

Jury Instructions for Probate Limited Conservatorship Cases



A Practice Guide for California Attorneys

By
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Attorney at Law

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

Justice Louis Brandeis

(*Olmstead v. United States*, 277 U.S. 438, 479 (1928))

While guardianship was designed to protect the elderly, it is a process that is often used to take advantage of them. Guardianship in many ways is the most severe form of civil deprivation which can be imposed on a citizen of the United States.

U.S. Rep. Claude Pepper

Chairman's Report (1987)

House Select Committee on Aging

Supported Decision-Making protects and enhances the principal prerogative all people have to make their own decisions and direct their own lives to the maximum of their abilities and can improve life outcomes like health, independence, safety, and employment.

Jonathan Martinis

Supported Decision-Making: Protecting
Rights, Ensuring Choices (2015)

National Resource Center for Supported Decision-Making

Dedication

This guidebook is dedicated to the men and women whose unfortunate experiences with the conservatorship system have provided concrete examples of the need for systemic reforms:

Gregory D, an autistic young man whose court-appointed attorney waived his rights rather than defend them; **Michael P**, a conservatee with an intellectual disability who lost his life after the probate court failed to protect him; **Stephen L**, an autistic young man whose appointed attorney would have surrendered his right to vote had it not been for outside intervention; **Theresa J**, an elderly woman whose powers of attorney



and trust documents were unnecessarily voided by the court and whose court-appointed attorney violated ethical duties of confidentiality and loyalty by arguing against her stated wishes; **David R**, a former producer with National Public Radio who was stripped of his right to vote and whose fiancé contacted over 50 attorneys, none of whom would help; **Olivia B**, an autistic young woman whose case was the subject of a Supreme Court decision requiring appellate courts to use stricter scrutiny in evaluating claims of insufficiency of evidence in conservatorship cases; **Ashley E**, an autistic young woman in whose case the Court of Appeal ruled that

presence of a proposed conservatee at a hearing on the petition is jurisdictional; **Katherine D**, an elderly woman who was not provided an attorney either in the trial court or on appeal, thus completely violating her right to counsel; and **Elizabeth H**, the young woman with Down syndrome whose public defender's demand for a jury trial inspired me to write this guidebook of proposed jury instructions.

Acknowledgment

I am inspired by the dedication and competence of attorneys who have taken steps to secure access to justice for adults with actual or perceived disabilities in probate court proceedings:

Tony Chicotel of San Francisco for writing an excellent guide on conservatorship defense; **Lisa MacCarley** of Glendale for sharing years of her experience in probate court; **Brook Changala** of Long Beach for speaking truth to power in the case of Theresa J., joining an *amicus curiae* brief in the case of Olivia B., and arranging for an MCLE training with the Long Beach Bar Association; **Pat Murphy** of Lancaster for speaking out for better training for court-appointed counsel; **Susan Sindelar** of Santa Barbara County for filing the first appeal for a limited conservatee in decades – a case resulting in a major victory in the Supreme Court; **Joseph Reyes** of Solano County for demanding a jury trial for a proposed conservatee – a rarity in California; **Jay Kohorn** of the California Appellate Project for helping conservatees receive court-appointed counsel on appeal; **Gerald Miller**, a court-appointed appellate attorney who helped secure victories on appeal for Olivia B and Ashley E; **Stephen Dale** of Contra Costa County who helped obtain endorsements from The Arc of California for various conservatorship reform proposals; **Evan Nelson** who filed a masterfully-written lawsuit against the attorneys and fiduciaries in Alameda County who violated the civil rights of Katherine D; **Sandra Slaton, Lanny J. Davis, and Dario Frommer** for their tenacious and creative advocacy for a client unjustly deemed to lack the capacity to litigate; **Justice Maria Stratton** who, as presiding judge of the probate court in Los Angeles, disclosed “inconvenient truths” about the conservatorship system there; and **Cheryl Mitchell** of Spokane, Washington, for providing advice on best practices in adult guardianship proceedings.



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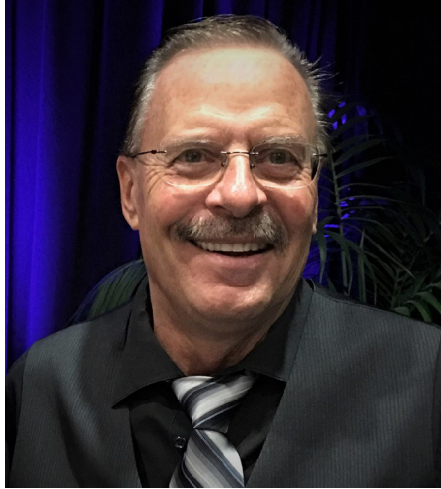
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About the Author



Thomas F. Coleman is a civil rights attorney with 47 years of experience advocating for the rights of disadvantaged and vulnerable populations, including seniors and people with disabilities.

For the past several years, his legal practice has focused on research, education, and advocacy involving the probate conservatorship system in California. Much of this work has been done pro bono as legal director of the Disability and Guardianship Project of [Spectrum Institute](#).

Coleman has written dozens of [policy reports](#) on deficiencies in the conservatorships system, calling on officials in all three branches of government to address these issues and implement reforms. Among the many commentaries Coleman has written on these and related matters, 23 op-ed articles have been published by the [Daily Journal](#) legal newspaper.

Coleman provides [consulting services](#) offering legal arguments and strategic advice to lawyers representing clients in cases involving issues of capacity to make decisions, supported decision-making as a less restrictive alternative to conservatorship, and the use of the Americans with Disabilities Act to secure access to justice for conservatees and proposed conservatees. He also offers [speaker services](#) for conferences and seminars sponsored by nonprofit advocacy organizations and service providers, as well as continuing education trainings for lawyers and other professionals.

Many of his advocacy efforts from 1972 to 2009 are chronicled in a book of his professional memoirs titled [The Domino Effect](#). An award-winning documentary film titled [Pursuit of Justice](#) explores his advocacy activities for conservatorship reform in California and guardianship reform nationally.



