



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

LLOYD G. CONNELLY
COURT EXECUTIVE OFFICER

720 NINTH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 874-6328

October 16, 2018

Thomas F. Coleman
Spectrum Institute
555 S. Sunrise Way, Suite 205
Palm Springs, CA 92264

Dear Mr. Coleman,

Your letter dated August 16, 2018, submitting two proposed complaints for consideration, were forwarded to this office for review and response. Thank you for bringing these important issues to the Court's attention.

Your proposed complaints request that the Court, within 60 days of receipt, "institute a new policy or court rule" requiring the appointment of counsel:

1. For proposed conservatees with developmental disabilities in all cases, regardless of whether they are designated general or limited, unless there has been an individualized fact-based determination that: (1) appointment of counsel is not necessary to protect the interests of the proposed conservatee, including the interest in access to justice as required by the ADA, Section 504, and Section 11135; and (2) the proposed conservatee has the capacity to waive the right to counsel and has done so knowingly and voluntarily. (See Paras. 28, 29 to Complaint #1.); and
2. For all proposed conservatees in general conservatorship proceedings, regardless of the nature or source of their cognitive disabilities, unless there has been an individualized fact-based determination that: (1) appointment of counsel is not necessary to protect the interests of the proposed conservatee, including the interest in access to justice as required by the ADA, Section 504, and Section 11135; and (2) the proposed conservatee has the capacity to waive the right to counsel and has done so knowingly and voluntarily. (Paras. 25, 26 to Complaint # 2.)

As a preliminary matter, the Court is unable to lawfully adopt the policies that you suggest because they are contrary to the governing statutes which invest discretion of such decisions with the responsible judicial officer, and command an expenditure of public funds in circumstances not authorized by the Legislature. Even if adoption of such policies were within the Court's purview, moreover, it could not legally be achieved within 60 days as a practical matter.

The existing statutory scheme already fully addresses appointment of counsel for protected persons in conservatorship cases. (See Probate Code §§ 1470, 1471.) In addition, a person aggrieved by a decision not to appoint counsel has various remedies to challenge that decision.

Section 1470(a) authorizes the court to appoint counsel for a proposed conservatee in any proceeding under division 4 (beginning with section 1400) of the Probate Code if the court determines (1) that the person is not represented by counsel and either (2)(A) that the appointment "would be helpful to the resolution of the matter" or (2)(B) that the appointment "is necessary to protect the person's interests."

Section 1471(a)-(b) requires appointment of counsel for a proposed conservatee or person alleged to lack legal capacity in five specific types of proceedings. (Probate Code § 1471(a)(1)-(5).) And the requirement varies depending on whether the person is unable to retain and plans to retain counsel; whether the person has requested appointment of counsel; and whether the court finds that the circumstances in (2)(A) or (2)(B), above, exist.

In any proceeding to establish a limited conservatorship for a developmentally disabled adult, including a proceeding to modify or revoke the powers or duties of a limited conservator, section 1471(c) requires the court to immediately appoint counsel for the proposed *limited* conservatee unless the person has already retained, or plans to retain, counsel. Finally, the court must appoint counsel for a conservatee in proceedings under other sections of division 4, some of which refer to section 1471.

The Court has reviewed its current relevant rules and practices for general compliance with the foregoing governing law and has detected no present systemic deficiencies. The Court has shared your complaints and concerns with the Probate bench for their consideration. Further, the Court has considered adopting additional guidance to its Probate investigators related to some of your concerns.

We also understand that many of the issues you raise have been or are being addressed, by the Judicial Council of California (JCC) and its Probate and Mental Health Advisory Committee (PMHAC), which considers rules regarding appointment of counsel.

Effective January 1, 2008, the PMHAC addressed the appointment of counsel under sections 1470 and 1471 in response to enactment of section 1456, which, among other things, required adoption of a rule specifying the qualifications and education standards for appointed counsel. Rule 7.1101 does that.

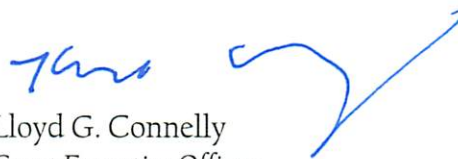
We understand that the PMHC, this year, circulated proposed amendments to rule 7.1101 to tailor the rule's requirements more closely to the statutory language and the knowledge and experience needed by counsel appointed in a conservatorship proceeding. Those amendments will be open for public comment.

We also understand that the PMHAC recommended the approval of two Judicial Council forms for applying for and ordering appointment of counsel for proposed conservatees, which were approved and will take effect January 1, 2019. The first (form GC-005) may be used by a party or nonparty to apply for appointment of such counsel under section 1470 or 1471 at any time during a conservatorship proceeding. The second (form GC-006) may be used by a court to order the appointment of counsel.

Finally, we do not agree with the assertion that state or federal disability discrimination laws currently require the automatic appointment of counsel in all conservatorship proceedings, or for all "conservatorship respondents." Indeed, determining whether an individual has meaningful access to the court system requires an individualized analysis that is already contemplated by the statutory scheme described above. If you have any legal authorities that require such automatic appointment of counsel in all conservatorship proceedings, we invite you to provide that information.

Thank you again for bringing your concerns to our attention.

Sincerely,



Lloyd G. Connelly
Court Executive Officer
Sacramento Superior Court