

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

OCTOBER 10-11, 1980

LOS ANGELES

A meeting of the California Law Revision Commission was held in Los Angeles on October 10 and 11, 1980. On October 11, the Commission functioned as a subcommittee, a quorum not being present.

Law Revision Commission

Present: Beatrice P. Lawson, Chairperson
Jean C. Love, Vice Chairperson
Robert S. Berton
Thomas S. Loo (Oct. 10 only)
Bion M. Gregory, Ex Officio

Absent: Omer L. Rains, Senate Member
Alister McAlister, Assembly Member
Judith Meisels Ashmann
George Y. Chinn
Warren M. Stanton

Staff Members Present

John H. DeMouilly
Nathaniel Sterling
Robert J. Murphy III
Stan G. Ulrich

Consultants Present

Carol S. Bruch, Community Property
William A. Reppy, Community Property and Creditors' Remedies
(Oct. 10 only)

Others Present

Abdul, I (Nigerian International Legislative Exchange)
Jan C. Gabrielson (State Bar Family Law Section)
Sandra G. Musser (State Bar Family Law Section)
Alan Pedlar (State Bar Debtor/Creditor Subcommittee)
Timothy K. Roake, (Research Assistant to Consultant Bruch)
Rick Schwartz (State Bar Business Law Debtor-Creditor and
Bankruptcy Committee)

Note. The members of the various sections, committees, and subcommittees of the State Bar attended as individuals and not as representatives of the State Bar.

ADMINISTRATIVE MATTERS

MINUTES OF THE SEPTEMBER 1980 MEETING

The Minutes of the September 5, 1980, meeting were approved without change.

REPORT ON LEGISLATIVE PROGRAM

The Executive Secretary reported that 14 out of 15 bills recommended for enactment in 1980 were enacted. The bill that was not enacted related to the interest rate on judgments. Another bill--SB 1394--would have increased the interest rate on judgments to 10 percent, but retain the 7 percent rate on judgments pending appeal. The Governor vetoed SB 1394. His veto message indicated that he favored the Commission recommended legislation. The Commission determined that the recommended legislation on the interest rate on judgments should again be recommended to the 1981 session.

COORDINATION OF WORK WITH ESTATE PLANNING SECTION OF STATE BAR

The Executive Secretary reported that the Estate Planning Section of the State Bar had written indicating a desire to be kept informed on the progress of all studies of the Commission in which the Estate Planning Section has an interest. To provide a means of obtaining such information, the Section suggested that Ron Gother (Chair of the Subcommittee of the Estate Planning Section to work with the Law Revision Commission in its review of the Uniform Probate Code) act as general liaison between the Section and the Commission. The Law Revision Commission agreed that this would be a good method of coordinating the activities of the Section and the Commission.

DIVORCE LAW RESEARCH PROJECT

The Executive Secretary reported that a letter had been received from Lenore J. Weitzman, Director, Divorce Law Research Project, indicating that that organization would be happy to share its results with the Commission and would, in addition, be willing to examine specific questions about property that could assist the work of the Commission. The Commission authorized the staff to work with the Divorce Law Research Project to the extent it would be of assistance to the Commission in its various studies.

NEW TOPICS

The Commission considered Memorandum 80-79 relating to new topics. The Commission approved the staff suggested disposition of the various suggested new topics, all of which involved matters already authorized

for study. The Commission decided not to recommend a change (suggested by Kurt W. Melchior) in the provisions of the Evidence Code which permit a privilege to be invoked by "the personal representative" in a wrongful death case. The problem is that under existing law you have a designated person to claim or waive the privilege. Under the proposal, you might have a number of persons who could claim or waive the privilege. The Commission was of the view that the more serious problem in wrongful death cases is the rights of the personal representative and those who assert rights in a wrongful death suit as to the right to file the suit, the maintenance of the action, the collecting and apportionment of the award. Perhaps this more serious problem can be considered in connection with the Probate Code study and at that time the Commission can give further consideration to the suggestion of Mr. Melchior.

PRIORITIES FOR WORK DURING 1981 AND SUBSEQUENT YEARS

The Commission considered Memorandum 80-89 and approved the following tentative schedule for submission of recommendations to future sessions of the Legislature:

1981 Legislative Session

Comprehensive Enforcement of Judgments Law with Conforming Changes

Nonprobate Transfers (Article VI of Uniform Probate Code)

Uniform Durable Power of Attorney Act

Liability of Marital Property for Debts

Revision of the Guardianship-Conservatorship Law (Support of Conservatee Spouse from Community Property; Appointment of Successor Guardian or Conservators; Appeals)

Statutory Bonds and Undertakings

Revision of the Power of Appointment Statute

1982 Legislative Session

Community Property (management and control, division on divorce, etc.)

