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Understanding the Basics of Conservatorship Law in California

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Lauren Carden: Welcome, everyone. We're going to get started in just a little bit. So thank you all for joining us today for this training on Understanding the Basics of Conservatorship Law in California. I'm Lauren Carden, I'm the Director of California Elder Rights at Justice and Aging, and I'm excited to be joined today by Sandy Skahen, a senior attorney at Community Legal Aid, SoCal, and Jim Berchtold, senior Attorney at Justice and Aging. So I'm going to cover a few logistics, then I'll introduce our presenters and then we will start on the presentation. So this training's brought to you by Justice and Aging. So we're a national organization that uses the power of law to fight senior poverty by securing access to affordable healthcare, economic security, and the courts for older adults with limited resources. And we focus our efforts on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ plus individuals, and people with limited English proficiency. And this presentation is made possible today through funding from the California Department of Aging.

So just some housekeeping items. So everyone is muted. So if you'd like to ask a question, you can put it in the Q&A box and we'll try to answer substantive questions at the end of the webinar. And if you have any technical difficulties, you can reach out also through the Q&A box or you can email us at trainings@justiceandaging.org. The webinar is being recorded and the recording will be available on our website resources page. We also have a special California resources webpage that holds all of our California-based materials. Closed captioning is available. To access the closed captioning, you can enable CC on your Zoom control panel. And then as you'll notice, we also have ASL interpretation today, so you should be able to see that video spotlighted throughout the webinar.

If you would like to stay up to date on future trainings, you can join our network. So you can go to our website and sign up or you can send us an email

to sign up. Finally, Justice and Aging is committed to advancing equity for low-income, older adults in economic security, healthcare, housing, and elder justice initiatives. We strive to address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low-income, older adults in marginalized communities.

So today we have two great presenters. So we're going to be joined by Sandra Skahen who will lead us through the majority of the presentation. So Sandra is the senior attorney at Community Legal Aid of Southern California working in Orange County and Los Angeles County. And Sandy has been with Community Legal Aid, SoCal Senior Unit since 2022. Prior to that, Sandy taught elder law as a clinical professor at Chapman University School of Law's Alona Cortese Elder Law Clinic from 2012 to 2022. And Sandy has a bachelor's degree in Dental hygiene and French literature.

And then Jim Berchtold will also be joining us for a short introduction to the webinar. Jim is a senior attorney with Justice and Aging where his work focuses on guardianship improvement and reform, including the provision of legal representation to those facing or under guardianship. And prior to joining Justice and Aging, Jim had a lengthy career with legal services developing and managing several Legal Aid programs, including a guardianship defense program, a court based self-help center, and a consumer rights program. So I will now pass it to our presenters.

Jim Berchtold: Thanks, Lauren. Next slide. So first, a little roadmap about what we're going to cover today. I'm going to speak briefly about the Older Americans Act and defending against conservatorship. I'll also touch on types of conservatorships in California. Then I will turn it over to Sandy who will cover the judicial process, trends in conservatorship law in California and preventing conservatorship. Next slide.

All right, so the Older Americans Act. As many of you may know, in February the Administration for Community Living released revised regulations under the Old Americans Act, which was actually a big deal since there hadn't been any real substantial revision to the regulations since 1988. Defensive guardianship has always been a priority area under the Older Americans Act, but over the last 35 years, there was a little bit of confusion about what defensive guardianship actually meant and what Legal Aid organizations were allowed to do.

So the new regulations really emphasize the importance of defensive guardianship and they also clarify what an organization, what a Legal Aid attorney is allowed to do under the Older Americans Act. And it really shows that there is an important role for Legal Aid to play from the inception of the guardianship, even before the inception of the guardianship, all the way to the termination. At the very outset, it may be about avoiding the guardianship altogether through the imposition of some creative alternative, less restrictive alternative to guardianship. It may entail actually appearing in court and opposing the guardianship. It may be the Legal Aid is there to make sure that

the guardianship is as narrow as possible, specifically tailored to the needs of the individual, preserving as much autonomy and as many rights as possible. And then of course, throughout the guardianship, Legal Aid plays a role in making sure that as soon as feasible, that guardianship is terminated, perhaps because some less restrictive alternative is available.

