

Developing Conservatorship Performance Standards in the California Courts: Preliminary Observations

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Executive Summary:

In 2006, the California State Legislature enacted the Omnibus Conservatorship and Guardianship Reform Act of 2006. The Act imposes a number of new requirements for conservatorship case processing. These new laws, however, do not specify the *practices* or particular methods that courts must use in implementing the new requirements in a way that accords the best possible protection of due process rights. It is the role of the judicial branch to provide this direction regarding how to operationalize the spirit and intent of these new laws. The California State Judiciary's Conservatorship Performance Study is designed to identify measures of quality that the courts should achieve in processing conservatorship cases, and specify the resources necessary to reach these benchmarks. The study has identified several important issues to consider while developing performance standards, including:

- A multi-method design is necessary to evaluate both the quantitative and qualitative differences in how courts seek to provide appropriate oversight in these cases;
- Individual practices must then be broken down into operational components to facilitate implementation in other courts with an understanding that different implementation models may achieve the same goals;
- Resource requirements associated with implementing these practices must be specified including the number of staff, type of training and experience that staff should have; and
- Development of a consistent system to collect appropriate data on both a case-by-case and court-wide basis is necessary for ongoing internal and system-wide audits to evaluate the reasonableness and success of the implemented practices and performance standards.

Introduction

California law requires courts to make a number of determinations prior to establishing a conservatorship.¹ For example, the court must interview the proposed conservatee to ascertain whether he or she objects to the conservatorship or the proposed conservator. If the proposed conservatee desires to oppose the appointment, the court must decide whether he or she is sufficiently lacking in capacity to require appointment of a conservator. Once a conservatorship is established, the court must oversee its progress and periodically determine if some of the rights the conservatee lost in the initial establishment can be restored.

California courts employ a wide variety of case processing practices to achieve the legislative goal of protecting the rights and the quality of life of conservatees. It is unclear, however, which implementation practices both effectively protect due process rights and consistently ensure that the best interest of the conservatee will be served.

In an effort to begin answering this question, the Office of Court Research, a research unit of the California State Administrative Office of the Courts, is conducting a study of performance standards in conservatorship case processing. The Conservatorship Performance Study has a number of objectives:

1. To create an appropriate performance standard for the courts to exercise in the establishment and monitoring of conservatorship cases;
2. To identify promising practices that courts employ to realize the standard;
3. To establish a baseline from which to evaluate funding levels available to the courts to ensure that sufficient resources are available to afford proper protection to conservatees in the system; and
4. To make recommendations for targeted, systematic data collection that will permit the courts to assess system efficiencies and monitor individual practices.

A report on this study will be presented to the California State Legislature in January 2008. This paper provides preliminary observations and lessons learned from the first year of research on this topic.

I. A clearly defined, uniformly accepted performance standard is needed to protect both due process rights and the best interests of the conservatee.

The courts in California perform two distinct case processing functions in conservatorship cases that involve: 1) evaluation in the establishment process and 2) monitoring the conservatorship after establishment. Yet there is no clear, definitive performance standard for these functions; and there is little precedent available for developing a standard for this case type.

¹ In much of the country these cases are referred to as “Guardianships.” Under California law, Guardianships refer to cases involving minors and Conservatorships refer to cases involving adults with incapacities.

To assist the courts, the Office of Court Research developed a multi-method study that utilizes both quantitative and qualitative assessment protocols in order to collect data from all sources needed to establish a well-informed, reasonable performance standard. Information drawn from three sources – case file review, staff interviews, and focus groups – is being used on a statewide and individual court basis to structure recommendations for improvements to the conservatorship system in California. The three sources of data will create a detailed picture not only of how the courts currently handle conservatorship cases, but also to identify areas where improvement is needed.

A. Case File Review

Case file review is used to 1) ascertain whether courts are complying with procedural statutes - e.g., if courts conduct all the investigations required by law, or if counsel is appointed to protect the interests of the proposed conservatee when petitions to act on behalf of the conservatee are filed; 2) determine how courts interpret the law, especially those procedural requirements specifically meant to protect due process rights - e.g., if investigators interview only the proposed conservatee or relatives in the first degree in addition, or if accountings include bank statements and benefit disbursement statements; and 3) identify the practices that effectively protect the rights and property of the conservatee.

Three courts were selected for the case-file review. The total caseload from these courts accounts for approximately 32% of all conservatorships in California. The case file review found general compliance with the statutes, but also found that time standards were not always met. Further examination of time standards that had lapsed, however, revealed that delays sometimes reflected a *higher* level of performance rather than insufficient case processing. As will be explained in the section on staff interviews, below, adherence to time standards alone does not necessarily correlate with quality case processing in this case type. This insight, however, surfaces only through qualitative data collection.

