JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Probate Conservatorship Task Force
Hon. Roger W. Boren, Chair
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DATE: September 15, 2006

SUBJECT: Probate: Probate Conservatorship Task Force Interim Report (For Information Only)

Issue Statement
On January 13, 2006, Chief Justice Ronald M. George announced the appointment of a statewide task force to make recommendations to improve the management of probate conservatorship cases in California trial courts. The task force is chaired by Administrative Presiding Justice Roger W. Boren of the Court of Appeal, Second Appellate District (Los Angeles). A list of members is attached at page 9. The official charge of the task force is to:

1. Seek input from a broad range of interested and affected stakeholders about how to improve the practices, procedures, and administration of probate conservatorship cases, including:

    - Conservatees;
    - Private professional conservators, guardians, and fiduciaries;
    - Family members, including those appointed as conservators;
    - Attorneys who represent conservators and conservatees;
    - Advocacy groups; and
    - Judicial officers and court staff.

2. Perform a comprehensive review of:

    - The law governing conservatorships established under the Probate Code, including the current statutes, case law, rules of court, ethical constraints, standards of judicial administration, and related forms and procedures, as well as the best methods now used in the courts' management of conservatorship cases;
    - The assignment of judicial officers to handle conservatorship cases, including any education, training, and other prerequisites for such assignments;

- The laws, practices, and procedures of other jurisdictions, including any national standards that may exist, that pertain to conservatorships, guardianships, or other protective arrangements involving court oversight of dependent adults;
- The educational and training programs on probate conservatorships that are currently being provided for judicial officers and other court personnel through the Education Division/Center for Judicial Education and Research (CJER) of the Administrative Office of the Courts (AOC) or other sources; and
- The staffing and other court resources currently being utilized for probate conservatorships, including investigator, examiner, and attorney positions.

3. Make recommendations to the Judicial Council for reforms and improvements to the overall system of conservatorship administration—including but not limited to changes to legislation, rules of court, funding, education, and training—in order to enhance services provided for, and more effectively prevent and deter abuse of, conservatees.

4. Create model guidelines for probate courts' practices and procedures in the handling of conservatorship cases.

5. Make other recommendations to the Judicial Council that further the purposes of the task force.

Process/Approach

The task force's initial efforts included selecting meeting dates, locations, and communication methods that would allow the public access to the task force's process; scheduling two full-day public hearings to give the task force members an in-depth background into the problems faced by users of the conservatorship system; establishing procedural rules for meetings; and organizing three working groups, each with assigned responsibilities and report-back deadlines. The key elements of each of these approaches are described below.

First, in order to produce recommendations reflecting the broadest possible input, the task force meetings have been, and will continue to be, open to the public, with each agenda including time for public comment. A voicemail box and e-mail address have been created to allow interested persons to leave messages for the task force's review. The charge, notice of meetings, agendas, minutes, and other items of information are posted on the judicial branch Web site at *www.courtinfo.ca.gov/jc/tflists/probcons.htm*.

Additionally, two public hearings were scheduled early in the process. The first was held on March 17, 2006, in Los Angeles at the Ronald Reagan State Building, and the second on March 24, 2006, in San Francisco at the Administrative Office of the Courts. Panelists providing testimony included judicial officers, attorneys, Adult Protective Services staff, adult abuse professionals, fiduciaries, a law enforcement officer, mediators and investigators, staff from the public guardian association, and related experts. Written testimony of these speakers is available to the public on the task force's Web site. The comments and testimony have been summarized on a matrix for the members' review and directly follows this report. Additionally, at the

March 17 hearing, 8 members of the general public testified, some on behalf of particular organizations, and on March 24, 11 members of the general public provided testimony.

Second, the task force, through the AOC Office of Governmental Affairs, has interacted with the California Legislature, which, contemporaneously with the formation of the task force, introduced several bills aimed at reforming probate conservatorship judicial practice in California. Through this liaison a number of helpful amendments have been achieved, and judicial branch concerns regarding adequate funding have received some consideration.

The four bills have been passed by the Legislature and await the approval or disapproval of Governor Schwarzenegger. The bills are AB 1363 (Jones), SB 1116 (Scott), SB 1550 (Figueroa), and SB 1716 (Bowen). The Legislature has bundled these bills so that presently they must all be approved or none of them will be enacted.

1. AB 1363 requires that by January 1, 2008, the Judicial Council must: (a) specify by rule the qualifications and continuing education requirements for probate conservatorship court staff attorneys, examiners, investigators, and appointed attorneys; (b) render a report to the Legislature regarding the caseload and level of compliance of certain probate conservatorship courts with statutory time frames; and (c) produce a standard accounting form to be used for periodic accounting in conservatorship cases. The bill also broadens the duties of court investigators regarding investigating, interviewing, and reporting to the probate conservatorship courts. The investigators would be required to determine the conservatee's wishes. The bill also requires a determination of "best interest" of the conservatee to change the conservatee's residence, and provides more-stringent notice requirements for appointment of temporary conservators and for filing inventories and appraisals. It also puts constraints on compensation and costs reimbursement to conservators and changes the procedures for waiver of bonds. Finally, the bill requires public guardians to comply with the continuing education requirements that are established by the California State Association of Public Administrators, Public Guardians, and Public Conservators.

2. SB 1116 provides additional safeguards regarding the sale of a conservatee's residential real property, and requires the court to apply a "best interests" standard to the conservatee evaluation.

3. SB 1550 creates a "Professional Fiduciaries Bureau" in the Department of Consumer Affairs to license and regulate the conduct of professional conservators and others. It also creates a fund into which licensing fees would be deposited. An advisory committee is designated to later assume the responsibilities of the bureau.

4. SB 1716 permits a probate conservatorship court to receive ex parte communications from any "interested person" concerning any "subject raised in the pleadings" and to take appropriate action as necessary, such as an immediate review or investigation. The bill encourages investigators to more carefully scrutinize the conservatee's placement, quality of care, and finances.

The task force has tracked the progress of these bills since its formation, inasmuch as these bills, if passed, would significantly alter the landscape on which the task force must evaluate. The recommendations the task force ultimately makes to the Judicial Council will be strongly influenced by any new statutory framework for probate conservatorships.

Third, all task force members are participating in at least one of three working groups. The focus of each working group is described below.

1. *Rules and Laws*: Chaired by Mr. Alan Slater and staffed by Mr. Daniel Pone, AOC Office of Governmental Affairs, and Mr. Douglas C. Miller, AOC Office of the General Counsel. The Rules and Laws Working Group (RLWG) is charged with researching, reviewing, and making recommendations regarding statutes and rules of court that relate to conservatorship proceedings, including statutes introduced in the current legislative session.

   The working group has reviewed current laws and pending legislation, statewide rules of court, local rules of court from six selected courts (Superior Courts of Alameda, Los Angeles, Orange, Sacramento, San Diego, and San Francisco Counties), and recommendations for change from task force witnesses and the Probate and Mental Health Advisory Committee concerning the following general topics:

   - Appointment of temporary conservators;
   - Appointment of general conservators, including appointment of counsel;
   - Role of court investigators; and
   - Accounts and reports of conservators.

   Three additional topics—private professional conservators, fees of conservators and their attorneys, and powers of conservators/restrictions or incapacities imposed on conservatees—will be reviewed in the coming months.

   As of the writing of this report, the probate conservatorship legislation, although passed by both houses of the Legislature, has not been signed into law. If the legislation is chaptered, an additional review will be made to determine areas that need to be addressed in addition to the legislation. If the legislation is not chaptered, this working group will be making recommendations to the entire task force for future legislation or rules of court to address the issues in the charge. Also, because at least one of the bills deals with education, those issues and recommendations concerning that subject fall under the purview of the Education and Training Working Group.

2. *Education and Training*: Chaired by Judge Frederick Paul Horn (but temporarily chaired by Judge S. William Abel) and staffed by Mr. Roderic Cathcart (CJER). The Education and Training Working Group has been charged with two tasks: (a) a review of the educational and training programs on probate conservatorships that are currently being provided for judicial officers and other court personnel through CJER or other sources; and (b) recommendation of changes in education and training to

enhance services provided for conservatees, and to more effectively prevent and deter their abuse.

The working group has reviewed current educational and training programs that include probate subject matters and has made the following findings:

a. Currently, there is no education and training requirement for judicial officers who hear probate conservatorship matters. For those who seek training, the Education Division/CJER offers courses for varying experience levels. For judicial officers new to a probate assignment, conservatorship education is offered as a component of the "Probate Overview." This week-long course is offered annually. Judicial officers with experience in probate may receive continuing education at the Education Division/CJER's annual Probate and Mental Health Institute. New judicial officers who do not have a probate assignment are exposed to general probate law during a half-day "Basic Probate" course at the Judicial College.

b. Currently, there is no education and training requirement for probate examiners and attorneys. A limited number of examiners/attorneys attend the overview course and institute. More experienced examiners/attorneys get the most benefit from this education. No training is offered by a professional association on an ongoing basis.

c. Currently, there is no education and training requirement for probate investigators. A limited number of investigators (30) will attend the 2006 Probate and Mental Health Institute in November. Training is offered periodically by a professional association, the California Association of Superior Court Investigators (CASCI). Some probate guardianship training is offered by the AOC Center for Families, Children & the Courts (CFCC) through the Family Dispute Resolution Mediator Education and Training Program.

