

Memorandum 86-207

Subject: Study L-1040 - Public Guardian and Public Administrator
(Comments on Tentative Recommendation)

The Commission distributed for comment in September 1986 its tentative recommendation relating to public guardians and public administrators. We have received the letters attached to this memorandum as Exhibits 1-28. This memorandum analyzes the general comments included in the letters. Points addressed to specific provisions of the tentative recommendation are analyzed following the relevant provisions in the revised draft of the tentative recommendation, which is also attached to this memorandum.

Of the letters commenting on the tentative recommendation, over half commented generally on the recommendations. Of these all but one supported the recommendations, either without exception or subject to a few specific problems. Typical comments are: "Overall, the tentative recommendations are excellent." (Belan M. Wagner of Pacific Palisades (Exhibit 2)). "In my opinion, each change has merit, and I have no additional changes to suggest." (Judge Robert R. Willard of Ventura Superior Court (Exhibit 3)). "We are in agreement with almost all of the recommendations." (Barbara A. Cain, Deputy Public Administrator of Marin County (Exhibit 21)).

The California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 29) supports the tentative recommendations in general, and specifically applauds the Commission's efforts to cover, at least partially, the costs of the Public Guardian/Administrator. "Our Association appreciates the commission's appropriate shifts of the burden of costs of services from overburdened counties to the estates, insofar as is possible."

One commentator was disturbed by and objected to the general thrust of the tentative recommendations. Gilbert Moody of Turlock (Exhibit 7) states, "I think the Public Administrator's powers and reimbursement for expense should be much limited and restricted from their present powers rather than expanded. In fact, I think if there is anyone else available to act as a guardian or administrator,

particularly administrator, he should be given precedence over the Public Administrator, and the Public Guardian and Public Administrator should be at the bottom of the list of those who may be appointed." In support of this position, Mr. Moody cites the experience of his firm with the public administrator's office. He believes the office is insensitive to the needs and feelings of interested persons. He reports a case where the public administrator's office advised a person to let that office handle the estate because a private lawyer would be more time consuming and expensive. He reports another case where a person in a mental health unit for a short time because of alcoholism returned home to find the public guardian had cleaned out the house and sold all the furnishings for a small amount.

In fact, the public administrator is already at the bottom of the list of appointees for administration. All kin and beneficiaries are higher in priority than the public administrator, and the only persons lower in priority are creditors and "other" persons.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

JEROME SAPIRO
ATTORNEY AT LAW
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Oct. 10, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA, 94303-4739

Re: Tentative Recommendations,
dated September, 1986
Proposed Estate and Trust Code

Hon. Commissioners:

Thank you for the opportunity to review and comment upon your proposed recommendations concerning the following subjects.

PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR, #L1040, Sept. 1986

On the question raised at p.4 of your resume concerning elimination of appraisal or self-appraisal by a conservator or Public Guardian, they are not normally qualified to make such appraisals (when not a co-owner) on such items as jewelry, furnishings, securities, etc. In small estates we can usually obtain broker's appraisals for free and others do cooperate in keeping cost down, if aware of the circumstances. Appraisals do serve as a protection to both conservators and the Public Guardian. Perhaps some provision accepting letterhead appraisals from qualified sources as an alternative to formal Referee appraisal in small estates should be considered.

Your recommendations at p. 5 and in §§ 2920 and 7621 adding that a Public Guardian or Public Administrator can take charge of property to protect against misappropriation is a good one. Over-reaching of the infirm and elderly is too frequent an occurrence, and anything that will allow the protection of them and their estates gets my approval.

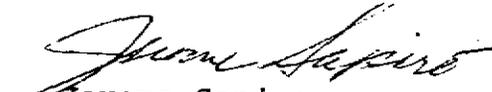
I do think that the temporary file retention period for the Public Administrator discussed at p.8 and contained in §7685 (b) at p.32 is too short. The proposed 2 year period should be extended to 4 or 5 years. It would be more appropriate and protective. The permanent filed statement is but a resume and may not reveal all that original records do.

CAVEAT the proposal that unclaimed summary disposition funds should be deposited into the County Treasury as part of the general fund seems wrong. (p.9 and §7643(a)). It is my recommendation that such funds be deposited with the County Treasurer for ultimate transmission to the State Treasurer. These funds should be used as part of State planning and funding, i.e., the State could grant assistance from such earmarked funds to Counties prorated in accordance with their population to assist the elderly and infirm. You have included and recommended other provisions in the law to see that counties are reimbursed and Public Guardians and Public Administrators and their expenses paid.

§7682 concerning payment of debts, -what about the payment of any taxes or public liens for past care? Should this not be specifically mentioned, and a position of priority assigned? It might be well to add that no formal claim is required, - a letter or other written notice should suffice. This should be spelled out in the section,

In any event, I do appreciate the chance to review these proposals in advance. It is part of the educational process.

Respectfully,


Jerome Sapiro

JS:mes

BELAN M. WAGNER
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PACIFIC PALISADES, CA 90272
(213) 454-0637

October 10, 1986

California Law Revision Committee
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Comments relating to
TENTATIVE RECOMMENDATIONS FOR
PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR

Gentlemen:

Overall, the tentative recommendations are excellent.

However, please refer to proposed section 7681(d). I do NOT believe the public administrator should have authority to sell real property of a decedent without permission of the Court first had and obtained after notice to all interested persons.

Very truly yours,


BELAN M. WAGNER

BMW:df

CHAMBERS OF
The Superior Court
VENTURA, CALIFORNIA
ROBERT R. WILLARD, JUDGE

L-1040
L-1033
L-1035
L-800
L-1045

October 10, 1986

California Law Revision Commission
4000 Middlefield Rd.
Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

I have reviewed the five tentative recommendations relating to probate law and procedure that you mailed October 3, 1986.

In my opinion each change has merit, and I have no additional changes to suggest.

I am sending the tentative recommendation on public guardians and administrators to the Ventura County Public Guardian and Administrator for her comments, if any.

Sincerely,


Robert R. Willard
Judge of the Superior Court

RRW:vm

cc: Catherine E. Johnston
Public Administrator & Guardian

HENRY ANGERBAUER, CPA
4401 WILLOW GLEN CT.
CONCORD, CA 94529

L-1040
L-1033
L-1035
L-800
L-1045

10/13/86

Law Revision
Commission

I have read the following Tentative Recommendations
Relating to the new estate and trust code

1. NonResident Decedent
2. Preliminary Provisions and Definitions
3. Determining Class membership
4. Administration of Estate of Missing Persons
Presumed Dead
5. Public Guardian and Public Administration

and agree with the Commission's conclusions
and recommendations and that the Commission
should make its views known to the Legislature
herewith. Thanks for permitting me to make
my views known.

Sincerely
HJA



Western Surety Company

Office of General Counsel

October 14, 1986.

California Law Revision Commission
State of California
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

Re: Studies L-800 & L-1040; Tentative Recommendations
Relating to Nonresident Decedents and Public Guardian
and Public Administrator (Our File CA 4372-B)

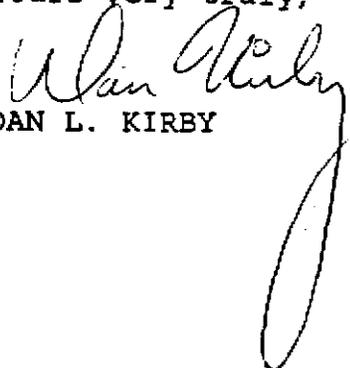
I am writing in general support of these recently distributed tentative recommendations relating to the proposed new estate and trust code. This Company writes fiduciary bonds of the sort contemplated in this proposal in all 50 states.

L-1040

This Company is in full agreement with proposed §2906 restating the requirement of bond currently contained in Welfare and Institutions Code §8008, and with all other provisions of this proposal.

Thank you very much for permitting us to comment on these tentative recommendations. Please keep us on the mailing list regarding these and related estate and trust recommendations.

Yours very truly,


DAN L. KIRBY

DLK:glh
cc: A-K Associates, Inc.

L-1040
L-1033
L-1035
L-800
L-1045

BURRISS, SUMNER & PALLEY
A PROFESSIONAL CORPORATION
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October 14, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

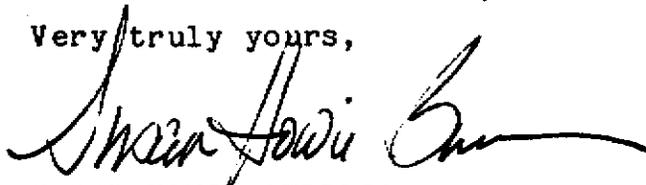
I have no comment with regard to most of the tentative recommendations relating to probate law, as most appear both necessary and useful.

I do object, however, to the change of title. I see no particular purpose in changing the name of the code from Probate Code to Estate and Trust Code, particularly in light of the fact that we are accustomed to dealing with a Uniform Probate Code as is most of the country.

The change of title is unnecessary, expensive, will create confusion, and in the long run will cost a great deal of money in changing the cross-references which currently exist in other California Codes.

My suggestion is that the title remain the same.

Very truly yours,



SUSAN HOWIE BURRISS

SHB:cd

GILBERT MOODY
VERNON JOHNSON
EDWIN MACH

ATTORNEYS AT LAW

THOMAS HOLSINGER

250 WEST MAIN, TURLOCK, CA 95380 - (209) 632-1086

October 15, 1986

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, CA 94303-4739

Re: Probate Law Revision

Gentlemen:

Thank you for sending me your recommendations relating to probate law and procedure. I think there are some very good proposed revisions, and there is only one part that disturbs me and to which I object. This has to do with the Public Guardian and Public Administrator. I think the Public Administrator's powers and reimbursement for expense should be much limited and restricted from their present powers rather than expanded. In fact, I think if there is anyone else available to act as a guardian or administrator, particularly administrator, he should be given precedence over the Public Administrator, and the Public Guardian and Public Administrator should be at the bottom of the list of those who may be appointed.

I think too in a Will contest the law should provide for appointment of a Public Administrator only if requested by all parties to a contest.

Our experience with the PA office has led to this conclusion. Some of the employees seem to run rough-shod over the needs and feelings of people and those interested as friends, relatives, or heirs. I have one probate administration where it was reported to me by a client that she had been told by the Public Administrator's employee that she should not have a private attorney handle the administration; that the Public Administrator's office should do it, and that if it was turned over to a private attorney the time and cost would be much greater than if the Public Administrator handled it.

I had another incidence where a client was in a mental health unit for a short time because of his alcoholism. When he returned home, he found that the Public Guardian had cleaned out his house and sold all of his furnishings for a rather small amount, and including some rather valuable antique ware and furniture.

October 15, 1986

Page 2

Likewise, I do not think the Public Administrator's fees for conserving an estate should be increased to \$350.00, and I don't think there should be any standard fee; that they should be required to apply to the court for an allowance after proper notice according to the time and trouble they have had in conserving the estate.

I am also enclosing the questionnaire regarding probate practice, and I would strongly object to the proposal relating to changing the fees to a review process. The present system allows for adjustment of the statutory fees and commission which is sufficient protection in my view. I think adoption of the proposal would just promote rabid competition by some offices, with heirs going from office to office to check out the lowest bids.

I do think there should be a minimum fee and commission allowed for estates under \$15,000.00. I have handled estates where there has been real property of a value of \$500.00 or \$1,000.00 or \$2,000.00 or \$3,000.00, and obviously 4% of these values does not begin to pay for the work. Fortunately the courts have been generous in allowing extraordinary fees, but I would suggest a minimum of \$250.00 to \$300.00.

What can happen in relation to fee allowances can be illustrated by what happened in our county a few years ago. Attorneys had normally been asking for \$500.00 extraordinary fees for preparing federal estate tax returns. A couple Judges took the position that the work wasn't worth more than \$250.00, so we and perhaps quite a few other attorneys just quit doing them and the Judges never said a word about payment of \$750.00 to accountants.

Thank you for your consideration.


GILBERT MOOBY

GM/dw

L-1040
L-1033
L-1035
L-800
L-1045

LAW OFFICES OF
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STEPHEN M. CHANDLER
LELAND W. BRUNER
STEPHEN A. RICKS
STEPHEN G. CHANDLER
JOSHUA L. BRIGHT

A. W. BRUNER (1901-1962)

October 16, 1986

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. DeMouilly:

I received the Law Revision Commission's tentative recommendations relating to probate law with your cover letter of October 3, 1986. I reviewed the enclosures and find them to be a very excellent job and really have no particular comment other than my congratulations to the Commission. I would like to receive any future mailings.

Very truly yours,

CHANDLER, BRUNER & RICKS


Leland W. Bruner

LWB/tm

LAW OFFICES
HOUSER & SANBORN260 ATLANTIC AVENUE
LONG BEACH, CALIFORNIA 90802-3294
(213) 432-8941EVERETT HOUSER
WARREN L. SANBORN

October 22, 1986

California Law Revision Commission
4000 Middlefield Road, #D-2
Palo Alto, California 94303-4739

My review of the tentative recommendations of the Estate and Trust Code are as follows:

L-1045 - Useful

L-1035 - Okay

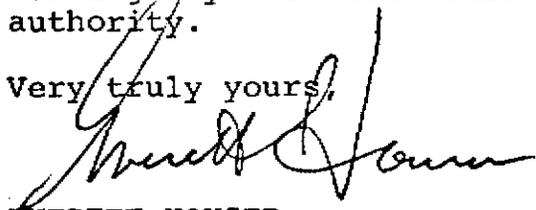
L-1033 - Fine

L-1040 - Okay as far as it goes. My experience has been in Los Angeles County where both of these offices are sadly behind schedule. Some means should be devised to require a more rapid termination of cases, or the use of private attorneys by court appointment when the schedules get more than six months behind.

L-800 - Approved

This is my first shipment of papers, so I may have missed something. I am involved right now with a trust which should be revocable under §2280 of the Civil Code. Husband and wife set up the trust to benefit each other and after the death of the survivor to go to numerous beneficiaries. The wife died first. The husband wishes to revoke the trust, and the defense is that everyone of the contingent beneficiaries has to be notified and given a chance to protect his contingency. I think this point should be settled by statutory authority.

Very truly yours,


EVERETT HOUSER

EH:da

Studies: L-800
L-1033
L-1035
L-1040
L-1045

Memo 86-207

EXHIBIT 10

WILBUR L. COATS
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

October 23, 1986

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, Ca 94303

Dear Commission Staff:

Comments relate to studies 1033, 1035, 1040, 1045, and 800.

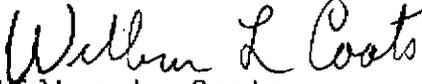
I concur with all changes except as set forth below concerning study 1040.

The term "resasonable fee for service" in referring to fees to be charged for services rendered by the Public Guardian and Public Administrator appear too broad and are going to cause a great deal of non-uniformity throughout the State. Each court will determine the fee according to its "liberal" or "conservative" view of charges for service rendered. It appears to me that the State has an obligation, as it does in setting probate fees, except for extraordinary fees, to state with specificity the range of fee charges. I suggest that a minimum dollar amount be set forth and a percent above that pegged to the dollar value of the property handled be established in the code as the proper fee. I believe it is important to establish specific guidelines rather than the subjective term "reasonable".

Regarding the appraisal of an estate it appears that if an estate consists of real property only or real property and other personal assets not exceeding a value of \$1000.00 or some similar dollar amount the estate should be appraised by the nominated or appointed Guardian or Conservator. Especially onerous for a Guardian or Conservator is the necessity to either borrow money or sell an asset to pay an appraiser when an estate does not have any cash or a minimal amount of cash but may have a valuable piece of real property which may be the residence of the conservatee or the minor.

Thank you for the opportunity to review the proposed changes.

Very truly yours,


Wilbur L. Coats

KILPATRICK, CLAYTON, MEYER & MADDEN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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October 22, 1986

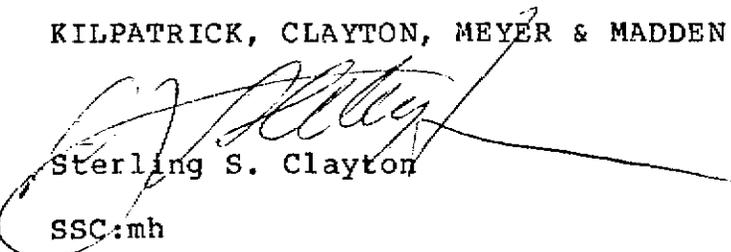
Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4200 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Dear Mr. DeMouilly:

I have reviewed the five tentative recommendations pertaining to probate law and procedure sent to me for review and comment. I think the recommended changes are all improvements in existing law, and the only particular observation I would make pertains to the tentative recommendations regarding the public guardian and public administrator. Apparently, it is now proposed that the public guardian will not be restricted insofar as statutory fees are concerned and that it will be left simply with a "reasonable fee" determination. It would seem to me that the determination of a reasonable fee, or at least its approval, should be subject to court review and authorization.

