

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

MARCH 2 AND 3, 1978

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on March 2 and 3, 1978.

Present: Howard R. Williams, Chairman
Beatrice P. Lawson, Vice Chairman
Judith Ashmann
Jean C. Love
Thomas E. Stanton, Jr., March 2
Laurence N. Walker, March 3

Absent: George Deukmejian, Member of Senate
Alister McAlister, Member of Assembly
John D. Miller
Bion M. Gregory, Ex Officio

Members of Staff Present:

John H. DeMouilly	Nathaniel Sterling
Stan G. Ulrich	Robert J. Murphy III

Consultant Present:

Garrett H. Elmore, Guardianship-Conservatorship,
March 2 and 3.

ADMINISTRATIVE MATTERS

Assembly Bill 2517--Psychotherapist-Patient Privilege

The Commission considered Assembly Bill 2517 (introduced to effectuate the Commission's Recommendation Relating to Psychotherapist-Patient Privilege) and a letter from Justice Robert Kingsley, Second District Court of Appeal, and a report of the action of the State Bar Board of Governors on the Commission's proposal. A copy of this letter and report follows this portion of the Minutes.

The Commission determined that the following amendments should be made to Assembly Bill 2517:

AMENDMENT 1

On page 3, line 34, after "1012." insert:

(a)

AMENDMENT 2

On page 4, line 4, strike out "information" and insert:
information

AMENDMENT 3

On page 4, line 8, after "family" insert:
and fellow patients in group therapy

AMENDMENT 4

On page 4, between lines 10 and 11, insert:

(b) As used in this article, "confidential communication between patient and psychotherapist" includes information reasonably necessary for the diagnosis or treatment of the patient by the psychotherapist that is disclosed by another person to the psychotherapist in confidence by a means which, so far as the person is aware, discloses the information to no third persons other than those described in subdivision (a). With respect to information so disclosed, the person disclosing the information is a joint holder of the privilege under this article.

The Commission made Amendment 3 (above) in response to the suggestion of the State Bar and Amendment 4 in response to the suggestion of Justice Kingsley. The Commission decided not to add the phrase "or reasonably believed by the patient to be" in the three new subdivisions added to Section 1010.

The Commission determined that the following should be added to the Comment to Section 1012:

Subdivision (b) is a new provision that makes clear that the psychotherapist-patient privilege protects disclosures made by parents or other third persons to the psychotherapist where made in confidence and reasonably necessary for the diagnosis or treatment of the patient by the psychotherapist. The subdivision is consistent with prior law. See *Grosslight v. Superior Court*, 72 Cal. App.3d 502, ___ Cal. Rptr. ___ (1977) (communications to psychotherapist by parents concerning their daughter's behavior were within purview of psychotherapist-patient privilege and therefore privileged). There was no judicial decision under prior law whether the privilege extended to nonfamily communications. See *Grosslight v. Superior Court*, *supra*, 72 Cal. App.3d at 508, ___ Cal. Rptr. at ___ ("We do not here determine whether the Section 1014 privilege extends to nonfamily communications"). The communication protected by subdivision (b) may concern the behavior of the patient as in Grosslight, may be information concerning the person making the communication, or may be any other relevant information. The protection provided by subdivision (b) is necessary because disclosure of the confidential information might be detrimental to the person called upon to make the disclosure, and full disclosure might not be made absent this protection. For this reason, the person disclosing the information is made a joint holder of the privilege. See Section 912(b) (waiver of the right of one joint holder to claim the privilege does not affect the right of another joint holder to claim the privilege). The right of the person making the disclosure to claim the privilege is, of course, subject to the exceptions provided in this article and to subdivisions (c) and (d) of Section 912. It should be noted that protection is provided under subdivision (a) for disclosures by the psychotherapist to the person making the communication described in subdivision (b). Moreover, disclosure to persons to whom disclosure is permitted under subdivision (a) without loss of the privilege does not cause loss of the privilege provided under subdivision (b).

