



How California's Limited Conservatorship
System Is Failing to Protect the Rights of
People with Developmental Disabilities

Materials for a Series of Conferences Sponsored
by the Conservatorship Reform Project of
Spectrum Institute



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April 28, 2014

Dear Conference Participant:

We were working on our chosen path: dealing with abuse of people with developmental disabilities. We had more on our plate than we could handle. But we were somehow able to keep pace. Then we were confronted by some new challenges. Three new cases presented themselves. One after another.

Each of them involved adults with developmental disabilities, and family members trying to help them, who were involved in a legal process known as the Limited Conservatorship System.

Limited conservatorships involve a system of protection created for people with developmental disabilities. A system that is supposed to give them just enough protection, but not too much, so they are safe but not overprotected. A system that is supposed to encourage as much independence as possible, but which also gives just enough supervision and control. A perfect balance. In theory.

The first case that came our way opened our eyes. Not in a good way. Then the second case. More bad news. Then the third. At that point, we knew that the "perfect balance" contemplated by the Limited Conservatorship System was a policy ideal that had not translated well into everyday practice.

We moved beyond the three cases to study the system itself. We did interviews of agency personnel involved in the system. We reviewed scores of court records. We researched the law. We put the pieces of this puzzle together. In other words, we did an audit. What we found was a system with many flaws, in both policy and practice. A system needing major reform.

We rose to the challenge. We decided to become "whistle blowers" and to alert those charged with protection of, and advocacy for, people with developmental disabilities about the deficiencies in the Limited Conservatorship System and the harm it is sometimes creating.

This is a system that is not audited. There do not appear to be any quality assurance mechanisms built into it. The system seems to be running on auto pilot, with primary considerations being efficiency and cost control.

Where is the concern for the individual? How can we bring the Limited Conservatorship System back to its original goal – a system encouraging as much independence as possible but giving just enough supervision and control? How can we help those who administer the system again achieve that perfect balance?

That is why we are convening this series of conferences. That is why we have invited you to join us in focusing on the problems we have identified and helping us meet this challenge.

We look forward to some productive conversations. Together we can find a way forward. We can transform the Limited Conservatorship System so that it has the proper checks and balances, and quality assurance controls, to give it the blend of protection and independence the creators of the system originally intended.

A handwritten signature in black ink, reading "N. J. Baladerian, Ph.D.".

Nora J. Baladerian, Ph.D.
Conference Co-Chair

A handwritten signature in black ink, reading "Thomas F. Coleman, J.D.".

Thomas F. Coleman, J.D.
Conference Co-Chair

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Conservatorship Reform Project

Conferences Focus on the Rights of People with Developmental Disabilities

The Disability and Abuse Project has conducted an audit of limited conservatorship procedures and cases processed through the Probate Court in Los Angeles County. What we have found is very disturbing. Los Angeles may be symptomatic of a much larger problem of personal and constitutional rights violations occurring throughout California, indeed, throughout the nation.

About 30 years ago, the California Legislature established a new system of protection for adults with developmental disabilities. We call it the "Limited Conservatorship System." It was a new form of conservatorship (adult guardianship) that provides a delicate balance between protecting vulnerable adults from harm and granting such adults as many rights as possible. A blend of semi-independence and semi-protection was the goal. Hence the term "limited" conservatorship since the conservator only receives limited powers over the conservatee.

The procedure for establishing limited conservatorships is supposed to have a built-in set of checks and balances to make sure that a conservatorship is needed, that the right person becomes the conservator, and that the conservatee retains as many rights as possible. Alternatives to conservatorship, including less intrusive forms of supportive decisionmaking, should be explored.

There should be a screening out of potentially bad conservators. A court investigator should interview all parties to the case and close relatives. A lawyer appointed for the conservatee should do an independent investigation and defend the rights of the conservatee from erosion. The Regional Center should do its own assessment and should make recommendations to the court.

This all sounds so good on paper. But what we found are practices that do not match this ideal scenario. We saw negligence, indifference, and systematic violations of rights. Courts are not narrowly tailoring their orders so that proposed conservatees retain as many rights as possible.

We are sponsoring a series of conferences to bring interested parties and agencies together to review our findings. We are "whistle blowers" who hope to shake up the status quo. We are offering solutions and seeking ideas from others for major reforms in the Limited Conservatorship System.

This system needs legislative oversight and more funding. The judicial branch needs to take an honest look at the dysfunctional process it is presiding over. The executive branch needs to get involved instead of ignoring the ongoing violations of the rights of people with developmental disabilities.

Disability rights organizations need to find time for this issue, even though their current priorities are focused on other areas. Bar associations and ethics professors need to take a look at the various violations of professional standards that are built into the court-appointed attorney aspect of this system.

Regional Centers need to play a greater role in protecting their clients when they are scheduled to become limited conservatees.

Please take the time to visit our [Conservatorship Reform Webpage](#) to learn more about the problems with this system and the solutions we are recommending. This is a reform effort that we believe will eventually spread throughout the nation.

Sponsored by the Disability and Abuse Project of Spectrum Institute

[Home Page](#)

Limited Conservatorship Reform in California

Roundtable Conference One: *Three Case Studies Provide an Overview*

[Welcome Letter from Conference Co-Chairs](#)

Date: May 9, 2014

Pre-Conference Report

Time: 9:30 a.m. to 3:00 p.m.

[Main Report](#)

[Appendix: Areas Needing Improvement](#)

[Appendix: Typical Scenario of Assembly Line Justice](#)

[Appendix: A Paradigm Shift to Trauma-Informed Justice](#)

Place: The Olympic Collection
11301 Olympic Blvd.
Los Angeles, CA 90025
By Invitation Only

tomcoleman@earthlink.net

Agenda for Conferences

[May 9 - Three Case Studies](#)

[June 20 - Voting Rights](#)

[PVP Reform](#)

[Capacity Assessments](#)

Participants at Conference One will focus on three case studies, each of which highlights various problems with the Limited Conservatorship System in California.

Background Papers

[Lanterman Act Rights](#)

[Searching Court Records](#)

[Probate Investigation Defects](#)

[Self Help Clinics](#)

[PVP Trainings -- Part I](#)

[PVP Trainings -- Part II](#)

[Voting Rights](#)

[Expanding the Role of the Regional Center](#)

[Legal Principles on Social Rights](#)

[Social Rights Advocacy](#)

Three other conferences are planned for June, July, and August. A Post-Conference Report, with recommendations, will be published later in the fall. It will be distributed to government officials as well as to advocacy groups for people with disabilities.

JUSTICE DENIED

A Special Report on Limited Conservatorships
(Full Set of Conference Materials)

Sponsored by the Disability and Abuse Project of Spectrum Institute
[Nora J. Baladerian, Ph.D.](#) and [Thomas F. Coleman, J.D.](#), Conference Co-Chairs

"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." -- Justice Louis Brandeis (Olmstead v. United States, 277 U.S. 438, 479 (1928))

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Roundtable Conference on Limited Conservatorship Reform

Sponsored by Spectrum Institute Disability and Abuse Project

May 9, 2014 – 9:30 a.m. to 3:00 p.m.
Olympic Collection • 11301 Olympic Blvd. • Los Angeles, California

Agenda

- | | |
|---------------|--|
| 9:30 - 10:00 | Registration and Informal Introductions |
| 10:00 - 10:30 | Opening Remarks
Nora J. Baladerian, Ph.D. and Thomas F. Coleman, J.D. |
| 10:30 - 11:30 | Case Study #1: Roy L. <ul style="list-style-type: none">* ADA compliance and reasonable accommodations (in and out of court)* Accommodating cognitive and communication disabilities* ADA compliance trainings of judges and court staff* ADA compliance trainings of PVP attorneys |
| 11:30 - 12:30 | Case Study #2: Nicky P. <ul style="list-style-type: none">* Interagency cooperation when a conservatee is a victim of alleged abuse* Mandatory cross reporting * Protocols for Probate Court* When a “death review” is appropriate or should be mandatory |
| 12:30 - 1:30 | Lunch (several restaurants within one block) |
| 1:30 - 2:30 | Case Study #3: Craig B. <ul style="list-style-type: none">* Assessment of capacity for various decisions* Current practices (social, sexual, voting, medical, financial, etc.)* Need for clinical criteria and legal guidelines in each area |
| 2:30 - 3:00 | Preview of coming attractions – Thomas F. Coleman, J.D. <ul style="list-style-type: none">* Roundtable on Voting Rights (June)* Roundtable on Role of PVP Attorneys (July)* Roundtable on Assessment of Capacities (Aug) |

Roundtable Conference on Limited Conservatorship Reform

Sponsored by Spectrum Institute Disability and Abuse Project

May 9, 2014 – 9:30 a.m. to 3:00 p.m.
Olympic Collection • 11301 Olympic Blvd. • Los Angeles, California

Confirmed Participants

Nora J. Baladerian, Ph.D.
Clinical Psychologist
Disability and Abuse Project

Thomas F. Coleman, J.D.
Attorney, Disability and Abuse Project

Wanda
Parent of Conservatee

Jennifer
Parent of Conservatee

Jamie
Sibling of Conservatee

Norma Nordstrom
Former Director
Los Angeles County APS

Paula Pearlman, J.D.
Attorney, Disability Rights Legal Center

Jonathan Rosenbloom, J.D.
Attorney at Law / PVP Training
Los Angeles County Bar Association

Angela Kaufman
ADA Compliance Officer
Los Angeles City
Department on Disability

Helane Schultz
Manager, Lanterman Regional Center

Arlene Diaz
California Association of Public
Administrators, Public Guardians,
and Public Conservators

Tamra Reza
Public Guardian Supervisor
Santa Barbara County

Marsha Mitchell-Bray
Director of Community Services
South Central Regional Center

Johanna Arias-Bhatia
Government Affairs Manager
South Central Regional Center

Yolande Erickson, J.D.
Attorney at Law
Bet Tzedek Legal Services

Bertha S. Hayden, J.D.
Attorney at Law
Bet Tzedek Legal Services

Jim Stream
Executive Director
The Arc of Riverside

Linda Cotterman, M.S.W.
Professional Fiduciary

Cynthia J. Waterson
Conservatorship Attorney

Voting Rights of People with Developmental Disabilities

A Roundtable Conference
sponsored by the
Disability and Abuse Project

June 20, 2014 – 9:30 am to 12:30 pm
at the Olympic Collection in West Los Angeles

A Roundtable Conference will be held to focus on the policies and practices of the Limited Conservatorship System in Los Angeles County (and California) which frequently takes away the voting rights of adults with developmental disabilities who are declared to be conservatees.

Recent monitoring of the Limited Conservatorship System has revealed that proposed conservatees are having their voting rights removed: (1) without regard to federal laws that protect the voting rights of people with developmental disabilities; (2) without training of or advocacy by court appointed attorneys who are supposed to protect the legal rights of proposed conservatees; (3) without awareness by parents that their adult children generally should have the right to vote; (4) without apparent training of probate investigators of criteria for determining the capability of proposed conservatees to vote; (5) without assessment of voting capacities by Regional Centers which are left out of the process on this issue; (6) without close scrutiny by Probate judges and without evidentiary hearings that show clear and convincing evidence that proposed conservatees are unable, with assistance, to complete an affidavit of voter registration; (7) without involvement or monitoring of this problem by Area Boards of the State Council on Developmental Disabilities; (8) without involvement, monitoring, or advocacy by the Office of Clients Rights of Disability Rights California which is under contract with the State Department of Developmental Disabilities to protect the rights of Regional Center clients; and (9) without the awareness of the Attorney General of California and the Civil Rights Division of the Department of Justice.