Marketable Title Act

Comprehensive Revision of Attachment Law

Uniform Conservation and Historic Preservation Easements Act

Model Periodic Payment of Judgments Act

Uniform Consent to Health Care Act

Miscellaneous Property Law Revisions

Dismissal for Lack of Prosecution

Summary Release of Liens

1983 Legislative Session

Revision of Unclaimed Property Act

Adoption

Wills and Intestate Succession

1984 Legislative Session

Comprehensive Revision of Property Law

The above schedule is probably overly ambitious and must be tentative since new topics may intervene and since it is difficult to predict the amount of time that will be required to prepare a recommendation on any particular topic. In addition, priorities may require revision in light of requests or suggestions from legislative committees or from the legislative members of the Commission. Also, the schedule should be flexible enough so that the staff can work on nonpriority topics when staff time permits.

ANNUAL REPORT FOR 1980

The Commission considered Memorandum 80-80 and the attached draft of the Annual Report. The Commission approved dropping a topic--unincorporated associations--from its agenda of topics. The Annual Report was approved in substance, but the draft is to be revised to reflect the recommendations that the Commission will submit in 1981.

Commissioner attendance. The Commission discussed the problem of irregular Commissioner attendance at Commission meetings. The Commission requested the Executive Secretary to prepare an attendance report for the Chairperson. The Chairperson will telephone those Commissioners whose attendance is irregular to see whether their attendance can be improved. If not, the Commission may wish to request their resignation or to require their resignation pursuant to statutes that mandate regular attendance by public officials.

Cooperation with State Bar on Community Property Study. The Commission discussed with Ms. Sandra Musser, State Bar Family Law Executive Committee liaison for property matters, methods for obtaining State Bar involvement in the community property study. Ms. Musser

undertook to provide one or two members of the standing property committee to regularly attend Commission meetings. The State Bar representatives will be persons the Executive Committee is willing to rely on and whose judgment they trust. The representatives will report to the Executive Committee when the Executive Committee determines what positions it will take on the Commission's recommendations.

MODEL PERIODIC PAYMENT OF JUDGMENTS ACT

The Commission considered Memorandum 80-81 and approved sending the Model Periodic Payment of Judgments Act (and the explanatory article) to interested persons and organizations for review and comment. The Commission suggested that a press release should be sent to the legal newspapers indicating the availability of the materials and indicating copies can be obtained by writing to the Law Revision Commission. The materials should be sent to the California Trial Lawyers Association and to insurance companies.

STUDY D-300 - ENFORCEMENT OF JUDGMENTS (WAGE GARNISHMENT)

The Commission considered Memorandum 80-91 and the attached draft statute and the attached preliminary portion of the recommendation explaining this portion of the statute. The revised statute was approved for inclusion in the comprehensive enforcement of judgments statute.

STUDY D-300 ENFORCEMENT OF JUDGMENTS (HOMESTEAD EXEMPTION)

The Commission considered Memorandum 80-84, along with a letter from Brian W. Newcomb of the San Mateo County Legal Aid Society (a copy of which is attached), relating to the most recent draft of the homestead exemption. The Commission directed the staff to continue to attempt to improve the draft and to implement the following policy decisions:

(1) Treatment of co-owners. If the judgment debtor is a co-owner of the homestead, only the interest of the judgment debtor and not the interests of co-owners should be sold, for property and income tax reasons as well as for other reasons. The staff should check legislation relating to Proposition 13 to ascertain whether the whole property is reassessed when an interest in the property is sold on execution.

(2) Treatment of liens. The interest of the judgment debtor should be sold subject to superior liens and encumbrances on the property. The lien and encumbrance holders should be precluded from accelerating the obligations because of the execution sale.

(3) Exemption in case of voluntary sale. The judgment debtor should be entitled to an exemption of proceeds when the homestead is voluntarily sold with a judgment lien against it. The exemption should not apply if the judgment lien attached before the judgment debtor made the property a homestead, unless the judgment debtor purchased the property with the intent to live in it. The staff should work on a provision to implement the exemption for proceeds of a voluntary sale, such as a right of first refusal if the proceeds are not sufficient to satisfy the judgment.

(4) Determination of value of homestead. The provisions for a determination whether the homestead has sufficient value to be sold should be deleted. In their place should be a provision for awarding attorney's fees to the judgment debtor in contesting the sale if the sale does not bring a sufficiently high bid. There should also be a prohibition on subsequent relevy by the judgment creditor for a period of one year. The staff should also consider other protections, such as a requirement that the judgment creditor guarantee sale at an adequate price by bond or undertaking.

(5) Amount of exemption. Meeting as a subcommittee on October 11, 1980, the Commission instructed the staff concerning its concepts for redrafting for the next meeting the portion of the statute relating to the amount of the homestead exemption. Each adult judgment debtor should be entitled to a single homestead exemption. Each judgment debtor who is over 65 or who is part of a family unit (married, or having dependents, or both married and having dependents) should be entitled to a double homestead exemption. The amount of the single exemption should be \$30,000 and the amount of the double exemption should be \$60,000.

LEGAL AID SOCIETY OF SAN MATEO COUNTY

PETER H. REID
EXECUTIVE DIRECTOR

2221 BROADWAY
REDWOOD CITY, CALIFORNIA 94063
TELEPHONE (415) 365-8411

October 7, 1980

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

Re: Enforcement of Judgments,
(Wage Garnishments and
Homestead Exemptions)

Dear Sir/Madam:

On behalf of this office's indigent clients who are often judgment debtors due to their dire financial predicament, I have set out hereinafter some comments regarding the proposed amendments to the California execution and exemption statutes which are to be considered at your meeting of October 10 and 11, 1980.

