

Memorandum 87-105

Subject: Study L-707 - Misuse of Conservatorship Funds

Misuse by conservators of conservatorship funds has been reported in the Wall Street Journal (Exhibit 1) and Sacramento Bee (Exhibit 2). These articles inspired Judge Ross Tharp of San Diego to inquire about recent legislation on the subject (Exhibit 3), and two legislators who received letters from Judge Tharp to suggest the Law Revision Commission look into the matter (Exhibits 5 and 6).

The articles report misuse of funds both by "family" conservators who serve for one conservatee only, and by professional conservators who serve for many conservatees. Professional conservatorship agencies may be either for profit or not for profit. The agencies for profit that were interviewed declined to discuss how much money they make, but non-profit agencies often need donations to stay afloat. Fees of the two kinds of agencies are comparable.

According to the Bee article, Probate Judge Rex Victor in San Bernardino County is considering (1) ordering a proposed conservator to disclose whether he or she has other conservatees, and (2) having the court investigator conduct an annual audit of professional conservators.

Not all the publicity has been unfavorable, however. Eighteen Santa Clara County attorneys joined in a letter to the San Jose Mercury News (Exhibit 4) defending the present conservatorship system. The letter noted that court investigators do act as "watchdogs over conservators."

The staff phoned Judge Tharp to discuss his letter. He said although he inquired about licensing of conservators, he did not advocate licensing. He said bonding companies screen proposed conservators before bonding. He thinks the present system is good. He thinks it needs tightening up, but has no specific suggestions. The staff asked him to let us know if specific suggestions come to mind.

1977 CONSERVATORSHIP REFORMS

Some of the reported abuses occurred before 1977 when California tightened up its conservatorship procedures. Present law has the

following safeguards:

(1) Ordinarily the proposed conservatee must be present at the hearing to establish the conservatorship. Prob. Code § 1825.

(2) If the proposed conservatee is unable or unwilling to attend the hearing, a court investigator must visit the proposed conservatee and report to the court. *Id.* § 1826. (No investigation is made if the proposed conservatee will be at the hearing; in that case, the court advises the conservatee of his or her rights, and asks for his or her opinion about appointment of the proposed conservator. *Id.* § 1828.)

(3) The proposed conservatee has a right to private or appointed counsel. *Id.* § 1471.

(4) In selecting a conservator, some weight is given to the preference of the proposed conservatee: If the proposed conservatee has sufficient capacity to form an intelligent preference, he or she may nominate a conservator; the court must appoint the nominee unless the court finds that is not in the best interests of the proposed conservatee. *Id.* § 1810. If the court investigator visits the proposed conservatee, the court investigator must determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator. *Id.* § 1826.

(5) The court must review the conservatorship one year after appointment of the conservator and biennially thereafter. *Id.* § 1850. The court investigator must visit the conservatee, determine whether the conservator is acting in the best interests of the conservatee, and report to the court. *Id.* § 1851. The statewide average cost per investigation is assessed against the conservatorship estate, but is not collected until the conservatorship is terminated. *Id.* § 1851.5.

SUITABILITY OF PROPOSED CONSERVATOR

There are no minimum requirements for a proposed conservator. Selection of a conservator is "solely in the discretion of the court," but the court "is to be guided by what appears to be for the best interests of the proposed conservatee." *Id.* § 1812.

Aside from the question of the proposed conservatee's preference, the court investigator makes no independent determination of who should be appointed conservator. The Probate Code does not require that the court investigator visit or interview the proposed conservator. The

court investigator's report does not address the proposed conservator's suitability as a fiduciary.

However, there is precedent for the court investigator to investigate the fiduciary in two analogous situations: Some local court rules provide that, on the review that occurs periodically after the conservatorship is established, the court investigator shall interview the conservator and examine conservatorship records and assets. E.g., Probate Policy Memorandum, San Bernardino County § 1503 (revised Aug. 13, 1985). When guardianship of the person of a minor (a child custody proceeding) is proposed, the investigation and report must address the "social history" of the proposed guardian. Prob. Code § 1513. The statewide average cost per investigation is assessed to the minor's parents, guardian, or guardianship estate. *Id.* § 1513.1. No similar investigation is made of a proposed guardian of the estate.

