

R E V I E W

By Cheryl Mitchell, J.D.

Capacity Assessments in California Conservatorship Proceedings

Improving Clinical Practices and Judicial Procedures to Better Protect the Rights of Seniors and People with Disabilities

By Thomas F. Coleman, Legal Director, Spectrum Institute
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Spectrum Institute and Thomas F. Coleman have done a masterful job of researching and writing *Capacity Assessments in California Conservatorship Proceedings*. This report is replete with citations to legal authorities, as well as actual examples of conservatorship cases gone awry. Its recommendations establish a clear and concise path that can be used to significantly improve the current conservatorship system.

This report is a must-read for anyone who wants to have a better understanding of why the current conservatorship system is broken and the steps that must be taken to improve it. Those who suffer under the current system frequently find themselves without redress to the courts and they may find themselves stripped of all their constitutional rights — including the right to vote. As is made clear in this report, without the right to vote, conservatees are deprived of their right to help elect their representatives and to have a voice in legislative changes that might improve the conservatorship system.

Spectrum Institute has demonstrated that it is a powerful and persuasive advocate for those who have been deprived of their legal rights without adequate due process and in violation of the Americans with Disabilities Act. This report makes it abundantly clear that there has been a massive failure of the courts, the legislature and the executive branch to implement rules to explore and put in place less restrictive alternatives to conservatorship.

While this report focuses on California, it can be used as a model in other states as well. The improvement of the legal process for those with physical or mental disabilities or cognitive impairments should be of paramount concern for everyone who believes in a fair and impartial system of justice.

About Cheryl C. Mitchell



Cheryl Mitchell received her BA in psychology from George Mason University; her MPA from Golden Gate University and her law degree from the McGeorge School of Law. She is an elder law attorney in Spokane, Washington, having been in practice for thirty-five years. Cheryl and her husband, Ferd H. Mitchell, are partners and authors of seven volumes of *Washington Practice* – a series of books on Washington State law for attorneys. They are authors of four volumes of *Methods of Practice*, two volumes on elder law and one volume on Washington probate and practice. *Washington Practice* is published by Thomson Reuters WestLaw, the largest publisher of legal books in the nation. Cheryl and Ferd developed the Care Management Trust as an alternative to guardianship.

Cheryl has participated in approximately 100 adult guardianship proceedings in Spokane County, Washington. She has been appointed and served as a guardian for several individuals. Cheryl has represented petitioners in guardianship cases, has served as a guardian ad litem, and has represented alleged incapacitated persons who opposed having a guardian. She has successfully argued for less restrictive alternatives to guardianship in several cases. Cheryl has lectured on guardianship at various continuing legal education programs over the years.

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