

# Conservatorship Reform in Alameda County

## Questions and Answers on the Path Forward

Some 60,000 or more seniors and people with disabilities are living under court-imposed conservatorships in California. Many of them reside in Alameda County. Thousands of new petitions are filed annually in courts throughout the state, perhaps hundreds of them in Alameda.

Fundamental rights have been taken from these individuals by probate court judges. The authority to make basic decisions regarding residence, medical care, finances, and lifestyle choices has been transferred to another adult pursuant to court order – sometimes to a complete stranger. The assets of these adults may be drained through protracted litigation, with court-appointed attorneys and professional fiduciaries using these cases for a steady stream of income.

There is a growing chorus of complaints about unfair proceedings and unjust results in these cases. Some complaints come from seniors and people with disabilities themselves. Some are raised by their family members who feel victimized by the overreaching control of the probate courts. Other complaints are leveled by advocacy organizations that have identified a pattern and practice of disability discrimination and violations of due process in these proceedings.

The calls for reform are increasing in both frequency and intensity. Persistent demands from a growing network of advocates have prompted an educational forum in Oakland, California on January 11, 2019. The event is hosted by Alameda County Supervisor Nathan Miley. A panel discussion will be held following the screening of *The Guardians*, a documentary film focusing on abuses by probate courts in Nevada. Civil rights violations in the conservatorship system in California were the subject of another

documentary film – *Pursuit of Justice* – released in March 2018.

Awareness, complaints, and generalized demands for reform are one thing. Real and lasting change is another. The latter requires detailed knowledge of how the current system works, where systemic deficiencies exist, and who is responsible for allowing them to continue. Such change also requires reform advocates to specify what adjustments in policy and practice need to occur and identify which officials need to take action to accomplish such results.



The following questions are designed to elicit information that will pinpoint the various sources of the systemic deficiencies that are contributing to the unfair process and unjust results we see in all too many probate conservatorship proceedings. Eliciting this information requires that elected and appointed officials and their staff members are both cooperative and candid.

Supervisor Nathan Miley has been asked to schedule meetings with the following officials to initiate a process that will elicit answers to some very basic questions: county auditor, public defender, Legal Assistance for Seniors, probate presiding judge, probate court investigator, court ADA officer, registrar of voters, local regional center director, adult protective services, and a nearby fair employment and housing office.

The legal director of Spectrum Institute has offered to meet with these officials, advise them of various concerns, and present them with these questions – the answers to which will help identify possible solutions. The most important step now is to schedule the meetings so that we can get answers to these important questions.

## **Probate Presiding Judge**

**Open Cases.** How many open probate conservatorships are there? Limited conservatorships?

**New Petitions.** How many new petitions were filed in 2017? How many granted? Denied or dismissed? How many jury trials? How many appeals were filed by conservatees that year?

**Attorneys.** In how many of the new cases in 2017 was the Public Defender appointed? In how many new cases was Legal Assistance for Seniors appointed? Does the court have a contract with LAS? How does LAS get paid for cases when it is appointed? Who sets the fees for these attorneys? What is the current fee structure for these cases? What procedure exists to handle complaints that lawyers from either of these legal services programs are not performing properly?

**Judges.** Which judges are currently hearing probate conservatorship cases? Who decides which judge gets assigned to hear a particular case? What training or educational requirements exist for judges to be eligible for an assignment to hear probate conservatorship cases? For the current judges who are assigned to hear these cases, what training has each received regarding elder or dependent adult abuse and on forensic assessment of capacity to make decisions?

**Experts.** For probate conservatorship cases, in how many cases in 2017 were experts appointed under Evidence Code Section 730 to assess the capacity of a proposed conservatee? Are experts routinely appointed to evaluate whether less restrictive alternatives are feasible?

## **Public Defender**

**Staff.** How many attorneys are currently assigned to represent clients in probate conservatorship cases? Do they handle other types of cases as well, or only conservatorship cases? What is the case load for each of these attorneys?

**Performance.** Do these attorneys keep track of their time on each case? What is the average

amount of time (per attorney) on cases in 2017? Does the office have performance standards for these attorneys? If so, when were they adopted and by whom? Is there any mechanism to monitor or review the performance of these attorneys? How many appeals were filed in 2017?

**Statistics.** How many total cases were handled by the office in 2017? What percent of petitions were granted? How many jury trials? How many appeals were filed by conservatees that year?

**Training.** Does the office have a training program that attorneys must take prior to handling these cases? Is training done in person, by video, with written materials, or by all of these methods? Who are the trainers? Who selects the trainers? What subject matters are covered in the trainings? Is there in-service training as well? How often does in-service training occur?

**Budget.** How much money did the Board of Supervisors allocate to the P.D.'s in 2017 for probate conservatorship cases? Does the office have a written agreement with the county for these services? Are there quality assurance controls associated with this budget item? Does the office agree that its services will comply with the ADA or Section 504 of the Rehabilitation Act? Does the county conduct any performance audits in connection with these cases?

## **Legal Assistance for Seniors**

The same questions that are raised for the Public Defender also apply to this organization. Additional questions are set forth below.

When did LAS first enter into a contract with the county to provide legal aid services for respondents in probate conservatorship cases? Was it a competitive bidding process? Has the county ever done an audit of these services or otherwise monitored the quality of services provided to seniors in these proceedings?

## **Probate Court Investigator**

**Staff.** How many full-time investigators are

assigned to work on probate conservatorship cases? How many investigators work part-time? How many support staff are there?

**Case Loads.** How many total cases, whether guardianships, adoptions, conservatorships, or others, does each investigator have responsibility for at any given time?

