether the initial appointment of the temporary conservatorship was warranted.

- Interview relatives and close friends as part of general conservatorship investigations – Under current law, the court investigator is required to conduct a personal interview with the proposed conservatee as part of his or her evaluation in connection with a petition for the establishment of a general conservatorship. AB 1363 would require the investigator to also interview the petitioner and the proposed conservator, if different from the petitioner, and the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors and, if known, close friends, and to the greatest extent possible, relatives within the second degree. The Judicial Council supports this provision, provided sufficient new funding is made available for this purpose, since it would allow the investigator to gather additional important input and prepare a more comprehensive evaluation and report to the court. This will also be beneficial to the court in making its determination regarding whether the conservatorship is warranted and, if so, who may be best suited to serve as conservator.
- Second visits by court investigators during temporary conservatorships – AB 1363 provides that 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. However, the bill also requires the court investigator to make a second visit to the proposed conservatee in such cases, and the investigator's report to the court must include the effect of the temporary conservatorship on the proposed conservatee. The Judicial Council supports this provision, provided sufficient new funding is made available for this purpose, since it would provide the court with additional information prior to the hearing on the general conservatorship petition regarding whether a conservatorship is needed.

Self-help educational program and court-based assistance for non-professional guardians and conservators: AB 1363 requires the Judicial Council to develop a short educational program of no more than three hours, to be made available free-of-charge to each non-professional conservator or guardian. The bill also requires each court to provide free assistance to self-represented, non-professional conservators and guardians. Such assistance must include providing educational materials, distributing necessary court forms, providing assistance in completing forms, and providing referrals to community agencies and resources that provide services for conservators and guardians. The Judicial Council supports these self-help

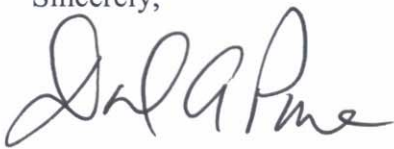
provisions, provided sufficient new funding is made available for these purposes. Providing assistance to self-represented conservators and guardians will increase their access to the courts and should also minimize unproductive court appearances, lower continuance rates, and allow conservatorship and guardianship cases to be resolved more effectively and expeditiously.

The council is continuing to work with the author on possible amendments to various other provisions in the bill, including conservatorship accountability measures, education and training standards, change of venue, and the type of supporting documents that should be submitted with, as well as the scope and process for review and verification of, accountings.

In summary, the Judicial Council shares the author's goal of improving the courts' oversight and handling of probate conservatorship cases. To accomplish this goal, significant new resources will be needed in order for the courts to hire additional investigators and other staff to adequately perform the variety of new duties and functions required in the bill. We look forward to continuing discussions with the author on further amendments to the bill that will enable the courts to better ensure that conservatorships are only granted when truly necessary, that conservatees are receiving proper care and treatment, and that conservators are held accountable for meeting their fiduciary obligations to this vulnerable population.

For all of these reasons, the Judicial Council supports AB 1363. Please feel free to contact me if you have any questions.

Sincerely,



Daniel A. Pone
Senior Attorney

DP/lb

Enclosure: Mock-up of author's proposed amendments

cc: Members, Senate Judiciary Committee
Hon. Dave Jones, Member of the Assembly
Ms. Sue Blake, Director of Legislation, Office of Planning and Research
Mr. Eric Csizmar, Deputy Legislative Secretary, Office of the Governor
Ms. Leora Gershenzon, Staff Counsel, Assembly Judiciary Committee
Ms. Fredericka McGee, General Counsel, Office of Speaker Fabian Nunez
Ms. Gloria Megino Ochoa, Deputy Chief Counsel, Senate Judiciary Committee
Mr. Michael Miller, Consultant, Office of Senate President pro Tempore Don Perata
Mr. Mike Peterson, Consultant, Senate Republican Office of Policy



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June 23, 2006

Hon. Joseph L. Dunn, Chair
Senate Judiciary Committee
State Capitol, Room 2080
Sacramento, California 95814

Subject: AB 1363 (Jones), as proposed to be amended - Support if funded
Hearing: Senate Judiciary Committee – June 27, 2006

Dear Senator Dunn:

The Judicial Council is pleased to support AB 1363, as proposed to be amended, which would enact the Omnibus Conservatorship and Guardianship Reform Act of 2006. The Judicial Council applauds and supports the author's goal of improving oversight of California's probate conservatorship system, and we appreciate the author's willingness to work with the council to take a number of amendments we requested to appropriately protect conservatees and provide proper oversight, as well as to make the bill workable for the courts.

The bill does contain a variety of new mandates that would require additional resources for the judicial branch, including but not limited to increasing the frequency of probate conservatorship reviews and court reviews of accountings, expanding the duties and responsibilities of court investigators at the temporary and general conservatorship phases of the process, and requiring each court to provide self-help assistance to non-professional guardians and conservators. Therefore, sufficient new funding must be provided to cover the costs for the courts to hire additional investigators and other staff to adequately perform the variety of new duties and functions required in the bill, and for otherwise complying with the new mandates on the courts and the council.

Hon. Joseph L. Dunn, Chair
June 23, 2006
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The Judicial Council shares the author's goal of improving the courts' oversight and handling of probate conservatorship cases.

