#F-100 3/27/79

Memorandum 79-17

Subject: Study F-100 - Guardianship-Conservatorship Revision (Review of Comments Generally)

GENERAL REACTION TO RECOMMENDATION

The general reaction to the Commission's guardianship-conservatorship recommendation was very favorable. The California Bankers Association is concerned about four specific areas of the bill. See Memorandum 79-19. We understand that Assemblyman Lanterman plans to attend the hearing on March 28 to express his concern about some of the changes we have made in the reforms he authored. The State Public Defender's office is greatly concerned about the provision that permits the court to excuse the proposed conservatee from attending the hearing where the court investigator reports that the proposed conservatee is not willing to attend the hearing and does not oppose the proceeding. See Exhibit 2 to this memorandum.

Mr. Lindgren distributed approximately 250 copies of the proposed legislation to practitioners in the probate law field. Attached are letters he forwarded to us containing comments on the proposed legislation. Except for minor matters (such as comments noting spelling errors) and matters already acted on, we note the various suggestions in the memorandum. None of the commentators generally oppose the proposed legislation. Typical general comments: Bottomley (Exhibit 3) ("The proposed legislation is a great improvement over the existing law."); Collier (Exhibit 4) ("excellent job"); Rosenblum (Exhibit 5) ("I think the work of the Law Revision Commission is nothing less than monumental"); Huddleston (Exhibit 8) ("both favorably impressed with the Bill, feeling that it makes needed changes in existing Guardianship and Conservatorship provisions"); Norman (Exhibit 9) ("My overall impression of the conservatorship and guardianship proposals is highly favorable. I hesitate nit-picking these bills for fear of jeopardizing their timely passage"); Pieper (Exhibit 11) ("In general the statute seems to be a significant improvement over current law, but there are some minor details I find troubling . . . basically I felt that the draftsmen did a good job of choosing between various alternatives.").

Today, we received a letter from Christopher Walt, forwarding an analysis prepared for former Assemblyman Frank Lanterman. This is attached for your information; we will report at the meeting the disposition the Assembly Judiciary Committee made of these comments.

SECTION-BY-SECTION ANALYSIS OF COMMENTS

§ 1424. Interested person

The definition of "interested person" includes, but is not limited to, specified public agencies and employees. Mr. Collier (Exhibit 4) suggests that the definition be expanded to include other interested persons. However, the definition does not purport to be exclusive and is merely intended to simplify the drafting in continuing provisions of existing law permitting public agencies and employees to perform certain functions in guardianship and conservatorship proceedings. See the Comment to Section 1424. Accordingly, the staff recommends against expanding the definition.

§ 1446. Single-premium deferred annuity

Ms. Whartenby (Exhibit 15) can find no reference in the proposed legislation where the phrase defined in Section 1446 is used. The note to the section in our recommendation indicates the section where this phrase is used in the proposed legislation. (The staff elsewhere in this memorandum recommends that one of these references be deleted.)

§ 1450. Petitions, reports, and accounts to be verified

Mr. Collier (Exhibit 4) suggests that Section 1450 be expanded to require objections to petitions, reports, or accounts to be verified. The staff recommends against the suggested change. Objections to an account must be under oath. See Section 2622.

§ 1454. Court investigator

Under Section 1454, the court investigator must be "a person trained in law." Mr. Collier (Exhibit 4) suggests that the language should be clarified so that it does not require the court investigator to be a lawyer. This provision was part of the 1976 Lanterman legislation, and Mr. Lindgren (Chairman of the State Bar Subcommittee on Guardianship-Conservatorship Revision) recommends against change. Accordingly, the staff recommends against the suggestion.

§ 1460. Notice of hearings generally

Carol A. Huddleston (Exhibit 8) expresses concern about the new requirement of Section 1460 that notice generally be given to the conservatee unless the court for good cause otherwise orders. The concern is that in many instances notice to a conservatee might cause undue concern to the elderly person who is incapable of understanding that the notice deals with a routine matter and that the conservatee's property is not in jeopardy. The fear is that an elderly or incapacitated person would be unduly alarmed by receiving notice officially stamped by the County Clerk. Huddleston also suggests that the statute might specify what constitutes good cause to dispense with notice. "This would simplify counsel's task of providing a declaration showing that notice to the conservatee would be harmful in that it would unduly disturb the individual and require a personal explanation that the conservatee need not appear in court for such a routine matter as the accounting of the conservator of the estate, or for request for routine instructions."

One response the Commission should consider is adding the following provision to Section 1460:

> (e) Notwithstanding any other provision of this division, unless the court otherwise orders, notice need not be given to a conservatee who has been adjudged to be seriously incapacitated.

If it is desirable to respond directly to the suggestion, the following additional provision might be added to Section 1460:

> (e) In determining whether good cause exists for dispensing with notice to a conservatee, the court shall take into consideration whether the giving the notice would be harmful to the conservatee because it would unduly disturb the conservatee, whether the matter of which notice is given is routine, and any other relevant considerations.

Mr. Collier (Exhibit 4) suggests that subdivision (b) of Section 1460 should specifically require notice to persons who have requested special notice. However, the special notice provisions are contained in Chapter 10 (commencing with Section 2700) of Part 4. Subdivision (d) of Section 1460 provides that "Nothing in this section excuses compliance with" the provisions for special notice. Accordingly, the staff recommends against the suggested change.

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

Mr. Anderson (Exhibit 1) suggests changing the cross-reference in Section 1461(b)(2) from Section 2211 to Section 2212. This is a nonsubstantive change that the staff will make when the bill is next amended. Mr. Anderson also suggests including cross-references to Sections 2421 and 2422. This would have the effect of requiring notice to the Director of Mental Health or the Director of Developmental Services of petitions for a personal allowance for the ward or conservatee (Section 2421) and for an order for support of the ward or conservatee out of the estate notwithstanding the existence of a third person legally obligated to furnish such support (Section 2422) if the ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in or on leave from a state mental hospital. This suggestion appears to be sound, and the staff will make this change to the bill.

§ 1465. Manner of mailing

Ms. Whartenby (Exhibit 15) suggests the use of certified mail be required under subdivision (a) of Section 1465 which prescribes the manner of mailing where notice by mail is required or permitted under the proposed legislation. This would not be a desirable change. The statute itself often requires personal service on some persons and, in addition, mailing to other persons. Where more than mailing by first-class mail is considered desirable, the particular provision imposes the greater duty.

Subdivision (a) of Section 1465 provides for mailing by first-class mail if the address is within the United States and by airmail if the person's address is not within the United States. The provision is modeled after a comparable provision adopted in 1978 in Probate Code Section 591.4 (Independent Administration of Estates Act). Mr. Hubbs (Exhibit 7) comments: "I see no need for the requirement that mail shall be sent to a person's address not within the United States by air mail in that all mail goes by air in any event and frequently cannot be specified." The staff recommends that no change be made in Section 1465.

§ 1468. Proof of giving of notice

Section 1468 permits proof of notice by "affidavit." Mr. Collier (Exhibit 4) suggests that this be expanded to permit proof by declaration as well. Mr. Devor (Exhibit 5) asks whether a declaration under penalty of perjury may be used. The Comment to Section 1468 notes that under Section 2015.5 of the Code of Civil Procedure a declaration may be used in lieu of an affidavit. See also Code Civ. Proc. § 2015.6 (affirmation in lieu of oath). It has been the Commission's drafting style not to say "affidavit or declaration," but instead to rely on the provisions of the Code of Civil Procedure. Accordingly, the staff recommends against the suggested change.

§ 1469. Application of Sections 1200 and 1201 to proceedings under this division

Section 1469 provides in part that "[w]hen a provision of this division applies the provisions of this code applicable to executors or administrators to proceedings under this division, a reference to Section 1200 [notice] in the provisions applicable to executors or administrators shall be deemed to be a reference to this chapter." Mr. Collier (Exhibit 4) suggests that we eliminate the references to Section 1200 in the other sections. However, the sections in question here are located in Division 3 (administration of estates of decedents) and the references to Section 1200 are appropriate in that context. When, however, provisions of Division 3 are incorporated by reference and applied to guardianship or conservatorship proceedings, then Section 1469 has the effect of applying the notice provisions of Chapter 3 (commencing with Section 1460) of Part 1 in lieu of the notice provisions of Section 1200.

§ 1470. Discretionary appointment of legal counsel

Section 1470 provides for appointment of private legal counsel where the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of a person not otherwise represented by counsel. The authority is comparable to the court's authority to appoint private counsel to represent the minor's interests in connection with a child custody issue arising under the Family Law Act. Mr. Devor (Exhibit 5) asks: "I observe that I

am not a criminal lawyer, but I have read cases where a criminal defendant was not adequately represented. Suppose the Court concludes that the incumbent was not adequately represented?" The staff does not recommend any change in the proposed legislation to respond to this question.

Under Section 1470, if counsel is appointed to represent a minor in guardianship proceedings, the attorney's fee is to be paid by the minor's parent or parents or from the guardianship estate. Mr. Collier (Exhibit 4) questions the propriety of imposing these fees on the minor's parent when the parent may not be before the court. However, this provision is comparable to Section 4606 of the Civil Code (Family Law Act), and Mr. Lindgren notes that the parent is liable for the welfare of his or her children. See Civil Code § 242. Accordingly, the staff recommends that this provision not be changed.

§§ 1471-1472. Appointment of counsel

Sallie T. Reynolds (Exhibit 12) is pleased with Sections 1471, 1472, and 1826 concerning appointment of counsel. He wonders whether this optional appointment system should not be extended to hearings where the proposed conservatee is a developmentally disabled person (LPS conservatorship). The Commission has decided not to tamper with the LPS Act and the staff recommends against this suggestion.

§ 1471. Mandatory appointment of legal counsel

Mr. Anderson (Exhibit 1) points out that Section 1471 does not mention anything about wards. This is intentional: As under existing law, appointment of counsel is required in the circumstances specified only for adults and not for minors.

§ 1483. Appointments or confirmations made under prior law

Section 1483 provides that "any appointment on or after the operative date is governed by this division." Mr. Anderson (Exhibit 1) suggests adding to this a reference to a "nomination" or "confirmation" on or after the operative date. The staff recommends against making this change. After the operative date, the "confirmation" concept will be obsolete, since individuals will nominate rather than appoint, and the court will appoint rather than confirm. A reference to "nomination"

would not be appropriate since Section 1483 deals with standards for appointment.

§ 1487. Order to reflect lack of legal capacity of existing wards and conservatees

Under Section 1485, existing guardianships of adults are converted to conservatorships on the operative date, and such a conservatee is deemed to have been adjudicated to be seriously incapacitated unless otherwise ordered by the court. Under Section 1486, if an existing conservator was appointed on the ground that the conservatee was a person for whom a guardian could have been appointed, the conservatee is deemed to be seriously incapacitated unless otherwise ordered by the court. Section 1487 requires the court to make an order, at or before the time of the court's first biennial review after the operative date, that a conservatee described in Section 1485 or 1486 is seriously incapacitated "unless the court finds otherwise and makes a different order."

Mr. Collier (Exhibit 4) notes that Section 1487 appears to be unnecessary in view of Sections 1485 and 1486. Section 1487 is merely a precatory section the purpose of which is to make the court's file in the conservatorship proceeding accurately reflect the status of the conservatee with respect to legal capacity. The staff recommends that Section 1487 be retained.

§ 1488. Effect on nomination by adult of guardian for such adult

Under Section 1488, a written nomination made by an adult prior to the operative date of a person to serve as guardian for such adult should that become necessary in the future is deemed to be a nomination of a conservator, and is valid whether or not the writing was executed in the same manner as a witnessed will so long as the person making the nomination had at the time the writing was signed "sufficient capacity to form an intelligent preference." Mr. Anderson (Exhibit 1) expresses concern that this may be construed to effectuate a nomination made by a person of unsound mind or acting under duress. The staff proposes to add to the Comment to Section 1810 (nomination by proposed conservatee) the following: "In determining whether the proposed conservatee had sufficient capacity to form an intelligent preference at the time of the nomination, the court may consider the proposed conservatee's soundness

of mind at that time and whether the proposed conservatee may have been acting under duress or undue influence." The staff also proposes to include cross-references to the Comment to Section 1810 in the Comments to Sections 1488 and 1489.

Mr. Collier (Exhibit 4) suggests that the reference to a nomination of a person "to serve as guardian if a guardian is in the future appointed" should instead refer to a nomination of a person "to serve as guardian if a conservator is in the future appointed." This is incorrect since the section refers to a nomination made before the operative date under existing Section 1463 of a "person to be appointed as guardian . . . in the event that a guardian is in the future appointed." Accordingly, this change should not be made.

§ 1500. Nomination of guardian of person or estate or both by parent

Under Section 1500, a nomination of a guardian for a minor may be made by one parent without the consent of the other parent if the latter's consent would not be required for an adoption of the child. This might occur, for example, where the noncustodial parent for one year "willfully fails to communicate with and to pay for the care, support, and education of such child when able to do so." Civil Code § 224. Mr. Anderson (Exhibit 1) fears that this may cause problems and litigation. This provision is a continuation of existing law (see Prob. Code § 1403), and in the staff's view is sound policy. The staff recommends against revising this provision.

Ordinarily, both parents must join in a nomination of a guardian for the nomination to be recognized. An exception to this rule exists where:

> (b) At the time the petition for appointment of the guardian is filed, either (1) the other parent is dead or lacks legal capacity to consent to the nomination or (2) the consent of the other parent would not be required for the adoption of the child.

Mr. Hubbs suggests that a third provision be added to permit one parent to nomination where "or (3) the other parent cannot be located to the satisfaction of the court." We think that this addition is unnecessary in view of the discussion of Civil Code Section 224 above.

§ 1510. Petition for appointment

Mr. Hubbs (Exhibit 7) comments: "Reference is made to receiving of benefits from the Veterans Administration. Since there are other government agencies that give similar benefits as the Veterans Administration, it would seem more appropriate to require information as to benefits from any government agency."

The reason why the petition requires a reference to benefits from the Veterans Administration is that the Uniform Veterans' Guardianship Act becomes applicable if a ward or conservatee receives Veterans Administration benefits and notice to the Veterans Administration is required and special accounting requirements and bond requirements apply with respect to the Veterans Administration benefits and property acquired therewith. The same reason does not apply to other benefits. Accordingly, the staff recommends against the suggested change.

If a 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 for guardianship, Section 1510 requires that the petition "state that fact and name the institution." Mr. Anderson (Exhibit 1) suggests that this provision include a requirement that the petition show the address of the institution. The staff recommends against such a requirement. The existing Judicial Council form requires only the name of the institution, not the address.

§ 1511. Notice of hearing

Darold D. Pieper (Exhibit 11) agrees with the expansion of notice in the case of a guardianship of the person "but I seriously doubt that most families would care to have their children's financial affairs noticed to such a large group of individuals." The expanded notice under Section 1511 is primarily in that notice is required to be given to all relatives of the proposed ward within the second degree. Under existing law, notice is required only to "such relatives of the minor residing in the state as the court or judge deems proper." There may be merit to this point when only a guardianship of the estate is sought to be established. If the Commission agrees with Mr. Pieper, the staff suggests that subdivision (c) of Section 1511 be revised to read:

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

(1) The spouse named in the petition.

(2) ~~The~~ If the petition is for the appointment of a guardian of the person or a guardian of the person and estate, the relatives named in the petition , and, if the petition is for the appointment of a guardian of the estate only, such relatives named in the petition as the court orders be given notice .

(3) The person having the care of the proposed ward if other than the person having legal custody of the proposed ward.

Mr. Pieper is also concerned as to how some courts might interpret "reasonable diligence" under subdivision (g)(1). He is concerned that the courts may be as strict as in the case of a missing heir to an estate. Subdivision (g)(1) might be revised to read:

(g) Notice need not be given to any person if the court so orders upon a determination of either of the following:

(1) The person cannot with reasonable diligence be given the notice. In determining what constitutes reasonable diligence, the court shall take into consideration the expense of an additional effort to give the notice, the extent to which the person would be likely to have an interest in the proceeding and would appear at the hearing if the person received notice, the extent to which other persons interested in the welfare of the proposed ward have been given notice, and any other relevant considerations.

Section 1511 requires that notice of the hearing on a petition for appointment of a guardian be given as provided in subdivisions (b) through (e) of the section. Mr. Anderson (Exhibit 1) suggests that a reference to subdivision (h) (proof of notice) be added to this list. The staff recommends against such a change, since subdivision (h) does not deal with the manner of giving notice, but rather provides for proof of notice before appointment of a guardian may be made.

§ 1513. Investigation and report by court-designated officer

Section 1513 provides that, when an investigation of a guardianship case has been made by the court investigator, probation officer, or domestic relations investigator, the report may be received in evidence "upon stipulation" of the persons present at the hearing who have been served and who have appeared in the proceeding. Mr. Lindgren is concerned that a "stipulation" may be effected only by counsel and that

this provision may preclude a person who is not represented from agreeing to admission of the report in evidence. However, this language is drawn from Section 4602 of the Civil Code (Family Law Act), which provides that a report of a custody investigation may be received in evidence "upon stipulation of all interested persons." The staff is reluctant to have different language in the guardianship statute than is in the Family Law Act. However, if the Commission does not agree with the staff, Section 1513 could be revised as follows:

1513. . . .

(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 persons who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of counsel for all such persons who are present at the hearing , or, if such person is present at the hearing but not represented by counsel, upon consent of such person .

Similar language appears in Section 1543, and, if the above change to Section 1513 is to be made, Section 1543 should be revised accordingly.

§ 1601. Termination by court order

When a petition for termination of a guardianship is filed, the notice prescribed by Section 1601 is "such notice as the court may require." Mr. Anderson (Exhibit 1) suggests that it would be preferable to require the notice prescribed in Chapter 3 (commencing with Section 1460) of Part 1 (notice to the ward if 14 or older, to the ward's spouse if any, and to any interested person who has appeared in the particular matter, unless the court for good cause dispenses with notice to any of these, and to the guardian). The staff thinks this is a good suggestion and would revise Section 1601 as follows:

1601. Upon petition of the guardian, a parent, or the ward, ~~and after such notice as the court may require,~~ the court may make an order terminating the guardianship if the court determines that it is no longer necessary that the ward have a guardian or that it is in the ward's best interest to terminate the guardianship. Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

§ 1823. Citation to proposed conservatee

Section 1823 requires that the citation to the proposed conservatee contain an advice of rights to the proposed conservatee, including advice of the right to legal representation and the right to appointed counsel in certain circumstances. Mr. Anderson (Exhibit 1) suggests that the reference in the citation to appointed counsel refer specifically to counsel appointed by the court pursuant to Chapter 4 (commencing with Section 1470) of Part 1. The staff recommends against this change since such a statutory reference would have no value to the proposed conservatee.

