



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

770 L Street, Suite 1240 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAU
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

August 22, 2014

Hon. Mike Gatto
Member of the Assembly
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 2034 (Gatto), *as proposed to be amended* - Oppose

Dear Assembly Member Gatto:

The Judicial Council regrets to inform you of its opposition to AB 2034, as proposed to be amended (see attached mockup of amendments). The Judicial Council's (council) opposition to AB 2034 is based on several considerations. First, the council believes existing legal mechanisms are sufficient for handling most, if not all, of the disputes that the bill seeks to address. The council believes it would be exceedingly rare, as a practical matter, that cases would present with the sole issue of interference with visitation between an elder or dependent adult and their family members. It is far more common for disputes to arise between various factions of family members of the elder or dependent adult that involve fundamental disagreements around the medical care and treatment, the placement, or the finances of these vulnerable individuals, which could not be addressed in these proceedings. The council also believes that an elder or dependent adult who is unable to make their own decisions about visitation is likely factually, if not legally incompetent, and a conservatorship is a more appropriate mechanism for addressing these difficult issues. In addition, the council notes that adult protective services or law enforcement can already intervene in cases where interference with an elder or dependent adult's right to visit and associate with others rises to the level of

isolation that is already covered under the Elder and Dependent Adult Civil Protection Act. In light of these existing mechanisms, and the complex and contentious nature of the underlying disputes, the Judicial Council believes that the creation of a new, stand-alone “family visitation” statutory scheme will be highly inefficient and result in multiple and possibly overlapping court hearings.

The Judicial Council also believes that the latest proposed version of the bill is unworkable. Under the existing protective orders scheme, once abuse has been proven, the remedies available to the court typically involve “stay away” orders allowing the separation of the elder or dependent adult from the abuser. In contrast, this bill contemplates an order simply enjoining the respondent from interfering with visitation between the elder or dependent adult and the petitioning family member or members, while potentially leaving the abuser in place. The council also notes that the respondent will likely often be the primary caregiver for the elder or dependent adult, and the court would lack the authority under AB 2034 to affect or change this relationship.

In addition, while we understand your intent to provide a mechanism for an isolated elder or dependent adult to be able to visit with his or adult children when he or she desires such contact, the bill will likely have the unintended consequence of subjecting that elder or dependent adult to further abuse and distress. There is nothing in the proposed bill that prevents a petition for visitation from being brought for improper purposes. As long as the petitioner is an adult relative in the first degree, he or she can initiate the court process without any proof that the proposed visitee (i.e., the elder or dependent adult) is being isolated, agrees with the action, and desires further contact with the relative in question. Judicial officers have expressed strong concerns about the inability under the bill to protect the elder or dependent adult in this new court process. Under the bill, these vulnerable individuals will likely have to confront in open court not only their primary caregivers, but also their adult relatives who they may be completely estranged from for a number of legitimate reasons. In their view, this will likely have the unfortunate consequence of subjecting the elder or dependent adult to further reprisals by their primary caregivers, and has the potential for subjecting them to further abuse from estranged family members.

Moreover, the bill fails to include an appropriation to cover the costs of the new court hearings that would be required. These costs could be significant, given the highly contentious nature of these types of disputes between family members. Cases brought under the bill will likely mimic difficult child custody and visitation cases, with the parties coming back to court repeatedly seeking modifications due to refusals or alleged refusals by the respondent to comply with the terms of the orders. In addition, while the bill’s provision for the court to appoint an investigator is discretionary, we are concerned about the additional cost pressures this presents. Court investigators currently are overwhelmed in trying to meet their current statutory mandates, especially during this time of severe budget constraints and staff layoffs. Given the highly contentious nature of these family visitation disputes, the investigations will be very costly and time consuming, which will have an adverse impact on their existing caseloads.

Hon. Mike Gatto
August 22, 2014
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For these reasons, the Judicial Council opposes AB 2034, as proposed to be amended. However, the council remains committed to working with you and your staff, committee staff, and other interested stakeholders in an effort to develop a consensus proposal that meets your goals in a way that is more workable for the courts.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel Pone", with a stylized, cursive script.

