

RESOLUTION 6-02-2002

DIGEST

Administrator: Appointment of Independent Professional Fiduciary or Corporate Fiduciary

Amends Probate Code section 8461 to allow courts to appoint an independent professional fiduciary or corporate fiduciary as administrator where family members file competing petitions for appointment.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution amends Probate Code section 8461 to allow courts to appoint an independent professional fiduciary or corporate fiduciary as administrator where family members file competing petitions for appointment. This resolution should be disapproved because it overturns the order of priority currently contained in Probate Code section 8461 and is unnecessary.

Probate Code section 8461 establishes a definite and certain order of priority in the appointment of an administrator, the purpose being the appointment of the closest relative in degree of consanguinity to the decedent, when competent, able and willing to serve. Under that statutory scheme, professional and corporate fiduciaries are at the bottom of the list. (*Id.* at subd. (r) [“any other person”].) This resolution would authorize the probate court to ignore that statutory priority and to appoint a professional or corporate fiduciary whenever there are competing petitions by family members.

Under the statute as currently written, courts routinely appoint independent professional fiduciaries or corporate fiduciaries as administrators, but do so only when no relative in the current order of priority is able or willing to serve. Appointing a non-relative is a last resort. This resolution would have the effect of placing non-relatives higher in the selection order than relatives, thus conflicting with the purpose behind the statute.

Besides, it is unnecessary. If the competing family members are not of equal priority, the one with the statutory priority prevails. If they have equal priority, Probate Code section 8467 already authorizes the appointment of a disinterested person (such as a professional or corporate fiduciary) in the event that several persons with equal priority file competing petitions for appointment.

SECTION/COMMITTEE REPORT

TRUST AND ESTATE SECTION

Recommendation: Oppose

Reasons: The Section found even less connection between the Conservatorship of Ramirez and the statutes appointing an administrator. In that instance, the best interests of the testator disappear and the nomination of the heirs will be given priority.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Probate Code section 8461 to read as follows:

- 1 §8461
- 2 Subject to the provisions of this article, a person in the following relation to the decedent is entitled
- 3 to appointment as administrator in the following order of priority:
- 4 (a) Surviving spouse or domestic partner as defined in Section 37.
- 5 (b) Children.
- 6 (c) Grandchildren.
- 7 (d) Other issue.
- 8 (e) Parents.
- 9 (f) Brothers and sisters.
- 10 (g) Issue of brothers and sisters.

- 1 (h) Grandparents.
2 (i) Issue of grandparents.
3 (j) Children of a predeceased spouse or domestic partner.
4 (k) Other issue of a predeceased spouse or domestic partner.
5 (l) Other next of kin.
6 (m) Parents of a predeceased spouse or domestic partner.
7 (n) Issue of parents of a predeceased spouse or domestic partner.
8 (o) Conservator or guardian of the estate acting in that capacity at the time of death who has filed a
9 first account and is not acting as conservator or guardian for any other person.
10 (p) Public administrator.
11 (q) Creditors.
12 (r) Any other person.
13 (s) Notwithstanding the priority order for appointment of an administrator set forth in this Section
14 8461, if competing petitions for appointment are filed by family members, the court, in its discretion, may
15 appoint as administrator a private independent professional fiduciary or a corporate fiduciary if determined to
16 be in the best interests of the estate.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

Existing Law: Probate Code section 8461 lists the priorities for appointment as administrator of a decedent's estate.

This Resolution: Amends section 8461 by adding specific new non-family entities who may also be appointed as administrator.

The Problem: When there is a dispute between competing family members as to the priority order or qualifications of various proposed administrators, the court should have the discretion to appoint an impartial professional or corporate fiduciary who is not a family member when it is determined to be in the best interests of the estate.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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RESPONSIBLE FLOOR DELEGATE: Kim R. Hubbard

COUNTERARGUMENT

SANTA CLARA COUNTY BAR ASSOCIATION

Probate Code section 8461 lists the priorities for appointment as administrator of a decedent's estate. Resolution 6-02 seeks to amend this section by giving the court the discretion to appoint a professional administrator if it is in the best interest of the estate, even if a "family member" would otherwise be entitled to be the administrator. In general, we endorse this concept. However, this section's priority list includes several persons who are not family members, including "conservators," "guardians," "public administrators," "creditors," and "any other person." We believe that the court should have the discretion to appoint a professional administrator even if the would be administrator is one of the mentioned non-family members.

We therefore propose that "family members" in line 24 be replaced by the words "any of the persons mentioned in this Section."

For these reasons, we oppose resolution 6-02 as currently written.