§ 1824. Service on proposed conservatee of citation and petition

Section 1824 requires service on the proposed conservatee of the citation and a copy of the petition "in the manner provided in Section 415.10 [service by personal delivery] or 415.30 [service by mail and written acknowledgement of service] of the Code of Civil Procedure." Mr. Anderson (Exhibit 1) suggests adding to these two alternatives provision for service under Section 415.20 ("in lieu" service) of the Code of Civil Procedure. Under Section 415.20, process may be left with (1) the person apparently in charge of the office of the person to be served during usual office hours and a copy thereafter mailed to the person at the office or (2) an adult member of the person's household at the person's dwelling house and a copy thereafter mailed to the person at that address. The staff recommends against this suggestion. It is not part of existing conservatorship law and may not give actual notice to the conservatee.

§ 1825. Attendance of proposed conservatee at hearing

Section 1825 requires that the proposed conservatee be produced at the hearing except in three cases. The first two exceptions continue existing law: The proposed conservatee need not be produced at the hearing (1) where he or she is out of state when served and is not the petitioner, and (2) where he or she is unable to attend the hearing because of medical inability. The third exception is a change in the law which is being recommended by the Commission: The proposed conservatee need not be produced at the hearing where the court investigator has reported to the court that the proposed conservatee has expressly

communicated that he or she is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing. Mr. Bonneau of the State Public Defender's Office (Exhibit 2) thinks this recommended change may not be good policy because it gives the court investigator "absolute power to restrict [the proposed conservatee's] access to the courts" and because there is "no substitute for the personal presence of the conservatee at the court hearing." This change was decided on by the Commission after much discussion and careful consideration. The staff recommends against retreating from this recommendation at this time. The Executive Secretary has written a letter to Mr. Bonneau explaining the Commission's view in detail. See Exhibit 2. It may be that the Assembly Judiciary Committee will be called upon to resolve this issue at the March 28 hearing.

If the proposed conservatee is unable to attend the hearing on the establishment of the conservatorship, Section 1825 requires that an affidavit or certificate of such inability be executed by a "licensed medical practitioner." Mr. Anderson (Exhibit 1) suggests that the term "licensed medical practitioner" is vague and should be more precisely defined. This suggestion has some merit, but the term was added to the law (Prob. Code § 1754) by the 1976 Lanterman legislation which we have been reluctant to tamper with. Moreover, Mr. Lindgren (Chairman of the State Bar Subcommittee on the Guardianship-Conservatorship Revision) recommends against revising this provision. Accordingly, the staff recommends against revising it.

Sallie T. Reynolds (Exhibit 12) approves this provision but would extend the grounds for excusing the conservatee from attending the hearing:

> I heartily agree with the recommendation that a conservatee need not appear if the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to contest the petition. I think, however, that the provision should be further extended to the cases where the conservatee is not lucid enough to know that he needs the conservatorship and the medical doctor,

investigator and public defender all agree that there is a need for conservatorship. It adds nothing to require the presence of the proposed conservatee in the court to confirm this matter. I see proposed conservatees who are completely unresponsive to any questions and they gain nothing by being brought to court. I think that power should be delegated to the investigator and public defender to confirm that their presence in court is not needed. Perhaps such provision could be added to Section 1893.

The office of the State Public Defender (Exhibit 2) objects to excusing the conservatee from the hearing merely because the conservatee is not willing to attend and does not oppose the petition.

If Section 1825 were modified to add the provision suggested by Mr. Reynolds--to permit the court to make an order excusing attendance on the ground that the conservatee lacks capacity to determine whether or not to oppose petition--the staff believes the additional requirement should be added to the statute that such an order may be made only if the public defender stipulates that attendance of the proposed conservatee in court should not be required under the circumstances of the particular case. This is analogous to the manner in which we treat a request for an order for medical treatment where we permit the order upon stipulation without hearing. See Section 2357(g) on page 71 of AB 261.

§ 1826. Information to proposed conservatee by court investigator; investigation and report

Section 1826 requires the court investigator to advise the proposed conservatee of his or her right to be represented by legal counsel, but there is no requirement in the section that the court investigator specifically advise the proposed conservatee of the right to appointed counsel. Mr. Anderson (Exhibit 1) suggests that such a requirement be included. The staff thinks this is a good suggestion. Subdivision (b) of Section 1826 could be revised as follows:

> 1826. If the petition alleges that the proposed conservatee is not willing to attend the hearing, or upon receipt of an affidavit or certificate attesting to the medical inability of the proposed conservatee to attend the hearing, the court investigator shall do all of the following:
>
> (a) Interview the proposed conservatee personally.
>
> (b) 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,

to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, ~~and~~ to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if the proposed conservatee opposes the proceeding and is unable to retain legal counsel .

. . . .

This revision makes subdivision (b) consistent with Section 1828(a)(b) (information by court).

Mr. Anderson also suggests that subdivision (j), which requires the court investigator to report to the court in writing concerning all of the matters which the court investigator is required to determine, including the proposed conservatee's express communications concerning representation by legal counsel and willingness to attend the hearing, be expanded to include the proposed conservatee's express communications concerning whether he or she objects to establishment of conservatorship or prefers another person as conservator. Mr. Lindgren recommends that the provision not be revised, and, accordingly, the staff recommends against the suggested change.

§ 1828. Information to proposed conservatee by court

Section 1828 requires the court to advise the proposed conservatee of his or her rights "so far as relevant to the allegations made and the determinations requested in the petition." Mr. Anderson (Exhibit 1) states that the rights enumerated in paragraph (6) of subdivision (a) of Section 1828 (right to oppose proceeding, to have jury trial, to be represented by counsel, and in some cases to have counsel appointed) should be "mandatorily delivered" to the proposed conservatee. The relevancy qualification of Section 1828 appears to apply only to paragraph (2) of subdivision (a). Accordingly, the staff recommends that the section be revised as follows:

1828. (a) Except as provided in subdivision (c), prior to the establishment of a conservatorship of the person or estate, or both, the court shall inform the proposed conservatee of all of the following ~~so far as relevant to the allegations made and the determinations requested in the petition~~ :

(1) The nature and purpose of the proceeding.

(2) The establishment of a conservatorship 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 both, depending on the allegations made and the determinations requested in the petition, and the effect of such an adjudication on the conservatee's basic rights.

. . . .

§ 1845. Petitions by conservatee [new]

The Deputy County Counsel of Orange County (Exhibit 14) suggests that the proposed legislation contain a prohibition as to the number of times a petition for termination of the conservatorship can occur. She notes that the present law, as well as the proposed legislation, does not prevent a conservatee from "papering" the conservator until the conservatee is successful. Moreover, the staff notes that the proposed legislation requires appointment of legal counsel each time such a petition is filed. She suggests that a provision comparable to Welfare and Institutions Code Section 5364 would be desirable. That section provides:

> 5364. At any time, the conservatee may petition the superior court for a rehearing as to his status as a conservatee. However, after the filing of the first petition for rehearing pursuant to this section, no further petition for rehearing shall be submitted for a period of six months. If the conservatorship is terminated pursuant to this section the court shall, in accordance with Section 707.7(c) of the Elections Code, notify the county clerk that the person's right to register to vote is restored.

The staff believes that there is merit to this suggestion. We recommend that the following new article be added to AB 261:

> Article 5. Petitions by Conservatee
>
> § 1845. Limitation on repeated petitions by conservatee
>
> 1845. (a) The right of the conservatee to file a petition under any of the following provisions is subject to the limitation stated in subdivision (b) of this section:
>
> (1) A petition under Section 1861 (termination of the conservatorship).
>
> (2) A petition under Section 1801 for modification or revocation of an order made under Chapter 4 (commencing with Section 1870) (legal capacity of conservatee).
>
> (b) A petition referred to in subdivision (a) may be filed by the conservatee at any time. However, after the filing of the first petition under Section 1861 or 1801, or both, no further petition under either of those sections shall be filed by the conservatee for a period of six months.

Comment. Section 1845 is new and is comparable to Section 5364 of the Welfare and Institutions Code (conservatorship for gravely disabled persons).

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

Under Section 1852, proceedings to terminate the conservatorship, to remove the existing conservator, to revoke or modify an order affecting the conservatee's legal capacity, or to restore the conservatee's right to register to vote may be initiated by the conservatee or by the court. Mr. Bottomley (Exhibit 3) would restrict this provision so that acquiescence of both the conservatee and the court would be required to commence any of these proceedings in connection with the court's biennial review. The staff strongly opposes this suggestion since it goes to the heart of the 1976 Lanterman reforms and would be a substantial and unacceptable curtailment of the conservatee's procedural rights. We propose to deal with this problem by adding a new Section 1845 supra.

§ 1853. Failure to locate conservatee; removal of conservator on failure to produce conservatee; petition to appoint new conservator

Mr. Pieper (Exhibit 11) makes what the staff believes is a good point concerning this section. To respond to his suggestion, the staff suggests that Section 1853 be revised to read:

1853. (a) If the court investigator is unable to locate the conservatee and a conservator of the person has been appointed, the court shall order the court investigator to serve notice upon the conservator of the person, ~~or upon the conservator of the estate if there is no conservator of the person,~~ in the manner provided in Section 415.10 or 415.30 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 conservator should not be removed. ~~(b)~~ If the conservatee is not made available within the time prescribed, unless good cause is shown for not doing so, the court, on its own motion or on petition, shall remove the conservator, revoke the letters of conservatorship, and enter judgment accordingly. ~~, and, in the case of a conservator of the estate so removed,~~

(b) The conservator of the estate shall provide to the court investigator such information as the conservator has concerning the whereabouts of the conservatee. If the conservator of the estate fails to provide such information to the court investigator, the court may after hearing remove the conservator, revoke the letters

of conservatorship, and enter judgment accordingly, and shall order the conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

(c) If ~~the~~ a conservator is ~~so~~ removed as provided in this section , the court shall notify the attorney of record for the conservatee, if any, or shall appoint the public defender or private counsel under Section 1471, to file a petition for appointment of a new conservator or for the termination of the conservatorship, whichever the attorney considers to be in the best interests of the conservatee in the circumstances, and to represent the conservatee in connection with such petition and, if such appointment of legal counsel is made, Section 1472 applies.

§ 1875. Good faith purchaser or encumbrancer of real property

Section 1825 protects a good faith purchaser or encumbrancer for value of real property unless a notice of the establishment of the conservatorship has been recorded. Mr. Bottomley (Exhibit 3) wonders if such a notice can be recorded under present recording laws. The answer appears to be "yes" in view of Section 27280 of the Government Code which provides that "Any instrument or judgment affecting the title to or possession of real property may be recorded pursuant to this chapter."

§ 2104. Nonprofit charitable corporation as guardian or conservator

Section 2104 permits a nonprofit charitable corporation to be appointed as guardian or conservator if the corporation has been providing, at the time of the 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 Behaviorial Science Examiners. Mr. Collier (Exhibit 4) suggests that this limitation is unduly restrictive. However, this provision continues existing law (Prob. Code §§ 1400, 1701), and the staff sees no compelling reason for broadening the provision. Accordingly, the staff recommends against changing it.

§ 2108. Additional powers granted guardian nominated by will

Mr. Collier (Exhibit 4) is concerned that Section 2108 "appears to state that whatever powers are granted to a guardian under a will must be granted by the court in appointing the guardian." However, this is incorrect since the introductory clause of Section 2108 provides that such powers shall be granted "[e]xcept to the extent the court for good cause determines otherwise."

§ 2201. Venue for residents

Under existing conservatorship law, conservatorship proceedings for a California resident must be commenced in his or her county of residence. Prob. Code § 2051. In the case of a guardianship for an incompetent adult, the proceeding may be commenced in any county. Prob. Code § 1460. The Commission is recommending an intermediate position: Under the proposed legislation, a conservatorship proceeding for a resident may be commenced in the county of residence, or in "such other county as may be in the best interests" of the proposed conservatee.

Mr. Bonneau of the State Public Defender's Office (Exhibit 2) is of the view that conservatorship proceedings should be commenced in the county of residence, at least until the court has had an opportunity to determine whether the proposed conservatee ought to be required to appear personally at the hearing. Otherwise, says Mr. Bonneau, the personal appearance of the proposed conservatee will be less likely. The Executive Secretary has written to the State Public Defender's Office explaining the Commission's view that the somewhat expanded venue provision will avoid the need to litigate the issue of where the proposed conservatee resides and to permit a petition in a county where the proposed conservatee is temporarily present. See Exhibit 2. The staff recommends against changing this provision.

§ 2252. Powers and duties [of temporary guardian or temporary conservator]

Section 2252 permits a temporary conservator to sell the temporary conservatee's residence or to relinquish a lease for such residence only after court approval. The section provides for notice of the hearing to be personally delivered to the temporary conservatee unless the court for good cause orders otherwise. Mr. Anderson (Exhibit 1) suggests that the section be revised to provide for service of notice "as provided in Chapter 3 (commencing with Section 1460) of Part 1." However, under Chapter 3 notice is ordinarily given by mail, not by personal delivery. If the temporary conservatee's residence is to be sold, it would appear that the provisions of Article 7 (commencing with Section 2540) (sales) of Chapter 6 of Part 4 would apply, with notice as provided in Section 2543. The staff recommends clarifying this by so stating in the Comment and by revising subdivision (a) of Section 2252 as follows:

2252. (a) Except as otherwise provided in subdivisions (b) and (c), a temporary guardian or temporary conservator has only the power and authority , and only the duties , of a guardian or conservator that are necessary to provide for the temporary care, maintenance, or support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

Mr. Collier (Exhibit 4) finds subdivision (e) "undesirable on its face." However, as he notes, the subdivision continues legislation enacted in 1977. The Commission previously determined not to attempt to revise these provisions, and the staff thinks that decision was sound.

§§ 2253-2254. Temporary conservators

Sallie T. Reynolds (Exhibit 12) objects to these sections as unnecessarily burdensome. The proposed law makes the provisions of existing law less burdensome. The staff recommends against any further liberalization in view of the recent enactment of the provisions.

§ 2253. Change of conservatee's residence generally

Under Section 2253, if the court makes an order authorizing the temporary conservator to change the temporary conservatee's residence, the order shall "specify the specific place" to which the temporary conservatee is to be moved. Mr. Anderson (Exhibit 1) suggests that the language be revised to require the order to specify the "specific address" rather than the "specific place." The word "place" appears in existing law (see Prob. Code § 2201), and the staff thinks this term is preferable. Accordingly, the staff recommends against the proposed revision.

Mr. Collier (Exhibit 4) finds the entire section undesirable. However, the section continues legislation enacted in 1977, and the Commission previously determined not to disturb these provisions. The staff recommends against change.

§ 2254. Removal of conservatee from residence in case of emergency or with conservatee's consent for medical treatment

Sections 2253 and 2254 place certain restrictions on the ability of the temporary conservator to change the conservatee's place of residence. Subdivision (d) provides that "[n]othing in this chapter prevents a temporary conservator from removing a temporary conservatee

without court authorization from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care." Mr. Collier (Exhibit 4) suggests that it is not clear whether this provision would apply to a transfer of the conservatee from one convalescent home to another. The staff believes no change should be made in the statute.

§ 2256. Accounts

Section 2256 provides that accounts of a temporary guardian or temporary conservator are subject to six of the eight sections in Article 3 (commencing with Section 2620) (accounts of guardian or conservator) of Chapter 7 of Part 4. Omitted, however, is any reference to Section 2627 which permits a ward after reaching majority to settle accounts with the guardian and to give the guardian a release. Mr. Anderson (Exhibit 1) suggests that Section 2627 be applied to a temporary guardian, as well as to a guardian. The Commission had reservations about the policy expressed in Section 2627, but decided to continue it since it was existing law (see Prob. Code § 1592). The staff recommends against extending Section 2627 to a temporary guardian.

§ 2311. Form of letters

Section 2311 provides that, except as otherwise required by the order of appointment, letters of guardianship or conservatorship "shall be in substantially the same form as letters of administration." Mr. Collier (Exhibit 4) says that a conservator will often be granted additional powers which must be reflected in the letters, and therefore it is not feasible to use the same Judicial Council form as is used for letters of administration. However, the statute does not require that the same form be used. The Judicial Council has developed a form for letters of guardianship/conservatorship under existing law which provides a place for additional powers to be indicated. Moreover, the language "[e]xcept as otherwise required by the order of appointment" in Section 2311 is new so there is additional flexibility under the proposed legislation. This does not appear to be a problem.

It might be useful, however, to provide in the proposed legislation that any form prescribed by the Judicial Council is deemed to comply with the statute. The Commission wrote a similar provision in the 1978

Employees' Earnings Protection Law (Code Civ. Proc. § 723.120). If the Commission finds such a provision desirable, a new section could be added to the general provisions of Part 1:

> 1456. The Judicial Council may prescribe the form of the applications, notices, orders, and other documents required by this division. Any such form prescribed by the Judicial Council is deemed to comply with this division.
>
> Comment. Section 1456 is new. See also Section 1464 (form of notice); Cal. Const. art. VI, § 6 (Judicial Council shall adopt rules for court administration, practice, and procedure, not inconsistent with statute); Gov't Code § 68511 (Judicial Council may prescribe by rule the form and content of forms used in the courts of this state).

§ 2321. Waiver of bond by conservatee

Under Section 2321, a conservatee having sufficient capacity to do so may waive the filing of a bond, and in such a case the court in its discretion may dispense with bond. Mr. Bottomley (Exhibit 3) suggests that the court should also have the alternative of requiring bond in a lesser amount. The court has discretion under Section 2320 to decrease the amount of bond upon a showing of good cause so the change appears to be unnecessary. However, if the Commission thinks the change is desirable, Section 2321 could be revised as follows:

> 2321. In a conservatorship proceeding, where the conservatee, having sufficient capacity to do so, has waived the filing of a bond, the court in its discretion may dispense with the requirement that a bond be filed or may permit the filing of a bond in an amount less than would otherwise be required under Section 2320 .

