

# County Jurisdiction in Probate Conservatorship Proceedings

By Thomas F. Coleman

The superior court is a state entity. So are its employees, such as court investigators and ADA coordinators. The county government has no *direct* jurisdiction over the superior court and its employees.

The county also has no jurisdiction over private parties who petition for probate conservatorships or over the attorneys who represent petitioners. Likewise, the county has no direct jurisdiction over private parties, including professional fiduciaries, who are appointed as conservators. Also, in cases involving adults with developmental disabilities, the county has no direct jurisdiction over regional centers which are involved in conservatorship proceedings.

Finally, the county has no direct jurisdiction over Legal Assistance for Seniors (LAS), an organization under contract with the superior court to provide legal services to conservatees and proposed conservatees who are not indigent. LAS attorney fees are paid from the assets of its clients and not by the county.

To summarize, the county has no direct jurisdiction over: judges; court investigators; court ADA coordinators; private party petitioners and their attorneys; private party conservators, including professional fiduciaries; regional centers; LAS and its attorneys.

HOWEVER, the county *does* have *direct* jurisdiction over other agencies and individuals involved in probate conservatorship proceedings. It has direct authority over the Public Defender, the office which represents indigents and adults with developmental disabilities involved in these proceedings. The county also has direct jurisdiction over Adult Protective Services, whose mission includes helping vulnerable adults remain independent and outside of conservatorships if feasible. It also has direct jurisdiction over the Public Guardian-Conservator, an office that sometimes files petitions for probate conservatorships and that sometimes is appointed as a conservator. It also has direct jurisdiction over the County Counsel, which advises and represents APS and the Public Guardian-Conservator.

Also, the county has *indirect* jurisdiction over experts who are appointed in these proceedings under Evidence Code Section 730 to perform evaluations or other services for litigants who are *indigent*. This is the power of the purse string. The county can impose quality assurance controls on the funding of these experts – especially to ensure that the services are ADA compliant. The court appoints, but the county

pays when the service recipient is indigent. Therefore, the county has authority to impose quality assurance controls on these county-funded services.

To summarize, the county has direct or indirect jurisdiction over: the Public Defender and its attorneys (direct); the APS agency and its workers (direct); the office of the Public Guardian-Conservator and its employees (direct); the office of the County Counsel and its lawyers and staff (direct); Evidence Code 730 experts for indigents (indirect via quality controls).

Because the county government does have such extensive jurisdiction in several important parts of the “probate conservatorship system,” the county has more than a role; it has a *responsibility* to ensure that its portions of the system comply with applicable state and federal laws. This includes Title II of the ADA which requires public entities to ensure that service recipients with disabilities (all respondents in conservatorship proceedings) have effective communication and meaningful participation in those services (including all aspects of these legal proceedings).

The role of the Public Defender is to ensure that all of the legal rights of its clients are protected. That includes making sure that all participants in the proceedings – judges, investigators, ADA coordinators, regional center, private parties, etc – obey the law in these proceedings. Therefore, since the Public Defender is a county agency, the county itself has a duty to make sure the Public Defender makes formal objections or files notices of appeal if these individuals or agencies are not following applicable laws. Therefore, while the county has direct jurisdiction over only several participants in these proceedings, it has *indirect* jurisdiction – through the advocacy duties of the Public Defender – to ensure that the entire system is functioning properly for the indigent clients who are represented by the Public Defender.

Considering the county’s duties and jurisdiction, it is appropriate that Alameda County Supervisor Nathan Miley has convened a forum to address these issues. Many thanks to Supervisor Miley for exercising such leadership by initiating an educational process that, over time, should stimulate necessary reforms.

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