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Preface

By Lisa MacCarley

I have been representing clients in probate courts throughout Southern California for over 25 years. In all that time, I have never seen or heard of a jury trial in a conservatorship case.

Attorneys representing petitioners and objectors, other than the people who are facing conservatorship, cannot demand a jury trial. Only a proposed conservatee can do that. But they don't. Why? Because in counties where the public defender doesn't handle conservatorship cases, these involuntary litigants are represented by court-appointed attorneys. In Los Angeles, they been given a conflicting mandate by a local court rule to help the judges resolve the cases. Moreover, many of these attorneys are dependent on further appointments and the judges for their income stream. The judges appoint them to cases, authorize the amount of fees they are paid, and also decide if they receive appointments in future cases. The attorneys know that the judges discourage trials in general and jury trials especially because they would take up too much judicial time and create a backlog of other cases on an already too-overloaded docket. Thus, no jury demands are ever made.

These model jury instructions developed by Tom Coleman are excellent. They are an accurate statement of the law and would be a tremendous help to lawyers and judges if they were used. Unfortunately, for the reasons stated above, they are unlikely to be used in counties such as Los Angeles where the judges have undue influence on the attorneys who appear before them. They might be used in counties where the public defender represents proposed conservatees. But demands for jury trials are seldom made by public defenders, probably due to their heavy caseloads more than anything else.

Even if they are more theoretically valuable than practically helpful right now – until more attorneys start demanding jury trials for proposed conservatees – these model jury instructions should be presented to the Judicial Council with a request for that agency to develop approved instructions for probate conservatorship cases. As it now stands, the Judicial Council has totally ignored this area of the law. Considering that 5,000 or more new probate conservatorship cases are filed each year in California, the lack of approved jury instructions for these cases appears to signal a lack of interest by the judiciary in providing access to justice for the thousands of seniors and people with disabilities whose lives are upended by these proceedings.

The Chief Justice of California should direct the Judicial Council, which she chairs, to devote resources to develop approved jury instructions for probate conservatorship cases. This set of model instructions could be used by staff members to jump start such a project.

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Practice Tips: Preparation for Trial

These instructions will not be of much help if counsel for a proposed conservatee has not properly prepared for trial. The key to a victory is being thoroughly prepared.

A proposed conservatee is entitled to effective assistance of counsel. (*Conservatorship of David L.* (164 Cal.App.4th 701.) This requires effective assistance during preparation of a case for trial. (*Prince v. Superior Court* (1992) 8 Cal.App.4th 1176.) This may necessitate counsel obtaining the assistance of experts in preparing the defense. (Ibid.) An attorney must carefully investigate all potential defenses of fact and law. (*Barber v. Municipal Court* (1979) 24 Cal.3d 742, 751.) This requires an attorney to develop evidence that could be used to impeach witnesses for the opposition. (*In re Hill* (2011) 198 Cal.App.4th 1008, 1017.)

Whether the attorney for a proposed conservatee is a public defender or appointed counsel does not matter. Counsel must provide effective assistance in advocating for the client's wishes or defending the client's rights. In determining what steps to take to provide effective advocacy or defense, counsel need not start from scratch. There are two practice guides to which counsel can refer for suggestions.

"A Strategic Guide for Court-Appointed Attorneys in Limited Conservatorship Cases" was published by Spectrum Institute in 2014. This legal guidebook is available online. <https://spectruminstitute.org/strategic-guide.pdf>

"California Conservatorship Defense: A Guide for Advocates," was published by California Advocates for Nursing Home Reform in 2010. This resource is also available online. http://www.canhr.org/publications/PDFs/conservatorship_defense_guide.pdf

Investigation should start with an assessment of the client's needs for accommodations to ensure effective communication and meaningful participation in the case – both in and out of the courtroom. Counsel then should:

- In a limited conservatorship case, initiate an IPP review process at the regional center, either with a request from the client if he or she does not have a temporary conservator, or with a motion for an order authorizing counsel to make the request for the client.
- Move the court for appointment of two experts: (1) a qualified mental health professional to evaluate the client's abilities and capacities; and (2) a social worker to develop one or more alternative care plans that would ensure the client is safe without the need for a conservatorship.
- Identify and interview lay witnesses (family members, friends, neighbors, church members, service providers, etc.) for the purpose of: (1) rebutting witnesses for petitioners on the need for a conservatorship; and (2) providing affirmative evidence to show that the client can properly provide for his or her needs with accommodations or third party assistance.

Each witness or piece of documentary evidence should be summarized. Offers of proof should be made at trial, if necessary, to ensure there is a proper record for an appeal.

Jurors will not use these instructions in a way benefitting a proposed conservatee unless counsel effectively develops and presents affirmative and rebuttal evidence to them.

Proposed Jury Instructions for Probate Conservatorship Cases

By Thomas F. Coleman

Introduction

Jury trials in probate conservatorship proceedings are extremely rare in California.¹ Because jury trials in these cases are so infrequent, the Judicial Council has not devoted time or resources to develop standard jury instructions for probate conservatorships.²

The *Conservatorship of Elizabeth H.* is the first limited conservatorship case that has come to my attention that is headed toward a jury trial. The case involves a young woman with Down syndrome who opposes the conservatorship and would prefer a supported decision-making arrangement instead. The public defender representing Elizabeth has demanded a jury trial. This set of proposed jury instructions is intended to assist the jurors in this case to perform their sworn duty to render a just verdict – a verdict based on evidence rather than myths or stereotypes about people with Down syndrome and evidence showing a high probability that a conservatorship is necessary according to applicable legal principles. These instructions may also assist public defenders and private counsel in future cases.