§ 2334. Insufficiency of sureties; order for further security or new bond

Subdivision (e) of Section 2334 provides that when a petition is filed requesting the court to require the guardian or conservator to give further security or to give a bond where no bond was originally required, and the petition further alleges facts showing that the guardian or conservator is failing to use ordinary care and diligence in the management of the estate, the court may suspend the powers of the guardian or conservator pending the hearing on the petition. Mr. Collier (Exhibit 4) suggests that this provision should perhaps be expanded to

permit the court to require a bond or additional bond pending the hearing or to require a deposit of assets in a custodial account. However, this would appear to be covered by subdivision (b) which permits the court, on its own motion and without any application, to require further security. See also Section 2250(e) (if court suspends power of guardian or conservator under Section 2334, court may appoint temporary guardian or conservator). Accordingly, Section 2334 appears satisfactory in its present form.

§ 2336. Release of surety

Under Section 2336, a surety may apply to the court for an order discharging the surety from liability for subsequent misconduct of the guardian or conservator. If new sureties are given to the satisfaction of the court "shall thereupon" make and order that the original surety shall not be liable for such subsequent misconduct. Mr. Collier (Exhibit 4) raises the question whether the original surety is relieved from liability as of the date the new sureties are given, or as of the date the order is made. This could be clarified by revising subdivision (c) of Section 2336 as follows:

> 2336. . . .
>
> (c) If new sureties are given to the satisfaction of the court, the court shall thereupon make an order that the surety who applied for the order shall not be liable on the bond for any ~~subsequent~~ act, default, or misconduct of the guardian or conservator occurring after the giving of the new sureties .

§ 2351. Care, custody, control, and education

Sallie T. Reynolds (Exhibit 12) suggests that "both the requirement of close physical supervision and permission to supervise the conservatee but not actually visit him be set forth in the provisions of Section 2351." This suggestion appears to be that the section be revised to permit the court to make an order that is appropriate to the circumstances of the particular conservatee. The revision of Section 2351, set out on pages 2-3 of Memorandum 79-12, would appear to deal adequately with this problem. Perhaps the words "and duties" should be added to the various provisions of the proposed draft section in Memorandum 79-12.

§ 2352. Residence and domicile of ward or conservatee

Section 2352 continues the existing language that provides that the guardian or conservator may fix "the residence and domicile" of the ward or conservatee outside the state if permission of the court is first obtained. It is not clear whether this means both residence and domicile or either residence or domicile. The Commission may wish to clarify this provision by changing "residence and domicile" to "residence or domicile." If this change is made, perhaps some provision should be made to permit the ward or conservatee to visit relatives or others for a short time outside the state without the need for prior court permission. This could be accomplished by adding the following provision to Section 2352:

> (e) Unless the court otherwise orders, the guardian or conservator may allow the ward or conservatee to temporarily reside at a place within or without this state for a period not to exceed 30 days without complying with subdivisions (a) and (b).

Note that Memorandum 79-12 proposes a revision of Section 2352 on page 3 of that memorandum, and Memorandum 79-18 proposes the addition of a subdivision (d) to Section 2352.

§ 2353. Medical treatment of ward

Section 2353 provides that, with certain exceptions, no surgery shall be performed on a ward over 14 without consent of both ward and guardian unless authorized by court order. Mr. Anderson (Exhibit 1) suggests that the consent of ward and guardian should be written consent. The staff recommends against this change since it might operate as a trap where minor surgery is performed without objection with both the guardian and ward present but written consent is not obtained.

However, the suggestion does point out another problem with the section: The requirement of consent of both ward and guardian may change provisions of existing law authorizing a minor to obtain medical care without consent of the minor's parent or guardian. See, e.g., Civil Code §§ 25.5 (blood donation), 25.7 (minor on active duty with armed services), 34.5 (surgical care related to prevention or treatment of pregnancy), 34.6 (minor living apart from parent or guardian), 34.7 (surgical care related to diagnosis or treatment of contagious disease),

34.8 (surgical care related to diagnosis or treatment of rape victim), 34.9 (surgical care related to diagnosis and treatment of victim of sexual assault). Accordingly, the staff recommends that a new subdivision (d) be added to Section 2353 as follows:

> 2353. . . .
>
> (d) Nothing in this section requires the consent of the guardian for medical or surgical treatment for the ward when the ward alone may consent to such treatment under other provisions of law.

The above-mentioned sections of the Civil Code should be referenced in the Comment to Section 2353.

§ 2355. Medical treatment of conservatee adjudicated to lack capacity to give informed consent

Section 2355 provides that, if the conservatee has been adjudicated to lack the capacity to give informed consent to medical treatment and the conservator consents to treatment on behalf of the conservatee, "the consent of the conservator alone is sufficient and no person is liable because the medical treatment is performed upon the conservatee without the conservatee's consent." Mr. Collier (Exhibit 4) finds the quoted language ambiguous, and thinks it might be used to forestall a malpractice claim. However, the Comment expressly negates the point: "The immunity provided by the last sentence of subdivision (a) does not extend to malpractice; the immunity goes only to the failure to obtain the consent of the patient (the conservatee)."

§ 2407. Application of chapter to community and homestead property

Section 2407 provides that Chapter 6 (powers and duties of guardian or conservator of the estate) applies to community or homestead property "only to the extent authorized by Part 6 (commencing with Section 3000)." Part 6 provides the rules applicable to management or disposition of community or homestead property where one or both spouses lack legal capacity. Mr. Collier (Exhibit 4) thinks Section 2407 is out of place, and that there should be "some reference in the 3000 series to the applicability of Sections 2400 and subsequent." However, Section 3056 provides that:

> Except as otherwise provided in this part and subject to Section 3071, when homestead or community property is included in a conservatorship estate under this article for the purpose of management,

control, and disposition, the conservator has the same powers and duties with respect to such property as the conservator has with respect to other property of the conservatorship estate.

This section appears to do what Mr. Collier suggests. The staff recommends that no change be made.

§ 2420. Support, maintenance, and education

To respond to suggestions made by Mr. Norman (Exhibit 9), the staff suggests that subdivisions (a) and (c) of Section 2420 be clarified by revising those provisions to read as follows:

2420. (a) Subject to Section 2422, the guardian or conservator shall apply the income from the estate, so far as necessary, to the comfortable and suitable support, maintenance, and education of the ward or conservatee (including care, treatment, and support of a ward or conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services) and of those legally entitled to support, maintenance, or education from the ward or conservatee , taking into account the value of the estate and the condition of life of the ward or conservatee and the other persons furnished such support, maintenance, and education .

(c) When the amount paid by the guardian or conservator for the purpose described in subdivision (a) is not disproportionate to the value of the estate ~~or~~ and the condition in life of the ~~person to whom the payment is made~~ persons furnished support, maintenance, and education from the estate , and the payments are supported by proper vouchers or other proof satisfactory to the court, the guardian or conservator shall be allowed credit for such payments when the accounts of the guardian or conservator are settled.

Under Section 2420, if the income from the estate is sufficient for the support, maintenance, and education of the ward or conservatee and those legally entitled to support from the ward or conservatee, the guardian or conservator may sell or encumber the property of the estate. Section 2547 requires that the proceeds of sale shall be applied "to the purposes for which it was made." However, there is no comparable provision requiring that money borrowed be used for such purpose, and Mr. Collier (Exhibit 4) points this out. This can be rectified by the following revision to Section 2551 (borrowing money and giving security therefor):

2551. (a) In any case described in Section 2541 or Section 2552, the guardian or conservator, after authorization by order of the court, may borrow money upon a note or notes, either unsecured

or to be secured by a security interest or other lien on the personal property of the estate or any part thereof. The guardian or conservator shall apply the money to the purpose or purposes specified in the order.

. . . .

§ 2423. Payment of surplus income to relatives of conservatee

Mr. Bottomley (Exhibit 3) suggests the following change to Section 2423:

> 2423. (a) On petition of the conservator, the conservatee, the spouse of the conservatee, or a relative within the second degree of the conservatee, the court may by order authorize or direct the conservator to pay and distribute surplus income of the estate ~~,~~ or any part of such surplus income ~~,~~ (not used for the support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee) ~~,~~ to the spouse of the conservatee and to such relatives within the second degree of the conservatee whom the conservatee would, in the judgment of the court, have aided but for the existence of the conservatorship. . . .
>
> . . . .

This change is desirable, says Mr. Bottomley, because "surplus income should not be used for the benefit of relatives until those whom the conservatee is obligated by law to support have been provided for." The staff agrees with this suggestion and recommends the above change and a conforming change in Section 2423(b)(1).

§§ 2453-2455. Deposit of money or property of conservatee

Mr. Gordon (Exhibit 6) is concerned that there is no statutory requirement that a deposit of money or property of the ward or conservatee be in the name of the guardianship or conservatorship. This is a matter that was the subject of some discussion at a Commission meeting, but it was concluded that it would not be desirable to impose such requirement in the statute. W. Johnstone & G. Zillgitt, California Conservatorships § 4.10, at 112 (Cal. Cont. Ed. Bar 1968) ("Savings accounts should also be transferred to the conservator's name if interest to the date of transfer is not lost, or the transfer should be deferred until the interest date."), § 4.11, at 113 ("The use by the conservator of any of the proceeds of jointly held property may disrupt the conservatee's estate plan; the conservator should therefore be

extremely careful in his withdrawals from joint bank accounts."). These quotations indicate that the matter is not a simple one, and the staff recommends against imposing a statutory requirement concerning the form in which savings accounts are to be held.

§ 2459. Life insurance; medical, retirement, and other plans and benefits

Ms. Whartenby (Exhibit 15) is puzzled by the reasoning behind this section. Subdivision (b)(3) requires that mutual fund investments must be those initiated by the conservatee prior to the establishment of the conservatorship. This requirement is not included with respect to the other types of plans or benefits listed in subdivision (b), but all plans and benefits covered by subdivision (b) may only "be continued in force." Comments Ms. Whartenby: "Obviously, if the conservator may only 'continue in force' life insurance and annuity policies, they must either have been existence for the conservatorship when it began or be transferred by gift from a third party."

There is one clarifying addition the staff suggests be made. The staff suggests that the following additional subdivision be added to Section 2459:

> (f) Nothing in this section limits the power of the guardian or conservator to make investments as otherwise authorized by this division.

Ms. Whartenby also asks: "Why are the provisions [of Section 2459(e)--minor's insurance contracts] different from those of Civil Code 1158 (Uniform Gifts to Minors Act)?" The Uniform Gifts to Minors Act permits the custodian where the gift is an insurance policy or annuity contract to pay premiums on the policy or contract out of the custodial property. We think it is appropriate to permit the custodian of the gift to pay the premiums out of the property given in such a case. However, Section 2459 deals with a different problem: The problem it deals with is an insurance contract obtained by the minor. In this case, court authorization is required to use funds of the guardianship estate to effect or continue an insurance contract of the ward made under Section 10112 of the Insurance Code. This requirement continues existing law. The staff recommends no change in subdivision (e) of Section 2459.

§ 2525. Abatement of petition if civil action pending

Sections 2520 to 2528 provide a procedure for the guardianship or conservatorship court to resolve certain property and contract claims. However, Section 2525 provides that if a civil action is pending concerning the subject matter, the guardianship or conservatorship court "shall abate the petition until the conclusion of the civil action." Mr. Collier (Exhibit 4) questions the wisdom of this, and suggests that the guardianship or conservatorship court be allowed to proceed if it is in the best interest of the ward or conservatee, notwithstanding the pendency of the civil action. Section 2525 is drawn from Section 851.5, and the Commission favored the provision when it was considered. However, the staff suggests the following revision to the section so that it will be invoked only upon request of a party to the civil action:

> 2525. If a civil action is pending with respect to the subject matter of a petition filed pursuant to this article and jurisdiction has been obtained in the court where the civil action is pending, upon request of any party to the civil action the court shall abate the petition until the conclusion of the civil action.

§ 2542. Terms of sale

Section 2542 provides that, with respect to sales of real or personal property of the estate, "[i]n no case shall credit exceed 20 years from the date of sale." Mr. Collier (Exhibit 4) suggests that this might more appropriately be 30 years. Although the 20-year limit continues existing guardianship-conservatorship law (see Prob. Code § 1532), there is no time limit on credit in the case of a sale by an executor or administrator. Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.15, at 509 (Cal. Cont. Ed. Bar 1971); see Prob. Code § 787 (real property). Mr. Lindgren believes that the 20-year provision should be retained. Does the Commission wish to provide for a 30-year limit?

§ 2543. Manner of sale

Mr. Pieper (Exhibit 11) notes that publication of notice in connection with sales of real and personal property is still required as in a decedent's estate. "I question the usefulness of published notice in probate matters generally, and I would favor its elimination on general principles." There is a bill before the Legislature, introduced at the

request of the Governor, to eliminate such publications. If the bill passes, it will eliminate publications in guardianship and conservatorship proceedings because proposed Section 2543 incorporates the procedure for decedents' estates by reference. The staff recommends no change in Section 2543.

§ 2548. Limitation of action to recover property sold

Under Section 2548, an action to recover property sold by the guardian or conservator must be commenced within three years after the termination of the guardianship or conservatorship, or within three years after the removal of any legal disability of the person bringing the action, whichever is later. Mr. Collier (Exhibit 4) suggests that this provision ought to be limited to guardianships. However, under existing law (Prob. Code § 1539), it applies both to guardianships and to conservatorships. W. Johnstone & G. Zillgitt, California Conservatorships § 5.57, at 203 (Cal. Cont. Ed. Bar 1968). Accordingly, the staff recommends against the suggested revision.

§§ 2580-2586 (substituted judgment)

Mr. Bottomley (Exhibit 3) is of the view that the substituted judgment provisions should be limited to large estates "where the benefits of estate planning would be more obvious." He also objects to the provision permitting the conservator (with court approval) to exercise a right of a conservatee to revoke a revocable trust: Since the conservator cannot rewrite the conservatee's will, revocation of a revocable trust may upset the conservatee's estate plan, particularly if there is a pour-over provision in the will. Mr. Lindgren's comment on this suggestion is: "No change -- let stand for the time being." The staff concurs with Mr. Lindgren's comment and would not revise the substituted judgment provisions at this time.

§ 2580. Petition to authorize proposed action [involving substituted judgment]

Assembly Bill 167, part of the guardianship-conservatorship package, would amend Probate Code Sections 202 and 650, relating to the election of the guardian or conservator of the surviving spouse concerning administration of community property in probate, to permit the

election to be made without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending. Mr. Norman (Exhibit 9) takes the position that the elections are ones that involve substituted judgment and should be made under the provisions relating to substituted judgment rather than without any court authorization or approval. As a banker, he notes that would make Section 2585 (no duty to propose action) applicable, but the staff also notes that it would provide an opportunity for all interested persons for a hearing before a determination is made concerning the election. The staff is inclined to adopt this suggestion and to add references to Sections 202 and 650 of the Probate Code to Section 2580 of the proposed law.

§ 2601. Wages of ward or conservatee

Section 2601 provides that wages of the ward or conservatee are not part of the guardianship or conservatorship estate and are subject to the sole control of the ward or conservatee unless the court orders otherwise. Mr. Collier (Exhibit 4) suggests that perhaps pension benefits and social security payments should be included within this provision. However, the purpose of Section 2601 appears to be to provide an incentive to the ward or conservatee to work and recognizes the "therapeutic value" of work. See W. Johnstone & G. Zillgitt, California Conservatorships § 4.52, at 141 (Cal. Cont. Ed. Bar 1968). This consideration is not present where fixed benefits are concerned. Moreover, the court may authorize an allowance for the personal use of the ward or conservatee, and this would seem to be the preferable way for the guardian or conservator to deal with the question. Accordingly, the staff recommends no change in Section 2601.

§ 2602. Order to file inventory or account or to show cause

Mr. Pease, a supervising court investigator in Contra Costa County, expressing his personal views, suggests (Exhibit 10) the substance of the provision set out below. This provision is recommended by the staff.

§ 2602. Order to file inventory or account or to show cause

2602. (a) If the guardian or conservator fails to file an inventory and appraisement or any account within the time allowed by law or by court order, upon request of the ward or conservatee, the spouse or any relative or friend of the ward or conservatee, or

any interested person, the court shall order the guardian or conservator to file the inventory and appraisement or to file the account, as the case may be, within 15 days of the receipt of the order or to show cause why the guardian or conservator should not be removed. The person who requested the order shall serve it upon the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as is ordered by the court.

(b) If the guardian or conservator fails to file the inventory and appraisement or to file the account as required by the order within the time prescribed in the order, unless good cause is shown for not doing so, the court, on its own motion or on petition, shall remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly, and shall order the guardian or conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

Comment. Section 2602 is new. The section is similar to Section 1853 and provides a procedure for requiring an inventory and appraisement or accounting short of removing the guardian or conservator. See also Section 2650 (removal of guardian or conservator for failure to file an inventory or to render an account within the time allowed by law or by court order).

§ 2610. Filing inventory and appraisement

Section 2610 requires the guardian or conservator to file an inventory and appraisement of the estate within 90 days after the appointment or within such further time as the court for reasonable cause may allow. Mr. Collier (Exhibit 4) asks whether this contemplates a court order extending time and whether a petition is necessary. Section 2610 is basically the same as Section 600 (decedents' estates) and, in the latter context, an extension of time may be obtained ex parte. Johnson, Inventory and Appraisement, in 1 California Decedent Estate Administration § 10.12, at 369 (Cal. Cont. Ed. Bar 1971). This could be made clear in Section 2610 by adding the following language:

2610. (a) Within 90 days after appointment, or within such further time as the court for reasonable cause upon ex parte petition of the guardian or conservator 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.

. . . .

§ 2611. Sending copy [of inventory and appraisement] to Director of Mental Health or Director of Developmental Services

Section 2611 requires that a copy of the inventory and appraisement of the estate be mailed to the Director of Mental Health or the Director

of Developmental Services when the ward or conservatee is or has been during the guardianship or conservatorship a patient in a state hospital under the jurisdiction of either of these officials. Mr. Anderson (Exhibit 1) suggests that this section refer back to Section 1461 (notice to Director of Mental Health or Director of Developmental Services). However, Section 2611 is a self-contained notice provision. It is not referred to in Section 1461, which applies to a "petition, report, or account." Accordingly, the staff recommends against the suggested change.

