

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

JULY 6, 7, AND 8, 1978

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on July 6, 7, and 8, 1978.

Law Revision Commission

Present: Howard R. Williams, Chairman
Beatrice P. Lawson, V. Chairman
Judith Ashmarr, July 7 and 8
Absent: George Deukmejian, Senate Member
Alister McAlister, Assembly Member
John D. Miller
Thomas E. Stanton, Jr.
Laurence N. Walker
Jean C. Love
Bion M. Gregory, Ex Officio

Staff Members Present

John H. DeMouilly
Nathaniel Sterling
Robert J. Murphy III

Consultant Present

Garrett H. Elmore, Guardianship-Conservatorship, July 6 and 7

Members of State Bar Subcommittee

Present: Arne S. Lindgren, Chairman, July 6 and 7
William S. Johnstone, July 6 and 7
David Lee, July 6 and 7
Mathew S. Rae, Jr.

Absent: Hon. Arthur K. Marshall
Ann E. Stodden

Members of State Bar Legal Services Section Present

Prof. Martin Levine, July 6
Neal Dudovitz, July 6

Other Invited Participants Present

W. Allen Bidwell, L.A. County Counsel Office
G. Sinclair Price, V. President & Regional Trust Counsel,
United California Bank
Edward J. Wise, California Land Title Ass'n, July 6 and 7

ADMINISTRATIVE MATTERS

Minutes of June Meeting

The Minutes of the June 8 and 9, 1978, Meeting were approved as submitted by the staff.

August Meeting

A meeting was scheduled for August 3 (7:00 p.m. - 10:00 p.m.) and 4 (9:00 a.m. - 5:00 p.m.) in San Francisco.

1978 Legislative Program

The Commission noted Memorandum 78-41--a report on the 1978 legislative program.

STUDY F-30.300 - GUARDIANSHIP-CONSERVATORSHIP REVISION
(REVIEW OF COMMENTS ON EXPOSURE DRAFT)

The Commission met jointly with members of the State Bar Subcommittee appointed to work with the Commission on this project. Other invited participants also were present. (See list of persons present on first page of these minutes.)

The Commission considered Memorandum 78-39, the First Supplement to Memorandum 78-39, the Exposure Draft of the Tentative Recommendation Relating to Guardianship-Conservatorship Law (May 1978), Supplemental Material Relating to Guardianship-Conservatorship Law (June 1978), and letters from the following persons which had been distributed prior to the meeting: Judge Arthur K. Marshall (member, State Bar Subcommittee); Judge Bruce W. Summer; Barbara Thompson, Office of County Counsel of Orange County.

The following actions were taken by the Commission.

Conference of California Judges Study

The staff was requested to obtain information concerning a study being made by the Conference of California Judges concerning Probate Code guardianships and conservatorships and to report back to the Commission.

Preliminary Portion

The staff requested that members of the Commission and others turn in to the staff the preliminary portion of the tentative recommendation. The staff plans to work this portion over in light of revisions made in the proposed legislation and also to improve the discussion of various matters in the preliminary portion.

Review of Features of AB 1417 Relating to Probate Code Provisions

The Commission considered the comments and suggestions, both oral and written, received from various persons concerning the need for review and revision of provisions of AB 1417 which are carried over into the proposed legislation. After an extended discussion, the Commission decided it would consider recommending changes to improve the procedure under those provisions of AB 1417 which will be continued in the proposed guardianship-conservatorship revision only if the recommended

changes would be in the best interests of proposed conservatees and would not operate to the detriment of the desirable and important objectives which were sought to be achieved by the proponents of AB 1417.

Residence Address

The word "address" should be substituted for "residence address" in the proposed legislation.

Bank in This State

The provisions that use the phrase "bank" should uniformly be limited to "in this state." Consideration should be given to developing some language similar to that used for trust companies--trust company authorized to transact a trust business in this state. In any case, the draft should be checked carefully to make sure that court-controlled accounts are in banks subject to the jurisdiction of the California court. If the deposit is subject to withdrawal without prior court authorization, there is no need to require that it be in a bank in this state, but the provisions should be consistent in their use of the term "bank" or "bank in this state" insofar as they apply to deposits that can be withdrawn without court authorization. It was also noted that there is authority to give an allowance to the ward or conservatee and that this authority will permit the establishment of a deposit account by the ward, for example, who is going to school in another state and needs a deposit account in a bank close to where the school is located for convenience. In such instance, the deposit provisions do not apply; the deposit is the deposit of the ward, not the guardian.

Application of Provisions to Minors 14 or Older

The proposed legislation should be revised to make provisions of the Exposure Draft that apply to minors 12 or older apply instead to minors 14 or older. In other words, 14 or older is to be used uniformly in the proposed legislation.

Time Periods for Notices

The proposed legislation should substitute a uniform period of 15 days for the 10-day and 15-day periods of notice provided in the Exposure Draft.

- § 1412. Conservator of the estate; conservatorship of the estate
- § 1415. Conservator of the person; conservatorship of the person
- § 1424. Guardian of the estate; guardianship of the estate
- § 1427. Guardian of the person; guardianship of the person

It was concluded that Sections 1412, 1415, 1424, and 1427 are unclear and confusing. It was suggested that, if the provisions are considered to be necessary, they should be redrafted. In addition, the staff should give consideration to combining the provisions in a single section.

§ 1418. Court

Section 1418 was revised to read:

1418. "Court," when used in connection with matters in the guardianship or conservatorship proceeding, means the court in which such proceeding is pending.

§ 1421. Court investigator

Section 1421 was added to read:

1421. "Court investigator" means a person appointed under

Section 1454,

Section 1454 is a new section to be added to the proposed legislation.

See these Minutes, infra.

§ 1428. Petition

A new section, to be numbered Section 1428, was added to read:

1428. "Petition" includes an application in the nature of a petition.

§ 1450. Petitions, applications, and accounts to be verified

Section 1450 was revised to read:

1450. Except as otherwise specifically provided, a petition, report, or account filed pursuant to this division shall be verified.

The Comment to Section 1450 is to be revised along the lines suggested by Mr. Elmore in Exhibit 4 to Memorandum 78-39.

§ 1452. Trial by jury

The staff is to make a technical revision in the Comment to Section 1452 along the lines suggested by Mr. Elmore in Exhibit 4 of Memorandum 78-39.

§ 1453. When motion for new trial allowed

A new section, numbered as Section 1453, was added to read in substance as follows:

1453. A motion for a new trial may be made only in cases in which, under the provisions of this division, a right to jury trial is expressly granted, whether or not the case was tried by a jury.

Comment. Section 1453 is new. However, the principle stated is the same as the rule under former law. See former Sections 1606 and 1708, incorporating the relevant parts of Section 1231 (motion for new trial in probate proceedings generally).

§ 1454. Court investigator

The following new section was added:

1454. A person appointed as the court investigator for the purposes of a proceeding under this division shall be a person trained in law who is an officer or special appointee of the court with no personal or other beneficial interest in the proceeding.