Daniel Pone
Senior Attorney

DP/nco
Enclosure

cc: Members, Senate Judiciary Committee
Members, Assembly Judiciary Committee
Ms. Tara Welch, Deputy Chief Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor

Pone, Daniel

From: Moreno, Aaron [Aaron.Moreno@ASM.CA.GOV]
Sent: Thursday, August 21, 2014 11:31 AM
To: Welch, Tara; Gershenzon, Leora; Pone, Daniel; mlodise@trustlitigation.la; 'Bercovitch, Saul' (Saul.Bercovitch@calbar.ca.gov); mark@weidemangroup.com; lhoward@caljudges.org; Mike Belote (mbelote@caladvocates.com); Tony Chicotel (tony@canhr.org); jhitchcock@laesf.org; trent@edelsteingilbert.com; tmartin@lurie-zepeda.com; Robert Naylor (robertwnaylor@yahoo.com)
Subject: AB 2034 (Gatto)- New version in to counsel for drafting

Hello All,

After more feedback from various stakeholders, I will be submitting the following for drafting by Leg. Counsel to be put across the desk tomorrow. Any last tweaks are appreciated as I suspect the Leg. Counsel deputy will be giving me a call later with suggestions.

Mr. Gatto is committed to solving this problem this year and will appreciate any assistance in doing so.

Thanks,

Aaron Moreno
Legislative Director
Office of Assembly Member Mike Gatto, 43rd District
(916) 319-2043

Delete the current contents of the bill and replace with the following:

SECTION 1. Section 3250 is added to the Probate Code to read:

3250.

(a) A petition may be brought for a visitation order seeking to enjoin a respondent from keeping a proposed visatee in isolation from contact with the petitioner.

(b) For the purposes of this section:

(1) "Elder" has the same meaning as defined in Section 15610.27 of the Welfare and Institutions Code.

(2) "Dependent adult" has the same meaning as defined in Section 15610.23 of the Welfare and Institutions Code.

(3) "Isolation" has the same meaning as defined in Section 15610.43 of the Welfare and Institutions Code.

(4) "Petitioner" means a person who is an adult relative in the first degree of the proposed visatee.

(5) “Proposed visitee” means the elder or dependent adult, who is under the care or control of the respondent.

(6) “Respondent” means the person who is alleged to be isolating the proposed visitee, and, if the petition is granted, the restrained person

(7) “Visitation” means any in-person meeting between a proposed visitee and the petitioner.

(8) “Visitation order” means an order enjoining a party from keeping the proposed visitee in isolation from contact with the petitioner that is issued by a court after notice and hearing.

(c) (1) If the proposed visitee resides in a long-term care facility, as defined in Section 9701 of this code, or a residential facility, as defined in Section 1502 of the Health and Safety Code, then an order shall not be issued under this section, and Section 483.10 of Title 42 of the Code of Federal Regulations shall apply.

(2) If the elder or dependent adult is a patient of a health facility as defined in subdivision (a), (b) or (f) of Section 1250 of the Health and Safety Code, then an order shall not be issued under this section, and Sections 482.13 and 485.635 of Title 42 of the Code of Federal Regulations, Section 1261 of the Health and Safety Code, and subdivision (b) of Section 70707 of the California Code of Regulations shall apply.

(d) A petition may not be filed pursuant to subdivision (a) if the proposed visitee is a conservatee or subject to a conservatorship.

(e) The petition may be filed in the superior court of any of the following counties:

(1) The county in which the proposed visitee resides.

(2) The county in which the proposed visitee is temporarily living

(f) The court may require the proposed visitee to appear at the hearing.

(g) (1) If the proposed visitee has not retained an attorney or is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, the court may, at or before the time of the hearing, appoint the public defender or private counsel to represent the proposed visitee at the hearing on the petition if the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the proposed visitee.

(2) If the proposed visitee is furnished with legal counsel pursuant to subparagraph (1) of this subdivision:

(A) The nonprevailing party may be required to pay the fees and costs of the proposed visitee’s legal counsel;

(B) The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the nonprevailing

party's ability to pay all or a portion of that sum. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel;

(C) If the court determines that the nonprevailing party has the ability to pay all or a portion of the sum, the court shall order the nonprevailing party to pay in any installments and in any manner the court determines to be reasonable and compatible with the nonprevailing party's financial ability;

(D) If the court determines that the nonprevailing party lacks the ability to pay all or a portion of the sum determined under subparagraph (B), the county shall pay the sum to the private counsel to the extent the court determines the person is unable to pay.

(h) The court shall schedule an evidentiary hearing within 60 days from the date that the petition is filed. The court may grant a continuance of the hearing for good cause.

(i) The respondent and the proposed visitee shall each be personally served with a copy of the petition for visitation order and notice of the hearing at least 21 days before the hearing date.

