

Ten Statewide Concerns About the Limited Conservatorship System

by Thomas F. Coleman

State Constitutional Requirement

– Uniform Operation

Article IV, Sec. 16 says that laws of a general nature (such as the Probate Code) have uniform operation.

Court Appointed Attorneys

– Scope of Representation

The Probate Code entitles limited conservatees to a court-appointed attorney. This is not uniform if some attorneys are doing “stated wishes” advocacy while others are doing “best interests” advocacy. The Presiding Judge in Los Angeles tells attorneys it is up to them as to which type of advocacy to give. The judge from Orange County said that “best interests” advocacy is not allowed and that there is a California Supreme Court decision that requires “stated wishes” advocacy. This is not uniform operation of law.

State Bar Standards

– Confidentiality and Loyalty

Confidentiality and loyalty are ethical standards for the entire state. A trainer at a recent PVP training told attorneys “you can’t rat out your client.” And yet, attorneys are told to use the PVP report form on the LA Probate website to advise the court of their findings regarding the client. On that form, they “rat out” their client by disclosing confidential information and by sharing information adverse to their client retaining rights. I have not found any clear guidance from the State Bar as to the role of court-appointed attorneys in conservatorship cases, despite the assertion of a committee member that such guidance exists. If it exists, why are the attorneys in Los Angeles violating these standards. Since the practices of attorneys in Los Angeles violate the duties of confidentiality and loyalty, it is clear that laws of a general nature (state bar standards) are not uniform in operation.

California Rules of Court

– Attorney Qualifications

Court form GC-010 must be filed by attorneys who want appointments to represent conservatees or proposed

conservatees. The form is premised on Rule 7.1101(b). The minimum standards of this rule and as stated in this form are totally inadequate, especially for attorneys who will represent people with developmental disabilities. A private attorney qualifies by having represented three LPS conservatees, proceedings which are completely different from limited conservatorships and which usually have involved a conservatee without a developmental disability.

Another way to qualify is by having done three of five tasks, including: (1) having prepared several estate planning documents; (2) having represented fiduciaries; and (3) having represented a petitioner in two contested probate conservatorships. None of these three things shows qualifications to represent a proposed conservatee who has a developmental disability.

There are absolutely no educational or training requirements at all, especially none concerning interviewing people with developmental disabilities, complying with ADA requirements, abuse of people with developmental disabilities, voting rights laws, Lanterman act rights, or constitutional rights of any nature. These state rules on attorney qualifications are TOTALLY inadequate and allow for a lack of uniform operation of law.

Department of Developmental Services

– Oversight of Regional Centers

The Probate Code requires Regional Centers to assess clients and file reports in limited conservatorship cases. Judges must consider these reports in making decisions. There are 21 Regional Centers and each one is a separate corporation. We have been told that each one is free to do as it wishes in terms of these evaluations and reports.

Although Regional Centers are supposed to be accountable to the Department of Developmental Services, from whom they receive their funding and with whom they contract, it appears that DDS has no regulations for the evaluation criteria, the number of hours needed for evaluations, the minimum qualifications for evaluators, or the training standards for evaluators when it comes to limited conservatorship

evaluations. Laws of a general nature are not operating uniformly in this area.

ARCA

– Not Coordinating Regional Centers

Regional Centers have a voluntary statewide association known as the Association of Regional Center Agencies. We reached out to them on the problems with the limited conservatorship process. We invited them to our conferences. They showed no interest at all.

Court Investigators

– Local Control and Not Statewide Uniformity

Court investigators are required by statute to investigate initial filings in limited conservatorship cases and conduct biennial reviews. The statute must assume competency in the performance of their duties. Some local courts, such as in Los Angeles, completely stopped using investigators in initial filings. This function stopped for at least three years. Other counties did not stop using investigators – thus a breach of the uniform operation requirement of the state constitution, plus a violation of statutory requirements. A review of training materials used in Los Angeles to train investigators shows a total deficiency of training for their role in limited conservatorship cases. Some courts use a training manual published in 2009 by the state court investigators association. That manual is inadequate in many ways. It appears that the court investigator association is all but defunct. A review of its website shows that most pages have not been updated for years.

Judicial Education

– A Complete Void

From the manner in which some local judges are functioning, it must be assumed that they have not been educated about the administration of justice involving people with developmental disabilities. There appears to be no training on federal voting rights laws, on federal ADA requirements, on Lanterman Act rights, on the constitutional rights of conservatees, on professional standards and ethics for attorneys, or on the basics of developmental disabilities. They may know a lot about wills and trusts, or general conservatorships involving money disputes regarding seniors, but when it comes to *Developmental Disabilities 101*, they are not educated. Any judge who is educated has received the education on his or her own. Judicial functions should be uniform throughout the state. They are not, and a lack of uniform judicial educational standards is part of the problem.

Voting Rights

– Hit and Miss

Federal voting rights laws govern the entire state. The Elections Code governs the entire state. The voting disqualification provision in the Probate Code is a statewide provision. Yet the disqualification of limited conservatees from voting appears to be a function of the individual interpretations of the law by judges, attorneys, court investigators, and petitioners. Until the passage of AB 1311, state law was extremely ambiguous. Now there is some clarification, in policy, but who is going to educate the judges, attorneys, and other participants about this clarification? Who will educate them about the “literacy test” prohibition of federal law? The Presiding Judge of Probate in Los Angeles told a group of PVP attorneys that if they want to raise a federal law issue, they should file a federal lawsuit. What? This statement is completely unacceptable. These attorneys can raise such an objection in state court by objecting to a proposed disqualification order on federal constitutional grounds and then by appealing from an adverse order. Who is training public defenders or court-appointed attorneys on how to defend the voting rights of their client? Nobody is.

Lack of Oversight

Every other part of the judicial system has some oversight, some checks and balances. Sometimes the checks come from an executive branch agency involved in the process, such as District Attorneys or Public Defenders involved in LPS conservatorships. Other times it comes from the appellate process, so appellate judges can publish decisions that correct judicial or attorney errors or abuses. There are no executive branch agencies involved in limited conservatorships, so there are no checks and balances from the executive branch. There are no appeals in limited conservatorship cases, especially not by court-appointed attorneys whose appointments expire before an appeal can be taken. We have all heard that “power corrupts and absolute power corrupts absolutely.” Probate Court judges have absolute power – and they know it.
