

Memorandum 88-5

Subject: Study L-707 - Misuse of Conservatorship Funds

Action of State Legislature

At the last meeting, the Commission asked the staff to find out if the Assembly Committee on Aging and Long Term Care is working on the problem of misuse of conservatorship funds. The staff contacted the Committee Consultant, Jeanne Boyce. She said the Committee held a hearing in Santa Monica on December 4, 1987. The Chairman of the Committee, Assemblyman Lloyd Connelly, is interested in proposing legislation. Several possibilities are being considered:

(1) Authorize a state agency, perhaps the Department of Consumer Affairs, to make regulations establishing qualifications and performance standards for private professional conservators.

(2) Authorize a state agency to license private professional conservators.

(3) Require a background investigation of the proposed conservator.

For public conservators, apparently the California State Association of Public Administrators, Public Guardians, and Public Conservators is developing internal standards, a code of ethics, and a training curriculum. This may help in developing standards for private conservators.

Staff Recommendation

Since the Legislature is actively interested in this area, the staff recommends the Commission not study standards or licensing. But it may still be desirable to enact a statutory statement of the conservator's duties.

Some abuses appear to be due to ignorance of the conservator, rather than malice. This problem might be alleviated by giving the conservator a statement of the duties of office. Two California counties -- Contra Costa and Santa Clara -- prescribe by local court rule a statement of the conservator's duties. The C.E.B. book on conservatorships recommends that if the court does not send a letter to the conservator outlining the duties, the conservator's attorney should

do so, and a form is suggested. W. Johnstone, G. Zillgitt, & S. House, California Conservatorships § 4.70, at 214-16 (Cal. Cont. Ed. Bar, 2d ed. 1983).

A statutory statement of duties would bring uniformity to existing practice, and the cost would be negligible. A draft statement of duties is attached to this Memorandum as Exhibit 1.

Respectfully submitted,

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Exhibit 1

STATEMENT OF DUTIES AND LIABILITIES
OF CONSERVATOR OF THE ESTATE

Probate Code § 1831 (added). Statement of duties and liabilities of
conservator of the estate

SEC. _____. Section 1831 is added to the Probate Code, to read:

1831. (a) The court may require the conservator of the estate to file an acknowledgment of receipt of a statement of duties and liabilities of the office. The court may by local rule require the acknowledgment of receipt to include the conservator's social security number and drivers' license number, if any, if the court has adopted a procedure that ensures their confidentiality.

(b) The statement of duties and liabilities, whether in the form provided in subdivision (c) or prescribed by the Judicial Council, does not supersede the law on which the statement is based.

(c) Unless the Judicial Council has prescribed the form of the statement, it shall be in the following form:

DUTIES AND LIABILITIES OF CONSERVATOR OF THE ESTATE

You have been appointed conservator of the estate of _____, conservatee. When you file your bond and take your oath as conservator, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you regarding these matters. You should clearly understand the following:

1. You must manage the assets with the care of a prudent person dealing with someone else's property. This means you must be cautious and you may not make any speculative investments. You may deposit estate funds in insured accounts in financial institutions. You should consult an attorney before making other investments.

2. You must keep the money and property of the conservatee separate from anyone else's, including your own. When you open a bank account for conservatorship funds, the account should be in your name as "conservator of the estate of _____." Never deposit conservatorship funds in your personal account or otherwise commingle them with anyone else's property. The conservatee's securities should

be held in the same way, showing that they are conservatorship property and not your personal property. If the conservatorship includes more than one conservatee, you must be careful to keep a separate account of what belongs to each. Your surety who posts the bond guaranteeing the conservatee against loss may make certain requirements in regard to withdrawal of money from the bank, which is called joint control.

3. There are some restrictions on your authority to deal with conservatorship property. Conservatorship property may be used only for the benefit of the conservatee. You may reimburse yourself for official court costs paid by you to the County Clerk and for the premium on your bond. You may not pay fees to your attorney or to yourself without prior order of the court. Conservatorship property should be used to provide for the support, maintenance, and education of the conservatee. Your attorney will explain what you may do on your own, and what transactions require you first to obtain permission from the court.

4. You must attempt to locate and take possession of all the conservatee's property. Not more than 90 days after you qualify, you must file with the court an inventory of all money, goods, and other property coming into your hands as conservator. You must arrange to have the property appraised by a court appraiser. If, as conservator, you hold nothing but money and United States bonds with a fixed redemption value, you must nevertheless file an inventory, but you need not have the money and bonds appraised.

5. You should determine that there is appropriate and adequate insurance covering the assets and risks of the conservatorship estate. Maintain the insurance in force during the entire period of the conservatorship.

6. You must keep complete and accurate records of each financial transaction affecting the estate. You must keep a separate record of all money and property belonging to the conservatee and of all the disbursements you make that are chargeable to the conservatee. You should keep an accurate record of all deposits into and withdrawals from conservatorship bank accounts, showing the source of and amount of each deposit, the amount and purpose of each payment, and the person to whom paid. Because the funds can be used only for specified purposes,

you should consult an attorney before drawing any checks on the bank account of the conservatorship.

7. One year after you have qualified as conservator, and at least once every two years thereafter, you must file an account showing what you received as conservator, what income you received during the period of the accounting, what you spent, and the date of each transaction. The account must also list the money and property left in your control at the end of the accounting period, for which you are responsible for the next accounting period. Your account will be reviewed by the court. Save your receipts because the court may ask to review them. If you do not file your accounts as required, the court will order you to do so. You may be removed as conservator if you fail to comply.

8. You may spend a reasonable and prudent amount for the support and maintenance of the conservatee, and of those legally entitled to support and maintenance from the conservatee, without a court order. You assume personal responsibility for any excessive payments. You may not use the conservatorship estate for the support of any other person without prior court approval.

9. Generally, you must obtain the court's permission to sell, lease, mortgage, or invest property of the conservatee. These applications should be made through your attorney.

10. A court investigator will visit the conservatee one year after your appointment and every two years thereafter and will report to the court. Any time information is received that the conservatee's best interests are not being served, the court investigator will investigate.

11. You should cooperate with your attorney and the court investigator's office at all times. The relationship between you and the court continues until terminated by court order. You will be expected to file a final account with the court. If you have any questions, contact your attorney.

I have read and understand the above instructions. My date of birth is: _____.

Dated: _____.

Signed: _____

Conservator

(d) The conservator's attorney may provide the conservator with an additional statement of duties and liabilities to supplement the statement required by this section.

Comment. Section 1831 is new, and is drawn from Section 8404 (personal representatives), from the Contra Costa County Probate Policy Manual, Exhibit B, and from the appendix to the Santa Clara County Probate Rules. See also W. Johnstone, G. Zillgitt & S. House, California Conservatorships § 4.70, at 214-16 (Cal. Cont. Ed. Bar, 2d ed. 1983).