



# Court Effectiveness in Conservatorship Case Processing

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A REPORT TO THE LEGISLATURE

JANUARY 2008



JUDICIAL COUNCIL  
OF CALIFORNIA

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ADMINISTRATIVE OFFICE  
OF THE COURTS

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Judicial Council of California  
Administrative Office of the Courts  
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This report has been submitted to the California Legislature pursuant to Probate Code section 1458.

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## Executive Summary

In 2006, the California State Legislature enacted the Omnibus Conservatorship and Guardianship Reform Act of 2006 (“Omnibus Act”). The Omnibus Act imposes a number of new requirements for conservatorship case processing. In conjunction with this act, the Legislature enacted Probate Code section 1458, which directed the Judicial Council to report to the Legislature the findings of a court study measuring effectiveness in conservatorship cases. This report provides an overview of conservatorship case processing in California and the results of a multiphase study examining caseload statistics, operational differences between courts, staffing needs, and practice recommendations, among other things. The findings are based on data collected in a Three-Court Study of case practice and statistics and a structured focus group process known as a “Delphi Study” that developed time and staffing estimates related to conservatorship case processing. Among the findings in the report are the following:

- Approximately 5,600 general petitions for conservatorship were filed statewide in fiscal year 2005–2006.
- 1,615 petitions for appointment of temporary conservator were filed in FY 2005–2006 and 83.1% of these (1,342) were granted.
- As of June 30, 2006, there were 45,181 conservatorship cases under the control of the courts.
- Case-file review conducted in the first phase of the study allowed for the evaluation of more detailed measures of case processing activity. Data from a sample of over 300 cases reviewed in a three-court sample showed the following:
  - 83% of the sample of conservatorships of the estate or of the person and the estate were bonded.
  - During the study period 41.4% of the sample of conservatorship cases completed all required reviews within 120 days of the due date and 22.5% of the sample cases were missing investigation reviews.
  - During the period studied 76.2% of the sample of conservatorships of the estate or of the person and the estate completed accounting reviews within 120 days of the due date and 13% were missing accountings.
- The median total workload per year for each new filing of a conservatorship is currently 1,077 minutes, or 17.6 hours. The majority of the time required for establishment of a new conservatorship case is spent conducting the initial investigation (530 minutes).
- The total workload per year for each conservatorship under the jurisdiction of the court is currently 723 minutes, or 12.1 hours. The majority of the time that courts invest in oversight of each case under the court’s jurisdiction is spent conducting

reviews (296 minutes), followed by working up files for rulings on subsequent petitions and motions (102 minutes).

- The statewide staff need for processing the conservatorship caseload *prior to enactment of the Omnibus Act* was 357 FTEs, and about 11% **more** staff were needed than courts reported having *prior to the enactment of the Omnibus Act*.
- Strictly quantitative evaluations will not capture all components of case processing and could distort the true picture of court operations. These measures should be used as diagnostic tools to assist courts in managing their caseloads and identifying potential problems early in the life of a case.
- Reviews and accountings that occur after the expiration of statutory timeframes and can be seen in a quantitative review of the data may actually reflect active and rigorous oversight by the court rather than deficient oversight. In high-performing courts, failure to meet statutory timeframes is often the result of the court's close oversight of conservatorship cases and a constructive working relationship between the court and conservators.

The report findings relate only to workload and operations prior to the Omnibus Act. Research to assess the impact of the Omnibus Act of 2006 on both performance and resource needs continues as part of a long-term research plan. Ongoing research will involve the continued collection of appropriate data for internal and court-wide audits and the incorporation of a new conservatorship case weight into the Resource Allocation Study model to take into account the resources necessary for statutory compliance with the Omnibus Act.

## Introduction

In 2005, the Administrative Office of the Courts (AOC), Office of Court Research began a study of conservatorship case processing with the goal of: (1) identifying an appropriate standard of care for the courts to exercise in establishing and monitoring conservatorship cases and (2) evaluating the resources available to the courts to ensure that they meet the standard of care in processing these cases.

The AOC designed the Conservatorship Performance Study (CPS) as a multiphase study that would utilize both quantitative and qualitative assessment protocols. Each phase sought specific types of information that would contribute to the overall goal of establishing performance standards and measures.

In CPS Phase 1, also known as the Three-Court Study, the AOC collected case-level data from three courts: the Superior Court of San Francisco County, Superior Court of San Diego County, and Superior Court of Amador County. The case-file review focused on statutory compliance, including compliance with statutory time frames. Interviews with staff, including investigators, examiners, and probate attorneys, were also conducted in this phase to gain an understanding of how differing court practices might impact the analysis of the case-level data.

Phase 2 of the CPS sought to establish a baseline estimate of the staffing needed to meet statutory requirements in the processing and oversight of the court's conservatorship caseload. As part of this phase, a statewide survey was conducted to ascertain basic information on conservatorship caseload, including the volume of new conservatorship filings, the existing caseload, and the resources that courts currently devote to conservatorship case processing.

Phase 3, a structured focus group process known as a "Delphi Study," brought representatives from 12 courts together in a focus group to establish the median amount of time it takes to perform each case-processing activity associated with the statutory requirements of both the establishment and oversight functions prior to the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Stats. 2006, ch. 493; "Omnibus Act").

Baseline data on the workload required for case processing prior to the implementation of the Omnibus Act provide the foundation for ongoing work that will determine the workload associated with the new mandates. Using the data collected in Phase 3 of the study, median times were multiplied by caseload (Phase 2) to establish a conservatorship case weight. This weight was then used to estimate staffing need. In addition to establishing case-processing times, Delphi participants engaged in focus group discussions concerning practice variations and the impact these variations have on case-processing times.

This report details findings to date for each phase of the Conservatorship Performance Study in compliance with Probate Code section 1458, which states in pertinent part:

- (a) On or before January 1, 2008, the Judicial Council shall report to the Legislature the findings of a study measuring court effectiveness in conservatorship cases. The report shall include all of the following with respect to the courts chosen for evaluation:
  - (1) A summary of caseload statistics, including both temporary and permanent conservatorships, bonds, court investigations, accountings, and use of professional conservators.
  - (2) An analysis of compliance with statutory timeframes.
  - (3) A description of any operational differences between courts that affect the processing of conservatorship cases, including timeframes.
- (b) The Judicial Council shall select three courts for the evaluation mandated by this section.
- (c) The report shall include recommendations for statewide performance measures to be collected, best practices that serve to protect the rights of conservatees, and staffing needs to meet case processing measures.

#### I. Probate Conservatorship Caseload Statistics

The data reported in this report span January 1, 1999 through the end of fiscal year 2005–2006 (June 30, 2006), and thus do not capture case elements and statutory requirements imposed or altered by the Omnibus Act. Because many of the provisions of the Omnibus Act only became effective on July 1, 2007, even with full and immediate implementation at most less than one-quarter of the data could have been available for this report. The absence of funding made immediate and full implementation problematic in many courts; therefore no reliable data are available relating to the requirements imposed by the Omnibus Act.

#### **Statewide Caseload Statistics**

Because currently no statewide case management system is in place, and local systems capture data elements differently, basic information on conservatorship cases is not readily available for more than a handful of trial courts. Although Probate Code section 1458 requires an examination of only three courts, with the assistance of the courts the AOC was able to collect certain information on a statewide basis. The AOC conducted a statewide survey in 2006 to determine conservatorship caseload and the resources that courts currently devote to processing the associated workload.

The survey collected caseload information both to inform the Probate Conservatorship Task Force, established in 2006, in developing its recommendations for the Judicial Council and also to provide baseline data necessary for establishing conservatorship case weights. For the balance of the summary statistics required under Probate Code section

1458(a)(1) (bonds, investigations, accountings, and professional conservators), data are limited to the participants in the Three-Court Study as authorized by the statute.

Fifty-seven of the 58 superior courts responded to the statewide survey, although not every court responded to every question in the survey. Caseload data collected included:

- Number of permanent petitions for appointment of a conservator filed in fiscal year 2005–2006;
- Number of permanent conservatorships under the courts’ control (also referred to as being monitored) on June 30, 2006;
- Number of petitions for appointment of a temporary conservator filed in FY 2005–2006; and
- Number of petitions for appointment of a temporary conservator granted in FY 2005–2006.