These proposed instructions are guided by the LPS jury instructions which were approved by the Judicial Council, as well as by statutes and judicial decisions on the elements that a jury must find true by clear and convincing evidence before they may enter a verdict in favor of the petition for a limited conservatorship. The instructions are grounded in due process requirements and established legislative policies, as well as nondiscrimination provisions found in the Lanterman Developmental Disabilities Act and Title II of the Americans with Disabilities Act as incorporated into California law by Government Code Section 11135.

CACI (Pronounced "Kacey") is the name of the California Civil Jury Instructions approved by the Judicial Council. This approved set of instructions is silent with respect to probate conservatorship proceedings, including limited conservatorship cases. It is therefore important for lawyers in these cases to develop and submit special jury instructions to the court. Failure to do so may amount to invited error which could not be challenged on appeal.

¹ A Judicial Council report shows that only one jury trial was conducted in a probate conservatorship proceeding in the entire state in fiscal year 2016-2017. "Probate (Estates, Guardianships, Conservatorships) – Methods of Disposition, by County" (2018 Court Statistics Report, p. 168) <https://www.courts.ca.gov/documents/2018-Court-Statistics-Report.pdf> Similar reports for the 12 years between 2008 and 2019, when 24,000 conservatorship cases were processed in Los Angeles County, show just two jury trials were conducted in that jurisdiction.

² Contrast this with LPS mental health conservatorships where jury trials happen so frequently that the Judicial Council has approved a set of jury instructions in these contested proceedings. <https://spectruminstitute.org/lps-instructions.pdf>

“Whereas in criminal cases a court has strong sua sponte duties to instruct the jury on a wide variety of subjects, a court in a civil case has no parallel responsibilities. A civil litigant must propose complete instructions in accordance with his or her theory of the litigation and a trial court is not ‘obligated to seek out theories [a party] might have advanced, or to articulate for him that which he has left unspoken.’ [Citations.] *Mesecher v. County of San Diego*, supra, 9 Cal.App.4th at p. 1686.)” *Stevens v. Owens-Corning Fiberglas Corp.* (1996) 49 Cal.App.4th 1645, 1653

“In charging the jury the Court may state to them all matters of law which it thinks necessary for their information in giving their verdict.” *Cal. Civ. Proc. Code* § 608. Whenever the latest edition of the Judicial Council jury instructions does not contain an instruction on a subject on which the trial judge determines that the jury should be instructed, the instruction given on that subject “should be accurate, brief, understandable, impartial, and free from argument.” *California Rules of Court*, Rule 2.1050(e).

A party is entitled to instructions on his theory of the case, if reasonably supported by the pleadings and the evidence. Such instructions must be properly framed. *Conservatorship of Gregory v. Beverly Enterprise* (2000) 80 Cal.App.4th 514, 522.

“Sources of law for jury instructions include statutes, court opinions, treatises, hornbooks, legal encyclopedias, digests, and form books. (2 Cal. Trial Practice: Civil Procedure During Trial (Cont.Ed.Bar 1997) § 20.25, p. 1225; 7 Witkin, Cal. Procedure, supra, Trial, §§ 280-282, 294, pp. 326-328, 341-342.)” *Conservatorship of Gregory*, supra. at p. 523.

“Where either party asks special instructions to be given to the jury, the Court must either give such instruction, as requested, or refuse to do so, or give the instruction with a modification, in such manner that it may distinctly appear what instructions were given in whole or in part.” *Code of Civil Procedure* § 609.

Special instructions must conform to the requirements of Rule 2.1055. Under that rule, each set of proposed jury instructions must have a cover page, containing the caption of the case, the name of the party proposing the instructions, and an index listing all the proposed instructions. In the index, approved jury instructions must be identified by their reference numbers and special jury instructions must be numbered consecutively. The index must contain a checklist that the court may use to indicate whether the instruction was: (1) given as proposed; (2) given as modified; (3) refused; or (4) withdrawn.

Each proposed instruction also must: (1) be on a separate page or pages; (2) include the instruction number and title of the instruction at the top; and (3) be prepared without any blank lines or unused bracketed portions, so that it can be read directly to the jury. Each instruction must include at the bottom a citation of authorities that supports the instruction.

The following pages contain special jury instructions that would be appropriate to use in cases requesting a limited conservatorship of the person or a limited conservatorship of the estate. The time is long overdue for the Judicial Council to develop and publish approved jury instructions for both general and limited conservatorship cases.

Limited Conservatorships of the Person

Instruction No. 01**Limited Conservatorship of the Person – Essential Factual Elements**

Petitioners claim that the proposed conservatee is unable to provide properly for her personal needs for physical health, food, clothing, or shelter and therefore should be placed in a limited conservatorship of the person. A limited conservator of the person may be appointed for a developmentally disabled adult.

To succeed on this claim, petitioners must show by clear and convincing evidence the following elements:

- (1) The proposed conservatee is an adult with a developmental disability; and
- (2) The proposed conservatee lacks the capacity to provide properly for her personal needs for physical health, food, clothing, or shelter; and
- (3) Alternatives to conservatorship have been considered and why they are not available; and
- (4) Granting of the conservatorship is the least restrictive alternative needed for the protection of the proposed conservatee.

Authorities:

1. Limited conservatorships are for developmentally disabled adults. (Probate Code Section 1801(d))
2. Petitioners must show a proposed conservatee lacks the ability to provide properly for personal needs. (Probate Code Section 1801(a))
3. There must be a showing that alternatives have been considered and why they are not available. (Probate Code Section 1821(a)(3))
4. There must be a showing that a conservatorship is the least restrictive alternative needed for the protection of the proposed conservatee. (Probate Code Section 1800.3)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 02**Burden of Proof– Clear and Convincing Evidence**

Petitioners have the burden of proving the necessity for a conservatorship of the person, as previously defined, by clear and convincing evidence.

To meet this burden of proof, petitioners must convince the jury that it is highly probable that each of the elements required for a conservatorship are true. Petitioners must do more than show that the facts are probably true.

The clear and convincing evidence test requires a finding of high probability based on evidence so clear as to leave no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind.

