

Memorandum 86-30

Subject: Study L-1050 - Estate and Trust Code (Notice in Guardianship and Conservatorship Proceedings)

Attached to this Memorandum are copies of Senate Bills 1639 and 1909. Both bills revise notice provisions of guardianship-conservatorship law as discussed below.

Notice of Appointment of Guardian of the Person of a Minor

Existing law requires that notice of a petition for appointment of a guardian for a minor be given to the proposed ward if 14 or older, to the person having legal custody of the proposed ward, to the parents of the proposed ward, to any person nominated as guardian for the proposed ward, to the minor's spouse, if any, and to the person having the care of the minor if not the person having legal custody. Prob. Code § 1511. The court has limited authority to dispense with notice to any of such persons if it cannot be given with reasonable diligence or would be contrary to the interest of justice. Id.

Notice must also be given to the minor's relatives within the second degree of kindred, except that if the petition is for appointment of a guardian of the minor's estate only, and not for appointment of a guardian of the minor's person, the court may dispense with notice to any or all of such relatives. Id. This authority is not limited by any requirement of a showing that the notice cannot be given with reasonable diligence or would be contrary to the interest of justice. The thought behind this provision was that notice to relatives is more important where the petition is for a guardian of the minor's person -- in effect, a custody order -- than for a guardian of the minor's estate.

SB 1639 would revise this so that if the petition were for the appointment of a guardian of the minor's person only, and not for appointment of a guardian of the minor's estate, then no notice need be given to the minor's relatives within the second degree.

A child custody proceeding typically involves only the parents of the child; no notice is given to relatives other than the parents. However, in a proceeding to free a child from the custody and control of the parents, notice must be given to the father or mother if known, but, if not known, notice must be given to the grandparents and adult brothers, sisters, uncles, and aunts (second degree relatives), and first cousins (third degree relatives) of the minor. Civil Code § 235.

In an adoption proceeding, no notice need be given to second degree relatives, but notice is required to the State Department of Social Services. Civil Code § 226. Either the department or a licensed county adoption agency investigates, makes a report, and appears in court to represent the interests of the child. Civil Code § 226a. These provisions protect against an adoption taking place without adequate notice or representation of the child's interests.

A guardianship proceeding may be analogized to a proceeding to free a minor from parental control, where there is no participation by a public agency. Arguably, the notice should be similar, suggesting that notice should be given to second degree relatives in most cases.

If the minor's parents are deceased and no one has care or custody of the minor, the revisions proposed by SB 1639 may result in no one receiving notice. If notice in guardianships is to be reduced, it seems preferable to give the court discretion to dispense with notice to second degree relatives rather than to eliminate the notice altogether.

Notice to Third Degree Relatives in Conservatorship Proceedings

SB 1909 is sponsored by the State Bar. It requires a petition for appointment of a conservator to set forth the names and addresses of stepchildren and relatives of the proposed conservatee within the third degree when there are no known relatives within the second degree. This has the effect of expanding notice, because notice must be given to the "relatives named in the petition." Prob. Code § 1822. This is the same as the suggestion made by the State Bar Committee on Private Conservatorships set out in Exhibit 1 to Memorandum 85-108. In that Memo, the staff recommended against thus expanding the notice.

The staff will monitor these two bills and will advise the Commission if they are reported favorably by the policy committee in the Senate.

Respectfully submitted,

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Introduced by Senator Stiern

January 29, 1986

An act to amend Section 1511 of the Probate Code, relating to guardianship.

LEGISLATIVE COUNSEL'S DIGEST

SB 1639, as introduced, Stiern. Guardianship: notice of proposed appointment.

Under existing law, notice of a hearing on a petition for appointment of a guardian must, unless excused by the court, be mailed to all the relatives named in the guardianship petition, in addition to persons and agencies otherwise required to receive notice of the hearing.

This bill would eliminate the requirement for this notice to relatives (except as required by other provisions of law) if the petition is for the appointment of a guardian of the person only and the proposed ward is a minor.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 **SECTION 1.** Section 1511 of the Probate Code is
- 2 amended to read:
- 3 1511. (a) Except as provided in subdivisions (f) and
- 4 (g), at least 15 days before the hearing on the petition for
- 5 the appointment of a guardian, notice of the time and
- 6 place of the hearing shall be given as provided in
- 7 subdivisions (b), (c), (d), and (e) of this section. The
- 8 notice shall be accompanied by a copy of the petition.
- 9 (b) Notice shall be served in the manner provided in
- 10 Section 415.10 or 415.30 of the Code of Civil Procedure,
- 11 or in such manner as may be authorized by the court, on

1 all of the following (other than the petitioner or persons
2 joining in the petition):

3 (1) The proposed ward if 14 years of age or older.

4 (2) The person having legal custody of the proposed
5 ward.

6 (3) The parents of the proposed ward.

7 (4) Any person nominated as a guardian for the
8 proposed ward under Section 1500 or 1501.

