

New Training Rules for California Conservatorship Attorneys

One Step on a Long Path to Reform

By Thomas F. Coleman
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The California Judicial Council is scheduled to adopt new rules requiring conservatorship attorneys to receive education on a wide range of topics not mandated under current law. The changes will affect public defenders and private attorneys who are appointed to represent seniors and people with disabilities in probate conservatorship proceedings.

The matter is Item 19-220 on the consent agenda for the Judicial Council's meeting on Sept. 24.

The Probate and Mental Health Advisory Committee is including several crucial topics in the training requirements. For too long important issues have been ignored or misrepresented in seminars sponsored by some local bar associations. An investigation into faulty trainings is being considered by the Civil Rights Division of the United States Department of Justice.



Under the new rules, conservatorship attorneys will be required to gain knowledge about: (1) state and federal statutes including the ADA, rules of court, and case law governing probate conservatorship proceedings, capacity determinations, and the legal rights of conservatees, persons alleged to lack legal capacity, and persons with disabilities; (2) ethical duties to a client under Rules of Professional Conduct and other applicable law; (3) special considerations for representing seniors and people with disabilities, including individualized communication methods; and (4) less restrictive alternatives to conservatorships, including the use

of non-judicial supported decision-making arrangements.

But this new training framework is just the first step in a much needed and multi-faceted process to reform the dysfunctional probate conservatorship system. Structural flaws in this system have been brought to the attention of the chief justice, Judicial Council, Supreme Court, State Bar, attorney general, governor, and other state and local officials on many occasions during the last 15 years. And yet, despite some minor tinkering around the edges, the failure of officials to institute fundamental changes has resulted in the

unnecessary victimization of thousands of seniors and people with disabilities who have been treated unfairly in these proceedings.

The next step leading to reform is to ensure that the training materials used in new educational programs are both accurate and complete. Quality education cannot be left to chance. There

is a crucial need for the State Bar to approve only those trainings that meet specific standards. Training providers should submit the content of seminars and qualifications of presenters to the State Bar for pre-approval. Providers should not be given carte blanche like they are now.

New educational standards sound good in theory, but without the adoption of performance standards, conservatorship attorneys are free to use or ignore what they learn. Attorneys are often not providing their clients with effective representation. The pattern of deficient advocacy is also

part of a pending ADA complaint with the Department of Justice (filed by my organization, Spectrum Institute). Adherence to performance standards should be mandatory, not optional.

The California Supreme Court has the authority to direct the State Bar to develop performance standards for attorneys appointed to represent clients in conservatorship proceedings. In developing such standards, the State Bar will not have to start from scratch. Excellent standards have been adopted in Massachusetts and Maryland. The State Bar can also consider the ADA-compliant performance standards submitted to the DOJ.

Once standards are developed by the State Bar and approved by the Supreme Court, then a method to monitor compliance will need to be developed. Due to the nature of cognitive disabilities, respondents in conservatorship proceedings generally lack the ability to complain about the deficient performance of their attorneys. As a result, they lack meaningful access to the complaint procedures of the State Bar.

To meet its ADA responsibilities to make its services accessible, the State Bar will need to find ways to address this problem. Perhaps performance audits of a representative sample of cases handled by these attorneys can help fill this access-to-justice gap. The State Bar could also require public defender offices to routinely conduct performance audits of staff attorneys who represent clients in probate conservatorship proceedings.

Each of these steps will help ensure that seniors and people with disabilities receive due process in legal proceedings in which their fundamental freedoms are placed at risk. But none of these measures will do anything to help litigants who do not receive an appointed attorney and are therefore required to represent themselves in complex legal proceedings.

As hard as it is to believe, some people with serious cognitive disabilities are not receiving

court-appointed counsel in these cases. An audit of cases in the Sacramento County Superior Court confirmed that judges there do not appoint attorneys in a significant number of cases.

Disability and seniors organizations filed a complaint with that court arguing that the failure to appoint counsel for probate conservatees violated the ADA. The court's response was a shameful denial that people with cognitive disabilities are entitled to an appointed attorney as an ADA accommodation. A state civil rights agency declined to open an investigation into the matter. As a result, it appears that the court's denial of access to justice for seniors and people with disabilities is a problem that will have to be addressed by the Legislature or by the DOJ.

It has been said that a journey of a thousand miles begins with a single step. The Judicial Council is about to take a step on a long journey toward comprehensive conservatorship reform.

This is an important step, to be sure, but one that may lead nowhere unless the Supreme Court, State Bar, and Legislature adopt additional reform measures. The question now is whether the justices, bar association officials, and state legislators have the will to do so.

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