§ 1455. Guardian ad litem

Exposure Draft Section 1453 is to be renumbered as Section 1455, and the words "minor or incompetent" are to be deleted from the text of the section.

§ 1460. Notice of hearings generally

Section 1460 was revised to read in substance as follows:

1460. (a) Subject to Section 1462, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.

(b) The petitioner (which includes for the purposes of this section a person filing a petition, report, or account) shall cause the notice of hearing to be mailed to each of the following persons (other than the petitioner or persons joining in the petition):

- (1) The guardian or conservator.
- (2) The ward if 14 years of age or older or the conservatee, unless the court for good cause dispenses with such notice.
- (3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, unless the court for good cause dispenses with such notice.

(4) Any interested person (including a governmental entity) who has appeared, or has served and filed notice of appearance, in the particular matter to which the hearing relates, unless the court for good cause dispenses with such notice.

(c) The clerk of the court shall cause the notice of the hearing to be posted at the courthouse of the county where the proceedings are pending if such posting is required by subdivision (c) of Section 2543.

(d) Nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 9 (commencing with Section 2700) of Part 4.

In order to implement the revision of what becomes subdivision (c) of Section 1460, the following subdivision should be added to Section 2543 (subdivision (b) of which makes applicable to sales the provisions relating to sales by administrators):

(c) The clerk of the court shall cause notice to be posted at the courthouse of the county where the proceedings are pending only in the following cases:

(1) Where posting of notice of hearing is required on a petition for the confirmation of a sale of real or personal property of the estate.

(2) Where posting of notice of a sale governed by Section 772 is required or authorized.

(3) In any case where posting of notice is ordered by the court.

We add the new subdivision to Section 2543 because it covers notices of matters other than notices of hearing. (Section 1460 is limited to notices of hearing.)

§ 1461. Notice to Director of Mental Health or Director of Developmental Services

Section 1461 is to be revised so that it does not apply where the director is the petitioner.

The phrase "petition, report, or account" should be substituted for "petition, account, or other paper" in three places in this section.

The numbering in paragraph (2) of subdivision (b) is to be changed to conform to the new numbering.

Professor Bodenheimer's suggestion that notice be given to directors of Regional Centers was discussed but was not adopted.

§ 1462. Court may extend or shorten time for notice or require additional notice

The words "as the court requires" were deleted from subdivision (b) of this section.

§ 1463. Postponement of hearings; notice

The following new section was added:

1463. The court may continue or postpone any hearing, from time to time, in the interest of justice, and no further notice of the continued postponed hearing is required unless otherwise ordered by the court.

Comment. Section 1463 is drawn from Section 1205 (administrators and executors).

§ 1464. Form of notice

Section 1463 of the Exposure Draft should be renumbered as Section 1464 and the word "or" inserted after "chapter" in the second line of the text of the section.

§ 1465. Manner of mailing; when mailing complete

The substance of the following new section was added:

1465. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person pursuant to this division, it shall be sent by:

(1) First-class mail if the person's address is within the United States.

(2) Airmail if the person's address is not within the United States.

(b) Mailing is complete under this division when the notice or other paper is deposited in the mail, postage prepaid, addressed to the person to whom it is mailed.

Comment. Section 1465 is new. Subdivision (a) provides a rule that is consistent with the 1978 amendment to Section 591.4 (Independent Administration of Estates Act). The introductory clause makes clear that Section 1465 does not apply to the extent that the applicable mailing provision expressly provides a different rule. Section 1465 does not apply where service is made by mail in the manner authorized in Section 415.30 of the Code of Civil Procedure. See Section 415.30 and Probate Code Section 1467.

§ 1466. Personal delivery in lieu of mailing

The following new section was added:

1466. If a notice or other paper is required or permitted to be mailed pursuant to this division (whether by first-class, airmail, certified, or registered mail), it may be delivered personally to the person to whom it is required or permitted to be mailed. Personal delivery as provided in this section is deemed to satisfy the provision that requires or permits the notice or other paper to be mailed.

Comment. Section 1466 makes clear that personal delivery is the equivalent of mailing.

The addition of this section will require the staff to search the entire statute and delete from the mailing provisions the additional phrase "or personally delivered." See, for example, Section 1460.

§ 1467. When service by mail deemed complete

The following new section was added:

1467. If service is made by mail pursuant to this division in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date a written acknowledgment of receipt is executed.

Comment. Section 1467 makes clear that, when service is made under this division in the manner authorized in Section 415.30 of the Code of Civil Procedure, the service is complete on the date the acknowledgment of receipt is executed. Section 1467 does not include the requirement found in Section 415.30 that the acknowledgment be returned "to the sender." It is sufficient if proof is made that the person served (or a person authorized to acknowledge service on behalf of such person) did execute a written acknowledgment of receipt. For example, service is complete under Section 1467 if the written acknowledgment is returned to a person other than the sender.

Section 1467 applies only where service is made by mail in the manner authorized in Section 415.30. The section does not apply where a provision of this division merely requires that a notice or other paper be mailed. In the latter case, the applicable provision ordinarily is satisfied when the notice or other paper is deposited in the mail. See Section 1465.

§ 1468. Proof of giving of notice

Section 1464 of the Exposure Draft will be renumbered as Section 1468.

§ 1471. Effect on existing guardianships and conservatorships generally

The numbering of this section in the text of the section should be corrected to change "1472" to "1471." "Section 1474" was substituted for "Sections 1474 and 1475" in the introductory phrase of the section.

§ 1472. Effect on bonds, security, and other obligations

This section was revised to read:

1472. The bonds, security, and other obligations in effect immediately prior to the operative date shall continue to apply on and after the operative date the same as if filed, issued, taken, or incurred under this division after the operative date.

§ 1473. Appointments or confirmations made under prior law

The words "on or" were inserted before "after" in the last line of the text of this section.

§ 1474. Pending matters arising under prior law

This section was revised to read:

1474. Subject to Sections 1475 and 1476:

(a) Any petition, report, account, or other matter filed or commenced before the operative date shall be continued under this division, so far as applicable, unless in the opinion of the court application of a particular provision would substantially interfere with the effective conduct of the matter or with the rights of the parties or other interested persons, in which case the particular provision does not apply and prior law applies.

(b) If any right or remedy is abrogated or substantially curtailed by the provisions of this division on or after the operative date, the person entitled to such right or remedy shall have one year after the operative date in which to commence enforcement thereof under prior law.

§ 1475. Effect on guardianships of adults and married minors

The word "petition" was substituted for "application." The Commission discussed a problem (identified by the State Department of Health) that was created by AB 1417 (1976) but concluded that dealing with the problem was beyond the scope of the present project.

§ 1476. Effect on conservatorship of person for whom guardian could have been appointed

This new section, set out in the Supplemental Material, was approved as drafted.

§ 1477. Amendment of letters of existing guardianships and conservatorships

This section, a revised version of Section 1476 of the Exposure Draft, was set out in the Supplemental Material and was approved as drafted.