(j) The notice of the hearing shall notify the proposed visitee and the respondent that following the hearing the court may make orders not to exceed five years from the hearing date. The notice of the hearing shall also notify the proposed visitee whether the court requires that the proposed visitee appear at the hearing, and how to request that counsel be appointed if the proposed visitee is unable to retain counsel.

(k) Respondent may file and serve a response that explains or denies the alleged isolation at least 10 days before the hearing date.

(l) The court shall issue an order only after notice and a hearing under this section, and the court shall not issue an ex parte order under this section.

(m) An order may be issued under this section to restrain any person for the purpose of preventing a recurrence of isolation if petitioner has shown by a preponderance of the evidence, to the satisfaction of the court, the following: (1) respondent's past act or acts of isolation of the proposed visitee from contact with the petitioner, and (2) that the proposed visitee desires contact with the petitioner. The order may specify the frequency, time, place, location, and any other terms or conditions of visitation.

(n) In deciding whether to issue or modify a visitation order under this section, the court shall consider any prior protective orders issued against the petitioner to protect the proposed visitee.

(o) In deciding whether to issue or modify a visitation order under this section, the court may consider whether visitation by the petitioner should be limited to situations in which a third person, specified by the court, is present, or whether visitation shall be suspended or denied.

The petitioner, proposed visitee, or respondent may submit to the court the name of a person who may be suitable to be present during visitation.

(p) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than 5 years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed, upon the request of a party, either for 5 years or permanently, without a showing of any further isolation since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the orders. The failure to state the expiration date on the face of the form creates an order with a duration of 3 years from the date of issuance.

(q) Nothing in this section shall preclude any party, including the proposed visitee, from representation by private counsel or from appearing on the party's own behalf.

(r) The court may, in its discretion, award the prevailing party in any action brought under this section court costs and attorney's fees, if any. In no event shall the proposed visitee be required to pay the court costs or attorney's fees of either the prevailing or nonprevailing party.

(s) The court shall not issue an order unless the elder or dependent adult has expressed a desire for visitation. The court may appoint a court investigator to determine whether the elder or dependent adult has expressed a desire for visitation.

(t) A proposed visitee who appears in an action on a petition for visitation order shall not be subject to any fees listed in Title 8 of the Government Code.

(t) The Judicial Council shall, on or before January 1, 2016, adopt implementing rules and forms, as necessary.

(u) This section shall become operative on January 1, 2016.

(v) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.



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TANI G. CANTIL-SAKAU
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

August 25, 2014

Hon. Mike Gatto
Member of the Assembly
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 2034 (Gatto), as amended August 22, 2014 - Oppose

Dear Assembly Member Gatto:

The Judicial Council regrets to inform you of its opposition to AB 2034, as amended August 22, 2014. The Judicial Council's (council) opposition to AB 2034 is limited to the provisions in Section 2 of the bill, as detailed below. The council takes no position on the provisions in Section 1, which would impose new duties on the conservator of an elder or dependent adult to provide specified information to the relatives of the conservatee whenever the conservatee dies or is admitted to a medical facility, as those issues are outside its purview.

The Judicial Council's opposition to Section 2 of AB 2034, which establishes a new statutory scheme governing the visitation of an elder or dependent adult without a conservator, is based on several considerations. First, the council believes existing legal mechanisms are sufficient for handling most, if not all, of the disputes that the bill seeks to address. The council believes it would be exceedingly rare, as a practical matter, that cases would present with the sole issue of interference with visitation between an elder or dependent adult and their family members. It is far more common for disputes to arise between various factions of family members of the elder or dependent adult that involve fundamental disagreements around the medical care and

treatment, the placement, or the finances of these vulnerable individuals, which could not be addressed in these proceedings. The council also believes that an elder or dependent adult who is unable to make their own decisions about visitation is likely factually, if not legally incompetent, and a conservatorship is a more appropriate mechanism for addressing these difficult issues. In addition, the council notes that adult protective services or law enforcement can already intervene in cases where interference with an elder or dependent adult's right to visit and associate with others rises to the level of isolation that is already covered under the Elder and Dependent Adult Civil Protection Act. In light of these existing mechanisms, and the complex and contentious nature of the underlying disputes, the Judicial Council believes that the creation of a new, stand-alone "family visitation" statutory scheme will be highly inefficient and result in multiple and possibly overlapping court hearings.