Yours very truly,

KILPATRICK, CLAYTON, MEYER & MADDEN


Sterling S. Clayton

SSC:mh

LAW OFFICES

HARVEY M. PARKER
 J. HAROLD BERG *
 FRED W. SOLDWEDEL *
 PETER R. PALERMO *
 * A PROFESSIONAL CORPORATION

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JAY D. RINEHART
 1891-1964
 RALPH T. MERRIAM
 1892-1868
 RONALD D. KINCAID
 1941-1980

October 27, 1986

Mr. John H. DeMouilly
 Executive Secretary
 California Law Revision Commission
 4000 Middlefield Road, Suite D-2
 Palo Alto, California 94303-4739

Re: Tentative Recommendations
 Relating to Probate Law
 Your Letter dated October 3, 1986

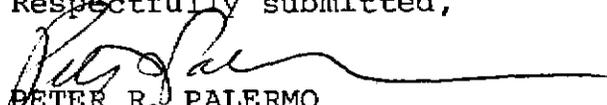
Gentlemen:

Thank you for the Tentative Recommendations Relating to Probate Law which you sent to me under your letter of October 3, 1986.

I would like to make the following counter-recommendations and comments with regard to the tentative recommendation relating to the Public Guardian and Public Administrator:

1. Public Guardian's Bond: The Public Guardian should be treated similar to a bank or trust company which do not need to post a bond in connection with the administration of an estate, since it would appear that the assets of the Public Guardian would be sufficient to cover any misfeasance. In any event, there should be at least a threshold under which the public should bear the cost of the bond rather than the estate, i.e., value of estate less than \$25,000. Otherwise, the cost of a bond will eat into the estate of the ward, which eventually will become a public charge, anyway.
2. Appraisal of Estate: The protection that currently exists against fraud in an estate is the requirement of having an independent person appointed to appraise the assets of the estate. This requirement should be continued in all estates of more than \$500.00. The cost of an appraisal by the Probate Referee in said estates is very nominal and should be continued in order to provide a safeguard of all persons interested in the estate against fraud.

Respectfully submitted,


 PETER R. PALERMO

PRP/dml

Redi-letter

MCP 6

TRIP

TO
• CALIFORNIA LAW REVISION COMMISSION
4000 MIDDLEFIELD ROAD SUITE D-2
PALO ALTO, CA 94303-4739

FROM
MELVIN C. KERWIN, ESQUIRE
1040 MARSH ROAD SUITE #120
MENLO PARK, CA 94025

(415)327-8060

SUBJECT TENTATIVE RECOMMENDATIONS RELATING TO PROBATE LAW DATE 10/22/86

MESSAGE

PLEASE FIND ENCLOSED THE COPIES OF THE TENTATIVE RECOMMENDATIONS RELATING TO PROBATE LAW WHICH WAS SENT TO MY ATTENTION FOR MY REVIEW. I HAVE WRITTEN MY COMMENTS ON THE RECOMMENDATION DOCUMENTS, PLEASE FEEL FREE TO CONTACT MY OFFICE WITH ANY QUESTIONS REGARDING MY COMMENTS.

SIGNED

MELVIN C. KERWIN

REPLY

SIGNED

DATE / /

SEND PARTS 1 AND 3 INTACT -
PART 3 WILL BE RETURNED WITH REPLY.

POLY PAK (50 SETS) 4P 471

carbonless

REDIFORM 4S 471

TENTATIVE RECOMMENDATION RELATING TO
PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR

PUBLIC GUARDIAN

The new code relocates the public guardian statute from the Welfare and Institutions Code¹ to the Guardianship and Conservatorship Law. At the same time, the new code makes a few significant substantive changes in the law.

Public guardian's bond. The official bond of the public guardian and the liability of the county for the public guardian stand in place of the ordinary bond of a guardian or conservator. Since the public guardian's bond and liability are for the benefit and protection of the ward or conservatee and persons interested in the estate of the ward or conservatee, it is proper that these persons, rather than the public, should bear the cost.² The new code allows as a claim against the estate of the ward or conservatee a share of the cost of the public guardian's bond.³ This amount is remitted to the county treasury to offset the public expenditure for the official bond and other public liability of the county.

Agree.
good.

1. Welf. & Inst. C. §§ 8000-8015.

2. A guardian or conservator is generally allowed the amount of reasonable expenses incurred in performance of the duties, including the cost of any surety bond given. Prob. Code § 2623(a).

3. The statutory share is \$25 plus ¼% of the amount of an estate greater than \$10,000. This amount is subject to revision, depending ultimately on the small estate non-appraisal provisions ultimately adopted. See discussion of "Appraisal of estate," below.

Court ordered public guardianship or conservatorship. If the court orders the guardianship or conservatorship of any person or estate into the public guardian's hands, existing law provides in one place that the public guardian "may act" as guardian or conservator and in another that the public guardian "shall" procure letters of guardianship or conservatorship.⁴ As a consequence, whether the public guardian must accept a court referral is not clear. The new code makes clear the public guardian must accept a court-referred guardianship or conservatorship. However, the court may not order the referral except upon 15 days' notice to the public guardian, a court hearing, and a determination that there is no other person qualified and willing to act and that the public guardianship or conservatorship is necessary. This will ensure that persons and property in need of protection will receive it, and that the public guardian will be required to act only in appropriate cases.

Jurisdiction of public guardian. Existing law provides that the public guardian may act with respect to persons and property "in the county."⁵ However, a person domiciled in the county may require protection when temporarily outside the county (including institutionalization outside the county), or the person's property requiring protection may be situated outside the county. Jurisdiction should be based on domicile, regardless of the temporary location of the person or property. The new code implements this concept.

good!

4. Welf. & Inst. Code § 8006.

5. Welf. & Inst. Code § 8006.

Taking possession or control of property. Whether or not the public guardian is ultimately appointed guardian or conservator, the public guardian may take immediate possession or control of property in need of protection because it is subject to waste, lack of care, or loss. The new code extends this authority to property that is subject to misappropriation as well.

Existing law sets a statutory fee for the services of the public guardian in taking charge of the ward's or conservatee's property. The statutory fee is subject to a \$25 minimum and a \$500 maximum.⁶ These limits are arbitrary, and bear no reasonable relation to the actual cost to the public guardian of providing services. The proposed law eliminates the statutory maximum and minimum fees, leaving the public guardian simply with a reasonable fee for services. *good.*

Employment of attorneys. Existing law enables the public guardian *** to employ private attorneys if necessary, provided the cost can be defrayed out of estate funds.⁷ The new code broadens this authority even where estate funds are insufficient by enabling the public guardian to employ private attorneys where satisfactory pro bono or contingency fee arrangements can be made. This will enable the public guardian to obtain adequate legal representation for the ward's or conservatee's estate without cost to the public or the estate.

6. Welf. & Inst. Code § 8006.5.

7. Welf. & Inst. Code § 8010.

good, but I would suggest it be made mandatory, where the estate can afford it.

I don't agree

Appraisal of estate. Ordinarily a guardianship or conservatorship estate must be appraised.⁸ The appraisal requirement is a substantial and unnecessary burden in the case of small estates⁹ and estates where the assets will not be sold. The Commission has under review proposals to eliminate appraisals or to substitute conservator for probate referee appraisal in appropriate cases, such as small estates, estates that will not be sold, and estates eligible for Social Security Supplemental Income Benefits.¹⁰ The object of this review is to simplify administration in small estates and to prevent the ward's or conservatee's assets from being consumed in administrative expenses. The new provisions would apply to estates administered by private conservators as well as the public guardian. The Commission solicits comments on these concepts.

Appraisal protect the ward & conservator and persons interested. difficult to tell if the assets will not be sold. will not be sold when?

Disposition of assets on death of ward or conservatee. On the death of the ward or conservatee the public administrator may pay expenses of last illness and funeral expenses, and may liquidate an estate worth less than \$20,000 by summary court proceedings if existing liquid assets are insufficient for payment.¹¹ This is a useful procedure, and the new code expands it to permit liquidation and payment of other reasonable guardian or conservator charges as well, including unpaid court approved attorney's fees.¹² However, because of the expansion and because of the summary nature of the court proceedings, the new code restricts the liquidation procedure to the smallest estates--those worth less than \$5,000.

Appraisals are the best bargain in the system!

8. Prob. Code § 2610.

9. An estate handled by the public guardian need not be appraised if worth fifty dollars or less. Welf. & Inst. Code § 8011.

10. The current SSSI asset limit is \$1,600.

11. Welf. & Inst. Code § 8012.

12. The new code makes this revision in Section 2631, which is applicable to any guardian or conservator and is not limited to the public guardian.

PUBLIC ADMINISTRATOR

The provisions of existing law governing public administrators are generally continued in the new code without substantive change, or with only minor changes that are noted in the Comments to the new code and to the repealed provisions of existing law. There are a number of more significant changes, however, that are noteworthy.

Property subject to loss, injury, waste, or misappropriation. A public administrator must take charge of a decedent's property either (1) upon court order or (2) if there is no personal representative and the property is subject to loss, injury, or waste.¹³ The new code extends this requirement to property that is subject to misappropriation as well. However, the public administrator is given express immunity with respect to property the public administrator is unable to obtain control of.

In carrying out this responsibility, the public administrator may make a search for other property, a will, and burial instructions, including a search of the decedent's safe deposit box, but only if there are reasonable grounds to believe that the public administrator may be appointed personal representative.¹⁴ This limitation is unduly restrictive, since there may be an immediate need for action regardless of the likelihood the public administrator will ultimately be the personal representative. The new code deletes the likelihood of appointment requirement. The new code also adds a requirement that if the search reveals additional property of the decedent that is subject to loss, injury, or waste, the person in possession must surrender the property to the public administrator.

13. Prob. Code § 1140.

14. Prob. Code § 1141.

Existing law sets a statutory fee for the services of a public administrator in searching for and taking charge of the decedent's property that is subject to loss, injury, or waste. The statutory fee is subject to a \$25 minimum and a \$500 maximum.¹⁵ These limits are arbitrary, and bear no reasonable relation to the actual cost to the public administrator of providing the services. The new code eliminates the statutory maximum and minimum fees, leaving the public administrator simply with a reasonable fee for services.

Public administrator's bond. The official bond of the public administrator and the liability of the county for the public administrator stand in place of the ordinary bond of a personal representative. Since the public administrator's bond and liability are for the benefit and protection of persons interested in the estates administered by the public administrator, it is proper that these beneficiaries, rather than the public, should bear the cost. The new code allows as a charge against every estate administered by the public administrator a share of the cost of the public administrator's bond.¹⁶ This amount is remitted to the county treasury to offset the public expenditure for the official bond and other public liability of the county.

15. Prob. Code § 1144.5.

16. The statutory share is \$25 for an estate of \$10,000 or less and ¼% of the amount of an estate greater than \$10,000. This amount is subject to revision, depending ultimately on the small estate non-appraisal provisions ultimately adopted. See Tentative Recommendation relating to Inventory and Appraisal (to be published).

Summary proceedings. Most estates handled by the public administrator are small estates that are uneconomical to administer.¹⁷ Existing law seeks to cure this problem by providing summary proceedings for use by the public administrator in small estates.¹⁸ The existing definition of a small estate, however, is unrealistically low--\$3,000 for independent action by the public administrator, and \$20,000 for action with court authorization. The new code increases these amounts to allow independent action by the public administrator if the estate is less than \$10,000, or upon court authorization if the estate is less than \$60,000. These amounts correspond to the amounts that define a small estate under general Probate Code provisions enabling collection and transfer of small estates without administration.¹⁹ Increasing the amounts should place the operation of the public administrator's office on a more sound economic basis. *good.*

In conducting summary administration proceedings, the public administrator may liquidate personal property assets but not real property assets.²⁰ This limitation unduly impairs the utility of the summary proceedings. The new code provides that, so long as the total estate is small, the public administrator may sell real property that is part of the estate. The sale should be subject to court confirmation, however, just as sales under ordinary estate administration. *- How this should be approved*
(Without I A Estates?)

17. For example, James R. Scannell, Public Administrator for the City and County of San Francisco, informs the Law Revision Commission that 70% of the estates handled by his office are less than \$10,000 in value and 88% are less than \$50,000 in value. See Minutes of Meeting of California Law Revision Commission (March 13-14, 1986) at 28.

18. Prob. Code § 1143.

19. Prob. Code § 13000 et seq.

20. Prob. Code §§ 1143-1144.

and the other 12? should be referred out to private attorneys.

Because no notice to creditors is given under summary proceedings, the new code includes two protections for creditors not found under existing law. First, the new code requires payment of claims made any time before distribution of the decedent's property is made, as opposed to the four-month claim period applicable in ordinary administration proceedings in which creditors receive published notice. To avoid precipitate distributions, the new code prohibits distribution until four months after commencement of summary disposition proceedings. Second, the new code imposes liability on recipients of property distributed pursuant to summary proceedings for unpaid creditor claims. This is analogous to personal liability imposed on recipients of property that passes without probate administration.²¹

Existing law provides no limit to the amount of time a public administrator must preserve files of summary disposition cases. The new code simplifies the record-keeping system by requiring the public administrator to file with the court a permanent statement of the decedent's estate and receipts for distributions in the case of an estate over \$10,000. Thereafter, the public administrator must preserve in the office of the public administrator a temporary file of all receipts and records of expenditures for a period of two years, after which the file may be destroyed.

The minimum fee of the public administrator for summary administration is \$250.²² This fee is unrealistically low under modern conditions, and the new code increases the minimum fee to \$350.

21. See, e.g., Prob. Code § 13000 et seq.

22. Prob. Code §§ 1143-1144; 43 Ops. Cal. Atty. Gen. 192 (4-22-64).

Existing law provides that where the public administrator uses summary disposition proceedings, unclaimed property in estates under \$3,000 is paid to the county²³ but unclaimed property in estates under \$20,000 is distributed to the state.²⁴ The Law Revision Commission recommends that all unclaimed summary disposition funds be paid to the county. Typically the small estates summarily disposed of by the public administrator are the estates of elders living alone without family support who receive greater than usual county care and service during their lifetimes.²⁵ For this reason it is appropriate that unclaimed property is paid to the county where the decedent resided.

Good.

Agreed.

23. Prob. Code § 1143(b).

24. Prob. Code § 1144.

25. Such care and service may include supplementation of income through geriatric programs such as day care centers, low cost public transportation, food and health centers, and replacement of services eliminated from the Medi-Cal program. See letter from Dianne Feinstein, Mayor of San Francisco, to California Law Revision Commission (May 21, 1986) (letter on file in Commission office).

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November 4, 1986

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, CA 94303-4739

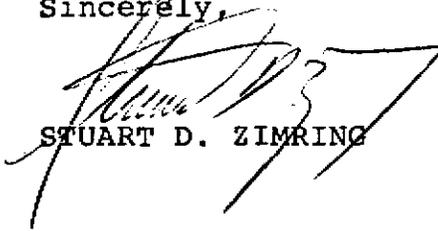
Re: Tentative Recommendations Relating to Probate Law

Dear Mr. DeMouilly:

Enclosed are my comments regarding the five tentative recommendations recently sent to me for review.

I appreciate this opportunity to assist the Commission and thank you for soliciting my input.

Sincerely,



STUART D. ZIMRING

SDZ:zw
Enclosure

October 31, 1986

COMMENTS ON TENTATIVE RECOMMENDATIONS OF THE CALIFORNIA LAW
REVISION COMMISSION

Public Guardian and Public Administrator

1. I am delighted to see that the proposed law shifts the cost of the bond from the public to the individual estate. This is a long-overdue revision.

2. The proposal that unclaimed summary disposition funds be paid to the County rather than the State is, for the reasons indicated in footnote number 25, salutary and I support it.

3. §7645(a). The recognition of Letters being issued to the office rather than the individual is an intelligent decision. Having made that decision, I'm surprised at Section 7645(a). I think it will ultimately be more economical for the administration of justice if the public administrator and/or guardian is always appointed in his or her "office" capacity as opposed to individual capacity. I therefore think that 7645(a) should be amended to provide that the public administrator does cease to act as personal representative upon termination of tenure.

4. 7685. Because of the scandals and allegations of misfeasance in office that have been brought against public administrators over the years, I strongly urge that the public administrator be required to file a statement in all cases. Hopefully, this will help rebuild public confidence.

