

Second Supplement to Memorandum 91-64

Subject: Study L-708 - Special Needs Trust for Disabled Minor or
Incompetent Person (Letter from LA Bar)

Exhibit 1 is a letter from Ronald Pearson for the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association. The letter supports the concerns expressed in the report of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section, attached to the First Supplement as Exhibit 1. We believe we have addressed these concerns by revisions proposed in the basic memo and First Supplement.

Respectfully submitted,

Robert J. Murphy III
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Law Revision Commission
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File: _____
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VIA FAX

Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Study L-708 - Special Needs Trust for
Disabled Minor of Incompetent Person

Dear Mr. Sterling:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association has reviewed the Tentative Recommendation relating to Study L-708 and has requested that I convey their comments.

In particular, we agree that a disabled minor or incompetent person who receives personal injury damages or settlement proceeds under a judgment or court order has just as urgent a need for public medical benefits as does a disabled child whose parents have the means to establish a special needs trust that preserves the child's eligibility for public benefits.

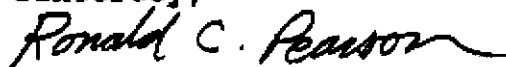
Furthermore, we agree that the repeal of the statutory language contained in former Probate Code Sections 3602, and 3611 (which authorized the court to direct that the proceeds be deposited in a "trust company authorized to transact business in the state"), essentially precludes courts, after June 30, 1991, from authorizing the establishment of a special needs trust to which personal injury damages or settlement proceeds could be paid and which would not disqualify a disabled minor or incompetent person from receiving public support.

Nathaniel Sterling
October 30, 1991
Page 2

Accordingly, we strongly support the Tentative Recommendation relating to amending Probate Code Sections 3602 and 3611.

However, the Tentative Recommendation also provides for the addition of new Section 3604 which, in general, would provide that upon the death of a minor or incompetent person who has received public support, trust property is subject to claims of public entities for reimbursement. We feel further clarification of Section 3604 is necessary and in this regard concur with the recommendations proposed by the Estate Planning, Trust and Probate Law Section of The State Bar of California as set forth in correspondence to the Law Revision Commission dated October 28, 1991, from Sterling L. Ross, Jr. Unless such clarifications are made to Section 3604, we also oppose adding such section to the Probate Code.

Sincerely,



RONALD C. PEARSON

RCP:ms
cc: Executive Committee