

PROBATE CONSERVATORSHIPS. **PART 2**: LEGAL UPDATES, LESS RESTRICTIVE OPTIONS, DUTIES OF PARTIES, ETHICAL DUTIES

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Conservatorships, Part 2:

- \* Recent Code Changes
- \* Ethical Duties
- \* Conservatee's Rights
- \* Less Restrictive Alternatives
  - Supportive Decision Making
- \* CLE Requirements
- \* Conservator's Powers/Duties/Limitations

-- Note: 2020 Was a Nuts and Bolts Presentation

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## Main Themes: The Code Changes and of this Presentation

The **Code changes** related to Conservatorships, primarily do the following:

- 1) Encourage protective measures that are less restrictive than conservatorships.
- 2) Encourage more empowerment and autonomy for the challenged adult.
- 3) Provide opportunities for modification or termination of conservatorships.
- 4) Add some additional protective measures.

Q: What is next?      A: Likely more of the same.

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## Main Themes: The Code Changes and of this Presentation

The code changes affect everyone involved (the conservators, the conservatees and potential conservatees, the court, the court investigators, Self-Help, and all the attorneys).

Further, the code changes are interwoven, often affecting multiple interested parties in the same code section. And this fact made it challenging to organize the presentation.\*

\*Disclaimer ;-)

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## Probate Conservatorship Code Changes

### Role of Counsel for Cee/P-Cee:

NEW: PC 1471(e) (Amended 2022), **Zealous Advocacy**: The role of the counsel for the Cee/P-Cee is that of an independent zealous advocate, for the wishes of the client. (See also B&P Code Section 6068)

Previously, PC 1471(b) and many local rules, allowed for a sliding scale, **best interests** focused, representation.

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## Probate Conservatorship Code Changes

### **The Legislature Wants More Focus on Lesser Restrictive Options!**

PC 1821 (Amended 2022), Petitions for Conservatorship:

Petitioners are now required to state why lesser restrictive measures will not suffice to protect and serve the P-Cee. The enumerated lesser restrictive measures are:

- 1) Supportive Decision Making (SDM);
- 2) Power of Attorney (PoA);
- 3) Advanced Health Care Directive (AHCD); and
- 4) Designated Health Care Surrogate.

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## Probate Conservatorship Code Changes

PC 1821 (Amended 2022), **Petitions** for Conservatorship (Contd):

The petitioner is required to address the enumerated, less restrictive options as follows:

- **The Petition** (GC-310) at already existing sections 5 (c) 1 and 2 (Person and Estate, respectively).
- **Confidential Supplement** (GC-312- Amended 2024) at Section 6.

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## Probate Conservatorship Code Changes

### Who Should Serve as the **Conservator**?

PC 1812 (Amended 2022): The selection of a Cor is to be guided by the **Best Interests** of the Cee. When considering who should act as the conservator, Courts are to are to consider: **1) The who the cee wants; 2) Who the prior Cor suggests;** 3) Spouse/Domestic Partner; 4) Adult Child; 5) Parent; 6) Sibling; 7) Other ready, willing and able persons/entities.

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## Probate Conservatorship Code Changes

### Who Choses the **Attorney** for the Cee?

First, the codes distinguish between **discretionary** (PC 1470a – NOT Amended) and **mandatory** (PC 1471b – Amended 2022) appointments of attorneys when directing how that attorney is to be chosen.

PC 1470a, **Discretionary** (NOT Amended): The Court “may” appoint counsel if proposed conservatee does not have one AND it would help resolve matters or to protect a person’s interests.

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## Probate Conservatorship Code Changes

### Who Choses the **Attorney** for the Cee?

PC 1471b (Amended 2022), **Mandatory**: The court **MUST** appoint counsel if Cee/P-Cee does not have counsel and does not plan to hire counsel, whether or not capacity is an issue, for all matters listed in PC 1471a.

PC 1471a (Amended 2022): Mandatory appointment of counsel for cee/p-cee for the following: 1) Establish Cship; 2) Remove Cor; 3) Seeking court order re Capacity; 4) Efforts to Terminate Cship; and/or 5) Change Temporary Cee's placement.