Authorities:

1. The burden of poof for a limited conservatorship is clear and convincing evidence. (Probate Code Section 1801(e))
2. This requires a finding that it is highly probable that the essential elements are true, which requires more than being probably true. (Comment, Evidence: Clear and Convincing Proof: Appellate Review (1944) 32 *Cal. L.Rev.* 74, 75, cited with approval in *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 999)
3. The evidence must leave no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552; *Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1158.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 03**Presumption of Capacity – Obligation to Prove**

There is a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their actions and decisions.

A person who has a mental or physical disability may still be capable of contracting, conveying, marrying, making medical decisions, executing wills and trusts, and performing other actions.

A finding that a person lacks the legal capacity to perform a specific act should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

A person is presumed not to need a conservatorship. The fact that a petition has been filed claiming that the proposed conservatee needs a conservatorship is not evidence that it is true.

Authorities:

1. The first three paragraphs of this instruction are based on Probate Code Section 810.
2. The fourth paragraph is patterned after CACI Instruction No. 4005. (*Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1099; *Conservatorship of Law* (1988) 202 Cal.App.3d 1336, 1340.

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 04**Isolated Incidents of Negligence or Improvidence**

The inability of a person to properly care for his or her personal needs for physical health, food, clothing, or shelter may not be proved solely by isolated incidents of negligence or improvidence.

A limited conservatorship shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations.

Authorities:

1. The principle enunciated in paragraph one is taken from Probate Code Section 1801(b).
2. Paragraph two is taken from Probate Code Section 1801(d).

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 05**Least Restrictive Alternative – Available Supports and Services**

Central to an inquiry into whether a limited conservatorship of the person is the “least restrictive alternative” is whether the proposed conservatee – together with any support systems that are available and which he or she is willing to use – is able to manager his or her personal needs.

Authorities:

1. A person’s ability to engage in an activity must take into consideration his or her right to have the assistance of others in performing that activity. For example, “The proposed conservatee shall not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: . . . (iii) Completes the affidavit of voter registration with the assistance of another person.” (Probate Code Section 1823(b)(3)(B)(iii).)
2. The power of the state to impose a conservatorship should be used sparingly and only for those truly necessary cases where a person “is incapable of providing for his basic needs either alone or with help of others.” (*Conservatorship of K.W.* (2017) 13 Cal.App.5th 12754, 1280; *Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1092–1093.)
3. A conservatorship is not required if a person can survive safely “with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.” (*Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453, 460.)
4. “We all depend, to varying degrees on the assistance of others . . . to make our way in this world. (*Conservatorship of Early* (1983) 35 Cal.3d 244, 151) “Where willing and responsible adults are able to assist a person in providing his or her basic personal needs the person is not, in our view, ‘truly unable to take care of [himself or herself].’” (Ibid.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 06**Less Restrictive Alternatives – Explained**

It is your duty as jurors to decide if less restrictive alternatives are available and whether they would obviate the need for a conservatorship of the person. Such alternatives may include one or more of the following arrangements: (1) powers of attorney; (2) a supported decision-making agreement; (3) a health care directive; and/or (4) enrollment in a regional center and the development and implementation of an Individual Program Plan.

Authorities:

1. “The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application.” (Probate Code Section 1801)
 2. A regional center client or an authorized representative may request an IPP review at any time. (Welfare and Institutions Code Section 4646.5(b)) An IPP review process involves the “Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities.” (Welfare and Institutions Code Section 4646.5(a)(1)) The IPP review process may determine that appropriate services for supported decision-making completely obviate the need for a conservatorship. Regional centers are authorized by statute to conduct an assessment of the specific areas, nature, and degree of disability of the proposed conservatee and to submit a report to the court with findings and recommendations. (Probate Code Section 1827.5(c))
 3. “Supported decision making (SDM) allows people to obtain guidance and support without relinquishing their legal right to make decisions about their lives. Using supported decision-making, a person with a disability chooses a person or a team of trusted people to help understand, make, and communicate their decisions.” “Introduction to Supported Decision-Making,” Mind Institute, UC Davis Health, University of California, website: <https://health.ucdavis.edu/mindinstitute/centers/cedd/sdm.html> “Supported Decision-Making: Model Agreements,” National Resource Center for Supported Decision-Making, website: <http://supporteddecisionmaking.org/legal-resource/supported-decision-making-model-agreements>
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☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 07
Third Party Assistance

A person does not need a limited conservatorship of the person if he or she can survive safely with the help of third party assistance. Third party assistance is the aid of family, friends, or others who are responsible, willing, and able to help provide for the person's basic needs for food, clothing, or shelter.

You must not consider offers by family, friends, or others unless they have testified to or stated specifically in writing their willingness and ability to help provide the proposed conservatee with food, clothing, or shelter. Well-intended offers of assistance are not sufficient unless they will ensure the person can survive safely.

Authorities:

1. This instruction is patterned after CACI Instruction No. 4007.
2. Third party assistance is one method of demonstrating there is a less restrictive alternative to conservatorship that will enable the proposed conservatee, with the assistance he or she is entitled to under the Americans with Disabilities Act, to properly provide for personal needs for physical health, food, clothing, or shelter. A conservatorship may not be granted if there is a less restrictive alternative to protect the proposed conservatee from harm. (Probate Code Section 1800.3)
3. "[A] jury is entitled to consider the availability of third party assistance to meet a proposed conservatee's basic needs for food, clothing and shelter." *Conservatorship of Early* (1983) 35 Cal.3d 244, 247.
4. "[E]vidence of available assistance by family members or friends which will enable one suffering from a mental disorder to meet his or her basic needs for food, clothing and shelter is admissible and that proffered instructions on this issue when tendered by the evidence must be given." *Conservatorship of Early* (1983) 35 Cal.3d 244, 249

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 08**Rights of Persons with Developmental Disabilities**

Persons with developmental disabilities have the same rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.