POLICY OPTIONS

Disclosure of Professional Status in Conservatorship Petition

The law could require conservatorship petitions to disclose whether the proposed conservator has other conservatees. This is similar to the suggestion made by Judge Victor, and would alert the court and others that the proposed conservator may be in the conservatorship business. This could invite closer scrutiny of the proposed conservator, and would entail minimal cost to implement.

Court Investigator's Recommendation re Suitability

The law could permit the court to require the court investigator to interview the proposed conservator and make a recommendation on his or her suitability. In most cases a court investigator's report is not required, because the proposed conservatee is present in court and the judge asks the questions that the investigator would have asked. See Prob. Code §§ 1825, 1826, 1828. If the court may require the investigator to interview the proposed conservatee in all cases, whether or not the proposed conservatee will be present in court, significant costs may be added to conservatorship proceedings.

The benefit of a report by the court investigator may be minimal, assuming that most conservators are bonded. Bond is required unless the court dispenses with it for one of the following reasons: (1) bond is waived by the conservatee having capacity to do so; (2) the estate

value (exclusive of the conservatee's residence) is less than \$5,000, monthly income (exclusive of public benefit payments) is less than \$300, and all income, if not retained, is spent for the benefit of the conservatee; or (3) if the estate is deposited in a financial institution subject to withdrawal only upon court order. *Id.* §§ 2320, 2321, 2323, 2328.

Statutory Statement of Conservator's Duties

Some of the problems reported in the newspaper articles appear to be due to the conservator's ignorance of his or her duties. The law could contain a statement of the duties of a conservator of the estate, analogous to the statement the Commission is proposing for personal representatives (proposed Section 8404 in the Commission's 1988 probate bill). A draft of such a statement is attached to this Memorandum as Exhibit 7.

At present, local court rules in two counties prescribe a statement of the conservator's duties. Contra Costa County Probate Policy Manual, exhibit B; Santa Clara County Probate Rules, appendix. Also, the C.E.B. book on conservatorships recommends that if the court does not send a letter to the conservator outlining the duties of the office, the attorney representing the conservator should do so. A form letter is suggested in the book. W. Johnstone, G. Zillgitt & S. House, *California Conservatorships* § 4.70, at 214-16 (Cal. Cont. Ed. Bar, 2d ed. 1983). So presumably this is already being widely done in practice. A statewide enactment would bring uniformity to this practice, and the cost would be minimal.

Licensing of Professional Conservators

The law could require state licensing of professional conservators -- those who have more than a specified number of conservatees. The staff does not favor licensing, because it is expensive and requires a state bureaucracy to administer. The benefits of licensing are marginal, since the court investigator already reviews conservatorships biennially. Anything that adds to the cost of conservatorship merely increases the tendency to use alternatives to conservatorship, such as the durable power of attorney and inter vivos trusts.

Application to Guardianships

If any of the foregoing are to be recommended, should a similar recommendation be made for guardianships? Since guardianships are for minors, the amount of wealth administered in guardianship estates may be small compared to conservatorships. If so, misuse of funds would appear to be a less serious problem in guardianships than in conservatorships. The principles are the same in the two types of proceedings, however.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

Courts See More Estates Misused By Those Assigned to Guard Them

By STANLEY PENN

Staff Reporter of THE WALL STREET JOURNAL
Revia Karl, a frail, 84-year-old woman, is living her last years in a psychotic haze in an Inglewood, Calif., hospital. "She has no knowledge of what is going on," says a hospital spokesman.

So she doesn't know that her grandson, Jerry M. Karl, ran through most of her \$75,000 in assets after a court appointed him her conservator. Mr. Karl wasn't charged with any wrongdoing, although he was replaced as conservator last year. "I screwed up my grandma's estate," concedes Mr. Karl, 36, a former mathematics teacher. "I've lived on her money for the last two years."

