

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Christine Patton, Regional Administrative Director, Bay Area/
Northern Coastal Regional Office, and Lead Staff, Probate
Conservatorship Task Force, christine.patton@jud.ca.gov, 415-875-4099

DATE: December 9, 2008

SUBJECT: Probate Conservatorship Task Force Recommendations to the Judicial
Council: Status of Implementation (Action Required)

Issue Statement

In January 2006 Chief Justice Ronald M. George established the Probate Conservatorship Task Force and charged it with conducting a comprehensive review of the probate conservatorship system in California. (The task force roster follows as Attachment A.) During its 18-month term, the task force studied conservatorship practices in jurisdictions within and outside the state and developed recommendations for courts, judicial partners, and the community support system for the protection and benefit of conservatees.

The task force presented its final report to the Judicial Council in October 2007. A total of 85 recommendations were presented, including items that would necessitate further study and review, additional funding, changes in legislation or rules of court, and preparation of training materials and guidelines for the courts. The Administrative Director of the Courts was asked to report to the council on the status of the implementation of these recommendations by December 2008.

Recommendation

The Administrative Director of the Courts recommends that the Judicial Council, effective immediately:

1. Receive and accept this report on progress in implementing the task force's recommendations;

2. Adopt the “Recommended Best Practices for Improving the Administration of Justice in Probate Conservatorship Cases” (Attachment D) and direct staff to publish a guide for the courts; and
3. Direct the Administrative Director of the Courts to refer to the appropriate Judicial Council advisory committee, Administrative Office of the Courts division or divisions, or other entity recommendations that are significantly long-term, multidivisional projects for further study and development.

Rationale for Recommendation

In fall 2005, a series of *Los Angeles Times* articles exposed problems in the probate conservatorship system, highlighting cases that resulted in harm to conservatees and, in some cases, their families. The Legislature immediately introduced several bills to address specific issues, including the regulation of private professional conservators and increased oversight by the courts. Early in 2006, Chief Justice George appointed the Probate Conservatorship Task Force to review the entire probate conservatorship process in the state and charged the task force with making recommendations to the Judicial Council that would improve the management of conservatorship cases and better protect conservatees. (The task force charge is included at Attachment B.)

The task force found that procedures and processes in the trial courts varied widely. Funding was piecemeal and practices were inconsistent, with many of the courts operating without adequate tools and staff resources. The task force had the opportunity to study other states’ systems and, with input from its diverse membership, which included judges, members of community groups, public service providers, and educators, was able to formulate meaningful recommendations. The task force was also able to provide input into the legislation that was being crafted, lending a practical and global viewpoint to the process.

On September 27, 2006, the Governor signed into law the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Omnibus Act), a package of four bills. On October 24, 2007, the Judicial Council accepted the final report of the task force, which contained 85 recommendations. Both of these accomplishments were designed to improve the administration of probate conservatorship cases in the trial courts.

Since then, two more bills have been signed, and many of the task force’s recommendations have been incorporated into those bills. (Recent legislative history regarding conservatorships is summarized in Attachment C.)

However, there have been challenges in implementation of both the statutes and the recommendations. The Omnibus Act provided for increased oversight of conservatees by the courts, which was expected to result in a corresponding increased workload. The fiscal year 2007–2008 State Budget contained an appropriation of \$17.4 million to fund

the additional staff and resources required by the legislation. Although the requirements remained in force, the funding was removed in the final budget, with courts left to meet the mandates as best as they could with existing resources. Despite this obstacle, many courts have worked hard to incorporate as many of the requirements as possible, knowing that the welfare of the conservatees is of utmost importance.

While the Legislature did not approve new FY 2008–2009 funding for the Omnibus Act, an agreement was reached with legislative leadership that the Judicial Council would provide \$8.5 million from the Trial Court Improvement Fund, on a one-time basis, in FY 2008–2009 for the purpose of enhancing the services that are already being implemented by courts consistent with the requirements of the legislation. This will be a great help to the courts and should result in more courts having the ability to meet the statutory mandates.

The formation of the task force and the legislative mandates have been an impetus for courts to review the resources devoted to conservatorship cases and the management of those cases, resulting in better oversight and protection of conservatees.

Status of Probate Conservatorship Task Force recommendations

Since the task force's recommendations were presented in October 2007 and the task force's work concluded, much progress has been made toward improving the management of conservatorship cases and protecting conservatees in California. The recommendations cover a wide range of areas and require implementation by a variety of entities. Some require legislation to be enacted and new procedures funded, some are implemented through adoption or amendment of rules of court, and others can be implemented only through changes in policy by state or local service agencies.

Out of the 85 proposed recommendations to the Judicial Council, 22 have been implemented through passage of legislation, adoption of new rules of court, or changes in Judicial Council forms. An additional 9 recommendations are either partially implemented or are pending adoption of new rules of court or mandatory Judicial Council forms. Six recommendations have been implemented by the creation and implementation of new training programs, conferences, broadcasts, Web sites, or guidebooks. The remaining 28 recommendations are in various states of review and analysis.

A list of all recommendations and their status is included as Attachment E.

Recommendations of best practices

A group of 20 recommendations have been identified as "best practices" to encourage the courts to implement these guidelines, procedures, or programs on their own, when possible, until such time as they may be implemented statewide through new legislation or rules of court, supplemental funding, or other means. These recommendations are

listed in Attachment D and it is suggested that this list be compiled into a guide and distributed to the trial courts for probate conservatorship judges and staff.

Alternative Actions Considered

N/A

Comments From Interested Parties

None.

Implementation Requirements and Costs

Trial courts will receive \$8.5 million in the current fiscal year to supplement their probate conservatorship programs. Many of the best practices listed in Attachment D can be implemented at little or no cost, but several other recommendations will require additional funding and legislative action. The Administrative Office of the Courts, Office of Governmental Affairs will work with the Legislature on further refining the existing statutes and developing a strategy for future amendments and improvements to the conservatorship statutory scheme.

The most significant impediment to implementation of the remaining recommendations is lack of sufficient funding. As the budget situation clarifies over the future months and years, and hopefully improves, the appropriate advisory bodies and entities will monitor which recommendations can move forward and will continue to work with the trial courts, justice partners, and community organizations to improve the management of probate conservatorship cases and the well-being of conservatees.

Attachments

- A. Task force roster
- B. Charge of the task force
- C. Legislative history
- D. Best practices recommendations
- E. Implementation status of the 85 recommendations presented in the task force's final report
- F. Full text of recommendations presented in the task force's final report

Roster of the
Probate Conservatorship Task Force
(Final as of August 2007)

Hon. Roger W. Boren, Chair
Administrative Presiding Justice of the
Court of Appeal
Second Appellate District

Hon. S. William Abel
Presiding Judge of the
Superior Court of California,
County of Colusa

Hon. Steven E. Jahr
Judge of the Superior Court of California,
County of Shasta

Hon. Aviva K. Bobb
Judge of the Superior Court of California,
County of Los Angeles

Hon. Laurence Donald Kay (Ret.)
Presiding Judge of the Court of Appeal,
First Appellate District, Division Four

Ms. Judith Chinello
Professional Conservator (Ret).
Chinello and Mandell

Ms. Gina L. Klee
Managing Probate Attorney
Superior Court of California,
County of Fresno

Ms. Michelle Williams Court
Director of Litigation
Bet Tzedek Legal Services

Hon. William H. Kronberger
Judge of the Superior Court of California,
County of San Diego

Hon. Don Edward Green
Commissioner of the
Superior Court of California,
County of Contra Costa

Dr. Margaret Little
Family Law and Probate Administrator
Superior Court of California,
County of Los Angeles

Hon. Donna J. Hitchens
Judge of the Superior Court of California,
County of San Francisco

Ms. Margaret G. Lodise
Attorney
Sacks Glazier Franklin & Lodise LLP

Hon. Frederick Paul Horn
Judge of the Superior Court of California,
County of Orange

Hon. Sandra Lynn Margulies
Associate Justice of the Court of Appeal
First Appellate District, Division One

Ms. Patricia L. McGinnis
Executive Director
California Advocates for Nursing Home
Reform

Hon. Douglas P. Miller
Associate Justice of the Court of Appeal
Fourth Appellate District
Division Two

Mr. Richard L. Narver
Assistant Public Guardian/Administrator
Yolo County Public Guardian's Office

Ms. Jacquie Paige
Executive Council Member
American Association of Retired Persons-
California

JUDICIAL COUNCIL LIAISON

Hon. Barbara J. Miller
Judge of the Superior Court of California,
County of Alameda

**ATTORNEY GENERAL'S OFFICE
LIAISON**

Mr. Alfredo Terrazas
Senior Assistant Attorney General
Office of the Attorney General

Ms. Sandy Sanfilippo
Probate Court Investigator
Superior Court of California,
County of Santa Cruz

Mr. Alan Slater
Chief Executive Officer
Superior Court of California,
County of Orange

Ms. Pat Sweeten
Executive Officer
Superior Court of California,
County of Alameda

LEGISLATIVE LIAISON

Ms. Gloria Ochoa
Deputy Chief Counsel
Senate Judiciary Committee

Probate Conservatorship Task Force Staff

Ms. Christine Patton, Lead Staff
Regional Administrative Director
Bay Area/Northern Coastal Regional Office
Administrative Office of the Courts

Mr. Douglas C. Miller
Senior Attorney
Office of the General Counsel
Administrative Office of the Courts

Mr. Roderic Cathcart
Senior Attorney
Education Division/CJER
Administrative Office of the Courts

Mr. Daniel Pone
Senior Attorney
Office of Governmental Affairs
Administrative Office of the Courts

Ms. Christine Cleary
Attorney
Center for Families, Children & the Courts
Administrative Office of the Courts

Ms. Susan Reeves
Court Services Analyst
Bay Area/Northern Coastal Regional
Office
Administrative Office of the Courts

Ms. Althea Lowe-Thomas
Assistant Division Director
Bay Area/Northern Coastal Regional Office
Administrative Office of the Courts

Ms. Eryn Shomer
Former Attorney
Center for Families, Children & the Courts
Administrative Office of the Courts

Charge of the Judicial Council
Probate Conservatorship Task Force

1. Seek input from a broad range of interested and affected stakeholders about how to improve the practices, procedures, and administration of probate conservatorship cases, including:
 - a. Conservatees;
 - b. Private professional conservators, guardians, and fiduciaries;
 - c. Family members, including those appointed as conservators;
 - d. Attorneys who represent conservators and conservatees;
 - e. Advocacy groups; and
 - f. Judicial officers and court staff.