Survey findings include:

- Approximately 5,600 general petitions for conservatorship were filed statewide in FY 2005–2006;
- 1,615 petitions for appointment of a temporary conservator were filed in FY 2005–2006 and 83.1% of these (1,342) were granted;<sup>1</sup>
- As of June 30, 2006, there were 45,181 conservatorship cases under the control of the courts.

### **Summary Statistics: Three-Court Study**

As part of the research design stage of the Three-Court Study, the AOC developed a data collection instrument to capture information on compliance with the mandates of the probate statutes. The instrument was pilot-tested in case file reviews of a small number of cases in the Superior Court of San Francisco County. Additionally, the AOC conducted interviews with the probate staff to learn more about the day-to-day court practice to help structure the survey instrument.

The finalized Three-Court Study component of the Conservatorship Performance Study is a fine-tuning of the original exploratory study conducted in San Francisco. The protocol included case-file review, evaluation of case management system (CMS) data, and staff interviews. The exploratory research concluded that all of these sources of data are necessary to establish a well-informed overview of court operations.

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<sup>1</sup> Forty-one courts were able to provide a count of the number of temporary petitions filed and granted during the survey period. These courts represent 56% of the total statewide conservatorship caseload.

The case-file review instrument allowed for the collection of useful information, required by the statutory mandate as well as additional data, and includes: (1) types of conservatorship filings; (2) whether courts are complying with procedural statutes, including timely completion of reviews and accountings; (3) profiles of proposed and appointed conservators; (4) bonding practices; (5) terminations; and (6) temporary conservatorships.

CMS data review captured data or documents that were missing in the files and allowed for review of minute orders, which often provide explanations for missing or late filings. The CMS data evaluation also provided other indicators of good practice. For example, one court studied often continues the filing of accountings for good cause after communication with the conservator. The CMS tracks these communications even though the information is not available in hard copies of the case file.

The information collected from the case-file review and CMS data analysis provided a foundation for discussions with the court management and conservatorship staff. The objectives of the interview process were to determine what operational practices facilitate or hinder strong oversight by a court in conservatorship cases, as well as to identify best practices and performance indicators. In addition, the interviews provided insight into data anomalies encountered in the later analysis. This will be discussed further, below.

The three courts selected for the study were the Superior Courts of Amador, San Diego, and San Francisco Counties. A number of considerations went into the selection. The Superior Court of San Francisco County was included because data collection had already begun in that court, and it represented a medium-sized court. It is also a court known for its exemplary work in probate conservatorship cases, which aligned with the CPS goal of identifying best practices. The Superior Court of San Diego County was selected because it is also cited as employing good operational practices in conservatorship case processing, and it represented a large court. Lastly, the Superior Court of Amador County represents practices in small courts. In addition to providing information from the perspective of large, medium, and small courts, the selection of these three courts also provides some geographic diversity that was anticipated to be a useful element in the evaluation.

The total caseload from these courts is approximately 4,300 and accounts for approximately 11% of all conservatorships in California. Three hundred and twenty open conservatorships filed between January 1, 1999, and June 30, 2006, from the three courts were reviewed using the previously described case-file review instrument, CMS analysis, and staff interview protocol. The case-file review sample represents 7.5% of the total caseload for these courts. The following summary results are drawn from this sample.

## Summary findings: Three-Court Study

Table 1. Temporary Conservatorships

	Total	%
Total General Petitions Filed	320	100.00%
Temporary Petitions Filed	211	65.94%
Temporary Petitions Granted	204	63.75%
% Granted to Filed Temporary Petitions		96.87%
Number of Temporary Conservatorships With Bond Ordered	151	74.02%

The number of temporary petitions filed as a percentage of the number of general petitions filed and granted is higher than the average reported in the 2006 statewide survey (in the statewide survey, 50.8% of all general petitions filed included a temporary petition, and 83.1% of temporary petitions filed were granted). The difference between the findings in the Three-Court Study and the statewide survey appears to be due largely to the higher rate of temporary petitions filed in both the Superior Court of San Francisco County (86% filed; 97% granted) and the Superior Court of Amador County (68% filed; 93% granted) than in most other trial courts.

The reason for the higher temporary filing rate is unknown in San Francisco. However, in Amador County approximately 60% of the conservatorship petitions are filed by the Public Guardian close to the end of the proposed conservatee's life. In most of these cases, it is reported that the proposed conservatee is suffering from a debilitating condition, has no family, has become indigent, and is transferred to, or is already a resident of, one of the nursing homes in Amador County. Thus, exigent circumstances that necessitate a temporary conservatorship appear to exist.

Table 2. Type of General Petitions Filed

	Total	%
Total General Petitions Filed	320	100.00%
Both Person and Estate	233	72.81%
Person Only	52	16.25%
Estate Only	31	9.69%
Unknown	4	1.25%

Conservatorships of both the person and estate are the most common type of conservatorship sought and granted in the courts studied, although San Diego had a considerably lower rate (54% Both) than San Francisco (87% Both) and Amador (90% Both). Work carried out by the Judicial Council's Probate Conservatorship Task Force and information gathered in the Delphi focus group confirm that the most often filed and granted conservatorship type is for both the person and the estate.

Table 3. Type of Conservator Appointed

	Total	%
Total General Petitions Filed	320	100.00%
Private Professional	65	20.31%
Public Guardian	92	28.75%
Spouse	6	1.88%
Other Family	137	42.81%
Friend	6	1.88%
Other	5	1.56%
Unknown	10	3.13%

The use of private professional conservators may be overrepresented in this report. The Superior Courts of San Francisco and San Diego Counties have established good working relationships with the local associations of private professionals, which may not exist in other counties. These associations conduct conservator training workshops for the courts and often serve as temporary or successor conservators when the current conservator resigns or is suspended or removed for misconduct. Professional conservators are found in 29% of the conservatorships in San Francisco and 17% of the conservatorships in San Diego compared to none in Amador.

Table 4 suggests how the local jurisdiction may impact the profile of conservatorship cases. For example, the table shows that family members serve most often in San Francisco and San Diego, with San Francisco's percentage of family member conservators much lower than San Diego's. Self-represented conservators are more likely to be family members or friends. The higher percentage of family members in San Diego also means a higher percentage of self-represented conservators. Self-represented conservators often fail to file accountings on time or file incomplete accountings, which delays the review process. There may be other explanations for this difference. At this time, however, the reasons for the differences in conservator profiles between the study courts are unknown.

Table 4. Conservators

	San Francisco	Amador	San Diego
Private Professional	29.4%	0.0%	17.4%
Public Guardian	29.4%	57.5%	20.1%
Spouse	0.7%	7.5%	1.4%
Other Family	31.6%	32.5%	56.3%
Friend	1.5%	0.0%	2.8%
Other	2.2%	0.0%	1.4%
Unknown	5.9%	2.5%	0.7%

Table 5. Bond Frequency in Permanent Conservatorships

	Total	%
Total Both/Estate Only Conservatorships	264	100.00%
Total w/Bond	219	82.95%

The requirement of bonding is only an issue in conservatorship cases exclusively of the estate or in cases in which both the person and the estate are the subject of the conservatorship. Of the 320 cases reviewed, 264 were either conservatorships of the estate alone or of both the person and estate. All three courts regularly require conservators to file a bond, with 83 percent of the cases in the sample having a bond. Bonds ranged from a low of approximately \$10,000 to a high of several million dollars.

## II. Compliance With Statutory Time Frames

Prior to the enactment of the Omnibus Act, conservators for conservatorships of both the person and the estate, and of the estate only, were required by law to file an accounting one year after establishment and biennially thereafter unless waived by the court. Courts were required to conduct reviews of all conservatorships one year after establishment and biennially thereafter. Therefore, an assessment of compliance with statutory mandates would require an analysis of case activity over a period of time. The sample from the Three-Court Study included conservatorships filed between January 1, 1999, and June 30, 2006, and was used to analyze available data on whether accountings and reviews were performed in a timely manner.