So why the focus on guardianship defense? It's because it is typically not an area that is really within the wheelhouse of many Legal Aid organizations. So what I like to say is, there is no better marriage than Legal Aid and defense of guardianship for a couple of reasons. One, having a Legal Aid attorney, a Legal Aid organization involved in that case really takes away the monetary incentive that can permeate a guardianship case to the detriment of the person facing guardianship. It also really allows Legal Aid attorneys to focus and specialize and build their skills in this area. And I will say, there is a real power in having a group of attorneys who specialize in a particular area of law because it allows Legal Aid to strategically move the law and decide how guardianship cases should look and be adjudicated.

And then finally, of course, there is no one better situated to this work than Legal Aid. Legal Aid attorneys are experts in working with vulnerable populations. And let's face it, none of us become Legal Aid attorneys because we want to make a lot of money. It's because we want to help people and there is no constituency, no group of clients who need help more than older adults who are facing prospect of guardianship. Next slide please.

So let's cover terminology really quick. As I'm sure you all know from all the news reports, different states use different terminology, use different terms when we're talking about guardianship. The Uniform Guardianship Act in many states consider guardianship to be issues of the person and conservatorship to be issues of the estate. California does not make that distinction. California divides conservatorship and guardianship according to age. So anyone under 18 in a guardianship case that is a guardianship. Anyone over 18, that is a conservatorship.

So who are the parties in a conservatorship case. The conservatee is the person who is under conservatorship. A proposed conservatee is someone who is facing the prospect of conservatorship. The conservator is the person who is granted authority by the court to make decisions for the conservatee. They are also sometimes called the petitioner. They are the person who has filed a petition with the court seeking a conservatorship over someone else. So you'll hear a lot of use of the term guardianship, but just be aware of the distinction in California. And with that, that's it for me. So I'm going to turn it over to Sandy.

Sandy Skahen: Thank you, Jim. And I just want to thank you for having me here today. And I'd also really like to endorse what Jim said about Legal Aid is the perfect arena because the monetary incentive for conservatorship is removed and there really is no more vulnerable population than older adults who are facing some sort of challenge like a conservatorship. So I'm going to talk about basically the nuts

and bolts in California. And now that we've established that we're talking about a conservatorship for a person over the age of 18 in California, I will ask us to move to the next slide and we'll talk about the two different types of conservatorship or the two components you can have in a conservatorship in California. You can have a conservatorship of the estate, that's a person's assets. And the standard of proof in California, that is the burden of the conservator, the petitioner to prove is that the conservatee is substantially unable to manage his or her own financial resources or resist fraud and undue influence.

And it's interesting to note that the probate code mentions that a substantial inability may not be proved solely by isolated incidents of negligence or improvidence. We can all be improvident with our financial resources. So it takes a recurring problem to rise to the level of substantial inability. Now, it's also important to note that conservatorship of the estate is not always necessary because if a person is receiving income from sources from the Social Security Administration such as SSI or SSDI, Social Security Disability or their own social security retirement, the Social Security Administration has crafted an alternative called a representative payee. Whereas the payee may be designated to receive the income for the elder and to help them administer it. And they're actually responsible to the Social Security Administration to account for that money, the representative payee is. So if your income is limited and you designate a representative payee, it's not necessary to petition for conservatorship of the estate for the average individual.

And that is a very good thing because the courts require that a conservator petitioning for conservatorship of the estate either post a bond or place the money in a separate blocked account, often requiring two signatures to access the money. In addition, the court requires the conservator to provide an annual accounting of the money to the court to prevent the conservator from misusing those funds or misappropriating those funds. So there's quite a bit of oversight in a conservatorship of the estate. And for most people, the paperwork is expensive and complicated to fill out. So the representative payee's status is a wonderful workaround for that. And it's a lesser restrictive alternative means, you'll hear that term a lot throughout this webinar. Next slide please.

All right, so the other type of conservatorship that you can check the box for, and this is the most common, is conservatorship of the person. This is decisions about a person's physical health, where they're going to live, how they will be taken care of. And the standard of proof, the burden once again is on the conservator. They must prove that the conservatee is unable to provide properly for his or her personal needs for physical health, food, clothing, and shelter. And one of the ways that we look at whether a person is able to do that is by thinking of them in terms of their activities of daily living and whether they're able to perform those basic needs. So I've listed the basic ADLs, bathing, dressing, toileting, transferring, continence and feeding. And then you also should think about a person's advanced ADLs, whether they can do their own laundry, manage their money, manage their medication, whether they can prepare meals safely, go out shopping and make change, whether they can take

the bus or drive a car, and also to communicate with a telephone or a computer. Next slide please.

As if to complicate things even more, we have three types, well four types of conservatorship in California today. We're concerning ourselves with the general conservatorship, but just so you know, there is the Lanterman, Petris, Short conservatorship that is for adults who are gravely disabled as a result of a mental disorder. There is the limited conservatorship for adults who have been born with a developmental disability. And then the general conservatorship applies to adults with dementia or memory loss, Alzheimer's or some sort of traumatic brain injury that has rendered them incapacitated.

The legislature has added the dementia powers to make it possible to give a conservatorship and give a conservator even more power in order to keep a conservatee safe. And we'll discuss those in a minute. But I just want to mention that in any of these conservatorships, you can petition for conservatorship of the person, to make decisions over them, conservatorship of the estate, to make decisions about their assets or you can do both. Next slide please.

All right, so the standard general probate conservatorship is the type that most often affects older adults, and that's the one we're concerning our self with today. I mentioned the probate conservatorship with dementia powers. This requires additional paperwork to be filled out by a doctor explaining why it's necessary to medicate an individual if they refuse medication, and also to put them in a secured perimeter or locked facility if an elopement is a concern. So these two powers are reserved for special dementia powers and are only very rarely invoked. Once again, that concept of least restrictive alternative means is the watchword in conservatorships. Next slide please.

All right, so next we're going to talk about the actual process of petitioning for conservatorship. And before we do that, I'd just like to point out that the role of the judicial officer ,of the judge, the commissioner in these administrative hearings is that they are to make a finding that the conservatee lacks capacity. All right. The judge is also to make sure that there has been sufficient notice and opportunity to be heard, and that notice is to the proposed conservatee and also to any other family members or interested individuals who are entitled to notice. There also to make a determination about who would act in the conservatee's best interest, who that appointed adult is going to be that is going to be that decision maker. Sometimes there are competing petitioners. Next slide please.

So it's important to understand that until a judge has made the finding that a person lacks capacity and imposed a conservatorship on them, that the conservatee is presumed to have capacity. This enables you as an attorney if you are defending a proposed conservatee to engage in representation with them and represent them if they are interested in opposing the conservatorship. It also negates anyone telling or relying on a document such as a doctor's declaration that the person lacks capacity to the extent that they

should be subject to a conservatorship. The judge is going to take the doctor's declarations into account, but they're also using other information such as a skilled court investigator who's going to interview the conservatee, and also the recommendation of the person, the advocate representing the conservatee, their attorney. In Orange County, they are automatically appointed a public defender. And in some cases the court will actually appoint a guardian ad litem to interview the conservatee and make judgment about whether the conservatee has capacity and make a recommendation to the court about what would be in the Conservatee's best interest. Next slide please.

So you've heard me say several times that when petitioning for conservatorship you have to take into account all of the least restrictive alternative means, and the probate code spells that out for us, that there shall not be a conservatorship of the person or estate granted unless the court makes an express finding that the granting of the conservatorship is the least restrictive alternative means for the protection of the conservatee. And in fact, the court forms will actually ask you whether you have considered voluntary agreements, supported decision-making, a power of attorney, a healthcare directive or a trust. And on the documents you will be asked to provide the reasons why those are not appropriate.

And once again, the court is tasked with considering the person's abilities and capacities with their current and possible supports and with the alternatives listed above. And the court must also take into account whether the person is able to understand the nature and consequences of the document they are signing in reference to the power of attorney, the healthcare directive, and the other alternative means that I have listed here in the slide. Next slide please.

All right. I put this slide in because it quotes from probate code section 1800 extensively, but it clearly spells out what the legislature intended from the probate code. They wanted to protect the rights of the person who was placed under conservatorship because they do recognize how vulnerable that individual was.