Persons with developmental disabilities have a right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.

Authorities:

1. This language is taken directly from the statement of rights in the Lanterman Developmental Disabilities Act. (Welfare and Institutions Code Section 4502.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 09
Disability Discrimination

State and federal law prohibits a state entity from engaging in discrimination on the basis of disability. The superior court is a state entity and, as jurors, you are functioning as agents of the court. Therefore, you may not discriminate against the proposed conservatee on the basis of her disability.

Your verdict must be the result of rational deliberations and decisions based on the evidence presented to you in court and not on myths, stereotypes, or preconceived notions about disabilities such as [Down syndrome, autism, traumatic brain injury, cerebral palsy, intellectual disability].

Authorities:

1. The Americans with Disabilities Act prohibits state courts from discriminating on the basis of a person's disability. (*Tennessee v. Lane* (2004) 541 U.S. 509.) Adverse action may not be taken against a person with a disability because he or she needs reasonable accommodations or because the person relies on supports and services to perform activities. (ADA Title II; Government Code Section 11135; Cal. Rules of Court, Rule 1.100)
 2. No otherwise qualified person by reason of having a developmental disability shall be subjected to discrimination under any program or activity which receives public funds. (Welfare and Institutions Code Section 4502.)
 3. No person shall on the basis of a mental or physical disability be unlawfully subjected to discrimination under any program that is operated by the state or funded directly by the state. (Government Code Section 11135(a).)
 4. The superior court is operated and funded by the state. Jurors are agents of the superior court. They receive state funds in payment their services. (Code of Civil Procedure Section 215.)
 5. This instruction incorporates elements from CACI instruction number 113 on bias.
-

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 10
Bias

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against parties or witnesses because of their disability, gender, gender identity, gender expression, race, religion, ethnicity, sexual orientation, age, national origin.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

Authorities:

1. This instruction is taken verbatim from CACI Instruction No. 113.
2. Conduct Exhibiting Bias Prohibited. Standard 10.20(a)(2) of the California Standards of Judicial Administration.

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 11**Ability to Manage Finances – Not in Issue**

Petitioners have only alleged that a limited conservatorship of the person is necessary. They have not asked for a conservatorship of the estate. Therefore, whether the proposed conservatee lacks the ability to substantially manage her own financial resources or to resist fraud or undue influence are not issues in this case. The jury is not being asked to deliberate on or make decisions about these issues.

It is presumed that the proposed conservatee has the capacity to make decisions and to be responsible for her acts or decisions. This includes financial decisions.

Authorities:

1. The jury should be instructed to disregard evidence on matters which have not been placed before it for decision. (Evidence Code Section 403)
2. The jury shall not consider evidence which has been ruled to be inadmissible. (CACI Instruction No. 106)
3. No evidence is admissible except relevant evidence. (Evidence Code Section 350)
4. “‘Relevant evidence’ means evidence . . . having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (Evidence Code Section 210.)

Comment: When a conservatorship petition does not ask for a conservatorship of the estate, the ability of the proposed conservatee to substantially manage his or her financial resources or to resist fraud or undue influence are not disputed facts that are of consequence to the determination of the action.

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 12**Capacity for Other Decisions – Not in Issue**

The only issues for the jury to decide are the elements necessary for a limited conservatorship of the person. Those two elements are: (1) whether the proposed conservatee is unable to properly provide for her needs for physical health, food, clothing, or shelter; and (2) whether the granting of a conservatorship is the least restrictive alternative needed for the protection of the conservatee.

It is not the province of the jury to deliberate or render a verdict on whether the proposed conservatee has the capacity to make decisions regarding contracts, residence, medical treatment, marriage, education, and social and sexual contacts and relationships. These are matters to be decided by the court if the jury returns a verdict in favor of a conservatorship.

For purposes of this trial, there is a presumption that the proposed conservatee has the capacity to make these types of decisions.

Authorities:

1. The two elements for a conservatorship of the person are found in Probate Code Section 1801(b) and Probate Code Section 18003.(b).
2. Whether the authority to make some or all of these decisions should be taken from an individual and transferred to another person is a matter decided by the court in its order appointing a limited conservator. Before authority on any matter can be transferred, there must have been a specific request made in the petition. (Probate Code Section 2351.5(b))
3. After a jury finds in favor of a conservatorship, a hearing must be held by the court to determine which rights shall be restricted and powers, if any, should be transferred to the conservator. (*Conservatorship of George H.* (2008) 169 Cal. App. 4th 157, 165)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 13**Who Should be Conservator – Jury to Disregard**

During your deliberations you should not consider who would be best suited to serve as a conservator or who should be appointed as a conservator. Those are matters for the court to consider and decide if, and only if, the jury finds that the elements necessary for a conservatorship have been proven by clear and convincing evidence.

Authorities:

1. If the jury finds that the need for a conservatorship has not been established, the court shall dismiss the petition for appointment of a limited conservator. (Probate Code Section 1828.5(b))
 2. If the jury finds that the need for a conservatorship has been established, the court shall appoint a limited conservator. (Probate Code Section 1828.5(c)) Then the court shall define the powers of the limited conservator. (Ibid.)
 3. A conservatee is entitled to a court hearing on who should be appointed as conservator. (*Conservatorship of Walker*) (1987) 1976 Cal.App.3d 1082, 1100-1101.)
 4. "If the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the petition is filed. The court shall appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee." (Probate Code Section 1810.) Such a finding must be supported by substantial evidence. (*Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 401.)
-

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 14
Sufficiency of Circumstantial Evidence

You may not decide that the proposed conservatee needs a conservatorship based substantially on indirect evidence unless this evidence:

- (1) Is consistent with the conclusion that there is a high probability that she is: (a) unable to properly provide for her personal needs, with or without assistance; and (b) a conservatorship is the least restrictive means to provide for her protection; and
- (2) Cannot be explained by any other reasonable conclusion.

