

10/8/86

Memorandum 86-93

Subject: Study L-700 - Guardianship-Conservatorship (Notice)

Attached to this Memo is a Recommendation Relating to Notice in Guardianship-Conservatorship Proceedings. This was suggested by the State Bar Committee on Private Conservatorships and was approved by the Commission last March. We forwarded the recommendation for inclusion in a 1986 State Bar bill, but it was not amended into the bill. As indicated in Exhibit 1 (letter from James Goodwin to Judith Harper), it did not get into the bill for procedural reasons having nothing to do with the merits. The staff recommends that we include this legislation in our 1987 legislative program.

Policy Issue

The recommendation substitutes mailed notice of hearing under general notice provisions of guardianship-conservatorship law for some special provisions requiring service of the notice. A question has been raised whether notice of a petition for an order concerning the conservatee's capacity to consent to medical treatment may constitutionally be given by mail. It has been argued that the notice must be personally served, since the hearing will involve "a fundamental civil right of the conservatee, namely, the right to choose his or her own medical treatment." W. Johnstone, G. Zillgitt, & S. House, California Conservatorships § 3.26, at 104-05 (Cal. Cont. Ed. Bar 2d ed. 1983).

The staff thinks we can constitutionally provide for mailed notice in this case, because the conservatee has been subjected to the court's jurisdiction by service of the citation and petition to establish the conservatorship. See Prob. Code § 1824; cf. W. Johnstone, G. Zillgitt, & S. House, supra § 3.27, at 105-06. Nonetheless, it is a policy question whether the conservatee should receive notice by mail or by service when the petition concerns his or her capacity to consent to medical treatment. What is the Commission's view?

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

RECOMMENDATION
relating to
NOTICE IN GUARDIANSHIP-CONSERVATORSHIP PROCEEDINGS

Introduction

The Law Revision Commission has reviewed the notice provisions of the guardianship-conservatorship law and submits this recommendation designed to make the notice provisions under that law more uniform.

Manner of Giving Notice of Hearing

After a guardianship or conservatorship proceeding is commenced and the guardian or conservator has been appointed, notice of hearing of petitions filed in the proceeding generally is given by mail under the general provisions governing the manner of giving notice.¹ Thus, notice of hearing is given by mail of petitions concerning the following matters:

- termination of guardianship.²
- authority for conservatee to enter particular transactions.³
- conservatee's capacity to marry.⁴
- order limiting powers and duties of conservator of the person.⁵
- court-ordered medical treatment.⁶
- instructions.⁷
- compelling guardian or conservator to pay support or debts.⁸

1. The general notice provisions of guardianship-conservatorship law provide for notice of hearing by mail. Prob. Code § 1460. The general notice provisions apply if notice of hearing is required by a particular provision of guardianship-conservatorship law but that provision does not fix the manner of giving notice. *Id.* In addition, the general notice provisions are expressly incorporated by statute for many kinds of petitions in guardianship-conservatorship proceedings. See *infra* notes 2-25 and accompanying text.

2. Prob. Code § 1601.

3. Prob. Code § 1873.

4. Prob. Code § 1901.

5. Prob. Code § 2351.

6. Prob. Code § 2357.

7. Prob. Code §§ 2359, 2403.

8. Prob. Code § 2404.

- allowance for ward or conservatee.⁹
- order for support notwithstanding third party liability.¹⁰
- payment of surplus income to relatives of conservatee.¹¹
- order limiting authority of guardian or conservator of the estate.¹²
- order limiting authority to compromise claims.¹³
- court approval of compromise.¹⁴
- property claimed to belong to ward, conservatee, or other person.¹⁵
- borrowing money and giving security.¹⁶
- order authorizing refinancing, improving, or repairing property.¹⁷
- approval of lease.¹⁸
- dedication or conveyance of real property or easement.¹⁹
- investments and purchase of property.²⁰
- independent exercise of powers.²¹
- limitation of independent powers.²²
- hearing on accounts.²³
- compensation of guardian, conservator, or attorney, including periodic payment and approval of contingent fee contract of attorney.²⁴
- resignation of guardian or conservator.²⁵

