

Seventeenth Supplement to Memorandum 82-70

Subject: Study L-625 - Probate Code (Tentative Recommendation--Limited Conservatorships §§ 1300-3720)

Attorney David H. Spencer suggests (Exhibit 1) that a copy of the report prepared by a regional center on a proposed limited conservatorship be furnished to the petitioner or the petitioner's attorney (if there is one) at least five court days before the date set for the hearing on the petition for establishment of the limited conservatorship.

The limited conservatorship law was not enacted upon Commission recommendation; it was added to the guardianship-conservatorship law by a separate bill enacted after the Commission's recommended legislation was enacted. Nevertheless, the suggested change appears to be desirable and could be made in the bill that will revise the guardianship-conservatorship law in connection with the revision of the law relating to wills and intestate succession.

The suggestion is consistent with the provision of Section 1826 which requires that the court investigator mail a copy of the court investigator's report on the establishment of a conservatorship to all of the following at least five days before the hearing:

- (1) The attorney, if any, for the petitioner.
- (2) The attorney, if any, for the proposed conservatee.
- (3) Such other persons as the court orders.

The staff proposed to revise Section 1827.5 to require mailing to the persons listed above in addition to the proposed limited conservatee. A draft of Section 1827.5, as proposed to be amended, is attached as Exhibit 2.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Exhibit 1

DAVID H. SPENCER
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LOS ALTOS, CALIFORNIA 94022
(415) 949-1660

July 13, 1982

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

Gentlemen:

Based on a recent experience I had when petitioning the Santa Clara County Superior Court to establish a limited conservatorship, I would like to suggest an amendment to Probate Code Section 1827.5.

Probate Code Section 1827.5 requires the assessment of a proposed limited by a regional center and the issuance of a report to the Court with copies to the petitioner and the proposed conservatee.

My proposed amendment to this Section 1827.5 would require that the regional center report be furnished to the Court and to the petitioner or the petitioner's attorney if he has one at least five court days before the date set for the hearing on the petition. This five-day requirement would be consistent with Civil Procedure Section 1005 which requires any opposing papers to a noticed motion be filed with the court and served on each party five days before the time appointed for the hearing.

This amendment would correct the situation I was faced with last week when I received a regional center report the morning of the day a hearing was to be held on a petition for a limited conservatorship. This report recommended a change in residence of the proposed conservatee and suggested that a general, rather than a limited, conservatorship was appropriate, all without adequate notice to petitioner or her attorney. Fortunately the proposed conservatee was capable of strongly expressing his opinion in court that he was very happy with his present residence, the place he had been living for eight years, and the recommendation was denied.

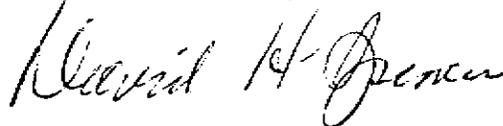
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I would appreciate your consideration of this matter and will be happy to work with you to help effect this proposed change.

Very truly yours,

A handwritten signature in cursive script that reads "David H. Spencer". The signature is written in dark ink and is positioned above the typed name.

David H. Spencer

DHS:klw

EXHIBIT 2

Prob. Code § 1827.5. Assessment of proposed limited conservatee; report
 SEC. ____ . Section 1827.5 of the Probate Code is amended to read:

1827.5. (a) In the case of any proceeding to establish a limited conservatorship, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. ~~Such~~ The regional center shall submit a written report of its findings and recommendations to the court ~~with copies to the proposed limited conservatee and to the petitioner~~ . The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability, if any. The findings and recommendations of the regional center ~~shall~~ are not ~~be~~ binding upon the court.

(b) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

- (1) The proposed limited conservatee.
- (2) The attorney, if any, for the proposed limited conservatee.
- (3) The attorney, if any, for the petitioner.
- (4) The petitioner if the petitioner does not have an attorney.
- (5) Such other persons as the court orders.

Comment. Section 1827.5 is amended to require that copies of the report be mailed at least five days before the hearing and to require that copies be mailed to the attorney, if any, for the proposed limited conservatee, to the attorney for the petitioner instead of the petitioner if the petitioner has an attorney, and to such other persons as the court orders. The requirement that a copy of the report be mailed at least five days before the hearing is the same as the one that applies to the report of the court investigator. See Section 1826(k). The requirement that copies be mailed to attorneys, if any, for the proposed limited conservatee and petitioner and to such other persons as the court orders is drawn from Section 1826(k) (report of court investigator).