

**BEHIND THE EMERALD CURTAIN:  
THE ROLE OF LA COUNTY COUNSEL IN  
PROBATE, CONSERVATORSHIPS, AND  
CRIMINAL MATTERS.**

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**Woodland Hills Tax and Estate Planning Council  
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## LOS ANGELES COUNTY COUNSEL'S OFFICE PROBATE DIVISION.

1. Who are we, what do we do, and how can your estate planning help?

## LOS ANGELES COUNTY COUNSEL'S OFFICE

2. The Office of County Counsel was established in 1913 – pursuant to the State Constitution and the County Charter.
3. The Office provides legal representation, advice and counsel to the Board of Supervisors, County departments, special districts, and other public agencies, as mandated by the County Charter and State statutes.
4. The Office provides a board range of legal services directed at promoting the public service objectives of the County, while protecting the County from loss and risk.
5. The Office of County Counsel initially had 38 attorneys in 1963 and currently employs approximately 277 attorneys.

## THE PROBATE DIVISION

6. The Probate Division is comprised of three practice areas.
7. Decedent's Estate – the client is the Office of the Public Administer, the Deputy County Counsel assist in the handling decedent's estate.
8. See Probate Code at Probate Code, Administration of Estates of Decedents, at Probate Code 7000 et seq.
9. Probate Conservatorships – the client is the Office of Public Guardian, a subdivision of the Department of Health.
10. See, Probate Code. Conservatorship Law at Probate Code 1400 et. seq.
11. Mental Health Conservatorships – the client is the Office of the Public Guardian. It maintains a separate group of Deputy Public Guardians with experience and expertise in mental health cases.
12. The mental health cases arise under the Lanterman-Petris-Short Act (the "LPS" Act). It is located in the Welfare and Institutions Code Sections 5000 et. seq.

## THE PUBLIC ADMINISTRATOR

13. The Office of the Public Administrator is represented by the County Counsel in connection with representation and advise in decedent's estates.

14. The County Charter and the Probate Code require the PA to administer the estate of deceased persons who die without a will or known heirs, or when a named executor or known heirs are not willing or able to administer the probate estate or trust. The work is usually focused on Central Court, Dept. 5, 29, 9 and 11.)

15. In administering a probate estate, the PA marshals the decedent's assets, pays off creditors, and distributes the remaining balance to legatees or heirs, all subject to court supervision.

16. A common problem is locating legatees or heirs.

17. The process ensures that there is not property in Los Angeles County that has uncertain status without a legal owner or otherwise goes to waste.

18. County Counsel takes the case as they come – and litigation can be part of the practice.

#### THE OFFICE OF THE PUBLIC GUARDIAN; PROBATE/LPS CONSERVATORSHIPS.

19. The Office of the Public Guardian can seek its appointment as conservator for people who are not competent to handle their own affairs.

20. Probate Conservatorship authorized under Probate Code section 1800 et. seq. The conservatorship can be either for the person or the estate or both.

21. A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter. Probate Code section 1801, subd. (a).

21. A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence. Substantial inability may not be proved solely by incidents of negligence or improvidence. Probate Code section 1801, subd. (b).

22. The burden of proof is clear and convincing evidence. Probate Code section 1801, sub. (e).

23. Probate Conservatorships are supported by evidence of the person's capacity. The criteria for Legal Mental Capacity are found at Probate Code section 810 et. seq. Probate Code section 811 prescribes a list of mental functions that underlie the capacity assessment.

24. Mental Health conservatorships are authorized in the Welfare and Institutions Code.

25. County Counsel represents a different set of Deputy Public Guardians in the Public Guardian's Office that work on these cases.

26. Mental capacity plays a central role in such cases. The concept is "grave disability".

27. "Grave disability" has two separate and distinction definitions. Both definitions are found in Welf. & Inst. Code section 5008(h)(1)(A) and (B).
28. Under Welf. & Inst. Code section 5008(h)(1)(A), a person is "gravely disabled" when, as a result of a mental health disorder, the person is unable to provide for their basic needs for food, clothing, or shelter.
29. Recent legislation expanded this definition to include inability to provide for medical care and treatment.
30. Welf. & Inst. Code section 5008(h)(1)(B) addresses the need to create involuntary civil commitments for persons who may be mentally ill and dangerous. These are commonly known as "Murphy" conservatorship – an acknowledge of legislator responsible for the law.
31. Criteria for Murphy conservatorships reflects the underlying history arising out of a criminal prosecution.
32. A person subject to a Murphy conservatorship must have been found mentally incompetent under Section 1370 of the Penal Code (incompetent to stand trial); as well as the following:
  - (i) The complaint, indictment, or information pending against the person at the time of commitment charges a felony involving death, great bodily harm, or a serious threat to the physical well-being of another person.
  - (ii) There has been a finding of probable cause on a complaint, a preliminary hearing, or a grand jury indictment, and the complaint, indictment, or information has not been dismissed.
  - (iii) As a result of a mental health disorder, the person is unable to understand the nature and purpose of the proceedings taken against them and to assist counsel in the conduct of their defense in a rational manner.
  - (iv) The person represents a substantial danger of physical harm to others by reason of a mental disease, defect, or disorder.
33. The burden of proof is beyond a reasonable doubt.