§ 1478. Effect on nomination by adult of a guardian

This section, Section 1477 of the Exposure Draft, is to be re-numbered as Section 1478.

§ 1479. References in statutes

This section, Section 1478 of the Exposure Draft, is to be re-numbered as Section 1479.

§ 1480. Rules of Judicial Council

This section, Section 1479 of the Exposure Draft, is to be re-numbered as Section 1480. The operative date provision (Section 4 of the proposed legislation on page 241 of the Exposure Draft) is to be revised to permit the Judicial Council to act under this section prior to the operative date.

§§ 1500-1501. Appointment of testamentary guardian

These sections should be revised to provide for the nomination of a guardian rather than the "appointment" of a guardian. The nomination should be by a "signed writing," the nomination to take effect upon the death of the nominating parent. The following views were expressed concerning the sections. The limitation in subdivision (a) of Section 1501 that the property be taken by "will or by succession" was considered too limiting, and the limitation in subdivision (b) of Section 1501 that the property be taken "by will" also was considered to be too limiting. Both provisions should cover any property the ward will receive from the person executing the signed writing upon death of such person, whether by virtue of a will, succession, trust, insurance proceeds, retirement benefits, profit-sharing, or otherwise.

Provision should be made that a parent or nonparent can nominate a guardian of the estate as to property which the child will receive from the person making the nomination. The provision should apply to all transfers that take effect upon the death of the person making the nomination.

The staff should draft a provision giving a parent a right to nominate a guardian for a child in the event the parent becomes incompetent and a guardian for the child is needed.

It was suggested that Sections 1500 and 1501 might be consolidated in one section drafted along the following lines:

(1) Either parent may nominate for his or her surviving children a guardian of the estate of that child if the nominator is the surviving spouse.

(2) Either parent or any other person may nominate a guardian of the estate that the child receives from the nominator, whether inter vivos or at death.

(3) A parent can nominate a guardian of the person of a surviving child if the parent is the surviving spouse, to take effect upon the death of the parent.

The phrase "any child surviving the nominator" was considered better than any "child, living or likely to be born."

Subdivision (c) of Section 1501 should be continued in substance and modified to require that the letters reflect the limited estate in the case of a testamentary guardian as to particular property.

A provision should be added to the statute providing that, where there is a general guardian of the estate and a guardian as to particular property, either guardian can petition for instructions on how the duties imposed on the guardian of the estate are to be allocated between the two guardians.

§ 1510. Petition for appointment

This section will need to be revised to reflect the change in the testamentary appointment sections.

The following should be substituted for subdivision (c)(2):

(2) The person having legal custody of the proposed ward and, if that person does not have the care of the ward, the person having the care of the ward.

The word "residence" should be deleted from the phrase "residence address" in this section.

A provision should be added to this section that the petition disclose any pending adoption proceeding for the proposed ward and perhaps other pending proceedings where the custody of the proposed ward is in issue. Subdivision (b) of Section 1514 is the source of this provision.

New Section - Amendment of guardianship petition if adoption petition filed

A new section should be added, probably following Section 1511, to make general the requirement imposed by Section 1542 of the Exposure Draft (which was limited to nonrelative guardianships). Section 1542 was deleted as unnecessary.

§ 1511. Notice of hearing

In subdivision (b)(1), "14" should be substituted for "12," and "residence" should be deleted from subdivision (c) and, in subdivision (b)(3), "legal custody" should be substituted for "the care." The following paragraph should be added to subdivision (c):

(3) The person having the care of the proposed ward if (i) the proposed ward is under the age of 14 and (ii) the person having the care of the proposed ward is not the person having legal custody of the proposed ward.

Subdivision (f)(2) should be revised to insert "judicially" before "declared."

Subdivision (g) was revised to add at the end of the subdivision the following: "or that the giving of the notice would be contrary to the interest of justice."

Subdivision (h)(2) should be revised to conform to the addition made to subdivision (g).

§ 1512. Order for temporary custody

This section was deleted. Provision is to be made in the proposed legislation for appointment of a temporary guardian of the person.

§ 1513. Investigation and report by court-designated officer

Section 1513 was revised to read in substance as follows:

1513. (a) The court investigator, probation officer, or domestic relations investigator in the county in which the petition for appointment of a guardian is pending shall make an investigation of each case whenever requested by the court.

(b) The officer making the investigation shall file with the court a written confidential report. The report may be considered by the court and shall be made available only to the persons who have been served in the proceeding and the persons who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of all such persons who are present at the hearing.

(c) When the court directs that an investigation and report be made under this section, the court shall make an inquiry into the financial condition of (1) the parent, parents, or other person charged with the support and maintenance of the proposed ward and (2) the estate of the proposed ward. If the court finds such parent, parents, or other person or the proposed ward's estate able, in whole or in part, to pay the expense of the investigation and report, the court shall make an order requiring such parent, parents, or other person, or the guardian of the ward's estate when appointed, to repay to the county such part, or all, of such expenses of the investigation and report as, in the opinion of the court, is proper. The repayment shall be made to the county officer designated by the board of supervisors, who shall keep suitable accounts of such expenses and repayments and shall deposit the collections in the county treasury. An order may be made under this subdivision only after a hearing if a hearing is requested.

The sentence was deleted from Section 1513 of the Exposure Draft that required an investigation and report in every case where a guardianship is filed for a minor of two years of age or under if the petition requested appointment of a nonrelative as a guardian. The deletion was subject to staff determination whether the sentence served a useful purpose. [After the meeting, the staff determined that legislation enacted by the 1978 Legislature and just signed by the Governor had deleted this sentence.]

§ 1515. No guardian of person for married minor

The Comment should include a discussion of the interim situation where an annulment proceeding is pending. Prior to the adjudication that the marriage is a nullity, if the married minor is in need of a protector of the person, a conservatorship must be established since a guardianship cannot be established. When the marriage is adjudged a nullity, a guardianship of the person can then be established.

§ 1541. Additional contents of petition for guardianship

Subdivision (b) was deleted because the same matter is covered by the requirement that this information be included in the petition for guardianship.

§ 1542. Amendment of guardianship petition if adoption petition filed

This section was deleted because the requirement imposed by this section was made a general one for all petitioners.

§ 1543. Delivery of copy of petition to Director of Social Services

"Director of Social Services" was substituted for "Director of Developmental Services" in this section.

§ 1544. Report on suitability of guardian

The phrase "local agency designated by the board of supervisors to provide public social services" should be substituted in subdivision (a) for "local agency to which foster family home licensure has been delegated" to conform to the 1978 amendment to the section from which Section 1544 is drawn.

Subdivision (b) was revised to read in substance:

(b) The report filed with the court pursuant to this section is confidential. The report may be considered by the court and shall be made available only to the persons who have been served in

the proceeding or who have appeared in the proceeding or their attorneys. The report may be received in evidence upon stipulation of all such persons who are present at the hearing.

§ 1601. Termination by court order

Section 1601 was revised to read:

1601. Upon petition of the guardian, a parent, or the ward and after such notice as the court may require, the court may make an order terminating the guardianship if the court determines that it is no longer necessary that the ward have a guardian or that it is in the ward's best interest to terminate the guardianship.

