

First Supplement to Memorandum 88-33

Subject: Study L-1036 - Attorney Fees in Probate (Written Contract
Between Public Administrator and County Counsel)

When the public administrator is personal representative and county counsel is estate attorney, does Business and Professions Code Section 6148 require them to have a written contract for legal services? County counsel is entitled to statutory probate fee, the same as private counsel. See Estate of Schnell, 82 Cal. App. 2d 170, 185 P.2d 854 (1947). (The text of Section 6148 is set out in Exhibit 1 to Memo 88-33.) A written contract seems superfluous in such a case.

Arguably, Section 6148 does not require a written contract in such a case, because the section does not apply if the client is a corporation. Perhaps "corporation" includes counties as municipal corporations. See Black's Law Dictionary 1169 (4th ed. 1951). However, it seems preferable to add language to Section 6148 to make clear that it does not apply to the public administrator and county counsel. The staff recommends the following:

6148. . . .

(d) This section shall not apply to any of the following:

(1) Services rendered in an emergency to avoid foreseeable prejudice to the rights or interests of the client or where a writing is otherwise impractical.

(2) An arrangement as to the fee implied by the fact that the attorney's services are of the same general kind as previously rendered to and paid for by the client.

(3) If the client knowingly states in writing, after full disclosure of this section, that a writing concerning fees is not required.

(4) If the client is a corporation.

(5) If the client is the public administrator and the attorney is the county counsel.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

City and County of San Francisco

PUBLIC ADMINISTRATOR
PUBLIC GUARDIAN:
James R. Scannell

ATTORNEY:
Lou Aronian



PUBLIC ADMINISTRATOR
PUBLIC GUARDIAN
1212 Market Street
San Francisco, CA 94102
Telephone 558-4161

March 31, 1988

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
Suite D-2
4000 Middlefield Road
Palo Alto, CA 94303-4739

CA LAW REV. COMM'N

MAR 31 1988

RECEIVED

Re: Fees

IN REPLY REFER
TO OUR FILE NO

Dear Mr. DeMouilly:

I have followed the various proposals regarding fees for personal representatives and their attorneys, and would like to point out that statutes applicable to the private sector may not be useful in the public sector.

Our attorneys usually work for the county along with the Public Administrators and negotiations would not be realistic.

To negotiate with heirs is often impossible, and on estates that are in conflict that we are forced into, neither side wants to discuss anything with us in a reasonable manner.

Depending on what type of legislation is decided upon, the Public Administrators Association would like to make some suggestions to avoid a gap in the statutes.

I will attend future LRC meetings as a representative of the Public Administrators Association.

Very truly yours,

JAMES R. SCANNELL
Public Administrator/
Public Guardian/
Public Conservator

JRS:lca

cc: JoAnne Ringstrom
President, PA-PG-PC Association