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## Probate Conservatorship Code Changes

### Who Choses the **Attorney** for the Cee?

#### **Preferences of Cee/P-Cee:**

PC 1471(c) (Amended 2022): If Cee/P-Cee expresses a desire for a particular attorney, the court **shall** allow such representation, even if not qualified/certified.

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## Probate Conservatorship Code Changes

### Who Choses the **Attorney** for the Cee?

#### Take aways:

- 1) Appoint Counsel: Given the complexity of the “ifs” and “therefore,” it seems the court should default to always appointing counsel.
- 2) “Appoint” vs “Allow to Represent”: PC 1471(d) [Mandatory] states that the desired, though not certified, counsel “shall be allowed to represent.” It does NOT say, shall be appointed by the court. Therefore, faced with a two attorney issue, the court should consider appointing an experienced independent counsel to also serve the Cee/P-Cee.

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## Probate Conservatorship Code Changes

### Who Choses the **Attorney** for the Cee?

-- Disqualification: However, any attorney that cannot provide zealous advocacy or has a conflict of interest, must be disqualified.

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## Probate Conservatorship Code Changes

### Conflicts between Counsel for Cee/P-Cee



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## Probate Conservatorship Code Changes

### Conflicts between Counsel for Cee/P-Cee

If there is a genuine conflict as to who should represent the conservatee, the court may hold an evidentiary hearing to address the issue.

In preparation for the, "Who should represent the cee?" evidentiary hearing, the court could consider using:

- 1) An Evidence Code Section 730 expert; and/or
- 2) A Guardian Ad Litem (GAL). As the GAL is allowed to act in the conservatee's **best interests**.

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## Probate Conservatorship Code Changes

### Conflict between counsel for Cee/P-Cee (Contd)

At such an evidentiary hearing, the following would likely be relevant:

- 1) What are the wants of the conservatee?
- 2) Does the cee have a long-standing relationship with the other attorney?
- 3) Are there any conflicts?
- 4) Is undue influence being used on the Cee/P-Cee?
- 5) Is Capacity an issue?
  - a) Capacity to contract, create agency relationship, may be at issues.

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## Probate Conservatorship Code Changes

### Conflicts between Counsel for Cee/P-Cee (Contd)

Bottom line: These are protective proceedings, in which the court would like to, as much as reasonably possible, be sure that the cee has a capable attorney that will not take advantage of them. Therefore, when in doubt, choosing a qualified court appointed attorney (CAC) would typically be the best path.

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## Probate Conservatorship Code Changes

### New Court Duties....



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## Probate Conservatorship Code Changes

PC 1800.3 (Amended 2022) - **Court Duties at Petition Hearings**

**Newly Added:** The Court is to consider less restrictive options – specifically: 1) SDM Agreements; 2) AHDCs, 3) PoAs; and 4) Surrogates for Healthcare.

**Newly Added:** If the court is informed that the challenged person has a **developmental delay**, the court must deem the conservatorship a limited conservatorship.

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## Probate Conservatorship Code Changes

PC Section 1835 (Amended 2022) - The **Court** is to provide written materials to **Cors** outlining:

- How to use Community Based Services to meet Cee's needs.
- How to be sure that the Least Restrictive measures are being used.
- Procedures for Filings, including I&As and Accountings.

*\*Note, This is in effect. There is no legislative funding trigger. Though the court may charge [add] a \$20 fee.*

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## Probate Conservatorship Code Changes

PC Section 1835 (Amended 2022) - The **Court Duty** to provide written materials to **Cors** outlining (Contd):

- **Procedures to Petition to Modify or Terminate a conservatorship.**
- **Duty to reasonably accommodate wishes of the Cee (See also PC 2113).**

*\*Note, This is in effect. There is no legislative funding trigger. Though the court may charge [add] a \$20 fee.*

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## Probate Conservatorship Code Changes

PC 1835.5 (NEW 2022) – The **Court Duty** to provide materials to **Cee**:

Within 30 days of granting conservatorship, and annually after that, the court is to provide to the conservatee, a plainly written list of the Cee's rights, noting which rights the court has allotted to the Cor, and the contact information for:

- 1) The Court Investigator; and
- 2) The person to contact if they want to petition to modify or terminate the conservatorship.

