

Conservatorship Petition Process & Conservatorship Clinic for Pro Per Petitioners

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Conservatorship clinic at the San Diego Probate Court

- Established in May 2004
- Every Tuesday between 9:30 am and 12:00 pm
- Madge Bradley Building, 1409 Fourth Avenue, Downtown SD, 5th Floor, next to Dept. PC-2.

Conservatorship Clinic at the San Diego Probate Court

- first come – first served; no appointments;
- not a class, but meeting with individuals as signed up in the order on the sign-up sheet;
- clinic participant must fill out Legal Aid application & community education agreement;
- no legal representation or advise; just legal options; facilitator type services;
- no attorney-client relationship or confidentiality,
- may see opposing parties (no conflict of interest) due to facilitator type service;
- services only for self-represented litigant.

A typical day at the clinic

- Clinic participant (c/p) signs in & completes “community education agreement” & LASSD application.
- Staff & volunteers meet with c/p, review of application & oral reminder of lack of atty-client relationship at clinic.
- Discuss specific situation and provide resources & self-help material.

Initial discussion with clinic participant

What is Conservatorship?

- A court proceeding where a Judge appoints a responsible person to care of another adult who cannot take care of his/her own basic needs.

What are Basic Needs?

- Medical Care: talking to doctors, giving informed consent to medical treatment; weighing risk vs. benefit of medical treatment.
- Food: buying and/or cooking food.
- Clothing: buying clothes and getting dressed.
- Shelter: finding a place to live.



Who can petition to become Conservator?

- Family members (parents, spouse, children, grandchildren, siblings, other relatives).
- Friends.
- The Conservator can be more than one person (these are Co-conservators), who must agree on all aspects of the Conservatorship.

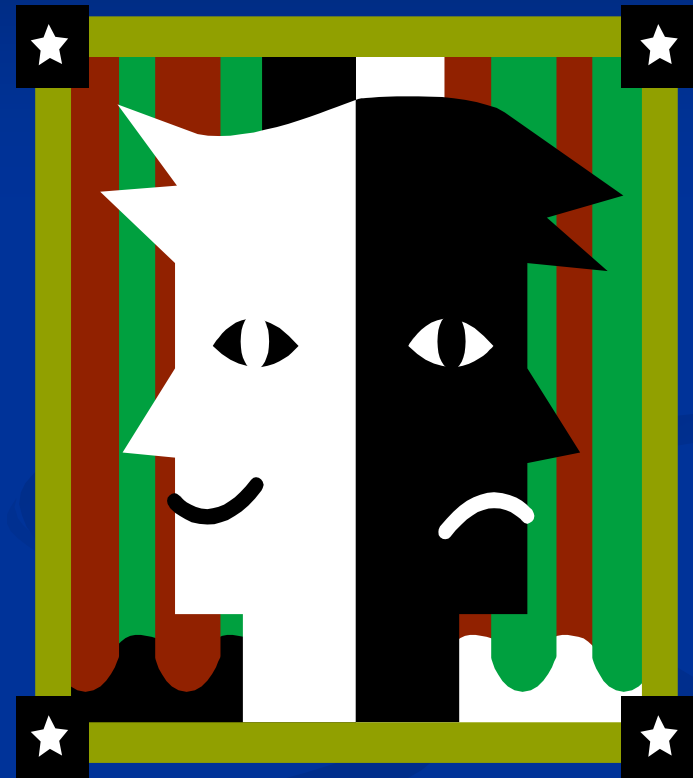
Alternatives to Conservatorship

Are alternatives available to manage the basic needs without Conservatorship? – Discussion with c/p:

- Power of Attorney
- Advance Health Care Directive
- Trust
 - Previously executed? If not, does the disabled adult have legal mental capacity to execute one now?
- Representative Payee Programs (VA & Social Security)
- Informal assistance sufficient?

Conservatorship Advantages:

- Ensures safety and wellbeing.
- Clarifies the responsibilities of the Conservator and the rights of the Conservatee.
- Provides stability.
- Court supervision and protection (unlike PoA, AHCD, or Trust).



Conservatorship Disadvantages:

- Can be a source of stress and conflict (between family members).
- Can be costly.
- Judicial process can be time consuming and complicated.
- Implication for the conservatee of being stripped of the rights of an adult and independence.



Types of Conservatorship

- General Conservatorship of Person and/or Estate = *Probate Conservatorship*.
- Limited Conservatorship of Person and/or Estate = *Probate Conservatorship*. (Developmental Disability)
- Temporary Conservatorship – pending appointment of permanent Probate Conservator; emergency only. = *Probate Conservatorship*.
- LPS Conservatorship = *Mental Health Conservatorship*.

Services not provided at the clinic:

- No representation!
- No conservatorship of estate (unless bond & accounting can be waived – very rare! For waiver of bond and accountings see PC 2323 & 2628.); Note, if a bond is required, the petitioner has to be represented in order to qualify for the bond (in San Diego)!
- No LPS (info & referral only).

Sample Petitions

- Sample petitions provided to c/p:
 - Conservatorship of Person (General)
 - Conservatorship of Person (with Dementia Powers)
 - Limited Conservatorship of Person
 - Temporary conservatorship
 - Conservatorship of Person & Estate – we use this only if bond & accountings are likely to be waived (rare).
- => Establish appropriate type of conservatorship.
- => Review of Petition available at the clinic; highly encouraged.

How to use the sample petition?