The Education and Training Working Group will be making recommendations to the entire task force in the following areas:

- Education and qualifications for nonjudicial court staff, including probate attorneys, examiners, and investigators, and for court-appointed attorneys under Probate Code sections 1470 and 1471;
- Education for judicial officers;
- Development of an education model for investigators and examiner/attorney training separate from judicial officer training;
- Development of a probate conservatorship curriculum; and
- Alternative educational delivery methods to supplement live trainings.

3. *Comparative Jurisdiction and Best Practices*: Chaired by Judge William H. Kronberger and staffed by Ms. Christine Patton (Regional Administrative Director, Bay Area/Northern Coastal Regional Office) and Ms. Evyn Shomer (CFCC). The working group has been charged with two tasks: (a) a review of "model"

conservatorship statutes adopted by other states or similar foreign jurisdictions and (b) the recommendation of best practices and procedures for the state's probate courts to follow in implementing the present statutory scheme.

The working group has reviewed legislation nationwide, focusing on a few state jurisdictions to gain an understanding of the issues that can be of help in California. Best practices in the management of probate conservatorships have been researched and reviewed, as have new ideas for the implementation of existing statutes. The working group met with representatives from the Administrative Office of the Courts of the State of Arizona to focus on what they learned in restructuring that state's conservatorship practices.

The working group also met with representatives of the Superior Court of Alameda County to discuss implementation and use of their General Plans for conservatees. The working group will be meeting with probate judges from across the state during the Probate and Mental Health Institute in November 2006 to discuss the issues faced on a daily basis and to share ideas for best practices.

The Comparative Jurisdiction and Best Practices Working Group will be making recommendations to the entire task force for adoption of policies, guidelines, and training tools that will take into consideration any newly chaptered legislation, experiences of other states, and the best practices of effective conservatorship programs.

Meetings

The task force has met five times since its first meeting in February 2006, alternating between meeting in San Francisco and in Burbank. In addition to having a portion of each meeting reserved for public comment and working group reports, the agendas have included review of the task force's charge, rules, laws, and processes governing probate conservatorships; review of pending legislation; review of public testimony and discussion of next steps in response to issues identified and concerns raised; presentation and discussion with the Trust and Estates Section of the Alameda County Bar Association; discussion of Education Division/CJER issues and opportunities, including benchguides and the Probate and Mental Health Institute; discussion with AOC Office of Court Research staff on a possible probate conservatorship survey; and a presentation by Mr. David K. Byers, Arizona's Administrative Director of the Courts, and Ms. Nancy Swetnam, director of the Certification and Licensing Division of Arizona's judicial branch, concerning reforms and procedural advancements undertaken in that state.

Issues Identified

Over the course of the last several months, the task force has identified many problems in the area of probate conservatorship proceedings. As the task force continues its work, members will formulate recommendations addressing these challenges. These recommendations will be contained in the task force's final report to be presented to the Judicial Council in spring 2007. The problems listed below have been identified through public testimony, letters, e-mails, and task force members' own observations. An overarching concern is the lack of adequate resources

for handling these cases. Additional issues raised by those commenting and testifying that will be addressed more fully in the task force's final report include the following:

- Accountability and standards for establishing temporary conservatorships;
- Notice requirements, how extensive these requirements should be, and whether and under what circumstances the court should be able to waive notice;
- The appropriate role of the court investigator in temporary conservatorships;
- Appropriateness and/or adequacy of the powers and duties currently granted to temporary conservators;
- Identification of additional or better approaches to emergency intervention;
- Sufficiency of due process safeguards to ensure that the rights and interests of conservatees are being protected;
- Court reviews of conservatorships, their frequency, resources required, and appropriate focus;
- The appropriate role for court investigators and other court personnel in preventing and deterring abuse;
- Importance of providing appropriate staffing resources (investigators, examiners, judicial officers) and current inadequacy of these resources;
- Insufficient resources for education and training for court personnel;
- Need for more effective methods for reviewing accountings;
- Identification of appropriate role for the courts in providing assistance to self-represented litigants in this area and resources needed to assist this population;
- Need for improved collaboration with key justice system partners;
- Identification of steps courts may take to better detect and deter abuse of conservatees by family members;
- Improved methods for hearing and investigating grievances or complaints, especially when the public guardian is not a party;
- Hiring and retention of staff to handle workload currently associated with implementing existing mandates; and
- Need to provide appropriate resources and methods for evaluating fraudulent accountings.

Some of the challenges the task force has identified in addressing these issues are as follows:

- Funding needs;
- Priority of probate conservatorships with courts and counties;
- Degree of problem versus remedy;
- Status of relevant legislation;
- Identification of training responsibilities and resources; and
- Policy of least restrictive alternatives.

Next Steps

As a result of the task force's efforts and in collaboration with the Education Division/CJER, the November 2006 Probate and Mental Health Institute will include several sections on probate

conservatorship matters and will have court investigators in addition to probate judges and examiners in attendance.

As noted above, task force members also anticipate several legislative changes that may affect the task force's work. During the in-person presentation of this interim report, Justice Boren will provide an update on the status of currently proposed legislation. Additionally, the task force will report more completely on these changes and the resulting impact, as well as possible responses, in the final report to be provided to the council in 2007.

The task force will meet again on October 13, 2006, and in conjunction with the November 2006 Probate and Mental Health Institute in Costa Mesa. During these meetings and throughout early 2007, members will present recommendations for further discussion and will develop a final set of recommendations for consideration by the Judicial Council at its April or June 2007 meeting.

Attachments

In addition to Justice Boren, the task force members are:

- Hon. S. William Abel, Presiding Judge of the Superior Court of California, County of Colusa
- Hon. Aviva K. Bobb, Judge of the Superior Court of California, County of Los Angeles
- Ms. Judith Chinello (Ret.), Professional Conservator, Chinello and Mandell Fiduciary Services
- Ms. Michelle Williams Court, Director of Litigation, Bet Tzedek Legal Services
- Hon. Don Edward Green, Commissioner of the Superior Court of California, County of Contra Costa
- Hon. Donna J. Hitchens, Judge of the Superior Court of California, County of San Francisco
- Hon. Frederick Paul Horn, Judge of the Superior Court of California, County of Orange
- Hon. Steven E. Jahr, Judge of the Superior Court of California, County of Shasta
- Hon. Laurence Donald Kay (Ret.), Presiding Justice of the Court of Appeal, First Appellate District, Division Four
- Ms. Gina L. Klee, Managing Probate Attorney, Superior Court of California, County of Fresno
- Hon. William H. Kronberger, Judge of the Superior Court of California, County of San Diego
- Dr. Margaret Little, Family Law and Probate Administrator, Superior Court of California, County of Los Angeles
- Ms. Margaret G. Lodise, Sacks Glazier Franklin & Lodise LLP
- Hon. Sandra L. Margulies, Associate Justice of the Court of Appeal, First Appellate District, Division One
- Ms. Patricia L. McGinnis, Executive Director, California Advocates for Nursing Home Reform
- Hon. Douglas P. Miller, Associate Justice of the Court of Appeal, Fourth Appellate District, Division Two
- Mr. Richard L. Narver, Legislative Chair of the California State Association of Public Administrators, Public Guardians, and Public Conservators; and Assistant Public Guardian/Administrator, Yolo County Public Guardian's Office
- Ms. Jacquie Paige, Executive Council Member, AARP-California
- Ms. Sandy Sanfilippo, Probate Court Investigator, Superior Court of California, County of Santa Cruz
- Mr. Alan Slater, Chief Executive Officer, Superior Court of California, County of Orange
- Ms. Pat Sweeten, Executive Officer, Superior Court of California, County of Alameda
- Hon. Barbara J. Miller (Judicial Council Liaison), Judge of the Superior Court of California, County of Alameda
- Mr. Alfredo Terrazas (Attorney General Liaison), Senior Assistant Attorney General, Office of the Attorney General
- Ms. Gloria Ochoa (Legislative Liaison), Deputy Chief Counsel, Senate Judiciary Committee

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

The attached matrix represents a summary of testimony from the following individuals at the March 17 and March 24, 2006, hearings:

Ms. Robin Allen Los Angeles County District Attorney's Office	Mr. Terry Flynn California Association of Public Administrators, Public Guardians, and Public Conservators	Mr. Richard Lambie Professional Fiduciary Association of California (PFAC)
Mr. John Bagnall Los Angeles Police Department	Mr. Eric Gelber Managing Attorney Protection & Advocacy, Inc.	Mr. James Locke, Probate Manager Superior Court of Sacramento County/California Association of Superior Court Investigators
Hon. Marjorie Laird Carter Superior Court of Orange County	Ms. Jennifer Henning Executive Director County Counsels Association of California	Ms. Margaret G. Lodise Sacks, Glazier, Franklin & Lodise LLP
Ms. Yolande Erickson Conservatorship Attorney Bet Tzedek Legal Services	Ms. Naomi Karp Senior Policy Advisor AARP Public Policy Institute Washington, D.C.	Mr. Russ Marshall Professional Fiduciary Association of California
Ms. Jean Farley Public Defender Ventura County Public Defender's Association	Mr. Dave Kochen Adult Protective Services Planning and Program Development Los Angeles County	Ms. Patricia McGinnis Executive Director California Advocates for Nursing Home Reform

