

Memorandum 90-46

Subject: Study L-1040 - When Public Administrator Must Petition for Appointment as Personal Representative

At the last meeting, the Commission considered a suggestion from Howard Serbin of the County Counsel's Office of Orange County that the public administrator not be required to petition for appointment as personal representative unless there are no known beneficiaries as was provided under prior law. Under the new law, the public administrator must petition if "no other person having higher priority has petitioned for appointment." Prob. Code § 7620. Mr. Serbin is concerned that the new law requires the public administrator to petition where the beneficiaries choose not to do so. He thinks the public administrator should have discretion not to petition in such a case. In an appropriate case, the court can order the public administrator to petition. *Id.* The staff agreed with Mr. Serbin's view.

The Commission did not want to go as far as Mr. Serbin suggested. The Commission was concerned that the court might not be aware of the need to order the public administrator to petition. The Commission asked the staff to give the matter more thought, and to discuss it with Mr. Serbin and with Wilcox Stoddard in the Los Angeles County Counsel's Office.

The staff has discussed this question with Mr. Serbin and Mr. Stoddard. Both prefer to go back to prior law (petition required where no known beneficiaries). On the assumption that the Commission still does not want to do this, the staff suggests the following as an intermediate solution:

Probate Code § 7620 (amended). Petition for appointment as personal representative

7620. The public administrator of the county in which the estate of a decedent may be administered shall promptly:

(a) Petition for appointment as personal representative of the estate if the public administrator has taken possession or control of property of the decedent pursuant to Section 7601 and no person having higher priority has petitioned for appointment.

(b) Petition for appointment as personal representative of any other estate the public administrator determines is proper.

(c) Accept appointment as personal representative of an estate when so ordered by the court whether or not on petition of the public administrator, after notice to the public administrator as provided in Section 7621.

Comment. Subdivision (a) of Section 7620 is amended to limit the requirement that the public administrator must petition for appointment as personal representative where no person having higher priority has done so to the case where the public administrator has taken possession or control of property of the decedent pursuant to Section 7601. Under Section 7601, the public administrator must take possession or control of decedent's property that is subject to loss, injury, waste, or misappropriation.

The staff asked Mr. Serbin to try to get us his comments on this proposal before the April meeting. (The staff was unable to discuss it with Mr. Stoddard because he has retired.)

Respectfully submitted,

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Staff Counsel