

# Legal System Without Appeals Should Raise Eyebrows

By Thomas F. Coleman

Our legal system presupposes a considerable number of contested hearings and a fair number of appeals. Appellate courts play a vital role in keeping the system honest.

Published appellate decisions create a body of case law that instructs trial judges and the entire legal profession about the correct interpretation of statutes and constitutional mandates. Appeals are essential to the life blood of the legal system – judicial precedent.

Having served as a court-appointed appellate attorney for over 15 years, I know the critical role that appellate courts play in monitoring the activities of trial judges and attorneys. Alleged errors are scrutinized on appeal and the opinion of the appellate court determines whether the rules were violated by the participants in the trial court.

Knowing that proceedings are being recorded and might be appealed can have a prophylactic effect. People are more careful when they believe their actions may be seen by others, especially by people in higher authority. The reverse is also true. When people believe they are not being watched or when they think their actions are not subject to review, they act differently.

I have looked at statistics published by the Los Angeles Superior Court and by the Judicial Council of California. Annual reports verify that contested hearings or trials occur in large numbers on virtually every subject matter and every type of case. Statistics also verify that the Courts of Appeal in California are kept busy deciding appeals from judgments involving child custody disputes, divorces, civil litigation, wills and estates, juvenile dependency, juvenile delinquency and criminal convictions.

Contested hearings and appeals should not only be expected, they should be valued. Appeals correct policy defects and operational flaws. They instruct judges and attorneys on how to conduct themselves within the law.

Now comes the kicker. There is a category of cases that has almost no contested hearings and virtually no appeals – limited conservatorship proceedings for adults with intellectual and developmental disabilities. Some 5,000 of these cases are processed in California each year, with 1,200 of them in Los Angeles County alone.

I found that, at least in Los Angeles, these cases are handled with “assembly line” efficiency. Petitions are filed to take away the rights of adults to make decisions regarding finances, residence, medical care, social contacts, and sexual relations. Opposition is rare.

Court-appointed attorneys for proposed conservatees are given a “dual role” by local court rules. One duty is to help the court resolve the case. The attorneys seem to be very good in that role, and not so good at defending

the rights of the clients, since nearly all cases are settled with the clients losing their decision-making rights.

These attorneys *never* file an appeal for their clients, so the Court of Appeal never sees how the judges or the attorneys handle these limited conservatorship cases. The probate court judges who process these cases know their actions will not be reviewed on appeal.

A probate judge recently told a group of court-appointed attorneys at a training last year that they are not required to advise clients about their right to appeal. Attorneys are usually released as counsel when the conservatorship order is granted. Clients, therefore, have no attorney to assist them in filing an appeal.

The California Appellate Project states it has never seen an appeal by a limited conservatee. A search of case law shows there are no published opinions deciding appeals filed by limited conservatees.

Show me a legal system that has no appeals and I will show you a rigged system. Consider me a whistle-blower if you wish, but this cannot continue. Something must be done.

One solution would be to pass a bill clarifying that a “next friend” can file an appeal for someone who lacks competency to do it for himself or herself. Such a proposal, known as Gregory’s Law, is being circulated now.

Gregory’s Law would allow a relative or friend to file a “next friend” appeal to challenge the orders of judges or the conduct of appointed attorneys that infringe the rights of limited conservatees. Clarification is needed because a published opinion (Conservatorship of Gregory D. 214 Cal.App.4th 62 (2013)) declared that only the limited conservatee may appeal to complain about these issues.

That creates a Catch 22 for limited conservatees. Because of the nature of their disabilities, they lack the understanding of how to appeal. Their appointed attorneys won’t appeal because it is they who surrendered the rights of their clients. So ongoing violations of the rights of people with disabilities are never reviewed on appeal.

The best solution would be for attorneys to serve their primary duty, defending the rights of their clients. This should be their only focus. The court rule giving them a secondary duty to help settle cases should be eliminated.

*Thomas F. Coleman is the legal director of the Disability and Abuse Project of Spectrum Institute.*

## Daily Journal

Published in California’s largest legal news provider on February 10, 2015.