2. Perform a comprehensive review of:
 - a. The law governing conservatorships established under the Probate Code, including the current statutes, case law, rules of court, ethical constraints, standards of judicial administration, and related forms and procedures, as well as the best methods now used in courts' management of conservatorship cases;
 - b. The assignment of judicial officers to handle conservatorship cases, including any education, training, and other prerequisites for such assignments;
 - c. The laws, practices, and procedures of other jurisdictions, including any national standards that may exist, that pertain to conservatorships, guardianships, and/or other protective arrangements involving court oversight of dependent adults;
 - d. The educational and training programs on probate conservatorships that are currently being provided for judicial officers and other court personnel through the Administrative Office of the Courts' Education Division or other sources; and
 - e. The staffing and other court resources currently being utilized for probate conservatorships, including investigator, examiner, and attorney positions.

3. Make recommendations to the Judicial Council for reforms and improvements to the overall system of conservatorship administration—including but not limited to changes to legislation, rules of court, funding, education, and training—in order to enhance services provided for, and more effectively prevent and deter abuse of, conservatees.

Attachment B

4. Create model guidelines for probate courts' practices and procedures in the handling of conservatorship cases.
5. Make other recommendations to the Judicial Council that further the purposes of the task force.

Legislative History

Omnibus Conservatorship and Guardianship Reform Act of 2006

- Assembly Bill 1363 ((Jones) Stats. 2006, ch. 493): Makes a number of reforms of the probate conservatorship system, including improved court review of conservatorships primarily through increasing the frequency and scope of court investigations and enhanced reviews of accountings.
- Senate Bill 1116 ((Scott) Stats. 2006, ch. 490): Increases court oversight of moves of conservatees and the sale of their homes.
- Senate Bill 1550 ((Figueroa) Stats. 2006, ch. 491): Enacts the Professional Fiduciaries Act, which establishes in the California Department of Consumer Affairs a new licensure scheme governing professional conservators, guardians, and other fiduciaries.
- Senate Bill 1716 ((Bowen) Stats. 2006, ch. 492): Authorizes court action in response to ex parte communications or informal complaints regarding a ward or conservatee or a guardian's or conservator's performance of his or her fiduciary duties.

In 2007, Assembly Bill 1727 ((Committee on Judiciary) Stats. 2007, ch. 553) was enacted, making several technical and clarifying changes to the Omnibus Act and including a number of proposals recommended by the Probate Conservatorship Task Force. Senate Bill 1047, passed in 2007 (Stats. 2007, ch. 354), amended the Professional Fiduciaries Act to extend the deadline from July 1, 2008, to January 1, 2009, for private professional fiduciaries to become licensed. However, SB 1047 did not change the existing requirement that prohibits a court, on and after July 1, 2008, from appointing a private professional fiduciary as a guardian or conservator unless the fiduciary has become licensed.

In 2008, Assembly Bill 1340 ((Jones) Stats. 2008, ch. 293) contained some further clarifying changes to the Omnibus Act and implemented several more task force recommendations.

**Recommended Best Practices for Improving
the Administration of Justice in Probate Conservatorship Cases**
From the Final Report of the Probate Conservatorship Task Force

This group of abbreviated recommendations is presented as “best practices” to encourage courts to implement these guidelines, procedures, or programs on their own, when possible, until such time as they may be implemented statewide through new legislation or rules of court, supplemental funding, or other means. For the full text of the recommendations, see Attachment F.

8. *Digital cameras*

Probate investigators should be provided with digital cameras to document assets and the condition of the proposed conservatee at the initial and all subsequent investigations for possible fraud prevention. Courts should establish internal procedures to ensure the chain of custody and integrity of the digital product in order to qualify as an official record.

15. *Required submission and handling of reports from attorneys, investigators, and regional centers*

Court-appointed attorneys should be required to file and serve written reports, in conformance with the courts’ guidelines, five days before hearings, consistent with existing requirements for reports by court investigators and regional centers. There should be no appointment of a conservator without a probate investigator’s report and a written report from a court-appointed attorney, unless waiting for a report would cause substantial harm to the proposed conservatee.

17. *Least restrictive alternative recommendation*

Court investigators should include in their reports recommendations on the least restrictive alternative for the proposed conservatees.

18. *Specify powers to be granted*

Court investigators should include in their reports specific recommendations as to which Probate Code sections 2351, 2351.5, and 2591 powers being sought by petitioners should be granted and which should be denied.

22. *Least restrictive alternative process*

The issue of least restrictive alternative should be discussed thoroughly by court-appointed counsel in their reports and should be the subject of a separate section in court investigators’ reports.

24. Care plan requirement

Each court should require the submission of a care plan, like that in use in the Superior Courts of Alameda and Orange Counties, by the conservator of the person and/or estate. The plan should address conservatee care and provide an estimate of the conservator's fees for the first year. Each follow-up report by the conservator should also contain an estimate of fees for the upcoming report period.

25. Care plan service

The required care plan, coupled with the inventory and appraisal, must be filed and served within 90 days on all persons required to be listed in the original petition or an order to show cause will automatically issue.

26. Care plan form

The Judicial Council should adopt a uniform, mandatory Judicial Council form for the submission of care plans. The existing level-of-care evaluation should be combined with the care plan in one form.

36. Care plan follow-up report

A care plan follow-up report should be submitted to the court by the conservator one year after appointment and then periodically thereafter, at the discretion of the judicial officer. The follow-up reports should be reviewed by examiners or investigators, and a recommendation should be submitted to the judicial officer as to whether or not a hearing should be set to review the plan.

37. Minimum visitation for conservatorship of the person

The conservator or a qualified and responsible person designated by the conservator should visit the conservatee monthly at a minimum in a conservatorship of the person case and should be responsive to a conservatee who may wish more contact with the conservator.

38. Minimum visitation for conservatorship of the estate

The conservator or a qualified and responsible person designated by the conservator should visit the conservatee annually at a minimum in a conservatorship of the estate case and should be responsive to a conservatee who may want more contact with the conservator.

39. Court investigator visit required before conservatee's removal from residence

The court investigator should be required to visit a conservatee and interview neighbors and relatives before any decision is made on removal of the conservatee from his or her residence, and the conservatee's attorney should be required to file a report with the court addressing all removal issues.

51. Evaluating budget needs

At the local court level, probate matters should be given a higher priority in the budgetary decisionmaking process. Probate—and consequently conservatorship—is perceived as a small, specialized area by the bench and is not generally understood. Staffing of probate courts cannot be measured by the same staffing standards as civil courts. A typical conservatorship case may have 5 to 10 separate petitions over the lifetime of the conservatee. To measure staffing by “active case” criteria is misleading and will continue to result in lack of adequate resources for probate courts.

62. Education requirements for nonprofessional conservators

Education programs should be put in place for nonprofessional conservators of the person and the estate. The Superior Court of San Francisco County operates such a program for conservators of the person.

63. Encourage partnerships

Public/private partnerships should be encouraged to provide services such as conservatorship clinics (as done in guardianships) for people of modest means.

65. Regional information sharing

Judicial officers, investigators, examiners, and probate attorneys assigned to conservatorships should meet regularly (at least twice a year) with their regional counterparts to share information, practices, and experiences.

76. Conservatorship petition coordination

If practical in counties with more than one probate calendar per week, petitions establishing a conservatorship should be set on a separate calendar or set together. If practical (based on size of caseload), conservatorship accounts, fee requests, substituted judgment, and other petitions should also be set on a separate calendar.

77. Conservatorship judicial officer assignment

Conservatorships should be assigned to one judicial officer for all purposes. Because conservatorship involves oversight over more than one petition, it is preferable that the same judge hear all matters, including petitions for establishment, periodic review hearings, substituted judgment petitions, and reviews of accountings.

79. Compliance dates set at original hearing

Compliance dates for the inventory and appraisal, the care plan including level-of-care evaluations, and filing of the first accounting should be set at the original hearing granting the conservatorship. Courts should have discretion, however, to either (1) set a review hearing to ensure compliance or (2) have adequate internal procedures established to generate an order to show cause on failure to comply. Future

accounting dates should be set when an accounting is approved in both conservatorships and guardianships.

85. Fee estimates

Fee estimates and a current schedule of charges should be required as components of every care plan to assist the courts in assessing fee requests.

Implementation Status of Probate Conservatorship Task Force Recommendations

- 1. Order for expedited investigation:** Creates a procedure under which a public guardian or public conservator could apply on an expedited basis for a court order authorizing a preliminary pre-filing investigation into a person's medical condition or finances to determine whether a petition for appointment of a probate conservator would be appropriate for the person's protection.

 - This recommendation has been fully implemented through legislation. (See Assem. Bill 1727 (Stats. 2007, ch. 553), § 25; codified at Prob. Code, §§ 2910–2911.)

- 2. Standardized ex parte application:** Proposes development of an application form that requires a clear statement of circumstances alleged to constitute an “imminent danger” to a conservatee's life or estate for a temporary conservatorship.

 - This proposal has been partially completed. An Omnibus Act provision (Assem. Bill 1363; Stats. 2006, ch. 493, § 15), required the Judicial Council to establish uniform standards for exceptions to notice of hearing on petitions for appointment of temporary conservators (i.e., ex parte applications for appointment). Ex parte applications are to be made only when essential to protect conservatees from “substantial harm.” (Prob. Code, § 2250(k).) The Judicial Council adopted rule 7.1062, effective January 1, 2008, to establish standards for waivers of notice in temporary conservatorships. Forms GC-112, GC-112(A-1), GC-112(A-2), and GC-115, forms to be used to apply for an exception to the requirement of notice of a petition for appointment of a temporary conservator, were adopted by the council effective January 1, 2009. The standard for waiver of notice under rule 7.1062 is necessary to protect the conservatee or his or her estate from “immediate and substantial harm during the notice period,” not “imminent danger.”

- 3. Review of report:** Requires court review of a report from a probate investigator before the appointment of a temporary conservator.

 - This recommendation was only partially accepted by the Legislature, which expressly permitted an investigation to take place and a report to be filed within two days after the hearing on a petition for appointment of a conservator if not feasible to do otherwise. However, in that event, the investigator has additional responsibilities to advise the court of the conservatee's opposition to the temporary appointment and facts indicating that the appointment may have been inappropriate and the court has additional authority to appoint counsel for the conservatee and reconsider the appointment before the hearing on the general

petition for appointment of conservator. (See Assem. Bill 1363; Stats. 2006, ch. 493, § 17; codified at Prob. Code, § 2250.6(a)–(b) and Assem. Bill 1340; Stats. 2008, ch. 293, § 4, codified at Prob. Code, § 2250(h) (effective January 1, 2009).)