For these reasons, the Judicial Council supports AB 1363, as proposed to be amended, if funded. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Daniel A. Pone" followed by a stylized flourish.

Daniel A. Pone
Senior Attorney

DP/DH/lb

Enclosure: Mock-up of author's proposed amendments

cc: Members, Senate Judiciary Committee
Hon. Dave Jones, Member of the Assembly
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KATHLEEN T. HOWARD
Director, Office of Governmental Affairs

September 5, 2006

Honorable Arnold Schwarzenegger
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: AB 1363 (Jones), SB 1116 (Scott), SB 1550 (Figueroa) and SB 1716 (Bowen) –
Request for Signatures

Dear Governor Schwarzenegger:

The Judicial Council supports AB 1363 (Jones), SB 1116 (Scott), SB 1550 (Figueroa) and SB 1716 (Bowen) - the Omnibus Conservatorship and Guardianship Reform Act of 2006. Together, these four bills will enact a comprehensive set of long-needed reforms to California's probate conservatorship system. As explained more fully below, the council's support for this act is contingent upon funding being provided to allow the courts to carry out the significant new duties and responsibilities that are contained in the legislation.

AB 1363 (Jones) – Increased Court Reviews & Investigations

AB 1363 makes a number of important changes to the laws governing probate conservatorships, including but not limited to increasing the frequency of conservatorship reviews, increasing the scope of court reviews of accountings, and expanding the duties and responsibilities of court investigators at the temporary and general conservatorship phases of the process. The Judicial Council supports these changes as they will significantly enhance the courts' ability to provide

proper oversight in probate conservatorship cases. However, sufficient new funding must be provided to cover the costs for the courts to hire additional investigators and other staff to adequately perform the variety of new duties and functions required in the bill, and for otherwise complying with the new mandates on the courts.

SB 1116 (Scott) – Enhanced Oversight of Sales of Conservatees' Homes

The Judicial Council supports SB 1116, which will increase the oversight ability of the courts in probate conservatorship cases by helping ensure that conservators are meeting their fiduciary obligations with respect to sales of conservatees' personal residences, as well as ensuring that conservatees are being placed in the least restrictive appropriate setting. The council believes that the additional information that a conservator must provide under the bill regarding sale of a conservatee's personal residence will assist the court in being able to determine the appropriateness of such transactions. In addition, the Judicial Council supports the bill's requirement that the conservator determine the appropriate level of care for the conservatee at the time of appointment. The council believes this evaluation, coupled with the requirement that the conservator document that any change of the conservatee's residence is the least restrictive appropriate setting that is available and necessary to meet the needs of the conservatee, will enhance the court's ability to ensure that such placements are in their best interests. The council also believes that these changes will improve the court's ability to take appropriate actions against conservators who are violating their placement obligations.

SB 1550 (Figueroa) – Licensure of Professional Fiduciaries

The Judicial Council supports SB 1550, a critically important component of the reform package that would enact the Professional Fiduciaries Act, which creates a new Professional Fiduciaries Bureau in the Department of Consumer Affairs that would regulate professional conservators, guardians and other fiduciaries. The Judicial Council supports this bill because more stringent regulation and oversight of professional fiduciaries will help assure the courts that those licensees who are eligible for appointment as guardians and conservators meet minimum education, qualification and ethical standards.

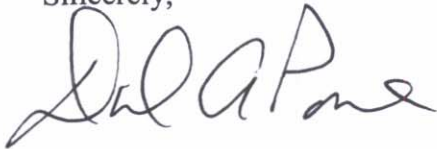
SB 1716 (Bowen) – Ex Parte Communications

The Judicial Council supports SB 1716, which, among other things, would authorize the court to consider and take appropriate action in response to ex parte communications regarding either a fiduciary's performance of his or her duties or a person who is the subject of a guardianship or conservatorship proceeding. In addition, the council supports the provisions in this bill, also contained in AB 1363, that would give the court discretion, on its own motion or upon request, to set additional review hearings at any time and that would clarify and expand the role of court investigators so that their evaluations can focus more specifically on the well-being of the conservatee. Coupling these changes with allowing the court, in appropriate circumstances, to act on ex parte communications regarding conservators and conservatees will greatly assist the courts in detecting and deterring abuse.

In sum, the landmark Omnibus Conservatorship and Guardianship Reform Act of 2006 will enable the courts to better ensure that conservatorships are only granted when truly necessary,

that conservatees are receiving proper care and treatment, and that conservators are held accountable for meeting their fiduciary obligations to this vulnerable population. We are working with the Department of Finance on the need for new funding and will submit a budget change proposal within 10 days should you sign these bills. The Judicial Council respectfully requests your signature on AB 1363, SB 1116, SB 1550 and SB 1716.

Sincerely,

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

Daniel A. Pone
Senior Attorney

DP/lb

cc: Hon. Dave Jones, Member of the Assembly
Hon. Jack Scott, Member of the Senate
Hon. Liz Figueroa, Member of the Senate
Hon. Debra Bowen, Member of the Senate
Ms. Sue Blake, Director of Legislation, Office of Planning and Research
Mr. Eric Csizmar, Deputy Legislative Secretary, Office of the Governor