The Judicial Council also believes that the latest proposed version of the bill is unworkable. Under the existing protective orders scheme, once abuse has been proven, the remedies available to the court typically involve "stay away" orders allowing the separation of the elder or dependent adult from the abuser. In contrast, this bill contemplates an order simply enjoining the respondent from interfering with visitation between the elder or dependent adult and the petitioning family member or members, while potentially leaving the abuser in place. The council also notes that the respondent will likely often be the primary caregiver for the elder or dependent adult, and the court would lack the authority under AB 2034 to affect or change this relationship.

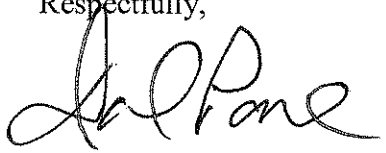
In addition, while we understand your intent to provide a mechanism for an isolated elder or dependent adult to be able to visit with his or adult children when he or she desires such contact, the bill will likely have the unintended consequence of subjecting that elder or dependent adult to further abuse and distress. There is nothing in the proposed bill that prevents a petition for visitation from being brought for improper purposes. As long as the petitioner is an adult relative in the first degree, he or she can initiate the court process without any proof that the proposed visitee (i.e., the elder or dependent adult) is being isolated, agrees with the action, and desires further contact with the relative in question. Judicial officers have expressed strong concerns about the inability under the bill to protect the elder or dependent adult in this new court process. Under the bill, these vulnerable individuals will likely have to confront in open court not only their primary caregivers, but also their adult relatives who they may be completely estranged from for a number of legitimate reasons. In their view, this will likely have the unfortunate consequence of subjecting the elder or dependent adult to further reprisals by their primary caregivers, and has the potential for subjecting them to further abuse from estranged family members.

Moreover, the bill fails to include an appropriation to cover the costs of the new court hearings that would be required. These costs could be significant, given the highly contentious nature of these types of disputes between family members. Cases brought under the bill will likely mimic difficult child custody and visitation cases, with the parties coming back to court repeatedly seeking modifications due to refusals or alleged refusals by the respondent to comply with the terms of the orders. In addition, while the bill's provision for the court to appoint an investigator is discretionary, we are concerned about the additional cost pressures this presents. Court

investigators currently are overwhelmed in trying to meet their current statutory mandates, especially during this time of severe budget constraints and staff layoffs. Given the highly contentious nature of these family visitation disputes, the investigations will be very costly and time consuming, which will have an adverse impact on their existing caseloads.

For these reasons, the Judicial Council opposes AB 2034. However, the council remains committed to working with you and your staff, committee staff, and other interested stakeholders in an effort to develop a consensus proposal that meets your goals in a way that is more workable for the courts.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel Pone", with a stylized, cursive script.

Daniel Pone
Senior Attorney

DP/nco

Enclosure

cc: Members, Senate Judiciary Committee
Members, Assembly Judiciary Committee
Ms. Tara Welch, Deputy Chief Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor



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STEVEN JAHR
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Director, Governmental Affairs

August 27, 2014

Hon. Hannah-Beth Jackson, Chair
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, California 95814

Subject: AB 2034 (Gatto) as amended August 22, 2014 - Oppose
Hearing: Senate Judiciary Committee – August 28, 2014

Dear Senator Jackson:

The Judicial Council regrets to inform you of its opposition to AB 2034. The Judicial Council's (council) opposition to AB 2034 is limited to the provisions in Section 2 of the bill, as detailed below. The council takes no position on the provisions in Section 1, which would impose new duties on the conservator of an elder or dependent adult to provide specified information to the relatives of the conservatee whenever the conservatee dies or is admitted to a medical facility, as those issues are outside its purview.

The Judicial Council's opposition to Section 2 of AB 2034, which establishes a new statutory scheme governing the visitation of an elder or dependent adult without a conservator, is based on several considerations. First, the council believes existing legal mechanisms are sufficient for handling most, if not all, of the disputes that the bill seeks to address. The council believes it would be exceedingly rare, as a practical matter, that cases would present with the sole issue of interference with visitation between an elder or dependent adult and their family members. It is far more common for disputes to arise between various factions of family members of the elder or dependent adult that involve fundamental disagreements around the medical care and treatment, the placement, or the finances of these vulnerable individuals, which could not be

addressed in these proceedings. The council also believes that an elder or dependent adult who is unable to make their own decisions about visitation is likely factually, if not legally incompetent, and a conservatorship is a more appropriate mechanism for addressing these difficult issues. In addition, the council notes that adult protective services or law enforcement can already intervene in cases where interference with an elder or dependent adult's right to visit and associate with others rises to the level of isolation that is already covered under the Elder and Dependent Adult Civil Protection Act. In light of these existing mechanisms, and the complex and contentious nature of the underlying disputes, the Judicial Council believes that the creation of a new, stand-alone "family visitation" statutory scheme will be highly inefficient and result in multiple and possibly overlapping court hearings.

