

# ACCOUNTABILITY

The Key to Real Guardianship Reform



Methods to Achieve Accountability  
Through Effective Legal Advocacy

A Presentation to  
Guardianship Reform Advocates

by Thomas F. Coleman

Tampa, Florida  
February 20, 2019

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## Preface

Guardianships\* are mostly a function of state governments. The legislature in each state adopts statutes to regulate how guardianships are created, how they are managed, and how they are terminated. Individual cases are processed by probate courts at the local level, often on a county by county basis. (\* The term “guardianships” also refers to conservatorships.)

Petitioners initiate proceedings, which then triggers an influx of various participants: judges, mental health professionals, attorneys, and court personnel. Many of these participants charge fees which are paid by the people targeted by the petition. Let’s call them “respondents” since they are cited or summoned to court and required to respond to the allegations of incapacity.

The way in which these state guardianship “systems” are structured, the various participants have almost no accountability. Unlike other areas of law where there are various checks and balances – criminal, civil, family, and juvenile – guardianship proceedings generally do not have a built-in method to ensure that the system is working properly and the participants are obeying the law.

Most states do not even require that guardianship respondents have an attorney to assist them in investigating facts, questioning expert opinions, discovering favorable evidence, challenging fee claims, and vetting proposed guardians for honesty and suitability. In many cases, despite the fact that the court knows these adults have serious disabilities, the court requires them to defend themselves in these complex proceedings.

Guardianship courts often act as though federal constitutional protections do not exist. They act as though the Americans with Disabilities Act is an

obscure legal concept that has no application to guardianship proceedings. The judges and attorneys know that respondents almost never appeal – because they don’t know they have that right or they would not know how to appeal – and therefore there is no scrutiny of local policies and practices by state appellate courts. Each probate court is its own fiefdom, with the attorneys and other professionals paying homage to the judge.

The violations of civil rights, and plundering of financial assets, has been occurring in guardianship proceedings from coast to coast – for many decades – because there has not been accountability built into the system. The time has come for this to change.

Each respondent should have a competent attorney – one who is loyal to the client, not

to the court or to the system. These lawyers should not be selected or controlled by the judges who hear these cases. The lawyers should be recruited, appointed, trained, monitored, and paid by an independent legal services organization – one that is not beholden to the judges. The performance standards for these attorneys should comply with the requirements of due process and the ADA.

The materials contained in this booklet provide examples of how to challenge the status quo and how to make guardianship systems truly provide access to justice to seniors and people with disabilities. Participants who frustrate this purpose should pay a price. There should be accountability – a process that would be enforced by an army of attorneys from coast to coast who are dedicated to the administration of justice, sworn to uphold the constitution, and loyal to their clients.

Guardianship respondents need and deserve real advocates and defenders. Let it be so.



# Contents

## Preface

1. Accountability: The Key to Reform . . . . .	1
2. Guardianship Matrix: Issues and Participants . . . . .	2
3. Help Wanted: An Army of Dedicated Attorneys . . . . .	3
4. Sitting Ducks: Targeting States for Deficient Legal Services . . . . .	5
5. Models for Local, State, and Federal ADA Complaints . . . . .	6
6. Ethics: Challenging Judicial Control of Legal Services . . . . .	7
7. Political Approaches:	
A. California: A Legislative Proposal . . . . .	11
B. Alameda County: The Path Forward . . . . .	15
C. Nevada: A Model for Legal Advocacy and Defense . . . . .	19
8. Federal Funding: The Next Step for DOJ Oversight . . . . .	25
9. World Congress: Other Nations Are Leading the Way . . . . .	26



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# ACCOUNTABILITY

## The Key to Real Guardianship Reform

By Thomas F. Coleman

### Abstract of Presentation

“Power tends to corrupt and absolute power corrupts absolutely.” A system without checks and balances – without accountability – can cause immeasurable harm to those under its control. State guardianship and conservatorship systems are examples of power without accountability.

Hundreds of thousands of Americans, perhaps millions, have been placed into guardianships and conservatorships – being forced by judges to surrender their basic decision-making rights to others, often strangers, who are appointed by the judges to control their personal lives or finances or both. The process by which this shift of power occurs has no checks and balances. There is no meaningful accountability by those who participate in these state-operated guardianship systems – judges, court personnel, petitioners, attorneys, capacity experts, guardians ad litem, and guardians. As a result, both systematic abuses of power, and injustices in individual cases, generally go uncorrected.

This presentation focuses on several challenges to guardianship systems that are occurring in a few state and local jurisdictions, as well as nationally and internationally – challenges that are designed to bring real accountability into guardianship and conservatorship proceedings.

The presenter will explain how, by ensuring that each and every person targeted by a guardianship petition has a well-trained and dedicated attorney acting as a zealous advocate, all other moving parts of these guardianship systems can be reformed.

Assets would be preserved, not raided. Personal rights would be protected, not surrendered. Many guardianships would be avoided in favor of less restrictive alternatives that provide a better balance of preserving freedoms while at the same time reducing the risk of abuse or exploitation.

Coleman’s presentation will focus on several promising challenges to policies and practices in California and Nevada and how they can be adapted to promote accountability, and thus reform, in guardianship systems operated in other states. The possibility of federal oversight and intervention also will be addressed, as well as international reforms promoting safe and legal alternatives to guardianship.

Right now, almost all state guardianship systems are at or near the bottom of an “accountability ladder.” By requiring counsel for all respondents, and building a “zealous advocacy” legal services component into the process, a guardianship

system can move up the ladder and bring itself into compliance with statutory and constitutional requirements, thereby giving respondents greater access to justice in these proceedings. ♦♦♦

