

1/17/78

F-30.300

Memorandum 78-4

Subject: Study F-30.300 - Guardianship-Conservatorship Revision
(Standard for Exercise of Powers of Guardian or Conservator)

In drafting the provisions relating to powers of a guardian or conservator, the staff has concluded that it would be useful to have a general provision in the powers and duties chapter requiring the guardian or conservator to "act reasonably" in the management and administration of the estate, whether or not court approval of the particular action is required. A staff draft of proposed Section 2501 to accomplish this is attached to this memorandum as Exhibit 1. The section would supersede the provision of existing law requiring the guardian to manage the estate "frugally and without waste"--language which is not sufficiently broad for the purpose.

Proposed Section 2501 is consistent with existing trust principles: Existing Section 1400 makes guardians subject to trust law, and Civil Code Section 2259 requires a trustee to use "at least ordinary care and diligence" in the execution of the trust. The fiduciary duty of a conservator has been described as the "obligation to act prudently and in good faith." W. Johnstone & G. Zillgitt, *California Conservatorships* § 5.2, at 152 (Cal. Cont. Ed. Bar 1968). See generally In re Estate of Wood, 159 Cal. 466, 470, 114 P. 992, ____ (1911) ("measure of care and diligence required of a guardian or similar trustee is such as would be exercised by a man of ordinary prudence and skill in the management of his own business"); In re Estates of Boyes, 151 Cal. 143, 154, 90 P. 454, ____ (1907) (guardian "only bound to the use of such care, diligence, and sound judgment as a man of ordinary prudence would exercise in matters of similar importance to himself"); Estate of Cousins, 111 Cal. 441, 449, 44 P. 182, ____ (1896) (if guardian "has exercised the care and judgment of ordinarily prudent men in their own affairs, he will not be chargeable for his mere errors of judgment, nor for accidental injuries and losses"); Guardianship of Blair, 139 Cal. App.2d 832, 836, 294 P.2d 521, ____ (1956) (guardian "who acts in good faith with ordinary diligence and prudence . . . has no liability for mistake in judgment"); In re Carlon, 43 Cal. App.2d 204, 208, 110 P.2d 488, ____

(1941) (guardian "exercises a trust demanding of him the highest degree of good faith and confidence").

Proposed Section 2501 will continue existing trust principles not only in qualifying all powers with the general duty to act reasonably, but also in imposing on the guardian or conservator an affirmative duty to take action when it is reasonably required under the circumstances. See, e.g., Civil Code §§ 2261-2262; 7 B. Witkin, Summary of California Law Trusts § 62, at 5423 (8th ed. 1974). Thus, for example, the guardian or conservator will, in the exercise of reasonable care, be required to keep surplus funds profitably invested. See, e.g., Gaver v. Early, 58 Cal. App. 736, 737, 209 P. 394, ____ (1923); 35 Cal. Jur.3d Guardianship and Conservatorship § 151, at 727 (1977).

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

Staff Draft

§ 2501. Duty of reasonable management

2501. In the management and administration of the estate, the guardian or conservator shall act reasonably according to all the circumstances.

Comment. Section 2501 supersedes the portion of the first sentence of former Section 1502 which required every guardian of an estate to manage it frugally and without waste. Section 2501 is consistent with principles of trust law which are applied to guardianships and conservatorships by Section 2100. Under Civil Code Section 2259, a trustee must use at least ordinary care and diligence in the execution of the trust. Similarly, a guardian or conservator assumes the basic obligation to act prudently and in good faith. See W. Johnstone & G. Zillgitt, California Conservatorships § 5.2, at 152 (Cal. Cont. Ed. Bar 1968). See also Section [2575 in prior draft] (protection from liability for guardian or conservator who fully and fairly complies with court order authorizing certain purchases or investments).

Section 2501 applies to all powers of a guardian or conservator, whether or not the particular power requires court approval for its exercise, and imposes on the guardian or conservator an affirmative duty to take action when it is reasonably required under the circumstances.