This process to provide an assessment of the needs of a person in order to determine the appropriateness and the extent of the conservatorship, and in addition to set goals for increasing the conservatees functional abilities to whatever extent possible. The purpose was to provide for the health and psychosocial needs of the proposed conservatee and to also provide community-based services in order to allow the conservatee to remain as independent and in the least restrictive setting as possible. The court also provides periodic review of the conservatorship so that if there are any wishes expressed by the conservatee, the court will take them into account. If the conservatee has regained or could regained their ability and capacity with or without supports, the court will take that into the account, and whether the conservatee needs to continue to be under conservatorship.

It goes without saying that it's important to ensure that the Conservatee's basic needs for physical health, food, clothing, and shelter are met and that the proper management and protection of the Conservatee's real and personal property is being cared for. And so in short, the goal was to ensure to the greatest possible extent that the conservatee is able to understand, make and communicate their own informed choices while under conservatorship. Now, because of this the... I'll just go back to that slide for just one minute. The Lanterman, Petris, Short Act, which also was incorporated into the California code, set the standard for modern mental health conservatorships in California because they wanted to make sure that people were living the least restrictive life possible. All right, next slide please.

So you are beginning at the very beginning and you are commencing this conservatorship if there are no other alternatives. All right. The standard of proof for the appointment of a conservator is clearing and convincing evidence that this conservatorship is needed. And after your initial engagement with your client, and if you're defending against a conservatorship, you're aware that the conservator has the burden of proof and that the standard is clear and convincing evidence.

If you are defending against the conservatorship, you do not file any of these petitions. But if you are representing somebody who is filing for conservatorship, you'll start to gather the forms and there are basically three batches of forms. In the initial batch, you will have what is known as the GC-310, the 312, the 314, and the 348. The 310 is the petition, which is the ruling document that contains all of the information for the court. And then there is supplemental information in the other documents. I mentioned that in those documents you will be showing why the alternatives to conservatorship were considered and how they were considered and why they are not suitable. In addition to those initial documents, you'll also be filing a fee waiver for the client and an order. And once those documents are signed and filed, the conservatee will be assigned counsel. All right. I mentioned that in Orange County the public defender is assigned in LA County, I believe that the court will assign private counsel. And in some cases, people have counsel of their own choosing if they're able to afford it. Next slide.

All right. During phase two of the process, an investigation goes on into the feasibility of the conservatorship and whether it is the least restrictive alternative means. The court investigator will go out and interview the conservatee and the proposed conservator and the judge will receive a doctor's declaration, which is a judicial counsel form that will outline for the judge what the doctor's determination is and they use that to rely on to make this determination themselves. In addition, there's going to be notice and opportunity to be heard. So there is going to be a citation served to the conservatee, and to the conservatee's relatives, a notice of hearing will go out. It will actually contain the notice of the date of the hearing and a copy of the petition so that the relatives can read what the petitioner is alleging about the proposed conserve. And that's very important if someone is hoping to oppose a

conservatorship because they can then object based on what was written in the petition,

During that time as well, proposed conservators are required to acquire California Conservators Handbook, which talks about their duties and responsibilities, and they're also required to attend a class that talks about their duties and responsibilities as conservator. And so during that interim period, the attorney and the attorney's paralegal and their support staff are preparing more paperwork and they're also checking the probate notes that are published online and the register of actions to make sure their documents are being received and that there aren't any deficiencies in the document. Next slide please.

So you get to the date of the hearing, you've given notice to everyone, you've checked the probate notes to make sure that everything is as it should be. And at the administrative hearing, the judge takes everything to account and they talk to the public defender to find out what the public defender has to say about whether the conservatorship is appropriate. They've read the investigator's report, they've read the doctor's findings, and they hear from any other interested parties, especially if there is somebody objecting to the conservatorship. And if there is any objection, then rather than make any findings in this administrative hearing, the judge will set the matter for a settlement conference so that parties from both sides can try to reach some type of settlement. Oftentimes this results in less restrictive means being imposed. However, if the parties can agree, then the matter is set for a trial if no settlement can be reached. Next slide please.