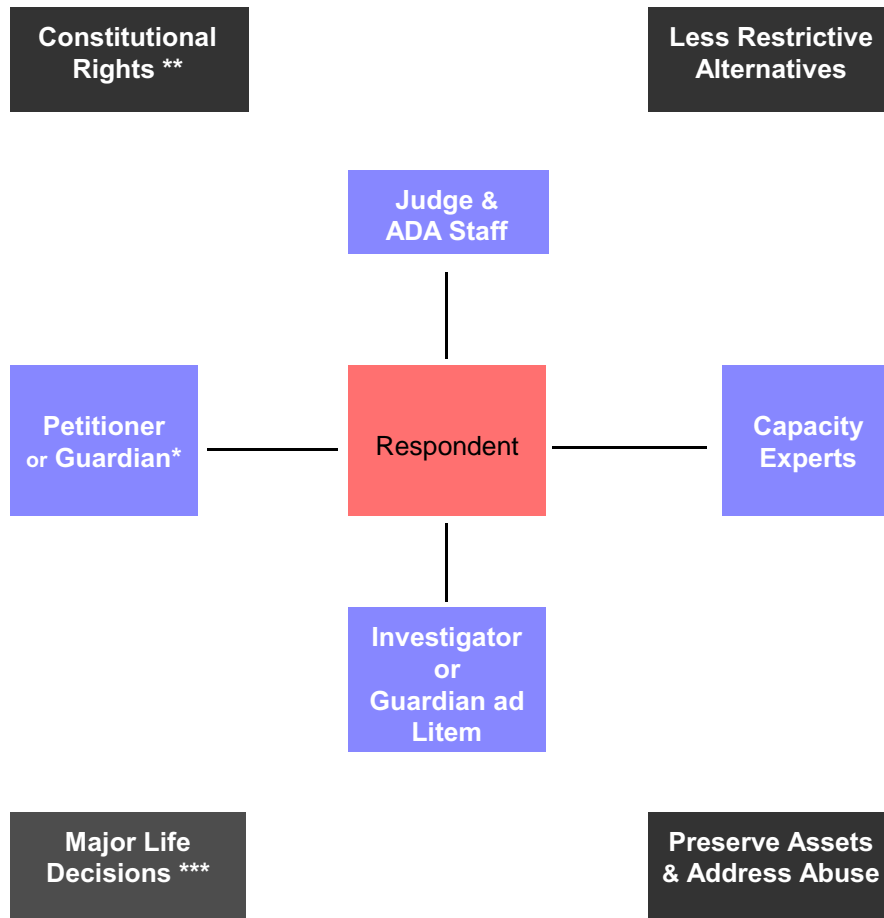


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# Guardianship Matrix

## Issues and Participants



### Appointing an Attorney for All Respondents is Required by Due Process and the ADA to Ensure that People with Cognitive Disabilities Have Access to Justice

Respondents with cognitive disabilities do not have the ability to represent themselves effectively in complex guardianship or conservatorship proceedings. Appointing an attorney is required by due process. It is also mandated by the Americans with Disabilities Act as an accommodation to enable respondents to have meaningful participation in their cases. Once appointed, counsel must provide **effective** advocacy. To ensure that legal advocacy is effective, courts must adopt ADA-compliant performance standards, require appropriate training of attorneys, and create workable methods to monitor their actual performance. The duty of the courts regarding these functions – appointment, training, and monitoring – stems from due process and the ADA.

Effective advocacy includes: reviewing petitioner's allegations/documents, examining capacity assessments in all areas of decision-making, investigating viable defenses and presenting favorable evidence, determining whether less restrictive alternatives are feasible, preserving assets, vetting the proposed conservator, insisting on a care plan that provides safety and reduces the risk of abuse, and making sure that all participants in the proceeding follow all statutory requirements. Most respondents would not be able to perform these essential functions without a court-appointed attorney. Many would lack the capacity to request or waive an attorney.

*\*Guardian or Conservator \*\*Constitutional rights include travel, marriage, sex, contract, vote, and freedom of choice in all personal decisions. \*\*\* Major life decisions include residence, occupation, education, medical care, social life, sex, finances, etc. \*\*\*\* Addressing abuse includes risk reduction and reporting.*

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## HELP WANTED: Brave Lawyers to Challenge State Guardianship Systems

By Thomas F. Coleman  
Daily Journal / Dec. 13, 2018

Two years ago I wrote a commentary that exposed my frustration and captured my hope. (“Something That’s Actually Rigged: the Conservatorship System,” Daily Journal, Nov. 18, 2016)

In the commentary, I expressed my frustration that several years of challenging the limited conservatorship system in California was being met with avoidance and denial by government officials despite clear evidence that policies and practices of the probate courts were denying justice to adults with developmental disabilities. I was hopeful that perhaps the U.S. Department of Justice might intervene, just as it had done the prior year by accepting my complaint and opening a formal investigation regarding voting rights violations by the conservatorship system in California. What I failed to consider in 2016 was the impact on the DOJ that Donald Trump’s election victory would have.

There were, and still are, good reasons to challenge the conservatorship system in California and adult guardianship systems elsewhere. Many seniors and adults with disabilities are being pushed into conservatorships and guardianships they do not need. Fundamental rights are being taken away that should be retained. The process is generally unfair and the result is often unjust. Seniors are being stripped of their assets by guardians and lawyers who enrich themselves at the expense of these vulnerable adults. People with developmental disabilities who generally do not have many assets are rushed through the process by judges who often do not even give them an attorney. These probate proceedings are being operated in violation of the access-to-justice requirements of the Americans with Disabilities Act.

There is an analogy between the “rigged” criminal law enforcement system I encountered when I was

a law student and young lawyer in the 1970s and the guardianship systems I challenge today. Back then, the criminal law and its enforcement were unfairly rigged against gay men. Vice cops were paid to entrap them. Prosecutors got easy convictions and more notches in their belts by threatening jail and securing plea bargains which still gave them conviction statistics. Judges were biased and saw gay men as sick, sinful, and criminal. A judge who challenged the “system” would pay a political price at the next judicial election. Defense attorneys made lots of money representing defendants

– most of whom were in the closet and fearful of publicity and loss of jobs, not to mention jail time and registration as a sex offender if they were convicted. Thousands of men were arrested and prosecuted each year in California alone. The same was happening in all states throughout the nation. These were easy arrests. Cops did not fear

violence. Gay men went silently in the paddy wagons to jail. Bail bondsmen got rich. Defense attorneys got rich. The pattern and cycle repeated itself over and over.

Although I was not personally affected by any of this, I was appalled by the injustice. I saw a class of people who were being victimized. I was angry that the defense attorneys – including closeted gay attorneys – were profiting on the system. I was upset that no one was challenging the constitutionality of the statutes and the discriminatory enforcement of the laws. I vowed to devote my professional life to changing this. I “came out” as a law student and co-founded the first gay law student association in the nation. Some of us were able to align with a few good lawyers who were willing to participate in the reform process. We formed a National Committee for Sexual Civil Liberties.

After getting my law license in December 1973, I





became one of a handful of openly gay lawyers who decided to take on the system of entrapment and oppression of gay men. I filed constitutional challenges – attacking the system and all the moving parts of it – police, prosecutors, judges, and defense attorneys. Despite experiencing loss after loss, I persisted. Then one day the right case came along. I took it to the top and in 1979 I won a major victory in the California Supreme Court. The victory occurred for a few reasons: (1) the string of losses nonetheless had an educational effect on the judiciary; (2) a few other lawyers joined the movement and we persisted in our challenges; and (3) a courageous member of the Supreme Court – Justice Mathew Tobriner – decided to side himself with justice and reform rather than the status quo. He wrote a compelling and brilliant opinion for the Supreme Court. *Pryor v. Municipal Court*, 25 Cal.3d 238 (1979)

Today, I find myself feeling the same frustration with the prospect of guardianship and conservatorship reform. I got involved in 2012 when one case came my way. After seeing a few more individual injustices in 2013 and 2014, I decided to devote myself to *systemic* reform – first with California’s limited conservatorship system and later with state guardianship systems throughout the nation. Having devoted more than 7,000 hours of volunteer time to this cause so far, I still remain frustrated. Unlike three years ago when I felt hopeful for federal intervention, I am not as hopeful. However, I have not lost all hope and have not given up on the vision of reform. I just realize now that it will be harder and taken longer than I originally had thought.

My advocacy activities have been supported by a handful of others – most of them are family members victimized by abusive guardianship proceedings. Very few people who have not been personally touched by the guardianship system have joined the cause. One exception is my friend and colleague, Dr. Nora J. Baladerian. Until very recently, I could not find even one lawyer in California who was willing to join me in challenging the conservatorship system.

For the past few years I have been asking: Where are all the lawyers?

