

Conservatorship Reform



From Complaints To Solutions

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Conservatorship Reform



A Multi-Faceted Approach

Federal

Judicial

Professions
Associations

Disability
Organizations

State

Legislative

Media

You

Local

Executive

Universities

Elder Abuse
Organizations

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.



Supreme Court



Jurisdiction	
CASES	POLICIES
Review of Appeals	Code of Judicial Ethics
Writ Proceedings	Oversight of State Bar
Depublishing Opinions	California Style Manual

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

Judicial Council

Jurisdiction				
Rules	Standards	Budget	Surveys	Committees

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

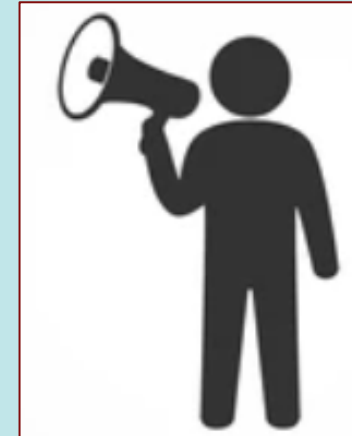


ATTORNEYS CAN: (individual cases)

- 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

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

Fair Employment and Housing Council



Proposals to Use FEHC Authority
to Protect the Civil Rights of
People with Disabilities in
Conservatorship Proceedings

Spectrum Institute

October 23, 2019

Next Steps

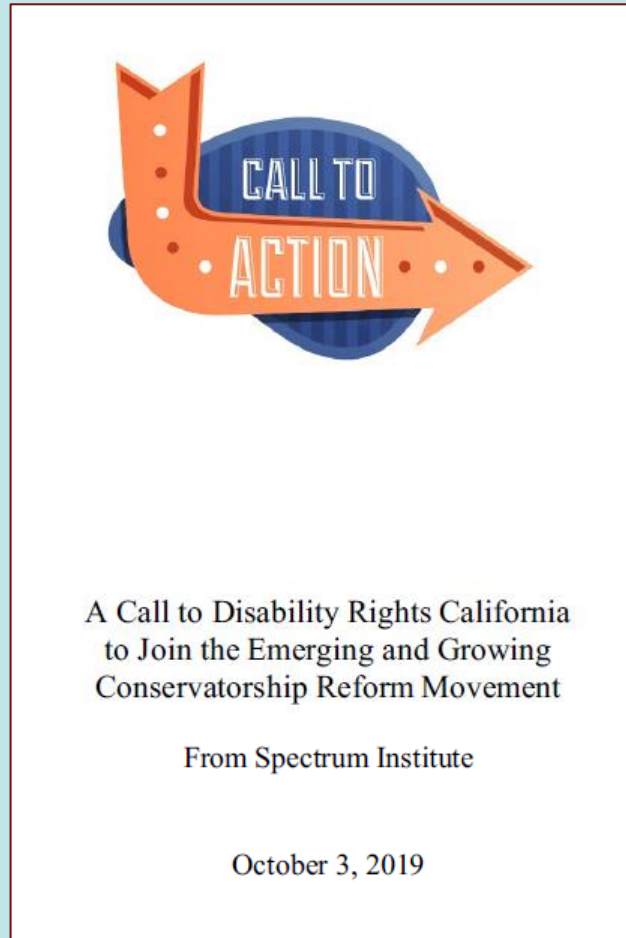
- Monitor FEHC regulations requiring ADA compliance in judicial proceedings
- File complaint against the Judicial Council because Rule 1.100 is misleading
- Educate conservatorship reform advocates about DFEH complaint process

Disability Rights California

A government-funded nonprofit

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
Supervisors
- ★ Public Defenders should not have **excessive caseloads**; have proper **training**; adopt ADA-compliant **performance standards for legal services**
Public Defender
- ★ County Counsel should advise supervisors of **liability** for violating ADA
County Counsel
- ★ Public Guardian and County Counsel should advocate for **less restrictive alternatives**
Public Guardian
- ★ California Association of Counties to hold a **conservatorship forum**
Association of Counties
- ★ **Investigate** county's role in the conservatorship process; issue a report proposing reforms
Civil Grand Jury
- ★ Convene a **Conservatorship Justice Project** pursuant to Gvt. Code Section 26500.5; Investigate disability **discrimination** under Civil Code Sec. 51.4
District Attorney

