

Memorandum 78-1

Subject: Study 30,300 - Guardianship-Conservatorship Revision (Comprehensive Statute--Major Portion)

Attached to this memorandum is a revised draft of the tentative recommendation relating to guardianship, conservatorship, and other protective proceedings. The draft incorporates the decisions of the Commission made at the September and October 1977 meetings. Each section of the draft is marked "Tentatively Approved," "Tentatively Approved in Substance," or "Staff Draft." If the section is marked "Tentatively Approved," the Commission has seen and approved the language of the section except for nonsubstantive editorial revisions made by the staff. If the section is marked "Tentatively Approved in Substance," the Commission has approved the policy reflected by the section but has not approved the specific language. If the section is marked "Staff Draft," the section has policy implications which have not been resolved by the Commission.

This memorandum discusses questions raised by the Commission as well as issues presented by the draft which have not been previously considered by the Commission. The staff recommends that the Commissioners review each section of the draft, including those previously approved, for a complete picture of the recommended legislation and the interrelationship of its various parts. The following section numbers refer to the Probate Code unless otherwise indicated.

The portions of the new statute relating to (1) powers and duties and (2) transactions where one or both spouses are under a disability and community or homestead property is involved are not included in the draft. These will be prepared after the January meeting.

§ 1407. Address

At the September meeting, the Commission tentatively decided to strike the word "residence" from the phrase "residence address" in several sections, to make "address" a defined term, and to define it to mean mailing address. The effect of this decision is to change the language of existing law and to require a petition for guardianship or conservatorship to set forth the mailing addresses of various persons,

including the parents and person having the care of the proposed ward (see proposed Section 1510), and to require the order appointing a conservator to set forth the mailing address of the conservator (see proposed Section 1830). However, the residence address of each of these persons would be more relevant information since the preferred method of notifying a ward over 12 of the commencement of guardianship proceedings is by personal service (see proposed Section 1511) and, in the case of proceedings to terminate the conservatorship or to remove the conservator, the preferred method of notice is by personal service on the conservator (see proposed Sections 1862, 2652). See also proposed Section 1853.

Accordingly, the staff recommends that proposed Section 1407 (defining "address") be deleted as unnecessary since "residence address" has been used in the various sections of the proposed legislation as appropriate.

§ 1460. Notice of hearing generally

The staff has made further revisions to proposed Section 1460 since it was considered by the Commission in September. First, the staff suggests lowering the age at which the minor becomes entitled to notice from 14 to 12. This will make proposed Section 1460 track with Section 416.60 of the Code of Civil Procedure which provides that a summons may be served on a minor by delivering a copy to specified persons "and to the minor if he is at least 12 years of age."

Second, the staff has deleted the proposed provision which would have authorized the court to "[d]ispense with any notice required by this division" and, instead, has added to paragraphs (2) and (3) of subdivision (c) of proposed Section 1460 authority for the court to dispense with notice to the ward or conservatee and to the spouse of the ward or conservatee for good cause. The staff has also added subdivision (d) ("Nothing in this section affects requirements for notice to a person who has requested special notice . . .").

Pursuant to the Commission's request, the staff has also examined the recent case of Estate of Obiols, 69 Cal. App.3d 514, 138 Cal. Rptr. 220 (1977) (hearing denied by Cal. Sup. Ct. and opinion ordered not to be published in bound volume), for its possible impact on the provisions

for notice. In the Obiols case, a minor beneficiary of an estate moved to reopen an accounting made nearly two years earlier. No direct notice of the accounting had been given to the minor beneficiary, but notice was posted at the courthouse as required by Section 1200 of the Probate Code. Relying on Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1949), the court held that notice by posting was constitutionally insufficient, saying:

The constitutional thrust of Mullane is that adequate actual notice must be given to a person with an economic interest in property [69 Cal. App.3d at 527, 133 Cal. Rptr. at ____.]

Accord, Estate of Reed, 259 Cal. App.2d 14, 66 Cal. Rptr. 193 (1968) (charitable residuary beneficiaries constitutionally entitled to notice of trustee's request for instructions affecting their interest).

However, the Mullane case also noted that a state legislature could reasonably dispense with personal notice "to those beneficiaries whose interests are either conjectural or future" 339 U.S. at 317. Those who would take property on the death of a living person have an "expectancy" interest during the latter's lifetime which "cannot be fairly said to be an interest in any specific thing." 3 R. Powell, The Law of Real Property § 382, at 319 (1977). Although this expectancy interest may have value and may be relinquished for consideration (id. § 383, at 323-31), it would appear to fall within the exception for "conjectural or future" interests referred to in Mullane.

The only authority on point appears to be a very old, pre-Mullane, Vermont case in which a sale of real property by the guardians of an insane person was challenged for lack of notice to the heirs of the application for court authorization of the sale. The court upheld the validity of the sale, saying: "here, the estate is still in the lunatic, and on his recovery is to be restored to him, unless previously disposed of by his guardians." Smith v. Burnham, 1 Aik. 84 (Vt. 1826); see 39 Am. Jur.2d Guardian and Ward § 131 (1968).

Hence, it is the staff's conclusion that there is no constitutional requirement of notice to prospective heirs of a ward or conservatee of accountings or other actions in guardianship or conservatorship proceedings.

The Commission has retained the requirement of posting in the courthouse, as required by Section 1200 of the Probate Code, in the proposed statute even though such notice is not of itself constitutionally sufficient. Does the Commission wish to delete the posting provision?

§ 1464. Proof of giving of notice

The Commission expressed some concern over subdivision (b) of proposed Section 1464 which, in its present draft form, reads as follows:

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order, and such order, when it becomes final, is conclusive on all persons.

This language was adapted from the last sentence of Section 1200 of the Probate Code, which dates from 1931 (see 1931 Cal. Stats., Ch. 281) and reads:

Proof of the giving of notice must be made at the hearing; and if it appears to the satisfaction of the court that said notice has been regularly given, the court shall so find in its order, and such order, when it becomes final, shall be conclusive upon all persons.

The apparent intent of this provision in Section 1200 is to give the entire order, including the finding that notice was regularly given, binding effect on the entire world, consistent with the traditional view that probate proceedings are "in rem." See Dorsey, Notice and Procedure, in 1 California Decedent Estate Administration §§ 20.2, 20.10, at 764, 785 (Cal. Cont. Ed. Bar 1971). It was the rule long before the 1931 Probate Code that a recital in a probate order that notice has been duly given is accorded presumptive effect in the absence of anything in the record to the contrary. See Moore v. Earl, 91 Cal. 632, 635, 27 P. 1087, ____ (1891); 25 Cal. Jur.3d Decedents' Estates § 1090, at 559 (1976). In Livermore v. Ratti, 150 Cal. 458, 462-63, 89 P. 327, ____ (1907), it was held that the person attacking the order's recital that notice was duly given may go outside the record to show that it was impossible that notice was given as recited.

Several post-1931 cases have developed exceptions to the conclusiveness rule of Section 1200. First, of course, is the constitutional requirement set forth in Mullane v. Central Hanover Bank & Trust Co.,

339 U.S. 306 (1949), that those who have an "economic interest" other than one which is "conjectural or future" must be given "adequate actual" notice, notwithstanding the provisions of Section 1200. See Estate of Reed, 259 Cal. App.2d 14, 19-22, 66 Cal. Rptr. 193, ____ (1968). Second, if one with an interest in the estate has been kept ignorant of the proceeding by extrinsic fraud and has thus been prevented from asserting rights, the order is not binding even though notice has been given as required by Section 1200 and the order so recites. State v. Broderson, 247 Cal. App.2d 797, 803-05, 56 Cal. Rptr. 58, ____ (1967). Third, even though notice has been given in accordance with Section 1200 and the proceeding does not adversely affect the economic interests of anyone who would be entitled to appear as a party, if the proceeding is conducted collusively or ex parte for the sole purpose of defeating inheritance taxes, the order will not bind the taxing authorities. Estate of Clarke, 66 Cal.2d 142, 147, 424 P.2d 337, ____, 56 Cal. Rptr. 897, ____ (1967).

The staff is of the view that subdivision (b) of Section 1464 should be retained with appropriate reference in the Comment to some of the case law exceptions to the rule of conclusiveness. Since Section 1460 will provide for notice to the ward if over the age of 12 or to the conservatee, it would appear that constitutional requirements will have been met.

The Commission also suggested that the staff look at Section 931 of the Probate Code (order settling account, when final, is conclusive against all persons interested in the estate except "persons under legal disability") for its possible application to Section 1464. Since in the context of guardianship and conservatorship, the ward or conservatee is the only person constitutionally entitled to notice, the exception to the finality provision for persons under legal disability appears inappropriate for Section 1464.

§ 1478. Effect on nomination by adult of a guardian

The first sentence of proposed Section 1478 (nomination of guardian made by adult under prior law is deemed to be a nomination of a conservator) implements a Commission decision made at the September meeting. The second sentence of the section (rule applies whether or not the

written instrument making the nomination was executed in the same manner as a witnessed will) has been added by the staff. Under prior law (Section 1463), an adult's nomination of a guardian must be made in a written instrument executed "in the same manner as the execution of a witnessed will." Under the Commission's recommended legislation (proposed Section 1810), an adult may nominate a conservator for himself or herself in a written instrument not requiring the formality of a witnessed will. The second sentence of proposed Section 1478 (section applies whether or not instrument executed in same manner as witnessed will) will give effect to an instrument which would have been defective under prior law.

§ 1510. Petition for appointment or confirmation

The staff has made several changes to proposed Section 1510 since it was last seen by the Commission. First, the staff proposes to retain the term "residence addresses" in subdivision (c). Second, the staff has added the "person having the care of the proposed ward" to those who must be named in the petition. This tracks with proposed Section 1511 (persons entitled to notice) and is consistent with the Judicial Council form petition. Third, the staff has added the spouse of the proposed ward in the case of a guardianship of the estate to those who must be named in the petition.

§ 1511. Notice of hearing

In proposed Section 1511, the staff has lowered the age at which the proposed ward becomes entitled to notice from 14 to 12 to correspond with Section 416.60 of the Code of Civil Procedure (summons served on minor by delivering to specified persons and to minor if at least 12 years of age). In September, the Commission decided to require notice by mail or in such manner as the court may direct on the minor if below the age of 14, with the object of thereby giving notice to those having the care of the minor. The staff has deleted the requirement of notice to the minor if less than 12 years of age in view of the requirement in Section 1511 of notice to the parents and to the person having the care of the proposed ward.

In subdivision (b) of Section 1511, the staff has changed "[n]otice shall be given" to "notice shall be served" and has added an express

reference to mail service (Code Civ. Proc. § 415.30) as a permissible method.

In subdivision (c), the spouse of the proposed ward is added as a person entitled to notice.

§ 1540. Application of article

In September, the Commission made the following change to proposed Section 1540: "This article does not apply in any ~~of the following cases~~ case in which". The staff is of the view that the section in this form may not pass the scrutiny of the Legislative Counsel and is ambiguous. See Legislative Counsel of California, Legislative Drafting Manual 33 (1975). The staff has restored the stricken language (above) and has inserted the word "[w]here" at the beginning of each subdivision of Section 1540.

§ 1811. Nomination by certain relatives of proposed conservatee

Proposed Section 1811 has been drafted by the staff in response to the Commission decision at the September meeting to make clear in the recommended legislation that a nomination of a person to serve as conservator as contemplated by existing Section 1753, when made by a spouse or parent of the proposed conservatee, may be made in a signed writing which will survive the death of the spouse or parent appointing.

§ 1821. Contents of petition

Proposed Section 1821 requires that the petition set forth the residence (not mailing) addresses of the spouse and specified relatives. See discussion under Section 1407 above.

§ 1853. Failure to locate conservatee; termination of conservatorship on failure to produce conservatee

The staff recommends the following changes to proposed Section 1853 as last seen by the Commission:

1853. (a) If the court investigator is unable to locate the conservatee, the court shall order the court investigator to serve notice upon the conservator to produce the conservatee conservator, in the manner provided in Section 415.10 of the Code of Civil Procedure or in such other manner as is ordered by the court, to make the conservatee available for the purposes of Section 1851 to the court investigator within 15 days of the receipt of such notice or to show cause why the conservatorship should not be terminated.

(b) If the conservatee is not ~~produced~~ made available within the time prescribed and no good cause is shown for not ~~producing the conservatee, doing so,~~ the court shall terminate the conservatorship. If the conservatorship is of the estate, the court shall order the conservator to file an accounting.

This recommended change will make the section more flexible without impairing its efficacy, notwithstanding that it is part of the 1976 Lanterman legislation.

§ 2103. Several guardians or conservators

The requirement in proposed Section 2103 that, when several guardians or conservators are appointed for the same ward or conservatee, "[t]hey shall act as a unit by a majority" was added pursuant to the Commission's decision at the September meeting. The staff recommends the addition of the language appearing in paragraph (3) of subdivision (b) to provide that a "guardian or conservator who does not join in or consent to the acts of the majority is not liable for such acts." This is generally consistent with the rule concerning joint trustees (Civil Code § 2239) and joint executors or administrators (Prob. Code § 920). Civil Code Section 2239 provides: "A trustee is responsible for the wrongful acts of a co-trustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others." Probate Code Section 920 provides in part that an executor or administrator "is not accountable for any debts due to the decedent which remain uncollected without his fault, nor is he liable for the act or negligence of a coexecutor or coadministrator, except for collusion or gross negligence." This is also the rule of the Uniform Probate Code (Section 5-429), which provides in part that the "conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault."

§ 2201. Venue for residents

Proposed Section 2201 is based in part on existing Section 1440, which provides for guardianship venue in "the county in which a minor resides or is temporarily domiciled" The Commission viewed the concept of "temporary" domicile as self-contradictory since domicile involves presence plus intent to remain. See 12 Cal. Jur.3d Conflict of

Laws § 25, at 507 (1974). The Commission requested that the staff determine whether this terminology has been given any special meaning in the context of Section 1440. In Guardianship of Smith, 147 Cal. App.2d 686, 689, 306 P.2d 86, ___ (1957), it was said: "Section 1440 of the Probate Code confers jurisdiction to appoint a guardian upon the county where the minor 'resides or is temporarily domiciled.' In spite of this language, the California cases have held that courts in this state have jurisdiction to appoint a guardian whenever the best interests of the minor require it, and certainly where the child is physically present, regardless of where he may be technically domiciled."

Proposed Section 2201 expands venue by allowing the proceedings to take place "in such other county as may be for the best interests of the proposed ward or proposed conservatee." Also, the Smith case, supra, is referred to in the Comment. There thus appears to be ample flexibility under the proposed section, and deletion of the word "temporary" will eliminate the anachronism.

Subdivision (b) (in case of proceedings in more than one county, court first making an order appointing guardian or conservator has exclusive jurisdiction) has been added by the staff. For a discussion of this provision, see Section 2202, infra.

The Commission also requested the staff to consider the possibility of codifying the rule of Grinbaum v. Superior Court, 192 Cal. 566, 221 P. 651 (1923) (no jurisdiction to appoint guardian of the person for one not present in California), although Commission sentiment was generally not to do so. In the Grinbaum case, Julie Grinbaum, the proposed ward, had been a long-time resident of San Francisco but was, at the commencement of the guardianship proceeding, in a mental institution in Switzerland. Notice of the proceeding was given to the Mercantile Trust Company (the existing guardian of the estate) and by posting. No notice was given to the proposed ward. The court's holding that there was no jurisdiction rested both on the proposition that, in the case of a guardianship of the person, the proposed ward "shall be within the jurisdiction of the court," and on the proposition that "personal service of notice . . . shall be given to such person . . ." 192 Cal. at 568.

The Rules of Court of the various courts have codified the rule of the Grinbaum case. Rule 17.03, Los Angeles County Probate Policy Manual, provides:

The court has jurisdiction to appoint a guardian of the person and estate, or of the person or estate, of a minor or incompetent person who resides out of the state [Probate Code, Section 1570]. However, the court cannot appoint a guardian of the person unless the minor or incompetent is actually within the state of California. [Grinbaum v. Superior Court, 192 Cal. 566 (1923).]

Substantially similar provisions are commonly found in the local court rules. See, e.g., Contra Costa Rule 702, Fresno Rule 812, Marin Rule 1126, Orange Rule 9.16, San Bernardino Rule 901, San Francisco Rule 16.24, Stanislaus Rule 1402.

The staff believes that this matter is of sufficient significance to be covered by an express statutory provision rather than requiring the practitioner to refer to the local court rules. Accordingly, we recommend that the substance of the second sentence of the LA rule set out above be included in the new statute and be applicable to both guardians of the person and conservators of the person.

§ 2202. Venue for nonresidents

In September, the Commission approved subdivision (a) of proposed Section 2202 but requested the staff to give further consideration to subdivision (b) (if guardianship or conservatorship proceedings for a nonresident are instituted in more than one county, the court in which the guardianship or conservatorship is "first granted" has exclusive jurisdiction). The Commission requested the staff to consider whether exclusive jurisdiction should be based on first filing, first service, or first granting.

To base exclusive jurisdiction on first filing seems inadvisable since the petitioner may file and then delay bringing the matter to a hearing. To base it on first service has some attraction in the conservatorship context but, in the context of a minor's guardianship, the statute provides for "notice" rather than "service," and notice may be dispensed with in some cases. See Prob. Code § 1441 (to be superseded by proposed Section 1511).

The staff has thus continued the provision basing exclusive jurisdiction on first granting in proposed Section 2202 (nonresident) and has

added a similar provision to proposed Section 2201 (resident). The provision continues the last sentence of existing Section 1570 (nonresident ward). The provision is not immune to the kind of abuse illustrated in Guardianship of Vierra, 115 Cal. App.2d 869, 253 P.2d 55 (1953). In the Vierra case, a maternal uncle of an eight-year-old boy petitioned in Mendocino County to be appointed as guardian. The boy's father obtained a continuance of the hearing, and then filed a petition and was appointed guardian in Santa Clara County. The case was decided on other grounds, but these facts could well be repeated.

In proposed Sections 2201 and 2202, first granting includes appointment of a temporary guardian or conservator as previously suggested by the Commission.

§ 2212. Contents of petition

In proposed Section 2212, the term "residence" address has been restored by the staff. See the discussion under Section 1407 supra.

§ 2213. Notice of hearing

The Commission requested the staff to consider whether notice by mail on a petition to transfer the proceedings to another county as provided by proposed Section 2213 (existing Sections 1603 and 2053) is sufficient, or whether personal service should be required because of the potentially drastic effect of transfer. Since notice by mail is the usual manner of giving notice in guardianship and conservatorship proceedings, the staff is of the view that notice by mail should be preserved in Section 2213.

§ 2250. Appointment [of temporary guardian or conservator]

When last seen by the Commission, proposed Section 2250 provided for appointment of a temporary guardian or conservator of the person, of the estate, or of both. This would have been an extension of existing guardianship law since, at present, a temporary ("special") guardian may be appointed for the estate only. After further discussion, the staff has decided to recommend that existing law not be extended. There is a provision in the recommended legislation for an order for temporary custody of a minor (proposed Section 1512, continuing existing Section 1442), and to provide for a temporary guardian of the person of a minor

would be duplicative.

In proposed Section 2250, the age at which notice must be given to the minor unless the court dispenses with notice is lowered from 14 to 12.

§ 2252. Powers and duties

Proposed Section 2252 is revised in view of the changes made to proposed Section 2250 supra so that the powers and duties relating to "temporary care, maintenance, and support" apply to a temporary conservator of the person but not to a temporary guardian.

§ 2404. Additional conditions in order of appointment

Proposed Section 2404 (based on existing Section 1512) allows the court, with consent of the guardian or conservator, to insert in the order of appointment "conditions not otherwise obligatory" providing for the care, treatment, education, and welfare of the ward or conservatee. The Commission requested that the staff determine whether this language has been explained or interpreted in appellate decisions. In *Guardianship of Reynolds*, 60 Cal. App.2d 669, 141 P.2d 498 (1943), the court rejected the argument that the language meant that the court could not award visitation rights without consent of the guardian, holding that the court had inherent power to do so. No other California case interpreting this language has been found.

Powers and Duties of Guardian or Conservator of the Estate

Chapter 6 (powers and duties of guardian or conservator of estate) is not included in the staff draft pending consideration of Memorandum 77-82. However, Commissioner Stanton requested that the staff research the question of whether a conservator has the authority to maintain a bankruptcy proceeding on behalf of the conservatee. In 1 *Collier on Bankruptcy* para. 4.10 (1975), it is said:

It is undoubted that an insane or incompetent person may not, save in an interval of competency, himself file a voluntary petition in bankruptcy. On the other hand, the question as to whether or not a guardian of such a person may file a petition in his behalf has been open to some dispute. Earlier cases held that there was no jurisdiction to make the adjudication. The better authority, however, is that a properly authorized guardian may file such a petition

§ 2643. Account of dead or incompetent guardian or conservator

The Commission expressed some concern about the situation where the guardian or conservator dies, the account is presented by the executor or administrator of the deceased guardian or conservator, and it appears that the deceased guardian or conservator should be surcharged. Ordinarily, creditor's claims must be filed within four months of first publication of notice. See Prob. Code § 700; DeMeo, Creditors' Claims, in 1 California Decedent Estate Administration § 13.6, at 465 (Cal. Cont. Ed. Bar 1971).

If the guardian or conservator dies after presentment and approval of the account, claims arising out of the accounting period must be filed with the estate of the deceased guardian or conservator within the time prescribed or the claim will be barred. See Hornaday v. Hornaday, 95 Cal. App.2d 384, 391, 213 P.2d 91, ___ (1949).

Where the account has not yet been presented, however, it appears that a claim with the estate is unnecessary. Although the question has not been addressed in the guardianship-conservatorship context, several cases have arisen where an executor or administrator has died and the personal representative of the deceased executor or administrator has been compelled to account. See 25 Cal. Jur.3d Decedents' Estates § 650, at 99-100 (1976). The applicable code section is closely similar to the guardianship and conservatorship sections. Compare Prob. Code § 932 with Prob. Code §§ 1555, 1907. It has been uniformly held that the personal representative need not file a claim with the estate of the deceased executor or administrator. See, e.g., Estate of Smith, 123 Cal. App.2d 844, 847, 268 P.2d 53, ___ (1954); 25 Cal. Jur.3d supra.

§ 2700. Request for special notice

The ward or conservatee is not presently listed among those who may request special notice. Should the ward or conservatee be included? It should be noted that, under the general notice provision (proposed Section 1400), the court may for good cause dispense with notice otherwise required by the provision to be given to the ward or conservatee. The court may not dispense with notice when a request for special notice has been made.

§ 2750. Appealable orders

The Commission was concerned that failure to appeal from an appealable order might give the order greater conclusive effect than it would have if the order were not appealable. However, in *Estate of Eaton*, 38 Cal. App.2d 180, 100 P.2d 813 (1940), the superior court in a guardianship proceeding made orders settling the current account of the guardian and authorized and directed the payment of attorneys' fees. Under Probate Code Section 1630, these were appealable orders. However, no appeal was taken. Some months later, the guardian filed a final account seeking credit, among other things, for the payment of the fees previously approved. The trial court refused to hear objections to the credit sought for fees, holding that the previous orders had become final and were *res judicata*. The appellate court reversed, saying:

. . . it is only when the judgment or decree becomes final that the matter is res judicata. There can be but one final judgment or its equivalent in any proceeding. Such intermediate orders, sought to be relied upon as final, are as a matter of law not final

§§ 2800-2806 (transfer of proceedings out of state)

The Commission had reservations about the provisions for transfer of a California guardianship or conservatorship proceeding to another state. Since there must already be a proceeding pending in the foreign state (see proposed Section 2802(f) and existing Section 2052(6)), it appears that this is really a transfer of assets and not a transfer of the proceeding. See *W. Johnstone & G. Zillgitt, California Conservatorships* § 2.34, at 49 (Cal. Cont. Ed. Car 1968) ("[a]lthough the statute directs the California clerk to send the papers, some courts decline to do so, and instead direct the conservator to send the assets of the conservatorship estate to the foreign fiduciary").

The staff has not rewritten the chapter, however, and it remains a policy question whether this should be done.

§ 3053. Order for payment of fee to attorney

Proposed Section 3053 continues the substance of existing Section 1511. The section was omitted from the previous draft because the substance of the section was, in the staff's view, included within proposed Section 3300(a) (based on existing Section 1510). At the suggestion of

Mr. Elmore, however, the staff has restored the section so there will be no question of the court's authority to order the payment of an attorney's fee direct to the attorney.

§§ 3100-3113 (small estates of minors)

The Commission considered the possibility of increasing the \$20,000 upper limit for the application of Article 2 (proposed Sections 3110-3113) of Chapter 2 of Part 6 but requested the staff to furnish some historical background concerning the arrival at that figure before making a decision.

Proposed Sections 3110 through 3113 continue the substance of existing Section 1430.5 except that the minimum amount has, pursuant to Commission decision, been raised from \$2,000 to \$5,000. Section 1430.5 was enacted in 1968, at which time the upper limit figure was \$10,000. 1968 Cal. Stats., Ch. 327. The \$10,000 figure was increased to the present \$20,000 in 1973. 1973 Cal. Stats., Ch. 400.

It should also be noted that \$20,000 is a breaking point under proposed Sections 3310-3314 (increased from the existing \$10,000), above which the court's discretion with respect to disposition of the money becomes more narrowly circumscribed.

The Commission also requested the staff to consider adding a provision to proposed Section 3111 to exclude from the computation of the \$20,000 upper limit any money which has been left to the minor subject to a testamentary guardianship. For the purposes of supervision and appropriate protection of the minor's assets, the staff is of the view that money subject to testamentary guardianship should not be excluded. However, a more serious question is raised whether violence will be done to the wishes of the testator by authorizing the court to order the termination of a testamentary guardianship under proposed Section 3113(a) and to order the deposit or investment of the money under proposed Section 3113(b). Under the present draft, this is possible.

§ 3200. Persons having right to compromise minor's claim

The Commission requested the staff to consider whether, in the situation where the minor's parents are living separate and apart, the custodial parent should be required to the noncustodial parent before

court approval of a minor's compromise is obtained. The staff is of the view that this would serve no useful function and would only cause mischief.

Proposed Section 3200 is in the form it was when last seen by the Commission except that the requirement that the minor's claim not be the subject of pending litigation has been added at the suggestion of Garrett Elmore. As noted in the Comment, if the claim is the subject of pending litigation, the minor must appear in the action either by a guardian of the estate or by a guardian ad litem and, in such case, Section 372 of the Code of Civil Procedure provides for compromise of the claim.

§ 3201. Approval by court

The revision made to proposed Section 3201 since last seen by the Commission entails modification of the venue rules for a petition for compromise of a minor's claim. Under existing law (Section 1431), the petition is filed in the county where the minor resides, whether or not there is a pending guardianship. As revised, proposed Section 3201 provides that, where there is a pending guardianship of the estate, the petition for compromise shall be filed in the county where the guardianship is pending.

§ 3202. Payment or delivery of money or other property

Since last seen by the Commission, the introductory language to subdivision (a) of proposed Section 3202 ("Unless the money or other property is to be paid or delivered to an existing guardian of the estate") has been added for clarity. See the Comment to proposed Section 3202.

§ 3300. Order directing payment of expenses, costs, and fees

Since last seen by the Commission, proposed Section 3300 has been revised to add the reference in subdivision (a) to a "covenant not to enforce judgment" and to add to subdivision (b) the first sentence and the first portion of the second sentence to make clear that, where there is an existing guardianship or conservatorship of the estate, the money or other property is paid to the guardian or conservator.

§ 3310. Application of article

Since last seen by the Commission, the introductory clause of proposed Section 3310 has been revised to make clear that the article applies where there is not an existing guardianship or conservatorship of the estate. This puts in proposed Section 3310 provisions which were previously contained in proposed Sections 3311 and 3312.

Possible reconciliation of inconsistency between §§ 3110-3113 and
§§ 3310-3314

Proposed Sections 3110 to 3113 are based on existing Section 1430.5 and are limited to minor's estates. Under the proposed sections, if the minor's estate value is between \$5,000 and \$20,000, the court has a wide range of options (see proposed Section 3113); if the value is more than \$20,000, the sections do not apply, and a guardian of the minor's estate must be appointed.

Proposed Sections 3310 to 3314 are based on existing Section 1510 and apply to money or other property to be paid to a minor or incompetent pursuant to a compromise or judgment. Under these sections as proposed, if the money or property value does not exceed \$20,000, the court has a wide range of options (see proposed Section 3311); if more than \$20,000, however, the court may nonetheless order that the money be deposited in specified institutions as an alternative to guardianship or conservatorship. It would appear questionable to confine this authority to money which is paid pursuant to a compromise or judgment. Should this authority be broadened to apply to money of a minor or incompetent, from whatever source received?