- 4. Disclosure of medical information:** Recommends an expedited procedure to allow confidential medical information covered by federal and state medical privacy laws to be released by a health care provider to a court investigator in connection with investigations pertaining to conservatorships and guardianships.

 - This recommendation has been completed through the enactment of legislation and an implementing form. (See Assem. Bill 1727; Stats. 2007, ch. 553, §§ 1.9, 7; codified at Civ. Code, § 56.10(c)(12), Prob. Code, § 1826(r). A proposed new Judicial Council form (form GC-336) to implement this procedure has been developed, which is scheduled for adoption by the council, to become effective January 1, 2009.)

- 5. Due diligence to find relatives:** Requires a declaration of due diligence showing efforts to (1) find the proposed conservatee’s relatives and (2) ascertain the preferences of the proposed conservatee, or explain why it was not feasible to do so, to be included with every petition to establish a temporary conservatorship.

 - This recommendation has been completed through the enactment of legislation and an implementing form. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 12; codified at Prob. Code, § 2250(d). The Judicial Council petition for temporary conservatorship (form GC-111) was amended to include this requirement, effective July 1, 2008.)

- 6. Ex parte appointment follow-up hearing:** Recommends setting an automatic court hearing following an ex parte (no notice) appointment of a temporary conservator.

 - This recommendation has not been pursued legislatively due to fiscal concerns and will be deferred pending improved budget outlook.

- 7. Least restrictive alternative declaration:** Requires a declaration as to why a petition to determine capacity to make a health-care decision under Probate Code section 3200 et seq. is not the least restrictive alternative be included with every petition to establish a temporary conservatorship.

 - This recommendation has not yet been implemented but remains under consideration. Form GC-312, the confidential information statement referred to in the recommendation, currently lists alternatives to conservatorship that could include a section 3201 petition but does not specifically identify this alternative or limit its application to temporary conservatorships. As of July 1, 2008, each order appointing a general conservator (form GC-340) now includes a finding

that conservatorship is the least restrictive available alternative. (See Recommendation 21 below.)

- 8. Digital cameras:** Recommends that probate investigators be provided with digital cameras to document assets and the condition of the proposed conservatee at the initial and all subsequent investigations for possible fraud prevention.

 - Due to fiscal constraints, this proposal is currently being recommended as a “best practice.”

- 9. Specific conservator powers:** Requires the order establishing temporary conservatorship to list the specific powers granted.

 - This proposal has not been implemented. The Probate and Mental Health Advisory Committee (PMHAC) is studying this issue to determine if legislation is required or if the recommendation could be implemented through rule of court or form changes.

- 10. Waiver of notice on good cause:** Allows the court to waive notice on the petition to appoint temporary conservator only on clear showing of imminent harm or urgent necessity, to be used only in the rarest of circumstances.

 - This proposal has been completed through enactment of legislation and the adoption of an implementing rule of court and Judicial Council forms, although as noted above in connection with Recommendation 2, the standard for an ex parte appointment of a temporary conservator is not exactly as proposed in this recommendation. (See Assem. Bill 1363; Stats. 2006, ch. 493, § 15; codified at Prob. Code, § 2250(j). Rule 7.1062, adopted effective January 1, 2008, establishes showing for a good cause exception to notice. Forms GC-112, GC-112(A-1), GC-112(A-2), and GC-115 are to be used to apply for a waiver of notice, effective January 1, 2009.)

- 11. Supplemental e-mail notice:** Requires notice of all conservatorship proceedings to also be sent by e-mail to those who have requested it.

 - This proposal has not been implemented. It is recommended that legislation be pursued to provide for supplemental e-mail notice to all who request it in conservatorship proceedings.

- 12. Expanded information on notices:** Disseminates more information about the conservatorship to the conservatee and family members.

 - This proposal has essentially been completed, as regards the filing of an inventory, through the enactment of legislation and the adoption of implementing forms. No change has been made to expand the list of family members entitled to notice of hearing and a copy of an accounting, currently limited to the conservatee’s spouse or registered domestic partner and those who request special notice. However, the list of interested persons who may object to

an accounting is broader than the list of persons who must be given notice. These interested persons can avail themselves of the existing special notice procedure to ensure that they are entitled to receive notice of the hearing and a copy of any accounting. (See Assem. Bill 1363; Stats. 2006, ch. 493, §§ 8, 23; codified at Prob. Code, §§ 1826(l)(3)–(4) and 2610(a). A new form was developed (form GC-042) that implements the requirement to provide notice on how to file an objection to an inventory and appraisal.)

13. **Consistent report distribution:** Requires that the investigator’s report be given to both limited and general conservatees and allows the court to waive service of the investigator’s report on showing of harm to the conservatee and/or the conservatee’s estate.
 - This recommendation has been partially implemented through legislation. The statutes are now consistent (i.e., the investigator’s report must be given to both proposed general and limited conservatees). (See Assem. Bill 1363; Stats. 2006, ch. 493, § 8; codified at Prob. Code, § 1826(l)(3).) However, neither statute provides a good cause exception for waiver of the requirement of delivering a copy of the report to the conservatee based on showing of harm to the conservatee or the conservatee’s estate if delivery takes place. Section 1826(l)(4), also added by AB 1363, which requires mailing of a copy of the investigator’s report in a general conservatorship to the conservatee’s spouse or registered domestic partner and certain relatives, permits the court to waive such mailing if it would result in harm to the conservatee. This matter will be referred to PMHAC for further study to determine if legislation authorizing the court to waive delivery of the report to the conservatee should be pursued.

14. **Fifteen-day notice period before move from principal residence:** Requires a conservator to obtain prior court approval, rather than simply providing notice, before moving a conservatee.
 - This recommendation has not been pursued legislatively due to fiscal concerns and will be deferred pending an improved budget outlook.

15. **Required submission and handling of reports from attorneys, investigators, and regional centers:** Requires court-appointed attorneys to file and serve written reports consistent with existing requirements for reports by court investigators and regional centers. Conservators should not be appointed without a probate investigator’s report and a written report from a court-appointed attorney, unless waiting for a report would cause substantial harm to the proposed conservatee.
 - This recommendation has not been implemented and is tied to recommendation 70, which recommends that legal counsel be appointed in every case. Due to fiscal constraints, this proposal is currently being recommended as a “best practice.”

- 16. Inventory and appraisal monitoring:** Requires courts to establish procedures to ensure that the inventory and appraisal report is filed within 90 days of establishment of the conservatorship.

 - This recommendation has essentially been enacted through legislation. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 3; codified at Prob. Code, § 1456.5.)
- 17. Least restrictive alternative recommendation:** Court investigators should include in their reports recommendations on the least restrictive alternative for the proposed conservatees.

 - Due to the additional workload this would entail, and fiscal constraints, this proposal is currently being recommended as a “best practice.”
- 18. Specify powers to be granted:** Court investigators should include in their reports specific recommendations as to which Probate Code sections 2351, 2351.5, and 2591 powers being sought by petitioners should be granted and which should be denied.

 - See recommendation 17: Due to fiscal constraints, this proposal is currently being recommended as a “best practice.”
- 19. Due diligence to find relatives:** Specifies that every petition to establish a conservatorship must be accompanied by a declaration of due diligence to find relatives of, and to ascertain the preferences of, the proposed conservatee or explain why it was not feasible to do so.

 - This proposal was implemented through the enactment of legislation. (See Assem. Bill 1340; Stats. 2008, ch. 293, § 1; codified at Prob. Code, § 1821(d).) The conservatorship petition (form GC-310,) will be revised effective July 1, 2009, to add the necessary allegations.
- 20. Finding of impaired mental function:** Recommends revision of the *Order Appointing Probate Conservator* (form GC-340) to provide for specified findings that connect the impairment of the conservatee’s mental functions to his or her inability to provide for his or her personal needs, manage financial resources, or resist fraud or undue influence.

 - This recommendation has not been implemented and will be referred to PMHAC for further study.
- 21. Least restrictive alternative finding:** Requires in every case a finding by the judicial officer that the conservatorship is the least restrictive alternative and that the conservatee lacks capacity.

 - This recommendation was essentially implemented through the enactment of legislation and the revision of the Judicial Council conservatorship appointment order form. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 6; codified at Prob. Code, § 1800.3(b).) The general conservatorship appointment order (form GC-

340) was revised to contain the least restrictive alternative finding, effective July 1, 2008.)

- 22. Least restrictive alternative process:** Recommends the issue of the least restrictive alternative should be discussed thoroughly by court-appointed counsel in their reports and should be the subject of a separate section in court investigators' reports.

 - Due to fiscal constraints, this proposal is currently being recommended as a "best practice." (See recommendations 15 and 17 above.)
- 23. Independent powers of conservators and guardians:** Probate Code section 2590, concerning the independent powers of conservators and guardians, should be amended to list only those powers that these fiduciaries do not already possess under the general authority of their appointments.

 - This recommendation was implemented through the enactment of legislation. (See Assem. Bill 1727; Stats. 2007, ch. 553, §§ 18–19; codified at Prob. Code, §§ 2590(b), 2591.)
- 24. Care plan requirement:** Requires a conservator to submit a care plan and estimate of the first-year conservator's fees with revisions each subsequent reporting period.

 - Legislation introduced during 2007 (Sen. Bill 800; Corbett) that would have implemented this proposal was held under submission in the Assembly Appropriations Committee due to fiscal concerns connected with increased workload. Based on the state's ongoing budget crisis, this proposal is currently being recommended as a "best practice."
- 25. Care plan service:** Directs that the care plan and inventory/appraisal are filed and served within 90 days.

 - See recommendation 24 above.
- 26. Care plan form:** Proposes adoption of a uniform, mandatory Judicial Council form.

 - See recommendation 24 above.
- 27. Psychotropic medication:** Requires compliance with Probate Code section 2356.5 before a conservator may consent to administration of psychotropic medication for treatment of dementia or other purpose.

 - This recommendation has not been implemented. PMHAC will coordinate with the AOC Office of Governmental Affairs (OGA) regarding the timing and feasibility of pursuing this legislation.