All right. So if the conservatorship is granted, and this is at any stage, if it's granted at the administrative stage, at the settlement stage or the trial stage, the attorney representing the petitioner still has some more documents to file. So I've listed them on the slide here and I've made a typo here. In addition to the conservatee receiving them, the court needs to receive these also. So they are the order for the judge to sign. And once the order has been signed by the judge, the notice of conservatee's rights and the level of care declaration require you to insert the date the order was signed on them. So there is a sort of order in which we file these documents, we file the order first, and then we wait for the order to come back signed and then we file the letters, the notice of rights and the level of care declaration.

These documents, many of them contain an attachment which specifically lists the hours that have been granted to the conservator. And very often nowadays we're finding that access to medical records is a shared power that is shared between the conservatee and the conservator as a way to help the conservatee maintain their autonomy. Another notation that is always included in Orange County is that there will be no withdrawal of life-sustaining treatment to the conservatee without notice. To counsel for the conservatee. The judge has to take into account whether there will be a disqualification from voting. This is very rarely taken away from the conservatee. And if you have applied for a fee

waiver, the judge will make the statement that the assessments have been deferred.

Now that's an important distinction. I have never seen an assessment be assessed against a petitioner, but the judge always used to say in a candid way to the petitioner, "If you ever win the lottery, we'd love for you to come back and pay those assessments." And I believe that currently the assessment for the court investigator's investigation is $650. So that's why it's important, especially for Legal Aid and legal services providers to always submit a fee waiver and an order with your petition for the conservatorship. Next slide please.

Now I wanted to bring up the fact that just as we saw earlier, it's always the intent of the legislature, that if things change that the conservatorship be amended. And so there are some items that depending on the circumstances, that it's the responsibility of the conservator to notify the court that they have changed. One of the most important is that the conservator moves, they are obligated to notify the court that they have moved so that the court can find them and send them notification.

Even more important is if the location of the conservatee moves, because the court does make periodic investigations and they want to know where the conservatee is, whether the placement is appropriate and to be able to contact them. It happens that people move so if you do move out of the county, it's very important that you notify the court and the court may actually make them a determination to transfer the jurisdiction to another county in California. County to county transfer is relatively easy. It's also possible to transfer the conservatorship out of state and that requires more coordination between the handoff state and the receiving state. But it is another thing that must be given notice for to the courts.

I mentioned that the courts like to keep track of the conservatee. There is a biannual review by the court investigator of the conservatorship and the conservatee to see how they're doing. If for some reason something were to happen to the conservator, the conservator's family, if they are still living, the conservator is required to notify the court. If they were to pass away, then there is going to be a vacancy in the office of the conservator and the court would want to hear from the family that the conservator had passed away. There's also the requirement to notify the court if the conservatee has passed away as well. So the court can know to close the file on that specific case. And if there is a conservatorship of the estate, then there will be a closing of the estate with a formal accounting of how the money was spent and where it goes. So a conservatorship, I think it's logical to say ends at the death of the conservatee. It also ends if the judge decides that the conservatee has improved and there is a petition to end the conservatorship. Next slide please.

All right. We've heard a lot in the news about different legislative provisions that have been made recently, and if we could go to the next slide. I think all of us are aware of the free Britney movement when Britney Spears formally had her

conservatorship terminated on November 12 in 2021, and she became a symbol of conservatorship law reform, especially in California, but across the United States. And Britney served as a precedent for new legislation designed to combat abuse of conservatorships on a federal and state level. Next slide please.

So in California AB-1663 was enacted. It's the Supported Decision-Making Act and it allows a proposed conservatee rather than having a conservatorship, this is an alternative, a less restrictive alternative means to identify people who will support them in making their decisions. It can go into effect immediately, and it's not a contract, it's an authorization and it's much easier to understand and to execute validly. So for a person who has some impairments, it is a less restrictive alternative means that may be something that they're functionally capable of doing and choosing. It differs from a power of attorney because a power of attorney is considered a much more complex document that may require a high level of understanding to execute validly. And the power of attorney actually designates a substitute decision-maker, an agent, whereas a supported decision-making agreement identifies a person who's authorized to support the proposed conservatee will say in their decisions. But I want to make clear that these are alternatives to conservatorship. So these would be things that the potential conservatee could take into consideration and use as a way of avoiding a conservatorship. Next slide please.

All right. This webinar, I've talked about the nuts and bolts of what happens in a petition for conservatorship, but I think that the takeaway from today's seminar should be that there are ways to prevent conservatorships. And the most important thing that a person can do is talking to their family and to do their planning ahead of time. No one likes to talk about their passing or their decline, but if a person can be convinced to put a power of attorney in place for their finances while they still have capacity, and if they can be encouraged to think about the healthcare decisions they would like to have made for them if they were incapacitated and think about the end-of-life care that they would like and execute a advanced healthcare directive. With a little bit of time and with the assistance of two witnesses, a person can put in place the documents that in most cases can prevent a conservatorship. Here at Legal Aid of Southern California, we provide both of these documents to our clients free of charge and give them explanation about how to execute these.

In the case of the power of attorney, it should also be notarized. And I'm sure that that's the case with other Legal Aid providers, that you can consider yourselves on the front line of helping prevent conservatorships among older Americans just by educating your clients about the simplicity of the power of attorney and the healthcare directive in preventing conservatorships while a person has capacity and can understand the nature of what they're doing, while they can understand what it means to designate an agent to make decisions for them. And I put in open communication among family members because I think that that is a very important aspect of this. And when you're designating an agent for your power of attorney and your healthcare directive, oftentimes it's

natural to designate a family member and it's important to share with them what your concerns are and to talk with them about what your wishes would be.

I just want to check the time, is there another slide that we have to go to? Okay, that's what I thought. I wanted to ask if there are any questions at this time. And we've tried to make this a training that is basic, and so if I haven't been clear or if you have any questions, I'd be happy to answer them at this time.

Lauren Carden: Yes. So we had a lot of questions come in. Yeah, thank you so much Sandy and Jim for all your information. First, just based on some of the questions, I just want to reiterate that today we focused mostly on general probate consevatorships, but there's also, as Sandy said, the LPS and limited conservatorships that have different standards and different processes. So I'm not going to raise up those questions today.

And then I wanted to also point out, I think Joyce made a comment, just about the different processes that might happen based on county. So Joyce said in her county, conservatorships are done by the judge in a regular hearing, not an administrative hearing, and they do not have settlement conference hearings. If someone objects, it is set for a contested trial. So if anyone else is familiar with their county's process, I would encourage you to put it in the Q&A just so we can learn because it is very dependent on county. I think we also had some questions about who the petitioner is or when Legal Aid can represent a petition, or yes, can represent a petitioner. I don't know, Jim, if you want to take that since it's based on the OAA regs.

Jim Berchtold: Yeah, sure. So one of the things that the revisions to the Older Americans Act regs we're trying to clarify is when a Legal Aid organization can actually represent a petitioner, someone who is seeking conservatorship over another person because there have been some confusion on that front. So the regs make clear that this is only to be done in really limited circumstances. Specifically the person who is seeking conservatorship, the petitioner has to be a qualified person under the older Americans Act, meaning that they themselves have to be over 60 years old. There has to be no other adequate counsel available and the Legal Aid organization has to demonstrate and document that they have exhausted all other possible less restrictive alternatives. So in other words, can a Legal Aid organization take on the representation? Yes, but in very narrow circumstances where no other alternative is acceptable, there is no other adequate counsel available and the person seeking conservatorship is over 60 years old. So those are the regulations under the Older Americans Act.

Now I will say on this point, one of the reasons cited by ACL in revising this is because there is a public perception that it is a conflict for an organization to petition on the one hand and represent the person facing guardianship on the other. Now from our legal brains, we look at that and say, "Well, wait a minute. That's not necessarily a direct conflict of interest, but it could be viewed as a positional conflict." I know in my old organization we made the determination

as an organization to avoid that appearance of conflict by only representing those people who are facing or under guardianship. And if someone came into our office who really, really needed representation to obtain a guardianship, we would send that case out pro bono. And I'm sure other organizations handle it different ways.

Lauren Carden: Thank you. I think these, we just touched on this Sandy, but I think there's some question about clarification between what is the difference between the power of attorney and advanced healthcare directives? And then a question on whether your organization can assist with those documents free of charge for either document?

Sandy Skahen: Good questions. The power of attorney is like the conservatorship of the estate. In most cases, the powers that you delegate to your agent are those related to the management of your property, your bank accounts, your stocks, your bonds, your real property. The advanced healthcare directive is like the conservatorship of the estate. That is decisions that are going to be made about what type of healthcare you receive, what kind of a facility you may be hospitalized in. And so those documents I consider, both are essential because one allows you to take care of what you own and the other allows the agent to take care of what needs to be done to have the person live in as healthy a manner as possible and stay as safely as possible.

And we do offer copies of those at Community Legal Aid to anyone who asks for them and consider it a service that anyone can take advantage of who is an adult because none of us know when these documents may come into effect. And we do know that an ounce of prevention is equal to a pound of hair and people are so happy to have them. If they put them into effect and then if they lose capacity later on, they can be considered valid representations of what the person's wishes were.

Lauren Carden: Thank you so much. So we also got some questions on just the timeline of the court process. So I guess Sandy, what is in Orange County, the standard timeline or expectation for a decision on the conservatorship?

Sandy Skahen: Sure. That's a really great question. Right now, when we file our petitions, the initial batch of documents, we are expecting to receive a court date about four months in the future. It's gone down from six months to four months. And it's during that time that we do our stage two notification and opportunity to be heard. If we go to the administrative hearing and the matter needs to be set for a settlement conference, it's usually at least two months out. So now we're at six months total. And then if there's a trial to be set, I think it could take up to a year for a conservatorship to go through that entire process. But we tell our clients four to six months will be the length of the process.

Lauren Carden: And I'm also seeing a lot of questions in the chat about the alternatives to conservatorship. So we're hoping to have a separate webinar specifically on those alternatives because we could get into those in a lot more depth. So I

won't be addressing all those questions here in our Q&A. One thing that came up that either of you can touch on, is just the difference between capacity to retain an attorney if you are in threat of having a conservatorship placed on you versus capacity for the conservatorship hearing. I don't know, Jim or Sandy, if you want to take that.

Jim Berchtold: Well, I would certainly say so This can be a little confusing because through this presentation there's been talk about the appointment of council, the appointment of a public defender for somebody who's facing guardianship. So I can see that the question might be, well then why are we talking about Legal Aid being involved in the defense of guardianship? Because the person who is facing conservatorship or the person who is under conservatorship never loses the right to retain their own counsel at any point during that case. They can retain their own attorney and substitute that attorney in for even a court appointed attorney. So that is why Legal Aid plays such an important role in this.

Now, a lot of attorneys will also say, "Well, how can I form an attorney-client relationship with somebody who is under a conservatorship and potentially is having their decisional capability questioned?" You can, in almost every situation, you can. Really, the ability to retain an attorney only requires that the person retaining counsel fundamentally understand why they are retaining that person, who that person is and what they are going to do. So the bar is very, very low. So usually the capacity to retain an attorney is not an issue. I don't know if Sandy, if you want to add anything to that.

Sandy Skahen: Well, I would agree. And I always remind myself that it is not up to me to determine capacity. It's not up to a doctor or a court investigator. It is the responsibility of the judge to take all the facts and circumstances into account. And without the ability to retain an attorney under all circumstances, then a person would be fundamentally deprived of a basic human right, which is to have an advocate to put forth your desires to the court.

Lauren Carden: Thank you so much. I think for the rest of the questions, there are some specific questions and requests, we will try to answer those by email after the end of this webinar to get back to you all who have questions that we can't answer. So I think that that will conclude it for today in terms of the questions that are being presented. So I just want to, again, thank both Sandy and Jim for all the information you shared with us today. That was extremely helpful just to lay out that process, which I know can be confusing for a lot of Legal Aid providers new to this area of law.

So just as a reminder also because some questions came in, so we will be sending a follow-up email after this training with the recording and copies of the slides. And then if you have a question that you didn't ask today in the Q&A, you can always email us at info@justiceandaging.org and we can get back to you with that assistance. So thank you all for joining us today. Hope you have a great afternoon.

Sandy Skahen: Thank you.