Administrative Matters-Exhibit I

STATE OF CALIFORNIA

COURT OF APPEAL

SECOND DISTRICT—DIVISION FOUR

3880 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90010

Minutes

March 2 and 3, 1978

ROBERT KINGSLEY
ASSOCIATE JUSTICE

February 16, 1978

California Law Revision Commission,
Stanford Law School,
Stanford, California 94305

Gentlemen:

I have read the proposed revision of the Psychotherapist Privilege (Appendix X to the 1977 Report). I call to your attention the decision of this court in Grosslight v. Superior Court (1977) 72 Cal.App.3d 502. Since you propose a revision of the law in that field, would it not be wise to amend Evidence Code section 1011, to include under the definition of "patient" some reference to the situation therein involved. Your proposed amendment of section 1012 would cover statements by the psychotherapist to a parent, but not to cover statements by the parent.

Sincerely,

Minutes
March 2 and 3, 1978

THE STATE BAR OF CALIFORNIA



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EDWIN J. WILSON, *Vice-President and Treasurer*
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February 24, 1978

John H. DeMouilly
Executive Secretary
California Law Revision Commission
Stanford University, School of Law
Stanford, CA., 94305

Dear John,

Enclosed is the report of the CAJ re the LRC Psychotherapist privilege. The Board approved the CAJ recommendation except as to the recommendation to strike the proposed sections re social workers. As to that recommendation, the Board, primarily on the urging of Mr. Melchior, disapproved the CAJ recommendation and approved the inclusion of social workers.

Although the Board's resolution only states that it "approves the reports of the committees and instructs the Legislative Representative to support the LRC proposal but seek to amend it to expand Evid. 1012 to include communications made in group therapy to fellow patients and so advise the Law Revision Commission", Mr. Melchior later stated that he had intended the resolution to include amending proposed 1010 (g)(h) and (i) to conform to 1010(a). It is my understanding that he believes that the three new subsections should include, in the appropriate places, the phrase "or reasonably believed by the patient to be".

The Board also disapproved the recommendation of the Committee to Confer with the California Medical Association that the phrase "therapeutic relationship" be substituted for "applied

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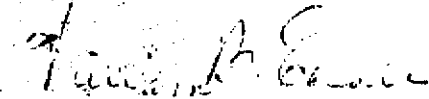
John H. DeMouilly

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2/24/78

psychotherapy of a non-medical nature". If you would like any further clarification of the Board's action, please call me.

Very truly yours,



William B. Eades
Director
Sections and Committees

jst

Enclosure

FEBRUARY Minutes
March 2 and 3, 1978
Interim report of CAJ re:
LRC Proposal re: Psycho-
therapist-Patient Privilege

February 1, 1978

TO THE MEMBERS OF THE BOARD OF GOVERNORS:

LRC PROPOSAL RE: PSYCHOTHERAPIST-PATIENT PRIVILEGE

GENERAL:

The California Law Revision Commission will introduce in the 1978 legislature a proposal to broaden the Psychotherapist-Patient Privilege (Evidence Code §§1010, 1010.5, 1012, 1014 and 1025) to include: (1) patients of a psychologist licensed or certified in another state or nation; (2) patients of unlicensed (but registered) psychologists employed by a non-profit community agency receiving at least 25% of its support from governmental agencies; (3) patients of licensed educational psychologists; (4) patients receiving psychotherapy from psychiatric social workers; (5) patients of psychotherapists employed by a medical or marriage, family or child counseling corporation; (6) information disclosed at a group or family therapy session, and; (7) by repealing Evidence Code §1028, a provision that the privilege, in its entirety, applies in criminal as well as civil proceedings.

The entire recommendation including proposed text of amendments is attached hereto as Exhibit A.

RECOMMENDATION:

After study and review of the LRC proposal as well as the report and recommendations of the Committee to Confer with the California Medical Association the CAJ, by a very substantial majority, recommends your Board support the LRC proposed amendments, except the inclusion of patients of psychiatric social workers. By a vote of 10 yes, 9 no, the committee recommends disapproval of the proposal for a new subsections §1010(g),(h) and (i) of the Evidence Code.

The committee also recommends, again by a substantial majority, that the LRC proposed inclusion of information disclosed at group or family therapy sessions be further broadened to include fellow patients participating in the therapy (Evidence Code §1012).

