

Memorandum 89-35

Subject: 1989 Legislative Program (Miscellaneous Matters)

AB 156 (JUDICIARY/FRIEDMAN)—URGENCY PROBATE BILL

We have two matters to consider for inclusion in the probate cleanup bill.

County Counsel as Attorney for Public Guardian

Attached as Exhibit 1 is a letter from Harry Drabkin of the Stanislaus County Counsel's office suggesting that the 1989 probate cleanup bill have added to it a provision (to be located in the Government Code) that authorizes the Board of Supervisors of a county to require the Public Guardian to be represented by the County Counsel:

The Board of Supervisors may by ordinance require that the County Counsel shall act as attorney for the Public Guardian in all proceedings in which the Public Guardian is a party in his official capacity. In those matters where the County Counsel furnishes representation, the County Counsel shall be awarded and collect the attorney's fees allowed by law, and pay them into the County Treasury.

This provision is modeled after a similar one applicable to the Public Administrator. While this provision seems unobjectionable on its face to the staff, we do not know what political ramifications may be involved. The staff would recommend against simply inserting a provision of this type in the urgency legislation. If the Commission is interested in pursuing this matter, it could circulate Mr. Drabkin's suggestion for comment, using the regular process we use for tentative Commission proposals. If the Commission is not interested in pursuing this matter, we would suggest to Mr. Drabkin that there might be another appropriate organization that is interested in seeking legislation on the matter, such as the County Supervisors Association of California or the California State Association of Public Administrators, Public Guardians, and Public Conservators.

Priority for Appointment as Administrator

At the last meeting, the Commission decided to revise the priorities for appointment as administrator as follows, to conform more closely to intestate succession (Prob. Code § 6402):

8461. Subject to the provisions of this article, the following persons are entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse.
- (b) Children.
- (c) Grandchildren.
- (d) Other issue.
- (e) Parents.
- (f) Brothers and sisters.
- (g) Grandparents.
- (h) Issue of grandparents.
- (i) ~~Children~~ Issue of a predeceased spouse.
- (j) Other next of kin.
- (k) Relatives Parents of a predeceased spouse or issue of parents .
 - (l) Conservator or guardian of the estate of the decedent acting in that capacity at the time of death.
 - (m) Public administrator.
 - (n) Creditors.
 - (o) Any other person.

In Exhibit 2, the staff proposes to make a few additional revisions to Section 8461 that have not been seen by the Commission:

(1) The introductory clause is revised to make clear that each succeeding category relates to the decedent, and a conforming change is made in subdivision (o) (Exhibit 2).

(2) Proposed new subdivision (g) (Exhibit 2) gives issue of brothers and sisters of the decedent priority over decedent's grandparents, consistent with the priorities for inheritance under Section 6402(c)-(d).

(3) In subdivisions (k) and (l) (Exhibit 2), children of a predeceased spouse are given priority over other issue of a predeceased spouse. Under the inheritance statute, issue share equally if of the same degree of kinship to decedent. If of unequal degree, those of more remote degree take by representation. But the appointment statute contemplates that one person will be administrator, and therefore is more specific, with earlier generations of issue having priority over later ones. Thus, while the inheritance statute gives property to decedent's "issue," the appointment statute gives priority to

decedent's children, then grandchildren, then other issue. The proposal in Exhibit 2 to give children of a predeceased spouse priority over other issue of a predeceased spouse parallels the scheme with respect to decedent's issue.

(4) In subdivisions (n) and (o) 8461 (Exhibit 2), parents of a predeceased spouse are given priority for appointment over issue of such parents, consistent with the priorities for inheritance under Section 6402(g).

The amendment will be added to AB 156 if the bill is otherwise amended during the legislative process. If not, the amendment will be added to AB 158 (general probate bill).

SB 536 (BEVERLY)--ASSIGNMENT AND SUBLEASE

The assignment and sublease bill as introduced does not include decisions made at the February Commission meeting or revisions made by the staff for clarification in the process of preparing the recommendation for printing. We will amend these changes into the bill before it is heard in the Senate. The amendments are set out in Exhibit 3. The only changes of note are added detail in the parenthetical description of the "safe harbor" provision (Civil Code Section 1951.4(a)) and a reorganized sequence of Sections 1995.240-1995.260 as 1995.240-1995.270.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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Staff Counsel

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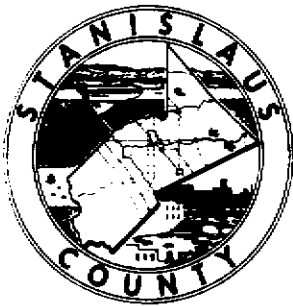
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CA LAW REV. COMMISSION