Hon. Dorothy L. McMath Commissioner Superior Court of San Francisco County	Ms. Mary Joy Quinn Director, San Francisco Probate Court Superior Court of San Francisco County	Ms. Heather C. Tackitt Family Law Mediator/Investigator Probate Court Investigator Superior Court of Madera County
Mr. Barry Melton Public Defender County of Yolo Public Defender's Office	Mr. Peter S. Stern Trusts and Estates Executive Committee State Bar of California	Dr. Brenda K. Uekert National Center for State Courts
Mr. Richard L. Narver Legislative Chair of the California State Association of Public Administrators, Public Guardians, and Public Conservators; and Assistant Public Guardian/Administrator County of Yolo	Hon. F. Clark Sueyres Superior Court of San Joaquin County/ California Judges Association	Ms. Michelle Uzeta Associate Managing Attorney Protection & Advocacy, Inc.
Ms. Peggy Osborn Program Manager, Elder and Dependent Adult Abuse Prevention Program Office of the California Attorney General		

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

Temporary Conservatorships

Panelists	Summary of Testimony
Are the standards for establishment of temporary conservatorship appropriate?	
Jean Farley	1. Petition should include showing that there are no less restrictive alternatives available, same showing now required in the Confidential Supplemental Information statement (form GC-312, item 5) filed with petition for general appointment under Probate Code section 1821. Alternatives include: a. Voluntary acceptance of assistance; b. Special or limited power of attorney; c. Durable powers of attorneys—health care or estate management; and d. Trusts. 2. Temporary conservatorships should never be allowed without an emergency justification.
Eric Gelber Michelle Uzeta	Support accountability reforms like those proposed in AB 1363, including mandatory tracking of at least: (1) the number of temporary conservatorships requested and granted, and the number in which notice was waived; (2) the number in which the proposed conservatee attended the hearing; (3) the number of contested hearings; and (4) the "type" of conservator being proposed (i.e., family member, professional, public guardian).
Jennifer Henning	1. Appropriate standards exist for the appointment of a temporary conservator. Current standards provide for enough flexibility to remove a person from a potentially dangerous or harmful situation, but still allow a neutral arbitrator to independently review the justification for the appointment. 2. Court has before it at the time of appointment of a temporary conservator all of the material that would show the need for appointment of a general conservator, including allegations of fact by a percipient witness showing the need for appointment of a conservator, and the alternatives considered and the reasons why they were rejected in favor of the conservatorship. 3. Judicial Council forms require factual allegations in support of the "good cause" requirement for appointment of a temporary conservator, and the reasons for a change of residence during the period of the temporary conservatorship. 4. Statutory scheme depends on the parties faithfully executing their duties. Petitioners must rigorously conduct their investigations of facts to be used in support of a temporary appointment, and resort to temporary

	conservatorship should be limited to cases where good cause exists and can be shown. Courts must carefully review the showing made, ask questions where doubts remain, and enforce the good cause standard. 5. Where faithful execution of duties does not exist, reform efforts should be focused on improving the performance of the persons responsible for carrying out the conservatorship process rather than changing the standards.
Naomi Karp	Probate Code should identify the basic criteria for appointment of a temporary conservator: 1. "Good cause" must be concretely defined to require risk of serious, imminent, or emergent harm; and additional harm will result if a temporary appointment is not made; 2. Appointment is necessary because no one currently has authority to act on behalf of the proposed temporary conservatee, or an existing fiduciary is unwilling to act, ineffective, or abusive; 3. Petition states a factual basis for the need for a temporary conservatorship; 4. Court finds facts that constitute the urgent or emergency need; and 5. Conservator is given only those powers necessary to respond to the emergency.
Richard Lambie Russ Marshall	Existing Probate Code and court rules provide for a temporary conservatorship where "exigent" circumstances exist. PFAC suggests that a comprehensive set of rules and guidelines would give judicial officers and court staff an appropriate framework for temporary conservatorships. 1. With no preexisting relationship with the proposed conservatee, it is almost impossible for a professional conservator to allege facts sufficient to show the need for a temporary conservatorship. 2. Court should require a professional conservator to state his or her prior relationship to a proposed conservatee, if any, and show how he or she learned about the facts alleged. 3. It is more appropriate in many cases for the petition to be filed by a family member who has actual notice of the supporting facts.
Barry Melton	1. As a general matter, there is no quarrel with the "good cause" standard under Probate Code section 2250. 2. There are concerns about the common practice of extending temporary appointments under the provisions of Probate Code section 2257(b).
Is notice provided to the correct individuals?	
Jean Farley	1. Notice should be as extensive as that required for hearing general petition (primarily second degree relatives). 2. Persons holding durable powers of attorney and trustees of trusts of which proposed temporary conservatees are beneficiaries should also be given notice of hearing on temporary conservatorship.
Jennifer Henning	Notice should be expanded to include close relatives of the proposed temporary conservatee—those entitled to notice of the hearing on the general conservatorship petition.

Richard Lambie Russ Marshall	PFAC supports the concept that the more persons noticed the better. Persons given notice should include (1) a person nominated as conservator; (2) a trustee or successor trustee [of a trust of which the conservatee is a settlor]; (3) an attorney in fact named in a power of attorney granted by the proposed conservatee; and (4) a person named in an advance directive signed by the proposed conservatee.
Barry Melton	1. Notice to the proposed temporary conservatee under Probate Code section 2250 is devoid of meaning if the proposed conservatee is not capable of understanding the significance of the notice. 2. The task force should consider proposing an amendment to Probate Code sections 1470 and 1471 to authorize appointment of counsel when requested temporary conservatorship powers potentially affect substantial assets of the proposed conservatee.
Should the courts be able to waive notice and, if so, under what circumstances?	
Jean Farley	1. Should never be a waiver of notice by personal service on proposed conservatee and counsel; 2. Waiver should be possible only if court finds from sworn testimony that proposed conservatee would be substantially harmed by giving notice; 3. Should be a requirement of proof of actual service of notice filed within 48 hours after the hearing; and 4. Probate Code section 1825 is often not followed. Conservatee should always be present unless physically unable to attend—completely bedridden, at least at the temporary stage.
Eric Gelber Michelle Uzeta	1. No notice is given to more than half of proposed temporary conservatees; judges routinely dispense with notice to proposed conservatee when provided unconfirmed assurance that proposed conservatee is too feeble to come to court; 2. Support reformed notice procedures in AB 1363, including (a) creation of a rule of court setting standards for good cause exceptions to notice requirements; (b) limiting exceptions to notice to those cases where waiver is essential to protect proposed conservatee or estate from irreparable harm; and (c) require proposed conservatee's attendance absent very limited exceptional circumstances.
Jennifer Henning	1. A good cause showing for waiver of notice to the conservatee is appropriate. The statute should not define this term too closely or narrowly. 2. If notice is expanded to include notice to relatives, the court should have discretion to waive notice to a relative who is an abuser when notice would jeopardize conservatee's financial situation; and 3. Reasons for a request for waiver of notice should be moved from the petition to a confidential document.
Naomi Karp	Except for Texas, all states appear to permit waiver of advance notice of application for temporary conservatorship in emergency situations. Notice should not be waived except in the most extreme circumstances. The Probate Code currently requires 5 days' notice to the proposed conservatee "unless the court for good cause otherwise orders." Good cause should be defined, and narrowly. Possible justifications for waiving notice:

	1. Proposed conservatee lives with a caregiver who is actively dissipating the conservatee's assets and giving notice is giving notice to the financial abuser; 2. A kidnapping; 3. A severe health problem requires immediate treatment and proposed conservatee can't or won't seek treatment; and 4. Other dire circumstances exist in which waiting even a couple of days may result in irreparable harm. One way to reduce notice waiver cases is to require a shorter notice period when an emergency is alleged: 1. Oregon and Minnesota require 2 days' notice; 2. Oklahoma requires 72 hours' notice. It is important to provide for notice and an opportunity for the temporary conservatee to contest the appointment at some point, even after the emergency appointment. For example, Wyoming and Minnesota require notice within 48 hours after an ex parte appointment. This allows immediate protective action and informs the conservatee as soon as it is safe to do so.
Richard Lambie Russ Marshall	1. The court should continue to have the power to waive notice of a petition for a temporary conservatorship. This power is essential where the health, safety or financial well-being of the proposed conservatee would be risked by giving notice that would enable potential abusers to take actions against the interests of the conservatee. 2. Waiver of notice should be rare but it is now routine. 3. Waiver should be considered only if an individual who would get notice is an abuser and the abuse is the reason for the temporary conservatorship. 4. Other examples of situations where notice should be waived: a. Person is in immediate physical danger and should be moved; b. Need to start eviction proceedings against occupants of property [with the proposed conservatee]; c. Need to serve [domestic violence or elder abuse] restraining orders against abusers; d. When immediate medical attention is necessary; and e. To prevent additional losses in cases of financial abuse.
Barry Melton	Courts should continue to be able to waive notice if temporary powers are requested to provide immediate medical treatment because of accident or illness. It is difficult to support unlimited waivers of notice for other reasons, particularly where there are substantial assets.