DISCUSSION:

Most of the broadening of the privilege is accomplished by amending Evidence Code §1010 to expand the definition of psychotherapist. With the exception of psychiatric social workers, the new groups are either licensed or registered and are easily identified. The psychiatric social worker, on the other hand, is neither licensed nor registered and is, in fact, merely a person holding a position so titled by his or her employer and whose qualifications are not uniform and may vary not only between various employers, but also may be changed from time to time by any employer.

The majority felt that to require a trial court to determine whether a person is indeed a "psychiatric social worker" would lead to additional litigation or at least a "trial within the trial." (Note: the committee would probably have no objections if the "psychiatric social worker" was required to be licensed, certified or registered.)

The minority adopt the reasoning of the Law Revision Commission that since psychiatric social workers provide therapy for a great many people, they should be included within the definition of a psychotherapist and that the requirement of Welfare and Institutions Code §5751 that the Director of Health establish standards of education and experience for professional, administrative and technical personnel employed in mental health services, is sufficient identification.

The committee concurs in the other amendments proposed except it recommends the proposed amendment to Evidence Code §1012 which would classify communications made to persons participating in the diagnosis and treatment including members of the patient's family, be broadened. The committee is concerned that as worded, it may not include communications made to fellow patients and their families in group therapy sessions. To obviate this, the committee recommends the section be further amended to include not only members of the patient's family but "and fellow patients in group therapy."

CMA REPORT:

The report of the Committee to Confer with the California Medical Association recommends approval of the proposal with two amendments. One, relating to communications in group therapy sessions has been incorporated in the final LRC recommendation. The other proposes that Evidence Code §1010 be amended to include educational psychologists "when consulted or engaged for the purpose of a therapeutic relationship," and to substitute the same language in subsection (h) and (i) regarding psychiatric social workers for the term "while engaged in applied psychotherapy of

a non-medical nature."

The CAJ feels that the inclusion of either phrase in Section §1010 is inappropriate. That section is merely a definition of the term "psychotherapist." If a communication between the educational psychologist or clinical social worker and the patient is "confidential" within the meaning of Evidence Code §1012, it may be privileged; otherwise it is not, and whether the "psychotherapist" was "engaged in applied psychotherapy of a non-medical nature" or "where consulted or engaged for the purpose of a therapeutic relationship," should make no difference.

If your Board adopts the CAJ recommendation that Evidence Code §1010(g),(h) and (i) should be deleted, the problem does not arise since the phrase to which the CMA committee objects only appears in those sections. If, however, your Board feels that psychiatric social workers should be included, the committee recommends against adoption of the CMA committee proposed substitute language.

The language presently proposed by the LRC, while it may be of uncertain meaning to the medical profession, has been in the statute since 1970 and before was in B&PC §9049. Since there has been no attempt to amend or clarify the phrase for over fifteen years, it apparently has not caused any difficulty. The substitute phrase, on the other hand, has no legislative background and, at least to the CAJ, means nothing more than a healing or treating relationship and would add nothing.

SUMMARY:

In summary, the committee recommends your Board support the LRC proposal but seek to amend it to: (1) delete proposed Evidence Code §1010(g), (h) and (i) relating to psychiatric social workers, and; (2) expand Evidence Code §1012 to include communications made in group therapy to fellow patients. It also recommends disapproval of the CMA committee proposal to substitute in Evidence Code §1010 the phrase "therapeutic relationship" for "applied psychotherapy of a non-medical nature."

STUDY F-30.300 - GUARDIANSHIP-CONSERVATORSHIP

The Commission considered four memoranda and attached materials concerning guardianship and conservatorship as follows:

(1) Memorandum 78-13 (comprehensive statute - major portion) and attached draft of Parts 1, 2, and 4 (less Chapters 5 and 6) of proposed new Division 4 of the Probate Code.

(2) Memorandum 78-14 (compulsory medical treatment), the attached Attorney General's opinion concerning the power of the guardian or conservator of the person to require the ward or conservatee to submit to medical treatment, and the attached draft of revised Part 3 (conservatorship) and Chapter 5 (powers and duties of guardian or conservator of the person) of Part 4 of Division 4.

(3) Memorandum 78-18 (venue for nonresidents) and the attached draft of proposed Section 2202 as revised by staff.

