

A Presentation to the Judicial Council on Crafting Better Ways to Manage Appointed Conservatorship Attorneys

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Create a CRAFT Program Like the DRAFT Program

For several years, the [Chief Justice](#), [Judicial Council](#), and [Supreme Court](#), have received reports about systemic problems with the probate conservatorship system. [Proposals](#) to improve the system have been submitted to [state](#) and [local](#) judges. Suggestions were made on steps the judicial branch can take to ensure that seniors and other adults with disabilities receive access to justice.

Legal and ethical problems arise when local judges control the recruitment, appointment, payment, training, and monitoring of attorneys who represent probate conservatorship respondents.

There are problems in [Alameda County](#). For example, one non-profit has been given a monopoly on all appointments when a respondent has assets. This monopoly was created by [court rule](#). There was no RFP and no competitive bidding. There are no quality assurance controls and no complaint system. On top of that, the court contracted with the same organization to assist *petitioners* in filing and processing cases. This dual role creates a real or apparent conflict of interest.

There are also major problems in the court-appointed counsel program in Los Angeles. There is favoritism in the appointment process. There are no quality assurance controls. The system is operated by the court in violation of the Americans with Disabilities Act. A [complaint](#) about this local system is [under review](#) by the U.S. Department of Justice.

Spectrum Institute filed a [report](#) with the Supreme Court last year demonstrating that the Code of Judicial Ethics is violated when local judges control such legal services programs. Unfortunately, the court's ethics advisory committee summarily dismissed this report.

Spectrum Institute urges the Judicial Council to adopt a pilot project called CRAFT – a Conservatorship, Representation, Administration, Funding, and Training program. It would adopt the same operating principles as the [DRAFT](#) program in juvenile dependency proceedings – a highly successful program where the management of appointed dependency attorneys in 20 counties is centralized at the state level.

This issue is explored in greater depth in a [commentary](#) published in the Daily Journal on November 20, 2019.

The Judicial Council should acknowledge the many problems inherent in local judges managing and directing attorneys who represent conservatorship respondents in their courtrooms. The Chief Justice should assign staff to start crafting sensible statewide solutions for the Council to consider.

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Crafting Better Legal Services in Conservatorship Cases

By Thomas F. Coleman
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“This call may be monitored for quality assurance purposes.” We have all heard this statement when we are on the phone with private-sector businesses that sell products or provide services to consumers.

Businesses often make the quality of products or services a priority when they have stiff competition. But when a monopoly exists or when there is a captive audience, quality may take a back seat to efficiency.

Quality assurance is not what most of us think about in terms of government services. This is especially true when it comes to judicial services in court proceedings. Whether judges and attorneys are actually implementing the minimum standards established by the legislature is not something that most litigants feel they have much control over.

Think about public attitudes regarding public defenders. What comes to mind for most people are large caseloads, plea bargains, and assembly-line justice. Even though there are excellent public defenders who deliver quality services, they are thought of as the exception and not the rule. No one would expect to find a customer service representative or quality assurance department in the office of a public defender.

For decades, the same expectation existed for legal services being provided to litigants in juvenile dependency proceedings. When one or both parents were hauled into court for abuse or neglect, they were provided with a court-appointed attorney to defend them. These parents had no control over the quality of legal services they were provided. It was a take-it-or-leave-it situation. The children

were also completely at the mercy of their court-appointed lawyers.

Local judges had total control over the recruitment and payment of the attorneys they appointed in dependency cases. This was a “spoils system” where there were favorites who received many appointments and other attorneys who received very few cases. Attorneys had an incentive to please the judges so they would be appointed in future cases and thereby increase their revenue stream. Pleasing the judges often meant negotiating settlements in order to help the judges move cases through the system quickly and efficiently.

The court-appointed attorney system worked well for the judges who controlled it and for the attorneys they favored. It did not work so well for the parents or children who were pushed through the system with settlements that may not have been in their best interest. For them, efficiency often

took precedence over justice.

Eventually some lawyers and child welfare organizations started to push back against this court-appointed attorney system controlled by local judges. The momentum for change grew to the point that systemic deficiencies could no longer be swept under the rug.

With the advent of a pilot project called DRAFT, quality legal services went from an oxymoron to an expectation in child dependency proceedings. Authorized by the legislature, the Judicial Council started the Dependency, Representation, Administration, Funding, and Training Program in 2004. The goal of DRAFT was to stabilize costs related to appointed dependency counsel and to test



the use of performance and compensation standards for attorneys in juvenile dependency cases. When it was started in 2004, ten court systems volunteered to participate. Staff of the Judicial Council worked with participating courts, attorney providers, and an oversight committee to create new standards for dependency counsel caseloads, compensation, and performance. The pilot project was so successful that just three years later ten more courts were added to the program.

Components of the DRAFT program include: competitive bidding from law firms that want to represent clients in juvenile dependency proceedings; caseload standards; compensation standards that rationalize compensation and allow for regional differences due to cost-of-living expenses; performance standards that are written into the contracts with participating law firms; and comprehensive training programs.

The DRAFT program also uses social services data to evaluate the impact of the program on well-being outcomes for the children. The subliminal message to the families involved in these proceedings could well be: “This proceeding may be monitored for quality assurance purposes.”

When I was recently at a meeting of the Judicial Council to speak to its members about the need for reforms in the conservatorship system, I sat in the audience listening to reports by several committees. During one presentation I heard mention of the DRAFT program. My ears perked up. Perhaps this approach to legal services for children and parents in dependency cases could be a model for legal services in probate conservatorship proceedings.

Under current probate law, judges in each superior court appoint attorneys to represent seniors and other adults with disabilities in conservatorship cases. In some locations, this is done on an ad hoc basis without any systemic checks and balances. In other places, such as Los Angeles County, the court-appointed attorney system smacks of cronyism without any demonstrated concern for quality or accountability.

One major benefit of the DRAFT program is that it focuses more on justice than efficiency. Another is that by having a state agency administer the program, local judges can focus exclusively on what they are elected to do – judging cases. DRAFT eliminates actual or potential violations of judicial ethics that are inherent in a legal services program operated by judicial officers.

California needs a similar program to administer legal services for conservatees and proposed conservatees. These involuntary and vulnerable litigants would benefit immensely if judges no longer appointed, coached, and paid the attorneys who appear before them in conservatorship proceedings. Justice would be much better served if these lawyers were no longer dependent on appointments by local judges for a steady stream of income.

The legislature should authorize the Judicial Council to develop a Conservatorship, Representation, Administration, Funding, and Training Program (CRAFT). In addition to all of the benefits of the DRAFT program, this pilot project would eliminate the incentive that currently exists in conservatorship proceedings for attorneys to protract litigation when there are assets they can tap into for their fees, or to expedite the cases of indigent clients due to financial disincentives or excessive caseloads. CRAFT could start with a few court systems, be evaluated, and then expand to others.

It is time for the State of California to craft a legal services program for conservatorships that reduces the possibility of financial exploitation and that eliminates judicial favoritism. Seniors and other adults with disabilities caught up in conservatorship proceedings deserve the same quality assurance protections the state has been giving for more than a decade to children and parents in juvenile dependency proceedings. ◇◇

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