The following table shows the reviews and accountings that would be expected for cases filed during each year of the study.<sup>2</sup>

Table 6. Mandated Reviews

		Review Event Years															
		1999		2000		2001		2002		2003		2004		2005		2006	
Year of Establishment	1999	I		R	A			R	A			R	A			R	A
	2000			I		R	A			R	A			R	A		
	2001					I		R	A			R	A			R	A
	2002							I		R	A			R	A		
	2003									I		R	A			R	A
	2004											I		R	A		
	2005													I		R	A
	2006															I	
I=Initial Investigation																	
R=Investigation Review Completed																	
A=Accounting Filed for Review by the Court																	

For this study, timeliness was assessed only for conservatorships with all mandated reviews and accountings completed. A “timely review” was defined as one that occurs on

<sup>2</sup> Conservatorships of the person only would not generate accounting filings. In these conservatorships, an initial investigation, a first-year review, and a minimum of two biennial reviews would be expected for conservatorships established in 1999, for example.

or within 60 days after the establishment anniversary date, or on or within 120 days after the anniversary date.<sup>3</sup>

It is important to note that all study courts informed the AOC at the outset of data collection that they had, at some point during the study period, fallen behind on reviews and accountings. The courts cited lack of staff resources, particularly investigators, as the primary reason that they had trouble completing all mandated reviews. These backlogs due to staff deficiencies do show up in the data. However, all courts also recognized and addressed the backlog at a later time and worked to eliminate the problem.

In most cases the courts contracted with outside resources such as attorney auditors or volunteer social workers to identify cases in which reviews were not conducted. The courts then prioritized these cases for review to bring them back into compliance. Courts also temporarily redirect staff resources to audit the inventory for terminated cases. In most instances this involves a search of social security databases to identify deceased conservatees to officially remove them from the court docket.

Table 7a. Investigation Review Statistics, Total Sample

	Total	%
Total conservatorships	320	100.00%
Total with waived reviews	2	0.63%
Total conservatorships terminated before the 1st review became due	81	25.31%
Total remaining conservatorships	237	74.06%

Table 7b. Investigation Review Statistics With Time Frame Analysis

	Total	%
Total conservatorships with reviews	237	100.00
Total conservatorships with all reviews completed within 60 days	58	24.47%
Total remaining conservatorships with all reviews completed within 120 days	40	16.88%
Total conservatorships with all reviews completed but with one or more reviews occurring after 120 days	67	28.27%
Total with missing reviews	72	30.38%

<sup>3</sup> The Three-Court Study utilized a number of data collection methods. In some instances, data “dumps” and registry reviews were the primary data sources. These repositories do not list the dates interviews are conducted but do list the date reports are filed. The 60-day and 120-day time frames for analyzing the timeliness of reviews were selected based on observations made in the courts in which file reviews were conducted. That is, most reports are filed within 120 days of the anniversary date. The same time frames for accounting reviews were used for similar reasons: Once an accounting is filed, it is not unusual for the examiner to request other information, causing delays in the final reporting.

The study found 72 instances of missing reviews. Of these, 53 files were missing only one review and 3 were missing reviews because the conservatee was missing or had consented to the conservatorship.

Some of the missing reviews relate to the cutoff date of the study sample. If a review was due in May or early June 2006, it may not have been completed by the time of the case-file review.

Another reason for missing reviews relates to the time it takes to close a file. It can take a few years after the death of the conservatee to close the file because of delays surrounding the final accounting. As a case makes the transition from a conservatorship to a decedent's estate, there will be no need for conservatorship reviews, but a whole different set of processes and actions related to the case will be necessary to finalize the estate before the conservatorship case may be disposed. In other instances, however, the court may simply fail to close the file after death of the conservatee. In several cases studied, the court received the notice of death but failed to close the file. This happens most frequently with conservatorships of the person. The conservatorship appears open in the CMS but is actually terminated by operation of law. In about 35% of the conservatorship cases studied, the conservatee had died but the file remained open.

The same situation can occur in conservatorships of the estate that are missing a request for final discharge. This request discharges the conservator and closes the file. If the request is not submitted by the conservator, the case remains open in the court's case management system even after all accountings have been finalized.

The study found 67 (28.27%) of the cases had one or more reviews completed 120 days or more after the anniversary date. Of these 67 cases, 48 (72%) had only one review that was late and approximately 37% had all reviews completed within 6 months of the anniversary date.

Late and missing reviews often occur when a conservator resigns or is removed and a successor instated, or when a conservatorship is established while a trustee of a living trust is replaced. Of the cases studied, 17 (7%) fell into one of these two categories.

While time standards were not always met in cases in which all the reviews were completed, further examination revealed that delays sometimes reflected a *higher* level of court oversight rather than lower. CMS data show that accountings were often "late" because the court granted extensions on the filing to allow the conservator to gather court requested supporting documentation from outside financial agencies. These cases appear to define good oversight more than rigid adherence to time standards without regard for the completeness of the files or readiness to proceed does. In other words, adherence to time standards by itself does not necessarily correlate with quality case processing in this case type.

The observation that some delays reflect good oversight illustrates the value of conducting qualitative interviews. The interview process also revealed a practice in one study court in which accounting reviews are coordinated with review investigations. Simultaneous submission of the two reports makes it easier to spot anomalies in one or the other of the filings. For instance, if an examiner of the accounting notices a large expenditure for clothes, he or she may then ask the investigator to confirm the purchase at the investigation review. Coordination of mandated reviews may result in a delay in performing the mandated investigation review, but can also provide better protection of the conservatee’s interests.

Table 8a. Accounting Statistics, Total Sample

	Total	%
Total conservatorships for accounting analysis	247	100.00%
Total conservatorships with waived accountings*	41	16.60%
Total remaining accountings	206	83.40%

\* Some conservatorship cases had both submitted accountings and subsequent waiver of further accountings but are counted with those with waived accountings from the outset of the case.

Table 8b. Accounting Statistics With Time Frame Analysis

	Total	%
Total conservatorships	206	100.00%
Total conservatorships with all accountings filed within 60 days	87	42.23%
Total conservatorships with all accountings filed within 120 days	70	33.98%
Total conservatorships with all accountings, but with one or more accountings filed after 120 days	15	7.29%
Total conservatorships with missing accountings	34	16.5%

In the analysis of time frames for accountings, the study found that time standards were not always met. Although it is the *conservator* who is obligated to file accountings with the court on time, it is still the responsibility of the court to take appropriate action to ensure that delinquent accountings are prepared and filed. Combining the category of cases in which all accountings were filed within 60 days and the category of cases in which all accountings were filed within 120 days, the data show that 76% of all accountings in cases without missing accountings are filed within 120 days of the anniversary date. This suggests that courts are communicating with delinquent conservators to bring them into compliance.

There are several reasons why a case may have a missing accounting. Accountings that were due within a few months of the case-file review cutoff date may simply be late instead of missing. This occurrence is especially notable in San Francisco. Over half of

the missing accountings were due two months prior to the cutoff date for data collection. If these were excluded from the count, it would lower the actual “missing” rate to 12.5%.

Individual court practice may also drive the data reflecting late accountings. The Superior Court of San Francisco County regularly grants continuances for accountings if the conservator contacts the court and provides a reasonable basis for the extension. The reason behind this practice is the court’s belief that a strong working relationship between the court and the conservator better serves the needs of the conservatee. The corollary to this accommodation, however, is that the court does not hesitate to issue an order to show cause for removal of the conservator and remove conservators if they fail to file an accounting without contacting the court for an extension.

It should be noted that threatening to remove conservators who are out of compliance with technicalities may not be feasible in all jurisdictions. In counties with an understaffed Public Guardian Office or few professional conservators, removing a conservator may be difficult because there is no one to step in as a successor. Regular status conferences and imposition of fines are more often employed by courts in these counties to ensure timely accounting filings.

A sale of the conservatee’s home in the first year of the conservatorship also often delays the filing of the first accounting. This is a frequent occurrence during the first year of a conservatorship. If it is a lengthy sale process, a first accounting may not be filed until well into the second year of the conservatorship. This pushes back the due date for the second and, consequently, subsequent accountings. In other words, if a conservatorship was established in 1999, one would expect to see four accountings filed between establishment and the June 30, 2006, study cutoff date (see Table 6 above). Any delays in filing an accounting due to the sale of property may result in a pushback of subsequent due dates that would put the filing date for the fourth accounting beyond the study cutoff date. Consequently, only three accountings would have been filed in the study time period, but there would not be a missing accounting. Disputed accountings, especially those occurring in the first year of the conservatorship, may create the same results.