STANLEY L. HAHN *
 DAVID K. ROBINSON *
 LOREN H. RUSSELL *
 LEONARD M. MARANGI *
 WILLIAM S. JOHNSTONE, JR. *
 GEORGE R. BAFFA *
 DON MIKE ANTHONY *
 ROBERT W. ANDERSON
 WILLIAM K. HENLEY *
 CLARK R. BYAM *
 RICHARD L. HALL *
 SUSAN T. HOUSE
 CARL J. WEST
 DIANNE H. BUKATA
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November 11, 1986

BENJAMIN W. HAHN, 1868-1932
 EDWIN F. HAHN, 1872-1951
 HERBERT L. HAHN, 1893-1982

RETIRED PARTNERS

EDWIN F. HAHN, JR.
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California Law Revision Commission
 4000 Middlefield Road, Suite D-2
 Palo Alto, CA 94303-4739

Re: Tentative Recommendations Relating To
 The New Estate and Trust Code

Gentlemen:

This letter is written with respect to solicited comments on a number of tentative recommendations relating to The New Estate and Gift Tax Code. The following comments are a composite of comments of our office's Probate Department to particular tentative recommendations.

Public Guardian and Public Administrator:

In general, the recommended legislative changes relating to the Public Guardian and Public Administrator appear sound. We strongly support the requirement that the Public Guardian accept a Court referral in cases on guardianships and conservatorships. With the exceptions of the few subjects which will be discussed below, the members of our Probate Department fully support the other proposed changes as well.

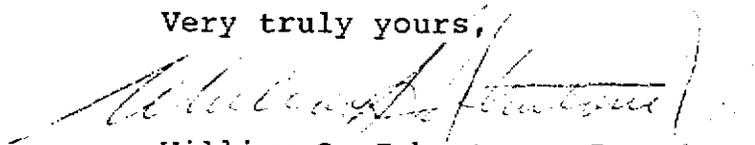
Proposed Section 2920, which governs when the Public Guardian may take possession or control of property, contains several changes we support, but we also have several other suggestions. The addition of the grounds of "misappropriation" appears sound as does the change from minimum and maximum fees to "reasonable" fees. We do believe, however, that to limit the action of the Public Guardian to circumstances in which the owner is "domiciled" in the county may be too restrictive. We would suggest that the Public Guardian be permitted to take possession or control of "property physically located in the county," regardless of the location or domicile of the individual owners under the circumstances described in Section 2920(A). Our concern is that domicile is often a disputable issue, whereas physical location of the property to be protected is not. Perhaps some further provision would have to be made to facilitate turning over possession and control to the appropriate Public Guardian if one is appointed in another county and that is the entity which should ultimately control. However, since the purpose of Section 2920 is to authorize action in an "emergency," it seems to us that questions of domicile should not tie the hands of the Public Guardian.

The only other question we have as to Section 2920 is the phrasing of Subsection A, itself. It appears that the words "referred to the Public Guardian for guardianship or conservatorship" are spurious. Someone should look more closely at the wording of that section to be certain that all of the clauses fit.

Our only comment in the Public Guardian/Administrator area is that we can reach no consensus among ourselves on the subject of appraisals by conservators in small estates. There is a sharp division in our Probate Department as to the need for the involvement of the Probate Referee.

Should you wish to discuss any of the foregoing comments, please feel free to call me.

Very truly yours,



William S. Johnstone, Jr.
of HAHN & HAHN.

WSJ:g



CALIFORNIA CONTINUING EDUCATION OF THE BAR

2300 Shattuck Avenue, Berkeley, CA 94704
(415) 642-3973; Direct Phone: (415) 642-8317

November 12, 1986

California Law Revision Committee
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Study L-1040; Tentative Recommendation Relating to
Public Guardian and Public Administrator

Sirs:

I have reviewed the foregoing and am wondering if the judiciary has been consulted to determine whether proposed Probate Code 2921 provides them adequate flexibility to order appointment of the Public Guardian in the situations which the judges face. I also think that the necessity of a determination that no other person is qualified and willing to act may be an undesirable restriction. What if the public guardian is willing to act and the court believes that it is best to appoint the public guardian because of disputes among family members who are technically qualified and willing?

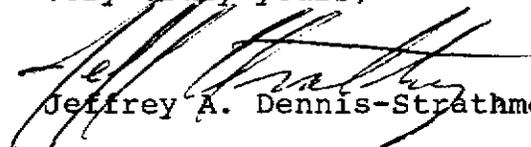
I suspect that the one-fourth of one percent fee bond is much higher than the actual cost to the county.

I don't understand the rationale of having the court determine the clerk's fee in 7680(a)(2).

It should not be necessary for heirs to wait four months to collect an estate under \$60,000 if they could have collected it without administration, if the public administrator had not gotten involved.

I have also made a very cursory review of studies L-800, L-1033, L-1035, and L-1045. The principal proposed changes will improve the Code.

Very truly yours,



Jeffrey A. Dennis-Strathmeyer

JAD-S:kg

The Surety Association of America

100 WOOD AVE. S., ISELIN, NEW JERSEY 08830 (201) 494-7600

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Senior Statistician
Surety Department
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Vice President

November 12, 1986

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Law Revision Commission Tentative Recommendation
Relating to Probate Law

Dear Mr. DeMouilly:

This is to acknowledge and thank you for your letter and enclosures of October 3.

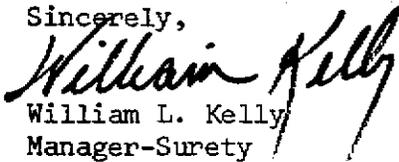
We have reviewed the latest set of recommendations (L-1040, L-800, L-1033, L-1035, L-1045) and are in general support of them.

We would, however, like to echo the comments of the Western Surety Company which had written to you on October 14, 1986.

Please keep us on your mailing list to receive future recommendation studies.

Thank you for your assistance.

Sincerely,


William L. Kelly
Manager-Surety

WLK:poh

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November 13, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Attn: John H. DeMouilly, Executive Secretary

Dear Mr. DeMouilly:

Thank you for your communication and transmittal
of October 3, 1986.

My comments with respect to tentative recommendation
#L-1040, "Public Guardian and Public Administrator", include
the following:

FIRST: I am unhappy with the provisions relating
to the public guardian's bond. Verdine Dunham is the Public
Guardian in Tehama County. She reports that her bond premium
for LPS conservatees is \$150 per annum and with respect to the
regular civil conservatorships the premium is \$125. She has
approximately 50 LPS accounts at any given time and 50 regular
civil accounts at any given time. She feels that $\frac{1}{2}\%$ of the
amount of the estate is outrageous and so do I. For example,
if I read your recommendation correctly, if she is assigned a
million dollar estate, the charge against the estate for a
bond premium would be \$2500. In addition, she would pick
up premiums from the other conservatorships. She is presently
operating under Probate Code Section 2623(a). In a recent
telephone conversation she indicated her hourly rate, including
her staff, the bond and all other expenses, averages \$45 per
hour.

SECOND: I am very much opposed to Section 7680(a)(1)
as incorporated into the exception to 7685(a). The public
guardian should file with the clerk a statement showing the
property of the decedent that came into his/her possession
and the disposition of the property together with receipts
for all disbursements. I would make no exceptions.

THIRD: If the estate of the decedent is valued at less than \$10,000 and includes real property, I doubt if any title company would accept the public administrators deed; on the other hand, a court order should do the job.

* * * * *

Very truly yours,



RAWLINS COFFMAN

RC:tm

P.S. Please keep me on your mailing list.



Writer's Direct Dial Number

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COUNTY OF ORANGE

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 ASSISTANTS

834-6333

November 14, 1986

California Law Revision Commission
 4000 Middlefield Road, Suite D-2
 Palo Alto, California 94303-4739

Dear Commission:

VICTOR T. BELLERUE	BARBARA L. STOCKER
JOHN R. GRISET	JAMES F. MEADE
EDWARD N. DURAN	STEFEN H. WEISS
IRYNE C. BLACK	SUSAN STROM
RICHARD D. OVIEDO	DAVID BEALES
O.M. MOORE	TERRY C. ANDRUS
JULEE ROBINSON	CLAUDIA L. COWAN
BENJAMIN P. DE MAYO	JAMES L. TURNER
R. DONALD McINTYRE	PETER L. COHON
HOWARD SERBIN	NICHOLAS S. CHRISOS
DANIEL J. DIDIER	DAVID G. EPSTEIN
GENE AXELROD	THOMAS F. MORSE
ROBERT L. AUSTIN	WANDA S. FLORENCE
DONALD H. RUBIN	HOPE E. SNYDER
DAVID R. CHAFFEE	BRIAN PETRABORG
CAROL D. BROWN	

DEPUTIES

Thank you for sending me the revised tentative recommendations regarding the Public Guardian/Public Administrator, Determining Class Membership, Preliminary Provisions, Nonresident Decedent, and Administration Of Estates Of Missing Persons Presumed Dead sections of the new Estate and Trust Code.

Due to the birth of my first child, I have had difficulty finding the time to respond before now. I am sending my response before the deadline of November 15, but it may not reach you until after the deadline. I hope you will consider my comments as if timely received.

As before, I note that these are my individual views. I do not write here as a representative of the Orange County Counsel, the Orange County Public Administrator/Public Guardian, or the County of Orange.

Public Guardian/Public Administrator Sections:

Proposed Section 2905 - I believe the second sentence is a useful addition to the law. This will save time, confusion, and paperwork and clarify that there are no gaps in authority when a successor public guardian takes office.

Proposed Section 2920(a) - I support the addition of "misappropriation" as a ground for the public guardian taking possession or control. The public guardian fairly often winds up being appointed conservator in these kind of cases, and it would help him to recover assets if he could have the "head start" provided by 2920. Certainly, misappropriation is as important a ground as the existing grounds. Persons who fit the standard of being unable to resist fraud or undue influence are too often victims of "misappropriation."

Proposed Section 2920(b) - I support the proposed change.

Proposed Section 2921(b) - As argued before, I oppose the requirement that the public guardian apply for appointment if the Court so orders. His is an office of limited resources, and he must have discretion as to which cases are most appropriate. In most counties, the public guardian is the officer who has the obligation to apply for letters in Lanterman-Petris-Short cases where there is no alternative. The proposed probate section change would lessen his resources to meet that obligation.

There are a number of cases which involve the manpower and expertise (for example, the need to run a business) that may be beyond the resources of a particular public guardian's office. The public guardian must have discretion to decline a case that fits this category.

Proposed Section 2923 - I support the proposed change.

Proposed Section 2941 - I support the proposed change.

Proposed Section 2942(a) - I support the expansion of authority to pay all unpaid expenses, not just burial and last illness. Absence of this express authority has lead to uncertainty as to how to act when payments are needed to preserve estate assets - i.e., mobile house space rent. The section still does not clarify whether the public guardian can pay from the conservatorship estate debts accruing after the conservatee's death (again for example, rent). It would be helpful to clarify that this authority will exist.

Proposed Section 2942(b) - I support the proposed change.

Proposed Section 2943(e) - I support the proposed change. It seems most fair to charge the cost of the protection of the bond to those estates that receive the protection, rather than to the taxpayers in general.

Proposed Section 7621 - I support the proposed changes. There is sometimes need to act immediately in cases involving "misappropriation", to recover assets before they are forever out of reach. The proposed new section (b) expressly adds more fairness to the code. It would be unjust to penalize a public administrator for failing to take possession of an asset beyond his control.

Proposed Sections 7622, 7623 - I support the proposed deletion of the requirement of reasonable grounds. That requirement could cause delays in situations where emergency action is needed. If the public administrator is to be caretaker

under 7621, he needs access to property, the will, and burial instructions, whether or not he will eventually be issued letters of administration. The proposed change should help assure that estate assets are in the hands of a bonded and competent party. Also, it should help the public administrator to determine whether in fact the estate requires formal administration, and whether or not there is a will naming an executor.

Proposed Section 7624 - I support the proposed change.

Proposed Sections 7640, 7641(b) - I oppose the addition that the public administrator shall accept appointment as personal representative when so ordered by the Court, whether or not upon petition of the public administrator.

One objection is that this provision could cause the public administrator to be appointed on cases above and beyond his resources. Also, there are often cases where at first there appears to be no alternative to the public administrator, but where soon a ready and able party appears. These are sometimes cases where there is no urgent need for appointment. To appoint the public administrator may unnecessarily affect the office work load, cause needless transfers and re-transfers of assets, and require burdensome accounts to be filed by the public administrator.

If the provision is adopted, I believe 7641(b) should be more explicit about the amount of notice required. Perhaps the notice should be at least 15 days, unless the Court finds that good cause exists to shorten notice.

Proposed Section 7641(c) and (d) - I support these proposed changes.

Proposed Section 7645(b) - I support the proposed change.

Proposed Section 7680(a) - I support the increased summary probate limits. These will greatly add to the efficiency of administering small estates.

Proposed Section 7680(c) - I am pleased to see this proposal, about which I have written you before. Previously, many small estates have required formal administration solely because there was a need for Court instruction, for will interpretation, or for determination of heirship. The proposed change solves the problem.

Proposed Section 7681 - I support the proposed changes.

Proposed Section 7682, 7683 - I have some concerns about this proposal. In particular, what if a claim is received after other creditor's claims are paid, but before the heirs or beneficiaries are paid their "distribution"? If such a claim made the estate insolvent, so that creditors already paid in full should only get a pro rata share of their claims, would there be an obligation to collect the "overpayments"? Perhaps the solution is to define "distribution" so as to include payment of any creditor's claim.

Proposed Section 7683(b) - I support the proposed change.

Proposed Section 7685 - The proposed changes should substantially increase the efficiency of administering summary estates, and I support them.

Proposed Section 7686 - I support the proposed change.

Determining Class Membership - I support the general thrust of the changes, expanding the list of those who may commence proceedings.

Preliminary Provisions - No comments.

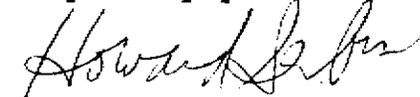
Nonresident Decedent - No comments.

Administration Of Estates Of Missing Persons Presumed Dead - No comments.

Please note that I have only commented on proposed changes in the law. My failure to comment on sections that simply renumber and recodify the law should not be construed to necessarily indicate approval or disapproval of the existing law.

I look forward to receiving your further recommendations.

Very truly yours,



Howard Serbin
Deputy County Counsel
Orange County

BS:jp

cc: Carol Gandy, Linda Martinez, Dwight G. Tipping, Chris Salas -
Office of Public Administrator/Public Guardian;
James F. Meade, Nicholas S. Chrisos - Office of County Counsel

FRANK L. FREITAS, C.P.A.
DEPARTMENT ADMINISTRATOR

RENEE SIMON
ASSISTANT



TREASURER, TAX COLLECTOR
PUBLIC ADMINISTRATOR, PUBLIC GUARDIAN
S A N L U I S O B I S P O C O U N T Y
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November 14, 1986

California Law Revision Commission
4000 Middlefield Road, Ste. D-2
Palo Alto, CA 94303-4739

Gentlemen:

In the Law Revision Commission's proposals to modify Welfare and Institutions Code §8006, you have proposed that the Public Guardian is required to serve in cases where the Court makes a referral.

Unfortunately, the suggestion fails to recognize there is an existing sophisticated procedural structure whereby referrals to the Public Guardian are received from a number of sources, (Department of Social Services/Adult Protective Services, Mental Health Agencies, Civic and Public Welfare groups and private citizens).

In many cases persons seek to have the Public Guardian appointed as a Successor Conservator when the estate resources of the conservatee have been fully exhausted. It is naturally the inclination of the Court to continue a conservatorship once such a vehicle has been created. However, in the vast majority of cases it is the experience of this office that the proposed conservatee can have his or her needs met without the establishment of a conservatorship. This would allow the proposed conservatee to maintain the maximum amount of dignity and independence and would also preserve valuable resources so they may be utilized for the benefit of truly needy proposed conservatees. A proposed conservatee should not be forced to rely on a conservator who may not be able to meet his needs.

The Public Guardian does not have the power to create his own resources. Currently, if he lacks the resources to provide proper services, he can avoid a commitment.

It would, therefore, be our strong recommendation and hope that your honorable commission would reconsider forcing an unwilling fiduciary into service.

While we do recognize certain political exigencies may exist to create such a system (Judicial Council, Governmental staff expansion, etc.), we would hope that if you submit this revision with the court authority to impose a conservatorship on the Public Guardian without his consent, you would in addition, create the authority in the Public Guardian's Office to provide all of the proposed conservatee's needs including food, health, clothing and shelter. In order to ensure this, the Public Guardian should have the authority to order various public agencies that provide these services to meet the needs of the proposed conservatee.

Alternatively, an independent source of funding could be provided. For an example, expenditures made by the Public Guardian to provide services to conservatees would be charges against the County General Fund and shall be paid by the County.

It is, therefore, strongly urged that the Public Guardian be given the tools through funding and/or authority to compel support services to meet these new responsibilities which you propose.