Stories like this are becoming distressingly common. Judges around the country say they're finding a rise in the misuse of estate money by conservators, also sometimes called guardians, who are appointed by a court to manage the money of elderly and mentally ill people. "There are more and more elderly people," says Miami Circuit Court Judge Francis Christie. "A lot of them have money. More people are stealing (from them) because there's more to be stolen."

Almost a Sure Thing

Conservators, who are paid a fee for their services, get appointed by petitioning a court that a friend or relative is unfit to manage his own affairs. Richard Narver, deputy public guardian in Sacramento, Calif., says that, lacking opposition, the petition is usually granted "if there's nothing blatant about (the petitioner's) behavior in court and nothing to show he's involved in a conflict of interest."

Once a conservator is appointed, he has virtually complete control over the incapacitated person's estate. In Washington, D.C., an attorney acting as conservator took \$376,000 from an elderly man's estate. He later pleaded guilty to fraud. A Colorado woman, conservator for her ailing husband, spent \$80,000 of his funds on her son's business. Such cases rarely receive much publicity, but one involving New York real estate broker John Zaccaro last year did. Mr. Zaccaro, husband of Democratic vice presidential candidate Geraldine Ferraro, had borrowed \$175,000 from the estate of an elderly Long Island woman for his own use.

Mr. Zaccaro, who repaid the loan with interest, said he didn't know he shouldn't have used the money. A court removed him as conservator of the estate, but he wasn't charged with any wrongdoing.

Bonding companies, which insure estates against losses from the misconduct or negligence of conservators, also note the increase of misused estate money. Many states require the bonding of conservators, although in many cases bonding company payoffs cover only part of estate losses.

Misuse of estate money has become

filiations and little if any protection," says John Mills, president of Planned Protective Services Inc., Los Angeles, a nonprofit firm that acts as professional conservators for the elderly. "There are people lying in wait for the old to become senile so they can take them over. Their attitude is, 'I'll borrow the money and repay it,' but they don't."

In California, a prime source for manipulation are proceeds from real estate, which has sharply appreciated post-war, says Robert Spaak, president of Southern California Bonding Service Inc. of Los Angeles.

Conservators who misuse estate money are rarely prosecuted. Victims are generally unwilling to prosecute, and their advanced age and lack of comprehension make some of them poor witnesses. Many courts are satisfied with the often-limited compensation provided by bonding companies.

A typical ward of the court is John A. Sward, a World War II veteran in Los An-

CONSERVATORS who misuse estate money are rarely prosecuted. Victims are often unwilling to press charges, and their advanced age makes some of them poor witnesses.

geles who suffers from service-connected mental and emotional problems. He receives \$1,295 in monthly benefits from the Veterans Administration. "John is a friendly, gregarious person," says Mr. Sward's attorney, Michael Dave. "John has no guile."

Some years ago, Mr. Sward was befriended by the operator of the motel where Mr. Sward had a room. The motel operator, David Gold, became Mr. Sward's conservator. But in 1981, probate investigator Edith Reid filed a report in court that Mr. Gold had spent \$10,767 of Mr. Sward's money on a car, even though Mr. Sward had no driver's license and got around town by bus. The woman who managed Mr. Gold's motel "drives the vehicle to her dance classes," the investigator reported.

The Veterans Administration asked Mr. Gold to resign as conservator after he failed to file an accounting, a VA spokesman says. Mr. Gold's lawyer says there was no misconduct by Mr. Gold "other than failure to file an accounting. We have an order to do that, and it will be done."

No Chance to Protest

In California, people whose estates are

grily that his opinion wasn't sought when his brother Jimmy was named temporary conservator of Larry's estate in March last year. A Los Angeles court appointed Jimmy after Larry's conviction, which was later reversed, for contempt of court in a California case. Larry was in jail when the hearing on the conservatorship took place. Jimmy served as conservator of the estate for seven months.

