AB 1194
Fulfilling Duties and Reducing Risks

Zealous Advocacy Standards for Legal Service Providers in Conservatorships

Constitutional, Statutory, and Regulatory Duties of Public Defenders and Court-Appointed Attorneys; Risks for Attorneys and the Public Entities that Employ, Appoint, or Fund Them

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By Thomas F. Coleman

Zealous Advocacy: Compliance Duties

AB 1194

Assembly Bill 1194 has amended Probate Code Section 1471(e) to read: "The role of legal counsel of a conservatee, proposed conservatee, or a person alleged to lack legal capacity is that of a zealous, independent advocate representing the wishes of their client, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct."

AB 1194, authored by Assemblymember Evan Low, was signed by the Governor on September 30, 2021. The bill takes effect on January 1, 2022. The bill contains several provisions to strengthen the right to counsel in probate conservatorship proceedings. These right-to-counsel aspects of the bill were incorporated from SB 724.

SB 724, authored by Senator Ben Allen, originally had only one substantive provision – to protect the right to counsel of choice in a probate conservatorship proceeding. After his staff reviewed a model right-to-counsel bill that Spectrum Institute had developed in 2019, Senator Allen expanded SB 724 to include additional protections: (1) mandatory appointment of counsel by the superior court for conservatees and proposed conservatees who do not retain counsel; (2) mandatory appointment of counsel in appellate proceedings; and (3) defining the role of counsel for a conservatee or proposed conservatee as a zealous advocate. This amendment was made to the bill on April 5, 2021.

An analysis by the Judiciary Committee on April 9, 2021, discusses in considerable detail the purpose, intent, and meaning of the zealous advocacy requirement. The analysis referred to a written statement supplied to the author and to the committee by Spectrum Institute:

"The Spectrum Institute applauds all aspects of the bill that strengthen legal advocacy and defense services in conservatorship proceedings, writing:

> 'SB 724 would require the court to allow a conservatee or proposed conservatee to be represented by the attorney of their choice. The bill implements the due process right of a civil litigant to be represented by a privately retained attorney. The bill is consistent with the legislative intent manifest in various sections of the probate code. . .
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> 'Everyone with an attorney is entitled to have counsel be a zealous advocate defending their rights and promoting their stated wishes. Unfortunately, that often does not happen. In many cases, courts instruct appointed counsel to act as "the eyes and ears of the court" and to advocate for what counsel believes is in the client's best interests—even if this requires counsel to be disloyal to the client or violate their right to confidentiality. In places such as Los Angeles, local court rules such as Rule 4.125 give appointed counsel a dual role. Attorneys are told to represent the client but also to help the court resolve the case. SB724 would remove this ethical tension by clarifying that counsel has one duty: to be a zealous advocate.'"

SB 724 was amended again on April 15, 2021, to define the role of counsel as a zealous advocate "consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct." This amendment provides context to the meaning of zealous advocacy for a conservatee, proposed conservatee, or "a person alleged to lack legal capacity."

SB 724 passed without opposition in the Senate Judiciary Committee on May 3, 2021, and the Senate Appropriations Committee on May 20, 2021.

When limitations were imposed on the number of bills that could be brought to a vote on the Senate floor prior to the end of the legislative session in August 2021, Senator Allen made arrangements with Assemblymember Low to incorporate all of the right-to-counsel provisions of SB 724 into AB 1194 – a bill which reformed other aspects of the probate conservatorship system. AB 1194 was amended in the Senate to add these provisions on August 26, 2021.

As further amended on September 3, 2021, the final "zealous advocate" language of the bill as passed by the Legislature and signed into law by the Governor, states: "The role of legal counsel of a conservatee, proposed conservatee, or a person alleged to lack legal capacity is that of a zealous, independent advocate representing the wishes of their client, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct."

The zealous advocacy mandate of AB 1194 prohibits attorneys from advocating for what they think is in the client's best interests and requires them to advocate for what the client wants when that can be ascertained. Otherwise, the bill requires lawyers to serve in an adversarial rather than a paternalistic role while they provide zealous representation to clients. Attorneys must advocate with courage and devotion, exhibiting competence, diligence, and loyalty while always adhering to their duty of confidentiality.

In effect, attorneys for conservatees or proposed conservatees must provide clients who have diminished capacity the same type of representation that would be required for clients without actual or perceived mental disabilities. Under Probate Code Section 1471(b), if a conservatee or proposed conservatee does not have counsel, the court must appoint an attorney to represent the person, "whether or not the person lacks or appears to lack legal capacity." The lack of legal capacity of a client does not transform an appointed attorney into a de facto guardian ad litem or adjunct court investigator. AB 1194 clarifies that the attorney represents the person and that in doing so the attorney must act as a zealous advocate.

As one legal commentator stated: "A lawyer is a lawyer is a lawyer." ("A Lawyer is a Lawyer is a Lawyer," *California Trusts and Estates Quarterly* (Vol. 25, Issue 1 - 2019) This periodical is the official publication of the Trusts and Estates Section of the California Lawyers Association.

The commentary uses the terms "zealous advocate" several times as a way of explaining the duty of an attorney to a client or the role of an attorney in representing a client, including one with "diminished capacity."

> * [A]ttorneys have a general obligation to be zealous advocates for their clients.
>
> * The attorney's duties to be a confidential, loyal, and zealous advocate are fundamental.
>
> * The conclusion that a California attorney appointed to represent a proposed conservatee must act as a zealous advocate for the client and not as a reporter to the court lies at the intersection of the two most basic ethical rules governing California attorneys.
>
> * Attorneys must be zealous advocates and are not permitted to resolve their client's interests contrary to the client's wishes.
>
> * Two cases, *Conservatorship of Schaeffer* and *Conservatorship of Cornelius,* illustrate the dangers of a system that requires attorneys to stray from their roles as loyal, confidential, and zealous advocates and to instead function as reporters to the court.

* The California attorney is required to be a loyal, confidential, and zealous advocate for the client regardless of the client's mental condition.

* [E]ven if the current state of the Probate Code prevents the appointment of a guardian ad litem before the determination of incapacity, the role of the appointed attorney remains the same: the appointed attorney must be a zealous advocate for his or her client.

* California law and Rules of Professional Conduct require appointed attorneys to be confidential, loyal, and zealous advocates for their clients. There is no exception to these ethical duties in the probate court.

Wishes of the Client. Under AB 1194, legal counsel in a conservatorship proceeding must represent the wishes of their client consistent with professional standards specified by other statutes or by State Bar rules of professional conduct. "Best interests" advocacy is no longer permitted.

Because conservatorship clients have cognitive or communication disabilities, a public defender or court-appointed attorney must employ measures to enable effective communication with the client. Failure to do so will prevent the attorney from knowing the current wishes of the client. An ADA accommodation assessment should be done as soon as the attorney is appointed. Information on communication accommodations and needs can be ascertained by speaking with the client, with family members, a regional center case worker, and service providers. Accommodations may need to be made for time of day, location, or the presence of a support person. A sign language interpreter may be needed.

If there is doubt as to what accommodations to provide, an attorney may file a MC-410 form with the court's ADA coordinator asking for the appointment of a qualified professional to assess what accommodations are appropriate. Knowing the current wishes of a client will depend on an appropriate assessment of communication and support needs, including the need for a cognitive interpreter, to help explain legal concepts and options to the client in the terms the client will understand and the manner that will enhance understanding and a meaningful communication from the client.

Once an attorney knows the wishes of the client – to consent to or oppose the conservatorship, less restrictive alternatives, the terms of a conservatorship, what rights should be retained, who should be appointed as conservator, the details of a continuing care plan, etc. – the attorney can effectively represent the wishes of the client. What relatives or others want may be informative as to developing strategies, but it is the client's wishes that should control the goals and methods of advocacy.

There will be cases where an attorney cannot ascertain the current wishes of the client. Such a situation does not warrant the attorney becoming a guardian at litem who advocates for the best interests of the proposed conservatee. The court can decide, sua sponte, to appoint a GAL if it wishes. If current wishes are unknown, an attorney has two duties as a zealous

advocate.

With current wishes unknown, an attorney can investigate to determine the client's most recently expressed wishes. For example, the client may have executed a trust, a financial power of attorney, or a power of attorney for health care. If any or all of these documents exist, they are likely durable and do not dissolve upon the incapacity of the client. They were executed with incapacity in mind. Therefore, they are an excellent source of information as to the wishes of the client. The attorney should zealously advocate for the validity of these documents and their use as a less restrictive alternative to a conservatorship. Zealous advocacy requires no less. If the court invalidates the documents and imposes a conservatorship, the attorney should consider filing an appeal for the client. If this is done, the client will receive a court-appointed attorney on appeal.

If it appears that the court is inclined to impose a conservatorship despite the client having these documents, there is more that a zealous advocate should do. From these documents, as well as the most recently executed will, an attorney can determine who the client would want to make decision for them in the event of incapacity. The attorney should advocate for this person, or alternates mention in the documents, to be appointed as conservator. Th attorney may also be able to determine from these documents who the client was estranged from and therefor would not want as a conservator. The attorney should oppose the appointment of such a person as conservator.

If neither current or most recent wishes of the client cannot be ascertained, the role of the attorney is guided by other provisions in AB 1194. Despite their actual or perceived incapacity, an attorney is appointed to "represent the person." If this is a proposed conservatee, the person is presumed to have capacity to make decisions, is entitled to due process, is entitled to a serious exploration of less restrictive alternatives, and is entitled to a dismissal unless thee court finds clear and convincing evidence that the elements supporting the need for a conservatorship have been met. Even if current or most recent wishes cannot be ascertained, the person being represented by an attorney is entitled to have the attorney protect their substantive and procedural rights. In other words, the attorney's role, consistent with Business and Professions Code Section 6068 and the Rules of Professional Conduct, is to make sure that all participants in the proceeding obey the law.

Independent Advocacy. AB 1194 also requires that legal counsel for a conservatee or proposed conservatee should be an "independent" advocate for the client. This corresponds with the ethical duty of loyalty. An attorney cannot serve two masters. Under the express terms of AB 1194, an attorney who cannot provide zealous and independent advocacy or who has a conflict of interest is disqualified from representing a conservatee or proposed conservatee.

Other Statutes and Rules

AB 1194 states: "The role of legal counsel of a conservatee, proposed conservatee, or a

person alleged to lack legal capacity is that of a zealous advocate, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct." The reference to the Business and Professions Code and the Rules of Professional Conduct was added to the bill as an amendment to provide additional meaning to the term "zealous advocate." As explained below, there are many duties for a zealous advocate that were packed into that amendment.

Business & Professions Code

From this language, it is clear that whatever else is required of a "zealous advocate," the attorney must perform legal services consistent with the duties specified in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct.

Constitutional Duties. Of utmost importance, Section 6068(a) imposes a duty on attorneys to "support the constitution and laws of the United States and of this state." Therefore, an attorney must perform services consistent with the requirements of the due process clauses of the state and federal constitutions.

A conservatee or proposed conservatee is entitled to due process of law in a conservatorship proceeding. *(Conservatorship of Sanderson* (1980) 106 Cal.App.3d 607) If a litigant has a statutory right to an appointed attorney, due process entitles the litigant to "effective assistance of counsel." This right arises directly from the constitution. It is also "a result of the Legislature's creation of a statutory right to counsel." (*People v. Hill* (2013) 219 Cal.App.4th 646) "A prospective conservatee's statutory right to effective assistance of counsel is protected by due process." (*Conservatorship of David L*. (2008) 164 Cal.App.4th 701.)

Case law defining the basic requirements of effective assistance of counsel forms the foundation for what an attorney must do to be a zealous advocate in a probate conservatorship proceeding. (See section on Effective Assistance of Counsel.)

Confidentiality. Section 6068(c) directs attorneys "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." Comments to the Rules of Professional Conduct explain that "The principle of lawyer-client confidentiality applies to information a lawyer acquires by virtue of the representation, whatever its source." Without the voluntary and informed consent of a conservatee or proposed conservatee, an attorney may not disclose orally or in writing, through reports or legal briefs, information adverse to the client's interests that was acquired by the lawyer during the course of representation, no matter what or who the source of the information was. Information may not be disclosed that undermines the presumption of capacity.

