

Testimony of Mary Joy Quinn
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Probate Conservatorship Task Force
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OVERVIEW OF SAN FRANCISCO PROBATE COURT

The Probate Court in San Francisco is composed of the presiding judge, the probate commissioner, a court reporter, a probate attorney, a director and assistant director, six investigators, including a guardianship investigator, and six examiners. Clerical support includes a calendar clerk, a courtroom clerk, three office clerical employees and staff in the clerk's office. An average of 1000 matters are considered each month including 20 on the appearance ex parte calendar, which are usually petitions for the appointment of a temporary conservator.

There are seven weekly calendars consisting of 3 calendars for probate and trust petitions and accountings, one each for appointment (or removal) of guardians and conservators, one mental health calendar, and one law and motion calendar. Short cause trials are specially set.

An average of 1300 conservatorships exists at any given time taking into account newly established conservatorships and conservatorships that are terminated by death. Several low cost or no cost programs have been established: a guardianship monitoring program staffed by trained and supervised AARP volunteers, a pro bono mediation program, no cost mandatory education for lay conservators, and self help clinics for those who want to petition to be guardians or conservators.

This testimony will include features of the role of the investigator, examiner, assistant director and director. The nature and handling of complaints will be presented as well as procedures, and examples of intra court communication. Programs and grant activities will be mentioned.

A. Investigators

The position of probate court investigator has always been viewed as a professional role in San Francisco and as comparable to the family court counselors. There has been an emphasis on hiring people from diverse educational and work experience backgrounds because of the variety of medical conditions and social situations found in the conservatorships of dependent adults and elders. There has also been emphasis on hiring people who look like the people we are serving. A total of nine people have served as conservatorship investigators since the establishment of the position in 1977. All nine had college degrees and six had master's degrees. Work experience of the current investigators is as follows: a conservator in a non-profit agency, a LPS investigator, an adult protective services worker, a probate paralegal with a masters degree in gerontology, and an investigator who has extensive experience in another county. The director of the department, originally hired as an investigator, is a nurse with a master's degree in gerontology.

Investigators are assigned 4-6 pre-appointment initial investigations per month and an average of 12 review investigations. They are permitted to take the time needed to complete each case.

Investigations and Reports

The Probate Code determines the structure of all investigations and reports. However, each conservatorship is unique as to the parties involved and the issues. This means the conduct of the investigation will vary with each case. In addition to

complying with the specifics of the Probate Code, the following activities are a routine part of probate court investigation work:

- Interview the proposed conservator or the conservator if a conservatorship already exists
- Review records such as medical records and police reports as indicated by the circumstances of the case
- Interview 3rd parties as appropriate: Adult Protective Services workers, staff of non profit agencies such as Meals on Wheels, occupational and physical therapists, physicians, psychiatrists, public health nurses.
- Interview friends, neighbors, relatives as indicated by the case
- Recommend appointment of attorneys liberally (not county counsel or Public Defender)
- Seriously explore alternatives to conservatorship prior to hearing on petition to establish a general conservatorship
- Take objections of proposed conservatee or conservatee seriously
- Reports
 - Check boxes for specifics of Probate Code in addition to required quotes
 - Narrative in order to present the unique aspects of each case
Divided into the following categories: Rationale for Conservatorship, Background Information, Interviews, Placement, Additional Powers (Independent Powers, Exclusive Medical

Decision Making Powers, Dementia Powers), and
Recommendations

- Tailor report recommendations to the specific case e.g.
 - Case manager when there is an out of state conservator or complex situation or conservator lacks information
 - Neuropsychological examination when mental disabilities of proposed conservatee are in doubt or contested, especially when undue influence seems to be a factor
 - Grant conservatorship of estate only but not person or, vice versa
 - Make placement out of the home contingent on court review
 - Bring the trust under court supervision
 - Periodic appearance or written status reports in complex or highly charged cases
 - Further evaluation by psychiatrist or occupational therapist
 - Control of allowance or small bank account by conservatee

B. Examiners

Examiners were hired with the same considerations as the investigators. A college degree is required. Additionally, the person must have 5 years as a probate paralegal or 2 years as a probate attorney. This type of experience means that the person has prepared court accountings, knows how they must be constructed, knows the red flags when attempts are made to balance accounts that in reality do not

balance, and knows how disbursements or receipts can be concealed. In other words, the examiners are sophisticated about accountings and documents that are filed with the court prior to being hired. Examiners review on average 135 cases each per month.