In another disputed case several years ago, the \$140 million estate of Los Angeles real estate developer Ben Weingart was put into conservatorship without his presence in court. Mr. Weingart died in 1980 at the age of 82, but his friend and live-in companion, Laura Winston, now 51, is still pursuing legal efforts to show that the conservatorship was conceived in fraud.

In 1974, three business associates of Mr. Weingart petitioned the court to become conservators of his estate on the ground that his health was failing and that Miss Winston had designs on his money. But according to Miss Winston, "Ben was in good condition when this happened. He went to work every day."

Nevertheless, a doctor's report said, in effect, that Mr. Weingart's well-being would be impaired if he attended hearings on the petition. The three associates, who were financially indebted to Mr. Weingart, were appointed permanent conservators.

'Relative Ease'

After Mr. Weingart's death, the Los Angeles County district attorney's office investigated the conservatorship. Then assistant chief deputy Richard A. Moss found no evidence of wrongdoing. But in a report, he said he found "unsettling" the "relative ease" by which Mr. Weingart's estate had been put into conservatorship.

In 1977, California changed its law on permanent conservatorships: Now it requires the presence of the conservatee, or ward, at proceedings to appoint permanent conservators except in cases of extreme physical disability.

Sometimes conservators simply lack the savvy to oversee an estate. Nearly all of Regina Aberson's \$250,000 was wasted in the failure of her daughter, Eugenia Herberson, "to use ordinary care and diligence" as conservator, according to attorney Stephen E. Rykoff in a report to Superior Court in Los Angeles. Mr. Rykoff, who represents the estate's new conservator, says Mrs. Herberson, with court approval, had turned over her mother's money to a stockbroker to put into low-risk investments. Instead, the broker used the money to trade options.

Mrs. Herberson was replaced as conservator last November. Her mother's estate will recover \$91,000 from a bonding company, the amount probably lost through negligence, including \$4,600 that Mrs. Herberson herself withdrew without court approval. Mr. Rykoff says

Making a profit by running lives for the elderly

Guardians in growing, unregulated field

By George Garties
Associated Press

California, home to thousands of retirees who have pulled up roots and moved far from family, is a proving ground for a new kind of business: Running the lives of those who are no longer able.

Professional guardians are setting up shop in small but growing numbers, seeking court appointments as surrogate family for elderly people in failing health.

An Associated Press study found that some of those most familiar with conservatorship of the elderly are worried about the potential for abuse by these new entrepreneurial guardians.

But others say they bring new standards of care and much needed professionalism to a task traditionally — and not always honestly — handled by family, friends, lawyers and bank trust officers.

The AP study, part of a nationwide effort, is based on court records and interviews with dozens of experts on guardianship, called conservatorship in California.

Some 30,000 Californians have conservators who act on court authority to run their wards' lives, deciding where they will live, how they will spend their money and in some cases even what medical care they should receive.

The professional conservators usually are called in when relatives or friends are unavailable or unable to care for an aging person, or when the family is quarreling over who should control Grandma's money.

Often the trigger is a medical emergency, as in the case of a 94-year-old Los Angeles man who ended up in the care of a non-profit conservator called Life Services after a visit to a hospital emergency room.

Life Services' Wanda Sawyers says she found the man and his wife had been living in a squalid apartment, malnourished, with bills piling up. Sawyers moved the couple to a nursing home, where the wife died, but eventually the man improved enough to move to a boarding home for the elderly.

His only income is from Social Security and Medi-Cal, and that just about covers the \$500 to \$600 a month bill for the board-and-care home. Sawyers and her staff dole out the remaining \$35 a month for toiletries and sundries and outfit the man with used clothes.

Someone from Life Services visits him and the rest of the company's 100 wards once a week, checking on care, giving them an allowance and delivering monthly gifts such as candy.

"If they need surgery, we're there when they go in; we're there when they come out," Sawyers says.

