



**ALAMEDA COUNTY'S
MENTAL HEALTH SYSTEM**

**OAKLAND'S USE OF
FORM 700**

**ELECTION INTEGRITY
IN ALAMEDA COUNTY**

**PROBATE
CONSERVATORSHIPS**

SANTA RITA JAIL

**CAMP SWEENEY
INSPECTION**

**FREMONT JAIL
INSPECTION**

**INDEPENDENT
OVERSIGHT OF BART**

**FIRE INSPECTIONS
IN OAKLAND**

**OAKLAND'S PLANNING &
BUILDING DEPARTMENT**

STUDENT HOMELESSNESS

**2021-2022
Alameda County Grand Jury
Final Report**

PROBATE CONSERVATORSHIP CRIES OUT FOR REFORM

EXECUTIVE SUMMARY

Alameda County provides legal services for people who cannot take care of their basic personal and financial needs and cannot afford a private attorney. These individuals, depending on the degree of impairment, may be placed in a conservatorship, a legal proceeding in which the court appoints a person or agency to take care of the individual's needs and make decisions on their behalf. The legal services provided by two agencies, the Public Defender and Legal Assistance for Seniors (LAS), are the primary safeguard against a person being placed in a conservatorship that is unjustified or unnecessarily restrictive.

The Grand Jury investigated the performance of the Alameda County agencies that are intended to protect impaired adults from harm: the Public Defender, which represents individuals in conservatorships, and the Public Guardian, which is appointed by the court as conservator when no one else is willing and able. (*See the Glossary in Appendix A for definitions of key terms used in this report*).

To understand the scope and purpose of conservatorship legal services, the Grand Jury focused on the performance and practices of the three service providers, the funding supporting these services, and the checks and balances that are in place to protect Alameda County's most vulnerable residents and make the entire process more responsive and transparent. The findings of this investigation provide a solid basis for recommendations for substantive and practical modifications of the conservatorship process that would provide more safeguards, define best practices, and reduce chronic underfunding and understaffing.

BACKGROUND

How Conservatorship Works

A conservatorship is established through a legal process, supervised by a court, in which a conservator is appointed as a decision maker on behalf of an impaired adult. An interested party, such as a friend, family member, or governmental agency, may petition the court for appointment of a conservator to protect an adult who needs help managing their personal or financial affairs. Depending on the evidence of the adult's inability to take care of their own needs, the court may transfer some or all of the adult's decision-making powers, known as the seven powers of conservatorship, to the conservator.

These rights include:

1. choosing where to live,
2. entering into contracts,
3. accessing confidential records,
4. making medical decisions,
5. making educational decisions,
6. choosing who to have social and sexual relationships with, and
7. marrying.

The court will order the transfer of these powers if there is convincing evidence that there is no less-restrictive alternative available to protect the adult from harm.

