#L-1040 ns32e
04/29/87

First Supplement to Memorandum 86-207

Subject: Study L-1040 - Public Guardian and Public Administrator
(Comments on Tentative Recommendation)

Attached to this supplementary memorandum as Exhibit 1 is a copy of the public administrators' bill AB 201, which is referred to in notes following several provisions in the tentative recommendation. The bill passed the Assembly on a 75-0 vote and is awaiting hearing in the Senate.

Exhibit 2 is a letter from Harry P. Drabkin who has served 17 years as attorney for the Stanislaus County Public Guardian and Public Administrator. Mr. Drabkin comments in his letter on the tentative recommendation. The comments are analyzed below.

§ 2900. Creation of office

Section 2900 authorizes the county board of supervisors to create the office of public guardian. Mr. Drabkin is informed that every county now has a public guardian, and suggests that this section be made mandatory rather than permissive, and relocated to the Government Code provisions dealing with county officers. See Gov't Code § 24000 et seq.

The reason the Commission has resisted the suggestion that the public guardian be mandatory is that such a change could be viewed as creating a "state-mandated local program", which the state would be required to fund. We could, however, relocate this section to the Government Code provisions dealing with county officers, and the staff believes we should.

Incidentally, the staff has been advised that Alpine County is an exception to the rule that every county has a public guardian. We don't know whether this advice is accurate.

§ 2901. Termination of office

Section 2901 authorizes the county board of supervisors to terminate the office of public guardian. Mr. Drabkin suggests as a stylistic matter that this provision could be combined with Section 2900. The staff thinks this is a good idea.

§§ 2902, 2903, 2904. Public administrator as public guardian

These sections deal with appointment of the public administrator as public guardian. Mr. Drabkin would relocate these sections to the Government Code provisions dealing with consolidation. See, e.g., Gov't Code § 24300:

> 24300. By ordinance the board of supervisors may consolidate the duties of certain of the county offices in one or more of these combinations:
>
> .....
> (d) County clerk and public administrator.
> .....
> (j) Treasurer and public administrator.
> (k) Public administrator and coroner.
> (l) District attorney and public administrator.
> .....
> (o) Sheriff and public administrator.
> .....

The staff agrees with this suggestion.

§ 2907. Advance on expenses of public guardian

If the county advances expenses to the public guardian for the administration of an estate, the county must be reimbursed from the estate. The Comment to Section 2907 notes that if estate funds are insufficient for reimbursement, the advanced expenses remain a county charge. Mr. Drabkin would make this concept a part of the statute itself by stating that the county is reimbursed from the estate "as soon as and to the extent that such funds become available." The staff does not have a problem with this approach.

§ 2920. Taking possession or control of property

Section 2920 authorizes the public guardian to take protective custody of property belonging to persons "referred to" the public guardian. We have noted that this phrase is imprecise, and have invited the public guardians to explain it.

Mr. Drabkin has responded that most referrals are "by other agencies or persons. Board and care operators, police departments, relatives, etc., will refer a situation to the public guardian when such services are appropriate."

Given the informality and breadth of the referral concept, Mr. Drabkin suggests that the phrase simply be deleted from the statute, so that it would read, "The public guardian may take possession or control of property of persons domiciled in the county if the property is subject to loss, injury, waste, or misappropriation."

The staff is not completely happy with this suggestion, since it loses all context of the types of cases appropriate for public guardian involvement, nebulous as the existing "referral" concept may be. We have no good alternative suggestion, however. One possibility is to provide that the public guardian may take possession or control if "the public guardian determines that public possession or control is necessary to protect" property subject to loss, injury, waste, or misappropriation.

§ 2921. Application for appointment

Section 2921 provides for appointment of the public guardian as guardian or conservator by court order after a noticed hearing at which the court determines that the appointment is necessary and that there is no other person qualified and willing to act.

Mr. Drabkin believes the requirement that there be no other qualified and willing person is unnecessary and inappropriate. "Although there may be someone who is qualified and willing to act as conservator, they may be unsuitable or it may not be in the best interest of the conservatee that such person be appointed."

The reason for this limitation is to try to restrict the cases where a guardianship or conservatorship is forced upon the public guardian to those of strict necessity. Perhaps the standard should be modified so that the court may appoint the public guardian if it determines that no other qualified and willing person would be in the best interest of the ward or conservatee.