Communications. Section 6068(m) requires attorneys "To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services." Keeping a client with cognitive or communication disabilities reasonably

informed would require a professional assessment of : (1) the client's ability to understand; and (2) the best methods available to ensure meaningful communications between the attorney and client, and by the client with other participants in the legal proceeding such as the judge, court investigator, and experts. Furthermore, the duty to support the "laws of the United States and of this state" would require the attorney to comply with the nondiscrimination and reasonable accommodation requirements of the federal Americans with Disabilities Act and the state Unruh Civil Rights Act. This would trigger a duty to initiate an ADA needs assessment to determine what reasonable accommodations may be needed to enhance the client's ability to understand and communicate in order to have meaningful participation in the case to the greatest extent possible.

Rules of Professional Conduct

AB 1194 specifies that zealous advocacy must be consistent with the Rules of Professional Conduct. This requires an exploration of the rules most applicable to probate conservatorship proceedings.

Competence. Rule 1.1(a) specified that: "A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence." There are two elements of competency. One pertains to leaning and skill. The other involves mental, emotional, or physical abilities.

As for the latter, a zealous advocate for a client with developmental disabilities, dementia, or other cognitive challenges must be comfortable in relating to and representing someone with such conditions. Implicit biases may prevent an attorney from establishing a rapport with the client and gaining the client's trust.

As for the former, zealous advocacy for a special needs client or a client with diminished capacity – whether actual or perceived – is not possible unless the attorney has become educated on the issues involved in conservatorship advocacy and defense. In addition to understanding those issues, there must be an ability to articulate them and present them effectively in memos, briefs, and orally.

Rule 7.1103 requires attorneys to receive continuing education on the following topics. (1) state and federal statutes including the Americans with Disabilities Act, 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) the attorney-client relationship and lawyer's ethical duties to a client under the California Rules of Professional Conduct and other applicable law; and (3) special considerations for representing an older adult or a person with a disability, including: (a) communicating with an older client or a client with a disability; (b) vulnerability of older adults and persons with disabilities to undue influence, physical and financial abuse, and neglect; (c) effects of aging, major neurocognitive disorders (including dementia), and intellectual and developmental disabilities on a person's ability to perform the activities of daily living; and (d) less-restrictive alternatives to conservatorship, including supported

decision-making.

Learning about these topics would not make an attorney a zealous advocate in conservatorship proceedings. To provide effective assistance of counsel as required by due process and to competently represent the interests of the client as required by the Rules of Professional Conduct, a zealous advocate may need to enlist of the assistance of an investigator or professional experts such as a psychologist or social worker or both. Zealous advocacy requires competence which in turn requires both learning and skill.

Diligence. Rule 1.3(a) states: "A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client." Subdivision (b) adds: "For purposes of this rule, "reasonable diligence" shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer."

Commitment and dedication to the interests of the client would require an attorney to be loyal to the client. There is no room for a dual role for an attorney representing a conservatee or proposed conservatee. The attorney must disregard attempts made by judges or opposing counsel for the attorney to step outside of his or her role as a zealous advocate. The attorney should not act as "the eyes and ears of the court" as some judges would have it. A zealous advocate is not a de facto guardian ad litem who advocates for what he or she determines is in the client's best interests. Nor should the attorney perform the functions of a court investigator who is neutral and objective. The retained or appointed attorney must be committed to preserving and defending the client's rights and advocating for his or her wishes when they are ascertainable. When they are not, they commitment and dedication to the interest of the client requires the attorney to advocate for less restrictive alternatives to conservatorship, or if such is not available then to vet the proposed conservatee and ensure that a continuing care plan is consistent with the client's wants and needs.

Communication and Confidentiality. Although the issues of communication and confidentiality are mentioned in the Rules of Professional Conduct, they will not be discussed further in this section since they were addressed in the section above on the Business and Professions Code.

Compensation. Rule 1.8.6 states: "A lawyer shall not enter into an agreement for, charge, or accept compensation for representing a client from one other than the client unless: (a) there is no interference with the lawyer's independent professional judgment or with the lawyer-client relationship." A zealous advocate who is "supporting the constitution," acting "with competence" and acting with "diligence and commitment to the interests of the client" as required by other rules, may not compromise those duties because of the policies or practices of the source of the attorney's funding. Whether the funding source is the county's department of public defender, a contract with the county, or a court-operated panel for appointed attorneys, a zealous advocate should resist and oppose policies and practices which may cause the attorney to provide deficient services. Caseloads that are unreasonably large, funding that is inadequate to support effective assistance of

counsel, or implicit pressure from judges to settle cases or move them along prematurely are examples of pressure from funding sources that should be resisted or opposed.

Lawyer as Witness. Rule 3.7 states: (a) A lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless: (1) the lawyer's testimony relates to an uncontested issue or matter; (2) the lawyer's testimony relates to the nature and value of legal services rendered in the case; or (3) the lawyer has obtained informed written consent from the client."

By adhering to this rule, a zealous advocate would never submit a report to the court containing facts the lawyer has obtained through conversations with the client or observations of the client or from other sources about the client's capacities or incapacities. The practice of appointed counsel submitting reports, under penalty of perjury, in courts such as is routinely done in Los Angeles, advising the court of counsel's observations, beliefs, or opinions about the client's capacities or what is in the client's best interests runs contrary to the duty of zealous advocacy and violates Rule 3.7. Counsel is appointed under Section 1471 to represent the client as an advocacy attorney, not to be a guardian ad litem or de facto court investigator.

Supervisory Lawyers. Rule 5.1 states that a supervisor or manager of a lawyer "shall make reasonable efforts to ensure that the lawyer "complies with these rules and the State Bar Act." This would require a supervisor in the public defender's office or an attorney managing contract legal services or an attorney managing a panel of appointed attorneys to take affirmative steps to ensure the line attorney acts as a zealous advocate consistent with the duties described in this report.

Subordinate Lawyers. Rule 5.2 states: "(a) A lawyer shall comply with these rules and the State Bar Act notwithstanding that the lawyer acts at the direction of another lawyer or other person."

The comment to this rule explains: When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to the lawyers' responsibilities under these rules or the State Bar Act and the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. Accordingly, the subordinate lawyer must comply with his or her obligations under paragraph (a). If the question reasonably can be answered more than one way, the supervisory lawyer may assume responsibility for determining which of the reasonable alternatives to select, and the subordinate may be guided accordingly. If the subordinate lawyer believes that the supervisor's proposed resolution of the question of professional duty would result in a violation of these rules or the State Bar Act, the subordinate is obligated to communicate his or her professional judgment regarding the matter to the supervisory lawyer.

The rule and the comment make it clear that "just following orders" is not an excuse to violate legal requirements for professional conduct. There is a duty of the subordinate to

push back when what the supervisor is demanding violates ethical duties or professional responsibilities. A zealous advocate does not sacrifice the client's right to effective assistance of counsel because the supervisor gives the attorney an unreasonably large caseload or wants the attorney to cut corners due to inadequate funding or staffing.

Misconduct. Rule 8.4 states: "It is professional misconduct for a lawyer to: (a) violate these rules or the State Bar Act, knowingly assist, solicit, or induce another to do so, or do so through the acts of another; . . . (d) engage in conduct that is prejudicial to the administration of justice." The administration of justice depends on appointed lawyers acting as zealous advocates for clients consistent with constitutional duties, statutory directives, ethical obligations, and rules of professional conduct. The failure to provide effective assistance in an ethical manner with competence, diligence, and loyalty is prejudicial to the administration of justice in probate conservatorship proceedings.

Discrimination. Rule 8.4.1 states: "(a) In representing a client . . . a lawyer shall not . . . unlawfully discriminate against persons on the basis of any protected characteristic. . . (b) In relation to a law firm's operations, a lawyer shall not: (1) On the basis of any protected characteristic, (I) unlawfully discriminate or knowingly permit unlawful discrimination."

Actual or perceived mental disability is a protected characteristic within the meaning of this rule. By virtue of the allegations in a petition for conservatorship, a proposed conservatee has an actual or perceived mental disability. Adjudicated conservatees have an actual mental disability.

Whether an attorney's action constitutes unlawful discrimination is determined by reference to federal and state laws prohibiting discrimination. In the case of mental disabilities, those statutes would include the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the state Unruh Civil Rights Act, and the state Lanterman Developmental Disabilities Services Act. A supervising attorney who knowingly permits discrimination or fails to take correction action against such is considered to be in violation of this rule.

Disability discrimination occurs when an attorney who knows a client has a mental disability that impairs the client's ability to communicate or meaningfully participate in the litigation fails to conduct an assessment of the client's needs and fails to secure reasonable accommodations to maximize the potential for effective communication and meaningful participation in the case. A zealous advocate take actions to accommodate the needs of clients with mental disabilities.

Legislative Committee Analysis

Because AB 1194 incorporated the "zealous advocacy" provision in SB 724, the role and activities of a "zealous advocate" are informed by the analysis of SB 724 by the Senate Judiciary Committee. This following excerpts from that report are helpful to any analysis of the legislative intent for the "zealous advocacy" standard.

> "This bill . . . [p]rovides that the role of legal counsel of a conservatee or proposed conservatee is that of a zealous advocate. . . The author writes . . . SB 724 advances the due process rights of conservatees and proposed conservatees by providing them with the guarantee of legal counsel, the clear right to choose an attorney of their preference, and requiring that their attorney be a zealous advocate on their behalf." (p. 3)

This part of the analysis indicates that the zealous advocate provision is grounded in the constitutional principle of due process – the same principle that entitled the client in a conservatorship proceeding to effective assistance of counsel.

> "While it may be expedient, there is cost to liberty if a conservatee appears before the court without legal representation. . . And there is a cost to permitting attorneys for conservatees to ignore their clients' wishes and instead advocate for what they perceive as their clients' best interests." (p. 4)

The state and federal constitutions both prohibit the state from depriving an individual of liberty or property without due process of law. By referencing the cost to liberty, this part of the analysis indicates that due process requires that an attorney for a conservatee or proposed conservatee zealously advocate for the client's wishes rather than the attorney's perception of the client's best interests.

The analysis states that the bill "Seeks to enhance legal representation in conservatorship proceedings" and that by defining the "proper role" of the attorney as a zealous advocate, the bill makes "changes with respect to the quantity and quality of legal representation." (p. 12) The need for such change is partially prompted by existing practices where "conservatorship attorneys, especially those who are court-appointed, are often instructed by courts to serve a role that is more paternalistic than adversarial." (p. 12)

The requirement that counsel act as a zealous advocate, therefore, requires counsel to assume an adversarial role to test the sufficiency of the petitioner's evidence, develop evidence favorable to the client's retention of rights, and ensure that all participants in the proceeding follow statutory and constitutional requirements. Paternalist approaches and best interests considerations should be left to a guardian ad litem or court investigator. They are inappropriate for a zealous advocate.

> "'The duty of a lawyer both to his client and to the legal system, is to represent his client zealously within the bounds of the law.' [Citations.] More particularly, the role of . . . attorney requires that counsel 'serve as . . . counselor and advocate with courage, devotion and to the utmost of his or her learning and ability . . . .' [Citation.]" (*People v. McKenzie* (1983) 34 Cal.3d 616, 631; italics omitted.) Lawyers owe clients duties of competence, diligence, and loyalty, including the obligation to avoid conflicts of interest and maintain confidentiality. (*See* Bus. & Prof. Code § 6808.)

> "While an attorney generally may only represent clients who have legal capacity, probate conservatorship attorneys, particularly those appointed by the court, are in a different position because many clients have diminished capacity. Existing law is unclear with respect to the attorney's role in such cases." (p. 12)

The analysis discusses two schools of thought about proper advocacy methods by an appointed attorney in a conservatorship proceeding. One school believes the attorney should assume the normal adversarial role for all types of litigation. The other is more paternalistic and justifies the attorney advocating for what he or she believes is in the client's best interests even if this clashes with the client's wishes. The analysis makes it clear that SB 724 is intended to resolve this tension by clarifying the role of an appointed attorney as a zealous advocate acting consistently with the requirements of Business and Professions Code 6068 (The State Bar Act) and the Rules of Professional Conduct.