But that kind of attention doesn't come cheaply. Life Services gets \$65 to \$70 an hour in court-approved fees from the estates of most wards.

The 94-year-old, however, is a "beneficent case," meaning he pays no fee because he doesn't have the money. Life Services and other non-profit conservatorship groups solicit donations to underwrite these cases.

Los Angeles County, with 10,000 active conservatorships, has two non-profit guardian groups, including Life Services, plus a for-profit partnership and several individuals who make their living as conservators.

Individual conservators, or fiduciaries, appear to predominate in San Francisco and other populous areas of the state.

In San Diego, there's even a night class for those who want to go into business as conservators.

Conservators who are willing to discuss it say they charge between \$40 and \$70 an hour.

But as conservator Judy Chinello points out, the way hours are billed has as much effect on the bottom line as the rate does. Chinello, a partner in a for-profit group called Hurst, Chinello and Mandel, suggests that bottom line price isn't necessarily any lower for the ward of a non-profit conservatorship group, which, she points out, has the same list of expenses to meet.

None of the for-profit conservators interviewed by the AP would discuss how much money they make, although Chinello called hers

a growing business. The operators of non-profit agencies said they need donations to stay afloat.

For the money, a private conservator's ward appears more likely to remain in his or her own home than one who ends up being cared for by the public guardian.

Professionals report keeping one-quarter to one-third of their wards at home, the rest in nursing homes; it's extremely rare for a ward of a public guardian to be anywhere but an institution.

Some critics suggest professional conservators exist only to serve those with money.

"These people move in, take over large estates, go through the money and dump them on the public guardian's doorstep. It's a real problem," says Tehama County Public Guardian Verdine Duham, who also is

president of the California State Association of Public Administrators, Public Guardians and Public Conservators.

"My feeling is that these things are self-perpetuating," says James Kaspar, supervising court investigator dealing with conservatorship cases in San Mateo County. "They have overhead. One becomes protective of one's organization and its needs, rather than focusing on the individual needs of its clients."

Debra Dolch, a professional conservator in San Francisco, responds: "There are people out there who will think this is an easy way to make money, and it's not. You have to be willing to make the commitment. You have to be there 24 hours a day, seven days a week for people."

See GUARDIANS, page A4

Compliments of
ASSEMBLYWOMAN SUNNY MOJONIER
75th A.D.

SACRAMENTO BEE

9/21

Contact
Sen. Leg. for
possible
legislation

Guardians

Continued from page A1

Every professional conservator interviewed denied abandoning wards to the public guardian after their estates are exhausted by medical and nursing home costs that can easily top \$2,000 a month.

Supporting that claim is Ilona Bryman, chief deputy public guardian in Los Angeles, who says she isn't aware of a large number of cases being dumped by private conservators.

In any event, most of those cared for by private conservators do have money, at least to start.

Judy Okonski, a partner in Ourself Conservatorship Services in Orange County, says her firm tries to avoid wards who have less than \$150,000. But the partnership keeps caring for their wards even after the money's gone, she says.

"There's a lot of things that you could make a lot more money at than this," Okonski said. "All of a sudden you find yourself doing funerals and cleaning up houses that haven't been touched for five years."

James Mills of Planned Protective Services, a non-profit Los Angeles conservatorship operation with 200 wards, says he takes on charity cases, but seeks out wards with money as well.

"If a facility is going to refer Medi-Cal people, we hope they're going to refer people with money, too, so we can stay afloat."

Some people worry that there's virtually no regulation of the business.

"I think by the nature of it, there's the opportunity for great abuse," said A. Rex Victor, a San Bernardino County probate judge. He worries conservators might double-bill for visiting more than one ward at a nursing home, spend wards' money on businesses connected with the conservator, or simply skip town with their wards' money.

Victor says he's studying the possibility of ordering those seeking appointments as conservators to disclose if they have other wards. He's also researching the idea of having court investigators conduct annual audits of professional conservators.

The conservatorship business is unregulated, except for the court supervision that applies to professional and family conservators alike.

"Right now," says Chinello, herself a former deputy public guardian, "anyone who wants to announce themselves as a conservator can do so."

SACRAMENTO BEE

9/21

3

The Superior Court
OF THE
State of California

COUNTY COURTHOUSE - SAN DIEGO 92101

CHAMBERS OF
ROSS G. THARP
JUDGE

MAILING ADDRESS
POST OFFICE BOX 2724
SAN DIEGO, CALIFORNIA 92112

September 22, 1987

Senator Wadie Deddeh
3048 State Capitol
Sacramento, CA 95814

Wadie
Dear ~~Senator Deddeh~~:

Attached please find a copy of an article which appeared in the Wall Street Journal a couple of years ago concerning conservators who misuse estate money. As Probate Judge of this Court, I am mindful of the problem.

I am writing to inquire what, if any, remedial legislation has been offered, or is in process, to remedy this situation or to set any minimum requirements or licensing requirements for conservators and other fiduciaries. Please advise me of any legislators, private individuals or groups who have shown any interest in the subject.

Thanking you for your cooperation, I remain,

Very truly yours,


ROSS G. THARP

RGT/sv
(T/Conser.Ltr)

Attachment

8B Tuesday, November 3, 1987 ■ San Jose Mercury News

Letters to the editor

Conservatorship program works well here

As attorneys who collectively have handled dozens of conservatorships in Santa Clara County, we find your Associated Press article of Sept. 20 on conservatorships and guardianships to be substantially misleading as it reflects upon conservatorships in this county.

In our experience court investigators and the judges handling the conservatorship calendar here are genuinely concerned with the welfare and dignity of the proposed conservatees.

As an officer of the court, the court investigator regularly interviews all conservatees to determine their needs, desires and capabilities and reports his or her findings to the judge. In most cases, the court will preserve

rights, encourage independence and protect conservatees' rights to remain in their homes unless the facts presented to the court by all interested parties dictate otherwise.

To suggest, as the article does, that the judge and court investigators rubber-stamp any and all petitions for conservatorships is not only inaccurate but unfair to these individuals and the tireless public service they perform. The article implies that the absence of argument at the court hearings equates with the casual stripping of individual rights. In reality, when the conservatorship is uncontested, it is because the court investigator and the judge have already devoted hours of investigation to the

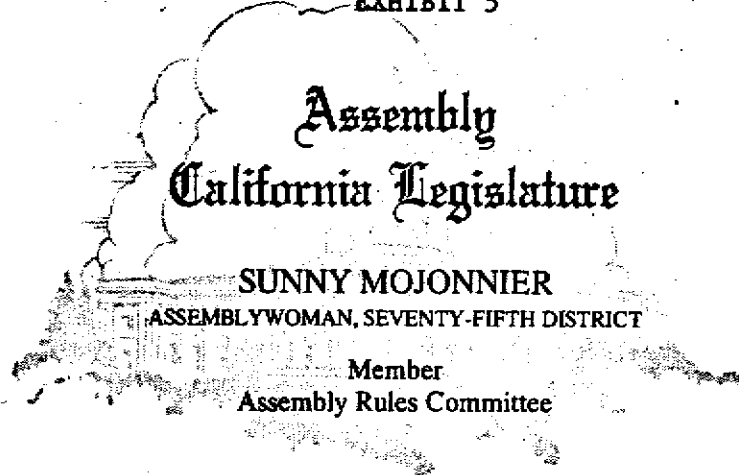
matter and have determined that a conservatorship is needed.

The root of many abuses in conservatorships lies in the moral shortcomings of the conservatee's family and alleged friends who usually have priority to be selected as conservators. Court investigators serve an essential need in acting as watchdogs over conservators. Not all mothers and fathers are good parents, and not all children or other relatives are good conservators. Whether replacing them with public employees would prevent abuses is debatable, and whether the public would pay the cost is unknown.