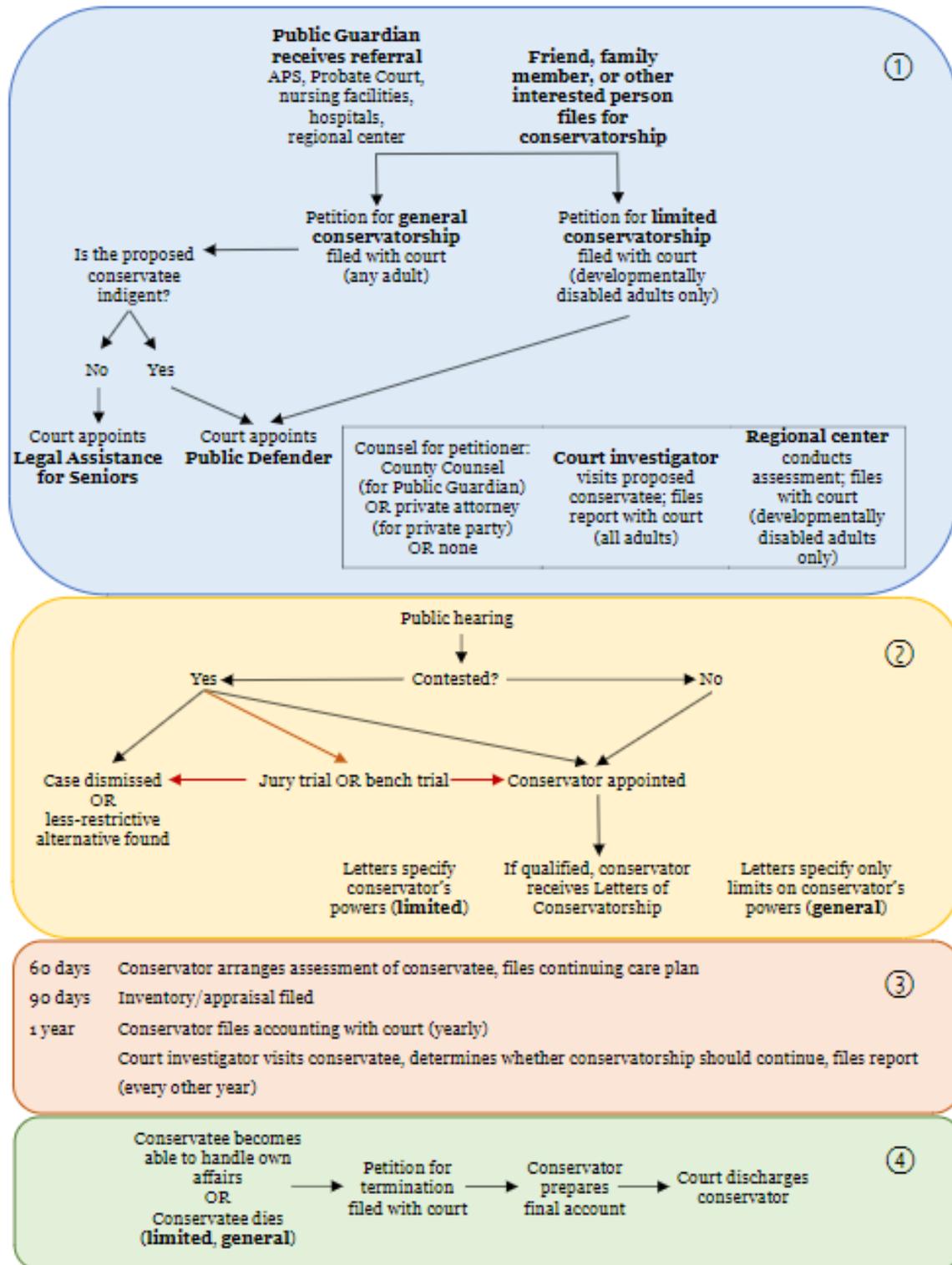
Types of Conservatorships

Several types of conservatorships exist. The two main categories are probate conservatorships, so named because they are handled in probate court, and LPS (or mental health) conservatorships, the most restrictive type, which aim to rehabilitate adults with severe mental illness and can be initiated only by a governmental agency; they expire after a year but can be renewed. Probate conservatorships, which are the focus of this report, can be divided into two subtypes, general and limited. General conservatorships are for any impaired adult, though most general conservatees are elderly and may have physical or cognitive disabilities (such as dementia). Limited conservatorships are only for developmentally disabled adults (of any age). Both general and limited conservatorships can last a lifetime.

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Conservatorship Process Summary

Here's a summary of the conservatorship process (see the figure on the following page): (1) Initiation of conservatorship proceedings. (2) The hearing and possible outcomes. The red arrows indicate options that have rarely (bench trials) or never (jury trials) been pursued in Alameda County within the past decade. (3) Court oversight of the conservatorship consists of annual accountings filed by the conservator and biannual reports filed by the court investigator. (4) Termination of the conservatorship. A conservatorship formally ends either when the conservatee successfully petitions the court to recognize that they are able to handle their own affairs or upon judicial recognition of the conservatee's death. The timeline data in part (3) are from the [*California Handbook for Conservators*](#).



In response to a petition to the court for a conservatorship, the proposed conservatee has a right to an attorney to present evidence on their behalf, to contest the proceeding, and to demand a jury trial. State statutes require counties to appoint attorneys in probate conservatorship proceedings and to provide or fund indigent legal defense services. According to [Local Rule of Court 7.820](#), the court will appoint a free Public Defender for all developmentally disabled and indigent adults, and it will appoint LAS for all other adults. Conservatees may also hire private attorneys, who must be approved by the court. State law requires the attorneys who perform these services to be licensed and to abide by the Rules of Professional Conduct.

The evidence presented at the hearing will determine whether the petition for conservatorship is approved. If so, the conservatee may lose the right to control where they live, to make decisions about their health care and medications, and to choose who to associate with, among other rights. For these reasons, a robust defense is essential. The attorney is obligated to protect a proposed conservatee's constitutional rights by carefully examining the client's capacity, cross-examining witnesses, considering the conservatee's placement and the extent of their powers, and determining who would best serve as a conservator.

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Conservators and Their Role

If the petition is approved, the court appoints a conservator. For adults in both general and limited conservatorships, the court may appoint a conservator of the person, who is responsible for taking care of the conservatee's personal matters (such as food, shelter, and medical care), and/or a conservator of the estate, who is responsible for managing the conservatee's financial matters. These roles can be assigned to the same person or different ones.

A conservator may be a friend or family member of the impaired adult, a private fiduciary, or the Public Guardian. The Public Guardian is known as the conservator of last resort because it is appointed only when no other person is qualified or willing to act as conservator, or when the appointment of someone who is able and willing would not be in the conservatee's best interest (for instance, when a neutral party is needed because of a dispute among family members). In 2020, the Public Guardian acted as conservator in 17% of cases.

After a conservator is appointed, a court investigator conducts regular checks on the conservatee's living conditions and the conservator's actions, and reports its findings to the court. The conservatorship lasts until the conservatee dies or the court decides that the conservatorship is no longer necessary. When a petition for termination is filed, the conservator files a final accounting, and the court discharges the conservator.

Statewide Reforms: Adopted but Unfunded

In 2005, a series of articles by the *Los Angeles Times* exposed abusive treatment of conserved adults by for-profit conservators. Deficiencies in court oversight of these conservators prompted the California Legislature to pass the 2006 Omnibus Conservatorship and Guardianship Reform Act, which imposed licensing requirements on professional conservators and increased financial protections for conservatees.

At the same time, the California Supreme Court convened a task force to study how the probate conservatorship process could be improved. Its goals included the following:

- ensure that the conservatorship is the least restrictive alternative for the conservatee;
- ensure adequate access to information for all of the interested participants;
- make increased and better use of short- and long-term care plans;
- ensure that there is a system to prevent fraud and improper handling of conservatees' assets;
- ensure that the conservatee is being taken care of properly through personal visitation.

The final report of the Probate Conservatorship Task Force, published in 2007, called for systemic change. Its 85 recommendations covered aspects of the process ranging from attorney training to family relationship support to fraud detection. To help implement these reforms, the California Legislature approved a one-time payment to courts in fiscal year 2008-2009. In the wake of the 2008 financial crisis, however, the legislature eliminated funding for conservatorship reform from the state budget. It was never restored.

The Zealous Advocacy Law

The most important recent change in state law regarding representation of conservatees is the passage of AB 1194, known as the zealous advocacy law, in 2021. This law strengthens an individual's right to legal counsel in conservatorship proceedings and requires counsel to act as a zealous advocate, meaning that the attorney must advocate for what the client wants, rather than what the attorney (or anyone else) thinks is in the client's best interest. Among other reforms, it also requires professional conservators to be fully transparent about their fees and imposes heavy fines for misconduct.