The committee analysis cites with approval "A 2019 article entitled *A Lawyer is a Lawyer is a Lawyer* which argues that 'the practice of requiring or encouraging appointed attorneys to report to the court about what the attorney believes is in the best interests of the proposed conservatee should be ended, and California should instead follow state-wide, uniform procedures that encourage appointed attorneys to fulfill their duty to act solely and only as zealous advocates for their clients.'" (p. 15)

The analysis also emphasizes that the California Supreme Court specifically refused to adopt ABA Model Rule 1.14 which allows an attorney to treat a client with diminished capacity differently than a client without mental disabilities. Under the Rules of Professional Conduct, to which the activities of a zealous advocate must adhere, clients in conservatorship proceedings must receive the same quality and type of representation as a client in any other type of civil proceeding.

The analysis observes that "The role that court-appointed attorneys play in some counties raises serious questions as to whether conservatees and proposed conservatees are getting adequate legal representation." It notes with disapproval "the fact that some courts rely on attorneys to behave more like investigators" and emphasizes that SB 724 will ensure "that clients get the robust legal representation they deserve." (p. 16)

The analysis quotes the author's words regarding the need for SB 724: "The author writes: A conservatorship is arguably the most consequential civil restriction levied against Californians. The court, acting in what it decides as the conservatees best interest, is effectively depriving an individual of fundamental rights—to manage property, to spend money, to handle their own medical affairs, even to make everyday decisions about what to eat or who to spend time with. Such consequential, life-altering restrictions should never be applied without the presence of attorneys who are constantly advocating for a conservatee's interests, and seeking the least restrictive alternatives to the abridgment of their civil rights. Furthermore, our courts and attorneys should never—for expediency or efficiency's sake—neglect to apply the fullest extent of best practices that California statute requires."

The analysis also quotes from Spectrum Institute's evaluation of the bill: "The Spectrum Institute applauds all aspects of the bill that would make conservatorship proceedings more adversarial, writing: SB 724 would require the court to allow a conservatee or proposed conservatee to be represented by the attorney of their choice. The bill implements the due process right of a civil litigant to be represented by a privately retained attorney. The bill is consistent with the legislative intent manifest in various sections of the probate code . . . Everyone with an attorney is entitled to have counsel be a zealous advocate defending their rights and promoting their stated wishes. Unfortunately, that often does not happen. In many cases, courts instruct appointed counsel to act as "the eyes and ears of the court" and to advocate for what counsel believes is in the client's best interests—even if this requires counsel to be disloyal to the client or violate their right to confidentiality. In places such as Los Angeles, local court rules such as Rule 4.125 give appointed counsel a dual role. Attorneys are told to represent the client but also to help the court resolve the case. SB724 would remove this ethical tension by clarifying that counsel has one duty: to be a zealous advocate." (p. 18)

Finally, the committee analysis explains why an amendment was made to the bill to define the role of "zealous advocate" as needing to be consistent with the Business and Professions Code and Rules of Professional Conduct.

> "Additionally, while it is generally understood that an attorney's role is that of a zealous advocate, the term "zealous" is not used in Business and Professions Code section 6068, which governs the ethical duties of attorneys. To avoid confusion and make it clear that counsel for a conservatee or proposed conservatee must act consistent with the general rules of ethics, the following changes will be made:
>
> "Amend section 1471(e) and (f) as follows:
> (e) The role of legal counsel of a conservatee or proposed conservatee *conservatee, proposed conservatee, or person alleged to lack legal capacity* is that of a zealous advocate, *consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct.*" (p. 18)

Case Law

By requiring attorneys to act as a "zealous advocate," AB 1194 is not introducing a new concept to the law. Judicial opinions in California and elsewhere often have referred to the role of attorneys as zealous advocates.

An attorney has duties "as a zealous advocate and as protector of his client's confidences." (*California State Auto Association v. Bales* (1990) 221 Cal.App.3d 227.

The term "zealous advocacy" is associated with the California rules of professional conduct. See *In re Zamer G* (2007) 153 Cal.App.4th 1253, 1267 where the Court of Appeal speaks

of “an attorney's duties of loyalty, confidentiality, and zealous advocacy.” Also see *People v. Wade* (1988) 44 Cal.3d 975, 1000-1 where the court stated: “The state and federal constitutional guarantees of the right to counsel require counsel ‘to represent his client zealously within the bounds of the law and to refrain from arguing against [him].’” “An attorney who argues against his own client seriously undermines the factfinding process.” (*United States v. Cronic* (1984) 466 U.S. 648, 659.)

“[T]he rationale and need for independent appointed counsel exists when a conservator or other representative proposes acts that would significantly affect the person's fundamental rights. ” *Michelle K. v. Superior Court of Orange Cnty.* (2013) 221 Cal.App.4th 409, 447.)

“Like all lawyers, the court-appointed attorney is obligated to keep her client fully informed about the proceedings at hand, to advise the client of his rights, and to vigorously advocate on his behalf. ” *San Diego County v. John L* (2010) 48 Cal.4th 131, 151-52.)

"Implicit in the mandatory appointment of counsel is the duty of counsel to perform in an effective and professional manner." (C*onservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030, 1037, fn. 6)

“Traditionally, an attorney is appointed to zealously advocate for a protected person's wishes, regardless of whether those wishes are in that person's best interests. A court representative [or guardian ad litem], on the other hand, is appointed to act in a protected person's best interests.” (*Guardianship of Stevenson* (S.D. 2013) 825 N.W.2d 911)

“The Code of Professional Responsibility establishes that an attorney must zealously represent the wishes of his or her client.... It is not the role of an attorney acting as counsel to independently determine what is best for his client and then act accordingly. Rather, such an attorney is to allow the client to determine what is in the client's best interests and then act according to the wishes of that client within the limits of the law.” (*Orr. V. Knowles* (Neb. 1983) 337 N.W.2d 699)

“The governing standard for the representation of impaired adult clients is not the protection of their best interests, but, to the extent possible, the zealous advocacy of their expressed preferences. This is true even if the Probate Court has appointed a conservator for the client.” (*Gross v. Rell* (Conn. 2012) 40 A.3d 240)

Other Sources

Statements from conferences, professional associations, advocacy organizations, academic journals, and even judges in training programs, support the principle that appointed attorneys in guardianship and conservator proceedings should act as zealous advocates.

“Your client says ‘I want a trial’ or ‘I want a hearing’ or ‘I don’t want this particular person as my conservator,’ the judge needs to know that. And maybe you shouldn’t be saying, ‘and by the way judge, even though my client says she doesn’t want a conservatorship, she is so

demented she doesn't really know what she wants and she really need one.' No, you can't say that. That's being disloyal to your client. Your client wants to fight it, so you're in that mode, you're in fight mode." (Remarks of Los Angeles Superior Court Judge Maria Stratton at a Los Angeles County Bar Association training program on May 9, 2015)

"*Zealous Advocacy* - In order to assume the proper advocacy role, counsel for the respondent and the petitioner shall: (a) advise the client of all the options as well as practical and legal consequences of those options and the probability of success in pursuing anyone of those options; (b) give that advice in the language, mode of communication and terms that the client is most likely to understand; and (c) zealously advocate the course of actions chosen by the client." (Wingspan: The Second National Guardianship Conference - 2001)

"Guardianship proceedings should ensure adequate procedural protections including: mandatory court appointment of counsel at or before notice to act as zealous advocate for the individual. (National Academy of Elder Law Attorneys Public Policy Guidelines on Guardianship)

Guardianship attorneys "must zealously advocate for preserving the substantive and procedural rights of all individuals with I/DD." (2016 Joint Policy Statement of the Arc of the United States and American Association on Intellectual and Developmental Disabilities.)

"The ro1e of counsel is to diligently and zealously advocate on behalf of his or her client, within the scope of the assignment, to ensure that the client is afforded all of his or her due process and other rights. . . . "During the hearing the attorney shall act as a zealous advocate for the client, insuring that proper procedures are followed and that the client's interests are well represented" (Massachusetts Committee for Public Counsel Services)

"Alaska specifically requires attorneys 'to represent the ward or respondent zealously' and to follow the decisions of the defendant concerning the defendant's interests. The District of Columbia also requires the appointment of an attorney to 'represent zealously the individual's legitimate interests.' The distinction between the role of the attorney and the role of the guardian ad litem is clearest in Washington State. There a defendant has the right to be represented by counsel at any stage in a guardianship proceeding. Counsel is directed to act as an advocate for the client and not to substitute counsel's own judgment for that of the client concerning what may be in the client's best interests. The guardian ad litem, on the other hand, is directed to promote the defendant's best interest, rather than the defendant's expressed preferences." (Excerpt from: "Zealous Advocacy for the Defendant in Adult Guardianship Cases" published in Journal of Poverty Law (1996))

"Role of the attorney. The attorney appointed to represent the ADP [allegedly disabled person] is key to solving the guardianship puzzle. Depending on the role that attorney plays, the ADP may or may not receive substantial due process in the proceeding which deprives her of her rights as an adult citizen. Under the present system, due process is a hit or miss affair. Both of our studies confirm that confusion reigns regarding what role the appointed attorney is to play. The study of case files shows that attorneys generally do not take an

advocate's role, though the words of the statute and the legislative history indicate that is what the legislature intended. The survey of judges shows that those who responded are divided about or are unsure of the attorney's proper role. . . . The evolution of the dual role of the attorney in guardianship cases creates significant questions about the adequate representation of the ADP and due process. The legislature clearly intended that the proceeding would be adversarial, by providing for a hearing, an optional jury trial, and court-appointed counsel. In such a setting, the usual role of the attorney, and the one dictated by the Rules of Professional Conduct, would be to see that a defense, if one is available, is raised; that the client's views are advocated in court; and that the petitioner meets the burden of proof. In short, the attorney would insure that the ADP had his or her day in court. But instead, the role of the ADP's attorney has become that of a court investigator, who provides the court with facts and information that normally would be presented and proven by the petitioner. Why the petitioner has been relieved of the duty to prove his case without assistance from opposing counsel is one of the more puzzling questions surrounding guardianship. . . . Clarifying the proper role of the attorney for the ADP is the first and most important step in solving the due process puzzle, because that attorney can effect better, more equitable results in all aspects of the guardianship proceeding." (Excerpts from "The Guardianship Puzzle: What Ever Happened to Due Process," Maryland Journal of Contemporary Legal Issues (1995-96)

Effective Assistance of Counsel

A zealous advocate in a conservatorship proceeding must comply with the requirements of Business and Professions Code 6068. One provision in that statute states that an attorney must support the constitution and the laws of the United States and of California.

Because significant liberty interests are at risk, a conservatee or proposed conservatee is entitled to due process of law in a conservatorship proceeding. *(Conservatorship of Sanderson* (1980) 106 Cal.App.3d 607) The potential deprivation of property, through court-imposed fees from the assets of the conservatee or proposed conservatee, also requires such proceedings to comply with due process.

"The consequences, and concurrent due process requirements, when the ward is a person with mental retardation or developmental disability—rather than an elderly person—are the same. As one federal court noted, 'Where, as in both proceedings for juveniles and mentally deficient persons, the state undertakes to act in *parens patriae*, it has the inescapable duty to vouchsafe due process' (*Heryford v Parker*, 396 F2d 393, 396 [10th Cir 1968])."

SB 724 confers on conservatees and proposed conservatees a statutory right to counsel. The duty of counsel to perform in an effective and professional manner is implicit in the mandatory appointment of counsel. (*Conservatorship of Benvenuto* (1986) 180 Cal.App.3d 1030, 1037, fn. 6.)

When a litigant has a statutory right to an appointed attorney, due process entitles the litigant to "effective assistance of counsel." This right arises directly from the constitution. It is also

"a result of the Legislature's creation of a statutory right to counsel." (*People v. Hill* (2013) 219 Cal.App.4th 646; (*Conservatorship of David L.* (2008) 164 Cal.App.4th 701)

"[T]he purpose of the statutory and due process requirement of the appointment of counsel is to protect the rights and interests of the alleged incompetent. To accomplish this task it is essential that appointed counsel act as an advocate for the individual. . . . The right to counsel becomes a mere formality, and does not meet the constitutional and statutory guarantee absent affirmative efforts to protect the individual's fundamental rights through investigation and submission of all relevant defenses or arguments." (*In re Link* (Mo. 1986) 713 S.W.2d 487.)

Due process precludes an attorney from stipulating to a conservatorship order or its terms and that the court must affirmatively determine that the client understands and agrees to such a stipulation prior to entering such an order. If a client lacks capacity to understand contractual terms, then such a stipulation would not have her consent. (*Conservatorship of Tian L.* (2007) 149 Cal.App.4th 1022.)