Agencies that should be protecting the voting rights of people with developmental disabilities will be invited to this Roundtable Conference on Voting Rights. Their attention will be called to this problem. Participants will discuss solutions to what appears to be the routine disenfranchisement of an entire class of voting-age California citizens. Strategies will be discussed for filing petitions with the court to reinstate voting rights for limited conservatees who have been improperly disqualified to vote due to mistake or neglect (by participants in the conservatorship system).

Representatives from these groups will be invited to the table: Association of Regional Center Agencies (2); Areas Board 10 (1); State Council on Developmental Disabilities (2); Secretary of State (1); Los Angeles County Registrar of Voters (1); California Department of Justice (1); United States Department of Justice (1); City of Los Angeles ADA Compliance Office (1); Bet Tzedek Legal Services (1); Disability Rights California (2); State Department of Developmental Services (1); Los Angeles Superior Court Probate Investigator's Office (1); The Arc of California (1); TASH (1); ACLU (1); Los Angeles County Bar Association (1).

For more information, contact:

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(213) 230-5156 / tomcoleman@earthlink.net / www.disabilityandabuse.org

Legal Advocacy for Limited Conservatees

A Roundtable Conference
sponsored by the
Disability and Abuse Project

Date and Location to be Announced

A Roundtable Conference will be held to focus on the role of court-appointed attorneys as advocates for people with developmental disabilities who become involved in the Limited Conservatorship System in Los Angeles County (and California).

Recent monitoring of the Limited Conservatorship System has revealed that attorneys appointed to represent proposed limited conservatees: (1) are not receiving adequate training prior to being added to the Probate Volunteer Panel (PVP) lists for limited conservatorship cases; (2) are not being appointed to cases on a fair rotational basis; (3) are being used by the courts to act as de-facto court investigators; (4) are not familiar with the Americans with Disabilities Act and are not providing reasonable accommodation to their clients; (5) do not know how to conduct forensic interviews of people with cognitive or communication disabilities; (6) are not aware of legal and psychological criteria for proper assessments of client capacities to make major life decisions; (8) are often acting as a de-facto guardian ad litem, by advocating for what they personally believe to be the client's best interests rather than advocating for the personal wishes of the client; (9) are not aware of the proper application of the right to effective assistance of counsel to cases involving clients with developmental disabilities; (10) are not aware of federal voting rights laws as applied to adults with developmental disabilities and are therefore not advocating for the voting rights of their clients; (11) are sometimes improperly stipulating away the social rights of their clients and are not advocating for the right of the client to refuse to associate with anyone in a social setting; (12) are publicly disclosing information obtained from clients in the attorney-client relationship; (13) are not subject to monitoring or quality assurance oversight by any agency and are not advising clients of their right to complain to the court if they are not satisfied with the attorneys performance and of their right to demand a "Marsden" hearing; and (14) are not advising clients of their right to petition the court at any time to modify the conservatorship order, to restore rights that have been restricted, and to ask the court to appoint an attorney to help them file and litigate such petitions.

Agencies and individuals will be invited to the conference that are or should be involved in: (1) monitoring or enforcing professional standards; (2) training PVP attorneys; (3) maintaining PVP appointment lists; (5) ADA compliance by the courts; (6) teaching ethics and constitutional law; (7) advocating for the rights of Regional Center clients; and (8) funding the payment of PVP attorneys. Such agencies include: (1) Probate Attorney's Office; (2) County Bar Association; (3) State Bar Association; (4) Administrative Office of the Courts; (5) Office of Clients Rights Advocacy; (6) Regional Center attorneys; (7) California Department of Justice; (8) Area Board 10; (9) Los Angeles City ADA Compliance Office; (10) Disability Rights Legal Center at Loyola Law School; and (11) PVP attorneys. Parents of conservatees and disability advocacy organizations will also be invited.

For more information, contact:

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Law, Psychology, and Forensic Assessment of Capacities for Life Decisions by Limited Conservatees

A Roundtable Conference
sponsored by the
Disability and Abuse Project

Date and Location to be Announced

A Roundtable Conference will be held to focus on the role of attorneys, court investigators, mental health professionals, social workers, and judges in assessing the capacities of proposed limited conservatees to make major life decisions, such as residence, education, finances, and medical treatment. Special attention will be given to decisions involving sexual activities and decisions regarding social contacts and personal relationships.

A portion of the conference will discuss the development of criteria and guidelines for each professional person and each agency worker who assesses such capacities in limited conservatorship cases. The goal is to begin the process of developing criteria for these assessments. Discussion will also focus on strategies for challenging assessments that lack factual foundation or clinical validity.

Recent monitoring of the Limited Conservatorship System has revealed that criteria and guidelines are not being used by those who are making recommendations about which of the “seven powers” should be retained by the client and which should be given to the conservator. Court appointed attorneys are supposed to advocate for retention of rights but they are not receiving training on how and when to challenge petitions on any of these seven powers which are not supported by substantial evidence or valid assessment criteria. Doctors submitting capacity declarations do not render opinions on which of the seven powers should be retained by the client. Nor does it seem that such doctors have training on forensic assessments. Since very few petitions are contested, and appeals are almost nonexistent, there is virtually no guidance from appellate court cases on these issues.

Regional Center case managers do not have guidelines nor do they receive training on psychological assessment of client capacities in each of these seven areas. No one is giving any professional assessment regarding capacity to vote. It is unknown whether court investigators have any guidelines or receive any training on these issues. Parents routinely ask for all seven powers and do not receive any educational materials or training on these issues nor are they told about the legal presumption that their adult child should retain as many rights as possible and be as independent as possible.

These agencies and individuals will be invited to the conference: (1) Association of Regional Center Agencies (2); (2) social worker (1); (3) medical doctor (1); (4) Office of Client’s Rights Advocacy (2); (5) court investigator (1); (6) PVP training program coordinator (1); (7) State Council on Developmental Disability (2); (8) Area Board 10 (1); (9) TASH (1); (10) The Arc of California (1); (11) Forensic Mental Health Association of California (1); (12) Forensic Psychology professor (1).

For more information, contact:

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Limited Conservatorships: A System that Protects Adults with Developmental Disabilities Needs *Major* Reform

Pre-Conference Report

by Thomas F. Coleman

Most people who hear the term “limited conservatorship” for the first time probably react the same way I did when I first heard it. “What the heck is that?”

I had heard about conservatorships in the context of older people with dementia or people with brain injuries who can’t handle their own financial affairs. But my personal experience with the concept of conservatorships was limited to signing a “nomination of conservator” form as a part of my estate planning package a few years ago (in case my capacity to make major life decisions would be adversely affected due to an illness or an accident).

Other than that, I vaguely knew that a conservatorship system was operated by the Probate Court for adults who needed a formal method to provide them with financial or personal protection against potential fraud or abuse. I knew there were two types of conservatorships: of the person; and of the estate.

What I did not know was that the conservatorship system has changed over the years, as our commitment to constitutional rights was strengthened and as a disability rights movement emerged.

We now have three conservatorship systems: (1) General Conservatorships (mostly for the elderly); (2) Lanterman Petris Short (LPS) Conservatorships (for adults with mental illness); and (3) Limited Conservatorships (for adults with developmental disabilities). This essay focuses on Limited Conservatorships for adults with developmental disabilities – documenting the current condition of this system and the need for major reform.

The essay suggests points to specific problems that need to be addressed. The essay is written as a

precursor to a series of conferences – roundtable in format where interested participants will discuss a wide range of policies and practices needing reform.

After receiving the best ideas of the participants during these conferences, a Conference Report will be written and distributed to relevant governmental agencies, nonprofit organizations, and leaders in the world of developmental disabilities. At that point, those who advocate for people with developmental disabilities will have ownership of the problem and can press for legislative and judicial reform of the Limited Conservatorship System in California.

What happens in California, in terms of reforms, can serve as a model for the rest of the nation. Right now, however, I would not want the current California system to be replicated elsewhere. The Limited Conservatorship System here is better than no protection system at all, but the problems with it are so numerous, so complex, and so disturbing that it is not something that the judiciary or the legal community would want to serve as a model for other states.

When I say “Limited Conservatorship System” I am referring to a set of laws and network of participants who decide whether an adult with a developmental disability will have rights to make major life decisions taken away or restricted. These are decisions that we all take for granted as the basic human right of any adult: the choice of one’s residence; whether to marry; registering to vote; signing contracts; who to socialize with (or not); sexual intimacy, etc.

The network of participants includes: the legislature (passing laws); the judiciary (operating the system); regional centers (assessing clients); and attorneys appointed for conservatees. Noticeably absent are:

executive branch agencies, such as the Department of Justice, the Department of Developmental Services, and the State Council on Developmental Disabilities.

The Role of Our Project

Before analyzing the Limited Conservatorship System and seeking solutions to the myriad problems with it, it is only fair that I share with the reader our credentials and motivations. By “our” I refer to the Disability and Abuse Project.

The Disability and Abuse Project is operated by Spectrum Institute, a nonprofit organization that engages in education and advocacy to protect personal rights. Issue areas on which Spectrum Institute has focused its attention over the years include: discrimination on the basis of marital status, sex, and sexual orientation; hate crimes; personal privacy; family diversity; institutional abuse of teenagers; and the rights of people with disabilities.

Spectrum Institute has a limited budget which comes from a few small donations by private individuals. We have no government or foundation grants.

The Disability and Abuse Project is an outgrowth of the decades long work of Dr. Nora J. Baladerian. Nora is a clinical psychologist who is heavily involved in the world of developmental disabilities: as a therapist for individuals; as a forensic expert for lawyers in civil and criminal cases; and as an educator and trainer for government agencies and nonprofit organizations that provide services for children and adults with such disabilities.

My background is in law and public policy. As an attorney and advocate, I have been involved in court cases, political advocacy, and special projects for several decades. Many of these projects have involved advocacy for people with disabilities.

Several years ago, I decided to focus my professional energy on the rights of people with developmental disabilities. Nora and I created the Disability and Abuse Project to prioritize the problem with the

greatest need and the least attention: the physical, sexual, and emotional abuse of children and adults with intellectual and developmental disabilities. Jim Stream, Executive Director of The Arc of Riverside joined the Executive Committee of the Project.

Two years ago, our attention was drawn to a case that involved the alleged abuse of a conservatee with a developmental disability. Unfortunately, he died before we were able to discover that the system that was supposed to protect him from abuse or neglect – the Limited Conservatorship System – had structural and operational flaws that could adversely affect tens of thousands of others like him. So we closed the case – so we thought – and moved on.

Then another case came to our attention – one involving a limited conservatee who was being pressured to visit with a parent he did not want to see. As we focused on this case, we began to learn how “the system” could be used by a parent to violate the constitutional and personal rights of adults with developmental disabilities.

As we were beginning to study how the Limited Conservatorship System operates, yet another case came our way. This one also involved a violation of the social decision-making rights of a conservatee.

With our attention drawn to three cases involving major violations of constitutional rights, and with our preliminary investigation showing structural and operational flaws – these were not isolated problems – we got the message. The Universe was calling on us to lead the charge for reform.

Why us? Because the people operating the Limited Conservatorship System – judges and court staff – were too busy juggling huge caseloads and struggling with fiscal cutbacks to notice that the system was dysfunctional. Attorneys paid by the courts to represent conservatees were following instructions and were not aware of systemic defects.

When the system was established by the legislature, there was no role for agencies of the Executive Branch in advocacy or oversight. We soon learned

that other disability rights organizations were overloaded with work on other issues and that protecting the rights of limited conservatees was not on their agendas.

So “mission impossible” has knocked on our door.

The Limited Conservatorship System

There are three ways to look at the operation of the Limited Conservatorship System: (1) How it should operate under current law; (2) How it actually operates and how this deviates from current law; and (3) How the law should be changed to make the system operate better.