Also, we note, that while you are proposing that the Public Administrator be granted express immunity with respect to property that he or she is unable to obtain control, the Public Guardian will not. We would recommend that express immunity be applied to the Public Guardian as well.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank L. Freitas", with a long horizontal flourish extending to the right.

FRANK L. FREITAS
PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN

FLF/fo

TREASURER — TAX COLLECTOR — PUBLIC ADMINISTRATOR

COUNTY OF MARIN

P. O. BOX 4220 — CIVIC CENTER

SAN RAFAEL, CALIFORNIA 94913

JOSEPH A. COFFRINI
TREASURER — TAX COLLECTOR
PUBLIC ADMINISTRATOR

MICHAEL J. SMITH
ASSISTANT TREASURER — TAX COLLECTOR

November 14, 1986

California Law Revision Committee
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Dear Members of the Law Revision Committee:

We recently received a copy of the "Tentative Recommendations Relating to Public Guardian and Public Administrator". This office, as Public Administrator, is particularly interested in the recommendations relating to the Public Administrator and we mainly address these recommendations.

We are in agreement with almost all of the recommendations. However, with regard to section 7686(b), we would suggest raising the minimum commission for administering a Summary Probate estate, from the current two hundred fifty dollars (\$250) to five hundred dollars (\$500), instead of three hundred fifty dollars (\$350) as proposed by the Committee. Inasmuch as you are proposing raising the limit of Summary Probate estates under Probate Code, section 1143(b) from three thousand dollars (\$3,000) to ten thousand dollars (\$10,000), the proposed fee of three hundred fifty (\$350) seems unrealistically low. An increase up to five hundred dollars (\$500) would be closer to the actual cost of administration of small estate valued at less than ten thousand dollars (\$10,000).

Please include us on your mailing list for further recommendations as we are very interested in keeping current on the proposed law.

Very truly yours,

JOSEPH A. COFFRINI
PUBLIC ADMINISTRATOR

Barbara A. Cain
Barbara A. Cain
Deputy Public Administrator

BAC/rw

VICTOR J. WESTMAN
COUNTY COUNSEL

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November 18, 1986

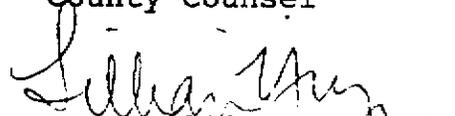
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Approve of Tentative Recommendation Relating to Public
Administrator

The Contra Costa County Counsel's Office, as attorneys for the Contra Costa County Public Administrator, approve of the Commission's tentative recommendations relating to the public administrator. We particularly approve of your recommendation favoring that the cost of the official bond of the public administrator be borne by the estates' beneficiaries rather than the public.

Very truly yours,

Victor J. Westman
County Counsel


By: Lillian T. Fujii
Deputy County Counsel

LTF:te
cc: Public Administrator
Attn: Jim Miller
Mark A. Wasser, General Counsel, CSAC

**Matthew Bender**

**Matthew Bender
& Company, Inc.**
2101 Webster Street
Post Office Box 2077
Oakland, CA 94604
(415) 446-7100

November 17, 1986

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, suite D-2
Palo Alto, CA 94303-4739

Re: Studies # L-800 (Nonresident Decedents), L-1033 (Determining Class Membership), L-1035 (Estates of Missing Persons), L-1040 (Public Guardians/Administrators), and L-1045 (Definitions).

Gentlemen:

Thank you for the September, 1986 versions of the tentative recommendations of the above-referenced proposals. It is helpful to have the latest thinking of the commission regarding the preliminary provisions and definitions while reviewing the other proposals.

I know this will arrive after your November 15th deadline, but computer malfunction has made timely transcription of this letter impossible.

Regarding the proposal for simplification of distribution or administration of California assets of nonresident decedents, I think it is all workable, sensible, and an improvement. Also:

§12522 (validity of foreign will): I especially like the proposed provision conforming the criteria for validity of a nonresident's will to those in Prob C § 6113.

§§12553, 12554 (payment of small accounts): Shouldn't Totten trust accounts be excepted from those which may be delivered to a foreign representative? If there are competing claims by a Californian entitled to distribution without administration and a foreign representative, are they to be resolved in the state where the primary administration is pending or may they be resolved here? The requirement of § 12553(b) and the discharge from liability provisions of Prob C § 13106 seem to favor the California claimant, allowing the institution to pay the California claimant and requiring the foreign representative then to establish a superior claim. Is that your intention?

Regarding the proposal for determination of class membership:
§ 320 (Proceeding authorized): Are there some situations in which both these proposed proceedings and proceedings under Prob C § 1080 will be available?

§ 322(b) (Notice of Hearing): This is not one of the matters listed at Prob C § 1200(a). Given Prob C § 1200(d) and the trend to limit the responsibility of the clerks for posting notices, why not drop subdivision (b)?



Matthew Bender

§ 323 (Response): Answers can support (admit) as well as deny, too. Do you think it might simplify things to require the response/answer be filed sooner than before the hearing? Is earlier filing required in some counties by virtue of local rules? I think that procedurally these proposed proceedings and proceedings under Prob C § 1080 should be substantially similar.

I like all the changes regarding administration of estates of missing persons. I agree that there is no reason to perpetuate different notice, hearing, or distribution waiting-period requirements for estates of missing persons. I also think the changes adopting the new general definition of interested person and charging the costs of any additional required search to the estate are appropriate.

I like all the changes regarding public guardians and administrators. Specifically, I agree:

§ 2921: that domicile is a more workable basis for jurisdiction;

to be drafted (re W & I C § 8011): that appraisals are wasteful and unnecessary in small estates;

§§ 2631, 2942: that the public guardian should have authority to pay expenses of general administration on the same basis that present law provides for payment of funeral and last illness expenses;

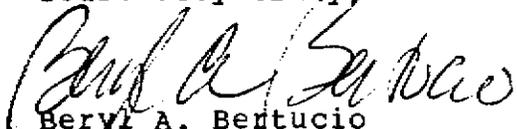
§ 2941: that the public guardian should be allowed more flexibility in arranging for legal representation;

§§ 7643, 7683(b): that unclaimed funds in an estate administered by the public administrator are more properly turned over to the county; and

§ 7682-7684: that the new creditor protection provisions are appropriate.

Regarding the current version of preliminary provisions and definitions, generally, they all seem sensible. Specifically, I like the new § 46 definition of insured account because it equalizes the treatment between the three most prevalent types of financial institutions and because it is keyed to the insurance coverage. I think the latter is especially important since representatives under pressure to maximize income to the estate are likely to forget that some of the "investment certificates" are not insured.

Yours very truly


Beryl A. Bertucio
Senior Legal Writer

cc George A. Meier

Studies: L-800
L-1033
L-1035
L-1040
L-1045

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November 17, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Attention: John H. D'Moulley, Executive Secretary

Re: Law Revision Commission Tentative
Recommendations Relating to Probate
Law

Dear Mr. D'Moulley:

I am writing to you with my comments on the Tentative Recommendations of the California Law Revision Commission relating to the new Estate and Trust Code and the Public Guardian and Public Administrator.

For your convenience in organizing the comments, I have put my comments for each separate code on separate sheets. If you have any questions, or if I can be of any further assistance, please call.

Very truly yours,

MacCARLEY, PHELPS & ROSEN
A Professional Corporation

By: *Ruth A. Phelps*
Ruth A. Phelps

RAP:mr
0612m

Comments on Tentative Recommendations
Relating to Public Guardian and
Public Administrator
L-1040
September, 1986

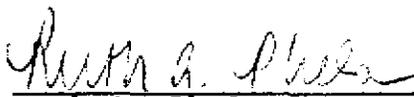
I read this tentative recommendation. I have several comments.

1. Summary of proceedings - page 7 - I agree with raising the limit for independent action in the estates, of less than \$10,000.00 and court authorization if the estate is worth less than \$60,000.00. I think these limits should be higher but I understand that this new code section will track other provisions of the probate code. I suggest raising the limits to \$15,000 and \$75,000 respectively.

2. New Section 7624 - Cost and Fees for Taking Possession or Control of Property - This is a needed section. However, aren't fees subject to court approval? Who determines the fees? Will the public administrator promulgate a fee schedule based on a percentage of the property?

3. Section 7685 - Public Administrator Statement of Disposition - Under this section the Public Administrator does not have to state the disposition of the property in estates of less than \$10,000.00. How will creditors of estates less than \$10,000.00 find out to whom distribution was made in order to file a claim? With that small an estate there may not be any significant creditors but there is no provision for this. The creditor needs to know to whom to turn to collect as provided in section 7684.

Respectfully submitted,



Ruth A. Phelps

0612m



**CALIFORNIA STATE ASSOCIATION OF PUBLIC
ADMINISTRATORS, PUBLIC GUARDIANS,
AND PUBLIC CONSERVATORS**

November 25, 1986

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California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Attn: John H. DeMouilly

Dear Sirs:

Thank you for sending me copies of your commission's recommendations relating to the review of the California Probate Code. Unfortunately I did not receive the proposed revisions until November 20, 1986. I therefore hope that my comments on behalf of the California State Association of Public Administrators/Guardians/Conservators will still be timely enough for your commission.

Our Association is supportive of all the tentative recommendations made. Therefore, I will restrict my comments specifically to those relating to Public Guardian/Administrator revisions.

Public Guardian Bond: Our Association strongly supports this revision. We do have two points which need clarification: (1) What are examples of "other public liabilities of the County" that may be offset besides our official bond; and would, for example, insurance costs to protect personal property stored in our offices qualify. (2) In reviewing the revision that a share of cost would be charged against estates of more than \$10,000, I interpret this to mean the small estates under \$10,000 would not be subjected to this mandated fee, and this would be supported by our Association.

Court Ordered Public Guardianship or Conservatorship: We support a revision in the law that will eliminate the conflict in the Probate Code and require proper notice for court referrals.

Taking Possession or Control of Property: Support

Employment of Attorneys: Support

Appraisals of Estates: Very strongly support. This has been an issue where reform is urgently needed. Small estates are currently being billed by Probate Referees throughout California where the individual estate cannot afford the mandated appraisal fee. We believe that it is unjust to require an appraisal when the estate cannot afford it, when the estate will not be sold, and when the individual estate qualifies for SSI and/or Medi-Cal benefits. We also believe Public Guardians are generally as well qualified to make appraisals as Probate Referees and the appraisals could be done free of charge for our estates. Our Association is available to testify in supporting this important revision, and we urge the Law Revision Commission to support this needed change in the Probate Code.

Disposition of Assets Upon Death of Ward or Conservatee: Support amend. Upon review of Welfare and Institutions Code 8012, the Public Guardian may pay such expenses, not the Public Administrator.

Property Subject to Loss, Injury, Waste or Misappropriation: Support.

Public Administrator Bond: Strongly support. We do seek a clarification on what effect will the small estate non-appraisal provisions have on this revision, if any. Please forward a copy of your commission's regulations relating to inventory and appraisal as soon as it is available.

Summary Proceedings: Very strongly support. These changes will increase the efficiency, reduce costs, cut time and increase revenue to the counties, which will help offset the cost of administration of estates, thus reducing the burden to local government.

Thank you for the opportunity to comment on these tentative revisions. Please feel free to contact me or the president of our Association regarding any additional information you may require. I am looking forward to receiving your full recommendations and for them to be activated into law.

Sincerely,



DOUGLAS A. KAPLAN
Liaison Officer

DAK:cp

cc: Verdine B. Dunham

Memo 86-207

EXHIBIT 26

J. Earle Norris
Vice President and
Senior Claims Counsel

November 17, 1986

Mr. John H. DeMouly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite "D-2"
Palo Alto, CA 94303-4739

Re: California Law Revision Commission
Study L-800 - Nonresident Decedent
Study L-1033 - Determining Class Membership
Study L-1035 - Administration of Estates of Missing Persons
Presumed Dead
Study L-1040 - Public Guardian and Public Administrator
Study L-1045 - Preliminary Provisions and Definitions

Dear Mr. DeMouly:

I have submitted copies of the above-mentioned studies to the Subcommittee members of our special committee of the CLTA Forms and Practices Committee for review and comment in October, 1986.

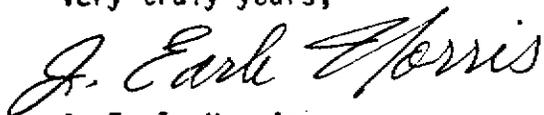
I apologize for the late response since I noticed that you requested comments no later than November 15, 1986. From the responses I have received from the Subcommittee members, it would not appear that there is anything in all of the studies that would cause any concern for the members of our industry.

I would suggest one recommendation with regards to Study L-1035, tentative recommendation relating to the Administration of Estates of Missing Persons Presumed Dead. That comment would concern proposed Section 12408, Recovery of Property by Missing Persons Upon Reappearance. In Sub-Section (a) (2) there is a statute of limitations from the recovery of property from distributees "to the extent that recovery from distributees is equitable in view of all the circumstances . . . ". I would like to suggest that it would be of assistance if there were a third sub-paragraph to indicate that conveyances by distributees to third party bona fide purchasers for value would protect such purchasers and the missing persons recovery would be limited to recovery only from the immediate distributee. This would clarify that the missing person would be left with a monetary cause of action against the distributee but that the title as conveyed to the bona fide purchaser would be protected.

Letter to John H. DeMouly
November 17, 1986
Page Two

Thank you very much for the opportunity to review the proposed recommendations to the legislature in the Law Revision Commission's continuing work.

Very truly yours,

A handwritten signature in cursive script that reads "J. Earle Norris". The signature is written in dark ink and is positioned above the typed name.

J. Earle Norris

JEN:elm

cc:Gordon Granger
Richard M. Klarin
Robert L. Manuele
Robert Cavallaro
James Wickline
Collyer Church
Clark Staves

ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
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LEONARD W. POLLARD II, San Diego
JAMES V. QUILLINAN, Mountain View
JAMES F. ROGERS, Los Angeles
HUGH NEAL WELLS III, Irvine

December 1, 1986

James V. Quillinan, Esq.
444 Castro, Suite 900
Mtn. View, CA 94041

Dear Jim:

Re: LRC TR: Public Guardians & Administrators - Study
L-1040

I have made a careful review of the LRC TR dealing with the Public Guardians and Public Administrators. Having gone over this memo several times before, I have no additional comments on its final form.

Neal Wells would like to see proposed Section 7685 revised to require the Public Administrator to file receipts for all distributions with the court, rather than being preserved by the Public Administrator for two years only. I have no strong feeling either way.

Very truly yours,

LEONARD W. POLLARD II

LWP:naa
cc Chuck Collier
Keith Bilter
Irv Goldring
Jim Opel
Jim Devine
Lloyd Homer



**CALIFORNIA STATE ASSOCIATION OF PUBLIC
ADMINISTRATORS, PUBLIC GUARDIANS,
AND PUBLIC CONSERVATORS**

December 3, 1986

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Maureen Hamilton
PG/PC
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Chief Deputy PG/PC
Shasta County

Member-at-Large:
Brian McCormick
PA/PG/PC
San Bernardino County

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, CA 94303-4739

Attention: John H. DeMouilly

Gentlemen:

Doug Kaplan, Liaison Officer of our Association, has provided me with copies of your commission's recommendations relating to the review of the California Probate Code, along with a copy of his letter dated 11-25-86 with his comments, and to his I wish to add the following:

Public Guardian Bond: If Mr. Kaplan's interpretation is accurate that "estates of under \$10,000 would not be subjected to this mandated fee", it was agreed, in further discussion with Mr. Kaplan, that in determining small estates not subject to the mandated fee, the current SSI asset limit might be appropriate rather than the arbitrary \$10,000 figure.

Appraisals of Estates: The following motion was made, seconded, and carried at our Association Conference on 9/16/86. "That the PA/PG Association recommend that the Probate Code be amended to exempt conservatorship estates from probate referee appraisals except in the event of sale unless the conservatee is SSI or Medi-Cal eligible, which case, only the sale of real property would require a probate referee appraisal."

Finally, this is to emphasize our Association's support of the tentative recommendations, in general, and to applaud, specifically, the commission's efforts to cover, at least partially, the costs of the Public Guardian/ Administrators. Our Association appreciates the commission's appropriate shifts of the burden of costs of services from overburdened counties to the estates, insofar as is possible.

If we can be of further assistance, please let us know.

Sincerely,


Verdine B. Dunham, President

VBD/slb

cc: Doug Kaplan

Executive Secretary:
Gene Thacker
PA (Retired)
San Diego County
8260 Wintergarden Blvd.
Lakeside, CA 92040
(619) 443-0513

3/20/87

Revised
TENTATIVE RECOMMENDATION RELATING TO
PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR

PUBLIC GUARDIAN

The new code relocates the public guardian statute from the Welfare and Institutions Code¹ to the Guardianship and Conservatorship Law. At the same time, the new code makes a few significant substantive changes in the law.

