

A Conversation with Leah Wilson

Executive Director of the California State Bar

In preparation for a phone call between Thomas F. Coleman, legal director of the Disability and Guardianship Project of Spectrum Institute, and State Bar Executive Director Leah Wilson on November 19, 2019, these talking points were developed to help guide the conversation.

1. Class Demographics

Spectrum Institute is concerned about legal services for seniors and other adults with disabilities in probate conservatorship proceedings – litigation in which their assets are targeted and their fundamental rights are placed at risk.

We believe that about 60,000 adults are currently living under orders of conservatorship in California. About 40,000 of them are adults with developmental disabilities while the other 20,000 include seniors with cognitive challenges and adults of all ages who have acquired cognitive disabilities due to injuries or illnesses. About 5,000 new probate conservatorship proceedings are initiated each year throughout the state.

These numbers are estimates. Neither the Judicial Council nor the State Bar knows how many open probate conservatorship cases exist, how many conservatees who are supposed to be under the “protection” of the courts cannot be located by court investigators, how large the case loads of such investigators are, or how backlogged they are in conducting statutorily-required biennial reviews.

The State Bar should take actions to address this unacceptable informational void.

2. Denial of Legal Services

Many members of this class are not afforded an attorney in superior court conservatorship proceed-

ings. This problem is especially acute in Sacramento and surrounding counties.

The Court of Appeal has no policy regarding the appointment counsel in conservatorship appeals for members of this class who are appellants or respondents in such appellate proceedings. In one current appeal out of Alameda County, the senior whose assets are in dispute was not represented by counsel in the trial court and is not being represented by counsel on appeal. Despite being advised by Spectrum Institute of its ADA duty to appoint counsel for her as a respondent in the

appeal, the Court of Appeal has taken no action. As a result, the use of her assets to pay disputed legal fees will be decided without her participation. This is not access to justice.

The denial of legal representation is a problem that should be addressed by the State Bar.

3. Deficient Legal Services

In Los Angeles County, judges are refusing to allow members of this class to retain their own attorneys, instead forcing court-appointed attorneys on them. The constitutional right to be represented by an attorney of one’s choice is being violated.

A rule of the Alameda County Superior Court gives a monopoly to one law firm for court appointments to represent *respondents* in conservatorship proceedings who have assets. There was no RFP issued or open bidding process used. The court does not have any quality assurance controls for these services, nor does the court have a complaint process for these litigants. The law firm, Legal Assistance for Seniors, has an actual or apparent conflict of interest because it is under contract with the court to provide legal advice to *petitioners* who are not represented by counsel.



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In places such as Los Angeles County, a local court rule requires appointed attorneys to play a dual role in providing legal services to these litigants. One role is to assist the judges in resolving cases by acting as “the eyes and ears of the court.” In this role, attorneys file reports recommending what they think is in the best interests of their clients.

Many attorneys are not acting as zealous advocates for their clients. They are violating ethical duties of loyalty and confidentiality. Based on this “dual role” court rule, some attorneys actively advocate *against* the stated wishes of their clients.

These serious ethical and performance problems should be addressed by the State Bar.

4. Deficient Legal Education

For several years, Spectrum Institute reviewed the training program mandated by the Los Angeles Superior Court and operated by the local bar association. Many presenters were unqualified. Important topics were not covered. In other areas, misinformation was given to those who attended. Attorneys were given MCLE credits for these deficient training programs because the bar association had been given MCLE *pre-approval* for *all* of its education programs no matter how deficient.

We brought these problems to the attention of the Judicial Council in November 2014 and a few months later we proposed specific changes to court rules on mandatory educational requirements for court-appointed attorneys in probate conservatorship proceedings. After several years of study and deliberations by its Probate and Mental Health Advisory Committee, the Judicial Council has adopted new training requirements. The new court rule takes effect on January 1, 2020.

Now the real work begins. The State Bar should become actively involved in the implementation process. It should require providers to submit plans for their training programs under this new rule so that the quality can be reviewed by the State Bar prior to authorizing MCLE credits for them. Blanket pre-approval should not occur.

5. Deficient Judicial Education

Many judges who process probate conservatorship cases lack experience in this area of the law. In some counties, judges with experience in criminal or civil or juvenile law are assigned to handle adult conservatorship proceedings without adequate prior experience or training. In some counties, judges are rotated in and out of probate courts without regard to the effect this lack of knowledge has on this vulnerable class of litigants. Judicial Council training materials on judicial duties under the Americans with Disabilities Act are deficient.

The State Bar should review these problems and promote better education and training requirements for judges who handle conservatorship cases.

6. Inaccessible Complaint Program

The State Bar has a program where clients who believe they have received deficient legal services can file complaints against their attorneys. These complaints are investigated and action is taken on complaints that are sustained.

The effects of this complaint program are both remedial and preventive. In addition to providing relief to individual clients, the knowledge that such a program exists and the issuance of public disciplinary actions in some cases causes attorneys to think twice before violating ethical rules or providing deficient legal services.

Unfortunately, due to the nature and severity of their disabilities, clients in probate conservatorship proceedings do not have practical access to the complaint system. They either do not know when they are receiving deficient legal services or they lack the ability to file complaints.

The State Bar should devise methods to ensure that members of this class receive the preventive and remedial benefits of this program.

www.spectruminstitute.org/talking-points.pdf

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