

Second Supplement to Memorandum 91-41

Subject: Study L-3055 - Compensation in Guardianship and
Conservatorship Proceedings (Letter From Harry Drabkin)

Exhibit 1 is a letter from Harry Drabkin, Deputy County Counsel for Stanislaus County urging adoption of the legislation proposed in the *Recommendation Relating to Compensation in Guardianship and Conservatorship Proceedings (September 1990)*, attached to the basic memo.

In view of the support of Mr. Drabkin and of Team 3 of the State Bar Probate Section (see 1st Supp.), the staff recommends we resubmit this legislation to the 1992 Legislature with the revisions suggested in Exhibit 2 to the basic memo and in the First Supplement.

Respectfully submitted,

Robert J. Murphy III
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CA LAW REV. COMM'N

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July 19, 1991

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

Dear Commissioners:

IN RE: STUDY 1-700, MEMORANDUM 91-41

I have reviewed Memorandum 91-41 and Study L-700. It is my opinion that this legislation is necessary. We represent the Stanislaus County Public Guardian who is the conservator of approximately 200 conservatees. At this time, one of them is objecting to our petition for instructions, and as part of that objection has petitioned to terminate the conservatorship. To do so she obtained a private attorney. She has no money to pay this private attorney. We do have control of what little of her cash remains. I do believe that she has a due process right to have an attorney appointed for her, and to choose that attorney when she is able to do so.

However, since this conservatee has been found to be incompetent, and has lost the right to contract, how can she obtain the services of an attorney without the conservator's permission? Since what the conservatee wishes to do is against the best judgment of the conservator, can the conservator properly allocate funds, if there were some, to hire an attorney to oppose the conservator's best judgment? The Court can appoint the Public Defender to represent the conservatee, but should the government subsidize this conservatee's legal battle when she has sufficient property interest to pay for it herself?

These are some of the vexing questions that arise in this type of situation. I think that the statute the commission has proposed will resolve some of these problems. In my opinion, it is much better to have a statute that all Courts could look to for guidance, rather than rely on the perceptions of a multitude of probate court judges who have many different perspectives on the problems. Although these problems do not arise frequently, they do happen. The fact that there are few published opinions is

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indicative only of the fact that few people in these situations are able to carry them to the Court of Appeal.

Very truly yours,

MICHAEL H. KRAUSNICK
County Counsel

By *Harry P. Drabkin*
Harry P. Drabkin
Deputy County Counsel

HPD/sjp