

Meeting

Date of Meeting: April 17-18, 1959  
Date of Memo: April 16, 1959

Memorandum No. 5

SUBJECT: Study #20 - Guardians for Nonresidents

A. B. 401

The Commission's bill on this subject has passed the Assembly and is set for hearing by the Senate Judiciary Committee on April 30.

Yesterday Mr. Elmore of the State Bar gave me the following materials relating to this bill:

1. From the minutes of the meeting of the Southern Section of the C.A.J. on January 12, 1959 the following excerpt:

Law Revision Commission - Guardianship Procedure

It was moved, seconded and carried that the report of Lawrence L. Otis dated January 5, 1959 be approved and be attached to the minutes as Exhibit A; that the Section does not object to the provision for an affidavit from a physician, surgeon, director or superintendent (or deputy) in another state. The Section, however, favors a modification of the provision, middle of page 6 of the recommendation as suggested in the Otis report.

It was moved, seconded and carried to approve the insertion in the third paragraph of proposed amendment 1461, being the 10th line from the bottom of Page 6 of the recommendation of the Commission, after word "mailed" the words "by the petitioner".

Note: Mr. Otis's report, referred to in the minutes, generally approved the Commission's recommendations. He raised a question as to the desirability of accepting a doctor's affidavit; the Section decided not to object to this. Mr. Otis also raised a question whether service of the citation on the alleged insane or incompetent person at least 10

days before the hearing allows sufficient time to obtain representation at the hearing. He recommended the substitution, for the last sentence of the second paragraph of Section 1461 (lines 22-25 of page 2 of A.B. 401) of the following provision:

"Unless the time is shortened by the court for good cause shown, such service shall be made on the alleged insane or incompetent person at least 15 days before the time of hearing, if he is served within the state; and, where delivery is made to him personally outside the state, it shall be made at least 30 days before the time of hearing."

The Southern Section accepted this recommendation and the Northern Section concurred in this action.

2. Excerpt from minutes of meeting of Northern Section of C.A.J. on February 9, 1959:

Guardians for non residents.

Mr. Abel orally reported to the section after which preliminary consideration was given to the matter.

1. The section is of the opinion that Probate Code 1570 should be made to conform to Section 1461, in regard to those entitled to file the petition, instead of the converse (i.e. both sections should read "relative or friend" and the phrase "or of anyone interested in his estate, in expectancy or otherwise" should be deleted from Section 1570). It was pointed out that in the conservatorship provision (Sec. 1754), the phrase used is "relative or friend ... other than a creditor". The words "relative or friend" appear to be adequate for guardianships as a creditor who is also a relative should be allowed to file a petition for guardianship.

It was agreed that a spouse should be allowed to file the petition and it is assumed that "relative or friend" includes a spouse. However, this question was referred to staff for check.

We are not certain of the meaning of the words "person interested in his estate in expectancy or otherwise". It could mean a person with a contingent reversionary interest or an heir. It probably does not mean a legatee of a will as a will is of no effect until death. At any rate, we feel that "relative or friend" is broad enough to cover all those which should be allowed to file a petition.

2. Notice provisions.

It was agreed that the time for serving notice of the proceedings on the incompetent should be made to conform to those now appearing in the conservatorship provision in Section 1754 (i.e., 5 days before the hearing if served within the state and 10 days if served without the state). This would give adequate notice and still, in most cases, not require application to the court for an order to shorten time.

The question was raised, but no determination reached, that the provision in Section 1754 providing for service on the relatives at least 20 days before the hearing may be too long in the guardianship situation. There is no provision for appointment of a temporary guardian contrary to the provisions of Secs. 2201-2207 re temporary conservators. - Continued.

3. Excerpts from minutes of Northern Section of C.A.J. of

February 16, 1959:

Guardians for non residents (See Assembly Bill 401).

Mr. Abel made a further report to the section after which the following action was taken.

We concur with the action expressed by the Southern Section in its minutes of January 12, 1959 and Mr. Otis' report attached thereto (i.e., approval with amendments suggested) but raise the following points to which the Law Revision Commission may wish to give consideration in the interest of further conformity within its own proposal and with the existing conservatorship provisions.

1. Reference is again made to our prior observations with respect to the absence of conformity with the conservatorship provisions re time required for notice to the incompetent.

2. In regard to the notice requirement to relatives, it is noted that the conservatorship provision in Section 1754 provides for 20 days. This may in some cases be too long in guardianship cases but should not work any hardship if the provision allowing an order to shorten time is retained in the Commission's proposal.

3. It is noted in Section 1461 that if the incompetent is not within the state and is not produced pursuant to court order, the penalty is dismissal of the petition. There is no similar penalty in the case of an incompetent who is within the state. We express no view on the merits of a dismissal in either case. However, if one of the purposes of the proposal is uniformity, the information presently before us does not indicate why the two cases are treated differently.

NOTE: In regard to notice to relatives there is apparently a typographical error in Mr. Otis' report. The Commission recommended 10 days notice in its report (p. 3) but in its draft of Sec. 1461 proposed 15 days.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary