Ten is Not Enough: Probate Investigators Cannot Comply with Legislative Mandates

by Thomas C. Coleman

Just how many court investigators does the Los Angeles County Probate Court actually have? The answer depends on who you ask.

In March 2014, I submitted an administrative records request to the Los Angeles Superior Court pursuant to Rule 10.500. Among the many requests for information, I asked for "the number of probate court investigators currently employed to investigate conservatorship cases (general and limited)."

The following month I received an official reply from the Superior Court. Court staff replied: "The number of positions assigned to perform Probate Investigations is 18."

Considering the wording of the question, any reasonable person reading the answer would normally conclude that the court has 18 investigators. Other information indicates that the actual number of currently employed investigators is less than half that number.

Information contained in a biographical summary of the court's chief investigator, Leonard Thomas Adamiak, says that he "supervises a staff of 10 full-time investigators." The biographical information is contained in a book titled "California Guardianship Practice" published in 2014. So that's very recent.

Assuming that the number is still 10, I am wondering if 10 investigators are sufficient to comply with the legislative mandates imposed on the court by the Legislature. The math tells the story.

The Probate Code states that court personnel "shall" conduct investigations in all new petitions for conservatorship, limited conservatorship, and guardianship. An investigation "shall" also be done at the end of the first year of conservatorship or guardianship. Another investigation "shall" also be done once every two years thereafter.

In each of these situations, investigators must meet with the conservatee or ward face to face. They must also interview the actual or could-be conservators or guardians. For new filings, they "shall" also interview all relatives of the first degree, which means parents or siblings. That's a lot of work.

A few minutes of calculations shows, quite clearly, that 10 investigators cannot possibly fulfill these statutory duties.

To make these calculations, one needs to know the number of new filings each year, the number of cases subject to annual review each year, and the number of cases that should have a biennial review each year.

Based on information provided from an annual report of the Superior Court, there are about 2,000 new conservatorship cases filed each year in Los Angeles. There are another 2,000 new guardianship cases. So that's 4,000 new cases per year that need to be investigated.

Annual review mandates are easy to calculate. Each year, the prior year's new filings require an annual review. That means investigators are required to investigate another 4,000 cases each year.

Calculating the number of "open" conservatorship and guardianship cases is more difficult.

A conservatorship case remains "open" until the conservatee dies. An educated guess would be that general conservatorships for seniors – let's say, for example, they are started when they are 80 years old – might remain open for seven years or so.

Limited conservatorships for adults with developmental disabilities, might start when they are 18 and remain open until they are 68. That's 50 years. Some would live longer, others less. So let's be conservative and say the average length of a limited conservatorship is 40 years.

Guardianships stay "open" for a shorter period of time. They expire when the ward turns 18. Let's assume the average guardianship starts when the child turns 11. That would mean, on average, a guardianship case stays "open" for 7 years.

These numbers are needed to determine the number of biennial reviews that must be done each year. Per the statutory mandate, half of the number of "open' cases would need to be investigated each year.

How many "open" cases does the Los Angeles Probate Court have for general conservatorships, limited conservatorships, and guardianships? I asked. The answer I received does not make sense.

The court stated that the number of guardianship cases subject to annual reviews or biennial reviews "is not available in any document or report." To me, that means the court may have the information but they are not going to turn it over to me so easily. They are going to make me work for the information. I will have to ask the right question.

In response to my question about the number of "open" conservatorship cases subject to annual or biennial review, the court said that it had an "active inventory" of 7,643 limited conservatorships, 2,093 dementia cases, and 3,341 other conservatorships.

I find it hard to believe that there are fewer than 8,000 "open" limited conservatorship cases. Some 1,200 new cases are filed each year. Cases remain open until the conservatee dies, which could be 40 years. Something does not add up.

Let's assume that the number of new filings has risen each year over the past few decades. Limited conservatorhips were created by the Legislature around 1980.