(4) Memorandum 78-19 (powers and duties of guardian or conservator of the estate) and the attached draft of revised Chapter 6 of Part 4 of proposed Division 4 relating to powers and duties of a guardian or conservator of the estate.

Although Parts 5 (Uniform Veterans' Guardianship Act) and 6 (miscellaneous protective proceedings) were not presented to the Commission at the March 1978 meeting, the Commission authorized the staff to include these parts in the comprehensive statute when it is distributed for comment. The provisions on community and homestead property, however, will not be included. The Commission also authorized the staff to include with the materials to be distributed for comment the preliminary part of the recommendation which provides a narrative description of the recommendation. There should be a note that the preliminary part is a staff draft which has not been reviewed by the Commission.

The Commission then reviewed the sections of the draft statute and made the following decisions:

§ 1452. Trial by jury

There was stricken from the Comment to proposed Section 1452 the sentence which read: "The effect of Section 1452 is to narrow somewhat

the situations in which the right to jury trial will exist in conservatorship proceedings."

§ 1462. Court may extend or shorten time for notice or require additional notice

The following language was added to the second paragraph of the Comment to proposed Section 1462: "The time for giving the notice required by Section 1511 (notice of hearing on petition for appointment or confirmation of guardian) or Section 1822 (notice of hearing on petition for appointment of conservator) may not be shortened. Where necessary, a temporary guardian or conservator may be appointed to serve pending the determination of the petition for the appointment of the guardian or conservator. See Section 2250."

§ 1471. Operative date

Proposed Section 1471 ("This division become operative on January 1, 1981") should be deleted from Chapter 4 (transitional provisions) of Part 1 and added as an uncodified provision at the end of each of the three Commission bills on guardianship-conservatorship.

§ 1472. Effect on existing guardianships and conservatorships generally

Proposed Section 1472 contains a clause making the section "[s]ubject to Section 1476." It appears that this cross-reference should be either to Section 1475 or to Sections 1475 and 1476. The staff was requested to give this further thought.

§ 1475. Pending matters arising under prior law

Subdivision (a) of proposed Section 1475 was revised as follows:

(a) Any petition, application, accounting, defense, or other matter instituted or maintained before the operative date shall be continued under this division, so far as applicable, unless in the opinion of the court application of a particular provision would substantially interfere with the effective conduct of a matter in progress or with the rights of the parties or other interested persons, in which case the particular provision does not apply and the prior law applicable thereto prior to the operative date applies.

§ 1478. Effect on nomination by adult of a guardian

Proposed Section 1478 was revised as follows:

1478. If, under prior law, an adult has in a written instrument signed writing nominated a person to serve as guardian if a guardian is in the future appointed for such adult, such nomination shall be deemed to be a nomination of a conservator. This section applies whether or not the written instrument signed writing was executed in the same manner as a witnessed will so long as the person executing making the instrument writing had at that the time the writing was made sufficient capacity to form an intelligent preference.

§ 1500. Appointment of general testamentary guardian by parent

The word "general" was deleted from the lead line to proposed Section 1500.

§ 1501. Appointment of special testamentary guardian

The lead line to proposed Section 1501 was revised to read: "Appointment of ~~special~~ testamentary guardian as to particular property."

Subdivision (c) was revised substantially as follows:

(c) A guardianship created pursuant to this section may coexist with a ~~general~~ guardianship of the estate created under other provisions of this part, in which case the guardian appointed pursuant to this section controls the property referred to in this section and the ~~general~~ other guardian controls the balance of the guardianship estate.

§ 1514. Appointment or confirmation of guardian

The staff was requested to work over the Comment to proposed Section 1514 to make it somewhat shorter.

§ 1600. Majority, death, or marriage of ward

The following should be added to the second paragraph of the Comment to proposed Section 1600: "If the married minor is suffering from a mental disability, a petition for conservatorship of the person may be filed. See Section 1800."

§ 1810. Nomination by proposed conservatee

§ 1811. Nomination by certain relatives of proposed conservatee

In proposed Sections 1810 and 1811, the language "written instrument executed" should be revised to read "writing signed" in the two places where it appears.