The fact that a conservatee has such a serious developmental disability that she is unable to complain that she is not receiving effective assistance of counsel as constitutionally and statutorily required does not negate the right to seek relief for a violation of that right. Someone else must be given standing to seek relief. (*Michelle K. v. Superior Court* (2013) 221 Cal.App.4th 409.)

The requirement of effective assistance of counsel entitles a client to the reasonably competent assistance of an attorney acting as a diligent and conscientious advocate. *(In Re Scott* (2003) 29 Cal.4th 783, 811.) An attorney's performance is considered ineffective if it falls below "objective standards of reasonableness under prevailing professional norms." (*People v. Carter* (2005) 36 Cal.4th 1114, 1189.)

Failure to perform basic activities associated with advocacy and defense in litigation has been held to constitute ineffective assistance of counsel. Examples include the failure to properly investigate, failure to interview or call helpful witnesses, and the failure to challenge evidence presented by an opposing party. In other litigation contexts, the following actions or omissions were described as ineffective assistance of counsel.

* Failing to properly investigate the facts (*In re Cordero* (1988) 46 Cal.3d 16, 187)

* Failing to adequately understand the available alternatives, promote their proper application, or pursue the most advantageous disposition for the client (*People v. Scott* (1994) 9 Cal.4th 331, 351.)

* Failing to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." (*In re Thomas* (2006) 37 Cal.4th 1249, 1258.)

* Before counsel acts or chooses not to act, she "must make a rational and informed decision on strategy and tactics founded upon adequate investigation and preparation." (*In re Lucas* (2004) 33 Cal.4th 682, 721-722.)

* Failing to present testimony of crucial witnesses. (*United States v. Holder* (10th Cir. 2005) 410 F.3d 651.)

* Failing to use documentary evidence to challenge testimony of an adversary's witness. (*Gonzales-Soberal v. United States* (1st Cir. 2001) 244 F.3d 273.)

* Failing to interview witnesses who could have contradicted evidence of the opposing party. (*Detrich v. Ryan* (9th Cir. 2013) 740 F.3d 1237.)

* Failing to investigate the validity of expert evidence of an opposing party. *(Tice v. Johnson* (4th Cir. 2011) 647 F.3d 87.)

* Failure to consult with an expert on an important issue in the case. (*Showers v. Beard* (3rd Cir. 2011) 635 F.3d 625.)

* Failing to retain an expert to counter the expert of the opposing party. *(Siehl v. Grace* (3rd Cir. 2009) 561 F.3d 189.)

* Failing to interview any witnesses or engage in any meaningful pretrial preparation. (*Stanley v. Bartley* (7th Cir. 2006) 465 F.3d 810.)

Because the underlying test for ineffective assistance of counsel is that an attorney's actions or inactions fall below "objective standards of reasonableness under prevailing professional norms," an inquiry must focus on what are reasonable performance standards for appointed counsel in a probate conservatorship.

Sources of Performance Standards

California has no official performance standards for appointed attorneys in probate conservatorship proceedings. None have been developed by state or local officials or agencies. As a result, details about what such attorneys should or should not be doing in these cases, to comply with constitutional requirements, nondiscrimination laws, ethical obligations, statutory directives, or case law, must be gleaned from other sources.

While the Judicial Council has developed detailed checklists for what appointed attorneys should do in each stage of juvenile dependency proceedings, it has not provided any guidance for probate conservatorship proceedings. Noting that developing performance standards in such proceedings are not within its purview, the Probate and Mental Health Advisory Committee has taken the position that only the Legislature, Supreme Court, State Bar, or the entity that funds such services have the authority to develop performance

standards in probate conservatorship cases.

Through Standards of Judicial Administration, the Judicial Council has directed the presiding judges of the juvenile division of superior courts throughout the state to: "Establish minimum standards of practice to which all court-appointed and public office attorneys will be expected to conform. These standards should delineate the responsibilities of attorneys relative to investigation and evaluation of the case, preparation for and conduct of hearings, and advocacy for their respective clients." (Standard 5.40) No similar delegation has been made to presiding judges of the probate division of superior courts to promulgate performance standards for appointed attorneys in conservatorship proceedings.

The Legislature has not addressed this matter other than stating that attorneys representing conservatees or proposed conservatees should act in the role of a zealous and independent advocate consistent with requirements of the State Bar Act and Rules of Professional Conduct.

The State Bar, with approval of the Supreme Court, has adopted Rules of Professional Conduct. By refusing to approve ABA Model Rule 1.4, the Supreme Court has indicated that attorneys for clients with diminished capacity must treat them like any other client. With these exceptions, the Legislature, Judicial Council, Supreme Court, and State Bar have not provided detailed performance standards to which appointed attorneys in conservatorship proceedings must adhere. Some counties, however, have included a few basic standards in agreements with "contract public defenders" but these generally lack much detail.

As a result of the inaction of the legislative and judicial branches to adopt performance standards for appointed attorneys in conservatorship proceedings, reference can be made to other sources to determine what such attorneys should and should not do in these cases.

One source of indirect guidance comes from standards for appointed counsel in child dependency cases. The Judicial Council has provided attorneys for both parents and children detailed checklists for services to be performed during phases of dependency cases. (See various checklists from the "Dependency Quick Guide")

Local courts have also adopted performance standards for appointed attorneys in dependency cases. For example, local rule 7.17 of the Los Angeles County Superior Court specifies actions that should be taken by attorneys in those cases. In contrast, the superior court has not promulgated a rule specifying performance standards for appointed attorneys in probate conservatorship proceedings.

Orange County has an administrative order specifying standards for appointed attorneys in juvenile court. Complaints against such attorneys may be filed with the court by the child or a caretaker relative or a social worker. The court has no administrative order with performance standards for appointed attorneys in probate conservatorship cases. The duties of appointed counsel in juvenile cases are quite detailed:

> "The attorney shall thoroughly and completely investigate the accuracy of the allegations of the petition or other moving papers and the court reports filed in support thereof. This shall include conducting a comprehensive interview with the client, if four years of age or older, to ascertain his or her knowledge of and/or involvement in the matters alleged or reported; contacting social workers and other professionals associated with the case to ascertain if the allegations and/or reports are supported by accurate facts and reliable information; consulting with and, if necessary, seeking the appointment of experts to advise the attorney or the Juvenile Court with respect to matters which are beyond the expertise of the attorney and/or the Juvenile Court; and obtaining such other facts, evidence or information as may be necessary to effectively present the client's position to the Juvenile Court."

County Contracts

Once source of performance standards for attorneys representing conservatees and proposed conservatees is found in contracts between counties and private law firms or bar associations who either provide legal services to indigent clients in these cases or administer programs in which other law firms do.

Spectrum Institute reviewed contracts in many counties. The results, including some which had performance standards, are found in a document published online.

Competent Representation Checklist

Performance standards for lawyers who represent clients in conservatorship or adult guardianship cases have been developed by various government agencies and nonprofit organizations throughout the nation. Spectrum Institute reviewed a variety of documents containing such standards or guidelines.[1] From this study, we developed a checklist which could be used in California. A copy is found in the appendix to this report.

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[1] "Due Process Plus," White Paper to the United States Department of Justice (Spectrum Institute 2015), abbreviated as DPP; "Efficiency vs. Justice," an exhibit to a complaint filed with the United States Department of Justice (Spectrum Institute 2015), abbreviated as EVJ; "Strategic Guide for Court -Appointed Attorneys" (Spectrum Institute 2014), abbreviated as SG; "California Conservatorship Defense: A Guide for Advocates" (California Advocates for Nursing Home Reform 2010), abbreviated as CCD; "Representing the Elderly and Adults with Disabilities Who Are Facing or Under Guardianship," (Legal Aid Center of Southern Nevada 2018), abbreviated as NV; "Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings," (Maryland Rules of Procedure), abbreviated as MD; "Performance Standards Governing the Representation of Indigent Adults in Guardianship Proceedings" (Committee for Public Counsel Services), abbreviated as MA; "Guidelines on Indigent Defense Services Delivery Systems" (State Bar of California (2006).

The checklist also took into consideration a set of performance standards issued by the Judicial Council for appointed attorneys representing parents or children in juvenile dependency proceedings.[2] In those cases, as in probate conservatorship proceedings, significant liberty interests are placed at risk. The standards for dependency cases were developed pursuant to a legislative directive. (Welfare and Institutions Code, Section 317)

The standards for attorneys in child dependency proceedings require them to perform the following services: (1) establish and maintain an attorney-client relationship; (2) visit child clients at each new placement whenever feasible; (3) conduct thorough, continuing, and independent investigations and interviews at every stage of the proceedings; (4) determine their client's interest and desires and advocate for those interests and desires; (5) contact social workers and other professionals associated with their client's case prior to each hearing; (6) request services (by court order if necessary) to access entitlements and to ensure a comprehensive service plan; (7) monitor compliance with court orders; (8) prepare for and participate in all hearings; (9) file pleadings, motions, responses, or objections as necessary to represent the client; (10) determine if appeals and writs are appropriate and, where necessary file writ and notice of appeal.

Under a program operated by the Judicial Council for 20 superior courts – Dependency, Representation, Administration, Funding and Training Program (DRAFT) – attorney performance evaluations are conducted regularly by judicial officer, peers, and clients. In the 38 non-DRAFT counties, courts are encouraged to develop a system of accountability and supervision to ensure the quality of services by appointed attorneys.

In San Francisco, for example, the bar association contracts with the superior court to operate a panel of attorneys from which appointments are made to individual dependency cases. Some attorneys are required to have six month mentorships before going solo. All attorneys must take 10 hours of training each year to remain on the panel.

In Los Angeles, a nonprofit lawfirm contracts with the court to represent parents in dependency cases. The firm has a staff of attorneys, social workers, and investigators who work as a team. Attorneys are subject to evaluations by peers, clients, and judges. A similar program operates in a similar manner in Santa Clara County.

Even though the liberty interests of seniors and people with disabilities in conservatorship cases are as significant as those of parents and children in dependency proceedings, the State of California has not yet seen fit to issue performance standards or to periodically monitor the performance of appointed attorneys in conservatorship proceedings.

Although the Judicial Council initially authorized its Probate and Mental Health Advisory Committee to place the issue of performance standards for conservatorship cases on it annual

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[2] "Request for Information: Juvenile Dependency Representation Services," (California Judicial Council - 2017).

agenda in 2016, that project was dropped on the ground that it was not in the purview of the Judicial Council to develop performance standards without authorizing legislation.

Committee staff concluded that performance standards could be issued by the Legislature or the Supreme Court.[3] The committee also indicated that the State Bar, which is an arm of the Supreme Court, could create standards of professional conduct for attorneys in probate conservatorship proceedings.[4] The committee also suggested that an entity which funds such legal services, such as a county government, could include performance standards as a condition of providing such funding to a legal services provider.[5]

To date, neither the Legislature, the Supreme Court, or the State Bar have issued

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[3] "The committee considered whether to specify the standards of professional conduct applicable to attorneys appointed by the court to represent (proposed) wards and conservatees. The committee determined, however, that it is the province of the Legislature (see, e.g., Bus. & Prof. Code, § 6068) and the Supreme Court (see, e.g., Rules of Prof. Conduct, rules 1.2–1.4 (eff. Nov. 1, 2018)) to specify the general role and duties of an attorney and to authorize any exceptions in specific circumstances. When the Judicial Council *has* entered this arena, it has done so at the express direction of the Legislature and, doing so, has echoed the standard specified by the relevant statute. (See, e.g., Fam. Code, §§ 3150–3151; Cal. Rules of Court, rule 5.242(j): court-appointed minor's counsel is to represent "the child's best interest".) Here, Probate Code section 1456 directs the council to adopt a rule that specifies the qualifications and the amount and subject matter of education related to guardianships and conservatorships required for appointed counsel, as well as reporting requirements to ensure compliance with the statute. Nothing in sections 1456, 1470, or 1471, however, specifies—or invites the council to specify—the role and duties of counsel appointed in guardianship or conservatorship proceedings. The committee has therefore declined to specify those duties in the proposed rules. (Invitation to Comment - W19-08, Judicial Council of California - 2019)

[4] "The committee determined, however, that standards of professional conduct fall in the first instance within the province of the Legislature and, to the extent that the Legislature has left gaps in the statutory scheme, of the State Bar." (Invitation to Comment - SPR18-33, Judicial Council of California - 2019)

[5] "In addition, the court's authority to impose special standards of attorney conduct seems tied to the existence of a statutory financial relationship. The cost of appointed children's counsel in family law proceedings is an element of court operations. (Gov. Code, § 77003(a)(4).) Courts frequently contract with counsel to represent children. By contrast, no financial relationship exists between the court and appointed counsel in conservatorship or guardianship proceedings. Sections 1470(a) and 1472 impose liability for the cost of appointed counsel in guardianships and conservatorships on the person represented, the person's estate, or the county." (Invitation to Comment - SPR18-33, Judicial Council of California - 2019)

performance standards for appointed attorneys in probate conservatorship cases, although some counties have included them in written agreements with "contract public defenders" who are paid with public funds to represent indigents in these proceedings.