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- 9. Prob. Code § 2421.
 - 10. Prob. Code § 2422.
 - 11. Prob. Code § 2423.
 - 12. Prob. Code § 2450.
 - 13. Prob. Code § 2500.
 - 14. Prob. Code § 2506.
 - 15. Prob. Code § 2521.
 - 16. Prob. Code § 2551.
 - 17. Prob. Code § 2552.
 - 18. Prob. Code § 2553.
 - 19. Prob. Code § 2556.
 - 20. Prob. Code § 2570.
 - 21. Prob. Code § 2592.
 - 22. Prob. Code § 2593.
 - 23. Prob. Code § 2621.
 - 24. Prob. Code §§ 2640-2644.
 - 25. Prob. Code § 2660.

For a few hearings, a different manner of giving notice of hearing is prescribed: Notice of hearing is required to be served in the manner prescribed in Section 415.10 or 415.30 of the Code of Civil Procedure, or in such other manner as may be authorized by the court. Service of notice of hearing is required to be made in this special manner for a petition to terminate the conservatorship,²⁶ a petition concerning the conservatee's capacity to consent to medical treatment,²⁷ a petition to modify the powers of a limited conservator,²⁸ and a petition to remove a guardian or conservator.²⁹

There is no justification for not using the general provisions governing notice of hearing for these petitions.³⁰ The existing special provisions should be eliminated and the general provisions made applicable. Not only will this result in more uniformity in

26. Prob. Code § 1862. If the person to be served is outside the state, service also may be made in the manner provided in Section 415.40 of the Code of Civil Procedure. If the conservator or conservatee cannot with reasonable diligence be served with a copy of the petition and notice of hearing, the court may dispense with such notice. Id.

27. Prob. Code § 1892. If the person to be served is outside the state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure. Id.

28. Prob. Code § 2351.5. If the limited conservator cannot, with reasonable diligence, be served in the prescribed manner, the court may dispense with giving the limited conservator notice of the hearing. Id.

29. Prob. Code § 2652.

30. It has been argued that notice of a petition for an order concerning the conservatee's capacity to consent to medical treatment must be personally served, since the hearing will involve "a fundamental civil right of the conservatee, namely, the right to choose his or her own medical treatment." W. Johnstone, G. Zillgitt, & S. House, California Conservatorships § 3.26, at 104-05 (Cal. Cont. Ed. Bar 2d ed. 1983). The Commission is of the view that there is not a constitutional problem with mailed notice in this instance, because the conservatee has been subjected to the court's jurisdiction by service of the citation and petition to establish the conservatorship. See Prob. Code § 1824; cf. W. Johnstone, G. Zillgitt, & S. House, supra § 3.27, at 105-06. Moreover, under existing law, mailed notice of hearing is used for a petition for court-ordered medical treatment (Prob. Code § 2357) and for such fundamental rights of the conservatee as the right to marry (Prob. Code § 1901).

the manner of giving notice of hearing and eliminate a possible trap for the unwary lawyer, but it also will reduce the expense and delay of giving notice of hearing in the cases where the special provisions now apply.³¹

Notice of Hearing on Objections to Appraisalment

The provisions for hearing objections to an appraisalment contain their own notice requirements,³² rather than applying the general notice provisions of guardianship-conservatorship law.³³ Like the general notice provisions, these provide for notice by mail, but the persons to whom notice is given differ from those specified in the general provisions: Notice is given to the guardian or conservator, the spouse (if any) of the ward or conservatee, relatives of the ward or conservatee within the second degree, and the probate referee.³⁴ Unlike the general notice provisions, no notice is given to a ward over 14 or the conservatee, and notice is given to relatives within the second degree whether or not they have requested special notice or have appeared in the matter.

Notice should be given to a ward over 14 or the conservatee of a hearing on objections to the appraisalment, as it is in the case of most other hearings in guardianship and conservatorship proceedings. On the other hand, time and expense may be saved by dispensing with notice to relatives who have shown no interest in receiving the notice.

The Commission recommends that the nonstandard notice of hearing on objections to an appraisalment be replaced by the general notice provisions, so that notice will be given to a ward over 14 or the conservatee, and will be given only to those relatives who request special notice or appear in the matter.

