

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 156

Introduced by Senator Beall

January 31, 2013

An act to amend Section 2640 of the Probate Code, relating to conservatorships and guardianships.

LEGISLATIVE COUNSEL'S DIGEST

SB 156, as amended, Beall. Conservatorships and guardianships: attorney's fees.

Existing law provides for the administration of guardianships and conservatorships. Existing law authorizes a guardian or conservator of an estate to petition the court for an order allowing compensation to the guardian, conservator, or attorney for the guardian or conservator, as specified. Existing law prohibits the guardian or conservator from being compensated from the estate for any costs or fees that he or she incurred in unsuccessfully opposing a petition, or other request or action, made by or on behalf of the ward or conservatee, unless the court determines that the opposition was made in good faith, based on the best interests of the ward or conservatee.

This bill would instead authorize the court to award litigation costs, including attorney's fees, to the prevailing party if an objection is made to the petition for compensation, as specified.

~~Existing law provides for the administration of conservatorships. Existing law requires a conservator to pay the reasonable expenses incurred in the collection, care, and administration of the estate from the principal and income of the estate, but requires court approval for compensation of an attorney for the conservator.~~

~~This bill would declare the intent of the Legislature to enact legislation that would limit the ability of an attorney who represents a conservator to charge a fee for managing a conservatorship when the conservator challenges this management.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2640 of the Probate Code is amended to
2 read:

3 2640. (a) At any time after the filing of the inventory and
4 appraisal, but not before the expiration of 90 days from the issuance
5 of letters or any other period of time as the court for good cause
6 orders, the guardian or conservator of the estate may petition the
7 court for an order fixing and allowing compensation to any one or
8 more of the following:

9 (1) The guardian or conservator of the estate for services
10 rendered to that time.

11 (2) The guardian or conservator of the person for services
12 rendered to that time.

13 (3) The attorney for services rendered to that time by the
14 attorney to the guardian or conservator of the person or estate or
15 both.

16 (b) Notice of the hearing shall be given for the period and in
17 the manner provided for in Chapter 3 (commencing with Section
18 1460) of Part 1.

19 (c) Upon the hearing, the court shall make an order allowing
20 (1) any compensation requested in the petition the court determines
21 is just and reasonable to the guardian or conservator of the estate
22 for services rendered or to the guardian or conservator of the person
23 for services rendered, or to both, and (2) any compensation
24 requested in the petition the court determines is reasonable to the
25 attorney for services rendered to the guardian or conservator of
26 the person or estate or both. The compensation allowed to the
27 guardian or conservator of the person, the guardian or conservator
28 of the estate, and to the attorney may, in the discretion of the court,
29 include compensation for services rendered before the date of the
30 order appointing the guardian or conservator. The compensation
31 allowed shall thereupon be charged to the estate. Legal services

1 for which the attorney may be compensated include those services
 2 rendered by any paralegal performing legal services under the
 3 direction and supervision of an attorney. The petition or application
 4 for compensation shall set forth the hours spent and services
 5 performed by the paralegal.

6 ~~(d) Notwithstanding the provisions of subdivision (c), the~~
 7 ~~guardian or conservator shall not be compensated from the estate~~
 8 ~~for any costs or fees that the guardian or conservator incurred in~~
 9 ~~unsuccessfully opposing a petition, or other request or action, made~~
 10 ~~by or on behalf of the ward or conservatee, unless the court~~
 11 ~~determines that the opposition was made in good faith, based on~~
 12 ~~the best interests of the ward or conservatee.~~

13 *(d) If the court, upon an objection to the petition, reduces the*
 14 *compensation requested in the petition, the objector shall be*
 15 *deemed the prevailing party and the court may award the objector*
 16 *his or her costs and other expenses and costs of litigation, including*
 17 *attorney’s fees, incurred to contest the petition. The amount*
 18 *charged is a charge against the compensation of the guardian or*
 19 *conservator, and the guardian or conservator is liable personally*
 20 *and on the bond, if any, for any amount that remains unsatisfied.*

21 *(e) If the court, upon an objection to the petition, does not reduce*
 22 *the compensation requested in the petition, the guardian or*
 23 *conservator shall be deemed the prevailing party and the court*
 24 *may order the objector to pay the compensation and costs of the*
 25 *guardian or conservator and other expenses and costs of litigation,*
 26 *including attorney’s fees, incurred to defend the petition. The*
 27 *objector shall be personally liable to the guardianship or*
 28 *conservatorship estate for the amount ordered.*

29 ~~SECTION 1. It is the intent of the Legislature to enact~~
 30 ~~legislation that would limit the ability of an attorney who represents~~
 31 ~~a conservator to charge a fee for managing a conservatorship when~~
 32 ~~the conservator challenges this management.~~