

Memorandum 89-96

Subject: Study L-3028 - Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding

The Commission's *Tentative Recommendation Relating to Miscellaneous Probate Code Revisions* includes a recommendation that Probate Code Section 2333 (action against sureties on bond of guardian or conservator) be revised to make it similar to the provision for decedents' estates (Section 8488). We have prepared this recommendation in the form of a separate Recommendation which is attached.

Guardianship-conservatorship law requires an action against sureties on a bond to be commenced within four years from discharge or removal of the guardian or conservator, or within four years from the date the order surcharging the guardian or conservator becomes final, whichever is later. But a person under legal disability may commence the action within four years after the disability is removed.

For decedents' estates, the period for bringing an action on a bond is four years from the time of discharge, without tolling for legal disability. The no-tolling rule was adopted for decedents' estates upon Commission recommendation because of the need for finality in probate proceedings. A person under legal disability is not left unprotected, because a guardian ad litem may be appointed to bring the action. Prob. Code § 1003.

The Commission's Recommendation would conform guardianships and conservatorships to decedents' estates by eliminating tolling for legal disability. In support of this recommendation, the Commission states:

Tolling was eliminated for decedents' estates because of the need to ensure finality. If necessary to protect the interests of a person under legal disability, a guardian ad litem may be appointed to bring the action.

The need for finality is equally great in guardianship and conservatorship proceedings. The law governing guardianships and conservatorships should be conformed to the law governing decedents' estates by eliminating tolling for

legal disability in determining the time for commencing an action to recover from the sureties on the bond of the guardian or conservator. A guardian ad litem may be appointed, if necessary, for action on the bond in guardianship and conservatorship proceedings, the same as in decedents' estates. [Footnotes omitted.]

The only comment on this recommendation that was not favorable came from Grace Tam, who states:

Probate Code § 2333(e) should be retained for Probate law to be consistent with general civil law on tolling. The recommended change is unwarranted because conservatorships are in fact different from decedent's estates.

The Probate Code contains many statute of limitations that do not provide for tolling. Section 8488 is one of these provisions and provides:

8488. No action may be maintained against the sureties on the bond of the personal representative unless commenced not later than four years after the discharge of the personal representative.

Section 8488 contains no provision for tolling. The statute of limitations for an action against the sureties on the bond of the guardian or conservator under the Commission's recommendation actually is more favorable to the person bringing the action, since it also permits the action to be brought within four years from the date an order surcharging the guardian or conservator becomes final.

The Commission's recommendation was sent to 268 persons and organizations (in addition to the State Bar Section); only one person objected to it. The reason given in support of the only objection received does not persuade the staff that the Commission's recommendation is unsound. The need for finality of probate proceedings applies with equal force to winding up a guardianship or conservatorship estate.

Accordingly, the staff recommends that the Commission approve the attached recommendation for printing and submission to the 1990 Legislature.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

**Limitation Period for Action Against
Surety in Guardianship or
Conservatorship Proceeding**

December 1989

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding*, 20 Cal. L. Revision Comm'n Reports 563 (1990).

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

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December 1, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

This recommendation proposes that the limitation period for commencing an action against the sureties on the bond of a guardian or conservator be conformed to the law governing decedents' estates, so there will be a uniform four-year limitation period without tolling. This will eliminate the existing provision of the guardianship-conservatorship law tolling the limitation period in case of disability.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Edwin K. Marzec
Chairperson

RECOMMENDATION

An action against sureties on the bond of a guardian or conservator must be commenced within four years from discharge or removal of the guardian or conservator, or within four years from the date the order surcharging the guardian or conservator becomes final, whichever is later.¹ If a person entitled to bring the action is under a legal disability to sue, the person may commence the action within four years after the disability is removed.²

For a bond given by a personal representative in a decedent's estate, the period for bringing an action on the bond is four years from the discharge of the personal representative, without any tolling period for legal disability.³ Tolling was eliminated for decedents' estates because of the need to ensure finality. If necessary to protect the interests of a person under legal disability, a guardian ad litem may be appointed to bring the action.⁴

The need for finality is equally great in guardianship and conservatorship proceedings. The law governing guardianships and conservatorships should be made consistent with the law governing decedents' estates by eliminating tolling for legal disability in determining the time for commencing an action to recover from the sureties on the bond of the guardian or conservator. A guardian ad litem may be appointed, if necessary, for action on the bond in guardianship and conservatorship proceedings, the same as in decedents' estates.⁵

The recommended legislation amends a section of the new Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759. The recommended

1. Prob. Code § 2333.

2. Prob. Code § 2333.

3. See Prob. Code § 8488.

4. Prob. Code § 1003.

5. Prob. Code § 1003.

legislation will become operative at the same time as the new Probate Code becomes operative.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following amendment:

Probate Code § 2333 (amended). Limitation period for suit against sureties on bond of guardian or conservator

2333. (a) In case of a breach of a condition of the bond, an action may be brought against the sureties on the bond for the use and benefit of the ward or conservatee or of any person interested in the estate.

(b) ~~Except as provided in subdivision (c),~~ *No* action may be maintained against the sureties on the bond unless commenced within four years from the discharge or removal of the guardian or conservator or within four years from the date the order surcharging the guardian or conservator becomes final, whichever is later.

~~(c) If at the time of the discharge or removal of the guardian or conservator or when the order of surcharge becomes final any person entitled to bring the action is under any legal disability to sue, such person may commence the action within four years after the disability is removed.~~

Comment. Section 2333 is amended to delete subdivision (c) to make the rule under Section 2333 consistent with the rule for decedents' estates. See Section 8488.

Note. This amendment to Section 2333 is made to Section 2333 of the Probate Code as it will be proposed to be enacted at the 1990 legislative session by Assembly Bill 759.