Wage Garnishments

The undersigned strongly supports the proposed amendment set forth in Section 706.051 which provides the renter (who is not eligible to claim a homestead exemption) with an unqualified hardship exemption.

Homestead Exemption

The undersigned supports the proposal contained in Section 704.730 that the excess remaining after a debtor's homestead is sold remains exempt for a period of eighteen months.

However, the undersigned is opposed to Section 703.010 which provides that the judgment creditor's lien and junior liens are excluded in a determination of the equity for purposes of applying the homestead exemption. The undersigned also opposes Section 704.740(a) which provides the value of the homestead need only exceed the amount of the exemption and superior liens rather than all liens and encumbrances to be sold. Furthermore, the undersigned opposes Section 704.840 which provides that in the instance the judgment debtor is a co-owner of the property, the \$45,000 exemption should be reduced to an amount proportionate to the judgment debtor's interest.

The policy of the homestead law is to protect the debtor in the possession of the homestead and to allow an adequate amount

for replacement housing in the event of dispossession. According to the court in Schoenfeld v. Norberg, (1968) 267 Cal. App. 2d 496, 498, 72 Cal. Rptr. 924:

"The broad purpose of the homestead laws is to promote the security of the home, and to place such property beyond the reach of the consequences of the homeowner's economic misfortune. The policy is a strong one. It has been declared in our Constitution since statehood. [Citations omitted]". See also Taylor v. Madigan (1976) 53 Cal. App. 3d 943, 126 Cal. Rptr. 376.

Proposed Sections 703.010, 704.740(a) and 704.840 are at variance with this policy of the law in that each of these sections erode the protections afforded the improvident debtor. These proposed statutes are even more injurious to the public when one considers that inflation has rapidly increased the value of homes above the homestead exemption level of \$45,000.00. A homeowner may now be dispossessed from a home he bought four (4) years ago for \$40,000.00 with an \$8000.00 down payment because it is now worth \$110,000.00. However, the dispossessed homeowner will not be able to find replacement housing with the \$45,000.00 if he or she lives in San Francisco, San Mateo County or certain portions of Santa Clara County or southern California because the replacement house will be \$110,000.00 to \$150,000.00 with higher interest payments. Accordingly, existing protections should be retained. The \$45,000.00 will allow some to find replacement housing but not all. However, if the debtor is still subject to existing junior liens after the sale (§704.740a), then even fewer people will be able to buy another house. Additionally, Section 704.840 is totally inappropriate for the reason set forth by Mr. Sterling wherein he states:

"Suppose the judgment debtor pools funds with another person and becomes a joint owner of a \$200,000 home; why should the judgment debtor's exemption be cut in half? If the policy of the homestead law is to protect the debtor in the possession of the homestead and to allow an adequate amount for replacement housing in the event of dispossession, this policy is defeated by cutting the exemption in half for no apparent reason other than that the debtor happens to be a co-owner."

The undersigned also disagrees with the Commission's comment that "[t]he declared homestead is inefficient because it encourages the recording of a declaration at a time when it is not

needed for protection against the claims of creditors." As previously written in my letter of August 8, 1980, at pp 3-4 "[t] prophylactic filing of a homestead declaration is preferable to waiting until the debt is incurred or execution commenced." Many folks fail to act in a timely fashion to protect their rights. Accordingly, the option of filing a homestead declaration prior to a potential execution must be retained.

I trust these comments will be considered at your meeting of October 10 and 11, 1980. It is imperative that the family of the improvident debtor be protected. It is in the interest of the California public that the improvident debtor's family not be forced to apply for welfare benefits due to the execution upon his or her meager assets.

Very truly yours,



BRIAN W. NEWCOMB
Attorney at Law

BWN:mhs

STUDY D-312 ENFORCEMENT OF JUDGMENTS
(LIABILITY OF MARITAL PROPERTY FOR DEBTS)

The Commission considered Memorandum 80-88 and the First Supplement thereto, relating to comments received on the Commission's tentative recommendation on liability of marital property for debts. The Commission made the following determinations with respect to the tentative recommendation:

Civil Code § 4800. There was disagreement among the participants at the meeting whether existing law requires a "net" equal division of assets and liabilities, and if so, whether the law should require such equal division of liabilities. Professor Bruch offered an old draft of Section 4800 that would assign debts to the spouses based on the character of the debt--support, educational loan, tort, post-separation. The Commission decided to defer work on Section 4800 until Professor Bruch has completed the dissolution and division portion of her study.

§ 5120.010. Liability of community property. The existing scheme of Civil Code Section 5122(b) should be preserved--the community property is primarily liable for community torts and separate property secondarily liable, and separate property is primarily liable for separate torts and community property is secondarily liable. The staff was directed to attempt to draft a procedure to implement this scheme, perhaps similar to the claim of exemption procedure, so that when a creditor levies upon property of one type the creditor's interest is preserved pending resolution of the issues between the spouses. In drafting a procedure, the staff should attempt to deal with the problem of maintaining a levy on a going business for some period of time while the spouses resolve their dispute. Professor Bruch offered her assistance to the staff in attempting to devise a workable procedure. The staff should consider the possibility of a presumption that torts committed by married persons are community torts. The staff should also be aware of problems raised by Professor Riesenfeld concerning marshalling between creditors in the situation where there are several funds available to the creditor.