- 28. Reversal of investment provisions:** Proposes a reversal of current provisions by permitting investments in publicly traded mutual funds without court approval and requiring court approval for investments in individual stocks.

 - This recommendation has not been implemented. PMHAC will coordinate with OGA regarding the timing and feasibility of pursuing this legislation.

- 29. Investment policy for conservators:** The Judicial Council should amend the rule of court concerning uniform standards of conduct by conservators to emphasize the fiduciary's primary responsibility to provide for the needs of the conservatee rather than to preserve the conservatee's estate for potential beneficiaries.

 - This recommendation has been completed by adoption of rule 7.1059 of the California Rules of Court, effective January 1, 2008. (See, in particular, rule 7.1059(b)(4).)

- 30. Fraud detection professionals:** Recommends that a team of forensic accountants and professionals trained in the detection of insurance, medical claim, and similar types of fraud should be retained to examine existing conservatorship procedures and recommend improved practices.

 - This proposal has not been implemented due to fiscal constraints. This matter will be referred for further study by PMHAC.

- 31. Adjustment to qualifying amount for waiver of accounting:** Recommends increasing statutory amounts to \$20,000 for net value of the estate and \$2,000 for income.

 - A modified version of this proposal was completed through the enactment of legislation. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 23; codified at Prob. Code, § 2628(a), which set the threshold amount at \$15,000.)

- 32. Uniform system of accounts:** Requires development of a simple and understandable system for use in all conservatorships and guardianships in order to aid in efficient evaluation of accounts.

 - This proposal has been partially completed. Thirty-five forms for schedules to be used in standard and simplified accountings in guardianships and conservatorships were adopted by the Judicial Council effective January 1, 2008, together with rule 7.575 of the California Rules of Court to prescribe their use. However, these forms are not compatible with commonly used computerized accounting systems. This matter will be referred for further study by PMHAC, in consultation with AOC Information Services Division staff.

- 33. Web-based accounting filing system:** Proposes the design and implementation of a Web-based filing system for use in nearly all conservatorship accounts that includes red-flag software for exceptions and is preferably integrated with a statewide case-management system.

- This recommendation has not been implemented. Due to the complexity and expense of this project, this recommendation will be tabled until the budget situation improves and then will be referred to PMHAC, in consultation with AOC Information Services Division staff.
- 34. Mandatory reporting by banking institutions:** Recommends adoption of new procedures to address the reported failure of banks to follow mandatory reporting requirements under the Probate Code.
- To address this problem, rules 7.1011 and 7.1061 will be adopted and forms GC-050, GC-150, GC-250, and GC-350 will be revised, effective January 1, 2009. PMHAC will consult with OGA regarding the feasibility of pursuing legislation that would provide for sanctions or other consequences for failure to comply with reporting requirements.
- 35. Random reviews by accounting personnel:** Suggests that courts conduct random reviews and audits of conservatorship and guardianship accountings.
- This recommendation was completed through the enactment of legislation. (See Assem. Bill 1363; Stats. 2006, ch. 493, § 24; codified at Prob. Code, § 2620(d).)
- 36. Care plan follow-up report:** Specifies a report submitted one year after appointment and periodically thereafter at the judge’s discretion.
- See recommendation 24 above.
- 37. Minimum visitation for conservatorship of the person:** Recommends that the conservator or a qualified and responsible person designated by the conservator visit the conservatee monthly at a minimum.
- This is currently being recommended as a “best practice.”
- 38. Minimum visitation for conservatorship of the estate:** Recommends that the conservator or a qualified and responsible person designated by the conservator visit the conservatee annually at a minimum in a conservatorship of the estate case.
- This is currently being recommended as a “best practice.”
- 39. Court investigator visit required before the conservatee’s removal from his or her residence:** Directs that the court investigator be required to visit a conservatee and interview neighbors and relatives before any decision is made on removal of the conservatee from his or her residence.
- Due to increased workload and fiscal constraints, this is currently being recommended as a “best practice.”
- 40. Conservatee advocate program:** Suggests institution of an advocacy program for conservatees, modeled after the Court Appointed Special Advocate (CASA) program.

- This recommendation has not been implemented. Due to the fiscal impact of this program, this recommendation will be tabled until the budget situation improves and then will be referred to the AOC Center for Families, Children & the Courts (CFCC) CASA unit in conjunction with the executive office of the AOC to determine the feasibility of future program development and implementation.
- 41. Conservatee advocate report:** Requires a report filed every six months with the court.
- See recommendation 40.
- 42. Written bill of rights for conservatees:** Includes the rights to contest establishment of the conservatorship, remove the conservator, terminate the conservatorship, and have privacy.
- This proposal was completed through the enactment of legislation and the adoption of implementing forms. (See Assem. Bill 1363; Stats. 2006, ch. 493, §§ 8, 13; codified at Prob. Code, §§ 1826(q), 2113; and forms GC-341 and GC-341(MA), adopted effective January 1, 2008.)
- 43. Vexatious litigation:** Allows a judge the authority to declare that continuing litigation is not in the best interest of the conservatee.
- This proposal was implemented through the enactment of legislation. (See Assem. Bill 1340; Stats. 2008, ch. 293, § 3; codified at Prob. Code, § 1970, effective January 1, 2009.)
- 44. Conservatee review of accountings:** Advises the court investigator to review purchases and expenses with the conservatee.
- This proposal was completed through the enactment of legislation. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 9; codified at Prob. Code, § 1851(a), which requires court investigators, to the extent practicable, to review accountings with conservatees with sufficient capacity, during the course of their review investigations.)
- 45. Out-of-state transfer process:** Directs courts to follow up to ensure continued care and protection of a conservatee when transferred to another state.
- This recommendation has not been implemented and will be referred to PMHAC for development of proposed statutory or rule changes.
- 46. Interstate cooperation:** Proposes that a system be established to allow for states to more easily track and investigate the well-being and care of conservatees who have moved to other states.
- This recommendation has not been completed and will be referred to PMHAC for further study regarding strategies for implementation (e.g., adoption of

uniform statutes through the National Conference of Commissioners on Uniform State Laws (NCCUSL).

- 47. Out-of-county transfer process:** Recommends that the transferring county set a status hearing 30 days following the transfer of a conservatorship to another county.

 - This proposal was completed through the enactment of legislation, but the new legislation gives the transferring court up to two months, not 30 days, to schedule the status hearing. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 11; codified at Prob. Code, § 2217.)

- 48. Adequate funding for probate court services:** Requires adequate funding to ensure that the trial courts have the ability to carry out all statutory mandates.

 - The AOC Office of Governmental Affairs and Finance Division will continue to pursue adequate funding for the courts. Data is being collected from all courts to support a budget change proposal for fiscal year 2011–2012.

- 49. Adequate funding for county public guardian and public conservator services:** Specifies that public guardians and public conservators are key justice system partners and their programs and services should be adequately funded.

 - It is recommended that the Judicial Council support any funding measures that provide adequate resources for the public guardian and other justice partners.

- 50. Budget priority:** Recommends that the Judicial Council set conservatorship as a budgetary priority.

 - A budget change proposal for probate conservatorship funding will be submitted for FY 2011–2012.

- 51. Evaluating budget needs:** Recommends that local courts give probate matters a higher priority in the budgetary decisionmaking process.

 - This is currently being recommended as a “best practice.”

- 52. Responsibility for payment of appointed counsel fees:** Requests clarification of responsibility between county and court as to which pays the public portion of attorney fees and expenses under Probate Code section 1470.

 - This recommendation has not been implemented. PMHAC will coordinate with OGA regarding the timing and feasibility of pursuing this legislation.

- 53. Allocation of the cost of incorporating caseload standards:** Proposes that cost be part of base funding for every trial court.

 - This recommendation has not been pursued due to fiscal concerns and will be deferred pending improved budget outlook.

- 54. Adoption of proposed qualifications and education rules:** Requires the adoption of prescribed qualifications and education rules for probate court investigators, probate staff attorneys, probate examiners, and also probate judges and commissioners.
- This proposal was completed through the enactment of legislation and the adoption of implementing rules. (See Assem. Bill 1363; Stats. 2006, ch. 493, §3; codified at Prob. Code, § 1456. Rules 10.468 (education of judicial officers), 10.478 (education of court investigators, probate staff attorneys, and probate examiners), and 10.776 and 10.777 (qualifications of court investigators, probate attorneys, and probate examiners) were adopted, effective January 1, 2008.)
- 55. Training for court investigators:** Recommends the creation of annual training and a conference for court investigators.
- This recommendation was implemented. A new, annual, two-day Probate Conservatorship and Guardianship Institute was held on September 29 to October 1, 2008. This event, sponsored by the AOC Education Division/Center for Judicial Education and Research (CJER), was attended by 140 participants and will serve as the primary venue for AOC-sponsored education of court investigators.
- 56. Statewide standards:** Recommends the development of statewide standards of practice for court investigators, including preparation of reports, accounting reviews, and caseloads.
- This recommendation requires long-term study by PMHAC to determine whether standards would be best addressed through training or a rule of court.
- 57. Probate conservatorship and guardianship curriculum:** Recommends a 15-point curriculum.
- The recommended areas of study have been integrated into CJER's probate curriculum, and will be reflected in the biannual Probate Overview course and at the annual Probate and Mental Health Institute which serves as the primary venue for face-to-face education of judicial officers, staff attorneys, and examiners.
- 58. Distance-learning alternatives:** Directs the development of conservatorship and guardianship content broadcasts to satisfy education requirements.
- A number of distance-learning broadcasts have been developed in the past two years, representing a total of nine hours of training in the conservatorship and guardianship area. Two broadcasts focus on implementation of the legislation of 2007, two cover specifically court investigator responsibilities, and one reviews the more general topic of memory loss and aging.

- 59. New probate benchguide:** Directs the publishing of a new benchguide.

 - The new probate benchguide, *Conservatorship: Appointment and Powers of Conservator*, was released May 2008. The benchguide is available online to all California judicial officers at serranus.courtinfo.ca.gov/education or on CD-Rom upon request.

- 60. New Probate Conservatorship and Guardianship Institute:** Recommends a new annual institute for AOC-sponsored education of court investigators.

 - See recommendation 55 above.

- 61. Mandatory education requirements for attorneys:** Mandates education requirements that include a clear delineation of duties for appointed counsel. Also suggests collaboration with the State Bar of California to develop guidelines as to what is expected by the court from counsel.

