

Memorandum 79-18

Subject: Study F-100 - Guardianship-Conservatorship Revision (Fixing Residence Out-of-State for Extended Period)

Sallie T. Reynolds makes the following comment:

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.

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.

The staff believes that there is merit to this suggestion. We suggest for Commission consideration the addition of the following subdivision to Section 2352 (also proposed to be amended on page 3 of Memorandum 79-12):

(d) An order under paragraph (2) of subdivision (a) shall require the guardian or conservator either to return the ward or conservatee to this state, or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence and domicile, when the ward or conservatee has resided in the new residence and domicile for a period of four months or such longer or shorter period as is specified in the order.

Respectfully submitted,

John H. DeMouilly
Executive Secretary