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As zealous advocates, attorneys are required to do everything reasonably within their means to help the client achieve the goals they articulate to their attorney at any point during the

proceeding. For people in involuntary conservatorship proceedings, the legal process is adversarial because their personal freedoms are at risk. The only hope for avoiding an unnecessary or too-restrictive conservatorship is a good defense attorney.

Public activists have advocated for years on behalf of vulnerable persons kept in conservatorships in which they are unable to make their own life decisions and/or are subject to potential abuse. The widely publicized Britney Spears case and two films, the 2018 documentary *The Guardians* and the 2020 feature *I Care A Lot*, led to a new wave of public interest and induced media outlets to take a critical look at conservatorships. These developments drew the attention of the Alameda County Board of Supervisors, which in 2021 conducted hearings on the subject of conservatorship.

The 2021–2022 Alameda County Civil Grand Jury received two requests to investigate probate conservatorship generally. These complaints, combined with the groundswell of public concern over alleged abuses of vulnerable people, prompted the jury to undertake this investigation.

INVESTIGATION

During its investigation, the Grand Jury conducted 10 witness interviews and received answers to emailed questions. Persons interviewed include employees of LAS, the Public Defender, the Division of Aging and Adult Protection, and the County Counsel Department. The Grand Jury also reviewed numerous documents, including reports by county and state agencies, manuals and standards of practice, conservatee asset records and case statistics, correspondence between county agencies, and the text of state laws and local rules of court.

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Conservatorship Defense Providers

Hundreds of new petitions for conservatorships are filed in Alameda County each year. The Public Defender represents approximately three-quarters of all (proposed) conservatees in Alameda County, and LAS represents most of the rest. LAS’s clients are primarily elderly adults in general conservatorships, whereas 80% of the Public Defender’s clients are developmentally disabled adults in limited conservatorships.

Despite being collectively responsible for representing several hundred conservatees per year, neither the Public Defender nor LAS has a written contract for services with Alameda County. As a result, there are no uniform guidelines or expectations for attorney training and evaluation, caseload, the scope of representation, or what constitutes zealous advocacy. The lack of guidelines means that the level of service clients receive is not consistent across these two agencies, but rather depends on the agency’s level of funding and staffing (see the table below for a summary).

This section of the report examines the conservatorship defense services provided by the Public Defender and LAS, with a focus on how they differ.

Summary of the Differences in Conservatorship Defense Services Provided by the Public Defender and Legal Assistance for Seniors

Aspect of Service	Public Defender	Legal Assistance for Seniors
Number of attorneys	1 full time	1.5 to 2 full-time equivalent
Support staff	1 shared legal secretary 1 shared clerical specialist	1 full-time equivalent
Caseload per attorney	Up to 362	Up to 50
Typical number of meetings with client	1	2 to 3
Training	2 weeks on-the-job training with outgoing attorney Self-directed continuing education	Work on conservatorship cases under supervision Conferences on elder abuse Community group trainings Ongoing continuing education
Track case outcomes?	No	Yes
Formal grievance procedure for clients?	No	Yes
Claim to practice zealous advocacy?	Yes	Yes

Training and Education

While the Public Defender employs more than 100 attorneys and 40 support staff across numerous practice areas, its probate conservatorship unit consists of a single attorney, with no dedicated support staff. For a newly hired attorney in this unit, training consists of one or two weeks of shadowing the departing attorney. There is no training checklist or manual.

After the initial training period, the attorney is responsible for self-educating to stay up to date on changes in the law and best practices. Continuing education consists of in-person seminars and recorded videos.

LAS was founded in 1976 and incorporated as a nonprofit organization in 1984. It is a much smaller agency than the Public Defender, with 35 employees providing legal, educational, and advocacy services in areas including elder abuse, minor guardianship, and conservatorship. A new conservatorship attorney at LAS is required to have experience working with older adults and to have worked a specified number of conservatorship cases, under supervision, from start to end. In addition to participating in continuing education seminars run by external agencies,

LAS conducts an annual conference on elder abuse as well as educational events within the community. A new hire at LAS has more thorough training, as well as more structured continuing education, than a new attorney at the Public Defender.

Caseload

The three attorneys at LAS who work on conservatorship part-time manage 40-50 cases each, not all of which are active. By contrast, between April and November 2021, the caseload of the Public Defender's probate conservatorship attorney ranged between 273 and 362 active cases, requiring significant evening and weekend work.

While the Public Defender employs more than 100 attorneys and 40 support staff across numerous practice areas, its probate conservatorship unit consists of a single attorney, with no dedicated support staff.

A heavy active caseload raises questions as to whether an attorney, regardless of skill or diligence, is able to act as a zealous advocate for each client. To mitigate this issue, the State Bar of California's *Guidelines on Indigent Services Delivery Systems*, published in 2006, recommend that attorneys practicing indigent defense prioritize their cases through "case weighting," which involves determining "the amount of work (in time) that is required to bring a case to a conclusion" (p. 27). To do so, attorneys should consider the complexity and specialized nature of the probate conservatorship process, their experience and training, reasonable preparation and study time for the task including the duty to research and investigate, and whether to consult with another professional in a related field. Despite this

recommendation, the Public Defender's probate conservatorship unit does not employ case weighting.

The *Guidelines* advise attorneys against taking on too many cases and caution that supervisors of overloaded attorneys are responsible for gaps in the legal services provided to conservatees. Specifically, the *Guidelines* cite an opinion by the American Council of Chief Defenders stating that:

When confronted with a prospective overloading of cases... the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.