The issue whether there should be an order of satisfaction of community or separate contract debts out of community and separate property was deferred until Professor Bruch completes the portion of her

study relating to division of debts and property on dissolution. The matter of an order of satisfaction for prenuptial debts should be similarly deferred.

§ 5120.030. Liability for necessities. Existing law on liability for necessities should be preserved pending completion of Professor Bruch's study. However, the staff should make the order of satisfaction procedure drafted in connection with liability for torts applicable to liability for necessities.

§ 5120.040. Interspousal transfers. The Commission discussed whether Civil Code Section 3440 (part of the Uniform Fraudulent Conveyance Act) should be amended so that an interspousal transfer without change of possession is not conclusively presumed fraudulent. The Commission requested Professor Bruch to provide her suggestions for amending language and also to check with Professor Riesenfeld whether the exclusion of exemptions from Section 3440 might not be sufficient to take care of the interspousal transfer problem.

§ 5120.050. Liability of property after division. This section should be omitted from the recommendation pending completion of Professor Bruch's study on division of property and debts at dissolution. Thus existing law temporarily would be preserved which enables the judgment creditor to seek satisfaction of the judgment out of former community property awarded to the nondebtor spouse.

§ 5120.060. Liability of property after judgment of nullity. The Commission reaffirmed its decision that liability of property of an annulled marriage should be the same as liability of property of a valid marriage that is dissolved.

Liability of community property business in bankruptcy. Alan Pedlar pointed out that in bankruptcy all community property liable for the debtor's obligation goes into the bankrupt's estate. Thus if California law makes a community property business solely managed by the nondebtor spouse liable for the debt of the nondebtor spouse, the community property business would be part of the bankrupt's estate and in the solvent bankrupt situation could be taken in bankruptcy despite the presence of other assets. The Commission felt that the community property business solely managed by the nondebtor spouse should be protected to the extent practical. Professor Pedlar suggested that a charging

order be required to reach the business assets. The Commission directed the staff to work on a procedure, although the procedure need not be developed in the context of the liability of marital property recommendation but could be developed among the general execution procedures.

STUDY F-600 - COMMUNITY PROPERTY (CONSULTANT'S STUDY)

Professor Bruch introduced her study of community property law by providing an outline of the study (a copy of which is attached) and by speaking about the general problems involved and giving her views as to the philosophies that should guide the Commission in attempting to solve the problems. She pointed out that the significant problems in community property law have been caused by a basic change in the nature of the family giving both spouses equal rights. When two persons have rights in property, disagreements inevitably arise. The law should provide remedies for the disagreements--family law property matters are as important as any other matters in society, and if remedies are not provided divorce will be the only remedy. Moreover, the very existence of remedies may help avoid court resolution of disagreements. The remedies should permit flexibility, however, since many problems are caused by rigidity in the law, as attested by the proliferation of equitable remedies in the community property area.

Professor Bruch felt that in working on these problems, the Commission should attempt to achieve balance overall, should be pro-marriage and anti-divorce, should seek to achieve fairness to third parties, and should strive for simplicity to the extent simplicity can be accomplished while still doing equity.

The Executive Secretary and Sandra Musser (of the State Bar Family Law Section) both expressed the view that some of the policies advocated by Professor Bruch would result in increased litigation and increased involvement of lawyers in family disputes, greatly increasing costs. Ms. Musser felt that a dominant guideline in the Commission's deliberations should be certainty. Certainty is often more important than equity; by giving the parties clear standards of conduct, conflict and litigation will be avoided.

OUTLINE

COMMUNITY PROPERTY STUDY -- BRUCH

I. Definition of Community Property

- A. Post-separation earnings
- B. Fruits of separate property and borrowed funds
- C. Tort recoveries and disability pay
- D. Good will
- E. Enhanced earning capacity
- F. Quasi-community property
- G. Quasi-marital property
- H. Forms of title

II. Management and Control

- A. Standard of care
- B. Restraints on alienation
- C. Sole management and control
- D. Mixed assets: tracing and presumptions
- E. Transmutation
- F. Remedies

III. Division at Divorce

- A. Valuation: timing and standards (e.g., education and good will)
- B. Jurisdiction to divide
- C. Standards for division
 - 1. debts
 - 2. property in general
 - 3. house
 - 4. lump sums
- D. Tax implications

IV. Creditor Access

- A. During relationship
- B. After dissolution
- C. Rights over

V. Probate

VI. Conflict of laws

STUDY L-701 - GUARDIANSHIP-CONSERVATORSHIP (SUPPORT
OF CONSERVATEE FROM COMMUNITY PROPERTY)

The Commission considered Memorandum 80-82 and the First Supplement to Memorandum 80-82. The Commission approved the recommendation for printing and submission to the 1981 session of the Legislature, but the proposed legislation should include a provision that makes clear that the court which grants a dissolution of the marriage or separate maintenance has authority to modify the order made by the Probate Court under the proposed legislation.

