

Memorandum 87-68

Subject: Study L-1040 - Public Guardian and Public Administrator (Review of Revised Provisions Before Approval for Printing)

At the July meeting in Irvine the Commission approved the recommendation relating to public guardians and public administrators for printing and submission to the Legislature, but requested that the provision relating to court ordered appointment of the public guardian be brought back for review before final approval of that provision. The provision is set out below, with suggested additions to the section and Comment indicated in underscore.

§ 2920. Application for appointment

2920. If any person domiciled in the county requires a guardian or conservator and there is no one else whose who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

Comment. Section 2920 supersedes the first, second, and a portion of the third sentences of former Welfare and Institutions Code Section 8006. Section 2920 applies even though a person may be institutionalized in a facility in another county if the person is domiciled in the county of the public guardian. Even though there may be other persons qualified and willing to act, their appointment may not be in the best interest of the ward or conservatee. This could occur, for example, where a neutral party is needed because of family disputes. In such a situation, a public guardian is not liable for failure to take possession or control of property that is beyond the public guardian's ability to possess or control. See Section 2944 (immunity of public guardian).

The court may order appointment of the public guardian only after notice to the public guardian and a determination that the appointment is necessary. The determination of necessity may require the court to ascertain whether there is any other alternative to public guardianship, and whether the public guardianship is simply being sought as a convenience or as a strategic litigation device by the parties involved. Alternative means of resolving the situation, besides appointment of the public guardian, could include such options as use of a private guardian or appointment of a guardian ad litem, in an appropriate case.

Subdivision (b) permits the special notice to the public guardian and hearing under this subdivision to be combined with a general notice and hearing for appointment of a guardian or conservator, in the interest of procedural efficiency.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary