



National Association for Court Management

Supported Resolution # 6 Year 2017

Urging the Social Security Administration to Amend its Regulations and Congress to Add an Exception to the Privacy Act of 1974 for the Purpose of Protecting Assets of Social Security Recipients

CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS

WHEREAS, the National Center for State Courts estimates that there are 1.3 million active adult guardianship or conservatorship cases in the United States and at least \$50 billion in assets under guardianships and conservatorships; and

WHEREAS, the majority of adults subject to conservatorships are likely to be Social Security recipients who have Social Security representative payees; and

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution “Encouraging Collaboration Between State Courts and Federal and State Representative Payee Programs” in 2013-2014; and

WHEREAS, the United States Senate Special Committee on Aging has requested a series of reports from the Government Accountability Office, as recently as November 30, 2016 (“Trust Betrayed: Financial Abuse of Older Americans by Guardians and Others in Power”) and held numerous hearings detailing exploitation in guardianship and conservatorship cases and the lack of cooperation by the United States Social Security Administration (SSA) and United States Department of Veterans Affairs in their interactions with state courts; and

WHEREAS, the United States House of Representatives Committee on Ways and Means held hearings on “Examining the Social Security Administration’s Representative Payee Program: Who Provides Help,” on March 22, 2017, that included testimony detailing barriers to sharing information between the SSA and state courts on guardianship/conservatorship matters; and

WHEREAS, 20 CFR § 401.180.(b) and § 401.180 (c)(4)(d) define “court” as an institution of the judicial branch of the Federal government and states that “SSA will not honor state court orders as a basis for disclosure”; and

WHEREAS, the SSA relies on the Privacy Act of 1974 to prohibit sharing information with state courts. The Act [5 U.S.C. § 552a(b)] states that “no agency shall disclose any record which is contained in a system of records by any means of communication to



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any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains," subject to certain exceptions; and

WHEREAS, concerning cases in which a person is under the jurisdiction of a state court for guardianship or conservatorship, the Conferences continue to encourage the exchange of information between state courts with jurisdiction over guardianships/conservatorships and the SSA on matters relating to the appointment, resignation, and removal of a court-appointed guardian or conservator or Social Security representative payee or the misuse of funds by individuals who serve as a court-appointed guardian or conservator and/or Social Security representative payee; and

WHEREAS, the SSA's failure to honor state court orders and inability to share information results in inconsistencies between the court-appointed conservator and the representative payee, and furthermore, compromise the ability of the state courts to protect the social security recipients' assets, which jeopardizes the financial security of vulnerable adults; and

WHEREAS, the Conferences support the participation of Social Security Administration representatives on state Working Interdisciplinary Networks of Guardianship Stakeholders and promote the SSA's efforts that will improve information sharing with state courts that have jurisdiction over guardianships or conservatorships;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators do hereby:

- invite the SSA and other stakeholders to work with the Conferences to establish and implement protocols to facilitate communication between individual state courts with jurisdiction over guardianships/conservatorships and SSA staff who have the responsibility of appointing and monitoring representative payees; and
- request that the SSA amend its regulations to allow the SSA to recognize and honor state court orders related to the appointment, resignation, and removal of court-appointed guardians or conservators and to disclose information related to misuse of funds; and
- urge Congress to add an exception to the Privacy Act of 1974 that will allow the SSA to disclose to state courts information related to the appointment, resignation, and removal of representative payees and information related to the misuse of funds by representative payees for individuals who are under the jurisdiction of a state court for guardianship or conservatorship.

On December 5, 2017 the NACM Board voted to support the attached resolution.