The Judicial Council also believes that the current version of the bill is unworkable. Under the existing protective orders scheme, once abuse has been proven, the remedies available to the court typically involve "stay away" orders allowing the separation of the elder or dependent adult from the abuser. In contrast, this bill contemplates an order simply enjoining the respondent from interfering with visitation between the elder or dependent adult and the petitioning family member or members, while potentially leaving the abuser in place. The council also notes that the respondent will likely often be the primary caregiver for the elder or dependent adult, and the court would lack the authority under AB 2034 to affect or change this relationship.

In addition, while we understand the author's intent to provide a mechanism for an isolated elder or dependent adult to be able to visit with his or adult children when he or she desires such contact, the bill will likely have the unintended consequence of subjecting that elder or dependent adult to further abuse and distress. There is nothing in the bill that prevents a petition for visitation from being brought for improper purposes. As long as the petitioner is an adult relative in the first degree, he or she can initiate the court process without any proof that the proposed visitee (i.e., the elder or dependent adult) is being isolated, agrees with the action, and desires further contact with the relative in question. Judicial officers have expressed strong concerns about the inability under the bill to protect the elder or dependent adult in this new court process. Under the bill, these vulnerable individuals will likely have to confront in open court not only their primary caregivers, but also their adult relatives who they may be completely estranged from for a number of legitimate reasons. In their view, this will likely have the unfortunate consequence of subjecting the elder or dependent adult to further reprisals by their primary caregivers, and has the potential for subjecting them to further abuse from estranged family members.

Moreover, the bill fails to include an appropriation to cover the costs of the new court hearings that would be required. These costs could be significant, given the highly contentious nature of these types of disputes between family members. Cases brought under the bill will likely mimic difficult child custody and visitation cases, with the parties coming back to court repeatedly seeking modifications due to refusals or alleged refusals by the respondent to comply with the terms of the orders. In addition, while the bill's provision for the court to appoint an investigator is discretionary, we are concerned about the additional cost pressures this presents. Court investigators currently are overwhelmed in trying to meet their current statutory mandates,

Hon. Hannah-Beth Jackson

August 27, 2014

Page 3

especially during this time of severe budget constraints and staff layoffs. Given the highly contentious nature of these family visitation disputes, the investigations will be very costly and time consuming, which will have an adverse impact on their existing caseloads.

Finally, we respectfully submit that there is no urgency for moving forward with AB 2034 at the present time. The bill contains a one-year delayed operative date, so even if this bill were to be enacted, the soonest its provisions could take effect is January 1, 2016. Given the substantial concerns that are being raised about the bill by the Judicial Council, the California Advocates for Nursing Home Reform, and the California Association of Superior Court Investigators, it would be preferable, in our view, to hold the bill and continue the stakeholder process over the interim. This would allow for a more careful and deliberative process in a cooperative effort to develop a consensus proposal that meets the author's goals in a way that minimizes potential abuse, better protects the rights of the elders and dependent adults, and is more workable for the courts.

For these reasons, the Judicial Council opposes AB 2034 and requests your No vote.

Sincerely,

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

Daniel Pone
Senior Attorney

DP/nco

Enclosure

cc: Members, Senate Judiciary Committee
Hon. Mike Gatto, Member of the Assembly
Ms. Tara Welch, Deputy Chief Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Ms. June Clark, Deputy Legislative Secretary, Office of the Governor



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS
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STEVEN JAHR
Administrative Director of the Courts

CORY T. JASPERSON
Director, Office of Governmental Affairs

April 24, 2014

Hon. Mike Gatto, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Subject: AB 2034 (Gatto), as amended March 28, 2014 – Fiscal Impact Statement

Dear Assembly Member Gatto:

AB 2034 would create a mechanism for adult children of non-conserved adults to petition the court for orders related to visitation. Borrowing from the Omnibus Conservatorship and Guardianship Reform Act of 2006, the bill creates a petition and investigation process for those adults determined by the court to be incompetent to declare to the satisfaction of the court their wishes and intentions relative to visits from their adult children.