Every successful civil rights cause has had a coalition of lawyers participating in, supporting, and leading the charge. But when it comes to the movement to reform abusive guardianship and conservatorship systems, there is an advocacy void when it comes to attorneys willing to challenge these systems – file complaints, draft legislation, write commentaries, give television interviews, etc. The National Disability Rights Network has recently tiptoed into these troubled waters – but ever so gently and tentatively. Elder law attorneys may write some academic articles, but where are they when it comes to actually filing lawsuits?

This civil rights advocacy vacuum must be filled. All of the wonderful non-lawyers who are fighting for this cause deserve to have the support of a cadre of dedicated and committed attorneys who assume the mantle of civil rights advocates. Unless and until there is a strong network of lawyers who become leaders in this reform movement, progress will be minimal and victories will remain local.

We cannot count on government civil rights enforcement agencies to do the heavy lifting. For example, state attorneys general are advisors to and defenders of state officials, including the judges who are running these guardianship systems. So we won’t get help from the chief law enforcement officers in the 50 states. What we need is an army of private attorneys general.

So again, I ask: Where are all the lawyers?

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**Daily Journal**  
California’s premier legal newspaper

# Sitting Ducks: Courts that Fail to Appoint Attorneys for Guardianship Respondents Are Targets for ADA Complaints

By Thomas F. Coleman

Twenty states have laws that provide for the mandatory appointment of counsel to represent adults in guardianship and conservatorship cases. Many of these guardianship respondents are people with intellectual and developmental disabilities, while others are seniors who allegedly lack capacity to make major life decisions due to various cognitive impairments.

Whichever type of respondent they may be, the probate court knows that, due to their disabilities, these involuntary litigants lack the ability to represent themselves in these legal proceedings. As a matter of due process, and to comply with the requirements of the Americans with Disabilities Act, all states should require the appointment of an attorney to ensure that respondents have access to justice.

Some 30 states fail to provide for the mandatory appointment of counsel in all such cases. The ADA is a federal law that applies to all 50 states. It does not allow for access to justice to be protected in some states but not others. The ADA applies to all cases – everywhere.

Equal protection requires that *all* litigants with cognitive and communication disabilities receive accommodations to ensure they have meaningful participation and effective communication in their guardianship cases. Litigants must be provided supports and services to help them to probe the sufficiency of evidence against them and to assist them in producing evidence showing that less restrictive alternatives – such as supported decision making – may be feasible. Appointment of competent counsel is the only type of accommodation that will meet these needs. Seniors with age-related cognitive impairments, and adults of all ages with intellectual and developmental disabilities are not equipped to represent themselves in such complex legal proceedings.

The 30 “sitting ducks” are: Alabama, Alaska, Arkansas, California, Colorado, Idaho, Hawaii, Illinois, Indiana, Massachusetts, Michigan, Mississippi, Montana, Nebraska, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island,

South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming, and Wisconsin. These states are targets for complaints to the United States Department of Justice. The DOJ has jurisdiction to investigate alleged violations of Title II of the ADA by state and local courts. These 30 states will have a hard time justifying the refusal to do what 20 other states have been doing for years: appointing attorneys to ensure that *all* guardianship respondents have access to justice.

The Chief Justices in these states should initiate a plan – by adopting a court rule or seeking new legislation –

to ensure that appointed counsel is mandatory in all adult guardianship cases. The ADA was passed by Congress in 1990. The time for ensuring access to justice in guardianship cases is long overdue.

Spectrum Institute has publications that can help courts comply with the ADA, such as a White Paper to the United States Dept. of Justice titled “Due Process *Plus*: ADA Advocacy and Training Standards for

Appointed Attorneys in Adult Guardianship Cases.”

(<http://spectruminstitute.org/white-paper/>)

Mandating the appointment of counsel is just the beginning of a longer process. Performance standards, training requirements, and monitoring mechanisms also must be adopted. Models for performance standards exist in [Maryland](#) and [Massachusetts](#). The [Legal Aid Center of Southern Nevada](#) uses a client-directed advocacy approach. It has an excellent [training manual](#).

The courts in these 30 states do not have to remain targets for Title II ADA complaints or lawsuits. They can move into a safe zone by simply doing what the law has required for years – providing access to justice and effective communication for guardianship respondents by appointing counsel to represent them in *every* case.

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The Sacramento Superior Court is the first court in the nation to receive an ADA complaint for not appointing counsel in these cases.



[www.spectruminstitute.org/Sacramento](http://www.spectruminstitute.org/Sacramento)



## Appointment of Counsel in Guardianship Cases is *Mandatory* in These 20 States\*\*

Arizona  
Connecticut  
District of Columbia  
Florida  
Georgia  
Iowa  
Kansas  
Kentucky  
Louisiana  
Maine  
Maryland

Key	Total States
<span style="display: inline-block; width: 15px; height: 15px; background-color: #90EE90; border: 1px solid black;"></span> Categorical Right To Counsel ?	20
<span style="display: inline-block; width: 15px; height: 15px; background-color: #FFB6C1; border: 1px solid black;"></span> Discretionary Appointment Of Counsel ?	7
<span style="display: inline-block; width: 15px; height: 15px; background-color: #DDA0DD; border: 1px solid black;"></span> Right Or Appointment Is Qualified ?	23

Minnesota  
Missouri  
Nevada  
New Hampshire  
New Jersey  
South Carolina  
Vermont  
Washington\*  
West Virginia

\* Does not always occur in actual practice

\*\* <http://www.civilrighttocounsel.org/map>

## Models for Local, State, and Federal ADA Complaints

**Sacramento.** The Sacramento Superior Court does not have a policy to ensure that all conservatees and proposed conservatees have legal representation in probate conservatorship proceedings. As a result, many seniors and people with disabilities must represent themselves, even though the court knows that the severity of their disabilities preclude them from having effective communication and meaningful participation in the proceedings without counsel. An ADA complaint was filed with the court in 2018 to challenge the failure to appoint counsel in all cases. The court rejected the complaint. (<http://spectruminstitute.org/Sacramento/>) A separate ADA complaint was then filed against the court with a state civil rights agency. It was denied. An [administrative appeal](#) is pending.

**Washington State.** The policies and practices of local courts in Washington State do not ensure access to justice for seniors and people with disabilities in adult guardianship proceedings. There is a justice gap. (<http://spectruminstitute.org/gap/>) An ambiguous state statute appears to require the appointment of counsel, but that is not the case. Many respondents must represent themselves in these complex legal proceedings. Attorneys who are appointed are under the control of the judges. There are no performance standards, mandatory training requirements, or monitoring for quality of representation. Litigants lack the ability to complain about deficient performance. An ADA complaint was filed with the Supreme Court in 2017 to challenge these deficiencies. It is still under review by the court. (<http://spectruminstitute.org/Washington/>)

**Federal.** An ADA complaint was filed with the United States Department of Justice in 2014 to challenge voting rights violations by the Los Angeles Superior Court against conservatees. The complaint was accepted in 2015 and a statewide investigation was opened. This prompted the California Legislature to enact a law correcting the problem. A second ADA complaint was filed in 2015 to challenge a sorely deficient legal services program operated by the Los Angeles Superior Court. The attorneys who are appointed to represent conservatees and proposed conservatees are improperly trained, have no performance standards, and in many cases they either argue against their clients rights or surrender them. That complaint is pending. (<http://spectruminstitute.org/doj/>)