 - Rule 7.1101, adopted effective January 1, 2008, establishes the qualifications of appointed counsel in conservatorships and guardianships. The rule contains an annual continuing education requirement but does not require that education clearly delineate the duties of appointed counsel.

- 62. Education requirements for nonprofessional conservators:** Mandates that education requirements be put into place for nonprofessional conservators.

 - This is currently being recommended as a “best practice.”

- 63. Encourage partnerships:** Public/private partnerships should be encouraged to provide services such as conservatorship clinics (as done in guardianships) for people of modest means.

 - This is currently being recommended as a “best practice.”

- 64. Uniform probate court staff guidelines:** Create uniform statewide guidelines for examiners, investigators, attorneys, and other court staff.

 - This recommendation was implemented by creating a link from the Serranus judicial Web site to the Southern California Probate Training Manual Web site hosted by the Superior Court of San Diego County. This manual was the endeavor of a group of Southern California probate judges and staff who were interested in promoting best practices, knowledge sharing, and networking opportunities. It is a living manual that will be amended based on new legislation, policy changes, and comments by site users. Guidelines for examiners and investigators concerning the review of accountings will be proposed for adoption by the Judicial Council effective January 1, 2009, to be implemented primarily by revision of staff training curricula and in “best practices” exchanges between court staff.

- 65. Regional information sharing:** Suggests that judicial officers, investigators, examiners, and probate attorneys assigned to conservatorships meet regularly (at least twice a year) with their regional counterparts to share information, practices, and experiences.

 - This is currently being recommended as a “best practice.” There currently is an ongoing series of semiannual meetings between judicial officers, senior legal staff, and senior investigator staff from all the probate departments in Southern California. These meetings cover probate topics other than conservatorships, but that subject is a prominent part of the meeting programs.

- 66. Out-of-county reciprocal investigations:** Courts should develop a system for reciprocal investigations when a conservatee is living in another county. The statewide case-management system should be modified to permit the tracking of conservatorship cases across jurisdictions.

 - This recommendation has not been implemented and will be referred to PMHAC for further review and, when appropriate, to the California Court Case Management System (CCMS) steering committee.

- 67. Expand self-help services:** Suggests that self-help programs, such as EZLegalFile and I-CAN!, be expanded to include conservatorship models and made available statewide.

 - This recommendation has not been implemented and will be referred to CFCC and, when appropriate, the CCMS project team.

- 68. Allocate funding for self-help services in conservatorships:** Recommends directing a portion of self-help funding to conservatorship cases.

 - This recommendation has not been implemented and will be referred to CFCC to be considered when additional funds become available for self-help programs.

- 69. Review the forms for ease of use:** Suggests that probate forms be reviewed and revised as necessary to make them more user-friendly for self-represented litigants.

 - This is an ongoing project of PMHAC.

- 70. Automatic appointment of counsel:** Recommends that an attorney be appointed automatically for all proposed conservatees instead of only for those who request it.

 - This recommendation has not been implemented. Due to fiscal restraints and other political issues, PMHAC will coordinate with OGA regarding the timing and feasibility of pursuing this legislation.

- 71. Confidentiality of conservatee’s attorney reports:** Affords the same level of confidentiality for these reports as for reports of court investigators and regional centers.

 - This recommendation has not been implemented. PMHAC will coordinate with OGA regarding the timing and feasibility of pursuing this legislation.

- 72. Appointment of counsel in transfer-of-asset cases:** Requires a report by a court-appointed counsel, investigator, or guardian ad litem before approval of a petition in which a substantial portion of an incapacitated spouse’s assets are proposed to be transferred.

 - This recommendation has essentially been completed through the enactment of legislation. (See Assem. Bill 1340; Stats. 2008, ch. 293, § 10; codified at Prob. Code, § 3140, effective January 1, 2009. The legislation will authorize the court to appoint an investigator, in addition to currently existing authority to appoint an attorney or a guardian ad litem, to investigate and report to the court on the appropriateness of the proposed transaction.)

- 73. Develop caseload standards:** Proposes development of statewide caseload standards for probate investigators and examiners and clerical personnel.

 - This recommendation has not been pursued due to fiscal concerns and will be deferred pending improved budget outlook.

- 74. AOC probate administration review:** Recommends an AOC review of how it administers probate support and advice to trial courts to ensure that the needs of conservatees receive appropriate attention and resources.

 - The AOC Executive Office is in the process of reviewing this matter.

- 75. Services for enhancement of family relationships:** Recommends that support be provided for families after conservatorships are established.

 - This recommendation has not been implemented and will be referred to PMHAC and CFCC for further review.

- 76. Conservatorship petition coordination:** Recommends that in counties with more than one probate calendar per week petitions establishing conservatorships be set on a separate calendar or set together.

 - This is currently being recommended as a “best practice.”

- 77. Conservatorship judicial officer assignment:** Suggests that conservatorships be assigned to one judicial officer for all matters.

 - This is currently being recommended as a “best practice.”

- 78. Coordination of annual reviews and accountings:** Proposes that reviews by court investigators and deadlines for the filing of accountings be coordinated to allow the investigators to include accounting matters in their reports.

- This recommendation was partially completed through the enactment of legislation. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 10; codified at Prob. Code, § 1851.2, which requires each court to coordinate investigations with the filing of accountings so that investigators may review accountings before visiting conservatees, *if feasible*. Further statutory changes would be required to fully implement this recommendation.)
- 79. Compliance dates set at original hearing:** Requires that compliance dates for the inventory and appraisal, the care plan including level-of-care evaluations, and filing of the first accounting be set at the original hearing granting the conservatorship.
- This is currently being recommended as a “best practice.”
- 80. Psychotropic drugs:** Provides for court monitoring of psychotropic drugs much in the same way that juvenile dementia drugs are monitored.
- This recommendation has not been implemented. PMHAC will coordinate with OGA regarding the timing and feasibility of pursuing legislation that would be necessary to implement the recommendation.
- 81. Private professional conservators’ registration (licensing) information:** Requires specified information regarding licensing on all pleadings filed by licensed professional fiduciaries with the court.
- This recommendation has been completed through the enactment of legislation and partially completed through the revision of the relevant Judicial Council petition for appointment of temporary and general conservator forms. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 12, codified at Prob. Code, § 2250(c)(1)(temporary conservatorships, effective January 1, 2008); and Assem. Bill 1340; Stats. 2008, ch. 293, § 1, codified at Prob. Code, § 1821(c)(1)(general conservatorships, effective January 1, 2009). The temporary conservatorship petition (form GC-111), was revised effective July 1, 2008, to request licensure information. The general conservatorship petition (form GC-310) and the *Confidential Conservator Screening Form* (form GC-314) will be revised effective July 1, 2009, to call for this information.
- 82. Source of appointment:** Specifies a declaration by a proposed professional conservator explaining how the person became involved with the conservatee.
- This recommendation has been completed through the enactment of legislation and partially completed through the revision of Judicial Council forms. (See Assem. Bill 1727; Stats. 2007, ch. 553, § 12, codified at Prob. Code, § 2250(c)(2) (temporary conservatorships, effective January 1, 2008); and Assem. Bill 1340, Stats. 2008, ch. 293, § 1, codified at Prob. Code, § 1821(c)(2)(general conservatorships, effective January 1, 2009).) The temporary conservatorship petition (form GC-111) was revised to call for this information effective July 1,

2008. The general conservatorship petition (form GC-310) will be revised to call for it effective July 1, 2009.

- 83. Criminal and credit background checks:** Provide judges with this information before the appointment of either a professional or nonprofessional conservator.
- The criminal background check portion of this recommendation has essentially been completed through the enactment of legislation. (See Sen. Bill 340; Stats. 2007, ch. 581, § 1, codified at Pen. Code, § 11105(b)(19),(20),(21), which provides court investigators with access to criminal history information on proposed conservators through the state Department of Justice.) PMHAC will coordinate with OGA regarding the timing and feasibility of pursuing legislation that would authorize courts to obtain credit checks on proposed conservators.
- 84. Standardized fee requests:** Requires use of a statewide uniform system specifying categories of service by conservators and their attorneys.
- The portion of this recommendation pertaining to compensation of conservators and guardians has been completed through the enactment of legislation and the adoption of a rule of court. (See Assem. Bill 1363, Stats. 2006, ch. 493, § 22, codified at Prob. Code, § 2410; see also rule 7.756 of the California Rules of Court, effective January 1, 2008.) Additional issues will be referred to PMHAC for further study to determine if additional rule and/or form changes are needed.
- 85. Fee estimates:** Fee estimates and a current schedule of charges should be required as components of every care plan to assist the courts in assessing fee requests.
- See recommendation 24 above.

Probate Conservatorship Task Force Recommendations

1. Order for expedited investigation

The Judicial Council should sponsor or support legislation and, if necessary, adoption of rules of court or Judicial Council forms to create and implement a procedure under which a public guardian or public conservator could apply on an expedited basis for a court order authorizing that officer to conduct a preliminary pre-filing investigation into a person's medical condition or finances in order to determine whether a petition for appointment of a probate conservator would be necessary or appropriate for the person's protection. Recommended features of this procedure would include:

- Provisions in the order authorizing identified medical service providers to disclose private medical information concerning the person for the limited purposes of the investigation sufficient to qualify the disclosure under federal medical privacy regulations such as the Health Insurance Portability and Accountability Act of 1996 (Pub.L. No.104-191) (HIPAA);
- Provisions in the order authorizing identified financial institutions or advisors, accountants, and others to disclose the person's financial information for the limited purposes of the investigation;
- A requirement that medical or financial information would be kept confidential, except as disclosed in a judicial proceeding;
- A requirement that the public guardian or conservator must meet a clear threshold of probable cause to believe that the person is in substantial danger of abuse or neglect for which the officer's intervention may be an appropriate remedy;
- Provision for prior notification to the person of the proposed investigation and application, in the absence of facts showing an immediate threat of substantial harm to the person if notice is given; and
- Provision for destruction of the information obtained during the investigation if a conservatorship proceeding is not commenced within a specified period of time.

2. Standardized ex parte application

A standardized ex parte application for a temporary conservatorship should be developed. The application should require a clear statement of the circumstances that are alleged to constitute an "imminent danger" or "substantial harm" to the proposed conservatee's life, health, and/or estate. With respect to estates, there should be a showing of the danger of the immediate dissipation of all or any part of the proposed conservatee's estate.

