

SB 156 (Beall) – FACT SHEET

Act Relates to Conservator/Attorney Fees

BACKGROUND

Conserved adults who are being overcharged by estate managers face a dilemma when they go to court to contest questionable costs: They must pay the conservator's legal fees – even if a judge ultimately finds the conservators had filed unjustified or exorbitant bills.

Many times, this gap in the law has placed California's elderly and disabled adults in the untenable position of choosing to accept the overcharges solely because it will cost more to challenge them in court, win or lose.

The upshot: The estates – set up by parents to keep their vulnerable sons and daughters financially secure when they could no longer be there to care for them – are being drained.

In one notable case, a San Jose man contested his estate manager's \$108,000 fee for four months of work and was able to get that fee lowered by a judge. But citing a statute, the judge said he had no choice but to require the trust pay out nearly \$150,000 in fees to the conservator's attorney.

As a newspaper investigation pointed out: "Under California law, challenging an excessive bill presents an astounding damned-if-you-do dilemma: A private estate manager can bill the cost to defend his charges right back to the person who protested the bill in the first place."

Within the legal community, this situation is often referred to as "fees-on-fees" and it is the author's strong belief that "fees-on-

fees" can exploits victims who are legitimately challenging the overbilling of their estates.

It is unconscionable to use elderly and disabled adults' limited financial resources to pay their trustees to fight against themselves.

THIS BILL

SB 156 provides judges with greater discretion to protect estates from exorbitant billing and fees. The bill also balances the scales by creating a "loser pays" scenario in which both sides risk paying their opponent's legal fees if they lose.

Under SB 156, if a conservatee objects to charges for services by their estate manager and the court reduces those charges the conservatee is deemed the prevailing party and the court *may* award the legal costs of objecting to the fees to the conservatee.

Should the court make no reduction in fees, the conservator is deemed the prevailing party and the court *may* award the attorney costs that were incurred in the defense of the charges. The charges and the fees would be paid from the estate of the conservatee.

SB 156 recognizes that a "one size fits all" solution does not apply to every case. Under the bill, a court can decide to reduce fees and *not* award the conservatee's costs related to the litigation. If the reduction was small, a judge might rule no reimbursement

is awarded to the prevailing party.

Under AB 156, attorney fees, in any amount, may only be awarded to the prevailing party. SB 156 ensures that everyone has skin in the game. It will give unscrupulous executors pause.

It will act as a deterrent to any unfair padding of costs, thereby reducing number of contested fee dispute cases in probate court.

And for the conservatees or their families who do file frivolous objections, SB 156 allows a judge to award conservators their legal fees incurred.

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