

Should Ethics Complaints be Filed When Facts Show that Rights to a *Loyal* Attorney and an *Impartial* Judge Have Been Violated?

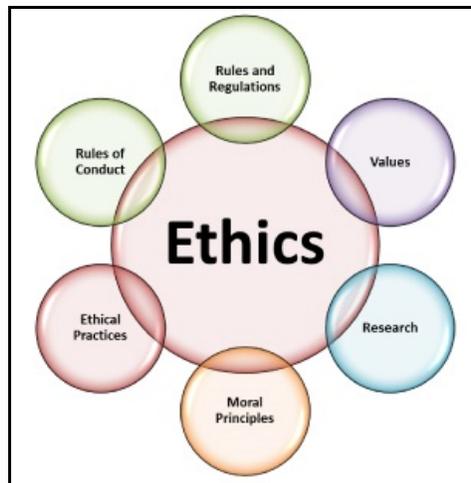
By Thomas F. Coleman

A court-appointed attorney advocates that his client should be placed under an order of conservatorship even though this is contrary to his client's stated wishes. The attorney fails to investigate facts that support his client's position. A legal commentary is published urging the court to remove the attorney for breaching ethical duties of confidentiality and loyalty. A motion is filed by two other attorney – lawyers personally chosen by the proposed conservatee – seeking removal of the one appointed by the court. A communication is sent to the court by a disability rights advocate explaining why the actions of the appointed attorney are unethical and illegal.

The case is then transferred by the currently-assigned judge to the probate presiding judge. The presiding judge schedules a hearing where he gets emotional and angry – perhaps because the legitimacy of the court-appointed attorney system which is controlled by the probate court is indirectly being challenged.

The probate presiding judge has taken public positions on at least two occasions -- outside of court and not in connection with a specific case – coaching court-appointed attorneys to act as “the eyes and ears of the court.” Such a role is appropriate for court investigators and guardians ad litem, but not for attorneys who should be advocating for their client's wishes and defending their client's rights.

The presiding judge clearly has a stake in this issue since he has advised and directed attorneys on the Probate Volunteer Panel that they have a duty to help the court resolve cases. He is in charge of this PVP legal services program. The duty of loyalty to the client does not allow for an attorney to have a secondary role of helping the court resolve cases. The duty of confidentiality to the client does not allow an attorney to be the “eyes and ears of the court” as this judge has told them.



When the challenge to the court-appointed attorney and his violation of ethics is called for a hearing, the presiding judge does not recuse himself. He takes the matter under submission, but makes remarks indicating that he will likely deny the motion. The disability rights advocate sends another communication to the court, reminding the presiding judge of his previously stated public positions that

PVP attorneys should be the “eyes and ears of the court” and suggests that the judge should disclose those statements to the parties and recuse himself from deciding that very issue in the context of this case.

The judge is advised that a reasonable person knowing that he has previously instructed attorneys to act in such a manner would doubt the judge's ability to be fair and impartial in deciding that very issue in this case. The presiding judge refuses to entertain this sug-

gestion. He refuses to give serious consideration to such disclosure and recusal.

The presiding judge issues a scathing written opinion, criticizing the chosen attorneys for filing the motion to disqualify the appointed attorney. The judge doubles down on his previous public positions about the role of appointed counsel, ruling that PVP attorneys should act like appointed counsel do when representing children in family court.

In addition to denying the motion to disqualify, and rejecting the notion that he should even consider recusing himself, the presiding judge issues an order requiring the chosen attorneys to show cause why they should not be prohibited from further participation in the conservatorship proceeding as legal advocates for the proposed conservatee.

These attorneys file a written objection to the ruling on the motion to disqualify. They also file an affidavit of prejudice with facts supporting their call for the judge to disqualify himself from ruling on the order to show cause due to his prejudices – on the issues, against the chosen attorneys, and in favor of the current PVP system.

The next hearing scheduled in the case – where the affidavit of prejudice and the order to show cause come up for review by Judge David Cowan – is set for 8:30 a.m. on October 12, 2018 in Department 3 of the Los Angeles County Superior Court.

If the presiding judge triples down by failing to recuse himself and refuses to transfer the hearing on the order to show cause to another judge, three major questions arise:

- *Should a complaint be filed against the presiding judge with the Commission on Judicial Performance for apparent violations of the Code of Judicial Ethics?*

- *Should a complaint be filed with the State Bar against the court-appointed attorney for apparent violations of his ethical duties of confidentiality and loyalty and for a breach of the Rules of Professional Conduct?*

- *Should the Supreme Court Committee on Judicial Ethics Opinions render a general opinion on whether it is ethical for judges to exercise management and control over a legal services program involving attorneys who appear before those judges or their court in specific cases?*

Information relevant to these questions can be found in the [commentary](#) published in the Daily Journal, the [motion to remove](#) the court-appointed attorney, the written communications to the court by the disability rights advocate which are included in the [objection](#) filed by the chosen attorneys, [response to the order to show cause](#), [declaration #1](#), [declaration #2](#), [affidavit of prejudice](#), and a [report](#) recently submitted to the California Supreme Court.

Would the facts contained in these documents cause a reasonable person to doubt that the judge in question can be impartial or that the court-appointed attorney in question is fulfilling his ethical duties to the proposed conservatee? If such doubts exists, then it is time for complaints to be filed with the State Bar and the Commission on Judicial Performance asking these oversight agencies to investigate.

A new opinion from the Committee on Judicial Ethics Opinions also should be issued to clarify that judges may not manage legal services programs involving attorneys who appear before their court. Current rules are obviously not sufficiently clear or lawyers would refuse to follow judicial instructions to act as the “eyes and ears of the court.” ♦♦♦

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