§ 1831. Adjudication of conservatee's lack of legal capacity and lack of capacity to make medical decisions; withdrawing power to enter specified transactions

Paragraphs (3) and (4) of subdivision (a) of proposed Section 1831 should be revised so that the court determination that the conservatee lacks capacity to make medical or surgical decisions is limited to the case where the conservatee cannot reasonably be expected ever to recover capacity to make such decisions. See comparable revisions to Section 2405 infra.

§§ 1850-1853 (biennial review of conservatorship)

The note at the beginning of Chapter 2 of Part 3 soliciting comments on the advisability of extending the biennial review procedure to minors' guardianships was deleted.

§ 2105. Several guardians or conservators

The third paragraph of the Comment to proposed Section 2105 should be commenced by a sentence reading substantially as follows: "Section 2105 does not deal with the question of when one of several guardians or conservators may be liable for the act of a co-guardian or co-conservator." However, there should be kept in the third paragraph sufficient warning to put a joint guardian or conservator on notice that there may be such liability.

§ 2201. Venue for residents

§ 2202. Venue for nonresidents

The jurisdictional language was deleted from subdivision (b) of proposed Section 2201 ("has exclusive jurisdiction") and from subdivision (c) of proposed Section 2202 ("and the court of no other county has jurisdiction").

Also, the jurisdictional language should be deleted from the Comment to proposed Section 2201 and venue language substituted. The cross-reference to the Comment to Section 2201 should be deleted from the Comment to Section 2202, and there should be substituted language substantially as follows: "This provision will enable the court of the county where the property is located, for example, to entertain proceedings with respect to the person as well as the estate."

The language "for the best interests of the proposed ward or proposed conservatee" should be changed to "in the best interests of the proposed ward or proposed conservatee" in the three places it appears in Sections 2201 and 2202.

§ 2254. Change of conservatee's residence in cases of emergency or with conservatee's consent

The staff was requested to check with Assemblyman Lanterman's office to determine whether he would have any objection to making the following revision to subdivision (a) of proposed Section 2254:

(a) Notwithstanding Section 2253, a temporary conservator may remove a temporary conservatee from the temporary conservatee's place of residence without prior court approval if an emergency exists. For the purposes of this section, an emergency exists if the temporary conservatee's place of residence is ~~unsafe~~ unsafe for habitation or if the temporary conservatee has a medical condition which presents an immediate treat to the temporary conservatee's physical survival.

§ 2403. Involuntary civil mental health treatment

Proposed Section 2403 should be renumbered as Section 2405, and as renumbered the section was revised as follows:

2405. No person ~~14~~ years of age or older for whom a guardian or conservator has been appointed shall be placed in a mental health treatment facility under the provisions of this division against the person's will. Involuntary civil mental health treatment for such a ward or conservatee shall be obtained only pursuant to the provisions of Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

§ 2404. Medical treatment of ward

Proposed Section 2404 should be renumbered as Section 2403, and as renumbered the section was revised as follows:

2403. (a) Subject to Section 2403 and to subdivision (b), the guardian has the same right as a parent having custody of a child to require the ward to receive medical treatment.

(b) If the ward is ~~14~~ 12 years of age or older, except in an emergency case in which the ward faces loss of life or serious bodily injury, no surgery shall be performed upon the ward without the ward's prior consent or a court order specifically authorizing such surgery obtained pursuant to Section 2406.

§ 2405. Medical treatment of conservatee

Proposed Section 2405 should be renumbered as Section 2404. Subdivisions (c) and (d) of the proposed section should be combined and limited to the case where the conservatee cannot reasonably be expected ever to recover capacity to make medical or surgical decisions. See comparable revision to Section 1831 supra. If the conservatee's incapacity may not be permanent and no emergency exists, the conservator will be required to obtain a court order under proposed Section 2406 before the conservatee may be required to submit to medical or surgical treatment. The staff was directed to draft the necessary language and to give the Commissioners an opportunity to review the language before the tentative recommendation is sent to the State Bar Subcommittee on Guardianship and Conservatorship.

§ 2406. Court ordered medical treatment.

Proposed Section 2406 was revised as follows:

2406. If the ward or conservatee requires medical treatment which is not authorized under Section 2403 or 2404, the guardian or conservator shall, after notice to the ward or conservatee, obtain a court order for such medical treatment. The ward or conservatee ~~;~~ if the ward or conservatee chooses who chooses to contest the request for a court order ~~;~~ may petition the court for hearing which shall be held prior to the granting of the order.