Lastly, courts often waive accountings for Public Guardian conservators even though the file does not always contain a formal waiver of the next accounting. The request for waiver occasionally appears in the accounting petition, and in these incidences the waiver was coded on the review instrument. More often, however, a request for waiver of accounting will come in an ex parte petition. The case file review did not collect ex parte data, and consequently, some of the missed accountings could be waived accountings.

### III. Statewide Performance Measures, Best Practices, and Staffing Needs to Meet Case-Processing Standards

#### **The Development of Statewide Performance Standards**

The courts in California perform two distinct case-processing functions in conservatorship cases: evaluation during the establishment process and monitoring and evaluation of the conservatorship after establishment. Apart from the statutory requirements for accountings and reviews in these cases, there is no definitive performance standard for these functions, and little precedent is available for developing standards for this case type. The Three-Court Study provided an opportunity to learn more about how courts interpret and implement probate laws, especially those pertaining to evaluative and oversight requirements, as well as to determine (1) data elements that would assist in case management, (2) the impact that variation of practice has on data analysis, and (3) case-processing practices that appear to be common among courts.

Operational differences among courts are perhaps the greatest obstacles to establishing performance standards. A range of factors drives the variations in practice, many outside the court's control, such as local demographics, technology, or practices of the Public Guardian. All create unique environments that differ from court to court.

For example, courts vary in their enforcement practices for remedying conservator non-compliance. A court that immediately removes any conservator who does not comply with orders will have a higher occurrence of successor petitions. Successor conservators must go through the same rigorous scrutiny as proposed conservators at the initiation of the conservatorship. The process of appointing the successor will cause a shift in the timing of the accountings and the subsequent reviews. Analysis of timeliness in these courts will erroneously suggest that a court is not meeting statutory requirements in comparison to courts that put a greater emphasis on compensation reductions to force compliance.

The use of the trial process will also affect performance standards. Some large courts have docket loads that make it difficult to resolve more complex issues in probate hearings. In these courts, both short- and long-cause matters are sent out to other departments for resolution, which can be lengthy and can result in delaying completion of mandatory oversight requirements. Trial-related delays may also be related to the culture of the local bar and their willingness or preference to take an issue to trial rather than resolve it in a less formal hearing process.

The use of trusts has an impact on the accounting processes in many courts. A common situation involves the establishment of a conservatorship to protect the conservatee's assets while an outside fiduciary corrects the trust defects or moves to replace the trustee. The conversions and corrections of trusts present the court with unique demands. For example, the coordination with financial institutions and trustees will affect the timeliness of accountings due under the statutes. This does not mean that the court is not complying

with the requirements, but rather that the process of the trust establishment or correction precludes the finalization of the accountings within statutory time frames.

Many counties have a large number of conservatees who have relatives who live in states other than California or in foreign countries. Providing proper notice of court action to, and coordinating with, parties in other states and countries has a significant impact on the timeliness of all court processes. All relatives have the opportunity to review and dispute investigation findings, accountings, and court rulings. Long-distance location of interested parties and relatives often leads to continuances necessitated by communication difficulty. This situation is particularly true in courts in Southern California, as well as courts located in seats of international industry.

Differences in the social makeup of counties will also impact a court's management of a conservatorship. For example, many inland counties are experiencing a meteoric rise in the use of methamphetamine. This drug in particular has caused a substantial increase in the number of conservatorships in these counties due to its degenerative effects on mental health. However, the difficulty is that these conservatees often come to the court through the criminal justice system and frequently reoffend and are rearrested during the course of the conservatorship. The probate court then has to coordinate all activities either through the probation office, another arm of the court, or other mental health organizations. In addition, if a drug-addicted conservatee commits a subsequent jailable offense the timeliness of the statutory requirements can be affected due to incarceration. Lastly, because these conservatees are often younger and more mobile than a typical elderly, incapacitated conservatee, they often simply disappear from the system by leaving the county of their own volition. The court's ability to monitor these conservatees is dependent not only on conservator and conservatee responsiveness, but also on the ability to communicate with other justice partners to track the conservatees as they move in and out of other jurisdictions.

The above observations did not come out of the Three-Court Study, but rather came out of conversations and observations during statewide conferences and task force discussions. Almost without exception, every court has at least one characteristic that is unique to their operations and that has an impact on their performance in comparison to other, similarly situated courts.

The variation of practice among all courts and even among the three studied courts makes it inadvisable to extrapolate findings in these courts to the rest of the courts in California. It is necessary to take all aspects that bear upon court operations into account when formulating performance standards. Standards need to be flexible enough to take into account necessary and appropriate differences that drive operational variations.

While it would be incorrect to suggest that the findings here can be applied wholesale to all of the courts in the state, certain data elements should be collected, nonetheless, by all the courts, including baseline data for each case type and a general count of mandated activity. These data can serve as diagnostic tools for courts to better understand how to adapt local practice to meet statewide requirements.

Findings on development of conservatorship performance standards are discussed below.

**1. Baseline and ongoing data collection will facilitate systemwide oversight.** It is essential to collect baseline and ongoing data for this case type. Ongoing evaluation of the conservatorship system must begin with increasing the availability of descriptive baseline data. As a start, the accurate collection of the following information is critical:

1. The number of conservatorships currently under the court's jurisdiction;
2. The number of petitions for conservatorship and temporary conservatorship filed;
3. The number of petitions for conservatorship and temporary conservatorship granted and date of order; and
4. The number of conservatorships that terminate.

This type of baseline information is necessary both to gauge the scope of the courts' workload, as well as to track changes in filing trends that will affect the courts and the handling of these cases. This will be useful in flagging courts that may need to conduct a further detailed self-audit of internal operations.

In addition, a long-term reliable data collection system will allow for the forecasting of filing trends, expected court clearance rates, and caseload growth rates, thus allowing the courts to better manage the expected increase in conservatorship filings as the baby-boom generation ages.

**2. Data collection on the mandated events performed will facilitate systemwide oversight.** The primary purpose for collecting event data is diagnostic. Conservatorships involve important fundamental rights and freedoms, which necessitate scrupulous oversight by court personnel. The ability to assess compliance with the necessary and mandated activities and the use of staff and financial resources will enable court executives and judicial officers to better utilize those assets to ensure the best service to the public. It also will allow for a better assessment of resource needs at the state level. Event data should include the following:

1. Number and timing of investigations performed on general petitions
2. Number and timing of investigations performed on temporary petitions
3. Number and timing of follow-up investigations performed on temporary petitions
4. Number and timing of inventory and appraisals (I&A) filed
5. Number and timing of annual reviews performed
6. Number and timing of status reviews performed
7. Number and timing of annual accountings performed
8. Number and timing of biennial accountings performed

**3. All assessment protocols must include a qualitative component to identify effective evaluation and oversight practices.** Strictly quantitative evaluations will not capture important components of case processing and may even distort the true picture of

court operations. As discussed above, noncompliance with statutory time frames that can be seen in a quantitative review of the data may actually reflect active and rigorous oversight by the court rather than deficient oversight. Any quantitative data element must be evaluated in relation to each individual court process to provide an accurate picture of court performance.

**4. Bundles of related data elements rather than individual case events may be the best indicators of effective court practice.** During the course of the Three-Court Study, the AOC found that individual, discrete data elements within a case were not especially helpful for assessing the quality of performance in conservatorship case processing. For instance, a raw tally of the number of investigations, accountings, and petitions does little to inform the court about anything other than the workload associated with a typical case. It does not speak to whether court operations effectively protect the conservatee. The AOC has identified several relationships among internal case events that indicate an effective protective process. The proper diagnostic tool will allow courts to analyze these types of case events in relation to one another.

For example, conservatorships often involve the sale of real property, which infuses a large sum of money into the estate. In response, the court should soon thereafter increase the conservator's bond requirement to protect these newly liquid assets from possible misappropriation. If a court has a means to collect these data elements, it can then query its own case management systems, calculate the average frequency at which these events and filings coincide, and establish protocols for ensuring that bonds are revalued following the sale of real property. The information is useful as a diagnostic tool to assess the court's level of due process protection in circumstances that open a conservatee to possible financial abuse. It will also highlight an area for improvement should a court find that its operations are underperforming in this area.

