

A.O.C. Task Force Public Hearing

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Ronald Reagan Auditorium

300 South Spring Street

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Improving the Management and Oversight of Probate Conservatorship Cases in California Trial Courts

Panel II. How to increase Court Oversight and Accountability in Permanent Conservatorships?

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Dear Members of the A.O.C. Probate Conservatorship Task Force,

On behalf of the CASCI organization and myself personally, I want to thank you for the opportunity to participate in this important project.

As some of you know, I have been involved in working with the California Judicial Assembly on AB 1363. The LA times articles simply brought attention to the errors and abuses that many Probate Court Investigators have been complaining about for many years. I firmly believe that the legislative and judicial reactions can help implement both necessary changes and also help us use the current resources more efficiently.

I will respond to the Panel II questions sequentially:

1. Whether there are sufficient due process safeguards to ensure the rights and interests of conservatees are being protected.

We need to address both the rights/interests of the physical person and the financial/estate issues. In most abuse cases, after control of the estate and person is granted to a Petitioner/Conservator, the **financial abuse** usually begins immediately. This is possible because some courts grant “**general powers/control**” asked for in the petition, thus allowing the sale of assets to begin without further court hearings/approval.

If courts also **waive the bond** requirement, the victims have no real financial recourse. These are the due process issues that must be addressed in order to guard against the first stages of financial abuses. Perhaps, more stringent bond requirements and require court hearings before the sales of some assets, such as home or assets valued at certain amounts.

In addition, Physical rights/interests need protections. Currently, the Probate Code **requires “least restrictive care standards.”** This should prevent a conserved person from being placed in a care facility (often locked-down facility) if they are able to remain in their home with adequate medical care. And it is important to note that keeping a conserved in their home will be a first step in preventing some of the abuses being reported (i.e. the swift sale of assets after control of the person and estate is granted.) While the “least restrictive care requirement” is an adequate due process safeguard, proper court oversight is lacking, with most counties statewide reporting they are not current in their reviews. Due to this, the courts are not detecting this, and other violations, in adequate time.

Other physical abuses (i.e. neglect, abandonment, physical abuse) also takes place and without adequate court oversight, the only agency that may respond to physical abuse is the local APS agency and/or law enforcement; and that is only if another citizen or the victim themselves complains. This is rare due to fear of complete abandonment (thus tolerating the abuse), fear of further retaliation, physical inability to actually make a complaint, or isolation from others, thus no one else is aware of the abuse.

Support for current Review Procedure as adequate –

In order to properly guard against any of these financial and physical abuses, many PCI’s statewide urge that the **current annual/bi-annual review process is adequate.** But all PCI’s state the courts need to be adhered to this requirement and that this will only be possible if the **Courts receive earmarked funds for increased PCI staff and training.**

Support for AB1363 –

In addition, many PCI’s support the AB1363 modifications that may require 6 month/annual thereafter **reviews.** The reasoning is that after control of the estate and person is granted to a Petitioner/Conservator, the theft and abuse/neglect begins immediately. This happens when some courts grant “general powers/control” as mentioned above. While it is common in my court and others I have studied to **allow for an emergency review if complaints are made, to rely on a complaint from a family member or third party to trigger a more immediate review may be overly optimistic.** I say this for the reasons mentioned above (i.e. lack of reporting, fear of retaliation, isolation etc...). In addition, many concerned **family members and friends only begin to notice the financial abuses when the losses are obvious and great. Therefore, waiting for a complaint to review the Permanent Conservatorship prior to the current one-year required review may be inadequate to prevent against some of the abuses.**

A compromise –

If the court investigators are required to review the Person and Estate status within 6 months of the Permanent Conservatorship being granted, we can detect potential abuses sooner and help to prevent them. Annual checks will be conducted thereafter to assure compliance. **It could also be suggested that after 2 “positive” annual reviews, bi-annuals can be performed.** This would lessen the workload on the courts over time, and also add the necessary initial court oversight at the critical beginning stages of the Conservatorship.

Regardless of the split opinions statewide on the increased review requirements outlined in AB 1363, we know that the current required reviews are not being performed in a timely manner. This is a wide spread problem that cannot and should not be ignored.

2. Whether court review of Conservatorships should be conducted more frequently, and what the focus of these reviews should be?

