

A Grand Jury Method for Conservatorship Reform

By Thomas F. Coleman
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The top-down approach to conservatorship reform has been tried for nearly 15 years with very little success. Perhaps it is time for reform advocates to use a more grass-roots process.

When a series of articles in the Los Angeles Times exposed major problems with California's probate conservatorship system in November 2005, there was a swift reaction from elected officials in all three branches of state government. The pattern of corruption and dysfunction that emerged from the newspaper's review of 2,400 conservatorship cases could not be ignored.

The chief justice convened a probate task force which made 85 recommendations for reform. The Legislature quickly passed the Omnibus Conservatorship and Guardianship Reform Act which the governor signed into law on Sept. 27, 2006. Although these actions seemed to satisfy the press and made government officials appear to be responsive, not much changed. Most of these reforms have never been funded and therefore have never been implemented. The conservatorship system is as flawed today as it was back then.

A small network of reform advocates have been agitating for changes in the conservatorship system for the past several years. I am one of them.

We have approached elected and appointed officials in all three branches of government at the federal, state, and local levels. Efforts to enlist the help of the governor and cabinet secretaries were not productive. Outreach to the attorney general was nothing but frustrating. Our efforts with the chief justice and the Supreme Court produced no results. Only one small change has occurred as a result of seven years of interaction with the Judicial

Council. The Legislature has mostly been unresponsive, although that could change this year. A few modest reforms have been included in some pending bills.

Suffice it to say, the top-down approach to reform – going to elected officials who have the authority to make the changes that are needed – has not been very productive. Perhaps it is time for reform advocates to use a bottom-up approach. Invoke the authority of civil grand juries.

The website of the judicial branch explains the grand jury process. "Every year, in each of California's 58 counties, a group of ordinary citizens takes an oath to serve as grand jurors. Its function is to investigate the operations of the various officers, departments and agencies of local government. Each Civil Grand Jury determines which officers, departments and agencies it will investigate during its term of office."



The civil grand jury system has been in effect since the California Constitution was adopted in 1850. In each county, a group of 19 citizens serves as a grand jury for a one-year term. It operates with the assistance of an employee of the superior court and a deputy district attorney. It has wide-ranging powers to investigate problems and to issue reports recommending reforms. There is only one area that is off limits – improprieties, inefficiencies, or dysfunction by *state* offices, agencies, or departments.

Despite this limitation, grand jury investigations and reports could stimulate significant reforms in the probate conservatorship system. The actions of county employees and the use of county funds are fair game for grand jury investigations. A grand jury probe of the actions of county departments

such as adult protective services, public guardian, county counsel, and public defender could help improve their role in the conservatorship process. An investigation of the use of county funds to provide legal services to indigent conservatees and proposed conservatees could result in major beneficial changes in advocacy and defense services for seniors and people with disabilities who find themselves targeted by conservatorship petitions.

County supervisors have authority to choose the method by which they will fund indigent legal defense services for conservatorship proceedings. In some counties, they fund the office of the public defender to provide legal representation. In other counties, the money is directed to a nonprofit legal services organization. In places such as Los Angeles, supervisors direct the funds to the superior court itself which operates its own program for court appointed counsel.

Regardless of which method it used, as the source of funding the county is responsible to ensure that the legal services are adequate and in compliance with disability nondiscrimination statutes such as the Americans with Disabilities Act. My research has shown that supervisors are throwing money at these legal services programs without any quality assurance controls. As a result of inadequate training, unreasonably high caseloads, lack of performance standards, and no monitoring mechanisms, conservatees and proposed conservatees are often being denied effective legal representation.

Funding and implementation of legal services is one of the first parts of the conservatorship system that a civil grand jury should investigate. A county has complete control over this. A grand jury could hold county supervisors accountable for deficiencies in these legal services programs.

Improvements in this one area would have an immediate effect on the administration of justice by the state probate courts. Although a grand jury cannot directly investigate the court itself, it can and should investigate the methods by which legal services are being delivered to indigents in these judicial proceedings. Improvements in legal services will result in properly trained attorneys acting as zealous advocates for their clients. These

attorneys will file motions, make objections, demand hearings, and file appeals. Improved legal advocacy and defense services will eventually cause the many other problems with the conservatorship system to be addressed by our appellate courts.

The grand jury can also inquire into how various county-funded employees are performing in connection with conservatorships. Is the public guardian seeking less restrictive alternatives in every case as required by law? Does the adult protective services department work with defense counsel to identify supports and services that could help a proposed conservatee avoid having his or her life taken over by a conservator? Is the county counsel well versed in the mandates of the Americans with Disabilities Act and properly advising county supervisors that services they fund, such as legal services programs, must comply with the ADA?

Considering that the county's role in probate conservatorship proceedings is more extensive than most people realize, civil grand juries in each county should use their authority to investigate the funding decisions of supervisors and the practices of county departments pertaining to conservatorships. Because legal services play a crucial role in the conservatorship process, a grand jury probe should make this component an investigative priority.

Civil grand juries get ideas for investigations from one of three sources: one of their own members; citizen complaints; or suggestions from a previous grand jury. Since they are an untapped source of power for conservatorship reform, victims of conservatorship abuse and reform advocates should reach out to this one part of the government that is truly "of the people, by the people, and for the people."

There is certainly no harm in trying, considering that the top-down approach has yielded very few reforms.

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