— Robert E. Temmerman Jr.
and 17 others
Campbell

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- LEADERSHIP:
 - RULES COMMITTEE
 - JT. RULES COMMITTEE
- POLICY COMMITTEES:
 - GOVERNMENTAL ORGANIZATION
 - JUDICIARY
 - VETERANS' AFFAIRS
- SUBCOMMITTEES:
 - ARTS AND ATHLETICS, CHAIR
 - ADMINISTRATION OF JUSTICE
- MEMBER:
 - BLOCK GRANT ADVISORY COMMITTEE
 - JOINT COMMITTEE ON THE ARTS
 - MOTION PICTURE COUNCIL
 - ARTS, TOURISM & CULTURAL RESOURCES - NCSL
 - WESTERN LEGISLATIVE CONFERENCE

October 22, 1987

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

CA LAW REV. COMM'N

OCT 30 1987

RECEIVED


Dear Mr. DeMouilly:

It is my understanding that the Law Revision Commission is working on a complete revision of the Probate Code, and that Assembly Bill 708 (Harris), which will become effective on January 1, 1988, represents a portion of that effort.

Judge Ross Tharp of San Diego has sent me the enclosed clippings with the suggestion that legislation may be necessary to protect those who may not be able to take care of their own assets.

If you feel it appropriate, I would appreciate your sharing this information with the members of the Commission. If they decide that legislation is necessary, I would appreciate being given the opportunity to carry it.

For a brighter future --


SUNNY MOJONNIER
Assemblywoman, 75th District

cc: Hon. Ross Tharp
Judge of the Superior Court
San Diego County

Enclosures

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SENATOR

WADIE P. DEDDEH

Fortieth Senatorial District



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GROWTH
JOINT LEGISLATIVE
RETIREMENT COMMITTEE
JOINT COMMITTEE ON PUBLIC
PENSION FUND INVESTMENTS
NATIONAL CONFERENCE OF
STATE LEGISLATURES

November 9, 1987

Honorable Ross G. Tharp
Judge of the Superior Court
County Courthouse
San Diego, CA 92101

Dear Judge Tharp: *Ross*

Thank you for taking the time to inform me of your concern regarding conservators who misuse estate money.

I took the liberty of forwarding your letter with the attached article to the Senate Judiciary Committee for their review. According to committee records, there has not been any legislation introduced in the last two years that addresses the appointment or qualifications of conservators.

In light of the fact that nothing is being done legislatively, I contacted Mr. John DeMouilly, Executive Secretary to the California Law Revision Commission. He informed me that the Commission is currently requesting input from the State Bar's probate attorneys. After receiving the information from the State Bar, the Commission is planning on putting the issue of conservators on the agenda of an upcoming meeting.

Please be assured that I will forward the Commission's findings to you.

Sincerely,

WADIE P. DEDDEH
Senator, 40th District

WPD:njp

Exhibit 7

STATEMENT OF DUTIES AND LIABILITIES
OF CONSERVATOR OF THE ESTATE

Probate Code § 1831 (added). Statement of duties and liabilities of
conservator of the estate

SEC. _____. Section 1831 is added to the Probate Code, to read:

1831. (a) The court may require the conservator of the estate to file an acknowledgment of receipt of a statement of duties and liabilities of the office. The court may by local rule require the acknowledgment of receipt to include the conservator's social security number and drivers' license number, if any, if the court has adopted a procedure that ensures their confidentiality.

(b) The statement of duties and liabilities, whether in the form provided in subdivision (c) or prescribed by the Judicial Council, does not supersede the law on which the statement is based.

(c) Unless the Judicial Council has prescribed the form of the statement, it shall be in the following form:

DUTIES AND LIABILITIES OF CONSERVATOR OF THE ESTATE

You have been appointed conservator of the estate of _____, conservatee. When you file your bond and take your oath as conservator, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you regarding these matters. You should clearly understand the following:

1. You must manage the assets with the care of a prudent person dealing with someone else's property. This means you must be cautious and you may not make any speculative investments. You may deposit estate funds in insured accounts in financial institutions. You should consult an attorney before making other investments.

