

Memorandum 85-108

Subject: Study L-1050 - Estates and Trusts Code (Notice in Guardianships and Conservatorships)

At the May 1985 meeting, the Commission considered suggestions to reduce notice in guardianships and conservatorships. The Commission decided not to reduce the initial notice given when proceedings are commenced, but deferred deciding whether notice of post-establishment proceedings should be reduced to give the State Bar Committee on Private Conservatorships time to comment. We now have the State Bar's comments, attached to this Memorandum as Exhibit 1. Exhibit 2 summarizes existing notice requirements. The State Bar recommends we do the following:

(1) Increase notice on establishment of a guardianship or conservatorship and in proceedings for appointment of a successor guardian or conservator by requiring notice to relatives within the third degree when there are no relatives within the second degree.

(2) Reduce notice in the following eight types of post-establishment proceedings by replacing existing notice provisions with a cross-reference to the general notice provisions of Sections 1460-1469 (this would substitute mailed notice for personal service, and eliminate notice to relatives who have neither requested special notice nor appeared in the matter to which the hearing relates):

<u>Type of Petition</u>	<u>Existing Notice</u>	<u>Proposed Notice</u>
Termination of conservatorship (§ 1862); consent to medical treatment (§ 1892)	Personal service on conservator & conservatee; mailed to spouse, relatives within 2nd degree, & persons who have requested special notice	Mailed to conservator & conservatee, spouse, & persons who have appeared in the matter or requested special notice
Modification of powers of limited conservator (§ 2351.5)	Personal service on conservator & conservatee; mailed to spouse & relatives within 2nd degree	Same as above
Removal of conservator (§ 2652)	Personal service on conservator or as court orders; mailed to conservatee, spouse, relatives within 2nd degree, & persons who have requested special notice	Same as above

<u>Type of Petition</u>	<u>Existing Notice</u>	<u>Proposed Notice</u>
Removal of guardian (\$ 2652)	Personal service on guardian or as court orders; mailed to ward if over 14, person having legal custody or care of ward, parents, nominee as guardian, relatives within 2nd degree, & persons who have requested special notice	Mailed to guardian, ward if over 14, spouse, & persons who have appeared in the matter or requested special notice
Objections to appraisal (\$ 2614)	Mailed to guardian or conservator, spouse, relatives within 2nd degree, & probate referee	Mailed to guardian or conservator, ward if over 14 or conservatee, spouse, & persons who have appeared in the matter or requested special notice
Transfer of assets out of state (\$ 2804); final account when assets transferred out of state (\$ 2808)	Mailed to Calif. guardian or conservator, foreign guardian or conservator, ward or conservatee, spouse, relatives within 2nd degree, & persons who have requested special notice	Same as above

The staff recommends against requiring notice to third degree relatives when there are no nearer relatives. The court may now require additional notice if notice is otherwise insufficient. Prob. Code § 1462(b). This is more flexible than a blanket requirement.

The staff agrees with the State Bar proposal to replace the notice provisions in the eight specified post-establishment proceedings with a cross-reference to the general notice provisions of Sections 1460-1469. The substitution of mailed notice for personal service is consistent with post-summons notice in civil actions, and would reduce the burden and expense of giving the notice. The elimination of mailed notice to relatives who have not requested special notice would dispense with notice to those who presumably do not want it. Those who do want notice may protect themselves by requesting special notice.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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October 30, 1985

John H. DeMouilly, Esq.
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Re: Memorandum 85-7 - Notice in
Guardianships and Conservatorships

Dear John:

You will recall that several months ago Memorandum 85-7 and the supplements thereto were considered by the Commission at one of its meetings. At that time we requested an opportunity for the State Bar's Committee on Private Conservatorships to review the Memorandum in greater detail as to the standardization of notices in guardianships and conservatorships.

That Committee favors a retention of existing provisions requiring that notices of hearing on establishments of conservatorships and guardianships be mailed to all relatives of the proposed conservatee or minor within the second degree or, if none, then to the relatives within the third degree, including minor relatives within these classes. Awareness of the establishment of protective proceedings was perceived to be much more significant than awareness of post-establishment administrative proceedings.

The Committee on Private Conservatorships felt that notice incident to miscellaneous other post-establishment proceedings should generally be on a more limited basis consistent with existing Probate Code Sections 1460-69. The Committee also favored the staff recommendation allowing the court to determine additional notice in particular circumstances where the court determines that notice otherwise required is insufficient.

Accordingly, the Committee favored deleting notice requirements to relatives within the second degree and

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John H. DeMouilly
October 30, 1985
Page Two

substituting general notice requirements for proceedings under Probate Code Sections 1862 (termination), 1892 (authorization, modification or revocation of medical decisions), 2214 (change of venue), 2351.5 (modification of powers in a limited conservatorship), 2614 (objections to appraisals), 2652 (removal of guardian or conservator), 2804 (transfer of assets out of the state), and 2808 (final accounting when assets transferred out of state).

The Committee believes that the current notice provisions in Section 2581 (substituted judgment) are appropriate in order to better protect the interest of those individuals who might be affected by this substituted judgment.

Proceedings for appointments of successor guardians or conservators (Probate Code Section 2670 and Section 2683) should continue to require notice be given to relatives within the second degree or, if there are none, to relatives within the third degree.

Thank you for giving our Committee on Private Conservatorships a chance to review Memorandum 85-7 in some detail.

Sincerely,



Charles A. Collier, Jr.

CAC:vjd

cc: James Willett, Esq.
James Goodwin, Esq.
James Quillinan, Esq.
Theodore Cranston, Esq.