Mr. Drabkin would also allow the public guardian to waive notice or the court, for good cause, to shorten notice, of hearing on the appointment. "Why go through the additional requirements of a petition, notice, and a further hearing? Everybody concerned is going to be present at the hearing ordered by the Court. If the public guardian or other parties cannot convince the Court at that time that

there is an alternative, why have more paperwork and an additional hearing." The staff believes this is a good point, and would simplify the procedure here along the lines suggested by Mr. Drabkin.

§ 2922. Persons under jurisdiction of Departments of Mental Health or Developmental Services

Mr. Drabkin suspects Section 2922 is obsolete. He does not know whether there actually any people "under the jurisdiction" of the relevant state agencies, or what it means to be under their jurisdiction. He thinks we should check this out. The staff will do this.

Mr. Drabkin believes there is a need for some sort of "summary" conservatorship. He continually has situations that arise that need only a single action or a short term protective measure. He gives examples of a person about to be imprisoned whose property needs protection only until the Department of Corrections can take custody of it, and of a person incompetent to sign an affidavit for summary collection of her deceased son's estate ("it appears necessary to appoint a conservator merely for the purpose of executing this affidavit"). Mr. Drabkin says these cases are not unusual. Many times a conservator is needed solely for the purpose of a single, or a small number of, transactions such as closing a bank account and paying a debt. A type of summary conservatorship "would be a great help for all concerned." This would be procedurally simpler than the currently authorized temporary guardianship or conservatorship.

§ 2942. Disposition of property on death of ward or conservatee

Subdivision (a) of Section 2942 authorizes the public guardian, after the death of the ward or conservatee, to pay expenses of administration. The Note to the section would make clear that the expenses may be paid even if they arise after death. Mr. Drabkin agrees with this point. "For instance, it is not uncommon that by the time of the final accounting, state and federal agencies require refunds of prior payments by them to the conservatorship estate that they later have determined to be improper. We have usually obtained special Court authority to make such payments. This is but one example of the types of payments that will come up, which cannot realistically

be specified by legislation. The public guardian should have general authority to make such payments, subject to Court approval in the accounting."

Subdivision (b) of Section 2942 allows the public guardian to liquidate assets of a deceased ward or devisee for purposes of payment of expenses of administration under subdivision (a), on ex parte petition and court order. Mr. Drabkin wonders what use the petition and order are if made ex parte. He would simply eliminate this requirement and allow the public guardian to act. "The granting of such an order by the Court would be a mere routine matter, and neither the petition nor order would be of any realistic significance."

§ 2944. Inventory and appraisal of estate

Section 2944 would excuse probate referee appraisals in small guardianship and conservatorship estates. Mr. Drabkin's perspective is that in most public guardian estates there is little dispute about the value of assets. Other than real property, the matters in dispute are often special personal property items believed to have unusual value. "The probate referee usually has no more expertise in determining the value of those items than has the public guardian. Our probate referees have routinely asked us to obtain expert appraisals of any items that may have such unusual value." The situation he finds most "galling", however, is when there is an item of small value, such as an automobile that may be worth $100, that is the only asset in the estate. That asset must be appraised at the minimum fee by the probate referee; "the mere appraisal depletes a large portion of the estate."

He would simplify Section 2944 somewhat by providing that (1) the public guardian appraises estates under $2,000, and (2) real property in the estate need not be appraised if the conservatee is SSI eligible, except that the probate referee would appraise real property in the event of sale.

§ 7601. Assistant or deputy public administrator

Mr. Drabkin suggests that this section be rephrased and relocated to the Government Code provisions governing the office of the public administrator (Gov't Code §§ 27440-27443.5). The staff agrees with this suggestion.

§ 7620. Report of public officer or employee

Section 7620 requires a public officer or employee to inform the public administrator of property of a decedent that the officer or employee knows needs to be cared for. Mr. Drabkin is concerned about a possible implication in the phrasing of this section that there is a specified public official having this responsibility. He would rephrase it to make clear that the duty to report applies to any public officer or employee who is aware of the situation. The staff has no problem with clarifying the wording in this way.

§ 7621. Authority of public administrator

Mr. Drabkin points out that this leadline is the same as the leadline for Section 7640. We would call this section "Duty of public administrator" to help avoid confusion.

The rather succinct notice provision of subdivision (a) disturbs Mr. Drabkin. We will incorporate general notice provisions here.