Civil Code § 4600

The staff recommends that the proposed amendments to Civil Code Section 4600 be included in the conforming revisions rather than in the basic recommendation. The conforming revisions will be presented to the Commission for review at a later meeting.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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Tentatively Approved - Sept. 1977

The Commission's recommendation would be effectuated by enactment of the following measures:

An act to add Division 4 (commencing with Section 1400) to, and to repeal Division 4 (commencing with Section 1400) and Division 5 (commencing with Section 1701) of, the Probate Code, relating to guardianship, conservatorship, and other protective proceedings.

The people of the State of California do enact as follows:

968/877

Tentatively Approved - Sept. 1977

PROBATE CODE--GENERAL PROVISIONS

Probate Code § 6 (added). Construction of code

SECTION 1. Section 6 is added to the Probate Code, to read:

6. Unless the provision or context otherwise requires, the following general provisions and rules of construction govern the construction of this code.

Comment. Section 6 is a standard provision in various California codes. E.g., Evid. Code § 4; Veh. Code § 6.

18/499

Tentatively Approved - Sept. 1977

Probate Code § 7 (added). References to statutes

SEC. 2. Section 7 is added to the Probate Code, to read:

7. Whenever any reference is made to any portion of this code or to any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

Comment. Section 7 is a standard provision in various California codes. E.g., Evid. Code § 6; Veh. Code § 10.

18/526

Tentatively Approved - Sept. 1977

Probate Code § 8 (added). "Division," "part," "chapter," "article,"
"section," "subdivision," and "paragraph"

SEC. 3. Section 8 is added to the Probate Code, to read:

8. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the part in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

Comment. Section 8 is similar to Evidence Code Section 7.

21/975

Tentatively Approved - Sept. 1977

Probate Code § 9 (added). Tenses

SEC. 4. Section 9 is added to the Probate Code, to read:

9. The present tense includes the past and future tenses; and the future, the present.

Comment. Section 9 is a standard provision in various California codes. E.g., Evid. Code § 8; Veh. Code § 12.

21/976

Tentatively Approved - Sept. 1977

Probate Code § 10 (added). Construction of singular and plural

SEC. 5. Section 10 is added to the Probate Code, to read:

10. The singular number includes the plural; and the plural, the singular.

Comment. Section 10 is a standard provision in various California codes. E.g., Evid. Code § 10; Veh. Code § 14.

21/977
Tentatively Approved - Sept. 1977

Probate Code § 11 (added). Constitutionality

SEC. 6. Section 11 is added to the Probate Code, to read:

11. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are severable.

Comment. Section 11 is the same in substance as Section 3 of the Evidence Code and Section 1108 of the Commercial Code.

405/198
Tentatively Approved - Sept. 1977

Probate Code §§ 1400-1700 (repealed). Guardian and ward

SEC. 7. Division 4 (commencing with Section 1400) of the Probate Code is repealed.

Comment. Former Division 4, Guardian and Ward (former Sections 1400-1700), is replaced by new Division 4 (Guardianship and Conservatorship). The disposition of each repealed section of the former law is indicated in the Comment to the repealed section. See Appendix to Recommendation Relating to Guardianship-Conservatorship Revision, 14 Cal. L. Revision Comm'n Reports 0000 (1977).

405/199
Tentatively Approved - Sept. 1977

Probate Code §§ 1701-2207 (repealed). Conservatorship

SEC. 8. Division 5 (commencing with Section 1701) of the Probate Code is repealed.

Comment. Former Division 5, Conservatorship (former Sections 1701-2207), is replaced by new Division 4 (Guardianship and Conservatorship). The disposition of each repealed section of the former law is indicated in the Comment to the repealed section. See Appendix to Recommendation Relating to Guardianship-Conservatorship Revision, 14 Cal. L. Revision Comm'n Reports 0000 (1977).

404/797

Tentatively Approved - Sept. 1977

Probate Code §§ 1400-3603 (added). Guardianship, conservatorship, and other protective proceedings

SEC. 9. Division 4 (commencing with Section 1400) is added to the Probate Code, to read:

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

PART 1. DEFINITIONS AND GENERAL PROVISIONS

CHAPTER 1. DEFINITIONS

17/023

Tentatively Approved - Sept. 1977

§ 1400. Application of definitions

1400. Unless the context otherwise requires, the words and phrases defined in this chapter govern the construction of this division.

Comment. Section 1400 is new.

17/024

Tentatively Approved - Sept. 1977

§ 1403. Absentee

1403. "Absentee" means either of the following:

(a) A member of a uniformed service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned or a delegate to be in "missing status" as defined therein.

(b) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned or a delegate to be in "missing status" as defined therein.

Comment. Section 1403 continues the definition of "absentee" contained in former Section 1751.5.

18/481

Tentatively Approved - Sept. 1977

§ 1406. Account in an insured savings and loan association

1406. "Account in an insured savings and loan association" means any of the following:

(a) Shares issued by a federal savings and loan association.

(b) Investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act.

(c) Shares issued by a state-chartered building and loan association or savings and loan association doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

Comment. Section 1406 continues the substance of the fourth paragraph of former Section 1510.

21/978

Tentatively Approved - Sept. 1977

§ 1407. Address

1407. "Address" means mailing address.

Comment. Section 1407 is new.

Note. The staff recommends that this definition be deleted. It serves no useful purpose.

404/943

Tentatively Approved - Sept. 1977

§ 1409. Bank

1409. "Bank" means a bank in this state.

Comment. Section 1409 is new and avoids the need to repeat "in this state" wherever "bank" is used in this division.

21/979

Tentatively Approved in Substance - Sept. 1977

§ 1412. Conservator of the estate

1412. "Conservator of the estate" includes a conservator of the person and estate and "conservatorship of the estate" includes conservatorship of the person and estate and as so used the terms refer to those aspects of a conservatorship of the person and estate which relate to the estate.

Comment. Section 1412 is new and obviates the need, when referring to a conservator of the estate, to refer to a conservator of the "estate or of the person and estate" as was sometimes done under prior law. See, e.g., former Sections 1802, 1852, 1853, 1901, 2204.

968/606

Tentatively Approved in Substance - Sept. 1977

§ 1415. Conservator of the person

1415. "Conservator of the person" includes a conservator of the person and estate and "conservatorship of the person" includes conservatorship of the person and estate and as so used the terms refer to those aspects of a conservatorship of the person and estate which relate to the person.

Comment. Section 1415 is new. See the Comment to Section 1412.

Under Section 1400, this definition does not apply if the context otherwise requires. For an example of where the context otherwise requires, see Section 2322.

404/942

Tentatively Approved - Sept. 1977

§ 1418. Court

1418. In the case of a guardianship or conservatorship proceeding, "court" means the court in which the guardianship or conservatorship proceeding is pending.

Comment. Section 1418 is new.

404/290

§ 1421. [Reserved]

27/820

Tentatively Approved in Substance - Sept. 1977

§ 1424. Guardian of the estate

1424. "Guardian of the estate" includes a guardian of the person and estate and "guardianship of the estate" includes guardianship of the person and estate and when so used the terms refer to those aspects of a guardianship of the person and estate which relate to the estate.

Comment. Section 1424 is new. See the Comment to Section 1412.

28/292

Tentatively Approved in Substance - Sept. 1977

§ 1427. Guardian of the person

1427. "Guardian of the person" includes a guardian of the person and estate and "guardianship of the person" includes guardianship of the person and estate and when so used the terms refer to those aspects of a guardianship of the person and estate which relate to the person.

Comment. Section 1427 is new. See the Comments to Sections 1412 and 1415.

404/953

Tentatively Approved - Sept. 1977

§ 1430. Secretary concerned

1430. "Secretary concerned" has the same meaning as defined in United States Code, Title 37, Section 101.

Comment. Section 1430 continues the substance of subdivision (b) of former Section 1751.5.

18/531

Tentatively Approved - Sept. 1977

§ 1433. Shares of an insured credit union

1433. "Shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

Comment. Section 1433 continues the substance of the fifth paragraph of former Section 1510.

18/532

Tentatively Approved - Sept. 1977

§ 1436. Single-premium deferred annuity

1436. "Single-premium deferred annuity" means an annuity offered by an admitted life insurer for the payment of a one-time lump-sum premium and for which the insurer neither assesses any initial charges or administrative fees against the premium paid nor exacts nor assesses any penalty for withdrawal of any funds by the annuitant after a period of five years.

Comment. Section 1436 continues the substance of the sixth paragraph of former Section 1510.

404/954

Tentatively Approved - Sept. 1977

§ 1439. Trust company

1439. "Trust company" means a trust company authorized to transact a trust business in this state.

Comment. Section 1439 is based on a portion of former Section 1405.1. The definition avoids the need to repeat the words "authorized to transact a trust business in this state" in various sections.

CHAPTER 2. GENERAL PROVISIONS§ 1450. Law governing guardianships and conservatorships

1450. Guardianships and conservatorships are governed by the provisions of this division. If no specific provision of this division is applicable, the provisions of Division 3 (commencing with Section 300) govern so far as they are applicable to like situations.

Comment. Section 1450 supersedes former Sections 1606 and 1702. The language conforms more closely to former Section 1702 than to former Section 1606. The language "except as provided in Section 1853 of this code" which was contained in former Section 1702 is not continued. This makes no substantive change since the effect of the former exception is continued by the language "[i]f no specific provision of this division is applicable."

§ 1451. Petitions, accounts, and inventories and appraisements to be verified

1451. Except as otherwise specifically provided, a petition, application, account, or inventory and appraisal filed under this division shall be verified.

Comment. Section 1451 is new. It establishes a general requirement that supersedes various provisions of the former guardianship and conservatorship statutes that required that petitions, applications, accounts, and inventories and appraisements be verified. For an exception to Section 1451, see Section 2643.

§ 1452. Setting petitions for hearing

1452. When a petition is filed with the clerk of the court pursuant to this division, the clerk shall set the petition for hearing.

Comment. Section 1452 is based on a portion of Section 1200, which was made applicable to guardianship and conservatorship proceedings by former Sections 1606 and 1702. Section 1452 supersedes comparable provisions in various sections of the former guardianship and conservatorship statutes and establishes a general requirement that the clerk of the court set petitions filed under this division for hearing. The

requirement of some provisions of the former statutes that petitions be set for hearing "by the court" has not been continued. Although ordinarily petitions will be heard by the court, in some cases the right to a jury trial exists unless waived. See, e.g., Sections 1827, 1863.

404/974

Tentatively Approved - Sept. 1977

§ 1453. Guardian ad litem

1453. The provisions of this division do not limit the power of a court to appoint a guardian ad litem to protect the interests of any minor or incompetent person.

Comment. Section 1453 continues the substance of former Section 1607, but the reference to "insane" persons and the former language "in an action or proceeding therein" have been omitted as unnecessary. For provisions relating to a guardian ad litem, see Civil Code Section 42 and Code of Civil Procedure Sections 372-373.5.

CHAPTER 3. NOTICE OF HEARING

§ 1460. Notice of hearing generally

1460. (a) Subject to Section 1461, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 10 days before the day of the hearing as provided in this section.

(b) The clerk of the court shall cause the notice of the hearing to be posted at the courthouse of the county where the proceedings are pending.

(c) The petitioner (which includes for the purposes of this section a person filing an account, report, or other paper) shall cause the notice of hearing to be mailed or personally delivered to each of the following persons (other than the petitioner or persons joining in the petition):

(1) The guardian or conservator.

(2) The ward if over the age of 12, or the conservatee, unless the court for good cause dispenses with such notice.

(3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, unless the court for good cause dispenses with such notice.

(d) Nothing in this section affects requirements for notice to a person who has requested special notice pursuant to Chapter 9 (commencing with Section 2700) of Part 4.

Comment. Section 1460 is based on portions of Section 1200 which under prior law was incorporated and made applicable to guardianship and conservatorship proceedings by various sections. Absent a request for special notice, the notice requirement under prior law apparently required notice only to the guardian or conservator. Under Section 1460, notice also is required to be given to the ward (if over the age of 12) or the conservatee and to the spouse of the ward or conservatee (if the ward or conservatee has a spouse) unless the court for good cause dispenses with such notice. Other persons may receive notice of certain specified matters by filing and serving a request for special notice under Section 2700.

The provision in Section 1200 for mailing of notice to the county seat when a mailing address is not known is not carried over into Section 1460; but, where the court determines that the notice otherwise required is insufficient under the particular circumstances, the court may require under subdivision (b) of Section 1461 that further or additional notice be given as the court requires.

The court may dispense with the notice required by paragraphs (2) and (3) of subdivision (c) where good cause is shown. This authority will permit the court to dispense with notice, for example, where the person specified to receive the notice is in such a mental or physical condition that giving the person notice would be useless or detrimental to the person or where the whereabouts of the person is unknown.

The court may for good cause shorten or lengthen the 10-day notice required by this section. Section 1462.

Subdivision (d) is included to make clear that the provisions of this section have no effect on the requirements for notice to a person who has requested special notice. Any notice required under Chapter 9 (commencing with Section 2700) of Part 4 is in addition to the notice required under this section.

Section 1460 does not deal with the effect of giving notice or the failure to receive notice. See Section 1464(b) and Comment thereto. Proof of the giving of notice shall be made at or before the hearing as provided in Section 1465.

Definitions:

Court, § 1418

404/991
Staff draft - Jan. 1978

§ 1461. Notice to Director of Mental Health or Director of Developmental Services

1461. (a) As used in this section, "director" means:

(1) The Director of Mental Health when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Mental Health.

(2) The Director of Developmental Services when the hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Developmental Services.

(b) Except as provided in subdivision (c), notice of the time and place of hearing on any petition, account, or other paper filed in the proceeding, and a copy of the petition, account, or other paper, shall

be mailed or delivered to the director at the director's office in Sacramento at least 15 days before the hearing if both of the following requirements are met:

(1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in or on leave from a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

(2) The petition, account, report, or other paper is filed under any one or more of the following provisions: Section 1510, 1820, 1861, 2211, 2405, 2504, or 2514; Article 4 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2593, 2620, or 3406.

(c) If the ward or conservatee has been discharged from the state hospital, the director, upon ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is not indebted to the state and waive the giving of further notices under this section. Upon the filing of the certificate of the director, compliance with this section thereafter is not required unless the certificate is revoked by the director and notice of the revocation is filed with the court.

(d) The statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services against the estate of the ward or conservatee for board, care, maintenance, or transportation with respect to an account that is settled without giving the notice required by this section.

Comment. Subdivision (b) of Section 1461 generalizes various provisions scattered throughout the former guardianship and conservatorship statutes. Subdivision (c) continues former Sections 1554.1 and 1906 but adds a provision for revoking the certificate and substitutes the "director" for the "Attorney General" as the one executing the certificate. Subdivision (c) supersedes former Section 1906. Subdivision (d) continues the last sentence of former Section 1554 and supersedes the broader provision of the last sentence of former Section 1905. For other provisions concerning notice to the Director of Mental Health or the Director of Developmental Services, see Sections 1543, 2611, and 2621.

Definitions:

Court, § 1418

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

1462. (a) Except for the notice required by Section 1511 or 1822, the court may for good cause shorten the time for giving any notice required by this division.

(b) Where the court determines that the notice otherwise required under this division is insufficient in the particular circumstances, the court may require that further or additional notice, including a longer period of notice, be given as the court requires.

Comment. Section 1462 supersedes the last clause of former Section 2001 (conservatorship). The provision of former Section 2001 authorizing the court to dispense with notice is not continued in Section 1462. Under former Section 2001, it appears that the court's authority to dispense with or shorten time for notice was limited to cases in which notice was not prescribed directly by the conservatorship provisions. See W. Johnstone & G. Zillgitt, *California Conservatorships* § 2.8, at 30 (Cal. Cont. Ed. Bar 1968). For provisions authorizing the court to dispense with notice in particular situations, see Sections 1460(c)(2)-(3), 2250, 2255(b), 2572(b), and 2653(b).

The provision in subdivision (a) authorizing the court to shorten the time for any notice required by this division is based on Section 1005 of the Code of Civil Procedure and broadens the court's limited authority under prior law. See W. Johnstone & G. Zillgitt, supra.

Subdivision (b) continues the last portion of the last clause of former Section 2001, with the addition of language adapted from Section 1204. The authority of the court to require a longer period of notice is made explicit. This authority was implied under former law. See W. Johnstone & G. Zillgitt, supra.

Definitions:

Court, § 1418

15643
Tentatively approved in substance - Sept. 1977

§ 1463. Form of notice

1463. (a) When notice of the time and place of hearing is required to be given by any provision of this division, the notice shall be in the form prescribed by the Judicial Council.

(b) Section 1201 does not apply to proceedings under this division.

Comment. Section 1463 is new. Subdivision (a) requires that the Judicial Council form of notice of hearing be used. Compare Section 1200.1 (estates of deceased persons). See also Cal. Const., Art. VI, § 6 (Judicial Council shall adopt rules for court administration, practice, and procedure); Govt. Code § 68511 (Judicial Council may prescribe by rule the form and content of forms used in the courts of this state).

Subdivision (b) constitutes an exception to Section 1450 which applies the provisions of Division 3 (commencing with Section 300) to proceedings under this division when no specific provision of this division is applicable. Section 1201 relates to additional notice by publication in case of a petition for leave to sell, or to give, an option to purchase a mining claim or real property worked as a mine, or for leave to borrow money or execute a mortgage or deed of trust or give other security, or for leave to execute a lease or sublease.

404/992

Tentatively Approved - Sept. 1977

§ 1464. Proof of giving of notice

1464. (a) Proof of the giving of notice under this division shall be made at or before the hearing by the following means, as applicable:

(1) Proof of notice, however given, may be made by testimonial evidence presented at the hearing.

(2) Proof of notice by personal delivery may be made by the affidavit of the person making such delivery showing the time, place, and manner of delivery, and the name of the person to whom delivery was made.

(3) Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

(4) Proof of posting may be made by the affidavit of the person who posted the notice.

(5) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order, and such order, when it becomes final, is conclusive on all persons.

Comment. Section 1464 is based on the last sentence of Section 1200, but subdivision (a) of Section 1464 makes clear that proof of notice is allowed at or before the hearing and specifies the manner of proof. Paragraph (1) is new, but continues existing practice. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.15, at 37 (Cal. Cont. Ed. Bar 1968). Paragraph (2) is adapted from subdivision (a) of Section 417.10 of the Code of Civil Procedure. Paragraph (3) continues existing practice. See W. Johnstone & G. Zillgitt, supra § 2.16, at 37. Paragraph (4) also continues existing practice. See W. Dorsey, Notice and Procedure, in 1 California Decedent Estate Administration § 20.12, at 785-86 (Cal. Cont. Ed. Bar 1971). Paragraph (5) is adapted from subdivision (b) of Section 417.10 of the Code of Civil Procedure. A declaration may be used in lieu of the affidavits required by this section in many instances. See Code Civ. Proc. § 2015.5.

Subdivision (b) is the same as the last portion of the last sentence of Section 1200. The case law has developed exceptions to the rule of conclusiveness stated in Section 1200 and duplicated in subdivision (b) of Section 1464. See, e.g., State v. Broderon, 247 Cal. App.2d 797, 56 Cal. Rptr. 58 (1967) (finality of decree not protected by notice given because of presence of extrinsic fraud). See also Estate of Clarke, 66 Cal.2d 142, 424 P.2d 337, 56 Cal. Rptr. 897 (1967); Estate of Reed, 259 Cal. App.2d 14, 66 Cal. Rptr. 193 (1968).

As to proof of giving notice in response to requests for special notice and the effect of the court's order, see Section 2703.

Definitions:

Court, § 1418

CHAPTER 4. TRANSITIONAL PROVISIONS

Note. This chapter is drafted on the assumption that the proposed legislation will be submitted to the 1979 legislative session and will become operative on July 1, 1980.

405/464
Tentatively Approved - Sept. 1977

§ 1470. Definitions

1470. As used in this chapter:

(a) "Operative date" means the date this division becomes operative pursuant to Section 1471.

(b) "Prior law" means the applicable law as in effect prior to the operative date.

Comment. Section 1470 is new. It is included to facilitate the drafting and amendment of sections included in this chapter.

405/466
Staff Draft

§ 1471. Operative date

1471. This division becomes operative on July 1, 1980.

Comment. Section 1471 defers the operative date of this division for six months in order to allow sufficient time for interested persons to become familiar with the new law and for the development of the necessary forms by the Judicial Council.

405/480
Tentatively Approved - Sept. 1977

§ 1472. Effect on existing guardianships and conservatorships generally

1472. Subject to Section 1476, a guardianship or conservatorship in existence under this code on the operative date continues in existence and is governed by this division.

Comment. Section 1472 states the general rule that the enactment of this division and the repeal of prior law governing guardianships and conservatorships does not affect the existence of guardianships and conservatorships formed under prior law. However, on and after the operative date such guardianships and conservatorships are no longer governed by prior law but by this division.

Definitions:

Operative date, § 1470

405/758

Tentatively Approved - Sept. 1977

§ 1473. Effect on bonds, security, and other obligations

1473. The bonds, security, and other obligations in effect immediately prior to the operative date shall continue to apply after the operative date just as if filed, issued, or incurred under this division after the operative date.

Comment. Section 1473 is consistent with the general rule stated in Section 1472.

Definitions:

Operative date, § 1470

405/759

Tentatively Approved - Sept. 1977

§ 1474. Appointments or confirmations made under prior law

1474. The changes made in prior law by this division after the operative date in the standards for appointment or confirmation of a guardian shall not affect the validity of any nomination, appointment, or confirmation made under prior law, but any appointment or confirmation after the operative date is governed by this division.

Comment. Section 1747 is consistent with the general rule stated in Section 1472.

Definitions:

Operative date, § 1470

Prior law, § 1470

405/760

Tentatively Approved - Sept. 1977

§ 1475. Pending actions and proceedings; actions arising under prior law

1475. Subject to Section 1476:

(a) Any action, cause of action, defense, accounting, or other proceeding instituted or maintained before the operative date shall be continued under this division, so far as applicable, and if no provision of this division is applicable, under the law in effect immediately prior to the operative date of this act, and for this limited purpose the prior law is continued in force and effect.

(b) If any right or remedy is abrogated or substantially curtailed by the provisions of this division after the operative date, the person entitled to such right or remedy shall have one year after the operative date in which to commence enforcement thereof under prior law.

Comment. Section 1475 is consistent with the general rule stated in Section 1472.

Definitions:

Operative date, § 1470

Prior law, § 1470

405/761

Tentatively Approved - Sept. 1977

§ 1476. Effect on guardianships of adults and married minors

1476. (a) A guardianship of an adult, or a guardianship of the person of a married minor, in existence under this code on the operative date shall be deemed to be a conservatorship and is governed by the provisions of this code applicable to conservatorships without application or order, whether or not the letters of guardianship or the title of the proceeding are amended as provided in this chapter.

(b) A conservatee subject to conservatorship described in subdivision (a) shall be deemed to have been judicially determined to lack legal capacity as provided in Section 1831 unless otherwise ordered by the court.

(c) The validity of transactions and acts of a guardian or conservator shall not be affected by a misdescription of the office, nor shall any judgment, decree, or order of the court be invalidated by any such misdescription.

Comment. Section 1476 continues in effect as conservatorships all guardianships for adults and for the person of married minors established under prior law. It preserves the effect of the creation of a guardianship under prior law, which renders the ward incapable of making a valid contract. *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-605, 275 P. 794, ____ (1929). Section 1831 permits the court to order that the conservatee lacks the power to enter into specified types of transactions or any transaction in excess of a specified amount. If the court removes entirely the disability imposed on the

conservatee by this section, the conservatee will have the limited power to contract provided by Section 2527. See Board of Regents State Univs. v. Davis, 14 Cal.3d 33, 41, 533 P.2d 1047, ___ (1975).

Definitions:

Operative date, § 1470

405/762

Tentatively Approved - Sept. 1977

§ 1477. Amendment of letters of existing guardianships

1477. Unless the court otherwise orders, the letters of guardianship in existence immediately preceding the operative date with respect to guardianships described in Section 1476 shall be amended at the time of the court's next biennial review as provided in Section 1850 to reflect that the conservatee lacks legal capacity to the extent provided in Section 40 of the Civil Code. Noncompliance with this section does not alter the effect of Section 1476 and gives rise to no penalty.

Comment. Section 1477 requires amendment of letters of conservatorship to indicate whether the conservatee (formerly a ward) lacks capacity. This requirement implements Section 1476.

Definitions:

Operative date, § 1470

404/935

Staff Draft

§ 1478. Effect on nomination by adult of a guardian

1478. If, under prior law, an adult has in a written instrument 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 was executed in the same manner as a witnessed will so long as the person executing the instrument had at that time sufficient capacity to form an intelligent preference.

Comment. Section 1478 ensures that a nomination of a guardian made under former Section 1463 will be given effect under the new law (Section 1810).

Under Section 1810, a conservator may be nominated in a written instrument whether or not the instrument is executed in the same manner as a witnessed will. The second sentence of Section 1478 applies the same standard to a written instrument executed under prior law and purporting to nominate a guardian, even though the instrument may not have met the stricter requirement of former Section 1463.

Definitions:

Prior law, § 1470

405/764
Tentatively Approved - Sept. 1977

§ 1479. References in statutes

1479. (a) When used in any statute of this state with reference to an adult or to the person of a married minor, "guardian" means the conservator of that adult or the conservator of the person in case of the married minor.

(b) Any reference in the statutes of this state to the term "absentee" or "secretary concerned" as defined in former Section 1751.5 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

(c) Any reference in the statutes of this state to the terms "account in an insured savings and loan association," "shares of an insured credit union," or "single-premium deferred annuity" as defined in former Section 1510 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

Comment. Section 1479 is intended to conform references made obsolete by the enactment of this division in cases where conforming changes were not made in the references through inadvertence.

405/765
Tentatively Approved - Sept. 1977

§ 1480. Rules of Judicial Council

1480. The Judicial Council may provide by rule for the orderly transition of pending proceedings on the operative date, including but not limited to amendment of the title of the proceedings and amendment of, or issuance of, letters of guardianship or conservatorship.

Comment. Section 1480 makes clear the authority of the Judicial Council to prescribe rules prior to the operative date for the orderly transition of pending proceedings on the operative date.

Definitions:

Operative date, § 1470

Tentatively Approved in Substance - Sept. 1977

PART 2. GUARDIANSHIP

CHAPTER 1. APPOINTMENT

Article 1. Appointment of Testamentary Guardian

§ 1500. Appointment of testamentary guardian by parent

1500. (a) Either parent of a minor child, living or likely to be born, may by will or by a signed writing appoint a guardian of the person of the child, or a guardian of the estate of the child, or both, to take effect upon the death of the appointing parent.

(b) Unless the other parent is dead or incapable of consent, the written consent of the other parent is required for an appointment under this section if that parent's consent would be required for an adoption of the child.

Comment. Section 1500 continues the substance of former Section 1403 but substitutes a broader provision authorizing a parent to appoint a testamentary guardian by a "signed writing" for the former narrower provision authorizing the appointment by deed. "Signed writing" includes but is broader than "deed." The word "general" which appeared before the word "guardian" in former Section 1403 has been omitted as unnecessary. For cases in which consent of a parent to adoption of a child is required, see Civil Code Sections 223-224. As to when the appointment becomes effective, see Section 1502. See also Sections 2103 (several guardians for one ward), 2104 (one guardian for several wards).

Tentatively Approved in Substance - Sept. 1977

§ 1501. Appointment of special testamentary guardian

1501. (a) A parent may by will or by a signed writing appoint a guardian for the property of any minor child, living or likely to be born, which the child may take from the parent by the will or by succession.

(b) Any person may by will appoint a guardian for any property of a minor, living or likely to be born, which the minor may take from such person by the will.

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

Comment. Subdivisions (a) and (b) of Section 1501 continue the substance of former Section 1402 but substitute a broader provision authorizing a parent to appoint a special testamentary guardian by a "signed writing" for the former narrower provision authorizing the appointment by deed. "Signed writing" includes but is broader than "deed." As to when the appointment becomes effective, see Section 1502. See also Sections 2103 (several guardians for one ward), 2104 (one guardian for several wards). Subdivision (c) is new and codifies the rule set forth in Guardianship of Joaquin, 168 Cal. App.2d 99, 335 P.2d 507 (1959).

The word "succession" in subdivision (a) of Section 1501 is synonymous with "descent"; it excludes those who take by gift or any form of contract. In re Welfer, 110 Cal. App.2d 262, 242 P.2d 655 (1952).