Before discussing how the Limited Conservatorship System currently operates in real life, and before discussing the details of the three cases that came to our attention, let’s look at how the law currently specifies it should operate.

When people with developmental disabilities are under the age of 18, their parents have the legal right to make decisions for them. But the day they turn 18, their parents lose such authority. The law presumes that any adult has the capacity and the right to make major life decisions and people with developmental disabilities are no exception.

Therefore, if a person with a developmental disability in fact lacks the capacity to make decisions about finances, education, sex, marriage, etc., someone (usually a parent) needs to petition the Probate Court to establish a conservatorship for the person in order to protect them from potential abuse.

Many, if not most, minors with developmental disabilities are clients of a Regional Center. A Regional Center is a nonprofit organization, funded by the state, which coordinates services for children and adults with developmental disabilities. Regional Centers operate under a contract with the State Department of Developmental Services.

When a Regional Center client is about to turn 18, parents are made aware of the need to petition the

Probate Court for a limited conservatorship for their child when he or she turns 18. Most parents are intimidated by the thought of having to go to court.

Some parents look for an attorney to help them with what they perceive as a daunting legal task. Getting referred to an affordable and competent attorney does not happen easily. But some parents – mostly upper middle income ones – manage to find an attorney.

Low income, and most middle income parents, simply do not have discretionary funds to spend on an attorney. These parents muddle through the court process without legal representation.

About 1,200 limited conservatorship petitions are filed each year with the Los Angeles Superior Court. Some 90 percent of these cases are filed by parents without an attorney. They are called “proper” cases.

Fortunately, Bet Tzedek Legal Services – a nonprofit public service organization – provides a “self help” conservatorship clinic for people seeking to file petitions for general conservatorships (mostly for seniors) and people who need to file petitions for limited conservatorships (for adults with developmental disabilities). This service is provided without charge.

How the System is Supposed to Operate

A parent or family member files a petition for Limited Conservatorship with the Probate Court. A copy of the petition is given to the proposed conservatee (adult with the disability) and to close relatives.

The court is supposed to appoint a court investigator (employee of the court) to investigate the case. The investigator is supposed to visit the home of the proposed conservatee, interview the conservatee in person, review medical and psychological records, and determine the level of the disability and the extent to which the conservatee can or cannot make major life decisions. The investigator should file a confidential report with the court and serve a copy

on the parties to the case. Any interested party, such as another family member, can object to the need for the conservatorship or to the assessment of the level of the proposed conservatee's incapacity.

The court is supposed to notify the relevant Regional Center that their client is the subject of a limited conservatorship proceeding. The law gives the Regional Center an obligation to assess the capacities of the client to make major life decisions and to report their findings (confidentially) to the court. A copy of the Regional Center report must be sent to the parties to the case.

The court is also supposed to appoint a private attorney to represent the proposed conservatee. Since limited conservatorships take away fundamental rights, and may restrict basic personal liberties, proposed conservatees are constitutionally entitled to a court-appointed attorney if they cannot afford to hire one. Because most of them come from low income families, nearly all proposed conservatees need a court-appointed attorney.

State law says that a judge must appoint an attorney to represent a proposed limited conservatee when a case is initially filed.

These attorneys are called PVP attorneys (Probate Volunteer Panel) even though they are not really volunteers serving without compensation. They are paid by county funds in an amount determined by the judge who appointed them.

The loyalty of PVP attorneys should be to their clients – the proposed conservatees for whom they advocate. However, court rules appear to give them a secondary role – to help the judge resolve the case. Therefore, in cases where there may be a dispute about various aspects of the case, the PVP attorney is expected to act as an unofficial court investigator or as an unofficial mediator.

Once the reports of the investigator, the PVP attorney, and the Regional Center are filed with the court and served on the parties, the case is ready for resolution – unless someone has filed an objection

and insists on a hearing. A review of court records suggests that objections are filed in only 2 percent of limited conservatorship cases.

The person asking to be conservator should file paperwork with the court acknowledging their duties as conservator and the rights of the conservatee.

Once all the paperwork has been filed, the proposed conservator and conservatee appear before the judge. The judge may speak with the conservatee to make sure they understand what is happening. The judge then enters an order granting the petition.

In the rare cases where a trial is held following an objection by a party to the case, a judgment is entered once the judge decides the contested issues. A party to the case who is displeased with the judgment may file a notice of appeal.

Our research reveals that contested hearings are rare and appeals are almost nonexistent in connection with initial petitions for limited conservatorships.

One year later, the court investigator is supposed to visit the conservatee to check on his or her welfare. An annual review report is supposed to be filed with the court. This is a confidential document. The law requires the court investigator to conduct subsequent reviews every two years and to file a confidential biennial report with the court.

The limited conservatorship case remains open until the conservatee dies. Assuming a normal life span, the case could remain “open” for 50 years or longer.

Although we asked the Probate Court how many limited conservatorship cases are currently open, the court would not give us this information. But based on calculations from other methods of analysis, we estimate that at least 30,000 limited conservatorship cases are currently open in Los Angeles County and about 100,000 limited conservatorship cases are open statewide. The figures could be as high as 50,000 in Los Angeles and 150,000 statewide.

In any open case, a conservator or conservatee can

file a supplemental petition with the court at any time. Although people do not know this, anyone can send a letter to the judge complaining that the conservatee is being mistreated. If a supplemental petition or a complaint is filed, the court can order another investigation or it can appoint a PVP attorney to represent the conservatee. A hearing can be held and an appeal can be filed. Again, this is rare.

Drumroll . . . How the System Really Works

In the General Conservatorship System, the subject of the proceeding is generally an elderly person – someone in their 80s or even 90s. They have lived most of their life and need protection for their remaining years. Usually, it is an all or nothing situation with the conservator receiving authority to make all major life decisions or not getting any authority at all.

Major reforms occurred in the General Conservatorship System in the late 1970s. The position of court investigator was created in 1977 – a product of the “rights revolution.” It was the same year that courts received authority to appoint an attorney to represent the proposed conservatee.

Part of the thorough revamping of the General Conservatorship System in the late 1970s was the creation of the Limited Conservatorship System for adults with developmental disabilities. With education and pressure from disability rights groups, legislators decided that the law should encourage adults with developmental disabilities to be as independent as possible. Therefore, this new system presumed that limited conservatees would keep as many decision-making rights as possible. Restrictions on any specific right would be on an as needed basis. Hence, the emergence of a Limited Conservatorship System in California.

From merely reading the statute books, it could be said that the Limited Conservatorship System looks good on paper. It should be noted that the same thing was once said about the General Conservatorship System. (Friedman and Star, “Losing It in California: Conservatorship and the Social Organi-

zation of Aging,” 73 *Washington University Law Review* 1501, 1512 (1995).)

“It is one thing to be progressive on paper, quite another to make sure reality matches the words. After all, rights can be ignored; they can be waived; and sometimes they can turn into a caricature of themselves.” (Friedman and Star, *supra*.)

In order to move beyond the surface appeal of the words of the statutes governing a system such as this, we looked at the court files in dozens of limited conservatorship cases. (See: “Searching for Clues: Putting Together Pieces of the Limited Conservatorship Puzzle by Examining Court Records.”)

Although the examination of court dockets and case files is not definitive, “one gets a lot closer [to the truth] by looking into files than by just reading statutes, their legislative history, and the handful of decided [appellate] cases.” (Friedman and Star, *supra*.)

One gets even closer to the truth by interviewing parties to actual cases and by witnessing the performance of various participants in the system. In retrospect, we now know that we were fortunate to have three specific cases come to our attention for more intense scrutiny in real time.

Through these three cases, we were able to observe and analyze the performance of judges, court investigators, PVP attorneys, and Regional Centers. This gave us a better glimpse of how the system operates in reality. Spoiler Alert! Reality does not match theory.

Before sharing the specifics of the three cases, I would like to explain our extensive efforts to analyze the Limited Conservatorship System.

I read the relevant statutes; examined appellate cases on the relevant constitutional rights of conservatees; read appellate cases on the right of conservatees to effective assistance of counsel; and reviewed professional ethics on the role of attorneys representing clients with diminished capacity.

I read the court dockets for dozens of limited conservatorship cases; met with the Presiding Judge of the Probate Court; sat in on a court proceeding; interviewed the attorney with the Los Angeles County Bar Association who coordinates the trainings of PVP attorneys; attended an actual training; and heard a lecture by the Bet Tzedek attorney who runs the Self-Help Clinic. I also communicated with public guardians and experts in adult protective services.

The Three Cases

During the last two years, three cases were brought to the attention of Dr. Nora J. Baladerian. She, in turn, enlisted my help with these cases.

Each of the three cases gave us a glimpse into the performance of the major participants in the Limited Conservatorship System: Self Help Clinic, Probate Investigators, PVP attorneys, and Judges. We also were able to share the anguish of family members who were trying to help the conservatees.

Our experience with these three cases is what prompted us to research the law that states how the system should operate, and look into court files and records in other cases to find any patterns regarding the performance of the key participants.

The Case of Nicky P.

On June 25, 2012, Nora received an email from the sister-in-law of Nicky P, a man in his mid-30s who had a serious intellectual disability. Nicky was a limited conservatee who lived with his parents. The parents were his conservators.

Nora sent me the email and asked if I would take the lead because it involved legal issues. Here is what the email said (names changed by me):

“My husband's parents have been neglecting [my husband's brother]. Nicky is being put in the back yard naked and in handcuffs. We witnessed him in his room naked and in handcuffs. Once we noticed that he was in his room without food and water for

two days handcuffed. He had underwear on but he had urinated and pooped on himself. My husband snapped some pictures of the abuse when it was taking place but nobody seems to care. We have proved that this is really happening. We called to make a report twice and both times they just question the parents and of course they denied it. A lady by the name Mrs. Reed called us from Elderly and Handicap Protective Services and basically was very rude to us saying that there is no abuse going on and it's our word against theirs. We told her that we have pictures to prove it. We feel that if Nicky does not get removed from the home he might end up dying of starvation. He looks very skinny and frail. Please contact me it's urgent. Sheriff's Dept. also don't seem to care.”

The photos were sent to Nora the next day. When I saw them, my heart sank. They showed Nicky on the ground with handcuffs on his ankles. His body was covered with bruises and abrasions.

I dropped everything I was doing and worked for a few days to prepare a packet of information to send to Adult Protective Services.

Since APS had been previously contacted by Nicky's brother, without success, Nora and I were not optimistic about what their response to us would be. So I decided to bring the Justice Deputy of a County Supervisor into the loop.

APS and the Justice Deputy were sent the packet of information about the alleged abuse, including photos, by email on Monday morning, July 1, 2012. They were told that if an investigation and appropriate action were not taken by that afternoon, we would take the matter to the media on Tuesday.

We later learned that APS and the Sheriff went to the home of the parents on Monday. They went inside the house to check on Nicky's condition. They found him lying on the floor in a fetal position, feebly crying “help” as he looked up at them. He appeared to be very frail.

Nicky was taken to the hospital where he was admit-

ted for evaluation and treatment. Nora was told by a nurse that Nicky, who was severely underweight, had a MRSA infection. Nora was told by APS that the parents had withdrawn Nicky as a Regional Center client, so he had been without a social worker or services for a long time.

The brother called the hospital and they would not confirm that Nicky was a patient. So I told him to just show up and ask to see his brother. The hospital staff would not let him see Nicky. They had been told by APS not to allow any visitors.

I could only imagine the fear of a man with a severe intellectual disability in a hospital bed surrounded by strangers. He needed to see the face of a loved one.

Nora contacted a head nurse and pleaded with her to allow the brother to see Nicky. What we did not know at the time but found out much later was that Nicky's conservatorship court order allowed him to retain his right to visit with anyone of his choice. Thus, the "no visitor" rule imposed by the hospital was a violation of patient's rights.