*\*This is in effect. There is not funding trigger.*

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## Probate Conservatorship Code Changes

PC 1835.5 (NEW 2022) – The **Court Duty** to provide materials to **Cee** (Contd):

Including, Listing the Conservatee's Rights (Repeated in this Code):

- To Control Their Own Salary (PC 1871 & 2601).
- If have Allowance, the ability to Spend as they Wish (PC 1871 & 2421).
- To Receive Mail and have Personal Telephone Calls (PC 2351).
- To have Visits with Family and Friends (PC 2351).
- To make or change a Will (PC 1871).

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## Probate Conservatorship Code Changes

PC 1835.5 (NEW 2022) – The **Court Duty** to provide material to **Cee** (Contd):

Including, Listing the Conservatee's Rights (Repeated in this Code):

(Contd):

- Have Judge Modify or Terminate the Conservatorship.
- Have a Lawyer.
- To Get Married (PC 1900).
- To Vote (PC 1910).
- Make own Healthcare Decisions.
- To Enter Business Transactions, to provide for their and their children's basic needs (PC 1871).

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## Probate Conservatorship Code Changes

### New Duties for Court Investigators:

PC1826(B) and (9) (Amended 2022): Need Get Medical Information/Documentation from Doctors.

Probate Code Section 1850/1851 (Amended 2022 and 2021): For review hearings, the Court Investigator is to Assess:

- 1) **Less restrictive alternatives/modifications;**
- 2) And, possible **termination.**

**\* Financial Trigger: Actions in Accordance with Amendments are not required unless legislators provide financial appropriations.**

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## Probate Conservatorship Code Changes

### PC 1850 (Amended 2006, 2007, 2011 and 2022) - **Court Investigations – Timing and What to Look For:**

- ▶ Six (6) months after the initial appointment, the Court Investigator (CI) is to visit again with the Cee and report back to the court about whether the Cor is acting in the Cee's best interests, the **appropriateness of the conservatorship**, quality of care, the Cee's physical and mental health, the placement, finances, etc.

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## Probate Conservatorship Code Changes

### PC 1850 (Amended 2006, 2007, 2011 and 2022) - **Court Investigations – Timing and What to Look For (Contd):**

- ▶ One (1) year after the initial appointment, and annually thereafter, the CI shall investigate again, **and discuss, when possible, less restrictive alternatives to a conservatorship, modification and termination.**
- ▶ Of note, the Legislators Removed the Bi-Annual Review option for general conservatorships in 2022.
  - ▶ Fiscal Trigger: However, the Legislation notes that recent amendments are not court requirements until funding is provided.

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## Probate Conservatorship Code Changes

### PC 1850.5 (Amended 2021) - **Court Investigations – Timing and What to Look For (Contd):**

Limited Conservatorships: Court can continue to **allow Bi-Annual** Reviews that involve **Limited** Conservatorships.

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## Probate Conservatorship Code Changes

PC 1850 (Amended 2006, 2007, 2011 and 2022) - **Court Investigations and Related Court Hearings (Contd):**

- ▶ ***Upon receipt of the Court Investigator's Report, the Court is to promptly consider setting a hearing for possible termination or modification of the conservatorship.***
- ▶ Fiscal Trigger: The court is NOT required to act in accordance with the amendments until the legislature makes financial appropriations.

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## Probate Conservatorship Code Changes

Changes Regarding Court Duties and Termination:

### **The Historical Path to Termination:**

File petition (there are several local forms).

Provide Notice Per PC 1460.

- Fifteen (15+) days.
- Mail is okay (PC 1215).
- To Relatives to the Second Degree + Atty for Cee + Special Notice.

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## Probate Conservatorship Code Changes

### Changes Regarding Court Duties and Termination:

PC 1861.5 (**New 2022**): If Conservatee wishes to **terminate** the conservatorship, the court must set a hearing and make sure the conservatee has an attorney, **if the court finds:**

- 1) A termination hearing has not been held in over a year;
- OR
- 2) There is Good Cause to set the hearing.