Caseload Standards

Unreasonably large caseloads can prevent attorneys from adhering to professional standards and deprive clients of effective legal representation. Both the American Bar Association and the California State Bar have issued reports with a variety of standards to ensure that caseloads of publicly-funded legal defense services – whether provided by county departments, contract law firms, or court-appointed counsel programs – do not interfere with an attorney's ethical and professional duties to clients. Excerpts from those reports are contained in the appendix to this report.

The California Rules of Professional Conduct advise attorneys to resist unreasonably large caseloads that may be imposed on them by supervisors due to inadequate funding or staffing. (Rule 1.8.6; Rule 5.2)

Unfortunately, these bar association reports and these rules are not preventing supervisors in some public defender's offices from requiring staff attorneys from having huge caseloads.

One deputy public defender in Northern California reported that he handled 431 cases in 2020. This caseload included probate conservatorships as well as a variety of other types of legal proceedings. A deputy public defender in Alameda County told county supervisors that he had represented 362 clients in probate conservatorship proceedings in one year. In contrast, staff attorneys in that office who defended misdemeanor cases had caseloads ranging from 80 to 180 cases. No good explanation was given for this disparity.

The issue of caseloads in probate conservatorships has never received the attention of the California Judicial Council. That agency, however, has issued caseload standards for attorneys appointed to represent parents or children in juvenile dependency proceeding. The standards were developed from a statewide workload study in 2002. Those standards call for an attorney handling no more than 188-200 clients per year (assuming the attorney is assisted by a half-time social worker/investigator).

Role of Supreme Court

Whether conservatees and proposed conservatees receive effective legal representation as required by the constitution and contemplated by statutes and rules of court is largely dependent on whether the California Supreme Court will use its authority to address a wide range of deficiencies in the current fragmented system of providing such legal services.

Because the delivery of legal services to indigents in conservatorship proceedings is the responsibility of county governments, and the appointment of counsel for non-indigents is handled by superior courts, the quality of these services is left to the discretion of state and

local officials in 58 separate jurisdictions. The Supreme Court, State Bar, Judicial Council, and Legislature have no idea of the extent to which conservatees and proposed conservatees are receiving deficient legal services. Unlike juvenile dependency proceedings where the Legislature and the Judicial Council have taken a pro-active approach to ensure quality services for parents and children, these officials have shown no interest in the legal services situation for seniors and people with disabilities in probate conservatorship proceedings.

Spectrum Institute and a wide range of other organizations have brought this issue to the attention of the California Supreme Court. As the Judicial Council has noted, the Supreme Court has the authority to regulate the ethics and performance of attorneys practicing law in this state. That includes attorneys appointed to represent clients in conservatorship cases.

A request to convene a *Workgroup on Conservatorship Right to Counsel Standards* was filed with the Supreme Court on July 21, 2021. The report and attachments document a legal services delivery system in disarray. It urges the court to convene a blue ribbon panel to identify deficiencies in the legal representation of clients in conservatorship proceedings and to make recommendations on ways to improve these services. Performance standards, caseload limits, and quality assurance monitoring mechanisms are some of the suggestions raised in the request.

The Supreme Court responded to this request on September 21, 2021. It acknowledged that AB 1194 "provides conservatees with additional protections concerning the right to counsel." This is an acknowledgment that AB 1194 is not merely a restatement of existing law. The additional protection provided by this new law is the "zealous advocacy" provision. Even though the Court declined to convene a Workgroup on Conservatorship Right to Counsel Standards "at this time," the justices have left the door open to further action by the Court once the Judicial Council finishes a two-year study concerning the effectiveness of conservatorship proceedings.

Role of County Supervisors

In the meantime, county supervisors who fund indigent legal defense services can, as some counties have already done, impose performance standards as a condition of funding. This has been done through contractual provisions in counties in which "contract public defenders" provide these services in conservatorship proceedings.

It could be done through a Memorandum of Understanding between counties and superior courts in those counties where the courts operate a panel for appointed attorneys who get paid with county funds for indigent legal services.

In counties where a department of public defender provides the services through attorneys and staff who are county employees, standards can be developed by a team consisting of executive office, risk manager, human resources manager, and chief public defender. A team approach such as this would be appropriate since the county may have liability under state and federal laws if deficient legal services are provided to conservatees and proposed

conservatees due to excessive caseloads or attorney negligence.

Zealous Advocacy: Risks of Non-Compliance

Attorneys who do not meet zealous advocacy standards in the delivery of legal services can face a variety of adverse legal and professional consequences.

Rule 7.10. Such consequences can result from an ex parte communication to the court under Rule 7.10 of the California Rules of Court. Anyone with information that a fiduciary, such as an attorney, is violating their duties can inform the court of such. The court can schedule a hearing or refer the matter to the State Bar for investigation. Ex parte communications have been filed in conservatorship cases in Los Angeles, Santa Barbara, and Riverside.

Marsden. If the court has reason to believe that a public defender or appointed attorney is not providing competent representation, the court may, on its own motion or at the request of a party to the case, schedule a hearing under *People v. Marsden* (1970) 2 Cal.3d 118. The principles of Marsden apply to conservatorship proceedings and a third party can complain on behalf of a conservatee who, because of a disability, is not able to do so themselves. "[A conservatee's] right to effective counsel and to request new appointed counsel would be meaningless unless someone is permitted to exercise the right for her." (*Michelle K. v. Superior Court* (2013) 221 Cal.App.4th 409, 452.)

If the court finds that deficient services are being provided, the court may remove counsel and appoint another attorney to represent the client.

An example of a Marsden motion is the *Conservatorship of Katherine Dubro*, a case involving an elderly woman who was ordered into a conservatorship. A temporary conservator filed a Marsden motion, seeking to have a court-appointed attorney removed due to alleged deficiencies in legal services that resulted in harm, and almost death, to Ms. Dubro. An extensive Memorandum of Points and Authorities was filed in the case.

State Bar. A client or a third party who becomes aware that an attorney is violating the Rules of Professional Conduct, may file a complaint with the State Bar. This could trigger a formal investigation and disciplinary action against the attorney. Third-party complaints to the State Bar must be allowed in order to make the system accessible to clients with mental or developmental disabilities. The State Bar has a duty to make its complaint system accessible by investigating complaints against attorneys filed by third parties who are aware of deficient services provided by attorneys who represent clients with mental or developmental disabilities.

Training programs for public defenders or court-appointed attorneys may be approved by the State Bar to give attendees MCLE credits. Bar associations that offer training programs usually are certified by the State Bar as a Multiple Activity Provider (MAP). These providers are given authority to offer and grant credit to all forms of permissible MCLE activities without first submitting separate applications requesting prior approval for each

program offered. The approval must be renewed at least every three years.

A complaint may be filed with the State Bar if educational activities or materials are providing attorneys with misinformation. A complaint can ask the State Bar to rescind MAP status or to decline to renew, thus requiring the provider to seek single activity approval in advance of future educational programs. Such a complaint was filed with the State Bar in 2015 against the Los Angles County Bar Association for significant deficiencies in its training programs for court-appointed counsel in probate conservatorship proceedings. The complaint was noted by the California Supreme Court.

Appeal. A conservatee may file an appeal seeking reversal of an order due to ineffective assistance of counsel (IAC). Another party to the case may also raise a claim of IAC and ask for third-party standing to do so. Under AB 1194, an appellate court must appoint an attorney to represent a conservatee in an appeal or writ proceeding regardless of whether the conservatee is designated as an appellant or a respondent in the case.

Panel Attorneys. A complaint against a court-appointed attorney may be filed with the administrator of the panel through which the attorney receives appointments to conservatorship cases. For good cause, the court may remove the attorney from the list of panel attorneys thereby precluding future appointments to such cases. As one presiding judge said, appointed counsel serves "at the pleasure of the court." Therefore, if the court is displeased with the performance of an attorney, that attorney may no longer receive appointments – whether this results from "blacklisting" by a particular judge or removal of the attorney's name from the list of attorneys approved for appointment. The presiding judge may learn of an attorney's deficient performance from the client or from another panel attorney.

Panel attorneys are required to comply with the zealous advocacy requirements of AB 1194 as specified in Probate Code Section 1471(e). This requires that attorneys comply with the mandates contained Section 6068 of the Business and Professions Code and all provisions in the Rules of Professional Conduct.

As noted by the Senate Judiciary Committee in its analysis of the zealous advocacy requirement, an attorney has only one role – to be a zealous advocate for the client. There is no room for a secondary role to assist the court in resolving the matter before it. That is the role of a guardian ad litem or a court investigator or a mediator. Once AB 1194 takes effect on January 1, 2022, court appointed counsel will have a duty to implement the zealous advocacy provision of Section 1471(e), including the ethical and professional duties imposed by the Business and Professions Code and the Rules of Professional Conduct. Any local rule of court that purports to give an appointed attorney a secondary duty to assist the court in resolving the matter before it is inconsistent with this statute.

A local rule is invalid if it is inconsistent with state law. An appointed attorney may not escape ethical and professional duties by claiming "I was just following orders." Under current local court rules, appointed attorneys in Los Angeles County now have a duty, as a

zealous advocate, to challenge the validity of Rule 4.125 which imposes a secondary duty as a condition of appointment to represent a conservatee or proposed conservatee. Obeying the secondary duty provision of the rule dilutes what should be the sole duty of the attorney – acting as a zealous advocate for the client. Any action taken by the attorney to comply with such a secondary duty could result in the filing of any of the complaints or seeking any of the remedies described in this report.

To eliminate putting attorneys in this position, the presiding judge of the Los Angeles Superior Court should rescind Rule 4.125 immediately. The failure to do so could result in disability discrimination complaints against the court with DFEH or the federal DOJ since it is only attorneys who have clients with mental or developmental disabilities who are given a secondary role such as this.

No such local rule exists for attorneys appointed to represent non-disabled clients in criminal, dependency, family, or civil cases. Rule 4.125 is a blatant example of disability discrimination and appointed attorneys can challenge it as such, in addition to arguing it is inconsistent with state law and is a violation of due process. Clients with disabilities are entitled to full strength advocacy. Rule 4.125 deprived them of that. The federal DOJ would have authority to file a lawsuit against the superior court on the ground that Rule 4.125 is a form of disability discrimination in violation of Title II of the ADA.

The Los Angeles County Superior Court requires attorneys for proposed conservatees with developmental disabilities to file a report with the court. In this report, attorneys are expected to inform the court to make admissions of fact that are likely to result in the granting of the petition and the loss of rights of the client. The court form asks attorneys to disclose information that has been gathered as a result of the attorney-client relationship – information that would be considered confidential for non-disabled clients in other types of proceedings. Attorneys who submit such a report would be depriving the client of zealous advocacy and would be violating Business and Professions Code Section 6068 and various provisions of the Rules of Professional Conduct.

A superior court judge at a recent mandatory training program for court appointed counsel instructed attorneys on how to fill out fill out this form. He advised attorneys to include in the report their observations and recommendations. That is a function of a GAL, not an advocacy attorney. Plus many of their observations come from privileged communications and work product investigations and it would be unethical to reveal them to the court. The judge told the attorneys to advise the court of the client's limitations. That would be the role of a petitioner, court investigator, or GAL but not a defense attorney He instructed attorneys to include information from collateral interviews. That would violate the ethical duty of loyalty if the information undermines the retention of rights for the client. He also advised attorneys to recommend whether any of the client's rights should be restricted. Again, that is advising the attorney to act as a GAL or de facto court investigator. Such a presentation given after January 1, 2022 would violate the mandates of AB 1194. A judge who encourages attorneys to violate legal ethics could himself be the target of a judicial ethics complaint with the Commission on Judicial Performance.

