

First Supplement to Memorandum 92-24

Subject: Legislative Program - Compensation in Guardianship and
Conservatorship Proceedings (SB 1455)

Senate Bill 1455 (Mello) would effectuate the Commission's Recommendation relating to *Compensation in Guardianship and Conservatorship Proceedings*. Existing law permits the court to appoint legal counsel for the person who is the subject of a guardianship or conservatorship proceeding (Prob. Code §§ 1470, 1471), and requires the court to fix a reasonable sum for compensation of counsel on conclusion of the matter (*id.* § 1472). The court may also fix the compensation of the guardian or conservator. *Id.* §§ 2640, 2641. The Commission recommendation would make clear that the court's award of compensation of counsel, and of the guardian or conservator, may include compensation for services rendered before the date of appointment.

The staff of the Senate Judiciary Committee is concerned that the language in the bill may require the court to award compensation for services rendered before the date of appointment, rather than merely giving the court discretion to do so. The staff recommends we address this concern by amending the bill to restore language from an earlier draft of the recommendation.

Exhibit 1 shows how the four affected sections as they now appear in the bill would be revised. (The Comments in the Commission's printed recommendation are satisfactory, and need not be revised.)

Exhibit 2 shows the amendments as they would be submitted to Legislative Counsel.

Respectfully submitted,

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Staff Counsel

Note: The following amendments are to the sections as they appear in Senate Bill 1455, amended in Senate April 20, 1992.

Prob. Code § 1470 (amended). Discretionary appointment of legal counsel

1470. (a) The court may appoint private legal counsel for the ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under this division if the court determines the person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests.

(b) If a person is furnished legal counsel under this section, the court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel, ~~whether the services were rendered and the expenses incurred before or after the date of the order appointing counsel.~~ The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.

(c) The court shall order the sum fixed under subdivision (b) to be paid:

(1) If the person for whom legal counsel is appointed is an adult, from the estate of that person.

(2) If the person for whom legal counsel is appointed is a minor, by a parent or the parents of the minor or from the minor's estate, or any combination thereof, in any proportions as the court deems just.

(d) The court may make an order under subdivision (c) requiring payment by a parent or parents of the minor only after the parent or parents, as the case may be, have been given notice and the opportunity to be heard on whether the order would be just under the circumstances of the particular case.

Prob. Code § 1472 (amended). Compensation of mandatory court-appointed counsel

1472. (a) If a person is furnished legal counsel under Section 1471:

(1) The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel, ~~whether the~~

~~services were rendered and the expenses incurred before or after the date of the order appointing counsel,~~ and shall make a determination of the person's ability to pay all or a portion of that sum. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.

(2) If the court determines that the person has the ability to pay all or a portion of the sum, the court shall order the conservator of the estate or, if none, the person, to pay in any installments and in any manner as the court determines to be reasonable and compatible with the person's financial ability.

(3) In a proceeding under Chapter 3 (commencing with Section 3100) of Part 6 for court authorization of a proposed transaction involving community property, the court may order payment out of the proceeds of the transaction.

(4) If a conservator is not appointed for the person furnished legal counsel, the order for payment may be enforced in the same manner as a money judgment.

(b) If the court determines that a person furnished private counsel under Section 1471 lacks the ability to pay all or a portion of the sum determined under paragraph (1) of subdivision (a), the county shall pay the sum to the private counsel to the extent the court determines the person is unable to pay.

(c) The payment ordered by the court under subdivision (a) shall be made to the county if the public defender has been appointed or if private counsel has been appointed to perform the duties of the public defender and the county has compensated such counsel. In the case of other court-appointed counsel, the payment shall be made to that counsel.

Prob. Code § 2640 (amended). Petition by guardian or conservator of estate

2640. (a) At any time after the filing of the inventory and appraisal, but not before the expiration of 90 days from the issuance of letters, the guardian or conservator of the estate may petition the court for an order fixing and allowing compensation to any one or more of the following:

(1) The guardian or conservator of the estate for services rendered to that time.

(2) The guardian or conservator of the person for services rendered to that time.

(3) The attorney for services rendered to that time by the attorney to the guardian or conservator of the person or estate or both.

(b) Notice of the hearing shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) Upon the hearing, the court shall make an order allowing (1) any compensation requested in the petition as the court determines is just and reasonable to the guardian or conservator of the estate for services rendered or to the guardian or conservator of the person for services rendered, or to both, and (2) any compensation requested in the petition as the court determines is reasonable to the attorney for services rendered to the guardian or conservator of the person or estate or both, ~~whether the services were rendered before or after the date of the order appointing the guardian or conservator.~~ The compensation allowed to the guardian or conservator of the person and the guardian or conservator of the estate may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation so allowed shall thereupon be charged to the estate. Legal services for which the attorney may be compensated include those services rendered by any paralegal performing the legal services under the direction and supervision of an attorney. The petition or application for compensation shall set forth the hours spent and services performed by the paralegal.

Prob. Code § 2641 (amended), Petition by guardian or conservator of person

2641. (a) At any time permitted by Section 2640 and upon the notice therein prescribed, the guardian or conservator of the person may petition the court for an order fixing and allowing compensation for services rendered to that time, ~~whether the services were rendered before or after the date of the order appointing the guardian or conservator.~~

(b) Upon the hearing, the court shall make an order allowing any

compensation as the court determines just and reasonable to the guardian or conservator of the person for services rendered. The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator. The compensation allowed shall thereupon be charged against the estate.

AMENDMENTS TO SENATE BILL 1455
AMENDED IN SENATE APRIL 20, 1992

Amendment 1

On page 3, strike out lines 13 to 15, inclusive, and insert:
counsel. The sum may, in the discretion of the court, include
compensation for services rendered, and expenses incurred, before the
date of the order appointing counsel.

Amendment 2

On page 3, line 23, strike out "as"

Amendment 3

On page 3, line 36, strike out "whether the services were rendered
and the", strike out line 37, and in line 38 strike out "appointing
counsel,"

Amendment 4

On page 4, line 1, after the period insert:
The sum may, in the discretion of the court, include compensation for
services rendered, and expenses incurred, before the date of the order
appointing counsel.

Amendment 5

On page 4, line 4, after "person" insert a comma

Amendment 6

On page 4, line 5, strike out "as"

Amendment 7

On page 9, line 12, strike out "as"

Amendment 8

On page 9, line 16, strike out "as"

Amendment 9

On page 9, line 19, strike out "both, whether the services were rendered", strike out line 20, and in line 21 strike out "guardian or conservator." and insert:

both. The compensation allowed to the guardian or conservator of the person and the guardian or conservator of the estate may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator.

Amendment 10

On page 9, line 36, strike out ", whether the services were", strike out line 37, and in line 38 strike out "the guardian or conservator"

Amendment 11

On page 9, line 40, strike out "as"

Amendment 12

On page 10, line 2, after the period insert:
The compensation allowed to the guardian or conservator of the person may, in the discretion of the court, include compensation for services rendered before the date of the order appointing the guardian or conservator.