Petitions for exclusive medical authority provide another example. At a minimum, a conservator should file a capacity declaration along with the petition for medical authority. The capacity declaration is an extensive medical evaluation by the conservatee's physician with a full assessment of the conservatee's capacity to make informed medical decisions. Going beyond this outside evaluation, some courts appoint independent counsel to represent the conservatee's interest during the course of the court's decision on the matter. Therefore, this bundle of protective relationships consists of the petition, the capacity declaration, and an order appointing counsel. If the case management system collects this event data, courts can run a diagnostic frequency query to assess how often these appear together and, thus, how well they are responding to petitions that have a significant impact on the conservatee's personal rights.

Due to the lack of a statewide case management system and the limitations of some of the current cases management systems being used in the courts, this type of relational analysis can only be accomplished at the individual court level through detailed case-file review and analyses of case management system information. A diagnostic audit of this measure would be performed if a court's baseline statistics appear out of the ordinary or on an intermittently scheduled basis as part of a court's normal housekeeping practices. It

may be possible under the statewide case management system that is currently being developed to run these types of diagnostics for all courts.

### **Resource Needs to Meet Statutory Requirements**

In 2005 the Judicial Council approved the use of the Resource Allocation Study (RAS) model to identify underfunded courts and supplement their baseline budgets with funding derived through application of the state appropriations limit (SAL). Due to data limitations, the model approved in 2005 lumped all probate matters together, including conservatorship cases along with decedents' estate filings, trusts, and guardianships.

To begin assessing the resources needed to meet statutory compliance in conservatorship cases, the AOC selected 12 courts for participation in a full-day Delphi focus group (Phase 3 of the CPS) to discuss case processing in greater detail and to establish time estimates related to case processing. The AOC provided a data collection instrument to each of the 12 Delphi courts prior to the focus group session (see Appendix I: Delphi Study Instrument and Instructions). The instrument contained a listing of specific functions and tasks associated with conservatorship case processing. These functions and tasks were grouped by staff positions—clerical, investigators, examiners, and attorneys. Additionally, the instrument was divided into two workload sections paralleling the two phases in conservatorship case processing: establishment and under the court's control/monitoring. Courts provided a time and frequency estimation for each of the listed tasks, based on their individual court practices.

The Delphi focus group then used the task-specific time estimates provided by the courts as a starting point to discuss case management practices and reach consensus on how much processing time these cases demand on average. During a full-day focus group, 35 representatives from the 12 courts, including clerks, investigators, examiners, attorneys, and probate supervisory staff, discussed the reasonableness of the median times, identified differences in their courts, and made adjustments based on the consensus of the participants. The time estimates, in conjunction with a survey to ascertain filings and case inventory information, were used to estimate statewide staffing needs for conservatorship case processing.

Part 1 of the Delphi Study has been completed, and Part 2 is in process. Part 1 developed baseline case-processing time estimates prior to the enactment of the Omnibus Conservatorship and Guardianship Reform Act of 2006. Part 2 of the Delphi Study will incorporate the increased workload associated with the Omnibus Act. As noted earlier in this report, many of the requirements of the Omnibus Act only became effective July 1, 2007, and without funding there have been challenges to fully implementing its provisions. As a result, the remainder of the study will be completed in 2008 after all courts have developed appropriate operational protocols to effect full implementation of the act.

**Preliminary findings.** The drivers of conservatorship workload in the trial courts are the number of new filings and the number of cases under the jurisdiction of the court. Multiplying the median Delphi time estimates for each task by the workload drivers

results in a workload estimate for each court, expressed in minutes (see Appendix II: Delphi Study—Time Estimates). The Delphi time and staffing estimates are as follows:

- The median total workload per year for each new filing of a conservatorship is currently 1,077 minutes, or 17.6 hours. The majority of the time required for establishment of a new conservatorship case (530 minutes) is spent conducting the initial investigation.
- The total workload per year for each conservatorship already under the jurisdiction of the court is currently 723 minutes, or 12.1 hours. The majority of the time that courts invest in monitoring of each case under their jurisdiction is spent conducting reviews (296 minutes), followed by working up files for rulings on subsequent petitions and motions (102 minutes).
- Using these case weights, the statewide staff need for processing the conservatorship caseload *prior to enactment of the Omnibus Act* was 357 FTEs.
- Compared with staff resources reported by the courts for processing conservatorship cases, the case weights estimated that about 11% **more** staff were needed than courts reported having *prior to the enactment of the Omnibus Act*.

Again, the time estimates reported as of this writing reflect the median amount of time that courts devoted to conservatorship case processing *prior* to the passage of the Omnibus Conservatorship and Guardianship Reform Act of 2006. These estimates do not yet include the increase in workload under the act. Follow-up work will be conducted in the spring of 2008 to incorporate time estimates for the additional workload related to the new legislation.

### **Best Practice Recommendations**

In 2006, the Judicial Council created the Probate Conservatorship Task Force. An important charge of the task force was to make best practice recommendations. The task force report and recommendations were approved by the Judicial Council in October 2007. Several of the report's 85 recommendations correspond to the promising practices observed in the Three-Court Study or discussed with courts participating in the Delphi Study/focus group, and are described below. As noted in the task force report, some of these recommendations will require additional resources and cannot be implemented until those resources are provided. Upon adoption of the report, the Judicial Council directed that appropriate action be taken to implement the report's recommendations, including those described below.

### **Temporary conservatorships**

*1. Review of report.* A temporary conservatorship of a person should not be established before the trial court reviews 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 (no notice) appointments.

2. *Ex parte appointment follow-up hearing.* In cases where there is an ex parte appointment based on allegations of substantial harm to the proposed conservatee, there must be a follow-up hearing within five court days or a procedure for calendaring a court review on two days' notice, with notice to second-degree relatives. Setting review hearings 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.

3. *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 whenever possible.

### **Establishment of general conservatorships**

1. *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 prior to 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 five days prior to the hearing should be strictly enforced by the courts. The practice of accepting oral reports at hearings should be discouraged. If possible, courts should make a practice of continuing hearings when reports are not timely filed, so that court investigators and examiners have an opportunity to review the reports and advise the court prior to the hearings.

2. *Inventory and appraisal monitoring.* Each court should establish monitoring procedures to ensure that the inventory and appraisal (I&A) 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 I&A, or by an internal monitoring system. In either event, on the failure to file an I&A, the courts should follow the procedures found in Probate Code section 2614.5 and issue an appropriate order to show cause (OSC). 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 OSC would clearly not be appropriate. The assets of conservatees are at the greatest risk during the first 90 days of a conservatorship, so requiring the timely filing of the I&A will help deter loss.

3. *Care plan requirement.* Each court should require the submission of a care plan. 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.

4. *Uniform system of accountings.* The courts should create and adopt a uniform system of accountings. 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 filed accountings. In drafting a uniform system of accountings, it is important to note that the majority of estates are small, and most conservators are not professionals. Thus, the accounting system should be simple and understandable. To that end, courts should additionally consider the production of accounting templates that are compatible with commonly used computerized accounting programs.

5. *Minimum visitation in 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 conservatorship of the person cases and should be responsive to the conservatee who may wish more contact with the conservator.

6. *Court investigator visit required prior to 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 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 only be waived at the discretion of the court in emergency situations.

7. *Conservatee review of accountings.* Whenever possible, and if the conservatee has the requisite capacity, the court investigator should review the accounting with the conservatee to verify specific purchases and expenses.

### **Termination of conservatorships**

1. *Out-of-county transfer process.* A transferring court should set a status hearing within 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.

## Conclusion

The Omnibus Conservatorship and Guardianship Reform Act of 2006 provides for a heightened level of oversight by courts in conservatorship case processing, including more investigations and stricter standards for accountings. It is the role of the judicial branch to specify the methods of case processing that will be most effective in achieving the legislative goals of protecting the due process rights and the quality of life of conservatees.

In its efforts to achieve performance standards that provide the best possible protection of the rights of elders or persons with disabilities, the AOC is employing a number of evaluative processes. First, it assessed the success of current court practices throughout the system, using case-file reviews, operations analyses, and interviews with key staff. Focus groups of staff representing diverse courts were then asked to (1) determine whether these identified practices can be effective universally, (2) define the exact components of an effective practice, and (3) provide reliable estimates of time and staff levels necessary to achieve these standards. The compilation of this work resulted in the aforementioned findings and recommendations.