- Briefly review petition with c/p, explain who the parties are in a conservatorship petition?
 - The responsible person appointed by the judge is called the conservator. There can be co-conservators.
 - The person filing the petition with the court is called the petitioner. (note: this can be the conservator)
 - The adult who needs help is called the conservatee.
- Point out specific forms, such as the Capacity Declaration to be filled out by the proposed conservatee's doctor.
- Provide appropriate attachments (which are not readily available in the court package) and explain.

Fees involved in Conservatorship Process

- The petitioner (often the proposed Conservator) has to pay his/her filing fees (\$355), (and own attorney at atty's hourly rate if one is retained).
 - The proposed Conservatee's estate has to pay the court investigation fee (\$800 in San Diego) and the court appointed attorney. However, if he/she has only public benefits and no estate, fee will be deferred and attorney paid by the county.
- => Fees and the Petition Process is summarized in clinic's "What to Expect Handout", provided to c/p together with timeline.

The Petition Process – step by step

■ Filling out and filing the petition

“Ready to file – handout/checklist” :

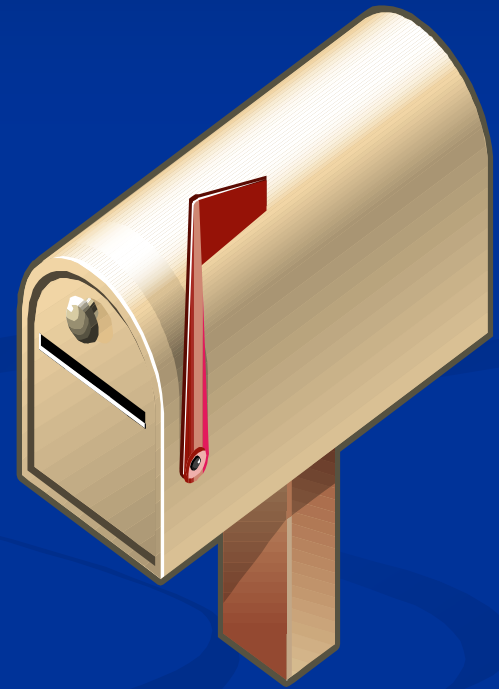
- Judicial Council forms available on court website or at clerk’s office for a fee.
- Use sample side by side to fill out forms (optional return to clinic for review)
- File petition at Madge Bradley Bldg (Downtown San Diego) or Vista for North county – depends on Proposed Conservatee’s Zip Code
- Filing fee \$355



The Petition Process – step by step

Continued:

- Mailing “Notice” to Regional Center for limited conservatorship (30 days before the hearing) and to 1st & 2nd degree relatives and VA if appropriate (15 days before the hearing).
 - Use Judicial Council form.
 - Notice must be mailed by someone 18 or older, who is not part to the petition.
 - 1st & 2nd degree relatives include: Conservatee’s parents, grandparents, siblings, children and grandchildren, spouse or domestic partner.
 - Due diligence search required for relatives who petitioner has no current address.
- Filing Proof of Service of Notice
→ handout/checklist for c/p



The Petition Process – step by step

Continued:

- Service of Citation on Conservatee (15 days before the hearing).
 - Judicial Council form
 - Hand delivery by someone 18 or older, who is not part to the petition.
 - Even if Conservatee does not care, or cannot read.
- Filing Proof of Service of Citation
→ handout/checklist for c/p



The Petition Process – step by step

Continued:

- Court Investigator's visit
 - Unannounced.
 - Cost: \$800, unless Conservatee cannot afford to pay, then deferred by judge.
 - Must file report with the court.
 - Currently not for limited conservatorship.
- Court Appointed Attorney's visit
 - Cost: Attorney's hourly rate, if Conservatee cannot afford to pay, the judge will order the county to pay.
 - Must file report with the court.
- Regional Center (only limited conservatorship) must file report with the court.



The Petition Process – step by step

Continued:

■ Hearing Date

→ handout/checklist for c/p

- Go to the hearing and know your forms (also bring copies with you). Judge may ask questions.
- Conservatee should appear in court, *unless* doctor states on the Capacity Declaration that Conservatee cannot appear for medical reasons.
- Judge will address Conservatee in court.
- If proposed Conservatee or other party objects and/or files competing petition, there will be an evidentiary hearing.
- If there are defects or missing information, there will be a continuance.



The Petition Process – step by step

Continued:

If Petition is approved:

- Petitioner must file “Orders” & “Letters”
- Mail “Information Notice of Conservatee’s Rights” and Copy of Order to Conservatee and 2nd degree relatives and File Proof of Service with the court
- File a Level of Care Plan
- Conservatorship Orientation Class (if ordered by the judge)
- Annual Court Investigations
→ handout/checklist for c/p

Important Notes:

- Conservatee must reside in California, unless a Judge says otherwise. In order to move Conservatee out of state, Conservator must first get a court order.
- Conservator must keep Conservator's and Conservatee's address current with the court.



Resources & Handouts

- Resources (LRIS, Regional Ctr, Elder Law & Advocacy; Elder Abuse phone numbers & info; LPS info; Representative Payee info)
- Information & checklists: “timeline” & “what to expect”; “ready to file” handout; notice & citation checklists; “after you are appointed handout”, “alternatives to conservatorship”
- Other assistance provided at clinic: correction to petition; objection to petition; due diligence declaration; visitation; consent to act; fee waivers; orders, letters, level of care plan & notice of rights.

Questions & Comments