2. You must keep the money and property of the conservatee separate from anyone else's, including your own. When you open a bank account for conservatorship funds, the account should be in your name as "conservator of the estate of _____." Never deposit conservatorship funds in your personal account or otherwise commingle them with anyone else's property. The conservatee's securities should

be held in the same way, showing that they are conservatorship property and not your personal property. If the conservatorship includes more than one conservatee, you must be careful to keep a separate account of what belongs to each. Your surety who posts the bond guaranteeing the conservatee against loss may make certain requirements in regard to withdrawal of money from the bank, which is called joint control.

3. There are some restrictions on your authority to deal with conservatorship property. Conservatorship property may be used only for the benefit of the conservatee. You may reimburse yourself for official court costs paid by you to the County Clerk and for the premium on your bond. You may not pay fees to your attorney or to yourself without prior order of the court. Conservatorship property should be used to provide for the support, maintenance, and education of the conservatee. Your attorney will explain what you may do on your own, and what transactions require you first to obtain permission from the court.

4. You must attempt to locate and take possession of all the conservatee's property. Not more than 90 days after you qualify, you must file with the court an inventory of all money, goods, and other property coming into your hands as conservator. You must arrange to have the property appraised by a court appraiser. If, as conservator, you hold nothing but money and United States bonds with a fixed redemption value, you must nevertheless file an inventory, but you need not have the money and bonds appraised.

5. You should determine that there is appropriate and adequate insurance covering the assets and risks of the conservatorship estate. Maintain the insurance in force during the entire period of the conservatorship.

6. You must keep complete and accurate records of each financial transaction affecting the estate. You must keep a separate record of all money and property belonging to the conservatee and of all the disbursements you make that are chargeable to the conservatee. You should keep an accurate record of all deposits into and withdrawals from conservatorship bank accounts, showing the source of and amount of each deposit, the amount and purpose of each payment, and the person to whom paid. Because the funds can be used only for specified purposes,

you should consult an attorney before drawing any checks on the bank account of the conservatorship.

7. One year after you have qualified as conservator, and at least once every two years thereafter, you must file an account showing what you received as conservator, what income you received during the period of the accounting, what you spent, and the date of each transaction. The account must also list the money and property left in your control at the end of the accounting period, for which you are responsible for the next accounting period. Your account will be reviewed by the court. Save your receipts because the court may ask to review them. If you do not file your accounts as required, the court will order you to do so. You may be removed as conservator if you fail to comply.

8. You may spend a reasonable and prudent amount for the support and maintenance of the conservatee, and of those legally entitled to support and maintenance from the conservatee, without a court order. You assume personal responsibility for any excessive payments. You may not use the conservatorship estate for the support of any other person without prior court approval.

9. Generally, you must obtain the court's permission to sell, lease, mortgage, or invest property of the conservatee. These applications should be made through your attorney.

10. A court investigator will visit the conservatee one year after your appointment and every two years thereafter and will report to the court. Any time information is received that the conservatee's best interests are not being served, the court investigator will investigate.

11. You should cooperate with your attorney and the court investigator's office at all times. The relationship between you and the court continues until terminated by court order. You will be expected to file a final account with the court. If you have any questions, contact your attorney.

I have read and understand the above instructions. My date of birth is: _____.

Dated: _____.

Signed: _____

Conservator

(d) The conservator's attorney may provide the conservator with an additional statement of duties and liabilities to supplement the statement required by this section.

Comment. Section 1831 is new, and is drawn from Section 8404 (personal representatives), from the Contra Costa County Probate Policy Manual, Exhibit B, and from the appendix to the Santa Clara County Probate Rules. See also W. Johnstone, G. Zillgitt & S. House, California Conservatorships § 4.70, at 214-16 (Cal. Cont. Ed. Bar, 2d ed. 1983).