The findings, however, relate only to workload and operations prior to the Omnibus Act. Research to assess the impact of the Omnibus Act of 2006 on both performance and resource needs continues as part of long-term research plan. Ongoing research will involve the continued collection of appropriate data for internal and court-wide audits and the incorporation of a new conservatorship case weight into the Resource Allocation Study model to take into account the resources necessary for statutory compliance with the Omnibus Act.

# **Appendix I**

## **Delphi Study Instrument and Instructions**

Superior Court of \_\_\_\_\_ County.

Your Name \_\_\_\_\_

		How long does it take to perform this task (in minutes)	Rate of Occurrence	In what % of cases does the event occur?	When the event occurs, how often does it occur?
<b>Part I: Conservatorship: Establishment</b>					
<b>New Filings (Include in processing time both temporary and permanent petitions)</b>					
<b>A Opening New Files Case Processing-Clerical</b>					
Court Clerk (General File)					
1	Receive & review documents, assign case number, stamp, collect fees, route to/do data entry				
2	Update case registers and indexes: record required data regarding parties, documents and events in CMS				
3	Assemble case: create files, add documents to files, and route/shelve files				
4	Misc. counter services: provide information to petitioners/public, duplicate and conform copies, provide forms and/or direct customers.				
5	Other activities: Reciprocal, Phones				
Court Investigator Clerk (Confidential File)					
6	Receive & review documents, update registers and indexes				
7	Assemble confidential file: create files, add documents to files, and route/shelve files				
8	Other activities (only activities related to opening the file)				
<b>Pre-Establishment Case Processing</b>					
<b>B Pre-Establishment Case Processing-Clerical</b>					
9	Provide notices to parties of necessary court dates and requirements, including form notices linked to calendars, custom notices to individuals, and notices of order appointing counsel				
10	Court-appointed attorney processing				
11	Filing of subsequent documents and related clerical				
12	Other activities:				
<b>C Initial Investigation on Permanent Petition</b>					
Investigator Functions					
13	Plan and schedule interviews				
14	Conduct review investigation; review pleadings				
15	Prepare investigator reports				
16	Other activities: APS referrals, consult with judicial officer and/or attorneys; phone calls				
Clerical Functions					
17	Related clerical work: CLETs, mailing, prepare assessments, reciprocals (DO NOT include opening file)				
<b>D Investigations Pursuant to Temporary Petitions</b>					
<b>E Mediation / Arbitration</b>					
18	Formal Mediation/Arbitration-- clerical				
19	Informal Mediation/Arbitration-- staff other than clerical (attorney, investigator, examiner)				
<b>F Ex Parte Petitions (other than Temporary Petitions)</b>					
<b>Calendar (Establishment)</b>					
<b>G Calendar--Temporary Petitions--Examiner/Attorney Functions</b>					
20	Review case files prior to establishment hearing/trial, ensure required actions are complete and information needed by the court is available and conforms to court policy, and statutory requirements re: due process have been met.				
21	Prepare probate notes/Consult with Judicial Officer				

<b>H Calendar--Permanent Petitions</b>				
Examiner/Attorney and/or Investigator Functions				
22	Review case files prior to establishment hearing/trial, ensure required actions are complete and information needed by the court is available and conforms to court policy, and statutory requirements re: due process have been met. Monitor readiness of parties for hearings/trials, confirm appearances; notify parties prior to hearing/trial about missing/non-compliant forms and information.			
23	Prepare probate notes/Consult with Judicial Officer			
Clerical Functions				
24	Assign cases to regularly scheduled calendars, produce calendars, publish and post calendars.			
25	Locating and pulling files			
26	Other activities: Handling Continuances			
<b>Courtroom</b>				
<b>I Hearing on Establishment on Temporary Petition</b>				
27	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support			
<b>J Hearing on Establishment on Permanent Petition</b>				
28	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support			
29	Investigator/Examiner Appearance			
<b>K Trial on Establishment on Permanent Petition</b>				
30	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support			
31	Manage Exhibits (when trial is requested)			
32	Juror Management (when jury trial is requested): create juror source list; prepare summons; manage juror reporting; payment; stats.			
33	Investigator/Examiner Appearance			
34	Other activities: Settlement Conferences			
<b>Judgment/Order on Establishment of Permanent Conservatorship</b>				
<b>L Judgment/Order on Establishment of Permanent Conservatorship</b>				
35	Maintain records/process paperwork related to judgment (e.g., issue Letters)			
36	Record essential data regarding parties, due dates on I&A and first accounting, etc.			
37	Other activities: Examiners/attorney review of orders submitted right after hearing.			



<b>G</b>	<b>Mediation / Arbitration</b>					
	20	Formal Mediation/Arbitration--Clerical functions				
	21	Informal Mediation/Arbitration--Examiner/Investigator/Attorney functions				
<b>H</b>	<b>Ex Parte Applications Processing</b>					
<b>I</b>	<b>Special Investigations Ordered by the Court</b>					
<b>J</b>	<b>Special Accountings Ordered by the Court</b>					
<b>Calendar (Under Court's Control/Monitoring)</b>						
<b>K</b>	<b>Calendaring</b>					
	Examiner/Attorney Functions and/or Investigator Functions					
	22	Review case files prior to hearing/trial, ensure required actions are complete and information needed by the court is available and conforms to court policy, and statutory requirements. Monitor readiness of parties for hearings/trials, confirm appearances; notify parties prior to hearing/trial about missing/non-compliant forms and information.				
	23	Prepare Probate Notes/Consult with Judicial Officer				
	24	Attendance at accounting hearings				
	Clerical Functions					
	25	Assign cases to regularly scheduled calendars, produce calendars, publish and post calendars.				
	26	Locate and pull files				
	27	Other activities: Prepare Tentative Rulings				
<b>Courtroom (Under Court's Control)</b>						
<b>L</b>	<b>Courtroom--Event Hearings</b>					
	28	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support				
<b>M</b>	<b>Courtroom--Trial</b>					
	29	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support				
	30	Manage Exhibits				
	31	Juror Management (when jury trial is requested): create juror source list; prepare summons; manage juror reporting; payment; stats.				
<b>N</b>	<b>Other activities:</b>					
<b>Judgments/Orders</b>						
<b>O</b>	<b>Judgments/Orders</b>					
	32	Maintain records/process paperwork related to judgment/Orders				
	33	Other activities:				
<b>Post-Judgment</b>						
<b>P</b>	<b>Post-Judgment on Trials</b>					
	34	Motion for New Trial: receive and send to courtroom; fees; set date; notify parties				
	35	Monitor and document compliance with Court-ordered judgments, report non-compliance				
	34	Appeals: receive & file; notice; fees; prepare record; forward to judge				
<b>Termination of Conservatorship</b>						
<b>Q</b>	<b>Termination</b>					

# Instructions for Completing the Delphi Worksheets

## Purpose

The purpose of this survey is to solicit the best estimate from court staff regarding the amount of time required for conservatorship case processing. This information will be used in the focus groups on November 15 to produce accurate estimates of how much time staff *currently* spend processing these cases. In turn, these estimates will provide the basis for further discussion with staff regarding how much time courts *should* spend to provide a uniform standard of quality case processing, as well as meet the new requirements of Omnibus Conservatorship and Guardianship Reform Act of 2006—AB 1363 and SB 1716.

*We understand that there is significant variation from case to case as well as from court to court. These variations will be addressed in the focus group. For purposes of the worksheet, however, we need you to make educated guesses about the amount of time required in the average case for your court. The information you provide will be used as a first draft estimate to compare with the estimates of other courts, identify differences in court operations, and guide the discussions on November 15.*

## How to Complete the Worksheet

### 1) Worksheet Overview

The Excel worksheet that accompanies these instructions lists individual tasks performed in the processing of conservatorship cases and groups them under general case-processing headings. Our goal for this worksheet is twofold:

- Estimate the staff time that is required to complete each of the tasks listed in the worksheet;
- Estimate how often each of these events occurs during the course of an average conservatorship case.

