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#L-1040

2/10/86

Third Supplement to Memorandum 86-19

Subject: Study L-1040 - Estates and Trusts Code (Public Guardian--
public guardian comments)

Attached to this memorandum are comments from the San Francisco Public Administrator/Guardian concerning the staff draft public guardian statute attached to the First Supplement to Memorandum 86-19.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

City and County of San Francisco



PUBLIC ADMINISTRATOR
PUBLIC GUARDIAN

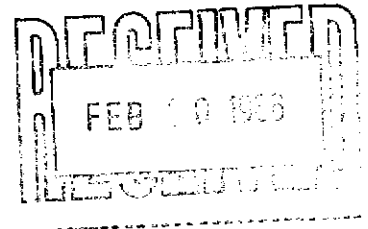
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February 7, 1986

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Dear Mr. Sterling:

Enclosed are comments and proposals of James R. Scannell to the Commission staff drafts of the Public Guardian statutes. Please accept my apology for not being able to forward these materials earlier.

Yours very truly,

Theresa Taken

Theresa Taken
Associate Attorney

Comments/Proposals by James R. Scannell

<u>Proposed</u> <u>Estate &</u> <u>Trust Sec.</u>	<u>Former</u> <u>W & I</u> <u>Section</u>	<u>Comments/Proposals</u>
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2911	8006	<p><u>Comment</u> - The meaning of the 2911 phrase "<u>If the court orders</u> any person or estate into the hands of the public guardian" and the words, "the public guardian <u>shall</u> apply. ." is very different than the 8006 phrase. This phrase says "Any public guardian <u>may act</u> as guardian or conservator of any person or estate ordered into his hands by the court."</p>
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The common law principle that "no person shall be held to act as a fiduciary without his consent" is applicable to the conservator/conservatee relationship.

Proposal - Leave the following wording in 2911, "The public guardian may act as guardian or conservator of any person and estate ordered into his or her hands by the court."

Comments/Proposals by James R. Scannell

<u>Proposed Estate & Trust Sec.</u>	<u>Former W & I Section</u>	<u>Comments/Proposals</u>
2913	8006 & 8006.5	<p><u>Comment</u> - Staff Query re; referral. Referral means a written or, in an emergency case, a telephone request for immediate and necessary action to protect the estate of a proposed conservatee.</p> <p><u>Proposal</u> - The wording of 2913 should remain as it is in 8006 with the addition of "misappropriated" after "lost".</p> <p><u>Comment</u> - While the public guardian attempts to obtain a temporary conservatorship upon determination that a proposed conservatee's estate needs immediate protection, this may not always be possible logistically. That is, schedules of courts and judges often do not permit the immediate hearing of a temporary conservatorship proceeding. This provision allows for this possibility and authorizes the public guardian in his discretion to take immediate action to protect the proposed conservatee's estate, when deemed necessary.</p> <p>The insertion of "misappropriated" is proposed because it more nearly approximates the common situation where a proposed elder conservatee's estate is being "ripped off".</p>

Comments/Proposals by James R. Scannell

<u>Proposed</u> <u>Estate &</u> <u>Trust Sec.</u>	<u>Former</u> <u>W & I</u> <u>Section</u>	<u>Comments/Proposals</u>
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2915	8014	<p>Changed by Senate Bill 652 effective 1-1-86.</p> <p>This amends 8013 and repeals 8014. 8013 is amended to read: "The public guardian shall have a claim against the ward's estate for his or her reasonable expenses incurred in the execution of the guardianship or conservatorship, and such compensation for his or her services, those of his or her attorney, and filing and processing services of the county clerk, as the court in which his or her accounts are settled deems just and reasonable."</p>
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Section 8014 is repealed.

Proposal - The insertion of the wording, "against the estate of the ward or conservatee for . . ." to correspond to the later use of "guardianship and conservatorship."

Comments/Proposals by James R. Scannell

<u>Proposed Estate & Trust Sec.</u>	<u>Former W & I Section</u>	<u>Comments/Proposals</u>
2921	8010	<u>Proposed Wording</u> - The public guardian in his/her discretion may employ private attorneys where the cost thereof can be defrayed out of estate funds or where satisfactory pro bono or contingency fee arrangements can be made.