3. *Review of report*

A temporary conservatorship of a person should not be established before trial court review of a written report from the probate investigator or a court-appointed attorney, unless the court finds that waiting for a report would cause substantial harm to the proposed conservatee. The goal of this effort is to eliminate unnecessary ex parte appointments.

4. *Disclosure of medical information*

The Legislature should clarify state law concerning the authority of a health-care provider to disclose confidential medical information regarding a conservatee or proposed conservatee to a court investigator in the course of the investigator's temporary conservatorship investigation or general conservatorship initial or review investigation. The Judicial Council should adopt rules of court or forms as necessary to implement an expedited procedure authorizing the trial court to order the health-care provider to disclose such information to a court investigator under federal medical privacy regulations such as HIPAA.

5. *Due diligence to find relatives*

Every petition to establish a temporary conservatorship should include a declaration of due diligence showing efforts to (1) find the proposed conservatee's relatives and (2) ascertain the preferences of the proposed conservatee or why it was not feasible to do so.

6. *Ex parte appointment follow-up hearing*

In cases where there is an ex parte (no notice) appointment based on allegations of substantial harm to the proposed conservatee, there must be a follow-up hearing within 5 court days or a procedure for calendaring a court review on 2 days' notice, with notice to second-degree relatives. The task force believes it is a better practice to set a review hearing in advance rather than await a calendared hearing by someone objecting to the temporary conservatorship. Setting a review hearing automatically allows for quicker review by the court. If a temporary conservatorship is to be granted on an ex parte basis, the court should be required to state factual findings in the order demonstrating the nature of the immediate harm or danger that established good cause to waive notice to the conservatee.

7. *Least restrictive alternative declaration*

Every petition to establish a temporary conservatorship should include a declaration as to why a Probate Code section 3201 et seq. petition (petition to determine capacity to make a health-care decision) is not the least restrictive alternative in lieu of a conservatorship. This declaration should be submitted on the Judicial Council *Confidential Supplemental Information* form (form GC-312).

8. *Digital cameras*

Probate investigators should be provided with digital cameras to document assets and the condition of the proposed conservatee at the initial and all subsequent investigations for possible fraud prevention. Each court should establish internal procedures to ensure the chain of custody and integrity of the digital product so that it will qualify as an official record within the meaning of Evidence Code section 1280.

9. *Specific conservator powers*

The petition and supporting documents must demonstrate a nexus between the powers requested and the need for interim protection, and the order granting temporary conservatorship must list the specific powers granted.

10. *Waiver of notice on good cause*

When waiver of notice on good cause is permitted by the Probate Code, judicial officers should allow such waiver only on a clear showing of imminent harm or urgent necessity. Notice for any temporary conservatorship proceedings should only be waived in the rarest of circumstances, and the proceedings should be delayed where possible. The California Rules of Court should be amended to clarify these requirements.

11. *Supplemental e-mail notice*

Legislation should be pursued to provide for supplemental e-mail notice to all who request it in conservatorship matters, similar to the statutory scheme implemented in Arizona. The courts in Arizona are required to provide e-mail notice of all conservatorship proceedings to those who have requested it. The task force recommends that this capability should be incorporated into the statewide case management system. This supplemental e-mail notice is not intended to replace currently required statutory notice provisions.

12. *Expanded information on notices*

Statutory notice provisions should be expanded to disseminate more information about the conservatorship to the conservatee and family members, including the inventory and appraisal and all accountings. The task force believes that animosity between conservators and family members frequently arises due to the lack of information and transparency. However, in drafting provisions for expanded notice, a mechanism to balance the need for transparency against the privacy considerations of both the conservatee and, where appropriate, the conservatee's spouse should be included.

13. *Consistent report distribution*

Probate Code sections 1826 and 1827.5 should be made consistent with respect to the provision of reports to proposed conservatees. The regional center report in limited conservatorship cases is currently required to be given to the proposed conservatee,

which is not the case with the court investigator's report in general conservator-ships. A provision should also be included to allow the court to waive service of the investigator's report on the proposed conservatee upon a showing of harm to the conservatee and/or the conservatee's estate.

14. Fifteen-day notice period before move from principal residence

The Judicial Council should sponsor or support legislation to amend Probate Code section 2352 to replace the current prior notice-only provisions of that section with a requirement that the conservator must obtain court approval, with 15 days' prior notice to the persons now identified in section 2352(e)(3), unless an emergency requires a shorter period of notice, before moving the conservatee from his or her principal residence at the commencement of the conservatorship, except in cases where the move is necessary to secure emergency medical treatment for the conservatee.

15. Required submission and handling of reports from attorneys, investigators, and regional centers

Court-appointed attorneys should be required to file and serve written reports, in conformance with the courts' guidelines, 5 days before hearings, consistent with existing requirements for reports by court investigators and regional centers. There should be no appointment of a conservator without a probate investigator's report and a written report from a court-appointed attorney, unless waiting for a report would cause substantial harm to the proposed conservatee. Specifically, the requirement that the report be filed 5 days before the hearing should be strictly enforced by the courts. The practice of accepting oral reports at hearings should be discouraged. Courts should make a practice of continuing hearings where reports are not timely filed, if possible, so that court investigators and examiners have an opportunity to review the reports and advise the court before the hearings.

16. Inventory and appraisal monitoring

Each court should establish monitoring procedures to ensure that the inventory and appraisal is filed within 90 days of establishment of the conservatorship. Courts may monitor either by setting review hearings, which may be taken off calendar on the filing of the inventory and appraisal, or by an internal monitoring system. In either event, on the failure to file an inventory and appraisal, the courts should follow the procedures found in Probate Code section 2614.5 and issue an appropriate order to show cause. The statute, in subdivision (c), currently provides that the procedures are optional, but it is recommended that courts treat the procedure as mandatory except in circumstances where an order to show cause would clearly not be appropriate. It is the task force's view that the first 90 days of a conservatorship are the time frame in which the assets of conservatees are at the greatest risk and that the requirement of timely filing of the inventory and appraisal will help deter loss. The task force notes that the Judicial Council's current efforts to create a statewide case management

system may include the capability for the trial courts to perform the necessary monitoring.

17. *Least restrictive alternative recommendation*

Court investigators should include in their reports recommendations on the least restrictive alternative for the proposed conservatees.

18. *Specify powers to be granted*

Court investigators should include in their reports specific recommendations as to which Probate Code sections 2351, 2351.5, and 2591 powers being sought by petitioners should be granted and which should be denied. This practice will assist the court in determining whether to include in its order either limitations on the conservator's powers or a separate listing of the powers granted, as provided in Probate Code section 2351(b).

19. *Due diligence to find relatives*

Every petition to establish a conservatorship should be accompanied by a declaration of due diligence showing the petitioner's efforts to both find the relatives of and to ascertain the preferences of the proposed conservatee.

20. *Finding of impaired mental function*

The Judicial Council should revise the *Order Appointing Probate Conservator* (form (GC-340) to provide for a finding that one or more of the general conservatee's mental functions described in Probate Code section 811(a) is impaired and that this deficit, alone or in combination with other mental function deficits, renders the conservatee unable to provide properly for his or her personal needs for food, clothing, or shelter (conservatorship of the person) or manage his or her financial resources or resist fraud or undue influence (conservatorship of the estate).

21. *Least restrictive alternative finding*

Legislation should be sought to require in every case a finding stated on the record by the judge that the conservatorship is the least restrictive alternative and that the conservatee lacks capacity. A clear statement of required findings that must be made on the record, in open court, in order to establish a conservatorship should be delineated. The requirements for findings, on the record, should also be addressed in judicial education programs for probate judges and commissioners.

22. *Least restrictive alternative process*

Courts should implement processes to ensure that the least restrictive alternative is addressed in every conservatorship case. The issue of least restrictive alternative should be discussed thoroughly by court-appointed counsel in their reports and should be the subject of a separate section in court investigators' reports.

23. *Independent powers of conservators and guardians*

Legislation should be pursued to amend Probate Code section 2590, concerning the independent powers of conservators and guardians, to list only those powers that these fiduciaries do not already possess under the general authority of their appointments.

24. *Care plan requirement*

Each court should require the submission of a care plan, like that in use in the Superior Courts of Alameda and Orange Counties, by the conservator of the person and/or estate. In addition to planning for the care of the conservatee, the plan should include an estimate of the conservator's fees for the first year, which can be a good tool for the court in situations where the fees billed significantly exceed the estimate. Each follow-up report by the conservator should also contain an estimate of fees for the upcoming report period.

25. *Care plan service*

The required care plan, coupled with the inventory and appraisal, must be filed and served within 90 days on all persons required to be listed in the original petition, or an order to show cause will automatically issue.

26. *Care plan form*

The Judicial Council should adopt a uniform, mandatory Judicial Council form for the submission of care plans. The existing level-of-care evaluation should be combined with the care plan in one form.

27. *Psychotropic medication*

The Legislature should amend Probate Code section 2356.5 to require compliance with that section before a conservator of the person may consent to administration of a psychotropic medication for treatment of dementia or for any other purpose.

28. *Reversal of investment provisions*

The Legislature should reverse the current investment provisions in Probate Code section 2574 that permit investment by conservators and guardians in individual publicly traded stocks without court approval and require court approval for ownership of mutual funds. Investments in publicly traded mutual funds should be permitted without court approval, and court approval should be required for investments in individual stocks, to reduce speculative investing and increase portfolio diversification.

29. *Investment policy for conservators*

The Judicial Council should amend the rule of court concerning uniform standards of conduct by conservators and guardians of estates required by Probate Code section 2410 to include an investment policy for conservators that emphasizes the fiduciary's

primary responsibility to provide for the current and estimated future needs of the conservatee rather than to preserve the conservatee's estate for potential remainder beneficiaries.

30. *Fraud detection professionals*

A team of forensic accountants and professionals trained in the detection of insurance, medical claim, and similar types of fraud should be retained by the Judicial Council for the purpose of surveying existing procedures and recommending improved practices. The present system of account review is designed to uncover procedural errors and obvious forms of fraud. Best practices employed by private enterprise in fraud prevention should be adopted for use in review of all probate accounts, especially conservatorships. Common areas of potential deception should be quantified and procedures adopted to identify them. The results of the study should be used to produce a statewide set of guidelines for examiners and investigators.