Much of what the examiners have been doing was required by local court rule and is now contained in the Probate Code or State Rules of Court. Following are specific examples:

- Require original bank statements on all accountings
- Recommend full bonding to judicial officers with no examiner discretion
- Date of next accounting is contained in the court order settling the instant accounting
- Court order approving accounting is not released until additional bonding is on file, if it is required
- Order re: sale of real property is not released until additional bonding is on file
- Recommend appointment of attorneys based on faulty accountings, where attorney has no control over client/conservator or when the accounting is not forthcoming
- Detailed review of accountings. For example:

- Income

If conservatee receives a pension check, is it reflected each month?

If conservatee has securities, are dividends reflected when they should be?

If conservatee receives rental income, is it reflected each month?

Is income from a previous accounting missing in this accounting?

o Expenses

Are medical expenses consistent with the investigator report?

Are there bank charges for insufficient funds?

Are there multiply expenditures for cash with no explanation?

Are there ATM withdrawals when conservatee is bed bound?

C. Assistant Director of Probate Department

1. Supervises 5 examiners
2. Present in the courtroom during hearings except the conservatorship and guardianship calendar
3. Speaks to Probate Bar and probate paralegal organization
4. Briefs the judge and commissioner on daily basis as appropriate
5. Carries 3/4 caseload of file examinations
6. Works with judge, probate commissioner and probate director re: policies and procedures for the Probate Department
7. Serves on court wide committees from time to time
8. Coordinates with the staff of the Clerk's Office
9. Briefs the judge on appearance ex parte trust and decedent matters when probate attorney is out of the office
10. Oversees implementation of new laws, local and state rules, as well as court policies

D. Director of Probate Department

1. Directly supervises six investigators: 5 conservatorship and 1 guardianship

2. Works with judge, commissioner, and assistant director of Probate Department re: development of policies and procedures
3. Serves as liaison with other court departments and with court administration re: court policies and procedures, equipment, securing staff
4. Facilitates and supports the various Probate Department volunteer programs e.g mediation, lay conservatorship education, self help clinics, Guardianship Monitoring Program
5. Serves on court wide committees regularly
6. Attends manager meetings
7. Speaks at community events re: the Probate Court
8. Performs 2-4 conservatorship investigations per month
9. Briefs the judge on appearance ex parte conservatorship and guardianship matters when probate attorney is out of the office
10. Oversee implementation of new laws, local and state rules, and court policies
11. Advocates for investigators and examiners re: policies and equipment e.g. cell phones for investigators, large screen monitors for examiners, telecommuting policy for investigators, ergonomic workstations for all.

E. Intra Office Policies and Communication

1. Coordinate investigations and accountings so that investigator has accounting prior to review investigation and examiner has the investigator's report when reviewing the accounting.
2. Rotate list of attorneys who have agreed to serve as court appointed

3. Bench officers are accessible re: cases and procedures
4. Climate of consultation and problem solving
5. Staff efforts to minimize or resolve conflict among parties
 - a. Mediation
 - b. Education re: dementia, court process, likely outcomes
6. Higher expectations of private professional conservators than family members. Require them to keep cases if the money runs out. Scrutinize carefully re: fees and activities.
7. Appreciate and respect different opinions within staff
8. Strict policies re: no gifts from attorneys or others
9. Strict policies re: fraternization with parties or attorneys
10. Appreciation and respect for checks and balances within the department i.e. judicial officer makes the final decision.
11. An investigator sits in on hearings for appointment of conservators

F. Complaints from the Public

1. From Family Members
 - a. About cost of care or professional services
 - b. About money being spent on the needs of conservatee or something for pleasure, i.e. a trip
 - c. About getting a pet and the pet was incontinent in the house
 - d. About judgment calls made by conservator
 - e. About not being able to visit or number of visits lessened or now being monitored

- i. May be interfering with care
 - ii. Conservatee may not want to see them.
 - iii. Negative family dynamics being played out
- 2. From Community Agencies
 - a. Usually about care being given by conservator or judgment calls of conservator or about inattention of conservator
 - b. More likely to be substantiated than family member complaints
 - c. Occasional complaints by nursing homes, MDs, or pharmacies that bills are not being paid
- 3. From Adult Protective Services
 - a. Conservator will not cooperate with them
 - b. Conservator's actions require court intervention i.e. restraining order, appoint of attorney
- 4. Possible Court Action Depending on Case
 - a. Appoint an attorney
 - b. If complaint is written, make it available to the other parties
 - c. Set matter for appearance status hearing

