

First Supplement to Memorandum 2009-36

Presumptively Disqualified Fiduciary (Public Comment)

The Commission has received another letter from the Executive Committee of the Trusts and Estates Section of the State Bar ("TEXCOM"). It is attached. TEXCOM agrees with the staff's recommendation that this study be put on hold until the status of SB 105 is determined by the Legislature. See Exhibit.

Respectfully submitted,

Brian Hebert
Executive Secretary

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August 27, 2009

VIA E-MAIL AND U.S. MAIL

bhebert@clrc.ca.gov

Brian Hebert
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: Presumptively Disqualified Fiduciary Study

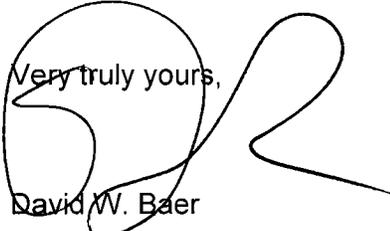
Dear Mr. Hebert:

I reviewed Memorandum 2009-36 and noted staff's recommendation that the Presumptively Disqualified Fiduciary Study be placed on hold pending legislative action on SB 105, which would redefine the terms "dependent adult" and "care custodian." As Texcom's letter of August 14, 2009 indicates, there is a substantial interplay between the desirability of legislation creating new categories of presumptively disqualified beneficiaries and these definitions. I therefore agree with this recommendation and do not anticipate that Texcom will submit any further comment on the Study until the definition of these terms is known.

It would not be a wise use of the Commission's or Texcom's time to craft and propose legislation based on the current definitions when those may change. Likewise, SB 105 may or may not be enacted and even if it is, it is possible that the Legislature will amend the proposed definitions. As such, it would also be unwise to undertake this task with the assumption that the definitions proposed by SB 105 will become law.

Texcom looks forward to assisting the Commission in any way can regarding this Study once the Legislature acts on SB 105 in 2010.

Very truly yours,



David W. Baer

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