



CALIFORNIA LAW REVISION COMMISSION

Law Revision Commission Needs a Nudge from the Legislature

California Law Revision Commission
Staff Memorandum 2020-52
October 8, 2020

Excerpts from the staff report (pp. 33-38) <http://www.clrc.ca.gov/pub/2020/MM20-52.pdf>

Once a year, the Commission reviews its current program of work, determines what its priorities will be for the next year, and decides whether to request that topics be added to or deleted from its legislatively-enacted Calendar of Topics Authorized for Study ("Calendar of Topics"). The Commission generally undertakes this analysis after the Legislature has adjourned for the year.

SUGGESTED NEW TOPICS

Submission from Spectrum Institute

The Spectrum Institute is a nonprofit foundation that has advocated on a variety of human rights issues. It is currently engaged in a Disability and Guardianship Project that is designed "[t]o promote access to justice for adults with cognitive and communication disabilities who are involved in guardianship proceedings and to promote viable alternatives to guardianship." As part of that project, the founder and legal director of the Spectrum Institute (Thomas Coleman) sent a letter "requesting that the Commission consider conducting an in-depth study of capacity assessment standards and practices in probate conservatorship proceedings."

In support of that request, Mr. Coleman provided the Commission with a 129-page report entitled "Capacity Assessments in California Conservatorship Proceedings," which is "the culmination of 15 months of research, writing, and collaboration." The Spectrum Institute also submitted the same report to the Chief Justice, the Governor, and the leaders of the Assembly and the Senate.

The Spectrum Institute's report is quite critical of California's conservatorship system. For example, the report says: *Despite having ... strong laws against disability discrimination, California cannot claim to be a leader when its probate conservatorship system is compared with other nations and states. In terms of protecting the rights of seniors and people with disabilities in such proceedings, and seriously exploring less restrictive alternatives, California is lagging behind much of the developed world.*

The report includes more than forty distinct recommendations to various governmental entities, including the California Legislature. No recommendation is directed to the Commission. A number of the recommendations propose statutory revisions.

Similarly, the Spectrum Institute's report says: *Generally speaking, California has good laws on capacity assessments and determinations and the use of less restrictive alternatives.... The problem is not so much with the law as it is with the lack of uniform and effective implementation. What California needs are methods to ensure that statutory and constitutional requirements are enforced. A reasonable degree of accountability is needed. Without that, judges and attorneys can do whatever they want, without any concern for penalties or discipline for noncompliance. The question is how to devise procedural mechanisms that provide incentives for judges and attorneys to follow the law and disincentives for not doing so. The answer will require new legislation to initiate and fund various methods to require more accountability by the judges and attorneys who process conservatorship cases. A system of accountability would involve new administrative functions, at the state level, in both the executive and judicial branches of government.*

Given its limited resources, the Commission is not in a position to conduct a comprehensive study of conservatorship law at this time, nor is it clear that another comprehensive study is warranted in light of the work recently done by both the Legislature and the Judicial Council. Approaching the situation piecemeal might be problematic, however, as the core issues being raised appear to call for a global perspective. . . . **To date, the Legislature has not sought the Commission's help in this area. Absent such a request, it seems best to leave the topic for others to handle; it is not apparent that the Commission has a useful role to play at this time.** (emphasis added by Spectrum Institute)

(Note: The Capacity Assessment Report of Spectrum Institute is online at: <https://spectruminstitute.org/capacity/report.htm>)

Contact: Thomas F. Coleman, legal director: tomcoleman@spectruminstitute.org