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## Probate Conservatorship Code Changes

### Changes Regarding Court Duties and Termination:

PC 1860.5 (Amended 2021 and 2022): If the court sets a hearing for possible termination of a limited conservatorship and no petition is filed [instead of letting it go off-calendar], the court shall order the Limited Cor to give notice and appear to show cause why the conservatorship should not be terminated.

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## Probate Conservatorship Code Changes

### Changes Regarding Court Duties and Termination:

PC1863 (c)(Amended 2022) - **Termination:** At Termination Hearing, the Court **MUST** terminate a conservatorship unless there is clear and convincing evidence that the challenged adult needs help AND a conservatorship is the least restrictive measure to provide that help.

Probate Code Section 1863 (h) (Amended 2022): If the Cons and Cee agree that a conservatorship is NOT the least restrictive measure to assist the challenged adult, the court **MAY** terminate the conservatorship, **without** an evidentiary hearing.

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## Less Restrictive Alternatives to a Conservatorship

There are various paths one can take to attempt to assist someone who is cognitively challenged.

PC 3200: **Medical Decision(s).** If the petitioner wants only to make a single set of known medical decisions for a person who lacks capacity, a 3200 Petition is the correct legal path.

PC 3100: **Financial Decision.** If the petitioner wants to perform a single set of financial transactions, involving a person who lacks capacity, a 3100 Petition is the correct legal path.

Ex: In both of these circumstances, the petitioner would often be a "well spouse."

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## Less Restrictive Alternatives to a Conservatorship

- 1) A **Conservatorship** - Restrictive and the Cor has final authority.
- 2) **Power of Attorney** – Can be withdrawn and the challenged person may not have the required capacity to agree to the terms.
- 3) **Authorizations/Releases** – Can be withdrawn and the challenged person may not have the required capacity to agree to the terms.

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## Less Restrictive Alternatives to a Conservatorship (Contd)

- 4) **Representative Payees** – Can be withdrawn.
- 5) **Advanced Healthcare Directives** – Can be withdrawn and the challenged person may not have the required capacity to agree to the terms.

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## Probate Conservatorship Code Changes

### Less Restrictive Alternatives to a Conservatorship

And now, **Supportive Decision Making (WIC 21000 – 21008)**



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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21001 (NEW): Technically, the new Supportive Decision Making laws **apply to all** potential conservatees. They include, but are not limited to:

- Major Neurocognitive Disorder (Dementia)
- Developmental Delay.
- Intellectual Disability.
- Cognitive Disability.
- Psychiatric Disability.
- Physical Disability.
- Learning Disability.
- Communication Disability.

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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21001 (NEW) (Contd):

However, practically, it would seem that the new laws will involve, primarily:

- Developmentally Delayed individuals.
- Traumatic Brain Injured persons, as they can get better.
- Stroke victims, as they can get better.

\*The Capacity of those diagnosed with MND (Dementia), will only go down.

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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21000 – 21008 (New):

WIC 21000: Purpose of SDM.

WIC 21001: Definitions.

WIC 21002: Guidelines for Supporters.

WIC 21003: Voluntary agreement, can still act independently.

WIC 21004: Supporter can come to meetings.

WIC 21005: How craft SDM agreement.

WIC 21006: How to Terminate SDM.

WIC 21007-21008: (Administrative Directives)

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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21000-21008 (NEW): A trusted friend or family member can assist the adult with a disability (challenged adult) with their decisions.

- Together, the challenged adult and supportive helper sign an agreement.

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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21000-21008 (NEW): A trusted friend or family member can assist the adult with a disability (challenged adult) with their decisions.

- Then, and going forward, they can work through decisions together, with the challenged adult's wishes being their guide.
  - **Note: The SDM helper has no authority to sign documents or act without, or in conflict with, the challenged adult (WIC 21002).**
    - Third parties must meet with the supporter(s) of the challenged adult's choosing, unless they suspect, fraud or abuse (WIC 21004)

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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21002 (NEW): **Duties** of the Supportive Decision Maker:

- 1) Support and implement the preferences of the adult with a disability.
- 2) Respect the values, beliefs and preferences of the challenged adult.
- 3) Act honestly, diligently and in good faith.
- 4) Maintain confidentiality.