§§ 2500-2595 (powers and duties of guardian or conservator of the estate)

The Commission approved the omission from the draft of Chapter 6 (powers and duties of guardian or conservator of the estate) of the provision of existing law requiring that "[a]ll petitions filed under this chapter shall be set for hearing within 30 days of the filing of such petitions." Prob. Code §§ 1500(b), 1851(a). It should be noted in the preliminary part that there is a comparable provision in the Lanterman-Petris-Short Act (Welf. & Inst. Code § 5365) which is not affected by this recommendation.

§ 2500. Definitions

The second sentence of the Comment ("The definitions provided in this section avoid needless repetition in the various sections in this

chapter") should be deleted. The Comment should be rewritten to make clear that the chapter deals only with guardians and conservators of the estate, and that the purpose of the definitions in proposed Section 2500 is to avoid the need to repeat "guardian of the estate" and "conservator of the estate" throughout the chapter.

§ 2503. Instructions from or approval by court

The Commission disapproved the staff proposal to add language to proposed Section 2503 to allow the court to "decline to instruct or approve in advance when another procedure is provided by this part." In any event, proposed Section 2503 is a discretionary section (the court "may" authorize and instruct), and the proposed language is therefore comprehended within subdivision (a).

§ 2510. Support, maintenance, and education

The staff should revise subdivision (c) of proposed Section 2510 to find a substitute term for the word "proof" in one of the two places where it appears.

§ 2513. Payment of surplus income to next of kin of conservatee

The Commission noted that proposed Section 2513 overlaps to some extent the draft provisions relating to the doctrine of substituted judgment (see proposed Sections 2580-2585), but decided that the section should nonetheless be retained. The reference in the section to "the next of kin" should be revised to refer instead to a relative within the second degree.

§ 2520. Extent of court supervision

Subdivision (a) of proposed Section 2520 was revised as follows:

(a) Unless a specific provision of this article specifically provides for a proceeding to obtain court approval or requires court approval, the powers and duties set forth in this article may be exercised or performed by the guardian or conservator without court approval, instruction, or confirmation; but the acts of the guardian or conservator shall be subject to review by the court upon the settlement of accounts.

§ 2521. Collection of debts and benefits

Section 2521 was revised as follows:

2521. The guardian or conservator shall may collect all debts and benefits due to the ward or conservatee and the estate.

§ 2522. Checks, warrants, and drafts

Subdivision (b) (authority to draw checks) was deleted from proposed Section 2522.

§ 2523. Deposit or investment of money

Proposed Section 2523 was revised as follows:

2523. The guardian or conservator may deposit any money belonging to the estate in any a bank within this state or may invest any such money in an account in an insured savings and loan association or in shares of an insured credit union. No amount may be deposited or invested under this section that is not fully covered by insurance of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or by insurance required by Section 14805.6 of the Financial Code. Upon such deposit or investment, the guardian or conservator is discharged from further care or responsibility for the money until the money is withdrawn by the guardian or conservator. The money may be withdrawn without order of court.

The staff was requested to give further consideration to the reference to a bank "within this state." Should this limitation be in the statute? Should it apply also to savings and loan associations and credit unions? Should other sections be conformed? See proposed Sections 2332, 3113, 3203, 3311, and 3312. See also proposed Sections 2328 and 2329. The staff was also requested to ask representatives of financial institutions whether there should be something in the statute to indicate how an account of a ward or conservatee should be held.

The penultimate sentence of the Comment should be revised as follows: "The references to other provisions authorizing deposits and investments that were found in former Section 1513 have been omitted as unnecessary not relevant to a deposit made under Section 2523."

§ 2528. Life insurance and medical, retirement, and other benefits

Subdivision (b) of proposed Section 2528 was revised as follows:

(b) The right of a conservatee to elect benefit or payment options and to change beneficiaries, or to receive cash value in return for a surrender of rights, under any of the policies, plans, or benefits described in subdivision (a) may be exercised by the conservator only with the approval of the court under Article 8 (commencing with Section 2580).