Whatever ambiguity that may have previously existed about the legality of such reports, the enactment of AB 1194 makes it crystal clear that attorneys for proposed conservatees may not reveal confidential information gathered during an investigation by the attorney and may not argue against the rights of the client. Court-appointed attorneys who are providing clients with zealous advocacy should now object to these reports and refuse to file them. If ordered to do so by a judge, the attorney should file an appeal on behalf of the client. Filing such reports may result in complaints to the State Bar, complaints with state and federal civil rights agencies, and malpractice lawsuits. Failure of the court to rescind Rule 4.125 and withdraw the requirement of attorneys filing these reports may result in similar legal actions against the superior court.

Public Defenders. If an attorney is a deputy public defender who is employed by the county, a complaint for deficient legal services may be filed with the attorney's supervisor, the head public defender, or even with the board of supervisors. If there is reason to believe that caseloads for attorneys who represent clients in conservatorship proceedings – where all clients have significant disabilities – are higher than in proceedings where few clients have disabilities, an argument can be made that the public defender's office is engaging in disability discrimination. The client, or a third party on behalf of the client, can file a disability discrimination complaint with the county's ADA compliance officer.

Life of the Case. Many public defender offices report that once they are appointed by the court to represent a proposed conservatee, they remain attorney of record for the "life of the case." The office is not relieved as counsel when the court enters a order granting the petition for a conservatorship. The office remains the conservatees attorney of record for as long as the case remains open. For elderly clients, this could be years. For young clients with developmental disabilities, it could be decades. Public defenders offices must obey state and federal disability nondiscrimination statutes and regulations as long as they are attorney of record in a case. This means that they must take affirmative steps to ensure effective communication with the client.

The client must be able to communicate with the public defender if and when a legal problem arises. This could involve a desire to terminate the conservatorship or to modify its conditions. There could be an abusive or neglectful conservator whose actions need to be challenged. It could involve the infringement of their constitutional rights, such as freedom of speech or association or sexual rights. Perhaps a court investigator has failed to conduct a biennial review as required by law. If the public defenders office does not reach out to the client periodically or have an effective communication mechanism in place, this could be considered a form of abandonment which could result in administrative complaints or a lawsuit against the public defenders office. The failure of supervisory staff to monitor caseloads of open cases could subject the supervisor to discipline by the State Bar. The failure of the board of supervisors to provide sufficient funding to ensure ongoing and effective communication between the public defender and "life of the case" clients could result in complaints against the county for disability discrimination. In some counties, the public defender is attorney of record for hundreds or even thousands of conservatees in open

cases. In Alameda County, for example, there are about 1,800 open cases and the public defender is attorney of record for a majority of them. But there is only one attorney who handles probate conservatorship cases and he has a caseload of 364 active cases. This is already an unreasonably large caseload.

A model program in Nevada is an example of a lawfirm that does not abandon clients once they are ordered into an adult guardianship. The Legal Aid Center of Southern Nevada has a Guardianship Advocacy Program that sends a staff member to the client's home every six months to check on their well being and potential legal needs. If there is a problem that requires attention, they file a petition with the court to have the matter addressed.

Contract Public Defenders. If an attorney is working under a contract with the county to provide conservatorship legal services to conservatees and proposed conservatees, *additional* remedies are available to clients who receive deficient services. Some of the contracts between the county and a "contract public defender" call for periodic performance reviews by management at the county or by a team consisting of court executives and county management. Complaints about deficient performance could be submitted for this review. Also, contracts come up for renewal every one-to-three years. A complaint for deficient performance could ask that the contract not be renewed or that stricter monitoring mechanisms be put in place.

Many of these contracts have performance standards that the lawfirm agrees to fulfill. These standards can be vague – like providing competent representation – or quite detailed. A breach of contract lawsuit could be brought by a client who receives deficient services, or by a surrogate advocate for the client, alleging standing to sue as a third-party beneficiary.

In addition to these special remedies, all of the other remedies that apply to legal service providers apply to contract defenders, such complaints to the State Bar or state and federal civil rights agencies, ex-parte motions for deficient performance by a fiduciary, a Marsden motion, and an appeal seeking reversal of an order based on ineffective assistance of counsel.

Appellate Attorneys. Until very recently, appeals by probate conservatees were rare. As a result, the various appellate projects that supply attorneys for appellants in criminal, juvenile delinquency, and child dependency proceedings had no experience with conservatorship appeals. When a few appeals did arise in the past four years, Spectrum Institute worked with the California Appellate Project and ADA coordinators at the Court of Appeal to have attorneys appointed for some conservatees. With the enactment of AB 1194, the days of ad hoc appointments are over. Probate Code Section 1471(f) will require that in a writ proceeding or an appeal arising our of a probate conservatorship proceeding, a reviewing court must appoint an attorney to represent the conservatee or proposed conservatee before that court.

With more public interest in conservatorships, and with more scrutiny being given to the quality of legal services being provided by public defenders and court-appointed attorneys to clients in these proceedings, it is likely there will be more contested hearings in the

superior court and more appeals. This will require the various appellate projects that are under contract with the Judicial Council to provide competent appellate attorneys for appellants and respondents. Their contracts call for these nonprofits to train attorneys, match them to cases for which they are qualified, supervise them, recommend fee payments, and monitor performance. The enactment of AB 1194 will require them to perform these same functions for attorneys representing appellants and respondents in conservatorship cases.

Appointed appellate attorneys who perform deficiently could be subject to some of the same legal consequences as trial court attorneys. Since the contracting entity is the Judicial Council and the appointing entity is the Court of Appeal – both being state governmental entities – these public entities could be subject to liability under the doctrine of respondeat superior if proper controls are not enacted and executed to minimize the risk of deficient legal services by appointed appellate attorneys. This liability could involve administrative complaints to state and federal civil rights enforcement agencies for violations of Title II of the ADA, Government Code Section 11135, or Welfare and Institutions Code Section 4502. A victim of deficient legal services might complain to the Judicial Council that deficient services violated its contract with an appellate project or perhaps even file a breach of contract lawsuit against the attorney and the appellate project as a third-party beneficiary.

ADA Complaints. Litigants have the right to represent themselves in a legal proceeding. However, since a conservatorship is not an ordinary civil case involving money damages – fundamental liberties are at stake which invoke due process protections – a judge should inquire into the litigant's ability to understand the proceedings and perform basic litigation functions. Because of the serious nature of the mental or developmental disabilities of conservatees and proposed conservatees, judges are unlikely to find that such a litigant has the capacity to give a knowing and intelligent waiver of the right to counsel – a right which is rooted in due process requirements and which AB 1194 makes statutorily mandatory. In effect, because of the nature of their disabilities, appointment of counsel is essentially a disability accommodation that is required by the Americans with Disabilities Act and its state law equivalent (Government Code Section 11135).

The services of competent counsel, acting as a zealous advocate, is a necessary ADA accommodation to ensure effective communication and meaningful participation in the proceeding. This would be similar to the court appointment of a sign language interpreter to enable a deaf litigant to participate in a legal proceeding. No one would doubt that the court has a duty to ensure that the sign language interpreter is performing the service competently. If it were determined that the interpreter was performing incompetently during the proceedings, a complaint could be filed against the court with the United States Department of Justice (Title II of the ADA) or with the California Department of Fair Employment and Housing (DFEH processes Section 11135 complaints). The same administrative complaint process is available to litigants with mental or developmental disabilities who are not able to litigate on their own and who must depend entirely on a public defender or court-appointed attorney for effective communication and meaningful participation in the proceeding.

Deficient performance by such attorneys for clients with such disabilities is not only a violation of the zealous advocacy mandate of AB 1194, or the due process mandate of effective assistance of counsel, it is a violation of Title II of the ADA and the disability nondiscrimination mandate of Section 11135. Further, the complaint could target not only the lawfirm providing deficient services to a disabled client, it could be lodged against the county that delegated these services to the lawfirm through a contract and which funds the services.

Such complaints are not theoretical. A complaint was lodged with the federal DOJ against the Los Angeles Superior Court for allowing appointed attorneys to deliver deficient legal services to conservatees and proposed conservatees. That complaint is pending for review by the DOJ. Based on a study of court practices, a complaint was filed with the Sacramento County Superior Court under a grievance procedure for ADA violations in connection with legal services in probate conservatorship proceedings. When the court failed to take corrective action, the director of DFEH was asked to open an investigation into the practices of the court.

In a county such as Los Angeles where the court has a rule giving appointed attorneys a secondary role to help the court resolve the matter before it, a complaint could also be filed as an ADA grievance. The complaint could allege that the county is knowingly funding legal services by appointed attorneys that violate the Americans with Disabilities Act. The complaint could ask the county to discontinue such funding, or to develop an alternative method for delivering legal services to conservatees and proposed conservatees. It could also ask the county to impose performance standards on county-funded conservatorship legal services that are consistent with AB 1194 and that comply with the ADA.

Lanterman Complaints. Statutory provisions known as the "Lanterman Act" – named after their legislative author – contain a statement of rights for individuals with developmental disabilities. (Welfare and Institutions Code Section 4502) Programs that receive public funds must respect and protect these rights. This would include legal services that are paid with government funds. A public defender, contract public defender, or other court-appointed attorney whose is paid with county funds to represent a client with developmental disabilities is bound by the mandates of the Lanterman Act. So is the government entity that provides the funding for legal services to such individuals.

Failure of publicly-funded attorneys to provide competent legal services to clients with developmental disabilities can result in a complaint to the Department of Developmental Services. DDS is charged with enforcing the rights guaranteed to individuals with developmental disabilities by Welfare and Institutions Code Section 4502.

DDS regulations spell out in considerable detail the "access rights" which programs or activities receiving public funds must afford to individuals with developmental disabilities.

According to Section 50510 of Title 17 of the California Code of Regulations, access rights include: (1) a right to advocacy services to protect and assert the civil, legal, and service

rights to which any person with a developmental disability is entitled; (2) a right to be free from discrimination by exclusion from participation in, or denial of the benefits of, any program or activity which receives public funds solely by reason of being a person with a developmental disability; and (3) a right of access to the courts to assert rights and to contest a conservatorship, its terms, or the individual or entity appointed as conservator.

State regulations establish administrative procedures for complaints to DDS for alleged violations of Section 4502 and Section 50510.

Civil Lawsuits. An attorney may be sued if a client is harmed by the attorney's negligence, breach of duty, or breach of contract. Negligence occurs if an attorney fails to provide services in a manner that a reasonably competent attorney acting as a diligent and conscientious advocate would. Breach of duty can be based on obligations imposed by statute, such as the zealous advocacy requirements in Probate Code 1471(e). A breach of contract suit is usually brought by a party to the contract, but an action may also be brought by a third party beneficiary who is harmed by the failure of an attorney to live up to the terms of the contract. As explained below, such a lawsuit can be brought by the client who is harmed by deficient legal services or by a third party who asserts standing to act as a surrogate advocate when disabilities preclude a suit by the client.

In jurisdictions where the county has entered into a contract with a private lawfirm or bar association to provide or manage legal services for conservatees and proposed conservatees, a breach of contract may be brought against the service provider if the standards of the contract are not met. Most of the contracts in the 24 counties that have contract providers for these legal services require the lawfirm to adhere to professional standards. Some set forth specific performance standards. These standards are clearly for the benefit of the beneficiary of the services, namely, the conservatees and proposed conservatees who are represented by the provider. If the client is harmed by deficient services, the client may bring a lawsuit as a third party beneficiary of the contract. *(Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 829-830*; Brinton v.Bankers Pension Services, Inc*. (1999) 76 Cal.App.4th 550, 558.)

Judicial Council Complaints. The Judicial Council has several roles related to the conservatorship proceedings, some of which impact the quality of legal services provided to conservatees and proposed conservatees by court-appointed attorneys. Its administrative jurisdiction can be invoked by individuals or organizations who have knowledge of how the policies and practices of the Judicial Council are adversely affecting this vulnerable class of involuntary litigants.

> ***Appellate Projects*.** Complaints could be filed with the Judicial Council against entities with whom it contracts to provide legal services if those services violate the standards set forth in the contract or violate nondiscrimination statutes and regulations. The Judicial Council contracts with various appellate projects to provide attorneys for appellants and respondents in various types of cases. With the passage of AB 1194, this now

must include writs and appeals arising out of probate conservatorship proceedings.