§ 1650. Appointment of counsel

The following new chapter was added:

CHAPTER 3. APPOINTMENT OF COUNSEL

§ 1650. Appointment of counsel to represent ward or proposed ward

1650. In any proceeding under this part for the appointment of a guardian or the termination of a guardianship, the court may, if it finds it would be in the best interest of the proposed ward or ward, appoint private counsel to represent the interests of the proposed ward or ward. When the court appoints counsel under this section, counsel shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. Such determination may be made only after a hearing if a hearing is requested. The amount so determined shall be paid by the parent, parents, or from the estate of the proposed ward or ward, in such proportions as the court deems just.

Comment. Section 1650 is drawn from Civil Code Section 4606 which provides authority for appointment of counsel in proceedings under the Family Law Act where there is in issue the custody of a minor child. Section 1650, like Civil Code Section 4606, recognizes that independent representation of the minor whose custody is in issue may be desirable in certain cases.

§ 1812. Order of preference for appointment as conservator

The following clause was added at the beginning of subdivision (a) of Section 1812: "Subject to Section 1810, the selection"

§ 1820. Filing of petition

This section should be revised by renumbering existing paragraph (3) of subdivision (a) to be paragraph (4) and adding a new paragraph (3) to subdivision (a) to permit a petition to be filed by:

(3) Any other person or entity eligible for appointment as a conservator under this code or under the Welfare and Institutions Code.

The Commission discussed whether the time within which a petition could be filed under subdivision (b) should be limited and declined to impose such a limit. It was agreed by all present that the possibility of premature petitions under subdivision (b) was remote and could be controlled by the court.

§ 1821. Contents of petition

This section should be conformed to any changes made in Section 1831. For example, paragraph (3) of subdivision (f) should be revised to provide:

(3) That the proposed conservatee be adjudged to lack the capacity to make necessary medical decisions and that the conservator of the person is authorized to require the conservatee to receive any necessary medical treatment (including surgery) that may thereafter be necessary.

Paragraph (2) of subdivision (f) should also be revised to conform to the revision of Section 1831.

An additional subdivision should be added to Section 1821, to read in substance:

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition.

§ 1822. Notice of hearing

Before the colon in subdivision (a), the following was inserted:
"(other than the petitioner or person joining in the petition)".

§ 1824. Service on proposed conservatee of citation and petition

In Section 1824, "15 days" was substituted for "10 days".

§ 1825. Attendance of proposed conservatee at hearing

The following revisions were made in this section:

(1) In the introductory clause of subdivision (a), the words "either or" were deleted.

(2) In paragraph (2) of subdivision (a), after "hearing," the words "by reason of medical inability" were added.

(3) The following additional paragraph was added to subdivision (a), to read in substance:

(3) Where the court investigator reports to the court that the proposed conservatee is not willing to attend the hearing, does not wish to contest the establishment of the conservatorship, and does

not object to the proposed conservator or prefer that another person act as conservator, and the court makes an order that the proposed conservatee need not attend the hearing.

§ 1826. Information to proposed conservatee by court investigator; investigation and report

Subdivision (a) and the introductory portion of subdivision (b) were revised to read:

1826. If the petition alleges that the proposed conservatee is not willing to attend the hearing or upon receipt of an affidavit or certificate attesting to the medical inability of the proposed conservatee to attend the hearing, the court investigator shall do all of the following:

Paragraph (3) should be revised to read in substance:

(3) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

§ 1828. Information to proposed conservatee by court

Just before the colon in the introductory clause of subdivision (a), the following was inserted: "so far as relevant to the allegations and determinations requested in the petition."

§ 1830. Order appointing conservator

The phrase ", among other things," was inserted after "shall" in the first line of this section.

§ 1831. Adjudication of conservatee's lack of legal capacity and lack of capacity to make medical decisions; withdrawing power to enter into specified transactions

General approach. The Commission discussed at some length whether the rule of the Davis case should be reversed. In other words, should a conservatee have only such powers as the court determines he possesses and, absent such determination, the conservatee would be deemed to be an incompetent and have no powers. Although the Commission recognized that many practitioners were of the view, prior to the Davis case, that a conservatee was an incompetent, the Commission decided not to change the rule in the Davis case.

Withdrawing power to enter into specified transactions. Subdivision (a)(2) of Section 1831 was revised to read:

(2) Withdraw the power of the conservatee to enter into any one or more of the following: (i) specified types of transactions; (ii) any transaction in excess of a specified amount; (iii) any transaction other than specified types of transactions.

Medical care. The Commission revised subdivision (b) of Section 1831 to read in substance:

(b) If the court determines that the conservatee is unable to understand the nature and effect of decisions relating to the conservatee's medical care, the court may adjudge that the conservatee lacks the capacity to make necessary medical decisions and by order authorize the conservator of the person to require the conservatee to receive any medical treatment (including surgery) that may thereafter be necessary.

The Commission suggested that the staff consider a provision to authorize the court to provide that the conservator's authority to require the conservatee to receive medical treatment shall terminate at a particular time. Elsewhere in the statute, it should be made clear that the court may review and redetermine the question of the conservator's authority to require the conservatee to receive medical care at the time of the biennial review and to provide that the court investigator should inquire into the conservatee's capacity to understand the nature and effect of medical decisions at the time of the biennial review and should recommend to the court whether the conservator's authority should be continued.

The Commission suggested that the staff draft separate provisions for court approval of medical treatment for a person whose competence to consent is doubtful but who has no conservator. Such provisions should contain appropriate procedural protections, including right to counsel, similar to the special procedure available to permit transfers of community and homestead property. Mr. W. Allan Bidwell of the Los Angeles County Counsel's Office agreed to submit draft provisions to the staff to be considered in preparing the separate provisions.

Letters of conservatorship. The second sentence of subdivision (c) of Section 1831 was revised to read in substance:

The terms of any order under subdivision (b) shall be included in the letters of conservatorship.

This revision was made because the Commission determined that the letters are to state any additional authority or limitations on authority

the court orders. The letters will not state the limitations on the authority of the conservatee. See discussion under Section 2311 in these Minutes.

Adjudication that conservatee is an incompetent. The Commission approved the use of the term "legal capacity" but directed that a new section be added to the draft that will provide that an adjudication that the conservatee lacks legal capacity is an adjudication that the conservatee is incompetent.

The staff was requested to review the law of other states to determine if some better term than "legal capacity" or "incompetent" can be used. Also, the staff should report on the effect of adjudicating a conservatee an incompetent.

§ 1853. Failure to locate conservatee; removal of conservator on failure to produce conservatee

The first portion of subdivision (a) of Section 1853 was revised to read:

1853. (a) If the court investigator is unable to locate the conservatee, the court shall order the court investigator to serve notice upon the conservator of the person, or if there is no conservator of the person upon the conservator of the estate, in the manner provided in Section 415.10 of the Code of Civil Procedure. . . .