If the indirect evidence suggests two reasonable interpretations, one of which suggests a high probability that a conservatorship is necessary and less restrictive alternatives are not available, and the other interpretation raises a substantial doubt on these matters, then you must accept the interpretation that suggests that the proposed conservatee does not need a conservatorship.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable one.

If you base your verdict on indirect evidence, petitioners must prove by clear and convincing evidence each fact essential to your conclusion that the proposed conservatee needs a conservatorship.

Authorities:

1. This instruction is patterned after CACI Instruction No. 4006. It also incorporates the reasoning of *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 999, which states that the evidence must leave no substantial doubt regarding the elements to be proved in order to satisfy the clear and convincing evidence standard.

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 15
Expert Witness Testimony

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in the expert's field of expertise even if the expert has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

- a. The expert's training and experience;
- b. The facts the expert relied on; and
- c. The reasons for the expert's opinion.

Authorities;

1. This is taken verbatim from CACI Instruction No. 219.
2. "Under Evidence Code section 720, subdivision (a), a person is qualified to testify as an expert if he or she 'has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates.' '[T]he determinative issue in each case must be whether the witness has sufficient skill or experience in the field so that his testimony would be likely to assist the jury in the search for the truth [Citation.] Where a witness has disclosed sufficient knowledge, the question of the degree of knowledge goes more to the weight of the evidence than its admissibility. [Citation.]' " (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 969 [191 Cal.Rptr.3d 766]).

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 16
Experts – Questions Containing Assumed Facts

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert’s opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

Authorities;

1. This is taken verbatim from CACI Instruction No. 220.
2. The value of an expert’s opinion depends on the truth of the facts assumed. (*Richard v. Scott* (1978) 79 Cal.App.3d 57, 63.) “Generally, an expert may render opinion testimony on the basis of facts given ‘in a hypothetical question that asks the expert to assume their truth.’” (*People v. Vang* (2011) 52 Cal.4th 1038, 1045.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 17
Conflicting Expert Testimony

If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

Authorities;

1. This is taken verbatim from CACI Instruction No. 221.
2. "[C]redibility of expert witnesses is a matter for the jury after proper instructions from the court." (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1265.

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 18
Opinion Testimony of Lay Witness

A witness [who was not testifying as an expert] gave an opinion during the trial. You may, but are not required to, accept that opinion. You may give the opinion whatever weight you think is appropriate.

Consider the extent of the witness's opportunity to perceive the matters on which the opinion is based, the reasons the witness gave for the opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

Authorities;

1. This is taken verbatim from CACI Instruction No. 223.
2. Opinion Testimony of Lay Witness. Evidence Code section 800.
3. Foundation for Opinion Testimony of Lay Witness. Evidence Code section 802

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 19
Concluding Instruction

To find that the proposed conservatee needs a conservatorship of the person, 9 jurors must agree on the verdict.

Authorities;

1. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. (Probate Code Section 2351.5(d))
2. To render a verdict, at least 9 of 12 jurors must agree that each element of the cause of action has been proved by the requisite quantum of evidence. (*Stoner v. Williams* (1996) 46 Cal.App.4th 986, 1002.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

**Limited Conservatorships
of the Estate**

Instruction No. 01**Limited Conservatorship of the Estate – Essential Factual Elements**

Petitioners claim that the proposed conservatee is substantially unable to manage his or her own financial resources or resist fraud or undue influence. A limited conservator of the estate may be appointed for a developmentally disabled adult.

To succeed on this claim, petitioners must show by clear and convincing evidence the following elements:

- (1) The proposed conservatee is an adult with a developmental disability; and
- (2) is substantially unable to manage his or her own financial resources or resist fraud or undue influence; and
- (3) Alternatives to conservatorship have been considered and why they are not available; and
- (4) Granting of the conservatorship is the least restrictive alternative needed for the protection of the proposed conservatee.

Authorities:

1. Limited conservatorships are for developmentally disabled adults. (Probate Code Section 1801(d))
2. Petitioners must show a proposed conservatee is substantially unable to manage his or her own financial resources or resist fraud or undue influence. (Probate Code Section 1801(b))
3. There must be a showing that alternatives have been considered and why they are not available. (Probate Code Section 1821(a)(3))
4. There must be a showing that a conservatorship is the least restrictive alternative needed for the protection of the proposed conservatee. (Probate Code Section 1800.3)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 02**Burden of Proof– Clear and Convincing Evidence**

Petitioners have the burden of proving the necessity for a conservatorship, as previously defined, by clear and convincing evidence.

To meet this burden of proof, petitioners must convince the jury that it is highly probable that each of the elements required for a conservatorship are true. Petitioners must do more than show that the facts are probably true.

The clear and convincing evidence test requires a finding of high probability based on evidence so clear as to leave no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind.

Authorities:

1. The burden of poof for a limited conservatorship is clear and convincing evidence. (Probate Code Section 1801(e))
2. This requires a finding that it is highly probable that the essential elements are true, which requires more than being probably true. (Comment, Evidence: Clear and Convincing Proof: Appellate Review (1944) 32 *Cal. L.Rev.* 74, 75, cited with approval in *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 999)
3. The evidence must leave no substantial doubt and must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552; *Butte Fire Cases* (2018) 24 Cal.App.5th 1150, 1158.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 03**Presumption of Capacity – Obligation to Prove**

There is a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their actions and decisions.

A person who has a mental or physical disability may still be capable of contracting, conveying, marrying, making medical decisions, executing wills and trusts, and performing other actions.

A finding that a person lacks the legal capacity to perform a specific act should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

A person is presumed not to need a conservatorship. The fact that a petition has been filed claiming that the proposed conservatee needs a conservatorship is not evidence that it is true.

Authorities:

1. The first three paragraphs of this instruction are based on Probate Code Section 810.
2. The fourth paragraph is patterned after CACI Instruction No. 4005. (*Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1099; *Conservatorship of Law* (1988) 202 Cal.App.3d 1336, 1340.