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

Funding

Guidance

- 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

Investigate

Hearings

- 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

Involving lawyers, professors, and law students

Law Schools

Internships

Guest lecturing

Legal Publications

Continue to write op-eds

Bar Associations

Continue to do CLE webinars

Seek support for legislation

Interns

Op-Eds

Webinars

Dynamics of Dysfunction:



Inadequate Training
Ethical Lapses
Profit Motivations
Culture of Collegiality

Multi-faceted Approach:



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

Medicine

- **Psychologists**

Better training of students & continuing education on capacity assessments

Psychology

- **Social Workers**

Better training of students & continuing education on evaluating less restrictive alternatives to conservatorship

Social Work

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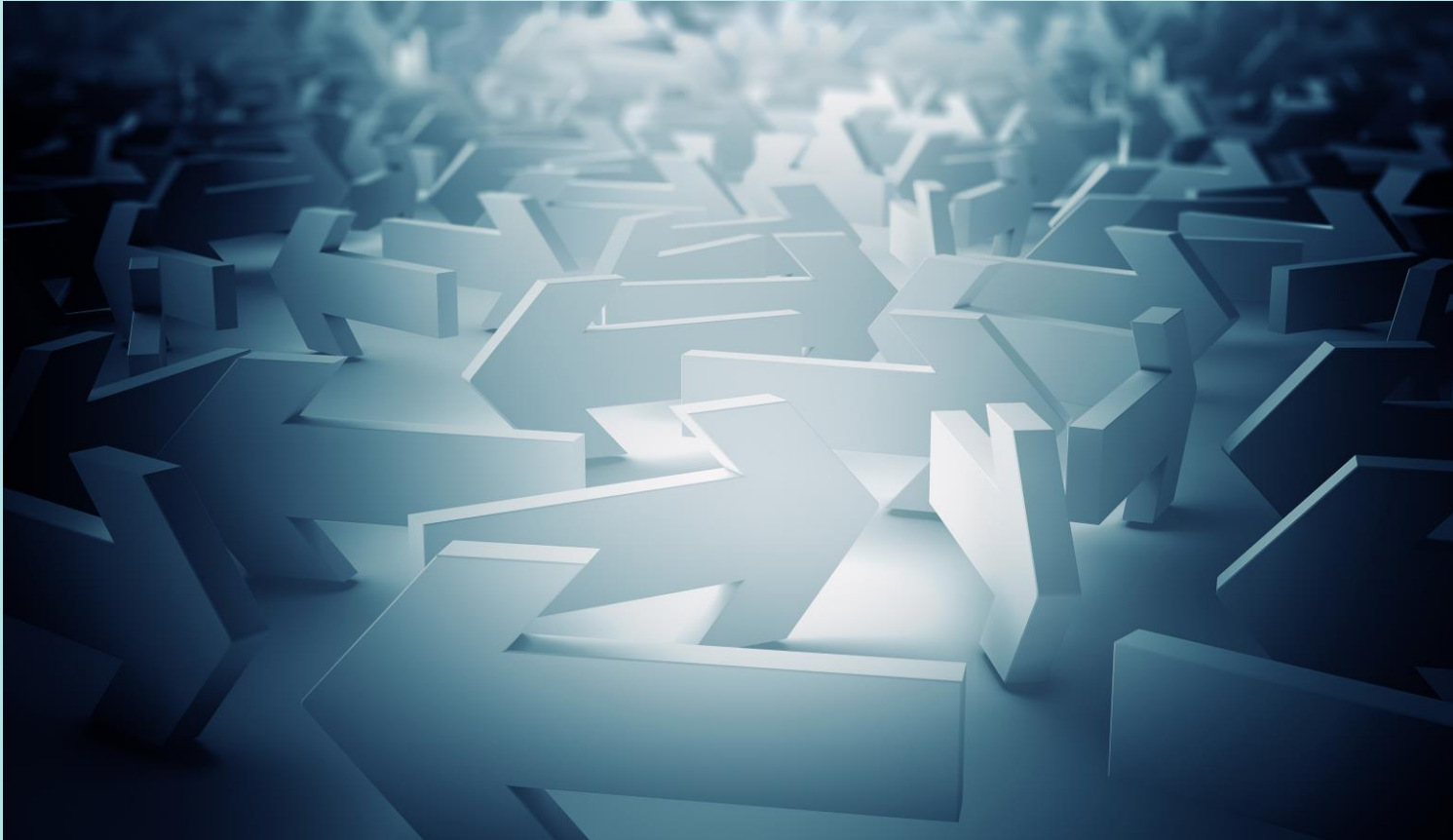
Elder Abuse
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Conservatorship Reform is a Puzzle



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>



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