



CONTESTED CONSERVATORSHIPS

A Closer Look at Undue Influence, Red Flags and Mediation

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Speaking Today

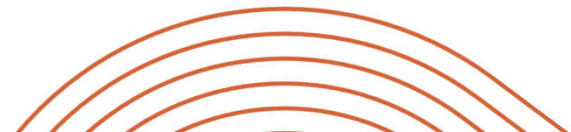
Bette Epstein, Esq. has been mediating trust and estate disputes since 2000. Following a remarkable career first as a licensed Psychotherapist and then as a trust and estate litigator for over 30 years, she turned her focus to alternative dispute resolution and has been helping parties settle their disputes ever since. She is now available as a full-time mediator and discovery referee. Ms. Epstein is highly regarded as one of the Bay Area's leading probate specialists. She spent the last 28 years of her litigation career handling trust and estate disputes, contested conservatorships, elder abuse claims, and serving as an expert witness in conservatorship, trust & estate litigation proceedings. As a neutral, she brings her unique emotional intelligence, sharp legal intellect, and psychotherapy background to highly emotional probate disputes, and is able to manage and successfully resolve even the most challenging and complex issues.





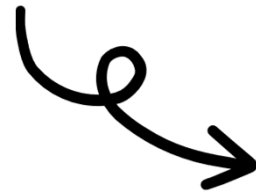
Nature Of Contested Conservatorships

- Objection by the proposed conservatee
- Objection by a family member, including a spouse
- Competing petition for appointment of a conservator





Why Is The Conservatorship Contested



- *Desire for control by proposed conservatee – “I am handling things just fine. I don’t need any help”*
- *Disputed changes to an estate plan*
- *Desire for control by other family members – typically a dispute among siblings or proposed conservatee’s spouse*



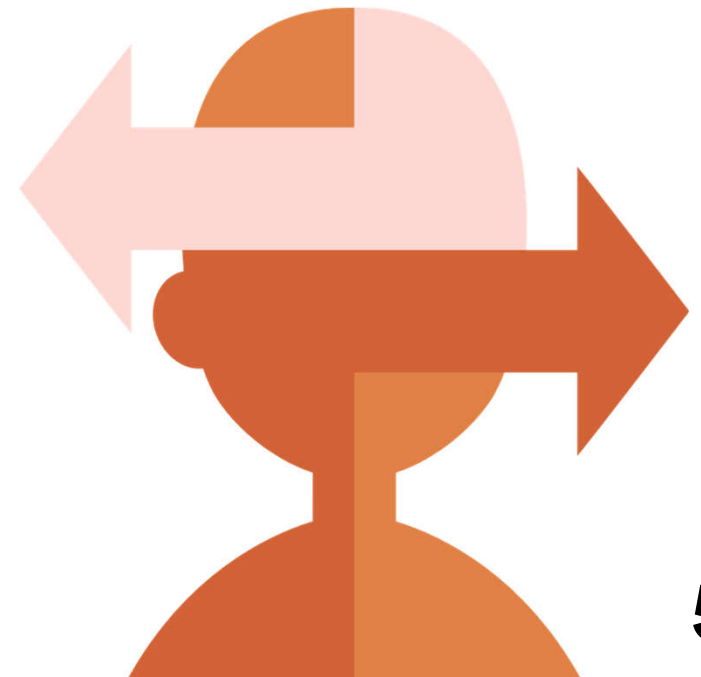
Does It Matter Who Contests

Proposed Conservatee

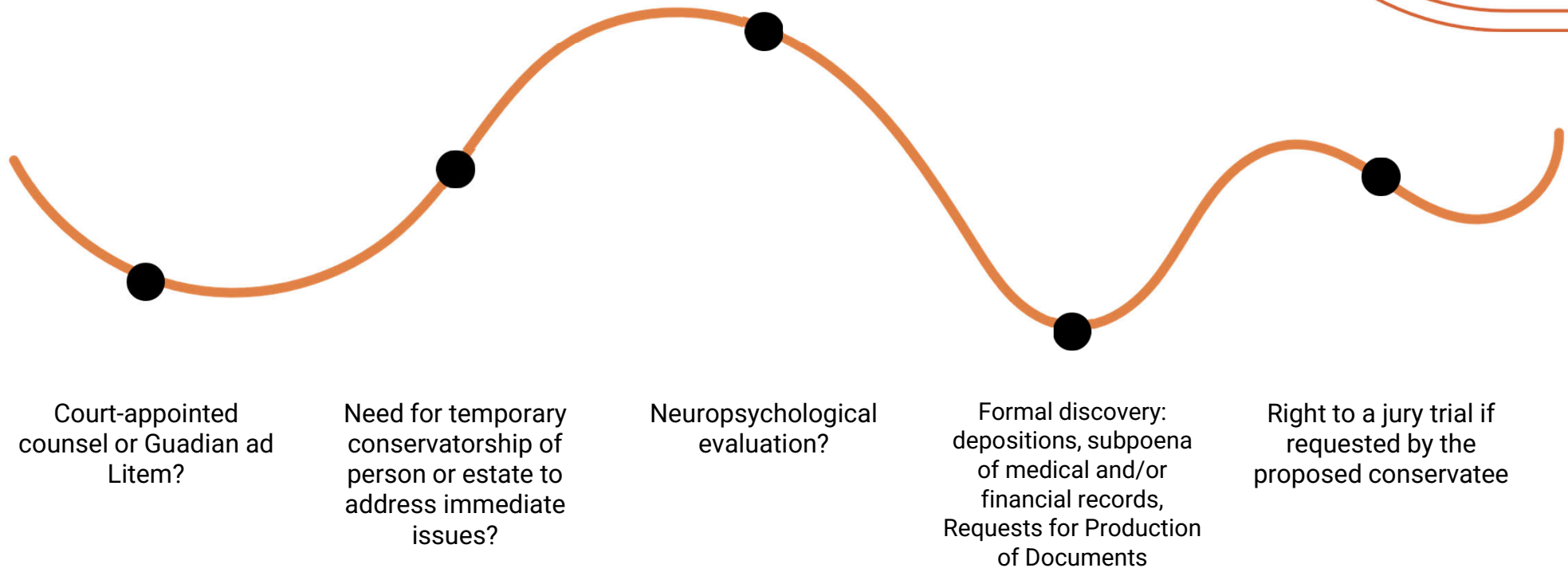
If contested by the proposed conservatee important to respect their wishes if possible and to comply with the applicable provisions of the Probate Code

Who Will Serve?

Different scenario if need for conservatorship is not disputed but issue is who will serve



Process When A Conservatorship Is Contested



Significance Of Trust, Power Of Attorney For Asset Management Or Health Care Directive

- Simultaneous trust petition seeking to remove/replace trustee and accounting?
- Revocation of powers of attorney
- Focus on orderly management of assets



Red Flags Of Abuse, Neglect And Undue Influence

Change of circumstances regarding living arrangements

- New “friend” or spouse moving into the residence
- Isolation by family members or caregiver – “they don’t want to speak with or see you” or “they are sleeping”
- Residence not properly maintained despite caregiving arrangements
- People living in the residence but not paying rent or providing services
- Change of residence of proposed conservatee without notice

Change in Finances

- Unusual use of credit cards/ATM withdrawals
- Bills not being paid, e.g. utilities turned off
- Gifts or “loans” made to friends or family

Change in Medical Condition

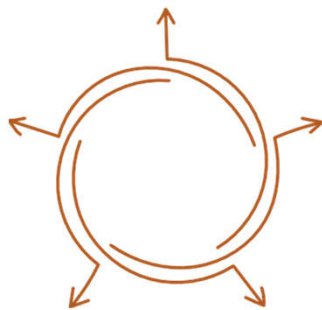
- Failure to seek care from health care professionals
- Failure to take medication as prescribed
- Frequent falls – residence not properly equipped for safety

Role Of Court Investigator Report

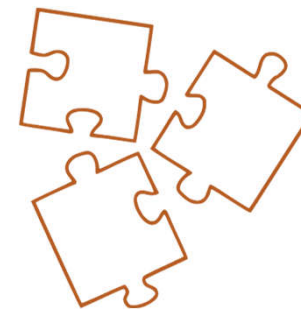
1. Critical piece of information for consideration by the parties
2. May include answers to questions regarding motivation for seeking changes to an estate plan, new friendships, termination of relationships, etc.
 - Some questions we wish the estate planner had asked.
3. May include suggestions for alternatives to conservatorship

Role Of Mediation

OPPORTUNITY TO EXPLORE OPTIONS FOR
RESOLUTION IN A CONFIDENTIAL PROCESS



MAY INCLUDE BOTH PARTIES AND OTHER
FAMILY MEMBERS/INTERESTED PERSONS





Thank You

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