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 04**Isolated Incidents of Negligence or Improvidence**

The inability of a person to substantially manage his or her own financial resources or resist fraud or undue influence may not be proved solely by isolated incidents of negligence or improvidence.

A limited conservatorship shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations.

Authorities:

1. The principle enunciated in paragraph one is taken from Probate Code Section 1801(b).
2. Paragraph two is taken from Probate Code Section 1801(d).

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 05**Least Restrictive Alternative – Available Supports and Services**

Central to an inquiry into whether a conservatorship of the estate is the “least restrictive alternative” is whether the proposed conservatee – together with any support systems that are available and which he or she is willing to use – is able to manage his or her own financial resources or resist fraud or undue influence

Authorities:

1. A person’s ability to engage in an activity must take into consideration his or her right to have the assistance of others in performing that activity. For example, “The proposed conservatee shall not be disqualified from voting on the basis that he or she does, or would need to do, any of the following to complete an affidavit of voter registration: . . . (iii) Completes the affidavit of voter registration with the assistance of another person.” (Probate Code Section 1823(b)(3)(B)(iii).)
2. The power of the state to impose a conservatorship should be used sparingly and only for those truly necessary cases where a person “is incapable of providing for his basic needs either alone or with help of others.” (*Conservatorship of K. W.* (2017) 13 Cal.App.5th 12754, 1280; *Conservatorship of Walker* (1987) 196 Cal.App.3d 1082, 1092–1093.)
3. A conservatorship is not required if a person can survive safely “with the help of responsible family, friends, or others who are both willing and able to help provide for the person’s basic personal needs for food, clothing, or shelter.” (*Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453, 460.)
4. “We all depend, to varying degrees on the assistance of others . . . to make our way in this world. (*Conservatorship of Early* (1983) 35 Cal.3d 244, 151) “Where willing and responsible adults are able to assist a person in providing his or her basic personal needs the person is not, in our view, ‘truly unable to take care of [himself or herself].’” (Ibid.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 06**Less Restrictive Alternatives – Explained**

It is your duty as jurors to decide if less restrictive alternatives are available and whether they would obviate the need for a conservatorship. Such alternatives may include one or more of the following arrangements: (1) powers of attorney; (2) a supported decision-making agreement; (3) a representative payee for government benefits; and/or (4) enrollment in a regional center and the development and implementation of an Individual Program Plan.

Authorities:

1. The Social Security Administration allow for a family member or other person to serve as a representative payee for a beneficiary with a cognitive disability. “Representative Payee: When People Need Help Managing Their Money,” SSA. <https://www.ssa.gov/payee/>
2. The petitioner must list for the court all possible alternatives to the conservatorship and the reason or reasons each alternative is unsuitable or unavailable. (Probate Code Section 1821(a)(3)) Possible alternatives include: Voluntary acceptance of informal or formal assistance, a special or limited power of attorney, a general power of attorney, a durable power of attorney for finances, advance health care directive, estate management, and a trust. “Probate Conservatorships in California: Fact Sheet,” California Advocates for Nursing Home Reform. http://www.canhr.org/factsheets/legal_fs/html/fs_ProbateConservatorship.htm
3. “Supported decision making (SDM) allows people to obtain guidance and support without relinquishing their legal right to make decisions about their lives.” “Introduction to Supported Decision-Making,” Mind Institute, UC Davis Health, University of California, website: <https://health.ucdavis.edu/mindinstitute/centers/cedd/sdm.html>; “From Theory to Practice: Supported Decision-Making and Financial Decisions,” a webinar presented by the National Resource Center on Supported Decision-Making. (June 29, 2016) http://supporteddecisionmaking.org/sites/default/files/event_files/062916-ppt.pdf

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 07
Disability Discrimination

State and federal law prohibits a state entity from engaging in discrimination on the basis of disability. The superior court is a state entity and, as jurors, you are functioning as agents of the court. Therefore, you may not discriminate against the proposed conservatee on the basis of her disability.

Your verdict must be the result of rational deliberations and decisions based on the evidence presented to you in court and not on myths, stereotypes, or preconceived notions about disabilities such as [Down syndrome, autism, traumatic brain injury, cerebral palsy, intellectual disability].

Authorities:

1. The Americans with Disabilities Act prohibits state courts from discriminating on the basis of a person's disability. (*Tennessee v. Lane* (2004) 541 U.S. 509.) Adverse action may not be taken against a person with a disability because he or she needs reasonable accommodations or because the person relies on supports and services to perform activities. (ADA Title II; Government Code Section 11135; Cal. Rules of Court, Rule 1.100)
2. No otherwise qualified person by reason of having a developmental disability shall be subjected to discrimination under any program or activity which receives public funds. (Welfare and Institutions Code Section 4502.)
3. No person shall on the basis of a mental or physical disability be unlawfully subjected to discrimination under any program that is operated by the state or funded directly by the state. (Government Code Section 11135(a).)
4. The superior court is operated and funded by the state. Jurors are agents of the superior court. They receive state funds in payment their services. (Code of Civil Procedure Section 215.)
5. This instruction incorporates elements from CACI instruction number 113 on bias.

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 08**Bias**

Each one of us has biases about or certain perceptions or stereotypes of other people. We may be aware of some of our biases, though we may not share them with others. We may not be fully aware of some of our other biases.

Our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions.

As jurors you are being asked to make very important decisions in this case. You must not let bias, prejudice, or public opinion influence your decision. You must not be biased in favor of or against parties or witnesses because of their disability, gender, gender identity, gender expression, race, religion, ethnicity, sexual orientation, age, national origin.

Your verdict must be based solely on the evidence presented. You must carefully evaluate the evidence and resist any urge to reach a verdict that is influenced by bias for or against any party or witness.

Authorities:

1. This instruction is taken verbatim from CACI Instruction No. 113.
2. Conduct Exhibiting Bias Prohibited. Standard 10.20(a)(2) of the California Standards of Judicial Administration.