What role could and should court investigators play in temporary conservatorships?	
Jean Farley	1. If an attorney is appointed for a proposed temporary conservatee for a temporary conservatorship hearing or ex parte application, a court investigator is not needed; 2. If counsel is not appointed, a court investigator should at a minimum interview the proposed conservatee concerning his or her desires and the issues raised by the petition; and 3. Appointment of a court investigator should be mandatory when the proposed conservatee is not going to be present at the hearing or ex parte application.
Eric Gelber Michelle Uzeta	Support AB 1363's requirement that: 1. Prior to the hearing, or, if feasible, within 48 hours after the hearing, a court investigator must interview the proposed conservatee personally to determine whether he or she wants to oppose the conservatorship or has a preference as to identity of appointed temporary conservator; and 2. When a temporary conservatee's residence to be changed, absent good cause to the contrary, the court investigator should be required to personally interview the conservatee to determine his or her views on the change, whether he or she wants counsel, and whether the change is required to prevent irreparable harm. A hearing should be required on all such requests.
Jennifer Henning	1. Funding for court investigators must be increased if they are to be given a larger role in temporary conservatorships; 2. There should be flexibility in the requirement for a court investigator's report before the hearing on the petition for appointment of a temporary conservator. The court should be able to waive the report or allow it to be filed after the appointment hearing when time is of the essence; and 3. Court investigators should have access to the confidential information that is submitted with the general conservatorship petition when they investigate the request for appointment of a temporary conservator.
Naomi Karp	Difficult question due to resource limitations, but investigators play a key role when they inform the proposed conservatee of the case and the right to oppose the appointment, to attend the hearing, to be represented by counsel, and to have counsel appointed by the court. 1. This function of investigators should be included in the temporary conservatorship process, either before the hearing or, in unusual cases requiring an ex parte appointment, within 48 hours after the appointment (Maine procedure); and 2. AARP supports the requirement in Florida and Arizona for appointment of counsel in every temporary conservatorship matter. Appointed counsel may diminish the need for court investigator involvement at this early stage of the case.

Richard Lambie Russ Marshall	Court investigators should continue to play a critical role in temporary conservatorships. The proposal to have court investigators interview the proposed temporary conservatee before the appointment would be a tremendous safeguard against the potential for abuse.
Barry Melton	The role of court investigators should be expanded to authorize the immediate appointment of a court investigator to make a financial investigation, including the power to subpoena financial records, when a temporary conservatorship is requested that potentially affects substantial assets of the proposed conservatee.
Are the powers and duties granted to temporary conservators appropriate?	
Jean Farley	Many attorneys request powers at the temporary stage that require 15 days' notice. Court should strictly enforce requirements of Probate Code section 1203(a) (court can't shorten time for notice of a matter where the statute governing notice of that matter does not permit shortening of notice). No powers should be granted unless section 1203(a) is strictly complied with.
Jennifer Henning	1. Caution against attempts to limit the powers currently available to a temporary conservator. 2. Need to prevent or correct financial abuse may support greater powers than now available. 3. Full range of powers should be available, but petitioner is obligated to request only those powers currently required to address the needs of the conservatee. 4. An explanation should be required as to why a particular power is necessary, with any specific financial information placed in a confidential form. 5. Court must carefully review requests for powers and make an independent determination of the need for them.
Naomi Karp	Current statutory language granting powers to temporary conservatee is too broad. Temporary conservator's powers should be limited to those necessary to deal with the urgent or emergent situation giving rise to the need for the appointment. (New Jersey: "temporary [conservator] may provide only those services determined by the court to be necessary to deal with critical needs or risk of substantial harm to the incapacitated person.") Courts should specify the temporary conservator's limited powers in the Letters of Temporary Conservatorship. A check-off form could facilitate this process. AARP has other suggestions for a temporary conservatorship process that will be forwarded in writing. AARP is working with the ABA on a 2-year study of court monitoring of [conservatorships]. We will provide the task force with the findings of this study that are relevant to its work.
Richard Lambie Russ Marshall	The powers of temporary conservators are appropriate.

Barry Melton	The powers of temporary conservators to dispose of or take possession of substantial assets should be commensurate with the amount of a bond the court requires or, alternatively, such powers should be exercised by public authorities. The court should more closely monitor such transactions.
What might be better approaches to emergency intervention?	
Jean Farley	Statute should require appointment of counsel at the beginning of every conservatorship proceeding.
Jennifer Henning	If establishing temporary conservatorships is going to be made more difficult, a mechanism should be developed that permits emergency intervention where warranted. 1. Florida distinguishes between emergency and non-emergency situations. An emergency exists when the vulnerable adult is at risk of death or serious physical injury and lacks capacity to consent to emergency protective services. a. Emergency powers include power to remove the person from the dangerous situation and provision of medical treatment. b. A hearing follows within 4 days to determine whether the emergency powers should continue, on 24-hour notice to the person involved and next-of-kin. 2. A three-tiered conservatorship system similar to Florida's could work in California. a. First level, emergency powers for a short period of time; b. Second level, a temporary conservatorship that could feature additional hearings and investigation by the court, but would provide the conservator with some power to care for the conservatee while the court determines the need for a permanent conservatorship; and c. Third level, the permanent (general) conservatorship.
Naomi Karp	A paradigm for a well-constructed temporary conservatorship process grounded in due process and an examination of other states' statutes is a two-tiered process, depending on the urgency of the facts at hand. 1. Temporary conservatorship under urgent but not emergent circumstances; includes advance notice and hearing, and short duration; 2. Emergency conservatorship ordered on an ex parte basis only to avoid imminent and major harm—in a very small fraction of cases—with appropriate notice and a hearing to follow in short order. Wyoming incorporates this idea. Analogy in equitable actions to temporary restraining order, with expedited or no notice (emergency conservatorship); preliminary injunction, with additional notice and a hearing (temporary conservatorship); and permanent injunction, with full notice and opportunity to respond and a trial (general conservatorship).

Richard Lambie Russ Marshall	1. Notice should be given to county Adult Protective Services department (APS) where proposed conservatee is incapable of consenting to APS's intervention. 2. Mandatory family mediation should be required before the hearing on permanent appointment.
Barry Melton	Assuming a commensurate increase in funding, protection against or correction of financial abuse in emergency situations could be accomplished by increasing the role of public agencies, including public administrators/ guardians/conservators. A broader role in this area might also be possible for county counsels and public defenders.
Miscellaneous testimony on temporary conservatorships	
Hon. Marjorie Laird Carter	Notice and right to rehearing within 5 days should be required if temporary conservatorship was granted without notice.
Eric Gelber	1. The concept of conservatorships is anachronistic and antithetical to current ways of viewing disability and the principles and values embodied in approaches to the provision of services and support to persons with disabilities. 2. Current approaches focus on self-determination, person-centered planning, and autonomy. 3. People with disabilities are capable, with natural and professional supports, of expressing preferences and making choices affecting their lives, including where and with whom they live and the types of services and support they need. 4. "Nothing about us without us."
Jennifer Henning	1. Temporary conservatorship statutory scheme works. Most concerns surrounding appointment of temporary conservators come from lax application of existing standards, not from lapses in statutory scheme. 2. Funding is and remains a concern in public guardian conservatorships. Many temporary conservatees under the care of public guardians have very low incomes; fees and costs of the public guardian and the county counsel are routinely deferred or waived. Simply adding requirements to the temporary conservatorship process without addressing funding will not meet any objectives of the task force. 3. Reforms of the temporary conservatorship process should not be based on anecdotal stories. Changes in the process should be based on sound policy.
Richard Lambie Russ Marshall	An important issue is the length of time before the hearing on the general petition. PFAC supports a limit on temporary conservatorship appointment of 30 days, as is the case in temporary guardianships granted without notice (Prob. Code, § 2250(d)).

Patricia McGinnis	1. The law should be amended to more strictly limit temporary conservatorships, and to encourage consistency among all counties. 2. The 5-day notice for a temporary conservatorship is insufficient. 3. The duty of the court investigator to interview the conservatee should never be waived, nor should the notice to the conservatee.
Hon. F. Clark Sueyres	Temporary conservatorship statute currently requires notice only to proposed conservatee, which for good cause may be waived. Court is authorized to require further notice according to the circumstances of each case, but the statute offers no guidance. Unlike the Rules of Court for general civil matters, there are no rules for ex parte application in probate. Local practices have been cultivated that are widely disparate court to court. Guidelines and minimum standards for this dramatic intrusion into a protected person's life would help efficiency and assure better protection from abuse.