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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21002 (NEW): Those **Ineligible** to Serve as Supportive Decision Makers:

- 1) If the challenged adult has made **abuse allegations** against the person.
- 2) The challenge adult has obtained a **protective or restraining order** against the person.
- 3) The person **was removed** as a conservator for not acting in their best interests.
- 4) If the supporter/proposed supporter is **found criminally or civilly liable** for wrongs against the challenged person.

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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21003 (NEW) How SDM affects the Adult with a Disability:

- 1) If chose SDM path, the Challenged Adult can chose one or more supporters.
- 2) These people can help with understanding, communicating, assuring preferences are honored, etc.
- 3) The existence of a SDM agreement will not precluded the challenged adult from acting alone.

***\*And the existence of a SDM agreement may not be used as evidence that the person lacks capacity.***

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## Probate Conservatorship Code Changes

### Supportive Decision Making

WIC 21005: Requirements of a SDM Agreement:

- 1) Written in **plain English**.
- 2) List all the **areas** the adult with a disability **wants support**. And that the chosen supporter agrees to provide support.
- 3) A statement that the chosen supporter is **not disqualified** to serve (See WIC 21002).
- 4) A statement listing the challenged adults **right to report** abuse and wrongs.

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## Probate Conservatorship Code Changes

### Supportive Decision Making

#### WIC 21005: Requirements of a SDM Agreement (Contd):

- 5) List any **other agreements** (POAs, AHCD, Payee Agreements, Authorizations/Releases).
- 6) Be **signed by all** parties and witnessed by at least one other person over 18 years old.
- 7) The agreement should be **reviewed** by the parties, and updated as needed, at least **every two years**.

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## Probate Conservatorship Code Changes

### Supportive Decision Making

#### Samples of SDM Agreements:

- 1) Crafted by Sam Huestis (Included with Packet) .
- 2) From the ACLU: [https://www.aclu.org/wp-content/uploads/legal-documents/sdm\\_packet\\_for\\_pwds\\_0.pdf](https://www.aclu.org/wp-content/uploads/legal-documents/sdm_packet_for_pwds_0.pdf)
- 3) A list of SDM Agreements from the National Resource Center: [https://supporteddecisionmaking.org/research\\_library/supported-decision-making-model-agreements/](https://supporteddecisionmaking.org/research_library/supported-decision-making-model-agreements/)

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## Probate Conservatorship Code Changes

### Supportive Decision Making

How to tie this into one's practice....

- 1) Keep SDM in your decision tree.
- 2) Along with the other less restrictive options (AHCD, POA, Payee, Authorization/Release).
- 3) Use as appropriate.
  - ▶ As a practical matter, this should apply to a relatively small number of high functioning potential conservatees.
  - ▶ And to those that it does, it may be VERY empowering. Assisting with their independence, self-esteem, mental health, etc.

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## Probate Conservatorship Code Changes

### PC 1836 (New 2022) – New Court Self-Help Duties

In the future, the County Court Self-Help Offices are to be trained and provide information to the public on, less restrictive alternatives to conservatorships, including Supportive Decision Making.

\*Financial Trigger: WHEN the Legislation Makes the Financial Appropriations.

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# Probate Conservatorship Code Changes

## Experience/Educational Requirements



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# Probate Conservatorship Code Changes

## Experience/Educational Requirements

See RoC 7.1101 through 7.1103 (Eff. 2024) and Certification of Attorney Qualifications Form(s) (**GC-010**):

RoC 7.1101: Definitions.

RoC 7.1102: Representing a Ward.

RoC 7.1103 (Eff. 2024): Representing a **Cee**.

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## Probate Conservatorship Code Changes

### Experience/Educational Requirements

RoC 7.1103 (Eff. 2024): **Representing a Cee/P-Cee.**

#### To Initially Qualify:

Within the last 5 years, have represented 3+ persons involved in a Probate and/or LPS (mental health) conservatorship process.

OR....

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## Probate Conservatorship Code Changes

### Experience/Educational Requirements (Contd)

RoC 7.1103 (Eff. 2024): **Representing a Cee/P-Cee (Contd).**

OR ...