There should be a cross-reference to the requirement of ordinary prudence in Section 2501, either in the Comment or in the list of cross-references.

§ 2529. Liability and casualty insurance

Proposed Section 2529 was revised substantially as follows:

2529. The guardian or conservator may insure:

(a) Property of the estate against loss or damage.

(b) The ward or conservatee, the guardian or conservator, and all or any part of the estate, or any of thereof, against liability to third persons.

§ 2530. Taxes and tax returns

Proposed Section 2530 was revised substantially as follows:

2530. The guardian or conservator may:

(a) Make tax returns for the ward or conservatee and the estate.

~~(a)~~ (b) Pay, contest, and compromise taxes, penalties, and assessments upon the property of the estate and income and other taxes payable or claimed to be payable by the ward or conservatee or the estate.

~~(b)~~ Make tax returns for the ward or conservatee and the estate.

§ 2531. Representation in actions and proceedings

Proposed Section 2531 was revised substantially as follows:

2531. Subject to Section 2532, unless another person ~~is~~ is appointed for that purpose, the guardian or conservator ~~shall~~ may :

(a) Institute and maintain ~~all~~ actions and proceedings for the benefit of the ward or conservatee or the estate.

(b) Defend ~~all~~ actions and proceedings against the ward or conservatee or the estate.

The staff was requested to give further consideration to the question of whether a conservatee who has not been adjudicated to be incompetent may bring an action in his or her own name. See Code Civ. Proc. § 372.

§ 2533. Compromise of claims and actions; extension, renewal, or modification of obligations

The Commission was concerned that the proposal in Section 2533 to permit the guardian or conservator to compromise claims and actions

without court approval (with certain exceptions) would be used as a device to accomplish a transfer of property or to take other action for which court approval would ordinarily be required. The Commission was of the view that court approval should be required for compromise of a claim against the ward, conservatee, or the estate where the assets of the estate to be transferred or the liability to be created against the estate exceeds the lesser of \$25,000 or 10 percent of the net value of the real and personal property of the estate.

Where linguistically possible, the word "any" should be deleted from proposed Section 2533 and either "a" or "an" substituted.

§ 2551. Borrowing money and giving security therefor

Subdivision (b) of proposed Section 2551 was revised substantially as follows:

(b) Upon any foreclosure or sale under any such a security interest, lien, mortgage, or deed of trust described in subdivision (a), if the proceeds of the sale of the encumbered property are insufficient to pay the note or notes, the security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale, no judgment or claim for any deficiency shall be had or allowed against the ward or conservatee or the estate.

§ 2575. United States and State of California obligations; listed stocks, bonds, and other securities

It should be made clear in proposed Section 2575 that the section is not the exclusive authority for making investments as stated in the last sentence of the Comment. This might be done by providing in subdivision (a) that "the guardian or conservator may invest and reinvest funds of the estate pursuant to this section . . ." and by adding a subdivision (d) to the effect that "[n]othing in this section limits the authority of the guardian or conservator to invest as provided in Section 2570."

The staff should review the five year limitation for the maturity date of bonds referred to in paragraph (1) of subdivision (a) to see if it may preclude investment in bonds redeemable at face value on the death of the bondholder ("flower bonds").

Subdivision (c) should be revised to substitute a reference to Civil Code Section 2261 (trustee's standard of care in investing funds) in place of the reference to the "prudent man" investment rule.

§ 2581. Notice of hearing of petition

Subdivision (c) of proposed Section 2581 (persons to whom notice of petition under substituted judgment provisions shall be given) was revised as follows:

(c) So far as is known to the petitioner, ~~any~~ beneficiaries under the conservatee's will any document executed by the conservatee which may have testamentary effect unless the court for good cause dispenses with such notice.

The staff should consider whether a provision should be included in the substituted judgment provisions or among the general powers provisions to authorize a guardian or conservator of a surviving spouse to elect to have community property probated (see Prob. Code § 202) or to petition to have community property not probated (see Prob. Code § 650).

§ 2627. Settlement of accounts by ward; release and discharge of guardian

Subdivision (b) of proposed Section 2627 was revised as follows:

(b) Except as otherwise provided by this code, a guardian appointed by a court is not entitled to a discharge until one year after the ward has attained majority.

