

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

LEWIS, D'AMATO, BRISBOIS & BISGAARD

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

LAWYERS

SUITE 1200

221 NORTH FIGUEROA STREET
LOS ANGELES, CALIFORNIA 90012
TELEPHONE (213) 260-1800

TELEX: 104508

FACSIMILES:

LOS ANGELES: (213) 260-7900
SAN DIEGO: (619) 533-8827
SAN FRANCISCO: (415) 434-0888
ORANGE COUNTY: (714) 850-1030
PALM SPRINGS: (619) 322-2800

SAN FRANCISCO OFFICE

SUITE 1800

801 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 392-8880

PALM SPRINGS OFFICE

SUITE C

980 EAST TAHQUITE WAY
PALM SPRINGS, CALIFORNIA 92268
TELEPHONE (619) 322-3401

SAN DIEGO OFFICE

SUITE 800

850 WEST "C" STREET
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 533-1008

ORANGE COUNTY OFFICE

SUITE 1400

880 TOWN CENTER DRIVE
CENTER TOWER BUILDING
COSTA MESA, CALIFORNIA 92626
TELEPHONE (714) 545-9200

LAWRENCE J. KALFAYAN
DIRECT DIAL (213) 660-8147

Law Revision Commission
RECEIVED

May 11, 1993

MAY 11 1993

VIA FACSIMILE (415) 494-1827

File: L-3044
Key: _____

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.

Mr. Stan Ulrich
May 11, 1993
Page 2

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