

Memorandum 79-16

Subject: Study F-100 - Guardianship-Conservatorship Revision (Simplified Accounting for Small Estates)

Sallie T. Reynolds makes the following suggestion:

8. Accountings by Conservators of the Estate in Small Estates

I find that many of my conservatees receive social security which is immediately paid to an institution for their care. Medicare pays most of the rest of the cost of their care. In most of these cases, the conservator makes additional payments from his personal funds on behalf of the conservatee. It seems a needless expense for someone to prepare an accounting in these cases. I am certain that I do not wish to make a charge for such an account and yet I cannot undertake too many charity cases. The conservatee is protected because all Medi-Cal payments are only made upon condition of the social security being paid to the institution.

In these small estates, for example, where the property on hand at the beginning and end of the account period is under \$2,000 and the income has been under \$150 a month, the conservator of the estate, in lieu of filing an accounting, should be able to file an affidavit stating that the property on hand throughout the accounting period has not been over \$2,000, the amount of the present property on hand, and that all income has either been retained or spent for the benefit of the conservatee.

I also feel that in these small estates the bond should be waived.

Perhaps a provision for an affidavit in lieu of an accounting could be added as Section 2628.

The staff believes that this is a good suggestion. We recommend that a new section be added to the proposed legislation to effectuate this suggestion. A suggested draft of the new section is attached as Exhibit 1.

The Commission may wish to make a comparable revision in proposed Section 2323 relating to bonds or guardians and conservators. A suggested revision of that section is attached as Exhibit 2.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT 1

§ 2628. Affidavit in lieu of accounting in case of small estate

2628. (a) As used in this section, "public benefit payments" means payments received or to be received under either or both of the following:

(1) Part 3 (commencing with Section 11000) of, or Part 5 (commencing with Section 17000) of, Division 9 of the Welfare and Institutions Code.

(2) Subchapter II (commencing with Section 401) of, or Part A of Subchapter XVI (commencing with Section 1382) of, Chapter 7, Title 42, United States Code.

(b) In lieu of accounting as otherwise required by this article, the guardian or conservator may follow the procedure provided by this section if all of the following conditions are satisfied:

(1) The estate at the beginning and end of the accounting period consisted of property of a total net value of less than two thousand dollars (\$2,000).

(2) The income of the estate for each month of the accounting period, exclusive of public benefit payments, was less than one hundred fifty dollars (\$150).

(3) All income of the estate, if not retained, was spent for the benefit of the ward or conservatee.

(c) The guardian or conservator may file with the court at the time the account is otherwise required to be presented an affidavit stating that all the conditions prescribed in subdivision (b) are satisfied.

(d) If an affidavit is filed under subdivision (c), the ward or conservatee or any interested person may petition the court for an order requiring the guardian or conservator to present an account as otherwise required by this article or the court on its own motion may make such an order. An order under this subdivision may be made ex parte or on such notice of hearing as the court in its discretion requires.

Comment. Section 2628 is designed to reduce expense of administration of small estates. In determining whether the monthly income of the estate satisfies the small estate requirements, income from public benefit payments is excluded. These payments are: (1) state aid and medical assistance (Welf. & Inst. Code §§ 11000-15520), (2) county aid

and relief to indigents (Welf. & Inst. Code §§ 17000-17410), (3) federal old age, survivors, and disability insurance benefits (42 U.S.C. §§ 401-431 (1970 & Supp. V 1976)), and (4) federal supplemental security income for the aged, blind, and disabled (42 U.S.C. §§ 1381-1383c (1970)). See Review of Selected 1976 California Legislation, 8 Pac. L.J. 165, 188 (1977).

Policy Issue: Should notice of the filing be required to be mailed to the ward if over 14 years of age, to the conservatee, and to the spouse of the ward or conservatee if the ward or conservatee has a spouse, unless the court for good cause dispenses with the mailing?

Should the filing of the affidavit be added to the list of matters of which special notice is required if a request for special notice is filed?

EXHIBIT 2

§ 2323. Small estate

2323. (a) The court may dispense with the requirement of a bond if it appears likely that the estate will satisfy the conditions of subdivision (b) of Section 2628 for its duration.

(b) If at any time it appears that the estate does not satisfy the conditions of subdivision (b) of Section 2628, the court may require the filing of a bond.

Comment. Section 2323 expands former Section 1480.3 to cover the estate of a conservatee as well as the estate of a minor and to cover a small estate, regardless whether consisting in its entirety of public benefit payments. See Welf. & Inst. Code §§ 10002, 11006.5.