Based on the detailed procedures contained within the bill should it be enacted into law, there likely will be significant costs to the judicial branch related to implementation.

First, we believe cases brought under the law, should AB 2034 be enacted, will fall into two categories of complexity: moderately complex and highly complex. Because the bill focuses narrowly on issues related to visitation (as opposed to a variety of other issues that are often found in more multi-faceted conservatorship cases), we believe that relatively simple visitation cases will not likely require court intervention. The difference between moderately complex cases and highly complex cases is the number of hours required for their initial resolution, with highly complex cases calculated as requiring nearly twice the time of court personnel as moderately complex cases.

Second, since the Judicial Council has no way to reliably determine how many petitions may be filed under AB 2034, we have used an estimated range for the committee's consideration. Extrapolating from the costs from the fiscal analysis we prepared on the Omnibus Conservatorship and Guardianship Reform Act of 2006, we determined that the court costs per petition for a single case categorized as moderately complex would be \$1,021.69, and the costs for a highly complex case

would be \$1,863.41. (See chart below.) Then we estimated a range of as few as 100 cases statewide per year (i.e., roughly 2 cases per court), and as high as 500 cases statewide per year (i.e., roughly 10 cases per court). Again, it's important to stress that these are examples of statewide costs only, and do not reflect a data-based forecast of how many cases would be filed should AB 2034 be signed into law. Our calculations assume that one-third of the cases will be moderately complex, while two-thirds will be highly complex.

Position	Est. Hours – Moderate	Est. Hours – Complex
Judge	1.5 @ \$106.97/hour	3.0 @ \$106.97/hour
Court Reporter	1.5 @ 76.87/hour	3.0 @ 76.87/hour
Court Clerk	1.5 @ 54.03/hour	3.0 @ 54.03/hour
Admin. Support	1.5 @ 52.31/hour	3.0 @ 52.31/hour
Investigator	6.0 @ 66.73/hour	10.0 @ 66.73/hour
Attorney	2.0 @ 93.02/hour	3.5 @ 93.02/hour
TOTAL HOURS	14.0 (\$1,021.69)	25.5 (\$1,863.41)

Third, these cost estimates reflect *one-time* costs related to a petition. This is noteworthy because the bill language provides the courts express authority to retain jurisdiction over a matter beyond the resolution of visitation for a pending petition.¹ Using family court visitation as a parallel, courts that retain jurisdiction often see highly complex cases return multiple times as a reflection of the fractured family relationships and high degrees of distrust among the parties. There is no way to know with certainty if the cases brought under the authority created by AB 2034 would result in a similar pattern of motions to modify the visitation orders, so they have not been included in these calculations. However, in our view, it is likely that a similar pattern will emerge here given the highly contentious and emotional nature of such disputes, which would result in additional costs that may be substantial in the majority of these cases

Finally, there may be some offset of these costs since some undetermined number of the petitions filed under the authority created by AB 2034 likely would have been filed as conservatorships were this avenue not available. The numbers for an offset are not precisely quantifiable because we do not know either the number of conservatorships filed in California each year, or the number of visitation petitions that might be filed. Both numbers would be helpful for an accurate calculation of any possible offset. Nevertheless, we believe that there is some savings likely to accrue from the filing of an AB 2034 petition as opposed to the filing of a conservatorship.

Based on estimates of time required for the judicial officer, a court reporter, a court clerk, a secretary, a court investigator, and an attorney, in a moderately complex petition, and utilizing statewide average wages, we estimate 14 hours per petition for a total petition cost of \$1,021.69. For a highly complex petition, we estimate 25.5 hours per petition for an estimated per petition cost of \$1,863.41. The hourly costs in the calculation above include wages and benefits. Using these per petition figures, we estimate these possible statewide impacts:

¹ See proposed Probate Code sec. 3257, which provides that “[t]he court in which the petition is filed has continuing jurisdiction to revoke or modify an order made under this part upon a petition filed, noticed, and heard in the same manner as an original petition filed under this part.”

As mentioned above, an offset (cost savings) can be added to these calculations because we anticipate the cost for an AB 2034 petition for visitation will be a less expensive procedure than a conservatorship. Because of the difficulty in calculating such an offset, we have estimated the savings at 10%.