Case file review also suggested that the best performance indicators for conservatorships might be identification of event bundles rather than examination of discrete data elements. For example, following court approval of the sale of a conservatee's real property, there should be a subsequent increase of the bond in the amount of the capital gains from the sale. The increased bond reflects the increase in the conservatee's liquid assets. The law requires sufficient bond at all times, but not all courts monitor bonding adequacy as a regular practice. In some courts judicial officers will not sign orders confirming a sale until the conservator presents sufficient bond. The latter practice of coupling the two court procedures is both minimally burdensome to the court and easy to implement, but affords excellent protection of the conservatee's assets. The usefulness of these event bundles will be discussed further below.

B. Staff Interviews

The information gathered in the case file review provided a foundation upon which to discuss operations with the court management and conservatorship staff. The objective for the

interview process is to determine what operational practices facilitate or hinder a court while overseeing conservatorship cases.

The observation that some delays reflect good oversight illustrates the value of conducting qualitative interviews. Through the interview process, it was found that one study court coordinates accounting reviews with review investigations. Simultaneous submissions of the two reports make it easier to spot anomalies in the filing. 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 scheduling the accounting outside of the statutory timeframe and/or a delay in performing the mandated investigation review, but may better serve to protect the conservatee's interest.

In another study court, the judicial officer 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 relation between the court and the conservator better serves the need of the conservatee. The corollary to this accommodation, however, is the court does not hesitate to issue an Order to Show Cause for Removal of the Conservator if the conservator fails to file an accounting without contacting the court for an extension.

The interview process also revealed both the creative use of local resources and specific local challenges on case processing. For example, an active, volunteer mediation panel might assist the court with informal mediations resulting in fewer court hearings; a rural county may have a difficult time performing timely investigations because of weather conditions or the distance an investigator must travel to conduct an interview. These are just a few examples of the qualitative information about local practice variations that supplement the data collected through case file review and provide better understanding of the quality of care oversight in these cases.

C. Focus Groups on Business Process Evaluation

Focus groups supply information about individual tasks related to conservatorship case processing as well as the time required to complete each task. The goal of breaking down specific court functions, such as investigations, into individual tasks is two-fold:

1. Define the exact components of an effective practice in order to better facilitate widespread replication; and
2. Estimate the average amount of time necessary to complete an effective practice.

In addition, the focus groups explore variations in practice. Twelve courts were selected to participate in the focus group segment of the Conservatorship study, representing a variety of sizes and practices from which to garner a wide array of operations and local considerations. These courts will participate in two focus groups: one to determine tasks and time estimates; another to discuss operations and effective practices.

In preparation for the focus groups, the Office of Court Research sent out two data collection instruments. The first went to all courts in California and asked a number of questions about staffing levels and staff utilization. Primarily, it inquired into how many full-time staff each court has dedicated to conservatorship case processing and exactly what these staff members do.

In addition to the staffing questions, the courts were asked to identify operational areas in which the courts excel, as well as areas that they find challenging. This qualitative information serves dual purposes. First, it will be a resource when developing implementation strategies. Second, it alerted us to practices worthy of further exploration in the focus group time study. For instance, it appeared that courts with professional staff - investigators with Masters' degrees in social work or 5 years plus investigation experience - who performed reviews tended to be more thorough in their evaluations, but also took much longer than average to perform them.

a. Time Study

The staffing information gathered in the first survey was used to develop the second data collection instrument: a questionnaire designed to capture a detailed picture of all of the tasks performed in conservatorship case processing, including clerical, as well as time estimates for each task. The second instrument was sent to the twelve courts participating in the focus groups.

The median time per task was calculated based on court responses to the survey. This information was fed back to court staff for use as a reference in the subsequent focus group session. The Office of Court Research then brought together representatives from the twelve courts to discuss the reasonableness of the median times and make adjustments based on the consensus of the participants. This focus group discussion yielded a court-informed estimate of the time that goes into processing and management of conservatorship cases. This will be essential in later stages of the study when determining a more appropriate budget allocation for this case type.

b. Local Operations Assessment

The second focus group session on local operations is conducted in a conference call. The purpose of the conference call with focus group participants is to discuss variations in local practices and operations. This is necessary for several reasons.