G. Programs and Grant Activities

1. Guardianship Monitoring Program

Started in 1994 with technical assistance of AARP

Volunteers are recruited from members of AARP

Two roles: Records Researchers and Court Visitors

Training: 2 days

Screening: CLETS, child abuse and neglect, DMV, personal interview

Proof of automobile insurance if court visitor

Insurance: City and County carries insurance on all volunteers: \$12 per year per
volunteer

2. Classes for Lay Conservators

- a. Conducted on volunteer basis by Professional Fiduciary Association of California
- b. Offered 4 times a year
- c. Eligibility: have filed for conservatorship or have been appointed conservator
- d. Attendance required per court order
- e. Must file certificate of completion in court file

3. Mediation

- a. Two panels: one for estates and trusts, one for conservatorships and guardianships
- b. Mediators are volunteer attorneys who received training by the court at a nominal fee plus MCLE credits
- c. Conservatorship and guardianship mediation agreements are reviewed by the court

4. Self Help Clinics

- a. Guardianship
 - i. Person or person and estates \$25, 000 and under
 - ii. Average of six people served per month

iii. Volunteer is an AOC attorney and as back up, a probate paralegal
in a private law firm

iv. Two afternoons per month

b. Conservatorship

i. Person only

ii. Staffed by AOC attorney and private professional conservator who
volunteers

iii. Two afternoons per month

iv. Began 10/1/06

v. Three people per month being served

5. Grant Activities

a. Grants received from AOC (3) and from Foundation of State Bar (1)

b. Products: brochure on various types of restraining orders, manual for self
represented proposed guardians, manual for probate paralegals re: self
represented proposed guardians, report to AOC re: Access to the Courts for
Elders, especially abused elders, educational materials on conservatorships
(forthcoming).

H. Recommendations to Others

1. Hire sophisticated staff that are educated and have experience in the field.

a. Investigators: Education level comparable to family court
mediators plus a track record of working with the
conservatorship population

- b. Examiners: a track record working with court accountings and preparing court documents
- 2. Provide opportunities for continuing education for staff
- 3. Institute concrete conservatorship monitoring procedures by forward calendaring
- 4. Establish investigation assessment policies re: amount and collection source, deferring (not waiving)
- 5. Establish supervision measures specific for investigators since they do field work in sometimes unsavory or dangerous situations:
 - a. Safety (cell phones)
 - b. Accountability for whereabouts
 - c. Telecommuting only with carefully articulated policies
- 6. Provide up to date technology and ergonomic safety for all.
- 7. Consider volunteer programs when trying to offer services keeping in mind principles of volunteer training, supervision, and support.
- 9. Require supervisors and managers to carry a caseload even if it is a small one

Biography

Mary Joy Quinn

Mary Joy Quinn has been the Director of the Probate Court of San Francisco Superior Court since 1989. Prior to that, she served as a conservatorship investigator for 12 years. As director, she supervises probate court investigators and examiners and coordinates the activities of the Probate Department. Ms. Quinn facilitated and supervises the following low cost or no cost programs: mediation, guardianship monitoring program with AARP volunteers, education for lay conservators, and in pro per clinics for guardianships and conservatorships. In 2002, Ms. Quinn designed and coordinated education on elder abuse and neglect for San Francisco judicial officers and attorneys.

From 2000-2005, Ms. Quinn was a member of the Probate and Mental Health Advisory Committee of the California Judicial Council. She currently serves as an advisor to the committee. Ms. Quinn is in her fourth year as a commissioner with the American Bar Association Commission on Law and Aging. She is also on the Executive Board of the National College of Probate Judges and the board of the National Committee for the Prevention of Elder Abuse.

Ms. Quinn is the co-author of *Elder Abuse and Neglect* (Springer Publishing Co. 1986, 1997) and a contributor to the California Judicial Council publication, *Handbook for Conservators* (2002). She is the author of *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* (2005). She has contributed to numerous publications on the subjects of elder abuse and neglect, conservatorships/guardianships, undue influence, and the relationship between civil and criminal courts with regard to elder abuse and neglect.