Many PCI's are split on this topic. As mentioned above, many believe that the current requirements are adequate and that the courts only lack in staffing to perform these annual/bi-annual reviews. Thus, many PCI's urge no increase in reviews and ask only for additional staff to “catch-up” with the current review caseload and stay current thereafter. However, many PCI's support the more frequent reviews for reasons detailed above. **Importantly, of course, the PCI's statewide ask for increased staff and training regardless of AB1363 and only support AB1363 if the courts are going to receive funds from the state earmarked for Probate court staff and training.**

The focus of the Reviews should be in three-four main areas:

- 1. Is the conserved living in the least restrictive care home/facility?** For example, a conserved with main diagnosis of Congestive Heart Failure with some dementia symptoms can still remain in their home to live if they have financial means to do so. Displacing a conserved from their home without medical justification is a warning sign that financial abuses may be taking place. If the care facility is the proper placement, PCI should run checks on the facility through various web-sites that collect code violation information (i.e. detailed of federal and state citations through CALNHS at www.calnhs.org, Nursing home comparisons at www.medicare.gov, or the Bureau of Medi-cal Fraud and Elder abuse link from the main DOJ webpage.)
- 2. Are the assets being properly managed?** - Who is managing the accounts; conflict of interest relationships (i.e. relative who gains commissions etc...) Have bank and investment account documents ready for review. PCI's need to be adequately trained to review/audit financial documents. (Hiring of Court Probate Examiners with accounting backgrounds is a supported suggestion.)

There have been suggestions for having credit checks on the conserved to see if changes have been posted. (*Note*: PCI's have discussed running credit checks on Petitioners during the initial investigations as well. The Internet makes this easily accessible and the costs can be minimum – [avg. \$39.00] and shifted to the petitioner.

3. **Is the conserved being medically cared for and is the care plan consistent with diagnosis/prognosis?** Check for missed or lack of medical appointments, over medicated, no powers to prescribe psychotropic medications, overall medical records review.
 4. **Interview of the conserved and any listed concerned family members/friends, without intervention from others.** This should include a review of the APS system and local law enforcement records to check for any lodged complaints. It is also critical to have adequate time to discuss the issues with family and friends.
3. **What is the appropriate role of the court investigator and other court personnel in preventing and deterring abuse?**

The question cannot be posed as whether this role is “appropriate.”

California W& I Code sections 15601 lists “care custodians” as mandated reporters of suspected elder abuse, while 15610.17 (t) defines care custodian to specifically include court investigators. Thus, it is clear; **PCI's are mandated reporters; requires the PCI to be involved in the “prevention and deterrence” of abuse.**

In addition, the court must take responsibility for the fact the “required review” mandate gives caring family members and friends the impression that in fact, the court is a case manager and thus will help prevent and deter abuse. This gives rise to their expectations. The required reviews are the only guaranteed check and balance system currently in place. (Note: APS/Law enforcement response is based on complaints being lodged.)

Some believe that the PCI role needs to be limited in the role of deter and prevention of abuse. They would advocate the PCI should only gather the relevant information and if necessary, feed the case out to appropriate community based organizations that perform case management duties, such as APS or other organizations who specialize in this field. There are some benefits to this approach, **but the court has always had the capacity to craft specialized court orders, seeking additional support from a CBO in any Conservatorship. Many of these CBO's have resources the court cannot offer.**

4. Whether court personnel have the requisite education and training to properly perform their jobs.
- **CALIFORNIA ASSOCIATION OF SUPERIOR COURT INVESTIGATORS (C.A.S.C.I.)**
 - Over 28 years of training services. The only known organized training for Probate Investigators.
 - Lack of participation from some counties.
 - Reports that some CEO's will not support training efforts ; budget shortfall cited.
 - Trainings consist of Annual Conference for statewide participation and Regional Trainings are held annually as well.
 - Trainings include education regarding accountings, medical training, court system processes, legal updates etc... / any topic related to both Conservatorships and Guardianships.
 - **CASCI is the only training available for in-depth education/training**, especially for “stand-alone” systems because the AOC does not offer Probate Inv. Training. Even for “joint” systems (Probate Investigators in the Family Court Services divisions), the AOC only recently began offering Probate training issues at the 2005 AOC statewide training; only included Guardianship Inv. Training.
 - *For PCI's who are in the “joint system” -- Guardianship Investigation training was initially offered at the 2005 AOC conference and I will co-present this year (2006 L.A. statewide) with Madera Superior Court Judge James Oakley and CASCI Board Member/FCS Director Diane Goodman of Amador County on “Nuts and Bolts” of a Guardianship Investigation.. This could also be done for Probate Conservatorship Investigations/Reviews.*
 - *CASCI has discussed the idea of a working partnership with a CJER committee just as the Family Law Mediators/Custody evaluators attend AOC sponsored Trainings through CFCC. CJER sponsored training could be offered under Probate and Mental Health, Family Law Education or the Collaborative Courts Education committees.*
 - **The issues involved in Conservatorships range from Accounting issues to very serious Medical issues. The need for training in the vast range of disciplines is obvious.**
 - Many PCI's have had some training/experience in perhaps one or some of the possible disciplines involved, but rarely are they experts in ALL fields without a need for further education.
 - CASCI has proposed mandatory education requirements for Probate Investigator positions. (“Grand-fathering” in current PCI's is supported.)
 - **As of May 2003, The Minimum Uniform Standards of Practice for Court Investigators adopted by CASCI** was scheduled to be drafted by the