Refusing an increase in caseload is not an option for the Public Defender, as cases are assigned by the court and there is only one attorney to shoulder the workload. The consequence of chronic overloading of attorneys is insufficient legal services for conservatees.

Zealous Advocacy

In the absence of a contract between Alameda County and its conservatorship defense providers, the scope of attorney representation is unclear. Most importantly, according to [California Probate Code § 1800.3\(b\)](#), the court will not grant a conservatorship if a less-restrictive option is available, but the actions an attorney should take to pursue such options are not clearly defined.

The Grand Jury aimed to answer the following questions:

- How often do conservatorship defense attorneys meet with their clients?
- Do attorneys routinely arrange for clients to be evaluated by medical professionals and/or social workers? Should they?
- What role, if any, do attorneys have in communicating with a developmentally disabled client's regional center (described on page 62)?
- How often do conservatorship proceedings go to trial?
- After a conservatorship is established, does the attorney continue to monitor the case? If so, for how long?

As with attorney training, education, and caseload, in these areas the Grand Jury found significant differences between conservatorship defense providers.

Client Meetings

Most of the proposed conservatees represented by the Public Defender agree to the conservatorship. The Public Defender usually has one meeting with these clients (during the COVID-19 pandemic, this meeting often took place via video). For the small proportion of clients who object to the conservatorship, meetings are more frequent. LAS attorneys, by contrast, typically meet with their clients a minimum of two or three times, though in some complex cases there may be dozens of meetings over several years.

For the Public Defender, simple cases take three to five hours of attorney time. More complex cases, in which a client either objects to the proceeding or has a disability that impedes communication, can take up to 30 hours. If the client is unable to communicate their wishes, the Public Defender investigates their living situation and interviews their caretakers to determine what would be in the client's best interest.

Medical Evaluations

Whether a conservatorship defense provider should arrange for medical evaluations of proposed conservatees is subject to debate. The Grand Jury learned that there are conflicting opinions

about whether doing so should be considered part of the attorney's job, whether it should be delegated to support staff, or whether it should happen at all.

Neither the Public Defender nor LAS routinely arranges medical exams for clients. The rationale is that an exam might show that a client is more impaired than previously believed, which would not help their case. The Grand Jury acknowledges this concern but also notes that, in cases where the extent of a client's impairment is not clear, a thorough medical examination could help establish capacity, determine whether a treatable medical condition or a problem with medication or dosage is responsible for the impairment, or even bring to light a misdiagnosis.

Social Worker Evaluations

The Public Defender does not request evaluations by social workers, even though it employs five of them. A meeting with a trained social worker would provide valuable input and the ability to share observations. If feasible, such a meeting without the proposed conservator or family members present would provide an opportunity for the client to voice concerns about the proceedings, if so inclined and able.

Regional Center Involvement

Adults with developmental disabilities are frequently clients of regional centers, which are nonprofit agencies that offer assessments, access to services, and assistance with meeting educational and life goals. Regional centers play an important role in developing a client's individualized program plan (IPP), a document in which a client, in collaboration with their support system, sets forth their personal goals and how to achieve them. Depending on the client, an IPP can offer a blueprint for a less-restrictive alternative to conservatorship, such as supported decision-making, in which a client creates their own support network to help manage their personal and financial affairs. Such a document, assembled by a client with the help of people who know them and their capabilities well, would seem to be an invaluable resource for a conservatorship defense attorney.

Again, the Grand Jury heard conflicting testimony regarding whether (and to what extent) an attorney should communicate with a client's regional center, and whether doing so constitutes zealous advocacy or is outside the scope of representation. Most of LAS's clients are elderly adults in general conservatorships, so it has little contact with regional centers. Most of the Public Defender's, in contrast, are developmentally disabled adults in limited conservatorships who are regional center clients. The Public Defender routinely requests the most recent copy of a client's IPP from the client's family, but if none is provided, it does not follow up. IPPs are required by law to be updated at least every three years, but the Public Defender does not participate in this process and, therefore, does not receive or provide input.

By not participating in the IPP process, the Public Defender is forgoing an opportunity to assess changes in clients' capacity over time—changes that could result in a less-restrictive conservatorship or even termination. The Grand Jury learned that a developmentally disabled adult may be able to retain some of the seven powers of conservatorship and that capacity in each area can be assessed separately. For example, a person may be unable to make medical decisions or enter into contracts but may be capable of choosing where they would like to live or who to be friends with. Also, a conservatee's skills and abilities may develop to the extent that continuing the conservatorship is no longer necessary.

Trials

[California Probate Code § 1827](#) grants conservatees the right to a bench trial or jury trial. In practice, however, bench trials in Alameda County are relatively rare and jury trials are nonexistent. Court records show that an average of 12 bench trials occurred each fiscal year from 2009-2010 to 2018-2019 and that there were zero jury trials in the same period. Notably, LAS was counsel for the proposed conservatee in the vast majority of the bench trials, despite representing fewer than half of all proposed conservatees in the county.

The Grand Jury learned that there are several explanations for the lack of jury trials, including their expense (for clients with the means to pay) and the unwillingness of many clients to air family disputes in open court. A jury trial is also very time-consuming, and an attorney with a high caseload would be hard pressed to see a trial through to completion.

Affirmative Outreach

Another aspect of zealous advocacy with no objective standard is whether (or for how long) an attorney should conduct affirmative outreach, or actively monitor a case, after conservatorship is established. The Public Defender usually withdraws as counsel after the petition for conservatorship is granted. If it becomes aware of a problem in an established conservatorship, it gets reappointed.

Follow-up generally consists of checking that the conservator is filing the required paperwork and that the court investigator is conducting a thorough review every two years, as required by law. If a case is scheduled for a status hearing and no problems have been reported, the Public Defender asks for the hearing to be taken off calendar to reduce caseload.