# The Domino Effect *Judicial Control of Legal Services*



A Report to the  
California Supreme Court  
on the Code of Judicial Ethics

*Trilogy on Legal Services*

Submitted by:



[www.spectruminstitute.org/ethics](http://www.spectruminstitute.org/ethics)

September 24, 2018

# Contents

Request to Modify Code of Judicial Ethics	i
Executive Summary of Report	iii
Report	
<i>Part One: Trilogy on Legal Services</i> The Discovery of Individual Injustices Leads to Audits Showing Ongoing Ethical Violations in the PVP Legal Program	1
<i>Part Two: Trilogy on Legal Services</i> Judges Should Not Be Managing and Directing Legal Services Programs	21
<i>Part Three: Trilogy on Legal Services</i> There Are Viable Alternatives to Court-Run Legal Services Programs	29
Exhibits	
Table of Contents: Exhibits to Part One	40
Table of Contents: Exhibits to Part Two	42
Table of Contents: Exhibits to Part Three	43
Proof of Service	44



Spectrum Institute is a nonprofit organization promoting equal rights and access to justice for people with disabilities – including and especially people with intellectual and developmental disabilities. The organization functions through two projects. The Disability and Abuse Project does research, education, and advocacy on issues involving disability and abuse. That project is directed by Nora J. Baladerian, Ph.D. The Disability and Guardianship Project does research, education, and advocacy on issues involving access to justice in adult guardianship and conservatorship proceedings. That project is directed by attorney Thomas F. Coleman. Reports and other materials published by Coleman on this topic are found online in the Digital Law Library on Guardianship and Disability Rights. ([www.spectruminstitute.org/library](http://www.spectruminstitute.org/library)) *Pursuit of Justice* is a documentary film that tracks the work of Coleman, Baladerian, and a small and growing network of advocates and supporters as they work to reform California’s conservatorship system and state adult guardianship systems nationwide. ([www.pursuitofjusticefilm.com](http://www.pursuitofjusticefilm.com))



## **Disability and Guardianship Project**

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September 21, 2018

Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102

Administrative Docket

Re: Request to Modify the California Code of Judicial Ethics  
Per California Constitution, Article VI, Section 18(m)

To the Court:

Spectrum Institute is writing to the Supreme Court pursuant to the court's authority under Article VI, Section 18(m) of the state Constitution. That provision gives the court administrative authority to establish a Code of Judicial Ethics to regulate the conduct of judges both on and off the bench.

Based on research we have been conducting over the past six years, we are requesting the Court to modify the Code to clarify that judges may not operate or direct a legal services program involving attorneys who appear before the judges or their court in individual cases.

Our research shows that judges of the Los Angeles Superior Court have been managing a court-appointed attorney program in the probate court. Instead of adjudicating cases in an impartial manner, the superior court has been deciding which attorneys get appointed to cases, how much they get paid, and whether they are appointed to future cases and if so, how many. This financial control has a tendency to influence the conduct of the affected attorneys. We believe that such judicial practices are not limited to the Los Angeles area but are occurring in other counties as well. Many superior courts operate legal services programs involving court-appointed attorneys.

Our research shows that judges of the Los Angeles County Superior court are managing the Probate Volunteer Panel – a legal services program that assigns attorneys to conservatees and proposed conservatees. In addition to controlling that program, judges are making presentations at the training programs and, in doing so, attempting to influence the manner of attorney advocacy and defense.

Judges are telling court-appointed attorneys what to do and what not to do in their cases. Some judges tell them to be the “eyes and ears of the court.” Some tell them to advise the court of what is in their client's best interests – even if this conflicts with what the client wants. Other judges tell them they should not do that – that doing so would violate ethical duties of loyalty and confidentiality. Some judges tell attorneys not to challenge laws or procedures that restrict the voting rights of clients – advising them to bring such challenges in federal court (knowing full well that the attorneys have no authorization to represent clients in conservatorship cases in federal court). When the superior court reduced the number of court investigators as a budget cutting measure, judges instructed court-appointed attorneys to fill the gap and to act as de-facto court investigators.

In support of this request to the Court, we are submitting a report titled “The Domino Effect: Judicial Control of Legal Services.” The document contains three reports: A Trilogy on Legal Services.

Part One of the Trilogy shares the results of our investigation of the PVP system and the role of judges in shaping the advocacy services of the court-appointed attorneys on that panel. Our research involved reviews of several specific cases, as well as audits of dozens of others. The audits show a pattern of inadequate legal services by many of these attorneys – deficiencies which we believe are implicitly authorized by the judges who manage the PVP program and who also adjudicate the conservatorship cases. We also attended several training programs. We observed unethical practices by the judges who made presentations – the same judges who hear cases involving these lawyers.

Part Two of the Trilogy shares the results of our research regarding policy statements and position papers of national judicial and legal organizations. These statements and papers uniformly are opposed to judges operating and directing legal services programs. They favor legal services programs being managed by an independent entity – one in which judges who adjudicate cases are not involved. Ethical reasons are cited as to why judges should stay in their own lane – adjudicating cases – and leave it to others to manage and direct the advocacy services of attorneys.

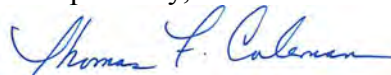
Part Three of the Trilogy shares the results of our research regarding options and alternatives to court-operated legal services programs. There are models in other states that are working well. There are various approaches taken in other areas of California. Even in Los Angeles County, there are many programs providing legal services for indigent litigants that do not have judicial control or management. This occurs in criminal law, juvenile delinquency law, and juvenile dependency law. Despite these options, and despite some discussions by Los Angeles County officials of taking control of the PVP panel away from the court, it appears that judges are resisting the loss of power over the court-appointed attorneys who appear before them in conservatorship cases.

We call our report *The Domino Effect* because the violations of ethics by judges who run legal services programs have an adverse effect on the legal ethics of and performance by the attorneys, which in turn has an adverse effect on the quality of services being received by clients.

As society's awareness of ethical standards has evolved over the years, changes have been occurring in Los Angeles, statewide, and throughout the nation. The trend is toward independence for attorneys and away from control by judges of the delivery of legal services. There is a growing national consensus that judges should have no more control over court-appointed lawyers than they do over privately-retained attorneys. Judges should be able to adjudicate issues that arise in individual cases, but they should not be coaching attorneys on how to advocate or defend cases and they should not be controlling the income stream of attorneys who appear in their courtrooms.

The current Code of Judicial Ethics is apparently insufficient – or else the practices revealed in Part One of the Trilogy would not be occurring repeatedly and openly. We therefore request the Court to modify the Code of Judicial Ethics to clarify that it is unethical for judges to manage legal services programs involving attorneys who appear before them or their court in individual cases.

Respectfully,



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cc: See Proof of Service



# Conservatorship Reform: More Than Attorney Education is Needed

By Thomas F. Coleman  
Daily Journal / Dec. 19, 2018

The Judicial Council has just released for public comment a set of new educational requirements for court-appointed attorneys in probate conservatorship proceedings. The proposals have been under consideration by its Probate and Mental Health Advisory Committee for several years.