The nurse had a heart, and despite APS instructions, allowed the brother and his wife to see Nicky once, and only once. We were told that when Nicky saw his brother, his face lit up, he smiled, and they held hands. After a brief conversation with Nicky, they were told to leave. They never saw Nicky again.

APS did not find an alternative placement for Nicky. They did not interview the brother and his wife as a possible placement, despite the fact that they had a spare bedroom ready for Nicky upon his release from the hospital. After about 10 days, when Nicky was stabilized enough to be discharged, the hospital called the parents and told them to come pick up Nicky. He was taken home.

We later learned that APS had contacted the Probate Court about this incident, since Nicky was a limited conservatee and the alleged abuse or neglect was claimed to be caused by the parent-conservators.

A review of court records showed that, after the APS

report, the court appointed an attorney to represent Nicky in the conservatorship proceeding. The attorney conducted an "investigation."

During the so-called investigation, the attorney did not interview the sheriff investigator who had seen the photos showing the marks on Nicky's body and the handcuffs on his ankles, had seen his frail condition on the floor of his bedroom, and who had interviewed the brother and sister-in-law. The attorney did not interview the brother and his wife. The attorney did not attempt to interview Nicky outside of the presence of the alleged abusers.

The attorney had only spoken with APS and interviewed the parents and then summarily concluded that all was well. So no action was taken by the judge and Nicky remained home with his parents.

Two months later, Nora and I received an email from Nicky's brother, advising us that Nicky was dead. We were told that he died at home and that the parents wanted to have a quick cremation.

We knew that an autopsy should be done. So we advised the brother to contact the coroner to demand one. After learning some of the facts of the case, the coroner seized Nicky's body and did an autopsy.

In addition to the results of the medical examination of the body – which showed old bruise marks and abrasions – the coroner's report also contained some information from the sheriff's investigation.

At the time of death, Nicky, who was 5' 6", weighed only 93 pounds. He had been suffering from pneumonia and dehydration. He had experienced renal failure due to excessive toxins from a medication.

The sheriff investigator reported that Nicky had not seen his doctor in six months. The mother had told the investigator in July that Nicky never left the house because he was too frail to walk. The parents had never obtained a wheelchair for him. Had Nicky not been removed as a client of the Regional Center, a wheelchair would have been easy to obtain and a physical therapist would have helped him regain the

strength to walk.

The sheriff investigator said he had interviewed neighbors, who told him that they would sometimes hear Nicky screaming for help from inside his home.

When the mother was confronted by the sheriff about the handcuffs, she admitted using them on Nicky, but claimed she had a doctor's prescription. No one ever interviewed the doctor about the handcuffs, or why he had not seen Nicky in months.

The coroner's office said the manner of death was "undetermined" because they could not tell whether the care at home had a role in the death. A county death-review-team investigation has not been done.

A recent review of the probate records in Nicky's case revealed another defect in the limited conservatorship system – the failure of court investigators to conduct biennial reviews as required by law.

Records show that a biennial was not done for years on end in Nicky's case. There was one stretch of time when a follow up investigation was not done for 8 years. Another time, no investigation was done for 4 years. The reason for these lapses is unknown.

The Case of Roy L.

Roy L. is 19 years old. He has autism and is mostly nonverbal. His I.Q. of 90 puts him in the normal range.

Roy attends school on weekdays. He formerly used a communication board to spell out words as a method of communication. Now he often uses an iPad that speaks out words and sentences.

Roy's parents have been divorced for several years. Roy has lived with his mother since the divorce. His father lives out of state.

When Roy was about to turn 18, his mother was advised by the Regional Center that she should file a petition for a limited conservatorship. Without a

conservatorship order, she would not have authority to make medical, financial, or educational decisions for her son after he officially became an adult.

The mother felt she could not afford an attorney, so she went to a Self Help Conservatorship Clinic operated by Bet Tzedek Legal Services. At the clinic she filled out the conservatorship forms, checking off the boxes as instructed.

She, like the others in the clinic, checked a box declaring that the proposed conservatee "is not able to complete an affidavit for voter registration." She, like the others asked that all "seven powers" be granted to her. She did not understand the implications of either statement or how they would affect the rights of her son.

When the petition was filed, it was opposed by Roy's father. He filed a counter petition, asking that he be made conservator. Nora and I were later informed by the mother that this was a strategic maneuver by the father, who really only wanted unmonitored visitation with Roy on a regular basis.

The problem was that Roy was afraid of his father and did not want to see him. Even the thought of seeing his father caused him great trauma.

Even though the mother did not want to risk having the father become conservator and taking Roy away from her, she could not agree to unsupervised and regular visitation. She knew the emotional turmoil that would cause her son, and her too, since she had to deal with the aftermath of such visits.

The court appointed a PVP attorney to represent Roy in the limited conservatorship proceeding. The attorney went to the home, where he was supposed to interview both Roy and his mother.

One of the issues the mother discussed with the attorney was that of voting. She asked if Roy would keep the right to vote despite the conservatorship. The attorney replied in the negative, telling her that voting would be inconsistent with the whole concept of conservatorship.

After the home visit by the attorney, Roy told his mother that he thought the attorney “must think that I am deaf.” When the mother asked why, Roy said that the attorney had not spoken to him directly during the visit.

When the attorney filed a report with the court, he recommended that all “seven powers” be granted to the mother, including the right to make social decisions. He also stated that Roy was unable to complete an affidavit of voter registration.

How the attorney determined the voting matter is unknown. He certainly knew that, if his determination was accepted by the court, Roy would lose his right to vote.

The mother talked to Nora, who discussed the conservatorship proceeding with Roy. She determined that Roy was traumatized by the idea of having to visit with his father. Nora asked Roy and his mother if she could share information about the case with me. They both agreed.

When I spoke with the mother, I learned that Roy had stated that in the next presidential election, he wanted to vote for Hillary.

The mother asked me about voting rights of conservatees. I told her that I would look into it, but that I could see no reason why Roy should not have the right to vote.

The mother told me that she was concerned because the PVP attorney did not want to allow Roy to use his facilitated communication technique and device in communications with the attorney or the court. I told her that I felt that Roy was entitled to use that method, in and out of court, as a reasonable accommodation under the Americans with Disabilities Act.

I contacted an ADA accommodations specialist and learned that the court has a special form that can be used for ADA accommodation requests. I filled out a form for Roy and sent it to the attorney. I told him that he should file it with the court and that he and the court should accommodate Roy’s special com-

munication needs.

Instead of submitting the form to the court, the attorney sent a copy to the attorney for the father. ADA accommodation requests are supposed to be confidential (between the court and the requesting party) and not be disclosed to others.

I learned that the attorney planned to speak to Roy at his school. Knowing the attorney’s past performance, and resistance to ADA accommodations, I got permission from Roy and his mother for me to be at the school meeting as a support person for Roy.

At the meeting, the attorney again refused to allow Roy to use facilitated communication or his iPad. The attorney had two flash cards – one said YES and the other said NO.

The attorney asked Roy questions, and insisted that Roy answer by pointing to one of the flash cards. I later learned that people with developmental disabilities do not respond well to yes or no questions. Such answers under this type of duress are not reliable. Open ended questions should be used to allow them to develop their own method of answering. The interview process was a disaster. The attorney received a series of inconsistent answers.

With permission of the mother and Roy, Nora invited the attorney to come to her office to meet with Roy, the mother, and me.

At that meeting, the attorney finally allowed Roy to use facilitated communication and his iPad. He learned that Roy wanted to keep his right to make social decisions. He did not want to visit with his father. Roy said he is afraid of his father.

During the meeting, the attorney used complex and legalistic language – quite inappropriate with a person with developmental disabilities.

After I had done further research about voting and the rights of people with disabilities, I advised the PVP attorney that someone can help a person such as Roy fill out the voter registration form. All they

have to do is indicate their desire to vote and sign the completed form.

I also sent the attorney communications about the constitutional rights of conservatees to make their own social decisions and the duty of an attorney to advocate for the wishes of a client, regardless of his personal views about the best interests of the client.

Despite my best efforts, however, the attorney refused to submit the ADA-accommodation request form with the court.

As a result of the meeting at Nora's office, and my communications with the attorney about his client's First Amendment rights, and his client's right to have effective assistance of counsel, it was apparent that some progress had been made.

The attorney filed another report with the court, indicating that Roy was capable of completing the voter registration affidavit. He also recommended that Roy should retain the right to make his own social decisions.

We were very hopeful that the case would be resolved without further drama or trauma. It did not turn out that way.

As a proposed conservatee, Roy retained his right to make social decisions. It was his future role as an actual conservatee that was at issue.

With his full social rights intact, Roy did not want to see his father. Despite this, when the next court hearing was scheduled to occur, Roy's attorney wanted him to come to court so he could visit with his father at the courthouse.

The mother asked Nora and me about this. Didn't Roy have the right to decline a visit with his father at this stage of the proceeding. My answer was an emphatic "yes."

Since the hearing was not a contested proceeding with testimony – it was just a status conference – I told the mother that Roy could decline to come to

court that day. He did not have to be there. It was just a time for the attorneys to talk about the case. At this stage, the mother had retained an attorney because the father was getting so demanding.

When Roy did not come to court, his attorney and the attorneys for the mother and father had a fit. They all anticipated that Roy would passively follow instructions to visit with his father at the courthouse.

So the mother was pressured by everyone to make Roy come to court. A special aide had to drive him to court where, over his emotional resistance, he was forced to have a visit with his father. So much for people respecting his right to make his own social decisions – especially at a stage of the proceedings where he still retained all of his rights.

After the unwanted visit was over and the parties appeared again before the judge, Roy's attorney suggested to the court that perhaps Roy and his father could have weekly visits by Skype. This suggestion was made despite the fact that the attorney knew that visits with the father were traumatic for Roy and that Roy did not want to see his father.

To appease the father, the mother's attorney went along with this suggestion. The first Skype visit did not go well. Roy was very upset afterwards and there were emotional outbursts by Roy that the mother had to deal with. During the second Skype visit, Roy figured out to hit a button to stop the Skype session.

The case is still pending at this time. Now that he knows how to end a Skype session, presumably this may happen with some frequency.

Update: Although a final order has not yet been entered, it appears that, due to the intervention of our Project, Roy will retain his right to make social decisions and parental pressure will be prohibited.

On another matter, in reviewing the court files in Roy's case, I noticed that a court investigator's report had not been filed in the case. After reviewing the reporter's transcript of a prior court session,

I learned that the parties had stipulated that the PVP attorney's report would be used as a substitute for the Probate Investigator's report. It just so happens that payment for the an investigation by a court investigator comes out of the court's own budget, whereas payment for a PVP attorney investigation comes out of the general fund of the county.

This type of a stipulation is not uncommon. A review of court records in other cases shows that, upon recommendation from the Probate Attorney, court investigator reports are being waived on a regular basis.

The Case of Craig B.

Craig B. is 26 years old. Although he has autism, he is high functioning, has a part-time job, lives in an apartment with a roommate (with a live-in caregiver too), does volunteer activities, and has a social life.

Craig's parents have been divorced for many years. There has been an ongoing battle in court over whether Craig should have to visit with his father.

Because Craig has resisted visitations with his father, the father sought a court order for a mandated visitation schedule. The father wanted the order to specify that Craig could decide what to do on one weekend, the mother on the second weekend, and the father on the third weekend. Then the rotation would begin again.

The mother said that she did not need a court order. She felt that Craig should be allowed to decide when he wanted to visit either of the parents. Let Craig make these social decisions.

The father did not want Craig to decide because, based on past performance, Craig would probably decide not to visit with his father most of the time.

