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#L-1040

First Supplement to Memorandum 86-19

Subject: Study L-1040 - Estates and Trusts Code (Public Guardian--
staff draft)

Attached to this memorandum is a staff draft of the statute governing the public guardian. The draft relocates existing law from the Welfare and Institutions Code to the guardianship and conservatorship portion of the Estates and Trusts Code. A few Notes and Queries are made following the provisions of the relocated statute.

Our objective at this point is to complete initial review of the draft with the goal of preparation of a tentative recommendation that can be sent out for comment as a package with the public administrator provisions.

Respectfully submitted,

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Assistant Executive Secretary

Staff Draft
PUBLIC GUARDIANS

Welfare & Institutions Code §§ 8000-8015 (repealed)

SEC. __. Chapter 1 (commencing with Section 8000) of Division 8 of the Welfare and Institutions Code is repealed.

Comment. Former Sections 8000 to 8015 are relocated to Part 5 (commencing with Section 2900) of Division 4 of the Estates and Trusts Code. The disposition of the former provisions is indicated below.

<u>Former Provision</u>	<u>Est. & Tr. Code Section</u>
8000	2900
8001	2901
8002	2902
8003	2903
8004	2904
8005	2905
8006	
First sentence	2910
Second sentence	2911
Third sentence	2911, 2912
Fourth sentence	2912
Fifth sentence	2913(a)
8006.5	2913(b)
8007	2914
8008	2906
8009	2920
8010	2921
8011	2922
8012	2923
8013	2924
8014	2915
8015	2907

Estates and Trusts Code §§ 2900-2924 (added)

SEC. __. Part 5 (commencing with Section 2900) is added to Division 4 of the Estates and Trusts Code, to read:

PART 5. PUBLIC GUARDIAN

CHAPTER 1. OFFICE OF PUBLIC GUARDIAN

§ 2900. Creation of office

2900. (a) In any county the board of supervisors may by ordinance create the office of public guardian and such subordinate positions as may be necessary and fix compensation therefor.

(b) The board of supervisors may appoint a public guardian to fill the office and provide for appointment to the subordinate positions.

Comment. Section 2900 continues former Welfare and Institutions Code Section 8000 without substantive change.

§ 2901. Public administrator as public guardian

2901. The board of supervisors may provide by ordinance that the public administrator is ex officio public guardian.

Comment. Section 2901 continues former Welfare and Institutions Code Section 8001 without substantive change.

§ 2902. Termination of office

2902. The board of supervisors may by ordinance terminate the office of public guardian.

Comment. Section 2902 continues former Welfare and Institutions Code Section 8002 without substantive change.

§ 2903. Termination of public administrator as public guardian

2903. If the public administrator has been designated ex officio public guardian the board of supervisors may by ordinance terminate the designation and appoint another public guardian and all authority vests in the successor.

Comment. Section 2903 continues former Welfare and Institutions Code Section 8003 without substantive change.

§ 2904. Termination of public guardian and appointment of public administrator

2904. If the board of supervisors has not designated the public administrator as ex officio public guardian but has appointed another to the office of public guardian it may terminate the appointment and by ordinance may designate that the public administrator is ex officio public guardian and all authority vests in the successor.

Comment. Section 2904 continues former Welfare and Institutions Code Section 8004 without substantive change.

§ 2905. Termination of authority of public guardian

2905. The authority of the public guardian or ex officio public guardian ceases upon the termination of his or her tenure in office as public guardian or ex officio public guardian and his or her authority vests in his or her successor.

Comment. Section 2905 continues former Welfare and Institutions Code Section 8005 without substantive change.

§ 2906. Official bond

2906. The public guardian shall give an official bond in such amount as may be fixed, from time to time, by the board of supervisors. The bond shall be for the joint benefit of the guardianship or conservatorship estates and the county, and the public guardian shall not be required to give bonds in individual estates.

Comment. Section 2906 continues former Welfare and Institutions Code Section 8008 without substantive change. See also Section 2912 (letters, oath, and bond).