For 100 petitions

Complexity	Per Petition	Percentage	Petitions	Totals
Moderate	\$1,021.69	1/3	34	\$34,737.46
High	\$1,863.41	2/3	66	\$122,985.06
<i>Subtotal</i>				<i>\$157,722.52</i>
10% Offset				(\$15,772.25)
TOTAL		100%	100	\$141,950.27

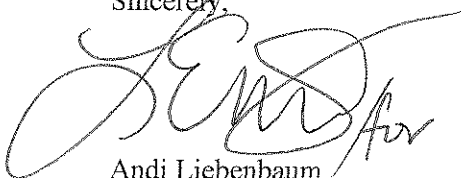
For 500 petitions

Complexity	Per Petition	Percentage	Petitions	Totals
Moderate	\$1,021.69	1/3	170	\$173,687.30
High	\$1,863.41	2/3	330	\$614,925.30
<i>Subtotal</i>				<i>\$788,612.60</i>
10% Offset				(\$78,861.26)
TOTAL		100%	500	\$709,751.34

Based on our preliminary fiscal assessment, the range of \$141,950 to \$709,751 is the estimated cost burden for the courts to handle cases filed under the authority of AB 2034.

If you have any questions about the fiscal impacts of AB 2034, please call me.

Sincerely,



Andi Liebenbaum
Senior Governmental Affairs Analyst

AL/nco

cc: Members, Assembly Appropriations Committee
Hon. Mike Gatto, Member of the Assembly
Mr. Chuck Nicol, Principal Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Fiscal Consultant, Assembly Republican Fiscal Office
Ms. Leora Gershenson, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Madelynn McClain, Budget Analyst, Department of Finance



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF GOVERNMENTAL AFFAIRS
770 L Street, Suite 1240 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director of the Courts

CORY T. JASPERSON
Director, Office of Governmental Affairs

July 25, 2014

Hon. Kevin de León, Chair
Senate Appropriations Committee
State Capitol, Room 2206
Sacramento, California 95814

Subject: AB 2034 (Gatto), as amended July 1, 2014 – Fiscal Impact Statement
Hearing: Senate Appropriations Committee – August 4, 2014

Dear Senator de León:

AB 2034 would provide a relative of an elder or dependent adult, such as an adult child, with the ability to file a protective order to enjoin a respondent from keeping a proposed visitee (e.g., the petitioner's parent) in isolation from contact with the petitioner. Borrowing from an existing legal framework for protective orders, the bill creates a petition process that requests the court to determine whether or not there is reasonable proof of a past act or acts of isolation of the proposed visitee from contact with the petitioner, and, upon a showing that either the proposed visitee desires contact with the petitioner or that visitation is in the best interests of the proposed visitee.

Based on the detailed procedures contained within the bill should it be enacted into law, there likely will be significant costs to the judicial branch related to implementation.

First, we believe cases brought under the law, should AB 2034 be enacted, will fall into two categories of complexity: moderately complex and highly complex. The bill focuses narrowly on issues related to visitation, and requires that the petitioner file a petition with the court for a protective order enjoining a respondent from keeping a proposed visitee from contact with the petitioner. Thus, we conclude that relatively simple visitation cases will be resolved differently, not likely requiring court intervention. The difference between moderately complex cases and highly complex cases is the number of hours required for their initial resolution, with highly complex cases calculated as requiring nearly twice the time of court personnel as moderately complex cases.

Second, since the Judicial Council has no way to reliably determine how many petitions may be filed under the authority created by AB 2034, we have proposed a range for the committee's

consideration. We base our calculations for a hearing for a protective order on existing civil domestic violence (DV) hearings, taking into account the complex nature of the evidence that petitioners would need to present and defend in that hearing. We believe this is a reasonable basis for the calculation given that courts currently hear civil DV petitions, and understanding that the nature of the claims and orders under the authority created by AB 2034 is not unlike a lengthy DV hearing. Using calculations consistent with current pay rates, we determined that the court costs per petition for a single case categorized as moderately complex would be \$621.31, and the costs for a highly complex case would be \$1,196.41. (See chart below.) Then we estimated a range of as few as 100 cases statewide per year (i.e., roughly 2 cases per court), and as high as 500 cases statewide per year (i.e., roughly 10 cases per court). Again, it's important to stress that these are examples of statewide costs only, and do not reflect a data-driven forecast of how many cases would be filed should AB 2034 be signed into law. Our calculations assume that one-third of the cases will be moderately complex, while two-thirds will be highly complex.