31. *Adjustment to qualifying amount for waiver of accountings*

To more fairly reduce the expense of administering small estates, the statutory amounts required for waiver of accountings should be increased. Probate Code section 2628(b) currently provides that a conservator does not have to file an accounting if the conservatee's estate during an accounting period does not have a total net value (excluding the conservatee's residence) of \$7,500 and income of less than \$1,000 (excluding receipt of public benefits). These qualifying amounts, which were established when the statute was enacted in 1990, no longer realistically reflect amounts that qualify as low-income thresholds given our current economy. Legislation should be pursued to increase the qualifying amounts to a net value of the estate of \$20,000 and income of \$2,000. The order waiving the accounting must state that the waiver only applies as long as the values comply with the code statute. The follow-up care plans should contain a declaration that the estate is still in compliance with Probate Code section 2628(b).

32. *Uniform system of accounts*

The courts should create and adopt a uniform system of accounts. Expense and income categories should be established for use in all conservatorships and guardianships. Standardization of accounting practices will aid in the efficient evaluation of accounts. In drafting a uniform system of accounts, it is important to note that the majority of estates are small in nature and that most conservators are not professionals. Thus, the accounting system should be simple and understandable. To that end, courts should additionally consider the production of account templates that are compatible with commonly used computerized accounting programs.

33. *Web-based accounting filing system*

The Judicial Council should immediately embark on the design and implementation of a Web-based filing system for all conservatorship accounts that includes red-flag

software for exceptions. The task force specifically recommends creation of a system that would show spikes in activity in expense categories so judicial officers would have the information they need to make reasoned decisions. This was a matter of the highest priority for the task force in order to facilitate fraud detection and analysis. Current practices do not include a review of underlying data, which is seen as a significant need by the task force.

The task force recognizes that electronic filing may not always be appropriate, for example, in large conservatorship estates. It is believed, however, that it would be extremely productive from the courts' oversight perspective in the vast majority of conservatorship accounts and would ultimately inure to the benefit of the conservators themselves in preparation of the accounts. The system should be designed to provide for simple bookkeeping by conservators, using readily available off-the-shelf commercial software that provides for the uploading of data to the courts' Web-based filing. Banks have interacted with off-the-shelf software for banking transactions for years, and there is no reason why the vast majority of conservatorship accounts could not be tracked in a similar fashion.

One example of a system that the task force reviewed is the Minnesota model. The task force notes that the system is close to going online in Minnesota and that it was developed in a public/private partnership at a cost of \$40,000.

Finally, in creating such a Web-based filing system, it would be preferable if it could be integrated with a statewide case-management system, although that is not a requirement. The system could also operate in a standalone environment. Whatever mode of technology is chosen, the task force recommends that this be a high-priority goal for the Judicial Council and that work on this project begin as soon as practicable.

34. Mandatory reporting by banking institutions

It is the task force's view that the provisions of Probate Code sections 2892 and 2893 are not being uniformly followed. A procedure should be developed to follow up on a statewide basis to ensure that banking institutions comply with mandatory reporting requirements.

35. Random reviews by accounting personnel

The courts should conduct random reviews of conservatorship and guardianship accountings. Courts' staff should include appropriately trained accounting personnel capable of conducting random audits in accordance with generally accepted accounting principles. In urban areas where sufficient skills are available in volunteer pools, volunteer programs could be established to work in conjunction with professional court staff.

36. *Care plan follow-up report*

A care plan follow-up report should be submitted to the court by the conservator one year after appointment and then periodically thereafter, at the discretion of the judicial officer. The follow-up reports should be reviewed by examiners or investigators, and a recommendation should be submitted to the judicial officer as to whether or not a hearing should be set to review the plan.

37. *Minimum visitation for conservatorship of the person*

The conservator or a qualified and responsible person designated by the conservator should visit the conservatee monthly at a minimum in a conservatorship of the person case and should be responsive to a conservatee who may wish more contact with the conservator.

38. *Minimum visitation for conservatorship of the estate*

The conservator or a qualified and responsible person designated by the conservator should visit the conservatee annually at a minimum in a conservatorship of the estate case and should be responsive to a conservatee who may want more contact with the conservator.

39. *Court investigator visit required before conservatee's removal from residence*

The court investigator should be required to visit a conservatee before any decision is made on removal of the conservatee from his or her residence, and the conservatee's attorney should be required to file a report with the court addressing all removal issues. The court investigator should also interview neighbors as well as the conservatee's relatives regarding the proposed removal. This requirement should be waived in the discretion of the court in emergency situations.

40. *Conservatee advocate program*

The courts should institute an advocacy program for all conservatees, modeled on the current Court Appointed Special Advocate (CASA) program, which provides volunteer advocates for minors in juvenile cases.

41. *Conservatee advocate report*

If a conservatee advocacy program is instituted, the advocate must file a report with the court every six months. Reports should be reviewed by examiners or investigators and a recommendation submitted to the judge as to whether or not a hearing should be set to review the report.

42. *Written bill of rights for conservatees*

A written bill of rights should be established for conservatees. It should include procedural rights of due process, including the right to contest the establishment of the conservatorship, the right to remove the conservator, the right to terminate the conservatorship, and the right to privacy as well as a clear statement that conservatees

be allowed the greatest degree of freedom possible consistent with the underlying reasons for their conservatorships. The bill of rights should include direction to conservators to give as much regard to the wishes of conservatees as permissible under the circumstances so that they might function at the highest level their abilities permit. It should be clear that a conservator is required to give due regard to the preferences of the conservatee and to encourage the conservatee's participation in decision making. The bill of rights should be given to the conservatee and acknowledged by the conservator.

43. Vexatious litigation

Judges should be given the authority to declare that continuing litigation in a conservatorship case is not in the best interest of the conservatee. This would require legislation, perhaps modeled on the vexatious litigant statute. The findings and language stated in Probate Code sections 1610 and 1611 have no counterpart in conservatorship law. Special attention should be paid to those situations when family members continue their lifetime animosity toward one another in the conservatorship arena at the expense of the conservatee's estate.

44. Conservatee review of accountings

Whenever possible, and if the conservatee has the requisite capacity, the accounting should be reviewed by the court investigator with the conservatee to verify specific purchases and expenses.

45. Out-of-state transfer process

When the court approves a permanent move of a conservatee to another state, permission should be conditioned on the application for establishment of court supervision in the conservatee's new state of residence. A review hearing should be set within 90 days of the approval of a conservatee's move for a report on the status of the proceedings in the new state of residence. The California conservatorship should be maintained until such time as the court is satisfied with the arrangements and supervision at the conservatee's new residence, at which time the California conservatorship should be terminated. In no circumstances should the court simply approve the move without following up to ensure the care and protection of the conservatee.

46. Interstate cooperation

A system of interstate cooperation should be established similar to that of other interstate compacts. There is no current mechanism for a California court to obtain a follow-up investigation on the well-being of a conservatee who has moved to a sister state on condition that conservatorship proceedings be commenced in that state. Once the conservatee has moved, as a practical matter, judicial oversight is "hit or miss" and dependent on the level of voluntary cooperation offered in the sister jurisdiction. Further, when abuse of conservatees who have moved to other states comes to the

attention of California courts, there is no efficient mechanism for referral or communication. This is a long-term issue that should be addressed in the context of overall elder abuse reforms. The process of establishing an interstate mechanism for protection of the elderly should be commenced.

47. Out-of-county transfer process

A transferring court should set a status hearing in 30 days following the transfer of a conservatorship to another county to ensure that an orderly transfer has in fact occurred and that the transferee court has set appropriate hearing dates. The receiving court should, on receipt of a transferred conservatorship, dispatch a court investigator to report on the well-being, care, and status of the conservatee.

48. Adequate funding for probate court services

The Legislature should adequately fund probate court services to ensure the ability to carry out all statutory mandates. Due to the nature of probate, it is difficult to isolate the needs for conservatorship funding, for example, versus guardianship funding, and it is critical that sufficient resources be allocated to the probate courts in general, and courts that oversee conservatorships in particular, to accomplish their statutory responsibilities.

49. Adequate funding for county public guardian and public conservator services

Public guardians and public conservators are key justice system partners, and their programs and services should be adequately funded. Discrepancies in funding public guardians and public conservators among the counties in this state present a serious access to justice issue.

50. Budget priority

The Judicial Council should set the area of conservatorship as a budgetary priority in future years, in the same fashion that it has selected other areas for priority in past years.

51. Evaluating budget needs

At the local court level, probate matters should be given a higher priority in the budgetary decision making process. Probate, and consequently conservatorship, is perceived as a small, specialized area by the bench and is not generally understood. For example, staffing of probate courts is generally measured by the same staffing standards that civil courts are measured by, which is highly misleading. In civil court a case is assigned a case number, begins with a complaint, and ends with a judgment. In probate court, however, the opening of a file and assigning of a case number is just the beginning of the process. A typical conservatorship case may have 5 to 10 separate petitions over the lifetime of the conservatee, and probably more. Measuring staffing by “active case” criteria is misleading. Courts should develop a new methodology for evaluating budgetary needs, as a continuation of the current staffing

analysis will result in the continued lack of adequate resources for probate courts to provide the scrutiny and protection the statutes envision for conservatees.

52. *Responsibility for payment of appointed counsel fees*

The Legislature should clarify responsibility between the judicial branch and counties for payment of the public portion of attorney fees and expenses for representing conservatees under the discretionary appointment provisions of Probate Code section 1470.

53. *Allocation of cost of incorporating caseload standards*

The cost of incorporating statewide conservatorship caseload standards should be allocated as part of the base funding for every trial court.

54. *Adoption of proposed qualification and education rules*

Probate Code section 1456 requires the Judicial Council to adopt rules of court that prescribe the qualifications of probate court investigators, probate staff attorneys, and probate examiners and require judges and commissioners regularly assigned to hear probate proceedings to participate in guardianship and conservatorship education. The Judicial Council should adopt the four proposed rules of court, submitted by its Probate and Mental Health Advisory Committee, that implement these requirements.

55. *Training for court investigators*

The Judicial Council should develop and provide an annual training program for court investigators and hold an annual conference for them comparable to but separate from the current Probate Institute for judicial officers and representatives of probate department legal staffs that is provided by the AOC Education Division/Center for Judicial Education and Research.

56. *Statewide standards*

The Judicial Council should develop statewide standards of practice for court investigators, including preparation and content of reports, accounting review functions, and caseloads.