This recommendation is to be combined with the recommendation relating to the procedure for appointment of a successor conservator.

STUDY L-702 - GUARDIANSHIP-CONSERVATORSHIP (PROCEDURE
FOR APPOINTMENT OF SUCCESSOR CONSERVATOR)

The Commission considered Memorandum 80-83, the Tentative Recommendation attached to that Memorandum, and the Redrafted Statutory Provisions and letter from Commissioner Lee (both handed out at the meeting and attached to these Minutes.

The preliminary portion should be revised to conform to the redrafted statutory provisions and the redrafted statutory provisions were approved.

The recommendation as so revised is to be combined with the recommendation relating to support of the conservatee from community property and printed and submitted to the 1981 legislative session.

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairperson

Executive Secretary

SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ADMINISTRATION BUILDING
1221 OAK STREET
OAKLAND, CALIFORNIA 94612
874-7742

DAVID C. LEE
PROBATE COMMISSIONER

October 1, 1980

Robert J. Murphy, III
California Law Revision Commission
4000 Middlefield Drive, Room D-2
Palo Alto, Ca. 94306

Dear Mr. Murphy:

This is to confirm my concern regarding the suggested changes as set forth in LRC Memorandum 80-83.

My reading of Estate of Mims (1962) 202 Cal. App. 2d 332 is different from that of Mr. Johnstone.

It is critical for purpose of analysis to note that Mims was a guardianship proceeding in 1955. (Prior to the conservatorship law enactment.) Specifically, I refer you to the third paragraph on page 340 of the official reporter. The ward was determined to have been "not concerned with the substitution of 'one officer of the court for another. No substantial right'... is affected." This was because Mim had been adjudicated incompetent.

While I recognize that there may be dispute as to whether or not a conservatee as of January 1, 1981 is competent, there can be no doubt but that a conservatee whether on initial or successor appointment of conservator does have the right to contest the appointment of the proposed conservator.

Referring to 2110, the Court may appoint "...after notice and hearing as in the case of an original appointment." (emphasis mine) Section 1825 sets forth the requirement for the conservatee's attendance at the hearing. Surely the conservatee is a necessary ingredient of the "hearing." Further, under Section 1823 the citation must advise the proposed conservatee of the right to appear and oppose. /1823(b)(4)/ As well, section 1826 provides for procedural due process safeguards in the event of inability of a proposed conservatee to attend.

Robert J. Murphy, III
Page Two
October 1, 1980

Surely, these safeguards are "substantial right(s)" (Mims, supra) which we carefully sought to preserve for conservatees. I fear they will be lost if the same requirements for all aspects of the hearing are not accorded to a conservatee for whom a successor conservator appointment is alleged to be necessary.

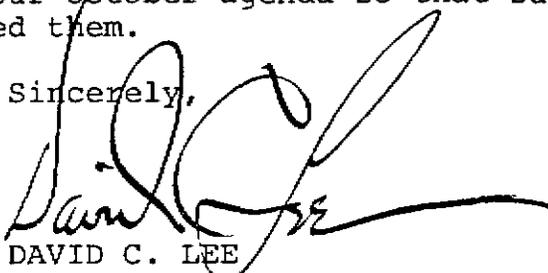
The service of Citation is that act which triggers (1) appearance in Court so objections, including the person seeking successor letters, or (2) the dispatch of the Court Investigator to advise the Citee of his or her rights if unable or unwilling to appear. The petition does not set forth a recitation of the rights of the Citee, the citation does (Section 1823).

For these reasons, I feel that 2110 should be amended, not, however, as suggested in 80-83 but rather by requiring that a Citation issue as in the initial appointment proceeding. It will be of interest to the Commission that practice statewide differs from Court to Court regarding whether Mims applies to conservatorships. I suggest that even if it does, which I dispute, it should be legislatively overruled and not "preserved."

I have read with interest Memo 80-82 and its 9/22/80 supplement and feel it goes a long way toward answering Mr. Titchell's concern. The Commission might consider going the rest of the way and authorizing the Court to fix support from the non-conservatee spouse's separate property as well rather than require going into family law court for separate maintenance or dissolution.

I have circulated this letter to key members of the State Bar Section on Estate Planning, et al, for report. May I ask for a continuance from your October agenda so that sufficient time for reply can be afforded them.

Sincerely,



DAVID C. LEE
Probate Commissioner

DCL:g

cc: William S. Johnstone, Jr.
James Goodwin
Ellsworth H. DeWeese
Terry L. Ross
Charles Collier

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 1461, 1461.5, 2700, and 2750 of, to add Chapter 9.5 (commencing with Section 2670) to Part 4 of Division 4 of, and to repeal Section 2110 of, the Probate Code, relating to guardianship and conservatorship.

The people of the State of California do enact as follows:

10361

Probate Code § 1461 (amended). Notice to Director of Mental Health or Director of Developmental Services

SECTION 1. Section 1461 of the Probate Code is amended to read:

1461. (a) As used in this section, "director" means:

(1) The Director of Mental Health when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Mental Health.