Throughout the California judicial system, courts have developed novel policies and aggressive oversight practices. In defining performance standards, the most efficient strategy is to evaluate these models and identify hallmarks common to all or most of the variant county structures. Practices must then be broken down into operational components to facilitate implementation in other courts. The uniqueness of individual court operations is unlikely to result in identical replication elsewhere. However, by breaking down best practices into specific operational components, courts can better identify how to implement

the pieces within their own operations to maximize performance and achieve a higher level of service.

Operational assessment of this kind also reveals innovations that cannot be replicated in all courts, but nonetheless effectively protect due process rights. For instance, one court relies on a pool of volunteer probate attorneys to advocate on behalf of the conservatee in contested matters. This court did not have the resources to appoint counsel in every situation, so it developed an external resource to provide this service outside of the court budget. This court's novel practice is feasible because the court is located in a metropolitan area with a cooperative local bar. On the other hand, smaller courts have found it feasible to draw upon already existing public agencies for assistance, a practice would be more difficult to implement in larger metropolitan areas.

Issues surrounding feasibility of implementation must be addressed when assessing which practices should be incorporated into specific performance standards, including recognizing implementation alternatives that will sufficiently satisfy the standard. Performance standards should not be interpreted to mean an inflexible set of procedures, and the use of focus groups can ensure that a proper balance is achieved.

II. Courts require adequate resources in order to improve performance in processing conservatorship cases.

It is always difficult to strike an acceptable balance between what should be done and what can be done. Available resources are a significant factor that will limit what is practicable in each court. When assessing what is workable, it is important to know the costs associated with the proposed changes in practice and procedure. The California court system is no stranger to research related to resource allocation.

With the advent of state funding of the trial courts in 1998, it became necessary for the California State Judiciary to address inequities resulting from the legacy of local funding. The Office of Court Research developed workload measures that provide a common methodology to measure both judicial and non-judicial workload in every court. Evaluation of trial court expenditures and filings data revealed that aggregate filings in the trial courts positively correlate with expenditures. This relationship provided the foundation upon which to develop case weights that distinguish among case types that have different case processing workload requirements. These case weights were then applied to the filings data reported from each court and used as an allocation tool as branch leaders appraised the resource needs of the individual courts.

While this study, entitled the Resource Allocation Study, measured workload in the courts on the basis of *current practice*, from inception the Office of Court Research intended to expand the model to evaluate resource and staffing necessary for what courts *should be doing* to provide a higher level of service to the public. The Conservatorship Performance Study is one of a number of studies that the judiciary is undertaking to identify measures of quality that the courts should achieve, and specifying the resources necessary to reach these benchmarks.

The Conservatorship Performance Study uses the methodology developed in the Resource Allocation Study. As discussed above, staff representatives from twelve study courts were asked to consider tasks involved with conservatorship case processing, providing both time and frequency estimates for each task, as well as a breakdown of tasks by staff positions—clerical staff, examiners, attorneys, and investigators. The number of tasks detailed for the Conservatorship Performance Study exceeds the number collected in the original Resource Allocation Study model.

Specifically, the Conservatorship Performance Study analyses includes both the heightened requirements of the newly passed California laws, as well as uncodified practices that the courts identified as beneficial to ensuring the protection of adults in conservatorships. For instance, courts are currently required to interview only the proposed conservatee prior to establishment. The new laws require interviewing the petitioner (proposed conservator), as well as family members. In the Conservatorship Performance Study, investigator work is broken down into discreet sub-tasks including ‘Planning and scheduling’, ‘Interviews’, ‘Preparing a report’, ‘Preparing probate notes’, and ‘Court attendance’. The expanded task list will allow the Office of Court Research to increase processing time and/or frequency rates based on individual statutory changes and practice recommendations from the courts. The expanded performance study will yield resource analysis of the “as-is” model of conservatorship case processing now, as well as predict staff necessary to implement the what “should be” performance standard for processing of this case type.

III. Consistent collection of appropriate data on a case-by-case and court-wide basis will allow for internal and system-wide audits to evaluate the reasonableness and success of proposed performance standards.

Upon completion of the study, Office of Court Research will report on the findings and make recommendations regarding performance standards in conservatorship case processing to the Judicial Council and the California Legislature. Should the Council decide to establish performance standards, it will be necessary to conduct periodic evaluations to evaluate how well the courts are implementing the standards. Evaluation of practice models requires collection of informative and properly defined data elements regarding baseline caseload information, as well as internal case events. Availability of reliable data from this case type is essential when doing any evaluation.