#### THE COUNTY COUNSEL'S ROLE

34. For both the Public Administrator and Public Guardian, County Counsel files pleadings and litigates matters in the Probate Code.
35. County Counsel files petitions for approval of appointments of administrator and conservator, sales of real property, accountings and distributions.
36. County Counsel will may also need to take over any civil litigation that the decedent or conservatee was involved in, and often need to initiate new litigation relating to ownership of assets – subject to the availability of sufficient funds in the estate. [Gift of Public Funds]

37. The cases involve real property, bankruptcy law, attachments, business law,unlawful detainer, intellectual property and other areas

#### THE FUTURE LANDSCAPE IN CALIFORNIA

38. California is the home to the largest population of elderly people in the country.
39. Over 30% of seniors in the State of California live in the County of Los Angeles.
40. Persons of 85 years of age and older are the fastest growing segment of the population in California.
41. Previous records indicated that 1 in 62 Californians are more than 85 years old and is projected become 1 in 34 by 2040.

#### COUNTY COUNSEL – INVOLVEMENT IS VARIOUS CASES

42. Decedent's Estates. The classic scenario is a intestacy with no family or friends willing or able to help.
43. Referrals from coroner, court, hospital, Public Guardian, convalescent home, etc.
44. Probate Conservatorships - court referrals, Adult Protective Services (APS), hospital, placement facilities, general public.
45. Probate Conservatorships – no one willing or able to act as conservator of the person or estate.
46. Probate Conservatorships – a Capacity Declaration reflecting Probate Code section 810 et. prepared by an qualified mental health professions.
- 47 LPS Conservatorships – the Office of the Public Guardian is the only agency under applicable law that file a petition to establish an LPS conservatorship.
48. The commencement of LPS conservatorship are preceded by a series of involuntary holds – commonly known as 5150, 5250, etc.

**BONUS MATERIALS**

**2. The Probate Code provides that the Rules of Civil Procedure apply to Probate Proceedings.**

Probate Code section 1000 states:

- (a) Except to the extent that this code provides applicable rules, the rules of practice applicable to civil actions, including discovery proceedings and proceedings under Title 3a (commencing with Section 391) of Part 2 of the Code of Civil Procedure, apply to, and constitute the rules of practice in, proceedings under this code. All issues of fact joined in probate proceedings shall be tried in conformity with the rules of practice in civil actions.

...

Welfare and Institutions Code section 5350 reinforces this basic rule:

...

The procedure for establishing, administering, and terminating a conservatorship under this chapter shall be the same as that provided in Division 4 (commencing with Section 1400) of the Probate Code, except as follows. . .

See, also California Conservatorship Practice (Cal CEB) §23.1 – Probate Code procedures (Prob. C §§1400-3925) govern LPS conservatorships, except when they are superseded by specific provisions of the LPS Act. Welf. & Inst. Code §5350.

## William C. Sias Biographical Statement

Mr. Sias is an attorney with the Office of County Counsel, County of Los Angeles. His practice focuses on Probate and LPS Conservatorships and related appeals, representing the Public Guardian.

He is a co-author of California Conservatorship Practice, CEB, Chapter 24 Appeals, Finality of Orders. His published opinions include Conservatorship of K.P. (2021) 11 Cal. 5<sup>th</sup> 695; Conservatorship of P.C. (2019) 39 Cal. App. 5<sup>th</sup> 487; Conservatorship of M.M. (2019) 39 Cal. App. 5<sup>th</sup> 496 (Petition for Review denied November 13, 2019); and Conservatorship of Jose B. (2020) 50 Cal. App. 5<sup>th</sup> 963. He received the Litigation Program Award from the California County Counsel Association in 2021, for his contribution in writing the Association's Amicus Brief in the matter of Conservatorship of E.B. (2022) 12 Cal. 5<sup>th</sup> 1085.

He is certified as a trial advocacy instructor by the National Institute of Trial Advocacy (NITA). He has taught in NITA's local trial advocacy program since 2015. He is a member of the Trust and Estate Executive Committee, TEXCOM, with the California Lawyers Association.

He is a certified legal specialist in Estate Planning, Trust and Probate. He earned an LLM in Taxation from the University of San Diego and a Graduate Certificate in Estate Planning and Taxation from Golden Gate University, San Francisco. He received his law degree from UCLA School of Law. He earned his undergraduate degree at Pitzer College, Claremont, California.