



**Mental Health Project
Disability and Guardianship Project**

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January 1, 2021

Chairperson Tani Cantile-Sakauye
California Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Jury Instructions for Probate Conservatorship Cases

Dear Madam Chairperson:

We are writing to request the Judicial Council to direct its Advisory Committee on Civil Jury Instructions to add to its agenda the development of jury instructions for probate conservatorship cases. The lack of such instructions in the California Civil Jury Instructions (CACI) manual sends an undesirable and hopefully unintended signal that jury trials in these cases are unnecessary or unwanted.

As more public defenders and appointed counsel begin to vigorously defend their clients against unwanted or overreaching conservatorship petitions, they will begin demanding jury trials. This is already the case for mental health conservatorships filed under the Lanterman Petris Short Act. An increase in jury trials in probate conservatorship cases can be expected in the coming years. This will be a likely result of more probate conservatorship defense attorneys becoming aware of ethical and legal obligations to provide effective assistance and zealous advocacy as a requirement of due process and of their duty under the Americans with Disabilities Act to ensure that clients receive access to justice in these proceedings.

We have developed a set of model jury instructions for limited probate conservatorship cases. (<https://spectruminstitute.org/jury-instructions.pdf>) We offer them to the Judicial Council as an incentive for the advisory committee to develop a full set of instructions for all types of probate conservatorship proceedings. The Preface of the manual, which is attached, summarizes the need for a set of instructions approved by the Judicial Council.

Please ask the advisory committee chair or staff to contact us to discuss this matter further.

Respectfully submitted:

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Legal Director, Spectrum Institute
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cc: Hon. Martin J. Tangeman, Chair, CACI Advisory Committee
Hon. Jayne C. Lee, Chair, Probate and Mental Health Advisory Committee
Hon. Harry Hull, Chair, Rules and Projects Committee

Preface

By Lisa MacCarley

I have been representing clients in probate courts throughout Southern California for over 25 years. In all that time, I have never seen or heard of a jury trial in a conservatorship case.

Attorneys representing petitioners and objectors, other than the people who are facing conservatorship, cannot demand a jury trial. Only a proposed conservatee can do that. But they don't. Why? Because in counties where the public defender doesn't handle conservatorship cases, these involuntary litigants are represented by court-appointed attorneys. In Los Angeles, they been given a conflicting mandate by a local court rule to help the judges resolve the cases. Moreover, many of these attorneys are dependent on further appointments and the judges for their income stream. The judges appoint them to cases, authorize the amount of fees they are paid, and also decide if they receive appointments in future cases. The attorneys know that the judges discourage trials in general and jury trials especially because they would take up too much judicial time and create a backlog of other cases on an already too-overloaded docket. Thus, no jury demands are ever made.

These model jury instructions developed by Tom Coleman are excellent. They are an accurate statement of the law and would be a tremendous help to lawyers and judges if they were used. Unfortunately, for the reasons stated above, they are unlikely to be used in counties such as Los Angeles where the judges have undue influence on the attorneys who appear before them. They might be used in counties where the public defender represents proposed conservatees. But demands for jury trials are seldom made by public defenders, probably due to their heavy caseloads more than anything else.

Even if they are more theoretically valuable than practically helpful right now – until more attorneys start demanding jury trials for proposed conservatees – these model jury instructions should be presented to the Judicial Council with a request for that agency to develop approved instructions for probate conservatorship cases. As it now stands, the Judicial Council has totally ignored this area of the law. Considering that 5,000 or more new probate conservatorship cases are filed each year in California, the lack of approved jury instructions for these cases appears to signal a lack of interest by the judiciary in providing access to justice for the thousands of seniors and people with disabilities whose lives are upended by these proceedings.

The Chief Justice of California should direct the Judicial Council, which she chairs, to devote resources to develop approved jury instructions for probate conservatorship cases. This set of model instructions could be used by staff members to jump start such a project.

Lisa MacCarley is a probate and conservatorship attorney with an office in Glendale, California. Her law practice focuses on conservatorships, estate planning, probate administration, elder law and mediation. <http://lisamaccarley.com/>