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

Permanent Conservatorships

Panelists	Summary of Testimony
Are there sufficient due process safeguards to ensure the rights and interests of conservatees are being protected?	
Hon. Marjorie Laird Carter	The conservatee's right to privacy needs to be weighed against any expanded notice requirements.
Margaret Lodise	Generally supportive of broader range of notice, and right to jury trial should be maintained. LA system of appointment of counsel, which utilizes some volunteer attorneys, works well to help protect rights of conservatees. It should be easier to end a conservatorship with sufficient safeguards to prevent the conservatee from cycling back into the system.
Patricia McGinnis	Findings of exact degrees of incapacity or incompetence should be required so as to impose only the necessary degree of guardianship or conservatorship. Although the current system requires conservators to state in the petition why alternatives are not available, it does not require them to prove the lack of less restrictive alternatives, such as money management, home care, etc. Should make the judge's decision that there is no less restrictive alternative an appealable finding. Waiver of notice happens too frequently; requirements for notice and opportunity to appear should be strictly enforced. The law should be amended to give conservatees immediate access to their funds to pay for legal challenges to their conservatorship, the accountings, and/or the conservator, if they wish. Conversely, professional conservators should not be permitted to use a conservatee's funds to fight such challenges, particularly when their opposition to a challenge by a conservatee is unsuccessful.
Richard Narver	Each party must fulfill its statutory role, which has been a significant problem in some counties. There needs to be more monitoring by the court through the court investigator's role.

Peter Stern	Notice provisions should be expanded to disseminate more information about the conservatorship to the conservatee and family members, including the confidential supplemental information form, the inventory and appraisal, and the accountings. The Trusts and Estates Section of the State Bar of California (Section) supports SB 1116, if it is amended to include provisions that would create a presumption that the conservatee's personal residence is the least restrictive residence, would create a fiduciary duty to evaluate residential and care needs focused on keeping the conservatee at home whenever possible, would require all notices of change of residence to state that the change of residence is consistent with the "least restrictive residence" standard, would require mailing all changes of residence to second-degree family members, and would create a series of enhanced safeguards regarding the sale of a conservatee's personal residence.
Hon. F. Clark Sueyres	The right to counsel in conservatorships has some fundamental issues in its application. There is no statutory guidance and little case law. This results in disparate application between courts in different counties and between judges in the same court. A petition, or the investigation report, may present facts that show a lack of capacity to manage affairs or resist undue influence, yet counsel may appear as retained. Beyond the capacity issue, there is the question of who is actually controlling the subject's counsel. The extent to which the court may inquire, and if necessary intervene, is unclear and should be addressed. Also, what is the appropriate role of appointed counsel? Does the attorney represent the subject's wishes or best interest?
Heather Tackitt	Need to address both the rights/interests of the physical person and the financial/estate issues, especially at the beginning of the conservatorship, which is often when financial abuse occurs. There should be more stringent bond requirements; and mandatory court hearings before the sales of certain assets, such as the conservatee's home or assets valued at certain amounts, should be considered. Least restrictive care standards should be strictly adhered to by the courts in order to prevent a conserved person from being placed in a care facility (often locked-down facility) if they are able to remain in their home with adequate medical care. While the "least restrictive care requirement" is an adequate due process safeguard, proper court oversight is lacking, with most counties statewide reporting they are not current in their reviews. Due to this, the courts are not detecting this, and other violations, in adequate time. Other physical abuses (e.g., neglect, abandonment, physical abuse) also take place and without adequate court oversight.

Michelle Uzeta	Support the establishment of accountability measures, like those proposed in AB 1363, that would require tracking of at least: (1) the number of permanent conservatorships requested and the number granted, noting the number in which notice was waived; (2) the number in which the proposed conservatee attended the hearing; (3) the number of contested hearings; and (4) the "type" of conservator being proposed (e.g., family member, professional, public guardian). The collection and analyzing of such data is essential from a quality assurance standpoint, and will help identify problems and trends within the system.
Should court review of conservatorships be conducted more frequently, and what should the focus of these reviews be?	
James Locke	Due to severe budget constraints, Sacramento County only reviews cases when an accounting is filed (i.e., cases are only reviewed where the conservator is playing by the rules). Some cases have not been reviewed since the mid-1980s and perhaps have never been visited by an investigator after the initial investigation and report. Sacramento County will need 2 or 3 more investigators just to do what we are already required to do and are not doing. Without additional funding any other discussion is moot.
Margaret Lodise	The single biggest reason for problems in this area is a lack of sufficient resources to review the accountings and conservatorships currently in the system. Placing the burden of additional regulation on the courts and the conservators without providing additional resources will not resolve any of the perceived problems.
Patricia McGinnis	Far too often, an elderly person suffers from the effects of malnutrition, of new medications, of a fall, etc., and is only temporarily incapacitated. With the appropriate treatment or therapies, the elder can live and maintain independently within a few months. Unfortunately, our current system provides only for an annual review and biennially thereafter. The procedures should provide for at least a six months review after the conservatorship is approved.
Richard Narver	The court should send out the court investigator more frequently to determine if there is sufficient reason for a hearing. The court investigator would carry out a comprehensive investigation regarding the conservatee's overall welfare as well as determine the appropriateness of the relationship between the conservator and the conservatee. The foregoing would be preferable to a change in the law that would automatically require additional hearings.
Peter Stern	Although the Section has taken positions supporting licensing and certification for professional fiduciaries, we recognize that a licensing system alone is no substitute for vigorous and well-funded court reviews by the court investigation units, for thorough review of court accountings by the investigators and the probate examiners, and for oversight by the courts throughout the conservatorship process. These steps do not require new laws; rather they require increased staff and funding.
Hon. F. Clark Sueyres	Statutes fleshing out the process of person-only reviews would be useful. Currently, the court must review, but there is no requirement that it be done in open court, which would permit interested persons to address the issues. Also, the law currently does not require conservators to cooperate in fact gathering for this review.

Heather Tackitt	The current annual/biannual review process may be adequate, but the courts need to adhere to this requirement and this will only be possible if the courts receive earmarked funds for increased probate court investigator staff and training. There is a split of opinion among court investigators regarding increasing the frequency of reviews. Possible compromise: If the court investigators are required to review the Person and Estate status within 6 months of the Permanent Conservatorship being granted, they could detect potential abuses sooner and help to prevent them. Annual checks would be conducted thereafter to ensure compliance. After 2 "positive" annual reviews, biannuals can then be performed, which would lessen the workload on the courts over time, and also add the necessary initial court oversight at the critical beginning stages of the conservatorship. The focus of the reviews should be in four main areas: (1) Is the conserved living in the least restrictive care home/facility? (2) Are the assets being properly managed? Probate court investigators need to be adequately trained to review/audit financial documents. Also, there have been suggestions for having credit checks on the conserved to see if changes have been posted. (3) Is the conserved being medically cared for and is the care plan consistent with diagnosis/prognosis? (4) Interview of the conserved and any listed concerned family members/friends, without intervention from others. This should include a review of the APS system and local law enforcement records to check for any lodged complaints. It is also critical to have adequate time to discuss the issues with family and friends.
Michelle Uzeta	Support reforms that would require more frequent reviews of conservatorships at *noticed* hearings and that would require conservators and guardians to present annual, rather than biennial, accountings. Increasing the frequency of such reviews will improve the chances of identifying and addressing conservator abuses earlier.
What is the appropriate role for court investigators and other court personnel in preventing and deterring abuse?	
Margaret Lodise	Additional resources would enable the courts and court investigators to more fully review the accountings that are presented since, in populous counties, accountings may be subject to only cursory reviews. The lack of resources to investigate family or conservatee complaints outside of accounting issues is similarly problematic. It is critical that a determination be made to adequately fund programs to benefit the aging population that the courts will increasingly be called upon to serve.
Richard Narver	The increased role of the court investigator is critical in preventing and deterring abuse. Accordingly, there is legislation needed that includes additional funding to increase the role of the court investigator.

Peter Stern	SB 1716 (Bowen) would permit the courts to consider ex parte communications concerning conservators and conservatees and mandate more frequent review by court investigators. The Section is seeking amendment of that bill to permit the ex parte communication to be acted upon, but at the same time to ensure due process and to guarantee that all parties and counsel will receive notice of the communication. The Section also supports the portion of SB 1716 that would permit the court to order a review of a conservatorship on any occasion deemed appropriate by the court. The Section also supports the part of SB 1716 that explicitly mandates the court investigator to report on the appropriateness of the conservatee's placement, the conservatee's quality of care, including physical and mental treatment, and the conservatee's financial condition, all of which, in our opinion, are subjects touched upon in some detail by most court investigation reports we normally see.
Hon. F. Clark Sueyres	In conservatorship cases, independent investigation by the probate court investigator may be the most important tool employed by the court.
Heather Tackitt	Probate court investigators are mandated reporters and required to be involved in the "prevention and deterrence" of abuse.
Michelle Uzeta	Court investigators' evaluations should be required to include assessment of (at a minimum) the appropriateness of a conservatee's placement, a conservatee's quality of care, and a conservatee's financial condition. Appropriateness, for purposes of such evaluations, must be defined to take into account least restrictive measures and alternatives, as well as a conservatee's desires and values.
Do court personnel have the requisite education and training to properly perform their jobs?	
Hon. Marjorie Laird Carter	Many of the reported cases of abuse in the Los Angeles *Times* series appeared to involve waiver of bond requirements, which suggests need for greater education of the courts on the importance of bonds to protect against financial abuse of conservatees. The Education Division/CJER audience should be expanded to include court investigators.
Richard Narver	In terms of court personnel, there is some major variability in their properly performing their jobs. It appears to be a matter of developing and maintaining high performance standards. This would most likely require additional funding for increased staffing and increased performance monitoring.
Hon. F. Clark Sueyres	Training of judges and court staff, clerks, examiners, and investigators and retention of their expertise is necessary for execution of their statutory duty. Currently, however, judges have no probate court-specific education and continuing education requirements. Probate investigators have no court-required, statewide standards and no court-furnished, statewide training. Support staff training should include some accounting principles.

