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Memorandum 89-77

Subject: Study L-1062 - Priority for Appointment as Administrator

Under Section 8461 of the Probate Code, a conservator or guardian of the estate of an intestate decedent, acting in that capacity at the time of death, has priority over the public administrator for appointment as administrator of the estate. At the last meeting, the Commission decided to limit this priority to the case where the conservator or guardian is not a private professional conservator or guardian and has filed a first account, or where the court in its discretion determines that there is good cause to give the conservator or guardian priority. The Commission asked the staff to prepare a Tentative Recommendation and to bring it back to the Commission for review.

Attached to this memorandum is a staff draft of a *Tentative Recommendation Relating to Priority of Conservator or Guardian for Appointment as Administrator*. If the Commission approves the staff draft, the staff will send it out for comment.

Respectfully submitted,

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TENTATIVE RECOMMENDATION
relating to
PRIORITY OF CONSERVATOR OR GUARDIAN
FOR APPOINTMENT AS ADMINISTRATOR

If a person dies without a will and it is necessary to appoint an administrator of the estate, priority for appointment goes first to relatives of the decedent, then to parents or issue of decedent's predeceased spouse.¹ If none of these are available to serve, next priority goes to a conservator or guardian of the estate of the decedent acting in that capacity at the time of death, and then to the public administrator.²

If decedent dies with a conservator or guardian who has not properly performed the duties of the office and the conservator or guardian is appointed administrator of the estate, there is a danger that the malfeasance of the conservator or guardian will not receive careful scrutiny. This danger may be lessened by limiting the priority of a conservator or guardian for appointment as administrator to the case where the conservator or guardian has filed a first account with the court,³ and is not serving as guardian or conservator for anyone else.

The filing of the first account will permit the court to review the performance of the conservator or guardian before he or she is appointed as administrator. The requirement that the guardian or conservator not be serving in that capacity for anyone else will deny automatic priority to an institutional conservator or guardian with responsibility for many conservatees or wards. For good cause, the court should have discretion to give priority notwithstanding that a

1. Prob. Code § 8461.

2. Prob. Code § 8461.

3. The first account of a conservator or guardian is required one year after appointment. Prob. Code § 2620.

first account has not been filed or that the conservator or guardian is also acting in that capacity for someone else.

The Commission recommends that the priority of a conservator or guardian for appointment as administrator be limited to the case where the conservator or guardian has filed a first account and is not serving as conservator or guardian for anyone else, unless the court determines that there is good cause for priority notwithstanding that these requirements are not met.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 8461 of, and to add Section 8469 to, the Probate Code, relating to decedents' estates.

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

Probate Code § 8461 (amended). Priority for appointment as administrator

SEC. _____. Section 8461 of the Probate Code is amended to read:

8461. Subject to the provisions of this article, a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse.
- (b) Children.
- (c) Grandchildren.
- (d) Other issue.
- (e) Parents.
- (f) Brothers and sisters.
- (g) Issue of brothers and sisters.
- (h) Grandparents.
- (i) Issue of grandparents.
- (j) Children of a predeceased spouse.
- (k) Other issue of a predeceased spouse.
- (l) Other next of kin.
- (m) Parents of a predeceased spouse.

(n) Issue of a predeceased spouse.

(o) Conservator or guardian of the estate acting in that capacity at the time of death who has filed a first account and is not acting as conservator or guardian for any other person .

(p) Public administrator.

(q) Creditors.

(r) Any other person.

Comment. Subdivision (o) of Section 8461 is amended to limit the priority for a conservator or guardian of the estate to the case where a first account has been filed (Prob. Code § 2620) and the conservator or guardian is not acting in that capacity for any other person. See also Section 8469 (court discretion to give priority to conservator or guardian where requirements of Section 8461 not met).

Probate Code § 8469 (added). Conservator or guardian who does not meet requirements of Section 8461

SEC. _____. Section 8469 is added to the Probate Code, to read:

8469. For good cause, the court may allow a conservator or guardian of the estate of the decedent serving in that capacity at the time of death the priority given by Section 8461, notwithstanding that the guardian or conservator has not filed a first account, is acting as guardian or conservator for another person, or both.

Comment. Section 8469 is new, and permits the court to allow the priority given by Section 8461 to a guardian or conservator of the estate of the decedent serving in that capacity at the time of death, notwithstanding that the guardian or conservator fails to satisfy the other requirements of Section 8461.