Where a parent attempts to appoint a general guardian of the person and estate of a child, as authorized by Section 1500, but the appointment does not satisfy the requirements of Section 1500 because the written consent of the other parent is required but not obtained, the appointment may nevertheless satisfy the requirements of Section 1501 and permit appointment of a guardian with respect to the property of the appointing parent that the child takes by will or succession from that parent. Guardianship of Joaquin, supra.

4253

Tentatively Approved - Sept. 1977

§ 1502. When appointment effective

1502. An appointment under this article is effective only if both of the following requirements are met:

(a) The appointment is confirmed by the court under Article 2 (commencing with Section 1510).

(b) The person appointed satisfies the requirements of Section 2300.

Comment. Section 1502 is new and makes clear that an appointment of a general or special testamentary guardian under this article is subject to court confirmation under Article 2. See the Comments to the sections in that article. The person appointed must also satisfy the requirements of Section 2300 (oath and, if required, bond). A testamentary guardian is not required to file a bond unless required by the court. See Section 2324.

Definitions:

Court, § 1418

Article 2. Court Appointment or Confirmation Generally

§ 1510. Petition for appointment or confirmation

1510. (a) A relative or other person on behalf of the minor, or the minor if 14 years of age or older, may file a petition for the appointment or confirmation of a guardian of the minor.

(b) The petition shall request that a guardian of the person or estate of the minor, or both, be appointed and shall state that such appointment is necessary or convenient.

(c) The petition shall set forth, so far as known to the petitioner, the names and residence addresses of all of the following:

- (1) The parents of the proposed ward.
- (2) The person having the care of the proposed ward.
- (3) The relatives of the proposed ward within the second degree.
- (4) In the case of a guardianship of the estate, the spouse of the proposed ward.

(d) If the proposed ward is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration.

Comment. Subdivision (a) of Section 1510 continues the substance of the second sentence of subdivision (a) of former Section 1440. In authorizing a petition for confirmation of a testamentary guardian appointed under Section 1500 or 1501, subdivision (a) continues the substance of the last sentence of former Section 1405.

The "necessary or convenient" standard of subdivision (b) is taken from the first sentence of subdivision (a) of former Section 1440.

Subdivision (c) is new and is drawn in part from the second sentence of former Section 1754 (conservatorship). This subdivision will facilitate compliance with the notice requirements of Section 1511. The subdivision continues existing guardianship practice except that the former practice is broadened to include relatives within the second degree who reside outside of California and the spouse of the minor.

(Note that a guardian of the person may not be appointed for a married minor. See Section 1515.) See Petition for Appointment of Guardian of Minor (Form Approved by the Judicial Council of California, effective January 1, 1976).

Subdivision (d) continues the substance of a portion of former Section 1461.3. Subdivision (e) is new, and is based on the penultimate sentence of former Section 1754 (conservatorship) and on former Section 1655 (Uniform Veterans' Guardianship Act).

A petition for appointment or confirmation of a guardian must be verified. See Section 1451. For additional requirements concerning the petition in cases of certain nonrelative guardianships, see Sections 1541 and 1542. See also Sections 2103 (several guardians for one ward), 2104 (one guardian for several wards). As to appointments to fill vacancies, see Section 2105.

Staff Draft

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§ 1511. Notice of hearing

1511. (a) Except as provided in subdivisions (f) and (g), notice of the time and place of the hearing on the petition for the appointment or confirmation of the appointment of a guardian shall be given at least 15 days before the hearing as provided in this section. The notice shall be accompanied by a copy of the petition.

(b) The notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, or in such manner as may be authorized by the court, on all of the following:

- (1) The proposed ward if 12 years of age or older.
- (2) The person having the care of the proposed ward.
- (3) The parents of the proposed ward.

(c) Notice shall be given by mail sent to their residence addresses stated in the petition, or in such manner as may be authorized by the court, to all of the following:

- (1) The spouse named in the petition.
- (2) The relatives named in the petition.

(d) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed or delivered as required by that section.

(e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed or delivered to the office of the Veterans Administration referred to in Section 2908.

(f) Unless the court orders otherwise, notice need not be given to any of the following:

(1) The parents or other relatives of a proposed ward who has been relinquished to a licensed adoption agency.

(2) The parents of a proposed ward who has been declared free from their custody and control.

(g) Notice need not be given to any person if the court so orders upon a determination that the whereabouts of the person is unknown or that for other good reason the person cannot with reasonable diligence be given the notice.

(h) Before the appointment of a guardian is made or confirmed, proof shall be made to the court that all persons entitled to notice under this section either:

(1) Have been given notice as required by this section; or

(2) Have not been given notice as required by this section because their whereabouts are unknown or because of some other good reason.

Comment. Section 1511 supersedes former Section 1441 and substantially broadens the notice required. Subdivisions (b) and (c) of Section 1511 retain the former requirement of notice to the parents and to the person having the care of the proposed ward but adds a requirement of notice to the proposed ward if 12 years of age or older and to the spouse of the proposed ward. The 12-years-of-age-or-older requirement for service of notice on the proposed ward is taken from Code of Civil Procedure Section 416.60 (service of summons on minor). The former requirement of notice to "such relatives of the minor residing in the state as the court or judge deems proper" is expanded by subdivision (c) of Section 1511 to require notice to all relatives of the proposed ward within the second degree (see Section 1510) outside of as well as within California. Subdivisions (d) and (e) are included to alert the practitioner to the need to give notice to the Director of Mental Health or the Director of Developmental Services and to the Veterans Administration in certain cases.

Subdivision (a) requires that notice be given at least 15 days before the hearing, and this time may not be shortened by the court. See Section 1461. If there is urgency, a temporary guardian may be appointed. See Section 2250. See also Section 1512 (order for temporary custody).

Subdivision (f) continues the last sentence of former Section 1441 with two changes. First, the former provision specified that notice "shall" not be given, whereas subdivision (f) provides that notice "need" not be given. Second, subdivision (f) authorizes the court to require that notice be given whereas the court had no comparable authority under the former provision.

Subdivisions (g) and (h) are based on the last portion of the second sentence of former Section 1441, and the provision for proof of notice is generalized to apply to all notices required by Section 1511.

Definitions:

Court, § 1418

4272

Tentatively Approved - Sept. 1977

§ 1512. Order for temporary custody

1512. (a) When it appears to the court or judge from a verified petition or from affidavits that the welfare of the minor will be imperiled if the minor is allowed to remain in the custody of the person then having the minor's care, the court or judge may make an order providing for the temporary custody of the minor until a hearing can be had on the petition.

(b) If there is reason to believe that the minor will be carried out of the jurisdiction of the court or will suffer some irreparable injury before the temporary custody order can be enforced, the court or judge may, at the time of making the temporary custody order, cause a warrant to be issued, reciting the facts and directed to the sheriff, coroner, or a constable of the county, commanding such officer (1) to take the minor from the custody of the person in whose care the minor then is and (2) to place the minor in custody in accordance with the order.

Comment. Section 1512 continues the substance of former Section 1442. Although this section appears to give the court somewhat broader authority than under the Family Law Act, former Section 1442 was held to apply in a custody proceeding between parents. *Titcomb v. Superior Court*, 220 Cal. 34, 29 P.2d 206 (1934).

Tentatively Approved - Sept. 1977

§ 1513. Investigation by probation officer or domestic relations investigator

1513. (a) The probation officer or domestic relations investigator in the county in which the petition for appointment of a guardian is pending shall make an investigation of each case whenever requested by a judge of the superior court. If a petition for guardianship is filed for a minor of two years of age or under and the person petitioning for appointment as guardian is not a relative of the minor, the court shall require the probation officer or domestic relations investigator to make an investigation.

(b) The officer making the investigation shall file with the court a written confidential report. The report may be considered by the court and shall be made available only to the person petitioning for appointment as guardian, or the attorney for such petitioner, at least 10 days before the hearing on the petition. The report may be received in evidence upon stipulation of the petitioner.

Comment. Subdivision (a) of Section 1513 continues the substance of former Section 1443 insofar as that subdivision related to a guardian for a minor except that "domestic relations investigator" has been added to Section 1513 to conform to Civil Code Section 4602. Subdivision (b) of Section 1513 is new and is based on the comparable provision of Civil Code Section 4602. See also Section 1544 (report in case of certain nonrelative guardianships).

Definitions:

Court, § 1418

Tentatively Approved - Sept. 1977

§ 1514. Appointment or confirmation of guardian

1514. (a) Upon hearing of the petition, if it appears necessary or convenient, the court may appoint or confirm a guardian of the person or estate of the minor or both.

(b) In appointing or confirming a guardian of the person, the court is governed by the provisions of Section 4600 of the Civil Code, relating to custody of a minor.

(c) The court shall confirm the appointment of a guardian made under Section 1500 insofar as the appointment relates to the guardianship of the estate unless the court determines that the appointee is unsuitable.

(d) The court shall confirm the appointment of a guardian of the estate made under Section 1501 unless the court determines that the appointee is unsuitable.

(e) Subject to subdivisions (c) and (d), in appointing a guardian of the estate, the court is to be guided by what appears to be in the best interest of the minor, taking into account the proposed guardian's ability to manage and to preserve the estate as well as the proposed guardian's concern for and interest in the welfare of the minor. If the minor is of sufficient age to form an intelligent preference, the court shall give due consideration to that preference in determining the question.

Comment. Subdivision (a) of Section 1514 continues the substance of the first sentence of subdivision (a) of former Section 1440 which apparently was made applicable to petitions for confirmation of a testamentary appointment by the last sentence of former Section 1405. The jurisdiction and venue provisions are found in Sections 2200-2215. Certain nonprofit charitable corporations may be appointed as guardians of the person or estate or both. See Section 2102. A corporation or association authorized to conduct the business of a trust company in this state may be appointed as a guardian of the estate but not as a guardian of the person. See Section 480. Other public offices or entities are also authorized to serve as a guardian. See Health & Saf. Code § 416 (Director of Developmental Services); Mil. & Vet. Code § 1046 (Veterans' Home of California); Welf. & Inst. Code § 8006 (public guardian). See also Sections 2103 (several guardians for one ward), 2104 (one guardian for several wards). As to appointments to fill vacancies, see Section 2105.

Subdivision (b) applies only to a guardian of the person of a minor. If a person is to be appointed as a guardian of the person and of the estate, this subdivision applies. See Section 1427. Proceedings for an adult in need of protective supervision may be brought pursuant to Part 3 (conservatorship). Subdivision (b) incorporates by reference Section 4600 of the Civil Code, which applies to any proceeding where there is at issue the custody of a minor child, including a guardianship proceeding. See, e.g., Guardianship of Marino, 30 Cal. App.3d 952, 106 Cal. Rptr. 655 (1973). Former Section 1406 permitted a minor over 14 years of age to nominate a guardian, but the court had considerable latitude in approving or disapproving the minor's nominee. See Guardianship of Kentera, 41 Cal.2d 639, 262 P.2d 317 (1953); Guardianship of

Rose, 171 Cal. App.2d 677, 340 P.2d 1045 (1959). Section 1510 preserves the standing of a minor 14 years of age or older to petition as a party in a guardianship proceeding for the appointment of his or her own guardian. Civil Code Section 4600 requires the court to consider and give due weight to the minor's preference.

Subdivisions (c) and (d) continue the portion of the last sentence of former Section 1405 that related to confirmation of a testamentary guardian of the estate of a minor. Prior law was not clear whether appointment of a testamentary guardian of the estate was binding on the court or was merely persuasive. See 3 W. Condee, California Probate Court Practice § 2029, at 151 (2d ed. 1964); Schlesinger, Testamentary Guardianships for Minors and Incompetents, in California Will Drafting § 10.10 (Cal. Cont. Ed. Bar 1965). Subdivisions (c) and (d) require confirmation of a testamentary guardian of the estate unless the court determines that the appointee is unsuitable. Subdivision (b) permits confirmation of a testamentary guardian of the person and estate of a minor in the court's discretion, as in the case of a judicial appointment; but, if the appointment is not confirmed as to the person, the appointee still is required to be confirmed as the guardian of the estate unless the court determines that the appointee is unfit.

Subdivision (e) provides the standards for appointing a general guardian of the estate of a minor. A general guardian may coexist with a special testamentary guardian of the estate appointed under Section 1501, with the latter controlling the property received from the person making the appointment. See Section 1501(c). However, no new general guardian may be appointed when an existing general guardian is serving unless the existing guardian is removed or the appointment is vacated. See Guardianship of Kimball, 80 Cal. App.2d 884, 182 P.2d 612 (1947). Subdivision (e) continues the first sentence of former Section 1406 insofar as it related to appointment of a general guardian of the estate of a minor.

Section 1514 substitutes the rule of Section 4600 and the general rule stated in subdivision (e) for the priorities and limitations stated in former Sections 1406-1409 and supersedes those sections.

Definitions:

Court, § 1418

4442

Tentatively Approved - Sept. 1977

§ 1515. No guardian of person for married minor

1515. (a) Notwithstanding any other provision of this part, no guardian of the person shall be appointed or confirmed for a minor who is married or whose marriage has been dissolved.

(b) Subdivision (a) does not apply in the case of a minor whose marriage has been adjudged a nullity.

Comment. Section 1515 supersedes former Section 1433, which precluded appointment of a guardian of the person of a married minor solely by reason of minority. If a married minor is in need of protective supervision of the person, a conservator of the person may be appointed under Part 3. Nothing in Section 1515 precludes the appointment or confirmation of a guardian of the estate of a married minor. See also Section 1600 (termination of guardianship of person when minor marries).

Definitions:

Guardian of the person, § 1427

4429

Article 3. Nonrelative Guardianships

Tentatively Approved in Substance - Sept. 1977

§ 1540. Application of article

1540. This article does not apply in any of the following cases:

(a) Where the petition is for guardianship of the estate exclusively.

(b) Where the petitioner is a relative of the proposed ward.

(c) Where the petitioner is one appointed as a guardian of the proposed ward under Section 1500.

(d) Where the Director of Developmental Services is appointed guardian pursuant to Article 7.5 (commencing with Section 416) of Division 1 of the Health and Safety Code.

Comment. Section 1540 is new. The section is drawn from the qualifications for application of subdivision (c) of former Section 1440 and from former Section 1440.3. Subdivision (c) of Section 1540 limits the exception for testamentary guardians to those appointed by a parent (with the written consent of the other parent if such other parent is capable of consenting) under Section 1500. The exception under former Section 1440 applied to any guardian appointed "by will," which would appear to have included a special testamentary guardian of the estate appointed by a parent or a nonparent under former Section 1402 (continued in Section 1501).

4431

Tentatively Approved - Sept. 1977

§ 1541. Additional contents of petition for guardianship

1541. In addition to the other required contents of the petition for appointment of a guardian, the petition shall include all of the following:

(a) A statement that, upon request by an agency referred to in Section 1544 for information relating to the investigation referred to in that section, the petitioner will promptly submit the information required.

(b) A disclosure of any petition for adoption of the minor who is the subject of the guardianship petition by the petitioner for guardianship regardless of when or where filed.

(c) A statement whether or not the petitioner's home is licensed as a foster family home.

Comment. Section 1541 continues the substance of the second sentence of subdivision (c) of former Section 1440. For cases in which this article does not apply, see Section 1540.

4434

Tentatively Approved - Sept. 1977

§ 1542. Amendment of guardianship petition if adoption petition filed

1542. If the petitioner files a petition for adoption of the minor of whom the petitioner is seeking guardianship after the guardianship petition is filed, the petitioner shall amend the guardianship petition to disclose that fact.

Comment. Section 1542 continues the substance of the second paragraph of subdivision (c) of former Section 1440. For cases in which this article does not apply, see Section 1540.

4436

Tentatively Approved - Sept. 1977

§ 1543. Delivery of copy of petition to Department of Developmental Services

1543. The petitioner shall mail or deliver a notice of the hearing and a copy of the petition to the Director of Developmental Services at the director's office in Sacramento at least 15 days before the hearing.

Comment. Section 1543 continues the substance of the first sentence of subdivision (c) of former Section 1440 except that the requirement that notice of the hearing be given has been added, "mail or deliver" has been substituted for "served," and the 15-day provision has been added. The provision of former Section 1440 requiring proof of service to be made to the court at the time of hearing has been omitted; this will permit proof of mailing or delivery to be filed with the court prior to the hearing. See Section 1464.

For cases in which this article does not apply, see Section 1540.

§ 1544. Report on suitability of guardian

1544. (a) If the petition as filed or as amended states that an adoption petition has been filed, a report with respect to the suitability of the petitioner for guardianship shall be filed with the court by the agency investigating the adoption. In other cases, the local agency to whom foster family home licensure has been delegated shall file a report with the court with respect to the petitioner of the same character required to be made with regard to an applicant for foster family home licensure.

(b) The report filed with the court pursuant to this section is confidential. The report may be considered by the court and shall be made available only to the person petitioning for appointment as guardian, or the attorney for such petitioner, at least 10 days before the hearing on the petition. The report may be received in evidence upon stipulation of the petitioner.

Comment. Subdivision (a) of Section 1544 is the same in substance as former Section 1440.1. Subdivision (b) supersedes former Section 1440.2 and is comparable to subdivision (b) of Section 1513 and is based on the comparable provision of Civil Code Section 4602. See also Section 1513 (investigation by probation officer or domestic relations investigator). For cases in which this article does not apply, see Section 1540.

Definitions:

Court, § 1418

CHAPTER 2. TERMINATION

Tentatively Approved - Sept. 1977

§ 1600. Majority, death, or marriage of ward

1600. (a) A guardianship of the person or estate or both terminates when the ward attains majority or dies.

(b) A guardianship of the person terminates when the ward marries.

Comment. Subdivision (a) of Section 1600 continues subdivisions (1) and (2) of former Section 1590, relating to termination of guardianship when the ward attains majority. The age of majority is 18. See Civil Code § 25. Subdivision (a) also codifies the rule that the death of the ward terminates the guardianship. See In re Estate of Kelley, 184 Cal. 448, 194 P. 4 (1920); In re Estate of Livermore, 132 Cal. 99, 64 P. 113 (1901). Subdivision (b) continues that portion of subdivision (1) of former Section 1590 relating to termination of the guardianship of the person when a minor marries. The court retains jurisdiction of the guardianship proceeding despite the termination of the guardianship. See Section 2641. See also Section 1515 (no guardian of person of married minor); Section 2626 (ward reaching majority may settle accounts with guardian).

Tentatively Approved - Sept. 1977

§ 1601. Termination by court order

1601. Upon petition of the guardian or ward and after such notice to the other as the court may require, the court may make an order terminating the guardianship if the court determines that it is in the ward's best interest to do so.

Comment. Section 1601 continues the first portion of subdivision (3) of former Section 1590 but deletes the provision relating to restoration to capacity under Chapter 5 since Chapter 5 is repealed. The standard for termination of the guardianship--that it is in the ward's best interest to do so--was not formerly specified in the statute. The court retains jurisdiction of the guardianship proceeding despite termination of the guardianship. See Section 2641.

Definitions:

Court, § 1418

PART 3. CONSERVATORSHIPCHAPTER 1. APPOINTMENTArticle 1. Persons for Whom Conservator May Be Appointed

Tentatively Approved - Sept. 1977

§ 1800. Conservatorships for adults or married minors

1800. If the other requirements of this chapter are satisfied, the court may appoint:

- (a) A conservator of the person or estate of an adult, or both.
- (b) A conservator of the person of a minor who is married or whose marriage has been dissolved.

Comment. Section 1800 is new and makes clear that conservatorships are authorized only for adults and for minors who are married or whose marriage has been dissolved. In the case of a minor who is married or whose marriage has been dissolved, a conservator of the person may be appointed if the requirements of this chapter are satisfied; a guardian of the estate of the minor may be appointed where necessary or convenient. See Sections 1514, 1515. In the case of a minor whose marriage has been adjudged a nullity, guardianship and not conservatorship is the appropriate protective proceeding of the person. See Section 1515(b).

Definitions:

Court, § 1418

Tentatively Approved in Substance - Sept. 1977

§ 1801. Showing required for appointment generally

1801. Subject to Section 1800:

(a) A conservator of the person may be appointed for a person who is unable properly to provide for his or her personal needs for physical health, food, clothing, or shelter.

(b) A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence. "Substantial inability" may not be proved solely by isolated incidents of negligence or improvidence.

(c) A conservator of the person and estate may be appointed for a person described in subdivisions (a) and (b).

Comment. Section 1801 continues the substance of a portion of former Section 1751. The portion of former Section 1751 that authorized the appointment of a conservator for an adult for whom a guardian could be appointed is superseded by subdivision (f) of Section 1821 and Section 1831.

29194

Tentatively Approved - Sept. 1977

§ 1802. Appointment upon request of proposed conservatee

1802. Subject to Section 1800, a conservator of the person or estate, or both, may be appointed for a person who voluntarily requests the appointment and who, to the satisfaction of the court, establishes good cause for the appointment.

Comment. Section 1802 continues the substance of a portion of former Section 1751. If the proposed conservatee is the petitioner, he or she may waive bond and, in such case, the court may in its discretion dispense with bond. Section 2321.

Definitions:

Court, § 1418

29195

Tentatively Approved - Sept. 1977

§ 1803. Proposed conservatee an "absentee"

1803. A conservator of the estate may be appointed for a person who is an absentee as defined in Section 1403.

Comment. Section 1803 continues a portion of former Section 1751. For special provisions applicable where the proposed conservatee is an absentee, see Article 4 (commencing with Section 1840).

Definitions:

Absentee, § 1403

29198

Article 2. Order of Preference for
Appointment of Conservator

Tentatively Approved - Sept. 1977

§ 1810. Nomination by proposed conservatee

1810. The proposed conservatee may nominate a conservator in the petition or in a written instrument executed either before or after the petition is filed if, at the time of signing the petition or written

instrument, the proposed conservatee has sufficient capacity to form an intelligent preference. The court shall appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee.

Comment. Section 1810 continues the substance of the second sentence of former Section 1752. Like former Section 1752, but unlike former Section 1463 (guardianship), Section 1810 does not require that the instrument containing the nomination be executed in the same manner as a witnessed will. The only formal requirements for a nomination under Section 1810 are that the nomination be in writing and be signed by the proposed conservatee. The nomination may be made in a written instrument made long before the conservatorship proceedings are commenced, but, whenever made, the proposed conservatee must have had at the time the writing was executed sufficient capacity to form an intelligent preference. A nomination of a guardian made by an adult under prior law is deemed to be a nomination of a conservator. See Section 1478.

If the proposed conservatee is the petitioner, he or she may waive bond and, in such a case, the court may in its discretion dispense with bond. Section 2321.

Definitions:

Court, § 1418

30/939

Tentatively Approved in Substance - Sept. 1977

§ 1811. Nomination by certain relatives of proposed conservatee

1811. (a) A spouse, adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing on the petition.

(b) The spouse or a parent of the proposed conservatee may nominate a conservator in a written instrument executed either before or after the petition is filed and such nomination shall remain effective notwithstanding the death or incapacity of the spouse or parent, except that a nomination by the spouse shall become void upon dissolution or an adjudication of nullity of their marriage.

Comment. Section 1811 is new. Subdivision (a) specifies the manner in which the nomination contemplated by former Section 1753 (continued in Section 1812) shall be made. Subdivision (b) goes beyond prior law, and gives a written nomination made by a spouse or parent posthumous effect analogous to a testamentary guardianship. Unlike the appointment of a testamentary guardian of the estate which the court

must confirm unless the appointee is "unsuitable" (Section 1514), or a nomination made by the proposed conservatee pursuant to Section 1810 which nominee the court must appoint unless it is not in the best interests of the proposed conservatee, a nomination made under Section 1811 merely entitles the nominee to some preference for appointment. See Section 1812.

29199

Tentatively Approved - Sept. 1977

§ 1812. Order of preference for appointment as conservator

1812. (a) The selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.

(b) Subject to Sections 1810 and 1813, of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both of another, preference is to be given in the following order:

(1) The spouse of the proposed conservatee or the person nominated by the spouse pursuant to Section 1811.

(2) An adult child of the proposed conservatee or the person nominated by the child pursuant to Section 1811.

(3) A parent of the proposed conservatee or the person nominated by the parent pursuant to Section 1811.

(4) A brother or sister of the proposed conservatee or the person nominated by the brother or sister pursuant to Section 1811.

(5) Any other person or entity eligible for appointment as a conservator under this code or, if there is no such person or entity willing to act as a conservator, under the Welfare and Institutions Code.

(c) The preference for any nominee for appointment under paragraphs (2), (3), and (4) of subdivision (b) is subordinate to the preference for any other parent, child, brother, or sister in such class.

Comment. Section 1812 continues the substance of former Section 1753 and the first sentence of former Section 1752. The last sentence of former Section 1752 is omitted as unnecessary in view of the addition of the introductory clause to subdivision (b) of Section 1812 and the more detailed and inconsistent provisions of former Section 1753 which are continued in Section 1812. The last paragraph of former Section

1753 has been omitted as unnecessary. The reference to guardian of an incompetent person has been omitted since guardians are no longer appointed for incompetent persons.

Certain nonprofit charitable corporations may be appointed as conservators of the person or estate or both. See Section 2052. A corporation or association authorized to conduct the business of a trust company in this state may be appointed as a conservator of the estate but not as a conservator of the person. Section 480. Other public offices or entities are also authorized to serve as a conservator. See Health & Saf. Code § 416 (Director of Developmental Services); Mil. & Vet. Code § 1046 (Veterans' Home of California); Welf. & Inst. Code § 3006 (public guardian). See also Sections 2103 (several conservators for one conservatee), 2104 (one conservator for several conservatees). As to appointments to fill vacancies, see Section 2105.

Definitions:

Court, § 1418

29200

Tentatively Approved - Sept. 1977

§ 1813. Condition for appointment of absentee's spouse

1813. The spouse of an absentee as defined in Section 1403 may not be appointed as conservator of the estate of the absentee unless the spouse alleges in the petition for appointment as conservator, and the court finds, that the spouse has not commenced any action or proceeding against the absentee for judicial or legal separation, divorce or dissolution of marriage, annulment, or adjudication of nullity of their marriage.

Comment. Section 1813 continues the substance of the second sentence of former Section 1754.5.

Definitions:

Absentee, § 1403

Court, § 1418

4449

Article 3. Procedure for Appointment

Tentatively Approved - Sept. 1977

§ 1820. Filing of petition

1820. (a) A petition for the appointment of a conservator may be filed by any of the following:

- (1) The proposed conservatee.

(2) A relative of the proposed conservatee.

(3) Any friend, other than a creditor, of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's becoming eligible therefor as provided in Section 1800. An existing guardian of the minor may be appointed as conservator under this part upon the minor's becoming eligible therefor, whether or not the guardian's accounts have been settled.

Comment. Subdivision (a) of Section 1820 continues the substance of a portion of the first sentence of former Section 1754 except that a relative of the proposed conservatee may now petition, whether or not the relative is also a creditor. The requirement that the petition be verified is continued in Section 1451.

The first sentence of subdivision (b) is new and will permit the uninterrupted continuation of protective proceedings for an incompetent minor under guardianship who is approaching majority. The second sentence of subdivision (b) is based on a portion of the first sentence of former Section 1704. Under subdivision (b), however, the power of the court to appoint an existing guardian as conservator upon the minor's reaching majority is not conditioned upon settlement of the guardian's accounts. Such settlement may take place after the guardian's appointment as conservator. See Section 2641.

When the petition is filed by the proposed conservatee, the proposed conservatee may waive bond. Section 2321.

4450

Tentatively Approved - Sept. 1977

§ 1821. Contents of petition

1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, and shall state the reasons why the appointment is required.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and residence addresses of the spouse and of the relatives of the proposed conservatee within the second degree.

(c) If the petition is filed by one other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration.

(f) The petition may include a further statement that either of the following is necessary for the protection of the proposed conservatee or the estate of the proposed conservatee:

(1) That the proposed conservatee be adjudged under Section 1831 to lack legal capacity to the extent provided in Section 40 of the Civil Code.

(2) That the power of the proposed conservatee to enter into specified types of transactions or any transaction in excess of a specified money amount be withdrawn.

Comment. Subdivision (a) of Section 1821 continues the substance of a portion of the first sentence of former Section 1754 but adds the requirement that the petition state the "reasons for appointment." This addition is consistent with existing practice. See Petition for Appointment of Conservator (Form Approved by Judicial Council of California, effective July 1, 1977). A petition filed under this section shall be verified. Section 1451.

Subdivision (b) is the same in substance as the second sentence of former Section 1754. Subdivision (c) is new and conforms to the change in former law made in Section 1820 (creditor-relative permitted to file petition).

Subdivision (d) continues the substance of a portion of former Section 1461.3 (guardianship) which appears to have been made applicable to conservatorships by the penultimate sentence of former Section 1754. See Petition for Appointment of Conservator (Form Approved by the Judicial Council of California, effective July 1, 1977).

Subdivision (e) is based on the penultimate sentence of former Section 1754 and is consistent with former practice. See Petition for Appointment of Conservator (Form Approved by the Judicial Council of California, effective July 1, 1977). In connection with subdivision (e), see the Uniform Veterans' Guardianship Act, Part 5 (commencing with Section 2900). For additional requirements if the proposed conservatee is an "absentee," see Sections 1813 and 1841. See also Section 2052 (nonprofit charitable corporation as conservator).

Subdivision (f) replaces the portion of former Section 1751 that permitted a conservator to be appointed if the proposed conservatee was a person for whom a guardian could be appointed.

§ 1822. Notice of hearing

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of hearing, accompanied by a copy of the petition, shall be mailed to the following persons:

(1) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(b) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice of the time and place of the hearing and a copy of the petition shall be mailed or delivered as required by that section.

(c) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice of the time and place of the hearing and a copy of the petition shall be mailed or delivered at least 15 days before the hearing to the office of the Veterans Administration referred to in Section 2908.

Comment. Subdivision (a) of Section 1822, which requires that notice be mailed at least 15 days before the hearing, is drawn from former Section 1754. The requirement of former Section 1754 that the notice be of the "nature of the proceedings" is replaced by a requirement that a copy of the petition be mailed with the notice of the time and place of the hearing. Paragraphs (1) and (2) of subdivision (a) continue the substance of a portion of the fifth sentence of former Section 1754 but add the provision that the mailing is to be sent to the addresses stated in the petition. See Section 1821(b). Subdivisions (b) and (c) are based on the penultimate sentence of former Section 1754, which appears to have adopted a portion of former Section 1461.3 (guardianship) and provisions of the Uniform Veterans' Guardianship Act. The provision for shortening the time for the notice which was found in former Section 1461.3 is not continued here. If time is of the essence, a temporary conservatorship may be used. See Sections 2250-2256. For additional notice requirements where the proposed conservatee is an "absentee," see Section 1842. See also Section 1829 (right of state and federal officers and agencies to appear at hearing and oppose petition).

§ 1823. Citation to proposed conservatee

1823. (a) If the petition is filed by a person other than the proposed conservatee, the clerk shall issue a citation directed to the proposed conservatee setting forth the time and place of hearing.

(b) The citation shall include a specific delineation of the legal standards by which the need for a conservatorship is adjudged as stated in Section 1801 and shall state the substance of all of the following:

(1) The proposed conservatee may be adjudged unable to provide for his or her personal needs or to manage his or her financial resources and, by reason thereof, a conservator may be appointed for his or her person or estate or both.

(2) Such adjudication may transfer to the appointed conservator the proposed conservatee's right to contract, to manage and control his or her property, and to fix his or her residence.

(3) The court or a court investigator will explain the nature, purpose, and effect of the proceeding to the proposed conservatee and will answer questions concerning the explanation.

(4) The proposed conservatee has the right to appear at the hearing and oppose the petition.

(5) The proposed conservatee has the right to legal counsel of his or her own choosing, and the right to have legal counsel appointed by the court if the proposed conservatee is unable to retain one.

(6) The proposed conservatee has the right to a jury trial if he or she so desires.

Comment. Section 1823 continues the substance of the second paragraph of former Section 1754. A citation is not required if the proposed conservatee is an "absentee." Section 1843.

§ 1824. Service on proposed conservatee of citation and petition

1824. The citation and a copy of the petition shall be served on the proposed conservatee at least 10 days before the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the

Code of Civil Procedure or in such manner as may be authorized by the court.

Comment. Section 1824 is the same in substance as the first sentence of the third paragraph of former Section 1754. No citation is required if the proposed conservatee is the petitioner. See Section 1823(a). If the proposed conservatee is an "absentee," no citation is required. Section 1843.

Definitions:

Court, § 1418

4459

Tentatively Approved - Sept. 1977

§ 1825. Attendance of proposed conservatee at hearing

1825. (a) The proposed conservatee shall be produced at the hearing except in either of the following cases:

(1) Where the proposed conservatee is out of the state when served and is not the petitioner.

(2) Where the proposed conservatee is unable to attend the hearing.

(b) If the proposed conservatee is unable to attend the hearing because of medical inability, such inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the proposed conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the proposed conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the appointment of a conservator.

(c) Emotional or psychological instability is not good cause for the absence from the hearing of the proposed conservatee unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.

Comment. Section 1825 continues the substance of the first four sentences of the fourth paragraph of former Section 1754. An "absentee," as defined in Section 1403, need not be produced at the hearing. See Section 1843.

§ 1826. Appointment and duties of court investigator

1826. (a) Upon receipt of an affidavit or certificate attesting to the medical inability of the proposed conservatee to attend the hearing, the court shall appoint as court investigator a person trained in law who is an officer or special appointee of the court and has no personal or other beneficial interest in the proceedings.

(b) The court investigator shall do all of the following:

(1) Interview the proposed conservatee personally.

(2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding, attend the hearing, have the matter tried by jury, and be represented by counsel.

(3) Determine whether it appears that the proposed conservatee is unable to attend the hearing.

(4) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(5) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(6) Determine whether the proposed conservatee wishes to be represented by counsel and, if so, whether the proposed conservatee has retained counsel and, if not, the name of an attorney the proposed conservatee wishes to retain.

(7) Report to the court in writing concerning all of the foregoing, including the proposed conservatee's express statement concerning representation by counsel, at least five days before the hearing.

Comment. Section 1826 continues the substance of the fifth, sixth, and seventh paragraphs of former Section 1754 [as amended by 1977 Cal. Stats., Ch. 453]. "Medical inability" has been substituted for "inability" in subdivision (a) to avoid the requirement that a court investigator be appointed in a case, for example, where the proposed conservatee is an "absentee." See Section 1844(b).

Definitions:

Court, § 1418

§ 1827. Law and procedure applicable to hearing

1827. The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded.

Comment. Section 1827 continues the substance of the third sentence of former Section 1606.5 (guardianship of incompetent adult) and the third sentence of former Section 2006 (conservatorship). See also Section 1863 (law and procedure applicable termination of conservatorship).

The proposed conservatee has a right to counsel at the hearing. See Sections 1870 and 1871. See also Section 1829 (persons who may oppose petition).

Definitions:

Court, § 1418

§ 1828. Information to proposed conservatee by court

1828. (a) Except as provided in subdivision (c), prior to the appointment of a conservator of the person or estate, or both, the court shall inform the proposed conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The appointment of a conservator is a legal adjudication of the conservatee's inability properly to provide for the conservatee's personal needs or to manage the conservatee's own financial resources or of the conservatee's incapacity to make a conveyance or contract, and the effect of such an adjudication on the conservatee's basic rights.

(3) The identity of the person who has been nominated as the conservator.

(4) The conservatee has the right to oppose the proceeding, to have the matter tried by jury, and to be represented by legal counsel if the conservatee chooses.

(b) After the court so informs the proposed conservatee and prior to the appointment of a conservator, the court shall consult the proposed conservatee to determine the proposed conservatee's opinion concerning the appointment.

(c) This section does not apply in either of the following cases:

(1) The proposed conservatee is the petitioner.

(2) The proposed conservatee is absent from the hearing, is not required to attend the hearing under the provisions of Section 1825, and any showing required by Section 1825 has been made.

Comment. Subdivisions (a) and (b) of Section 1828 continue the substance of the first paragraph of former Section 1754.1. Subdivision (c) expands the second sentence of former Section 1754.1 which made the section inapplicable only if the proposed conservatee's inability to attend the hearing was "medically" certified. Subdivision (c) makes this section inapplicable in the case of any legitimate absence of the proposed conservatee.

Definitions:

Court, § 1418

09598

Tentatively Approved - Sept. 1977

§ 1829. Persons who may oppose petition

1829. Any officer or agency of this state or of the United States or the authorized delegate thereof, or any relative or friend of the proposed conservatee, or the proposed conservatee, may appear at the hearing and oppose the petition.

Comment. Section 1829 continues the substance of the last sentence of former Section 1754.

09597

Tentatively Approved - Sept. 1977

§ 1830. Order appointing conservator

1830. The order appointing the conservator shall contain the names, addresses, and telephone numbers of:

(a) The conservator.

(b) The conservatee's attorney, if any.

(c) The court investigator, if any.

Comment. Section 1830 continues the substance of the last sentence of former Section 1801.

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

1831. (a) If the court determines that it is necessary for the protection of the conservatee or the conservatee's estate, the court may by order do either of the following:

(1) Determine that the conservatee lacks legal capacity to the extent provided in Section 40 of the Civil Code.

(2) Withdraw the power of the conservatee to enter into specified types of transactions or any transaction in excess of a specified money amount.

(b) The order referred to in subdivision (a) may be included in the order of appointment of the conservator or may be made subsequently upon a petition filed, noticed, and heard in the same manner as a petition for appointment of a conservator. The terms of the order shall be included in the letters of conservatorship.

(c) The order referred to in subdivision (a) may be modified or revoked upon a verified petition made, noticed, and heard in the same manner as a petition for termination of a conservatorship under Chapter 3 (commencing with Section 1860).

Comment. Section 1831 is new and is added to preserve the effect under former Section 1751 of appointing a conservator on the ground that the conservatee was a person for whom a guardian could have been appointed. The appointment of a guardian for an adult under former Division 4 constituted a judicial determination of incapacity under Section 40 of the Civil Code and made void any contract entered into by the ward after such determination. *Hellman Commercial Trust & Sav. Bank v. Alden*, 206 Cal. 592, 604-05, 275 P. 794, ___ (1929). An order appointing a conservator on the ground that the conservatee was a person for whom a guardian could have been appointed rendered the conservatee incapable of contracting. *Board of Regents State Univs. v. Davis*, 14 Cal.3d 33, 38 n.6, 43, 533 P.2d 1047, ___ n.6, ___, 120 Cal. Rptr. 407, ___ n.6, ___ (1975). Section 1831 permits the court to withdraw or constrict the conservatee's power to contract, thus providing a judicial adjudication of the conservatee's incapacity but without the necessity of a stigmatizing adjudication of incompetency. The provision authorizing the court to withdraw the power of the conservatee to enter into specified types of transactions or any transaction in excess of a specified money amount is drawn from Section 5357 of the Welfare and Institutions Code. As to the legal capacity of an adult for whom a guardian had been appointed under prior law, see Section 1476.

Definitions:

Court, § 1418

Article 4. Special Provisions Applicable Where
Proposed Conservatee Is An Absentee

§ 1840. Procedure for appointment of conservator for absentee

1840. Except as otherwise provided in this article, a conservator for an absentee shall be appointed as provided in Article 3 (commencing with Section 1820).

Comment. Section 1840 retains the substance of the prior statute which applied to the appointment of a conservator for an absentee but included some special provisions applicable where the proposed conservatee is an absentee. Because of the limited use of conservatorships for absentees, these special provisions have been relocated from the general provisions relating to appointment of conservators and have been collected in this article. See also Sections 1803 (conservator of estate may be appointed for absentee), 1813 (condition on appointment of spouse of absentee as conservator), 1864 (termination of conservatorship for absentee).

Definitions:

Absentee, § 1403

§ 1841. Additional contents of petition

1841. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition and any notice required by any other law shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall state whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation, divorce or dissolution of marriage, annulment, or adjudication of nullity of their marriage.

Comment. Section 1841 continues that portion of the first and second sentences of former Section 1754.5 that related to the information required to be contained in the petition or in the notice except that, under Section 1841, the information concerning military rank and social security number is required to be included in the petition rather than in the notice. See also Section 1813 (condition on appointment of spouse of absentee as conservator).

Definitions:

Absentee, § 1403

§ 1842. Notice of hearing

1842. In addition to the persons and entities to whom notice of hearing is required under Section 1822, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the hearing will be held.

Comment. Section 1842 continues the substance of a portion of the fourth sentence and all of the fifth sentence of former Section 1754. The inconsistent requirement of former Section 1754.5 that the copy of the petition and notice be "delivered only by a method which would be sufficient for service of a summons in a civil action" is not continued. See also Section 1829 (right of officer or agency of United States or authorized delegate thereof to appear at hearing and oppose petition).

Definitions:

Absentee, § 1403

Secretary concerned, § 1430

§ 1843. Citation to proposed conservatee not required

1843. No citation is required under Section 1823 to the proposed conservatee if the proposed conservatee is an absentee.

Comment. Section 1843 continues the substance of the second sentence of the third paragraph of former Section 1754.

Definitions:

Absentee, § 1403

§ 1844. Proof of status of proposed conservatee; attendance at hearing not required

1844. (a) An official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an absentee shall be received as evidence of that fact and the court shall

not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

Comment. Subdivision (a) of Section 1844 continues the substance of the last sentence of former Section 1754.5. Subdivision (b) continues the substance of the last sentence of the fourth paragraph of former Section 1754.

Definitions:

Absentee, § 1403

Court, § 1418

CHAPTER 2. BIENNIAL REVIEW OF CONSERVATORSHIP§ 1850. Court review of conservatorship

1850. (a) Each conservatorship initiated pursuant to this part shall be reviewed by the court one year after the appointment of the conservator and biennially thereafter.

(b) For each conservatorship established prior to July 1, 1977, court review shall commence at the time of the next financial accounting but, in all cases, no later than July 1, 1980.

Comment. Subdivision (a) of Section 1850 continues the substance of the first sentence of former Section 1851.1. Subdivision (b) continues the substance of former Section 1851.2.

Definitions:

Court, § 1418

§ 1851. Visitation and findings by court investigator

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, and whether the present conservator is acting in the best interests of the conservatee.

(b) The findings of the court investigator, including the facts upon which such findings are based, shall be certified in writing to the court within 15 days of the date of review.

Comment. Section 1851 continues the substance of the second, third, and fourth sentences of former Section 1851.1.

Definitions:

Court, § 1418

§ 1852. Notification of counsel; representation of conservatee at hearing

1852. If the conservatee wishes to petition the court for termination of the proceeding or for removal of the existing conservator, or if based on information contained in the court investigator's report or obtained from any other source, the court determines that a hearing for such termination or removal is in the best interests of the conservatee, the court shall notify the attorney of record for the conservatee, if any, or shall appoint the public defender or other attorney to file the petition and represent the conservatee at the hearing or trial.

Comment. Section 1852 continues the substance of the fifth and sixth sentences of former Section 1851.1, with the addition of the language authorizing the court to act on information from whatever source it may be received.

Definitions:

Court, § 1418

§ 1853. Failure to locate conservatee; termination of conservatorship on failure to produce conservatee

1853. (a) If the court investigator is unable to locate the conservatee, the court shall order the court investigator to serve notice upon the conservator, in the manner provided in Section 415.10 of the Code of Civil Procedure or in such other manner as is ordered by the court, to make the conservatee available for the purposes of Section 1851 to the court investigator within 15 days of the receipt of such notice or to show cause why the conservatorship should not be terminated.

(b) If the conservatee is not made available within the time prescribed and no good cause is shown for not doing so, the court shall terminate the conservatorship. If the conservatorship is of the estate, the court shall order the conservator to file an accounting.

Comment. Section 1853 continues the substance of the last two sentences of former Section 1851.1 but Section 1853 provides for the manner of service and provides that the conservatee is to be made available to the court investigator for the purposes of Section 1851.

Definitions:

Court, § 1418

CHAPTER 3. TERMINATION§ 1860. When conservatorship terminates

1860. A conservatorship continues until terminated by the death of the conservatee or by order of court.

Comment. Section 1860 continues a portion of the first sentence of former Section 1755. The provision of former Section 1755 for termination of the conservatorship on the death of the conservator is not continued; death of the conservator merely terminates the relationship of conservator and conservatee but does not terminate the conservatorship proceeding. See Section 2641. Cf. Estate of Mims, 202 Cal. App.2d 332, 20 Cal. Rptr. 667 (1962) (guardianship). As to the duty of the conservator to deliver the conservatee's estate to the conservatee's personal representative upon death of the conservatee, see Section 2535. See also Section 1853 (termination of conservatorship on failure to locate or produce conservatee).

Definitions:

Court, § 1418

§ 1861. Petition for termination of conservatorship

1861. The conservator, conservatee, or any relative or friend of the conservatee may petition the court to have the conservatorship terminated. The petition shall state facts showing that the conservatorship is no longer required.

Comment. Section 1861 continues the second and third sentences of former Section 1755. The petition must be verified. See Section 1451.

Definitions:

Court, § 1418

§ 1862. Notice of hearing

1862. (a) At least 15 days before the hearing, a copy of the petition and of the notice of the time and place of the hearing shall be mailed to:

(1) The conservatee if the conservatee is not the petitioner and has not joined in the petition; and

(2) The persons specified in Section 1822.

(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 10 days prior to the hearing. Service shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the conservator cannot with reasonable diligence be served with a copy of the petition and notice of hearing, the court may dispense with such service.

Comment. Subdivision (a) of Section 1862 continues the substance of a portion of the fourth sentence of former Section 1755, which provided that notice of the hearing shall be given to the persons and in the manner provided for the appointment of a conservator. It was not clear under the former law whether issuance and personal service of a citation on the conservatee was required when the hearing is on the termination of the conservatorship. See W. Johnstone & G. Zillgitt, California Conservatorships § 7.10, at 266 (Cal. Cont. Ed. Bar 1968). Subdivision (a) makes clear that mailed notice to the conservatee, but not issuance and personal service of a citation, is required when the hearing is on the termination of the conservatorship.

Subdivision (b) continues the substance of the fifth, sixth, and seventh sentences of former Section 1755 except that subdivision (b) requires 10 days' notice rather than five days as was the case under former Section 1755. This change makes subdivision (b) consistent with Section 1824.

Definitions:

Court, § 1418

4638

Tentatively Approved - Sept. 1977

§ 1863. Hearing and judgment

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded. The conservator, the conservatee, or any relative or friend of the conservatee may appear and oppose the petition.

(b) If the court determines that the grounds for appointment of a conservator of the person or estate, or both, no longer exist, the court

shall make such a finding and shall enter judgment terminating the conservatorship accordingly.

(c) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and bond given by the conservator be exonerated upon the settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude institution of new proceedings for appointment of a conservator on the same or other grounds.

Comment. Section 1863 supersedes the last five sentences of former Section 1755. Under subdivision (a), the list of those who may appear and oppose the petition is broadened to include the conservatee. Subdivision (d) supersedes the last sentence of former Section 1755.5 but broadens its application to all cases and not merely those where the conservatee was an absentee as defined in Section 1403.

The conservatee has a right to counsel at the hearing. See Sections 1870 and 1871.

Definitions:

Court, § 1418

4639

Tentatively Approved - Sept. 1977

§ 1864. Termination of conservatorship of "absentee"

1864. (a) In the case of the conservatorship of an "absentee" as defined in Section 1403, the petition to terminate the conservatorship may also be filed by any officer or agency of this state or of the United States or the authorized delegate thereof.

(b) If the petition states and the court finds that the absentee has returned to the controllable jurisdiction of the military department or civilian department or agency concerned, or is deceased, as determined under 37 United States Code, Section 556, or 5 United States Code, Section 5566, as the case may be, the court shall order the conservatorship terminated. An official written report or record of such military department or civilian department or agency that the absentee has returned to such controllable jurisdiction or is deceased shall be received as evidence of such fact.

Comment. Section 1864 continues the substance of the first paragraph of former Section 1755.5.

Definitions:

Absentee, § 1403

Court, § 1418

CHAPTER 4. RIGHT TO COUNSEL

Tentatively Approved - Sept. 1977

§ 1870. Right to counsel

1870. (a) In any proceeding under this part for the appointment of a conservator or for the termination of a conservatorship, the proposed conservatee or conservatee shall be represented by legal counsel at the hearing if he or she so chooses, irrespective of whether he or she appears to have the capacity to make such a choice.

(b) If the proposed conservatee or conservatee so chooses but is unable to retain legal counsel, the court shall, at the time of the hearing, appoint the public defender or other attorney to represent the proposed conservatee or conservatee.

(c) A county without a public defender is authorized to compensate the other attorney appointed by the court under subdivision (b).

Comment. Subdivisions (a) and (b) of Section 1870 continue the substance of the first paragraph of former Section 2006. Subdivision (c) continues the substance of former Section 2007 (enacted in 1977).

Definitions:

Court, § 1418

Tentatively Approved - Sept. 1977

§ 1871. Compensation of court-appointed counsel

1871. (a) If the proposed conservatee or conservatee is furnished legal counsel under this chapter, either through the public defender or private counsel appointed by the court, upon the conclusion of the hearing, the court shall make a determination of the present ability of the proposed conservatee or conservatee to pay all or a portion of the costs of such counsel.

(b) If the court determines that the proposed conservatee or conservatee has the present ability to pay all or a portion of the costs of such counsel, the court shall order the conservator of the estate or, if none, the proposed conservatee or conservatee to pay the amount so determined:

(1) In the case of the public defender or a court-appointed attorney referred to in subdivision (c) of Section 1870, to the county.

(2) In the case of other court-appointed private counsel, to such counsel.

(c) The court shall order the amount determined under subdivision (b) to be paid in such installments and manner the court determines to be reasonable and compatible with the financial ability of the proposed conservatee or conservatee.

(d) If a conservator is not appointed for the proposed conservatee, execution may be issued on the order in the same manner as on a judgment in a civil action.

Comment. Section 1871 continues the substance of the last paragraph of former Section 2006 (amended in 1977).

Definitions:

Court, § 1418

PART 4. PROVISIONS COMMON TO GUARDIANSHIP AND CONSERVATORSHIPCHAPTER 1. GENERAL PROVISIONS

Tentatively Approved - Sept. 1977

§ 2100. Relationship confidential and subject to law of trusts

2100. The relationship of guardian and ward and conservator and conservatee is confidential and is subject to the provisions of law relating to trusts.

Comment. Section 2100 continues the substance of the fifth sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702.

90873

Tentatively Approved - Sept. 1977

§ 2101. Control by court

2101. A guardian or conservator is subject to the regulation and control of the court in the performance of the duties of the office.

Comment. Section 2101 continues the substance of the last sentence of former Section 1400 (guardians) which was made applicable to conservators by former Section 1702.

045/054

Tentatively Approved - Sept. 1977

§ 2102. Nonprofit charitable corporation as guardian or conservator

2102. (a) A nonprofit charitable corporation may be appointed as a guardian or conservator of the person or estate, or both, if all of the following requirements are met:

- (1) The corporation is incorporated in this state.
- (2) The articles of incorporation specifically authorize the corporation to accept appointments as guardian or conservator, as the case may be.
- (3) The corporation has been providing, at the time of appointment, care, counseling, or financial assistance to the proposed ward or conservatee under the supervision of a registered social worker certified by the Board of Behavioral Science Examiners of this state.

(b) The petition for appointment of the nonprofit charitable corporation as a guardian or conservator under this section shall include in the caption the name of a responsible corporate officer who shall act for the corporation for the purposes of this division. If, for any reason, the officer so named ceases to act as the responsible corporate officer for the purposes of this division, the corporation shall file with the court a notice containing (1) the name of the successor responsible corporate officer and (2) the date the successor becomes the responsible corporate officer.

Comment. Section 2102 continues the substance of a portion of former Sections 1400 and 1701.

Staff Draft

968/897

§ 2103. Several guardians or conservators

2103. (a) The court, in its discretion, may appoint or confirm more than one guardian or conservator for the same ward or conservatee.

(b) When two or more guardians or conservators are appointed:

(1) Each shall qualify in the same manner as a sole guardian or conservator.

(2) They shall act as a unit by a majority.

(3) A guardian or conservator who does not join in or consent to the acts of the majority is not liable for such acts.

(c) If one of several guardians or conservators dies or resigns, the powers and duties continue in the remaining guardians or conservators until further appointment is made by the court.

(d) Where two or more guardians or conservators have been appointed and one or more are absent from the state or legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining guardians or conservators to act as to all matters embraced in its order.

Comment. Subdivision (a) of Section 2103 continues the substance of a portion of the second sentence of former Section 1405 and the last sentence of former Section 1751.

Subdivision (b) supersedes the third sentence of former Section 1405. Under the former provision, one of several guardians was "governed and liable in all respects as a sole guardian." Under paragraph

(1) of subdivision (b), each of several guardians or conservators shall "qualify" in the same manner as a sole guardian or conservator. See, e.g., Sections 2300 (oath and bond required), 2326 (joint bond permitted). Paragraph (2) is based on the last sentence of Section 570 which appears to have been applied to guardianship and conservatorship proceedings by former Sections 1606 and 1702. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.84, at 225 (Cal. Cont. Ed. Bar 1968). Paragraph (3) is new and is comparable to provisions relating to joint trustees (see Civil Code § 2239) and joint executors or administrators (see Prob. Code § 920). See also Uniform Probate Code § 5-429(b).

Subdivision (c) is drawn from former Sections 1591 and 1955 but has been expanded to cover the case where there is a resignation as well as the case of a death. Subdivision (d) continues the substance of former Section 1956.

968/915

Tentatively Approved in Substance - Sept. 1977

§ 2104. One guardian or conservator for several wards or conservatees

2104. (a) The court, in its discretion, may appoint or confirm one guardian or conservator for several wards or conservatees.

(b) The appointment of one guardian or conservator for several wards or conservatees may be requested in the initial petition filed in the proceeding or may be requested subsequently upon a petition filed in the same proceeding and noticed and heard in the same manner as an initial petition for appointment of a guardian or conservator.

Comment. Subdivision (a) of Section 2104 makes clear that a proceeding may be for the appointment of a guardian for several wards or a conservator for several conservatees. This continues authority formerly found in subdivision (b) of Section 1440 (guardians). No express authority was contained in the conservatorship statute. Two or more guardians or conservators may serve as joint guardians or conservators for several wards or conservatees. See Section 2103. Subdivision (b) is new. See also Section 2327 (separate bonds or single bonds where proceeding involves more than one ward or conservatee).

968/905

Tentatively Approved - Sept. 1977

§ 2105. Appointment to fill vacancy

2105. When for any reason a vacancy occurs in the office of guardian or conservator, the court may appoint a successor, after notice and hearing as in the case of an original appointment.

Comment. Section 2105 continues the substance of former Section 1954 with the addition of "for any reason." Former Section 1582 covered an appointment in case of resignation or removal.

999/558

Tentatively Approved - Sept. 1977

§ 2106. Release of guardian or conservator and sureties

2106. Unless reversed on appeal, a judgment, order, or decree made pursuant to this division releases the guardian or conservator and the sureties from all claims of the ward or conservatee and of any persons affected thereby, based upon any act or omission directly authorized, approved, or confirmed in the judgment, order, or decree. This section does not apply where the judgment, order, or decree was obtained by fraud, conspiracy, or misrepresentation as to a material fact.

Comment. Section 2106 continues the substance of former Section 2103 (conservatorship); there was no comparable provision for guardianship.

CHAPTER 2. JURISDICTION AND VENUEArticle 1. Jurisdiction and Venue

Tentatively Approved - Sept. 1977

§ 2200. Jurisdiction in superior court

2200. The superior court has jurisdiction of guardianship and conservatorship proceedings.

Comment. Section 2200 continues portions of former Sections 1405 and 1440 (guardianship of minor), 1460 (guardianship of incompetent), and 2051 (conservatorship).

Staff Draft

08361

§ 2201. Venue for residents

2201. (a) Guardianship or conservatorship proceedings for a resident of this state shall be instituted in the county in which the proposed ward or proposed conservatee resides or is domiciled or in such other county as may be for the best interests of the proposed ward or proposed conservatee.

(b) If guardianship or conservatorship proceedings of a resident are instituted in more than one county, the court which first makes an order appointing a guardian or conservator, including a temporary guardian or conservator, has exclusive jurisdiction so long as the proceeding is pending.

Comment. Subdivision (a) of section 2201 supersedes former Sections 1440 (county in which minor resides or is temporarily domiciled), 1460 (any county in which application for incompetent is made), and 2051 (county in which proposed conservatee resides). The addition of the last phrase to subdivision (a) permits the court to exercise jurisdiction even though the place of residence or domicile is in dispute. See *Guardianship of Smith*, 147 Cal. App.2d 686, ___ Cal. Rptr. ___ (1957); *Hillman v. Stults*, 263 Cal. App.2d 848, ___ Cal. Rptr. ___ (1968). This avoids the need to litigate the issue of residence or domicile if the court determines that continuance of the proceeding in the county where filed is for the best interests of the ward or conservatee.