Local Rules. The Judicial Council has adopted the California Rules of Court. One rule permits superior courts to adopt local rules. However, as an opinion of the California Supreme Court has noted, local rules are invalid if they conflict with state rules or state statutes. When AB 1194 goes into effect on January 1, 2022, Rule 4.125 of the Los Angeles County Superior Court will be in conflict with two state laws: Probate Code Section 1471(e) that requires attorneys to provide zealous and independent advocacy for clients in conservatorship proceedings and Government Code Section 11135 which enforces the ADA and prohibits state-funded entities from engaging in disability discrimination.

ADA Grievances. The Judicial Council has in the past adopted a state rule that preempts local courts from adopting rules on certain subjects. An ADA grievance could be filed by anyone with the Judicial Council asking it to adopt a preemption rule that precludes local courts from enforcing rules that give appointed counsel in conservatorship cases a secondary role to help the court resolve the matter before it. Such a rule conflicts with and dilutes the zealous advocacy requirement of AB 1194. This rule only applies to proceedings where all of the respondents have mental or developmental disabilities. There is no similar rule for proceedings involving generic litigants, most of whom do not have disabilities. Rule 4.125 is therefore a form of disability discrimination. The Judicial Council has the power to preempt such discrimination with a state rule forbidding such local rules.

11136 Complaints. The Judicial Council has authority to investigate complaints of disability discrimination committed by entities whose programs it administers or controls or to whom it distributes state funds. This would include superior courts in terms of their adoption of local rules. It would also include all activities of superior courts for which the Judicial Council distributes funds. Further, it would include the various appellate projects to which it distributes state funds which are used in connection with legal services by court appointed appellate attorneys. Anyone with information that a superior court or appellate project is engaging in disability discrimination may file a complaint with the Judicial Council regarding such discrimination. If the Judicial Council has reasonable cause to believe that such discrimination is occurring by the entity in question, it should refer the complaint to the Department of Fair Employment and Housing for further investigation and enforcement actions. If DFEH finds the allegation to be true, the Judicial Council may withdraw or withhold funding from the offending entity.

Zealous Advocacy: Third-Party Standing

Marsden Relief. Conservatees and proposed conservatees are entitled to due process of law. This includes the right to effective assistance of counsel. Litigants with mental or developmental disabilities cannot be deprived of constitutional rights because their disability precludes them from asserting such rights or complaining when they are violated. As one appellate court explained the matter, the right of a conservatee to effective counsel "would be meaningless unless someone is permitted to exercise the right for her." (*Michelle K. v. Superior Court* (2013) 221 Cal.App.4th 209.) In this case, the court ruled that a conservator has standing to raise the issue of ineffective assistance of counsel on behalf of a conservatee who is receiving deficient legal representation. *Michelle K*. involved a Marsden motion. If a conservator does not do so, someone else can bring the deficiency to thee attention of the court. A nonparty might do so through an ex parte communication under Rule 7.10.

Civil Lawsuit. Another example of surrogate advocacy for deficient legal services arises from the *Conservatorship of Katherine Dubro*, a case in which an elderly woman was ordered into a conservatorship in Alameda County. A temporary conservator sought and was given permission to sue a variety of participants in the conservatorship case on the ground of disability discrimination and retaliation. Claims were directed against two law firms, one which served as a court-appointed attorney and then as a guardian ad litem and the other against a lawyer who served as a court-appointed attorney. The Department of Fair Employment and Housing, the agency with jurisdiction over disability discrimination and failure to accommodate complaints, issued a right to sue letter on August 31, 2021. In addition to a lawsuit for disability discrimination and failure to provide reasonable accommodations, a civil lawsuit was also filed against various participants in the conservatorship case, including allegations against an appointed attorney for professional negligence.

A civil lawsuit could be brought against a public defender or court-appointed lawyer if negligent services caused or contributed to the injury or death of a conservatee or proposed conservatee. For example, if the attorney knew or should have known that a conservator was committing elder or dependent adult abuse or neglect and the attorney took no action or did a deficient investigation, resulting harm to the client might such failures could give rise to a "survival" action by the personal representative of the client's estate. (Code of Civil Procedure Section 377.30.) It may also form the basis for a wrongful death lawsuit by close relatives. (Code of Civil Procedure Section 377.60.)

State Bar Complaint. On January 7, 2020, the executive director of the California State Bar wrote a letter to Spectrum Institute in which she clarified: "The State Bar's Office of Chief Trial Counsel (OCTC) does, in fact, accept complaints from third parties. OCTC routinely investigates that third-party non-clients submit, including, but not limited to, judges, opposing counsel, relatives and friends of clients, and anonymous members of the public, etc." As more people become aware of this, and with a growing public interest in the conservatorship system, it would not be surprising for complaints to be filed by third parties against public defenders and court-appointed attorneys for alleged violations of ethical duties or professional responsibilities.

Disability Rights California. A civil rights protection organization known as Disability Rights California (DRC) explicitly has been given standing by statute to "Pursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people with disabilities." (Welfare and Institutions Code Section 4902(a)(2).) This authorization is broad enough to give DRC standing to take action against an attorney who provides deficient services in a conservatorship proceeding regardless of the nature of the disability of the client.

In addition, DRC has additional authorizations to take action on behalf of conservatees and proposed conservatees who have developmental disabilities. DRC receives funding through a contract with the Department of Developmental Services. That contract authorizes DRC to "provide clients' rights advocacy services to persons with developmental disabilities who are clients of regional centers." Advocacy includes representation in legal and administrative actions. DRC is authorized to initiate action on behalf of consumers who are unable to register a complaint on their own behalf. Among the rights that DRC is authorized to take legal action to protect are: a right to advocacy services to protect the legal rights to which a person with developmental disabilities is entitled; a right of access to the courts; and the right to contest a conservatorship, its terms, and the person appointed to be conservator. This statute and the funding contract would authorize DRC to take administrative action or file civil lawsuits against a public defender or court-appointed attorney whose deficient legal services adversely affected the rights of a client with developmental disabilities.

DOJ Complaint. Title II of the Americans with Disabilities Act prohibits disability discrimination. This requires that public entities take affirmative steps to ensure that people with disabilities, including and especially mental and developmental disabilities, have effective communications and meaningful participation in government services. This includes legal proceedings. Title II applies to the superior court that appoints attorneys to these cases, the county that employs public defenders, the county that contracts such services to outside lawfirms, and the attorneys themselves since they are paid with government funds for the services they provide to these disabled clients.

Title II regulations declare: "An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part." (28 CFR § 35.170.) When the public entity is a court or officer of the court, the administrative agency that receives and investigates the complaint is the Department of Justice (DOJ). Such a complaint could be filed by the conservatee or proposed conservatee, a conservator on their behalf, or someone else asserting "next friend" standing as allowed by federal law. The DOJ has authority to take action against the offending party.

Next Friend. The American legal system is predicated on the notion that a contest between fully adversarial parties will achieve a just outcome. But when one of the parties lacks the capacity to advocate because of a disability or because his or her attorney is ineffective or has a conflict of interest, then the system is dysfunctional. In such a situation, granting standing to a next friend helps to restore integrity to the legal system.

To qualify as a next friend under federal law, a person "must provide an adequate explanation - such as inaccessibility, mental incompetence, or other disability - why the real party in interest cannot appear on his own behalf to prosecute the action" and the next friend "must be truly dedicated to the best interests of the person on whose behalf [she] seeks to litigate." (*Ross v. Lantz* (2nd Cir. 2005) 396 F.2d 512, 514, citing *Whitmore v. Arkansas* (1990) 495 U.S. 149, at 163-164.)

For a lawsuit on behalf of a conservatee or proposed conservatee against a public defender or court-appointed lawyer, such standing to file a complaint could be given to a close friend or relative whose interests are aligned with the plaintiff. A court might also grant such standing to a disability rights organization whose mission is to protect the rights of people with mental or developmental disabilities, similar to the legislatively conferred standing to Disability Rights California.

Once the lawsuit is filed, if the court had questions as to whether the next friend may have a conflict of interest, and the court finds the lawsuit raises a colorable claim for relief, the court may appoint a guardian ad litem to pursue the lawsuit on behalf of the plaintiff.

In federal court, "Rule 17(c) of the Federal Rules of Civil Procedure authorizes a minor or incompetent person to appear by a general guardian, committee conservator, next friend or guardian ad litem." (*J.W. v. Superior Court* (1993) 17 Cal.App.4th 958, 967 fn. 8.) There is no reason that next friend standing should not be recognized in California courts as a way to accommodate the disability of a litigant and to ensure that, despite such disability, the individual has access to justice. Public policy in California favors stronger, not weaker, legal protections for people with disabilities. (Government Code Section 11135(b).) This policy should translate into liberal rules on third-party standing in order to ensure that disabled litigants are not deprived of access to justice due to their inability to file lawsuits themselves.

Court of Public Opinion. Court watchers or advocates who monitor conservatorship cases, or participants in the cases, can always resort to the court of public opinion – the media – when they observe or learn of deficient legal services by a public defender or court-appointed attorney. There are no rules of legal standing when it comes to invoking the power of journalists, investigative reporters, radio personalities, or television producers. Systemic deficiencies in legal services programs have frequently been the subject of commentaries published by the Daily Journal – a legal newspaper read by judges, justices, and legislators. The alleged deficiency of the court-appointed lawyer in the conservatorship of Britney Spears was discussed in a recent international podcast. One journalists has already written a story about the impact that AB 1194 should have on the quality of legal services provided by public defenders and court-appointed attorneys in conservatorship cases.

Right to Counsel Provisions of AB 1194

(counsel of choice / mandatory appointment of counsel / role as zealous advocate)

Assembly Bill No. 1194 / CHAPTER 417
Approved by Governor September 30, 2021.

SEC. 6. Section 1471 of the Probate Code is amended to read:

1471. (a) If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, 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 person in the following proceedings under this division:
(1) A proceeding to establish or transfer a conservatorship or to appoint a proposed conservator.
(2) A proceeding to terminate the conservatorship.
(3) A proceeding to remove the conservator.
(4) A proceeding for a court order affecting the legal capacity of the conservatee.
(5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

(b) If a conservatee or proposed conservatee has not retained legal counsel and does not plan to retain 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 person in any proceeding listed in subdivision (a).**

(c) In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, **the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee.** The proposed limited conservatee shall pay the cost for that legal service if they are able. This subdivision applies irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

(d) If a conservatee, proposed conservatee, or person alleged to lack legal capacity expresses a preference for a particular attorney to represent them, **the court shall allow representation by the preferred attorney**, even if the attorney is not on the court's list of a court-appointed attorneys, and the attorney shall provide zealous representation as provided in subdivision (e). However, an attorney who cannot provide zealous advocacy or who has any conflict of interest with respect to the representation of the conservatee, proposed conservatee, or person alleged to lack legal capacity shall be disqualified.

(e) **The role of legal counsel of a conservatee, proposed conservatee, or a person alleged to lack legal capacity is that of a zealous, independent advocate representing the wishes of their client, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct.**

(f) In an **appeal or writ proceeding** arising out of a proceeding described in this section, if a conservatee or proposed conservatee is not represented by legal counsel, the **reviewing court shall appoint legal counsel** to represent the conservatee or proposed conservatee before the court.