(2) The Director of Developmental Services when the state hospital referred to in subdivision (b) is under the jurisdiction of the State Department of Developmental Services.

(b) Except where the petition, report, or account is filed by the director, notice of the time and place of hearing on the petition, report, or account, and a copy of the petition, report, or account, shall be mailed to the director at the director's office in Sacramento at least 15 days before the hearing if both of the following conditions exist:

(1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding a patient in or on leave from a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services.

(2) The petition, report, or account is filed under any one or more of the following provisions: Section 1510, 1820, 1861, 2212, 2403, 2421, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2580, 2592, 2620 ~~¶~~ ; Chapter 9.5 (commencing with

Section 2670) of Part 4; or Chapter 3 (commencing with Section 3100) of Part 6.

(c) If the ward or conservatee has been discharged from the state hospital, the director, upon ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is not indebted to the state and waive the giving of further notices under this section. Upon the filing of the certificate of the director, compliance with this section thereafter is not required unless the certificate is revoked by the director and notice of the revocation is filed with the court.

(d) The statute of limitations does not run against any claim of the State Department of Mental Health or the State Department of Developmental Services against the estate of the ward or conservatee for board, care, maintenance, or transportation with respect to an account that is settled without giving the notice required by this section.

Comment. Section 1461 is amended to include a reference in subdivision (b) to Chapter 9.5 (commencing with Section 2670) of Part 4 (appointment of successor guardian or conservator).

10362

Probate Code § 1461.5 (amended). Notice to Veterans Administration

SEC. 2. Section 1461.5 of the Probate Code is amended to read:

1461.5. Except for a petition filed by the Veterans Administration, notice of the time and place of hearing on a petition, report, or account, and a notice of the filing of an inventory, together with a copy of the petition, report, inventory, or account, shall be mailed to the office of the Veterans Administration having jurisdiction over the area in which the court is located at least 15 days before the hearing, or within 15 days after the inventory is filed, if both of the following conditions exist:

(a) The guardianship or conservatorship estate consists or will consist wholly or in part of any of the following:

- (1) Money received from the Veterans Administration.
- (2) Revenue or profit from such money or from property acquired wholly or in part from such money.

(3) Property acquired wholly or in part with such money or from such property.

(b) The petition, report, inventory, or account is filed under any one or more of the following provisions: Section 1510, 1601, 1820, 1861, 1874, 2422, or 2423; Article 7 (commencing with Section 2540) of Chapter 6 of Part 4; Section 2570, 2571, 2580, 2592, 2610, 2613, or 2620; Chapter 8 (commencing with Section 2640) of Part 4; Chapter 9.5 (commencing with Section 2670) of Part 4; or Chapter 3 (commencing with Section 3100) of Part 6.

Comment. Section 1461.5 is amended to add the reference in subdivision (b) to Chapter 9.5 (commencing with Section 2670) of Part 4 (appointment of successor guardian or conservator).

10363

Probate Code § 2110 (repealed). Appointment to fill vacancy

SEC. 3. Section 2110 of the Probate Code is repealed.

~~2110. When for any reason a vacancy occurs in the office of guardian or conservator, the court may appoint a successor, after notice and hearing as in the case of an original appointment.~~

Comment. Former Section 2110 is superseded by Chapter 9.5 (commencing with Section 2670) of Part 4 of Division 4 of the Probate Code.

10364

Probate Code §§ 2670-2689 (added). Appointment of successor guardian or conservator

SEC. 4. Chapter 9.5 (commencing with Section 2670) is added to Part 4 of Division 4 of the Probate Code, to read:

CHAPTER 9.5. APPOINTMENT OF SUCCESSOR GUARDIAN
OR CONSERVATOR

Article 1. Appointment of Successor
Guardian

§ 2670. Appointment of successor guardian

2670. When for any reason a vacancy occurs in the office of guardian, the court may appoint a successor guardian in the manner provided in this division for an initial appointment of a guardian.

Comment. Section 2670 continues the substance of former Section 2110 as the former section applied to guardianships of minors.

10365

Article 2. Appointment of Successor
Conservator

§ 2680. Application of article

2680. When for any reason a vacancy occurs in the office of conservator, the court may appoint a successor conservator in the manner provided in this article.

Comment. Article 2 (commencing with Section 2680) supersedes former Section 2110 as that section applied to conservatorships. Article 2 makes clear the procedure for appointment of a successor conservator. Under former Section 2110, appointment of a successor conservator was to be made "after notice and hearing as in the case of an original appointment," but it was not clear which of the requirements applicable to an original appointment applied to the appointment of a successor conservator and which did not. Cf. Estate of Mims, 202 Cal. App.2d 332, 20 Cal. Rptr. 667 (1962) (adult ward need not be served with citation as on original appointment where petition is for successor guardian).

10368

§ 2681. Who may file petition

2681. A petition for appointment of a successor conservator may be filed by any of the following:

- (a) The conservatee.
- (b) The spouse of the conservatee.
- (c) A relative of the conservatee.
- (d) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.
- (e) Any other interested person or friend of the conservatee.

Comment. Section 2681 is comparable to subdivisions (a) and (c) of Section 1820 (petition for initial appointment of conservator).

