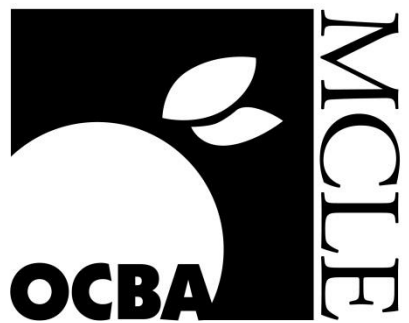

ORANGE COUNTY BAR ASSOCIATION

**CONSERVATORSHIP, GUARDIANSHIP, &
PROTECTIVE PROCEEDINGS
SECTION WEBINAR**

*Award and Collection of Conservatorship Fees
After Death of the Conservatee*



Thursday, October 22, 2020

Award and Collection of Conservatorship Fees After Death of the Conservatee

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Getting Paid Starts at the Time of Retention

- The court has no power to determine fees paid by any source except the conservatorship estate. *Probate Code* §2646. What if the proposed conservatee dies prior to appointment and no estate is created?
- Address this possibility in your retainer agreement: payment from client? Or look to a decedent's estate or trust?

Attorney and Conservator Fee Awards

- Once the Inventory has been filed, and at least 90 days have passed since issuance of Letters, the conservator may petition for an award of conservator or attorney fees. *Probate Code* §2640. “Just and reasonable” is the test.
- A petition for fees can also be filed directly by an attorney. *Probate Code* §2642.
- Periodic payments are allowed by *Probate Code* §2643.
- Fees for appointed counsel and GAL

Fee Awards Even if Someone Else Appointed as Conservator

- If a person has petitioned for the appointment of a **particular conservator** and another conservator was appointed while the petition was pending, the person who petitioned but was not appointed and that person's attorney may petition the court for fees.
- The court must determine that the petition was filed in the best interests of the conservatee. *Probate Code* §2640.1.

Is an Award of Fees an Enforceable Judgment?

- Yes, and it bears interest at 10%.
- If the conservator refuses to pay you, legal enforcement action may be taken: Abstract of Judgment to create lien on real property, bank account levy, etc.
- However: Enforcement actions against estate property require court approval. *Code of Civ. Proc. §709.030.*
- Enforcement against bond?

But: Enforcement After Death of Conservatee

- After the death of a conservatee (judgment debtor), enforcement of a judgment against property in the judgment debtor's estate is governed by the Probate Code. *Code of Civ. Proc.* §686.020.
- Beware the one-year statute of limitations of *Code of Civ. Proc.* §366.2.

If There is a Decedent's Estate for the Conservatee

- Is filing/service of a Creditor's Claim required?
- **No:** The court retains jurisdiction over the conservatorship estate post-death and can order payment.
- **Yes:** A claim that is not filed in the manner required by the Probate Code is barred. *Probate Code* §9002. And even a holder of a final judgment must still file a Creditor's Claim. *Probate Code* §9300(b).

If There is a Decedent's Estate for the Conservatee

- What if your fees have not yet been approved (a petition is still pending, or hasn't been filed yet)? File a Claim anyway?
- Deadline for Claims: Four months after Letters issue or 60 days after Notice of Administration is served, whichever is later. *Probate Code §9100.*
- Filing a Claim stops the running of the statute of limitations. *Probate Code §9352.*

If There isn't a Decedent's Estate Filed

- As a creditor, you have standing to initiate probate yourself to protect your ability to file a Claim and collect. *Probate Code* §8000.

If the Conservatee Had a Trust

- Property of the deceased conservatee held in a formerly revocable trust is subject to the claims of creditors.
Probate Code §19001.
- Optional notice/claims process.
Probate Code §19003 et seq.
- Statute of limitations still applies.

The Effect of the One-Year Statute of Limitations

- If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise ... dies before the expiration of the applicable limitations period ... an action may be commenced within **one year** after the date of death. *Code of Civ. Proc. §366.2.*
- Does not apply if you already have a fee award, or you have a fee petition pending, at the time of death.
- Don't let your client take too long to file that final account!

Possible Use of Expedited Procedures to Resolve Disputes

- *Code of Civ. Proc.* §638 – appoint a Referee to hear and determine the issues in a dispute.
- *Probate Code* §2405 (only for disputes between a conservator and a third party) – appointment of a Temporary Judge, summary process.

QUESTIONS AND COMMENTS