The court investigator plays an important role in conservatorship cases. The seven investigators employed by the Superior Court of Alameda County all work on conservatorship cases, and one is assigned to review accountings and fee requests. Aside from the biannual court investigator review, there is no other independent check on the conservator's performance throughout the life of the conservatorship. For this reason, it is crucial that the conservatorship defense provider conduct affirmative outreach to monitor the conservator's actions and ensure the conservatee's

well-being. In an effort to improve long-term follow-up, the Public Defender recently launched an affirmative outreach program that tasks interns with telephoning clients in long-established conservatorships to check on their status.

LAS conducts regular affirmative outreach for an average of a year after a conservatorship is established, but it withdraws as attorney of record by two years post-conservatorship. If LAS learns of a problem in an established conservatorship, it gets reappointed as counsel.

Quality Control

The Public Defender does not maintain an electronic database of its probate conservatorship cases. It does not track client demographics, case outcomes, or the rate at which conservatorships are terminated. In contrast, LAS maintains an electronic database of its conservatorship cases, allowing it to run reports on client demographics and case outcomes.

The Public Defender has no written complaint procedure to address the concerns of clients and their families. No audits of the Public Defender have occurred to determine compliance with probate rules designed to verify inventories and appraisals or accountings.

In the absence of an external assessment, a mechanism for analyzing case data, or a formal system for collecting client feedback, other quality control mechanisms are needed. The *Guidelines on Indigent Services Delivery Systems* emphasize the importance of attorney supervision and performance review, specifically:

a continuous, interactive system whereby mentors, supervisors and managers provide assessment, feedback, documentation, remediation and other functions to ensure that the quality of service being provided is assured... In general, newer employees ordinarily require considerable supervision as well as training to confirm quality assurance. However, the work product of more experienced employees should also be regularly or periodically assessed... To the maximum extent possible the performance measurements and standards should be in writing.

Contrary to these guidelines, the Public Defender does not have written performance standards for conservatorship proceedings, and no formal performance evaluations occur after the attorney's initial training period ends. Instead, supervision consists of weekly observation in court and informal discussions between the conservatorship attorney and their supervisor.

LAS does not represent indigent clients, so the *Guidelines* quoted above do not apply to it. Nevertheless, its procedures for attorney evaluation and client complaints are in line with zealous advocacy. To monitor attorney performance, LAS uses weekly case review meetings, regular

review by a supervising attorney, and client evaluation forms. If a client has a complaint, a written grievance procedure provides for two levels of review: a meeting with the legal director and, if the client is dissatisfied with that person's response, a meeting with the executive director. Clients who wish to "appeal" the executive director's decision are advised to bring their complaint to the Alameda County Area Agency on Aging, and a form for that purpose is available on the LAS website.

Funding and Fees

Fees charged to clients

In conservatorship proceedings, all requests for attorney fees are subject to court approval, and every party to a case (as well as any member of the public attending the court hearing) has an opportunity to object to a fee request. The court-approved hourly rate charged to clients by LAS is substantially lower than the county average. The Public Defender charges no hourly fees at all. Instead, it can claim a flat fee or a percentage of the estate of a conservatee whose assets have been liquidated. The percentage varies according to the value of the estate. The Public Defender requests fees only in general conservatorship cases, and only when the Public Guardian files a request for fees.

The court may deny any request for fees or reduce the amount to be paid. If a client of LAS cannot pay the fees, the county may be required to pay them instead.

How the agencies are funded

The Board of Supervisors approves each year's funding for the Public Defender, and the Chief Public Defender is responsible for allocating funds among the various service areas. The office's resources are devoted primarily to criminal defense; probate proceedings are not a priority for resources. There is no line item in the Public Defender's budget for legal services in probate conservatorship proceedings.

By all accounts, the Public Defender is severely underfunded, and this problem is especially acute in the probate department. Of the numerous requests for funding submitted by the Public Defender to the County Administrator between 2018 and 2021, only one item (funds to support yearly probate training) relates to conservatorship defense. Despite the competing priorities for funds, the Grand Jury confirmed an urgent need for at least one additional attorney in the probate conservatorship unit.

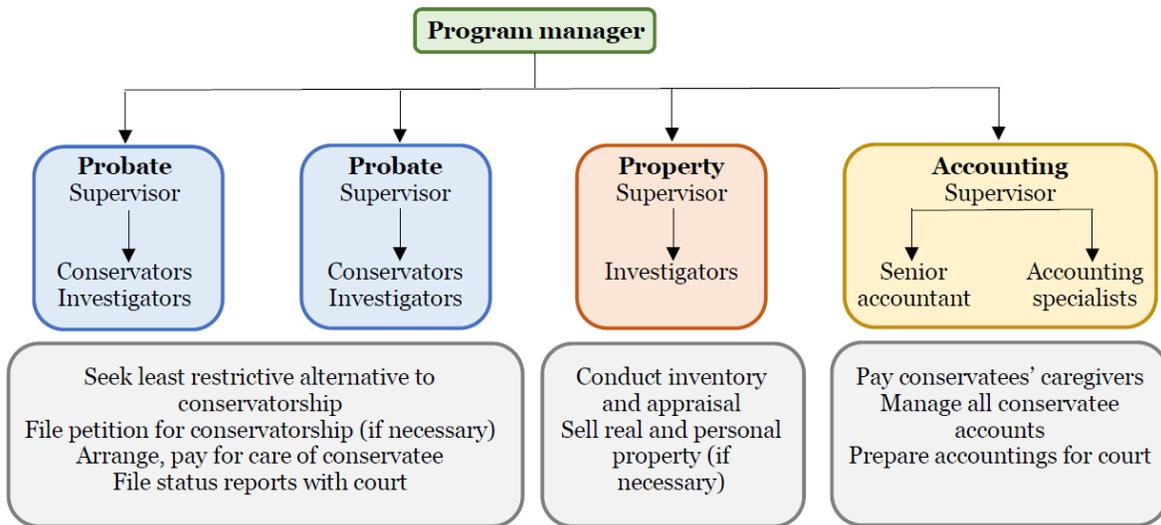
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In contrast to the Public Defender, LAS receives no funds from the Board of Supervisors. With a budget of \$2.5 million, LAS’s operations are not self-sustaining, so it raises money through grants and individual donors. Most of its clients are low income. As a result, LAS charges clients on a sliding scale and sometimes writes off fees entirely if paying them would pose a hardship to the client.