§ 2682. Contents of petition

2682. (a) The petition shall request that a successor conservator be appointed for the person or estate, or both, shall specify the name and address of the proposed successor conservator and the name and address of the conservatee.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the conservatee within the second degree.

(c) If the petition is filed by one other than the conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the conservatee.

(d) If the conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the conservatee.

(f) The petition shall state whether or not the conservatee will be present at the hearing.

Comment. Section 2682 is comparable to Section 1821 (petition for initial appointment of conservator).

§ 2683. Notice of hearing

2683. (a) At least 15 days before the hearing on the petition for appointment of a successor conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d) of this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons (other than the petitioner or persons joining in the petition):

(1) The conservatee at the address stated in the petition.

(2) The spouse, if any, of the conservatee at the address stated in the petition.

(3) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If notice is required by Section 1461.5 to be given to the Veterans Administration, notice shall be mailed as so required.

Comment. Section 2683 is comparable to Section 1822 (notice on initial appointment of conservator). If the conservatee is an "absentee" as defined in Section 1403, notice must be given as provided in Sections 1842 and 2683, except that notice need not be given to the conservatee. Section 2689.

12332

§ 2684. Interview and report by court investigator

2684. Unless the petition states that the conservatee will be present at the hearing, the court investigator shall do all of the following:

(a) Interview the conservatee personally.

(b) Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the person proposed as successor conservator, and the conservatee's right to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed.

(d) If the conservatee is not represented by legal counsel, determine whether the conservatee wishes to be represented by legal counsel and, if so, determine the name of an attorney the conservatee wishes to

retain or whether the conservatee desires the court to appoint legal counsel.

(e) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(f) Report to the court in writing, at least five days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee objects to the person proposed as successor conservator or prefers that some other person be appointed.

(g) Mail, at least five days before the hearing, a copy of the report referred to in subdivision (f) to the attorney, if any, for the petitioner, to the attorney, if any, for the conservatee, and to such other persons as the court orders.

Comment. Section 2684 is comparable to Section 1826 (interview and report of court investigator on initial appointment of conservator). If the conservatee is unable to retain legal counsel and requests the court to appoint counsel, or if the court determines that the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee, the court shall appoint the public defender or private counsel to represent the interest of the conservatee in proceedings under this article. Section 1471. An interview and report by the court investigator is not required under Section 2684 if the conservatee is an "absentee" as defined in Section 1403. Section 2689.

13612

§ 2685. Information to conservatee by court

2685. If the conservatee is present at the hearing, prior to making an order appointing a successor conservator the court shall do all of the following:

(a) Inform the conservatee of the nature and purpose of the proceeding.

(b) Inform the conservatee that the conservatee has the right to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, and, if not represented

by legal counsel, to be represented by legal counsel if the conservatee so chooses and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court so informs the conservatee, the court shall consult the conservatee to determine the conservatee's opinion concerning the question of who should be appointed as successor conservator.

Comment. Section 2685 is comparable to Section 1828 (information to proposed conservatee by court on initial appointment of conservator). If the conservatee is unable to retain legal counsel and requests the court to appoint counsel or if the court determines that the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee, the court shall appoint the public defender or private counsel to represent the interest of the conservatee in proceedings under this article. Section 1471.

36243

§ 2686. Conservatee not present at hearing

2686. If the petition states that the conservatee will be present at the hearing and the conservatee fails to appear at the hearing, the court shall continue the hearing and direct the court investigator to perform the duties set forth in Section 2684.

Comment. Section 2686 is new and is to ensure that the conservatee is informed of his or her rights before a successor conservator is appointed.

15636

§ 2687. Persons who may support or oppose petition

2687. The conservatee, the spouse or any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

Comment. Section 2687 is comparable to Section 1829 (persons who may support or oppose petition for initial appointment of conservator). "Interested person" includes state, local, or federal entities and employees. Section 1424.

§ 2688. Order appointing successor conservator

2688. (a) The court shall determine the question of who should be appointed as successor conservator according to the provisions of Article 2 (commencing with Section 1810) of Chapter 1 of Part 3.

(b) The order appointing the successor conservator shall contain, among other things, the names, addresses and telephone numbers of the successor conservator, the conservatee's attorney, if any, and the court investigator, if any.

Comment. Subdivision (a) of Section 2688 makes clear that the order of preference for appointment as conservator set forth in Section 1812 applies to the selection of a successor conservator and that a nomination made pursuant to Section 1810 or 1811 will be given the same weight as on an initial appointment of a conservator. Subdivision (b) is comparable to Section 1830 (order making initial appointment of conservator).

There is no right to trial by jury on the appointment of a successor conservator. See Section 1452. This is consistent with the rule applicable to the initial appointment of a conservator (as distinguished from the establishment of the conservatorship) where there is no right to trial by jury. See the Comment to Section 1827.

15914

§ 2689. Provisions applicable where conservatee is an "absentee"

2689. If the conservatee is an "absentee" as defined in Section 1403:

(a) The petition for appointment of a successor conservator shall contain the matters required by Section 1841 in addition to the matters required by Section 2682.