Heather Tackitt	California Association of Superior Court Investigators (CASCI) is the only known organized training for probate investigators. There is a lack of participation from some counties—reportedly, some court executive officers will not support these training efforts, citing budget shortfalls. The Administrative Office of the Courts (AOC) does not currently offer probate investigator training. Even for "joint" systems (Probate Investigators in the Family Court Services divisions), the AOC only recently began offering probate training issues at the 2005 AOC statewide training, which only included guardianship investigator training. CASCI has discussed the idea of a working partnership with a CJER committee just as the Family Law Mediators/Custody evaluators attend AOC-sponsored Trainings through CFCC. CJER-sponsored training could be offered under Probate and Mental Health, Family Law Education, or the Collaborative Courts Education committees. The issues involved in conservatorships range from accounting issues to very serious medical issues. The need for training in the vast range of disciplines is obvious. Many court investigators have had some training/experience in perhaps one or some of the possible disciplines involved, but rarely are they experts in ALL fields without a need for further education. CASCI has proposed mandatory education requirements for probate investigator positions. "Grandfathering" in current probate court investigators is supported. As of May 2003, the Minimum Uniform Standards of Practice for Court Investigators adopted by CASCI was scheduled to be drafted by the Judicial Council to be implemented as a California Rule of Court. To date, this has not been implemented.
Michelle Uzeta	Judges, as well as attorneys and investigators involved in the conservatorship process, need to be better trained so that they are aware of potentially available sources of services and supports that would in many instances prevent the need to establish conservatorships.
How can courts more effectively review accountings?	
Hon. Marjorie Laird Carter	Courts should perform random audits of accountings, utilizing volunteer CPAs if necessary. If accountings were required every 6 months, courts would need to triple the number of staff. Forensic accountings are needed to detect fraud in cases where accountings appear to be balanced on their face.
James Locke	The courts should require credit reports on the conservatee, not the conservator, when the review is done. This would be one simple step the court could undertake to protect conservatees.

Margaret Lodise	A requirement for more frequent accountings may be beneficial, although such a requirement must be coupled with the ability of courts to waive or modify requirements in appropriate cases and with sufficient resources to courts to enable review of required accountings. In conjunction with accountings, the provision of original bank statements for the accounting period may also make sense. However, a requirement that all underlying original records be provided is likely to overwhelm the court with paper. Additionally, the more information that is required to be provided, the more opportunities will exist for sensitive private information to be inadvertently disclosed. The same persons entitled to notice of the original conservatorship petition should probably, absent a finding of good cause not to do so, be provided with notice and a copy of accountings and other filings in the conservatorship.
Patricia McGinnis	Conservators should be sanctioned and fined when accountings are not filed in a timely manner and all accountings should be subject to review and verification, including submission of receipts and invoices for all alleged expenditures.
Richard Narver	The role of the court investigator should be increased to provide needed assistance, which should result in more timely reporting of potential and actual estate management problems.
Peter Stern	While it might be worthwhile to consider requirement of a greater number of statements for each account (rather than only the initial statement and the closing statement for each account period), the Legislature should move cautiously where a change in the law would create a paper deluge in the offices of the court investigators and probate examiners. The best way to increase court oversight and accountability regarding conservatorship assets and the financial transactions performed by a conservator is to enforce the existing law.
Heather Tackitt	Many probate court investigators support more stringent accounting reviews and agree that the financial documents should be available for review within the first 6 to 12 months of the initial permanent conservatorship. Again, resources cannot be ignored. In addition, it is widely suggested that courts invest in either the hiring of or subcontracting with probate examiners who specialize in this field. Perhaps the current probate court investigators may perform cursory reviews as an additional layer of protection. Regardless of the duties assigned, all investigators who will be mandated to review accounting documents need continued and mandatory training in this area. In addition, the investigators agree on the need for adequate time to perform proper reviews of complex financial documents if assigned this duty.
Michelle Uzeta	With regard to the review of a conservatee's financial situation, courts and investigators must ensure the prompt and effective review of filed accountings. This will, in part, require the hiring and training of additional court investigators or accounting specialists.

What is the appropriate role of the courts in providing assistance to self-represented litigants?	
Hon. Marjorie Laird Carter	Existing guardianship clinics should be expanded to cover probate conservatorships. Recommends "unbefriended elders program" as a possible model.
Yolande Erickson	The Judicial Council's Conservatorship Handbook should be more widely available, even before conservatorship has been established. Courts should provide self-help clinics, which can serve as resource centers with informational guides, including information about community resources and alternatives to conservatorship. When a conservatorship petition is filed, pro per litigants should receive a checklist from the court clerk's office with information on items needed to be completed before the hearing on the petition. Courts should offer training to all nonprofessional conservators, self-represented litigants, and those represented by counsel.
Patricia McGinnis	A written "bill of rights" for conservatees should be provided to every potential conservatee by the court investigator, explaining the process, what it means, what rights the conservatee will have to challenge the conservatorship, etc.
Richard Narver	Given the serious capacity issues usually involved in probate conservatorship proceedings, the appropriateness of self-represented litigants is in grave doubt. Also, given the task force's topic of inquiry, it is vital that conservatees have sound legal representation.
Hon. F. Clark Sueyres	Pro per clinics offer assistance not only to litigants but to the court. In addition, many more receive direction from "paralegals" and "legal typing services." Replacing their role with court clinics seems a huge budget challenge. Underground legal assistance is a breeding ground for elder abuse and fraud. Reduction of estates, ostensibly to achieve Medi-Cal eligibility and avoid repayment, are more likely found where quasi-lawyers practice.
Heather Tackitt	Courts should provide assistance to family and friends attempting to petition or object to a conservatorship in order to protect an elder or disabled adult. Unless the courts can be provided adequate funding, the burden will be unduly placed on the courts under the already existing "tight" budget.
Miscellaneous testimony on permanent conservatorships	
Hon. Marjorie Laird Carter	The overall statutory scheme is basically sound; lack of resources is the main problem, which will be exacerbated with new mandates. Variance and flexibility in good practices may be needed because of differences in rural and urban settings. Modest conservatorship estates can be eaten up by fees. It is important to strike the appropriate balance with any reforms.

Margaret Lodise	The Los Angeles *Times* articles were one-sided, failing to fully present the other side of the situation—those persons whose lives are saved by the conservatorship system in the vast majority of the cases where it works exactly as it should. Thus, our bias is toward keeping the system with minor reforms and determining a way to ensure that the many safeguards already in place are fully utilized. As with any law on the books, those intent upon breaking the law may be successful for some period of time and it is questionable whether the system can be so far reformed as to prevent all forms of thievery. Cambalik and other cases highlight that arguably the largest failures of the current system were each entirely different and that they do not point to overall failure of the system but, instead, to individual issues within specific courts. Individuals who come into the conservatorship system have significant problems. This is not to say that the system should not work for them, but to say that relying upon statements from the participants as to supposed abuses may not be a reliable source of history. In other words, while it is important to consider the reports of abuse of the system, it is also important to consider the potential for erroneous reports. While the LA *Times* series focused on professional conservators, there are many, many instances of abuse of the system by individuals caring for family members that require the intervention and assistance of professionals. Any system of regulation that unduly burdens professionals will cause them to leave the system and potentially place additional conservatees in danger. On the flip side, any system that is too cumbersome will discourage family members from becoming conservators and thus put more persons into the hands of non-family members. The issue that should be focused on is the implementation of the existing regulatory measures, with only some minor revisions to the system. Reforms that the Executive Committee would support (and has supported in the past) include licensing of professional conservators. Licensing, coupled with training, insures that when a professional, rather than a family member, is the conservator, that person will have training in dealing with the issues of the conservatee.

