

First Supplement to Memorandum 93-20

Subject: L-3044— Comprehensive Power of Attorney Statute (Jury Trial)

Attached to this supplement is a letter concerning the right to a jury trial in proceedings concerning powers of attorney, from the Legislative Subcommittee of the Trust and Estates Section of the Los Angeles County Bar Association. (See letter from Lawrence J. Kalfayan, attached as Exhibit 1.) This letter will be discussed in connection with the discussion of Section 8904 in the draft attached to Memorandum 93-20.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

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May 11, 1993

Law Revision Commission
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VIA FACSIMILE (415) 494-1827

Mr. Stan Ulrich
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

**Re: Comprehensive Power of Attorney Statute
Study L-3044**

Dear Mr. Ulrich:

The Legislative Subcommittee of the Trust and Estates
Section of the Los Angeles County Bar Association has the
following comment to the above referenced draft.

With respect to Section 8908, which specifies that
there is no right to a jury trial, our subcommittee recommends
that the right to a jury trial be provided in connection with
durable powers of attorney.

While we understand that Section 8908 makes the durable
powers of attorney statutes consistent with other Probate Code
provisions regarding jury trials, we believe the durable powers
of attorney issues are distinguishable from other types of
fiduciaries. Issues involving other types of fiduciaries
(personal representatives of decedents' estates; conservators,
etc.) may best be addressed solely by a judge.

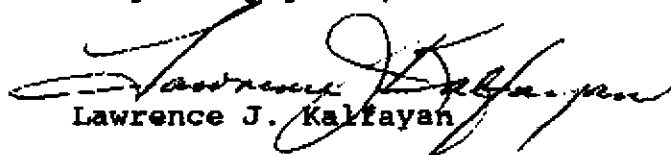
Specifically, decedents' estates, conservatorships,
guardianships and other fiduciary situations often include issues
which involve the intent of a decedent, the best interests of an
incompetent or a minor or other person who cannot testify. In
durable power of attorney situations, one can conceive of
situations where the principal is still very much in possession
of his or her faculties and has a dispute with his or her
attorney-in-fact.

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Disputes in such situations may more readily lend themselves to trial by jury, where the situation is more comparable to a civil contract dispute.

Thank you for your consideration of our concerns in connection with this issue. If you have any questions, please do not hesitate to call or write the undersigned.

Very truly yours,


Lawrence J. Kalfayan

cc: LACBA Trust & Estates Section
Legislative Subcommittee