

§ Attorney Fee Review Team to Examine Flaws § and Abuses in Probate Conservatorship Cases

Spectrum Institute has convened a workgroup to review policies and practices involving the authorization and payment of fees to attorneys in probate conservatorship cases in California. The findings of the review team will be used in a report to be sent by Spectrum Institute in 2021 to the chief justice, governor, and legislature.

Two types of fee awards are being examined. One involves a probe into fees to attorneys who represent conservatees and proposed conservatees and the reimbursement to counties for legal services provided by public defenders to litigants. The other involves an analysis of fee awards to attorneys representing petitioners, conservators, and other parties to these cases when the payments are taken from the assets of conservatees or proposed conservatees.

Conservatorship proceedings are supposed to be *protective* proceedings where judges are responsible for *conserving* the finances of the seniors and people with disabilities whose liberties and assets are in jeopardy. A preliminary review of fee awards in conservatorships indicates that the practices of judges in awarding attorney fees often do not advance this purpose. It also appears that judicial procedures in setting fees vary widely among probate courts, thereby causing potential violations of the constitutional requirements of equal protection and uniform operation of the law. The arbitrary manner in which fee awards are made also may infringe on the right of conservatees to due process of law.

Legal research for the upcoming report – *Rethinking Attorney Fee Awards in Conservatorship Proceedings* – has been conducted by Spectrum Institute for more than a year. The report will cite gaps or ambiguities in the law, provide examples where judicial discretion has been abused, and highlight inconsistent practices among probate courts throughout the state. It will propose revisions to statutes and court rules in order to make the legal standards for fee awards advance the goal of conserving the assets of these vulnerable litigants. Recommendations will suggest changes in policies and practices to ensure that the procedures used by judges to award attorney fees comply with the requirements of due process.



Tom Coleman

Attorney Thomas F. Coleman (Palm Springs), legal director of Spectrum Institute, leads the team consisting of: attorney Brook Changala (Long Beach), probate litigator and member of the board of Spectrum Institute; Rosalind Alexander-Kasparik (San Diego), former conservator who experienced excessive attorney fees; attorney Evan Nelson (Walnut Creek), plaintiff's attorney in a lawsuit challenging conservatorship abuses in Alameda County; Sharon Holmes (Ahaheim), elder care consultant who witnessed attorney fee abuses; attorney Ben Bartlett (Berkeley), city council member and advocate for conservatorship reform; Susan Sindelar (Santa Barbara), deputy public defender; attorney Cheryl Mitchell (Spokane, WA), author of elder law and guardianship legal practice books by Westlaw; Anthony Chicotel, attorney with California Advocates for Nursing Home Reform; Alameda County Supervisor Nate Miley; Brendon Woods, Alameda County Pubic Defender; and Dr. Gloria Duffy, president and CEO of the Commonwealth Club of California.

Spectrum Institute is a nonprofit organization promoting equal rights and justice for seniors and people with disabilities, including advocacy for conservatorship and guardianship reform.

Members of the Attorney Fee Review Team



Attorney Brook Changala challenged the payment of fees to a court-appointed attorney who was arguing against the client's wishes. He sees systemic problems in the fee-award process.



Roz Alexander-Kasparik was only allowed to be the conservator for her fiancé David Rector after the court depleted David's assets with payments of fees to the conservator and attorneys.



Attorney Evan Nelson saw Catherine Dubro's assets being drained when at one point there were five attorneys being paid from her estate, while Catherine herself had no attorney.



Sharon Holmes saw Theresa Jankowski suffer "legalized extortion" when lawyers wanted hundreds of thousands of dollars in fees in exchange for a dismissal of her conservatorship case.



Attorney Ben Bartlett is a member of the Berkeley City Council. He is working with constituents to reform conservatorship proceedings in the probate court in Alameda County.



Deputy Public Defender Susan Sindelar has handled scores of conservatorship cases. She brings to the fee study the perspective of a legal advocate who is paid from county funds.



Attorney Cheryl Mitchell is an academic and legal educator with a passion for justice. She would like to see systemic reforms in the way that attorney fees are calculated and awarded.



Antony Chicotel is a staff attorney with California Advocates for Nursing Home Reform. He is the author of *California Conservatorship Defense: A Guide for Advocates*.



Alameda County Supervisor Nate Miley is an honorary member of the team. He will participate through his representative to identify solutions to the attorney fee problem.



Alameda County Public Defender Brendon Woods (photo) is represented on the team by John Plaine, the attorney assigned to the office's probate conservatorship desk.

Update: January 9, 2021

Commonwealth Club CEO Gloria Duffy Joins the Attorney Fee Review Team



Dr. Gloria Duffy has become a member of the Attorney Fee Review Team. She has been the president and CEO of the Commonwealth Club of California since 1996. The organization is the nation's oldest and largest public affairs forum. Each year, it presents hundreds of forums on a wide range of topics involving politics, culture, society and the economy.

Dr. Duffy has initiated several special projects at the Commonwealth Club, including Voices of Reform (now the independent organization California Forward). These efforts convened experts and stakeholders in various fields to build a consensus for solutions and action.

She recently wrote a commentary titled “Courts should not be a vehicle for elder financial abuse.” It was published on January 6, 2021 in the East Bay Times. In the article, Dr. Duffy explains how she personally witnessed her mother’s assets being depleted by ongoing court-authorized attorney fee awards in a conservatorship proceeding. The article calls for major reforms in how attorney fees are calculated and awarded in conservatorship cases. To read the commentary, [click here](#).

New Members

January 28, 2021

Retired California Judge Becomes Advisor to the Attorney Fee Review Study

Retired Superior Court Judge Stephen Lachs has become an advisor to the Attorney Fee Review Study being conducted by Spectrum Institute. The study is examining how public funds as well as the personal assets of seniors and people with disabilities are being used to pay for lawyer's fees and legal services in probate conservatorship proceedings in California. Preliminary research suggests that public funds are sometimes subsidizing deficient legal services. Anecdotal evidence shows that attorney fee awards being made by judges from the assets of conservatees are sometimes excessive and unreasonable. Judge Lachs, and other team members, will help Spectrum Institute identify problems in both areas of concern and review proposed solutions. Lachs served as a superior court judge for 20 years. His first assignment was in the mental health division of the Los Angeles Superior Court. Prior to his appointment to the bench by Governor Jerry Brown in 1979, Lachs was a supervising attorney in the public defender's office in Los Angeles County. Lachs lives with his spouse in Rancho Mirage.



January 21, 2021

Research Associate Added to Attorney Fee Review Team

Attorney John Adam Di Pietro has agreed to participate as a research associate on the Attorney Fee Review Team. He will work closely with the project's legal director to investigate how probate court judges throughout California are currently awarding attorney fees in conservatorship proceedings. His background in municipal law will benefit the study as we examine how county funds are being used to provide legal services to indigents in these cases. John's legal practice for the past 44 years has involved legal representation for businesses as well as local governments. He received his law degree from the University of Notre Dame. John lives with his spouse in Palm Springs, California.