(b) Notice of the hearing shall be given as provided by Section 1842 in addition to the requirements of Section 2683, except that notice need not be given to the conservatee.

(c) An interview and report by the court investigator is not required.

Comment. Section 2689 requires additional allegations in the petition and additional notice and dispenses with the interview and report by the court investigator where the conservatee is in missing status as determined under federal law.

Probate Code § 2700 (amended). Request for special notice

SEC. 5. Section 2700 of the Probate Code is amended to read:

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, the ward if over 14 years of age or the conservatee, the spouse or any relative or creditor of the ward or conservatee, or any other interested person, in person or by attorney, may file with the clerk of the court a written request for special notice of the filing or commencing of any one or more or all of the following:

- (1) Petitions to direct, authorize, approve, or confirm the sale, lease, encumbrance, conveyance, or exchange of property.
- (2) Petitions for transfer of the proceeding to another county.
- (3) Inventory and appraisal of the estate, including any supplemental inventory and appraisal.
- (4) Accounts of the guardian or conservator.
- (5) Petitions for the authorization to commence an action for the partition of property.
- (6) Petitions for allowances of any nature payable from the estate of the ward or conservatee.
- (7) Petitions for the investment of funds of the estate or for the purchase of real property.
- (8) Petitions for the resignation, removal, suspension, or discharge of the guardian or conservator.
- (9) Proceedings for the final termination of the guardianship or conservatorship proceeding.
- (10) Petitions to direct or allow payment of a debt or claim or to fix, direct, authorize, or allow payment of an attorney's fee.
- (11) Petitions to fix, direct, authorize, or allow payment of the compensation or expenses of a guardian or conservator.
- (12) Petitions to direct, authorize, approve, or modify payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.
- (13) Petitions filed pursuant to Section 2423 (payment of surplus income to relatives of conservatee) or Article 10 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(14) Petitions filed pursuant to Section 2359 or Section 2403 (authorization and instruction or approval and confirmation by court).

(15) Petitions filed pursuant to Article 11 (commencing with Section 2590) of Chapter 6 (independent exercise of powers).

(16) Petitions filed under Section 2520 (conveyance or transfer of property claimed to belong to ward or conservatee or other person).

(17) Petitions filed pursuant to Article 5 (commencing with Section 2500) of Chapter 6 (compromise of claims and actions or extension, renewal, or modification of obligations).

(18) Petitions to fix the residence of the ward or conservatee at a place not within this state.

(19) Petitions to remove property to another jurisdiction.

(20) Petitions filed pursuant to Chapter 4 (commencing with Section 1870) of Part 3 (legal capacity of conservatee).

(21) Petitions filed pursuant to Chapter 9.5 (commencing with Section 2670) (appointment of successor guardian or conservator).

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent. If the request is for all of the matters referred to in subdivision (a), the request may refer generally to the provisions of this section. If the request is for less than all of the matters set forth in subdivision (a), the request shall state specifically each of the matters of which special notice is requested.

(c) A copy of the request shall be served on the guardian or conservator or on the attorney for the guardian or conservator.

(d) The original of the request when filed with the clerk shall be accompanied by a written admission or proof of service.

Comment. Section 2700 is amended to add paragraph (21) (petitions for appointment of successor guardian or conservator) to subdivision (a).

16896

Probate Code § 2750 (amended). Appealable orders

SEC. 6. Section 2750 of the Probate Code is amended to read:

2750. An appeal may be taken from the making of, or the refusal to make, a judgment, order, or decree doing any of the following:

(a) Granting or revoking letters of guardianship or conservatorship except letters of temporary guardianship or temporary conservatorship.

(b) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, conveyance, or exchange of property.

(c) Adjudicating the merits of any claim under Article 5 (commencing with Section 2500) (compromise of claim or action or extension, renewal, or modification of obligation) or Article 6 (commencing with Section 2520) (conveyance or transfer of property claimed to belong to ward or conservatee or other person) of Chapter 6.

(d) Settling an account of a guardian or conservator.

(e) Authorizing and instructing a guardian or conservator or approving and confirming acts of a guardian or conservator.

(f) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.

(g) Directing or allowing payment of a debt or claim or fixing, directing, authorizing, or allowing payment of an attorney's fee.

(h) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a guardian or conservator.

(i) Directing, authorizing, approving, or modifying payments for the support, maintenance, or education of the ward or conservatee or a person legally entitled to support, maintenance, or education from the ward or conservatee.

(j) Granting or denying a petition under Section 2423 (payment of surplus income to relatives of conservatee) or under Article 10 (commencing with Section 2580) of Chapter 6 (substituted judgment).

(k) Transferring the assets of the guardianship or conservatorship estate to a guardian, conservator, committee, or comparable fiduciary in another jurisdiction.

(l) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3.

(m) Allowing or denying a petition of the guardian or conservator to resign.

(n) Removing or discharging the guardian or conservator.

(o) Discharging a surety on the bond of a guardian or conservator.

(p) Appointing a successor guardian or conservator.

Comment. Section 2750 is amended to add subdivision (p) (appointment of successor guardian or conservator). For the provisions relating to appointment of a successor guardian or conservator, see Sections 2670-2689.