Craig told the court investigator that he was fearful of his father. He also told his own court-appointed attorney that he did not want to visit with his father. Despite his wishes, and at the insistence of the father, the court ordered Craig to see a therapist for

“reunification” therapy with the father.

Despite this “therapy,” Craig continued to resist visits with his father. Sometimes Craig would leave his house and go for a walk just prior to the time his father was scheduled to arrive. So the visit would have to be cancelled.

The father was upset with Craig's new method to assert his social rights, so he sought and obtained a new court order. This order required the caregiver to pressure Craig to stay at home when a visit was scheduled so he would be there when the father arrived. Craig's attorney did not object to this order.

The mother appealed from the visitation orders. She argued that Craig's constitutional rights were being violated by forced visitation. The appeal proceeded without any participation by Craig's attorney.

The Court of Appeal dismissed the appeal. The court ruled that the mother did not have “standing” to appeal. Only the party whose rights are being violated can appeal. It was not the mother's rights, but Craig's rights that were at stake. Since Craig's attorney did not appeal, no one could ask a higher court to reverse the judge's order.

This is when Nora and I found out about Craig's case. We both filed letters with the Supreme Court, asking the judges to review and reverse the Court of Appeal. The Supreme Court denied review. Since the Court of Appeal opinion is published, it creates binding precedent throughout the state.

When the case was returned from the appellate court to the lower court, the conservators (paid fiduciaries appointed by the court when the father objected to the mother being the conservator) made a bold move. They asked the court to officially take away Craig's right to make any social decisions and to grant them the authority to decide who Craig would socialize with or visit.

The judge indicated that he was going to make the decision at an upcoming hearing. But Craig no longer had an attorney. The judge had relieved him

from the case before the appeal occurred. So it appeared that Craig would not have an attorney at the upcoming hearing.

I researched the matter and discovered that Craig was entitled to a court-appointed attorney if his fundamental rights were at stake. If a conservatee requests an attorney, the judge has no choice in the matter. One must be appointed upon request.

So I wrote a request for Craig, he signed it, and I mailed it off to the judge. Having no discretion in the matter, the judge had to appoint an attorney.

We hoped that the new court-appointed attorney would fight for Craig's rights and advocate for his wishes not to be forced to visit with his father. Our hopes were soon dashed.

At the next court hearing, Craig surprised everyone when he got up in open court and made a statement: "I have a right to say no to Dad . . . I don't want to see you Dad . . . I don't want to see you anymore."

When I read the reporter's transcript, those words jumped off the page at me. For sure, Craig's attorney would respond by filing a motion to modify the visitation order to eliminate the forced visitation. The attorney would surely advocate for the stated wishes of her client.

Wrong! The attorney allowed the forced visitation to continue. Then she tried to broker a deal whereby the conservators would "share" social decision-making with Craig. The problem is that, when you read the "fine print" of the deal, if there is a conflict between Craig and the conservators on an issue, the decision of the conservators controls. So much for so-called "shared" decisionmaking.

In effect, Craig has a court-appointed attorney who is acting as a mediator, not an advocate for Craig. In reality, Craig does not have an attorney.

Craig's case is still pending, awaiting a hearing on whether Craig will keep his social decisionmaking rights or whether the authority to make social deci-

sions will be granted to the conservators.

At this point, the issue is really academic because whichever way the judge rules, Craig's wishes will not be respected anyway. If the judge rules in favor of the conservators, Craig's attorney will not appeal since she does not advocate for Craig. The mother would like to appeal to protect Craig's constitutional rights, but the Court of Appeal has ruled that she lacks standing to appeal. The mother asked for help from several disability rights groups but none were willing to get involved in the case.

Unless a legal miracle happens, Craig will go through life being forced to visit with someone against his will. He will be a captive audience. His freedom of association – in this case, his right not to associate – will continually be disrespected.

What part of the First Amendment do probate judges and court-appointed attorneys not understand? And why are disability rights organizations not willing to get involved to protect the social rights of adults with developmental disabilities?

In the meantime, I am gathering letters from people who have known Craig for years. They are attesting to his ability to make social decisions and arguing that his right to do so should be respected.

Here are excerpts from one letter, written by someone who has known Craig for 13 years:

"Craig is part of a new generation of adults with Autism in the U.S. As the rate of Autism continues to climb . . . it is imperative to find efficient methods that allow autistic individuals to become self-sustaining adults without becoming tangled in a web of legal proceedings. Craig's case could become the precedent for how thousands of autistic people are treated in the future as they attempt to become contributing members of society."

"In order to be a contributing member of society, one needs to be taken seriously as a member of society. This means not undermining the rights of autistic people – in Craig's case, the court's ruling

that he must reconnect with his father.”

“Craig does not wish to hurt or neglect anyone; he just wants to lead *his* own life and surround himself with people *he* likes. . . Craig’s feelings need to be respected.”

Another letter, written by a former teacher who has known Craig for 14 years, states:

“I can say confidently that Craig is more than able to make his own social decisions and is aware of what is safe and reasonable for his well-being. He is an adult with Autism, but knows his own mind and has a right to choose how he lives his life and with whom he spends his time.”

Craig’s case, and the other cases described earlier, touched our hearts and made us wonder about the malfunctioning of the Limited Conservatorship System. They prompted us to interview people who work in the system, to dig into court files, and to determine how badly the system may be broken.

Our preliminary finding is that major flaws permeate the system and the agencies that operate or participate in the system don’t seem to notice these defects. So we must be “whistle blowers” for justice. Justice for people with developmental disabilities who are not able to advocate for themselves.

Researching Court Records

I wondered if these three cases were an aberration or whether the problems with the limited conservatorship system were systemic. If they are systemic, then is the problem with the legal foundation on which the system is based (statutes and court rules) or is the problem with the failure of relevant agencies to implement the policies properly? Or both?

I thought that the best place to begin my inquiry would be to start at the top. Ask questions and seek answers from the Supervising Judge of the Probate Court in Los Angeles.

I discovered that Judge Michael Levanas was a new

supervising judge of the Probate Court. I thought that would work to my advantage. If the system was being operated improperly, he would not be responsible since he had just taken over the helm of the Limited Conservatorship System. Surely he would see that Nora and I are sincere and he would be willing to cooperate with our study.

I had an hour-long interview with him. Judge Levanas said that he had asked around about me and was told that I was competent and a strong advocate. But he seemed cautious about cooperating since he had never worked with me himself.

I told him about a few of our preliminary findings and gave him some written materials to review. I asked him some questions and suggested that he should delegate the matter to someone on his staff. I did not want to take up his precious time. He did not want to delegate the matter. He said that I should direct my questions to him.

Over the course of the next few days, I sent him a few emails with questions about statistics and procedures of the limited conservatorship system. That was several weeks ago.

I later followed up with an official request for access to records under Rule 10.500 of the California Rules of Court. I asked about 35 questions. The court gave direct answers to two of them and evasive answers to two or three more. It ignored the others.

So I used the court’s online services and reviewed dockets in scores of limited conservatorship cases.

I also went to the main courthouse to review documents in dozens of cases. The process and my findings are in an essay titled: “Searching for Clues: Putting Together Pieces of the Limited Conservatorship Puzzle by Examining Court Records.”

The bottom line is that it appears that cases are being processed on a judicial assembly line. The participants are all doing their parts very efficiently – too efficiently – and none of them are seeing the big picture. There are almost no contested hearings. There are virtually no appeals.

The voting rights and social rights of thousands of adults with developmental disabilities are routinely being violated. The participants do not have bad intent, but neither do they have high regard for the constitutional rights of conservatees. The system just keeps cranking out conservatorship orders, over and over, at a pace that seems to be driven by fiscal concerns of administrators reacting to budget cuts.

Convening a Series of Conferences

After reviewing what we have discovered, Nora and I decided that it would be appropriate to convene a conference so that we could share our findings and our preliminary recommendations with people who should care about improving the system: parents and family members involved in the three cases; adult protective services personnel; the county bar association; the city's ADA compliance officer; case managers from the Regional Centers; Client's Rights Advocates; a disability rights legal center; a conservatorship legal services organization; etc.

We selected a date and a location. We sent out invitations. As of today, we 15 people are scheduled to attend the May 9th conference. Unfortunately, none of the Client's Rights Advocates we invited will be at the table.

We invited Judge Levanas to come, if only just for the introduction. We wanted him to welcome people and to let them know that the court is open to suggestions. He has not yet responded .

After reviewing our research materials, and talking about the myriad problems with the system, we eventually realized that one conference would not be sufficient. So we have scheduled four conferences, and even that many gatherings are barely enough to deal with so many complex issues with the care and depth they deserve.

Conference One: An Overview

The first conference will focus on the three case studies: Roy L, Nicky P, and Craig B. These cases will be used to examine flaws in policies and proce-

dures that adversely affect the rights of adults with developmental disabilities who become involved in the limited conservatorship system.

The case of Roy L. will be our entry into the realm of ADA compliance and the duty of judges, court investigators, and attorneys to reasonably accommodate the special needs of conservatees with cognitive, communication, and physical disabilities.

The case of Nicky P. will inform our analysis of the duty of participants in the adult protection system and participants in the limited conservatorship system to investigate allegations of suspected abuse and to provide protection for potential and actual victims.

The case of Craig B. will provide an example of how participants in the system lack criteria, guidelines, and training regarding assessments of a proposed conservatee's capacity to make major life decisions (medical, residence, educational, marriage, sexual, social, etc.) Participants include: medical and mental health professionals, attorneys, case managers, court investigators, and judges.

Conference Two: Voting Rights

Our research has shown that the voting rights of adults with developmental disabilities are being routinely and systematically taken away. Federal voting rights laws are being violated. This conference will identify ways to stop future violations and to help people regain their voting rights.

Conference Three: Court-Appointed Attorneys

This conference will focus on flaws in the PVP court-appointed attorney system. The system itself may need to be scrapped and replaced. In addition to deficiencies in the appointment process, the inquiry will look at matters more fundamental, such as constitutional requirements, ethical considerations, professional standards, and potential and actual conflicts of interest inherent in the PVP system.

Conference Four: Assessment of Capacities

Judges need to decide not only whether a conservatorship should be granted, and who the conservator should be, but also which rights should be taken away from the conservatee and which they should retain.

Judges must rely on the participants in the system to help guide their decision on these important matters. What powers is the petitioner seeking? Does the PVP attorney object and why? What does the court investigator recommend? What does the Regional Center case manager have to say?

We have found that the participants do not have criteria to guide their decisions and recommendations. They have not received training on how to make valid capacity assessments or how to challenge invalid ones. As a result, judicial decisions are often based on superficial and routine judgments by untrained participants.

This conference will focus on the need for criteria on each of the “seven powers” and the need for training of all of the participants – case managers, attorneys, investigators – including the judges themselves.

Next Step: A Post-Conference Report

After the four conferences, a report will be written containing the best ideas emerging from the meetings. The report will be distributed to the Legislature, the Judicial Council, and to relevant Executive Branch agencies and nonprofit organizations.

Beyond the Report

After the report is distributed to relevant agencies and various leaders, we will ask for direct meetings with the Chief Justice of the Supreme Court in her role as Chairperson of the Judicial Council, the Chairperson of the Senate Judiciary Committee, the Chairperson of the Assembly Judiciary Committee, and the Attorney General.

A meeting with the Secretary of State and the Los

Angeles County Registrar of Voters should occur to discuss the protection of the voting rights of proposed limited conservatees and how to restore the voting rights of current conservatees who have had those rights removed due to mistake or neglect of judicial officers or investigators or through ineffective assistance of PVP attorneys.

A meeting with the Presiding Judge and the Assistant Presiding Judge of the Los Angeles Superior Court would also be appropriate, since this report focuses on deficiencies of the Limited Conservatorship System in Los Angeles County.

