

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA**

Probate Notes

**202100557657PRCE: In the Matter of Mary Jane Vind
03/17/2026 in Department J6
Review Hearing re: Fees and Costs**

Petitioner, a conservator of the estate, has hired her spouse as her attorney for the conservatorship. A conservator of the estate must avoid actual conflicts of interest and, consistent with her fiduciary duty to the conservatee, the appearance of conflicts of interest. (Cal. Rules of Court, rule 7.1059(a).) The conservator must avoid any personal, business, or professional relationship that is or reasonably could be perceived as being self-serving. (*Ibid.*) Here, the conservator hiring her spouse as her attorney and paying his fees from the estate reasonably could create the appearance of a conflict of interest and be perceived as self-serving.

Further, a conservator must not engage her family members to provide services to the conservatee for a profit or fee when other alternatives are reasonably available. (Rule 7.1059(a)(4).) While the letter of this rule applies to services provided to the conservatee and not the conservator, the Court believes the spirit of the rule is violated by the conservator employing her spouse as her attorney and paying his fees from the estate.

Rule 7.1059(a)(4) also goes on to state: “Where family members do provide such services, their relationship to the conservator must be fully disclosed to the court, the terms of engagement must be in the best interest of the conservatee compared to the terms available from independent service providers, the services must be competently performed, and the conservator must be able to exercise appropriate control and supervision.”

Here, it is true that the conservator previously disclosed to the court that she was married to her attorney. However, the supplement does not show that “the terms of engagement [are] in the best interest of the conservatee compared to the terms available from independent service providers.” The supplement makes no showing that the terms of Attorney Esquibias’s engagement compared to the terms available from other attorneys are in the conservatee’s best interest.

The supplement does contain conclusory language that alleges “no other attorney with comparable experience, immediate availability, and familiarity with the conservatorship was readily available.” The supplement offers no corroborating evidence to support the conclusory language.

Accordingly, the Court will find that the requirements of rule 7.1059(a)(4) have not been met and the conservator may not hire her spouse as her attorney in this case.

Previously, the Court allowed the conservator of the person to waive the conflict of interest. Upon reconsideration, the Court does not think that the conservator of the person has the authority to waive the conflict. That authority belongs to the conservator of the estate, who cannot waive a conflict created by herself.

On a separate issue, the Court notes that Probate Code section 2645, subdivision (b), provides: "No parent, child, sibling, or spouse of a person who is a guardian or conservator, and no law partnership or corporation whose partner, shareholder, or employee is serving as a guardian or conservator shall receive any compensation for legal services performed for the guardian or conservator unless the court specifically approves the right to the compensation and finds that it is to the advantage, benefit, and best interests of the ward or conservatee." Under this section, an attorney who is the conservator's spouse must show that his representation, as opposed to the representation otherwise available, was to the advantage, benefit, and best interests of the conservatee. (*Conservatorship of Bryant* (1996) 45 Cal.App.4th 117.)

The Court additionally notes that section 2645, subdivision (b), was not discussed, nor considered prior to the Court's approval of Mr. Esquibias's attorney fees. Accordingly, on its own motion, the Court intends to reconsider its approval of the fees from 1/20/26. (*Le Francois v. Goel* (2005) 35 Cal.4th 1094.)

The Court will set dates for an expedited briefing schedule and a hearing on the issue. All briefs are to be filed by the close of court business on 3/19/26. The matter is set for hearing on 3/23/26 at 9:00 AM in J6.