Judicial Council to be implemented as a California Rule of Court. (Copy available for review upon request.) To date, this has not been implemented.

5. How courts can effectively review accountings.

Initially, many PCI's support more stringent accounting reviews and agree that the financial documents should be available for review within the first 6 months to 12 months of the Initial permanent Conservatorships. Again, RESOURCES cannot be ignored.

In addition, it is widely suggested the Court invest in either the hiring of Probate Examiners who specialize in this field or sub-contracting with such. Perhaps, the current PCI's may perform cursory reviews as an additional layer of protection. Regardless of the duties assigned, **all PCI's who will be mandated to review accounting documents need continued and mandatory TRAINING in this area.** Again, many PCI's have had some training/experience in accounting, but rarely are they experts who are assigned to only evaluate financial documents. In addition, the PCI's agree we need adequate time to perform proper reviews of complex financial documents if assigned this duty.

6. The appropriate role of the courts in providing assistance to self-represented litigants.

This issue has not faced much opposition from the PCI's. Many I have spoken with state this appears reasonable and we compare this with the current "Family Law Facilitator" model used in each county.

Also, *Penal Code Section 368: Elder or dependant adults; infliction of pain or mental suffering or endangering health; theft or embezzlement of property; penalties; definitions.* Discusses legislative intent. The code specifically states, "The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children...". One of the special protections provided for minor children is the Family Law Facilitator offices. This allows interested parties to seek immediate legal assistance in a child custody case (which may involve ex-parte petitions due to allegations of abuse and neglect). In some counties, parties are also assisted on Guardianship cases. Therefore, it would be logical that the courts also give assistance to family and friends attempting to petition or object to a Conservatorship in order to protect an elder or disabled adult.

With that said, I am highly aware that all of these suggestions and possible remedies cost MONEY. So unless the courts can be provided adequate funding by the State of California, the burden will be unduly placed on the courts under the already existing "tight" budget. As a court "team player", I am weary of any new mandates without MORE FUNDING.

Summary –

In summary, and for lack of a more appropriate phrase, the funding issue cannot be the “elephant in the room.” We cannot address new mandates without guaranteed earmarked funding for the Probate Courts.

I do propose, however, that if some of the current Guardianship cases in Probate Court are properly returned to the local CPS under Prb. Code 1513 (c) for further investigation and final adjudication in Juvenile Dependency court, some of the probate division resources being expended for Guardianship Investigations can be returned to the Probate Conservatorships cases.

While I am aware this is requesting the Courts Task Force to evaluate a very large complex issue, it is critical to consider this “drainage of resources” in order to properly evaluate the current resources/budget issue. We need to allocate our current resources more efficiently, especially if the new AB1363 requirements are mandated and funding is not guaranteed.

Another suggestion to help alleviate the staffing/funding issue would be to work with the California University and California State University systems and develop a “work study” program. Students in related fields (i.e. social work, nursing, gerontology, and accounting) could perhaps earn both units and small financial stipends by working in the Probate divisions.

Again, this will be another large task to undertake, but given the warnings that “funds” are short, we will need to get creative. After all, the elder and disabled adults we are working to protect are worth our best efforts. I would be pleased to discuss these issues further if necessary. Again, thank you for the opportunity to work with the A.O.C. Task Force.

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Family Law Mediator/Investigator
Probate Court Investigator**

- California State University, Fresno – B.A. Sociology 1991
- University of California - Hastings College of the Law, 1996
- Employed by Madera County Superior Court since 1997.
- Volunteer with nursing homes in both Fresno and Madera Counties.
- Guest presenter at 2005 A.O.C. Center for Children, Families and the Courts statewide conference regarding Grandparents Rights and Legal advice v. legal education. I will return to the 2006 A.O.C. C.F.C.C. statewide conference to co-present on issues of Custody Evaluations and Guardianship Investigations.
- May 2005 – Elected to the Board of California Association of Superior Court Investigators (C.A.S.C.I.)
- December 2005 - Working with Assembly Judiciary Committee on AB 1363