



Capacity Assessment Workgroup

An Advisory Committee of Spectrum Institute

To: Workgroup Members From: Thomas F. Coleman

Re: Issues and Procedures Date: April 4, 2019

Thank you for agreeing to participate as a member of the Capacity Assessment Workgroup of Spectrum Institute. During the coming months, I will have the privilege of directing and staffing the workgroup.

You are part of a project that can vastly improve the way in which seniors and adults with disabilities are treated by the legal system. Together we will identify deficiencies in both policy and practice in connection with probate conservatorship proceedings. We will explore safe and legal alternatives to conservatorship, and when those alternatives have been explored and found not to be feasible, we will recommend ways in which the conservatorship process can better protect the rights of these individuals and give them access to justice throughout the proceedings.

The probate conservatorship process has been operating on “auto pilot” for decades. Official participants in the process have had little or no accountability. The lack of accountability has contributed to widespread and systematic violations of the rights of seniors and people with disabilities in these proceedings.

The issue of capacity is at the very core, the foundation, of conservatorship proceedings. Every official participant in these proceedings makes formal or informal assessments regarding the capacity of proposed conservatees to handle their own personal and financial affairs – to make decisions on a wide range of issues. And yet, many of these participants lack training or an understanding of the complexities and nuances of the legal and psychological concept of capacity. They lack an awareness of the constitutional and statutory rights that should apply at each stage of these proceedings. They fail to properly and fully explore the availability of supports and services that would enable these individuals to exercise their decision-making rights in a way that would avoid the need to drastically invade a person’s rights through an order of conservatorship.

The work that we do here together will have an impact on the way that conservatorship proceedings and that capacity assessment processes are handled in the future. Not only will we stimulate the passage of new laws and court rules, but we will positively affect the attitudes of judges, lawyers, medical and mental health professionals, and others who are involved in probate conservatorship proceedings.

In addition to recommending changes at the micro level, by going deep into the weeds of California’s policies and practices regarding capacity assessments, we can work at the macro level by introducing California officials and advocates alike to the Convention on the Rights of Persons with Disabilities and the exemplary work being done in other nations as they attempt to comply with the provisions of that international treaty.

This is cutting edge work. We will shake up “the system” by shining a spotlight on issues that have been ignored for far too long. The last major revision to the conservatorship system was in 1979 when the limited conservatorship process was first introduced. It is time for another major revision. We can help lead the way.

Along with this [memo](#) there are three documents: (1) [list of members](#); (2) [issues to be explored](#); and (3) a [commentary on issues](#). Over the coming months you will receive emails and attachments that pertain to various issue areas. They will help educate us on current policies and practices. Proposals will eventually be sent to everyone for review. Throughout this process I welcome your input, suggestions, and feedback.