

Memorandum 82-90

Subject: Study L-627 - Probate Law and Procedure (Notice in Limited Conservatorship Proceedings)

Attached is the Recommendation Relating to Report of Assessment of Proposed Limited Conservatee. There were no objections to the recommendation. However, Kenneth J. Arnold suggests that the copy of the report be mailed at least 15 days (rather than 10 days as proposed) before the hearing.

Existing law requires that the report of the court investigator be mailed to interested persons at least five days before the hearing. The Commission decided to require that the report of the regional center be mailed at least 10 days. Arnold refers to Code of Civil Procedure Sections 1005 (15-day written notice of motion to be given with related papers), 1013(a) (extension of time where service by mail).

Whether the time should be extended from 10 to 15 days is a policy issue. The 15-day requirement would give the parties more time to study the report and to prepare to support or oppose the report. On the other hand, under existing law, the report of the court investigator is mailed only five days before the hearing, and the parties must also deal with the recommendations in that report. Moreover, the 15-day requirement would delay for an additional five days action on the petition to establish a limited conservatorship, and this additional delay may not be in the best interests of the person for whom the conservatorship is needed.

Respectfully submitted,

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Executive Secretary

STAFF DRAFT

STATE OF CALIFORNIA

C A L I F O R N I A L A W
R E V I S I O N C O M M I S S I O N

RECOMMENDATION

relating to

REPORT OF ASSESSMENT OF PROPOSED LIMITED CONSERVATEE

July 28, 1982

Important Note. This staff draft of a recommendation reflects the Commission's tentative conclusions. It is being distributed to interested persons and organizations so that they can make their views known to the Commission. Any comments sent to the Commission will be considered at the Commission's September 1982 meeting when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the draft as it is to advise the Commission that you object to the draft or that you believe that it needs to be revised.

COMMENTS ON THIS STAFF DRAFT SHOULD BE SENT TO THE COMMISSION NOT LATER THAN AUGUST 31, 1982.

The Commission often substantially revises tentative drafts as a result of the comments it receives. Hence, this staff draft is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
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LETTER OF TRANSMITTAL

The new guardianship-conservatorship law was enacted in 1979 upon recommendation of the Law Revision Commission. 1979 Cal. Stats. ch. 726. See Recommendation Relating to Guardianship-Conservatorship Law, 14 Cal. L. Revision Comm'n Reports 501 (1978). In 1980, provisions relating to limited conservatorships (not recommended by the Commission) were enacted. 1980 Cal. Stats. ch. 1304.

Pursuant to Resolution Chapter 27 of the Statutes of 1972, the Commission has reviewed the experience under the new guardianship-conservatorship law to determine whether any technical or substantive revisions in the new law are needed. This recommendation is submitted as a result of this continuing review.

Section 1827.5 of the Probate Code provides for an assessment of a proposed limited conservatee by a regional center and requires that a copy of the report of the regional center be given to the proposed limited conservatee and the petitioner. The Commission recommends that the list of persons to be given a copy of the report be expanded to include the attorneys for the parties and such other persons as the court orders. To ensure that the copy is received a sufficient time before the hearing, the Commission recommends that it be mailed at least 10 days before the hearing on the petition to establish the limited conservatorship.

RECOMMENDATION

relating to

REPORT OF ASSESSMENT OF PROPOSED LIMITED CONSERVATEE

Section 1827.5 of the Probate Code provides for an assessment of a proposed limited conservatee by a regional center.¹ The regional center submits a written report of its findings* and recommendations to the court. The regional center furnishes a copy of its report to the proposed limited conservatee and to the petitioner.

The Commission recommends that Section 1827.5 be amended to require that:

(1) A copy of the report of the regional center be mailed to the attorneys and other interested persons designated by the court (not just the proposed limited conservatee and the petitioner).²

(2) The copy be mailed at least 10 days before the hearing on the petition to establish the limited conservatorship.³

Section 1827.5 does not now specify the time when the copy of the report must be delivered. The Commission is aware of a case where the copy of the report was delivered on the morning of the day the hearing was to be held.⁴ The report recommended a change in residence of the

1. The proposed limited conservatee, with his or her consent, must be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The assessment must be made within 30 days after the filing of the petition for limited conservatorship. Prob. Code § 1827.5.
2. Section 1827.5 requires that a copy of the report be provided only to the proposed limited conservatee and to the petitioner. Other interested persons should receive a copy of the report. If the proposed limited conservatee has an attorney, both the proposed limited conservatee and the attorney should receive a copy. If the proposed conservatee is not the petitioner, the attorney for the petitioner instead of the petitioner should receive a copy if the petitioner has an attorney. In addition, the court should be given express authority to require that a copy be furnished to any other person the court specifies. The requirement that copies be provided to attorneys, if any, for the proposed limited conservatee and petitioner and to such other persons as the court orders is drawn from Section 1826(k) of the Probate Code (report of court investigator).
3. Compare Prob. Code § 1826(k) (report of court investigator must be mailed to interested persons at least five days before the hearing).
4. Letter dated July 13, 1982, from David H. Spencer, Los Altos, California, lawyer (on file in the office of the Commission).

proposed limited conservatee and suggested that a general, rather than a limited, conservatorship was appropriate. In such a case, the lack of sufficient advance notice makes it difficult or impossible for the parties and their attorneys to contest or support at the hearing the findings and recommendations contained in the report. The recommended 10-day mailing requirement will assure sufficient advance notice.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Section 1827.5 of the Probate Code, relating to limited conservatorships.

The people of the State of California do enact as follows:

3147

SECTION 1. Section 1827.5 of the Probate Code is amended to read:

1827.5. (a) In the case of any proceeding to establish a limited conservatorship, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. ~~Such~~ The regional center shall submit a written report of its findings and recommendations to the court ~~with copies to the proposed limited conservatee and to the petitioner~~. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability, if any. The findings and recommendations of the regional center ~~shall~~ are not be binding upon the court.

(b) At least 10 days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

- (1) The proposed limited conservatee.
- (2) The attorney, if any, for the proposed limited conservatee.
- (3) If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.

(4) Such other persons as the court orders.

Comment. Section 1827.5 is amended to require that copies of the report be mailed at least 10 days before the hearing and to require that copies be mailed to the attorney, if any, for the proposed limited conservatee, to the attorney for the petitioner instead of the petitioner if the petitioner has an attorney, and to such other persons as the court orders. The amended section continues the former requirement that in every case a copy be provided to the proposed limited conservatee. The new requirement that copies be mailed to attorneys, if any, for the proposed limited conservatee and petitioner and to such other persons as the court orders is drawn from Section 1826(k) (report of court investigator). See also Sections 1465 (manner of mailing; when mailing complete), 1466 (personal delivery in lieu of mailing).