Comments/Proposals by James R. Scannell

<u>Proposed Estate & Trust Sec.</u>	<u>Former W & I Section</u>	<u>Comments/Proposals</u>
2922	8011	<p><u>Proposal</u> - (a) The public guardian need not request appointment of a conservatorship referee if the proposed conservatee is eligible for Social Security Supplemental Income Benefits. (The current cash limit is \$1600.00.)</p> <p><u>Comment</u> - The use of "eligible" allows the estates of proposed conservatees who may have more cash than the SSI limit but also have known bills that will reduce their estate to below this limit to be included in this group.</p> <p><u>Proposal</u> - (b) The public guardian need not file an appraisal of assets other than cash if said assets are not to be sold. However, the public guardian shall file a verified declaration of said assets other than cash held by him. Special notice requests shall be applicable to said declarations.</p> <p><u>Proposal</u> - (c) If the conservatee assets other than cash have an estimated value of \$1,000 or less, the public guardian shall be allowed to sell said assets upon the filing of a verified declaration stating said estimated value. Probate Code Section 2545 would remain applicable to these sales.</p>

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<u>Proposed Estate & Trust Sec.</u>	<u>Former W & I Section</u>	<u>Comments/Proposals</u>
2922	8011	<p><u>Comment</u> - cont-d - These proposals address the frequent situation of small conservatorships with furniture and furnishings, jewelry, and other small value items. Presently, these conservatorships have to incur the minimum \$75.00 referre fee prior to any sale. Present practice in these inventories is to allow the conservator to pencil in the estimated value. The referre then generally accepts the estimated value as the appraised value and places it on the inventory value column.</p> <p>The granting of the proposed authority to the public guardian would result in a savings for the small conservatorship.</p> <p>The granting of this authority to the public guardian would also seem appropriate in that he/she has usually had extensive experience in valuing small value assets like furniture, furnishings, and jewelry.</p>

Comments/Proposals by James R. Scannell

<u>Proposed Estate & Trust Sec.</u>	<u>Former W & I Section</u>	<u>Comments/Proposals</u>
2923(b)	8012	<p><u>Comment</u> re: staff query as to whether this section serves any useful purpose. It does. It authorizes the public guardian to collect small cash amounts due the conservatee and to sell personal property items where there will be no estate proceedings. These small cash amounts and sale proceeds would otherwise go uncollected and unapplied to the last illness and burial expenses as fees for any estate proceeding would normally be in excess of the amounts that could be collected or realized.</p> <p><u>Proposal</u> - That the statute be amended to allow the public guardian to seek a court order to collect cash amounts due and to sell personal property when there are unpaid, court-approved public guardian or public guardian attorney's fees.</p> <p><u>Proposed Wording</u> - "If, after the death of the conservatee or the ward and after deduction of the cost or payment of burial and last illness and the <u>amount of any unpaid but approved public guardian or public guardian attorney's fees</u>, the total market value of the estate of the conservatee does not exceed the amount set forth in subdivision (a) of Section 1143 of the Probate Code, the public</p>

Comments/Proposals by James R. Scannell

<u>Proposed Estate & Trust Sec.</u>	<u>Former W & I Section</u>	<u>Comments/Proposals</u>
2923(b)	8012	<p><u>Proposed Wording</u> - cont'd - guardian may apply to the judge of the superior court for an order permitting him/her to sell any personal property belonging to the decedent, to withdraw any money of the decedent on deposit with any bank or other commercial savings institution, and to collect any debt, claim, or insurance proceeds that may be owing to the decedent or to his/her estate. If the order is granted, any person or institution shall pay or deliver said money or property to the public guardian. Application for such an order may be filed whether or not there is a will in existence if the will does not appoint an executor or if the named executor refuses to act. No notice of the application need be given.</p> <p>After payment of any remaining amounts due for the burial and last illness and approved fees for the public guardian and his/her attorney, the public guardian may transfer any remaining assets in accordance with and subject to the provisions of Section 630 of the Probate Code. The value of the property for purposes of ascertaining the right to transfer under that section shall be determined after deduction for such remaining amounts paid.</p>

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<u>Proposed Estate & Trust Sec.</u>	<u>Former W & I Section</u>	<u>Comments/Proposals</u>
2923(b)	8012	<p><u>Comment</u>- Consideration should be given here or in Probate Code Section 2631 to giving the public guardian authority to pay other reasonable conservatorship charges where there will be no estate proceedings. There are often miscellaneous medical and other legitimate charges after payment of the expenses of last illness and burial.</p> <p>In these instances the small amount of anticipated cash remaining precludes any estate proceeding.</p>