There may be as many as 60,000 adults living under an order of conservatorship in California. They include seniors with mental challenges, adults with developmental disabilities, and others who have cognitive disabilities due to medical illnesses or injuries. The Spectrum Institute, a nonprofit organization advocating for conservatorship reform, estimates that some 5,000 new probate conservatorship petitions are filed annually in California.

Spectrum Institute presented the advisory committee with a list of deficiencies in the conservatorship system in November 2014. At the top of the list was the failure of court-appointed attorneys to advocate effectively for conservatees and proposed conservatees. The advocacy group asked the Judicial Council to adopt new training requirements and performance standards for court-appointed attorneys in these cases. In May 2015, a detailed proposal for such requirements and standards was submitted to the advisory committee.

Later that year, the Judicial Council authorized a multi-year project for the advisory committee to develop new rules in this area. After months of review, the committee dropped the idea of performance standards because it believed only the Legislature and State Bar have authority to do so. The committee decided to limit its focus to new educational requirements.

The work product of the committee, proposing amendments to Rule 7.1101 of the California Rules of Court, was released by the Judicial Council on

Dec. 13. The subject matter on which attorneys would be required to receive training are quite extensive.

Topics include: (1) the rights of conservatees, persons alleged to lack legal capacity, and persons with disabilities under state and federal law, including the Americans with Disabilities Act; (2) a lawyer's ethical duties to a client, including a client who has or may have diminished functional ability, under

the California Rules of Professional Conduct and other applicable law; and (3) techniques for communicating with an older client or a client with a disability, ascertaining the client's wishes, and advocating for those wishes in court.

In addition, attorneys would be required to have training on special considerations for representing older clients or those with disabilities, including: (1) risk factors that make a person vulnerable to undue influence, physical

and financial abuse, and neglect; (2) effects of physical, intellectual and developmental disabilities; (3) mental health disorders; (4) major neurocognitive disorders; (5) identification and collaboration with professionals with other professions; and (6) identification of less restrictive alternatives to conservatorship, including supported decision-making.

While these requirements, if adopted, are necessary to improve the quality of legal representation of clients in conservatorship proceedings, they are not sufficient to ensure they have access to justice. However, the authority to mandate more than new educational requirements may not be in the purview of the Judicial Council.

The California Advocates for Nursing Home Reform asked the advisory committee to propose a new rule clarifying the role of an appointed attorney for a

## A New Law Should

- Mandate appointment of counsel for all conservatees and proposed conservatees without an attorney
- Specify that the role of counsel is to act as a zealous advocate
- Direct the State Bar to adopt performance standards for lawyers assigned to represent such clients

conservatee or proposed conservatee as a “zealous advocate.” Both Spectrum Institute and the California Advocates for Nursing Home Reform suggested new rules on performance standards for such attorneys to ensure they provide effective advocacy and defense services. The advisory committee declined to follow these suggestions, arguing that only the Supreme Court or the Legislature has the authority to specify the role of an attorney and adopt performance standards.

Clarifying the role of appointed attorneys is crucial to litigants with disabilities receiving equal protection and access to justice. Some judges expect attorneys to be zealous advocates, while others want attorneys to override the stated wishes of clients if they believe a client’s best interests require such an approach. Attorneys representing non-disabled clients would never dream of advocating against their client’s wishes and promoting their own beliefs instead. If they did, attorneys could be the target of a malpractice lawsuit or a complaint to the State Bar. Clients with disabilities deserve the same type of advocacy as those without disabilities. New legislation should clarify this.

Legislation is also needed to clarify that all conservatees and proposed conservatees are entitled to an appointed attorney, even if they don’t request one. Under current law, even without a request, litigants with developmental disabilities *automatically* receive an attorney if a petitioner files for a *limited* conservatorship. However, if a petitioner files for a *general* conservatorship, a developmentally disabled litigant may be required to represent himself or herself. Giving a petitioner this type of control does not make sense.

Appointment of counsel for litigants in general conservatorship proceedings is not required under current law, unless they specifically request one. The problem is that many, if not most, of these litigants do not know the role or value of an attorney and so they will not ask for one. As a result, in some areas of the state, judges are not appointing attorneys even though they know these involuntary litigants have serious disabilities that make it impossible to effectively represent themselves. This “catch 22” – you must request even though you can’t request – needs to be eliminated. Probate Code Section 1471 should require appointment of counsel

regardless of whether a petitioner files for a general or a limited conservatorship.

A bill is currently being developed by a coalition of advocacy groups that will build upon, and move beyond, the new educational requirements likely to be adopted by the Judicial Council in 2019. The bill would: (1) guarantee appointed counsel for all conservatees and proposed conservatees; (2) specify that the role of counsel is that of a zealous advocate; and (3) direct the State Bar to develop performance standards for such attorneys. The State Bar can look for guidance to Maryland and Massachusetts where such standards already exist.

The Judicial Council should be applauded for developing these new educational requirements. But how will they help litigants with disabilities receive access to justice if they do not have an attorney, or if appointed attorneys advocate for what they think is best and ignore the stated wishes of a client? New legislation can and should fill this access-to-justice void in probate conservatorship proceedings.

Spectrum Institute, California Advocates for Nursing Home Reform, and The Arc of California recently filed a complaint with the Sacramento County Superior Court for failing to appoint attorneys in many general conservatorship proceedings. Spectrum Institute has also filed a complaint with the U.S. Department of Justice against the Los Angeles County Superior Court. The complaint cites deficient advocacy services of court-appointed attorneys there. These complaints allege that courts are violating their obligations under Title II of the Americans with Disabilities Act by failing to provide equal access to justice to persons with known disabilities.

Having an attorney – one that performs competently – is an essential component of access to justice under the ADA. New legislation entitling litigants in general conservatorship proceedings to effective representation by zealous advocates will bring California closer to compliance with the ADA.

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## A Bill to Promote Access to Justice and Effective Assistance of Counsel in Probate Conservatorship Proceedings

This bill protects the rights of people with disabilities to equal access to public services as guaranteed by Title II of the Americans with Disabilities Act, California Government Code Section 11135, Welfare and Institutions Code Section 4502, and Section 50510 of Title 17 of the California Code of Regulations. The objectives of this bill are supported by the [California Advocates for Nursing Home Reform](#), [The Arc of California](#), and the [Public Justice Center](#).

