

First Supplement to Memorandum 91-41

Subject: Study L-3055 - Compensation in Guardianship and Conservatorship Proceedings (Letter From State Bar Team 3)

Exhibit 1 is a letter from Melitta Fleck for Team 3 of the State Bar Probate Section. The central question in the basic memorandum is whether this legislation is needed at all. Exhibit 1 "supports the proposals" in the basic memo, so Exhibit 1 appears to be saying impliedly that the legislation is needed.

Exhibit 1 suggests a technical revision which the staff supports: The words "in that capacity" should be deleted from Probate Code Section 2640 in the four places where they appear, and the words "in such capacity" should be deleted from Probate Code Section 2641. These words are inconsistent with the other amendments, which will allow compensation for services rendered before the appointment.

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

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July 22, 1991

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REPLY TO:

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Re: Memorandum 91-41 - Compensation in Guardianship  
and Conservatorship Proceedings

Dear Valerie:

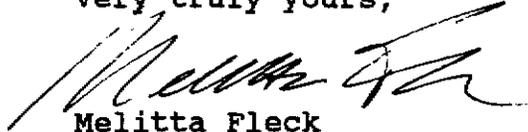
On behalf of the members of Team 3 of the Executive Committee, I am writing to respond to the proposals provided in the above-referenced memorandum. The conclusions reached by Team 3 have not been reviewed by the entire Executive Committee. Team 3 supports the proposals in Memo 91-41 with one technical suggestion relating to the proposed amendment of Probate Code Section 2640.

Probate Code Section 2640(c) allows the court to make an order allowing compensation to the guardian or conservator of the estate "for services rendered in that capacity" or to the guardian or conservator of the person "for services rendered in that capacity." The proposed amendment to that Code Section would authorize the court to allow compensation whether the services were rendered before or after the date of the order appointing the guardian or conservator. Technically, the guardian or conservator cannot render services in the capacity

Valerie J. Merritt, Esq.  
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of guardian or conservator prior to the date of appointment.  
Team 3 suggests that Section 2640(c) be amended to delete the  
phrase "in that capacity" when describing the services rendered  
by the guardian or conservator.

Very truly yours,



Melitta Fleck

for

GRAY, CARY, AMES & FRYE

MF/pd

20078510

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