Public guardian's bond. The official bond of the public guardian and the liability of the county for the public guardian stand in place of the ordinary bond of a guardian or conservator. Since the public guardian's bond and liability are for the benefit and protection of the ward or conservatee and persons interested in the estate of the ward or conservatee, it is proper that these persons, rather than the public, should bear the cost.² The new code allows as a claim against the estate of the ward or conservatee a share of the cost of the public guardian's bond.³ This amount is remitted to the county treasury to offset the public expenditure for the official bond and other public liability of the county.

1. Welf. & Inst. C. §§ 8000-8015.

2. A guardian or conservator is generally allowed the amount of reasonable expenses incurred in performance of the duties, including the cost of any surety bond given. Prob. Code § 2623(a).

3. The statutory share is \$25 plus ¼% of the amount of an estate greater than \$10,000. This amount is subject to revision, depending ultimately on the small estate non-appraisal provisions ultimately adopted. See discussion of "Appraisal of estate," below.

Court ordered public guardianship or conservatorship. If the court orders the guardianship or conservatorship of any person or estate into the public guardian's hands, existing law provides in one place that the public guardian "may act" as guardian or conservator and in another that the public guardian "shall" procure letters of guardianship or conservatorship.⁴ As a consequence, whether the public guardian must accept a court referral is not clear. The new code makes clear the public guardian must accept a court-referred guardianship or conservatorship. However, the court may not order the referral except upon 15 days' notice to the public guardian, a court hearing, and a determination that there is no other person qualified and willing to act and that the public guardianship or conservatorship is necessary. This will ensure that persons and property in need of protection will receive it, and that the public guardian will be required to act only in appropriate cases.

Jurisdiction of public guardian. Existing law provides that the public guardian may act with respect to persons and property "in the county."⁵ However, a person domiciled in the county may require protection when temporarily outside the county (including institutionalization outside the county), or the person's property requiring protection may be situated outside the county. Jurisdiction should be based on domicile, regardless of the temporary location of the person or property. The new code implements this concept.

4. Welf. & Inst. Code § 8006.

5. Welf. & Inst. Code § 8006.

Taking possession or control of property. Whether or not the public guardian is ultimately appointed guardian or conservator, the public guardian may take immediate possession or control of property in need of protection because it is subject to waste, lack of care, or loss. The new code extends this authority to property that is subject to misappropriation as well.

Existing law sets a statutory fee for the services of the public guardian in taking charge of the ward's or conservatee's property. The statutory fee is subject to a \$25 minimum and a \$500 maximum.⁶ These limits are arbitrary, and bear no reasonable relation to the actual cost to the public guardian of providing services. The proposed law eliminates the statutory maximum and minimum fees, leaving the public guardian simply with a reasonable fee for services.

Employment of attorneys. Existing law enables the public guardian to employ private attorneys if necessary, provided the cost can be defrayed out of estate funds.⁷ The new code broadens this authority even where estate funds are insufficient by enabling the public guardian to employ private attorneys where satisfactory pro bono or contingency fee arrangements can be made. This will enable the public guardian to obtain adequate legal representation for the ward's or conservatee's estate without cost to the public or the estate.

6. Welf. & Inst. Code § 8006.5.

7. Welf. & Inst. Code § 8010.

Appraisal of estate. Ordinarily a guardianship or conservatorship estate must be appraised.⁸ The appraisal requirement is a substantial and unnecessary burden in the case of small estates⁹ and estates where the assets will not be sold. The Commission has under review proposals to eliminate appraisals or to substitute conservator for probate referee appraisal in appropriate cases, such as small estates, estates that will not be sold, and estates eligible for Social Security Supplemental Income Benefits.¹⁰ The object of this review is to simplify administration in small estates and to prevent the ward's or conservatee's assets from being consumed in administrative expenses. The new provisions would apply to estates administered by private conservators as well as the public guardian. The Commission solicits comments on these concepts.

Disposition of assets on death of ward or conservatee. On the death of the ward or conservatee the public guardian may pay expenses of last illness and funeral expenses, and may liquidate an estate worth less than \$20,000 by summary court proceedings if existing liquid assets are insufficient for payment.¹¹ This is a useful procedure, and the new code expands it to permit liquidation and payment of other reasonable guardian or conservator charges as well, including unpaid court approved attorney's fees.¹² However, because of the expansion and because of the summary nature of the court proceedings, the new code restricts the liquidation procedure to the smallest estates--those worth less than \$5,000.

8. Prob. Code § 2610.

9. An estate handled by the public guardian need not be appraised if worth fifty dollars or less. Welf. & Inst. Code § 8011.

10. The current SSSI asset limit is \$1,600.

11. Welf. & Inst. Code § 8012.

12. The new code makes this revision in Section 2631, which is applicable to any guardian or conservator and is not limited to the public guardian.

PUBLIC ADMINISTRATOR

The provisions of existing law governing public administrators are generally continued in the new code without substantive change, or with only minor changes that are noted in the Comments to the new code and to the repealed provisions of existing law. There are a number of more significant changes, however, that are noteworthy.

Property subject to loss, injury, waste, or misappropriation. A public administrator must take charge of a decedent's property either (1) upon court order or (2) if there is no personal representative and the property is subject to loss, injury, or waste.¹³ The new code extends this requirement to property that is subject to misappropriation as well. However, the public administrator is given express immunity with respect to property the public administrator is unable to obtain control of.

In carrying out this responsibility, the public administrator may make a search for other property, a will, and burial instructions, including a search of the decedent's safe deposit box, but only if there are reasonable grounds to believe that the public administrator may be appointed personal representative.¹⁴ This limitation is unduly restrictive, since there may be an immediate need for action regardless of the likelihood the public administrator will ultimately be the personal representative. The new code deletes the likelihood of appointment requirement. The new code also adds a requirement that if the search reveals additional property of the decedent that is subject to loss, injury, or waste, the person in possession must surrender the property to the public administrator.

13. Prob. Code § 1140.

14. Prob. Code § 1141.

Existing law sets a statutory fee for the services of a public administrator in searching for and taking charge of the decedent's property that is subject to loss, injury, or waste. The statutory fee is subject to a \$25 minimum and a \$500 maximum.¹⁵ These limits are arbitrary, and bear no reasonable relation to the actual cost to the public administrator of providing the services. The new code eliminates the statutory maximum and minimum fees, leaving the public administrator simply with a reasonable fee for services.

Public administrator's bond. The official bond of the public administrator and the liability of the county for the public administrator stand in place of the ordinary bond of a personal representative. Since the public administrator's bond and liability are for the benefit and protection of persons interested in the estates administered by the public administrator, it is proper that these beneficiaries, rather than the public, should bear the cost. The new code allows as a charge against every estate administered by the public administrator a share of the cost of the public administrator's bond.¹⁶ This amount is remitted to the county treasury to offset the public expenditure for the official bond and other public liability of the county.

15. Prob. Code § 1144.5.

16. The statutory share is \$25 for an estate of \$10,000 or less and ¼% of the amount of an estate greater than \$10,000. This amount is subject to revision, depending ultimately on the small estate non-appraisal provisions ultimately adopted. See Tentative Recommendation relating to Inventory and Appraisal (to be published).

Summary proceedings. Most estates handled by the public administrator are small estates that are uneconomical to administer.¹⁷ Existing law seeks to cure this problem by providing summary proceedings for use by the public administrator in small estates.¹⁸ The existing definition of a small estate, however, is unrealistically low--\$3,000 for independent action by the public administrator, and \$20,000 for action with court authorization. The new code increases these amounts to allow independent action by the public administrator if the estate is less than \$10,000, or upon court authorization if the estate is less than \$60,000. These amounts correspond to the amounts that define a small estate under general Probate Code provisions enabling collection and transfer of small estates without administration.¹⁹ Increasing the amounts should place the operation of the public administrator's office on a more sound economic basis.

In conducting summary administration proceedings, the public administrator may liquidate personal property assets but not real property assets.²⁰ This limitation unduly impairs the utility of the summary proceedings. The new code provides that, so long as the total estate is small, the public administrator may sell real property that is part of the estate. The sale should be subject to court confirmation, however, just as sales under ordinary estate administration.

17. For example, James R. Scannell, Public Administrator for the City and County of San Francisco, informs the Law Revision Commission that 70% of the estates handled by his office are less than \$10,000 in value and 88% are less than \$50,000 in value. See Minutes of Meeting of California Law Revision Commission (March 13-14, 1986) at 28.

18. Prob. Code § 1143.

19. Prob. Code § 13000 et seq.

20. Prob. Code §§ 1143-1144.

Because no notice to creditors is given under summary proceedings, the new code includes two protections for creditors not found under existing law. First, the new code requires payment of claims made any time before distribution of the decedent's property is made, as opposed to the four-month claim period applicable in ordinary administration proceedings in which creditors receive published notice. To avoid precipitate distributions, the new code prohibits distribution until four months after commencement of summary disposition proceedings. Second, the new code imposes liability on recipients of property distributed pursuant to summary proceedings for unpaid creditor claims. This is analogous to personal liability imposed on recipients of property that passes without probate administration.²¹

Existing law provides no limit to the amount of time a public administrator must preserve files of summary disposition cases. The new code simplifies the record-keeping system by requiring the public administrator to file with the court a permanent statement of the decedent's estate and receipts for distributions in the case of an estate over \$10,000. Thereafter, the public administrator must preserve in the office of the public administrator a temporary file of all receipts and records of expenditures for a period of two years, after which the file may be destroyed.

The minimum fee of the public administrator for summary administration is \$250.²² This fee is unrealistically low under modern conditions, and the new code increases the minimum fee to \$350.

21. See, e.g., Prob. Code § 13000 et seq.

22. Prob. Code §§ 1143-1144; 43 Ops. Cal. Atty. Gen. 192 (4-22-64).

Existing law provides that where the public administrator uses summary disposition proceedings, unclaimed property in estates under \$3,000 is paid to the county²³ but unclaimed property in estates under \$20,000 is distributed to the state.²⁴ The Law Revision Commission recommends that all unclaimed summary disposition funds be paid to the county. Typically the small estates summarily disposed of by the public administrator are the estates of elders living alone without family support who receive greater than usual county care and service during their lifetimes.²⁵ For this reason it is appropriate that unclaimed property is paid to the county where the decedent resided.

23. Prob. Code § 1143(b).

24. Prob. Code § 1144.

25. Such care and service may include supplementation of income through geriatric programs such as day care centers, low cost public transportation, food and health centers, and replacement of services eliminated from the Medi-Cal program. See letter from Dianne Feinstein, Mayor of San Francisco, to California Law Revision Commission (May 21, 1986) (letter on file in Commission office).

Outline

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DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER
PROTECTIVE PROCEEDINGS

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 restates former Welfare and Institutions Code Section 8000 without substantive change.

Note. 1986 legislation added to Section 8000 the following provisions, which we will incorporate here:

In appointing the public guardian, the board of supervisors may give preference to the person or agency providing public guardian services in each county. No person or agency shall be designated as public guardian whose agency functions present real conflict with the functions of conservatorship investigation or administration.

The board of supervisors may also designate who shall be authorized as public representative payee, and designate the public guardian to collect such fees as may be authorized by the board of supervisors for public representative payee services.

§ 2901. Termination of office

2901. The board of supervisors may by ordinance terminate the office of public guardian.

Comment. Section 2901 restates former Welfare and Institutions Code Section 8002 without substantive change.

§ 2902. Public administrator as public guardian

2902. The board of supervisors may by ordinance designate that the public administrator is ex officio public guardian.

Comment. Section 2902 restates former Welfare and Institutions Code Section 8001 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 restates 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 public guardian, it may terminate the appointment and may by ordinance designate that the public administrator is ex officio public guardian and all authority vests in the successor.

Comment. Section 2904 restates 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. If letters have been issued to "the public guardian" of the county, the letters are sufficient to authorize action by the successor and new letters need not be issued.

Comment. The first sentence of Section 2905 restates former Welfare and Institutions Code Section 8005 without substantive change. The second sentence is new; it recognizes that letters may be issued to the office instead of the individual (Section 2923) pursuant to existing practice in some counties.

CROSS-REFERENCES

Definitions

Letters § 52

Note. *This section adds a provision that enables letters of guardianship or conservatorship to be issued to the office of the public guardian rather than to an individual public guardian. Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), believes this is a useful addition to the law. "This will save time, confusion, and paperwork and clarify that there are no gaps in authority when a successor public guardian takes office."*

§ 2906. Official bond

2906. The public guardian shall give an official bond in an amount 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. The public guardian may not be required to give a bond in an individual estate.

Comment. Section 2906 restates former Welfare and Institutions Code Section 8008 without substantive change. See also Section 2923 (letters, oath, and bond). The public guardian is allowed a share of the cost of the bond as an expense of administration. Section 2943 (expenses of public guardian).

Note. *The Western Surety Company (Exhibit 5) is "in full agreement with proposed § 2906 restating the requirement of bond currently contained in Welfare and Institutions Code § 8008."*

On the other hand, Peter R. Palermo of Pasadena (Exhibit 12) questions the need for a bond here. "The Public Guardian should be treated similar to a bank or trust company which do not need to post a bond in connection with the administration of an estate, since it would appear that the assets of the Public Guardian would be sufficient to cover any misfeasance." The staff notes, however, that the bond also serves to protect the county.

§ 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 are a county charge, but the county shall be reimbursed therefor out of funds or property of the estate by the public guardian.

(b) As a means of advancing necessary expenses of a public guardian, 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 of Division 3 of Title 3 of the Government Code.

Comment. Section 2907 restates former Welfare and Institutions Code Section 8015 without substantive change. To the extent funds of the estate are insufficient for reimbursement under subdivision (a), the expenses advanced remain a county charge.

CROSS-REFERENCES

Definitions

Property § 62

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

§ 2920. Taking possession or control of property

2920. (a) The public guardian may take possession or control of property of persons domiciled in the county referred to the public guardian for guardianship or conservatorship if the property is subject to loss, injury, waste, or misappropriation.

(b) A public guardian who takes possession or control of property pursuant to this section is entitled to reasonable costs incurred for the protection of the property, together with a reasonable fee for services, 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 against the estate of the ward or conservatee.

Comment. Subdivision (a) of Section 2920 restates the fifth sentence of former Welfare and Institutions Code Section 8006, with the addition of misappropriation as a ground for taking possession or control. Subdivision (b) restates former Welfare and Institutions Code Section 8006.5, eliminating the maximum and minimum fees.

GROSS-REFERENCES

Definitions

Conservatee § 1411
Conservator § 1410
Property § 62

Note. This section adds "misappropriation" to the law as a ground upon which the public guardian may take property into protective custody and changes the public guardian's fee to "reasonable costs incurred" in place of the existing \$25 minimum and \$500 maximum. The California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28) support this proposal.

With respect to the addition of "misappropriation", Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), notes his support. The public guardian fairly often winds up being appointed conservator in these kinds of cases, and it would help in recovery of assets if the public guardian could have the "head start" given in this provision. "Certainly, misappropriation is as important a ground as the existing grounds." This sentiment is echoed by Jerome Sapiro of San Francisco (Exhibit 1), who states that, "Overreaching of the infirm and elderly is too frequent an occurrence, and anything that will allow the protection of them and their estates gets my approval." This addition also appears sound to the Probate Department of Hahn & Hahn of Pasadena (Exhibit 15).

The change in fee allowance to a "reasonable" basis also received favorable approval from Mr. Serbin, Hahn & Hahn, and Melvin C. Kerwin of Menlo Park (Exhibit 13). Sterling S. Clayton of Long Beach (Exhibit 11) felt this determination should be subject to court review and

authorization; the staff believes that this would be the procedure, but this should be clarified. Wilbur L. Coats of Poway (Exhibit 10) is worried about nonuniformity throughout the state. "It appears to me that the State has an obligation, as it does in setting probate fees, except for extraordinary fees, to state with specificity the range of fee charges." He suggests a fee schedule pegged to the dollar value of property in the estate.

The provisions for taking possession by the public guardian are limited to the case where the protected person is domiciled in the county. Hahn & Hahn sees circumstances where this may be too restrictive. They would extend the section to permit possession or control of property physically located in the county regardless of the location or domicile of individual owners. "Our concern is that domicile is often a disputable issue, whereas physical location of the property to be protected is not." They recognize there might be some jurisdictional problems between counties, since the ultimate public guardian may be in a different county, but this is just a temporary emergency situation and the hands of the public guardian should not be tied.

The public guardian may take possession of property "referred to the public guardian for guardianship or conservatorship." Hahn & Hahn wonders just what this means. The staff has also been concerned with this, but the Commission decided to keep it nebulous. Perhaps the public guardians can expand upon this for us.