Various Leadership Summits would also be appropriate. One meeting could involve members of the State Council on Developmental Disabilities, as well as representatives from all Area Boards.

Another Leadership Summit could be sponsored by the Association of Regional Center Agencies (ARCA) for participation by representatives of all Regional Centers in California.

Background Materials: Pre-Conference Essays

Searching for Clues: Putting Together Pieces of the Limited Conservatorship Puzzle by Examining Court Records.

Voting Rights of People with Developmental Disabilities: Correcting Flaws in the Limited Conservatorship System.

A Presentation on Self-Help Clinics Reinforces the Need for *Major* Reform of the Limited Conservatorship System.

PVP Training on Limited Conservatorships.

Legal Principles Governing Attempts to Restrict the Social Rights of Conservatees.

Social Rights Advocacy for Adults with Autism: Forced Socialization of Conservatees is Never Acceptable.

Limited Conservatorships: A System that Protects Adults with Developmental Disabilities Needs *Major* Reform

Pre-Conference Report

Preliminary Findings

This set of Preliminary Findings is being released prior to the first conference. The findings will be revised as the conference series progresses and as we learn more about the Limited Conservatorship System and its participants.

Please send any suggestions for corrections or additions to tomcoleman@earthlink.net.

General Information on the System

1. About 1,200 new petitions for limited conservatorships are filed each year in the Los Angeles County Superior Court.
2. About 90 percent of these petitions are filed by parents or family members who are not represented by an attorney. These are called “pro per” cases.
3. Prior to 2013, petitions were filed and cases were heard in the downtown court as well as several district court locations. In April 2013, court consolidation due to fiscal problems resulted in all cases being filed and heard downtown. Most cases are assigned to Department 29 where two judges alternate hearing cases. The only exception is that cases can still be filed in Lancaster.
4. There may be more than 30,000 “open cases” in limited conservatorships in Los Angeles County at any given time. There could be thousands more than that. Cases become open when the conservatorship order is initially granted and remain open until the conservatee dies. Petitions for modifications, or investigations due to suspected abuse, can be filed at any time, since conservatees are under the protection of the Probate Court.

5. The law requires court investigators to conduct investigations in all initial petitions, an annual review one year later, and then biennial investigations in conservatorships and guardianships.

6. There are about 2,000 new conservatorship cases (general and limited) filed each year in Los Angeles. There are about 2,000 new guardianship cases filed each year as well, for a total of 4,000 cases.

7. By our calculations, the Probate Court employs 10.5 investigators to investigate annually 4,000 new filings, 4,000 annual reviews, and 15,000 biennial reviews of the 30,000 open cases. That is 23,000 investigations per year that are mandated by law.

8. In 2008, the court’s annual report said it had 10 investigators to do 10,000 investigations annually. Even if that were still true, that would require each investigator to do 5 investigations per field day (4 days a week, with one day to write 20 reports), taking vacations and holidays into consideration.

9. About 98 percent of new petitions are granted without objection and therefore without an evidentiary hearing. In the few cases in which a contested hearing does occur, the issue is generally about who should be appointed as conservator. Contested hearings on retention of rights by the proposed limited conservatee are rare. Appeals are more rare.

10. Educational programs are not offered by the court, by Regional Centers, or by nonprofit organizations, to teach parents or others prior to filing petitions about the duties of conservators, the rights of conservatees, or the criteria for assessing whether the proposed conservatee has or does not have the

capacity to make specific life decisions such as medical, financial, educational, sexual, social, etc.

11. Educational programs or materials are not offered by these agencies or organizations to teach parents or others who file petitions about the voting rights of people with developmental disabilities and about the protections afforded by federal voting rights laws.

12. Educational programs or materials are not offered by these agencies to inform parents or others who file petitions about the availability of court forms (MC-410) in which requests can be made for the court and court-appointed attorneys to use methods to reasonably accommodate the needs of proposed limited conservatees who have cognitive, communication, or physical disabilities.

13. Despite the fact that investigations by court investigators are mandated by state law on all initial petitions, in many cases the court is waiving such an investigation and allowing the report of the court-appointed (PVP) attorney to be used as a substitute.

14. Biennial investigations by court investigators do not appear to be occurring every two years as required by state law. In many cases, probate investigator reports are filed many months late. In one case, records show that such an investigation did not occur for 8 years on one occasion and did not occur for 4 years on another occasion. The extent of the delays and the backlog of biennial investigation was not shared with our Project by the court.

Bet Tzedek Legal Services

15. The Self Help Clinic operated by Bet Tzedek Legal Services helps petitioners fill out the requisite court forms in a majority of these cases. Bet Tzedek does not provide legal advice to petitioners at the clinics it runs. It does sometimes represent a petitioner (parent or family member) in a complex case. It does not represent proposed limited conservatees.

16. The clinics provide administrative help to petitioners, assisting them in filling out petitions and

other forms. The clinics do not answer legal questions, nor do they explain anything about voting rights or provide guidelines for determining whether to ask the court to take away the decisionmaking rights of the proposed conservatee in regards to social, sexual, and other major life decisions.

17. The clinics advise parents on how to fill out fee waiver forms. Parents are advised that if they base financial information on the income of the proposed conservatee, rather than on themselves as petitioners, the court generally will waive fees and costs associated with filing the petition.

18. The vast majority of petitions filed through Bet Tzedek receive fee waivers, thus saving the petitioners \$435 each. Based on 1,200 petitions being filed annually, fee waivers reduce court revenue by hundreds of thousands of dollars each year.

PVP Court-Appointed Attorneys

19. The Los Angeles Superior Court has established a Probate Volunteer Panel (PVP) for which attorneys may sign up if they wish to receive appointments to represent proposed or actual conservatees in general or limited conservatorship cases.

20. Local Court Rule 4.123 establishes the general requirements attorneys must meet before they are placed on the PVP qualified attorney list.

21. Local Rule 4.124 specifies the requirements for specific areas of interest. For eligibility to be appointed in limited conservatorship cases, attorneys must meet the requirements listed in Rule 7.1101(b)(2) of the California Rules of Court. In addition, “the attorney must understand the legal and medical issues arising out of developmental disabilities and the role of the Regional Center.”

22. Based on the performance of some PVP attorneys, and based on interviews with some participants, it appears that compliance with Local Rule 4.123 is based on the “honor system” of self certification. The court does not have any quality assurance measures to determine if, in fact, the attorneys

understand the legal and medical issues arising out of developmental disabilities.

23. Some PVP attorneys are acting as de-facto guardians ad litem and are advocating for what they believe are the best interests of the client rather than advocating for what the client expressly wants.

24. Some PVP attorneys are not objecting to court orders that unreasonably restrict the social decisionmaking rights of the client.

25. Courts are relieving PVP attorneys as counsel of record at the time an order is made granting an initial petition.

26. Courts are not requiring PVP attorneys to notify clients, verbally and in writing, of their rights to: (1) complain to the court if they feel the attorney is not performing adequately and their right to ask for a "Marsden" hearing outside of the presence of other parties; (2) the right to appeal if they disagree with the order of the court and their right to have a court-appointed attorney on appeal; (3) the right to petition the court at any time in the future if they want to change conservators or to have any of their own rights restored; and (4) their right to have an attorney appointed to represent them in the future if they want to file such a petition or if they want to object to a petition filed by a conservator that will further restrict their rights.

27. PVP attorneys are appointed by judges in the Probate Court. The appointments do not appear to be made on a rotational basis so that all attorneys on the qualified list receive a fair share of appointments. A review of cases in 2012 showed that some attorneys received 30 or 40 appointments, while many received only 2 or 3.

28. The practice of waiving reports from court investigators, and substituting PVP reports instead, has the effect of turning attorneys who should be advocates into de facto court investigators, thus creating conflicts of interest, breaching client confidentiality, and diminishing the prospect that attorneys will provide effective assistance of counsel.

29. The Presiding Judge of the Probate Court issued a general order in 2011 restricting payments to PVP attorneys. Without prior approval from the appointing judge, PVP attorneys may not charge more than \$125 per hour and may not bill the court for more than 10 hours of work.

County Supervisors and Agencies

30. The practice of such court investigator waivers also has the effect of shifting costs from the state budget (and the court's own budget) to the budget of the County of Los Angeles. Orders for payment of PVP attorneys are usually directed to the county which must then pay the attorneys. While the county bears the cost for these attorney services, county supervisors have no say when it comes to the quality of such services and have no way of knowing whether the county is paying for constitutionally defective representation of limited conservatees. Justice Deputies of supervisors are not focusing attention on the Limited Conservatorship System.

31. Adult Protective Services has a mandate to receive reports of suspected abuse and neglect of dependent adults. This includes adults with developmental disabilities. APS has a mandate to cross report cases to law enforcement and to other local agencies with a duty to investigate cases of suspected abuse or neglect.

32. The Probate Court has a duty to investigate cases of suspected abuse of limited conservatees.

33. When it receives a report of suspected abuse of a person who is a limited conservatee, APS does not always report such cases to the Probate Court, despite the legislative mandate described above.

County Bar Association

34. The Probate Court has contracted with the Los Angeles County Bar Association to provide trainings for attorneys who want to be placed on the general PVP list. The bar association also provides trainings for attorneys who want to be eligible for appointments in limited conservatorship cases.

35. The County Bar Association provided some information about a PVP attorney training it conducted in 2013. The training, which lasted two hours, is summarized in an essay written by me which is titled: "PVP Training on Limited Conservatorships." Requests for information about PVP trainings in 2012 were not provided by the County Bar Association nor was any information on such trainings provided by the Probate Court, despite formal requests for such information pursuant to Rule 10.500 of local court rules.

36. The 2013 Limited Conservatorship PVP training by the County Bar Association did not include presentations or materials on: (1) constitutional rights of adults with developmental disabilities, especially in the areas of social rights and sexual rights; (2) constitutional requirements for providing effective assistance of counsel to proposed limited conservatees, including advocacy for their wishes rather than the attorney's opinion as to their best interests; (3) conflicts of interest involved in trying to be an advocate for a client and also serving as a de facto investigator for the court; (4) ethical and professional guidelines for representing clients with diminished capacities; (5) client confidentiality requirements that may be breached by filing reports with the court, open to the public, that disclose information adverse to retention of rights by the client; (6) forensic interviewing of people with developmental disabilities; (7) ADA compliance by attorneys and courts, including accommodations for clients with cognitive, communication, and physical disabilities; (8) voting rights of adults with developmental disabilities, ADA accommodation requirements for filling out voter registration affidavits, and prohibitions and protections in federal voting rights laws; (9) requirements for credible assessments of client capacities by Regional Centers and professionals who render such opinions and strategies for challenging assessments not based on solid medical or psychological criteria or on solid facts.

Regional Centers

37. Regional Centers are nonprofit agencies under contract with the State Department of Developmen-

tal Disabilities. Their clients are children and adults with developmental disabilities.

38. Regional Centers are mandated by law and contract to coordinate services for their clients. They conduct annual assessments of the needs and abilities of their clients.

39. There are seven Regional Centers in Los Angeles County. These Regional Centers belong to an Association of Regional Center Agencies which has headquarters in Sacramento.

40. Regional Centers are obligated by law to render an opinion to the Probate Court, upon request, regarding the capacity of a proposed limited conservatee to make major life decisions, such as medical, financial, residence, education, marriage, social contacts, and sexual relations.

41. The court is supposed to consider the Regional Center report on capacity assessments prior to entering an order granting or denying a petition for a limited conservatorship.

42. In a considerable number of cases, courts are entering orders granting such conservatorships without Regional Center reports. These reports sometimes are filed months after an order has been entered.

43. Regional Center case managers and others who submit reports in conservatorship cases do not have criteria and guidelines for making these assessments. They are not receiving formal training by licensed medical or mental health practitioners about how to make credible and valid assessments about a client's decisionmaking capacities on these issues.