Position	Est. Hours – Moderate	Est. Hours – Complex
Judge	1.5 @ \$106.97/hour	3.0 @ \$106.97/hour
Court Reporter	1.5 @ 76.87/hour	3.0 @ 76.87/hour
Court Clerk	1.5 @ 54.03/hour	3.0 @ 54.03/hour
Admin. Support	1.5 @ 52.31/hour	3.0 @ 52.31/hour
Attorney	2.0 @ 93.02/hour	3.5 @ 93.02/hour
TOTAL HOURS	8.0 @ \$621.31	15.5 @ \$1,196.41

While language has been removed from AB 2034 that would have granted the courts express authority to retain jurisdiction over a matter beyond the resolution of visitation for a pending petition, we believe it is a reasonable assumption to factor in the need for some petitioning parties to return to court seeking modification of visitation orders. Using family court visitation as a parallel, courts often retain jurisdiction in highly contested cases owing to the fractured family relationships and high degrees of distrust among the parties, the same tensions and fractures that are likely to be present in cases brought under the authority of AB 2034. Family law judges note that approximately one-third of their caseloads involve requests for modifications of custody and visitation orders, and they estimate that one-third of *those* cases return to the courts multiple times. Using the same calculations for AB 2034, we presume that at least one in three cases (33%) will result in at least one request for order modification, and that one in six (16%) will return three times.

We also note that there may be some offset of the bill's costs since an undetermined number of the petitions filed under the authority created by AB 2034 likely would have been filed as conservatorships were this avenue not available. The numbers for an offset are not precisely quantifiable because we do not know either the number of conservatorships filed in California each year, or the number of visitation petitions that might be filed. Both numbers would be helpful for an accurate calculation of any possible offset. Nevertheless, we believe that there is some savings likely to accrue from the filing of an AB 2034 petition as opposed to the filing of a conservatorship.

Based on estimates of time required for the judicial officer, a court reporter, a court clerk, a secretary, and an attorney in a moderately complex petition and utilizing statewide average wages, we estimate 8 hours per petition for a total petition cost of \$621.32. For a highly complex petition, we estimate 15.5 hours per petition for an estimated per petition cost of \$1,196.11. The hourly costs

in the calculation above include wages and benefits. Using these per petition figures, we estimate these possible statewide impacts:

For 100 petitions

Complexity	Per Petition	Percentage	Petitions	Totals
Moderate	\$621.31	one-third total cases	34	\$21,124.54
<i>Multiplier for one modification</i>		33%	11	\$7,034.47
<i>Multiplier for 3 modifications</i>		16%	5	\$10,139.78
High	\$1,196.11	two-thirds	66	\$78,943.26
<i>Multiplier for one modification</i>		33%	22	\$26,288.11
<i>Multiplier for 3 modifications</i>		16%	11	\$37,892.76
Subtotal				\$181,422.92
<i>10% Offset</i>				\$18,142.29
TOTAL		100%	100	\$163,280.63

For 500 petitions

Complexity	Per Petition	Percentage	Petitions	Totals
Moderate	\$621.31	one-third	170	\$105,622.70
<i>Multiplier for one modification</i>		33%	57	\$35,172.36
<i>Multiplier for 3 modifications</i>		16%	27	\$50,698.90
High	\$1,196.11	two-thirds	330	\$394,716.30
<i>Multiplier for one modification</i>		33%	110	\$131,440.53
<i>Multiplier for 3 modifications</i>		16%	53	\$189,463.82
Subtotal				\$717,650.78
<i>10% Offset</i>				\$71,765.08
TOTAL		100%	500	\$645,885.70

Based on our preliminary fiscal assessment, the range of \$163,000 to \$646,000 is the estimated cost burden for the courts to handle cases filed under the authority of AB 2034.

Hon. Kevin de León
July 25, 2014
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If you have any questions about the fiscal impacts of AB 2034, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Andi Liebenbaum". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andi Liebenbaum
Senior Governmental Affairs Analyst

AL/nco

cc: Members, Senate Appropriations Committee
Hon. Mike Gatto, Member of the Assembly
Ms. Jolie Onodera, Consultant, Senate Appropriations Committee
Mr. Matt Osterli, Fiscal Consultant, Senate Republican Fiscal Office
Ms. Leora Gershenzon, Counsel, Assembly Judiciary Committee
Mr. Paul Dress, Consultant, Assembly Republican Office of Policy
Ms. Tara Welch, Deputy Chief Counsel, Senate Judiciary Committee
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor
Ms. Madelynn McClain, Budget Analyst, Department of Finance