§ 2907. Advance on expenses of public guardian

2907. (a) Necessary expenses of the public guardian in the conduct of any guardianship or any conservatorship estate may be advanced by the county. If so ordered by the board of supervisors such expenses shall be a county charge, but the county shall be reimbursed therefor out of any funds or property of the estate by the public guardian.

(b) As a means of advancing necessary expenses to a public guardian who receives a salary in lieu of fees, the county board of supervisors may establish a revolving fund to be used by the public guardian. The revolving fund shall be established pursuant to Article 7 (commencing with Section 29460) of Chapter 2, Division 3, Title 3 of the Government Code.

Comment. Section 2907 continues former Welfare and Institutions Code Section 8015 without substantive change.

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

§ 2910. Application for appointment

2910. The public guardian may apply for appointment as guardian or conservator of the person and estate or person or estate of any of the following persons:

(a) Any person in the county or in a county-owned facility in another county who is a patient under the provisions of the Welfare and Institutions Code.

(b) Any person in the county who is a recipient of aid under any provision of the Welfare and Institutions Code, if it appears that the person requires a guardian or conservator.

(c) Any person in the county who requires a guardian or conservator and for whom there is no person qualified and willing to act as guardian or conservator.

Comment. Section 2910 restates the first sentence of former Welfare and Institutions Code Section 8006 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Trust company as fiduciary § 300

§ 2911. Where person and property ordered into hands of public guardian

2911. If the court orders any person and estate into the hands of the public guardian, the public guardian shall apply for appointment as guardian or conservator of the person and estate.

Comment. Section 2911 restates the second sentence and a portion of the third sentence of former Welfare and Institutions Code Section 8006 without substantive change.

§ 2912. Letters, oath, and bond

2912. If the public guardian is appointed as guardian or conservator:

(a) The public guardian shall procure letters of guardianship or conservatorship in like manner and on like proceedings as letters of guardianship or conservatorship are issued to other persons.

(b) The official bond and oath of the public guardian are in lieu of the guardian or conservator's bond and oath on the grant of letters of temporary guardianship or letters of guardianship or letters of temporary conservatorship or letters of conservatorship.

Comment. Section 2912 continues the third and fourth sentences of former Welfare and Institutions Code Section 8006 without substantive change. See also Section 2906 (official bond).

§ 2913. Taking charge of property

2913. (a) The public guardian may take immediate charge of property within the county of persons referred to the public guardian for guardianship or conservatorship if the property is being wasted, uncared for, or lost.

(b) A public guardian who takes charge of property pursuant to this section is entitled to costs incurred for the protection of the estate, together with a reasonable fee for services of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) in case of the subsequent appointment of another person as guardian or conservator of the estate. The costs and fee are a proper and legal charge of the estate of the ward or conservatee.

Comment. Subdivision (a) of Section 2913 continues the fifth sentence of former Welfare and Institutions Code Section 8006 without substantive change. Subdivision (b) restates former Welfare and Institutions Code Section 8006.5 without substantive change.

QUERY. What sort of referral is referred to here? The staff believes this is intended to refer to the situation where the court orders a person and estate "into the hands" of the public guardian; we are seeking more information on this point.

§ 2914. Persons under jurisdiction of Departments of Mental Health or Developmental Services

2914. If the public guardian makes application under Section 2910 for guardianship or conservatorship of the person and estate or person or estate of any person who is under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, the application shall not be granted without the written consent of the department having jurisdiction of the person.

Comment. Section 2914 continues former Welfare and Institutions Code Section 8007 without substantive change.

§ 2915. Fees of county clerk

2915. No fees shall be charged or received by the county clerk for the filing of any guardianship or conservatorship petition by the public guardian nor for any official service performed by the public guardian in the course of the proceedings.

Comment. Section 2915 continues former Welfare and Institutions Code Section 8014 without substantive change.

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

§ 2920. Deposit of funds

2920. (a) All funds coming into the custody of the public guardian shall be deposited or invested in one or more of the following:

(1) Deposited in the county treasury and disbursed by proper warrant issued pursuant to Chapter 5 (commencing with Section 29800) of Division 3 of Title 3 of the Government Code.