Subdivision (b) is new, and codifies existing law. See, e.g., *Browne v. Superior Court*, 16 Cal.2d 593, 107 P.2d 1 (1940); *Guardianship of Vierra*, 115 Cal. App.2d 869, 253 P.2d 55 (1953); *Milani v. Superior Court*, 61 Cal. App.2d 463, 143 P.2d 402, 935 (1943).

§ 2202. Venue for nonresidents

2202. (a) Guardianship or conservatorship proceedings for a nonresident of this state shall be instituted in the county in which the proposed ward or proposed conservatee is temporarily living or, if there is no such county, in any county in which the proposed ward or proposed conservatee has property or in such other county as may be for the best interests of the proposed ward or proposed conservatee.

(b) If guardianship or conservatorship proceedings of a nonresident are instituted in more than one county, the guardianship or conservatorship first granted, including a temporary guardianship or conservatorship, extends to all of the property of the ward or conservatee within this state, and the court of no other county has jurisdiction.

Comment. Subdivision (a) of Section 2202 continues and clarifies the substance of portions of former Sections 1440(a) (guardian of minor), 1570 (guardian of minor or incompetent), and 2051 (conservatorship) but adds the last phrase. See the Comment to Section 2201. As to the powers and duties of the guardian of a nonresident ward or conservator of a nonresident conservatee, see Section ____.

Subdivision (b) continues the substance of the last sentence of former Section 1570 (guardianship), except that the reference to a temporary guardianship or conservatorship is new. There was no provision under prior conservatorship law comparable to subdivision (b).

101/197

Tentatively Approved - Sept. 1977

Article 2. Change of Venue

§ 2210. Authority to transfer proceeding

2210. The court in which the proceeding is pending may, upon petition therefor, transfer the proceeding to another county within this state.

Comment. Section 2210 continues the substance of portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship). For provisions governing transfer of proceedings out of state, see Chapter 11 (commencing with Section 2800).

§ 2211. Who may petition for transfer

2211. The petition for transfer may be filed only by one or more of the following:

- (a) The guardian or conservator.
- (2) The ward or conservatee.
- (3) A relative or friend of the ward or conservatee.
- (4) A person interested in the estate of the ward or conservatee.

Comment. Section 2211 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship) but clarifies and may expand the class of persons who may petition for transfer. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.21, at 40 (Cal. Cont. Ed. Bar 1968). See also former Section 1603 (guardianship). A petition filed under this section shall be verified, Section 1451.

§ 2212. Contents of petition

2212. The petition for transfer shall set forth all of the following:

- (a) The county to which the proceeding is to be transferred.
- (b) The residence address of the ward or conservatee.
- (c) A brief description of the character, value, and location of the property of the ward or conservatee.
- (d) The reasons for the transfer.
- (e) The names 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.
- (f) The name and residence address of the guardian or conservator if other than the petitioner.

Comment. Section 2212 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship); see also former Section 1603 (guardianship). A petition for transfer shall be verified. Section 1451.

29221

Tentatively Approved - Sept. 1977

§ 2213. Notice of hearing

2213. Notice of the hearing shall be given for the period and in the manner prescribed by Chapter 3 (commencing with Section 1460) of Part 1. In addition, the petitioner shall cause written notice of the hearing and a copy of the petition to be mailed to all persons required to be listed in the petition at least 15 days before the date set for the hearing.

Comment. Section 2213 continues the substance of the first two sentences of former Section 2053 (conservatorship) except that the time for mailing the notice is extended from 10 to 15 days and the provision of the first sentence of former Section 2053 relating to the clerk setting the petition for hearing is continued in Section 1452. See also former Section 1603 (guardianship). Special notice of a petition to transfer may be requested. Section 2700(a)(2).

29222

Tentatively Approved - Sept. 1977

§ 2214. Hearing and order

2214. (a) Any of the following persons may appear and file written objections to the petition:

- (1) Any person required to be listed in the petition.
- (2) Any creditor of the ward or conservatee or of the estate.
- (3) The ward or conservatee.

(b) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the other county.

Comment. Section 2214 continues the substance of the third and fourth sentences of former Section 2053 (conservatorship). See also former Section 1603 (guardianship).

29223

Tentatively Approved - Sept. 1977

§ 2215. Transfer

2215. (a) Upon the order of transfer, the clerk shall transmit to the clerk of the court to which the proceeding is transferred a certified or exemplified copy of the order, together with all papers in the proceeding on file with the clerk.

(b) The clerk of the court from which the removal is made shall receive no fee therefor but shall be paid out of the estate all expenses incurred by the clerk in the removal. The clerk of the court to which the proceeding is transferred shall be entitled to such fees as are payable on the filing of a like original proceeding.

Comment. Subdivision (a) of Section 2215 continues the substance of the fifth sentence of former Section 2053 (conservatorship); subdivision (b) continues the substance of former Section 2054 (conservatorship). See also former Section 1603 (guardianship).

Staff Draft

21981

CHAPTER 3. TEMPORARY GUARDIANS AND CONSERVATORS

§ 2250. Appointment

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

- (1) A temporary guardian of the estate.
- (2) A temporary conservator of the person or estate or both.

(b) The petition shall establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the estate, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause dispenses with notice, notice shall be given to the proposed ward if 12 years of age or older or to the proposed conservatee before appointment of a temporary guardian or temporary conservator. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

Comment. Section 2250 continues the substance of former Section 1640 (special guardian) and the first paragraph of former Section 2201 (temporary conservator) with the addition of the phrase "or other showing as it may require" in subdivision (b) and the requirement in subdivision (c) of notice to the proposed ward if over 12 or to the proposed conservatee unless the court dispenses with such notice. The "special guardian" is referred to in this chapter as a "temporary guardian" for purposes of uniformity. A petition filed under this section must be verified. See Section 1451. For provisions relating to temporary custody of a minor, see Section 1512.

21983

Tentatively Approved - Sept. 1977

§ 2251. Issuance of letters

2251. A temporary guardian or temporary conservator shall be issued temporary letters of guardianship or conservatorship upon taking

the oath and filing the bond as in the case of a guardian or conservator.

Comment. Section 2251 continues the substance of former Sections 1641 (special guardian) and 2202 (temporary conservator) with the addition of the reference to the taking of the oath.

Staff Draft

21984

§ 2252. Powers and duties

2252. (a) Except as provided in subdivision (c), a temporary guardian or temporary conservator of the estate has only the power and authority and only the duties that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

(b) Except as provided in subdivision (c) and subject to this chapter, a temporary conservator of the person has only the power and authority and only the duties that are necessary to provide for the temporary care, maintenance, and support of the conservatee.

(c) Subject to Section 2253, the temporary guardian or temporary conservator has such additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require.

Comment. Section 2252 continues the substance of former Sections 1642 (special guardian) and 2203 (temporary conservator).

Staff Draft

30946

§ 2253. Change of conservatee's residence generally

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee to a place other than that where the conservatee resided prior to the commencement of the proceedings, such power shall be requested of the court in writing, unless such change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise

reasons why it is believed that the conservatee will suffer irreparable harm if such change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

(b) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court shall conduct a hearing at which the conservatee shall be present unless such attendance would immediately jeopardize the conservatee's physical survival. The conservatee shall be represented by counsel, as provided in Section 1870 and shall be granted the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on his or her own behalf.

(c) The court may approve the request to remove the conservatee from his or her previous place of residence only if it finds by a preponderance of the evidence that such change of residence is required to prevent irreparable harm to the conservatee, and that no means less restrictive of the conservatee's liberty will suffice to prevent such harm. If an order is made approving the request to remove the conservatee from his or her previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator shall not be authorized to remove the conservatee from the State of California unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from the State of California without authorization of the court is guilty of a felony.

(d) The court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence. Under no circumstances shall a temporary conservator be permitted to sell or relinquish on the conservatee's behalf any lease or estate in real or personal property used as or within the conservatee's place of residence; nor shall the temporary

conservator be permitted to sell or relinquish on the conservatee's behalf any estate or interest in other real or personal property without specific approval of the court, which may be granted only upon a finding based on a preponderance of the evidence that such action is necessary to avert irreparable harm to the conservatee.

Comment. Section 2253 continues the substance of the second, third, fourth, and fifth paragraphs of former Section 2201. [These paragraphs were added to former Section 2201 by Chapter 1237 of the Statutes of 1977.]

Staff Draft

30944

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

2254. (a) Notwithstanding Section 2253, a temporary conservator may remove a temporary conservatee from his or her 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 unfit for habitation or if the temporary conservatee has a medical condition which presents an immediate threat to the temporary conservatee's physical survival.

(b) No later than one judicial day after the emergency removal of the temporary conservatee, the temporary conservator shall file a written request pursuant to Section 2253 for permission to fix the residence of the temporary conservatee other than the temporary conservatee's previous place of residence. Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee from his place of residence to a health facility for treatment without court approval when the temporary conservatee has given informed consent to the removal.

Comment. Section 2254 continues the substance of former Section 2201.5. [Former Section 2201.5 was added to the Probate Code by Chapter 1237 of the Statutes of 1977.]

21987

Tentatively Approved - Sept. 1977

§ 2255. Inventory and appraisal of estate

2255. (a) Except as provided in subdivision (b), an inventory and appraisal of the estate shall be filed by the temporary guardian or temporary conservator of the estate as required by Article 2 (commencing with Section 2610) of Chapter 7.

(b) A temporary guardian or temporary conservator of the estate may inventory the estate in the final account, without the necessity for an appraisal of the estate, if the final account is filed within three months after the entry of the order of appointment of the temporary guardian or temporary conservator.

Comment. Section 2255 continues the substance of former Sections 1643 (special guardian) and 2204 (temporary conservator).

21989

Tentatively Approved - Sept. 1977

§ 2256. Accounts

2256. (a) Except as provided in subdivision (b), the temporary guardian or temporary conservator of the estate shall present the account to the court for settlement and allowance within 90 days after the appointment of a guardian or conservator, or within such other time as the court may fix.

(b) If the temporary guardian or temporary conservator of the estate is appointed guardian or conservator of the estate, the guardian or conservator may account for the administration as temporary guardian or temporary conservator in the first regular account.

(c) Accounts shall be subject to Sections 2621, 2622, 2623, 2624, 2626, 2630, 2631, 2641, and 2643.

Comment. Section 2256 continues the substance of former Sections 1644 (special guardian) and 2205 (temporary conservator).

21990

Tentatively Approved - Sept. 1977

§ 2257. Termination

2257. (a) Except as provided in subdivision (b), the powers of a temporary guardian or temporary conservator terminate (except for the rendering of the account) at the earliest of the following times:

(1) The time a guardian or conservator is appointed and qualified.

(2) Thirty days after the appointment of the temporary guardian or temporary conservator or such earlier time as the court may specify in the order of appointment.

(b) With or without notice as the court may require, the court may for good cause order that the time for the termination of the powers of the temporary guardian or temporary conservator be extended pending final determination by the court of the petition for appointment of a guardian or conservator or pending the final decision on appeal therefrom or for other cause. The order which extends the time for termination shall fix the time when the powers of the temporary guardian or temporary conservator terminate except for the rendering of the account.

Comment. Section 2257 continues the substance of former Sections 1645 (special guardian) and 2206 (temporary conservator).

21991

Tentatively Approved - Sept. 1977

§ 2258. Suspension, removal, resignation, and discharge

2258. A temporary guardian or temporary conservator is subject to the provisions of this division governing the suspension, removal, resignation, or discharge of a guardian or conservator.

Comment. Section 2258 continues the substance of former Sections 1646 (special guardian) and 2207 (temporary conservatorship). Cf. Chapter 8 (commencing with Section 2650) (suspension, removal, and resignation).

CHAPTER 4. OATH, LETTERS, AND BONDArticle 1. Requirement of Oath and Bond

Tentatively Approved - Sept. 1977

§ 2300. Oath and bond required before appointment effective

2300. Before the appointment of a guardian or conservator is effective, the guardian or conservator shall:

(a) Take an oath to perform the duties of the office according to law, which oath shall be attached to or endorsed upon the letters of guardianship or conservatorship.

(b) File the required bond if a bond is required.

Comment. Section 2300 is based on the first portion of former Section 1480 and the second sentence of former Section 1801. The requirement that the oath be attached to or endorsed upon the letters is taken from former Section 1480 and is consistent with a similar requirement in Section 540 (executor or administrator); former Section 1801 required that the oath "be filed in the proceeding." Section 2300 applies to a testamentary guardian as well as a guardian appointed by the court. In this respect, Section 2300 supersedes the requirement of former Section 1484 that a testamentary guardian "must qualify."

Article 2. Letters

Tentatively Approved - Sept. 1977

§ 2310. Issuance of letters

2310. The appointment, the taking of the oath, and the filing of the bond, if required, shall thereafter be evidenced by the issuance by the clerk of the court of letters of conservatorship or guardianship, as the case may be.

Comment. Section 2310 is based on the third sentence of former Section 1801 with the addition of wording relating to the filing of the bond taken from former Section 1481. There was no express provision on this subject in the guardianship statute.

27866

Tentatively Approved - Sept. 1977

§ 2311. Form of letters

2311. Except as otherwise required by the order of appointment, the letters shall be in substantially the same form as letters of administration.

Comment. Section 2311 continues portions of former Sections 1481 and 1801.

28293

Tentatively Approved - Sept. 1977

§ 2312. Notice to ward or conservatee

2312. Before letters of guardianship or conservatorship may be issued, a copy of the order appointing the guardian or conservator shall be mailed to the ward if 12 years of age or older or to the conservatee at the last known address of the ward or conservatee.

Comment. Section 2312 continues the fourth sentence of former Section 1801, and extends the provision to a ward 12 years of age or older. The former provision has been clarified by substituting "mailed" for "served by mail" and by adding "at the last known address of the ward or conservatee."

31515

Article 3. Bonds of Guardians and Conservators

Tentatively Approved in Substance - Sept. 1977

§ 2320. General requirement of bond; amount

2320. (a) Except as otherwise provided by statute:

(1) Every guardian and conservator shall furnish a bond in the amount fixed by the court, conditioned upon the faithful execution of the duties of the office according to law, to protect the ward or conservatee and all persons interested in the guardianship or conservatorship estate.

(2) Except upon a showing of good cause, the amount of the bond shall be the lowest amount permitted under Section 541 for a bond given under that section by an authorized surety company.

(b) If the sureties on the bond are individual persons, the bond shall be approved by the court and shall be for twice the amount required for a bond given by an authorized surety company.

Comment. Section 2320 is based on the second and third sentences of former Section 1802 and a portion of former Section 1480. The amount of the bond is determined by reference to Sections 541 except that the court may increase or decrease the amount of the bond that would otherwise be required upon a showing of good cause. Section 2320 substitutes a uniform rule for the conflicting rules provided in former Sections 1480 (bond not less than amount equivalent to that specified in Section 541) and 1802 (amount of bond not to exceed amount specified in Section 541). For provisions relating to approval of bond of individual sureties, see Sections 545 and 546. As to the requirement of a bond for a trust company acting as a guardian or conservator, see Probate Code Section 481. As to the bond required under the Uniform Veterans' Guardianship Act, see Sections 2907 and 2918. The cost of a surety bond is an allowable expense of the guardian or conservator. See Section 2622(a)(1).

One of the exceptions that qualifies Section 2320 is found in Section 2328 which permits reduction in the amount of the bond when money, securities, or other property are deposited in a bank or trust company or invested in an account of an insured savings and loan association, subject to withdrawal only upon authorization of the court. See also Sections 2321 (waiver of bond), 2322 (guardian or conservator of person only), 2323 (estate consisting entirely of public benefits), 2324 (testamentary guardian), 2522 (deposit of personal assets with trust company and reduction of bond).

31516

Tentatively Approved - Sept. 1977

§ 2321. Waiver of bond by conservatee

2321. In a conservatorship proceeding, where the conservatee as petitioner has waived the filing of a bond, the court in its discretion may dispense with the requirement that a bond be filed.

Comment. Section 2321 continues the first sentence of former Section 1802. Section 2321 applies only to conservatorship proceedings and not to guardianships.

31517

Tentatively Approved - Sept. 1977

§ 2322. Guardian or conservator of person only

2322. One appointed only as guardian of the person or conservator of the person need not file a bond unless required by the court.

Comment. Section 2322 continues the fourth sentence of former Section 1802 and extends the same rule to the guardian of the person.

§ 2323. Estate consisting entirely of public benefits

2323. (a) The court may dispense with the requirement of a bond where the entirety of the estate consists of benefits received or to be received under:

(1) Part 3 (commencing with Section 11000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of Chapter 7, Title 42, United States Code.

(b) If property, other than the benefits described in subdivision (a), becomes part of the estate, the court may require the filing of a bond.

Comment. Section 2323 continues former Section 1480.3 except that the former provision is expanded to cover the estate of a conservatee as well as the estate of a minor. See Welf. & Inst. Code §§ 10002, 11006.5.

The programs specified in Section 2323 are: (1) state aid and medical assistance (Welf. & Inst. Code, Part 3 of Division 9), (2) county aid and relief to indigents (Welf. & Inst. Code, Part 5 of Division 9), (3) federal old age, survivors, and disability insurance benefits (42 U.S.C. §§ 401-431, Supp. V 1975), and (4) federal supplemental security income for the aged, blind, and disabled (42 U.S.C. § 1381 et seq., Supp. V 1975). See Review of Selected 1976 California Legislation, 6 Pac. L.J. 165, 168 (1977).

§ 2324. Testamentary guardian

2324. A testamentary guardian need not file a bond unless required by the court.

Comment. Section 2324 continues former Section 1485. As to testamentary guardians, see Sections 1500-1502.

30185

Tentatively Approved - Sept. 1977

§ 2325. Bond of nonprofit charitable corporation

2325. The surety on the bond of a nonprofit charitable corporation described in Section 2152 shall be an authorized surety company.

Comment. Section 2325 continues the substance of former Sections 1480.6 and 1802.5. The cost of the bond is an allowable expense. See Section 2622(a)(1).

30186

Tentatively Approved - Sept. 1977

§ 2326. Several guardians or conservators

2326. (a) If more than one guardian or conservator is appointed, separate or joint bonds shall be furnished, as the court may order.

(b) If a joint bond is furnished, the liability on the bond is joint and several.

Comment. Section 2326 is based on a portion of the second sentence of former Section 1405 and the last sentence of former Section 1802. Section 2326 makes clear that the liability on a joint bond is joint and several and is consistent with Section 544 (administrators and executors). See also Section 2153 (authority to appoint several guardians or conservators).

30187

Tentatively Approved - Sept. 1977

§ 2327. Several wards or conservatees

2327. If the proceeding involves more than one ward or conservatee, the court may order separate bonds or a single bond or a combination thereof.

Comment. Section 2327 is based on the second sentence of subdivision (b) of Section 1440 and makes clear that, where the proceeding involves several wards or several conservatees, the court, in its discretion, may order a separate bond for each ward or conservatee, a single bond to cover all the wards or conservatees, or a combination of such bonds. See also Section 2154 (authority to appoint one guardian or conservator for several wards or conservatees).

§ 2328. Deposit of money or other property subject to court control

2328. (a) In any proceeding to determine the amount of the bond of the guardian or conservator (whether at the time of appointment or subsequently), if the estate includes money, securities, or other property which has been or will be deposited in a bank or trust company, or money which has been or will be invested in an account in an insured savings and loan association, upon condition that the money, securities, or other property will not be withdrawn except on authorization of the court, the court, in its discretion, may so order and may do either of the following:

(1) Exclude such money, securities, and other property in determining the amount of the required bond or reduce the amount of the bond to be required in respect to such money, securities, or other property to such an amount as the court determines is reasonable.

(2) If a bond has already been furnished or the amount fixed, reduce the amount to such an amount as the court determines is reasonable.

(b) The petitioner for letters, or the proposed guardian or conservator in advance of appointment of a guardian or conservator, may do any one or more of the following:

(1) Deliver to a bank or trust company money, securities, or other property in such person's possession.

(2) Deliver to an insured savings and loan association money in such person's possession.

(3) Allow a bank or trust company to retain such money, securities, and other property already in its possession.

(4) Allow an insured savings and loan association to retain any such money already invested with it.

(c) In the cases described in subdivision (b), the petitioner or proposed guardian or conservator shall obtain and file with the court a written receipt including the agreement of the bank, trust company, or insured savings and loan association that the money, securities, or other property shall not be allowed to be withdrawn except upon authorization of the court. In receiving and retaining money, securities, or

other property under subdivisions (b) and (c), the bank, trust company, or association shall be protected to the same extent as though it had received the money, securities, or other property from a person to whom letters had been issued.

Comment. Section 2328 continues the substance of former Section 1405.1 except that Section 2328 includes personal property in addition to money and securities. In this respect, Section 2328 is consistent with former Section 1804, which it supersedes, and with Financial Code Section 1586 which covers not only money but also "personal assets." Under Section 2328, the guardian or conservator would be permitted, for example, to deposit jewelry or other personal property of the ward or conservatee with a bank or trust company, subject to withdrawal only on order of court, and have the bond reduced accordingly. For related sections, see Fin. Code §§ 764, 765, 1586, and 6408.5. For definitions of terms used in this section, see Sections 1406 (account in an insured savings and loan association), 1409 (bank), 1439 (trust company). See also Sections 2521 (deposit or investment of money in bank or in account in an insured savings and loan association), 2522 (deposit of personal assets with trust company).

30935

Tentatively Approved - Sept. 1977

§ 2329. Estate not exceeding \$10,000 consisting of deposited money

2329. No bond is required if the estate does not exceed ten thousand dollars (\$10,000) and is in the form of money deposited in a bank or trust company or invested in an account in an insured savings and loan association, subject to withdrawal only upon authorization of the court.

Comment. Section 2325 continues the substance of the fourth sentence of former Section 1405 but expressly covers conservatorships as well as guardianships. No bond is required where Section 2329 applies; but, where Section 2329 does not apply, the court is given discretion as to the amount of the bond under Section 2328. For definitions of terms used in this section, see Sections 1406 (account in an insured savings and loan association), 1409 (bank), 1439 (trust company).

30938

Tentatively Approved - Sept. 1977

§ 2330. Reduction of amount of bond

2330. (a) A guardian or conservator may apply to the court for reduction in the amount of the bond. The application shall be made by filing a petition setting forth the condition of the estate.

(b) Notice of hearing shall be given in the manner provided by Chapter 3 (commencing with Section 1460) of Part 1. Upon the hearing, the court may reduce the amount of the bond to such amount as the court in its discretion determines is proper under the circumstances; but, except upon a showing of good cause, the amount of the bond shall not be reduced below the amount determined pursuant to Section 2320.

(c) The guardian or conservator may furnish new sureties who may be the same sureties as on the previous bond and who shall qualify for the reduced amount.

(d) Nothing in this section limits the authority of the court under Section 2328 to reduce the amount of the bond.

Comment. Section 2330 continues the substance of former Sections 1483.1 and 1803, but the limitation on the amount to which the bond can be reduced is revised to conform to the requirements of Section 2320. Subdivision (d) is new. It makes clear the relationship of Section 2330 and Section 2328; the court may reduce the amount of the bond under Section 2328 without compliance with Section 2330. A petition filed under Section 2330 must be verified. Section 1451. The clerk sets the petition for hearing. Section 1452. See also Section 2522 (reduction of bond when personal assets deposited with trust company).

30940

Tentatively Approved - Sept. 1977

§ 2331. Additional bond on real property transactions

2331. Before any sale of real property of an estate is confirmed, or any mortgage or deed of trust with respect to real property of an estate is authorized by which money is to be raised, the guardian or conservator shall furnish such additional bond as is required by the court in order to make the sum of the bonds furnished by the guardian or conservator equal to the amount determined pursuant to Sections 2320, taking into account the proceeds of the sale or mortgage or deed of trust.

Comment. Section 2331 continues the substance of former Section 1534a, which applied to conservators by virtue of former Section 1852.

Tentatively Approved in Substance - Sept. 1977

§ 2332. Deposit in place of surety bond

2332. (a) A guardian or conservator may, instead of furnishing the required surety bond, file with the clerk of the court a cash bond, or an assigned interest in an account in a bank or insured savings and loan association, or deposit with the clerk bearer or endorsed bonds of the United States or of the State of California, in the sum required for a surety bond given by an authorized surety company.

(b) The security furnished under subdivision (a) is subject to increase or decrease as provided with respect to the surety bond, shall be conditioned the same as required of the surety bond, and is returnable to the guardian or conservator on the termination of the service of the guardian or conservator or on later substitution of a surety bond or other adequate security.

Comment. Section 2332 continues former Sections 1480.5 and 1803.5, except that the language allowing return of the deposited security on later substitution of a surety bond or other adequate security has been added. For definitions of terms used in this section, see Sections 1406 (account in an insured savings and loan association), 1409 (bank).

Tentatively Approved - Sept. 1977

§ 2333. Filing and preservation of bond

2333. Every bond given by a guardian or conservator shall be filed and preserved in the office of the clerk of the court.

Comment. Section 2333 is the same in substance as a portion of former Sections 1486 and 1805. For requirements as to entries in register of actions and presumptive effect of such entries, see Section 545, incorporated by the general reference provisions of Section 1450.

Tentatively Approved - Sept. 1977

§ 2334. Suit against sureties on bond; limitation period

2334. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the ward or conservatee or of any person interested in the estate.

(b) Except as provided in subdivision (c), no action may be maintained against the sureties on the bond unless commenced within three years from the discharge or removal of the guardian or conservator or from the date the order surcharging the guardian or conservator becomes final, whichever is later.

(c) If at the time of the discharge or removal of the guardian or conservator or when the order of surcharge becomes final any person entitled to bring the action is under any legal disability to sue, such person may commence the action within three years after the disability is removed.

Comment. Subdivision (a) of Section 2334 continues a portion of former Sections 1486 and 1805. Subdivisions (b) and (c) are based on former Section 1487 with the addition of wording as to "surcharge" from former Section 1806. Subdivision (b) adopts the three-year period under former Section 1487 rather than the two-year period under former Section 1806. Subdivision (c) adopts the three-year period under former Section 1487 rather than the one-year period under former Section 1806. As to the liability of the guardian, conservator, and sureties, see also Section 554.

38048

Tentatively Approved - Sept. 1977

§ 2335. Insufficiency of sureties; order for further security or new bond

2335. (a) The ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate may apply to the court for an order that the guardian or conservator be required to furnish further security. The application shall be made by a verified petition showing that the sureties on the bond furnished by the guardian or conservator have become, or are becoming, insolvent, or that they have removed or are about to remove from the state, or that from any other cause the bond is insufficient.

(b) If it comes to the knowledge of the court that the bond of a guardian or conservator is from any cause insufficient, the court may on its own motion, without any application, make an order requiring the guardian or conservator to furnish further security.

(c) If the court is satisfied from the petition or from its own information that the matter requires investigation, the court shall issue

a citation to the guardian or conservator directing the guardian or conservator to appear before the court at a designated time and place to show cause why further security should not be required. The citation shall be served on the guardian or conservator personally, at least 10 days before the return day. If the guardian or conservator cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the guardian or conservator. On the return of the citation or at such other time as the court may fix, the court shall proceed to hear the matter, and if it satisfactorily appears that the security, from any cause, is insufficient, the court shall make an order requiring the guardian or conservator to give further security, or to file a new bond, within a reasonable time, not less than five days.

(d) If sufficient security or additional security is not given within the time fixed by the court's order, the court shall revoke the letters issued to the guardian or conservator.

(e) When a petition is presented for an order under this section that a guardian or conservator be required to give further security, or to give a bond where no bond was originally required, and it is alleged on oath, that the guardian or conservator is wasting the property of the estate, the court, by order, may suspend the powers of the guardian or conservator until the matter can be heard and determined.

Comment. Section 2335 supersedes former Section 1483 which was general in terms. Section 2335 is the same in substance as Sections 547-550 (executors and administrators) except that the court is directed to prescribe the manner of service if personal service cannot be made. Cf. Code Civ. Proc. § 413.10. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

90870

Tentatively Approved - Sept. 1977

§ 2336. Substitution of surety

2336. (a) A guardian or conservator who desires a substitution and discharge of a surety may file a petition with the court for that purpose together with an accounting. The clerk shall issue a citation to the existing surety directing the surety to appear before the court at a designated time and place to show cause why the surety should not

be substituted and discharged. The citation shall be served on the surety personally at least 10 days before the return day. If the surety cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the surety.

