

# California Probate Conservatorships:

Bridging the Gap Between *Theory* and *Reality*

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## 1. My Perspective as a Civil Liberties Advocate

- a. Where it Began: Loyola Law School Activism (1972)
- b. A Lifetime Adventure: 40+ Years of Advocacy ([www.dominoeffectbook.com](http://www.dominoeffectbook.com))
- c. Catching a New Wave: Introduction to Conservatorship Injustices (2012)
- d. Making Ongoing Challenges to “The System” to Stimulate Conservatorship Reforms

## 2. Conservatorship Proceedings: How They Should Operate in Theory

- a. Filing of petition (General - person/estate) (Limited - I/DD)
- b. Citation of respondent and service on relatives
- c. Filing of medical capacity declaration
- d. Appointment of an attorney to represent the respondent
- e. Court to assess ADA Needs and provide accommodations
- f. Court and appointed attorney to ensure due process and access to justice
- g. Investigation and report by a court investigator
- h. Preparation of a defense  
(investigate facts, challenge petition, review LRA, expert capacity assessments)
- i. Evaluation and report by regional center for I/DD respondents
- j. Court hearing (uncontested or contested)
  - i) Review evidence on the need for a conservatorship
  - ii) Is there clear and convincing evidence?
    - of need for a conservatorship – on each area of capacity under review
    - of less restrictive alternatives – on who should be appointed as conservator
    - on respondent’s right to vote
- k. Jury trial on demand
- l. Right to appeal

## 3. Conservatorship Proceedings: How They Actually Operate in Reality

- c. Qualifications of capacity professionals generally unknown and unquestioned
- d. Attorneys: sometimes not appointed; usually not trained; no performance standards  
no accountability (no appeals; inaccessible complaint procedures)
- e. Court does not conduct ADA assessments or ensure meaningful participation in cases
- f. Attorneys often act as a court investigator, not zealously advocating for client’s wishes
- g. Court investigators sometimes not used; ill trained; large caseloads; delayed reviews
- h. Attorneys seldom demand evidentiary hearings or produce favorable evidence
- i. Regional centers do mediocre work; sometimes they do not submit reports
- j. Judges place more emphasis on pushing cases through than getting it right
- k. Jury trials are rare
- l. Appeals are almost nonexistent

## **4. Examples of Ongoing Efforts to Improve the Probate Conservatorship System**

- a. **Filing of ADA complaints with the United States Department of Justice**
  - Voting rights complaint (2014) stimulated change in 2016
  - ADA complaint vs. PVP system (2015) is still pending
  - Congressional directive (2017) for guardianship “best practices” is still pending
- b. **Actions to correct the failure of courts to appoint counsel**
  - ADA complaint to Sacramento Superior Court (2018) was rejected
  - Administrative appeal to DFEH (2018) was denied (with guidance)
  - Legislative bill drafted to require appointment of counsel (for 2020 session)
- c. **Actions to correct the failure to properly train appointed counsel**
  - Request made to Judicial Council (2014) to impose new education mandates
  - New court rule with new mandates to be voted on in May 2019
- d. **Actions to remove judicial control of attorney appointments and legal services**
  - Ethics report and request sent to California Supreme Court (2018)
  - Supreme Court sent report to Advisory Committee on Code of Judicial Ethics
- e. **Actions to educate the public, judiciary, and legal profession**
  - Ongoing op-ed articles in the Daily Journal (2015 - 2018)
  - *Pursuit of Justice* documentary film released (2018) and shown at film festivals
  - Request state civil rights council to hold hearings into civil rights abuses (2019)
- f. **Actions to have ADA properly used by courts in conservatorship proceedings**
  - Request to Chief Justice to have Judicial Council modify ADA court rule
- g. **Failure to thoroughly evaluate “capacity” and less restrictive alternatives**
  - Capacity Assessment Workgroup is convened by Spectrum Institute (2019)
- h. **Actions to improve procedures in one local court**
  - Alameda Supervisor Nate Miley convened a conference on local reform (2019)
  - Follow up was done with officials at the Alameda Superior Court (2019)
- i. **Actions to improve regional center evaluations and reports**
  - Meeting with HHS agency and DDS department (2017)
  - Report to DDS on oversight as an existing administrative obligation (2017)

### **For more information about reform activities:**

Updates about ongoing reform activities: <http://disabilityandabuse.org/whats-new.htm>

Publications about problem areas and suggested changes: <http://spectruminstitute.org/library/>

Complaints filed with DOJ: <http://spectruminstitute.org/doj/>

White Paper to DOJ on attorney performance standards: <http://spectruminstitute.org/white-paper/>

Ethics report sent to California Supreme Court: <http://spectruminstitute.org/ethics/>

Requests made to Chief Justice of California: <http://spectruminstitute.org/steps/>

Reform efforts underway in Alameda County: <http://spectruminstitute.org/path/>

Study being done by Capacity Assessment Workgroup: <http://spectruminstitute.org/capacity/>

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