Patricia McGinnis	Simply increasing the standards or training for private conservators or court personnel would be window dressing. We need to ensure that conservatees are protected from inappropriate conservatorships in the first place and that their estates are protected from fraud and abuse; that they can contest the conservatorships, the accountings, or the court-appointed conservator; that, in the absence of abuse, their families are given first opportunity to be the conservator; and that they can more easily seek and obtain restitution when they have been wronged. Some measures should be added to ensure that private conservators are appointed as a *last* alternative over qualified, willing family members. There should be some burden to show that a willing family member is unqualified or otherwise unable to serve. The feasibility of incorporating family unification into probate conservatorship proceedings should be explored. We need a state and county reporting system that provides information on all of the key procedural benchmarks. We need to track the name of the conservator; the number of emergency appointments approved annually; the number granted without notice to the conservatees; or before an attorney is appointed; or before the court investigator's report is filed; the number of proposed conservatees who appeared at the initial hearing; the number of conservatorships opposed; the annual accountings and the dates filed. Without this basic information, we have no way to track abuses in the system or to address the problems inherent in the system. Current law has no provisions for a person to obtain restitution when the conservator has plundered the estate or when someone has been wrongfully conserved. Language should be added to the Probate Code to address this omission.
Richard Narver	The Public Guardian's Office is generally subordinated under agencies such as Health, Mental Health, and Social Services. In these situations, the Public Guardian's Office is usually drastically underfunded and understaffed and its voice is rarely heard. Legislation is needed for public guardians to be able to obtain medical and financial information when carrying out a probate conservatorship or guardianship investigation. This would allow for a stronger basis on which to determine the appropriateness of a conservatorship or guardianship as well as a suitable alternative. The task force may want to recommend more of a scientific study of conservatorship rather than the usual anecdotal accounts. For example, a longitudinal study of conservatorship carried out by a social scientist—who has no ax to grind. We don't need unfunded mandates. We don't want to create false expectations and unnecessary system failure. Imposition of additional mandates without funding is delusional.

Peter Stern	There is a lot that is right about our existing legislation, and those courts that have vigorous staffs in adequate numbers can enforce the law properly and make the existing legislation work. We urge the Legislature and the Governor to take seriously the problem of staffing and funding, which in our opinion is the real problem in court oversight and accountability. According to the court officials quoted in the Los Angeles *Times* series, there were too many cases, not enough investigators, not enough staff members available to review the cases, accountings that had gone unscreened for years, and essentially a complete failure of the system. What we need is more staff, more funding, and more compliance with existing laws. There should also be a revamping of the archaic investment standards of Probate Code sections 2570 to 2574. The State Bar has endorsed the Section's legislative proposal for such reform, which would bring current investment standards in line with prudent investor standards of the Trust Act and permit modern techniques of risk mitigation to be used in the conservatorship forum without costly petitions to the court. Such reform would streamline conservatorship investment standards, cut down on the costs of conventional patterns of investment, and require conservators who wish to make "nonstandard" investments to petition the court for prior authorization of their acts.
Hon. F. Clark Sueyres	Tracking of milestone events, including ones without calendar dates, e.g., the filing of an inventory and appraisal, is necessary to complete the court's duty. New software is under development that can provide the necessary tracking. Funding this for all courts would be of great assistance to supervision. It could be helpful to provide an express statute or rule permitting an inventory to be filed without an appraisal, for good cause. Communication directly with the court, even to alert the court of grave danger to the conserved, is grounds for the court to withdraw rather than grounds to act. A Rule of Court for juvenile judges is a paradigm for probate and pending legislation to permit this contact [i.e., SB 1716 (Bowen)] and is worthy of support. It would be useful to have express authority for appointment of forensic experts and for reference under Code of Civil Procedure sections 638/639. Demands on court resources not only impact the state budget, they also impact the parties' pocket books, none more so than that of the protected person. Court costs, as well as lawyers' and other professionals' fees, with rare exception, are borne by the protected party's estate. Proposals that increase costs to the protected party must be measured against the benefit delivered. Proposals that drive up costs also will have an unintended consequence to consider. Cost increases are an incentive to avoid conservatorship and place reliance on non-lawyer, non-court devices. These may be appropriate, even desirable, in given circumstances, but they are unsupervised. One of the most egregious cases of elder neglect and abuse seen in my court was perpetrated by a former legal secretary doing business as a fiduciary for hire as an attorney-in-fact.

	There may be additional cost for a protected person for new and reformed remedies, a reduction in personal privacy. Who of us wants all our relatives to know all of our personal and financial information? The first step to increased protection is increased budget resources and an incremental approach to legislative improvement.
Heather Tackitt	We cannot address new mandates without guaranteed earmarked funding for the probate courts. I propose that if some of the current guardianship cases in probate court are properly returned to the local county agency designated to investigate potential dependencies under Probate Code section 1513(c) for further investigation and final adjudication in juvenile dependency court, some of the probate division resources being expended for guardianship investigations can be returned to probate conservatorships cases. Another suggestion to help alleviate the staffing/funding issue would be to work with the University of California and California State University systems to develop a "work study" program. Students in related fields (e.g., social work, nursing, gerontology, and accounting) could perhaps earn both units and small financial stipends by working in the probate divisions.
Michelle Uzeta	Inadequate staffing has resulted in a backlog in needed home visits, which should happen even more frequently, and in the inability of probate attorneys to keep up with the financial reports in which conservators must account for conservatees' money. To rid this backlog of financial reports, many questionable expenses and payments have been rubber-stamped or otherwise gone unnoticed, opening the door to financial abuse. Support the establishment of additional safeguards to protect conservatees from major events, such as the sale of a conservatee's home and/or a change in living arrangement. Prior to the sale of real property of a conservatee and placement of the conservatee in a group home, nursing facility, or other residential care facility, conservators should be required to explore less restrictive alternatives to a facility placement, including but not limited to an at-home placement for the conservatee with necessary services and supports. Conservators should be required to document in writing all alternative placements explored, along with the rationale behind not pursuing/securing those placements. Conservators should also document, in writing, any efforts made to secure the services and supports that would allow their conservatees to remain in the community and/or in their family home, such as in-home support services, regional center services, mental health services, medical and mental health rehabilitation services, home and community-based waivers, and alternative property financing methods. Standardizing the educational and training requirements for potential conservators is also a necessary part of conservatorship reform, especially for professional conservators. Support such reforms as: (1) requiring the licensing of professional conservators; (2) the establishment and administration of a licensing program for professional conservators and guardians; (3) the establishment of an

	ombudsman's office to collect and analyze data related to complaints about conservatorships; (4) the development of a conservator's code of ethics; and (5) the establishment of a committee that would take disciplinary action against conservators, and/or make referrals to the Attorney General for violations of law and/or the breaching of a fiduciary duty. [Courts] should be required to start using the *existing* statewide registry to track abusive and inept conservators. If the utilization of the registry is currently too difficult or burdensome, then some other tracking mechanism needs to be developed. Pursuit of a conservatorship, whether temporary or permanent, is a measure that should only be undertaken in the most urgent or extreme of circumstances, and even then, only after less intrusive alternatives have been fully explored. If the task force is to accomplish anything meaningful, it must not let cost be the overriding or determinative factor in its recommendations. From the standpoint of those whose lives and basic rights are most directly impacted, fiscal costs to state and local government must be balanced with the costs to these individuals' fundamental interests in personal autonomy, human dignity, and even liberty. We hope the task force will propose real reform and let state and local legislative bodies determine what priority is to be given to safeguarding the interests of those whose rights and quality of life are at stake.

Probate Conservatorship Task Force Public Hearings
Summary of Written Testimony

Improving Collaboration With Key Justice System Partners

Panelists	Summary of Testimony
What specific steps can courts take to better detect and deter abuse of conservatees by family members?	
Robin Allen	Supports multidisciplinary team approach, and recommends that every county should have one. Recommends LA model led by manager in Department of Social Services.
Terry Flynn	Revamp accounting procedures to require more detailed information from conservators—no specific recommendation. Provide resources to better train prospective conservators, including public guardian staff. Provide resources to train self-represented litigants. Increase the role of the court investigator: have them make more frequent visits, visits between accountings. Increasing the number of accountings is not the way to go; it would clog the courts, create a hardship for under funded Public Guardian (PG) offices, and create costs that would generally be borne by the very conservatees whose estates we are trying to conserve. Provide better screening of prospective conservators. Current procedures for screening, where they can be said to exist at all, lack clarity and rigor. Often we at the PG's office are obliged to screen a prospective conservator, but in order to recommend against a family member, for example, we need information the family member is not likely to share with us, and which we lack the time, resources, or authority to gather ourselves. Mandate participation of defined entities in multi-disciplinary team. Riverside model led by manager of social services has been successful.
Peggy Osborn	Courts with exemplary programs devote staff for training and oversight of family conservators. Sadly, two-thirds of all abusers are family members. Three exemplary programs have volunteers or social work student interns visit conservatees and report on their condition.
Recommend a place that would receive and investigate complaints of abuse, especially where the public guardian's office is not a party?	
Terry Flynn	Clear channel for handling complaints is needed and currently lacking. Channel for anonymous complaints is needed.