Public Guardian

The Public Guardian-Conservator (Public Guardian) is a unit of the Department of Adult and Aging Services within the Alameda County Social Services Agency. The Public Guardian comprises conservators, investigators (not to be confused with court investigators), and accountants, along with support staff (see the below figure for a summary). It can be court-appointed as conservator in both LPS and probate conservatorships. In the latter, it can act as both conservator of the person and of the estate. County Counsel advises the Public Guardian and is responsible for drafting and reviewing all of its court filings.

Summary of the Staff and Duties of the Public Guardian in Probate Conservatorship Proceedings



The Public Guardian’s involvement in a conservatorship proceeding usually begins with a referral or an order by the court to initiate an investigation. Referrals may come from a hospital or nursing facility, Adult Protective Services, or a friend or relative of an impaired adult. Within five days of receiving a referral, a conservator meets with the proposed conservatee to learn about their needs, and an investigator begins researching whether a less-restrictive alternative is available.

In approximately two-thirds of cases, the investigation does not result in a petition for conservatorship (see the table below). If the Public Guardian does determine that conservatorship is necessary and appropriate, it will submit a petition to the court, usually within 20 days.

Sometimes, the court appoints the Public Guardian as conservator in a case it did not petition for. Such appointments are made when family members cannot agree on who should be conservator and it becomes necessary for a neutral party to arrange for the conservatee’s care and protect their assets.

Outcomes of Referrals for Probate Conservatorship Received by the Public Guardian for the Years 2018–2020 (as of November 2021)

Year	Referrals received	Conservatorships established (of person and of estate)	Cases pending	Terminated or deceased	Investigations closed/withdrawn or petition rejected
2018	86	24 (28%)	3 (3%)	2 (2%)	57 (66%)
2019	76	26 (34%)	1 (1%)	1 (1%)	48 (63%)
2020	89	17 (19%)	8 (9%)	2 (2%)	62 (70%)
Total	251	67 (27%)	12 (5%)	5 (2%)	167 (67%)

Data provided by the Public Guardian

Training and Education

The minimum qualifications for a probate conservator are a bachelor’s degree and previous experience with investigation or estate management. Probate conservators must also complete a four-year, 40-unit certification program by the California Association of Public Administrators, Public Guardians, and Public Conservators (CAPAPCPG); program participation is monitored by supervisors.

The Public Guardian has a detailed training manual and a guide to its case management software. In addition to the in-house and CAPAPCPG training, employees receive confidentiality and estate/trust management training from County Counsel as well as training in ethics, mental health, and aging.

Caseload

Ten probate conservators manage approximately 30 cases each, as conservators both of the estate and of the person. Witnesses stated that the unit is adequately staffed.

Quality Control and Oversight

Case management software allows the Public Guardian to track filing dates and task deadlines, as well as to analyze conservatee demographics, assets, and case outcomes. The Public Guardian pulls monthly reports to assess whether tasks are being completed in a timely fashion.

The Public Guardian's work is subject to several layers of review. Its accountings and status reports on conservatees are reviewed by County Counsel and the court investigator prior to approval by a judge. An external agency handles conservatees' tax returns, acting as a check on the Public Guardian's management of their estates.

A conservator of the estate can sell a conservatee's real or personal property to pay for ongoing care. If the Public Guardian determines that such a sale is necessary, it petitions the court for approval. Through their attorney, the conservatee can object to the sale.

Funding and Fees

The Public Guardian's funding comes from the county's general fund. Like the Public Defender, it can claim a flat fee or a variable percentage of the estate of a conservatee whose assets have been liquidated. However, if these funds are needed to pay for ongoing care, the Public Guardian does not request fees.

Optics and Liability

Appointing an attorney is a necessary accommodation under Title II of the Americans with Disabilities Act (ADA) to enable proposed conservatees to participate in a case. To ensure effective assistance of counsel, both the court and the county are obligated to adopt ADA compliance performance standards, require training of attorneys, and create methods to monitor attorneys' actual performance. Because there are no contracts between the probate conservatorship service providers and the county, ADA standards are not a part of any agreement to provide legal services.

The 2021 zealous advocacy law expands the risk of litigation by, or on behalf of, conservatees who are dissatisfied with the attorneys assigned by the county to represent their personal and financial legal interests. Alameda County's exposure to legal risk regarding probate conservatorships arises from the fact that the county does not keep track of how many and what type of probate cases are in the system; does not record what the outcomes actually are and what they should be; and does not audit the probate conservatorship system to examine its effectiveness, challenges, rate of improvement, and enforcement of probate conservatorship laws.

The significant understaffing and underfunding of the Public Defender likely contribute to the absence of jury trials and the rarity of court trials in conservatorship matters. With few trial

results for an appeals court to consider, there are virtually no appeals in which the appellate court could evaluate the procedures in probate conservatorships. Unlike constituencies with political power, adults in conservatorship proceedings are largely unable to lobby or influence the elected Board of Supervisors, the body responsible for funding decisions.

A Path Forward?

