

## Memorandum 90-12

Subject: Study L-1040 - Appointment of Public Administrator (Suggestion for Substantive Revision)

Section 7620(a) provides that the public administrator of a county must petition for appointment as personal representative of an estate in a number of situations, including where "no person having higher priority has petitioned for appointment." Howard Serbin of Santa Ana has written to the Commission suggesting that this provision is much too broad.

A strict reading of the new law would require a Public Administrator to apply for Letters even in a case where there was a competent, available and local heir or beneficiary who simply did not choose to act. That does not seem to be the best use of the Public Administrator's limited resources. I support the retention of 7620(c), whereby a Court can order a Public Administrator to accept appointment after notice, as a protection to insure that Public Administrators do act in the appropriate cases. However, I strongly believe that 7620(a) should be amended to replace "if no person having higher priority has petitioned for appointment" with "if the decedent had no known heirs or beneficiaries". Otherwise, the Public Administrator could conceivably be required to act in every case that is too small, too cumbersome, or too difficult for anyone else to want to administer. Our Public Administrator generally agrees it is his role to act where those with priority for good reason cannot. He needs to retain discretion in this area, however. 7620(c) protects the public by making sure the Public Administrator acts in appropriate cases. 7620(a) should be amended to insure that he can devote his resources to the cases where he is truly needed.

The staff believes Mr. Serbin makes a compelling case. He correctly points out that the predecessor of Section 7620(a) required the public administrator to petition for appointment only where there were no known heirs. We have traced back the evolution of this provision and find that the Commission's tentative recommendation merely retained the old law. The old law received no adverse remarks from commentators on the tentative recommendation. Nonetheless, when

the Commission reviewed comments on other aspects of Section 7620, subdivision (a) evidently also came under discussion, for the Minutes of the May 1987 meeting state that the section should be coordinated with the statutory priority for appointment as administrator. In the next draft the statute appears in the form in which it was ultimately enacted. No explanation for this change is found in any of the memoranda, minutes, or recommendations relating to it.

The staff recommends that Section 7620 be revised to restore former law requiring the public administrator to petition for appointment if there are no known heirs or devisees, as suggested by Mr. Serbin, and a tentative recommendation on this matter circulated for comment.

Respectfully submitted,

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