31. Personal delivery is more expensive and time-consuming than mailed notice. The mailing address of the guardian or conservator is readily accessible since it is part of the court record. See, e.g., Prob. Code §§ 1510(b), 1821(a).

32. Prob. Code § 2614(b).

33. The general notice provisions are in Probate Code Section 1460.

34. Prob. Code § 2614(b).

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

An act to amend Sections 2351.5 and 2614 of, and to repeal and add Sections 1862, 1892, and 2652 of, the Probate Code, relating to guardianships and conservatorships.

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

Probate Code § 1862 (repealed). Notice of hearing to terminate conservatorship

SECTION 1. Section 1862 of the Probate Code is repealed.

~~1862. (a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of the hearing shall be mailed to the persons specified in Section 1822.~~

~~(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.~~

~~(c) If the conservatee is not the petitioner and has not joined in the petition, the conservatee shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.~~

~~(d) Service under subdivisions (b) and (c) shall be made in the manner provided Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure. If the conservator or conservatee cannot with reasonable diligence be served with a copy of the petition and notice of hearing, the court may dispense with such service.~~

Comment. Former Section 1862 is superseded by new Section 1862.

Probate Code § 1862 (added), Notice of hearing to terminate conservatorship

SEC. 2. Section 1862 is added to the Probate Code, to read:

1862. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 1862 supersedes former Section 1862 and incorporates the general notice provisions of Sections 1460-1469 in place of the special provisions of former Section 1862.

Probate Code § 1892 (repealed), Notice of hearing concerning capacity to consent to medical treatment

SEC. 3. Section 1892 of the Probate Code is repealed.

~~1892. Notice of the hearing on the petition shall be as follows:~~

~~(a) At least 15 days before the hearing, a copy of the petition and a notice of the hearing shall be mailed to the spouse and relatives of the conservatee named in the petition (other than the petitioner or persons joining in the petition) at their addresses stated in the petition.~~

~~(b) If the conservator is not the petitioner and has not joined in the petition, the conservator shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.~~

~~(c) If the conservatee is not the petitioner and has not joined in the petition, the conservatee shall be served with a copy of the petition and a notice of the time and place of the hearing at least 15 days prior to the hearing.~~

~~(d) Service under subdivisions (b) and (c) shall be made in the manner provided Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court. If the person to be served is outside this state, service may also be made in the manner provided in Section 415.40 of the Code of Civil Procedure.~~

Comment. Former Section 1892 is superseded by new Section 1892.

Probate Code § 1892 (added), Notice of hearing concerning capacity to consent to medical treatment

SEC. 4. Section 1892 is added to the Probate Code, to read:

1892. Notice of the hearing on the petition shall be given for

the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 1892 supersedes former Section 1892 and incorporates the general notice provisions of Sections 1460-1469 in place of the special provisions of former Section 1892.

Probate Code § 2351.1 (amended). Powers of limited conservator

SEC. 5. Section 2351.5 of the Probate Code is amended to read:

2351.5. (a) The limited conservator has the care, custody, and control of the limited conservatee, except that a limited conservator shall not have any of the following powers or controls over the limited conservatee unless such powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator:

(1) To fix the residence or specific dwelling of the limited conservatee.

(2) Access to the confidential records and papers of the limited conservatee.

(3) To consent or withhold consent to the marriage of the limited conservatee.

(4) The right of the limited conservatee to contract.

(5) The power of the limited conservatee to give or withhold medical consent.

(6) The limited conservatee's right to control his or her own social and sexual contacts and relationships.

(7) Decisions concerning the education of the limited conservatee.

The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence.

(b) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by ~~verified~~ petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (a) above. The petition shall state the facts alleged to

establish that the limited conservatorship should be modified. The granting or elimination of such powers shall be discretionary with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

~~(c) The petition shall be set for hearing and notice thereof given to the persons in the same manner as is provided in this chapter for a petition for the appointment of a limited conservator. The limited conservator, if he or she is not the petitioner or has not joined in the petition, shall be served with a notice of the time and place of the hearing accompanied by a copy of the petition at least five days prior to the hearing. Such service shall be made in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court. If the limited conservator cannot, with reasonable diligence, be so served with notice, the court may dispense with such notice. The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil ~~actions~~ actions, including trial by jury if demanded. If any such powers are granted or eliminated, new letters of limited conservatorship shall be issued reflecting such change in the limited conservator's powers.~~

Comment. Section 2351.5 is amended to substitute the general notice provisions of Sections 1460-1467 in place of the former special provisions in Section 2351.5.