§ 2921. Application for appointment

2921. If any person domiciled in the county requires a guardian or conservator and there is no other person qualified and willing to act as guardian or conservator:

(a) The public guardian may apply for appointment as guardian or conservator of the person and estate or person or estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person and estate or person or estate if the court so orders after a hearing on 15 days' notice to the public guardian and a determination that the appointment is necessary.

Comment. Section 2921 supersedes the first, second, and a portion of the third sentences of former Welfare and Institutions Code Section 8006. Section 2921 applies even though a person may be institutionalized in a facility in another county if the person is domiciled in the county of the public guardian.

CROSS-REFERENCES

Definitions

Conservator § 1410
Trust company as fiduciary § 300

Note. Appointment of a public guardian is limited to cases where no other person is qualified and willing to act. Jeffrey A. Dennis-Strathmeyer of CEB (Exhibit 16) is concerned about this limitation. "What if the public guardian is willing to act and the court believes that it is best to appoint the public guardian because of disputes among family members who are technically qualified and willing?"

The categories of persons who may be referred to the public guardian are expanded in the draft. Existing law is limited to persons and property in the county, and the proposed law extends this to persons domiciled in the county, regardless of their location or the location of their property. This change received favorable comment from Melvin C. Kerwin of Menlo Park (Exhibit 13) and from Beryl A. Bertucio, Senior Legal Writer for Matthew Bender (Exhibit 23), who observes that "domicile is a more workable basis for jurisdiction."

Existing law is unclear whether the public guardian is required to accept a person or estate when "ordered into his hands by the court." Welfare and Institutions Code Section 8006 says in one place that in such a situation the public administrator "may act as guardian or conservator", and in another that "letters of guardianship or conservatorship shall be procured". The public guardians believe they need not accept a court referral; the probate courts believe the opposite. Subdivision (b) makes clear that the guardianship or conservatorship must be accepted when ordered by the court, but also precludes the court from making such an order except upon notice and an opportunity for the public administrator to be heard and a determination by the court that the appointment is necessary.

This provision received a mixed reaction. The Probate Department of Hahn & Hahn of Pasadena (Exhibit 15) strongly supports the proposal to require the public guardian to accept a court referral. The California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28) also supports "a revision in the law that will eliminate the conflict in the Probate Code and require proper notice for court referrals."

Mr. Strathmeyer wonders whether we may have unduly restricted the court's authority under this section. He's not sure the provision "provides them adequate flexibility to order appointment of the Public Guardian in the situations which the judges face."

The requirement that the public guardian accept a court referral was opposed by Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19). Mr. Serbin points out that the public guardian has limited resources and "must have discretion as to which cases are most appropriate." He also points out that there are cases that involve the manpower and expertise (e.g., the need to run a business) that may be beyond the resources of a particular public guardian's office. "The public guardian must have discretion to decline a case that fits this category." Mr. Serbin does not address the point that the notice of hearing gives the public guardian an opportunity to make these concerns known to the judge.

Frank L. Freitas, Public Administrator/Public Guardian of San Luis Obispo County (Exhibit 20) likewise points out the limited resources of and the many demands on the public guardian. He believes if the Commission is going to try to impose a duty on the public guardian to

receive all cases referred by the court, the Commission must also give the public guardian the means to carry out the duties. Specifically, he suggests:

(1) Adequate funding. "For an example, expenditures made by the Public Guardian to provide services to conservatees would be charges against the County General Fund and shall be paid by the County."

(2) Authority to compel various public agencies that provide food, clothing, shelter, and health services, to provide these services to meet the needs of the ward.

(3) Immunity with respect to property which the public guardian is ordered to care for but is unable to get possession or control of. This would parallel the immunity given the public administrator in the Commission's draft.

§ 2922. Persons under jurisdiction of Departments of Mental Health or Developmental Services

2922. An application of the public guardian for guardianship or conservatorship of the person and estate or person or estate of a person who is under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services may not be granted without the written consent of the department having jurisdiction of the person.

Comment. Section 2922 restates former Welfare and Institutions Code Section 8007 without substantive change.

§ 2923. Letters, oath, and bond

2923. If the public guardian is appointed as guardian or conservator:

(a) Letters of guardianship or conservatorship shall be issued in the same manner and by the same proceedings as letters of guardianship or conservatorship are issued to other persons. Letters may be issued to "the public guardian" of the county without naming the public guardian.

(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, letters of guardianship, letters of temporary conservatorship, or letters of conservatorship.

Comment. Section 2923 restates the third and fourth sentences of former Welfare and Institutions Code Section 8006 with the addition of authority to issue letters to "the public guardian." Letters issued in this form are sufficient to enable a successor public guardian to act without issuance of new letters. Section 2905 (termination of

authority of public guardian). The public guardian is allowed a share of the cost of the bond as an expense of administration. Section 2943 (expenses of public guardian). See also Section 2906 (official bond).

CROSS-REFERENCES

Definitions

Conservator § 1410

Note. Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), supports this section.

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

§ 2940. Deposit of funds

2940. All funds coming into the custody of the public guardian shall be deposited or invested in the same manner and subject to the same terms and conditions as deposit or investment of money of an estate by the public administrator pursuant to Article 4 (commencing with Section 7661) of Chapter 7 of Division 7.

Comment. Section 2940 supersedes former Welfare and Institutions Code Section 8009. It cross-refers to comparable provisions of the public administrator statute.

§ 2941. Employment of attorneys

2941. The public guardian may, if necessary and in the public guardian's discretion, employ private attorneys where the cost of employment can be defrayed out of estate funds or where satisfactory pro bono or contingency fee arrangements can be made.

Comment. Section 2941 restates former Welfare and Institutions Code Section 8010 with the addition of reference to satisfactory pro bono or contingency fee arrangements.

Note. This section, which broadens the authority of the public guardian to employ legal counsel, was supported by Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), and the California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28). Beryl A. Bertucio, Senior Legal Writer for Matthew Bender (Exhibit 23) agrees that "the public guardian should be allowed more flexibility in arranging for legal representation." Melvin C. Kerwin of Menlo Park (Exhibit 13) would go further and would mandate employment of private attorneys if the estate can afford it.

§ 2942. Disposition of property on death of ward or conservatee

2942. (a) Upon the death of the ward or conservatee the public guardian may pay from assets of the ward or conservatee that are in the possession or control of the public guardian the unpaid expenses and charges of the guardianship or conservatorship in the manner and to the extent provided in Section 2631.

(b) If payment of expenses and charges pursuant to subdivision (a) cannot be made in full and the total market value of the remaining estate of the decedent does not exceed \$5,000, the public guardian may petition the court for an order permitting the public guardian to liquidate the decedent's estate. The public guardian may petition even though 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 petition need be given. If the order is granted, the public guardian may sell personal property of the decedent, withdraw money of the decedent in an account in a financial institution, and collect a debt, claim, or insurance proceeds owed to the decedent or the decedent's estate, and a person having possession or control shall pay or deliver the money or property to the public guardian. After the payment of any remaining amounts due, the public guardian may transfer any remaining assets pursuant to Section 2631.

Comment. Section 2942 restates former Welfare and Institutions Code Section 8012; the section expands the expenses and charges that may be covered but limits estates that may be liquidated to \$5,000 or less. If the estate exceeds \$5,000 but is less than \$10,000, a public administrator appointed personal representative may summarily dispose of the estate without court authorization. Section 7680 (summary disposition authorized).

CROSS-REFERENCES

Definitions

Account § 21
Conservatee § 1411
Court § 1418
Financial institution § 40
Person § 56
Petition § 1430
Property § 62
Will § 88

Note. The authority provided in this section for the public guardian to pay expenses of general administration on the same basis that present law provides for payment of funeral and last illness expenses is supported by Beryl A. Bertucio, Senior Legal Writer for

Matthew Bender (Exhibit 23) and the California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28). Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), points out that "Absence of this express authority has lead to uncertainty as to how to act when payments are needed to preserve estate assets - i.e., mobile house space rent." Mr. Serbin also notes that the section fails to clarify whether the public guardian can pay from the conservatorship estate debts accruing after the conservatee's death (e.g. rent). This could be easily done by referring simply to "unpaid expenses and charges of the guardianship or conservatorship accruing before or after the death of the ward or conservatee."

§ 2943. Expenses of public guardian

2943. 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) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk, in the amount the court determines is just and reasonable.

(c) A share of the cost of the public guardian's official bond, in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than ten thousand dollars (\$10,000). The amount charged shall be deposited in the county treasury.

Comment. Subdivisions (a) and (b) of Section 2943 restate former Welfare and Institutions Code Section 8013 without substantive change. Subdivision (c) is new; it is comparable to Section 7641(c) (public administrator).

CROSS-REFERENCES

Definitions

Conservatee § 1411

Court § 1418

Note. Subdivision (c) provides for a portion of the cost of the public guardian's bond to be borne by the estate. This was supported by Melvin C. Kerwin of Menlo Park (Exhibit 13), Stuart D. Zimring of North Hollywood (Exhibit 14), and Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19). Typical comments were: "I am delighted to see that the proposed law shifts the cost of the bond from the public to the individual estate. This is a long-overdue revision." "It seems most fair to charge the cost of the protection of the bond to those estates that receive the protection, rather than to the taxpayers in general."

Several commentators were concerned about imposing this cost on a small estate. "There should be at least a threshold under which the public should bear the cost of the bond rather than the estate, i.e., value of estate less than \$25,000. Otherwise, the cost of a bond will eat into the estate of the ward, which eventually will become a public charge, anyway." Peter R. Palermo of Pasadena (Exhibit 12). The California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28), while strongly supporting the proposal, also was concerned about small estates. They suggest, rather than an arbitrary figure such as \$10,000, that a bond fee not be assessed against an estate within the Social Security Supplemental Income Benefits asset limit. That limit is currently \$1,600.

The reimbursement amount set in subdivision (c) is $\frac{1}{2}\%$ of an estate over \$10,000. Jeffrey A. Dennis-Strathmeyer of CEB (Exhibit 16) suspects this is "much higher" than the actual cost to the county. Rawlins Coffman of Red Bluff (Exhibit 18) feels that this amount is "outrageous", and gives examples of actual costs. In setting the amount to be reimbursed, the Commission was aware that recoveries by the public guardian would exceed expenditures for the bond. However, the Commission was convinced that the public guardian's office should be more adequately reimbursed for its expenses which are frequently not recovered in small estates, and therefore chose to cover these under the guise of a "bond reimbursement" charge.

§ 2944. Inventory and appraisal of estate

2944. (a) Notwithstanding Section 2610:

(1) The property described in the inventory may be appraised by the public guardian and need not be appraised by a probate referee if the conservatee is eligible for Social Security Supplemental Income Benefits.

(2) If no sale of the estate will occur, the public guardian shall file an inventory but need not file an appraisal of property in the estate other than cash.

(3) If a sale of property in the estate will occur, and the estate other than cash has an estimated value of less than \$2,000, the public guardian shall file an inventory but need not file an appraisal of property in the estate other than cash if the public guardian files with the inventory a verified declaration stating the estimated value of the property.

(b) As used in this section, "cash" means money, currency, cash items, and other assets that may be appraised by the public guardian pursuant to subdivision (c) of Section 2610.

Comment. Section 2944 supersedes former Welfare and Institutions Code Section 8011. An "eligible" conservatee, within the meaning of subdivision (a)(1), includes a conservatee who may have more cash than the SSI limit (currently \$1600) but also has known bills that will reduce the estate to below this limit. Section 2545 remains applicable to a sale of property pursuant to subdivision (a)(3). Assets that may be appraised by the public guardian within the meaning of subdivision (b) include money, currency, cash items, accounts in financial institutions, and money market and brokerage accounts. See Section 8901 (appraisal by personal representative).

CROSS-REFERENCES

Definitions

Property § 62

Note. This section was not included as such in the draft of the tentative recommendation that was distributed for comment. However, it is the statutory embodiment of the concept of limiting probate referee appraisals in small estates, concerning which the Commission solicited comments in the tentative recommendation. See discussion of "Appraisal of estate" at page 4. There was an interesting variety of responses to this proposal.

The California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28) was in very strong support of this proposal. "This has been an issue where reform is urgently needed. Small estates are currently being billed by Probate Referees throughout California where the individual estate cannot afford the mandated appraisal fee. We believe that it is unjust to require an appraisal when the estate cannot afford it, when the estate will not be sold, and when the individual estate qualifies for SSI and/or Medi-Cal benefits. We also believe Public Guardians are generally as well qualified to make appraisals as Probate Referees and the appraisals could be done free of charge for our estates." They would limit probate referee appraisal to real property sales. Beryl A. Bertucio, Senior Legal Writer for Matthew Bender (Exhibit 23) agrees that appraisals are wasteful and unnecessary in small estates. Wilbur L. Coats of Poway (Exhibit 10) is of the same opinion. He says, "Especially onerous for a Guardian or Conservator is the necessity to either borrow money or sell an asset to pay an appraiser when an estate does not have any cash or a minimal amount of cash but may have a valuable piece of real property which may be the residence of the conservatee or minor."

Despite the assertion of the public guardians that they are equally qualified to appraise as probate referees are, Jerome Sapiro of San Francisco (Exhibit 1) believes they are not. He believes that appraisals do serve as a protection to both conservators and the public guardian, though they need not necessarily be done by the probate referee. "In small estates we can usually obtain broker's appraisals for free and others do cooperate in keeping cost down, if aware of the circumstances." He suggests considering acceptance of "letterhead appraisals" from qualified sources as an alternative to formal referee appraisal in small estates. The staff notes that Mr. Sapiro's concern about the competence of the public guardian as an appraiser was shared by many of the respondents on our probate referee questionnaire.

The Probate Department of Hahn & Hahn of Pasadena (Exhibit 15) was able to reach no consensus on the subject of appraisals by conservators in small estates. "There is a sharp division in our Probate Department as to the need for the involvement of the Probate Referee."

Other commentators, however, were clear on the need for a probate referee appraisal. Melvin C. Kerwin of Menlo Park (Exhibit 13) states that appraisals protect the ward or conservatee and persons interested. "Appraisals are the best bargain in the system!" These sentiments are echoed by Peter R. Palermo of Pasadena (Exhibit 12), who states: "The protection that currently exists against fraud in an estate is the requirement of having an independent person appointed to appraise the assets of the estate. This requirement should be continued in all estates of more than \$500. The cost of an appraisal by the Probate Referee in said estates is very nominal and should be continued in order to provide a safeguard of all persons interested in the estate against fraud."

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 7. PUBLIC ADMINISTRATORS

Article 1. General Provisions

§ 7601. Assistant or deputy public administrator

7601. An assistant or deputy public administrator or other subordinate officer may be appointed to act and has the powers and may perform the duties of the office of the public administrator to the extent provided in Article 7 (commencing with Section 1190) of Chapter 1 of Division 4 of Title 1 of the Government Code.

Comment. Section 7601 replaces former Probate Code Section 1142.5 with a reference to the general Government Code provisions governing assistants and deputies.

Article 2. Taking Possession or Control of Property
Subject to Loss, Injury, Waste, or Misappropriation

§ 7620. Report of public officer or employee

7620. A public officer or employee shall inform the public administrator of property of a decedent known to the officer or employee to be subject to loss, injury, waste, or misappropriation that ought to be in the possession or control of the public administrator.

Comment. Section 7620 restates former Probate Code Section 1146 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

§ 7621. Authority of public administrator

7621. (a) If no personal representative has been appointed, the public administrator of a county shall take prompt possession or control of property of a decedent in the county that is liable to loss, injury, waste, or misappropriation, or that the court orders into the possession or control of the public administrator after notice to the public administrator.

(b) If property described in subdivision (a) is beyond the control of the public administrator, the public administrator is not liable for failing to take possession or control of the property.

Comment. Section 7621 restates the first sentence of former Probate Code Section 1140(a), with the addition of misappropriation as a ground for taking possession or control and with the addition of an express immunity in the case of property that is beyond the control of the public administrator. The public administrator may also be appointed special administrator for the property. Sections 8540-8541 (special administrators).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. This provision received express approval from Jerome Sapiro of San Francisco (Exhibit 1), Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), and the California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28). Mr. Serbin points out that, "There is sometimes need to act immediately in cases involving 'misappropriation', to recover assets before they are forever out of reach. The proposed new section (b) expressly adds more fairness to the code. It would be unjust to penalize a public administrator for failing to take possession of an asset beyond his control."

§ 7622. Search for property, will, and instructions for disposition of remains

7622. (a) A public administrator who is authorized to take possession or control of property of a decedent pursuant to this article may make an immediate search for other property, a will, and instructions for disposition of the decedent's remains.

(b) If a will is found, the public administrator or custodian of the will shall deliver the will as provided in Section 8200.

