

Second Supplement to Memorandum 92-50

Subject: Study L-3044 - Comprehensive Power of Attorney Statute
(Comments of Executive Committee of Trust and Estate
Section of Los Angeles County Bar Association)

Attached to this supplement is a letter from Lawrence Kalfayan, on behalf of the Executive Committee of the Trust and Estate Section of the Los Angeles County Bar Association, expressing opposition to the proposal to recognize a durable power of attorney for personal care. (See draft Section 8035 attached to Memorandum 92-50.) We will discuss this letter at the meeting.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

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October 27, 1992

VIA FACSIMILE

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

**Re: Comprehensive Power of Attorney Statute -- Revised
Staff Draft; Study L-3044; Memorandum 92-50**

Dear Mr. Sterling:

The Executive Committee of the Los Angeles County Bar Association, Trust and Estate Section has supported the development of the new comprehensive power of attorney statute. Our law revision subcommittee has reviewed the Revised Staff Draft, and we have the following concerns.

Our concerns center around the new, third category of power of attorney for personal care, embodied in proposed Civil Code Sections 8035, 8036 and 8062. We oppose the creation of this new, third category because we believe the bulk of decisions to be made for a principal's personal care are adequately covered by the existing durable powers of attorney for health care and for property. In addition, we believe it adds confusion and could create areas of potential dispute.

The majority of "personal care" decisions (personal grooming, taking the principal to recreational activities, etc.) cited in the materials can be accomplished without a specific power of attorney for this purpose. The usefulness of such a power of attorney is outweighed by the danger of being used by the attorney-in-fact to effectively keep people (friends, family members, etc.) away from the principal.

In addition, it appears that the staff is aware of, and has considered, the potential problems related to establishing a third category of power. The Staff Note to proposed Section 8035 states, in pertinent part, as follows:

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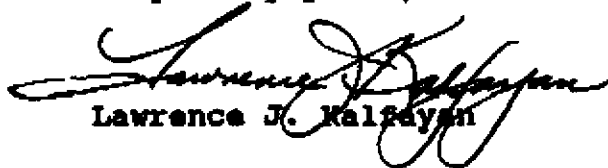
" . . . The draft has not yet been restructured to use this term where appropriate or to provide any needed special rules. Its main purpose is to avoid the oddity of having personal care decisions falling under the term 'power of attorney for property.' It remains to be seen whether creation of a third category of power creates more problems than it solves. . . ."

In attempting to avoid the oddity of having personal care decisions fall under the term "power of attorney for property", some personal care decisions could impact, and could become confused with, certain health care decisions and vice-versa. The potential for conflict could escalate where one individual serves in the capacity of attorney in fact for health care, while another acts in the capacity of attorney in fact for personal care.

In all, we believe the addition of a personal care power is unnecessary in that the normal, day-to-day personal care decisions may be accomplished without the necessity of a formal power of attorney. In those situations where the circumstances call for the specific outlining and definition of the personal care needs of the principal, a conservatorship would be the better alternative. In such cases, the court could specifically define the powers and duties of the conservator to address the needs of the conservatee. The potential for abuse of a personal care power of attorney could thereby be minimized.

We are aware that the draft has not yet been restructured to use the term "personal care" where appropriate or to provide any needed special rules. Nevertheless, we believe that the further splitting of powers of attorney create a serious potential for added conflict and disagreement.

Very truly yours,


Lawrence J. Kalfayan

LJK:kw

cc: LACBA Trust and Estate Section,
LRC Subcommittee members