§ 2614. Objections to appraisals

Section 2614 permits any interested person to object to any appraisal and authorizes the court to fix the true value of any asset to which objection has been filed. Mr. Collier (Exhibit 4) thinks this procedure has limited applicability in guardianship and conservatorship proceedings. However, the provision continues existing law (Prob. Code §§ 1550.1, 1901.5), and Mr. Lindgren thinks it should be retained. Accordingly, the staff recommends against revising or deleting the provision.

§ 2615. Consequences of failure to file inventory

Section 2615 provides for damages for the failure of the guardian or conservator to file an inventory "within the time prescribed." Mr. Collier (Exhibit 4) again raises the question as to whether a court order is required for an extension of time. We have proposed dealing with this problem under Section 2610 and recommend revising Section 2615 as follows:

> 2615. If a guardian or conservator fails to file any inventory required by this article within the time prescribed by law or by court order , the guardian or conservator is liable for damages for any injury to the estate, or to any interested person, resulting from the failure timely to file the inventory. . . .

See also Section 2650(b) (containing similar language).

Section 2615 makes the guardian or conservator who "fails to file any inventory . . . within the time prescribed . . . liable for damages for any injury to the estate, or to any interested person, resulting from the failure timely to file the inventory." Mr. Norman (Exhibit 9) recommends that the liability imposed by this provision "be predicated

upon fault or at least responsibility and control by the guardian or conservator." Section 2615 continues the substance of existing statutory provisions applicable to guardians and conservators. What revision does the Commission wish to make in Section 2615?

§ 2616. Examination concerning assets of estate

Section 2616 provides for a petition alleging embezzlement, concealment, or other fraud in connection with property of the ward or conservatee. The petition may be filed by the guardian or conservator, the ward or conservatee, or a "creditor or other interested person, including persons having only an expectancy or prospective interest in the estate." Mr. Collier (Exhibit 4) is concerned that, if the petition were filed by a beneficiary under a will, the court might require disclosure of the will contents as a condition of filing the petition. However, this provision continues existing law (Prob. Code § 1903), and Mr. Lindgren recommends not revising the provision. Accordingly, the staff recommends against revising Section 2616.

§ 2620. Presentation of account for settlement and allowance

Mr. Bottomley (Exhibit 3) suggests the following change to Section 2620:

> 2620. . . .
>
> (b) The account shall state the period covered by the account and contain a summary showing all of the following:
>
> (1) If the first account, the amount of appraisement; if a subsequent account, the amount chargeable from the prior account.
>
> (2) The amount of any supplemental appraisement filed within the period covered by the account.
>
> (3) The amount of cash receipts ~~, excluding principal items~~ .
>
> (4) The gains on sales or other increases in assets, if any.
>
> (5) The amount of cash disbursements ~~, excluding principal items~~ .
>
> (6) The losses on sales or other decreases in assets, if any.
>
> (7) The amount of property on hand.
>
> . . . .

This appears to be a desirable change.

Mr. Norman (Exhibit 9) suggests: "A real service would be performed by the proposed law if it legislated standardized statement and accounting formats, descriptions, and the like. Only items not covered by the established standards then need be subject to [the requirement of subdivision (d)(1) which requires a description of all transactions that are not otherwise readily understandable from the schedules]." The Judicial Council has authority to prescribe uniform forms if the Council so desires. Accordingly, the staff recommends that the Commission leave to the Judicial Council the determination whether to cover this by a uniform court rule or to permit local court rules as is now the practice.

Under subdivision (e) of Section 2620, a petition for approval of an account "may include additional requests for authorization, instruction, approval, or confirmation authorized by this division." The Comment notes that this includes "requests for compensation for services rendered" by the guardian, conservator, or the attorney. Mr. Collier (Exhibit 4) suggests that this be made explicit in the statute. This is a good suggestion and could be accomplished by the following revision:

> 2620. . . .
>
> (e) The petition requesting approval of the account may include additional requests for authorization, instruction, approval, or confirmation authorized by this division , including but not limited to a request for any order authorized under Chapter 8 (commencing with Section 2640) .

§ 2623. Compensation and expenses of guardian or conservator

Subdivision (a) of Section 2623 provides that the guardian or conservator shall be allowed "(a) The amount of the reasonable expenses incurred in the exercise of the powers and the performance of the duties of the guardian or conservator (including, but not limited to, the cost of any surety bond furnished, reasonable attorney's fees and such compensation for services rendered by the guardian or conservator of the person as the court determines is just and reasonable)." Mr. Norman (Exhibit 9) observes: "It seems rather shortsighted to expressly provide for attorney's fees without also making specific provision for the services of other professionals and experts needed to properly administer the estate." The reason for the inclusion of the attorney and guardian or conservator of the person in subdivision (a) of Section 2623

is that the statute authorizes those persons to themselves petition for compensation. The staff recommends against any revision.

§ 2625. Review of sales, purchases, and other transactions

Section 2625 provides that when the court reviews the account, the court may hold the guardian or conservator liable for "any violation of duties." Mr. Collier (Exhibit 4) thinks this is too vague. However, the language is drawn from existing Sections 1519 and 1862 of the Probate Code, and cannot be more specific in view of the general duty of the guardian or conservator to use "ordinary care and diligence" in the management of the estate. Mr. Lindgren recommends leaving the provision as is, and the staff agrees.

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

Subdivision (a) of Section 2627 provides that "[a]fter a ward has reached majority, the ward may settle accounts with the guardian and give the guardian a release which is valid if obtained fairly and without undue influence." This provision continues existing Section 1592 of the Probate Code. Mr. Collier (Exhibit 4) wonders what documentation must be filed with the court. This reflects the confusion created by continuing this existing provision. The guardian can be discharged only by filing "a final account and petition, setting forth that the ward has reached majority and requesting authority to turn the assets of the estate over to the ward." Cupp, McCarroll, & McClanahan, Guardianship of Minors, in 1 California Family Lawyer § 1675, at 661 (Cal. Cont. Ed. Bar 1962). In view of this requirement, should subdivision (a)--a source of confusion under existing law and possibly under the proposed law--be continued?

§ 2633. Account where relationship terminates before filing inventory [new]

Mr. Reynolds (Exhibit 13) suggests the substance of the following section, which the staff also recommends. We seek, however, the advice of experts as to whether the proposed section is workable.

§ 2633. Account where relationship terminates before filing inventory

2633. Subject to Section 2630, where the guardianship or conservatorship terminates before the inventory of the estate has been filed, the court, in its discretion and upon such notice as

the court may require, may make an order that the guardian or conservator need not file the inventory and appraisement and that the guardian or conservator shall file an account covering only those assets of the estate of which the guardian or conservator has possession or control.

Comment. Section 2633 is new. The section authorizes the court, for example, to dispense with an inventory and appraisement where the conservatee dies a few days after the appointment of the conservator. This will permit the court, in its discretion, to waive an inventory and permit an accounting of assets actually marshalled. It avoids the need to inventory estate assets--such as stocks, oil rights, real property--where the conservator has not yet taken possession or control of the asset and it would be unnecessary to incure the additional fees that would be earned by the conservator and to cause the delay in turning matters over to the executor of the deceased conservatee.

§ 2640. Petition by guardian or conservator of estate

Mr. Collier (Exhibit 4) notes a technical change the staff plans to make: The words "to that time" should be added to paragraph (3) of subdivision (a) of Section 2640. This conforms paragraph (3) to paragraphs (1) and (2).

§ 2643. Order authorizing periodic payments of compensation to guardian or conservator or attorney

Mr. Collier (Exhibit 4) is concerned about the possibility of the guardian or conservator receiving periodic payments and then resigning owing the estate money. Section 2630 continues the authority of the court after the resignation to settle accounts 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. The staff does not believe any more than this is needed in the statute.

§ 2650. Causes for removal

Under subdivision (f) of Section 2650, a guardian or conservator may be removed for having "an interest adverse to the faithful performance of duties." This subdivision continues the substance of the existing guardianship and conservatorship statutes. Mr. Collier (Exhibit 4) points out that often the guardian or conservator has interests that are technically adverse to the ward or conservatee. Although we recognize there is merit to the point made, the staff would prefer not to change subdivision (f), primarily because we are unable to propose any language

we would prefer. However, if it is desired to attempt to deal with the problem, the following revision of subdivision (f) is suggested:

> 2650. A guardian or conservator may be removed for any of the following causes:
>
> . . . .
>
> (f) Having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the guardian or conservator will fail faithfully to perform duties .

Under Section 2650, a guardian or conservator of the person may be removed from office for "failure to comply with" Section 2356. Section 2356 provides in part that "[n]o ward or conservatee shall be placed in a mental health treatment facility under the provisions of this division against the will of the ward or conservatee," and imposes certain other limitations on the power of a guardian or conservator of the person. Mr. Anderson (Exhibit 1) finds some ambiguity in these provisions. Since Section 2356 is a prohibitory section, it would appear that Section 2650 should authorize removal for a "violation" of Section 2356, rather than for "failure to comply" with Section 2356. Accordingly, the staff recommends that Section 2650 be revised as follows:

> 2650. A guardian or conservator may be removed for any of the following causes:
>
> . . . .
>
> (g) In the case of a guardian of the person or a conservator of the person, ~~failure to comply with the provisions~~ acting in violation of any provision of Section 2356.
>
> . . . .

§ 2653. Hearing and judgment

Section 2653 permits specified persons to appear at the hearing for removal of the guardian or conservator and to support or oppose the petition. Mr. Collier (Exhibit 4) suggests that the section might require the guardian or conservator to file a written response to the petition at least five days before the hearing. The staff recommends against this change: It appears to require unnecessary formality. Ordinarily the purpose of written pleadings is to narrow and frame the issues to be tried, but here the issues are already narrow in scope.

§ 2700. Request for special notice

Subdivision (b) of Section 2700 permits a request for special notice of all of the matters referred to in subdivision (a) to "refer generally to the provisions of this section." Mr. Collier (Exhibit 4) suggests that a provision be added to make clear that if only certain matters referred to in subdivision (a) are the subject of a request for special notice, those should be specifically set forth in the request. This might be a useful addition and could be accomplished as follows:

2700. . . .

(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. If the request is for all of the matters referred to in subdivision (a), the request may refer generally to the provisions of this section. If the request is for less than all of the matters set forth in subdivision (a), the request shall state specifically each of the matters of which special notice is requested.

§ 2751. Stay

Section 2751 provides generally that an appeal stays the operation and effect of the judgment, order, or decree, except that 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 as though no appeal were pending. Mr. Collier (Exhibit 4) wonders if this means that notwithstanding the appeal the court can authorize the guardian or conservator to carry out the terms of the judgment, order, or decree, and suggests that this needs some clarification.

In Gold v. Superior Court, 3 Cal.3d 275, 475 P.2d 193, 90 Cal. Rptr. 161 (1970), the court said that an appeal stays the guardian's powers "except in cases clearly presenting extraordinary circumstances." When extraordinary circumstances are present, however, it appears that Mr. Collier's reading of Section 2751 is correct. Perhaps this could be made clearer by the following revision:

2751. . . .

(b) ~~For~~ Notwithstanding that an appeal is taken from the judgment, order, or decree, 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 or 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.

. . . .

§ 2917. Law applicable to exercise of powers and duties of guardian

Section 2917 refers to two terms "as defined in Section 2901." Mr. Anderson (Exhibit 1) suggests that the reference be not only to the section in which these terms are defined, but to the specific subdivisions of the section. This is not consistent with the Commission's usual drafting style. Moreover, reference to specific subdivisions of a section when not absolutely necessary may cause problems if amendments are introduced which reletter the subdivisions and all sections which refer to the subdivisions are not conformed. Accordingly, the staff recommends against the suggested revision.

§ 3002. Community property

Section 3002 defines "community property" for the purpose of Part 6 (management or disposition of community or homestead property where spouse lacks legal capacity). Mr. Collier (Exhibit 4) asks whether the definition would include "joint tenancy property which had its origin in community property." The answer is yes if the spouses intend to hold the property as community notwithstanding the terms of a joint tenancy deed; the answer is no if the spouses intend to hold it in joint tenancy notwithstanding that it was purchased with community funds. See generally 7 B. Witkin, Summary of California Law Community Property §§ 49-51, at 5140-42 (8th ed. 1974). Perhaps it would be helpful to add the following to the Comment:

> The property may be community property notwithstanding that title is held in some other form. W. Johnstone & G. Zillgitt, California Conservatorships § 4.11, at 113 (Cal. Cont. Ed. Bar 1968). See also 7 B. Witkin, Summary of California Law Community Property §§ 49-50, at 5140-42 (8th ed. 1974).

§ 3012. Legal capacity with respect to community and homestead property

Subdivision (b) of Section 3021 provides that a spouse lacks legal capacity to join in or consent to a transaction involving community or homestead property if the spouse does not have legal capacity for the

particular transaction "measured by principles of law otherwise applicable to the particular transaction." Mr. Collier (Exhibit 4) says the meaning of this provision is not clear. The Comment states that this provision "recognizes that a spouse not having a conservator may lack legal capacity to join in or consent to a transaction under principles of law otherwise applicable. See, e.g., Civil Code §§ 38, 39. Whether the spouse lacks legal capacity for the particular purpose depends upon the act involved and the standards otherwise applicable to determine capacity for that act." The staff is of the view that this provision is satisfactory in its present form.

§ 3023. Determination of validity of homestead or character of property

Under Section 3023, the court may determine the validity of a homestead, or whether property is community or separate property, when the issue is "raised in any proceeding under this division." Mr. Collier (Exhibit 4) is concerned that this provision may be too broad and would restrict the section so that such a determination could be made only where necessary to carry out the particular transaction. Section 3101(d) is a somewhat comparable provision applicable in the context of a proceeding to authorize a proposed transaction. Section 3023 is not intended to be restricted to proceedings to authorize a proposed transaction but will apply in any proceeding under Division 4. It may be necessary to determine the character of property, for example, if there is an issue raised whether it is part of the conservatorship estate. As the Comment to Section 3023 notes, the section is consistent with the holding in Estate of Baglione, 65 Cal.2d 192, 417 P.2d 683, 53 Cal. Rptr. 139 (1966) (probate court has jurisdiction in a decedent's estate proceeding to determine the interest of each spouse in the community property). The staff recommends retaining Section 3023 in its present form.

§ 3051. Community property

Under Section 3051, if both spouses have conservators half the community property is to be administered in each conservatorship estate. The conservators may agree otherwise, and with authorization of the court, the community property may be divided unevenly for purposes of management. Mr. Collier (Exhibit 4) thinks this creates an anomaly

where all of the community property is being administered in the conservatorship estate with the consent of the competent spouse, and then a conservator is appointed for the latter: "Presumably, half the property would therefore have to be removed from the first conservatorship and transferred to the second conservatorship." This is true unless the conservators were to agree otherwise and the court sanctioned the agreement. The staff recommends retaining Section 3051 as is.

§ 3053. Separate property owned by both spouses subject to homestead

Section 3053 deals with the management and disposition of "separate property subject to a homestead that is owned by both spouses as joint tenants, tenants in common or otherwise." Mr. Collier (Exhibit 4) asks whether this is intended to include community property subject to a homestead. It is not so intended, and the staff will add a statement to that effect in the Comment.

§ 3057. Protection of rights of spouse who lacks legal capacity

Section 3057 places a duty on the conservator of one spouse to keep reasonably informed concerning the management and control of the community property by the other spouse. Mr. Bottomley (Exhibit 3) suggests that it would be preferable to shift the duty to the spouse having management and control to keep the conservator reasonably informed. Mr. Norman (Exhibit 9) makes the same suggestion. The staff agrees with this suggestion.

Mr. Bottomley also suggests that there should be an express provision permitting the court to order under appropriate circumstances that the community property be included in the conservatorship estate. The staff is of the view that this would be desirable where the competent spouse is not discharging his or her duty to keep the conservator reasonably informed or is not properly discharging his or her duty to manage the community property.

These two changes could be accomplished by making the following changes to Section 3057:

> 3057. . . .
>
> (b) If one spouse has a conservator and the other spouse is managing or controlling community property, the ~~conservator~~ spouse managing or controlling the community property has the duty

to keep the conservator reasonably informed concerning the management and control, including the disposition, of the community property. If the conservator has knowledge or reason to believe that the rights of the conservatee in the community property are being prejudiced, the conservator may bring an action on behalf of the conservatee to enforce the duty of good faith in the management and control of the community property and to obtain such relief as may be appropriate. If the court finds that the rights of the conservatee in the community property are being prejudiced, the court may grant such relief as the court determines to be appropriate, which relief may include but is not limited to an order that all or part of the community property be included in the conservatorship estate.

§ 3072. Court order authorizing joinder or consent by conservator

Where joinder or consent of both spouses is required under the Civil Code for a transaction involving community or homestead property, a conservator may join in or consent to the transaction on behalf of a conservatee-spouse only with court approval except that court approval is not required for consent to a transaction involving community personal property if such approval would be unnecessary if the property were part of the conservatorship estate. See Section 2545 (tangible personal property of aggregate value of less than $5,000 per year). Mr. Collier (Exhibit 4) is of the view that the conservator should be able to give consent to such a transaction without the approval of court. The rationale for Section 3072 was that if consent is required for the conservator to dispose of property under Part 4, consent should be required in comparable circumstances under Part 6. This presents a policy question; however, the staff is satisfied with Section 3072.

§ 3101. Nature of proceeding

Under Section 3101, the court may in a proceeding for a court order authorizing a proposed transaction involving community or homestead property determine the validity of a homestead and whether property is community property or separate property. Mr. Collier (Exhibit 4) suggests that such a determination should be limited to the specific transaction and be made only to the extent necessary properly to complete the transaction. This could be accomplished by the following revision:

3101. . . .

(d) In a proceeding under this chapter, the court may determine ~~the validity of a~~ whether the property that is the subject of the proposed transaction is subject to a valid homestead and

whether the property that is the subject of the proposed transaction is community property or the separate property of either spouse , but such determination shall not be made in the proceeding under this chapter if the court determines that the interest of justice requires that the determination be made in a civil action .