Alameda County's conservatorship defense providers rely on either funding from the Board of Supervisors, for which competition is fierce, or grants from foundations and individuals, which may not be reliable. However, other, more sustainable funding models exist. One such program, located outside California, has achieved good results for its clients and is financially self-sustaining.

The Legal Aid Center of Southern Nevada (located in Clark County) funds conservatorship defense through a fee appended to each document filed in the county recorder's office; its services are free to conservatees. Attorneys work with advocates and support staff to explore less-restrictive alternatives to conservatorship and to conduct affirmative outreach, which consists of twice-yearly, in-person visits with the conservatee to inspect their living conditions and assess their capacity. As a result of these efforts, in 2020 the Legal Aid Center closed almost as many conservatorship cases as it opened. In approximately 12% of its cases, either the petition for conservatorship was rejected or the existing conservatorship was terminated for cause. In other words, nearly one in eight conserved adults had their decision-making powers restored and their conservatorship proceedings dismissed.

Conservatorship defense providers in Alameda County would benefit from having a steady source of funding, employing advocates and legal assistants to monitor ongoing conservatorships, and having affirmative outreach built into the budget. Both conservatees and proposed conservatees would benefit from the proceedings being treated as a public service, with no fees or costs charged to their estates.

Under the current system, conservatees' estates can be quickly drained, despite court oversight. The main reasons are the costs of long-term care and fees paid to conservators and attorneys representing other parties (say, family members) whose hourly rates are not set by the court. The county is aware of this issue. In 2019, the Alameda County District Attorney investigated allegations that, among other things, probate court staff committed financial abuse and failed to protect conservatees' assets. The investigation found no evidence of criminal acts by probate

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court staff. It did, however, find that involuntary conservatorship proceedings are often very expensive for conservatees, especially those who are removed from their homes and placed in care facilities. The investigators offered the following recommendation to reduce or eliminate such costs for conservatees:

In situations where family members petitioned the court to be appointed conservator... and the Court finds conservatorship is not appropriate and eventually dismisses such petitions, the proposed conservatee should not be held accountable to pay for the costs of the legal process initiated by another person... [A]n analysis should be completed to identify alternate funding sources available through government agencies, including a voter approved initiative (tax) that can fund such expenses under limited and restricted circumstances.

The funding model used by the Legal Aid Center of Southern Nevada is one solution to this problem.

CONCLUSION

Through its investigation of conservatorship, the Grand Jury learned that there are numerous pitfalls in the system. The four findings and eight recommendations on the following pages aim to help conservatorship defense providers address these issues.

The Grand Jury recognizes that each case is unique and that attorneys have discretion in pursuing their clients' goals. The aim of this report is not to require attorneys to conform to a single, rigid standard but rather to clarify both the county's expectations of conservatorship defense providers and the duties of a zealous advocate. In the 2007 report conveying its recommendations to the Judicial Council, long before the funding intended to implement them was eliminated from the state budget, the Probate Conservatorship Task Force struck a hopeful note:

[M]any of the recommendations would require additional funding from outside sources and some recommendations would necessitate a substantial change in the culture and practice of superior courts and their justice partners. The task force did not want these factors to dictate whether a recommendation would be forwarded to the council; rather, the task force saw its charge as being one to make recommendations for the best possible system within which conservatees would have the greatest level of protection, resulting in a system that would warrant a high level of public trust and confidence.

The Grand Jury echoes these sentiments, with the hope that its findings and recommendations will lead to meaningful change for conserved adults in Alameda County. They have waited long enough.

FINDINGS

Finding 15:

The Public Defender's probate conservatorship unit is severely understaffed and overworked, meaning that proposed conservatees with means receive a far higher level of service than the indigent.

Finding 16:

The failure of the Public Defender to gather data on conservatorship case outcomes, implement formal training procedures, and establish a formal grievance process for clients, in addition to its reliance on paper files, hampers its ability to identify trends, stay up to date on best practices, and learn from past experience.

Finding 17:

The lack of a contract between Alameda County and its conservatorship defense providers that outlines the expected scope of representation means that not all proposed conservatees receive the same level of service and raises the risk of litigation against the county.

Finding 18:

Involuntary conservatorship proceedings can quickly drain proposed conservatees' estates, which would not occur under a recorder's fee- or grant-funded model.

RECOMMENDATIONS

Recommendation 20:

The Alameda County Board of Supervisors must transfer responsibility for conservatorship defense from the Alameda County Public Defender's Office to a separate agency.

Recommendation 21:

The Alameda County Board of Supervisors must establish a written contract with its conservatorship defense provider(s) outlining the standards to be met in order to receive county funding, as set forth in Recommendation 22.

Recommendation 22:

The Alameda County Board of Supervisors must include the following provisions in the written contract(s) named in Recommendation 21:

- a. actions required to establish zealous advocacy, including

- i. arranging an evaluation of proposed conservatees by a licensed medical professional and/or a social worker,
 - ii. working with regional centers to review individualized program plans (IPPs) for (proposed) conservatees who are regional center clients, to determine whether a less-restrictive alternative is available, and
 - iii. implementing a procedure to follow up with court investigators to ensure thorough and timely investigations,
- b. the length of time an attorney or support staff must perform affirmative outreach after letters of conservatorship are issued,
 - c. requirements that the conservatorship defense provider
 - i. establish written attorney training procedures,
 - ii. establish annual attorney performance evaluation procedures,
 - iii. review each case after the conservatorship ends and conduct an “exit interview” or survey with interested parties, and
 - iv. maintain a database of case outcomes.

Recommendation 23:

The Alameda County Board of Supervisors must select a neutral third party to conduct an annual audit of a random sample of conservatorship defense cases to assess attorney performance and determine compliance with probate rules.