If you print the worksheet, **please print in color because some of the instructions are color-coded**

Part I of the worksheet deals with the *Establishment* of the conservatorship and includes case processing that occurs before the Petition to Appoint a Permanent Conservator is granted or denied. Part 1 is subdivided into 5 phases:

- New Filings
- Pre-Judgment
- Calendar
- Courtroom
- Judgment / Orders

Part II deals with conservatorships that are *Under Court's Control* and encompasses case processing that occurs after a Petition is granted and the conservatorship is established. Part 2 is subdivided into 8 phases:

- Ongoing Filings
- Oversight [mandated functions]
- Pre-Judgment / Order
- Calendar
- Courtroom
- Judgment / Orders
- Post-Judgment
- Termination

*For purposes of this worksheet, a courtroom “event” refers to a hearing in which a party comes to court seeking approval of an action by a judicial officer. “Trial” refers only to a jury or bench trial.*

Each phase of case processing is followed by a task list consisting of tasks typically associated with that phase of case processing. Each group of tasks offers an “Other activities” category designed to capture estimates for activities we may have mistakenly omitted. If your court wishes to provide estimates for “Other activities,” please indicate what those activities are in the space provided.

## 2) Functions and Individual Tasks

In most instances, the worksheet offers two levels in which to formulate your time estimates. The red rows identify high-level function areas. The black rows underneath the red rows identify specific, delineated tasks within these broader functions.

We would like your court to enter estimates for the black, individual tasks. If you are unable to provide estimates for specific tasks but can provide estimates for the larger function areas, then provide those estimates instead. Please provide estimates for **either** the black task fields **or** the red function fields, **but not both**.

Some functions do not have individual tasks associated with them. In these instances, simply provide estimates for the red function area.

## 3) Time Estimates

We would like your staff to estimate the average time, **in minutes**, that it takes to complete each of the tasks listed in the worksheet and then enter that estimate into the column with the heading “How long does it take to perform this task? (in minutes).”

Staff should base their time estimates on the *average* case when estimating the time associated with each task or function. An “average case” represents the typical amount of time required to complete the set of tasks. Staff should consider

the entire range of case complexity processed in a given year when formulating time estimates. Ideally, the average time estimate will balance the time requirements of both simple, straightforward cases, as well as more the complex cases in your court.

#### 4) Frequency Estimates

Some tasks occur once and only once in every filing. Other tasks may occur multiple times over the life of a case – bi-annual reviews, for example – or might occur in only a small fraction of the cases – jury trials, for example.

To estimate the amount of time that these cases require, we need to also estimate the frequency of different tasks. There are two different types of frequency estimates that we are requesting:

*For the “Establishment” section of the worksheet (Part I, Page 1):*

- Please estimate how often *per filing* each task occurs. Tasks that do not happen every case should be entered as a fraction of the number of times they occur per case – for example, every other case = .5, once every ten cases = .1;

*For the “Under Court’s Control” section of the worksheet (Part II, Pages 2 & 3):*

- Please estimate how often *per case under court’s control per year* each task occurs. Tasks that occur less than every year should be entered as a fraction of the number of times they occur per case – for example, a bi-annual review occurs every other year and so = .5;

#### 5) Help with Worksheet Completion

Office of Court Research staff will hold two, one-hour Question-and-Answer sessions for anyone who has questions about how to complete the worksheet. These sessions are scheduled for the following times:

- |                                     |                                     |
|-------------------------------------|-------------------------------------|
| · Monday, October 30th, 2006        | · Tuesday, October 31st, 2006       |
| Noon - 1 pm                         | 11 am - noon                        |
| Conference line phone: 888-318-9100 | Conference line phone: 888-748-6651 |

To facilitate the discussion in the meetings on November 15, 2006, we request that you compile these estimates and return to the AOC **no later than Wednesday, November 9.**

**Please direct all other questions and comments to:**

***Karen Viscia: 415.865.7453***

**[Karen.viscia@jud.ca.gov](mailto:Karen.viscia@jud.ca.gov)**

## **Appendix II**

### **Delphi Study— Time Estimates (does not include new workload under Omnibus Conservatorship and Guardianship Reform Act of 2006)**

		Median time (in minutes)	How long does it take to perform this task (in minutes)	Rate of Occurrence	In what % of cases does the event occur?	When the event occurs, how often does it occur?
<b>Conservatorship</b>		<b>1,800</b>				
<b>Part I: Conservatorship: Establishment</b>		<b>1,077</b>				
<b>New Filings (Include in processing time both temporary and permanent petitions)</b>		<b>102</b>				
<b>A</b>	<b>Opening New Files Case Processing-Clerical</b>	<b>102</b>				
	<b>Court Clerk (General File)</b>	<b>77</b>				
1	Receive & review documents, assign case number, stamp, collect fees, route to/do data entry	15	15	100%	100%	1.0
2	Update case registers and indexes: record required data regarding parties, documents and events in CMS	15	15	100%	100%	1.0
3	Assemble case: create files, add documents to files, and route/shelve files	15	15	100%	100%	1.0
4	Misc. counter services: provide information to petitioners/public, duplicate and conform copies, provide forms and/or direct customers.	20	20	100%	100%	1.0
5	Other activities: Reciprocal, Phones	12	12	100%	100%	1.0
	<b>Court Investigator Clerk (Confidential File)</b>	<b>25</b>				
6	Receive & review documents, update registers and indexes	10	10	100%	100%	1.0
7	Assemble confidential file: create files, add documents to files, and route/shelve files	10	10	100%	100%	1.0
8	Other activities: (only activities related to opening the file)	5	5	100%	100%	1.0
<b>Pre-Establishment Case Processing</b>		<b>747</b>				
<b>B</b>	<b>Pre-Establishment Case Processing-Clerical</b>	<b>170</b>				
9	Provide notices to parties of necessary court dates and requirements, including form notices linked to calendars, custom notices to individuals, and notices of order appointing counsel	8	15	50%	50%	1.0
10	Court-appointed attorney processing	23	30	75%	75%	1.0
11	Filing of subsequent documents and related clerical	35	5	700%	100%	7.0
12	Other activities:	105	15	700%	100%	7.0
<b>C</b>	<b>Initial Investigation on Permanent Petition</b>	<b>561</b>				
	<b>Investigator Functions</b>	<b>531</b>				
13	Plan and schedule interviews	30	30	100%	100%	1.0
14	Conduct review investigation; review pleadings	360	360	100%	100%	1.0
15	Prepare investigator reports	132	120	110%	100%	1.1
16	Other activities: AFS referrals, consult with judicial officer and/or attorneys; phone calls	9	30	30%	30%	1.0
	<b>Clerical Functions</b>	<b>30</b>				
17	Related clerical work: CLETs, mailing, prepare assessments, reciprocals (DO NOT include opening file)	30	30	100%	100%	1.0
<b>D</b>	<b>Investigations Pursuant to Temporary Petitions</b>	<b>10</b>	<b>500</b>	<b>2%</b>	<b>2%</b>	<b>1.0</b>
<b>E</b>	<b>Mediation / Arbitration</b>	<b>4</b>				
18	Formal Mediation/Arbitration-- clerical	1	18	5%	5%	1.0
19	Informal Mediation/Arbitration-- staff other than clerical (attorney, investigator, examiner)	3	90	3%	3%	1.0
<b>F</b>	<b>Ex Parte Petitions (other than Temporary Petitions)</b>	<b>2</b>	<b>10</b>	<b>20%</b>	<b>20%</b>	<b>1.0</b>
<b>Calendar (Establishment)</b>		<b>127</b>				
<b>G</b>	<b>Calendar--Temporary Petitions--Examiner/Attorney Functions</b>	<b>23</b>				
20	Review case files prior to establishment hearing/trial, ensure required actions are complete and information needed by the court is available and conforms to court policy, and statutory requirements re: due process have been met.	15	30	50%	50%	1.0
21	Prepare probate notes/Consult with Judicial Officer	8	15	50%	50%	1.0
<b>H</b>	<b>Calendar--Permanent Petitions</b>	<b>104</b>				
	<b>Examiner/Attorney and/or Investigator Functions</b>	<b>78</b>				
22	Review case files prior to establishment hearing/trial, ensure required actions are complete and information needed by the court is available and conforms to court policy, and statutory requirements re: due process have been met. Monitor readiness of pa	60	60	100%	100%	1.0
23	Prepare probate notes/Consult with Judicial Officer	18	18	100%	100%	1.0
	<b>Clerical Functions</b>	<b>27</b>				
24	Assign cases to regularly scheduled calendars, produce calendars, publish and post calendars.	10	10	100%	100%	1.0
25	Locating and pulling files	15	15	100%	100%	1.0
26	Other activities: Handling Continuances	2	5	30%	30%	1.0
<b>Courtroom</b>		<b>75</b>				
<b>I</b>	<b>Hearing on Establishment on Temporary Petition</b>	<b>5</b>				
27	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support	5	10	45%	45%	1.0
<b>J</b>	<b>Hearing on Establishment on Permanent Petition</b>	<b>63</b>				
28	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support	38	15	250%	100%	2.5
29	Investigator/Examiner Appearance	25	10	250%	100%	2.5
<b>K</b>	<b>Trial on Establishment on Permanent Petition</b>	<b>8</b>				
30	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support	4	420	1%	1%	1.0
31	Manage Exhibits (when trial is requested)	0	30	1%	1%	1.0
32	Jury Management (when jury trial is requested): create juror source list; prepare summons; manage jury reporting; payment; stats.	0	60	0%	0%	1.0
33	Investigator/Examiner Appearance	3	60	5%	5%	1.0
34	Other activities: Settlement Conferences	0	188	0%	0%	1.0
<b>Judgment/Order on Establishment of Permanent Conservatorship</b>		<b>28</b>				
<b>L</b>	<b>Judgment/Order on Establishment of Permanent Conservatorship</b>	<b>28</b>				
35	Maintain records/process paperwork related to judgment (e.g., issue Letters)	13	13	100%	100%	1.0
36	Record essential data regarding parties, due dates on I&A and first accounting, etc.	9	10	90%	90%	1.0
37	Other activities: Examiners/attorney review of orders submitted right after hearing.	6	9	65%	65%	1.0