Excerpts from Reports on Caseloads

Eight Guidelines of Public Defense Related to Excessive Workloads (American Bar Association 2009)

All publicly funded lawyers. These guidelines apply to public defender agencies and to programs that furnish assigned lawyers and contract lawyers. (p. 4)

Connection of workload to competency. If workloads are excessive, neither competent nor quality representation is possible. (p.4)

Workload and conflict of interest. An excessive number of cases create a concurrent conflict of interest, as a lawyer is forced to choose among the interests of various clients, depriving at least some, if not all clients, of competent and diligent defense services. (p. 5)

Performance standards. The responsibilities of defense lawyers are contained in performance standards and in professional responsibility rules governing the conduct of lawyers in all cases. (p. 5)

No exceptions. There are "no exceptions" for lawyers who represent indigent clients, i.e., *all* lawyers have a duty to furnish "competent" and "diligent" service, as required by rules of professional conduct. (p. 1)

Workload oversight. The ABA Ten Principles require that "workload[s]…[be] controlled" and that lawyers be "supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards." "Workload," as explained in the ABA Ten Principles, refers to "caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties."The need for such oversight is just as important in programs that use assigned lawyers and contract lawyers as it is in public defender offices. When lawyers have a private practice in addition to their indigent defense representation, the extent of their private practice also must be considered in determining whether their workload is reasonable. This applies to part-time public defenders, assigned lawyers, and contract lawyers. (p. 6)

Duties of management. Guideline 1 urges the management of public defense programs to assess whether excessive workloads are preventing their lawyers from fulfilling performance obligations; and Guidelines 2, 3, and 4 relate to the need for continuous supervision and monitoring of workloads, training of lawyers respecting their ethical duty when confronted with excessive workloads, and the need for management to determine if excessive workloads exist. Guidelines 5 through 8 address the range of options that public defense providers and their lawyers should consider when excessive workloads are present. As set forth in Guideline 6,

depending upon the circumstances, it may be necessary for those providing public defense to seek redress in the courts, but other choices may be available, as suggested in Guideline 5, before this step is required. (p. 1)

Guidelines on Indigent Defense Services Delivery Systems
(California State Bar - 2006)

Loyalty to client is paramount. The indigent defense provider's ultimate and overriding obligation is to properly represent each individual client. Hence all other loyalties and concerns are subordinate to the best interests of each client. The decisions of the defense provider must not be effected by political influence and must be unaffected by judicial intervention, except to the same extent that a privately retained counsel may properly be influenced by rulings of the court. (p. 4)

Appearance of undue influence. When a judge appoints the attorney, or it is done on an ad hoc basis, the appearance of undue influence is great, and points to the necessity for basing appointments of counsel on a rotational system. Systematic assignment of counsel through a planned program, in lieu of *ad hoc* assignments by the courts, has been uniformly recommended by national professional organizations and governmental study groups. (p. 5)

Vices of ad hoc appointments. Among the reasons for avoiding the ad hoc or random method of assignments are the following: 1) frequent use of inexperienced counsel and overall lack of quality control; 2) the potential for patronage, discrimination, political control, or undue influence; 3) pressure to obtain waivers because of the unavailability of counsel; 4) inadequate or uneven compensation and lack of fiscal control and responsibility; 5) lack of training and continuing education; and 6) lack of development of a skilled and vigorous criminal defense bar able and willing to seek criminal justice reforms. (p. 5)

Monitoring procedures. Procedures should be established by the administration to monitor attorney conduct in order to enforce reasonable standards of representation. (p. 6)

Institutional public defenders. Should there develop an unavoidable conflict between the duties, responsibility or allegiance of an institutional public defender as a county manager or department of county government, and the role of said Public Defender in representing an indigent client, the duty to properly represent the client supersedes all other loyalties. The institutional public defender must resist any efforts by others to cause such a defender to compromise this core duty even at the risk of financial penalty to an individual defender or to the continued existence of the entire defender office.(p. 7)

Zealous advocacy. Indigent defense providers must act zealously to provide services meeting the mandate of being a "reasonably competent attorney acting as a diligent, conscientious advocate. (p. 8)

Performance standards. Assigned counsel programs and indigent defense contracts should furnish a competent attorney acting as a diligent, conscientious advocate, who undertakes the following responsibilities: (1) careful factual and legal investigation and utilization of needed experts; (2) prompt action to protect a client's legal rights; (3) informing the client of case developments; (4) a demonstrated willingness to try appropriate cases; (5) (for cases to be tried) preparing for jury selection, examination of witnesses, and preparation of arguments; (6) knowing and exploring disposition and sentencing alternatives available in the relevant jurisdiction; (7) advising clients concerning their rights of appeal; (8) refusing to accept more cases than the attorney can competently handle; (9) declining matters which the attorney knows or should know he or she is not competent to handle; and (10) maintaining client confidences and secrets. (p. 9)

Quality controls. There should exist a mechanism whereby the quality of the representation provided by indigent defense providers is monitored and accurately assessed, employing uniform standards. (p. 14)

Assigned counsel and contract system caseloads. Each jurisdiction and individual attorney should set approximate case load limits to assure that the individual attorney is not so over worked that the quality of representation is diminished. (p. 16) The number and types of cases for which an attorney is responsible may impact the quality of representation individual clients receive. Administrators of assigned counsel and contract indigent defense systems should establish reasonable maximum caseload goals. (p. 24) No attorney should be assigned more cases than he or she can effectively handle. Appropriate records should be kept by the administrator to avoid assigning an excessive number of cases to an attorney. (p. 25)

Complaint system. Each jurisdiction should maintain a written complaint procedure for complaints made against an attorney who is providing indigent legal representation. (p. 16)

Monitoring performance. To assure consistent quality representation, each jurisdiction shall establish written procedures, using uniform standards, to periodically monitor and accurately assess the performance of its attorneys. (p. 16)

Institutional defender quality controls. An institutional defender should provide a continuous, interactive system whereby mentors, supervisors and managers provide assessment, feedback, documentation, remediation and other functions to ensure that the quality of service being provided is assured. (p. 17) Chief Defenders bear the ultimate responsibility for assuring that workloads are not excessive in volume for any individual institutional public defender employee. (p. 28) Great care should be exercised by Chief Defenders to cause continuous monitoring of workload and to arrange for workload adjustments where necessary. (p. 29) Failure of a Chief Defender to effectively address workloads may result in personal liability for an adverse civil judgment and jeopardize the right of the Chief Defender to practice law in any capacity. (p. 30)

Competent Representation Checklist

1) Qualification and Training

a. Qualification Standards (ADA B, B-1) (MD 3)

b. Training Standards (ADA B, B-2) (MD 2)

2) Advocacy and Defense

a. Introduction

i. Defining a Guardianship (NV 1-1)

ii. Types of Guardianships (NV 1-2 – NV 1-3)

iii. Attributes of a Guardianship (Attributes Doc)

iv. Ethical Conduct and Procedure (CA Pg. 8-9) (NV 2-4) (Business Code 6088)
   1. Discrimination (Rule 8.4.1)

v. ADA Appointment Standards (ADA PG 73)

b. Appointment of Attorney

i. Order Appointing Attorney (NV 2-1)
   1. Add powers to appointment order (Debra Expanded Order)

c. Investigation

i. Records (ADA A-1-A)

1. Petition and supporting documents
2. Other Medical and Phycological Records (NV 3-14)
3. Medical Capacity Declaration (CA PG 14)
4. Regional Center Report (Strategic Guide PG 19)
5. IPP Reports from Regional Center (Strategic Guide PG 20)
6. IEP Reports from schools
7. Court Investigator's Report (Efficiency v Justice PG 4) (CA 16)
8. Service Provider Records (NV 3-15)

9. Bank and Other Records (NV 3-15)
10. Powers of Attorney, Trust, Will, Medical Directives

ii. Client Interviews (ADA A-1-C)

1. ADA needs assessment for interviews and other client communications (interpreter, communication device, support person, etc.)
2. Selecting a confidential and comfortable venue for interviews
3. Choose best timing for interview(s)
4. Preparation of questions with correlation to findings in records (Strategic Guide 20)
5. Explanation to Client (NV 3-7- 3-10)
6. Discussion of Case Proceedings (NV 3-10- 3-11)
7. Keeping the Client Informed (MA PG 9)
8. Client's Goals (NV 3-10)

iii. Interview Relatives, Friends, Neighbors (ADA A-1) (Strategic Guide 20)

1. Letter of introduction (NV)
2. Follow up Interview (zoom, phone, or in person)

iv. Witnesses (ADA A-1-B)

1. Interview Personal Sources, Professional Sources, Petitioner and the Proposed Conservator (NV 3-16)

v. Appointment of Experts (ADA A-3-B)

1. To assess capacities and incapacities (Psychologist)
2. To assess less restrictive alternatives (Social Worker
3. Convene IPP review for regional center clients

vi. Motion to Join Indispensable Parties

1. Seek to add Regional Center if necessary
2. Seek to Add County APS if necessary

vii. Vetting the proposed conservator(s) (suggesting alternative conservator)

d. Petition for Temporary Conservator

i. Evaluate and/or challenge need
ii. Demand evidentiary hearing if appropriate

iii. Oppose change of current residence

e. Petition for Appointment of Guardian ad Litem

i. Evaluate and/or challenge need
ii. Demand evidentiary hearing if appropriate

f. Petition for Writ

i. File in Court of Appeal if appropriate
ii. Challenge to GAL, Temp. Conservator, Change of Residence

g. Evaluation of Evidence

i. Evaluation will lead the attorney to rule whether there is "clear and convincing evidence" (ADA A-3-A) (NV 3-14)

ii. Less Restrictive Alternatives (Probate Code 1821(a)(3))
    1. Options include in-home care, payee programs, power of attorney etc.

iii. Interviews of people associated with the records that were reviewed (PCP, Regional Center Case Manager)

iv. Request a complete physical and medication assessment if a physical has not been done in the past year

h. Determination of Procedural Options

i. Discovery (if not going to settle)

    1. Requests for admissions
    2. Interrogatories
    3. Document Demands
    4. Depositions

ii. Motion to Dismiss

    1. Attorney should first argue for a dismissal if client is not incapacitated or of less restrictive alternatives would suffice. (NV 1-10)

iii. Propose Settlement Options (consistent with clients wishes)

iv. Demand Trial

1. If dismissal is not ordered and a settlement is not reached, a trial must be ordered. § 1827 provides that conservatees have a right to a jury trial to determine whether conservatorship is warranted.

2. Defend Existing Personal and Financial Documents

    a. Defend presumed validity of existing documents as less restrictive alternative to conservatorship of person or estate (durable financial power of attorney, medical directives, durable medical power of attorney, trust, etc.

3. Defend presumed capacity in all areas

4. Require petitioner to prove all elements of the case by clear and convincing evidence

5. Jury Trial

    a. Develop Case Theory and Strategy (NV 3-17)
    b. Motion in Limine to include/exclude evidence
    c. Presentation of Evidence (ADA A-1-B) (MA PG 9)
    d. Cross Examination of Witnesses (MA 6)
    e. Submit Proposed Jury Instructions
    f. Closing Argument

6. Bench Trial

i. Drafting the Order of Conservatorship

    i. Terms according to the settlement or the findings at trial

j. Fees
    i. Submit fee claim for appointed counsel
    ii. Oppose unreasonable fee claims of temporary conservator, guardian ad litem, attorney for petitioner, attorneys for other parties

k. Post Judgment

    i. Appeal
        1. After judgement is entered the conservatee may file a notice of appeal. (Efficiency v Justice p. 5) (NV 3-17)

ii. Continuing Care Plan

iii. Ongoing Representation (NV) (Solano)
    1. Periodic checking on client. Possibly once every six months
    2. Probate investigator biennial reports

iv. Termination

    1. Conservatorship is no Longer Necessary (Probate Code Sections 1860-1865)
    2. Conservatorship no longer exists (Probate Code Sections 1860-1865)
        a. Death of conservatee

v. Change of Venue

vi. Review periodic financial reports of the conservator (NV)

vii. Oppose unreasonable fee claims of conservator and attorney

l. Performance Evaluation by Supervisor

About the Author

Thomas F. Coleman has been practicing law for 48 years. Mr. Coleman helped develop the zealous advocacy and other right-to-counsel provisions in SB 724 which were later incorporated into AB 1194.

Mr. Coleman's publications on conservatorship reform and disability rights are numerous. He has filed briefs in conservatorship appeals and has produced policy reports on improving the administration of justice in conservatorship proceedings. The Daily Journal legal newspaper has published 31 commentaries written by him on various aspects of conservatorship reform and disability rights.

Mr. Coleman was the presenter at two recent MCLE-approved webinars on conservatorship issues sponsored by the Long Beach Bar Association. He gave a plenary presentation at the World Congress on Adult Guardianship in 2018. Testimonials about his abilities as a researcher, writer, advocate, and educator are found on his professional website as is his curriculum vitae.

Mr. Coleman is the legal director of Spectrum Institute, a nonprofit organization advocating for conservatorship reform, disability rights, and mental health access. More information about the research, educational, and advocacy activities of the organization are found on its website. A documentary film about his conservatorship reform activities – *Pursuit of Justice* – was released in 2016. His advocacy for other civil rights causes are explained in his professional memoirs – *The Domino Effect* – a book published in 2009.

Mr. Coleman is the host of a monthly podcast – *The Freedom Files*.