

First Supplement to Memorandum 90-46

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

Probate Code Section 7620 requires the public administrator to petition for appointment as personal representative "if no person having higher priority has petitioned." Under prior law, the public administrator had to petition only if there were "no known heirs."

At the March meeting, the Commission considered a suggestion from Howard Serbin, Deputy County Counsel for Orange County, to restore prior law. The Commission did not want to go so far. The Commission was concerned that if there were beneficiaries who declined to petition and the public administrator did not have to do so, the court might remain unaware of the need to exercise its discretion under Section 7620 to order the public administrator to petition. To address the Commission's concern, the staff in the basic memo (90-46) revised the proposal to limit the public administrator's duty to petition to the case where the public administrator has taken possession of decedent's property subject to loss, injury, waste, or misappropriation and no person having higher priority has petitioned.

The staff discussed the revised proposal with Mr. Serbin before the April meeting. He thought the public administrator should be able to request in the petition either that the court appoint another person who has agreed to serve or that no personal representative be appointed. The staff prepared a revised draft (handed out at the April meeting) to carry out Mr. Serbin's suggestion. The State Bar representative thought the Probate Section would be cool to this idea: If the duty to petition is limited to the case where the public administrator has taken possession of decedent's property, the public administrator might petition only in more lucrative estates.

This concern may be addressed by keeping the language that the public administrator must petition "if no person having higher priority has petitioned" while adding the authority suggested by Mr. Serbin for the petition to name someone else who has agreed to serve or to request that no personal representative be appointed:

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

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

(a) (1) Petition for appointment as personal representative of the estate if no person having higher priority has petitioned for appointment.

(b) (2) Petition for appointment as personal representative of any other estate the public administrator determines is proper.

(c) (3) 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.

(b) A petition filed by the public administrator under subdivision (a) may name as the proposed personal representative either the public administrator or any interested person who has agreed to serve.

(c) A petition naming the public administrator as proposed personal representative may state that appointment of a personal representative is unnecessary, and may request that a personal representative not be appointed. The court may decline to appoint a personal representative if the court determines all of the following:

(1) All known persons with priority over the public administrator for appointment as personal representative have been given notice of the hearing by mail or personal delivery at least 15 days before the hearing and that none of them have agreed to serve.

(2) The circumstances of the estate do not justify further involvement of the public administrator and the use of public resources.

Comment. Section 7620 is amended to add new subdivision (b) to permit the public administrator to recommend to the court that some other person be appointed as personal representative, and to add new subdivision (c) to give the court discretion to decline to appoint a personal representative in an appropriate case.

As indicated by Mr. Serbin's letter, attached as Exhibit 1, he thinks this draft is satisfactory.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel



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Dear Mr. Murphy:

Thank you for your first supplement to memorandum 90-46.

I support the proposal. It goes a long way toward addressing the concerns expressed in my original proposal, while also insuring that cases where the Court may need to exercise discretion under Section 7620 are brought to the Court's attention.

Thank you again for your good work and your courtesy in this matter.

Very truly yours,

ADRIAN KUYPER, COUNTY COUNSEL

By Howard Serbin
Howard Serbin, Deputy

HS:mm

cc: Carol Gandy, Assistant Public Administrator, Orange County
Dwight G. Tipping, Jr., Supv. Deputy Public Administrator