The Commission considered the problem created when the conservatee leaves the facility where the conservatee has been resident and cannot be found. The Comment to Section 1853 should indicate that this kind of situation would constitute "good cause" for not making the conservatee available to the court investigator. Another type of "good cause" situation might be where the conservatee is outside the state for extended medical treatment.

The question was raised whether this chapter applies to the conservatorship of an "absentee" as defined in Section 1403. Provisions should be included to deal with this situation. The question was also raised whether this chapter applies to nonresidents. The staff is to give consideration to this question.

The Commission discussed the sanction provided by Section 1853 for the failure of the conservator to produce the conservatee. The question was raised as to the status of a clearly incompetent conservatee if the conservator fails to produce the conservatee. Does the conservatee have

his legal capacity restored when the conservatorship is terminated? The Commission concluded that a better sanction is to order the removal of the conservator and to appoint another conservator who will make the conservatee available to the court investigator. This will protect the conservatee and at the same time remove the conservator who is not willing to cooperate with the court investigator. It should be noted that removal is the sanction provided for failure to comply with the prohibition against involuntary civil mental health treatment. See Section 2650(g).

Accordingly, subdivision (b) of Section 1853 was revised to read:

(b) If the conservatee is not made available within the time prescribed, unless good cause is shown for not doing so, the court, on its own motion or on petition, shall revoke the letters of conservatorship and enter judgment accordingly and, in the case of a conservator of the estate, shall order the conservator to file an accounting and to surrender the estate to the person legally entitled thereto.

It should be noted that Section 2110 provides that when, for any reason a vacancy occurs in the office of conservator, the court may appoint a successor, after notice and hearing as in the case of an original appointment.

§ 1860. When conservatorship terminates

This section was revised in substance to read:

1860. A conservatorship continues until terminated by any of the following:

- (a) The death of the conservatee.
- (b) The annulment of the marriage of a minor conservatee.
- (c) Order of court.

§ 1861. Petition for termination of conservatorship

Section 1861 was revised to read in substance:

1861. (a) A petition for the termination of the conservatorship may be filed by any of the following:

- (1) The conservator.
- (2) The conservatee.
- (3) Any person or entity eligible for appointment as a conservator under this code or under the Welfare and Institution Code.

(4) Any relative or friend of the conservatee.

(b) The petition shall state facts showing that the conservatorship is no longer required.

Comment. Section 1861 continues the second and third sentences of former Section 1755. Paragraph (3) of subdivision (a) is new, but the persons and entities therein described probably were included under the language "any relative or friend of the conservatee" contained in former Section 1755.

§ 1870. Right to counsel

Section 1870 is to be redrafted to achieve two objectives:

(1) The court should be authorized to appoint legal counsel in any case where the appointment of legal counsel will be helpful to the resolution of the matter or necessary to protect the interests of the conservatee.

(2) The right of mandatory counsel under Section 1870 (on appointment of a conservator or termination of a conservatorship) should be extended to cases of removal from residence by temporary conservator, but the court should be required to appoint counsel only where the proposed conservatee requests the assistance of a lawyer to oppose the appointment of a conservator or the removal from residence or to support the termination of the conservatorship.

The words "so chooses" in Section 1870 were questioned. This wording does not take into account that the conservatee may lack the capacity to make a choice. Perhaps the word "desires" or "wishes" would be better.

Subdivision (c) was discussed. It was agreed the subdivision is inadequate but, because of the fiscal implications, no change was made in the subdivision.

§ 1871. Compensation of court-appointed counsel

The word "present" was deleted in two places in the section.

The staff should consider whether Section 1871 should provide for a hearing, if requested, on the issue of costs.

§ 2100. Law governing guardianships and conservatorships

The substance of the material to be added in the Comment (as set out in the Memorandum) was approved for addition to the Comment.

§ 2101. Relationship confidential and subject to law of trusts

The Commission discussed the issue raised by Mr. Price set out in the Memorandum and decided not to attempt to deal in the statute with the problem of what investment practices should be followed. The practice to be followed would depend on the situation of the estate and the ward or conservatee. The length of time the proceeding is likely to continue is a factor to be taken into account. However, after considerable discussion, the Commission decided not to attempt to write any provision into the statute or in the Comment to deal with the problem. The variables were considered too complex.

§ 2103. Effect of court authorization, approval, or confirmation

In order to restore the existing law, the last sentence of Section 2103 was revised to read:

This section does not apply where the judgment, order, or decree is obtained by fraud or conspiracy or by misrepresentation as to any material fact contained therein or in the petition for same.

A cross-reference to Section 2103 should be added under Section 2334.

§ 2105. Joint guardians or conservators

This section was revised in substance to read:

2105. (a) The court, in its discretion, may appoint for a ward or conservatee:

- (1) Two or more joint guardians or conservators of the person.
- (2) Two or more joint guardians or conservators of the estate.
- (3) Two or more joint guardians or conservators of the person and estate.

(b) When joint guardians or conservators are appointed:

- (1) Each shall qualify in the same manner as a sole guardian or conservator.
- (2) The act of a majority of the joint guardians or conservators is valid.

(c) If one of the joint guardians or conservators dies or resigns, the powers and duties continue in the remaining joint guardians or conservators until further appointment is made by the court.

(d) Where joint guardians or conservators have been appointed and one or more are absent from the state or legally disqualified from serving, the court may, by order made with or without notice, authorize the remaining joint guardians or conservators to act as to all matters embraced within its order.

§ 2106. One guardian or conservator for several wards or conservatees

In subdivision (b) of Section 2106, "with respect to the newly proposed ward or conservatee" was added following "notice and heard."

§ 2107. Powers and duties of guardian or conservator appointed in California for nonresident

In subdivision (a), following "guardian or conservator" in the third line of the text of the section, the words "of the person" were inserted.

Both the section heading and the Comment should indicate that this section deals with a guardian or conservator appointed in California for a nonresident.

§ 2108. Powers and duties of testamentary guardian

This section, found in the Supplemental Material, was approved. However, the section will need to be reviewed when the provisions relating to testamentary guardians are revised from an appointment to a nomination system.

§§ 2201-2202. Venue

After a lengthy discussion, the Commission decided to make no change in Sections 2201 and 2202. Some persons present were in favor of expanding venue as proposed by the State Department of Health. A few persons favored restricting venue by deleting the provision that permits venue in a county that is in the best interests of the proposed ward or proposed conservatee.

§ 2203. Court having priority where proceedings instituted in several counties

The following new section was added:

2203. (a) If proceedings for the guardianship or conservatorship of the estate are instituted in more than one county, the guardianship or conservatorship of the estate first granted, including a temporary guardianship or conservatorship of the estate, extends to all the property of the ward or conservatee within this state.

(b) If proceedings for the guardianship or conservatorship of the person are instituted in more than one county, the guardianship or conservatorship first granted, including a temporary guardianship or conservatorship, governs and the other proceeding shall be dismissed.