57. *Probate conservatorship and guardianship curriculum*

The Judicial Council should direct CJER to identify the following content as part of its probate conservatorship and guardianship curriculum:

- Aging and gerontology;
- Approval of transfers and closing conservatorship or guardianship matters;
- Compensation and fees for attorneys and fiduciaries;
- Contested and uncontested conservatorship or guardianship matters;
- Examination of the role of both court-appointed and privately retained counsel for conservatees and proposed conservatees, including analysis of possible conflicts of interest;

- Interview and investigation techniques;
- Jurisdiction and sufficiency of notice for conservatorships or guardianships;
- Management of conservatorship and guardianship cases, including compliance with statutory requirements and the role of (1) dependency and delinquency courts in probate guardianships, (2) child protective services, (3) adult protective services, and (4) nonprofit agencies;
- Mental health, dementia, and capacity, including testamentary capacity;
- Organization and management of probate conservatorship or guardianship assignments;
- Protection of elder adults, minors, and persons with developmental disabilities from fraud, abuse, and neglect;
- Protection and preservation of property and assets, including accountings and management of the estate;
- Selection, appointment, and removal of fiduciaries;
- Substituted judgment, including Medi-Cal eligibility; and
- Wills, trusts, and other documents.

58. Distance learning alternatives

The Judicial Council should direct CJER to develop distance-learning means for satisfying content-based conservatorship and guardianship education for probate judges, commissioners, staff attorneys, examiners, and court investigators.

59. New probate benchbook

The Judicial Council should direct CJER to publish a new probate conservatorship and guardianship benchbook for probate court staff, including examiners, staff attorneys, and court investigators.

60. New Probate Conservatorship and Guardianship Institute

The Judicial Council should direct CJER to offer live training biannually that is open to probate judges, commissioners, staff attorneys, examiners, and court investigators. The Probate and Mental Health Institute should serve as the primary venue for judicial officers, staff attorneys, and examiners. The new Probate Conservatorship and Guardianship Institute should serve as the primary venue for court investigators.

61. Mandatory educational requirements for attorneys

Attorneys on an appointment panel should have mandatory educational requirements that include a clear delineation of duties. The Judicial Council should collaborate with representatives of the State Bar of California to develop general guidelines as to what is expected by the court from counsel.

62. Education requirements for nonprofessional conservators

Mandatory education requirements should be put in place for nonprofessional conservators of the person and the estate. The Superior Court of San Francisco

County operates such a program for conservators of the person, and its expansion on a statewide basis is recommended.

63. *Encourage partnerships*

The Judicial Council should encourage public/private partnerships to form and provide services such as conservatorship clinics (as done in guardianships) throughout the state for people of modest means.

64. *Uniform probate court staff guidelines*

Probate court staff guidelines for examiners, investigators, attorneys, and other court staff, similar to those currently being developed in southern California, should be adopted statewide. Uniformity of probate as well as conservatorship practices will provide for greater efficiency for both the courts and the Bar.

65. *Regional information sharing*

Judicial officers, investigators, examiners, and probate attorneys assigned to conservatorships should meet regularly with their regional counterparts to share information, practices, and experiences. Courts in southern California currently engage in two such conferences each year. The task force recommends that similar conferences be developed on a regional basis throughout the state and that the AOC provide support to these conferences.

66. *Out-of-county reciprocal investigations*

Courts should develop a system for reciprocal investigations when a conservatee is living in another county. Currently, the ability of one court to track a conservatee under its jurisdiction to another jurisdiction is problematic. A system whereby one court can request another court's investigator to investigate and report on a conservatee's well-being should be implemented. At present, cooperation is spotty, voluntary, and generally dependent on personal relationships. The statewide case management system should be modified to permit the tracking of conservatorship cases across jurisdictions.

67. *Expand self-help services*

Self-help services in the courts are necessary and important options for people of modest means. Examples of successful models in some courts include EZLegalFile and I-CAN! (San Mateo County, Orange County, and others), which should be expanded to include modules on conservatorships and made available statewide.

68. *Allocate funding for self-help services in conservatorships*

The Judicial Council should direct that a portion of the funds allocated to the courts for self-help services in the future should be for conservatorships, an area that has not been given a high priority in the past.

69. Review forms for ease of use

The Judicial Council should review all probate forms with the goal that they be more user-friendly for self-represented litigants.

70. Automatic appointment of counsel

Probate Code section 1471 presently lists limited situations in which representation by counsel is mandated and leaves it to the discretion of the court for all other matters. It is the task force's view that the Judicial Council should adopt a policy that an attorney should be automatically appointed for the proposed conservatee in connection with every petition to establish a conservatorship. A basic premise of the current statute is that counsel be appointed for those who request appointment. The reality is that if the individual truly lacks capacity and cannot request an appointment of counsel, that is when advocacy is most needed. The task force concludes that practices in appointing counsel vary widely within the state, with many jurisdictions appointing attorneys only when mandated and others appointing attorneys in every instance. The needs of conservatees for representation do not vary by physical location within the state and should be met uniformly. This was the most far-reaching policy issue that the task force grappled with. In forming its recommendation, the task force likened the situation of a conservatee to that of others within the judicial system. Conservatees are as vulnerable as dependents in our juvenile dependency system, are as at risk as minors in our family law system, and are as subject to deprivation of personal liberty and property as defendants in our criminal law system. Putting all of these factors together, it became apparent that the most effective way of affording protection to conservatees is to require the appointment of counsel in all cases. This need to safeguard the rights of the conservatee, the task force decided, far outweighs the arguments that it would be too costly or not necessary in all cases. The situation was likened to the history of mandatory appointment of counsel in juvenile dependency matters. Until recently, appointment was discretionary, but over time the statute has been modified to require appointment in all cases for the welfare of the minor. Similarly, the task force hopes that solutions can be crafted so that the conservatee will be protected while meeting the practical needs of the system.

71. Confidentiality of conservatee's attorney reports

Legislation should be pursued that would afford the same level of confidentiality to the reports of conservatees' or proposed conservatees' attorneys as is currently afforded in Probate Code sections 1826(n), and 1827.5(e), for the reports of court investigators and regional centers.

72. Appointment of counsel in transfer-of-asset cases

For petitions filed under Probate Code section 3100, a report by a court-appointed attorney, investigator, or guardian ad litem should be required before approval of a petition where a substantial portion of the incapacitated spouse's assets are proposed to be transferred. For Probate Code section 2580 and/or 3100 petitions, the court

should appoint independent counsel absent a finding that such appointment is not necessary to protect the conservatee's interests. Guidelines should be established for the type of information required by the court. For example, in Medi-Cal Probate Code section 3100 "spend down" cases, where the well spouse is petitioning for the transmutation of community property from the ill spouse to the well spouse, the court-appointed attorney should evaluate and report on the ill spouse's testamentary planning and/or prior intentions, along with recommendations in that regard. The task force notes that guidelines for Probate Code section 2580 substituted judgment petitions are set forth in Probate Code section 2583, whereas no similar guidelines exist for Probate Code section 3100 petitions. The task force suggests that, with respect to attorneys' reports, a statewide panel composed of representatives from the judiciary and the State Bar be formed for the purpose of conveying the court's expectations to the Bar regarding guidelines for these reports.

73. Develop caseload standards

Statewide caseload standards should be developed for probate investigators and examiners. Standards should also be developed for clerical personnel. Developed standards should not be prepared solely for conservatorship matters but for probate services as a whole. Even if such standards are not immediately attainable, they would be a good indicator of the needs in this area.

74. AOC probate administration review

The AOC should review how it administers probate support and advice to the trial courts to ensure that the needs of conservatees and minors under guardianship receive *the* appropriate level of attention and resources.

75 Services for enhancement of family relationships

Services should be made available to families of conservatees to assist in the enhancement of family relationships after conservatorships are established. These are difficult times for families, and the conservator should have as a goal the facilitation of a healthy family relationship. The AOC should explore this issue in further depth.

76. Conservatorship petition coordination

To the extent practical in counties with more than one probate calendar per week, petitions establishing a conservatorship should be set on a separate calendar or set together. To the extent practical, and based on size of caseload, conservatorship accounts, fee requests, substituted judgment, and other petitions should also be set on a separate calendar.

77. Conservatorship judicial officer assignment

Conservatorships should be assigned to one judicial officer for all purposes. Because conservatorship involves oversight over more than one petition, it is preferable that

the same judge hear all matters, including petitions for establishment, periodic review hearings, substituted judgment petitions, and reviews of accountings.

78. *Coordination of annual reviews and accountings*

Reviews by court investigators and deadlines for the filing of accountings should be coordinated to allow the investigator to include accounting matters in his or her report to the extent appropriate.

79. *Compliance dates set at original hearing*

Compliance dates for the inventory and appraisal, the care plan including level-of-care evaluations, and filing of the first accounting should be set at the original hearing granting the conservatorship. Courts should have discretion, however, to either (1) set a review hearing to ensure compliance or (2) have adequate internal procedures established to generate an order to show cause on failure to comply. Future accounting dates should be set when an accounting is approved in both conservatorships and guardianships.

80. *Psychotropic drugs*

Legislation should be sought that would provide for court monitoring of psychotropic drugs, much in the same way that dementia drugs are monitored. Overmedication of the elderly sometimes masks as dementia. The system should require supervision of these powerful medications to assure that they are being administered properly and to avoid their misuse.

81. *Private professional conservators' registration information*

Private professional conservators should be required to state their registration or license information, including the expiration date, on all pleadings filed with the court on their behalf.

82. *Source of appointment*

Every case with a proposed professional conservator should include a declaration by the proposed conservator explaining how the professional conservator became involved. The question of the standing of individuals who have no prior contact with the proposed conservatee and who are not nominated by a member of the conservatee's family or close acquaintances should be addressed. If the proposed conservator has no prior relationship and is not nominated by a family member, friend, or other person with a relationship to the conservatee, notice should be given to the public guardian. Consideration of appointment of the public guardian should be given in those circumstances.

83. *Criminal and credit background checks*

Judges should be provided with criminal and credit background checks before appointment of either a professional or nonprofessional conservator. The court could

accomplish this through the use of the California Law Enforcement Telecommunications System (CLETS) and credit background checking services or through some other means.

84. Standardized fee requests

Rules 7.751 and 7.702 of the California Rules of Court should be amended to require the use of a statewide uniform system that would specify categories of service by conservators and their attorneys. Rule 7.702(5) of the California Rules of Court should be revised to require specification of the hours spent and the fee requested for each category of service by each person who performed services.

85. Fee estimates

Fee estimates and a current schedule of charges should be required as components of every care plan to assist the courts in assessing fee requests.

- See recommendation 24 above.