

#L-930

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2/16/86

Memorandum 86-28

Subject: Study L-930 - Estate and Trusts Code (Guardian ad Litem)

Attached to this memorandum is a draft of explanatory text and statute relating to appointment of guardians ad litem in probate proceedings. This provision is drafted for consistency with the guardian ad litem provision in the proposed Trust Law (AB 2652).

Respectfully submitted,

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*Staff Draft*

Guardian ad Litem

The new code provides specific authority for appointment of a guardian ad litem at any stage of probate proceedings if the guardian ad litem is needed to represent the interests of a minor, an incapacitated, unborn, or unascertained person, a person whose identity or address is unknown, or a class of persons who are not ascertained or are not in being. The guardian ad litem may be appointed by the court on its own motion or upon request of the personal representative or other person interested in the estate. This provision is consistent with a provision in the Trust Law<sup>1</sup> and is substituted for the general provisions of the Code of Civil Procedure<sup>2</sup> that apply under existing law.<sup>3</sup>

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1. See Prob. Code § 17208 (continued without change in proposed Est. & Tr. Code § 17208).

2. See Code Civ. Proc. §§ 372-373.5.

3. See, e.g., Estate of High, 250 Cal. App. 2d 561, 567-68, 58 Cal. Rptr. 694 (1967).

*Staff Draft*

§ 7205. Appointment of guardian ad litem

7205. (a) The court may, on its own motion or on request of a personal representative or other person interested in the estate, appoint a guardian ad litem at any stage of a proceeding concerning the estate to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

- (1) A minor.
- (2) An incapacitated person.
- (3) An unborn person.
- (4) An unascertained person.
- (5) A person whose identity or address is unknown.
- (6) A designated class of persons who are not ascertained or are not in being.

(b) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(c) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of the property of the estate or by the petitioner.

(d) Sections 372 to 373.5, inclusive, of the Code of Civil Procedure do not apply to the appointment of a guardian ad litem under this section.

Comment. Section 7205 is a new provision drawn from Section 17208 (guardian ad litem in trust proceedings). Under former law, the appointment of a guardian ad litem in proceedings for administration of the decedent's estate was governed by Code of Civil Procedure Sections 372-373.5. If the beneficiary has an interest in only part of the estate, the court may not charge expenses to the whole estate, but only the beneficiary's interest. See *Estate of Corotto*, 125 Cal. App. 314, 325, 270 P.2d 498 (1954).

CROSS-REFERENCES

Definitions

- Court § 29
- Interested person § 48
- Order § 53
- Personal representative § 58