California Probate Conservatorships:
Bridging the Gap Between Theory and Reality

by Thomas F. Coleman
Stanford Law School – Mental Health Law
Presentation on April 25, 2019

1. My Perspective as a Civil Liberties Advocate

   a. Where it Began: Loyola Law School Activism (1972)
   b. A Lifetime Adventure: 40+ Years of Advocacy (www.dominoeffectbook.com)
   c. Catching a New Wave: Introduction to Conservatorship Injustices (2012)
   d. Making Ongoing Challenges to “The System” to Stimulate Conservatorship Reforms

2. Conservatorship Proceedings: How They Should Operate in Theory

   a. Filing of petition (General - person/estate) (Limited - I/DD)
   b. Citation of respondent and service on relatives
   c. Filing of medical capacity declaration
   d. Appointment of an attorney to represent the respondent
   e. Court to assess ADA Needs and provide accommodations
   f. Court and appointed attorney to ensure due process and access to justice
   g. Investigation and report by a court investigator
   h. Preparation of a defense
       (investigate facts, challenge petition, review LRA, expert capacity assessments)
   i. Evaluation and report by regional center for I/DD respondents
   j. Court hearing (uncontested or contested)
      i) Review evidence on the need for a conservatorship
      ii) Is there clear and convincing evidence?
         – of need for a conservatorship – on each area of capacity under review
         – of less restrictive alternatives – on who should be appointed as conservator
         – on respondent’s right to vote
   k. Jury trial on demand
   l. Right to appeal

3. Conservatorship Proceedings: How They Actually Operate in Reality

   c. Qualifications of capacity professionals generally unknown and unquestioned
   d. Attorneys: sometimes not appointed; usually not trained; no performance standards
       no accountability (no appeals; inaccessible complaint procedures)
   e. Court does not conduct ADA assessments or ensure meaningful participation in cases
   f. Attorneys often act as a court investigator, not zealously advocating for client’s wishes
   g. Court investigators sometimes not used; ill trained; large caseloads; delayed reviews
   h. Attorneys seldom demand evidentiary hearings or produce favorable evidence
   i. Regional centers do mediocre work; sometimes they do not submit reports
   j. Judges place more emphasis on pushing cases through than getting it right
   k. Jury trials are rare
   l. Appeals are almost nonexistent
4. Examples of Ongoing Efforts to Improve the Probate Conservatorship System

a. Filing of ADA complaints with the United States Department of Justice
   – ADA complaint vs. PVP system (2015) is still pending
   – Congressional directive (2017) for guardianship “best practices” is still pending

b. Actions to correct the failure of courts to appoint counsel
   – ADA complaint to Sacramento Superior Court (2018) was rejected
   – Administrative appeal to DFEH (2018) was denied (with guidance)
   – Legislative bill drafted to require appointment of counsel (for 2020 session)

c. Actions to correct the failure to properly train appointed counsel
   – Request made to Judicial Council (2014) to impose new education mandates
   – New court rule with new mandates to be voted on in May 2019

d. Actions to remove judicial control of attorney appointments and legal services
   – Ethics report and request sent to California Supreme Court (2018)
   – Supreme Court sent report to Advisory Committee on Code of Judicial Ethics

e. Actions to educate the public, judiciary, and legal profession
   – Pursuit of Justice documentary film released (2018) and shown at film festivals
   – Request state civil rights council to hold hearings into civil rights abuses (2019)

f. Actions to have ADA properly used by courts in conservatorship proceedings
   – Request to Chief Justice to have Judicial Council modify ADA court rule

g. Failure to throughly evaluate “capacity” and less restrictive alternatives
   – Capacity Assessment Workgroup is convened by Spectrum Institute (2019)

h. Actions to improve procedures in one local court
   – Alameda Supervisor Nate Miley convened a conference on local reform (2019)
   – Follow up was done with officials at the Alameda Superior Court (2019)

i. Actions to improve regional center evaluations and reports
   – Meeting with HHS agency and DDS department (2017)
   – Report to DDS on oversight as an existing administrative obligation (2017)

For more information about reform activities:

Updates about ongoing reform activities: http://disabilityandabuse.org/whats-new.htm
Publications about problem areas and suggested changes: http://spectruminstitute.org/library/
Complaints filed with DOJ: http://spectruminstitute.org/doi/
White Paper to DOJ on attorney performance standards: http://spectruminstitute.org/white-paper/
Ethics report sent to California Supreme Court: http://spectruminstitute.org/ethics/
Requests made to Chief Justice of California: http://spectruminstitute.org/steps/
Reform efforts underway in Alameda County: http://spectruminstitute.org/path/
Study being done by Capacity Assessment Workgroup: http://spectruminstitute.org/capacity/

Contact
Thomas F. Coleman
tomcoleman@spectruminstitute.org
www.tomcoleman.us