

Memorandum 79-14

Subject: Study F-100 - Guardianship-Conservatorship Revision (Requirement that petitioner not be creditor)

The attached letter from the Department of Developmental Services has identified the following problem: A public officer or entity may be the most appropriate one to petition for establishment of a conservatorship. A problem may arise because the proposed conservatee may owe money to the public entity or agency, and proposed Section 1820 precludes a petition by a creditor of the proposed conservatee.

The staff agrees that the statutory provisions should make clear that a public officer or entity may petition even though the public entity is a creditor, but the staff does not believe that the best way to deal with the problem is to add language to various sections that authorize public officers or entities to petition for establishment of a conservatorship. Instead, we prefer to amend Section 1820, and we propose the following amendment:

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

- (1) The proposed conservatee.
- (2) The spouse of the proposed conservatee.
- (3) A relative of the proposed conservatee.

(4) Any interested state or local entity or agency or any interested public officer or employee of this state or of a local public entity of this state.

~~(4)~~ (5) Any other interested person or friend, other than a creditor, of the proposed conservatee.

[no change in subdivision (b)]

The staff believes that this change is all that is needed to deal with the problem identified by the Department of Developmental Services. It will cover the problem identified by that department and any similar problem that may exist with respect to any other public entity or agency.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

DEPARTMENT OF DEVELOPMENTAL SERVICES

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March 9, 1979

John H. De Moully
Executive Secretary
California Law Revision Commission
Stanford Law School
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Dear Mr. De Moully:

RE: AB 261 and AB 167

We appreciate your letter of January 26, 1979 and the opportunity to identify problems still in the bills.

There is a remaining problem that is significant to our department. We handle two guardianship/conservatorship programs. One is handled by contract for the Department of Mental Health under their authority in Welfare and Institutions Code Section 7284. The other program is one in which the Director of Developmental Services may become guardian/conservator under Health and Safety Code Section 416.

Whenever the prospective conservatee is or has been a resident in a state hospital the state is likely to be a creditor of the prospective conservatee. A problem is created for us by proposed Section 1820. After making a state agency or officer an interested party in Proposed Section 1424, Proposed section 1820 (a)(4) allows an interested person other than a creditor (emphasis added) to file for appointment. If this does not prohibit us from petitioning it would at least seem to raise doubts that would encourage litigation.

We want to preserve our programs because often we offer the only suitable guardian or conservator. As a matter of policy we attempt to get someone else to serve if there is anyone suitable.

Perhaps "other than a creditor" is intended to modify only "friend". If that is the interpretation we do not believe it is clear enough to discourage litigation.

Although the problem arises in Section 1820 we suggest the solution be made in our empowering statutes, Welfare and Institutions Code Section 7284 and Health and Safety Code Section 416, providing in

March 9, 1979

each case that the agency or officer be allowed to petition notwithstanding that the agency is a creditor.

Sincerely,

Barbara C. Calais
Chief Counsel

by



Ralph Colburn
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