

4/25/78

Memorandum 78-26

Subject: Study F-30.300 - Guardianship-Conservatorship Revision
(Powers and Duties of Guardian or Conservator of Non-
resident)

The substance of Probate Code Section 1571 has been omitted from the draft guardianship-conservatorship statute. Section 1571 provides:

1571. Every guardian of a nonresident ward has the same powers and duties, with respect to the estate of the ward within this state, and with respect to the person of the ward while living therein, as are prescribed by this code with respect to any other guardian. Such guardian must give bond to the ward as hereinbefore provided for other guardians, but his responsibility with regard to inventory, accounting and disposal of the estate is confined to such estate as comes into his hands in this state.

The staff recommends that this provision be included in the draft statute with the following two revisions:

- (1) The provision should be extended to conservators.
- (2) With respect to a guardian or conservator of the person of a nonresident, the court should be authorized to restrict the powers so that the guardian or conservator may be authorized to act for a limited purpose--for example, the authorization of necessary medical care.

The provision might take the following form:

§ 2107. Guardian or conservator of nonresident ward or conservatee

2107. (a) Except to the extent limited by court order, a guardian or conservator of the person of a nonresident has the same powers and duties as a guardian or conservator of a resident while the nonresident is in this state.

(b) A guardian or conservator of the estate of a nonresident has, with respect to the estate of the nonresident within this state, the same powers and duties as a guardian or conservator of the estate of a resident. The responsibility of such a guardian or conservator with regard to inventory, accounting, and disposal of the estate is confined to such estate as comes into the hands of the guardian or conservator in this state.

Comment. Section 2107 continues the substance of former Section 1571, except that the court is authorized to limit the powers and duties of a guardian or conservator of the person of a nonresident. Thus, for example, if the appointment of a guardian of the person of a nonresident is necessary so that the ward may receive emergency medical treatment, the order appointing the guardian may expressly limit the powers and duties of the guardian to those necessary for the accomplishment of that purpose.

Section 2107 does not deal with the question of the extent of the powers of the guardian or conservator of the person when the nonresident ward or conservatee is not within California. See generally *Mayer v. Willing*, 196 Cal. App.2d 379, 16 Cal. Rptr. 476 (1961); 39 Am. Jur.2d Guardian and Ward §§ 26, 219 (1968).

The provision in former Section 1571 that a guardian of the estate of a nonresident must give bond as provided for other guardians has been omitted from Section 2107 as unnecessary. The provisions of Chapter 4 (commencing with Section 2300) concerning bonds apply to guardians and conservators of nonresidents as well as of residents.

Respectfully submitted,

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