(b) The court shall hear the matter on the return of the citation or at such other time as the court may appoint. If, upon the hearing, the accounting is approved and it appears to the court that the substitute surety is satisfactory and that no injury can result to the estate, the court may order a substitution of surety and discharge the existing surety from liability on his bond for any subsequent act, default, or misconduct of the guardian or conservator.

Comment. Section 2336 continues the substance of former Sections 1483.2 and 1483.3 except that the court is directed to prescribe the manner of service if personal service cannot be made. Cf. Code Civ. Proc. § 413.10. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

90871

Tentatively Approved - Sept. 1977

§ 2337. Release of surety

2337. (a) A surety may apply to the court for an order that the surety be discharged from liability on the bond for any subsequent act, default, or misconduct of the guardian or conservator. The clerk shall issue a citation to the guardian or conservator directing the guardian or conservator to appear before the court at a designated time and place and give other security. The citation shall be served on the guardian or conservator personally at least 10 days before the return day. If the guardian or conservator cannot be found after due diligence and inquiry, the citation may be served in such manner as the court may order which is reasonably calculated to give actual notice to the guardian or conservator.

(b) If the guardian or conservator fails to give new sureties to the satisfaction of the court on the return of the citation or within such reasonable time as the court shall allow, unless the surety making the application consents to a longer extension of time, the court shall revoke the letters of the guardian or conservator.

(c) If new sureties are given to the satisfaction of the court, the court shall thereupon make an order that the sureties who applied for the order shall not be liable on their bond for any subsequent act, default, or misconduct of the guardian or conservator.

Comment. Section 2337 continues the substance of former Sections 1488, 1489, and 1490 with the new provisions as to the service of the citation. See the Comments to Sections 2235 and 2236. There were no express provisions in the conservatorship statute on this subject. See former Section 1702.

CHAPTER 5. POWERS AND DUTIES OF GUARDIAN OR
CONSERVATOR OF THE PERSON

§ 2400. Definitions

2400. As used in this chapter:

(a) "Conservator" means a conservator of the person as defined in Section 1415.

(b) "Guardian" means a guardian of the person as defined in Section 1427.

Comment. Section 2400 is new. The section is needed to avoid needless repetition in the various sections in this chapter. As a result of the definitions of "conservator" and "guardian" in Section 2400, if one person is appointed as the conservator of the person and estate or as the guardian of the person and estate, the powers and duties conferred by this chapter will apply.

969/027

Tentatively Approved - Sept. 1977

§ 2401. Care, custody, control, and education

2401. The guardian or conservator has the care, custody, and control of, and is in charge of the education of, a ward or conservatee.

Comment. The provision of Section 2401 for care, custody, and control continues provisions found in the first sentence of former Sections 1500 (guardianship) and 1851 (conservatorship), respectively. The words "and control" were contained in former Section 1851 but not in former Section 1500. The generalization of these words to apply to guardianships as well as to conservatorships makes no substantive change. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.3, at 152-53 (Cal. Cont. Ed. Bar 1968). See also Section 2400 for definitions of "guardian" and "conservator."

The provision of Section 2401 concerning the education of the ward or conservatee extends to conservators the provision of the second sentence of former Section 1500 which applied only to guardians. This extension authorizes a conservator of the person to provide for the education of a married minor subject to conservatorship as well as of a conservatee over the age of 18.

§ 2402. Residence of ward or conservatee

2402. (a) The guardian or conservator may fix the residence of the ward or conservatee at any place within this state but not elsewhere without the permission of the court.

(b) The guardian or conservator shall give prompt written notice to the court of all changes in the residence of the ward or conservatee.

Comment. Subdivision (a) of Section 2402 continues the substance of the third sentence of former Section 1500 and the last portion of the first sentence of former Section 1851. Subdivision (b) continues the substance of subdivision (c) of former Section 1500 and subdivision (b) of former Section 1851 except that notice is to be given to the court in which the proceedings are then pending rather than the court which issued letters. See Section 2400 for definitions of "guardian," "conservator," and "court."

§ 2403. Involuntary civil mental health treatment

2403. 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.

Comment. Section 2403 continues the substance of the second paragraph of former Sections 1500 and 1851, respectively, except that the words "14 years of age or older" have been added. The former provision appears to have been intended to apply to adult incompetents, and the new language thus extends its protection to minors over the age of 14. Section 2403 recognizes that minors over the age of 14 have an independent right to assert the protections of the due process clause of the United States and California Constitutions. In re Roger S., 19 Cal.3d 921, 931, 569 P.2d 1286, 1292, 141 Cal. Rptr. 298, 304 (1977). Nothing in Section 2403 is intended to determine the existence or nonexistence of procedural rights of minors under the age of 14. See also Section 2400 for definitions of "guardian" and "conservator."

§ 2404. Additional conditions in order of appointment

2404. When a guardian or conservator is appointed, the court may, with the consent of the guardian or conservator, insert in the order of appointment conditions not otherwise obligatory providing for the care, treatment, education, and welfare of the ward or conservatee. The performance of such conditions is a part of the duties of the guardian or conservator, for the faithful performance of which the guardian or conservator and the sureties on the bond, if any, are responsible.

Comment. Section 2404 continues the portion of former Section 1512 which applied to a guardian of the person of a minor and broadens its application to include a conservator of the person. See also Section 2502 (additional conditions for guardian or conservator of estate). In the case of a guardian or conservator of the person, the requirement of a bond is discretionary with the court. See Section 2322. See Section 2400 for definitions of "guardian," "conservator," and "court."

§ 2405. Instructions from or approval by court

2405. (a) Upon petition of the guardian or conservator or ward or conservatee or other interested party, the court may, after hearing, authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator, with respect to the powers and duties prescribed in this chapter.

(b) Notice of the hearing on the petition shall be given for the period and in the manner required by Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2405 is based on the portion of former Section 1860 (instructions to or approval of acts of conservator) insofar as that section related to the care and protection of the conservatee. See also former Section 1516, which was limited to instructing the guardian of the estate. Section 2405 makes clear that the court may instruct and approve with respect to supervision of the person as well as with respect to management of the estate (see Section 2504). Section 2405 also extends to guardians of the person the former conservatorship provision of Section 1860 which authorized the court not only to instruct in advance but also to confirm actions already taken. See also Section 2400 for definitions of "guardian," "conservator," and "court."

§ 2406. Setting petitions for hearing

2406. All petitions filed under this chapter shall be set for hearing within 30 days of the filing of such petitions.

Comment. Section 2406 continues subdivision (b) of former Section 1500 and subdivision (a) of former Section 1851 insofar as those provisions applied to the provisions compiled in this chapter. As to notice of hearing, see Chapter 3 (commencing with Section 1460) of Part 1.

15/901

CHAPTER 6. POWERS AND DUTIES OF GUARDIAN OR
CONSERVATOR OF THE ESTATE

[This chapter will be drafted after the Commission
has considered Memorandum 77-82]

CHAPTER 7. INVENTORY AND ACCOUNTS

Article 1. Definitions and General Provisions

§ 2600. Definitions

2600. As used in this chapter, unless the context otherwise requires:

(a) "Conservator" means a conservator of the estate as defined in Section 1412.

(b) "Estate" means the estate of the ward or conservatee, as the case may be.

(c) "Guardian" means a guardian of the estate as defined in Section 1424.

Comment. Section 2600 is new. The definitions are included to avoid needless repetition in various sections in this chapter.

404/285

Tentatively Approved - Oct. 1977

§ 2601. Wages of ward or conservatee

2601. (a) Unless otherwise ordered by the court, if the ward or conservatee is at any time during the continuance of the guardianship or conservatorship employed:

(1) The wages or salaries for such employment are not a part of the estate and the guardian or conservator is not accountable for such wages or salaries.

(2) The wages or salaries for such employment shall be paid to the ward or conservatee and are subject to his or her control to the same extent as if the guardianship or conservatorship did not exist.

(b) Any court order referred to in subdivision (a) is binding upon the employer only after notice of the order has been received by the employer.

Comment. Section 2601 continues the substance of former Sections 1561 and 1910 but extends the provisions to minors. See also Section 2511 (personal allowance for ward or conservatee).

Article 2. Inventory and Appraisement of Estate

Tentatively Approved - Oct. 1977

§ 2610. Filing inventory and appraisement

2610. (a) Within three months after appointment, or within such further time as the court for reasonable cause may allow, the guardian or conservator shall file with the clerk of the court an inventory and appraisement of the estate, made as of the date of the appointment of the guardian or conservator. The guardian or conservator shall make oath to the inventory.

(b) The property described in the inventory (other than money) shall be appraised by the guardian or conservator and an inheritance tax referee in the manner provided for the inventory and appraisement of estates of decedents. The guardian or conservator may appraise the assets which an executor or administrator could appraise under Section 605.

(c) If there is a conservatorship initiated pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) and no sale of the estate will occur:

(1) The inventory and appraisement required by subdivision (a) shall be filed within 90 days after appointment of the conservator.

(2) The property described in the inventory (other than money) shall be appraised by the conservator, and the requirement contained in subdivision (b) of an appraisal by an inheritance tax referee does not apply.

Comment. Subdivisions (a) and (b) of Section 2610 continue the substance of the first, third, and fourth sentences of subdivision (a) of former Section 1550 and the first, third, and fourth sentences of former subdivision (a) of former Section 1901. Subdivision (c) continues the substance of subdivision (b) of former Section 1550 and subdivision (b) of former Section 1901. As to temporary guardians and conservators, see Section 2253. As to instructions from the court concerning duties under this article, see Section 2504.

404/291

Tentatively Approved - Oct. 1977

§ 2611. Sending copy to Director of Mental Health or Director of Developmental Services

2611. If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the guardian or conservator shall deliver or mail a copy of the inventory and appraisalment filed under Section 2610 to the director of the appropriate department at the director's office in Sacramento.

Comment. Section 2611 continues the fifth sentence of former Section 1550 and the fifth sentence of former Section 1901. The language has been revised to make clear that it is a copy of the inventory and appraisalment filed under Section 2610 that is to be mailed to the director.

404/297

Tentatively Approved - Oct. 1977

§ 2612. Sending copy to county assessor

2612. If a timely request is made, the clerk of court shall deliver or mail a copy of the inventory and appraisalment filed under Section 2610 to the county assessor.

Comment. Section 2612 continues the substance of the second sentence of former Section 1550 and the second sentence of former Section 1901. The language has been revised to permit delivery by mail.

404/299

Tentatively Approved - Oct. 1977

§ 2613. Subsequently discovered or acquired property

2613. Whenever any property of the ward or conservatee is discovered that was not included in the inventory, or whenever any other property is inherited or acquired by the ward or conservatee (other than by the actions of the guardian or conservator in the investment and management of the estate), the guardian or conservator shall file a supplemental inventory and appraisalment for the property so discovered, inherited, or acquired, and like proceedings shall be followed with respect thereto as in the case of an original inventory.

Comment. Section 2613 continues the substance of the last sentence of subdivision (a) of former Section 1550 and the last sentence of subdivision (a) of former Section 1901. Wages or salary of the ward or conservatee from employment during the guardianship or conservatorship are not part of the estate unless otherwise ordered by the court. See Section 2601.

404/300
Tentatively Approved - Oct. 1977

§ 2614. Objections to appraisals

2614. (a) Within 15 days after the inventory and appraisal is filed, the guardian or conservator, or any creditor or other person interested in the estate, may file written objections to any or all appraisals.

(b) The clerk shall set the objections for hearing not less than 15 days after their filing and shall give notice thereof in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) At least 10 days before the hearing, the party filing the written objections shall mail a notice of the time and place of the hearing and a copy of the objections to all of the following:

(1) The guardian or conservator unless the guardian or conservator is the one filing the objections.

(2) Relatives of the ward or conservatee within the second degree.

(3) The inheritance tax referee.

(d) The court shall determine the objections and may fix the true value of any asset to which objection has been filed.

(e) For the purpose of subdivision (d), the court may cause an independent appraisal or appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.

Comment. Section 2614 continues former Section 1901.5 (conservators) and supersedes former Section 1550.1. The former requirement that notice of hearing and a copy of the objections be "served" on the persons listed in subdivision (c) has been replaced by the requirement that such notice and copy be "mailed" to such persons. "Creditor" has been added to subdivision (a) for clarity. See Section 2616(a)(3).

§ 2615. Consequences of failure to file inventory

2615. (a) If a guardian or conservator fails to file any inventory required by this article within the time prescribed, the court, on its own motion or on petition of any party interested in the estate, upon notice served upon the guardian or conservator as provided or permitted by Section 2653, may revoke the letters of the guardian or conservator.

(b) If a guardian or conservator fails to file any inventory required by this article within the time prescribed, the guardian or conservator is liable for damages for any injury to the estate, or to any person interested in the estate, resulting from the failure timely to file the inventory. Any damages awarded pursuant to this subdivision are a charge upon the bond of the guardian or conservator. If the bond is insufficient, or if there is no bond, the damages are a charge against the personal assets of the guardian or conservator.

Comment. Section 2615 continues the substance of former Section 1902 and supersedes former Section 1551. As to removal of a guardian or conservator for failure to file an inventory within the prescribed time, see Chapter 3 (commencing with Section 2650).

Note. Subdivision (a) of Section 2615 could be deleted since failure to file an inventory on time is a ground for removal under Chapter 8 and that chapter includes procedural details on the hearing, persons who may file petitions for removal, and other details. If subdivision (a) is retained, there will be two different procedures for removal for failure to file an inventory on time, and subdivision (a) lacks needed procedural details. The staff doubts that the court will revoke the letters on its own motion since notice to the guardian or conservator is required before the letters can be revoked, and such notice ordinarily must be served in the manner provided for an original summons and complaint.

§ 2616. Examination concerning assets of estate

2616. (a) A petition may be filed under this section by any one or more of the following:

- (1) The guardian or conservator.
- (2) The ward or conservatee.
- (3) A creditor or other person interested in the estate, including persons having only an expectancy or prospective interest in the estate.

(b) The petition may allege any one or more of the following:

(1) A named person is suspected of having embezzled, concealed, smuggled, or falsely or fraudulently obtained or wrongfully disposed of any property of the ward or conservatee.

(2) A named person has in such person's possession or has knowledge of any instrument in writing belonging to the ward or conservatee.

(3) A named person asserts a claim against the ward or conservatee or the estate.

(4) The estate asserts a claim against a named person.

(c) Upon the filing of a petition under this section, the court may cite the named person to appear before the court, and the court and the petitioner may examine the named person under oath upon the matters recited in the petition. If the named person is not in the county where letters issued, the examination shall be made under this section but otherwise the procedure and the rights and duties of the parties shall be governed by the provisions of Sections 613, 614, and 615.

Comment. Section 2616 continues the substance of former Section 1903 and supersedes the somewhat narrower provisions of former Section 1552. A petition filed under this section must be verified. Section 1451. The reference to "Section 613" in former Section 1903 has been replaced by a reference to "Sections 613, 614, and 615." This change is consistent with the broad general reference found in former Section 1552. The reference to Section 614 is a useful clarification since that section appears to authorize the use of written interrogatories as well as oral examination. Sections 614 and 615 also include provisions relating to the enforcement of the right of examination. The estate is liable for the necessary expenses of an examinee who appears and is found innocent. Prob. Code § 613.

404/339

Article 3. Accounts

Tentatively Approved - Oct. 1977

§ 2620. Presentation of account for settlement and allowance

2620. (a) At the expiration of one year from the time of appointment and thereafter not less frequently than biennially, unless otherwise ordered by the court, the guardian or conservator shall present the account of the guardian or conservator to the court for settlement and allowance.

(b) When an account is rendered by or on behalf of two or more joint guardians or conservators, the court, in its discretion, may settle and allow the account upon the oath of any of them.

Comment. Section 2620 continues the substance of former Section 1904 and supersedes former Section 1553. The account presented under subdivision (a) must be verified. Section 1451. As to instructions from the court concerning duties under this chapter, see Section 2504. See also Sections 2511 (allowance for ward or conservatee), 2517 (advances by guardian or conservator). Terms used in this section are defined in Section 2600.

Staff Draft

404/341

§ 2621. Notice of hearing

2621. Notice of the hearing on the account of the guardian or conservator shall be given for the period and in the manner required by Chapter 3 (commencing with Section 1460) of Part 1. If notice is required to be given to the Director of Mental Health or Director of Developmental Services under Section 1461, the account shall not be settled or allowed unless notice has been given as provided in Section 1461.

Comment. The first sentence of Section 2621 is new; the second sentence is based on portions of former Sections 1554 and 1905. Unless notice is given or waived as provided in Section 1461, if the account is settled without giving notice to the Director of Mental Health or the Director of Developmental Services in the cases where notice is required under Section 1461, the statute of limitations does not run against any claim of the State Department of Health or the State Department of Developmental Services against the estate for board, care, maintenance, or transportation of the ward or conservatee. See Section 1461(d). See also Section 2700 (request for special notice of accounts). The court may require further or additional notice. See Section 1462.

10/035

Tentatively Approved - Oct. 1977

§ 2622. Objections to account

2622. The ward or conservatee, any relative or friend of the ward or conservatee, or any creditor or other person interested in the estate may file written objections under oath to the account of the guardian or conservator, stating the items of the account to which objection is made and the basis for the objection.

Comment. Section 2622 is new. No comparable provision was contained in the former guardianship or conservatorship statute, but Section 2622 appears to codify existing practice. See W. Johnstone & G. Zillgitt, California Conservatorships § 6.42, at 253 (Cal. Cont. Ed. Bar 1968).

404/342

Tentatively Approved - Oct. 1977

§ 2623. Compensation and expenses of guardian or conservator

2623. (a) The guardian or conservator shall be allowed all of the following:

(1) The amount of the reasonable expenses incurred in the execution of the trust, including the cost of any surety bond furnished and reasonable attorney's fees.

(2) Such compensation for services rendered by the guardian or conservator as the court determines is just and reasonable.

(3) All reasonable disbursements made before appointment as guardian or conservator.

(4) In the case of termination other than by the death of the ward or conservatee, all reasonable disbursements made after the termination of the conservatorship but prior to the discharge of the guardian or conservator by the court.

(5) In the case of termination by the death of the ward or conservatee, all reasonable expenses incurred prior to the discharge of the guardian or conservator by the court for the custody and conservation of the estate and its delivery to the executor or administrator of the estate of the deceased ward or conservatee or in making other disposition of the estate as provided for by law.

(b) In the case of a guardian or conservator which is a nonprofit charitable corporation described in Section 2102:

(1) The corporation's compensation shall be awarded only for services actually rendered and shall not be based on the value of the estate.

(2) Any fee allowed for an attorney shall be for services actually rendered and shall not be based on the value of the estate.

Comment. Subdivision (a) of Section 2623 continues the substance of subdivision (1) of former Section 1908 and supersedes the first

paragraph of former Section 1556. Subdivision (b) continues the substance of subdivision (2) of former Section 1908 (conservatorship) in a much more concise form and extends the same limitations to guardianships. The reference to the cost of a surety bond in paragraph (1) of subdivision (a) continues a provision found in the first portion of former Section 1908 and supersedes the similar provisions of former Section 1556.5. As to petitions for orders fixing compensation, see Sections 2630 and 2631. As to instructions from the court generally, see Section 2504. Terms used in this section are defined in Section 2600.

404/344

Tentatively Approved - Oct. 1977

§ 2624. Investment of funds

2624. Upon each accounting, the guardian or conservator shall show that, during the period covered by the account, all cash has been kept invested in interest bearing accounts or investments authorized by law except for such amounts of cash as are reasonably necessary for the orderly administration of the estate.

Comment. Section 2624 continues former Sections 1556.3 and 1612.

404/346

Tentatively Approved - Oct. 1977

§ 2625. Accounting and review of sales or purchases of property

2625. Any sale or purchase of property not previously approved or disapproved during administration of the guardianship or conservatorship estate is subject to review by the court upon the next succeeding accounting of the guardian or conservator after the sale or purchase is made. Upon such accounting and review, the court may hold the guardian or conservator liable for any violation of his or her duties with respect to such sale or purchase. Nothing in this section shall be construed to affect the validity of any such sale or purchase.

Comment. Section 2625 continues the substance of former Sections 1519 and 1862. As to instructions from the court, see Section 2504. Terms of a sale of property are subject to approval of the court. See Section 2531. Purchases of property are subject to approval of the court. See Section 2571.

§ 2626. Termination of proceeding upon exhaustion of estate

2626. If it appears upon the settlement of any account that the estate has been entirely exhausted through expenditures or disbursements which are approved by the court, the court, upon settlement of the account, shall order the proceeding terminated and the guardian or conservator forthwith discharged unless the court determines that there is reason to continue the proceeding.

Comment. Section 2626 continues former Sections 1559 and 1909, except that the authority for the court to continue the proceeding is new. Thus, for example, if it appears that the guardianship or conservatorship estate will be replenished by receiving new assets from some source, this section will not require termination of the proceeding. As to the time limitations on bringing action against sureties on the bond, see Section 2334.

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

2627. (a) After a ward has reached majority, the ward may settle accounts with the guardian and give the guardian a release. The release is valid if obtained fairly and without undue influence.

(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.

Comment. Subdivision (a) of Section 2627 continues the substance of former Section 1592. Subdivision (b) continues the substance of former Section 1593. The former guardian has the burden of showing that a release given by the ward pursuant to subdivision (a) is just and fair. *Smith v. Fidelity & Deposit Co.*, 130 Cal. App. 45, 56-57, 19 P.2d 1018, ___ (1933). Such a release does not excuse the guardian from filing a final account and obtaining a discharge from the court. *Cupp, McCarroll, & McClanahan, Guardianship of Minors*, in 1 California Family Lawyer § 16.75, at 661 (Cal. Cont. Ed. Bar 1962); see Section 2641 (ward's majority does not cause court to lose jurisdiction to settle accounts).

Article 4. Court Order Fixing Compensation for
Guardian, Conservator, or Attorney

Tentatively Approved - Oct. 1977

§ 2630. Petition by guardian or conservator

2630. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of three months from the issuance of letters, the guardian or conservator may petition the court for an order fixing and allowing compensation for services rendered by the guardian or conservator to that time and for an order fixing and allowing compensation to the attorney for services rendered by the attorney to the guardian or conservator.

(b) Notice of the hearing shall be given for the period and in the manner required by Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) such compensation as the court determines is just and reasonable to the guardian or conservator for services rendered to the estate and (2) such compensation as the court determines is reasonable to the attorney for services rendered to the guardian or conservator. The compensation so allowed shall thereupon be charged to the estate.

(d) If the guardian or conservator is a nonprofit charitable corporation described in Section 2152, the compensation of the guardian or conservator and the compensation of the attorney representing the guardian or conservator, in each instance, shall be for services actually rendered and shall not be based upon the value of the estate.

Comment. Section 2630 is based on former Section 1556 (second paragraph), with the addition in subdivision (d) of Section 2630 of provisions in former Sections 1907 and 1908 relating to nonprofit charitable corporations. In addition to the notice prescribed by subdivision (b), the court may require further or additional notice. See Section 1462. See also Section 2643 (fee for attorney rendering account for dead or incompetent guardian or conservator).

Tentatively Approved - Oct. 1977

§ 2631. Petition by attorney

2631. (a) At any time permitted by Section 2630 and upon the notice therein prescribed, an attorney who has rendered legal services

to the guardian or conservator, including services rendered under Section 2643, may petition the court for an order fixing and allowing compensation for such services rendered to that time.

(b) Upon the hearing, the court shall make an order allowing such compensation as the court determines reasonable to the attorney for services rendered to the guardian or conservator. The compensation so allowed shall thereupon be charged against the estate.

(c) If the guardian or conservator is a nonprofit charitable corporation described in Section 2102, the provisions of subdivision (d) of Section 2630 apply to the attorney's compensation.

Comment. Section 2631 is based on former Section 1556.1, relating to guardianships, with the addition of subdivision (c) which is based upon provisions in former Sections 1907 and 1908 relating to nonprofit charitable corporations. Former Section 1908 did not expressly provide for a direct petition by the attorney in case of conservatorships but referred to attorney's fees which may be included in the conservator's petition. The practice, in the case of conservatorships, was not uniform. Arguably, former Section 1702 authorized a direct petition by the attorney in the case of a conservatorship although not expressly provided for in the guardianship statute. Direct petition by the attorney is provided for in probate estate procedure. See Section 911. The former guardianship provisions, which permitted the issue to be presented either by the guardian or conservator or by direct petition by the attorney, provided a desirable flexibility and are extended by Section 2631 to conservatorships. For provisions as to the appealability of an order fixing, allowing, or directing payment of an attorney's fee, see Section 2750(f). See also Section 2643 (fee for attorney rendering account for dead or incompetent guardian or conservator).

404/363

Article 5. Accounts on Termination of Guardianship
or Conservatorship

Tentatively Approved - Oct. 1977

§ 2641. Continuing jurisdiction of court

2641. The termination of the relationship of guardian and ward or conservator and conservatee by the death of either, by the ward attaining majority, by the determination of the court that the guardianship or conservatorship is no longer necessary, or for any other reason, does not cause the court to lose jurisdiction of the proceeding for the purpose of settling the accounts of the guardian or conservator or for

any other purpose incident to the enforcement of the judgments and orders of the court upon such accounts or upon the termination of the relationship.

Comment. Section 2641 continues the substance of the first sentence of former Section 1555 and the first sentence of former Section 1907. The last portion of the first sentence of former Section 1907 is continued in Section 2641 and is made applicable to guardianships.

404/364

Tentatively Approved - Oct. 1977

§ 2642. Death of ward or conservatee; disposition of assets

2642. (a) Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the funeral of the deceased ward or conservatee, or may pay the unpaid expenses of such last illness and funeral, in full or in part, from any assets of the deceased ward or conservatee, other than real property or any interest therein, which are under the control of the guardian or conservator.

(b) When a claim for such expenses is presented to the guardian or conservator, the guardian or conservator shall endorse thereon an allowance or rejection, with the date thereof. If the claim is allowed, it shall be presented to the judge, who shall in like manner endorse thereon an allowance or rejection, and, if approved, the claim shall be filed with the clerk within 30 days thereafter.

(c) After payment of such expenses, the guardian or conservator may transfer any remaining assets in accordance with and subject to the provisions of Section 630. The value of the property of the deceased ward or conservatee, for the purpose of ascertaining the right to transfer under Section 630, shall be determined after the deduction of the expenses so paid.

Comment. Section 2642 continues former Sections 1560 and 1811.

404/371

Tentatively Approved - Oct. 1977

§ 2643. Account of dead or incompetent guardian or conservator

2643. (a) If the guardian or conservator dies or becomes incompetent, the account may be presented by:

(1) The executor or administrator of the guardian or conservator, if deceased.

(2) The conservator of the estate of the incompetent guardian or conservator.

(b) Upon petition of the successor of the deceased or incompetent guardian or conservator, the court shall compel such executor or administrator or the conservator of the estate of the incompetent guardian or conservator to render the account and shall settle the account as in other cases.

(c) If the guardian or conservator dies and there is no executor or administrator, or if the guardian or conservator becomes incompetent and has no conservator of the estate, or if the guardian or conservator absconds, the court may compel the attorney for the deceased, incompetent, or absconding guardian or conservator or the attorney of record in the guardianship or conservatorship proceeding to render an account of the guardianship or conservatorship to the extent that information or records are available to the attorney for the purpose. The account of the attorney need not be verified. A fee shall be allowed to the attorney by the court for this extraordinary service. If the guardian or conservator is a nonprofit charitable corporation described in Section 2152, the fee allowed to the attorney by the court for extraordinary service shall be for services actually rendered and shall not be based on the value of the estate.

Comment. Section 2643 continues all of former Section 1555 except the first sentence which is continued in Section 2641 and all of former Section 1907 except the first sentence which is continued in Section 2461. The substance of the last paragraph of former Section 1907 is continued in Section 2643 and made applicable to guardianships. As to instructions from the court, see Section 2504.

CHAPTER 8. REMOVAL OR RESIGNATION

Article 1. Removal of Guardian or Conservator

Tentatively Approved - Oct. 1977

§ 2650. Causes for removal

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.
- (b) Failure to file an inventory or to render an account within the time allowed by law or by court order.
- (c) Continued failure to perform duties.
- (d) Incapacity to perform duties suitably.
- (e) Gross immorality or conviction of a felony.
- (f) Having an interest adverse to the faithful performance of the trust.
- (g) In the case of a guardian of the person or a conservator of the person, failure to comply with the provisions of Section 2403.
- (h) In the case of a guardian of the estate or a conservator of the estate, insolvency or bankruptcy of the guardian or conservator.
- (i) In any other case in which the court in its discretion determines that removal is in the best interests of the ward or conservatee; but, in considering the best interests of the ward, if the guardian was appointed under Section 1500 or 1501 (appointment by will or by signed writing), the court shall take that fact into consideration.

