



COUNTY OF YOLO

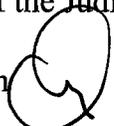
Public Defender's Office

Barry Melton, Public Defender

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MEMORANDUM

To: Attn.: Daniel Pone
for and on behalf of the Judicial Council of California

From: Barry Melton 

Dated: 3/21/2006

Re: Temporary Conservatorships

This memorandum is intended to address questions raised in connection with the hearing presently scheduled March 24, 2006, 10:30 a.m.-3:30 p.m., Milton Marks Auditorium, Lower Level, Hiram W. Johnson State Building, 455 Golden Gate Avenue, San Francisco. As it was requested, I also include a two-page resume in the following pages.

1. Should the standards for establishment be more stringent?

As a general matter, there is no quarrel with what constitutes "good cause" under the provisions of Probate Code § 2250. (Unless otherwise noted, further statutory citations are to the Probate Code.) There are, however, concern with the relatively common practice of extending temporary appointments under the provisions of § 2257, subd. (b).

2. Who should receive notice?

Of course, under § 2250, subd. (c), there is a requirement that notice must be delivered to a proposed conservatee at least five days before the appointment of a temporary conservator. But that requirement is devoid of meaning if the proposed conservatee is not capable of understanding the significance of such service.

Arguably, to protect proposed conservatees from potential financial and other abuses, this current state of affairs may be a good reason to consider amendment to §§ 1470 and 1471, so that court-appointed counsel can be appointed when the temporary powers sought potentially affect substantial assets of the proposed conservatee.



Attn.: Daniel Pone
March 21, 2006
Page two

Moreover, consideration should also be given to amending § 1454 to provide for the immediate appointment of an investigator and expand the powers of the investigator to include powers to make financial investigations in when the temporary powers sought will potentially affect substantial assets of the proposed conservatee.

3. Should the courts be able to waive notice and, if so, under what circumstances?

Of course, the courts should continue to be able to waive any length of notice if temporary powers are sought to provide immediate medical treatment because of accident or illness; but it is difficult to envision unlimited waivers for other reasons, particularly in situations involving substantial assets.

4. What role, if any, should court investigators play in temporary conservatorships?

The role of court investigators under § 1454 needs to be expanded to include the power to investigate financial matters including, but not limited to, the power to subpoena financial records as necessary. This expansion of the role of court investigators is necessary not only with regard to temporary conservatorships, but also with regard to any conservatorship where control of substantial assets is sought.

5. Are the current powers and duties of temporary conservators appropriate?

The power of temporary conservators to dispose, or take possession, of substantial assets should be commensurate with the amount of the bond that the court may require under § 2251 or, alternatively, such controls should be handled by public authorities. In any event, the court should more closely monitor such transactions when appropriate.

6. Should alternative models for emergency intervention be explored?

Yes. It is possible that the above concerns regarding potential financial abuse could be accomplished by broadening the role of existing public entities, such as public administrators and public guardians. It may also be possible that a more active role would be appropriate for county counsel and county public defender offices, however, it would be unwise to designate further responsibilities to those entities without a commensurate increase in state funding.

BARRY MELTON

Resumé

State Bar No. 104700

Admitted to practice: Calif. Supreme Court (1982); U.S. Dist. Court, N.D. of Calif. (1982); U.S. Court of Appeals, 9th Cir. (1983); U.S. Dist. Court, C.D. of Calif. (1983); U.S. Dist. Court, E.D. of Calif. (1985); U.S. Supreme Court (1988)

I. CRIMINAL LAW EXPERIENCE

Certified as a specialist in criminal law by the Board of Legal Specialization of the State Bar of California, 1993 to present

January 1, 2000 - present, Public Defender of Yolo County

May 1999-Dec. 1999, Chief Assistant Public Defender of Yolo County

July 1998-May 1999: Deputy State Public Defender, Office of the State Public Defender for the State of California (Sacramento Office)

1994-1998: Deputy Public Defender, Mendocino County Public Defender's Office

1982 - 1994: In private practice, San Francisco, California; served on court-appointment panels for San Francisco Municipal and Superior Courts and appointment panels for the First, Third and Fifth District Courts of Appeal, also represented retained clients

Trial court experience includes extensive number of felony and misdemeanor jury trials including trials for homicide and other serious felonies; significant juvenile dependency and juvenile delinquency litigation experience, including vertical representation of juvenile clients deemed fit to for trial as adults for serious crimes; also years of experience in LPS and probate conservatorship proceedings

Appellate experience: In excess of 100 criminal appeals (see, e.g., 202 Cal.App.3d 581), including experience with petitions before superior, appellate, state and federal supreme courts, for writs of mandamus, prohibition, habeas corpus and certiorari; and experience in preparation of capital habeas writ petitions in conjunction with assignment to capital habeas unit of the Office of the State Public Defender for the State of California

II. CIVIL LAW EXPERIENCE

Partner - Melton, Duncan & Hirshbein, San Francisco, Calif., 1983-1990 - primarily engaged in criminal practice (as above), however, also limited civil practice in real estate and personal injury litigation, entertainment, general business and family law

BARRY MELTON

Resumé, Page two

Pro-tem Judge, San Francisco Municipal Court, 1988-1994

III. OTHER

Member, Board of Directors (presently First Vice-President, incoming President 4/27/06), California Public Defenders Association [CPDA] (1999-); Interim CAO, Yolo County (6/23/05 – 7/3/05); President, Yolo County Bar Ass'n (2004); Master, Milton L. Schwartz American Inn of Court (2001-present); Member, Prop. 36 Statewide Advisory Group, Calif. Dept. of Alcohol and Drug Programs (2000-); lecturer, CPDA juvenile and criminal defense seminars and contributor to various criminal law practice publications (1994-present); Rated "AV" by Martindale-Hubbell (1993-present); Biographee, "Who's Who in American Law" (5th Edition to present), "Who's Who in America" (55th Edition to present); Faculty Member, CACJ/CPDA Capital Case Defense Seminar (1997-2002); President, Mendocino County Criminal Defense Bar Ass'n (1995); rated "well-qualified" by Judicial Qualifications Committee of Bar Ass'n of San Francisco (as judicial candidate, 1992); State Bar of California, Board of Governors Awards for participation in Volunteer Legal Services Program (1984-1989, inclusive); Member, San Francisco Community Youth Services Advisory Commission (1988); Co-Chair, Juvenile Law Section, Bar Ass'n of San Francisco (1985-1986); selected "Outstanding Lawyer in Public Service" (Bar Ass'n of San Francisco, 1985)

Memberships: American Inns of Court (Milton L. Schwartz Inn); Cal. Pub. Defenders Assoc. (CPDA); Cal. Attys. for Crim. Justice (CACJ); National Assoc. of Criminal Defense Lawyers (NACDL); National Legal Aid and Defenders Assoc. (NLADA) [including the American Council of Chief Defenders]; Yolo County Bar Assoc.

Correspondence law student (1977-1982): J.D., Ocean University (1982); LL.B., LaSalle Extension University (1981)

Diplomate, Bryan R. Shechmeister Death Penalty College, Santa Clara University School of Law (1997)

Diplomate, Capital Appellate Advocacy Institute, UOP McGeorge School of Law (1998)

Full-time professional musical entertainer 1965 -1982, and occasionally thereafter: Co-founded performing group "Country Joe and the Fish" (1965), toured extensively throughout U.S. and Europe with various musical ensembles and as solo performer, composed and performed on numerous musical recordings, television appearances and soundtracks, and such period films as "Monterey Pop" and "Woodstock;" still performing occasionally as a professional musical entertainer