Dave Kochen	Supports licensure and statewide ombudsman ("Jones Bill "concepts).
Peggy Osborn	Attorney General's Office has established a toll-free statewide hotline for the reporting of suspected elder abuse. One of the items in proposed legislation is the Statewide Registry. This database can provide judges with access to centralized information about private conservators and guardians. Ms. Osborn questioned whether courts were using the current registry, as to her knowledge only 25 judges had requested passwords. Licensure (Jones Bill) is not a solution for family abuse, which is more prevalent.
As proposed in SB 1716, would statutory authorization for courts to take appropriate action in response to ex parte communications be helpful to conservatees?	
Terry Flynn	Supports concept. Not familiar with Bowen Bill specifics.
Miscellaneous testimony on collaboration with key justice system partners	
Robin Allen	Los Angeles Police Department (LAPD) takes its responsibility very seriously.
John Bagnall	More funding. For example, expanding District Attorney's accounting staff would be helpful because LAPD detectives lack this expertise. Recommended probate fee as funding mechanism.
Terry Flynn	***FUNDING, FUNDING, FUNDING*** Adequate funding to allow the courts to do what they are supposed to do. State association of public guardians has certification program, but there is no outside funding for the trainings. Training dollars have been cut by counties. Great concern about unfunded mandates. Legislators should consult in a timely manner with people providing conservatorship services. Increase the authority of PG probate investigators to gather information on prospective conservatees. Often, until we are appointed conservator, we have no right to financial and other information that could materially affect the outcome of our investigation. Our investigators need authority similar to that possessed by law enforcement to do their jobs most effectively. Standardize what qualifies persons to be conservators and what would disqualify them. Currently some information is gathered by the courts, but to my knowledge, there are few if any rules as to what consequences follow from the information gathered.
Dave Kochen	More funding for greater accountability, oversight, and consistency of practice. More effective training of Adult Protective Services (APS) staff to reinforce policies and procedures. Development of a specific complaint form for use by APS.

Peggy Osborn	California has nation's largest population of seniors and it is expected to double by 2030. Elder abuse is one of the most disturbing challenges. Education, public awareness, and prevention are essential in helping protect this vulnerable population. Elder abuse is one of the most underrecognized and underreported crimes.

NOTE: Written testimony for Ms. Robin Allen is not available. Mr. John Bagnall's testimony is available via audiocast at *www.courtinfo.ca.gov/jc/tflists/cons_audiocast_031706.htm*

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Model Programs and Best Practices

Panelists	Summary of Testimony
Are you familiar with any unique practices or procedures that may enhance a court's ability to provide effective oversight in probate conservatorships?	
Hon. Dorothy L. McMath	San Francisco Probate Court Commissioner McMath jointly presented with Mary Joy Quinn, director, San Francisco Probate Court. She believes that the procedures and protocols of the San Francisco probate court are a good model for carrying out the statutory mandates, and that the statutory scheme provides adequate oversight. Her written testimony included an overview of procedures in San Francisco with citations to the appropriate probate code sections. San Francisco local court rule 14.91 mandates declaration regarding notice and appearances. San Francisco local court rule 14.93 clarifies the role of court-appointed attorneys, to inform the court of the wishes, desires, concerns, and objections of the proposed conservatee. If asked by the court, the attorney may offer his or her opinion as to the best interests of the proposed conservatee. Probate Department relies heavily on court-appointed attorneys to help parties, such as contentious families and conservatees, find alternatives that will protect the conservatee's interests while maintaining the maximum independence and privacy of the conservatee and relieving mistrust among family members. Alternatives may include creating a trust, bringing an existing trust under court supervision, finding an alternate acceptable conservator, or preserving some independent power of the conservatee such as management of an allowance or separate checking account. Status Dates (monitoring) Appointment orders include an attachment setting out dates for subsequent filings. The dates are entered into the court's computerized calendaring system. A probate examiner reviews the files for the calendared dates and takes the status date off calendar if the required document has been filed. If the document is not filed, the matter is on calendar for hearing. The court issues an order to show cause requiring the conservator to appear to show why the conservator should not be removed, or have his or her powers suspended. Accountings: Staff coordinates the hearing date for the accounting with the investigator's visit so that the file examiner has the investigator's report when he or she reviews the accounting, and the investigator has the accounting when he or she visits the conservatee. The cross reference enables the investigator to detect

	inconsistencies such as major property repairs, clothing purchases, or auto or utility costs reported in the accounting but not evident in the conservatee's home or care facility. Addressing problem conservatorships: The investigators are available to receive phone calls or letters reporting the problem. Optional responses are setting a hearing, making an additional investigator visit, or appointing counsel. General: In considering improvements to the conservatorship process, decision makers should not allow their concern for protection to overshadow conservatees' rights to privacy and maximum independence. Guardianships are not "permanent"; they should be called "general" per the statutes. She does not support sending accountings to relatives who may abuse information. This would also be a violation of the privacy rights of the conservatees.
Mary Joy Quinn	Per Commissioner McMath's testimony (see above), she believes the staffing, procedures, and operation of the San Francisco probate court implement the statutory scheme and provide an overview of the staffing and operational functions.
Brenda Uekert	Should professionalize the professional conservators through registration, certification, or licensing. Certification ensures that minimal education standards are met. Some programs, like Arizona's, also include operational audits, a complaint process. Courts need a case management system to implement effective monitoring. Rockingham County, New Hampshire, has an automated system that notifies court staff that reports are due. The system also tracks the number of new conservatorships and the total number of active cases. Courts need to conduct audits in addition to routine monitoring. Broward County, Florida, uses a three-tiered system. All reports are subject to the first level of review by the Audit Division of the Clerk of the Court's office. A sample of reports is selected for a more intensive second-level review. Finally, a further sample is selected for detailed in-house and field audits of supporting documents to verify information in the reports. Ramsey County, Minnesota, is about to launch a Web-based application. When the system becomes fully functional conservators will be able to access software that will assist the preparation of reports, and will allow management of their account and updating the courts records. The National Center for State Courts is developing performance standards that enable courts to manage, oversee, monitor, and enforce conservatorship law. This will be a help in accountability of courts for managing this area. The Michigan AOC audited five probate courts several years ago and concluded that the Michigan courts were not doing a good job of overseeing conservatorship cases. The Michigan AOC developed a review model and had two contractors travel to the state courts to conduct reviews. The courts received feedback about their strengths and weaknesses and were required to provide a corrective plan of action to the AOC. Courts are now more aware of their oversight role and how to detect fraud.

How can courts hire and retain sufficient staff to keep up with the workload investigations, reviews, and accountings currently mandated by statute?	
Hon. Dorothy L. McMath	"The task force has a wonderful opportunity to encourage the State of California to provide funding for staff and education for all courts to implement existing [probate] statutes."
Mary Joy Quinn	<u>Staff</u> San Francisco Probate Court is composed of the following: Presiding judge, probate commissioner, a court reporter, a probate attorney, a director and assistant director, five probate conservatorship court investigators (there is also one probate guardianship investigator), six examiners, a calendar clerk, three office clerks. Investigators and examiners are required to have advanced probate experience and education in a relevant field. <u>Workload/Calendaring</u> They hear an average 1,000 matters (hearings) per month. They have 7 weekly calendars (for probate & trust), one for appointment/removal of conservators, one for appointment/removal of guardians, one mental health calendar, and one law and motion calendar. An average of 1,300 conservatorships exist at any given time. Low- and no-cost programs are used, AARP volunteers staff a guardianship monitoring program, they have a pro bono mediation program, no-cost mandatory education for lay conservators, and self-help clinics for guardianship and conservatorship. Question: Justice Boren inquired specifically "how does the San Francisco court keep up?" Ms. Quinn responded that the court had hired contract investigators at an approximate cost of $285,000.
Are there grant programs or other sources of funds available to courts for handling probate conservatorship cases?	
Mary Joy Quinn	Guardianship monitoring program started in 1994 with AARP technical assistance. (City & County ensure volunteers) Classes for lay conservators Mediation Self-help clinics Three AOC grants and one Foundation of the State Bar grant. Products include a brochure, a manual of self-represented proposed guardians, and a report to the AOC regarding Access to the Courts for Elders, which is forthcoming.
Brenda Uekert	Technical assistance in the form of performance standards that are being developed for courts

Miscellaneous testimony on model programs and best practices	
Hon. Dorothy McMath	Local court rules institutionalize procedures that effectively implement the probate conservatorship statutory scheme.
Mary Joy Quinn	Recommendations: Hire sophisticated staff that are educated and have experience (investigators – education level equivalent to family court mediators plus conservatorship experience, examiners, experience with court accountings and preparation of documents). Provide opportunities for continuing education for staff. Institute concrete monitoring procedures by forward calendaring. Establish investigation assessment policies on amount and collection source, deferring (not waiving). Establish supervisory measures specific for investigators, such as safety measures for visits, accountability for scheduling. Provide up-to-date technology and ergonomic safety for all. Consider volunteer programs with appropriate training, supervision, and support. Require supervisors and managers to carry a caseload (even a small one).
Brenda Uekert	Consider developing a certification of licensing program for conservators. Implement a statewide case management system for probate courts that provides automatic notification and tracks compliance. Create a strategic plan that outlines how technology can be used to improve reporting, monitoring, and auditing of conservatorships. Adopt statewide performance standards to be used in all courts. Conduct periodic reviews of probate courts and provide training and technical assistance to ensure that courts meet state standards.

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Miscellaneous Testimony

Panelists	Summary of testimony
Patricia McGinnis	We had asked a number of consumers to address this task force. Unfortunately, all of the consumers I talked to were afraid to testify. They were either fearful of being caught up in the system again or fearful of being sued. I hope that the work of this task force will result in making the probate conservatorship system the impartial and accessible system it is supposed to be.