Conservatorship Reform

From Complaints To Solutions

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Legal Director
Spectrum Institute
Conservatorship Reform
A Multi-Faceted Approach

Federal
State
Local
Judicial
Legislative
Executive
Professions Associations
Media
Universities
Disability Organizations
Elder Abuse Organizations
You
TARGETING YOUR PROPOSALS

Complaints don't create reform.
We need targeted solutions.
Identifying the areas needing reform.
Making discrete proposals.
Pitching them to the right official.
The Supreme Court has two types of jurisdiction: (1) **adjudicative**; and (2) **administrative**.

**Petition for Review** – you must have a case – amicus letter / brief (Conservatorship of O.B.)

**Depublication** – you can request depublication of an appellate opinion (Conservatorship of O.B.)

**Ethics Request** – we filed a report and administrative request – transferred – denied – not over yet

**California Style Manual** – we filed an administrative request to update and modify – in process

### Jurisdiction

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Prior Requests from Spectrum Institute:

♦ Establish a Conservatorship Task Force
♦ Mandate Additional Training for Appointed Attorneys
♦ Develop ADA-Compliant Performance Standards for Appointed Attorneys in Conservatorship Cases
♦ Amend Rule 1.100 to Clarify that Judges Have ADA Duties for Known Disabilities Even Without a Request
♦ Survey superior courts for information on conservatorship petitions, open cases, policies, and practices

Future Actions from Spectrum Institute:

♦ We may ask for a Pilot Project to recruit, train, appoint, pay, create and implement performance standards, and monitor attorneys who represent indigents in probate conservatorship cases.
♦ We will file an ADA Complaint vs. Rule 1.100 - federal law requires accommodations for known disabilities
Court of Appeal

Six autonomous districts. Some have divisions.

- A conservatee can file an **appeal or writ** petition to challenge orders of a judge.

- An advocacy organization can file an **amicus curiae brief** in a case.

  Spectrum Institute has successfully urged the court to **appoint attorneys** for conservatees, both as appellants and as respondents.

  Spectrum Institute has successfully urged the court to **publish an opinion**.
Superior Court
A state-operated trial court in each of 58 counties

ATTORNEYS CAN: (individual cases)
• Ask for experts to be appointed / IPP review
• Conduct a thorough investigation of capacity / alternatives
• Demand a trial (by court or by jury)
• File an appeal from adverse ruling

ADVOCATES CAN: (policy change)
• File records requests
• Meet with the presiding judge
• File ADA complaints
• Seek changes in local rules
  - Los Angeles was asked to repeal a rule giving attorneys a dual role
  - Alameda was asked to revise a rule giving a monopoly to one law firm in all money cases
Legislature

40 Senators – 80 Assembly Members - Committees

Spectrum Institute Has

- Sent a report and proposals to improve capacity assessments
- Obtained an expansion of SB724 to mandate appointed counsel, define role of counsel, protect right to chosen attorney
- Criticized AB596 as a Trojan Horse undermining the right to an advocacy and defense attorney
- Requested an oversight hearing of the probate conservatorship system

Legislators Respond to

- Voters
- Donors
- Media
- Legislators Respond to

Jurisdiction

Individual Members
- Introduce Bills
- Make Inquiries
- Request Attorney General Opinion
- Request Legislative Counsel Opinion

Committees
- Issue Reports
- Conduct Hearings

Both Houses
- Enact Statutes
- Approve Budgets
- Adopt Resolutions
State Bar Operates Under the Supervision of the Supreme Court

Spectrum Institute Has

- Spoken at meetings of trustees
- Met with the executive director
- Written to the supreme court

Advocates Can Request

- An opinion on the ethical duties of appointed counsel in probate conservatorship cases
- Make the complaint system accessible to clients with cognitive disabilities
- Audit of MCLE certifications of local bar associations and appointed attorneys
Department of Developmental Services

**Justice & Equality**
Improving the Functions of the California Department of Developmental Services in Limited Conservatorship Proceedings