Work at an office where you are being supervised by someone with the above stated experience and qualifications.

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## Probate Conservatorship Code Changes

### Experience/Educational Requirements (Contd)

RoC 7.1103 (Eff. 2024): **Representing a Cee/P-Cee (Contd).**

### Continuing Education Requirements:

At least three (3) hours, every year, that include three (3) or more, of these topics:

- 1) Probate Conservatorship Law, Capacity, and/[or] the Rights of a Conservatees, Persons who Lack Legal Capacity and/or Persons with Disabilities.
- 2) Attorney Client Relationship and/or Ethical Duties to a Client.

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## Probate Conservatorship Code Changes

### Experience/Educational Requirements (Contd)

RoC 7.1103 (Eff. 2024): **Representing a Cee/P-Cee (Contd).**

### Continuing Education Requirements (Contd):

At least three (3) hours, every year that include three (3) of these topics:

- 3) Communicating with an Older Client OR a Person with a Disability.
- 4) Vulnerability of Older Adults, and/or Persons with Disabilities, to Undue Influence, Physical or Financial Abuse, or Neglect.

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## Probate Conservatorship Code Changes

### Experience/Educational Requirements (Contd)

RoC 7.1103 (Eff. 2024): **Representing a Cee (Contd).**

### Continuing Education Requirements (Contd):

At least three (3) hours, every year that include three (3) or more of these topics:

5) The Effects of Aging, Major Neurocognitive Disorder, Intellectual and Developmental Disabilities, and or How these conditions Effect such a Person's Ability to perform ADLs.

**6) Less Restrictive Alternatives to a Conservatorship. \***

*\* Must include at least one (1) hour, each year, covering this topic.*

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## Probate Conservatorship Code Changes

### Experience/Educational Requirements

#### For this two (2) Part Seminar:

##### **Part One:**

**-1.5 Hours, Vulnerability of Older Adults.**

##### **Part Two:**

**-1 Hour: Less Restrictive Alternatives to a Conservatorship.**

**-0.5 Hours: Ethical Duties (And: Probate Conservatorship Law, Rights of Cees, Attorney Client Relations).**

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## Probate Conservatorship Code Changes

### Conservator Duties

PC 2113 (Amended 2022): The Cor is to **consult with the Cee**, and unless unreasonable, make decisions that **align with the Cee's wants**. The Cor is to support the Cee and attempt to maximize the **Cee's decision making and autonomy**.

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## Probate Conservatorship Code Changes

### Conservator Duties

PC 2401 (c) (Amended 2021) and PC 2351 (d):

Conservators Must Avoid Conflicts and Self Dealing.

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## Probate Conservatorship Code Changes

### Conservator Duties

PC 2401 (Amended 2021): Cor Cannot Hire or Refer Cee to people/entities the conservator has an interest in.

\*Note: The broad-based exception that would allow exemptions "authorization of the court," has been removed from the code.

RoC 7.1059 (Not New): The conservator of the estate MUST avoid actual, and "the **appearance** of[,] conflicts of interest." There can be no self-dealing and there must be complete independence from all service providers.

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## Probate Conservatorship Code Changes

### Conservator Duties

PC 2640 (Amended 2021): Cor must act in the best interest of the conservatee to get paid.

PC 2623 (Amended 2021): **If the Cor litigates** to defend their actions/inactions and **loses**, they will **not be able to use estate funds** to pay their litigation fees and costs.

**Partial Exception:** The court can allow for some usage of estate monies to cover defensive litigation costs/fees if the court finds, by clear and convincing evidence, that: 1) the actions/inactions were in good faith; 2) were intended to serve the conservatee's best interests; AND 3) the conservatee was not harmed. **(A HIGH Bar!)**

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## Conservator Duties/Powers

**And while we are talking about Conservators,  
let's do a short review of some of the  
Conservator's Duties/Powers**

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## Conservator Duties/Powers

### **Automatic Person Powers – General Cship:**

PC 2351: General Powers over the Person of the Conservatee:

The conservator is in charge of the education, care, custody and control of the conservatee.