Comment. Subdivision (a) of Section 2203 continues the substance of the last sentence of former Section 1570 (guardianship) except that the provision has been extended to residents as well as nonresidents and the reference to a temporary guardianship or conservatorship is new. The language of the last sentence of former Section 1570 that the "court of no other county has jurisdiction" has been omitted as unnecessary. There was no provision under prior conservatorship law comparable to subdivision (a). Subdivision (b) is new and is adapted from subdivision (a).

§ 2210. Authority to transfer proceeding

The Commission discussed the suggestion that the authority under existing law to transfer the proceeding outside California be retained and decided not to retain this authority but instead to provide for a procedure for the transfer of assets outside California.

§ 2211. Who may petition for transfer

This section should be revised to add the spouse of the ward or conservatee as a person who may file a petition for transfer.

§ 2214. Hearing and order

The phrase "to support" should be inserted in the introductory clause of subdivision (a).

The Comment should note that the persons required to be listed in the petition (indicating who those persons are) are covered by subdivision (a)(1).

§ 2250. Appointment

Provision should be made for the appointment of a temporary guardian of the person. All necessary revisions should be made in the proposed legislation to conform to this decision.

The first sentence of subdivision (b) of Section 2250 was revised to read: "The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator."

A new subdivision (d) was added to the section, to read in substance:

(d) One petition may request the appointment of a guardian or conservator and also the appointment of a temporary guardian or conservator or such appointments may be requested in separate petitions.

§ 2251. Issuance of letters

The letters should include the termination date of temporary appointment.

§ 2252. Powers and duties

This section was revised to read:

2252. (a) Except as otherwise provided in subdivision (b) and subject to Sections 2253 and 2254, a temporary guardian or temporary conservator has only the power and authority and only the duties that are necessary to provide for the temporary care, maintenance, and support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

(b) The temporary guardian or temporary conservator has such additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require.

§ 2253. Change of conservatee's residence generally

The words "by a preponderance of the evidence" were deleted from subdivision (c).

The provision concerning appointment of counsel should be deleted from this section and be covered by the general section--Section 1870. Under the general provision, the proposed conservatee would have a right to counsel if he or she desires to oppose the move.

The same procedure to be provided on appointments should be provided here. If the court investigator finds that the conservatee has no objection to the move and does not object to the move, then the simplified procedure would be permitted and the conservatee would not need to be present at the hearing. To avoid having the conservatee come into court, the court investigator would have to report to the court that the proposed conservatee has expressed no objection to the move, that the move is required to prevent irreparable harm to the conservatee, and that no means less restrictive of the conservatee's liberty will suffice to prevent such harm.

The staff should check on pending legislation affecting this section.

§ 2254. Emergency cases; transfer between health facilities; removal with conservatee's consent

The substance of the following was added to this section:

(d) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee without court approval from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care.

This provision was included to permit the moving of the conservatee from a hospital to an extended care facility without a court order. The provision will avoid the unnecessary expense of keeping the conservatee in the hospital when the conservatee's needs can be met in a less expensive facility. This provision does not involve a change in residence.

Section 2254 also needs to be revised to reflect the decisions made with respect to Section 2254 insofar as the one judicial day provision is concerned.

§ 2256. Accounts

The words "his or her" were substituted for "the" before "account" and before "first regular account" in this section.

§ 2311. Form of letters

The Commission discussed at some length the purpose of the letters of guardianship or conservatorship and the content of the letters. The Commission concluded that the letters should not state the powers and duties of a guardian or conservator that exist by virtue of the statute except to the extent that the court grants additional powers or limits powers that the guardian or conservator would otherwise have under the statute. The Commission took the view that the letters should not state the extent to which the conservatee lacks legal capacity or is incompetent. There are two reasons for this decision. First, a person dealing with a known conservatee is placed on notice that the conservatee is not a fully competent person and has a duty of inquiry. The person can request a copy of the court order appointing the conservator, and this order will include the necessary information concerning the extent to which the legal capacity of the conservatee has been determined by the court in the conservatorship proceeding. Second, the letters should not contain a statement and that the conservatee has been determined to lack legal capacity (adjudicated to be an incompetent) or has been determined to have only limited legal capacity because the letters should not label the conservatee as an incompetent or person of limited competency. To so label the conservatee in the letters would defeat one of the purposes of enacting the conservatorship law which was to avoid embarrassment to the conservatee and the stigma of incompetency that was created when a guardianship was established.

There should be a cross-reference under this section to the section requiring that the date of termination be stated in letters of a temporary guardian or conservator.

§ 2312. Notice to ward or conservatee

This section was revised to read:

2312. Before letters of guardianship or conservatorship may be issued, a copy of the order of the court appointing the guardian or conservator shall be mailed to the ward if 14 years of age or older or to the conservatee.

§ 2321. Waiver of bond by conservatee

The words "as petitioner" were deleted from this section. The Comment should indicate that the petitioner can waive in a prior nomination, in the petition, or at the court hearing.

§ 2328. Deposit of money or other property subject to court control

The phrase "with or without notice," was inserted after "in its discretion," in subdivision (a) of this section. Interest is also subject to court control and the section should be revised to make this clear, if necessary.

§ 2329. Estate not exceeding \$10,000 consisting of deposited money

This section was deleted. It was feared that an estate could fall within the description of Section 2329 and yet have substantial income from sources that would not necessarily be considered part of the "estate." The section would appear to preclude the court from requiring a bond in such a case. The need for Section 2329 was also doubtful in view of Section 2328.

§ 2330. Reduction in amount of bond

The Comment should note that the amount of the bond can be reduced under Section 2328 with or without notice. Subdivision (d) of Section 2330 should have "with or without notice" added.

§ 2331. Additional bond on real property transactions

The introductory clause of this section was revised to read:

Upon the confirmation of the sale of any real property of an estate, or upon the authorization of any mortgage or deed of trust with respect to real property of an estate by which money is to be raised, . . .

§ 2334. Suit against sureties on bond; limitation period

The words "within three years" were inserted after the word "or" at the end of the first line on page 128 of the Exposure Draft.

§ 2401. Care, custody, control, and education

The phrase "has charge of" was substituted for "is in charge of" in this section.

§ 2402. Residence of ward or conservatee

The words "promptly mail" were substituted for "give prompt" in subdivision (b).

§ 2403. Medical treatment of ward

The Commission revised subdivision (b) of proposed Section 2403 to read:

(b) If the ward is 14 years of age or older, except in an emergency case in which the ward faces loss of life or serious bodily injury, no surgery shall be performed upon the ward without either (1) the consent of both the ward and the guardian or (2) a court order specifically authorizing such surgery obtained pursuant to Section 2406.

A provision is to be added to Section 2403 to provide that, if the guardian in good faith on the basis of medical advice concludes that there is an emergency in which the ward faces loss of life or serious bodily injury, the guardian may consent to medical treatment for the ward without the ward's consent, and the guardian, the physician, medical facility, and all treating personnel are thereafter insulated from any liability for proceeding without the ward's consent.

