

## Memorandum 84-40

Subject: Study L-628 - Probate Law and Procedure (Order Dispensing with Accounts of Guardian or Conservator)

The Guardianship-Conservatorship Law permits the court to dispense with accountings in guardianship or conservatorship proceedings if the net value of the estate is less than \$2,000, the monthly income (exclusive of public benefit payments) is less than \$150, and all income was either retained or spent for the benefit of the ward or conservatee. Prob. Code § 2628 (set out in Exhibit 2).

We have received a letter from Catherine Hughes, staff attorney for the Legal Center for the Elderly and the Disabled, recommending that the value of the residence (if any) be excluded from the net value of the estate for determining whether the court may dispense with the accounting. A copy of the letter is attached as Exhibit 1.

Ms. Hughes suggests that the recommended change should not make it easier for a guardian or conservator to defraud the ward or conservatee, because court authorization is necessary to dispose of real property in the estate. See Prob. Code § 2540.

The staff recommends the proposed amendment. The amendment would not require that the court dispense with the accounting, but would merely enlarge the court's discretion to do so. Ms. Hughes' proposal may be adopted by approving the amendment to Section 2628 set out in Exhibit 2. Does the Commission wish to recommend this change?

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

## EXHIBIT 1

**Legal Center For The  
Elderly And The Disabled**

2125 J STREET, SACRAMENTO, CA 95816

Telephone: 446-4851

January 23, 1984

California Law Revision Commission  
4000 Middlefield Road, Rm D-2  
Palo Alto, CA 94306

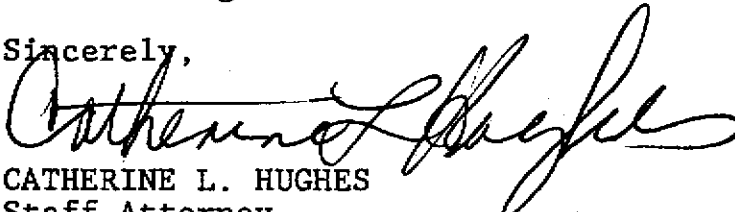
Attention: John H. DeMouly, Executive Secretary

Dear Mr. DeMouly:

Thank you for the information regarding the Commission's recommendations relating to probate law. I would like to discuss Probate Code Section 2628 that allows waiver of an accounting when the estate consisted of property of a total net value of less than \$2,000. I have found this section very useful to eliminate having to file accountings for low-income clients with few or no assets. Frequently conservatees own their own homes. An interest in real property exceeds \$2,000, and accountings are not waived in those situations. Since the conservator cannot dispose of the real property without the consent of the Court, I feel the interests of the conservatee will be protected and the intent of the statute met by allowing an accounting to be waived when the only asset over \$2,000 is the conservatee's home.

I would appreciate it if the Commission could recommend such a change and I would be happy to discuss my experiences and any problems that such a change could cause.

Sincerely,



CATHERINE L. HUGHES  
Staff Attorney

CLH:ab

## EXHIBIT 2

Probate Code § 2628 (amended). Order dispensing with accounting in case of small estate

2628. (a) As used in this section, "public benefit payments" means payments received or to be received under either or both of the following:

(1) Part 3 (commencing with Section 11000) of, Part 4 (commencing with Section 16000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

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

(b) The court may make an order that the guardian or conservator need not present the accounts otherwise required by this article so long as all the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period for which an account is otherwise required consisted of property, exclusive of the residence of the ward or conservatee, of a total net value of less than two thousand dollars (\$2,000).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than one hundred fifty dollars (\$150).

(3) All income of the estate during the accounting period, if not retained, was spent for the benefit of the ward or conservatee.

(c) Notwithstanding that the court has made an order under subdivision (b), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this article or the court on its own motion may make such an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

(d) For any accounting period during which all of the conditions of subdivision (b) are not satisfied, the guardian or conservator shall present the account as otherwise required by this article.

Comment. Paragraph (1) of subdivision (b) of Section 2628 is amended to exclude the residence of the ward or conservatee from the computation of the value of the property in the estate.