Exhibit 2

NOTICE IN GUARDIANSHIP AND CONSERVATORSHIP
PROCEEDINGS

Initial Notice When Proceedings Commenced

Personal service is required on the proposed ward (if 14 or older) (§ 1511) or conservatee (§§ 1822-1824). Mailed notice must be given to the spouse and relatives within the second degree (parents, grandparents, children, grandchildren, brothers, sisters, aunts, uncles, nieces, and nephews) (§§ 1511, 1822).

General Post-Establishment Notice (Prob. Code §§ 1460- 1469)

Under the general provisions for post-establishment notice (§§ 1460-1469), notice is mailed to the guardian or conservator, the ward (if 14 or older) or conservatee, the spouse, and any interested person who has appeared in the particular matter to which the hearing relates (§ 1460). The general notice provisions apply in the following proceedings:

- (1) Petition to terminate guardianship (§ 1601).
- (2) Petition concerning legal capacity of conservatee (§ 1873).
- (3) Petition re capacity to marry (§ 1901).
- (4) Petition for change of venue (§ 2214).
- (5) Petition to fix residence of ward outside California (§ 2352).
- (6) Petition to compel guardian or conservator to obtain medical treatment for ward or conservatee (§ 2357(i)).
- (7) Petition for instructions (§§ 2359, 2403).
- (8) Petition to compel guardian or conservator to furnish support or pay debts (§ 2404).
- (9) Petition for allowance for ward or conservatee (§ 2421).
- (10) Petition for support despite liability of another (§ 2422).
- (11) Petition for payment of surplus income to relatives (§ 2423).
- (12) Petition to accept deed in lieu of foreclosure (§ 2464).
- (13) Petition to limit authority of guardian or conservator to compromise claim or action or modify obligation (§ 2500).
- (14) Petition to compromise claim or action or modify obligation (§ 2506).

- (15) Petition to borrow money (§ 2551).
- (16) Petition to lease estate property (§ 2553).
- (17) Petition to convey real property to public entity, convey easement or access rights, or consent as lienholder (§ 2556).
- (18) Petition to exchange property (§ 2557).
- (19) Petition to invest (§ 2570).
- (20) Petition re independent exercise of powers (§§ 2592- 2593).
- (21) Hearing on account of guardian or conservator (§ 2621).
- (22) Petition for compensation to guardian, conservator, or attorney (§ 2640).
- (23) Petition for periodic payments of compensation to guardian, conservator, or attorney (§ 2643).
- (24) Petition for contingent fee contract with attorney (§ 2644).
- (25) Petition to resign as guardian or conservator (§ 2660).

Notice in Particular Post-Establishment Proceedings

Some post-establishment proceedings have their own notice requirements rather than incorporating the general notice provisions. These are:

(26) Petition to terminate conservatorship (§ 1862): personal service on conservator and conservatee; mailed to spouse and relatives within second degree.

(27) Petition re capacity to consent to medical treatment (§ 1892): personal service on conservator and conservatee; mailed to spouse and relatives within second degree.

(28) Petition for appointment of temporary guardian or conservator (§ 2250): personal delivery to ward (if 14 or older) or conservatee.

(29) Petition to modify powers of limited conservator (§ 2351.5): personal service on limited conservator and conservatee; mailed to spouse and relatives within second degree.

(30) Petition by guardian or conservator for court-authorized medical treatment (§ 2357(f)): Court may order notice by personal service or mail. Notice shall be given to the ward or conservatee, his or her attorney, and such other persons as court requires (may include spouse and relatives within second degree).

(31) Petition re transfer of property claimed to belong to ward, conservatee, or other person (§ 2521): Personal service on persons

with an interest in or possession of the property; mailed to guardian or conservator, ward (if 14 or older) or conservatee, spouse, and any interested person who has appeared in the matter.

(32) Petition re substituted judgment (§ 2581): mailed to conservator, conservatee, spouse, relatives within second degree, any interested person who has appeared in the matter, takers under the conservatee's will or other testamentary document or by intestate succession (unless the court orders otherwise), and such other persons as court orders.

(33) Order compelling inventory and appraisal or accounting (§ 2602): personal service on guardian or conservator, or in such manner as court orders.

(34) Objections to appraisal (§ 2614): mailed to guardian or conservator, spouse, relatives within second degree, and probate referee.

(35) Petition to remove guardian (§ 2652): personally served on guardian or in such manner as court orders; mailed to ward (if 14 or older), person having legal custody or care of ward, parents of ward, any person nominated as guardian, spouse, and relatives within second degree.

(36) Petition to remove conservator (§ 2652): personally served on conservator or in such manner as court orders; mailed to conservatee, spouse, and relatives within second degree.

(37) Petition to appoint successor guardian (§ 2670): personal service on ward (if 14 or older); mailed to spouse and relatives within second degree.

(38) Petition to appoint successor conservator (§ 2683): mailed to conservatee, spouse, and relatives within second degree.

(39) Petition to transfer assets out of state (§ 2804): mailed to California guardian or conservator, foreign guardian or conservator, ward or conservatee, spouse, and relatives within second degree.

(40) Final account when assets transferred out of state (§ 2808): mailed to California guardian or conservator, foreign guardian or conservator, ward or conservatee, spouse, and relatives within second degree.

Ex Parte Petitions

(41) Petition to commence partition action (§ 2463).

Requests for Special Notice

Special notice may be requested of items (1) through (5), (7) through (11), (13), (14), (19) through (23), (25) through (27), (31), (32), and (35) through (40) above. See § 2700.