§ 3141. Presence of spouse at hearing

Mr. Collier (Exhibit 4) suggests the following change to Section 3141:

> 3141. (a) If a spouse is alleged to lack legal capacity for the proposed transaction and has no conservator, the spouse shall be produced at the hearing unless unable to attend the hearing because of medical inability .

This would be a substantial limitation of the provision and presents a policy question. We provide other grounds for excuse from attending the hearing when a conservatorship is sought to be established--proposed conservatee out-of-state and not the petitioner and proposed conservatee unwilling to attend the hearing and not opposed to petition.

§ 3150. Bond

Section 3150 provides that the court is to require the petitioner to give a bond conditioned on the duty of the petitioner to account for and apply the proceeds of the transaction. Mr. Collier (Exhibit 4) asks whether an additional bond would be required of a non-petitioning conservator if one-half of the proceeds are ultimately to go into that conservatorship estate. The court may require further security under Section 2334, either on petition or on its own motion. This provision appears sufficient to deal with this question, and the staff will include a cross-reference to Section 2334 in the Comment to Section 3150. See also Section 2330.

§ 3151. Execution, delivery, and recording of documents

Section 3151 contemplates execution of the necessary documents by the petitioner. It is not necessary for the other conservator to join in executing such documents, and this point can be made clear by so stating in the Comment.

§ 3412. Order of court where guardianship of estate

Section 3412 permits the guardianship court to order that money of the estate be invested in a single-premium deferred annuity. Mr. Collier (Exhibit 4) questions the wisdom of this. The provision for investment in a single-premium deferred annuity is not contained in the existing provision from which Section 3412 was drawn, and, in view of Mr. Collier's objection, the staff recommends deleting this provision from Section 3412.

Sec. 5. No Mandated Local Costs (page 172 of AB 261)

The Deputy County Counsel of Orange County (Exhibit 14) is concerned that AB 261 may increase local costs or may create doubt that local costs now being reimbursed because of AB 1417 (Lanterman reforms) will no longer be reimbursed. The staff believes that the overall effect of the bill will be to reduce court time, but the bill may result in some increased duties of court investigators. The saving in court time would primarily be a state saving and the increased duties of court investigators would be a local cost which, if there is such an increase, should be reimbursed. Accordingly, the staff suggests that Section 5 on page 172 of AB 261 be deleted.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Exhibit 1

B. RAY ANDERSON
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March 5, 1979

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Re: Assembly Bill No. 261
Proposed New Conservatorship
and Guardian Law, Comments
Pursuant to Your Request of
January 25, 1979

Dear Mr. Lindgren:

Please accept my apology for the submission of my comments regarding your Assembly Bill No. 261 after the deadline February 28, 1979. I have been in Los Angeles with clients for the better part of last week and was not able to read the AB 261 until this week.

I have read the bill that is to be submitted to become operative January 1, 1981, and will summarize my comments below.

References will be page numbers of AB 261 as introduced by Assemblyman McAlister, January 11, 1979.

Page 9, line 19 -- In this Section, Probate Code Section 2211 is cross-referenced and it may be more appropriate to cross reference to 2212. It is possible that 2423, also included on the same line number, should include 2421 through 2423.

Page 12, line 14 -- Section 1471: It should be pointed out that this Code Section does not mention anything about wards.

Page 14, lines 37-40 -- The last sentence starting on line 38 "but any appointment..." should continue "nomination, or confirmation on or after the operative date is governed by this division." This is merely a procedural point but it is believed that it complies with the intention of Section 1483.

Page 16, line 11 -- Section 1488: Under this Section, the issue of a signed writing, nominating a person to serve as Guardian, is discussed. The Code Section specifically indicates that only in the instances of lack of sufficient capacity to form an intelligent preference shall the nomination be disregarded. The provisions protecting against preferences nominated under hallucinations, dillusions, illness, debility, old age, fraud or undue influence, menace, duress, or coercion are not specifically expressed. The Sections 1488 and 1489 also say that the provisions for the validity of a Will under the Probate Code should not be considered (Probate Code Section 22). It seems to be the intention of this Section to limit the validity of the nomination to "intelligent preferences." One would hope that this would also include the above states of minds and accordingly the courts would follow that interpretation. It is very possible that persons would want to attack a nomination of a guardian as is similarly encountered in persons attacking appointments under Wills.

Page 17, lines 28-32 -- Section 1500 indicates that a parent may nominate a guardian of the person or estate of a minor child as long as the consent of the other parent would not be required for an adoption of the child (among other things). What this is saying is that consent of the parents is present under Civil Code Section 224 (West Supp. 1978) is also a test to be considered under Section 1500 (b) (2). It is forseeable that many similar problems as are encountered in the consent cases under the Civil Code Section will also arise under this Section. See e.g., Storrs v. Van Anda, 62 Cal. Ap. 3rd 189, 132 Cal Reporter 878 (1976). To terminate the appointment as provided in the proposed Section 1601, there is no provision for a hearing. The Section just indicates that a Court may require notice of termination pursuant to a petition of the guardian, parent, or a ward. Cases have held that in the Civil Code 224 area, notice of adoptions and litigation of the consent issue mandatorily requires notice of the hearing. It is recommended that the Section 1601, line 12, page 24 require mandatorily, notice to the person whose termination is requested on petition. See in re adoption of Thevenin, 11 Cal Reporter 219, 189 Cal Ap. 2nd 245 (1961). All this could be tied in to Chapter 3, page 8 of the proposed legislation under a 15 days notice.

Page 19, line 8 -- It is recommended that between the word "name" and "the institution" be inserted the words "and address."

Page 19, lines 18-23 -- It is recommended that Section (h) could be inserted after the (e) referred to on line 22. This would probably make the notice provisions completely integrated into this section whereas the (h) section is not completely integrated as it is presented.

Page 29, lines 15-19 -- Section 1823 (6): It is recommended that a cross-reference be included in paragraph (6) to Section 1470, Chapter 4 and the Sections thereunder. This is based on the assumption that the right to choose and to be represented by Court appointed vehicle counsel will take place under the provisions of Chapter 4. It is noted that in Section 1824 there is no mention of CCP Section 415.20 which is probably the case because of the due process requirements. However, if CCP 415.20 is looked at closely, it is noted that although the services in lieu of personal delivery of a copy of this summons and complaint to the person specified, by leaving that document at the place of business, a subsequent mailing is also required to be sent to the person served at the place where the original summons was delivered. Section 415.20 could be included in line 25 but the protections of the notice provisions of 415.30 would not be present.

Page 31, lines 6-10 -- It is recommended that the proposed conservatee be advised of his right to counsel under Chapter 4 if he cannot afford one.

Page 30 , lines 7-8 -- The term "licensed medical practitioner is somewhat vague and it is questionable what exactly this term encompasses. For instance, under Business and Professions Code 2007, the professional is defined, and under 2014 Chiro Podiatrist is defined, and under Business and Professions Code Section 2137 Physicians and Surgeons and their certificates are defined. Therefore, it is possible that cross-references should be included under this section.

Page 31, (j) -- Possibly an additional subsection labeled (j) (3) could be added that would determine or relay the express intentions of the party concerning whether objections to the proposed conservatorship or preference for alternative persons exists. Merely writing down the proposed conservatee's express communications concerning counsel and willingness to attend a hearing does not seem to be an adequate disclosure of the express intentions of the party.

Page 32, lines 17-23 -- It is believed in the best interests of this section that under 1828 (a) the requirements listed in subsection (6) be required to be mandatorily delivered by the Court to the proposed conservatee. This is based upon the immediate importance of all matters mentioned in paragraph (6) to the conservatee.

Page 53, line 32 -- Section 2252: After the word "hearing" should be inserted "as provided for in Section 460, Chapter 3".

Page 56, line 22 -- It would probably be better to substitute "address" in place of the word "place."

Page 58, lines 12-14 -- It is submitted that proposed Section 2627 be included on page 58, line 12, and inclusive.

Page 66, lines 32-33 -- It is recommended that this be the written consent of both the ward and the guardian.

Page 107, lines 18-20 -- Section 2611: It might be suggested that a cross-reference to the notice provisions of Section 1461 (2) (b) be provided, even though that Section is referenced in 1461.

Page 117, lines 16-18 -- Section 2650: This paragraph refers to prior proposed Section 2356 wherein a person cannot be put in a mental treatment facility without certain requirements being satisfied. This Section 2650 states that the guardian or conservator may be removed for any of the following causes, one of which is failure to comply with the 2356. First of all, 5150 is an involuntary commitment procedure for dangerous or gravely disabled persons. That Section does not even mention guardians or conservators in its Section. The conservator or guardian doesn't have anything to do with whether he complies with 5150 as those sections require appointment by the Court. In this procedure it is set out in those statutes. In 5150, only a peace officer, a member of the attending staff, or other professional person can take the person into custody and place him in the facility so this doesn't even apply to the guardian or conservator. Maybe this section is unambiguous but at least it has some problems, I think, in its reference back to the 2356 Section and its subsequent references.

Page 132, line 21 -- Section 2917: Insert after 2901: (c) (d).

Page 139, line 31 -- Section 3071: There should be an "s" at the end of Section.

Page 140, line 32 -- Section 3073: There should be an "s" after Section.

These comments comprise my notes regarding the proposed legislation. Some of these comments may seem insignificant to you but I felt that it would be better to point out any inconsistencies or problems I had with the Bill rather than omit mentioning anything. I hope that this will assist you in helping the sponsors move this bill along to final form for consideration by the legislature.

I would be happy to assist you in any other manner and will do my best to give prompt attention to any further drafts or other requests that you would wish to make of me.

Thank you for your consideration.

Sincerely,

ANDERSON, NEARON & FALCO, INC.

By _____
B. RAY ANDERSON

BRA:kw

STATE OF CALIFORNIA

QUIN DENVIR, State Public Defender

Office of the State Public Defender

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March 1, 1979

California Law Revision Commission
Stanford Law School
Stanford, California 94305

Re: AB 261

Dear Sirs:

This letter is to suggest some changes in the content of the above bill, dealing with the establishment of adult conservatorships. These suggestions are made in regard to the due process rights of persons who are retarded or otherwise disabled.[1]

The bill as presently worded provides wide discretion for the court to hear the petition for conservatorship without the presence of the proposed conservatee. Proposed section 1825 provides the following exceptions to the requirement that the proposed conservatee be produced at the hearing:

(1) The proposed conservatee is out of state.

(2) The proposed conservatee is unable to attend the hearing because of a medical condition.

(3) The court investigator has reported that the proposed conservatee "has expressly communicated" his unwillingness to attend the hearing, his acquiescence in the conservatorship, and his agreement to the named conservator. According to the bill, if the court is satisfied with this showing, it may proceed to grant the petition on the basis of the showing by the conservator. The court may or may not choose to appoint counsel for the conservatee.

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1. County public defender offices may be appointed to represent proposed Probate Code wards and conservatees. Government Code section 27706.

(e.g. Los Angeles, San Francisco, Sacramento) regularly sit in county and local hospitals in order to hear LPS petitions. The probate matters could be heard with the LPS calendar if necessary to the medical well-being of the conservatee.

As a corollary to this argument, it is essential that jurisdiction be limited to the county of residence of the conservatee (proposed section 2201), at least until the court is able to make a determination of the conservatee's ability to waive his personal appearance. If the petition is heard in a distant county, the temptation will be that much greater to conduct the hearing in absentia.

The requirement of personal presence at the conservatorship hearing would eliminate many opportunities for abuse of conservatorships. It would also lessen the likelihood of future collateral attacks on the conservatorship on due process grounds.

Sincerely yours,

QUIN DENVIR
State Public Defender

Charles Bonneau /bp
by:
CHARLES M. BONNEAU
Deputy State Public Defender

CMB:ddb

cc: Assemblyman McAlister

CALIFORNIA LAW REVISION COMMISSION
STANFORD LAW SCHOOL
STANFORD, CALIFORNIA 94305
(415) 497-1731

March 16, 1979

Manuel M. Medeiros
Deputy State Public Defender
455 Capitol Mall, Suite 360
Sacramento, California 95814

Re: AB 261 (guardianship-conservatorship revision)

Dear Mr. Medeiros:

A letter from your office, dated March 1, 1979, expressed concern that Assembly Bill 261 permits probate courts to make conservatorship findings in absentia. It appears to be your position that a proposed conservatee should be brought before the court in every case so that the court can itself determine, after explaining the nature and purpose of the proceeding, whether the conservatee objects to the establishment of the conservatorship or objects to the proposed conservator.

In drafting AB 261 the Commission adopted the basic rule that the proposed conservatee should be advised of the nature and purpose of the proceeding and his rights, but the Commission continued the existing practice which permits this function to be performed by the court investigator when the conservatee is unable to attend the hearing because of medical inability. The Commission extended the court investigator procedure to the case where the proposed conservatee has no objection to the establishment of the conservatorship or to the proposed conservator and is unwilling to attend the hearing. The following explanation will, I believe, demonstrate that the procedure under AB 261 is more protective of the proposed conservatee than is existing law.

Under existing law, there is no assurance that a proposed conservatee will receive an explanation of the nature of the proceeding and of his rights if the proposed conservatee has no objection to the proceeding. This is because such a conservatee is likely to be the petitioner and, under existing Probate Code Section 1754.1, the court has no duty to give this information to the proposed conservatee if he is the petitioner. Accordingly, although the proposed conservatee will be brought before the court, the existing law does not assure that the proposed conservatee will be adequately advised of the nature of the proceeding. The bill eliminates this provision of Section 1754.1. In every case, the proposed conservatee is to be advised of the nature of the proceeding and of his rights, whether or not he is the petitioner.

A separate question is how the information concerning the nature of the proceeding and the rights of the conservatee is to be given to the proposed conservatee. An important reform was made in 1976 by legislation authored by Assemblyman Lanterman. This legislation provides that, if the proposed conservatee will be absent from the hearing because of medical inability to attend, a court investigator must personally visit the proposed conservatee and give the proposed conservatee information concerning the nature of the proceeding and the proposed conservatee's rights. Section 1454 of the bill continues the existing requirement that the court investigator be a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceeding. This requirement was intended to assure that not only would the court investigator be trained in law but also be a disinterested person skilled in dealing with and assisting proposed conservatees in understanding the nature of the proceeding and the rights the conservatee has under the law. The bill expands and clarifies the duties of the court investigator to ensure that the conservatee will be fully advised. When the 1976 legislation became operative, there were some complaints that there was undue delay in reviewing existing conservatorships. However, the Commission has received no information indicating that the court investigators are not performing their duties in a satisfactory manner in cases where the proposed conservatee is unable to attend the hearing because of medical inability.

In the case of the proposed conservatee who does not oppose the proceeding or object to the proposed conservator, the bill imposes (as noted above) a new requirement that the proposed conservatee be given the information by the court if present in court, whether or not the proposed conservatee is the petitioner. At the same time, the bill recognizes that there are proposed conservatees who are aware of the need for a conservatorship but who are in great fear of going to court. The Commission believes that the interests of such a proposed conservatee will be better served if the court investigator personally visits the proposed conservatee in his home or other place of residence and advises him of the nature and effect of the proceeding and of his rights. In this nonthreatening atmosphere, as much time as is necessary can be taken to ensure that the proposed conservatee has all the information he has the capability to understand. The alternative of advising such a proposed conservatee in the threatening atmosphere of the courtroom does not appear better to serve the interests of the proposed conservatee. The procedure for the court investigator advising the proposed conservatee is now used in the medical-inability-to-attend cases, so the extension of the same procedure to this additional type of case does not represent the adoption of an untried procedure.

It should be noted that AB 261 does not excuse the attendance of the proposed conservatee from the hearing merely because he does not oppose the conservatorship or the proposed conservator. The proposed

conservatee also must be unwilling to attend the hearing. All these decisions by the proposed conservatee must be "expressly communicated" by the proposed conservatee to the court investigator. Absent such an "express communication," the proposed conservatee must be produced at the hearing unless excused for medical inability to attend. Moreover, the court has discretion to require the attendance of the proposed conservatee even though the proposed conservatee has made such express communications to the court investigator.

In this connection, it should be noted that AB 261 does not affect the procedure for conservatorship investigations or court hearings under LPS petitions.

I think that your concern about AB 261 goes to the basic concept of the 1976 Lanterman reforms. The theory of those reforms was that a disinterested but skilled person appointed by the court and trained in law should investigate the situation in cases where the proposed conservatee would not be produced in court. My personal view is that the court investigator is serving a function similar to a lawyer advising the client as to the alternatives available to the client and assisting the client in understanding the consequences of the decisions. The establishment of the court investigator system resulted in significant additional costs, but I suspect that those costs are far less than the costs that would be involved in requiring the court itself to make the investigations now made, or authorized to be made under AB 261, by the court investigator. With the problems of court congestion, I believe that it would not be desirable to limit or eliminate the use of the court investigator as established under the 1976 reforms without a strong showing that the court investigator system is not working. Moreover, there are those who believe that the present system is a better system as far as proposed conservatees are concerned than a system under which the court merely "reads the rights" to the proposed conservatee.

There is one more feature of the bill that bears on this problem. One year after the appointment of the conservator and biennally thereafter (Section 1850), the court investigator must visit the conservatee and provide him or her with specified information (Section 1851). If the conservatee wishes to petition the court for termination of the conservatorship or for removal of the existing conservator or for revocation or modification of a court order affecting legal capacity, the court is required to have an attorney file the necessary petition and to represent the conservatee at the trial or hearing on the petition. Accordingly, after the conservatee is able to see how the conservatorship actually affects him or her, there is an absolute right to have the matter reviewed by the court and to have counsel to assist the conservatee in obtaining such review. These provisions continue and expand another of the 1976 reforms.

By way of summary, AB 261 basically continues the substance of the reforms made by 1976 legislation authored by former Assemblyman Frank Lanterman which introduced the concept of the court investigator. AB 261 builds on the concepts of the 1976 legislation and eliminates what the Commission and others consider technical defects. The bill significantly clarifies and may expand the right to counsel under the 1976 legislation. The Commission resisted proposals to cut back drastically on the Lanterman reforms--proposals that were based primarily on the theory that the cost of particular reforms greatly exceeds any possible benefits. The changes made by the Commission are considered relatively modest and not inconsistent with the basic philosophy of the 1976 reforms. The change you suggest--such as to require the court to hold the hearing at the hospital--would be likely significantly to increase costs and court congestion.