§ 7641. Appointment of public administrator

Mr. Drabkin is concerned about the succinct notice provision here also; we will incorporate general notice provisions here as well. Mr. Drabkin would also authorize the court for good cause to shorten time or dispense with notice. "There are situations when an immediate appointment, usually as special administrator, is required, and there is no time for the Court to give notice." The general notice provisions already cover this to some extent. See Sections 1203 (order shortening time) and 1220(f) (dispensing with notice) in AB 708.

§ 7643. Payment of unclaimed funds

Mr. Drabkin would locate this section following, rather than preceding, Section 7644. This makes some sense to the staff.

Mr. Drabkin asks why any money would be left in the hands of the public administrator after final distribution. This could happen because the distributee cannot be found or does not have legal capacity to receive the distribution and has no legal representative.

Mr. Drabkin believes that if the public administrator fails to comply with a court order to pay unclaimed funds to the county treasurer, the proper remedy should not be an independent action by the district attorney as provided in this section. It would be simpler and better for the court to issue an order to show cause. "What this

Section is really saying is that the Courts have failed to adequately supervise any administrators, let alone public administrators, who are not performing their duties. I think this whole Section should be done away with, but particularly subsection (b), and leave it to the board of supervisors, the Courts, or the grand jury, to take proper action in these situations."

§ 7665. Deposit unclaimed in financial institution

Section 7665 provides an escheat procedure where money in an estate administered by the public administrator is deposited in a financial institution and goes unclaimed for five years. Mr. Drabkin asks, what has the public administrator been doing in the estate for these five years? He would not allow a situation such as this to occur. He would require the financial institution to notify the presiding judge of the superior court (or the judge's designee) if an estate deposit by the public administrator is not withdrawn within a year. The judge could then take whatever action is necessary to ensure that the estate administration proceeds.

§ 7680. Summary disposition authorized

A provision of Section 7680 states that the fee to be allowed to the clerk for filing an application for summary disposition is to be set by the court. One of our commentators questioned the need for the court to set the fee, and we invited public administrator commentary on the reasons for this scheme.

Mr. Drabkin informs us that this provision was enacted in 1979 to enable the county to recover some of the costs of the clerk for the filing; prior to that time the law prohibited the clerk from charging a fee for the filing. This was a by-product of provisions for a minimum public administrator fee. "I doubt very much that the courts have ever set any fee to be allowed for the clerk while taking into account the size of the estate. It is still a good idea, however, and should be continued."

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

AMENDED IN SENATE APRIL 20, 1987

AMENDED IN ASSEMBLY MARCH 16, 1987

CALIFORNIA LEGISLATURE—1987–88 REGULAR SESSION

ASSEMBLY BILL No. 201

Introduced by Assembly Member Harris
(Coauthor: Senator Marks)

January 7, 1987

An act to amend Sections 1143, 1144, and 1144.5 of the Probate Code, relating to public administrators, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 201, as amended, Harris. Public administrators.

(1) Existing law requires the public administrator to take charge of and administer decedents' estates for which no executor or administrator has been appointed, under specified conditions. Under existing law, a public administrator may apply to the superior court for authorization for summary disposition of an estate not exceeding $20,000, excluding the decedent's motor vehicles. However, under existing law, no application to the court is necessary for estates not over $3,000. Existing law does not authorize the public administrator to sell real property in these proceedings for summary disposition.

This bill would make the eligibility criteria for summary administration of a decedent's estate also applicable to determine estates which may be subject to court-ordered summary disposition by the public administrator. The bill would allow summary disposition by the public administrator without court authorization of estates not exceeding $10,000. The bill would also authorize the public administrator to sell real property in summary proceedings. The bill would make

clarifying changes in existing law relating to public administrators.

(2) Under existing law, the public administrator is entitled to a reasonable fee of from $25 to $500, where the public administrator takes charge of an estate, but another person is later appointed as executor or administrator.

This bill would delete the dollar limitations on this fee.

(3) Under existing law, the public administrator may pay the decedent's burial expenses from the proceeds of an estate for which summary disposition is authorized by the court.

This bill would instead authorize the public administrator to use these proceeds to pay for disposition of the decedent's remains.

(4) Under existing law, the public administrator is required to file with the court vouchers for all expenditures made in the summary administration of an estate.

This bill would instead require the filing with the court of receipts for any disposition of estate property or proceeds thereof.

(5) This bill would declare that it is to take effect immediately, as an urgency statute.

