



## Disability and Guardianship Project

555 S. Sunrise Way, Suite 205 • Palm Springs, CA 92264  
(818) 230-5156 • [www.spectruminstitute.org](http://www.spectruminstitute.org)

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September 21, 2018

Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

Administrative Docket

Re: Request to Modify the California Code of Judicial Ethics  
Per California Constitution, Article VI, Section 18(m)

To the Court:

Spectrum Institute is writing to the Supreme Court pursuant to the court's authority under Article VI, Section 18(m) of the state Constitution. That provision gives the court administrative authority to establish a Code of Judicial Ethics to regulate the conduct of judges both on and off the bench.

Based on research we have been conducting over the past six years, we are requesting the Court to modify the Code to clarify that judges may not operate or direct a legal services program involving attorneys who appear before the judges or their court in individual cases.

Our research shows that judges of the Los Angeles Superior Court have been managing a court-appointed attorney program in the probate court. Instead of adjudicating cases in an impartial manner, the superior court has been deciding which attorneys get appointed to cases, how much they get paid, and whether they are appointed to future cases and if so, how many. This financial control has a tendency to influence the conduct of the affected attorneys. We believe that such judicial practices are not limited to the Los Angeles area but are occurring in other counties as well. Many superior courts operate legal services programs involving court-appointed attorneys.

Our research shows that judges of the Los Angeles County Superior court are managing the Probate Volunteer Panel – a legal services program that assigns attorneys to conservatees and proposed conservatees. In addition to controlling that program, judges are making presentations at the training programs and, in doing so, attempting to influence the manner of attorney advocacy and defense.

Judges are telling court-appointed attorneys what to do and what not to do in their cases. Some judges tell them to be the “eyes and ears of the court.” Some tell them to advise the court of what is in their client's best interests – even if this conflicts with what the client wants. Other judges tell them they should not do that – that doing so would violate ethical duties of loyalty and confidentiality. Some judges tell attorneys not to challenge laws or procedures that restrict the voting rights of clients – advising them to bring such challenges in federal court (knowing full well that the attorneys have no authorization to represent clients in conservatorship cases in federal court). When the superior court reduced the number of court investigators as a budget cutting measure, judges instructed court-appointed attorneys to fill the gap and to act as de-facto court investigators.

In support of this request to the Court, we are submitting a report titled “The Domino Effect: Judicial Control of Legal Services.” The document contains three reports: A Trilogy on Legal Services.

Part One of the Trilogy shares the results of our investigation of the PVP system and the role of judges in shaping the advocacy services of the court-appointed attorneys on that panel. Our research involved reviews of several specific cases, as well as audits of dozens of others. The audits show a pattern of inadequate legal services by many of these attorneys – deficiencies which we believe are implicitly authorized by the judges who manage the PVP program and who also adjudicate the conservatorship cases. We also attended several training programs. We observed unethical practices by the judges who made presentations – the same judges who hear cases involving these lawyers.

Part Two of the Trilogy shares the results of our research regarding policy statements and position papers of national judicial and legal organizations. These statements and papers uniformly are opposed to judges operating and directing legal services programs. They favor legal services programs being managed by an independent entity – one in which judges who adjudicate cases are not involved. Ethical reasons are cited as to why judges should stay in their own lane – adjudicating cases – and leave it to others to manage and direct the advocacy services of attorneys.

Part Three of the Trilogy shares the results of our research regarding options and alternatives to court-operated legal services programs. There are models in other states that are working well. There are various approaches taken in other areas of California. Even in Los Angeles County, there are many programs providing legal services for indigent litigants that do not have judicial control or management. This occurs in criminal law, juvenile delinquency law, and juvenile dependency law. Despite these options, and despite some discussions by Los Angeles County officials of taking control of the PVP panel away from the court, it appears that judges are resisting the loss of power over the court-appointed attorneys who appear before them in conservatorship cases.

We call our report *The Domino Effect* because the violations of ethics by judges who run legal services programs have an adverse effect on the legal ethics of and performance by the attorneys, which in turn has an adverse effect on the quality of services being received by clients.

As society’s awareness of ethical standards has evolved over the years, changes have been occurring in Los Angeles, statewide, and throughout the nation. The trend is toward independence for attorneys and away from control by judges of the delivery of legal services. There is a growing national consensus that judges should have no more control over court-appointed lawyers than they do over privately-retained attorneys. Judges should be able to adjudicate issues that arise in individual cases, but they should not be coaching attorneys on how to advocate or defend cases and they should not be controlling the income stream of attorneys who appear in their courtrooms.

The current Code of Judicial Ethics is apparently insufficient – or else the practices revealed in Part One of the Trilogy would not be occurring repeatedly and openly. We therefore request the Court to modify the Code of Judicial Ethics to clarify that it is unethical for judges to manage legal services programs involving attorneys who appear before them or their court in individual cases.

Respectfully,



Thomas F. Coleman

Attorney at Law (State Bar No. 56767)

[tomcoleman@spectruminstitute.org](mailto:tomcoleman@spectruminstitute.org)

cc: See Proof of Service