You also express concern about Section 2201 (venue). This section restricts venue to the county in which the proposed ward or conservatee resides (this probably refers to the ward's or conservatee's domicile) or to such other county as may be in the best interests of the proposed ward or conservatee. It should be noted that a guardianship for an incompetent adult may be filed under existing Section 1460 in any county. Section 2201 did not adopt this broad rule which applied to cases where the adult ward was in effect being adjudicated to be incompetent. Instead, it adopted a rule that somewhat expands the venue provision now applying to conservatorships; this expansion is desirable. The alternative provision for venue in counties other than the county of residence avoids the need to litigate the issue of residence if the court determines that continuance of the proceeding in the county where filed is in the best interests of the ward or conservatee. See, e.g., Hillman v. Stults, 263 Cal. App.2d 848, 871-72 (1968); Guardianship of Smith, 147 Cal. App.2d 686 (1957). I think we can rely on the courts to apply the venue provisions in a judicious manner.

There is nothing in the statute that permits excuse from attendance at the hearing on the ground that the conservatee is not present in the county where the petition is filed. In fact, the alternative venue provision would permit filing in a county where the conservatee is temporarily present even though not a resident there since that would facilitate presence at the hearing.

I hope that this letter will give you further background on the thinking behind the provisions of AB 261 that concern your office. I would appreciate an opportunity to discuss this matter with your office if you still have concern about AB 261. It is my hope that the bill can be moved out of the Assembly Judiciary Committee when it is heard. We expect to make a number of amendments before the bill is heard in the Senate. We distributed 250 copies of our report to lawyers who actively

practice in this area and have received and will receive suggestions for technical and substantive changes. We plan to consider these--as well as any continuing concerns your office may have--at our March 30-31 Commission meeting. We would be pleased to have a representative of your office attend our meeting.

Sincerely,

John H. DeMoully
Executive Secretary

JHD:kac

cc: Assemblyman McAlister
Quin Denvir
Charles M. Bonneau

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March 1, 1979

Arne S. Lindgren
Chairman
Conservatorship And Guardianship Committee
555 South Flower Street
Los Angeles, CA 90071

Re: Assembly Bill- 261

Dear Mr. Lindgren:

Pursuant to your request I have reviewed the proposed new conservatorship and guardianship law and the related materials enclosed with your letter of January 25, 1979. I offer my appreciation to all of the people who took part in this massive undertaking. The proposed legislation is a great improvement over the existing law.

While I did not have the time to give this matter the review that I would have like to have given it, I do have some comments.

1. In Section 1852 appearing on page 35 I think that the word "or" appearing in line 14 should be changed to "and". I don't believe that it would be wise to have these proceedings commenced at the mere whim of the conservatee. It would be better that the court make a decision on the basis of the investigator's report as to whether the petition should be filed or not. Furthermore, if the conservatee does not wish to petition, the court should not proceed on its own motion based on the information on the court investigator's report. This does not mean that the court could not remove a conservator or terminate a conservatorship under other provisions of the law.

2. Section 1875 permitting the filing of a Notice of the Establishment of the Conservatorship is an excellent idea. I wonder if some change in the recording laws would be necessary to permit the recording of such a notice.

3. In Section 2321 the court should also have the authority to fix a bond at a lower amount. This may be implied where the court has discretion to dispense with the bond, but a judge might feel that under this section as presently worded he may either dispense with the bond altogether or fix a bond at the full amount.

4. In Section 2423 (a) in line 20 after the word conservatee I suggest adding the following: "and of those legally entitled to support, maintenance, or education from the ward, or conservatee." The addition of this language will tie this section into section 2420 (a). Obviously surplus income should not be used for the benefit of relatives until those whom the conservatee is obligated by law to support have been provided for.

5. I am disturbed by the substituted judgment provisions in Article 10 which permit a conservator to exercise the right of a conservatee to revoke a revocable trust. The duty of the conservator and the court should be to support the conservatee and those dependent upon him. With respect to a revocable trust the conservator should have the right to compel the withdrawal of trust funds where they are needed for this purpose. Neither the conservator nor the court should be permitted to disturb whatever estate plan the conservatee may have made while competent. The provisions of this Article could promote wrangling among prospective heirs and legatees while the conservatee is still alive. If these provisions are to be adopted, then they should also include the right to revoke a conservatee's Will. Otherwise one could find that a trust is revoked leaving a valid Will unchanged which contains a pour over provision into the now revoked living trust. In my opinion these provisions dealing with substituted judgment should be strictly limited so that in practice they would be utilized only in those cases where the conservator is a person of great wealth and where the benefits of estate planning would be more obvious to all of the conservatee's family.

6. In Section 2620 (b) I suggest omitting the reference to the exclusion of "principal items" found in lines 1, 2, and 6 on page 110. Some people might think that this requires the exclusion of principal receipts and disbursements, which of course is not the case.

7. I did not find in Part 6 dealing with the management or disposition of community or homestead property any

express provision permitting the court to determine that under appropriate circumstances community property should be included in a conservatorship estate. Section 3054 permits the court to determine and order that community property not be included in a conservatorship estate, which is fine, but the reverse situation should also be taken care of. For example, a husband and wife might own a community property business in which their son takes an active part in the management along with the husband. The husband becomes incompetent and the wife tries to exercise exclusive management and control of the business. The son should be permitted via the conservatorship procedure the have the business taken from the wife's management and control, and the court could well find that this would be in the best interest of the conservatee.

8. Section 3057 (b) places an akward burden upon the conservator. I can see situations the conservator would have great difficuly keeping himself "reasonably informed concerning the management and control" of some forms of community property. Perhaps it would make more sense to impose a duty on the spouse to keep the conservator reasonably informed of what the spouse is doing with such property.

If I can be of further help in this project please let me know. I apologize for not getting this to you by February 28, but hope that my comments are helpful.

Sincerely,

Robert B. Bottomley

RBB:pb

1800 Century Park East
Los Angeles, California 90067
February 22, 1979

Arne S. Lindgren, Esq.
Latham & Watkins
555 South Flower Street
Los Angeles, California 90071

Re: Assembly Bill 261 -- Proposed New Conservatorship and Guardianship Law

Dear Arne:

Pursuant to your request, I have reviewed Assembly Bill 261, as set forth in the proposed language with comments and have a number of miscellaneous comments relating thereto. These are as follows:

1. I believe the Law Revision Commission has done an excellent job in further defining and clarifying the consequences of a guardianship for a minor or a conservatorship for an adult.

2. Section 1424 defines an interested person as including any governmental office or entity. Perhaps the definition could be expanded to define a non-government related interested person.

3. Section 1450 calls for a verified petition, report or account. Perhaps this should be expanded to include verification of any objections filed thereto.

4. Section 1454 retains the reference to a court investigator as one "trained in law." That language originally gave some concern and perhaps it can be further clarified to not require a lawyer.

5. Section 1460(a) refers to notice to be given at least fifteen days before the date of hearing. I am not sure whether this means a mailed notice. Section 1465(a) refers to a mailed notice.

6. Section 1460(b)(4) perhaps should also specifically include all persons that requested special notice in the proceedings.

7. Section 1468 refers to "affidavit." Although this may be covered by provisions of the Code of Civil Procedure which allow a declaration in lieu of affidavit, perhaps the language itself could simply refer to a declaration since presumably any such mailing would be done in California.

8. Section 1469 refers to Section 1200 and other provisions of the division. I would think the other sections should simply refer to Section 1469 and subsequent and not refer to Section 1200.

9. Section 1470(c)(2) appears to allow the court to impose the cost of counsel on a parent of a minor, even though that parent may not be before the court. I question the propriety of this. LIABILITY OF PARENTS FOR WELFARE OF CHILDREN

10. Section 1487 appears to be unnecessary in light of the language in Section 1485 and Section 1486.

11. Section 1488 I believe has a error in the second line. The second use of the word "guardian" I believe should refer to "conservator."

12. Section 2104(a)(3) seems unduly restrictive. I would think a non-profit charitable corporation could serve as a guardian or conservator whether or not it previously acted for that particular party.

13. Section 2108(a) appears to state that whatever powers are granted to a guardian under a will must be granted by the court in appointing the guardian. Perhaps the court should have discretion to withhold certain powers in the best interest of the minor.

NO. WE HAVE GONE THRU THIS BEFORE LEAVE ALONE

14. Section 2252(e) incorporates 1977 legislation which was undesirable on its face. I would hope that that subdivision would be completely reworked and would grant the

temporary conservator the right to change a place of residence based on a ex parte application without any formal hearing or determination of irreparable harm.

Leave Alone

15. Section 2253 is similarly undesirable as a concept. A change of residence should not require an adversary proceeding. If some limitation on the temporary conservator is needed, perhaps the consent of the attorney for the proposed conservatee would be sufficient or consent of the relatives within the first degree for example might suffice without going through the more elaborate hearing procedures.

Leave Alone

16. Section 2254(d) is not clear as to whether it would include transfer from one convalescent home or hospital to another, or whether a medical or health facility is limited to a hospital.

Let Prof. Conrad develop the Forms.

17. Section 2311. It appears to me that a conservator normally would be granted specific powers and therefore trying to use the same judicial counsel form as used for letters of administration would not be very feasible. I think there perhaps should be a separate form of letters for conservatorship where the various powers could be checked on the face of the document.

Leave alone

18. Section 2312. I assume that mere mailing suffices and there is no need to await any given number of days of delivery of the order before letters are issued. — Yes NO Need.

19. Section 2321, dealing with waiver of bond by a conservatee, appears to be commendable.

20. Section 2323 perhaps should be modified to allow waiver of bond where the only assets are those specified in the section plus personal effects which don't exceed a fixed dollar value, perhaps $500 or $1,000.

21. Section 2334(e) perhaps should be expanded to allow the court to require a bond or additional bond pending the hearing or require a deposit of assets in a custodial account or some other protective measure rather than simply suspending the powers of the conservator

22. Section 2336(c) is not clear as to whether the prior sureties are relieved of responsibility as of the date of the court order or as of the date the new surety bond is filed.

23. Section 2355(a), last sentence, is arguably ambiguous but I believe it is intended to refer only to no liability to the conservatee for performance of medical treatments simply because of the lack of the conservatee's direct consent. However, the language is a little broader and might support an argument that the person performing the medical treatment is also immune from a malpractice claim against him.

24. Section 2407 appears out of place. I would think that there should be some reference in the 3000 series to the applicability of Sections 2400 and subsequent.

25. Section 2420(b) perhaps should be expanded to state that the proceeds of such security interest, sale or mortgage can be used for the purposes set forth in Section 2420(a).

26. Section 2525 provides for abatement of the probate court proceeding if there is a civil action pending. Since the probate proceeding is likely to be ended much more expeditiously, I would think there should be some provision allowing the court to proceed with the probate action if that appears in the best interest of the conservatee, notwithstanding the pendency of the civil action. Obviously, if the matters are determined in probate, the civil action would then become moot, unless there were other parties also involved in the civil proceeding.

27. Section 2542(a) refers to credit not to exceed twenty years. I wonder whether that time limit is realistic or whether it should not be thirty years.

28. Section 2548 it appears to me should not apply to a conservatorship.

29. Section 2572 perhaps relates more specifically to the sections commencing at 3000 relating to management of community or homestead property. This seems to include community property but is not limited thereto.

Santa Good

30. Section 2601 relates to wages. Query whether it should also refer to pension benefits or social security payments.

31. Section 2610(a) requires filing of an inventory within ninety days or within such further time as the court for reasonable cause may allow. Does this contemplate a court order authorizing an extension of the ninety days? As you know in the probate context the inventory is seldom filed within the ninety days. If it is contemplated that the guardian or conservator would petition the court for authority to extend the time to file the inventory, that should be made clear. If the court in an accounting simply has the right to determine if the inventory was timely filed, the language should perhaps be changed.

32. Section 2614 appears to have limited applicability in a conservatorship or guardianship since the values are not used for tax purposes. You will recall that there was a bill several years ago which added these sections and had originally incorporated similar provisions

in the probate estate. I don't really see any purpose since fees are not based upon a percentage of the inventory and no taxes are based upon values.

33. Section 2615 refers to failure to file an inventory "within the time prescribed." This would seem to require under Section 2610(a) a specific order extending the ninety day period of time to file an inventory. Otherwise, Section 2615 appears somewhat inconsistent with Section 2610(a), since Section 2610(a) refers only to ninety days.

34. Section 2616(a)(3) appears to include a beneficiary under a will or an heir. This might require disclosure of the will for example as a condition of filing the petition. I am not sure that this is a desirable concept.

35. Section 2620(e) apparently includes a request for authorization to pay fees. This is implicit and perhaps should be made much more explicit, notwithstanding the comment.

36. Section 2625 refers to liability of a conservator or guardian who "is in any violation of duties" in connection with the sale. This is a very vague concept and might encompass such things as liability for selling a property which the conservatee did not want sold, for example. I am not sure how the damage is measured in that case.

37. Section 2627 appears to allow an informal settlement of accounts between a guardian and ward. I assume that no copy of that account is to be filed with the court but only a release. ?

See, Family Lawyer §16.75

38. Section 2640(a)(3) I think should be consistent with subparagraphs (1) and (2) and have added at the end the language "to that time."

39. Section 2643(c) might cause a problem if a conservator or guardian took fees on account based on parity payments and then resigned. It might complicate the ability of the court to recover those fees. See the last sentence of the comment.

40. Section 2650(b) again refers to failure to file an inventory within the time allowed by law or by court order. See my comments on Section 2610 and Section 2615. Subsection (f) refers to an interest adverse to the faithful performance of duties. Many spouses, parents or children may have technically adverse interests to that of the ward or conservator because of property interests, expectancies, etc. I am not too sure what this language really means.

41. Section 2653(a) might be expanded to provide that the guardian or ward shall file a written response to the petition for his removal at least five days before the hearing.

42. Section 2700(b) might be clarified to state that if only certain items in subpart (a) are the subject of a request for a special notice, those should specifically be set forth in the request for special notice.

43. Section 2751(b) refers to the exercise of the "powers." I am not sure what that refers to since the stay would affect a specific order, judgment or decree. Perhaps it means that the court can, notwithstanding the appeal, authorize the executor to carry out the terms of the order, judgment or decree. Also, I assume that if a temporary conservator was appointed, the temporary conservator could also carry out the terms of the order, judgment or decree. However, if the temporary conservator had to repetition for that judgment or order, presumably the order given to the temporary conservator could also be appealed and hence a stay affected. I think this section needs some clarification.

44. Section 3002 relating to community property is not clear as to whether it would relate to, for example, joint tenancy property which had its origin in community property, or whether the property must be held as community property in order for Section 3000 and subsequent to apply.

45. Section 3012(b)(2) refers to lack of capacity "measured by principles of law otherwise applicable

to the particular transaction." I am not sure what that means or refers to. - I think "equity" language is good here

46. Section 3023(a) I believe provides that the court may but is not required to determine issues of property. My general feeling is that the determination of the nature of property, whether community or separate, should only be made where necessary to carry out the particular transaction and there should be no right to have a general determination of the nature of property simply by reason of a conservatorship. Section (a)(2) I think should be limited to the property involved in the particular transaction. There is also the question of whether it would involve joint tenancy property if its origin was in community property.

47. Section 3023(c) I believe should be modified as I noted earlier with reference to another section so that the court, if a civil action is pending, could nonetheless proceed with the hearing under this section as the determination is likely to be much quicker and less costly. Therefore, I think the court should have the right to proceed notwithstanding the pendency of the civil action unless there were other parties involved or it would not be in the best interests of the party to proceed with the matter under the Probate Code. The present wording states that the court shall abate the hearing and therefore gives the court no discretion.

48. Section 3051(c) and (d) present the interesting situation where all of the community property is placed in the conservatorship for one spouse. Later, the second spouse is subject to conservatorship. Presumably, half of the property would therefore have to be removed from the first conservatorship and transferred to the second conservatorship. I am not sure that this is necessary or desirable.

49. Section 3053(c) would appear to require litigation as to the nature of the property and the respective rights therein if held in joint tenancy, for example, because the interest of each would have to be put in the appropriate conservatorship. I am also not sure whether Section 3053 would cover community property held in joint tenancy since it seems to refer only to separate property held in that manner.

GOOD QUESTION

50. Section 3072 appears to me to be unnecessary. The consent of the Conservator of the other spouse should be sufficient without having to have a court order.

51. Section 3101(d) appears to grant fairly general authority to determine title to property as between spouses, but I don't think that broad grant is necessary. It should be limited to the specific transaction only to the extent necessary to properly complete the transaction or to determine the rights of the parties in the proceeds.

MAYBE GOOD POINT

52. Section 3141(a) I believe should have the following words added at the end of that sentence "because of medical inability."

53. Section 3144(a)(1) again appears to require some kind of title determination as a condition of granting an order.

54. Section 3150(a) refers to a bond from the petitioner. Since in many cases the property is going to be determined to be community property and one-half of the proceeds would go to each spouse or the conservator, if an additional bond is required it should perhaps be required of both conservators, if there are two, even though only one is the petitioner.

55. Section 3151(a) and other subparts appears again to refer only to the petitioner. In many cases the transaction may involve two conservators and the documents would have to be executed both by the petitioner and by the other conservator, even though not a petitioner.

56. Section 3209 may not be consistent with the provisions of §3207 which allow determination based upon a stipulation.

57. Section 3412(a) allows in a guardianship purchase of a single premium deferred annuity. There was a Legislative bill last year which was to authorize purchase of an annuity. Our Executive Committee voted against it, as I recall. I do not see the reason for a single premium annuity in a guardianship and would object to that particular provision.

58. Rules of Construction to the Probate Code (pages 288 and 289) seem to cover the same things as included in AB 212, which is now pending before the Legislature.

I have one general comment that applies to many of the Sections. The Sections are very detailed. By being so detailed, it may deprive the court of some flexibility in dealing with problems. Also, because of the specific nature of many Sections, failure to include a particular item may be deemed an intentional omission. In short, much of the broad language found in the present statute has disappeared. This in some respects is commendable but may itself create other kinds of problems.

One other area should be mentioned. There is little ability to deal with a drug abuse problem through the courts at present. L.P.S. is not utilized and a probate conservatorship hasn't applied. The Sections which authorize specific medical treatment might be broadened to include treatment for drug abuse.