Vote: ~~majority~~ ⅔. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 1143 of the Probate Code is amended to read:

1143. (a) Except as provided in subdivision (b), when a public administrator takes possession of the estate of a decedent as provided in this chapter, and it appears that the estate of the decedent meets the valuation criteria specified in Section 13100, the public administrator may apply to the superior court of his or her county or a judge thereof for an order permitting the public administrator summarily to sell any personal and real property belonging to the decedent, and to withdraw any money of the decedent on deposit with any bank, and to collect any indebtedness or claim that may be owing to the decedent. The money received from such

a sale or collection shall be used to pay the statutorily permitted expenses of, and commissions to, the public administrator and to the attorney, if any, and to defray the expenses of the disposition of the decedent's remains and the expenses of the decedent's last illness. The balance, if any, shall be used to pay other claims presented to the public administrator within four months of the above order pursuant to Section 950 and there shall be no administration upon the estate unless additional property is discovered. No notice of the application need be given. The application may be filed whether or not there is a will of the decedent in existence, if the executor named therein refuses to act, or if the will does not appoint an executor.

(b) When a public administrator takes possession of the estate of a decedent as provided in this chapter, and it appears that the total value of the estate of the decedent does not exceed ten thousand dollars ($10,000), the public administrator may, instead of applying to the superior court or judge thereof for an order *as* provided in subdivision (a), collect all assets belonging to the decedent on the public administrator's statement, apply the money or the proceeds from the sale of any personal or real property towards the expense of the disposition of the decedent's remains, pay other proper claims presented within four months after the public administrator takes possession of the estate pursuant to Section 950, and pay over the remaining funds to the heirs or legatees, or if none, deposit the balance with the county treasurer for use in the general fund after one year of deposit. Heirs, devisees, or beneficiaries of the decedent can claim funds on deposit with the county treasurer if the claim is made within one year from their deposit with the county treasurer.

(c) The commissions payable to the public administrator pursuant to this section and the attorney, if any, for the public administrator for the filing of the application provided for in subdivision (a) or the public administrator's statement specified in subdivision (b), and for the performance of any duty or service connected

therewith, are those set forth in Sections 901, 902, and 910, except that, in all cases administered pursuant to this section, the public administrator shall be entitled to a minimum commission of three hundred fifty dollars ($350).

(d) This section does not preclude the public administrator or the attorney, if any, from filing any petitions with the court pursuant to other sections of this code when the petition is necessary to the proper administration of the small estate.

SEC. 2. Section 1144 of the Probate Code is amended to read:

1144. The fee to be allowed to the clerk of the court for the filing of the application provided for in subdivision (a) of Section 1143 shall be set by the court. The minimum commission of the public administrator and the fee for the attorney, if any, for the filing of the application, or the public administrator's statement and the performance of any duty or service connected therewith shall be 10 percent of the first three thousand five hundred dollars ($3,500) and, then as provided in Sections 901, 902, and 910 for the statutory and extraordinary services of an administrator and attorney. Sales of personal property may be made, with or without notice, as the public administrator may elect, and title to the property sold shall pass without the need of confirmation by the court. Sales of real property shall be made pursuant to Article 3 (commencing with Section 780) of Chapter 13 or pursuant to Article 2 (commencing with Section 591) of Chapter 8. Real property shall transfer with the public administrator's deed.

The public administrator, pursuant to subdivision (a) of Section 1143, shall file with the clerk of the court a statement showing the property of the decedent that came into possession of the public administrator and the disposition made thereof, if any, together with receipts for any disposition made of this property or its proceeds. Any money or other property of a decedent remaining in the possession of the public administrator shall be delivered to the devisees or beneficiaries under the

decedent's last will, or to the heirs in the absence of a will, and, if none, to the State of California after deduction of all commissions and additional compensation awarded to the public administrator and the attorney, if any, by the court.

Upon rendition of a court order distributing money or other property to the State of California under subdivision (a) of Section 1143, the public administrator shall immediately transmit to the Treasurer or Controller all money or other property distributed to the State of California, subject to Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

SEC. 3. Section 1144.5 of the Probate Code is amended to read:

1144.5. When a public administrator has taken charge of the estate of a decedent as provided in Section 1140, costs incurred by him or her for the protection of the estate, together with a reasonable fee for his or her services shall be a proper and legal charge as an expense of administration of the estate of the decedent, in case of the subsequent appointment of another person as executor or administrator of the estate.