§ 2404. Medical treatment of conservatee

Section 2404 is to be revised to provide in substance:

(1) A conservatee who has not been adjudged to lack the capacity to make medical decisions may consent to medical treatment, and consent of the conservator is not required. (However, the person providing the medical treatment is protected only if the conservatee's consent is informed consent. See *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972).)

(2) If the conservatee does not object to the medical treatment, the conservator may give informed consent for the conservatee. (The person providing the medical treatment may wish to secure the consent of

both the conservatee and the conservator. The consent of the conservatee would be obtained so that it is clear that the conservatee does not object to the treatment; the consent of the conservator so that it is clear that an informed consent has been obtained. If the conservatee is in such a condition that he is unable to give consent, the consent of the conservator would be sufficient since consent of the conservatee is not required only that the conservatee does not object.)

The Comment perhaps should indicate that, although the conservatorship law generally does not provide specific rules concerning the extent of the powers retained by a conservatee who has not been adjudicated to lack capacity, Section 2404 does so because of the uncertainty and importance of the medical care question. The Comment possibly should note that the conservatee's consent must be informed consent. See *Cobbs v. Grant*, 8 Cal.3d 229, 502 P.2d 1, 104 Cal. Rptr. 505 (1972). The Comment also should note that, if the conservator wants to forestall treatment, the conservator must seek an adjudication that the conservatee lacks capacity to make medical decisions.

Section 2404 should make clear that, when the conservator determines in good faith based upon medical advice that the conservatee should be required to receive medical treatment because the case is an emergency case in which the conservatee faces loss of life or serious bodily injury, no person is liable for proceeding without the conservatee's consent. The provision would be comparable to the provision added to Section 2403.

The Comment should make clear that the section does not deal with the approval for payment of the expenses for medical treatment which is the responsibility of the conservator of the estate. The Commission discussed the question of whether notice of a petition by the conservator of the person for court-ordered medical treatment should be given to the conservator of the estate but decided not to require such notice. (Revision should be made for obtaining such notice by filing a request for special notice.)

The Commission suggested that the staff submit the redraft of the medical care provisions to an appropriate medical body for review and comment.

§ 2406. Court-ordered medical treatment

The ward or conservatee should be able to petition for medical treatment which the guardian or conservator is not willing to give consent to.

§ 2407. Additional conditions in order of appointment

The following sentence was added at the end of Section 2407: "The terms of the order shall be included in the letters of guardianship or conservatorship."

§ 2408. Instructions from or approval by court

The portion of subdivision (a) of Section 2408 reading ", with respect to the powers and duties prescribed in this chapter" was deleted.

§ 2501. Duty to use ordinary care and diligence in management of estate

The first sentence of this section was revised to read:

The guardian or conservator has the management of the estate and in managing the estate shall use ordinary care and diligence.

Subdivision (b) should be revised to conform to this change.

In the last line of the Comment on page 137, the word "greatly" was deleted.

§ 2503. Instructions from or approval by court

The use of "other interested party" in this section and other sections should be reviewed. "Other interested person" would be better language. In some cases, creditors are specifically referred to; in others, creditors are not referred to. The staff should determine whether some uniform language should be used in the various sections that now refer to "other interested party" if there is no good reason for the different language used in the draft in the various sections.

§ 2510. Support, maintenance, and education

Orange County suggested that proposed Section 2510(d) should provide that prior authorization be obtained for payments for the support of those legally entitled to support, maintenance, or education from the ward or conservatee since such a person could be the guardian or conservator and there would be a conflict of interest. The conflict of interest provisions of the trust law were considered adequate to deal with

this problem. Subdivision (d) was revised to insert at the beginning of the subdivision: "Subject to Section 2230 of the Civil Code, nothing"

§ 2513. Payment of surplus income to next of kin of conservatee

The substance of the following (taken from the Comment) was added to the statute:

The court in making allowances under this section may attach conditions if the court determines that the conservatee would have imposed such conditions if the conservatee had the capacity to act.

The conservatee should be authorized to petition under this section.

The Commission discussed whether the section should be expanded to cover guardianships, but the Commission declined to so extend the scope of the section because the minor's estate should be preserved.

§ 2515. Payment of debts and expenses generally

In subdivision (a)(1), the words "and reasonable" were deleted.

The first sentence of subdivision (a)(2) was revised to read: "The just debts incurred by the ward or conservatee during the guardianship or conservatorship for the necessities of life to the extent reasonable."

The Comment should indicate that "just" means legally enforceable. See claims section in estate area (Section 700). The Comment needs to indicate the difference between subdivision (a)(1) and (a)(2).

There should be a reference in the Comment to Sections 2630-2632. The Commission discussed whether prior court authorization should always be required for payment of compensation to the guardian or conservator or a fee to the attorney. The Commission concluded that the rule should be the same for conservator's compensation and fees for attorneys. There should be prior authorization for any compensation or fee, but there may be payment of compensation or fees for services actually rendered if the court has made a prior authorization for payment of such services to be rendered when rendered, subject to review of such payments on the regular accounting. Under existing practice, some courts permit payment without prior authorization but others only permit payment if authorized at the accounting. Under the proposal, the court might authorize a payment to the conservator of so much per month on account. The court order would authorize the conservator to take so

much each month on account for services rendered, subject to review when the accounting of the conservator is made as to whether the services were actually rendered. If these provisions are included in Section 2515, they should be referred to in the Comment to Section 2630. There would, in the case of some estates, be obvious tax advantages to the periodic payments. The court can refuse authority to make periodic payments where the estate is a small one. The Comment should point out what the effect of the proposal is, not just state that the requirement of court authorization for periodic payments is new.

§ 2516. Priority for wage claims

The Commission determined that a provision making the Section 718 procedure applicable to wage claims should be included in Section 2516, but the staff is to give consideration to providing a general provision making the Section 718 procedure available for all claims and, if the staff concludes that such a general provision is desirable, the staff should draft a general provision for inclusion in the statute.

§ 2520. Extent of court supervision

Section 2520 was revised to read in substance:

2520. (a) Unless this article specifically provides for a proceeding to obtain court approval or requires court approval, the powers and duties set forth in this article may be exercised or performed by the guardian or conservator without court approval, instruction, or confirmation. Nothing in this subdivision precludes the guardian or conservator from seeking court approval, instructions, or confirmation pursuant to Section 2403.

(b) Upon petition of the ward or conservatee, a creditor, or any other interested person, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a) as to any particular power or duty or as to particular powers or duties. Notice of the hearing on a petition under this subdivision shall be given for the period and in the manner prescribed in Chapter 3 (commencing with Section 1460) of Part 1.

Concerning the use of "other interested person," see the discussion in these Minutes under Section 2503.

§ 2521. Collection of debts and benefits

The second sentence of the Comment was revised to read in substance:

Nonetheless, the guardian or conservator remains subject to the duty to use ordinary care and diligence in managing the estate

(Section 2501) and this duty ordinarily will require that the guardian or conservator take appropriate action to collect a debt or benefit. Where the potential recovery is less than the cost of the action needed to attempt to recover a debt, Section 2521 does not impose a duty on the guardian or conservator to act. In cases where there is a question concerning the propriety of initiating lawsuit to collect the debt, the guardian or conservator should obtain instructions from the court before commencing the action. See Section 2503 (instructions concerning management of estate).