I hope that you will receive comments from many people on the legislation. As indicated, I feel the Law Revision Commission did an excellent job in both analyzing the purposes and functions of the guardian and conservator and in spelling out the procedure and practice applicable to guardians and conservators.

Sincerely,

Charles A. Collier, Jr.

CAC:gd

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February 27, 1979

Mr. Arne S. Lindgren
Latham & Watkins
555 South Flower Street
Los Angeles, California 90071

Dear Arne:

I have read all. I think the work of the Law Revision Commission is nothing less than monumental. The only thing that really bothers me is whether we are going to have to employ a hoard of investigators, and if so, whether the procedure will become so cumbersome as to defeat the ends of justice rather than promote them.

The only inquiries I have are:

1. With respect to Chapter of the proposed Act, must the proof of service be by affidavit and not declaration; and

2. With respect to Chapter 4, Section 1470 (a), I observe that I am not a criminal lawyer, but I have read cases where a criminal defendant was not adequately represented. Suppose the Court concludes that the incumbent is not adequately represented?

With every good wish, I am,

Very truly yours,

George I. Devor

George I. Devor

By Diane C. Rosenblum
Secretary

GID:dr

Memo 79-17 Exhibit 6

WINTHROP O. GORDON
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February 27, 1979

Latham & Watkins
Attorneys at Law
555 South Flower Street
Los Angeles, CA 90071

Attention Arne S. Lindgren

Assembly Bill - 261

Gentlemen:

I have gone through Assembly Bill 261, and I must admit in somewhat of a hurry.

One bad thing impresses me, and that relates to Sections 2453, 4 and 5. It would seem to me as though it should be a requirement that the guardian or conservator deposit any and all moneys, the property of the conservatee, in the name of the conservatorship or guardianship, as the case may be, and the language of 2453, unless I have overlooked something, does not seem to make this a specific requirement. 2454 somewhat involves this but not to any great degree. 2455 I can understand the desirability of carrying securities in street names, but should that convenience overcome a requirement that all of the property of the conservatee in securities be held in the name of the conservatorship?

I am sincerely interested in this matter, and apologize for being so late with my letter.

Yours very truly,

Winthrop O. Gordon

wog/m

Memo 79-17 Exhibit 7

DONALD H. HUBBS
ATTORNEY AT LAW
SUITE 720 CENTURY CITY NORTH BUILDING
10100 SANTA MONICA BOULEVARD
LOS ANGELES, CALIFORNIA 90067
TELEPHONE (213) 553-2515

February 23, 1979

Arne S. Lindgren, Esq.
Latham and Watkins
555 So. Flower Street
Los Angeles, California 90071

Dear Mr. Lindgren:

Time did not permit me to review Assembly Bill No. 261 relating to guardianship-conservatorship law. I would like to make a few comments on those pages that I did have time to review:

✓ Section 1464(2): I see no need for the requirement that mail shall be sent to a person's address not within the United States by air mail in that all mail goes by air in any event and frequently cannot be specified. LET STAND.

2. Section 1500(B): I would suggest adding (3) the other parent cannot be located to the satisfaction of the court.

Section 1510(E): Reference is made to the receiving of benefits from the Veterans Administration. Since there are other government agencies that give similar benefits as the Veterans Administration, it would seem more appropriate to require information as to benefits from any government agency. SOUNDS GOOD

1. Section 1511(F): I believe the first phase should read "~~Unless~~ the court orders otherwise" instead of "Unless the court order otherwise".

✓ Section 1543(A): I think the last word of that section should read "licensing" instead of "licensure".

I regret that I could not do more but hope the above is somewhat helpful.

Very truly yours,

DONALD H. HUBBS

DHH/kl

Memo 79-17 Exhibit 8

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DANIEL E. HALL

February 26, 1979

OUR FILE NO. 392-M/7I

SUBJECT: Assembly Bill 261
The Proposed New Conservatorship
and Guardianship Law

Arne S. Lindgren
Latham & Watkins
555 South Flower Street
Los Angeles, California 90071

Dear Mr. Lindgren:

Cy Johnson of our office has requested I respond to your letter of January 25, 1979, in which you request comments and corrections to the proposed Assembly Bill 261. Cy and I have discussed the proposed legislation and are both favorably impressed with the Bill, feeling that it makes needed changes in the existing Guardianship and Conservatorship provisions. Our only question is with regard to the change in notice (Probate Code §1460). Under the present notice provisions, utilizing §1200, notice for many routine matters such as annual accountings or request for authority to lease real property owned by the conservatee, notice to the conservatee is not required. The notice provisions are complied with merely by utilizing §1200 in the standard Notice of Hearing form, assuming no one has filed a Request for Special Notice.

We feel that the new law would require notice of such routine dealings with the conservatorship estate to be mailed to

the conservatee "unless the Court for good cause dispenses with such Notice." We are in question as to whether the new provision would necessitate use of an Order Prescribing Notice in every routine matter with the conservatorship estate in order to avoid the requirement of sending notice to a conservatee. It is felt that in many instances notice to a conservatee appearing "legal" in nature, might cause undue concern to the elderly person who is incapable of understanding that it is a routine matter, and that his property is not in jeopardy. We realize that some balance needs to be struck between guarding the rights of notice and protecting the conservatee, and those common instances where an elderly or incapacitated person would be unduly alarmed by receiving notice officially stamped by the County Clerk.

Perhaps the statute could specify what constitutes "good cause" to dispense with such notice. This would simplify counsel's task of providing a declaration showing that notice to the conservatee could be harmful in that it would unduly disturb the individual and require a personal explanation that the conservatee need not appear in court for such a routine matter as the accounting of the conservator of the estate, or for request for routine instructions.

Since you requested notification of observed typographical errors, we note that §1812(b)(3) needs a spelling correction of the word "proposed".

Thank you for your personal efforts in working on this legislation.

Very truly yours,

DIEPENBROCK, WULFF, PLANT
& HANNEGAN

Carol A. Huddleston

By
Carol A. Huddleston

Memo 79-17 Exhibit 9

CITY NATIONAL BANK

WILSHIRE BOULEVARD AT ROXBURY DRIVE
BEVERLY HILLS, CALIFORNIA 90210
(213) 550-5592

L. BRUCE NORMAN
VICE PRESIDENT AND
TRUST COUNSEL

February 16, 1979

Arne S. Lindgren, Esq.
Lathan & Watkins
555 South Flower Street
Los Angeles, California 90071

RE: AB 167 and 261 - Conservatorship
and Guardianship proposals

Dear Mr. Lindgren:

Although I no longer serve as Chair of the trust beneficiary communications subcommittee, I did have occasion to examine the subject proposals at some length in connection with a California Bankers Association committee.

Enclosed is a copy of the points I raised for this latter committee's consideration.

Admittedly written with a "banker's bias", I believe these points warrant further study and I would be pleased to expand upon them if such would be helpful.

My overall impression of the conservatorship and guardianship proposals is highly favorable. I hesitate nit-picking these bills for fear of jeopardizing their timely passage.

If I may be of further assistance, please so advise.

Very truly yours,

L. Bruce Norman

LBN:sh
Enclosure

A. AB 167 - Amendments

Proposed §202(d) of Probate Code. The approach to this power should cross-reference and be treated as a part of the Substituted Judgment provisions of proposed AB 261 (§2580 et. seq.) and in particular §2585. This same comment applies to proposed §650(d) of the Probate Code.

B. AB 261 - Amendments

1. Proposed §2420(a) of Probate Code. The guardian or conservator must provide "comfortable and suitable" support, yet §2420(c) restricts the guardian or conservator's credits allowed for such payments made to those "not disproportionate to the value of the estate or the condition in life of the person whom the payment is made".

(a) The terms "comfortable and suitable" should be specifically defined and include the restrictions of §2420(c), wherever these terms are found.

(b) The §2420(c) restrictions themselves should be stated in the conjunctive rather than the disjunctive. What real benefit to a ward or conservatee is bestowed by trying to maintain as established "condition in life" if you lack the necessary funds to carry it off?

2. Proposed §2615 of the Probate Code. The liability by this provision should be predicated upon fault or at least responsibility and control by the guardian or conservator.

3. Proposed §2620(d)(1) of the Probate Code. A real service would be performed by the proposed law if it legislated standardized statement and accounting formats, descriptions and the like. Only items not covered by the established standards then need be subject to this requirement.

4. Proposed §2623(a) of the Probate Code. It seems rather shortsighted to expressly provide for attorney's fees without also making specific provision for the services of other professionals and experts needed to properly administer the estate.

5. Proposed §3057(b) of the Probate Code. The first sentence has a nice ring to it, but as a practical matter, how is a conservator who is not the other spouse going "to keep reasonably informed concerning the management and control, including disposition, of the community property"? Logic would seem to dictate placing the burden upon the other spouse to keep the conservator so informed.

Memo 79-17 Exhibit 10

1051 Arlington Way,
Martinez, CA 94553
Feb. 26, 1979

Hon. Alister McAlister, Assemblyman
State Capital,
Sacramento, CA 95814

Dear Assemblyman McAlister;

I should like to address some remarks to you re AB261 which you introduced on Jan. 11, 1979. First, I should indicate to you that I am presently acting in the capacity of Supervising Court Investigator in Contra Costa Co. This letter contains my own personal views and should not be construed as representing the views of the Court Investigator nor any other official persons.

I believe AB261 is a real step in the right direction to bring some kind of order to the present sections of the Probate Code relating to guardianships and consevatorships. It makes no sense to me to have provisions for guardianships of adults and conservatorships when in reality the language of the code is almost identical in each case. There has also been a real need to clarify what a guardian or conservator can or cannot do without prior court approval.

There is one area I feel needs to be strengthened in order to protect wards and/or conservatees. I would like to see a section similar in wording to your proposed Sec. 1853 which would make it mandatory for the court to cause the court investigator to cite those guardians and/or conservators who do not comply with the law relating to the proper and timely filing of accountings. This has been the one area in which I personally have found guardians and/or conservators to be sadly remiss in their duties (I'm sure court investigators in other counties would agree). I believe the reason for this is that in the past attorneys have not informed their clients of the need to keep accurate records nor have they told their clients that they must file reguler accountings. I have found case after case in which no inventory and appraisement has been filed nor an accounting ever filed, even final accountings after the ward or conservatee has died. Time after time guardians or conservators will state "Why didn't my lawyer tell me these things?" In most all of these cases there has been no financial abuse, however, if any such abuse is to occur, it most likely will be in this area.

Thank you for taking your valuable time to read this letter and for your consideration of my proposal to strengthen even more your AB261.

Sincerely yours,

V. Mackie Pease

V. Mackie Pease

cc: Assemblyman Daniel Boatright

RICHARD RICHARDS
GLENN R. WATSON
ROBERT G. BEVERLY
GILBERT DREYFUSS
HARRY L. GERSHON
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CABLE ADDRESS
RICHWAT

February 27, 1979

Arne S. Lindgren, Esq.
Latham & Watkins
555 South Flower Street
Los Angeles, California 90071

Re: Assembly Bill 261

Dear Arne:

I have read the entire recommendation of the California Law Revision Commission relating to the proposed new conservatorship and guardianship law. In general the statute seems to be a significant improvement over current law, but there are some minor details which I find troubling.

First, the new statute requires substantially broadened notice requirements with respect to a petition for the appointment of a guardian. If I read the new requirements correctly, this expanded notice must be given irrespective of whether the petition is for the guardianship of a minor's person or of a minor's property. I can fully understand the reason for broad notice in the case of the appointment of a guardianship of the person, but I seriously doubt that most families would care to have their children's financial affairs noticed to such a large group of individuals. Also, I would be concerned as to how some courts might interpret "reasonable diligence" in a notice situation. Presumably less diligence should be required here than in the case of a missing heir to an estate since the relative here has no direct pecuniary interest in the matter. Having watched our courts function, however, I am not certain that such a rule of reason would always prevail.

Perhaps more serious are the provisions relating to the removal of the conservator of an estate where the court investigator is unable to locate the conservatee and no conservator of the person has been appointed. The statute as written seems to urge the removal of the conservator of an estate where the conservatee cannot be produced in court, even though it is not

the conservator's responsibility to directly govern the life of the conservatee. In particular, it is easy to picture situations where young adults under the conservatorship of an estate might leave home and be effectively untraceable. The conservator of the estate is in no position to prevent this, he is no position to obtain the services of law enforcement agencies to locate the conservatee, and he should not be penalized in such a situation. The court investigator is a person who could secure the assistance of law enforcement agencies, and he should not be able to place the burden of locating the conservatee on the shoulders of the conservator of an estate. I would prefer to see the statute rewritten to place this duty primarily upon the court investigator, and to make the conservator of the estate removable only in the event he has reason to know the whereabouts of the conservatee and fails to cooperate with the investigator or the court in insuring the conservatee is present. In short, I would put the burden on those seeking to remove the conservator of the estate on these grounds, as opposed to making the conservator of the estate defend his actions in being unable to produce the conservatee.

I note that publication of notice in connection with the sales of real and personal property is still required as in a decedent's estate. I question the usefulness of published notice in probate matters generally, and I would favor its elimination on general principals.

As I reviewed the statute many other provisions raised questions in my mind, but basically I felt that the draftsmen did a good job of choosing between various alternatives. Accordingly, I have limited my comments to some of the nitpicking areas that I can foresee resulting in problems for persons who would utilize this new statute.

Thank you very much for soliciting my views on this matter.

Very truly yours,

Darold D. Pieper

DDP:cd

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JAMES D. GUNDERSON
SALLIE T. REYNOLDS
MORTON L. BARKER
LAWRENCE S. ROSS

February 2, 1979

Arne S. Lindgren, Esq.
Latham & Watkins
Attorneys at Law
555 South Flower Street
Los Angeles, CA 90071

Dear Mr. Lindgren:

Thank you for sending me a copy of the tentative draft of the proposed provisions of the new conservatorship and guardianship law sponsored by the California Law Revision Commission.

The following are my suggestions:

1. Appointment of Counsel for Conservatee

I am pleased with the provisions of Sections 1471, 1472, and 1826 concerning appointment of counsel. I wonder if this optional appointment should not be extended to hearings where the proposed conservatee is a developed mentally disabled person. In Orange County many developed mentally disabled persons appear in probate court after having spent most of their lives confined to an institution. Unless they express a desire for counsel, the appointment of one is a needless expense. I heard one irrate father tell the court that his child had been institutionalized all of his life upon the recommendation of institutional personnel and now to require the presence of an attorney to argue that he need not be institutionalized was a ridiculous waste of effort. Judge Bruce Sumner replied that it was the law and until someone could change the law, this procedure had to be followed and that he hoped someone would change the law. I think it would be appropriate to do so at this time.

NO Let someone else take this up

2. Visitation and Findings by Court Investigator

It makes sense that the court investigator not be required to visit conservatees who are not residents of this state as set forth in Section 1850 (2).

Section 1851 (b) provides that a copy of the report of the investigator should be mailed to the conservator at the time it is certified to the court. I believe that it would be helpful if the report were also mailed to the attorney of record. The attorney of record assumes a great deal of responsibility. Occasionally, conservators are not as cooperative as might be and fail to inform the attorney of new developments concerning the mental capacity of conservatee.

Not Needed - Can Check court file

DONE

3. Rights of Conservatee

I think Section 1871 should be expanded to permit a conservatee to be divorced or married if he so chooses. The conservator would be responsible to see that no one took advantage of the conservatee.

NO

4. Attendance of Conservatee at Hearing

I heartily agree with the recommendation that a conservatee need not appear if the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to contest the petition. I think, however, that the provision should be further extended to the cases where the conservatee is not lucid enough to know that he needs the conservatorship and the medical doctor, investigator and public defender all agree that there is a need for conservatorship. It adds nothing to require the presence of the proposed conservatee in the court to confirm this matter. I see proposed conservatees who are completely unresponsive to any questions and they gain nothing by being brought to court. I think that power should be delegated to the investigator and public defender to confirm that their presence in court is not needed. Perhaps such provision could be added to Section 1893.

NO Too Formal Problems

5. Removal of Conservatee from Residence in Case of Emergency

Let Present Law Stand

I am opposed to Section 2253 and 2254. It occurs to me that since the temporary conservator's appointment is for a limited time and will be reviewed probably within the month at the time of the appointment of the permanent conservator, the procedures concerning removal of the conservatee from his residence are needless trouble and expense. As I understand, the permanent conservator has the power to fix the conservatee's residence. If the temporary conservator has fixed it at a place to which the

conservatee does not consent, at the time of the hearing for permanent conservator, he can express his objection, request removal of the temporary conservator and be adequately protected. Lengthy procedures and the requirement of court investigation, etc. seem unnecessarily burdensome to me.

6. Supervision of the Conservatee by the Conservator

It is difficult to find someone willing to undertake the conservatorship of a person. It is a thankless job to deal with nurses, household help and the conservatee who has become disagreeable. Even though the conservator of the person is paid for his services, usually at the rate of $5.00 an hour, it is not sufficient recompense and turns out to be a labor of love.

NO

In Orange County, Judge Sumner requests the conservator of the person to visit with the conservatee at least once a week. This is a burden, but it is an understandable request. Some conservatees love to visit various relatives who are willing to invite them into their homes for prolonged periods of time. This is strictly in violation of the judge's reasonable requirement. I suggest that both the requirement of close physical supervision and permission to supervise the conservatee but not actually visit him be set forth in the provisions of Section 2351.

7. Fixing of Residence Outside State

When the residence is outside California, both the court and I lose effective control of the conservator and the assets. When a conservatorship is initiated, a conservator is most cooperative and continues to be so for a short time. Frequently when a conservator is out of state he questions the necessity of continuing court supervision. On occasion I have had out-of-state attorneys dispute with me the necessity of filing accounts.

MAYBE

I suggest that the order pursuant to Section 2352(a)(2) permitting residence to be fixed in another state contain the qualification that if the residence is to be in another state for more than perhaps four months, the conservator be required to initiate proceedings in that state and transfer the California proceedings to the new state. I think that the conservatee is best protected in this manner.

If he lives outside California a short time there is no necessity for a second court proceeding and frequently a conservatee does die shortly after the conservatorship proceeding fixing the residence is initiated. A four month period is also a reasonable time.

