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I am an attorney licensed to practice law in California, since November 1978: California State Bar number 81853. I have been a career public defender, practicing in Orange and Ventura Counties. Throughout my career I have consistently represented conservatees at all stages of Welfare and Institutions Code, and Probate Code proceedings. I have been the division head for the mental health/probate section of the Ventura County Public Defender for over 10 years. I started working for the mental health section of the Orange County Public Defender as an investigator in 1977 until November 1978, when I became a Deputy Public Defender in Orange County. I have been associated with the California Public Defenders Association since 1977 and served a period of time on the Board of Directors for that association. I regularly communicate with public defenders throughout the state about the topics below.

*A Fresh Look at **Temporary Conservatorships**
Improving the Practices and Procedures of Probate Conservatorship Cases*

I. Standards for establishment?

Petition for temporary conservatorship should include that there are no less restrictive alternatives available. Possible alternatives include voluntary acceptance of informal or formal assistance, a special or limited power of attorney, a general power of attorney, a durable power of attorney for health care or estate management, and a trust. This is required in the permanent petition. (Probate code 1821). It should be required in the temporary conservatorship as well. Temporary conservatorships should never be allowed without a emergency justification.

II. Notice to correct individuals?

The notice required for temporary is not as extensive as the notice required for the permanent hearing and it should be, in my opinion. Any person holding a durable power of attorney, any trustee of trust, and others explained below should be noticed and are not always a relative within the second degree.

A notice format which demonstrates to the individual given notice, a method to use to inform the court if someone who should have been given notice is excluded could be used to help protect against some of the problems occurring when petitioner does not include all those who should receive notice. The mechanism for providing that information quickly, without legal representation, should be provided.

III. Should Court ever waive notice? If so, when?

There should never be a waiver of notice by personal service on the proposed conservatee and counsel for a proposed conservatee. Even when a medical doctor swore the proposed conservatee was in a “chronic vegetative state,” I have personally found good support for a notice requirement. The notice requirement might be appropriately waived only if the court finds from affidavit or other sworn testimony the proposed conservatee will be substantially harmed by notice before a hearing on the appointment can be heard. There should be a requirement of proof of actual service within 48 hours after the hearing. Such sworn affidavit should be a requirement before any person who is required to be given notice by law is not given notice.

Probate Code Section 1825 is often not followed. The Conservatee should always be present unless physically unable to attend---completely bedridden –at least at the temporary stage.

IV. Role of the court investigator in temporary conservatorship?

If an attorney is appointed for the proposed conservatee at the ex parte or temporary conservatorship hearing, there is no need for court investigator involvement.

However if counsel is not appointed then court investigator should at a minimum interview conservatee regarding desires and issues raised by the petition.

If the proposed Conservatee is not physically present, it should be a mandatory appointment.

V. Appropriate Powers and Duties granted to temporary conservator?

Many attorneys request powers at the temporary stage that require 15 days notice. The court should enforce Probate Code Section 1203 (a). (order shortening time if good cause is presented). No power should be granted unless strict compliance.

VI. Better approaches to emergency intervention?

The standards should require appointment of counsel at the inception of any conservatorship proceeding (Probate Code Sections 1470-1471)