

# Zealous Advocacy

## **Understanding Zealous Advocacy vs. Best-Interest Perspectives For California Court Investigators**

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# Introduction: Why This Matters for Investigators

- ▶ Court investigators often interact with appointed counsel and proposed conservatees at critical moments. To evaluate a case accurately, investigators must understand:
  - ▶ **What counsel is legally required to do**
  - ▶ **Why counsel may take positions that differ from the investigator's assessment**
  - ▶ **How "zealous advocacy" operates**
  - ▶ **Where best-interest reasoning fits—and where it does *not***



# Governing Framework

- ▶ Assembly Bill 1194 strengthened the zealous-advocacy requirement.

- ▶ **Amended Probate Code §1471(d)**

- ▶ Counsel for a proposed conservatee must act as a:
  - ▶ **"Zealous, independent advocate representing the wishes of their client."**
- ▶ This is not optional. It is a statutory mandate.
- ▶ Requires the Court to appoint counsel more consistently
- ▶ [Proposed] Conservatee has right to paid counsel of their choice.



# Counsel's Duty of Loyalty



## ▶ Rule 1.7 – Conflict of Interest

- ▶ A lawyer must not represent a client if the representation is materially limited by duties to another person or by the lawyer's own interests. For conservatees, this means:
  - ▶ The lawyer cannot "balance" the conservatee's wishes against what others think is best.
  - ▶ The lawyer cannot defer to the conservator, family, or court investigator.
  - ▶ The lawyer cannot act as a guardian *ad litem* unless formally appointed as one.

## ▶ Rule 1.6 – Confidentiality

- ▶ The lawyer must keep the conservatee's communications confidential, even if the conservator, family or court investigator disagrees or wants information.

## ▶ Rule 1.2 – Scope of Representation

- ▶ The lawyer must pursue the **objectives the client chooses**, not what the lawyer personally believes is best.

# Case Law Clarifying the Duty of Loyalty

## ▶ **Conservatorship of John L. (2010) 48 Cal.4th 131**

- ▶ The California Supreme Court held that: Counsel for a conservatee must act as a **traditional advocate**, not a *guardian ad litem*.
- ▶ The attorney must advance the client's **expressed wishes**, not the attorney's view of the client's best interests.
- ▶ The conservatee is the **exclusive holder** of the attorney-client relationship.

## ▶ **Conservatorship of David L. (2008) 164 Cal.App.4th 701**

- ▶ The court emphasized that: The conservatee's attorney must protect the client's **autonomy**.
- ▶ The attorney cannot substitute their own judgment for the client's.

## ▶ **Conservatorship of Ben C. (2007) 40 Cal.4th 529**

- ▶ The Supreme Court held that: The conservatee has the right to counsel who advocates for their **expressed preferences**, even in LPS proceedings.
- ▶ Loyalty requires respecting the client's stated objectives.

# “Zealous Advocacy” is NOT



## ▶ Counsel’s Ethical Duty

### ▶ Counsel must:

- ▶ Represent the **client’s stated wishes**, even if the attorney personally disagrees
  - ▶ E.g. client does not appear to need conservatorship\*
- ▶ Challenge evidence, cross-examine witnesses, and test the conservator’s case
- ▶ Protect the client’s constitutional liberty interests
  - ▶ Seek less restrictive alternatives whenever possible
    - ▶ E.g. Isolating placements\*
  - ▶ Supportive decision making: Opportunity to find what is important for client

# Court Investigator Role vs. Counsel Role:

## ▶ **Court Investigator**

- ▶ Evaluates **best interest**, safety, and suitability
- ▶ Reviews records, interviews parties, and makes recommendations
- ▶ Assesses whether statutory criteria are met
- ▶ Provides the court with an independent, neutral report

## ▶ **Appointed Counsel**

- ▶ Advocates for the **client's expressed wishes**
  - ▶ Protects Due Process rights/Liberty interests
  - ▶ Challenges the sufficiency of evidence
  - ▶ Ensures the least restrictive alternative is considered
- ▶ **These roles are intentionally different.** The system relies on this tension to protect both liberty and safety.

# Why Counsel May Oppose a Conservatorship Even When the Investigator Supports It

## ▶ Counsel may:

- ▶ Assert the client can meet basic needs with **third-party assistance**
- ▶ Right to poor choices

## Article I

## ▶ Argue that the client is **not currently gravely disabled**

## ▶ Challenge the reliability of medical opinions

## ▶ Demand a jury trial to test the evidence

## ▶ Oppose locked placement even if the investigator believes it is safer

## ▶ This is not obstruction—it is **constitutionally required advocacy**.

# Statutory Qualifications of Appointed Counsel

- ▶ Conservatorship Counsel must meet the requirements of **Cal. Rules of Court 7.1103**, including:
  - ▶ Experience in conservatorship or capacity-related litigation
  - ▶ Annual MCLE in:
    - ▶ ADA and disability rights
    - ▶ Ethics and attorney-client relationship
    - ▶ Representing older adults and people with disabilities
    - ▶ Less restrictive alternatives (including supported decision-making)
- ▶ These requirements ensure counsel understands both **civil liberties** and **vulnerabilities**.
- ▶ Contrast with requirements for a deputy public defender I
  - ▶ Bar card.

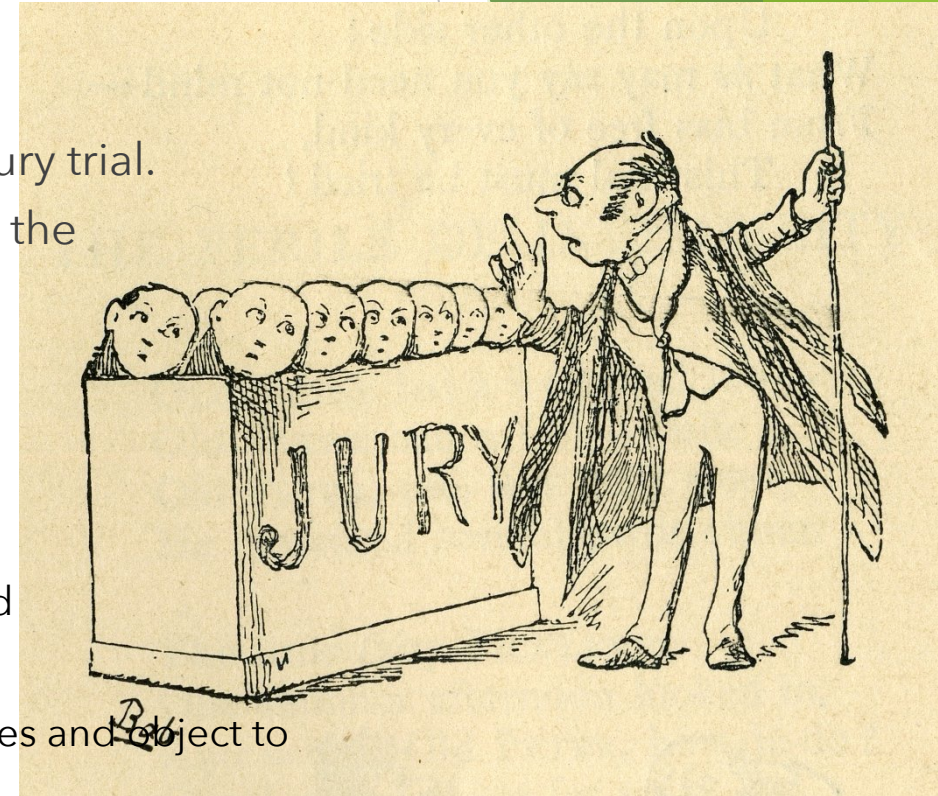
# How (this) Counsel Evaluates the Case

- ▶ Conduct a **client-centered interview**
  - ▶ **In person, if possible**
    - ▶ **Why?**
  - ▶ **Alone, if possible**
    - ▶ 例外のない規則はない
  - ▶ Review medical and psychiatric records
  - ▶ Learn what is important to the client
    - ▶ **"Choosing my breakfast"**
- ▶ Explore **less restrictive alternatives**
- ▶ Identify **third-party support** (family, friends, VA, tribal resources, RC etc.)
- ▶ Assess whether the client can **voluntarily accept treatment**
- ▶ Prepare for trial if the client opposes conservatorship
- ▶ Counsel's assessment may differ from the investigator's because the **lens is different.**



# Jury Trial Rights: Why Counsel asks for Trial

- ▶ In LPS conservatorships, only proposed conservatee can waive a jury trial.
- ▶ Probate: the conservatee is entitled to a jury trial "if demanded by the conservatee." (Probate Code section 1863)
- ▶ Counsel may request one because:
  - ▶ It provides the highest level of due process
  - ▶ It requires unanimous agreement
    - ▶ Hung jury is still a win
  - ▶ It forces the county to meet the **beyond a reasonable doubt** standard
  - ▶ It protects against unnecessary or prolonged confinement
  - ▶ Investigators should anticipate that counsel may insist on strict timelines and ~~be~~ subject to delays.
- ▶ Autonomy
  - ▶ **Psychotropic medications**



# Less Restrictive Alternatives: A Shared Area of Focus

- ▶ Both investigators and counsel must consider:
  - ▶ Supported decision-making
  - ▶ Voluntary services
  - ▶ Community-based treatment
  - ▶ Family or friend assistance
  - ▶ Tribal, Regional Center or VA resources
  - ▶ Housing options outside locked facilities
- ▶ However:
  - ▶ **Investigators** evaluate whether these alternatives are *realistic and safe*
  - ▶ **Counsel** evaluates whether these alternatives support the client's *expressed wishes*

# Understanding Counsel's Approach: Practical Examples

- ▶ Counsel may:
  - ▶ Argue the client can live with a sibling who offers housing
  - ▶ Challenge a doctor's conclusion that the client is non-compliant
  - ▶ Present evidence of improved functioning
  - ▶ Oppose locked placement even if the client is symptomatic
  - ▶ Appeal a conservatorship order within 24 hours
- ▶ These actions reflect **legal duty**, not personal opinion.
- ▶ Check our own biases
  - ▶ *Know thy self*

# How I practice[d] Zealous Advocacy

- ▶ **Come in with curiosity**
- ▶ Bring in an investigator early and often
  - ▶ Gives client another person they can reach out to
  - ▶ Sometimes more relatable
- ▶ **Meet with your client in person,**
  - ▶ especially if it is the initial placement
  - ▶ or if client won't come to the phone
- ▶ If you have faraway placements, identify all clients at the facility and meet them all
- ▶ Become familiar with all the placements and show up unexpectedly
  - ▶ Especially if you learn anything about a particular facility
- ▶ **Lean in-especially when you feel that you want to avoid**
- ▶ Don't stand down
- ▶ Hold yourself with compassion
- ▶ Reframe your goal
  - ▶ **"don't be an a-hole"**

# Working Together



ways

# Conclusion: Complementary Roles Protect Rights and Safety

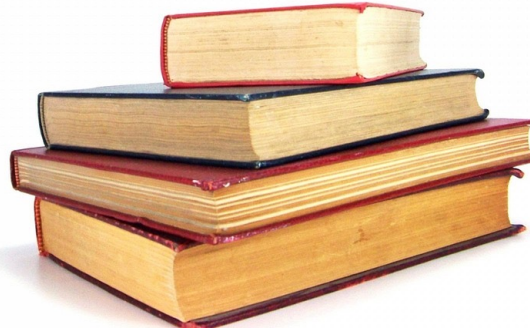
- ▶ Court investigators and appointed counsel operate under **different mandates**, but both are essential:
- ▶ **Investigators** protect safety, welfare, and best interest
  - ▶ Carry authority of the court
  - ▶ Collaborate with counsel
- ▶ **Counsel** protects liberty, autonomy, and due process
- ▶ Understanding these distinctions strengthens the integrity of conservatorship proceedings and improves outcomes for proposed conservatees.

# Off the Record



- ▶ Tremendous cost
  - ▶ Conservator's Office
    - ▶ Offers to step down if waiving trial
    - ▶ Refusing to respond to appeals
    - ▶ Hiring biased alienists on *Murphy* conservatorships to opine that a previously non-restored conservatee is now restored
- ▶ Limited resources
  - ▶ Bench
    - ▶ Proceeding without court reporters
    - ▶ Running out of time to complete calendar
  - ▶ Attorney workload

# Resources



- **Understanding Schizophrenia, Bipolar Disorder, & Major Depression**

- *The Center Cannot Hold*, Elyn Saks
- *A Beautiful Mind*, John Nash
- *Silver Linings Playbook*, Matthew Quick
- *The Night Parade*, Jami Nakamura Lin
- *Hear Today, Gone Tomorrow*, John J Geoghegan

- **Conservatorship**



- **Grand Jury Reports: Learn from Others**

- [Alameda](#) (2021-2022)
- [Santa Clara](#) (2022)

# Playlist

## For resilience when the system feels impossible

- ▶ *Shake It Out* – Florence + The Machine
- ▶ *Unstoppable* – Sia
- ▶ *Stronger* – Kelly Clarkson
- ▶ *Holler* – Amy Ray Band
- ▶ *I Can Still Hear You* – Lucy Wainright Roche & Suzy Roche
- ▶ *Uncle John's Band* – Indigo Girls

## For when you need to remember why you do this work

- ▶ *Human* – Rag'n'Bone Man
- ▶ *Stand By Me* – Ben E. King
- ▶ *Lean On Me* – Bill Withers
- ▶ *Rise Up* – Andra Day
- ▶ *This Is Me* – Keala Settle
- ▶ *Nightflyer* – Allison Russell
- ▶ *Freedom* – George Michael