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MARC B. HANKIN

RE FILE NUMBER:
File Number

November 1, 2000

Terri Abelar
Aging Solutions
28739 Dijon Court
Menifee, CA 92584

Margo Hamilton
Director
CARE Program
42258 Santee Court
Hemet, CA 92544

Re: SB 1742

Dear Terri and Margo:

Senate Bill 1742 does not usher in a new police state. Even under the law before SB 1742 was enacted, the Public Guardian had the authority to freeze assets of an incompetent, if the Public Guardian intended to become Conservator. However, frequently there are cases involving incompetent persons and mis-appropriations of the assets of those incompetent persons, where the Public Guardian does not elect to become Conservator.

There are many reasons for such decisions, such as the Public Guardian's hope that they will be able to find a relative (given enough time to search for the relative) to handle the affairs of the incompetent. Frequently, the Public Guardian simply cannot handle small asset cases because the Public Guardian is self-supporting in counties such as Los Angeles, and tries to have a balance between cases involving the absolutely destitute and devoid of assets, and cases involving substantial estates, so that the fees of the substantial estate cases make it possible for the Public Guardian to handle the no estate cases.

Chris Fiero, who is the Public Guardian of Los Angeles County can recall many vivid cases in which the Public Guardian's authority to freeze assets prevented the loss of

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the victim's entire estate. Until a point in time around fifteen (15) or twenty (20) years ago, the Public Guardian had the authority to freeze assets of an incompetent, where there was danger of mis-appropriation, without the Public Guardian being required to make the decision to become Conservator. THERE WERE NO REPORTED CASES OF ABUSE OF THAT AUTHORITY BY THE PUBLIC GUARDIAN.

SB 1742 allows the Public Guardian to have that authority again, but in deference to contemporary (and very important and appropriate) notions of Civil Liberties and Due Process, the Public Guardian cannot unilaterally assert that authority to freeze assets (in cases where the Public Guardian does not intend to become Conservator).

Instead, under SB 1742, the public Guardian is required to obtain statements from both [1] an Adult Protective Services ("APS") supervisor asserting that the person is both incompetent and being abused financially, and [2] a written statement by a Police Officer (who has special expertise and training in the assessment of mental function impairment) asserting that a crime is in progress, and the crime is related to the incompetent person's mental function deficits. These procedures are modeled on the practices developed by Detectives Chayo Reyes and Dave Harned of the LAPD. Detectives Reyes and Harned collaborated in the drafting of the legislation, and assisted in explaining it to legislative staff while SB 1742 was in the Legislature.

This hardly puts the Police Officer in the driver's seat. The five-day freeze on assets (like the Probate Code §2901 affidavit) is renewable by the Public Guardian, and by the Public Guardian alone.

I recall a case in which I was contacted by Adult Protective Services ("APS") involving a man who had made several transmissions to con artists operating a telephone scam out of Canada. Each transmission of cash was for about fifty thousand (\$50,000.00) or one hundred thousand dollars (\$100,000.00). The man was down to his last one hundred fifty thousand dollars (\$150,000.00), and was trying to get his last one hundred fifty thousand dollars (\$150,000.00) out of the bank, to send it to the telephone con artists in Canada.

At the urging of APS and law-enforcement officers, the bank was willing to hold the money for a few days, but the Public Guardian was too busy to investigate the case fully in order to determine whether there were relatives or someone else who might be willing to become Conservator. Eventually, after three (3) or four (4) or five (5) days, the bank was too fearful of liability, and sent the man's remaining money by wire transfer to the con artists in Canada.

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To the best of my understanding, the taxpayers of California are now supporting this gentleman in a nursing home or board and care facility. SB 1742 would have enabled the Public Guardian to freeze the remaining one hundred fifty thousand dollars (\$150,000.00), in order to prevent that tragedy. Luckily, now that SB 1742 has been enacted, this type of tragedy need not be repeated.

One last comment deserves mention: SB 1742 codifies the groundbreaking tactics developed by LAPD Detectives Reyes and Harned, and SB 1742 requires the rest of California law enforcement to follow their leadership.

1. No longer need concerned police officers turn a blind eye to the financial abuse of senile elderly persons, believing erroneously that "It is a civil matter" in which they regrettably cannot intervene. SB 1742 requires police departments to designate officers who will be armed with specialized POST training expertise in the assessment of mental impairment. Across California, and hopefully soon the nation, those specially trained officers will be able to make field mental status assessments for rank and file officers. Thus, rank and file officers will be able to distinguish criminal abuse of a mentally impaired person, from mere civil foolishness on the part of a victim.

2. No longer will concerned police officers feel a conflict between their own arrest productivity and the welfare of the victims. Police officers will know that, in appropriate situations, they may assist in the recovery of the victim's assets. Officers may demonstrate their productivity in terms of the amount of property recovered for the elderly victims. As you know, those victims need every penny for their own care, because they regrettably cannot start all over again.

Very truly yours,



Marc B. Hankin

MBH/se

Cc: Detective Chayo Reyes
Jason Sterling c/o Senator Teresa Hughes
Michelle Findler