44. People who work for Disability Rights California serve as Client Rights Advocates and are housed at Regional Centers. Disability Rights California is under contract with the State Department of Developmental Services to advocate for the rights of Regional Center clients. It appears that Client Rights Advocates play no part in the Limited Conservatorship System. They do not get involved

when the rights of a proposed conservatee are infringed by participants in the Limited Conservatorship System. Client Rights Advocates are not monitoring or advocating when it comes to voting rights, social rights, sexual rights, or the right to effective assistance of counsel.

Judges

45. Judges assigned to hear petitions in limited conservatorship cases do not appear to receive trainings at judicial seminars and conferences about medical, psychological, or legal issues involving people with developmental disabilities. Appellate judges are unaware of problems in the Limited Conservatorship System because there are virtually no appeals. As a result, there is no body of appellate case law to instruct lower court judges and attorneys on proper practice and procedure in this system.

State Agencies

46. The State Department of Developmental Services appears to have no role in protecting the rights of limited conservatees or in monitoring the activities of any of the participants in the Limited Conservatorship System.

47. The State Council on Developmental Disabilities, and its Area Boards, appear to have no role in the monitoring of the Limited Conservatorship System or in advocating for limited conservatees.

48. The Department of Justice and the California Attorney General do not appear to be involved in protecting the rights of limited conservatees.

49. The Secretary of State does not appear to be aware that voting rights of adults with developmental disabilities are being routinely violated. Perhaps 90 percent of limited conservatees are losing the right to vote. (Based on a review of 61 cases filed in Los Angeles during Aug-Dec 2012.)

Judicial Council

50. The Judicial Council of California (the rule

making body for the courts) and the Administrative Office of the Courts (staff who operate the court system) do not appear to be aware of the flaws in the Limited Conservatorship System. The Chief Justice of the Supreme Court is unaware of these problems.

Legislature

51. The judiciary committees of the Assembly and Senate were not aware of the flaws in the Limited Conservatorship System. These committees conducting auditing and oversight of this system. Our Project recently contacted staff members of these committees to alert them of our upcoming conferences.

U.S. Department of Justice

52. The Civil Rights Division of the United States Department of Justice has a Voting Section that enforces federal laws protecting voting rights. It also has a Disability Rights Section that protects the rights of people with disabilities. It appears that the Department of Justice is not aware of the systematic and routine violation of ADA accommodation laws the Limited Conservatorship System.



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Limited Conservatorship Reform in California: Several Areas That Need Improvement

by Thomas F. Coleman

Education of Parents

Most limited conservatorships are initiated when parents or family members of an adult with a developmental disability file a petition with the Probate Court. Some 90% of these petitions are filed “pro per” which means the petitioner does not have an attorney.

The law does not require “pro per” petitioners to educate themselves about the duties of a conservator and the rights of a conservatee prior to initiating a limited conservatorship proceeding. In Los Angeles County, educational programs on these topics are not available.

Bet Tzedek Legal Services does offer a Self-Help Conservatorship Clinic, but this is not an educational forum. It is a class that helps people fill out forms. Legal issues are not discussed. Legal questions are not answered. It is strictly a form-filling service.

1. Attending an educational seminar on limited conservatorships should be required, before a petition is filed, for anyone who will be named in the petition as a proposed conservator. The Superior Court could contract with a nonprofit agency, such as Bet Tzedek, Regional Centers, or the County Bar Association, to conduct these seminars. Topics should include: (1) duties of conservators; (2) general rights of conservatees; (3) voting rights of adults with developmental disabilities; and (4) how to assess capacity of a proposed conservatee regarding the “seven powers,” especially on their ability to make social and sexual decisions.

Education of PVP Attorneys

Having court-appointed attorneys who are effective

advocates for limited conservatees is critical for the rights of adults with developmental disabilities to be protected.

Currently, PVP attorneys are not receiving adequate education and training on issues that often arise in limited conservatorship proceedings. For example, in 2013 there was only one training in Los Angeles County – 3 hours in duration – for PVP attorneys who handle limited conservatorship cases.

2. Attendance at a series of 3 to 5 hour classes should be required before an attorney is placed on the limited conservatorship PVP list. Once on the list, a 5 hour refresher and update class should be required each year in order to stay on the list. Topics should include: (a) constitutional rights of limited conservatees and how to protect those rights; (b) voting rights of limited conservatees and federal laws protecting voting rights of people with disabilities; (c) Americans with Disabilities Act and ADA accommodation requirements for the Probate Court and for PVP attorneys; (d) criteria for assessing client capacities on each of the “seven powers” and how to challenge assessments which are not scientifically valid or not supported by substantial evidence; (e) how to conduct a forensic interview of a client with a developmental disability; (f) ethical rules and professional standards governing the confidentiality of client communications to the PVP attorney and the confidentiality of information gathered by an attorney on behalf of his or her client; (g) how to understand, interpret, and use a “capacity declaration” submitted by a medical doctor or psychologist; (h) understanding the various types of intellectual and developmental disabilities and their impact on daily living and capacity for decisions (Autism Spectrum Disorder, Cerebral Palsy, Fragile X Syndrome, Down Syndrome, Epilepsy, Fetal Alcohol Syndrome, and Intellectual Disabilities (formerly

called Mental Retardation), among others.); (i) understanding various communication methods and behavioral characteristics (j) limits on time allocated to a case and when to ask for more; (k) standards for ineffective assistance of counsel (IAC) as applied to a limited conservatorship case; the right of a client to a “Marsden” hearing to ask for a new attorney or complain about an attorney’s performance; (l) appellate rights of clients, including habeas corpus to challenge an order due to IAC.

Replacing the PVP System

The current system for appointing, paying, and monitoring the performance of PVP attorneys is not doing what it should be doing. It gives the appearance of favoritism rather than fairness in the way attorneys are selected. It gives incentives to attorneys to please the judges who appoint them and pay them. And it does not have any quality assurance procedures.

Appointment of attorneys should be done on a fair rotational basis, selecting attorneys on lists that match their skills and training with the complexity of the case. Such lists can also note language abilities that match attorneys with clients who do not speak English. The person who selects the attorney should not have any direct connection with the judge who will make decisions in the case.

There should be some form of quality assurance oversight procedures. This should be done by an entity or person with knowledge of limited conservatorship advocacy and, again, by someone who is not working for the judges who hear such cases.

Payment of court-appointed attorneys should be based on the quality of performance and the quantity of work done. Recommendations for the amount of payment should come from someone knowledgeable about these types of cases. The judge who orders payment to a particular attorney should not be the judge who heard the case, so as not to create an appearance of conflict of interest created by payment decided by someone the attorney would not want to offend by objecting, demanding hearings, or advis-

ing the client to appeal.

3. A system similar to that operated by the Los Angeles County Bar Association for appointed attorneys in criminal cases should be adopted for use in conservatorship cases, both limited and general. The Indigent Criminal Defense Appointments Program has been operating successfully for several years. It achieves all three objectives mentioned above: a fair selection process, quality assurance procedures, and a payment method that removes incentives for pleasing judges rather than providing vigorous advocacy. The system could be called the Conservatorship Appointments Program. Perhaps it could be grafted to the current criminal appointments program so that it uses the same administrative mechanisms but with additional staff who have expertise in conservatorship litigation. The Conservatorship Appointments Program of the Los Angeles County Bar Association would select attorneys for specific cases, monitor performance and conduct quality assurance audits, provide trainings, and recommend payments.

Effective Advocacy by Attorneys

In the current system, PVP attorneys are acting in two or three different roles. They often serve as a de-facto court investigator and their reports are even used as substitutes for those of official Probate Investigators. They also may view themselves as the “eyes and ears of the court” with the aim of helping the court resolve cases. They also may act as an unofficial guardian-ad-litem, advocating for what they believe is in the best interest of the client.

4. Court appointed attorneys for limited conservatees should have one role only – vigorous advocacy for the client. They should advocate for what the client says he or she wants. Absent an express wish from the client on any particular issue, they should strongly defend and protect the rights of the client from being diminished or removed. They should be no different than privately retained attorneys. The client’s wishes and rights should come first. The fact that they are paid by county funds should not alter their undivided loyalty to the client.

Bet Tzedek

Bet Tzedek performs a valuable service by helping petitioners complete the paperwork needed to obtain an order and letters of administration for a limited conservatorship. However, in the process, the clinics may be inadvertently suggesting that petitioners unnecessarily take rights away from conservatees and improperly seek more authority than they truly need.

5. The Self Help Conservatorship Clinic should not suggest, directly or indirectly, that proposed limited conservatees are unable to complete an affidavit of voter registration (with or without help from someone else). The clinics also should not lump all “seven powers” together as a package deal, or group them together as an attachment to the petition. Each power should be listed separately, with a yes or no box next to it, so that each is considered separately by the petitioner.

Bet Tzedek sometimes provides direct legal representation to petitioners in conservatorship cases that are more complicated than usual. However, the organization does not provide attorneys to represent limited conservatees. The rationale for this policy is that limited conservatees can have court-appointed attorneys at county expense. However, sometimes PVP attorneys are not capable of, or simply do not provide effective representation. The blanket policy of not representing limited conservatees should be reconsidered.

6. Bet Tzedek should sometimes represent limited conservatees upon request in cases that offer an opportunity to create a precedent on important issues such as voting rights, social rights, or sexual rights of people with developmental disabilities. It should also represent limited conservatees, from time to time, in appeals that may set important policy precedents, or in writ proceedings to challenge ineffective assistance by PVP attorneys when that happens. Periodic involvement by such an outside organization, on behalf of limited conservatees, would be a beneficial addition to the Limited Conservatorship System.

Regional Centers

At this time, it appears that the only role that Regional Centers play in limited conservatorship cases is that of assessing the capacity of clients to make decisions regarding the “seven powers.” There is so much more these nonprofit organizations can do to protect the rights of their clients who they find themselves the subject of such a proceeding. And even in the role of assessing clients, there are ways Regional Centers can improve.

8. Regional Centers should file capacity assessment reports in a timely manner. Such reports are sometimes filed with the court weeks or even months after the court grants a petition. This is not an acceptable practice, either for the court or for the Regional Center.

9. Regional Centers should do more to protect the right to vote of their clients. Educational materials about the right to vote of people with developmental disabilities should be distributed a few months prior to a client turning 18. Group seminars about the right to vote should be conducted at least every two years, several months before the deadline for registration for a general election.

10. Regional Centers, perhaps through or with the assistance of their statewide association (ARCA) should consult with medical, psychological, and legal professionals to develop criteria and guidelines for assessing each of the seven powers. Training programs for Regional Center staff should be developed and implemented regarding these issues. It appears that currently there are no such guidelines or training programs being used.

11. Regional Centers should become acquainted with the various federal laws governing the right to vote as they apply to people with disabilities. These protections should be considered as Regional Center staff include in their assessment report an opinion on the capacity of the client to complete a voter registration affidavit, with appropriate help. Currently, Regional Center reports are silent on the issue of voting capacity.

Disability Rights California

A nonprofit legal services organization known as Disability Rights California receives state and federal money to protect the rights of people with developmental disabilities.

Some of this money is channeled to DRC through the State Department of Developmental Services. The annual budget of DRC is nearly \$20 million.

DRC employs a staff of Clients Rights Advocates whose role is to protect and advocate for the rights of Regional Center clients. Staff members are generally housed with Regional Centers, even though they are employed by DRC.

These Clients Rights Advocates currently play no role in the Limited Conservatorship System. Apparently this is so because such a role is not part of the contract of DRC with the State Department of Developmental Services. Perhaps this absence from contractual duties is why none of the CRA's housed in the seven Regional Centers in Los Angeles County attended the first conference on limited conservatorship sponsored by the Disability and Abuse Project.