~~FEB 17 1989~~
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February 17, 1989

California Law Revision Commission
4000 Middlefield Road, Suite B-2
Palo Alto, CA 94303-4739

Dear Commissioners:

IN RE: STUDY L-2010, 1989 PROBATE CLEAN-UP BILL

AB 2841 of the 1988 session of the Legislature amended Government Code Section 27643. That Section essentially provides that the County Counsel shall act as the attorney for the Public Administrator, where the Board of Supervisors has so provided by ordinance. It does not appear that there is any similar statute concerning the duties of the County Counsel with regard to the Public Guardian. This seems to have been overlooked in the statutory changes the commission recommended to the Legislature for that bill. Although I know of no county in which the Public Guardian is represented by someone other than the County Counsel, except on an unusual ad hoc basis, it seems preferable to me that this be included in a statute. I recommend that as part of any clean-up legislation a Section be added to the Government Code County Counsel provisions (beginning with 27640) to provide basically as follows:

"The Board of Supervisors may by ordinance require that the County Counsel shall act as attorney for the Public Guardian in all proceedings in which the Public Guardian is a party in his official capacity. In those matters where the County Counsel furnishes representation, the County Counsel shall be

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awarded and collect the attorney's fees allowed
by law, and pay them into the County Treasury."

Very truly yours,

MICHAEL H. KRAUSNICK
County Counsel

By *Harry P. Drabkin*
Harry P. Drabkin
Deputy County Counsel

HPD/sjp

EXHIBIT 2

Probate Code § 8461 (amended). Priority for appointment as
administrator

SEC. _____. Section 8461 of the Probate Code is amended to read:

8461. Subject to the provisions of this article, ~~the following persons are~~ a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse.
- (b) Children.
- (c) Grandchildren.
- (d) Other issue.
- (e) Parents.
- (f) Brothers and sisters.
- (g) Issue of brothers and sisters.
- ~~(g)~~ (h) Grandparents.
- ~~(h)~~ (i) Issue of grandparents.
- ~~(i)~~ (j) Children of a predeceased spouse.
- (k) Other issue of a predeceased spouse.
- ~~(j)~~ (l) Other next of kin.
- ~~(k)~~ Relatives (m) Parents of a predeceased spouse.
- (n) Issue of parents of a predeceased spouse.
- ~~(l)~~ (o) Conservator or guardian of the estate of the decedent acting in that capacity at the time of death.
- ~~(m)~~ (p) Public administrator.
- ~~(n)~~ (q) Creditors.
- ~~(o)~~ (r) Any other person.

Comment. Section 8461 is amended to conform the priorities for appointment as administrator more closely to the priorities to take from the decedent by intestate succession. See Section 6402.

EXHIBIT 3

AMENDMENTS TO AB 536 (BEVERLY)
AS INTRODUCED

AMENDMENT 1

On page 3, lines 11 and 12, strike out "if lessee may" and insert:
and recover rent as it becomes due, if lessee has right to

AMENDMENT 2

On page 3, line 21, strike out "are" and insert:
is

AMENDMENT 3

On page 5, line 4, strike out "1995.250" and insert
1995.270

AMENDMENT 4

On page 5, line 5, strike out "all leases no matter when executed"
and insert:
a lease executed before, on, or after January 1, 1990

AMENDMENT 5

On page 5, line 20, after "1995.240." insert:

A restriction on transfer of a tenant's interest in a lease may
provide that the transfer is subject to any standard or condition,
including, but not limited to, a provision that the landlord is
entitled to some or all of any consideration the tenant receives from a
transferee in excess of the rent under the lease.

1995.250.

AMENDMENT 6

On page 5, line 32, strike out "1995.250." and insert:

1995.260. If a restriction on transfer of the tenant's interest
in a lease requires the landlord's consent for transfer but provides no

standard for giving or withholding consent, the restriction on transfer shall be construed to include an implied standard that the landlord's consent may not be unreasonably withheld. Whether the landlord's consent has been unreasonably withheld in a particular case is a question of fact on which the tenant has the burden of proof. The tenant may satisfy the burden of proof by showing that, in response to the tenant's written request for a statement of reasons for withholding consent, the landlord has failed, within a reasonable time, to state in writing a reasonable objection to the transfer.

1995.270.

AMENDMENT 7

On page 6, strike out lines 15 to 29, inclusive, and insert:

(b) Section 1995.260 applies to a restriction on transfer

AMENDMENT 8

On page 7, strike out lines 2 to 7, inclusive