(c) If instructions for disposition of the decedent's remains are found, the public administrator shall promptly deliver the instructions to the person upon whom the right to control disposition of the decedent's remains devolves as provided in Section 7100 of the Health and Safety Code.

Comment. Section 7622 restates the first portion of subdivision (a) and subdivision (b) of former Probate Code Section 1141 but eliminates the requirement that there be reasonable grounds to believe that the public administrator may be appointed personal representative.

CROSS-REFERENCES

Definitions

Property § 62

Will § 88

Note. Existing law limits emergency action by the public administrator to cases where there are reasonable grounds to believe the public administrator will be appointed as administrator of the estate. This section deletes that requirement, and the deletion is supported by Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19). Mr. Serbin observes, "That requirement could cause delays in situations where emergency action is needed. If the public administrator is to be caretaker under Section 7621, he needs access to property, the will, and burial instructions, whether or not he will eventually be issued letters of administration. The proposed change should help assure that estate assets are in the hands of a bonded and competent party. Also, it should help the public administrator to determine whether in fact the estate requires formal administration, and whether or not there is a will naming an executor."

§ 7623. Providing information and access

7623. (a) A public administrator who is authorized to take possession or control of property of a decedent pursuant to this article may make a written statement of this fact. A financial institution or other person shall, without the necessity of inquiring into the truth of the written statement and without court order or letters being issued:

(1) Provide the public administrator information concerning property held in the sole name of the decedent.

(2) Grant the public administrator access to a safe deposit box rented in the sole name of the decedent for the purpose of inspection and removal of any will or instructions for disposition of the decedent's remains. Costs and expenses incurred in drilling or forcing a safe deposit box shall be borne by the estate of the decedent.

(3) Surrender to the public administrator property of the decedent that is subject to loss, injury, waste, or misappropriation.

(b) Receipt of the written statement provided by this section:

(1) Constitutes sufficient acquittance for providing information or granting access to the safe deposit box, for removal of the decedent's will and instructions for disposition of the decedent's remains, and for surrendering property of the decedent.

(2) Fully discharges the financial institution or other person from any liability for granting access or for any act or omission of the public administrator with respect to the safe deposit box.

Comment. Section 7623 restates the last portion of subdivision (a) and subdivision (c) of former Probate Code Section 1141 with the elimination of the requirement that there be reasonable grounds to believe the public administrator may be appointed personal representative and with the addition of subdivision (a)(3).

CROSS-REFERENCES

Definitions

Financial institution § 40
Letters § 52
Person § 56
Property § 62
Will § 88

§ 7624. Costs and fees for taking possession or control of property

7624. If the public administrator takes possession or control of property of a decedent pursuant to this article, but another person is subsequently appointed personal representative, the public administrator is entitled to costs incurred for the preservation of the estate, together with a reasonable fee for services. The costs and fee are a proper and legal charge against the decedent's estate as an expense of administration.

Comment. Section 7624 restates former Probate Code Section 1144.5, eliminating the maximum and minimum fees.

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 58
Property § 62

Note. This section replaces the minimum and maximum fee limits with a "reasonable fee" provision. Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), supports this change. Ruth A. Phelps of Burbank (Exhibit 24) also believes this is needed, but

wonders who will be making the fee determination--the court or the public administrator. The staff believes the court must approve any allowance of fees, and this should be made clear by statute. Wilbur L. Coats of Poway (Exhibit 10) is worried about nonuniformity throughout the state. "It appears to me that the State has an obligation, as it does in setting probate fees, except for extraordinary fees, to state with specificity the range of fee charges." He suggests a fee schedule pegged to the dollar value of property in the estate.

Article 3. Appointment as Personal Representative

§ 7640. Authority of public administrator

7640. 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 decedent has no known beneficiaries.

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

(c) Accept appointment as personal representative of an estate when so ordered by the court whether or not upon petition of the public administrator, after notice to the public administrator as provided in Section 7641.

Comment. Subdivisions (a) and (b) of Section 7640 restate the second sentence of former Probate Code Section 1140(a) without substantive change. Subdivision (c) is new. See also Sections 7050-7051 (jurisdiction and venue of probate proceedings) and 8461 (priority for appointment).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

Note. This section requires the public administrator to accept appointment as personal representative when ordered by the court. This provision was opposed by Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19). "One objection is that this provision could cause the public administrator to be appointed on cases above and beyond his resources. Also, there are often cases where at first there appears to be no alternative to the public administrator, but where soon a ready and able party appears. These are sometimes cases where there is no urgent need for appointment. To appoint the public administrator may unnecessarily affect the office work load, cause needless transfers and re-transfers of assets, and require burdensome accounts to be filed by the public administrator." The workload is

also a concern of Everett Houser of Long Beach, whose experience is in Los Angeles County where the public administrator's office is "sadly behind schedule." He suggests use of private attorneys by court appointment when the schedules get more than six months behind.

The private attorney suggestion was echoed by Melvin C. Kerwin of Menlo Park (Exhibit 13), who states that estates over \$50,000 in value should be referred out to private attorneys. Along the same lines, Gilbert Moody of Turlock (Exhibit 7) thinks that in a will contest the law should provide for appointment of a public administrator only if requested by all parties to a contest.

§ 7641. Appointment of public administrator

7641. (a) Except as otherwise provided in this section, appointment of the public administrator as personal representative shall be made, and letters issued, in the same manner and pursuant to the same procedure as for appointment of and issuance of letters to personal representatives generally.

(b) Appointment of the public administrator may be made on the court's own motion, after notice to the public administrator.

(c) Letters may be issued to "the public administrator" of the county without naming the public administrator.

(d) The public administrator's oath and official bond are in lieu of the personal representative's oath and bond. Every estate administered under this chapter shall be charged with a share of the cost of the public administrator's official bond, in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than ten thousand dollars (\$10,000). The amount charged is an expense of administration and that amount shall be deposited in the county treasury.

Comment. Section 7641 restates former Probate Code Section 1140(b), with the addition of subdivisions (b) and (c) and the provision of subdivision (d) allowing the county to recoup a share of the cost of the public administrator's official bond.

Letters issued to "the public administrator" under subdivision (c) are sufficient to enable a successor public administrator to act without issuance of new letters. Section 7645 (expiration of term of office).

The amount allowed under subdivision (d) is half the amount allowed for the bond of a personal representative generally under former Probate Code Section 541.5. Removal of the public administrator is subject to the same procedures as removal of administrators generally, including removal at the request of a person having a higher priority for appointment. Section 8503.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Note. Subdivision (b) requires notice to the public administrator of the court's motion to appoint the public administrator. Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), would like the provision to be more explicit about the notice required. He suggests 15 days notice unless the court finds that good cause exists to shorten notice.

Mr. Serbin supports the provision of subdivision (c) for issuance of letters to the office of the public administrator rather than to the individual public administrator.

Subdivision (d) charges the estate for a share of the cost of the public administrator's bond. This is strongly supported by the California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28) as well as by Mr. Serbin. Lillian T. Fujii, Deputy County Counsel for Contra Costa County (Exhibit 22) writes that, "We particularly approve of your recommendation favoring that the cost of the official bond of the public administrator be borne by the estates' beneficiaries rather than the public."

The Association also raises the question of how the bond reimbursement will work, since it is based on the value of the estate and we may eliminate appraisals in small estates. This is a point we will watch for as we develop our recommendations in this area.

§ 7642. General rules governing administration of estates apply

7642. Except as otherwise provided in this chapter:

(a) The public administrator shall administer the estate in the same manner as a personal representative generally, and the provisions of this division apply to administration by the public administrator.

(b) The public administrator is entitled to receive the same compensation and allowances granted by this division to a personal representative generally.

Comment. Section 7642 restates former Probate Code Section 1142 without substantive change. The public administrator must file an inventory, institute suits for the recovery or protection of property, render accounts, and deliver up the property of the estate in the same manner as personal representatives generally.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 7643. Payment of unclaimed funds

7643. (a) If after final distribution of an estate any money remains in the possession of the public administrator that should be paid over to the county treasurer pursuant to Chapter 5 (commencing with Section 11850) of Part 10, the court shall order payment to be made within 60 days.

(b) Upon failure of the public administrator to comply with an order made pursuant to subdivision (a), the district attorney of the county shall promptly institute proceedings against the public administrator and the sureties on the official bond for the amount ordered to be paid, plus costs.

Comment. Section 7643 restates former Probate Code Section 1154, referring to the general provisions for deposit of funds in the county treasury instead of to "unclaimed" property and allowing 60 instead of 10 days for payment to be made.

CROSS-REFERENCES

Actions in chambers § 7061

Definitions

Court § 30

Note. This draft was circulated to the county treasurers for comment, without result.

§ 7644. Additional compensation

7644. (a) As used in this section, "additional compensation" means the difference between the reasonable cost of the administration of an estate and the commission awarded under Sections [901 and 902].

(b) The public administrator may be awarded additional compensation if any of the following conditions is satisfied:

(1) A person having priority for appointment as personal representative has been given notice under Section 8110 of the public administrator's petition for appointment, and the person has not petitioned for appointment in preference to the public administrator.

(2) The public administrator has been appointed after the resignation or removal of a personal representative.

Comment. Section 7644 restates former Probate Code Section 1142.3 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

§ 7645. Expiration of term of office

7645. (a) Except as provided in subdivision (b), the authority of a public administrator to administer an estate for which the public administrator has been appointed personal representative does not cease upon termination of his or her tenure in the office of public administrator, but his or her authority and duties as personal representative of the estate continue until discharge, as in the case of other personal representatives.

(b) If the compensation of the public administrator is paid by salary and not by fees, the authority of the public administrator ceases upon termination of his or her tenure in the office of public administrator, and his or her authority vests in the successor in the office of public administrator. If letters have been issued to "the public administrator" of the county, the letters are sufficient to authorize action by the successor and new letters need not be issued.

Comment. Section 7645 restates former Probate Code Section 1152 with the addition of a provision that recognizes that letters may be issued to the office instead of the individual (Section 7641). This codifies existing practice in some counties.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Both Stuart D. Zimring of North Hollywood (Exhibit 14) and Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), support issuance of letters to the office of the public administrator. However, Mr. Zimring believes subdivision (a) is inconsistent with this philosophy. "I think it will ultimately be more economical for the administration of justice if the public administrator and/or guardian is always appointed in his or her 'office' capacity as opposed to individual capacity. I therefore think that 7645(a) should be amended to provide that the public administrator does cease to act as personal representative upon termination of tenure."

Article 4. Deposit of Money of Estate

§ 7661. Deposit by public administrator

7661. (a) The public administrator shall, upon receipt, deposit all money of the estate in an insured account in a financial institution or with the county treasurer of the county in which the proceedings are pending.

(b) Upon deposit under this section the public administrator is discharged from further responsibility for the money deposited until the public administrator withdraws the money.

Comment. Section 7661 restates the first sentence of former Probate Code Section 1147 without substantive change.

CROSS-REFERENCES

Definitions

Insured account in a financial institution § 46

§ 7662. Withdrawal of amounts deposited

7662. Money deposited in a financial institution or with the county treasurer pursuant to this article may be withdrawn upon the order of the public administrator when required for the purposes of administration.

Comment. Section 7662 restates the second sentence of former Section 1147 without substantive change.

CROSS-REFERENCES

Definitions

Financial institution § 40

§ 7663. Interest on money deposited

7663. (a) The public administrator shall credit each estate with the highest rate of interest or dividends that the estate would have received if the funds available for deposit had been individually and separately deposited.

(b) Interest or dividends credited to the account of the public administrator in excess of the amount credited to the estates pursuant to subdivision (a) shall be deposited in the county general fund.

Comment. Section 7663 restates the second paragraph of former Probate Code Section 1147.

§ 7664. Deposit with county treasurer

7664. (a) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this chapter and pay the money out upon the order of the public administrator when required for the purposes of administration. The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(b) The county treasurer shall deliver to the State Treasurer or the State Controller all money in the possession of the county treasurer belonging to the estate, if after a final settlement of the estate, there are no beneficiaries or other persons entitled to the money, or the beneficiaries or other persons entitled to the money do not appear and claim it. Delivery shall be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7664 restates former Probate Code Section 1148 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Person § 56

Note. Conforming changes are needed in various interrelated Code of Civil Procedure sections.

§ 7665. Deposit unclaimed in financial institution

7665. (a) If a deposit in a financial institution is made pursuant to this article, money remaining unclaimed at the expiration of five years from the date of the deposit, together with the increase and proceeds of the deposit, shall be presumed abandoned in any of the following circumstances:

(1) The deposit belongs to the estate of a known decedent for which a personal representative has never been appointed.

(2) The deposit belongs to the estate of a known decedent for which a personal representative has been appointed but no order of distribution has been made due to the absence of interested persons or the failure of interested persons diligently to protect their interests by taking reasonable steps for the purpose of securing a distribution of the estate.

(b) The State Controller may, at any time after the expiration of the five-year period, file a petition with the court setting forth the fact that the money has remained on deposit in a financial institution under the circumstances described in subdivision (a) for the five-year period, and requesting an order declaring that the money is presumptively abandoned and directing the holder of the money to pay the money to the State Treasurer.

(c) Upon presentation of a certified copy of a court order made pursuant to subdivision (b), the financial institution shall forthwith transmit the money to the State Treasurer for deposit in the State Treasury. The deposit shall be made as provided in Section 1310 of the Code of Civil Procedure. All money deposited in the State Treasury under the provisions of this section shall be deemed to be deposited in the State Treasury under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure. The deposit shall be transmitted, received, accounted for, and disposed of as provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 7665 restates former Probate Code Section 1147.5 without substantive change.

CROSS-REFERENCES

Definitions

Financial institution § 40
Interested person § 48
Personal representative § 58

Article 5. Summary Disposition of Small Estates

§ 7680. Summary disposition authorized

7680. (a) If a public administrator takes possession or control of, or is appointed personal representative of, an estate pursuant to this chapter, the public administrator may summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the estate of the decedent does not exceed ten thousand dollars (\$10,000). The authority provided by this paragraph may be exercised without court authorization.

(2) The total value of the estate of the decedent does not exceed the amount prescribed in Section 13100. The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application shall be set by the court.

(b) Summary disposition may be made whether or not there is a will of the decedent in existence, if the will does not name an executor or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing a petition with the court pursuant to any other provision of this division.

Comment. Subdivisions (a) and (b) of Section 7680 supersede portions of former Probate Code Section 1143(a) and (b), increasing the summary disposition amounts from \$3,000 to \$10,000 and from \$20,000 to the amount prescribed in Section 13100 (affidavit procedure for collection or transfer of personal property). Subdivision (c) is new; petitions pursuant to other provisions of this division include petitions for interpretation of a will or determination of persons entitled to distribution. See, e.g., Sections 9611 (petition for instructions); 11700-11705 (determination of persons entitled to distribution). Section 7680 is not limited to summary disposition of personal property but may include real property of small value as well.

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

Ex parte orders may be made in chambers Code Civ. Proc. § 166

Note. This section increases the summary disposition amounts from \$3,000 to \$10,000 without court authorization and from \$20,000 to \$60,000 with court authorization. AB 201 (Harris) currently pending in the Legislature would make the same changes. These increases are supported by Melvin C. Kerwin of Menlo Park (Exhibit 13), Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), and Ruth A. Phelps of Burbank (Exhibit 24). Ms. Phelps actually thinks these limits should be higher (\$15,000 and \$75,000), but understands the need to track with other code sections.

The California State Association of Public Administrators, Public Guardians, and Public Conservators (Exhibits 25 and 28) very strongly supports this section and the other changes made to improve the summary disposition procedures throughout this article. "These changes will increase the efficiency, reduce costs, cut time and increase revenue to the counties, which will help offset the cost of administration of estates, thus reducing the burden to local government."

Jeffrey A. Dennis-Strathmeyer of CEB (Exhibit 16) questions the rationale for having the court determine the clerk's fee under subdivision (a)(2). The staff does not know the answer to this question; it is existing law. Maybe the public administrators can help us out here.

Subdivision (c) (which also appears in AB 201) was specifically approved by Mr. Serbin. "Previously, many small estates have required formal administration solely because there was a need for Court instruction, for will interpretation, or for determination of heirship. The proposed change solves the problem."

§ 7681. Liquidation of assets

7681. A public administrator acting under authority of this article may:

(a) Withdraw money of the decedent on deposit in a financial institution.

(b) Collect any debts owed to the decedent.

(c) Sell personal property of the decedent. Sales may be made with or without notice, as the public administrator elects. Title to the property sold passes without the need for confirmation by the court.

(d) Sell real property of the decedent, subject to Article 6 (commencing with Section 10300) of Chapter 17 of Part 5. Title to the property sold passes with the public administrator's deed.