Recommendation 24:

Unless and until there has been a determination as to a new funding model, the Alameda County Board of Supervisors must approve funding for one experienced full-time attorney to be assigned exclusively to the Alameda County Public Defender’s probate conservatorship unit.

If the Alameda County Board of Supervisors finds it unmanageable to follow Recommendation 20, then it must ensure that the existing conservatorship defense providers meet the standards named in Recommendation 22 by implementing Recommendations 25, 26, and 27:

Recommendation 25:

The Alameda County Board of Supervisors must direct the Alameda County Public Defender to subscribe to an attorney training service upon hire and for continuing education in the area of probate conservatorship.

Recommendation 26:

The Alameda County Board of Supervisors must direct the Alameda County Public Defender to establish annual performance evaluation procedures for conservatorship attorneys.

Recommendation 27:

The Alameda County Board of Supervisors must direct the Alameda County Public Defender and Legal Assistance for Seniors to arrange for each client to be evaluated by a licensed medical professional and/or a social worker.

REQUEST FOR RESPONSES

Pursuant to California Penal Code sections 933 and 933.05, the Grand Jury requests each entity or individual named below to respond to the enumerated Findings and Recommendations within specific statutory guidelines, no later than 90 days from the public release date of this report.

Responses to Findings shall be either:

- The respondent agrees with the finding.
- The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Responses to Recommendations shall be one of the following:

- The recommendation has been implemented, with a summary regarding the implemented action.
- The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency where applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

RESPONSES REQUIRED

Alameda County Board of Supervisors	Findings 15, 17 & 18 Recommendations 20 through 27
Alameda County Public Defender	Findings 15, 16 & 18 Recommendations 24, 25 & 26

APPENDIX A: GLOSSARY

Affirmative outreach: when an attorney proactively checks on a conservatee's well-being after conservatorship has been established, as opposed to taking no action unless a problem has been reported.

Capacity: a person's ability to perform a task (also referred to as competence).

Conservatee: an adult whom a court has determined is unable to manage their own personal and financial affairs because of physical illness, developmental disability, or conditions of old age.

Conservator: a person or organization approved by the court to manage and protect a conservatee's finances and assets (conservator of the estate); arrange for the conservatee's food, shelter, and/or medical care (conservator of the person); or both.

Court investigator: a person employed by the court who advises conservatees of their legal rights and visits them in person, assesses their living conditions, and reports back to the court on whether the conservatorship should continue. Court investigators are required to conduct a visit and file a report one year after a conservatorship is established and every two years thereafter.

General conservatorship: applies to any impaired adult, particularly those who cannot care for themselves or manage their finances, usually because of conditions associated with old age.

Indigent: refers to a person with few or no assets who is eligible for legal representation by the Public Defender.

Individualized program plan (IPP): a document assembled by a regional center client, in collaboration with their family, a regional center representative, and others, that describes the adult's personal goals and how to achieve them.

Limited conservatorship: applies only to adults with developmental disabilities. The conservator has limited authority, specified by the court, and the conservatee retains all other rights not specifically assigned to the conservator (see Seven powers of conservatorship).

LPS conservatorship (also known as mental health conservatorship): named for the Lanterman–Petris–Short Act of 1967, this type of conservatorship is the most restrictive, with the aim of rehabilitating adults with severe mental illness. Unlike a probate conservatorship, an LPS conservatorship must be initiated by a governmental agency. It is not the same as a 5150 hold, which lasts up 72 hours and does not involve a conservator.

Probate conservatorship: includes both limited and general conservatorships, which are administered in probate court (excludes LPS conservatorships). Probate conservatorships are the focus of this report.

Proposed conservatee: an individual for whom a petition for conservatorship has been filed but who has not yet been conserved by a court.

Regional center: a nonprofit agency that offers assessments, access to services, and case management for persons with disabilities.

Scope of representation: the legal services an attorney provides for a client.

Seven powers of conservatorship: the rights that a court can transfer from an impaired adult to a conservator (i.e., the rights to choose their place of residence, to access confidential records, to marry, to make medical decisions, to enter into contracts, to make educational decisions, and to choose who to have social and sexual relationships with).

Supported decision-making: a less-restrictive alternative to conservatorship in which developmentally disabled adults create their own support networks to help manage their personal and financial affairs.

Zealous advocacy: the requirement that attorneys advocate for what their clients want, rather than what they think is in their clients' best interest.

APPENDIX B: REFERENCES

Americans with Disabilities Act of 1990 (*ADA*), Title II, Subpart A, U.S.C. §§ 12131–12134

Cal. Prob. Code § 1800.3(b)

Cal. Prob. Code § 1827

Cal. R. Ct. Rule 7.820

Conservatorship, Stat. 2021, ch. 417 (AB 1194)

Judicial Council of California, *California Handbook for Conservators: 2016 Revised Edition*, 2016, <https://www.courts.ca.gov/documents/handbook.pdf>

Judicial Council of California, *Recommended Practices for Improving the Administration of Justice in Probate Conservatorship Cases: Final Report of the Probate Conservatorship Task Force*, September 2007, <https://www.courts.ca.gov/4039.htm>

Legal Aid Center of Southern Nevada, *2020 Report: Adult Guardianship Advocacy Program and Minor Guardianship Advocacy Program*, January 2021, <https://www.lacsn.org/images/2020-Guardianship-Advocacy-Program-mini-annual-report.pdf>

Omnibus Conservatorship and Guardianship Reform Act of 2006, Stat. 2006, ch. 493 (AB 1363)

State Bar of California, *Guidelines on Indigent Defense Service Delivery Systems*, December 2005, [https://www.calbar.ca.gov/Portals/o/documents/ethics/Indigent Defense Guidelines 2006.pdf](https://www.calbar.ca.gov/Portals/o/documents/ethics/Indigent%20Defense%20Guidelines%202006.pdf)