### Section 1 – Findings

The Legislature finds and declares:

1. Tens of thousands of adults in California are living under an order of probate conservatorship. Thousands of new conservatorship petitions are filed each year. These cases involve seniors who may be experiencing cognitive decline, adults with developmental disabilities, or adults of any age who have cognitive or communication disabilities caused by medical illnesses or injuries.
2. Probate conservatorship proceedings are initiated to protect the health and welfare of adults with significant disabilities – conditions that may impact their ability to make major life decisions regarding residence, education, medical care, marriage, social and sexual contacts, and finances.
3. These proceedings implicate the liberty interests of such adults and may ultimately result in the loss of fundamental constitutional and statutory rights.
4. Probate Code Section 1471 mandates the appointment of counsel in all *limited* conservatorship proceedings. In *general* conservatorship proceedings, the appointment of counsel is required only if requested or if the court determines that counsel “is necessary to protect the interests of the conservatee or proposed conservatee.” Some petitioners file for a general conservatorship in order to avoid the requirement that an attorney be appointed for all respondents in limited conservatorship proceedings.
5. Individuals with cognitive disabilities may not request counsel because they do not have the ability to understand the role of or need for an attorney to protect their rights. When a request is not made, some judges allow the individual to represent themselves, without conducting an assessment of the person’s ability to have meaningful participation in the proceeding without legal representation.
6. Litigants with disabilities have an interest in receiving access to justice in probate conservatorship proceedings. Components of access to justice include effective communication and meaningful participation in such litigation. Unless an attorney has been or will be retained by a conservatee or proposed conservatee, courts should appoint counsel in order to protect these legal interests.
7. When a statutory right to counsel exists, due process entitles a person to effective assistance of counsel throughout the proceeding.
8. The right to effective assistance of counsel is enhanced when an attorney receives appropriate education and training and adheres to objective performance standards.
9. The Judicial Council is in the process of adopting new training and education requirements for attorneys representing conservatees and proposed conservatees in probate court. A report issued by its Probate and Mental Health Advisory Committee indicates that the authority to adopt performance standards for such attorneys is vested in the California Legislature and The State Bar of California.

## Section 2 – Appointment of Counsel

California Probate Code Section 1471 , subdivision (b) is hereby amended as follows:

(b) If a conservatee or proposed conservatee does not plan to retain legal counsel and has not requested the court to appoint legal counsel, whether or not that person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the interests of that person in any proceeding listed in subdivision (a). ~~if, based on information contained in the court investigator's report or obtained from any other source, the court determines that the appointment would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee or proposed conservatee.~~

## Section 3 – Performance Standards

California Probate Code Section 1471 is hereby amended to add the following subdivision:

(d) The role of counsel for a conservatee or proposed conservatee is that of a zealous advocate. The State Bar of California shall develop and periodically update performance standards for attorneys who represent conservatees and proposed conservatees in probate conservatorship proceedings.

### Comments:

The Americans with Disabilities Act requires that courts provide an accommodation to litigants with *known* disabilities in order to enable them to have meaningful participation in a legal proceeding. A *request* is not necessary to trigger the court's duty to accommodate. Verified petitions, medical capacity declarations and other documents put judges on notice that litigants in conservatorship proceedings have cognitive and communication disabilities that affect their ability to understand, deliberate, and communicate. Appointment of counsel, therefore, may be a necessary accommodation to enable access to justice for many, if not most, conservatees and proposed conservatees.

One regional center has reported that judges in several counties are not appointing counsel to represent many litigants in probate conservatorship proceedings. An audit by the Spectrum Institute revealed that the Sacramento County Superior Court does not appoint counsel in a significant number of such cases.

California appellate courts have ruled that once a statutory right to counsel exists, due process entitles a litigant to receive effective assistance of counsel. However, no public entity in California has adopted performance standards for attorneys representing conservatees or proposed conservatees. A report from an advisory committee of the Judicial Council states that the State Bar and the Legislature have the authority to issue such standards. In formulating new standards, the State Bar can draw upon those adopted in Massachusetts and in Maryland. It can also refer to proposals included in a *White Paper* submitted to the U.S. Department of Justice and guidelines contained in a *Strategic Guide for Court Appointed Attorneys*. Both documents were produced and published by the Spectrum Institute.

Mandatory appointment of counsel in guardianship and conservatorship cases is supported by The Arc of the U.S., American Association for Intellectual and Developmental Disabilities, TASH, American Bar Association, National Council on Disability, National Coalition for a Civil Right to Counsel, Conference of State Court Administrators, and the California Advocates for Nursing Home Reform.

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(Rev-7 / 12-11-18)

# The Path Forward

to Justice in Conservatorships



A Report to Alameda County  
Supervisor Nathan A. Miley

Spectrum Institute  
January 16, 2019

[www.spectruminstitute.org/path](http://www.spectruminstitute.org/path)





On January 11, 2019, Alameda County Supervisor Nate Miley convened a forum focusing on the need for conservatorship reform in California.

The morning session began with a screening of the documentary film *The Guardians* and was followed by a panel presentation featuring several individuals involved in conservatorship reform in California and guardianship reform throughout the United States.

An afternoon roundtable discussion was led by Supervisor Miley, attorney Thomas F. Coleman of the Spectrum Institute, and attorney Tony Chicotel of the California Advocates for Nursing Home Reform. Participants included representatives from the Alameda County Superior Court, District Attorney, Public Defender, County Counsel, and Public Guardian-Conservator. This report was developed as a follow up to the roundtable.



# Contents

## **Background Documents**

Press Release	1
Agenda	2
Panelists	3
Letter from Spectrum Institute	5
A Path for Conservatorship Reform (Recommendations to State and Local Officials)	7
Conservatorship Reform in Alameda County (Questions for Agencies Involved in Conservatorships)	8
County Jurisdiction in Probate Conservatorships (Authority of the County to Leverage Reforms)	12
Library Outreach Volunteer Effort (Proposal to the Berkeley Public Library)	13

## **Moving Forward**

Conservatorship Justice Project (Proposal to the District Attorney)	14
What Access to Justice Would Look Like in Probate Conservatorship Proceedings if the ADA is Actually Implemented	15
The ADA and Ensuring Access to Justice in Probate Conservatorship Proceedings (What Laws and Procedures Apply?)	23

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## A Path for Conservatorship Reform

### Moving Beyond Awareness

Movies like *Edith + Eddie*, *The Guardian*, and *Pursuit of Justice* capture attention, but what next? Here are some concrete steps that conservatorship reform advocates should insist be taken.

Complaints about the probate conservatorship system in California have been mounting for years. Systemic deficiencies and a lack of accountability have created a pattern and practice of civil rights violations and financial abuse by many participants in probate conservatorship proceedings. Such practices harm seniors and people with disabilities.

Individual complaints have been ineffective. So far, organized efforts to create reform have yielded few results. One of the main reasons for such intransigence is that no single official is in charge of the conservatorship system.

Conservatorship proceedings are presided over by judges in each of the 58 counties. There is no statewide judicial administration, management, or oversight. Local probate courts act like fiefdoms. Legislative oversight is absent. The executive branch plays no role in the conservatorship system.

These systemic deficiencies and individual injustices will continue unabated until public pressure causes elected officials to take notice and work together for *comprehensive* reforms. In the interim, each of these officials can play a part in promoting measures to fix some of the most obvious deficiencies in the system.

The column on the right identifies state and federal officials who can help reform the conservatorship system in California. The key elements of such reform would involve: statewide judicial management; monitoring by an executive branch agency; accountability by the 58 county courts; performance standards for attorneys assigned to represent clients; and responsive and thorough investigations by federal and state law enforcement agencies.

**Chief Justice of California** – implement [proposals](#) submitted by Spectrum Institute to improve access to justice in probate conservatorship proceedings.

**Governor** – request the Fair Employment and Housing Council to open an inquiry and hold [hearings](#) into civil rights violations in conservatorship proceedings.

**Legislature** – [enact a law](#) to: (1) require an attorney for respondents in all conservatorship proceedings; (2) specify that attorneys must act as zealous advocates; (3) direct the State Bar to adopt attorney performance standards.