SEC. 4. This act is an urgency statute neccessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be given maximum implementation, it is necessary that it take effect at the earliest possible time.

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April 13, 1987

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

IN RE: STUDY L-1040- PUBLIC GUARDIAN AND PUBLIC ADMINISTRATOR

I have read Memorandum 86-207 and reviewed the March 20, 1987, draft of the proposed statutes. Having been the attorney for the Stanislaus County Public Guardian and Public Administrator for 17 years, I believe I can shed some light on some questions that were raised, and make some useful, further comments. I will do so section by section.

Section 2900

I have been reliably advised that every County now has a public guardian. Since the services provided by the public guardian are necessary, it seems foolish to continue this as a permissive office. As Justice Cardozo said "when the reason for the rule disappears, so should the rule." It seems appropriate to me to now include the office of public guardian as a mandatory office in Government Code Section 24000, and eliminate or change this Section accordingly.

Section 2901

If Section 2900 remains, and if you believe that stylistically it is better to have one statute to create an office, and a separate one to terminate the office, then this Section is allright. Otherwise, I would suggest that this could be added to Section 2900(a) as a dysjunctive; that is,

> "In any County the Board of Supervisors may by ordinance create the office of public guardian and such subordinate positions as may be necessary and fix compensation therefore, or may terminate such office."

Section 2902, 2903, and 2904

Don't these various consolidation statutes belong in Government Code Section 24300?

Section 2907

The comment to this Section is very welcome in pointing out that to the extent funds of the estate are insufficient for reimbursement, those expenses remain a County charge. I think it would be better if that was actually a part of the Section. I would suggest the following phrase be added to subsection (a).

> ". . . but the county shall be reimbursed therefore out of funds or property of the estate by the public guardian as soon as and to the extent that such funds become available."

Section 2920

In your note to this Section, you state that you are concerned about what the phrase "referred to the public guardian for guardianship or conservatorship" means. Most of the time the public guardian acts on cases that are referred to him by other agencies or persons. Board and care operators, police departments, relatives, etc. will refer a situation to the public guardian when such services seem appropriate. Although this is the explanation, there seems to be no rational purpose in keeping that phrase in the statute. It would be much better if that whole phrase was dropped, and the subsection read:

> "The public guardian may take possession or control of the property of persons' domiciled in the county if the property is subject to loss, injury, waste, or misappropriation."

Section 2921

First, although it is usually the case, that the public guardian is appointed in situations where there is no other person qualified and willing to act as guardian or conservator, it is not necessarily so. As this Section presently reads, it implies a required finding by the Court that there is no other person qualified and willing to act as guardian of conservator before the public guardian can be appointed. This is plainly unnecessary. Further, although there may be someone who is qualified and willing to act as conservator, they may be unsuitable or it may not be in the best interest of the conservatee that such person be appointed. Second, as it presently reads, the Section requires that the Court order the public guardian to apply for appointment after the 15 days'

notice that the Court intends to so order. If at the hearing, after the notice has been given to the public guardian, the Court determines that the appointment is necessary, why go through the additional requirements of a petition, notice, and a further hearing? Everybody concerned is going to be present at the hearing ordered by the Court. If the public guardian or other parties cannot convince the Court at that time that there is an alternative, why have more paperwork and an additional hearing?

I would suggest that this Section read as follows:

> "(a) If any person domiciled in the county requires a guardian or conservator, the public guardian may apply for appointment as temporary guardian, guardian, temporary conservator, or conservator of the person and estate, or person, or estate.
>
> (b) The public guardian may be appointed as temporary guardian, guardian, temporary conservator, or conservator of the person and estate, or person, or estate, if the court so orders after a hearing on 15 days' notice to the public guardian and a determination that the appointment is necessary unless the court finds that good cause exists to shorten time for such notice. The court may dispense with notice upon the consent of the public guardian."

Section 2922

This Section appears to be innocuous. There can be no real objection to requiring that the pertinent State department be involved. However, I wonder whether this Section is really necessary. What people actually are under the jurisdiction (whatever that means) of the State Department of Mental Health or the State Department of Developmental Services? Before we mindlessly continue in effect a Section which may be obsolete, I would suggest that those departments be consulted to determine:

(1) If there are such persons.

(2) What is the perception of those departments of the necessity for continuing this Section.

If it is indeed obsolete as I suspect, lets' do away with it.