8. Accountings by Conservators of the Estate in Small Estates

I find that many of my conservatees receive social security which is immediately paid to an institution for their care. Medicare pays most of the rest of the cost of their care. In most of these cases, the conservator makes additional payments from his personal funds on behalf of the conservatee. It seems a needless expense for someone to prepare an accounting in these cases. I am certain that I do not wish to make a charge for such an account and yet I cannot undertake too many charity cases. The conservatee is protected because all Medi-Cal payments are only made upon condition of the social security being paid to the institution. YES

In these small estates, for example, where the property on hand at the beginning and end of the account period is under $2,000 and the income has been under $150 a month, the conservator of the estate, in lieu of filing an accounting, should be able to file an affidavit stating that the property on hand throughout the accounting period has not been over $2,000, the amount of the present property on hand, and that all income has either been retained or spent for the benefit of the conservatee.

I also feel that in these small estates the bond should be waived.

Perhaps a provision for an affidavit in lieu of an accounting could be added as Section 2628.

9. Typographical corrections

Page 81 cross reference fourth line "secretary concerned" should be Section 1440, not Section 1430.

Page 259 - line 6 - The fifth word should be "if" rather than "in".

I know that many people have spent many hours on the preparation of this proposed legislation and that my comments come only after much thought has been given to these matters and that my proposals may have been presented by others, discussed and discarded. I understand that they may not be deemed appropriate and I shall not be offended if they are not acted upon.

If I can be of further help, please let me know.

Very truly yours,

Sallie T. Reynolds

STR:jh

Memo 79-17 Exhibit 13

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LAWRENCE S. ROSS
LINDA M. GUNDERSON

February 22, 1979

Arne S. Lindgren, Esq.
Latham & Watkins
Attorneys at Law
555 South Flower Street
Los Angeles, CA 90071

Re: Assembly Bill - 261 - The Proposed New Conservatorship and Guardianship Law

Dear Mr. Lindgren:

I have a further suggestion for the Law Revision Commission.

Often a conservatee dies within a short time after the appointment of a conservator. Today I represented a conservator whose conservatee died six days after his appointment. I prepared an account without an inventory showing only the actual assets marshalled (two bank accounts) and the bills paid. Judge Bruce Sumner was reluctant to approve the account because of lack of compliance with Probate Code 1901. However, if I had been required to inventory many stocks, bonds, oil rights, and pieces of real property, the fees earned and delay in turning matters over to an executor would have been unnecessary.

I suggest a provision that permits the court, in its discretion, to waive an inventory and permit an accounting of assets actually marshalled. If no time limit is specified, the court can handle each matter separately.

SOUNDS GOOD. SHOULD ONLY NEED TO ACCOUNT FOR ASSETS ACTUALLY TAKEN INTO POSSESSION

Very truly yours,

Sallie T. Reynolds

STR:jh

cc - Mr. John H. DeMoully

Memo 79-17 Exhibit 14

OFFICES OF

THE COUNTY COUNSEL
County Of Orange

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ROBERT L. AUSTIN
DONALD H. RUBIN
DAVID R. CHAFFEE
BARBARA H. EVANS
DEPUTIES

February 20, 1979

Mr. Arne S. Lindgren
Latham & Watkins
Attorneys at Law
555 South Flower Street
Los Angeles, California 90071

Re: Assembly Bill 261

Dear Mr. Lindgren:

Pursuant to your letter dated January 25, 1979, I am hereby submitting some comments which I have on AB 261. One suggestion is that the bill contain a prohibition as to the number of times a petition for termination of the conservatorship can occur. The present law, as well as the bill, does not prevent a conservatee from "papering" his conservator until he is successful. A provision comparable to Welfare and Institutions Code Section 5364 would be desirable.

Another comment which I would like to offer is whether SB 90 appropriation extends to this bill. Although this bill incorporates the provisions of AB 1417, which was implemented in July of 1977, it does not provide for any appropriation. If SB 90 does not extend to this bill, there may be a substantial financial impact upon counties, as court investigators, public defenders, public guardians, and county counsels are presently receiving State reimbursement. Private attorneys would also be affected, as Section 1472 of AB 261 provides that the county is to reimburse any private counsel of a person who lacks the ability to pay.

If you have any questions, please advise.

Very truly yours,

Barbara Tam Thompson

Barbara Tam Thompson
Deputy County Counsel

BTT:mm

Memo 79-17 Exhibit 15

CATHERINE E. WHARTENBY
DIRECTOR, SOUTHWESTERN REGIONAL DESIGN CENTER
16152 BEACH BOULEVARD, SUITE 210
HUNTINGTON BEACH, CALIFORNIA 92647
(714) 842-2206

February 21, 1979

Arne S. Lindgren, Esq.
Latham & Watkins
555 South Flower Street
Los Angeles, California 90071

Assembly Bill 261

Dear Mr. Lindgren:

In reply to your letter of January 25, 1979, I have the following comments:

1) I am puzzled by Section 1446, for the following reasons:

THIS WAS ADDED BY A RECENT AMENDMENT TO THE CODE LAST MONTH.

a) I find no reference elsewhere in the Bill to a "single-premium deferred annuity."

b) This definition requires that 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".

I am unaware of any contract - annuity or otherwise - offered by any insurance company with no charge of any sort for commissions or other expenses.

2) Section 1465(a)(1) provides that first class mail is sufficient notice.

NO I strongly suggest that there be a requirement for at least Certified Mail.

3) I am somewhat puzzled by Section 2459:

W a) This specifically permits a guardian or conservator to obtain, continue, etc. medical and other health care policies and disability policies (by which is meant, I assume, disability income).

b) The conservator may continue in force life insurance policies, annuity policies, and mutual fund investments.

The mutual fund investments must be those initiated by the conservatee prior to the establishment of conservatorship. Obviously, if the conservator may only "continue in force" life insurance and annuity policies, they must either have been in existence for the conservatorship when it began or be transferred by gift from a third party.

I don't understand the reasoning for this.

4) Section 2459(e) is of interest.

Why are the provisions different from those of Civil Code 1158 (Uniform Gifts to Minors Act)?

I have given AB 261 only the most cursory checking. Nonetheless, I trust these comments may be of some assistance.

With all good wishes,

Sincerely,

Catherine E. Whartenby

Catherine E. Whartenby, Director
Southwestern Regional Design Center

CEW:jd

Memo 79-19 Exhibit 16

2777 Piedmont Ave.
Berkeley, CA 94705
March 20, 1979

Bob Murphy
California Law Revisions Commission
Stanford Law School
Stanford, CA 94305

Dear Bob:

I enjoyed talking to you this afternoon regarding my concerns with AB 261. As you requested, I have enclosed a copy of my analysis. I hope the Commission will give consideration to my recommendations.

After our conversation, I discussed the matter of AB 261 with Frank Lanterman. He concurred in my analysis and recommendations.

I have decided to send a copy of the analysis along with the enclosed cover letter to the members of the Assembly Judiciary Committee, with a separate letter to Assemblyman McAlister, so that my recommendations will be before the Committee when it considers AB 261.

I plan to attend the hearing next week. As you suggested, I shall try to stop by Assemblyman McAlister's office at 11:00 a.m.

I look forward to seeing you again.

Cordially,

Chris

CHRISTOPHER WALT

Enc.

2777 Piedmont Ave.
Berkeley, CA 94705
March 22, 1979

Re: AB 261 (McAlister)

I am writing to express my serious concern over several provisions of AB 261 (McAlister), scheduled for hearing before you on March 28.

From 1973 through 1976 I served as consultant to former Assemblyman Frank Lanterman. In that capacity I assisted Mr. Lanterman in drafting AB 1417 (1976), which added important procedural safeguards to probate guardianships and conservatorships. Additionally, I worked for the California Law Revision Commission in the summer of 1977 during the initial stages of the Commission's guardianship-conservatorship project which culminated in AB 261.

It took nearly three years to enact AB 1417. As signed by the Governor, AB 1417 was supported by the State Bar of California, senior citizen organizations, legal services groups, and news media including the Los Angeles Times. The bill ensured that persons alleged to be in need of conservatorship would receive such basic protections as right to counsel, right to jury trial, independent investigation if unable to attend the hearing, and regular court review -- none of which were provided under prior statutory law.

At Mr. Lanterman's request, I have analyzed AB 261 to determine its impact of the protections added by AB 1417. While AB 261 continues many of the protections without substantive change, there are six areas in which AB 261 may substantially weaken existing safeguards:

1) Appointment of counsel (§1471)
2) Attendance of proposed conservatee at hearing (§1825)
3) Court review of conservatorship (§1850)
4) Failure to locate conservatee; sanction (§1853)
5) Order limiting legal capacity; jury trial (§§1870-98)
6) Removal of conservator; jury trial

The enclosed analysis discusses these problem areas and makes recommendations for amendments to maintain existing legal protections.

Mr. Lanterman has reviewed the analysis and fully concurs in the recommendations.

I urge you to sponsor committee amendments to implement the recommendations and thereby continue the current safeguards.

I plan to attend the March 28 hearing and will be pleased to answer any questions which you may have.

Cordially,

CHRISTOPHER WALT

Enc.

March 20, 1979
Christopher Walt

ANALYSIS OF AB 261 (McAlister), as introduced

Introduction

This analysis focuses on changes which AB 261 proposes to make in the procedural protections added to probate guardianships and conservatorships by AB 1417 (Lanterman, 1976).

Analysis

1. Appointment of counsel

Current law (§2006) requires a proposed conservatee to be represented by counsel in any proceeding for appointment of a conservator or termination of the conservatorship "if he [the proposed conservatee] so chooses."

Proposed law (§1471) requires court appointment of counsel in the following circumstances (among others):

1) A proceeding to establish a conservatorship where the proposed conservatee opposes the establishment of the conservatorship or the appointment of the proposed conservator.

2) A proceeding by the conservatee to terminate the conservatorship or to remove the conservator.

Discussion: The Law Revision Commission's introductory comments on the proposed changes (hereinafter "Comments") states that the proposed law, unlike the current law, does not require "automatic appointment of counsel." The Commission views the proposed change as "limiting mandatory appointment" so as to avoid appointment of counsel in cases where "the appointment would serve no useful purpose." (p. 35)

The Commission's reasons for the proposed change are unclear. The intent of the current law is to permit a proposed conservatee to be represented by counsel if he so chooses, and to require court appointment of counsel if the

proposed conservatee is unable to retain counsel. Such appointment is, therefore, "mandatory" only in the sense that the court must appoint counsel if: 1) the proposed conservatee wishes to be represented, and 2) the proposed conservatee is unable to retain counsel himself.

The proposed law imposes a limitation on the appointment of counsel by requiring appointment only when the proposed conservatee opposes the petition , opposes the proposed conservator, or brings a petition to terminate. In the case of a petition to terminate, both the current and proposed law permit any interested friend or relative of the conservatee to petition, on behalf of the conservatee, for termination. Under current law, the conservatee would be entitled to appointed counsel in such a proceeding. Under the proposed law, the conservatee would not. Thus, the proposed law is more restrictive than current law on the matter of appointment of counsel.

Recommendation: The Commission should be asked to explain in what cases the proposed language will eliminate appointment of counsel and the reasons for such elimination.

2. Attendance of proposed conservatee at hearing

Current law (§1754) requires the proposed conservatee, if in the state and able to attend, to be produced at the hearing on a petition to establish a conservatorship. Attendance may be excused by reason of a medical inability to attend, if such inability is attested to in an affidavit by a medical doctor. Emotional or psychological instability is not considered good cause for absence unless, because of the instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the proposed conservatee.

Proposed law (§1825) continues the rule that the proposed conservatee, if in the state, be produced at the hearing and continues the exception for medical inability. However, the proposed law adds a new exception -- the proposed

conservatee need not be produced if the court investigator reports that the proposed conservatee has expressed that he:1) is not willing to attend the hearing, 2) does not wish to contest the conservatorship, and 3) does not object to the proposed conservator.

Discussion: The Commission states in the Comments that physicians are reluctant to certify the proposed conservatee as medically unable to attend "except in the most extreme, life-threatening situations. The Commission has been informed that proposed conservatees have been brought into the courtroom in an unconscious or semi-conscious state and that, in other cases, the court appearance has been a degrading, shameful, or traumatic experience for a person humiliated by public exposure of his or her infirmity." (p. 29)

It was certainly not the intent of AB 1417 that unconscious or semi-conscious persons be wheeled into court and forced to attend the hearing, unless the proposed conservatee has expressed a desire to attend. Such persons should come under the "medical inability" exception of the current law. It is curious that, according to the Commission, physicians are unwilling to certify a person a medically unable except in life-threatening situations. Information received by Assemblyman Lanterman during the drafting of AB 1417 was directly contrary -- that physicians were all too willing to certify healthypersons as "unable to attend" based on potential psychological or emotional upset.

The language of the current law allowing absence in cases where emotional instability may cause serious and immediate physiological damage was added by the State Bar compromise and was intended to exclude persons whose physicial condition (e.g. high blood pressure, heart condition) might be aggravated to the danger point by attendance at the hearing.

In theory, there is no problem with permitting, in effect, a waiver of the proposed conservatee's right to attend the hearing. And the proposed law at least guarantees that the court investigator will be the one who receives such a waiver. However, the proposed new exception raises the possibility of a proposed conservatee being coerced or mis-informed by other persons into waiving the right to attend.

The answer to the problem identified by the Commission may be to revise the language relating to medical inability to ensure that unconscious persons are not dragged into court. The proposed language may turn out to be the loophole through which the proverbial truck can be driven.

Recommendation: Delete the proposed new exception.

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3. Court review of conservatorship

Current law (§1851.1) requires court review of a conservatorship after one year and biennially thereafter. No exception is made for conservatees who are nonresidents of California and not present within the state.

Proposed law (§1850) adds an exception to court review where the conservatee is a nonresident of this state and is not present within the state.

Discussion: The Commission states the reason for this exception as follows: "The benefits of the review in such a case are offset by the high cost of an out-of-state visit by the court investigator." (p. 38) However, this raises the possibility that a conservatee might be "stashed" outside California in order to avoid the court review. Note also that a conservatorship can be established, even under current law, without the attendance of the proposed conservatee and without any court investigation if the proposed conservatee

is not present in the state at the date of hearing. Thus, a conservatorship could be established and continue indefinitely without the conservatee even having been in court, represented by counsel, or visited by a court investigator.

Recommendation: Delete the proposed new exception unless a compelling fiscal argument can be made. At the very least, the Commission should present figures showing the number of out-of-state investigations made and the cost involved.

4. Failure to locate conservatee; sanction

Current law (§1851.1) provides that if the court investigator is unable to locate the conservatee for the annual or biennial review and if the conservator cannot show good cause for failing to produce the conservatee, the court shall terminate the conservatorship and order the conservator to file an accounting.

Proposed law (§1853) changes the sanction for a conservator's failure to show good cause from termination of the conservatorship to removal of the conservator.

Discussion: The Commission believes that removal of the conservator rather than termination "is a more appropriate sanction since the conservatee presumably still requires protective supervision of the person or estate or both." (p. 39)

There are several problems with the proposed change. First, the sanction for failure to produce the conservatee or show good cause for not producing the conservatee is under current law -- and should be -- a stiff one. If a conservatee who cannot be located is "presumed" to be in need of continuing supervision, then a conservator who cannot show good cause why the conservatee cannot be produced should be "presumed" to be incompetent. Removal, as proposed, will handle such a case. But what if the conservator is deliberately hiding the conservatee? If the conservatorship is continued and a new conservator appointed, the new conservator may be in league with the former conservator. Moreover, the conservatee need not be present at the hearing on a new conservator. Thus, another year could go by without the conservatee being either in court or interviewed by the court investigator. And then the whole process could begin anew.

Second, the proposed law requires the court to appoint the public defender or other attorney to petition for appointment of a new conservator and represent the conservatee in connection with such petition. The attorney is, thus, asked to represent the conflicting interests of the petitioner (proposed conservator) and the respondent (proposed conservatee).

Recommendation: Either retain termination as the sanction for failure to produce, or provide for termination coupled with appointment of a temporary conservator if it appears that the conservatee will be located within 30 days. During the temporary conservatorship, another person, if any, may file a new petition for placing the conservatee under a new conservatorship, with full procedural protections.

5. Order limiting legal capacity (NEW)

Proposed law (§§1870-1898) establishes a three-tier structure for limiting the legal capacity of a conservatee to enter into transactions. The court can impose one of three levels of restriction: First, a conservatee may be permitted to enter into transactions which a reasonably prudent person might make; second, the court can broaden or limit the power of the conservatee to bind the estate, either at the time of appointment or later ; third, the court may enter an order adjudging the conservatee "seriously incapacitated" and thereby unable to bind the estate except for necessities. If the capacity of the conservatee is to be restricted after the initial appointment of a conservator, the proposed law provides for such procedural protections as notice, attendance at the hearing, investigation by court investigator, and appointment of counsel. (pp. 29-32)

Discussion: The Commission's proposal is a marked improvement over the "all or nothing" approach of the current law in which a person is either fully competent or totally incompetent. Moreover, the proposed law avoids use of the stigmatizing term "incompetent" as used in the current guardianship law.

However, the proposed law excludes from the list of procedural safeguards accompanying a petition to limit capacity the right to jury trial. Thus, a conservatee might

be lulled into not contesting the conservatorship if the initial petition requests only the mild limitation restricting the conservatee to the transactions of a reasonably prudent person. The conservator might subsequently seek greater restrictions or a finding of "serious incapacity," the latter of which is tantamount to a finding of legal incompetence under the existing law. Despite the conservatee's right to oppose the imposition of the restrictions and his right to counsel, the conservatee could not have the matter tried to a jury, which he could have had if he had contested the initial conservatorship.

Recommendation: Add right to jury trial to the procedural protections (§1895).

6. Jury trial on removal of conservator

Current law (§§1755, 1951) provides a right to jury trial on a petition to remove a conservator.

Proposed law does not continue this right.

Discussion: The Commission proposes to eliminate the right to jury trial on a petition to remove the conservator on the ground that "[t]he protection of jury trial for the ... conservator is not appropriate." (p.67)

This ignores the fact that the right to a jury trial is also an important protection for the conservatee, who may have petitioned for removal of the conservator. A jury trial on a petition for removal, in short, is a two-way street. By eliminating it in all cases, the interests of conservatees may be harmed.

Recommendation: Add provision granting the right to jury trial on a petition to remove an existing conservator if requested by a conservatee who has petitioned for removal.

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