The word "verified" has been deleted preceding "petition" in the first sentence of subdivision (b). This change is nonsubstantive, since Section 1450 requires all petitions filed pursuant to this division to be verified.

Probate Code § 2614 (amended). Objections to appraisals

SEC. 6. Section 2614 of the Probate Code is amended to read:

2614. (a) Within 30 days after the inventory and appraisal is filed, the guardian or conservator or any creditor or other interested person may file written objections to any or all appraisals. The clerk shall set the objections for hearing not less than 15 days after their filing. Notice of the hearing, together with a copy of the objections, shall be given for the period and in the manner provided

in Chapter 3 (commencing with Section 1460) of Part 1.

~~(b) At least 10 days before the hearing, the party filing the written objections shall mail a notice of the time and place of the hearing and a copy of the objections to all of the following (other than the person filing the objections):~~

~~(1) The guardian or conservator.~~

~~(2) The spouse and the relatives of the ward or conservatee within the second degree.~~

~~(3) The probate referee.~~

Comment. Section 2614 is amended to apply the general notice provisions of Sections 1460-1467 in place of the former special provisions of Section 2614.

Probate Code § 2652 (repealed). Notice of hearing on petition for removal of guardian or conservator

SEC. 7. Section 2652 of the Probate Code is repealed.

~~2652. (a) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of hearing shall be mailed to the following persons (other than the petitioner):~~

~~(1) In case of a guardianship, to the persons specified in Section 1511.~~

~~(2) In the case of a conservatorship, to the conservatee and to the persons specified in Section 1822.~~

~~(b) At least 15 days before the hearing, a copy of the petition and a notice of the time and place of hearing shall be served on the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as the court may order. If the guardian or conservator cannot with reasonable diligence be so served, the court may dispense with service.~~

Comment. Section 2652 is superseded by new Section 2652.

Probate Code § 2652 (added). Notice of hearing on petition for removal of guardian or conservator

SEC. 8. Section 2652 is added to the Probate Code, to read:

2652. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

Comment. Section 2652 supersedes former Section 2652 and incorporates the general notice provisions of Sections 1460-1469 in place of the special provisions of former Section 2652.

**ESTATE PLANNING, TRUST AND
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September 11, 1986

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Re: SB 1909 (Notice in Conservatorship Proceedings)

Dear Judy:

This is a follow-up to our telephone conversation of several weeks ago concerning proposed amendments to Senate Bill 1909, which were outlined in my April 22, 1986 letter addressed to the Honorable Herschal Rosenthal, a copy of which is enclosed for your information.

You indicated that these amendments were not incorporated into the bill, due significantly to your not having been copied with this documentation and not having the opportunity to monitor the proposed amendments. My personal telephone calls to Mr. Rosenthal's administrative assistants subsequent to my letter were also not productive.

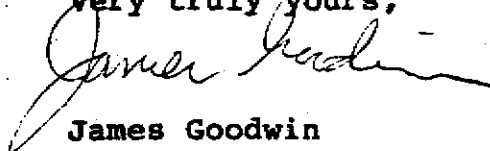
These proposed amendments are the result of combined efforts by the Estate Planning, Trust and Probate Law Section of the State Bar and the Law Revision Commission, as indicated by Mr. Robert J. Murphy's letter to me of March 25, 1986 which is enclosed with the materials. The proposal originated with our State Bar's Section.

Will you please advise me how the Section can best proceed with implementing this proposed legislation in the next session. The proposed legislation is technical in nature and should not result in any opposition.

September 11, 1986
To: Judith A. Harper
From: James R. Goodwin, Esq.
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Thank you very much for your guidance and assistance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James Goodwin".

James Goodwin

JG/mam

Encs.

cc: Lloyd W. Homer
Leonard W. Pollard, II
Matthew S. Rae, Jr.
Robert J. Murphy, III