**Annual Reviews.** Are investigators assigned to every new conservatorship case? How many first-year annual reviews were done by court investigators in 2017 in conservatorship cases? How many biennial reviews were done in such cases in 2017? Is there a backlog in annual reviews? Is there a backlog in biennial reviews?

**Developmental Disabilities.** As part of their duties for new cases, do court investigators routinely read IEP reports and IPP reports for proposed conservatees with developmental disabilities? Are grandparents and siblings routinely interviewed? Are neighbors of the proposed conservatees routinely interviewed?

**Voting Rights Reinstatements.** SB 589 requires reinstatement of voting rights for any conservatee who can express a desire to vote. Did investigators ask conservatees about this issue in annual reviews and biennial reviews in 2017? In how many cases were recommendations made to reinstate the voting rights of conservatees?

**Training.** Are staff required to take training prior to being assigned to serve the court as a probate investigator? If so, are the trainings in person, by video, by written materials, or by all of these methods? Is there in-service training for existing staff? How often? What topics are covered in the trainings? Is the issue of abuse included in these trainings? Is there training on what investigators must do to comply with the Americans with Disabilities Act as they interact with people with cognitive and communication disabilities?

### **ADA Officer**

**Staffing.** How many staff assist the court in complying with Title II of the ADA in connection with probate conservatorship proceedings?

**Performance Standards.** Does the court have performance standards for ADA officers to guide them in assessing the types of accommodations that conservatees and proposed conservatees may need in order to have effective communication and meaningful participation in conservatorship proceedings? If so, who adopted the standards?

**Training.** Does the court require staff who are assigned to ADA compliance duties to have training in Title II mandates? Is there specific training on identifying the types of accommodations that may be needed by litigants with cognitive and communication disabilities to ensure they have effective communication and meaningful participation in conservatorship proceedings? Are ADA officers trained on the obligations of the court pursuant to Government Code Section 11135? Do the court's ADA officers attend professional conferences? If so, how often?

**Monitoring.** What mechanisms does the court have for monitoring whether its ADA officers are actually complying with the requirements of the ADA?

### **Public Guardian-Conservator**

How many petitions for probate conservatorships did this office file in 2017? On how many cases was it appointed that year as conservator? How many investigators do they have for probate conservatorship cases? What process do they have for finding and evaluating less restrictive alternatives? How often do they visit their conservatees?

### **Registrar of Voters**

**SB 589 Implementation.** Prior to the passage of SB 589, the probate court frequently entered orders disqualifying probate conservatees from voting. The standards for disqualification were drastically changed by SB 589. Court investigators should be inquiring into the desire to vote of conservatees and notifying the court so that it can order voting rights reinstated and notify the Registrar of Voters. How many reinstatement orders did the Registrar receive from the court in 2017? What communications have occurred between the court and the Registrar since SB 589 was enacted?

## **Regional Center Director**

**DDS Guidance.** A regional center has a statutory duty to evaluate clients when it becomes aware that a petition for conservatorship has been filed and must then transmit a report to the court. What guidance, training, or supervision is being provided by the Department of Developmental Services to the Regional Center of the East Bay in connection with this service?

**Clients in Conservatorships.** How many clients of the regional center are currently in a probate conservatorship in Alameda County? How many new petitions were filed for clients in Alameda in 2017? Were regional center reports filed with the court for each of these clients? Are petitions for *limited* conservatorships always filed for clients, or do parents or other petitioners sometimes file for a *general* conservatorship instead?

**IPP Service.** A regional center client is entitled to have an IPP review whenever a significant event occurs or is about to occur that will affect the life of the client. How many IPPs were held in 2017 specifically for conservatorship planning or to assess less restrictive alternatives?

**Training.** Are staff who work on conservatorship evaluations and reports required to take any specialized training for these functions? If so, is there a formal training program? Are there training materials? Are all conservatorship evaluations done by a qualified professional, such as a psychologist or licensed social worker?

**Budget.** Are conservatorships mentioned in the regional center contract with DDS? Is there a line item in the regional center budget for this?

## **Adult Protective Services**

**Interaction with Probate Court.** Does the court, Public Defender, or Public Guardian-Conservator ever ask APS to assess proposed conservatees for less restrictive alternatives to conservatorship? If so, how frequently? If not, why not?

**Conservatorship Cases.** In how many cases in 2017 was a report received by APS for alleged

abuse or neglect of a conservatee in Alameda County? In how many cases did APS report suspected abuse or neglect to the Alameda court investigator's office in 2017? In how many cases did court investigators refer cases to APS for investigation that year? Does APS consider judges and court investigators to be mandatory reporters of elder or dependent adult abuse?

**Training.** Do workers have training on ADA compliance when interacting with victims of suspected abuse or neglect who have cognitive disabilities? Is there training on interviewing persons with developmental disabilities? On signs of abuse of people with such disabilities?

## **DFEH Office**

**Government Code Section 11135.** This law authorizes the Department of Fair Employment and Housing to investigate complaints of ADA violations committed by public entities. The superior court is a public entity under Title II of the ADA. DFEH has an office in Fremont.

**Complaint Process.** Does the Fremont office have a process for receiving and processing complaints that a superior court has violated the ADA or Government Code Section 11135?

**Staff.** Is a staff person at the Fremont office trained regarding the duties of public entities, including courts, to ensure that recipients of services have effective communication and meaningful participation in those services?

## **County Auditor**

How are county funds used in conservatorship proceedings? How much for the public defender? For court-appointed experts? Do these funds have quality assurance controls attached? Does the county do ADA compliance monitoring?

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