A. Baseline Data for System-wide Oversight

First, it is essential to collect baseline data. On-going evaluation of the conservatorship system will, at minimum, begin with increasing the availability of descriptive baseline data. This necessitates the accurate collection of information such as, but not limited to:

1. The number of conservatorships currently under the court’s jurisdiction,

2. The number of petitions for conservatorships and temporary conservatorship filed each year,
3. The number of petitions for conservatorships and temporary conservatorship granted each year, and
4. The number of conservatorships that terminate each year.

This type of baseline information is necessary to simply gauge the scope of the courts' workload, as well as to track changes in filing trends that will affect the courts. It also assists in identifying courts that are reporting anomalous numbers which may indicate deviation from the implemented models and standards. This will be useful in flagging courts that may need to go through a further detailed self-audit of internal operations.

In addition, a long-term reliable data collection system will allow for forecasting filing trends, expected court clearance rates, and caseload growth rates, among other things.

The lack of informative baseline data elements for conservatorship cases may be attributable to the unique nature of the case. Generally these cases cannot be evaluated using traditionally collected performance indicators useful for other case types. For example, "time to disposition" and "case age" are useful as proxies to evaluate efficiency of court performance in case types such as torts where a speedy disposition may be critical to offset further loss. However, this information is much less valuable for evaluating conservatorship case processing since a conservatorship is governed by the conservatee's need.

Thus, it will be necessary to design a statistical information system tailored to the specific demands of this case type, with the identified hallmarks of an effective performance standard in mind. This would decrease definitional confusion and increase the likelihood of reliable reporting.

B. Diagnostic Data Tools for Individual Courts

Individual courts must also have a means to periodically run self-audits of their internal operations. This type of self-audit will allow the court to analyze operations on a more detailed, case-by-case basis.

The Conservatorship Performance Study aims to identify relationships between internal case events that indicate an effective protective process. At the outset of the study, the Office of Court Research found that individual, discreet 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 workload associated with a typical case. It does not speak to whether court operations are effectively protecting the conservatee. It became apparent that the proper diagnostic tool was an analysis of case events in relation to one another.

In the course of the statutory analysis and case file review, relationships became apparent between case events and court response that indicated effective case management and court

oversight. As discussed above, conservatorships often involved the sale of real property, which infuses a large sum of money into the estate. In response, the court should soon after increase the conservator's bond requirement to protect these newly liquid assets from possible financial abuse. If the court has a means to properly collect these data elements, they can then query their own case management systems and calculate the frequency at which these events and filings happen together, on average. The information is useful as a diagnostic tool to assess the court's level of due process protection in circumstances that open the conservatee to possible financial abuse. It will also highlight an area for improvement should a court find that their operations are under-performing in this area.

Similar bundles of data may serve to identify effective protection of the conservatee from personal abuse. A conservator often files a Petition for Exclusive Medical Authority during the life of the conservatorship. This confers the power to make all medical decisions on behalf of the conservatee. The corollary to the granting of this petition is that the conservatee loses the ability to direct his or her medical care. The consequences of this petition, therefore, merit close court scrutiny.

The Conservatorship Performance Study revealed several promising practices that ensure the propriety of granting Petitions for Exclusive Medical Authority. At a minimum, these courts require that the conservator 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, intelligent 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. Again, if these discreet data elements are properly collected in the case management system, 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.

These are just two examples of several relationships the Conservatorship Performance Study has identified that indicate effective protective practice. These are exemplary of the discreet, informative data elements that will be recommended for inclusion in an updated case management system. These relationships may be unique to the California statutory and court system, but other, similar relationships will be present in court systems throughout the country based on individual statutory schema.

Conclusion

The California State Legislature enacted the Omnibus Conservatorship and Guardianship Reform Act of 2006 to provide for additional legal standards and requirements in conservatorship case processing, including more investigations and stricter standards for accountings. These laws, however, do not 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. It is the role of the judicial branch to provide this direction regarding how to operationalize the spirit and intent of these new laws.

Achieving performance standards that provide the best possible protection of the rights of elderly individuals requires a number of evaluative processes. First, it is important to assess the success of current court practices throughout the system using case file reviews, operations analyses, and interviews with key staff. This identifies several effective and successful models and common hallmarks therein. Focus groups comprised of staff representing diverse courts can then assess (1) 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. Finally, consistent collection of appropriate data will allow for internal and court-wide audits to evaluate the reasonableness and success of the implemented performance standards based on these recommendations.

Courts play a crucial role in the lives of the elderly coming under conservatorships, but are limited in how much they can do. Increased funding, staffing, and statutory regulations will not eradicate the abuse of incapacitated adults in the system. Ultimately, the proper care and protection of the elderly is a global, social issue requiring the collaborative attention of social service agencies, non-profits, government, and the community as a whole.