9 (c) Notice shall be given by mail sent to their
10 addresses stated in the petition, or in such manner as may
11 be authorized by the court, to all of the following (other
12 than the petitioner or persons joining in the petition):

13 (1) The spouse named in the petition.

14 (2) The relatives named in the petition, except that if:

15 (A) *If the petition is for the appointment of a guardian*
16 *of the estate only the court may dispense with the giving*
17 *of such notice to any one or more or all of such relatives.*

18 (B) *If the petition is for the appointment of a guardian*
19 *of the person only and the proposed ward is a minor, this*
20 *paragraph is not applicable.*

21 (3) The person having the care of the proposed ward
22 if other than the person having legal custody of the
23 proposed ward.

24 (d) If notice is required by Section 1461 or Section
25 1542 to be given to the Director of Mental Health or the
26 Director of Developmental Services or the Director of
27 Social Services, notice shall be mailed as so required.

28 (e) If the petition states that the proposed ward is
29 receiving or is entitled to receive benefits from the
30 Veterans Administration, notice shall be mailed to the
31 office of the Veterans Administration referred to in
32 Section 1461.5.

33 (f) Unless the court orders otherwise, notice shall not
34 be given to any of the following:

35 (1) The parents or other relatives of a proposed ward
36 who has been relinquished to a licensed adoption agency.

37 (2) The parents of a proposed ward who has been
38 judicially declared free from their custody and control.

39 (g) Notice need not be given to any person if the court
40 so orders upon a determination of either of the following:

1 (1) The person cannot with reasonable diligence be
2 given the notice.

3 (2) The giving of the notice would be contrary to the
4 interest of justice.

5 (h) Before the appointment of a guardian is made,
6 proof shall be made to the court that each person entitled
7 to notice under this section either:

8 (1) Has been given notice as required by this section;
9 or

10 (2) Has not been given notice as required by this
11 section because such person cannot with reasonable
12 diligence be given the notice or because the giving of
13 notice to such person would be contrary to the interest
14 of justice.

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Introduced by Senator Rosenthal

February 14, 1986

An act to amend Section 1821 of the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 1909, as introduced, Rosenthal. Conservatorship petition: names of relatives.

Under existing law, a petition for appointment of a conservator is required to set forth, among other things, the names and addresses of those relatives of the proposed conservatee in the second degree that are known to the petitioner.

This bill would require the petition to set forth the names and addresses of stepchildren and relatives in the third degree of the proposed conservatee that are known to the petitioner, if no relatives in the second degree are known to the petitioner.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

- 1 **SECTION 1.** Section 1821 of the Probate Code is
- 2 amended to read:
- 3 1821. (a) The petition shall request that a
- 4 conservator be appointed for the person or estate, or
- 5 both, shall specify the name and address of the proposed
- 6 conservator and the name and address of the proposed
- 7 conservatee, and shall state the reasons why the
- 8 appointment is required.
- 9 (b) The petition shall set forth, so far as they are
- 10 known to the petitioner, the names and addresses of the

1 spouse and of the relatives of the proposed conservatee
2 within the second degree. *If no relatives of the proposed*
3 *conservatee within the second degree are known to the*
4 *petitioner, then, in lieu thereof, the petition shall set*
5 *forth, so far as they are known to the petitioner, the*
6 *names and addresses of relatives of the proposed*
7 *conservatee within the third degree and any*
8 *stepchildren of the proposed conservatee.*

9 (c) If the petition is filed by one other than the
10 proposed conservatee, the petition shall state whether or
11 not the petitioner is a creditor or debtor of the proposed
12 conservatee.

13 (d) If the proposed conservatee is a patient in or on
14 leave of absence from a state institution under the
15 jurisdiction of the State Department of Mental Health or
16 the State Department of Developmental Services and
17 that fact is known to the petitioner, the petition shall state
18 that fact and name the institution.

19 (e) The petition shall state, so far as is known to the
20 petitioner, whether or not the proposed conservatee is
21 receiving or is entitled to receive benefits from the
22 Veterans Administration and the estimated amount of
23 the monthly benefit payable by the Veterans
24 Administration for the proposed conservatee.

25 (f) The petition may include an application for any
26 order or orders authorized under this division, including,
27 but not limited to, orders under Chapter 4 (commencing
28 with Section 1870).

29 (g) The petition may include a further statement that
30 the proposed conservatee is not willing to attend the
31 hearing on the petition, does not wish to contest the
32 establishment of the conservatorship, and does not object
33 to the proposed conservator or prefer that another
34 person act as conservator.

35 (h) In the case of an allegedly developmentally
36 disabled adult ~~a petitioner~~ *the petition* shall set forth the
37 following:

38 (1) The nature and degree of the alleged disability, the
39 specific duties and powers requested by or for the limited
40 conservator, and the limitations of civil and legal rights

- 1 requested to be included in the court's order of
- 2 appointment.
- 3 (2) Whether or not the proposed limited conservatee
- 4 is or is alleged to be developmentally disabled.