At the end of the third sentence of the Comment, the following words were added: "and benefits under private plans."

§ 2523. Deposit or investment of money

The second and third sentences of this section were deleted.

§ 2524. Deposit of personal assets with trust company

The Comment should indicate what constitutes "personal assets" and the use of this term in this section and the entire statute should be considered by the staff. Reference should be made to the Financial Code provisions and the Comment expanded.

§ 2456. Deposits and investments withdrawable only on court order
[Supplemental Material]

This section, contained in the Supplemental Material, was approved. However, the staff is to check to see if a trust company should be referred to in subdivision (a). If the reference is proper, then Section 2523 should include a reference to a trust company.

§ 2525. Deposit of securities in securities depository

It was pointed out by Mr. Price that the staff is in error in stating that this section permits securities to be held in street name. The section does not deal with stock held in street name. Mr. Price was requested to obtain information concerning the history and purpose of the securities depository and the purpose of including the section in the statute.

§ 2526. Maintaining home of ward or conservatee and dependents

The fourth sentence was revised to read: "The power to add improvements is not included under this section."

§ 2527. Voting rights with respect to corporate shares or memberships or property

Subdivision (b) of Section 2527 was revised to read in substance:

(b) Waive notice of any meeting or give consent to the holding of any meeting.

In subdivision (c), ", ratify, or confirm" was inserted after "Authorize".

§ 2528. Life insurance and medical, retirement, and other benefits

The Commission discussed at length the problems presented by this section.

In subdivision (b), the words "or ownership" were inserted after "beneficiaries" and the words "borrow or" were inserted before "receive cash value." Approval of the court would not be required to borrow on cash value of policy to pay premiums if that had been the practice prior to the establishment of the guardianship or conservatorship.

Subdivision (a) should be revised to also cover "mutual fund and other dividend reinvestment plans initiated by a conservatee prior to the imposition of the conservatorship."

A motion was adopted that this section is to be reexamined by the staff. The concept should be recognized in some way of trying to preserve whatever testamentary disposition or plan as is indicated to the extent practical and carrying out such disposition or plan to the extent practical. The section should be broken down between (1) medical insurance and disability plans and (2) the other insurance plans and benefits or in some other way. The requirement of court approval should exist where an expectancy is being terminated or affected and the person whose rights are being so affected should have an opportunity for hearing by the court on the issue. The view was expressed that medical and other health care policies should be subject to change without court approval, and perhaps disability policies should also be subject to change without court approval, but the other plans and policies should require court approval for changes and the only authorization without court approval would be to continue the plan in effect following past practices. For example, if borrowing on the loan value of the policy to pay premiums was the pattern, then that is the practice that should be followed unless the court authorizes a change.

The guardian or conservator could deal freely with medical and disability insurance policies since there are merely protections against expenses that are chargeable to the estate.

Availability of will of conservatee to conservator

It was noted that the will of the conservatee is not privileged under the Evidence Code against the conservator. Appropriate cross-references should be inserted in the Comments or under various sections in the proposed legislation to Evidence Code Section 953 giving the conservator the right to waive the lawyer-client privilege. If the staff on further study concludes more is needed, the staff should draft a section for consideration by the Commission. If a provision is drafted, it should cover not only the will but also information relating to the depository plan of the conservatee. The Commission was inclined to include a provision in the substituted judgment provisions providing in substance that "in any proceeding under this article, the will and any information relevant to the construction of the will shall be produced."

§ 2530. Taxes and tax returns

"Prepare, execute, and file" should be inserted for "Make" in subdivision (a) of Section 2530.

A provision should be added to this section to permit the guardian or conservator, without court approval, to exercise options and elections and to claims exemptions under applicable tax laws.

The introduction clause "Notwithstanding Section 2502," was added at the beginning of this section.

§ 2531. Representation in actions and proceedings

Somewhere in the statute, a provision should be added that, with the approval of the court, the guardian or conservator may enter into a contingent fee arrangement with legal counsel to handle a matter if the matter is of the kind customarily handled on a contingent fee basis. The approval would be prior to the rendering of services and would be in the discretion of the court.

Commissioner Miller indicated his copy of the draft has language for staff consideration relating to intervention, and this should be taken into account when the revised draft is prepared.

§§ 2500-2508 [Supplemental Material]. Compromise of claims and actions

A cross-reference should be included under each section to Section 2507. The form of the cross-reference should be improved ("Other statutes not affected" was not considered adequate).

Sections 2500-2508 were approved as drafted.

§ 2534. Acceptance of deed in lieu of foreclosure

It appears that "or conservatee" should be added in the last line of subdivision (a) after "ward."

§ 2535. Disposition or abandonment of valueless property

This section was revised to read:

2535. The guardian or conservator may dispose of or abandon valueless property.

The former subdivision (b) was omitted as unnecessary in view of the authority to bring actions and proceedings. The Comment should note that, if the property has some value, court approval is required for sales or other dispositions unless the disposition falls within one of the provisions in the sales provisions permitting a sale without court approval.

§ 2536. Advances by guardian or conservator

The section should be revised to provide that, with court approval, interest on the amount advanced may be allowed at the legal rate for judgments.

§ 2537. Care of estate pending delivery to personal representative

The substance of the following was added at the end of this section:

, and shall have such powers as are granted to a guardian or conservator under this division as may be necessary for the performance of such duty.

§ 2541. Extent of court supervision

This section should be the first section in the article.

§ 2542. Terms of sales

The last sentence of subdivision (c) was deleted. This sentence was deleted because it is often the case that cotenants have differing cost bases or other considerations which would make it advantageous for one to sell for cash and another on deferred terms. The court still must approve the terms of the sale and can examine the transaction to be sure it is fair to the ward or conservatee.

§ 2543. Manner of sale

The court considered a suggestion that publication in a newspaper be eliminated in case of sales of property by a guardian or conservator. The Commission declined to eliminate the required newspaper publication.

SEC. 4. OPERATIVE DATE

This section should be revised to permit the Judicial Council to act under Exposure Draft Section 1479, to be Section 1480, and to take into account any other transitional problems that might require that portions of the statute have an earlier operative date.

New Provision - Property Subject to Adverse Claim

The staff was requested to draft for Commission consideration and possible adoption provisions based on Probate Code Sections 851.5-853. The new provisions would cover the case where a ward or conservatee has possession of, or holds title to, real or personal property, which, or some interest in which, is claimed to belong to another, or has a claim to real or personal property, title to or possession of which is held by another. The staff should consider limitations on the use of the new provisions to prevent abuse in cases where the party by whom or against whom the guardian or conservator is asserting the claim should be given the right to have the matter determined in a civil action.

APPROVED AS SUBMITTED

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

Date

Chairman

Executive Secretary