Comment. Section 2650 continues the substance of the portions of former Sections 1580 and 1951 enumerating the causes for removal of a guardian or conservator except that the provisions for removal of a guardian when it is "no longer necessary that the ward should be under guardianship" and for removal of a conservator when the conservatorship is "no longer required" are not continued. In such cases, termination of the guardianship or conservatorship is the appropriate remedy, and not removal. See Sections 1601, 1861. The reference in former Section 1580 to an appointment by will or by deed has been broadened in subdivision (i) to refer to will or signed writing to correspond to Sections 1500 and 1501. See also Section 2615 (revocation of letters for failure to file inventory within prescribed time).

§ 2651. Petition for removal

2651. The ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate of the ward or conservatee, may apply by petition to the court to have the guardian or conservator removed. The petition shall state facts showing cause for removal.

Comment. Sections 2651-2653 supersede that portion of former Sections 1580 and 1951 which provided that notice of removal proceedings shall be as provided in former Section 1755 (termination of conservatorship). Section 2651 is comparable to Section 1861 (termination of conservatorship). A petition filed under Section 2651 must be verified. See Section 1451. The clerk sets the petition for hearing. See Section 1452.

§ 2652. Notice of hearing

2652. (a) At least 15 days before the hearing, a copy of the petition and of the notice of the time and place of hearing shall be mailed as follows:

(1) In the case of a guardianship, to the persons specified in Section 1511.

(2) In the case of a conservatorship, to the conservatee and to the persons specified in Section 1822.

(b) At least 10 days before the hearing, a copy of the petition and of the notice of the time and place of hearing shall be served on the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as the court may order. If the guardian or conservator cannot with reasonable diligence be so served, the court may dispense with service.

Comment. See the Comment to Section 2651. Section 2652 is comparable to Section 1863 (termination of conservatorship). The time for service under subdivision (b) is increased from five to 10 days.

§ 2653. Hearing and judgment

2653. (a) The court shall hear and determine the matter according to the laws and procedure relating to the trial of civil actions except that there is no right to trial by jury. The guardian or conservator, the ward or conservatee, any relative or friend of the ward or conservatee, and any person interested in the estate, may appear and oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court shall make such a finding, shall revoke the letters of guardianship or conservatorship, and shall enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, shall order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

Comment. See the Comment to Section 2651. Section 2653 is comparable to subdivision (a) of Section 1864 (hearing on termination of conservatorship) except that, under Section 2653, there is no right to jury trial in removal proceedings. Subdivision (b) is based in part on the first sentence of former Section 1581.

§ 2654. Surrender of estate and suspension of powers pending hearing

2654. Whenever it appears that the ward or conservatee, or the estate of the ward or conservatee, may suffer loss or injury during the time required for notice and hearing under this chapter, the court, on its own motion or on petition, may do either or both of the following:

(a) Suspend the powers of the guardian or conservator pending notice and hearing to such extent as the court deems necessary.

(b) Compel the guardian or conservator to surrender the estate of the ward or conservatee to a custodian designated by the court.

Comment. Section 2654 continues the substance of former Section 1952 and supersedes former Section 1581. A petition filed under this section must be verified. Section 1451.

Article 2. Resignation of Guardian or Conservator

Tentatively Approved - Oct. 1977

§ 2660. Resignation of guardian or conservator

2660. A guardian or conservator may at any time file a petition for permission to resign. The petition shall be filed in the court in which the guardianship or conservatorship proceeding is pending. The court may allow such resignation when it appears proper, to take effect at such time as the court may fix.

Comment. Section 2660 supersedes former Section 1953 and the first portion of former Section 1582. Section 2660 continues the substance of former Section 1953 except that the resignation takes effect at such time as the court may fix rather than upon settlement of the accounts of the guardian or conservator. The court may appoint a successor to the resigning guardian or conservator after notice and hearing. See Section 2105.

CHAPTER 9. REQUESTS FOR SPECIAL NOTICE

Tentatively Approved - Oct. 1977

§ 2700. Request for special notice

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, any relative or creditor of the ward or conservatee or any other interested person or governmental agency, in person or by attorney, may file with the clerk of the court where the proceeding is pending a written request for special notice of the filing or commencing of any one or more or all of the following:

(1) Petitions for the sale, lease, mortgage, giving of a deed of trust, encumbrance, or confirmation of sale of any property of the ward or conservatee.

(2) Petitions for transfer of the proceeding to another county.

(3) Accounts of the guardian or conservator.

(4) Petitions for partition of any property of the ward or conservatee.

(5) Petitions for allowances of any nature payable from the estate of the ward or conservatee.

(6) Petitions for the investment of funds of the estate.

(7) Petitions for the removal, suspension, or discharge of the guardian or conservator.

(8) Proceedings for the final termination of the guardianship or conservatorship proceedings.

(9) Petitions filed pursuant to Section 2504 or Article 7 (commencing with Section 2590) of Chapter 6.

(10) Applications for removal of the ward or conservatee or property of the ward or conservatee to a foreign jurisdiction.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) A copy of the request shall be served on the guardian or conservator or on the attorney for the guardian or conservator.

(d) The original of the request when filed with the clerk shall be accompanied by a written admission or proof of service.

Comment. Subdivisions (a), (c), and (d) of Section 2700 continue the substance of former Sections 1600 and 2002, with the addition of a provision for special notice of a petition for transfer of the proceeding to another county. Subdivision (a) in its first clause is based on former Section 2002, but the balance is derived from former Section 1600.

Subdivision (b) continues the substance of the first sentence of former Section 2003 and supersedes that sentence and the first clause of the first sentence of Section 1601.

Note. This section must be reviewed after the powers and duties provisions have been drafted and allocated to Parts 2, 3, and 4. If Sections 1853 and 1860 are generalized, paragraphs (1), (3), (4), and (5) of subdivision (a) will be redundant.

65196

Tentatively Approved - Oct. 1977

§ 2701. Modification or withdrawal of request; new request

2701. (a) A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request and is deemed to be withdrawn at a date three years from the date it was filed.

(b) A new request for special notice may be served and filed at any time as provided in the case of an initial request.

Comment. Section 2701 continues the substance of the second, third, and fourth sentences of former Section 2003, except that the request for special notice is deemed withdrawn three years from the date it was filed, rather than three years from the date it was served as under former law. The former guardianship statute contained no express provision comparable to Section 2701.

65195

Tentatively Approved - Oct. 1977

§ 2702. Petitioner required to give requested special notice

2702. In any case to which a request for special notice applies, the party filing the petition, account, or application, or commencing the proceeding, shall give written notice of the filing or commencement, together with the time and place set for the hearing thereon, by mailing the notice to the person named in the request at the address set forth in the request, or by causing the notice to be personally delivered to such person, at least 10 days before the time set for the hearing or within such shorter time as the court may order.

Comment. Section 2702 supersedes the last portion of former Section 1601 and all of former Section 2004. Section 2702 continues the substance of former Section 2004 except that the provision for shortening time for the notice is new. The provision of former Section 1601 that no notice is required when the petition is for the sale of perishable or certain other property is not continued; notice is required in such a case, but an order shortening time may be appropriate. Also provisions of former Section 1601 which required a copy of the petition, application, account, or proceeding to accompany the notice have not been continued. No comparable requirement was contained in the conservatorship statute.

38875

Tentatively Approved - Oct. 1977

§ 2703. Proof of service

2703. (a) Proof of mailing or of personal delivery of the notice required by Section 2702 shall be made at the hearing.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that the party entitled to notice has waived it, the court shall so find in its order, and such order, when it becomes final, is conclusive upon all persons.

Comment. Section 2703 continues the substance of former Sections 1602 and 2005. For discussion of a provision similar to subdivision (b), see the Comment to Section 1464.

10010

Tentatively Approved - Oct. 1977

§ 2704. Request for, and furnishing of, notice of filing of inventory and appraisement

2704. (a) At any time after the issuance of letters of guardianship or conservatorship, any person or entity described in Section 2700, in person or by attorney, may file with the clerk of the court where the proceeding is pending a written request for special notice of the filing with the court of the inventory and appraisement by the guardian or conservator, including any supplementary inventory and appraisement.

(b) The request shall be entitled "request for special notice of filing of inventory and appraisement" and shall set forth the name of the person and the address to which notices of filings shall be sent.

(c) A copy of the request shall be served on the guardian or conservator or on the attorney for the guardian or conservator.

(d) The original of the request when filed with the clerk shall be accompanied by a written admission or proof of service.

(e) If a person serves and files a request under this section, the guardian or conservator shall give written notice of the filing of the inventory and appraisalment by mailing the notice to the person named in the request at the address set forth in the request, or by causing the notice to be personally delivered to such person, not later than 10 days after the filing of the inventory and appraisalment with the court. Proof of mailing or of personal delivery of the notice shall be filed with the court.

Comment. Section 2704 had no counterpart in the former guardianship or conservatorship statute. The section is based on Section 1202.5 (executors and administrators) with modifications to make the section consistent with other sections in this chapter. The inventory and appraisalment is that required by Article 2 (commencing with Section 2610) of Chapter 7.

CHAPTER 10. APPEALS

Tentatively Approved - Oct. 1977

§ 2750. Appealable orders

2750. An appeal may be taken from the making of, or the refusal to make, a judgment, order, or decree doing any of the following:

(a) Granting or revoking letters of guardianship or conservatorship except letters of temporary guardianship or temporary conservatorship.

(b) Directing, authorizing, or confirming the sale, lease, encumbrance, conveyance, or exchange of property.

(c) Adjudicating the merits of any claim under Section 2532.

(d) Settling an account of a guardian or conservator.

(e) Instructing or directing a guardian or conservator.

(f) Directing or allowing payment of a debt, claim, or attorney's fee.

(g) Fixing, directing, or allowing payment of the compensation or expenses of a guardian or conservator.

(h) Directing, approving, or modifying payments for the support, maintenance, or education of the ward or conservatee.

Comment. Section 2750 supersedes former Sections 1630 (guardianship) and 2101 (conservatorship). The introductory portion of Section 2750 and subdivisions (a), (d), and (e) continue the substance of former Section 1630 (guardianship) with the addition of wording in subdivision (a) to make clear that it does not apply to letters of temporary guardianship or temporary conservatorship. Subdivisions (b), (c), and (f)-(h) are new and are adapted from Section 1240 (estates in probate). Section 2750 has the effect of broadening appealable orders in guardianship while narrowing appealable orders in conservatorship. See, e.g., Guardianship of Jacobson, 30 Cal.2d 312, 182 P.2d 537 (1947) (order for allowance of counsel fees to guardian not appealable); but see Conservatorship of Smith, 9 Cal. App.3d 324, 88 Cal. Rptr. 119 (1970) (appeals in conservatorship limited).

992/936

Tentatively Approved in Substance - Oct. 1977

§ 2751. Stay

2751. (a) Except as provided in subdivisions (b) and (c), an appeal pursuant to Section 2750 stays the operation and effect of the judgment, order, or decree.

(b) For the purpose of preventing injury or loss to person or property, the trial court may direct the exercise of the powers of the guardian or conservator, or may appoint a temporary guardian of the estate or temporary conservator of the person or estate, or both, to exercise the powers, from time to time, as though no appeal were pending. All acts of the guardian or conservator, or temporary guardian or temporary conservator, pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal.

(c) In proceedings for guardianship of the person, the provisions of Section 917.7 of the Code of Civil Procedure apply.

Comment. Subdivisions (a) and (b) of Section 2751 continue the substance of former Sections 1631 (guardianship) and 2102 (conservatorship) and broaden the guardianship provisions to apply to all appeals in guardianship. Cf. Gold v. Superior Court, 3 Cal.3d 275, 475 P.2d 193, 90 Cal. Rptr. 161 (1970) (stay provisions in guardianship limited to appeal from order appointing guardian for incompetent person). Any problems caused by broadening the stay provisions are subject to the trial court's continuing jurisdiction. For provisions governing temporary guardians and conservators, see Chapter 3 (commencing with Section 2250).

Subdivision (c) recognizes the effect of Section 917.7 of the Code of Civil Procedure, which applies to proceedings that affect the custody of a minor child, including guardianship proceedings. See 6 B. Witkin, California Procedure Appeal § 151, at 4145 (2d ed. 1971). Section 917.7 provides that, with certain exceptions, the perfecting of an appeal does not stay proceedings in the trial court that affect the custody of the minor.

999/549

Tentatively Approved - Oct. 1977

§ 2752. Reversal of order appointing guardian or conservator

2752. If an order appointing a guardian or conservator is reversed on appeal for error, all lawful acts of the guardian or conservator performed after qualification and prior to the reversal are as valid as though the order were affirmed.

Comment. Section 2752 continues the substance of former Section 1632 (guardianship); there was no comparable provision for conservatorship. Although appeal of an order appointing a guardian or conservator stays the order pursuant to Section 2751, there may be an interval between appointment and appeal during which the guardian or conservator acts.

CHAPTER 11. TRANSFER OF PROCEEDINGS OUT OF STATE

Tentatively Approved - Oct. 1977

§ 2800. Authority to transfer proceeding

2800. The court in which the guardianship of the estate or conservatorship of the estate is pending may, upon petition therefor, transfer the proceeding to the appropriate court in any other state in which the ward or conservatee resides at the time of application for the transfer.

Comment. Section 2800 continues the substance of portions of former Sections 1603 (guardianship) and 2051 and 2052 (conservatorship) with added wording to confine the procedure to a proceeding where the estate is involved. This limitation conforms to the apparent intent of the former statutes. For provisions governing transfer of proceedings between counties within this state, see Article 2 (commencing with Section 2210) of Chapter 2.

27645

Tentatively Approved - Oct. 1977

§ 2801. Who may petition for transfer

2801. A petition for transfer may be filed by any of the following persons:

(a) The guardian of the estate or conservator of the estate, the ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate of the ward or conservatee.

(b) The duly appointed and acting guardian, conservator, committee, or comparable fiduciary in the state to which the proceeding is to be transferred.

Comment. Section 2801 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship) except that the list of persons who may file a petition has been expanded to include "the ward or conservatee, or any relative or friend of the ward or conservatee, or any person interested in the estate of the ward or conservatee." See also former Section 1603 (guardianship).

Tentatively Approved - Oct. 1977

§ 2802. Contents of petition

2802. The petition shall set forth all of the following:

- (a) The court and jurisdiction to which the proceeding is to be transferred.
- (b) The residence address of the ward or conservatee.
- (c) A brief description of the character, value, and location of the property of the ward or conservatee.
- (d) The reasons for the transfer.
- (e) The names and residence addresses, so far as they are known to the petitioner, of (1) the spouse and relatives of the ward or conservatee within the second degree and (2) the guardian of the estate or conservator of the estate, if other than the petitioner.
- (f) Competent evidence that there is a duly appointed and acting guardian, conservator, committee, or comparable fiduciary in the state to which the proceeding is to be transferred.

Comment. Section 2802 continues the substance of a portion of the second sentence of former Section 2052 (conservatorship); see also former Section 1603 (guardianship). A petition under this section must be verified. Section 1451. The clerk sets the petition for hearing. Section 1452.

Tentatively Approved - Oct. 1977

§ 2803. Notice of hearing

2803. Notice of the hearing shall be given as provided in Chapter 3 (commencing with Section 1460) of Part 1. In addition, the petitioner shall cause written notice of the hearing and a copy of the petition to be mailed to all persons required to be listed in the petition at least 15 days before the date set for the hearing.

Comment. Section 2803 continues the substance of the first two sentences of former Section 2053 (conservatorship), except that the provision requiring the clerk to set the petition for hearing is continued in Section 1452 and the time for mailing notice is increased from 10 days to 15 days. See also former Section 1603 (guardianship).

Tentatively Approved - Oct. 1977

§ 2804. Hearing

2804. (a) Any of the following persons may appear and file written objections to the petition:

- (1) Any person required to be listed in the petition.
- (2) Any creditor of the ward or conservatee or of the estate.
- (3) The ward or conservatee.
- (4) The guardian or conservator.

(b) If the court determines that the transfer requested in the petition will be for the best interests of the ward or conservatee, it shall make an order transferring the proceeding to the appropriate court in the other state.

Comment. Section 2804 continues the substance of the third and fourth sentences of former Section 2053 (conservatorship) except that "guardian or conservator" is added to the list of persons in subdivision (a). This addition reflects the fact that the persons who may file the petition has been expanded. See Section 2801. See also former Section 1603 (guardianship).

Tentatively Approved - Oct. 1977

§ 2805. Transfer

2805. (a) Upon the court order of transfer, the clerk shall transmit to the clerk of the court to which the proceeding is transferred a certified or exemplified copy of the order, together with all papers in the proceeding on file with the clerk. The clerk, or at the court's direction the petitioner, shall obtain the receipt for the papers from the clerk of the court to which the transfer is made as a condition to the delivery of the papers.

(b) The clerk of the court from which the removal is made shall receive no fee therefor but shall be paid out of the estate all expenses incurred by the clerk in the removal.

Comment. Subdivision (a) of Section 2805 continues the substance of the last two sentences of former Section 2053 (conservatorship). Subdivision (b) continues the substance of the first sentence of former Section 2054 (conservatorship). See also former Section 1603 (guardianship).

Tentatively Approved - Oct. 1977

§ 2806. Termination of guardianship or conservatorship

2806. (a) Upon filing the receipt of the remaining assets by the guardian, conservator, committee, or comparable fiduciary in the other state with the clerk of the court, and upon settlement of the final account, the guardian or conservator shall petition for discharge.

(b) Unless notice is waived, a copy of the final account of the guardian or conservator and of the petition for discharge, together with a notice of the hearing thereon, shall be mailed at least 30 days before the date of the hearing to all persons required to be listed in the petition for transfer and to the duly appointed and acting guardian, conservator, committee, or comparable fiduciary in the other state.

(c) At the hearing, unless good cause to the contrary is shown, the court shall order the guardianship or conservatorship terminated and the guardian or conservator discharged.

Comment. Section 2806 continues the substance of former Section 2055 (conservatorship) with the addition of "unless good cause to the contrary is shown" in subdivision (c). See also former Section 1603 (guardianship). If there is California real property being administered in the California proceeding, it may be necessary to continue the California proceeding for the purpose of administering such property. See W. Johnstone & G. Zillgitt, California Conservatorships § 2.28, at 45 (Cal. Cont. Ed. Bar 1968).

PART 5. UNIFORM VETERANS' GUARDIANSHIP ACT

Tentatively Approved - Oct. 1977

§ 2900. Short title

2900. This part may be cited as the "Uniform Veterans' Guardianship Act."

Comment. Section 2900 continues former Section 1666.

Tentatively Approved - Oct. 1977

§ 2901. Definitions

2901. As used in this part:

- (a) "Person" means an individual, a partnership, a corporation, or an association.
- (b) "Veterans Administration" means the Veterans Administration, its predecessors, or successors.
- (c) "Income" means moneys received from the Veterans Administration and revenue or profit from any property wholly or partially acquired therewith.
- (d) "Estate" means income on hand and assets acquired partially or wholly with "income."
- (e) "Benefits" means all moneys paid or payable by the United States through the Veterans Administration.
- (f) "Administrator" means the Administrator of Veterans Affairs of the United States or successor.
- (g) "Ward" means a beneficiary of the Veterans Administration.
- (h) "Guardian" means any fiduciary for the estate of a ward.

Comment. Section 2901 continues former Section 1650, except that the definition of "guardian" in subdivision (h) has been narrowed to refer to a guardian of the estate only. Since former Sections 1663 and 1664 relating to involuntary commitment have not been continued, the Uniform Veterans' Guardianship Act no longer contains provisions relating to guardianship of the person.

§ 2902. Manner of appointment of guardian

2902. Whenever, pursuant to any law of the United States or regulation of the Veterans Administration, it is necessary, prior to payment of benefits that a guardian be appointed, the appointment may be made in the manner provided in this part.

Comment. Section 2902 continues former Section 1651.

§ 2903. Petition; filing; contents

2903. (a) A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within 30 days after mailing of notice by the Veterans Administration to the last known address of such person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this state.

(b) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the Veterans Administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(c) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the person proposed for appointment as guardian. Except as provided in subdivision (e), notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other person as guardian, if the court determines it is for the best interest of the ward.

(d) In the case of a mentally incompetent ward, the petition shall show that such ward has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration.

Comment. Section 2903 continues former Section 1652.

Tentatively Approved - Oct. 1977

§ 2904. Evidence of necessity for guardian of minor

2904. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or the administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the Veterans Administration is prima facie evidence of the necessity for the appointment.

Comment. Section 2904 continues former Section 1653.

Tentatively Approved - Oct. 1977

§ 2905. Evidence of necessity for guardian for incompetent

2905. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or the administrator's duly authorized representative, that such person has been rated incompetent by the Veterans Administration on examination in accordance with the laws and regulations governing the Veterans Administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due the ward by the Veterans Administration, is prima facie evidence of the necessity for the appointment.

Comment. Section 2905 continues former Section 1654.

Tentatively Approved - Oct. 1977

§ 2906. Notice

2906. Upon the filing of a petition for the appointment of a guardian under this part, notice shall be given to the ward, to such other persons, and in such manner, as is provided by the general law of this state. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

Comment. Section 2906 continues former Section 1655. Concerning the last sentence of Section 2906, see the Comment to Section 2908.

§ 2907. Fitness of appointee; bond

2907. (a) Before making an appointment under the provisions of this part, the court shall be satisfied that the guardian whose appointment is sought is a fit and proper person to be appointed.

(b) Upon the appointment being made, the guardian shall execute and file the bond required by law. Where a bond is tendered by a guardian with personal sureties, such sureties shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.

Comment. Section 2907 continues former Section 1656.

§ 2908. Petitions and accounts; notices and hearings

2908. (a) Every guardian who has received or shall receive on account of the ward any moneys or other thing of value from the Veterans Administration shall file with the court annually, or at such other intervals as are directed by the court, in addition to such other accounts as may be required by the court, a full, true, and accurate account under oath of all moneys or other things of value so received by the guardian, all earnings, interest or profits derived therefrom and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in hands of the guardian at the date of the account and how invested.

(b) At the time of filing in the court any account, a true copy thereof shall be sent by the guardian to the office of the Veterans Administration having jurisdiction over the area in which the court is located. The clerk shall fix a time and place for the hearing on the account, not less than 15 days nor more than 30 days from the date same is filed, unless a different available date be stipulated in writing. Written notice of the time and place of hearing shall be given the Veterans Administration office concerned and the guardian and any others entitled to notice not less than 15 days prior to the date fixed for the

hearing. The notice may be given by mail in which event it shall be deposited in the mails not less than 15 days prior to the date fixed for the hearing.

(c) If the guardian is accountable for property derived from sources other than the Veterans Administration, the guardian is accountable as is or may be required under the applicable law of this state pertaining to the property of minors or incompetent persons who are not beneficiaries of the Veterans Administration, and as to such other property is entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section.

Comment. Section 2908 continues former Section 1657 [as amended by 1977 Cal. Stats., Ch. 39]. Sections 2906, 2910, 2911, 2912, 2913, and 2915 incorporate the procedure under subdivision (b) of Section 2908. Uniform language incorporating the procedure under Section 2908 has been substituted in these sections to replace the varying language formerly used in the various provisions from which the sections were derived.

405/968

Tentatively Approved - Oct. 1977

§ 2909. Penalty for failure to account

2909. If a guardian fails to file with the court any account as required by this part, or by an order of the court, when any account is due or within 30 days after citation issues as provided by law, or fails to furnish the Veterans Administration a true copy of any account as required by this part, such failure shall in the discretion of the court be ground for the removal of the guardian.

Comment. Section 2909 continues former Section 1658.

405/971

Tentatively Approved - Oct. 1977

§ 2910. Compensation of guardians

2910. Compensation payable to guardians shall not exceed five percent of the income of the ward during the year, except that, in any case in which five percent of the money received during such period is less than twenty-five dollars (\$25), the court may in its discretion, and without a showing of extraordinary services by the guardian, allow a reasonable compensation, not to exceed twenty-five dollars (\$25). In

the event of extraordinary services rendered by such guardian, the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908. No compensation shall be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of the ward reasonable premiums paid by the guardian to any corporate surety upon the guardian's bond.

Comment. Section 2910 continues former Section 1659. "Veterans Administration" has been substituted for "bureau" in former Section 1659. Concerning the provision for sending a copy of the petition and giving notice of the hearing to the Veterans Administration, see the Comment to Section 2908.

405/973

Tentatively Approved - Oct. 1977

§ 2911. Investments

2911. (a) Every guardian shall invest the surplus funds of the ward's estate in such securities or property as authorized under the laws of this state, or may deposit funds of the estate with any bank or trust company or in an account in an insured savings and loan association, but only upon prior order of the court. A signed duplicate or certified copy of the petition for authority to invest shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

(b) Notwithstanding subdivision (a), the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States.

Comment. Section 2911 continues former Section 1660. Subdivision (a) has been revised to permit deposit with a "trust company" as well as a "bank." For definitions of terms used in this section, see Sections 1406 (account in an insured savings and loan association), 1409 (bank), 1439 (trust company). Concerning the last sentence of subdivision (a) of Section 2911, see the Comment to Section 2908.

Tentatively Approved - Oct. 1977

§ 2912. Maintenance and support of person other than ward

2912. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person other than the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration, in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

Comment. Section 2912 continues former Section 1661. Concerning the last sentence of Section 2912, see the Comment to Section 2908.

Tentatively Approved - Oct. 1977

§ 2913. Purchase of home for ward

2913. (a) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect the interest of the ward, or (if the ward is not a minor) as a home for the ward's dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A signed duplicate or certified copy of the petition shall be sent, and notice of the hearing on the petition shall be given, to the proper office of the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908.

(b) Before authorizing such investment, the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of the ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interests and upon prior order of the court in which the guardianship is pending, to agree with cotenants of

the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty.

Comment. Section 2913 continues former Section 1661.5. Concerning the last sentence of subdivision (a) of Section 2913, see the Comment to Section 2908.

405/977

Tentatively Approved - Oct. 1977

§ 2914. Furnishing copies of record without charge

2914. When a copy of any public record is required by the Veterans Administration to be used in determining the eligibility of any person to participate in benefits made available by the Veterans Administration, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on the applicant's behalf or the authorized representative of the Veterans Administration with a certified copy of such record.

Comment. Section 2914 continues former Section 1662.

405/984

Tentatively Approved - Oct. 1977

§ 2915. Certificate of majority or competency; discharge of guardian and release of sureties

2915. A certificate by the Veterans Administration showing that a minor ward has attained majority, or that an incompetent ward placed in or transferred to a United States Veterans Administration facility has been rated competent by the Veterans Administration upon examination in accordance with law, is prima facie evidence that the ward has attained majority or has recovered competency. Upon hearing after notice as provided by this part and the determination by the court that the ward has attained majority or has recovered competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the Veterans Administration in the same manner as is provided in the case of the hearing on a guardian's account under Section 2908, upon approval of the final account, and upon delivery to the ward of the assets due to the ward

from the guardian, the guardian shall be discharged and the guardian's sureties released.

Comment. Section 2915 continues former Section 1662.5. The phrase "placed in" has been substituted for "committed" which appeared in former Section 1662.5. Concerning the first portion of the last sentence of Section 2915, see the Comment to Section 2908.

405/992
Tentatively Approved - Oct. 1977

§ 2916. Application of part

2916. The provisions of this part relating to surety bonds and the administration of estates of wards apply to all "income" and "estate" as defined in Section 2901 whether the guardian has been appointed under this part or under any other law of this state, special or general, prior or subsequent to the enactment of this part.

Comment. Section 2916 continues former Section 1665.

968/710
Tentatively Approved - Oct. 1977

§ 2917. Inconsistent laws; application of laws relating to guardians and wards or conservators and conservatees

2917. (a) All acts or parts of acts relating to beneficiaries of the Veterans Administration inconsistent with this part are hereby repealed. Except where inconsistent with this part, the laws of this state relating to guardian and ward or to conservator and conservatee, as the case may be, and the judicial practice relating thereto, including the right to trial by jury and the right of appeal, shall be applicable to such beneficiaries and their estates.

(b) A guardian or conservator appointed under this part has only the rights, powers, privileges, and duties provided in, and is in all respects subject to, this part.