Comment. Section 7681 restates portions of former Probate Code Sections 1143 and 1144, expanding the ability to withdraw funds to include other financial institutions besides banks and adding the ability to sell real property, subject to court confirmation.

CROSS-REFERENCES

Definitions

Financial institution § 40

Real property § 68

Note. This section extends the public administrator's summary disposition authority to include real property sales, subject to court confirmation. This is also a feature of AB 201 (Harris).

Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), approves this change. Rawlins Coffman of Red Bluff (Exhibit 18) doubts that a title company would accept the public administrator's deed without a court order where the public administrator is acting without prior court authorization. Belan M. Wagner of Pacific Palisades (Exhibit 2) goes further to state that the public administrator should not have authority to sell real property without first giving notice to all interested persons and obtaining permission of the court.

§ 7682. Payment of debts

7682. The public administrator acting under authority of this article shall pay out the money of the estate in the following order:

(a) Costs of administration, including commissions and fees.

(b) Expenses of the decedent's last illness and of disposition of the remains of the decedent.

(c) Claims presented to the public administrator before distribution of the decedent's property pursuant to Section 7683. Claims shall be paid in the order prescribed in Section 11401 (order of payment).

Comment. Section 7682 restates the second sentence of former Probate Code Section 1143(a) and a portion of former Probate Code Section 1143(b), with the addition of specific references to fees and costs of administration. Because no notice to creditors is given pursuant to this article, the time for making claims is extended to the time of distribution of the decedent's property, and recipients of the property remain liable for creditor claims. See Section 7684 (liability for decedent's unsecured debts). Distribution may not be made until at least four months after commencement of administration. Section 7683 (distribution of property).

CROSS-REFERENCES

Definitions

Property § 62

Note. *There is no notice to creditors under these summary disposition procedures, so this draft adds a provision to allow creditor claims until the time distribution is made. This creditor protection provision is approved by Melvin C. Kerwin of Menlo Park (Exhibit 13) and Beryl A. Bertucio, Senior Legal Writer for Matthew Bender (Exhibit 23).*

However, Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), is concerned about a creditor's claim that comes in late, after other creditors have been paid. If the estate is insolvent, can the late creditor get contribution from those already paid? The staff would add a sentence precluding contribution by creditors that have been paid.

Jerome Sapiro of San Francisco (Exhibit 1) wonders about the treatment of public tax claims against the estate. The staff sees no need to deal with these specifically in the statute, since the statute adopts the general administration provisions governing payment of debts, which recognizes the priority of public tax claims. Perhaps a reference in the Comment would be helpful.

§ 7683. Distribution of property

7683. (a) After payment of debts pursuant to Section 7682, but in no case before four months after court authorization of the public administrator to act under this article or after the public administrator takes possession or control of the estate, the public administrator shall distribute any money or other property of the decedent remaining in the possession of the public administrator to the decedent's beneficiaries.

(b) If there are no beneficiaries, the public administrator shall deposit the balance with the county treasurer for use in the general fund.

Comment. Section 7683 restates a portion of former Probate Code Section 1143(b) and supersedes the fifth and sixth sentences of former Probate Code Section 1144. It makes clear that distribution may not be made until at least four months after commencement of administration, and requires that all unclaimed summary disposition funds go to the county (as opposed to only those from the smallest estates). The California Veterans' Home is considered a beneficiary for the purpose of application of this section. See Military and Veterans Code § 1035.05.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Person § 56
Property § 62

Note. Subdivision (a) delays distribution for four months in order to allow time for creditor claims to be made. Jeffrey A. Dennis-Strathmeyer of CEB (Exhibit 16) wonders why the heirs have to wait 4 months for their property. After all, we're dealing with a small estate that the heirs could take immediately by affidavit if the public administrator hadn't gotten involved. The staff thinks this is a good point; but the answer is that the heirs should have stepped forward and taken charge of the property if they were interested, instead of leaving it to the public administrator to handle in the first place.

Subdivision (b) provides for escheat of summary disposition property to the county instead of to the state. This proposal was supported by Melvin C. Kerwin of Menlo Park (Exhibit 13), Stuart D. Zimring of North Hollywood (Exhibit 14), Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19), and Beryl A. Bertucio, Senior Legal Writer for Matthew Bender (Exhibit 23). However, this seems wrong to Jerome Sapiro of San Francisco (Exhibit 1). "It is my recommendation that such funds be deposited with the County Treasurer for ultimate transmission to the State Treasurer. These funds should be used as part of State planning and funding, i.e., the State could grant assistance from such earmarked funds to Counties prorated in accordance with their population to assist the elderly and infirm.

You have included and recommended other provisions in the law to see that counties are reimbursed and Public Guardians and Public Administrators and their expenses paid."

§ 7684. Liability for decedent's unsecured debts

7684. A person to whom property is distributed pursuant to this article is personally liable for the unsecured debts of the decedent. Such a debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the person may assert any defenses available to the decedent if the decedent had not died. The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed, valued as of the time of the distribution, less the amount of any liens and encumbrances on the property at that time.

Comment. Section 7684 is new. It is drawn from Sections 13109 and 13112 (affidavit procedure for collection or transfer of personal property).

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Note. *The creditor protection provisions of this section are approved by Melvin C. Kerwin of Menlo Park (Exhibit 13) and by Beryl A. Bertucio, Senior Legal Writer for Matthew Bender (Exhibit 23).*

§ 7685. Public administrator's statement of disposition

7685. (a) The public administrator shall file with the clerk a statement showing the property of the decedent that came into possession of the public administrator and the disposition made of the property, together with receipts for all distributions. This subdivision does not apply to proceedings under paragraph (1) of subdivision (a) of Section 7680.

(b) The public administrator shall maintain a file of all receipts and records of expenditures for a period of two years after disposition of the property pursuant to Section 7683.

Comment. Subdivision (a) of Section 7685 restates the substance of the fourth sentence of former Probate Code Section 1144, substituting receipts for distributions for vouchers for expenditures and making clear that a filing is not required where summary

disposition is made without court authorization in an estate under \$10,000. Receipts and records for expenditures, instead, are preserved in the public administrator's files for two years pursuant to subdivision (b).

CROSS-REFERENCES

Definitions

Property § 62

Note. Under this section, the public administrator need not file a record with the court for disposition of small estates (under \$10,000), but must retain the records in files for two years. For larger estates, the records must be both filed and retained by the public administrator for 2 years. The Commission specifically solicited comments concerning this scheme.

We received one favorable comment, from Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19)--"The proposed changes should substantially increase the efficiency of administering summary estates, and I support them." The remainder of the comments were negative. Rawlins Coffman of Red Bluff (Exhibit 18) is "very much opposed" to excusing the filing of the records, and would make no exceptions. Stuart D. Zimring of North Hollywood (Exhibit 14) comments, "Because of the scandals and allegations of misfeasance in office that have been brought against public administrators over the years, I strongly urge that the public administrator be required to file a statement in all cases. Hopefully, this will help rebuild public confidence." Neal Wells also would like to see the public administrator file records in all cases. Exhibit 27. Ruth A. Phelps of Burbank (Exhibit 24) asks how a creditor will find out who the distributees are if records are retained without filing in small estates for only two years; the creditor may need to know in order to collect under Section 7684.

Jerome Sapiro of San Francisco (Exhibit 1) has a somewhat different perspective. He would require a longer retention period by the public administrator whether or not the records are filed with the court. "The proposed 2 year period should be extended to 4 or 5 years. It would be more appropriate and protective. The permanent filed statement is but a resume and may not reveal all that original records do."

§ 7686. Commission of public administrator

7686. (a) Except as provided in subdivision (b), the commissions payable to the public administrator and the attorney, if any, for the filing of an application pursuant to this article and for performance of any duty or service connected therewith, are those set forth in Sections [901, 902, and 910].

(b) The public administrator is entitled to a minimum commission of three hundred fifty dollars (\$350).

Comment. Section 7686 supersedes former Probate Code Section 1143(c) and the second sentence of former Probate Code Section 1144. See 43 Ops. Cal. Atty. Gen. 192 (4-22-64). Section 7686 increases the minimum commission under this article from \$250 to \$350.

CROSS-REFERENCES

Definitions

Property § 62

Note. This section would increase the minimum public administrator's commission for a summary disposition from \$250 to \$350. This is also a feature of AB 201 (Harris 1987). This provision is supported by Howard Serbin, Deputy County Counsel of Orange County (Exhibit 19). Gilbert Moody of Turlock (Exhibit 7) opposes this provision. "I do not think the Public Administrator's fees for conserving an estate should be increased to \$350.00, and I don't think there should be any standard fee; that they should be required to apply to the court for an allowance after proper notice according to the time and trouble they have had in conserving the estate." This, of course, would impair the concept of summary disposition without court involvement.

On the other hand, the proposed increase is not enough in the opinion of the Office of the Public Administrator for Marin County (Exhibit 21). They point out that the estate size for summary administration is being substantially increased, so they think the commission should be substantially increased as well. "An increase up to five hundred dollars (\$500) would be closer to the actual cost of administration of small estate valued at less than ten thousand dollars (\$10,000)." This reasoning is somewhat faulty, since the law gives the public administrator a commission based on the same schedule as any other personal representative in subdivision (a), and simply adds a minimum commission in subdivision (b).

COMMENTS TO REPEALED SECTIONS

CHAPTER 20. PUBLIC ADMINISTRATORS

Probate Code § 1140 (repealed)

Comment. The first sentence of subdivision (a) of former Section 1140 is restated in Estate and Trust Code Section 7621 (authority of public administrator), with the addition of misappropriation as a ground for taking possession or control of property. The court may also appoint the public administrator as special administrator. Estate and Trust Code Section 8541 (procedure for appointment). The second sentence of subdivision (a) is restated in Estate and Trust Code Section 7640 (authority of public administrator).

Subdivision (b) is restated without substantive change in Estate and Trust Code Section 7641 (appointment of public administrator), with the addition of provisions for appointment of a public administrator on the court's own motion and for county recoupment from the estate of a share of the cost of the public administrator's bond.

Probate Code § 1140.5 (repealed)

Comment. Former Section 1140.5 is omitted. The county may not return alien indigents to their native land.

Probate Code § 1141 (repealed)

Comment. Former Section 1141 is restated without substantive change in Estate and Trust Code Sections 7622 (search for property, will, and instructions for disposition of remains) and 7623 (providing information and access), with the elimination of the requirement that there be reasonable grounds to believe the public administrator may be appointed personal representative.

Probate Code § 1142 (repealed)

Comment. Former Section 1142 is restated without substantive change in Estate and Trust Code Section 7642 (general rules governing administration of estates apply).

Probate Code § 1142.3 (repealed)

Comment. Former Section 1142.3 is restated without substantive change in Estate and Trust Code Section 7644 (additional compensation).

Probate Code § 1142.5 (repealed)

Comment. Former Section 1142.5 is superseded by Estate and Trust Code Section 7601 (assistant or deputy public administrator).

Probate Code § 1143 (repealed)

Comment. Former Section 1143 is superseded by Estate and Trust Code Sections 7680-7686 (summary disposition of small estates). The new provisions increase the summary disposition amounts from \$3,000 to \$10,000 and from \$20,000 to the amount prescribed in Estate and Trust Code Section 13100, and are not limited to personal property.

Probate Code § 1144 (repealed)

Comment. Former Section 1144 is superseded by Estate and Trust Code Sections 7680-7686 (summary disposition of small estates); escheat to the state is replaced by payment to the county.

Probate Code § 1144.5 (repealed)

Comment. Former Section 1144.5 is restated in Estate and Trust Code Section 7624 (costs and fees for taking charge of property), with the elimination of the maximum and minimum fees.

Probate Code § 1145 (repealed)

Comment. Former Section 1145 is superseded by Estate and Trust Code Section 7620 (report of public officer or employee).

Probate Code § 1146 (repealed)

Comment. Former Section 1146 is restated without substantive change in Estate and Trust Code Section 7620 (report of public officer or employee).

Probate Code § 1147 (repealed)

Comment. The first sentence of the first paragraph of former Section 1147 is restated without substantive change in Estate and Trust Code Section 7661 (deposit by public administrator). The second sentence is restated without substantive change in Estate and Trust Code Section 7662 (withdrawal of amounts deposited). The second paragraph is restated in Estate and Trust Code Section 7663 (interest on money deposited).

Probate Code § 1147.5 (repealed)

Comment. Former Section 1147.5 is restated without substantive change in Estate and Trust Code Section 7665 (deposit unclaimed in financial institution).

Probate Code § 1148 (repealed)

Comment. Former Section 1148 is restated without substantive change in Estate and Trust Code Section 7664 (deposit with county treasurer).

Probate Code § 1149 (repealed)

Comment. Former Section 1149 is omitted. Payment of fees is controlled by general rules governing payment of the expenses of administration. See, e.g., Estate and Trust Code Sections 7642 (general rules governing administration of estates apply) and 7682 (payment of demands).

Probate Code § 1150 (repealed)

Comment. Former Section 1150 is omitted. General rules governing fiduciary obligations of the personal representative apply to the public administrator. Government Code Section 27443 provides an additional sanction.

Probate Code § 1152 (repealed)

Comment. Former Section 1152 is restated without substantive change in Estate and Trust Code Section 7645 (expiration of term of office).

Probate Code § 1154 (repealed)

Comment. Former Section 1154 is restated in Estate and Trust Code Section 7643 (payment of unclaimed funds), which allows 60 days instead of 10 days for making payment.

Probate Code § 1155 (repealed)

Comment. Former Section 1155 is omitted. Special sanctions are unnecessary in view of applicable general sanctions.

PUBLIC GUARDIAN

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 Estate and Trust Code. The disposition of the former provisions is indicated below.

<u>Former Provision</u>	<u>Est. & Trust Code Section</u>
8000	2900
8001	2902
8002	2901
8003	2903
8004	2904
8005	2905
8006	
First sentence	2921
Second sentence	2921
Third sentence	2921, 2923
Fourth sentence	2923
Fifth sentence	2920(a)
8006.5	2920(b)
8007	2922
8008	2906
8009	2940
8010	2941
8011	To be drafted
8012	2942
8013	2943
8015	2907

CONFORMING CHANGES

Probate Code § 52 (amended)

SEC. . Section 52 of the Probate Code, as added by AB 708 (1987), is amended to read:

52. "Letters," as ":

(a) As used in Division 7 (commencing with Section 7000), means letters testamentary, letters of administration, letters of administration with the will annexed, or letters of special administration.

(b) As it relates to a guardian or conservator, means letters of guardianship or conservatorship.

Government Code § 29616 (repealed)

SEC. . Section 29616 of the Government Code is repealed.

~~29616. The publication of the semiannual report by the public administrator is a county charge.~~

Comment. The semiannual report to which former Section 29616 referred was repealed in 1981. See former Probate Code § 1153.

Military & Veterans Code § 1035.05

SEC. . Section 1035.05 of the Military and Veterans Code is amended to read:

1035.05. [set out existing text without change]

(c) For the purpose of application to this section of the provisions of the Probate Code governing distribution of property, the home shall be deemed to be a beneficiary of the decedent.

Comment. Section 1035.05 is amended to make clear that the Veterans' Home of California is considered a "beneficiary" within the meaning of the Probate Code provisions governing distribution, for proper interpretation of the law. Thus, for example, under Probate Code Section 7683 (distribution of property by public administrator), distribution must be made to the Veterans' Home if appropriate before funds may be delivered to the county treasurer.

Probate Code § 2631 (amended)

2631. (a) Upon the death of the ward or conservatee, the guardian or conservator may contract for and pay a reasonable sum for the expenses of the last illness and the funeral disposition of the remains of the deceased ward or conservatee, and for other reasonable guardian or conservator charges, including unpaid court approved attorney's fees, or may pay the unpaid expenses ~~of such last illness and funeral,~~ in full or in part, to the extent reasonable, from any assets of the deceased ward or conservatee, other than real property or any interest therein, which are under the control of the guardian or conservator.

(b) When a claim for such expenses is presented to the guardian or conservator, the guardian or conservator shall endorse thereon an allowance or rejection, with the date thereof. If the claim is allowed, it shall be presented to the court and the court shall in like manner endorse thereon an allowance or rejection. If the claim is approved by the court, the claim shall be filed with the clerk within 30 days thereafter.

(c) After payment of such expenses, the guardian or conservator may transfer any remaining assets in accordance with and subject to the provisions of ~~Section-630~~ Part 1 (commencing with Section 13000) of Division 8. The value of the property of the deceased ward or conservatee, for the purpose of ascertaining the right to transfer under ~~Section-630~~ Part 1 (commencing with Section 13000) of Division 8, shall be determined after the deduction of the expenses so paid.

Comment. Section 2631 is amended to authorize payment of attorney's fees and other reasonable expenses of the guardian or conservator. The other changes in Section 2631 are technical.