

AMENDED IN ASSEMBLY JUNE 19, 2013

AMENDED IN ASSEMBLY JUNE 11, 2013

AMENDED IN SENATE APRIL 8, 2013

SENATE BILL

No. 156

Introduced by Senator Beall
(Coauthor: Assembly Member Fong)

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 specified litigation costs *incurred by the guardian or conservator in defending the compensation in the petition*, including attorney's fees, ~~to the prevailing party if an objection is made to the petition for compensation, except as specified.~~ *only if the guardian or conservator first proves that he or*

she made a good faith effort to informally resolve all objections, that he or she acted in good faith in defending the petition, and that it is in the best interest of the ward or conservatee to award the costs.

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 be charged to the estate. Legal services for which
32 the attorney may be compensated include those services rendered

1 by any paralegal performing legal services under the direction and
2 supervision of an attorney. The petition or application for
3 compensation shall set forth the hours spent and services performed
4 by the paralegal.

5 ~~(d) If the court, upon an objection to the petition, reduces the~~
6 ~~compensation requested in the petition, the objecting party shall~~
7 ~~be deemed the prevailing party and the court may award the~~
8 ~~objecting party his or her costs and other expenses and costs of~~
9 ~~litigation, including attorney's fees, incurred to contest the petition.~~
10 ~~In determining whether to award the objecting party his or her~~
11 ~~costs and other expenses and costs of litigation, the court shall~~
12 ~~consider the best interests of the ward or conservatee.~~

13 ~~(1) The award shall be a charge against the compensation of the~~
14 ~~guardian or conservator, and the guardian or conservator shall be~~
15 ~~liable personally and on the bond, if any, for any amount that~~
16 ~~remains unsatisfied.~~

17 ~~(2) This subdivision does not apply to a public conservator or~~
18 ~~public guardian.~~

19 (e)

20 (d) Notwithstanding subdivision (c), *if the court reduces or*
21 *denies the compensation requested in the petition,* the guardian or
22 conservator shall not be compensated from the estate for any costs
23 or fees, including attorney's fees, that the guardian or conservator
24 incurred in defending the compensation in the petition, ~~unless the~~
25 ~~guardian or conservator proves to the satisfaction of the court that~~
26 ~~the guardian or conservator acted in good faith in defending the~~
27 ~~petition, taking into consideration the objections of the ward or~~
28 ~~conservatee, if any. If the guardian or conservator establishes good~~
29 ~~faith, the court may choose, but is not required, to award those~~
30 ~~costs or fees if the court determines that it is in the best interest of~~
31 ~~the ward or conservatee to make that award.~~ *petition. However,*
32 *the court may exercise discretion to grant or deny any portion of*
33 *the additional fee request if the guardian or conservator proves*
34 *to the satisfaction of the court all of the following:*

35 (1) *The guardian or conservator made a reasonable and good*
36 *faith attempt at an informal resolution of each issue presented by*
37 *the objection to the compensation in the petition.*

38 (2) *The guardian or conservator acted in good faith and with*
39 *substantial justification in defending the petition, taking into*
40 *consideration any objections thereto.*

1 (3) *It is in the best interest of the ward or conservatee to make*
2 *an award of costs or fees.*
3 (f) ~~If the court, upon an objection to the petition, does not reduce~~
4 ~~the compensation requested in the petition, the guardian or~~
5 ~~conservator shall be deemed the prevailing party and the court~~
6 ~~may order the objecting party to pay the expenses and costs of~~
7 ~~litigation, including attorney's fees, incurred by the guardian or~~
8 ~~conservator to defend the petition. The objecting party shall be~~
9 ~~personally liable for the amount ordered. In determining whether~~
10 ~~to award the objecting party his or her expenses and costs of~~
11 ~~litigation, the court shall consider the best interests of the ward or~~
12 ~~conservatee.~~