

Memorandum 87-88

Subject: Study L-706 - Temporary Guardians and Conservators

The office of the County Counsel of Stanislaus County has suggested that the guardianship-conservatorship law be amended to make clear that a temporary guardian or conservator may be appointed pending the appointment of a successor guardian or conservator. See the letter attached as Exhibit 1.

If the Commission believes that there is a need to make this clear, the staff suggests that Section 2250 be amended to read as follows:

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

- (1) A temporary guardian of the person or estate or both.
- (2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon such petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) Unless the court for good cause otherwise orders, not less than five days before the appointment of the temporary guardian or temporary conservator, notice of the proposed appointment shall be personally delivered to the proposed ward if 14 years of age or older or to the proposed conservatee. The appointment of the temporary guardian or temporary conservator may be made with or without notice to other persons as the court may require.

(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments may be requested in separate petitions.

(e) If the court suspends the powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the

powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(f) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

The language "if for any reason a vacancy occurs in the office of guardian or conservator" is taken from Sections 2670 (appointment of successor guardian) and 2680 (appointment of successor conservator).

The following Comment is suggested for amended Section 2250:

Comment Subdivision (f) is added to Section 2250 to make clear that a temporary guardian or conservator may be appointed pending the appointment of a successor guardian or conservator to fill a vacancy in the office of guardian or conservator. Subdivision (f) is declaratory of existing law.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

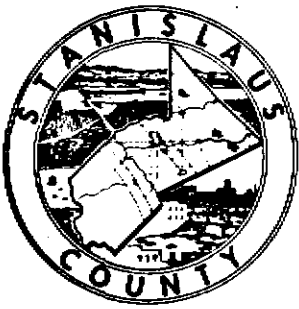


Exhibit 1

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September 18, 1987

CA LAW REV. COMM'N

SEP 21 1987

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Mr. John H. De Mouilly
Executive Secretary
Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Mr. De Mouilly:

IN RE: GUARDIANSHIP AND CONSERVATORSHIP STATUTES

It is my understanding that you are still in the process of fine tuning the guardianship and conservatorship statutes. With that in mind, I point out to you that there is a gap in that statute that should be filled.

At present when a guardian or conservator dies, there is no mechanism for the Court to appoint a temporary guardian or conservator on its own motion pending the filing of a petition to appoint a successor guardian or conservator. This is pointed out in California Conservatorships, Second Edition CEB, Section 13.24.

There is presently a code section, Probate Code Section 2250(e) which authorizes the Court to appoint a temporary guardian or conservator after it has suspended the powers of the guardian or conservator. The authors of the CEB book using that section as authority for the Court to appoint a temporary conservator when the conservator has died, state:

"Although the need may have arisen by virtue of vacancy in the office rather than by suspension of powers, the circumstances are analogous and the rule is presumably the same."

That is probably true, however, I think it would be better if this would be explicitly provided in the section and it was amended, as follows:

"If the Court suspends powers of the guardian or conservator under Section 2334 or 2624 or under any other provision of this division, or if there is otherwise a vacancy in the office of

Mr. John H. De Mouilly
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conservator, the Court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed."

I would be pleased to receive the commission's views on this matter. Thank you very much.

MICHAEL H. KRAUSNICK, County Counsel

By *Harry P. Drabkin*
Harry P. Drabkin, Deputy

HPD/sjp