January 16, 2017

**Spectrum Institute Has**
- Met with DDS director
- Written to HHS secretary
- Sent two reports to DDS

**Next Steps**
- Meet with **HHS secretary**
- Meet with **Governor**
- Ask **legislators** to intervene
- Seek legislative **hearing**
- Have **bill introduced** to mandate DDS regulation of regional center role in conservatorships

Regional Center Conservatorship Assessments
The Need for Guidance and Oversight from the Department of Developmental Services

April 6, 2017
Department of Fair Employment & Housing

Spectrum Institute Has

• Met with DFEH director
• Met with BCSH secretary
• Filed a complaint against a superior court
• Submitted proposed regulations to and spoke at meetings of the FEH Council

Next Steps

• Monitor FEHC regulations requiring ADA compliance in judicial proceedings
• File complaint against the Judicial Council because Rule 1.100 is misleading
• Educate conservatorship reform advocates about DFEH complaint process
Disability Rights California

Spectrum Institute Has

- Met with DRC’s executive director and key staff (disinterest - no success)

- Submitted a report to DRC pointing out its authority to advocate for people whose rights are violated in conservatorships like the recent Florida case of Michael Lincoln and to promote systemic reforms (vague response in Calif.; no success with DRC)

Next Steps

- Advocates should ask to meet with DRC’s board

- Advocates should meet with state and federal agencies that fund DRC

- Advocates should invite DRC’s legal director to sign on to various initiatives

- Submit joint letter to Director of NDRN
Counties

The 58 counties can improve access to justice in conservatorships

Action Items

Supervisors should adequately fund legal services and public guardian services to **comply with the ADA**; **lobby legislature** for systemic reforms

County Counsel should advise supervisors of **liability** for violating ADA

Public Defenders should not have **excessive caseloads**; have proper **training**; adopt ADA-compliant **performance standards for legal services**

Public Guardian and County Counsel should advocate for **less restrictive alternatives**

California Association of Counties to hold a **conservatorship forum**

Public Guardian and County Counsel should advocate for **less restrictive alternatives**

Investigate county’s role in the conservatorship process; issue a report proposing reforms

Convene a **Conservatorship Justice Project** pursuant to Gvt. Code Section 26500.5; Investigate disability **discrimination** under Civil Code Sec. 51.4

District Attorney

Civil Grand Jury
U.S. Government

Limited jurisdiction over conservatorship & guardianships

Action Items

- Seek **funding** from Congress for the Disability Rights Section of the DOJ to investigate ADA violations in guardianships & conservatorships

- Insist that any guardianship **guidance** issued by the DOJ explains what state courts should do to comply with the ADA

- Encourage the DOJ to **investigate** pending ADA complaints against California and Los Angeles County

- Request **hearings** by Congress and a new **report** by the Government Accountability Office on federal authority to stop abusive state conservatorship practices
Legal Profession

Action Items

**Law Schools**
- Internships
- Guest lecturing

**Legal Publications**
- Continue to write op-eds

**Bar Associations**
- Continue to do CLE webinars
- Seek support for legislation

Dynamics of Dysfunction:
- Inadequate Training
- Ethical Lapses
- Profit Motivations
- Culture of Collegiality

Multi-faceted Approach:
- Law schools
- Legal publications
- Bar associations

Involving lawyers, professors, and law students

- Interns
- Op-Eds
- Webinars

Action Items
- Law Schools
- Legal Publications
- Bar Associations
Other Professions

Involving physicians, psychologists, psychiatrists, social workers

Action Items

- **Physicians and Psychiatrists**
  Better training of students & continuing education on capacity assessments

- **Psychologists**
  Better training of students & continuing education on capacity assessments

- **Social Workers**
  Better training of students & continuing education on evaluating less restrictive alternatives to conservatorship

- **Medicine**
- **Psychology**
- **Social Work**
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Elder Abuse Organizations
You
Conservatorship Reform is a Puzzle

Know Where Each Piece Fits
Spectrum Institute Can be Commissioned

To Analyze the Legal Maze in Your State and to Develop a Reform Strategy for You
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A more detailed PDF version of presentation is online:  
https://disabilityandguardianship.org/symposium.pdf

Thanks to AAAPG for sponsoring this forum.