		Median Time (in minutes)	How long does it take to perform this task (in minutes)	Rate of Occurrence	In what % of cases does the event occur per year?	When the event occurs, how often does it occur per year?
<b>Part II: Conservatorship: Under Court's Control/Monitoring</b>		<b>723</b>				
<b>Ongoing Filings</b>		<b>82</b>				
<b>A Ongoing Filings--Clerical</b>		<b>82</b>				
Court Clerk (General File)		82				
1	Receive & review subsequent filings/documents, stamp, collect fees, order/pull files; give to examiner/investigator/judge; notifications (filings might include accountings, investigation reports, subsequent petitions, change of address, etc)	30	15	200%	100%	2.0
2	Update case registers and indexes: record required data regarding parties, documents and events in CMS	10	5	200%	100%	2.0
3	Assemble case: add documents to files, and route/shelve files	10	5	200%	100%	2.0
4	Misc. counter services: provide information to petitioners/public, duplicate and conform copies, provide forms and/or direct customers	6	10	60%	20%	3.0
5	Processing Orders To Show Cause (OSCs)	6	30	20%	20%	1.0
6	Other activities: Daily/Monthly Stats	20	1	2500%	50%	50.0
<b>Oversight (Mandated Functions)</b>		<b>448</b>				
<b>B Accountings--Examiner/Attorney Function</b>		<b>87</b>				
7	Review: review submitted accounts, communicate errors and omissions to conservator, monitor compliance, review objections	72	120	60%	60%	1.0
8	Prepare reports and recommendations for the court	15	25	60%	60%	1.0
<b>C Reviews</b>		<b>296</b>				
<b>Investigator Functions</b>		<b>288</b>				
9	Plan, schedule, review file	18	30	60%	100%	0.6
10	Conduct review investigation	216	360	60%	100%	0.6
11	Write reports	54	90	60%	100%	0.6
<b>Clerical Functions</b>		<b>8</b>				
12	Associated clerical activity: mailing reports, phone calls, etc.	8	15	53%	100%	0.5
<b>D Successor Petitions</b>		<b>56</b>				
13	Successor Initial Investigation: scheduling interviews, conducting investigation, reporting (Investigator)	48	480	10%	10%	1.0
14	Associated clerical work on investigations. (Clerical)	2	15	10%	10%	1.0
15	Review case files prior to establishment hearing/trial, ensure the information needed by the court is available and conforms to court policy, and statutory requirements re: due process have been met. (Examiner/Attorney)	6	60	10%	10%	1.0
<b>E Other activities: Registry Maintenance</b>		<b>10</b>	<b>25</b>	<b>40%</b>	<b>40%</b>	<b>1.0</b>
<b>Pre-Judgment/Order--Examiner/Attorney and/or Investigator Functions</b>		<b>102</b>				
<b>F Pre-Judgment/Order</b>		<b>68</b>				
<b>Subsequent Petitions and Orders to Show Cause</b>		<b>38</b>				
16	Prepare file for court, including review for completeness, legal research	8	13	66%	66%	1.0
17	Prepare Probate Notes/Consult with Judicial Officer	29	50	58%	58%	1.0
18	Other Activities: Posting	1	3	40%	40%	1.0
<b>Motions</b>		<b>30</b>				
19	Legal Research, Prepare Research Memorandum	30	300	10%	4%	2.5
<b>G Mediation / Arbitration</b>		<b>1</b>				
20	Formal Mediation/Arbitration--Clerical functions	0	5	1%	1%	1
21	Informal Mediation/Arbitration--Examiner/Investigator/Attorney functions	0	15	3%	3%	1
<b>H Ex Parte Applications Processing</b>		<b>8</b>	<b>30</b>	<b>25%</b>	<b>25%</b>	<b>1</b>
<b>I Special Investigations Ordered by the Court</b>		<b>18</b>	<b>180</b>	<b>10%</b>	<b>10%</b>	<b>1</b>
<b>J Special Accountings Ordered by the Court</b>		<b>7</b>	<b>145</b>	<b>5%</b>	<b>5%</b>	<b>1</b>
<b>Calendar (Under Court's Control/Monitoring)</b>		<b>43</b>				
<b>K Calendaring</b>		<b>43</b>				
<b>Examiner/Attorney Functions and/or Investigator Functions</b>		<b>32</b>				
22	Review case files prior to hearing/trial, ensure required actions are complete and information needed by the court is available and conforms to court policy, and statutory requirements. Monitor readiness of parties for hearings/trials, confirm appearance	21	35	60%	60%	1
23	Prepare Probate Notes/Consult with Judicial Officer	7	12	60%	60%	1
24	Attendance at accounting hearings	4	20	20%	20%	1
<b>Clerical Functions</b>		<b>11</b>				
25	Assign cases to regularly scheduled calendars, produce calendars, publish and post calendars.	6	10	55%	55%	1
26	Locate and pull files	5	8	60%	60%	1
27	Other activities: Prepare Tentative Rulings	1	5	20%	20%	1
<b>Courtroom (Under Court's Control)</b>		<b>21</b>				
<b>L Courtroom--Event Hearings</b>		<b>14</b>				
28	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support	14	20	70%	70%	1
<b>M Courtroom--Trial</b>		<b>7</b>				
29	General Courtroom (done by courtroom clerks): file documents; deliver/return files; prepare minutes; clerical support	6	40	15%	15%	1
30	Manage Exhibits	1	28	2%	2%	1
31	Juror Management (when jury trial is requested): create juror source list; prepare summons; manage juror reporting; payment; stats.	1	60	1%	1%	1
<b>N Other activities:</b>		<b>0</b>	<b>0</b>	<b>0%</b>	<b>0%</b>	<b>0</b>
<b>Judgments/Orders</b>		<b>11</b>				
<b>O Judgments/Orders</b>		<b>11</b>				
32	Maintain records/process paperwork related to judgment/Orders	7	10	70%	70%	1
33	Other activities:	4	18	25%	25%	1
<b>Post-Judgment</b>		<b>1</b>				
<b>P Post-Judgment on Trials</b>		<b>1</b>				
34	Motion for New Trial: receive and send to courtroom; fees; set date; notify parties	0	5	1%	1%	1
35	Monitor and document compliance with Court-ordered judgments, report non-compliance	0	15	2%	2%	1
34	Appeals: receive & file; notice; fees; prepare record; forward to judge	0	15	1%	1%	1
<b>Termination of Conservatorship</b>		<b>14</b>				
<b>Q Termination</b>		<b>14</b>	<b>95</b>	<b>15%</b>	<b>15%</b>	<b>1</b>