**Attorney General** – convene a [civil rights summit](#) on probate conservatorships, with participation by conservatees, family members, advocates, and judges.

**Health and Human Services Agency** – direct the Department of Developmental Services to [oversee regional centers](#) in connection with their role in probate conservatorship proceedings.

**State of California** – the Legislature, Governor, and Chief Justice should convene a commission to review guardianship reforms in [other nations](#), with recommendations for comprehensive reform in California.

**Congress** – fund a unit in the DOJ to investigate alleged [violations](#) of federal law, including the ADA, committed by courts and court-appointed personnel in guardianship and conservatorship proceedings.

**County Supervisors** – authorize a pilot project for a nonprofit organization to [represent](#) conservatees and proposed conservatees similar to the [program](#) operated by the Legal Aid Center of Southern Nevada.

**District Attorneys** – amend [Gov. Code § 11135](#) to authorize district attorneys to investigate and civilly prosecute alleged ADA violations by public entities.

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**Thomas F. Coleman, Legal Director**  
**Spectrum Institute**  
[www.spectruminstitute.org/path](http://www.spectruminstitute.org/path)

Report on First Full Year of Operations  
Under Nevada's Right to Counsel Law  
for Individuals Under or Facing  
Guardianship

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October 30, 2018

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## **Executive Summary**

In 2014, senior citizens and adults with disabilities, their family members, friends, and neighbors began raising alarm bells to anyone who would listen concerning the guardianship court process. Soon, the problems became well known. Guardians were being appointed without notice, oftentimes when they were not needed. Family members were being bypassed as guardians in favor of professional guardians who proceeded to loot an individual's estate and isolate the individual from loved ones. As a result of these cases, Legal Aid Center of Southern Nevada was asked to provide legal representation to these victims. Emergency seed funding was provided from a private donor and from Attorney General foreclosure settlement funds. The Nevada Supreme Court formed a Guardianship Commission to address these issues. The commission, chaired by Justice James Hardesty, recommended groundbreaking legislation, including the right to counsel for individuals facing or under guardianship. On October 1, 2017, institutional funding began to support the representation of these individuals with the goal of having every person facing guardianship guaranteed the right to counsel. This report describes the actions taken since that time to implement a right to counsel in Clark County.

## **Model Created**

The new legislation provides that an individual facing or under guardianship in Clark County has the right to legal counsel, and for all cases in Clark County (72% of Nevada's population), the court shall appoint an attorney from Legal Aid Center of Southern Nevada if the individual is unable to retain their own counsel. Legal Aid Center provides client-directed representation to those facing guardianship, meaning the attorney follows the individual's direction and works to achieve the client's stated goals. If the individual is unable to form a traditional client-attorney relationship, the attorney represents the individual's legal and constitutional interests. It is not a guardian ad litem model. A small program following a guardian ad litem model had previously existed in Clark County and was judged unsuccessful. Legal Aid Center has thus far hired eight well-qualified attorneys to represent these clients. This legal aid model allows the attorneys to become experts in the field of elder law and guardianship, to attend trainings in the law, and to share best practices with each other. In addition to providing top-notch representation, this model is also financially prudent. If a private sector model was utilized, and contract counsel were paid \$250 an hour, assuming each case took 10 hours a year, \$7,500,000 in funding would be required. Representation utilizing the nonprofit model costs less than 30% of this sum.

## **Goal of Representation**

The purpose of Legal Aid Center's legal representation is to provide the following:

- To ensure that the least restrictive alternative to guardianship is explored and selected before guardianship is considered so as to maximize the independence and legal rights of those who would otherwise be placed under guardianship.



- To provide a voice in court proceedings for seniors and individuals with disabilities who want to contest a guardianship, either because it is deemed unnecessary or because the guardian is abusing their power.
- To protect and represent the due process rights of seniors and individuals with disabilities who are currently saddled with an inappropriate guardian who ignores their needs, exploits them, and/or overbills them.
- To advocate the wishes of seniors and individuals with disabilities in a guardianship action when they want to remain in their home, or, when this is not possible, live in a place of their choosing where they feel safe and comfortable.
- To stop guardians from unilaterally liquidating the property, keepsakes, and heirlooms of a person under a guardianship.
- To ensure that seniors or individuals with disabilities are fully able to communicate their wishes directly to the guardianship court and have those wishes acted upon.
- To recover the property and/or funds of an individual under guardianship through the civil law process when these assets were improperly taken by a guardian.

### **Representation**

In October, 2017, Legal Aid Center began representation of seniors and adults with disabilities in every new case filed, in cases set for status checks, and in cases of concern to the court. Below is a chart showing the progress of representation:

<b>Year/ Month</b>	<b>Number of New Filings per 8<sup>th</sup> J.D.</b>	<b>Total New Cases Opened for Representation</b>	<b>Total Cases Closed</b>	<b>Total Active</b>
17-Oct	70	42	5	228
17-Nov	59	58	4	282
17-Dec	49	50	4	326
18-Jan	58	86	12	402
18-Feb	64	76	1	477
18-Mar	80	93	11	557
18-Apr	62	111	17	647
18-May	73	93	21	720
18-Jun	57	63	17	766
18-Jul	78	72	17	821
18-Aug	77	84	23	884
18-Sept	49	79	14	950
<b>Total</b>	<b>776</b>	<b>907</b>	<b>146</b>	<b>950</b>

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**LEGAL AID CENTER OF SOUTHERN NEVADA  
GUARDIANSHIP ADVOCACY PROGRAM**

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**REPRESENTING THE ELDERLY  
AND ADULTS WITH  
DISABILITIES WHO ARE  
FACING OR UNDER  
GUARDIANSHIP**

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## INTRODUCTION

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- ❖ This Manual is drafted to provide general information to pro bono attorneys on handling a guardianship case. It is not intended to provide legal advice on a specific matter involving a specific case.
- ❖ The legal information is believed to be current as of the last revision date.
- ❖ Nothing in this manual should substitute for reference to Nevada statutory or case law. When in doubt, please contact one of Legal Aid Center's guardianship attorneys for information concerning current law or current court practice.

### WHAT AM I GETTING MYSELF INTO?

Representing a senior or adult with a disability who is facing or under guardianship can be a frustrating and time-consuming, yet very rewarding, experience. Depending on your client's condition, the client's ability to recount history or relate preferences may be limited. Sometimes the facts surrounding the client's history and current situation will be appalling or heartbreaking. Your client might have been taken from home and placed into an institution or unfamiliar care setting, without fully understanding what is happening or why. Your client might be confused and disoriented, angry and resentful, depressed and uncommunicative – all of which could be appropriate responses given the client's situation.

Accepting this senior or adult with disability as a client means you must advocate for what the client wants – not what any other person or professional, including you, thinks ought to happen or is in the client's best interests. (Leave that for the other parties, the guardian ad litem, and, ultimately, the judge.) Your job is to promote what your client wants to the guardian and to the court and to work to make that happen, which might require you to confront uncaring guardians or family members and a sometimes inefficient and impersonal legal system. There is also no telling what your client might want. Your client's wishes might not make sense to you and might not be what you believe to be the logical choice. They might not even be feasible, in which case your job is to explore viable alternatives with your client and work to achieve a result that is closest to your client's wishes, one that employs least-restrictive means and protects and preserves your client's rights, dignity, and decision-making power to the greatest extent possible.

