

Capacity Assessments by Court Investigators

Investigators employed by the superior court have a statutory duty to evaluate the capacities of proposed conservatees and to file reports with the court regarding the findings of their assessment of the individual and their investigation of the case. However, what investigators should be doing in these cases and what is actually occurring are two very different matters.

The legal duties of court investigators in probate conservatorship cases are set forth by the Legislature in the Probate Code. The training and education requirements for court investigators are established by the Judicial Council in the Rules of Court.

By law, a court investigator assigned to conservatorship cases shall have the training or experience or both necessary to conduct the investigations required under the Probate Code. An investigator must also possess the skills necessary to communicate with, evaluate, and interact with persons subject to these proceedings. That would include seniors with cognitive disabilities and adults of all ages who have developmental disabilities. (Probate Code [Section 1454](#))

In connection with conservatorship proceedings, court investigators have the duty to interview a proposed conservatee, petitioners, and proposed conservators. They must also evaluate mental function deficits described in [Section 811\(a\)](#) to determine whether they significantly impair the individual's ability to understand the consequences of his or her actions. ([Section 1826](#)) In effect, this is a mandate to conduct a capacity assessment evaluation.

Within the first year on the job, a court investigator should receive 18 hours of training, including information on elder and dependent adult abuse, medical issues, assessing community resources for seniors and adults with developmental disabilities, and interviewing persons with cognitive or communication disabilities. ([Rule 10.478\(b\)](#)) Only a local superior court knows whether its investigators have received such training. There is no transparency on this – no statewide oversight and no outside monitoring as to whether this educational requirement is being met. There are no outside evaluations of the quality of pre-employment or in-service trainings.

A typical [job description](#) posted when courts recruit for the position of court investigator says the applicant should have knowledge of: assessment and analytical skills; medical and psychiatric terms and conditions; and interviewing and investigative techniques. It also says that applicants must have a college degree in psychology, social work, or behavioral science and two years of field interviewing.

Through an administrative records request filed in 2014, Spectrum Institute inquired into the training that court investigators were receiving in the Los Angeles County Superior Court. Information and documents were ultimately provided, but very reluctantly. We discovered that the training mandates of Rule 10.478 were not being met.

Staff training meetings for 2013 and 2014 were reviewed. None of the staff training meetings focused on adults with developmental disabilities or on limited conservatorships. None discussed abuse of adults with developmental disabilities. None addressed how to interview adults with developmental disabilities.

The training manual, which had not been updated in 14 years, was reviewed. It contained no information about various types of developmental disabilities and how they could affect cognition, communication, or emotions. There was nothing in it about abuse of adults with developmental disabilities.

The questionnaire form that is supposed to be used by court investigators in their interviews and evaluations was reviewed. There was nothing in it about the types of disabilities the proposed conservatee has or about the capacity the proposed conservatee has for decision-making in any of the several areas the court may rule on other than the issue of capacity to make medical decisions.

Online videos used for training investigators were viewed. None focused on limited conservatorships or proposed conservatees with developmental disabilities. One did address the issue of undue influence of elderly adults.

Spectrum Institute released a [report](#) on limited conservatorship trainings of court investigators in the Los Angeles Superior Court and concluded that the trainings should receive a failing grade.

The report reviewed the case loads of court investigators in Los Angeles and discovered there were only 10 investigators on staff. They were required to perform 14,000 investigations per year. This, of course, was not possible to do. As a result of budget cuts, it was also discovered that the court had stopped using court investigators altogether in limited conservatorship proceedings.

The report revealed that judges were instructing court-appointed attorneys in Los Angeles to step outside of their role as advocate and defender for proposed conservatees and to take on the additional role of de-facto court investigator. Unfortunately, these attorneys followed this instruction and filed reports disclosing client confidences and making recommendations for what they thought was in the client's best interest rather than what the client may have wanted. Even though this dual role created a conflict of interest and violated ethical principles, the attorneys did not push back. They did what they were told.

Spectrum Institute monitored a conservatorship [oversight hearing](#) conducted by the Senate Judiciary Committee in 2015. The presiding judge of the probate division of the Los Angeles County Superior Court testified. She painted a bleak picture in terms of overworked court investigators with unreasonably large caseloads. Each of the 20 investigators then on staff only had time to conduct field investigations one day per week. The judge informed the legislative panel that there were 9,200 cases to be examined each year by these 20 investigators in guardianship and conservatorship proceedings (initial interviews, annual reviews, and biennial reviews). As a result of this staffing-to-duty ratio, our report calculated that each investigator would have to conduct nine field interviews on that one day of the week when they were able to go outside of the office. This obviously was completely unrealistic.

Court investigators should play an important role in the capacity assessment process. But to do so, they must have the necessary skills. They also must have reasonable caseloads. The Judicial Council and the Legislature should investigate the problems described above.

The Legislature should direct the State Auditor to conduct an investigation into the policies and practices of three local superior courts regarding training, experience, and actual practices of court investigators in connection with probate conservatorship proceedings. The audit should determine what is actually happening in these three courts. This will provide the legislative and judicial branches a hint of what is likely happening in courts throughout the state. The three courts should include one large county such as Los Angeles, one medium sized county such as San Luis Obispo, and one small county such as Yolo.

Once such information is obtained and reported, corrective action can be taken by the Judicial Council and the Legislature. This type of an audit should not be a one-time occurrence. The Legislature should direct the Judicial Council to conduct an audit of court investigator practices in three superior courts each year. A report on the findings should be issued annually to the Legislature so that further corrective action, to the extent it may be necessary, can be taken.

Some local courts may cite budget shortages for the lack of proper training, large caseloads, and failure of investigators to perform statutory duties. Some of these duties may be attributed to reforms enacted by the Legislature in 2006 – new duties that have never been funded by the Legislature.

Some statutes pertaining to court investigator duties have a clause that excuses nonperformance. For example, Probate Code Section [1850\(f\)](#) states: “A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature makes an appropriation identified for this purpose.”

This clause does not excuse the failure of courts to ensure that investigators perform duties that existed prior to the 2006 legislation. As for new duties imposed by the “[Omnibus Conservatorship and Guardianship Reform Act of 2006](#),” the Legislature, Judicial Council, and Governor should take steps to ensure that local courts have sufficient funding to ensure compliance by court investigators with any new mandates imposed by this law. There is simply no excuse for depriving courts of this funding, considering that the Omnibus Act was passed some 14 years ago and considering the good condition of the state’s budget at this time.