

Third Supplement to Memorandum 86-54

Subject: Study L-1040 - Estate and Trust Code (Public Guardians and Public Administrators--comments of public guardian)

Attached to this supplementary memorandum are comments from James R. Scannell concerning an earlier version of the draft statute on public guardians and administrators. The comments remain relevant to the current draft, as renumbered.

§ 2921. Application for appointment. This section requires the public guardian to apply for appointment as guardian or conservator of the person or estate upon court order. Mr. Scannell is concerned that the public guardian will become a "dumping ground" for unmanageable or unprofitable wards or other persons set adrift by budget cuts of other programs. To avoid this problem, he would exclude from the section successor conservatorships and clients from the mental health system who have had LPS conservatorships in the past 5 years.

On a related matter, Mr. Scannell notes that existing law permits "forced referrals" to the public guardian by LPS investigators. This scheme is repugnant to most public guardians and points up the fact that the public guardian system is being asked to expand beyond its original functions without accompanying funds. Mr. Scannell notes that the forced referral system could be limited to elders who need placement or medical consent. For example, there could be a 90 or 120 day conservatorship for elders, which could only be extended by court order upon a hearing that would enable the judge to set specific limitations on the authority and responsibility of the conservator. The order could deal with residency, collection of assets, payment of debts, filing of inventories, specific treatment, and other needs. Mr. Scannell notes that there should be strong safeguards to avoid "shipping off" or "warehousing" elders, and initially the program might be reserved for public guardians who have experience, high visibility, and are responsive to court direction. Such a program could be funded by estate escheat monies. "This would receive widespread support from hospital administrators, probate judges and the convalescent home industry."

§ 7682. Payment of demands. Mr. Scannell would provide that the public administrator in summary proceedings must pay out costs of administration "including commissions and attorney's fees." He notes that often in small estates the conservator has approved fees deferred until after death, and there may not have been the services of an attorney.

Mr. Scannell would also include among the authorized payments by the public administrator normal recurring living expenses such as rent, home care services, and all reasonable expenses incurred in terminating the conservatorship.

Respectfully submitted,

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RE: Study L-1040

Dear Commissioners:

Sec. 2911

There is a danger in forced referrals that the county Public Guardian's program could become a "dumping ground" for unmanageable, unprofitable wards, or other persons set adrift by budget cuts of other programs.

To avoid this problem, Section 2911 should exclude successor conservatorships and clients from the mental health system who have had LPS Conservatorships in the past five (5) years.

Sec. 5354.5 of the Welfare and Institutions Code, and SB 1670, as amended, address the issue of forced referrals from the LPS investigators which is very repugnant to most Public Guardians. These sections would not be effected by court ordered conservatorships, but they do point up the fact that the public guardian system is constantly being asked to expand far beyond its original intended parameters without accompanying funds.

If the commission wishes to address the issue of forced referrals and restrict the clientele to elders who need placement or medical consent, then many of these dangers would be avoided. These would be elders with organic brain or Alzheimer's syndrome. One solution might be a special section in the probate code specifically for Conservatorships for elders which would terminate at the end of 90 or 120 days unless renewed. At the time of hearing, the judge would set specific limitations on the authority of the conservator and limit, if possible, the responsibility.

The right to set residency, collect assets, pay debts, authorize specific treatment, file inventories, would be specified and spelled-out in the petition. The court investigators would advise the court about specific needs of the proposed conservatee.

There should be strong safeguards to avoid any appearance of "shipping-off or warehousing elders".

Initially, this section might be reserved for Public Guardians who have experience, high visibility and are responsive to court direction.

If the commission, in their wisdom, sees fit to order the Public Guardians to act under this section, it might be interpreted under SB 90 as a state-mandated local program by requiring a higher level of service than presently exists.

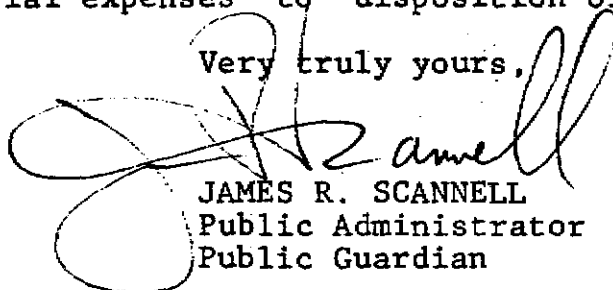
The California Constitution requires the state to reimburse local agencies for certain costs mandated by the state. There is presently a State Mandated Claims Fund for this purpose. Some of the estate escheat money could be earmarked for this fund as an offset which would serve the elders in need and the funds would originate from the counties. This would receive widespread support from hospital administrators, probate judges and the convalescent home industry.

Sec. 2923

Eliminate the word "attorney" in statement, "to cover unpaid court approved attorney fees". Often in small estates, the conservator has approved fees deferred until after death, and there may not have been the services of an attorney. Include normal recurring living expenses such as rent, home care services, and all reasonable expenses incurred in terminating conservatorship.

Change "burial expenses" to "disposition of remains".

Very truly yours,



JAMES R. SCANNELL
Public Administrator
Public Guardian