Perhaps new filings for limited conservatorships averaged 900 new cases per year for the last 10 years. Perhaps 600 per year for the 10 years before that, and 400 per year for the prior decade. Using those averages, there should be about 19,000 "open" limited conservatorship cases.

But the court says there are only 7,643 in "active inventory." That makes me believe that the court must have an "inactive" inventory. Perhaps people have moved and did not give a forwarding address. Perhaps the court does not have the time to track them down using various government databases. So these cases may be given an "inactive" status.

In any event, I will use the court's answers for my calculations to determine the number of investigations that each of the eight investigators would have to do on each "field day" in other to satisfy statutory mandates.

By "field day," I mean work days during which an investigator would go out into the field, or make phone calls, to investigate new cases, annual reviews, and biennial reviews. Assuming that one day per week would be devoted to staying in the office and writing reports, there would only be four days per week devoted to investigations in the field.

One must subtract court holidays, vacation and sick days, court appearance days, and training days. By my calculations, each investigator would have 171 "field days" per year.

I calculate that each investigator would have to conduct 1,4000 investigations during those 171 days. That would be, on average, 8 investigations per investigator per field day.

Here is how I reach the 1400 investigations per year per investigator:

2,000 new filings (conservatorship)
2,000 new filings (guardianship)
2,000 annual reviews (conservatorship)
2,000 annual reviews (guardianship)
6,000 biennial reviews (conservatorship)
14,000 total reviews

The 14,000 number does not include biennial guardianship reviews because the court did not supply an answer to my question regarding "open" guardianship cases. So 14,000 investigations per year is a conservative number.

Let's do the math. If 10 investigators must conduct 14,000 investigations per year, that is 1,400 investigations per investigator.

If each investigator were to do 8 field investigations on each of four available work days per week, each of them would have to write and submit 32 reports to the court on the report-writing day each week.

There is no way that 10 investigators could handle this type of a case load.

So what does the court do? What is the answer to this dilemma?

The way out of this predicament is that the court has stopped using court investigators in new filings for limited conservatorships. Biennial reviews in these cases are done less frequently.

A presenter at the recent training for court-appointed attorneys came right out and told the audience that court investigators are no longer used in screening new petitions for limited conservatorships. "Your report will be used as a substitute for the court investigator," the attorneys were told.

There are many problems with using the reports of court-appointed attorneys "in lieu of" reports from probate investigators. First, these attorneys are not trained investigators.

Second, it is a conflict of interest and breach of professional standards regarding confidentiality of work product, for attorneys to be acting as advocates and defenders of clients and also as de-facto investigators for the court.

Third, a general order of the court places a presumptive limit on the number of hours an attorney may devote to any given case. Ten hours is the maximum, without prior court approval.

Fourth, there is also implied pressure on the attorneys to keep the number of hours to a minimum. The court is trying to keep costs down. Therefore, attorneys may reasonably conclude that they are more likely to get future appointments on cases if they keep their billing down.

Data from a review of court records in 128 limited conservatorship cases in 2012 shows that the average billing of court-appointed attorneys is $750 per case. At $125 per hour, which is what the court allows, these attorneys are spending about six hours per case.

Nearly half of that time is billed for court appearances. Some for travel time. Perhaps three hours or less are spent in conducting an investigation.

For the sake of argument, let's dismiss constitutional requirements that an attorney must be an advocate working for the client and not for the court. Let's ignore the violations of confidentiality of information being gathered and disseminated and the breach of loyalty to the client occurring when court-appointed attorneys act as de-facto court investigators. Professional standards and ethics are simply being ignored.

Even if we pretend these ethical and constitutional violations do not exist, there is still a problem with the court using the reports of court-appointed attorneys as substitutes for reports of trained probate investigators. What the attorneys are doing are not real investigations.

A proper investigation would require eight hours or more: a private meeting with the conservatee, interviews and background checks of the conservators, phone calls to relatives, and a review of records of the Regional Center, school, and day program.

The premise of this commentary is supported by the facts. Ten is not enough. The number of court investigators would need to be 24, at the very least, to satisfy statutory mandates.