§ 2650. Causes for removal

Subdivision (a) of proposed Section 2650 was revised as follows:

2650. A guardian or conservator, however appointed, may be removed as provided in this article for any of the following causes:

(a) Waste or mismanagement of the estate or abuse of the trust Failure to use ordinary prudence in the management of the estate.

There should be a cross-reference to Section 2501 (duty to use ordinary prudence).

§ 2750. Appealable orders

There should be added to the list of appealable orders in proposed Section 2750 any order allowing the guardian or conservator to fix the residence of the ward or conservatee in another state. See Section 2402.

§ 2800. "Foreign guardian or conservator" defined

Proposed Section 2800 was revised as follows:

2800. As used in this chapter, "foreign guardian or conservator" means the a guardian, conservator, committee, or comparable fiduciary in the other another jurisdiction to whom the assets are to be transferred pursuant to an order obtained under this chapter .

§ 2801. Order for transfer of assets out of state

Proposed Section 2801 was revised as follows:

2801. Subject to the limitations and requirements of this chapter, the court in which the guardianship of the estate or conservatorship of the estate is pending may order the transfer of some or all of the assets of the estate to a foreign guardian ; or conservator ; committee; or comparable fiduciary in another jurisdiction outside California where the ward or conservatee resides at the time the petition for the order authorizing the transfer is filed.

§ 2802. Who may petition for transfer

Proposed Section 2802 was revised as follows:

2802. A petition for an order authorizing a transfer may be filed by any of the following:

- (a) The guardian of the estate or the conservator of the estate.
- (b) The ward or conservatee.
- ~~(c) Any relative or friend of the ward or conservatee.~~
- ~~(d) Any person interested in the estate.~~
- ~~(e) (c) The A foreign guardian or conservator seeking the transfer of assets .~~

§ 2803. Contents of petition

Proposed Section 2803 was revised as follows:

2803. The petition shall set forth all of the following:

- (a) The name and residence address of:
 - (1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.
 - (2) The ward or conservatee.
 - (3) The guardian or conservator, so far as known to the petitioner.
- (b) The names, ages, and residence addresses, so far as they are known to the petitioner, of the spouse and relatives of the ward or conservatee within the second degree.
- (c) A brief description of the character, condition, value, and location of the property comprising the assets sought to be transferred.
- (d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the assets. If the foreign guardian or conservator has so agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A statement of the manner and by whom the foreign guardian or conservator was appointed † .

(f) a A general statement of the qualifications of the foreign guardian or conservator † .

(g) ~~the~~ The amount of bond, if any † .

(h) a A general statement of the nature and value of the assets of the ward or conservatee already under the management and control of the foreign guardian or conservator in the other jurisdiction † .

(i) ~~and the~~ The name of the court having jurisdiction of such foreign guardian or conservator or of ~~his~~ the accounts or in which a proceeding may be had with respect to the guardianship or conservatorship if the assets are transferred.

~~(f)~~ (j) Whether there is any pending civil action in this state against the guardian or conservator, the ward or conservatee, or the estate.

~~(g)~~ (k) A statement of the reasons for the transfer.

§ 2804. Notice of hearing

In proposed Section 2804, the requirement of notice to "each of the persons listed in the petition" should be revised to make a specific cross-reference to the persons listed in subdivisions (a) and (b) of Section 2803.

§ 2805. Opposition to petition

Proposed Section 2805 was revised as follows:

2805. Any of the following may appear and file written objections to the petition:

(a) Any person required to be listed in the petition.

(b) Any creditor of the ward or conservatee of the estate.

(c) Any relative or friend of the ward or conservatee.

(d) Any person interested in the estate.

§ 2806. Order for transfer

The last sentence of proposed Section 2806 ("[t]he removal of the assets to the other jurisdiction would not conflict with any restriction or limitation on the assets") was deleted.

§ 2807. Manner of transfer; conditions

Proposed Section 2807 was revised as follows:

2807. If a transfer is ordered, the court may direct the manner of transfer and impose such terms and conditions as may be just, including but not by ~~limitation~~, limited to a requirement for the substitution of the successor foreign guardian or conservator in any pending litigation in this state.

Minutes
March 2 and 3, 1978

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairman

Executive Secretary