Comment. Subdivision (a) of Section 2917 continues former Section 1669 except that an explicit reference to conservator and conservatee has been added. See Section 2901 ("guardian" means any fiduciary of the estate). Subdivision (b) is the same as a portion of former Section 2151, but the provision of former law has been expanded to include a guardian as well as a conservator. It should be noted that a guardian or conservator appointed under the general provisions of California law (apart from this part) must comply with the provisions of this part

relating to surety bonds and the administration of estates so far as "income" and "estate" (as defined in Section 2901) are concerned. See Section 2916. See also Section 2908 (combined account for property derived from Veterans Administration and other sources permitted).

968/711

Tentatively Approved - Oct. 1977

§ 2918. Uniform law; effectuation of uniformity

2918. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Comment. Section 2918 continues former Section 1667.

PART 6. TRANSACTIONS NOT REQUIRING GUARDIANSHIP
OR CONSERVATORSHIP

CHAPTER 1. GENERAL PROVISIONS

Tentatively Approved - Oct. 1977

§ 3050. Parent must account to minor for money received

3050. A parent who receives any money or property belonging to a minor under the provisions of this part shall account to the minor for the money or other property when the minor reaches the age of majority.

Comment. Section 3050 is based on former Section 1432, but Section 3050 expands the scope of the former section to include property other than money and to cover money or other property received under any of the provisions of this part, not just the provisions of this part that continue the substance of former Sections 1430, 1430.5, and 1431.

16958

Tentatively Approved - Oct. 1977

§ 3051. Consent of court to permit hospital or medical care or enlistment in armed forces

3051. Whenever it appears to the satisfaction of the superior court by application of the minor concerned that the consent of a parent or guardian is necessary to permit hospital or medical care or enlistment in the armed services for or by a minor of the age of 16 years or over residing in the State of California and that such minor has no parent or guardian available to give such consent, the court may summarily grant such consent. No fee shall be charged for proceedings under this section.

Comment. Section 3051 is the same as former Section 1444. An application under this section must be verified. Section 1451.

28750

Tentatively Approved - Oct. 1977

§ 3052. Approval of contract for attorney's fees for minor; fees in absence of contract

3052. A contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved by the court in which the litigation is pending or the court having jurisdiction of the guardianship estate of the minor, upon petition of any person interested. When no such contract is approved and a judgment

is recovered by or on behalf of a minor, the attorney's fees chargeable against the minor shall be fixed by the court rendering the judgment.

Comment. Section 3052 is the same as former Section 1509 except that "guardianship" has been inserted before "estate." Section 3052 is not limited to cases in which a guardian of the estate of the minor has been appointed; although former Section 1509 was located in Chapter 7 of Division 4 (powers and duties of guardian), its application likewise was not limited to cases in which a guardian of a minor had been appointed. See, e.g., Leonard v. Alexander, 50 Cal. App.2d 385, 122 P.2d 984 (1942); 1 B. Witkin, California Procedure Attorneys § 86, at 92 (2d ed. 1970).

Staff Draft

38878

§ 3053. Order for payment of fee to attorney

3053. When the court fixes or approves an attorney's fee for services rendered to or for the benefit of a minor in litigation pending before it, the court may direct the judgment debtor to pay such fee to the attorney.

Comment. Section 3053 continues the substance of a portion of former Section 1511. The last clause of former Section 1511 (balance of judgment payable to guardian ad litem or general guardian) is omitted as unnecessary. See Code Civ. Proc. § 372 (guardian ad litem); Prob. Code §§ [2520], [2592], 3311-3314.

CHAPTER 2. SMALL ESTATES OF MINORSArticle 1. Total Estate Not in Excess of \$5,000

Tentatively Approved in Substance - Oct. 1977

§ 3100. Delivery to parent of money or property

3100. Money or other property belonging to a minor or to the guardianship estate of a minor may be paid or delivered to a parent of the minor entitled to the custody of the minor to be held in trust for the minor until the minor reaches majority if both of the following requirements are satisfied:

(a) The total estate of the minor, including the money and other property to be paid or delivered to the parent, does not exceed five thousand dollars (\$5,000) in value.

(b) The parent to whom the money or other property is to be paid or delivered gives the person making the payment or delivery written assurance, verified by the oath of such parent, that the total estate of the minor, including the money or other property to be paid or delivered to the parent, does not exceed five thousand dollars (\$5,000) in value.

Comment. Sections 3100, 3101, and 3102 continue the substance of former Section 1430, except that the reference in the former section to two thousand and two thousand five hundred dollars have been uniformly changed to five thousand dollars.

045/163

Tentatively Approved - Oct. 1977

§ 3101. Deductions allowed in computing "total estate of the minor"

3101. In computing the "total estate of the minor" for the purposes of this article, the parent may deduct all of the following:

(a) "Custodial property" held pursuant to the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(b) Any money or property subject to court order pursuant to Chapter 3 (commencing with Section 3200) or Chapter 4 (commencing with Section 3300) of this part or Section 372 of the Code of Civil Procedure.

Comment. Section 3101 continues a portion of former Section 1430. The reference to the "California Gifts of Securities to Minors Act" in former Section 1430 has not been continued. That act was repealed by 1959 Cal. Stats., Ch. 709, § 1. Minors who received gifts under that act prior to its repeal have reached majority and the reference to the act accordingly is obsolete.

§ 3102. Effect of written receipt of parent

3102. The written receipt of the parent giving the written assurance under Section 3100 shall be an acquittance of the person making the payment of money or delivery of other property pursuant to this article.

Comment. See the Comment to Section 3100.

Article 2. Property in the Form of Money Not Exceeding \$20,000 but More Than \$5,000§ 3110. Authority of court under this article

3110. The superior court of the county where a minor resides, or the superior court of the county having jurisdiction of the guardianship estate if the minor has a guardian of the estate, may make an order under this article in each of the following cases:

(a) Where the minor has no guardian of the estate and there is money belonging to the minor in excess of five thousand dollars (\$5,000) but not exceeding twenty thousand dollars (\$20,000).

(b) Where the minor has a guardian of the estate and the sole asset of the guardianship estate is money belonging to the minor in excess of five thousand dollars (\$5,000) but not exceeding twenty thousand dollars (\$20,000).

Comment. Sections 3110-3113 continue the substance of former Section 1430.5, except that the minimum amount has been raised from \$2,000 to \$5,000. Where the amount is \$5,000 or less, Article 1 (commencing with Section 3100) applies.

§ 3111. Deductions in computing "money belonging to the minor"

3111. This article does not apply to, and there shall be excluded in computing "money belonging to the minor" for the purposes of this article, all of the following:

(a) Money or property which is or will be held as "custodial property" pursuant to the California Uniform Gifts to Minors Act,

Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code.

(b) Any money or property subject to court order pursuant to Chapter 3 (commencing with Section 3200) or Chapter 4 (commencing with Section 3300) of this part or Section 372 of the Code of Civil Procedure.

Comment. See the Comment to Section 3110.

38879

Tentatively Approved - Oct. 1977

§ 3112. Filing of petition

3112. A parent of the minor entitled to custody of the minor, or the person holding the money belonging to the minor, may file a petition requesting that the court make an order under this article.

Comment. See the Comment to Section 3110. A petition filed under this section must be verified. See Section 1451.

045/132

Tentatively Approved - Oct. 1977

§ 3113. Order of court

3113. Under this article, the court may order any one or more of the following:

(a) If there is a guardianship of the estate of the minor, order that the guardianship be terminated and that the money be deposited or invested as provided in subdivision (b) or prescribe other conditions as provided in subdivision (d).

(b) Order that the money be deposited in a bank or trust company or invested in an account in an insured savings and loan association or in shares of an insured credit union, subject to withdrawal only upon authorization of the court.

(c) Require that a guardian of the estate be appointed and the money paid to such guardian.

(d) Prescribe such other conditions as the court in its discretion determines to be in the best interests of the minor.

Comment. See the Comment to Section 3110.

CHAPTER 3. COMPROMISE OF MINOR'S DISPUTED CLAIM
NOT THE SUBJECT OF SUIT

§ 3200. Persons having right to compromise minor's claim

3200. When a minor has a disputed claim for damages, money, or other property against a third person which is not the subject of a pending action or proceeding, the following persons have the right to compromise, or execute a covenant not to sue on, the claim:

(a) Either parent if the parents of the minor are not living separate and apart.

(b) The parent having the care, custody, or control of the minor if the parents of the minor are living separate and apart.

(c) The guardian of the estate, if any, of the minor.

Comment. Section 3200 continues the substance of the first portion of the first sentence of former Section 1431, except that the requirement that the minor's claim not be the subject of pending litigation has been added. If the claim is the subject of pending litigation, the minor must appear in the action either by a guardian of the estate or by a guardian ad litem, and in such case Section 372 of the Code of Civil Procedure provides for compromise of the claim.

§ 3201. Approval by court

3201. (a) The compromise or covenant is valid only after it has been approved by the superior court upon the filing of a petition.

(b) If the petition is by a parent, it shall be filed in the county in which the minor resides. If the petition is by the guardian of the estate, it shall be filed in the county in which the guardianship of the estate is pending.

Comment. Subdivision (a) of Section 3201 is the same in substance as a portion of the first sentence of former Section 1431. The requirement that the petition be verified is continued in Section 1451.

Subdivision (b) revises the venue rules of former Section 1431. If the petition is by a parent, the petition is filed in the county where the minor resides as under prior law. However, if the petition is filed by the guardian of the estate, the petition is filed in the county where the guardianship of the estate is pending rather than in the county where the minor resides as under prior law. If the minor's claim is the subject of a pending action or proceeding, the approval of a compromise is by the court in which the action or proceeding is pending. Code Civ. Proc. § 372.

§ 3202. Payment of delivery of money or other property

3202. (a) Unless the money or other property is to be paid or delivered to an existing guardian of the estate, any money or other property to be paid or delivered for the benefit of the minor pursuant to the compromise or covenant shall be paid and delivered in the manner and upon the terms and conditions specified in Chapter 4 (commencing with Section 3300).

(b) The person having the right to compromise the disputed claim of the minor may execute a full release and satisfaction, or execute a covenant not to sue on the disputed claim, after the money or other property to be paid or delivered has been paid or delivered as provided in subdivision (a). If the court orders that all or any part of the money, to be paid under the compromise or covenant, be deposited in a bank or trust company or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity issued by an admitted life insurer, the release and satisfaction or covenant is not effective for any purpose until the money has been deposited or invested as directed in the order of the court.

Comment. Section 3202 continues the substance of the second and third sentences of former Section 1431. The introductory clause of subdivision (a) is added for clarity since Sections 3311-3314 contemplate the situation where there is not an existing guardianship of the minor's estate.

CHAPTER 4. PAYMENT OR DELIVERY OF PROPERTY PURSUANT TO
COMPROMISE OR JUDGMENT FOR MINOR OR INCOMPETENT

Article 1. Order for Payment of Expenses, Costs, and Fees

Staff Draft

§ 3300. Order directing payment of expenses, costs, and fees

3300. (a) Upon approval of a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor or incompetent person is a party, or giving judgment for a minor or incompetent person, providing for the payment or delivery of money or other property, the court making the order or giving judgment, and as a part thereof, shall make a further order authorizing and directing a parent of the minor or the guardian of the estate of the minor or conservator of the estate of the incompetent person, or the payer of any money to be paid for the benefit of the minor or incompetent person, to pay, from the money or other property to be paid or delivered, such reasonable expenses (medical or otherwise and including reimbursement to a parent, guardian, or conservator), costs, and attorney's fees as the court shall approve and allow therein.

(b) If there is an existing guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money or other property shall be paid or delivered to the guardian or conservator. If there is not an existing guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money or other property shall be paid, delivered, or deposited as provided in Article 2 (commencing with Section 3310).

Comment. Section 3300 continues the substance of the third paragraph of former Section 1510, except that the reference to a covenant not to enforce judgment, as well as the first sentence of subdivision (b), has been added. The first sentence of subdivision (b) is consistent with Section [2520]. See also Section 3053 (court may direct judgment debtor to pay fee to attorney).

Article 2. Disposition of Money or Other Property
Where No Existing Guardianship or Conservatorship

Staff Draft

§ 3310. Application of article

3310. Except as otherwise specifically provided, this article applies where there is not an existing guardianship of the estate of the minor or conservatorship of the estate of the incompetent person and the court:

(a) Approves a compromise of, (including but not limited to approval of the execution of a covenant not to sue on or a covenant not to enforce judgment on), a minor's disputed claim for damages, money, or other property.

(b) Approves a compromise of a pending action or proceeding to which a minor or incompetent person is a party.

(c) Gives judgment for a minor or incompetent person.

Comment. Section 3310 is based on the introductory portion of former Section 1510, except that the language relating to a covenant not to enforce judgment has been added. For provisions relating to the authority of a guardian, conservator, or guardian ad litem to compromise claims and actions, see Section [2526] and Code of Civil Procedure Sections 372 and 373.5.

15920

Tentatively Approved - Oct. 1977

§ 3311. Property value not exceeding \$20,000

3311. If the money or the value of other property to be paid or delivered under the compromise, covenant, order, or judgment does not exceed twenty thousand dollars (\$20,000), the court making the order or giving judgment, in its discretion, may do any of the following:

(a) Require that the remaining balance of any money paid or to be paid under the compromise, covenant, order, or judgment, after payment of all expenses, costs, and fees as approved and allowed by the court, be deposited in a bank or trust company or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity issued by an admitted life insurer, subject to withdrawal only upon the authorization of the court.

(b) Require that a guardian of the estate or conservator of the estate be appointed and that the money or the other property be paid or delivered to the person so appointed.

(c) Prescribe such other conditions as the court in its discretion determines to be to the best interests of the minor or incompetent person.

Comment. Section 3311 continues the substance of a portion of the first paragraph of former Section 1510, except that the upper limit for the application of this section has been increased from \$10,000 to \$20,000. Where the money or property does not exceed \$5,000 and is for the benefit of a minor, the court in its discretion may make an order under this section or under Section 3313 or under both sections.

15917

Tentatively Approved - Oct. 1977

§ 3312. Property value exceeding \$20,000

3312. If the money or the value of other property to be paid or delivered under the compromise, covenant, order, or judgment exceeds twenty thousand dollars (\$20,000), the court making the order or giving judgment shall do either of the following:

(a) Require that a guardian of the estate or conservator of the estate be appointed and that the money or the other property be paid or delivered to the person so appointed.

(b) Instead of requiring the appointment of a guardian or conservator of the estate:

(1) Require that the remaining balance of any money paid or to be paid under the compromise, covenant, order, or judgment, after payment of all expenses, costs, and fees as approved and allowed by the court, be deposited in a bank or trust company or be invested in an account in an insured savings and loan association or in shares of an insured credit union or in a single-premium deferred annuity issued by an admitted life insurer, subject to withdrawal only upon order of the court; and

(2) Prescribe as to other property to be paid or delivered such conditions as the court determines to be to the best interests of the minor or incompetent person.

Comment. Section 3312 continues the substance of a portion of the first paragraph of former Section 1510, except that the reference to \$10,000 has been increased to \$20,000.

§ 3313. Property not exceeding \$5,000 for benefit of minor

3313. If the money or the value of other property to be paid or delivered under the compromise, covenant, order, or judgment does not exceed five thousand dollars (\$5,000), and the money or property is to be paid or delivered for the benefit of a minor, the court making the order or giving judgment may direct that all or any part of the money or the property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3100) of Chapter 2.

Comment. Section 3313 continues the substance of a portion of the first paragraph of former Section 1510 except that the specified amount has been increased in Section 3313 from \$1,000 to \$5,000. In a case described in Section 3313, the court has discretion to make an order under Section 3313 or to make an order under Section 3311 or to do both.

§ 3314. Reservation of jurisdiction where minor

3314. Notwithstanding any other provision of law, upon approval of a compromise of, or the execution of a covenant not to sue on or a covenant not to enforce judgment on, a minor's disputed claim, or approval of a compromise of a pending action or proceeding to which a minor is a party, or giving judgment for a minor, providing for the payment or delivery of money or other property, in any case to which this article applies, the court making the order or giving judgment, and as a part thereof, may expressly retain jurisdiction of any part or all of the money paid, delivered, deposited, or invested until the minor reaches the age of 18 years.

Comment. Section 3314 continues a portion of the second paragraph of former Section 1510, except that the language relating to a covenant not to enforce judgment has been added.

CHAPTER 5. COMMUNITY OR HOMESTEAD PROPERTY
OF INCOMPETENT PERSONS

[This chapter will be drafted after the Commission has considered the memorandum under preparation by the Commission's consultant, Garrett Elmore.]

CHAPTER 6. PERSONAL PROPERTY OF ABSENTEES

Comment. Chapter 6 (commencing with Section 3500) continues former Chapter 2.5 (commencing with Section 1776) of Division 5, enacted as part of the P.O.W.-M.I.A. Family Relief Act of 1972. See 1972 Cal. Stats., Ch. 988, § 10. For related provisions, see Chapter 3 (commencing with Section 295) of Division 2a (administration of estates of absentees).

406/162

Tentatively Approved in Substance - Oct. 1977

§ 3500. Definitions

3500. As used in this chapter:

(a) "Absentee" is defined in Section 1403.

(b) "Eligible spouse" means the spouse of an absentee who has not commenced an action or proceeding for judicial or legal separation, divorce, annulment, adjudication of nullity, or dissolution of the marriage of the spouse and the absentee.

(c) "Family of an absentee" means an eligible spouse, if any, or if no eligible spouse, the child or children of an absentee, equally, or if no child or children, the parent or parents of an absentee, equally, and the guardian of the estate or conservator of the estate of any person bearing such relationship to the absentee.

(d) "Secretary concerned" is defined in Section 1430.

Comment. Section 3500 continues the substance of former Section 1776.

406/163

Tentatively Approved - Oct. 1977

§ 3501. Setting aside personal property of absentee

3501. Upon petition as provided in this chapter, the court may set aside to the family of an absentee personal property of the absentee situated in this state for the purpose of managing, controlling, encumbering, selling, or conveying, or otherwise engaging in any transaction with respect to the property, if the court determines that to do so will be in the best interest of the absentee, including the interest of the absentee in providing for shelter, food, health care, education, transportation, or the maintenance of a reasonable and adequate standard of living for the family of the absentee. The absentee's interest in the property set aside shall not exceed five thousand dollars (\$5,000).

Comment. Section 3501 continues the substance of former Section 1777 but makes clear that the court may set aside property of the absentee in order not only to avoid "prejudice to the estates of such missing persons" but also to avoid "difficulty and hardship to their families [caused] by their inability to consummate transactions, such as to sell property, withdraw funds, cash checks, transfer securities and the like, upon which the families are dependent." 1972 Cal. Stats., Ch. 988, § 9. Cf. Section 295.1 (administration of estate of absentee); C. Stephenson & G. Cole, Supplement to 1 California Decedent Estate Administration § 3.31, at 36 (Cal. Cont. Ed. Bar 1976) (intended to provide for support of dependents of absentee).

406/164

Tentatively Approved - Oct. 1977

§ 3502. Who may petition

3502. A petition that personal property of an absentee be set aside as provided in this chapter may be filed by any of the following persons:

(a) A person in whose favor the personal property of the absentee may be set aside.

(b) A person to whom the absentee has issued a general power of attorney while serving in the armed forces of the United States or while an employee of any agency or department of the United States, provided the power of attorney was valid and effective at the time issued, regardless whether it has expired or terminated.

Comment. Section 3502 continues the substance of a portion of the first sentence of former Section 1778.

406/166

Tentatively Approved - Oct. 1977

§ 3503. Contents of petition

3503. (a) The petition shall contain all of the following:

(1) A statement that the petition is filed under this chapter.

(2) In its caption, the last known military rank or grade and the social security account number of the absentee.

(3) A specific description and estimate of the value of all of the absentee's property, wherever situated (including all sums due the absentee from the United States).

(4) A designation of the property to be set aside, and the facts establishing that setting aside the property is necessary and in the best interest of the absentee.

(5) If the property is to be set aside for the benefit of the spouse of the absentee, an allegation that the spouse is an eligible spouse.

(6) So far as known to the petitioner, the names and residences of all persons comprising the family of the absentee, and an allegation whether a guardian of the estate or a conservator of the estate of any member of the family of the absentee has been appointed.

(b) There shall be attached to the petition a certificate complying with Section 1283 of the Evidence Code showing the determination of the secretary of the military department or the head of the department or agency concerned or the delegate of the secretary or head that the absentee is in missing status. The certificate shall be received as evidence of that fact and the court shall not determine the status of the absentee inconsistent with the status shown in the certificate.

Comment. Section 3503 continues the substance of former Section 1778, with the exception of the statement of persons entitled to file the petition, the requirement that the court find that the spouse is an eligible spouse and the requirement that the petition contain a showing that this chapter is applicable and a prayer for relief. The statement of persons entitled to file the petition is continued in Section 3502. The requirement that the court find that the spouse is an eligible spouse is continued in Section 3505. The terms "eligible spouse" and "family of an absentee" are defined in Section 3500. The requirement that the petition contain a showing that the chapter is applicable has been replaced by a requirement that the petition include a statement that it is filed under this chapter; the detailed listing in Section 3503 of the required contents of the petition will contain the information necessary to show that the chapter is applicable. The requirement that the petition be verified is continued in Section 1451. The requirement of a prayer for relief has been omitted as unnecessary.

406/167

Tentatively Approved - Oct. 1977

§ 3504. Notice of hearing

3504. (a) Notice of the nature of the proceedings and the time and place of the hearing shall be given by the petitioner at least 15 days before the hearing date by all of the following means:

(1) By mail, together with a copy of the petition, to all persons comprising the family of the absentee.

(2) By delivery by a method that would be sufficient for service of summons in a civil action, together with a copy of the petition, to the secretary concerned or to the head of the United States department or agency concerned.

(3) By publication pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proceedings will be held.

(b) Whenever notice to an officer or agency of this state or of the United States would be required under Section 1464 or Section 1822 upon petition for appointment of a conservator, like notice shall be given of the petition under this chapter.

Comment. Section 3504 continues the substance of former Section 1779, with the exception of the last sentence, which is continued in Section 3505, and the requirement that the court set the petition for hearing which is superseded by Section 1452 (clerk shall set petition for hearing). The reference to appointment of a guardian of an incompetent person in former Section 1779 has been replaced by a reference in subdivision (b) to appointment of a conservator, and a specific reference to the relevant section of the conservatorship statute has been added. For definition of the terms "family of an absentee" and "absentee," see Section 3500.

406/173

Tentatively Approved - Oct. 1977

§ 3505. Hearing and order

3505. (a) Upon the hearing of the petition, any officer or agency of this state or the United States or the authorized delegate of the officer or agency, or any relative or friend of the absentee, may appear and oppose the petition.

(b) If the court determines that the allegations of the petition are true and correct, the court may order set aside to the family of the absentee personal property of the absentee situated in California (excluding any sums due the absentee from the United States) in which the absentee's interest does not exceed five thousand dollars (\$5,000). The property set aside shall be specified in the order.

(c) No bond shall be required of any person to whom property of the absentee has been set aside by the court pursuant to this chapter.

Comment. Subdivision (a) of Section 3505 continues the substance of the last sentence of former Section 1779. Subdivisions (b) and (c) continue the substance of former Section 1780.

Tentatively Approved - Oct. 1977

§ 3506. Jurisdiction of court not affected by size of absentee's estate

3506. A determination by the court that the value of all of the absentee's property, wherever situated, exceeds five thousand dollars (\$5,000) or that the absentee owns or has an interest in real property, wherever situated, does not deprive the court of jurisdiction to set aside to the family of the absentee personal property of the absentee situated in California in which the absentee's interest does not exceed five thousand dollars (\$5,000), and the court shall order set aside such personal property to the family of the absentee if the court finds that all of the other provisions of this chapter have been complied with. The property set aside shall be specified in the order.

Comment. Section 3506 continues the substance of former Section 1781. Cf. Section 295.1 (administration of estate of absentee where estate consists of no real property and is less than \$5,000).

Tentatively Approved - Oct. 1977

§ 3507. Joint tenancy property

3507. For the purposes of this chapter, any property or interest therein or lien thereon that the absentee holds as joint tenant shall be included in determining the property of the absentee and its value. The joint tenancy interest may be set aside to the family of the absentee as provided in this chapter but may only be set aside to a member of the absentee's family who was a joint tenant with the absentee in the property.

Comment. Section 3507 continues the substance of former Section 1782.

Tentatively Approved - Oct. 1977

§ 3508. Accounting

3508. (a) Within six months after the absentee has returned to the controllable jurisdiction of the military department or civilian agency or department concerned, or within six months after the determination of death of the absentee by the secretary concerned or the head of the department or agency concerned or the delegate of the secretary or head,

the former absentee or the personal representative of the deceased absentee may, by motion in the same proceeding, require the person or persons to whom the property of the absentee was set aside to account for the property and the proceeds, if any. The time of return to the controllable jurisdiction of the military department or civilian department or agency concerned or the determination of the time of death of the absentee shall be determined by the court under 37 United States Code, Section 556 or 5 United States Code, Section 5566. An official written report or record of the military department or civilian department or agency that the absentee has returned to its controllable jurisdiction or is deceased shall be received as evidence of that fact.

(b) This section does not in any manner derogate the finality and conclusiveness of any order, judgment, or decree previously entered in the proceeding.

Comment. Section 3508 continues the substance of former Section 1783.

CHAPTER 7. REMOVAL OF PROPERTY OF NONRESIDENT

Tentatively Approved - Oct. 1977

§ 3600. Petition for removal

3600. (a) If a nonresident has a duly appointed, qualified, and acting guardian, conservator, committee, or comparable fiduciary in the place of residence and if no proceeding for guardianship or conservatorship of the nonresident is pending or contemplated in this state, the nonresident fiduciary may petition to have property owned by the nonresident removed to the place of residence.

(b) The petition for removal of property of the nonresident shall be filed in the superior court of the county in which the nonresident is or has been temporarily present or in which the property of the nonresident, or the principal part thereof, is situated.

Comment. Section 3600 continues the substance of portions of former Section 1572. The reference to the "state of residence" has been changed to "place of residence" since the place of residence may be a foreign nation as well as a foreign state.

Tentatively Approved - Oct. 1977

§ 3601. Notice

3601. (a) The petition shall be made upon 10 days' notice, by mail or personal delivery, to all of the following persons:

(1) The executor or administrator or other person in whose possession the property may be.

(2) Persons in this state, known to the petitioner, who are obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident.

(b) The petition shall be made upon such additional notice, if any, as the court may order.

Comment. Section 3601 continues the substance of the first sentence of former Section 1573.

Tentatively Approved - Oct. 1977

§ 3602. Certificate of nonresident fiduciary

3602. The nonresident fiduciary shall produce and file one of the following certificates:

(a) A certificate that the fiduciary is entitled, by the laws of the place of appointment of the fiduciary, to the possession of the estate of the nonresident. The certificate shall be under the hand of the clerk and seal of the court from which the appointment of the fiduciary was derived and shall show a transcript of the record of appointment and that the fiduciary has entered upon the discharge of the duties of the fiduciary.

(b) A certificate that the fiduciary is entitled, by the laws of the place of residence, to custody of the estate of the nonresident, without the appointment of any court. The certificate shall be under the hand of the clerk and seal of either (1) the court in the place of residence having jurisdiction of estates of persons that have a guardian, conservator, committee, or comparable fiduciary or (2) the highest court in the place of residence. In the case of a foreign country, the certificate shall be attested by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States.

Comment. Section 3602 continues the substance of the last sentence of former Section 1573. The persons authorized to attest the certificate in the case of a foreign country are expanded in conformity with Evidence Code Section 1530 (statement certifying genuineness of attestation to accuracy of copy of a writing).

21996

Tentatively Approved - Oct. 1977

§ 3603. Order for removal

3603. (a) Upon the petition, if the court determines that removal of the property will not conflict with any restriction or limitation on the property or impair the right of the nonresident to the property or the rights of creditors or claimants in this state, the court shall make an order granting to the nonresident fiduciary leave to remove the property of the nonresident to the place of residence unless good cause to the contrary is shown.

(b) The order is authority to the fiduciary to sue for and receive the property in his or her own name for the use and benefit of the nonresident.

(c) The order is a discharge of the executor, administrator, or other person in whose possession the property may be at the time the order is made and of the person obligated to pay a debt, perform an obligation, or issue a security to the nonresident or the estate of the nonresident, upon filing with the clerk of the court the receipt of the nonresident fiduciary for the property and transmitting a duplicate receipt, or a certified copy of the receipt, to the court, if any, from which the appointment of the nonresident fiduciary was derived.

Comment. Section 3603 continues the substance of former Section 1574 and a portion of former Section 1572.