Section 2942

I support fully the suggestion in the note that the phrase "accruing before or after the death of the ward or conservatee"

be placed in subsection (a) in lieu of "in the manner and to the extent provided in Section 2631." There is no good purpose served in restricting such payments to those found in Section 2631. For instance, it is not uncommon that by the time of the final accounting, state and federal agencies require refunds of prior payments by them to the conservatorship estate that they later have determined to be improper. We have usually obtained special Court authority to make such payments. This is but one example of the types of payments that will come up, which cannot realistically be specified by legislation. The public guardian should have general authority to make such payments, subject to Court approval in the accounting.

I have nothing against subsection (b). Although that authority has existed, we have never used it. This parallels what the public administrator may do in such circumstances. We have decided that if one office must file a petition, it might as well be the public administrator, so our public guardian has not put this Section into effect.

However, if a petition is to be filed with the Court, and no notice of that petition is to be given, what is the purpose of the petition? The granting of such an order by the Court would be a mere routine matter, and neither the petition nor order would be of any realistic significance. I would suggest that that subsection be restated as follows:

> "If payment of expenses and charges pursuant to subdivision (a) cannot be made in full, and the total market value of the remaining estate of decedent does not exceed $5,000.00, the public guardian may sell personal property of the decedent, withdraw money of the decedent in an account in a financial institution, and collect a debt, claim, or insurance proceeds owed to the decedent or the decedent's estate, and a person having possession or control of property of the decedent shall pay or deliver the money or property to the public guardian. The public guardian may so act even though there is a will of the decedent in existence, if the will does not appoint an executor, or if the named executor refuses to act. After the payment of any remaining amounts due, the public guardian may transfer any remaining assets pursuant to Sections 1028, 1060, 1061, or 2631."

Section 2944

I do not agree with any of the commentators concerning this Section. In the vast majority of the estates handled by the

public guardian there is little dispute about the value of the assets of the estate. Other than real property, the matters which are in dispute are often certain items of personal property which are believed to have some unusual value. The probate referee usually has no more expertise in determining the value of those items than has the public guardian. Our probate referees have routinely asked us to obtain expert appraisals of any items that may have such unusual value.

The situation that is usually galling to the public guardian is when there is an item of relatively small value, such as an automobile, which may be worth $100.00, and is the only asset in the estate. That asset must be appraised at the minimum fee by the probate referee. The mere appraisal depletes a large portion of the estate. I would suggest that that Section be reworded as follows:

> "(a) Notwithstanding Section 2610:
>
> (1) If the estate, other than cash, has an estimated value of less than $2,000.00, such assets shall be appraised by the public guardian.
>
> (2) Real property of the estate shall be shown on the inventory but need not be appraised if the conservatee is eligible for social security supplemental income benefits. It must be appraised by a probate referee prior to its sale.
>
> (b) As used in this Section 'cash' means money, currency, cash items, and other assets that may be appraised by the public guardian pursuant to subdivision (c) of Section 2610."

In General

Before leaving the public guardian Sections, I suggest that the commission consider some type of summary conservatorship procedure. We continually have situations that arise which need only a single action, or short term protective measures. For example, we have just filed a petition for conservatorship and temporary conservatorship on an elderly man who is in jail and will shortly be going to prison. He has real and personal property that needs to be taken care of. He cannot do it. What family he has refuses to have anything to do with him. The property is in an area where there is a high probability of

theft and vandalization. Once the property is sold, there will be no need for the conservatorship since the money can probably be sent to the State Department of Corrections to be held in trust for the prisoner. I have another matter before me where we have an elderly, incompetent lady who has no property. One of her sons died in Texas. His brother is attempting to settle his estate by use of a summary procedure there. To do so, he needs an affidavit from her to settle that estate. There is no way she can give a competent affidavit. It appears necessary to appoint a conservator merely for the purpose of executing this affidavit. These cases are not unusual. There are many times when a conservator is needed solely for the purpose of a single, or a small number of transactions, such as closing a bank account and paying a debt. If there was some similar Section such as the present Probate Code Section 1143 for the public guardian, that would be a great help for all concerned.

Section 7601

This Section is rather innocuous. However, what purpose does it serve? It states what appears to be obvious. That is that a public administrator may have subordinate officers or employees. Better language could be borrowed from the proposed public guardian Section 2900(a) and have this Section read:

> "The board of supervisors may by ordinance create subordinate positions to the public administrator as may be necessary, and fix compensation therefore."