(2) Deposited in one or more insured banks or invested in one or more accounts in insured savings and loan associations or shares in insured credit unions in the state. The public guardian is not legally responsible for funds coming into the public guardian's custody while the funds are so deposited or invested.

(b) Money deposited with the county treasurer or with an insured bank or invested in an account in an insured savings and loan association or in shares in an insured credit union may be withdrawn only upon an order of the public guardian.

(c) The public guardian shall credit each estate with the highest rate of interest or dividends that the estate would have received if the funds available for deposit or investment had been individually and separately deposited or invested in [the] [an] insured bank, savings and loan association, or credit union. Any other interest or dividends credited to the account of the public guardian shall be deposited in the county general fund in an amount no more than necessary to offset the cost to the general fund of the services of the public administrator and public guardian.

Comment. Section 2920 continues former Welfare and Institutions Code Section 8009 without substantive change, with the addition of authority for investment in shares in an insured credit union.

GROSS-REFERENCES

Definitions

Account in insured savings and loan association § 22

Shares in an insured credit union § 72

QUERY. Is subdivision (c) intended to apply to deposit in the county treasury as well?

NOTE. This parallels a comparable provision in the public administrator statute. The two will be made consistent or combined.

The staff is developing uniform language to refer to insured deposits in banks and insured investments in savings and loan accounts and credit union shares in this state, for use throughout the code.

§ 2921. Employment of attorneys

2921. If necessary the public guardian in the public guardian's discretion may employ private attorneys where the cost of employment can be defrayed out of estate funds.

Comment. Section 2921 continues former Welfare and Institutions Code Section 8010 without substantive change.

§ 2922. Appraisal of estate

2922. If the value of the real and personal property of the estate appears to be less than fifty dollars (\$50) it shall not be necessary to have the property appraised. No appraisal shall be required in any estate handled by the public guardian if the estate consists of money only or money and other property of a value of fifty dollars (\$50) or less.

Comment. Section 2922 continues former Welfare and Institutions Code Section 8011 without substantive change.

§ 2923. Disposition of property on death of ward or conservatee

2923. (a) Pursuant to Section 2631, the public guardian upon the death of the ward or conservatee may pay in full or in part from assets of the ward or conservatee that are under the control of the public guardian the unpaid expenses of burial and last illness of the ward or conservatee.

(b) If, after the death of the conservatee or ward and after deduction of the cost or payment of burial and last illness expenses pursuant to Section 2631, the total market value of the estate of the decedent does not exceed the amount set forth in Section 13100, the public guardian may apply to a judge of the superior court for an order permitting the public guardian to sell any personal property of the decedent, to withdraw any money of the decedent on deposit with any bank or other commercial savings institution, and to collect any debt, claim, or insurance proceeds that may be owing to the decedent or the decedent's estate. If the order is granted, any person or institution shall pay or deliver money or property to the public guardian. Application for such an order may be made whether or not there is a will of the decedent in existence if the will does not appoint an executor or if the named executor refuses to act. No notice of the application need be given. After the payment of any remaining amounts due for burial and last illness, the public guardian may transfer any remaining assets in accordance with and subject to the provisions of Chapter 3 (commencing with Section 13100) of Part 1 of Division 8. The value of the property for the purpose of ascertaining the right to transfer under those provisions shall be determined after deduction of the remaining amounts paid.

Comment. Section 2923 restates former Welfare and Institutions Code Section 8012 without substantive change.

QUERY. Does this section serve a useful purpose, or does it just duplicate Section 2631?

§ 2924. Expenses of public guardian

2924. The public guardian has a claim against the estate of the ward or conservatee for all of the following:

(a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.

(b) Such compensation for services of the public guardian and the attorney of the public guardian as the court in which the accounts are settled deems just and reasonable.

Comment. Section 2924 restates former Welfare and Institutions Code Section 8013 without substantive change.