And More if ordered by the court.

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## Conservator Duties/Powers

### **Automatic Limited Conservatorship, Person Powers (When 7 powers not ordered):**

PC 2351.5: **Automatic Limited Conservatorship, Person Powers:** Conservator would have the general authority and duty to provide for the care, custody and control of the conservatee.

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## Conservator Duties/Powers

### **Automatic Limited Conservatorship Powers (When 7 powers not ordered):**

PC 2351.5: **Automatic Limited Powers (Contd):** And specifically make sure the Cee gets: 1) Help with accomplishing their ADLs; 2) Treatments; 3) Training; 4) Education; 5) Medical and Psychological Services; 6) Social and Vocational Opportunities; and 7) Assist Towards Maximum Self-Reliance and Independence.

--Practically: Very similar to all seven powers, unless there is pushback from the conservatee or a service provider.

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# Conservator Duties/Powers

## Limited Conservatorship, Person Powers:

### PC 2351.5(b), The Seven (7) Person Powers:

- 1) Fix Residence.
- 2) Access to Confidential Records.
- 3) Consent or Withhold Consent to Marriage.
- 4) Right of Limited Conservatee to Contract.
- 5) To consent or withhold consent to medical treatment.
- 6) Thwart social or sexual relationships.
- 7) Educational Decisions.

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# Conservator Duties/Powers

## Automatic Powers – General & Limited Conservatorship, Estate Powers:

### Estate Powers, **without specified powers** (under PC 2590):

PC 2401, **Estate Powers:** Management and control of the estate utilizing ordinary care and diligence.

PC 2450, **General Estate Powers:** Unless limited by code or order, the conservator may exercise estate powers related to the conservatee.

PC 2451, Can Collect Debts Owed to the Cee.

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## Conservator Duties/Powers

### Automatic Powers – General & Limited Conservatorship Estate Powers:

Estate Powers, **without specified powers** (under PC 2590)(Contd):

PC 2451.5, Perform Contracts, Purchase Personal Property, Employ an Attorney, Accountant and/or financial adviser, etc.

**If Need More**, go to PC 2590/2591 - A long list (a-p) of specific estate powers the court CAN grant that enhance the conservator's authority.

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## Conservator Duties/Powers

### END OF LIFE DECISIONS

The conservator is empowered to make medical decisions for the conservatee (PC 2355).

Including **end of life** decisions, as well (PC 4617(c)).

- Look to Cee, and their history for help in making those decisions.
  - Look to an estate plan, writings, prior statements, friends or family, the client's religion, etc.

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## Conservator Duties/Powers

### END OF LIFE DECISIONS (Continued)

Confirming this, the *Conservatorship of Drabick* (1988) 200 Cal. App. 3<sup>rd</sup> 189 reiterates that:

- The conservator possess end of life decision powers.
- And that the **attorney for the conservatee** is not required to advocate for **continued life support**.

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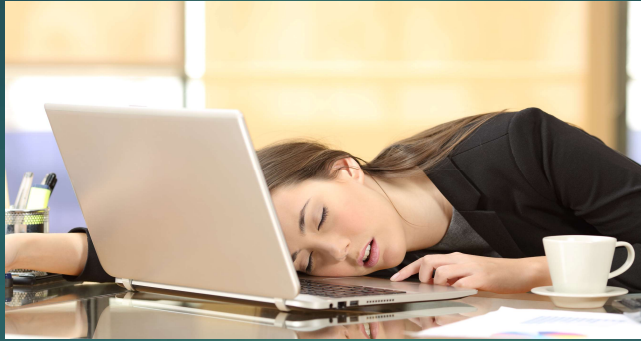
## Conservator Duties/Powers

### END OF LIFE DECISIONS (Continued)

**Narrow exception to Power:** If conservatee is **not** in a permanent vegetative state, the Cor needs **clear and convincing** evidence to end the person's life. *Wendland Vs Wendland* (2001) 26 Cal 4<sup>th</sup> 519.

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**PROBATE Conservatorships. PART 2: Legal Updates, Less Restrictive Options, Duties of Parties, Ethical Duties**



**Wake Up!**

**Any Questions?**