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 09**Who Should be Conservator – Jury to Disregard**

During your deliberations you should not consider who would be best suited to serve as a conservator or who should be appointed as a conservator. Those are matters for the court to consider and decide if, and only if, the jury finds that the elements necessary for a conservatorship have been proven by clear and convincing evidence.

Authorities:

1. If the jury finds that the need for a conservatorship has not been established, the court shall dismiss the petition for appointment of a limited conservator. (Probate Code Section 1828.5(b))
2. If the jury finds that the need for a conservatorship has been established, the court shall appoint a limited conservator. (Probate Code Section 1828.5(c)) Then the court shall define the powers of the limited conservator. (Ibid.)
3. A conservatee is entitled to a court hearing on who should be appointed as conservator. (*Conservatorship of Walker*) (1987) 1976 Cal.App.3d 1082, 1100-1101.)
4. "If the proposed conservatee has sufficient capacity at the time to form an intelligent preference, the proposed conservatee may nominate a conservator in the petition or in a writing signed either before or after the petition is filed. The court shall appoint the nominee as conservator unless the court finds that the appointment of the nominee is not in the best interests of the proposed conservatee." (Probate Code Section 1810.) Such a finding must be supported by substantial evidence. (*Conservatorship of Ramirez* (2001) 90 Cal.App.4th 390, 401.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 10
Sufficiency of Circumstantial Evidence

You may not decide that the proposed conservatee needs a conservatorship of the estate based substantially on indirect evidence unless this evidence:

- (1) Is consistent with the conclusion that there is a high probability that she is:
(a) substantially unable to manage his or her own financial resources or resist fraud or undue influence and (b) a conservatorship of the estate is the least restrictive means to provide for her protection; and
- (2) Cannot be explained by any other reasonable conclusion.

If the indirect evidence suggests two reasonable interpretations, one of which suggests a high probability that a conservatorship is necessary and less restrictive alternatives are not available, and the other interpretation raises a substantial doubt on these matters, then you must accept the interpretation that suggests that the proposed conservatee does not need a conservatorship.

If, on the other hand, one interpretation of this evidence appears to you to be reasonable and the other interpretation to be unreasonable, you must accept the reasonable interpretation and reject the unreasonable one.

If you base your verdict on indirect evidence, petitioners must prove by clear and convincing evidence each fact essential to your conclusion that the proposed conservatee needs a conservatorship.

Authorities:

1. This instruction is patterned after CACI Instruction No. 4006. It also incorporates the reasoning of *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 999, which states that the evidence must leave no substantial doubt regarding the elements to be proved in order to satisfy the clear and convincing evidence standard.

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Instruction No. 11
Expert Witness Testimony

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in the expert's field of expertise even if the expert has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

- a. The expert's training and experience;
- b. The facts the expert relied on; and
- c. The reasons for the expert's opinion.

Authorities;

1. This is taken verbatim from CACI Instruction No. 219.
2. "Under Evidence Code section 720, subdivision (a), a person is qualified to testify as an expert if he or she 'has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates.' '[T]he determinative issue in each case must be whether the witness has sufficient skill or experience in the field so that his testimony would be likely to assist the jury in the search for the truth [Citation.] Where a witness has disclosed sufficient knowledge, the question of the degree of knowledge goes more to the weight of the evidence than its admissibility. [Citation.]" (Lattimore v. Dickey (2015) 239 Cal.App.4th 959, 969 [191 Cal.Rptr.3d 766].

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 12**Experts – Questions Containing Assumed Facts**

The law allows expert witnesses to be asked questions that are based on assumed facts. These are sometimes called “hypothetical questions.”

In determining the weight to give to the expert’s opinion that is based on the assumed facts, you should consider whether the assumed facts are true.

Authorities;

1. This is taken verbatim from CACI Instruction No. 220.
2. The value of an expert’s opinion depends on the truth of the facts assumed. (*Richard v. Scott* (1978) 79 Cal.App.3d 57, 63.) “Generally, an expert may render opinion testimony on the basis of facts given ‘in a hypothetical question that asks the expert to assume their truth.’” (*People v. Vang* (2011) 52 Cal.4th 1038, 1045.)

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Instruction No. 13
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If the expert witnesses disagreed with one another, you should weigh each opinion against the others. You should examine the reasons given for each opinion and the facts or other matters that each witness relied on. You may also compare the experts' qualifications.

Authorities;

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2. "[C]redibility of expert witnesses is a matter for the jury after proper instructions from the court." (*Williams v. Volkswagenwerk Aktiengesellschaft* (1986) 180 Cal.App.3d 1244, 1265.

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Instruction No. 14
Opinion Testimony of Lay Witness

A witness [who was not testifying as an expert] gave an opinion during the trial. You may, but are not required to, accept that opinion. You may give the opinion whatever weight you think is appropriate.

Consider the extent of the witness's opportunity to perceive the matters on which the opinion is based, the reasons the witness gave for the opinion, and the facts or information on which the witness relied in forming that opinion. You must decide whether information on which the witness relied was true and accurate. You may disregard all or any part of an opinion that you find unbelievable, unreasonable, or unsupported by the evidence.

Authorities;

1. This is taken verbatim from CACI Instruction No. 223.
2. Opinion Testimony of Lay Witness. Evidence Code section 800.
3. Foundation for Opinion Testimony of Lay Witness. Evidence Code section 802

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn

Instruction No. 15
Concluding Instruction

To find that the proposed conservatee needs a conservatorship of the estate, 9 jurors must agree on the verdict.

Authorities;

1. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. (Probate Code Section 2351.5(d))
2. To render a verdict, at least 9 of 12 jurors must agree that each element of the cause of action has been proved by the requisite quantum of evidence. (*Stoner v. Williams* (1996) 46 Cal.App.4th 986, 1002.)

☐ Given as proposed ☐ Given as modified ☐ Refused ☐ Withdrawn