This manual describes the legal process that is initiated by a guardianship petition. However, the issues affecting the senior or adult with disability you have been asked to represent are unlikely to be limited to those typical to standard court proceedings. There might well be other issues – appropriate medical care or therapeutic services, changes in housing or placement, arguments over visitation and access, disputes over personal or real property, and the like – that will require your intervention on your client’s behalf. An in-depth discussion of every potential issue is beyond the scope of this manual. Therefore, Legal Aid Center’s guardianship attorneys are available to brainstorm and assist you with the many issues that can arise beyond the usual task of ensuring that the guardianship is necessary and the guardian’s actions appropriate. Please feel free to contact them for assistance.

Right now, the legal requirement that seniors and adults with disabilities facing guardianship be provided with an attorney is fairly new. For the hundreds of people already under guardianship, that means the court never heard their voices and now never hears their wants or needs – even though they are permanently affected by every decision the court makes. It also means that the demand for attorneys to fight for proposed protected persons in newly filed guardianship cases will quickly outstrip all available resources. (In fact, it already has.) Your willingness to advocate for a vulnerable senior or adult with disability means there is one fewer who will be potentially victimized – either by the legal process or by an unscrupulous guardian – and one fewer whose voice will go unheard.

We are happy you have chosen to attend this legal education class and hope you will gain valuable information.

# Investigating Violations of Federal Laws in State Guardianship Proceedings

## No Money, No Staff, No Investigations

When they occur in the context of guardianship proceedings, violations of federal law mostly have been ignored by federal authorities. It is similar to the way local police used to ignore domestic violence by labeling it a “civil matter” that the parties should deal with in family court.

It is true that guardianship proceedings are a function of state laws administered by state courts. But that should not make them immune from federal oversight. Criminal laws are also functions of state laws and state courts. But criminal proceedings must comply with federal due process, and adhere to federal protections against self incrimination and illegal searches and seizures.

The Americans with Disabilities Act applies to services provided by public entities. This includes state and local courts. Thus, the ADA has application to every state guardianship proceeding. But from the way these proceedings are currently handled, one would think that the ADA does not exist.

When someone is appointed as a guardian, he or she becomes a fiduciary with special obligations to the vulnerable adult whose income and assets are involved. Even though they are appointed by a judge, guardians do not receive authorization to violate federal laws.

Misuse of money could implicate federal criminal laws involving money laundering, bank fraud, postal fraud, social security regulations, or federal laws regulating annuities, stocks, bonds, or medical services. Guardians are capable of, and sometimes do, violate federal criminal statutes. They also are capable of, and sometimes do, violate the

rights of persons under the Americans with Disabilities Act.

Despite these realities, federal authorities seem very reluctant to investigate and prosecute, criminally or civilly, such violations of federal law. This is partially because Congress has not given a strong enough signal that violations of federal law, even when committed by participants in guardianship proceedings, should be investigated and prosecuted. But it is probably more due to the fact that Congress has not earmarked funds for this purpose.



Congress has passed legislation to promote best practices by states in dealing with elder abuse. It has barely ventured, however, into specifically affirming the duty of state courts to obey federal laws as they admin-

ister guardianship proceedings.

We need to move beyond a restatement of principles and a stated desire for best practices. The time has come for Congress to allocate money to protect vulnerable adults who have become entangled in a guardianship web.

We need legislation to fund specific positions at the DOJ to process complaints about ADA violations in state guardianship proceedings. Money should be allocated for positions within the FBI and the DOJ for investigations and prosecutions of alleged violations of federal criminal laws by judges, attorneys, professionals, and fiduciaries in guardianship proceedings.

The DOJ and FBI need a financial incentive to investigate these cases. Congress should give it to them by allocating funds for this purpose.



# World Congress on Adult Guardianship

Seoul, Korea / October 23-26, 2018



## California Judicial Branch Gains Attention at Global Forum

Thomas F. Coleman spoke at a plenary session of the World Congress on Adult Guardianship attended by more than 400 delegates from five continents. Presenters included judges, administrators, professors, and advocates from 20 nations. The forum was hosted by the Supreme Court of Korea, the Korean Ministry of Justice, and the International Guardianship Network.

Coleman focused on serious deficiencies in the conservatorship system in California and the need for the judiciary to support significant reforms to protect the rights of people with cognitive disabilities. So far, the Supreme Court and the Judicial Council have declined requests to create a task force to review deficiencies in the conservatorship system and to conduct a statewide survey of probate court practices in conservatorships.

Coleman highlighted the pending case of Theresa Jankowski, an 84 year-old woman whose rights are being violated by a judge and a court-appointed attorney in Los Angeles. With approval of the judge, the attorney is arguing in favor of a conservatorship, ignoring

Theresa's wishes, and actively promoting the denial of her rights. Coleman also focused on the refusal of the Sacramento court to appoint attorneys for many conservatorship respondents, thus requiring people with significant cognitive and communication disabilities to represent themselves in these complicated proceedings.

Coleman informed the delegates that a complaint against the Los Angeles court for violating the Americans with Disabilities Act (ADA) is pending with the United States Department of Justice. He also advised them that a separate ADA complaint is in the process of being filed against the Sacramento court with the California Department of Fair Employment and Housing – the state civil rights agency with jurisdiction to investigate, conciliate, and prosecute alleged ADA violations by public entities, including state courts.

*Pursuit of Justice*, a documentary film by Spectrum Institute, was also shown at the World Congress.

[www.pursuitofjusticefilm.com](http://www.pursuitofjusticefilm.com)

## World Congress on Adult Guardianship: Other Nations Are Leading the Way

Every two years, the World Congress on Adult Guardianship convenes to exchange information and ideas on improving guardianship systems in nations around the globe. The 5<sup>th</sup> World Congress was held in South Korea in October, 2018.

Presenters discussed progress in their countries to comply with the principles of the Convention on the Rights of Persons with Disabilities. Under Article 12 of the Convention – equal rights before the law – as it has been interpreted by the United Nations, requires signatories to move away from a substituted decision-making paradigm of guardianship to a supported-decision making model that would mainly operate outside of a court system. Some 166 nations have ratified the treaty.

Presentations were both provocative and inspiring. It was clear that guardianship systems have been abused for decades in all parts of the world. So even though it was provocative, the growing chorus of calls to abolish guardianship systems altogether was understandable.

It was inspiring to learn that many nations have reduced the role of judges in guardianship proceedings, instead placing a heavier emphasis on person-centered planning, interdisciplinary teams, social services, and supported decision-making arrangements.

The 6<sup>th</sup> World Congress will be held in Buenos Aires from September 29 to October 2, 2020.

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The World Congress on Adult Guardianship is a  
function of the International Guardianship Network.



The International Guardianship Network (IGN) is a non-profit and non-government organization. Its missions are to provide support, information and networking opportunities for guardians, especially for guardianship organizations, courts and public authorities worldwide and to put the legal proceedings of the UN Convention on the Rights of Persons with Disabilities into practice. IGN initiates innovative projects, workshops and congresses to improve the worldwide support and training of Volunteers and Family Guardians. IGN is independent of political and religious ideologies.

<https://www.international-guardianship.com>