The next question becomes, What is this Section doing in the Probate Code? This is really dealing with a government office and not probate law. I suggest that it be added to the Government Code as Section 27444. This would place it where it belongs, in the Government Code, under the public administrator's statute. Incidentally, in no place in this tentative recommendation have I found any reference to the public administrator's statutes which are found in Government Code Sections 27440-27443.5. It would seem that some reference should be made to those Sections someplace here, as otherwise interested people may not be aware of them.

Section 7620

The style of this Section does not ring correctly. It implies that there is "a" public officer or employee who shall have this responsibility. I would suggest the following alternative wording:

> "When a public officer or employee becomes aware that property of a decedent is subject to loss,

> injury, waste, or misappropriation, which ought to be in the possession or control of the public administrator, that person shall immediately inform the public administrator of those facts."

Section 7621

The title of this Section is the same as Section 7640. This, of course, can lead to confusion. "Powers of public administrator" may be a better Section head here. Subsection (a) is ambiguous about the notice to the public administrator. It probably should refer to Section 7641 for notice..

Section 7641

Subsection (b) requires notice to the public administrator, but it does not state how much notice is required. I think the same 15 days' notice that will be required for the public guardian should also be required for the public administrator. There are situations when an immediate appointment, usually as special administrator, is required, and there is no time for the Court to give notice. I would reword that subsection as follows:

> "(b) Appointment of the public administrator may be made on the courts own motion. The public administrator shall have 15 days' notice of the hearing concerning such an appointment, unless the Court finds that good cause exists to dispense with or shorten time for such notice."

Section 7643

First, the logic of placing this Section between 7642 and 7644 is not apparent. If it goes anyplace, it should go between 7664 and 7665. Second, why should there be any money of an estate remaining in the possession of the public administrator after final distribution? Third, why should it be necessary to have the district attorney bring a new proceeding against the public administrator in such a situation? Wouldn't it be simpler, and a better procedure, for the Court to issue a order to show cause to the public administrator, if its order distributing the estate has not been complied with? What this Section is really saying is that the Courts have failed to adequately supervise any administrators, let alone public administrators, who are not performing their duties. I think this whole Section should be done away with, but particularly subsection (b), and leave it to the board of supervisors, the Courts, or the grand jury, to take proper action in these situations.

Section 7665

What purpose does this Section serve? It says:

> "If a deposit in a financial institution is made pursuant to this article. . . ."

Thus, this must be money deposited by a public administrator. If such money is in a financial institution for over five years, what has happened to that public administrator? This would seem to me to be a clear case of malfeasance or misfeasance. Rather than having the money turned over willy-nilly to the State Controller, shouldn't the financial institution be required to bring this situation to the attention of the probate court, the board of supervisors, the grand jury, or the district attorney? If this Section is really necessary, I would reword it as follows:

> "If a deposit in a financial institution is made pursuant to this article, and there has been no activity concerning such deposit for a period of one year, the financial institution shall notify the presiding judge of the superior court, or his designee of those facts."

Section 7680

In your note to this Section, you ask the rationale for having the Court determine the clerk's fee under subdivision (a)(2). Prior to 1979, Section 1144 read:

> "No fee shall be charged by the clerk of the court or the public administrator or his attorney for filing the application provided for in Section 1143, nor for the performance of any duty or service connected therewith. . . ."

Chapter 366 of the Statutes of 1979 changed the above to the present wording. The idea behind that Chapter was to enable the county to recover some of the costs of the clerk for the filing, and a minimum fee for the public administrator. In that same session of the Legislature, Section 1143(c) was also added by Chapter 1026 of the Statutes of 1979. The intent of that Chapter was also to provide a minimum fee for the public administrator. Thus, the Legislature, in that session, enacted two irreconcilable and inconsistent statutes on the same subject, for the same purpose, that is providing a minimum fee for the public administrator. A by-product of that was the novel attempt to also get some fees for the clerk. I doubt very much that the courts have ever set any fee to be allowed for the

clerk while taking into account the size of the estate. It is still a good idea, however, and should be continued.

In General

Again, I strongly urge you to consider putting some of the proposed Sections concerning the offices and administrative functions of the public guardian and public administrator in the Government Code where they belong. The public guardian, who is a county officer in all counties of this State should be designated as such in the Government Code where a reasonable person would expect to find such an officer, rather than in the Probate Code. However, even the Probate Code is a better place to look than the Welfare and Institutions Code.

Very truly yours,

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HPD/sjp