

# **PROBATE CONSERVATORSHIPS FOR ORANGE COUNTY CITIZENS**

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## **SUMMARY**

Orange County has a large and growing senior citizen population. When an adult is no longer able to manage her/his own physical or financial needs, the Superior Court appoints a conservator to provide proper care.

The 2000-2001 Orange County Grand Jury studied conservatorship procedures and focused on the probate type of conservatorship. Probate conservators must guard against fraud, abuse and exploitation of senior citizens. Among other findings, the Grand Jury found that the Office of the Public Guardian and its investigative staff lack the legislative authority to determine whether a potential conservator has a criminal record.

As a precaution against future abuse by conservators, the Grand Jury recommends that the Public Guardian advocate for legislation that provides the ability to obtain criminal record check results during the investigation of potential conservators.

The Grand Jury also recommends that case records separate abuse by conservators from non-conservators. These records are maintained by Adult Protective Services (APS).

## **PURPOSE/INTRODUCTION**

The purpose of this study was to determine if the procedures utilized in the Public Guardian's identification and recommendation of potential probate conservators for adults in Orange County are sufficient.

## **HISTORY/BACKGROUND**

The Grand Jury recognizes that there is an increasing need to assess and intervene to protect at-risk senior citizens in the County from abuse and exploitation in order to preserve their independence and self-determination. The increasing population of senior citizens, the corresponding growth in the number of adults who need a conservator and the occasional media reports of abuse by probate conservators are of concern. When legal criteria that determine needs are met, a conservator is assigned by the Superior Court to manage the senior's physical or financial affairs. Of particular interest were the qualifications of potential conservators, the methodology of appointment and background checks.

When an individual petitions the Court to become a conservator, an investigation is ordered. The Superior Court Office of Mediation and Investigative Services performs this task and makes a recommendation to the Court. When there is no appropriate person available to serve as conservator, the Court appoints the Office of the Public Guardian to perform the service. As the temporary conservator, the Public Guardian attempts to find a suitable individual to assume the role. If successful, an investigation of the individual is conducted by the Public Guardian which may consist of contacts with friends, neighbors, relatives, or County personnel who are familiar with the prospective probate conservator. The investigation does not include a criminal record check because it is not within the investigator's authority to obtain it.

There are three types of conservatorships:

### **Lanterman-Petris-Short Act Conservatorship (LPS)**

The LPS Conservatorship is for any person who is gravely disabled as the result of a mental disorder or substance abuse and who is a threat to himself or herself or others. The Grand Jury has chosen not to focus on the LPS conservatorship because reports of abuse by LPS conservators are non-existent or rare.

### **Temporary Conservatorship**

A temporary conservatorship can be established when a person needs immediate help and cannot wait for the process required for a permanent conservatorship.

### **Probate Conservatorship**

Probate conservatorships are intended for adults who cannot handle their own finances or care for themselves.

When abuse is suspected and reported, it must be investigated and the Court is informed of the findings. However, it is difficult to determine whether there was malfeasance or abuse by conservators. Although records of abuse are maintained by the Social Services Agency, they do not identify the abuser as a conservator.

The Adult Protective Services Division (APS) of the Social Services Agency provides protective services to senior citizens and dependent adults living in the community who are victims of abuse or exploitation.

APS is responsible for the receipt, investigation and assessment of all reports of abuse, neglect or exploitation of senior citizens or dependent adults. Included are physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment resulting in physical harm or pain or mental suffering.

## **METHOD OF STUDY**

The Grand Jury interviewed personnel from the offices of the Public Administrator/Public Guardian, the Adult Protective Services Division of the Social Services Agency and the Superior Court Mediation and Investigative Services. Private attorneys and members of the Professional Conservators Association were also interviewed. Several web sites were utilized for background information.

## **FINDINGS**

Under California Penal Code Sections 933 and 933.05, responses are required to all findings. The Orange County Grand Jury arrived at three findings:

1. The Public Guardian does not require special qualifications of prospective conservators.
2. Public Guardian investigators lack the legal authority to determine whether a potential conservator has a criminal record.
3. Adult Protective Services records of abuse do not distinguish between offenses committed by conservators and non-conservators.

Responses to Findings 1 through 3 are required from the Public Guardian.

A response to Finding 3 is requested from the Social Services Agency.

## **RECOMMENDATIONS**

Under California Penal Code Sections 933 and 933.05, each recommendation requires a response from the government entity to which it is addressed. These responses are submitted to the Presiding Judge of the Superior Court. Based upon the findings, the Orange County Grand Jury recommends that:

1. The Office of the Public Guardian should strongly consider advocacy for legislation that would authorize access to the results of a criminal records check as part of the procedure to determine the suitability of potential conservators. (Finding 1)

A response to Recommendation 1 is required from the Public Guardian.

2. The Adult Protective Services division of the Social Services Agency records involving abuse should identify offenses committed by conservators as distinguished from offenses committed by non-conservators. (Finding 3)

A response to Recommendation 2 is required from the Board of Supervisors and requested from the Social Services Agency.

3. The office of the Public Guardian should review the Adult Protective Services Division of the Social Services Agency records of abuse as part of its procedures to determine the suitability of conservators. (Finding 2)

A response to Recommendation 3 is required from the Public Guardian and requested from the Social Services Agency.

## **REFERENCES**

California Penal Code Section 11076  
California Penal Code Section 13300–13305  
Private Court Reporter. Aug 2000. Fifth Edition

### **Government Agency Web Sites**

<http://www.oc.ca.gov/csa/papg>  
<http://www.oc.ca.gov/superior/m&i.htm#conservatorship>  
<http://www.sacdhhs.com/>  
<http://www.oc.ca.gov/ssa/adultsrv/asaps.htm#general>