

Memorandum 79-23

Subject: Study F-100 - Guardianship-Conservatorship Revision (Confidentiality of Court Investigator's Report)

Under the Commission's recommended legislation, the court investigator is required to make a written report to the court in four situations. First, in guardianship proceedings, the court may direct the court investigator, the probation officer, or domestic relations investigator to make a custody investigation. In such a case, the person making the investigation must file with the court a written confidential report, and the report shall be made available only to the persons who have been served or have appeared in the proceeding or their attorneys. Proposed Section 1513. This is consistent with the Family Law Act which provides that a report of a custody investigation made under that act is confidential. Civil Code § 4602. See also proposed Section 1543 (confidential report of investigation in case of nonrelative guardianship).

Second, in proceedings to establish a conservatorship, if the petition alleges that the proposed conservatee is not willing to attend the hearing or if a medical affidavit is filed attesting to the inability of the proposed conservatee to attend the hearing, the court investigator must visit the proposed conservatee and make a written report to the court. Proposed Section 1826. The report becomes part of the court's file. W. Johnstone, M. Levine, & G. Zillgitt, California Conservatorships Supplement § 3.42A, at 35 (Cal. Cont. Ed. Bar 1978). As part of the court's file, the report lacks confidentiality.

Third, the court investigator must make a written report to the court of his or her findings in connection with the biennial review, and to this provision the Commission has added a new requirement that a copy of the report be mailed to the conservator and to the attorneys of record for the conservator and conservatee. Proposed Section 1851.

Fourth, the court may direct the court investigator to interview a temporary conservatee if the temporary conservator petitions to change the residence of the temporary conservatee, and in such a case the court investigator must report to the court in writing. Proposed Section 2253. No provision is made for confidentiality of the report.

We have received a suggestion from the Deputy County Counsel of Stanislaus County that a provision be added to the recommended legislation requiring that a copy of the initial report on the establishment of the conservatorship (triggered by an allegation in the petition that the proposed conservatee is not willing to attend the hearing or by the filing of a medical affidavit) be sent to the "appearing parties." This raises for further consideration the question of whether and to what extent the various reports of the court investigator should be confidential, and to whom they should be made available.

On the one hand, the conservatee or proposed conservatee has a legitimate interest in avoiding widespread disclosure of possibly embarrassing personal details. On the other hand, the adversaries (petitioner, conservator, conservatee, and counsel) need full access to the facts to present the case effectively.

The need for confidentiality appears least in the case of a report on petition to change the place of residence of a temporary conservatee since the medical aspects of the report are narrowly limited to the question of whether the change of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent such harm. Proposed Section 2253.

In the case of an initial report, the court investigator must determine whether the proposed conservatee appears to be unable to attend the hearing and is capable of completing an affidavit of voter registration (proposed Section 1826), and, in the case of the biennial report, the court investigator must determine whether the conservatee "is still in need of the conservatorship." Thus these reports may possibly contain information that would be embarrassing to the conservatee or proposed conservatee, although the information potentially most embarrassing would appear to be contained in the reporter's transcript of the hearing rather than in the court investigator's report.

If the Commission is of the view that confidentiality should be accorded to the court investigator's initial and biennial reports, proposed Sections 1826 and 1851 could be revised as follows:

1826. . . .

(k) At least five days before the hearing, a copy of the report referred to in subdivision (j) shall be mailed to the proposed conservatee, to the attorney of record for the petitioner, and to the attorney for the proposed conservatee, if any. The report is otherwise confidential, except that the court may for good cause shown order that a copy of the report be furnished to such interested persons as may be specified in the order. Failure to mail or furnish copies of the report as provided in this subdivision does not affect the jurisdiction of the court to proceed at the hearing.

Comment. . . .

Subdivision (k) is new. See also Section 1851 (report on biennial review of conservatorship), 2253 (report on petition to change residence of temporary conservatee).

1851. . . .

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court. The report is otherwise confidential, except that the court may for good cause shown order that a copy of the report be furnished to such interested persons as may be specified in the order. Failure to mail or furnish copies of the report as provided in this subdivision does not affect the jurisdiction of the court to proceed with the review.

Comment. Section 1851 continues the substance of the second, third, and fourth sentences of former Section 1851.1 except that (1) the report is required not less than 15 days prior to the date of review rather than "within" 15 days of the date of review, (2) the court investigator is required to determine whether the terms of an order made under Chapter 4 (commencing with Section 1870) should be modified or the order revoked, and (3) the ~~second sentence~~ last three sentences of subdivision (b) ~~is~~ are new. See also Sections 1826 (report on establishment of conservatorship), 2253 (report on petition to change residence of temporary conservatee).

A comparable provision could be added to proposed Section 2253 to make confidential the report required on a petition to change the residence of the temporary conservatee, but the staff is inclined to recommend against such a change.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel