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First Supplement to Memorandum 88-82

Subject: Study L-1062 - Priority for Appointment as Administrator (Comments of Public Administrators)

Exhibit 1 is a letter from the California Association of Public Administrators, Public Guardians, and Conservators. Consistent with the two letters attached to the basic memo, the Association wants public administrators moved up the priority list for appointment as administrator of an intestate estate. Now they are near the bottom of the list, just ahead of creditors and others unrelated to the decedent.

However, the Association goes beyond James Scannell (Exh. 1 to basic memo) and Carol Gandy (Exh. 2 to basic memo) in proposing that public administrators be moved up two places on the list, ahead of children of a predeceased spouse and other next of kin of the decedent. Mr. Scannell would move public administrators up one place on the list by eliminating priority for a conservator or guardian of the estate of the decedent. Ms. Gandy would eliminate other next of kin of the decedent from the list and move public administrators up one place, just ahead of a conservator or guardian. Both Mr. Scannell and Ms. Gandy would keep relatives of a predeceased spouse ahead of public administrators on the priority list.

The staff would not give public administrators higher priority than relatives of a predeceased spouse. The purpose of the priorities is to appoint the person most likely to handle the estate to the advantage of those beneficially interested. Under Section 8462, relatives of a predeceased spouse of the decedent have priority only if entitled to succeed to some part of the estate. If there is a relative of a predeceased spouse to inherit, he or she should be appointed administrator of the estate, rather than the public administrator.

The question of whether the public administrator should be given priority over a conservator or guardian is discussed in the basic memo.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

CALIFORNIA STATE ASSOCIATION OF PUBLIC ADMINISTRATORS, PUBLIC GUARDIANS, AND PUBLIC CONSERVATORS

January 26, 1989

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

Dear Ladies & Gentlemen:

The California Association of Public Administrators, Public Guardians, and Conservators is opposed to the placement of public administrators in CPC Section 8461. It is the position of our organization that the order of priority should read as follows:

The letters (a) through (i) remain as presently shown

(j) Other next of kin.
(k) Public Administrator
(l) Relatives of a predeceased spouse
(m) Conservator or guardian of the estate of the decedent acting in that capacity at the time of death
(n) Creditors
(o) Any other person

Our association wishes to be clear in stating that our objection to the priority of the conservator is limited to those conservators who are not of blood kin. This would be the category of conservator who would perform the task for profit. It is the type of conservator who competes for the role of conservator. It is the conservator-for-profit cases which show the most problems. The problems extend from lack of knowledge of proper procedure to malfeasance. Some problems arise during the conservatorship, transfer into the decedent estate, and continue, undetected, throughout the process because of the lack of present heirs, as well as the lack of examination by an overworked court system.

The recent decline in interest of banks and corporate fiduciaries to seek appointment in the moderate value estates

not receive notice when a private conservator applies for appointment of a decedent estate. We would only have knowledge of a narrow range of information.

Our concern in connection with the appointment of "relatives of a predeceased spouse" stems from the possibility of lack of motivation on the part of this type of fiduciary. Will this category of fiduciary truly have an interest in a fair distribution? Will the documentation of the community assets be fairly analyzed to reflect the correct holdings? We recognize that the real property in an estate could be appraised for prior years, but tracing the value of personal property to arrive at the required $10,000.00 figure is more speculative. The fiduciary is often the custodian of the decedent's personal papers, address books and correspondence. Will this type of a fiduciary be motivated to search for missing blood-kin heirs?

Very truly yours,

JoAnne Ringstrom
Chairman Legislative Committee
California Association
PA, PG, PC.

1013A

Santa Cruz County (continued)

We believe that Mrs. Vill's estate would have been administered by the bookkeeper without our intervention. It is doubtful that all the assets would have been shown on the Inventory and Appraisement or distributed to the out-of-state heirs.

2. Bandar Case shows that the conservator became the administrator of the estate. He distributed assets from the estate prior to the expiration of the creditor claim period and without Court authority. He failed to file Inventory and Appraisement and returned correspondence of creditors without opening the envelopes. This person was not competent to serve in this capacity.

3. Lundberg Case demonstrates the unwillingness of child of predeceased spouse (stepdaughter to the decedent) to search for blood-kin heirs. The Public Administrator was in the process of petitioning the Court for appointment when the stepdaughter expressed her intention of becoming the administrator of the estate. The Public Administrator had already requested a search for heirs from a professional firm because the decedent resided in a nursing home and no one had relative information. The search for heirs was not successful for approximately a year. By the time they were found, the estate was in a condition to be distributed and the stepdaughter had made no effort to try to find blood-kin heirs who lived in Sweden.

San Diego County

1. Baily Case: Prior to appointment as conservator, Mr. "X" served as the financial planner for Baily. During that period, a Gift Tax Return for $512,216 of municipal bonds was filed. The sum of $85,000 was paid from Baily's funds as the donor. An additional Gift Tax Return was later filed for a $110,500 value and municipal bonds were filed creating a payment from Baily of $23,792 in tax as the donor. The recipients were Mr. "X" and his wife.

Upon appointment as conservator for Baily, the Court ordered a full accounting of the management of Mr. Baily's affairs during the period Mr. "X" has served as a financial manager. The gifts of the municipal bonds were omitted from the accounting.

As conservator, Mr. "X" allowed and encouraged Baily to write codicils to his will. The ninth codicil aroused the curiosity of Baily's niece by law, although she was named as a beneficiary. This codicil made Mr. "X" a beneficiary of one-sixth of the estate.

Mr. "X" caused a $700,000 trust to be amended so that, rather than come into Baily's estate at death, it would pay direct to himself and the niece by law.

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coincides with the rise of the contract fiduciary, i.e. the contract conservator. The field is glutted with an alarming number of firms created for the express purpose of conserving the elderly and mentally dependent population of our state. We know that in some areas these firms advertise and publish brochures outlining their services. In some instances these services include a guarantee of obtaining a conservatorship within 24 hours. Acute care facilities, burdened with the need to rid their facilities of patients who have reached the maximum time allowed under Medi-Care guidelines, are looking for a remedy. The private conservator is often the hospital's remedy.

If the order of priority set out in Section 8461 of the Probate Code stands, these profit-oriented fiduciaries will become the replacements for our now disinterested trust officers and corporate fiduciaries because they are, by virtue of this section, guaranteed a place as the personal representative of the decedent estate.

There are presently no standards of ethics for these individuals; they are not required to have malpractice insurance, certification or license. Virtually anyone, even those with criminal backgrounds, can become a contract conservator. This is a dangerous trend in the face of time constraints on court investigators and their lack of ability to check into the background information of the private conservators.

Remembering that the lack of heirs is a factor in these cases is also of concern. Whereas these heirs can often be found through careful investigation, the possibility of delay in notification to the heirs also exists. We think the restoration of the public administrator to a priority position ensures a check and balance system to the combination of stranger in charge of the affairs of a living person vis a vis a stranger in charge of that person's affairs after death. The function of public administrator is already mandated. It is a function which has been in place for many decades and is a part of each county government. Government Code Section 24000 provides for a trained, bondable fiduciary in each county. The public administrator is in place with a variety of services and resources ready to begin without delay. The system of scrutiny is also in place through the county treasurer, auditor and the court system.

Our organization feels strongly about the change in the priority and has focused on an effort to present our concerns to the Law Revision Commission. We have met repeatedly in committee and have come together by conference calls which have included the counties of San Francisco, Yolo, Sacramento, Santa Cruz, Merced, Riverside, Los Angeles, Orange, and Santa Clara.

At the Law Revision Commission meeting in Los Angeles in December, our delegation agreed to compile some case histories and we have attached those which time has permitted us to gather, but we also realized that this is not a realistic task inasmuch as we do

not receive notice when a private conservator applies for appointment of a decedent estate. We would only have knowledge of a narrow range of information.

Our concern in connection with the appointment of "relatives of a predeceased spouse" stems from the possibility of lack of motivation on the part of this type of fiduciary. Will this category of fiduciary truly have an interest in a fair distribution? Will the documentation of the community assets be fairly analyzed to reflect the correct holdings? We recognize that the real property in an estate could be appraised for prior years, but tracing the value of personal property to arrive at the required $10,000.00 figure is more speculative. The fiduciary is often the custodian of the decedent's personal papers, address books and correspondence. Will this type of a fiduciary be motivated to search for missing blood-kin heirs?

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Chairman Legislative Committee
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Case Histories

Riverside County

1. The Gonzales Estate was referred to this office on December 15, 1986. The estate was reported as indigent with no funds for burial.

Our investigation revealed that Gonzales owned one-half interest in an $80,000 home at the onset of the conservatorship and approximately $10,000 in personal property assets. However, because of delays by the conservator, escrow did not close and Gonzales lost his half interest in the home. All personal property assets were liquidated and the funds spent by the conservator, including payment of conservator fees.

The private conservator had Gonzales placed in a retirement home but failed to apply for benefits pending the close of escrow. All providers went unpaid. Creditor's claims against this estate total $12,565.73, including an unpaid mortuary claim. There are no assets and these claims will not be paid.

2. The Estate of Edwin Corby was referred to us with an estimated value of $30,000 when, in fact, the conservator knew the decedent had $70,000 in cash and a house valued at $78,000.

In the Petition for Probate, the conservator stated that there were no known relatives or heirs-at-law when, in fact, she had telephoned and written a letter contacting the relatives of a predeceased spouse.

Santa Cruz County

1. The matter of Ruth Vill was investigated by our office at the insistence of friends of the deceased and relatives of her recently deceased husband. Mr. Vill obtained a new bookkeeper at the retirement of his bookkeeper of long standing. He died within a few weeks after and the bookkeeper insinuated herself into the life of the clinically depressed widow.

She secluded Mrs. Vill from her neighbors, friends, and the relatives of her husband. When the bookkeeper took trips, she placed Mrs. Vill in nursing homes for custodial care. Prior to the death of her husband, Mrs. Vill took medication which permitted her to live a somewhat normal life and her friends often saw her socially.

The bookkeeper petitioned the Court to become Mrs. Vill's conservator. She was appointed and, within a few weeks, Mrs. Vill died.

Our investigation revealed that only a portion of the assets were listed for the Petition. The bank accounts of the bookkeeper and ward had been co-mingled. The bookkeeper had borrowed funds form the ward which were secured by a deed of trust. The deed was reconveyed without a corresponding deposit into the account of the ward for payoff of the note.

Litigation initiated by the Public Administrator resulted in an out-of-court settlement wherein the estate recovered funds transferred from the ward's long-standing bank accounts into the joint account of the ward and the bookkeeper. Bank employees were deposed and stated that Mrs. Vill seemed drugged the day of the transfer.

Santa Cruz County (continued)

We believe that Mrs. Vill's estate would have been administered by the bookkeeper without our intervention. It is doubtful that all the assets would have been shown on the Inventory and Appraisement or distributed to the out-of-state heirs.

2. Bandar Case shows that the conservator became the administrator of the estate. He distributed assets from the estate prior to the expiration of the creditor claim period and without Court authority. He failed to file Inventory and Appraisement and returned correspondence of creditors without opening the envelopes. This person was not competent to serve in this capacity.

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