



limited conservatorship training. Judges want the attorneys to act as de facto court investigators. That is why so much of the training program focused on local court rules rather than constitutional protections and disability nondiscrimination requirements.

Local preferences also influence attorneys to settle cases rather than demand evidentiary hearings. That preference is baked into local rule 4.125, which requires appointed counsel to help the court resolve cases. Such a “secondary duty” is manifest through a requirement that attorneys file a report with the court in which they share the results of work product developed during their investigation. These reports contain facts and opinions that may undermine the prospect of the client retaining his or her rights.

Appointed attorneys take these local rules and preferences seriously. They know that if they put in too many hours and run up fees which the county pays, they may be viewed with disfavor by the judges who operate the court appointed counsel program. Such disfavor may result in fewer appointments and therefore affect their income stream. Some attorneys can earn as much a \$100,000 per year from these appointments.

Back to last week’s training program. Here is a sample of what was included and what was omitted. Let’s start with the latter.

Although each proposed conservatee has serious disabilities that can affect their ability to have meaningful participation in the case without appropriate accommodations, not one word was mentioned about the duties of attorneys and judges under the Americans with Disabilities Act.

Although conservatorship case law is supposed to be covered, two recent appellate rulings were not discussed. One was an order of the Supreme Court decertifying for publication a Court of Appeal opinion that downplayed the importance of searching for less restrictive alternatives. The other was a Court of Appeal opinion, certified for publication, emphasizing that trial courts lack the authority to order a conservatee to visit someone against their will.

There was also no mention of the due process right of clients to effective assistance of counsel. Also not mentioned was the duty of attorneys to preserve issues for a possible appeal. Perhaps that is be-

cause, unlike other areas of law, appointed attorneys for conservatees almost never file appeals.

There was no discussion of discovery or preparing for trial. Contested court trials are unusual. Although proposed conservatees theoretically have the right to a jury trial, out of 24,000 conservatorship cases processed in Los Angeles over a recent 12-year time span, there were only two jury trials.

Also missing from the curriculum was how to use social workers or regional center multi-disciplinary teams to develop supported decision-making arrangements as a substitute for conservatorship. Not a word was spoken about an attorney’s duty to ensure that an appropriate continuing care plan is adopted if a conservatorship order is granted.

As to the former: what was included in the training was just as alarming as what was omitted. Reports by court appointed attorneys are mandatory. Attorneys were instructed to include their observations and recommendations. The client’s limitations should be mentioned. Attorneys are supposed to identify which rights of the client should be retained or restricted.

Requiring attorneys to file such reports contributes to violations of ethics, professional standards, constitutional obligations, and disability nondiscrimination laws. By filing such a report, a lawyer is acting more like a social worker with a law degree than a zealous advocate. A diligent advocate would challenge the constitutionality of these local rules.

Last month a coalition of 10 organizations, including Spectrum Institute and the Long Beach Bar Association, filed an administrative request with the Supreme Court asking the justices to convene a Workgroup on Conservatorship Right to Counsel Standards. The list of issues suggested for investigation did not include deficient conservatorship trainings programs. If such a workgroup is eventually created, this issue should be placed at the top of the list, with last week’s training session introduced as “Exhibit A.” ♦ ♦ ♦

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