12. Disability Rights California, and its Clients Rights Advocates, should play an active role in monitoring the Limited Conservatorship System and in advocating for Regional Center clients when their rights are threatened or are actually infringed. Clients Rights Advocates should be informed when social, sexual, marriage, or voting rights of Regional Center clients are in jeopardy. They should advise attorneys at DRC when this occurs and the attorneys should intervene, as an interested agency or as an amicus curiae in the trial court. DRC should also file a "next friend" appeal or writ when it learns that the constitutional rights of a limited conservatee have been violated or the conservatee has not received effective assistance of counsel. Such involvement by an outside agency funded by the Executive Branch of government would have a beneficial effect on the Limited Conservatorship System which, up to now, is not monitored by any agency outside of the Judicial Branch.

Los Angeles Superior Court

The Los Angeles Superior Court is aware of but has not cooperated with the study being conducted by the Disability and Abuse Project.

One short interview with the Presiding Judge of the Probate Court was granted. But subsequent requests of the Project for interviews with key personnel received no response. A formal request for information and access to records, per Rule 10.500, received a cursory response which mostly declined to provide information or access to records. The minimal information that was provided to the Project was ambiguous.

13. The Superior Court should welcome inquiries from advocacy organizations about its operations. Interviews should be granted. Information about fiscal matters, policy, procedure, and administrative practices should be shared without reluctance or resistance. More transparency is needed.

Adult Protective Services

Complaints of abuse of adults with developmental disabilities are reported to either Adult Protective Services (APS) or to the Sheriff. Each of these agencies cross reports complaints to the other, as required by law.

However, a top management official at APS has stated that APS is not required to cross report to the Probate Court in cases where the alleged victim is a limited conservatee. This may be done as a matter of "best practices" but the agency does not consider it to be mandatory.

14. The State Council on Developmental Disabilities, or a state legislator, should ask the Attorney General or the Legislative Council or both for an opinion on the APS duty to report to the Probate Court. If the opinion concludes that mandatory reporting is not required, then legislation should be introduced to make it mandatory. Limited conservatees need such additional protection.

Involvement by Other Agencies is Needed

15. The Limited Conservatorship System is not receiving attention from the Legislature, especially the judiciary committees in each house. It is not being monitored by the State Department of Developmental Services. Nor has the Department of Justice given this system any attention.

16. The State Council on Developmental Services has a mandate to protect the rights of children and adults with developmental disabilities, to monitor agencies that provide services to this constituency, and to seek systemic changes where needed. Despite this mandate, the State Council has not yet focused any of its attention or resources to the Limited Conservatorship System.

17. The Judicial Council of the State of California created a Task Force focusing on the General Conservatorship System in 2006. It is time for such an inquiry into the Limited Conservatorship System – and it should not require a series of articles in the Los Angeles Times for it to initiate such a review.



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Other Conference Materials:

www.disabilityandabuse.org/conferences

A Common Scenario of Assembly Line Justice in Limited Conservatorship Proceedings

by Thomas C. Coleman

Nancy, who has autism, is about to turn 18 years of age. Her parents are advised by the Regional Center that they should think about initiating a conservatorship proceeding.

The parents know nothing about the law and, having a low-income household, cannot afford to hire an attorney. They hear about a self-help clinic operated by Bet Tzedek Legal Services.

The parents call Bet Tzedek and schedule a spot for them in a clinic where 25 families will fill out forms in a group setting. They are told to bring certain basic information with them.

The parents attend the clinic even though they have received no instruction about the rights of conservatees or the duties of conservators. They have not attended any educational seminars about conservatorship and what it means. They have not consulted with a lawyer.

At the clinic, the parents view a slide show that shows them the boxes on the forms that are typically checked off by petitioners such as themselves. They go through the forms, page by page, checking off the boxes and filling in the blanks with the required information.

If they have legal questions about the ramifications of what they are declaring in these forms, there is no one to answer them. Bet Tzedek staff and volunteers cannot give legal advice.

The parents check off a box stating that Nancy “is unable to complete an affidavit of voter registration.” Nancy cannot read, can barely write her name, and has a low-normal IQ, so they cannot imagine her completing such a form on her own.

Attached to the court forms is a page that asks the court to give them all “seven powers” and to remove those rights from Nancy. The parents sign the forms and give them to the clinic staff who will then file it for the parents with the court.

A few weeks later, the court appoints an attorney to represent Nancy in the limited conservatorship proceedings. The attorney was selected from a list of Probate Volunteer Panel (PVP) lawyers who have signed up to handle such cases.

The attorney has no special skill or training about the dynamics of autism, or how it affects the thought processes or emotions of people who experience that condition. The attorney attended a three-hour seminar on one occasion during which he listened to a few judges and attorneys who talked about the limited conservatorship process.

At the seminar, the attorney was told that the law was unclear about what his role should be. Should he advocate for what the client wants or should he advocate for what he personally believes is best for the client? He will have to decide that for himself.

“If you don’t agree with what your client wants, then tell the court what she wants, then explain why you think that is wrong and say what you think is best,” a judge at the seminar explained. “Put both perspectives in your report to the court.”

The attorney remembers that another judge explained that if the attorney believes that the client cannot fill out an affidavit for voter registration on her own, then the attorney must say so in his report to the court. “A parent cannot fill out the form for the adult child,” the judge advised.

The attorney knows nothing about federal voting

rights laws and has never been educated about the Americans with Disabilities Act and its application to legal proceedings.

The attorney was also advised at the seminar that he will be acting as a substitute for a court investigator. Although the law contemplates that a court investigator interview the proposed conservatee and family members and evaluate her capacities to make decisions and to vote, due to budget and staff cuts, an investigator will not be involved. So the attorney will be acting as a de-facto court investigator. "Put everything in your report that an investigator would have put in his report," the seminar advised.

The attorney knows that his time on the case is limited. Because of budget cuts, the court requires attorneys to spend less than 10 hours on a case, including time in court, without prior approval.

The attorney goes to the home to interview the parents. Because Nancy is mostly non-verbal, the attorney says very little to her directly. She is present when the attorney interviews the parents so she gets the drift of what is happening by overhearing that conversation.

The attorney does not go to Nancy's school, nor does he talk to the coach of the soccer team on which Nancy plays. He does read a report prepared by the Regional Center.

That report recommends that the parents be given five of the seven powers, but that she retain her right to make decisions regarding marriage, sexual contacts, and social relationships. The attorney notes, but basically ignores the recommendation since he knows the Regional Center almost always makes such a recommendation as a matter of principle.

Although he has not asked the court for a psychologist to be appointed to evaluate Nancy's capacities in any of these areas, the attorney concludes that it is better if her parents are given all seven powers.

The attorney files a report with the court. The report is a public document. If he does not oppose any of

the parents' requests as indicated in their petition, then the petition will be unopposed and will be routinely granted by the court.

The attorney's report is typical of other PVP reports. He checks off the voting box on the form that he knows will result in the court entering an order disqualifying Nancy from voting. He checks off boxes next to all seven powers asking the court to grant the parents the authority in all of those areas and to remove those rights from Nancy.

Nancy and the parents appear in court. The judge is polite and asks her to speak. She is mostly silent. No one has filed a form with the court to advise the court that she needs Assistive Communication Technology in order to communicate her thoughts to others. So Nancy nods her head and says hello and nothing of substance is said.

No one has asked Nancy how she feels about losing her right to make her own decisions about which relatives she visits, or which friends she hangs out with. Nancy despises her grandfather who she feels gets too physical with her on occasion and says things that make her feel bad. As a child, she was forced to spend several weekends a year with her grandparents. Now that she is an adult, she would prefer not to go to the grandparents home anymore.

No one asks Nancy about whether she has a boyfriend and whether she wants to be able to decide for herself whether or when to kiss him or become intimate with him. No one asks her about her knowledge of birth control or other methods of protection from sexually transmitted diseases.

After the "hearing," the judge enters an order that gives the parents all seven powers. The parents can now require Nancy to spend weekends with the grandparents. She does not have the right to say no. The judge also enters an order disqualifying Nancy from voting.

The case is "closed" and the attorney is dismissed. Three days later, the attorney is contacted by the court to take a new case. The scenario begins again.

Trauma-Informed Justice: A Necessary Paradigm Shift for the Limited Conservatorship System

by Thomas C. Coleman

“Trauma-informed justice” is a relatively new concept in the law. It has been discussed and applied in the context of criminal, family, and juvenile courts. Not so with respect to the administration of justice in probate courts.

Many mental health and substance abuse professionals have used a trauma-informed approach for some time now in counseling and therapy programs. It is in this context that much has been written on the subject.

“A *trauma-informed approach* refers to how a program, agency, organization, or community thinks about and responds to those who have experienced or may be at risk for experiencing trauma; it refers to a change in the organizational culture. In this approach, all components of the organization incorporate a thorough understanding of the prevalence and impact of trauma, the role that trauma plays, and the complex and varied paths in which people recover and heal from trauma.” ([Website](#), Substance Abuse and Mental Health Services Administration, “Trauma Definition: Part Two: A Trauma Informed Approach.”)

Three elements occur in a trauma-informed approach: (1) realizing the prevalence of trauma in the population being served; (2) recognizing how trauma affects this population; and (3) responding by putting this knowledge into practice in the delivery of services. (SAMHSA, *supra*.)

A system that is trauma informed must realize the widespread impact of trauma, recognize the signs and symptoms of trauma, and fully integrate knowledge about trauma into policies, procedures, and practices.

The first step in delivering trauma-informed justice

in the Limited Conservatorship System is for the participants – judges, attorneys, investigators, case workers, and program volunteers – to acknowledge that the majority of proposed conservatees are probably trauma victims.

As difficult as it may be to make this mental and emotional shift, participants also need to be aware that the trauma to these victims was likely caused by those who are close to them – members of their household, school, or day programs.

From what I have seen in the way the Limited Conservatorship System currently operates, there is an assumption by participants that all is well, that proposed conservatees have a normal life, and that proposed conservators have been doing a good job of raising their children. Research shows that such assumptions are not warranted.

The most recent report on abuse of people with disabilities was published by our own Disability and Abuse Project in 2013. ([Website](#), Victims and Their Families Speak Out: A Report on the 2012 National Survey on Abuse of People with Disabilities.) More than 7,200 people throughout the nation responded to this survey, including thousands of people with disabilities and their families.

Over 70 percent of people with disabilities reported that they had been victims of abuse. More than 63 percent of family members said their loved one with a disability had been an abuse victim. Focusing exclusively on those with developmental disabilities, 62.5 percent of this group said they had experienced abuse of one type or another.

Of the various types of abuse, victims with disabilities reported verbal-emotional abuse (87.2%), physical abuse (50.6%), sexual abuse (41.6%),

neglect (37.3%), and financial abuse (31.5%).

Although this was not a random sample of the nation, the results of the survey certainly should be enough to cause concern within any system that is supposed to protect people with developmental disabilities. The Probate Court is such a system.

Dr. Nora J. Baladerian, Executive Director of the Disability and Abuse Project, was not surprised by the results of our national survey. She is a recognized expert on abuse and disability and lectures on the subject at professional conferences throughout the nation. She trains law enforcement personnel, psychologists, social workers, and service providers.

Dr. Baladerian cites retrospective studies that summarize the accounts of adults about their experiences of abuse as children. These studies show that one in four women, and one in six men, report that they were victims of sexual abuse as a child. ([Centers for Disease Control and Prevention, 2006](#))

In another study of adults retrospectively reporting adverse childhood experiences, 25.9 percent of respondents reported verbal abuse as children, 14.8 percent reported physical abuse, and 12.2 percent reported sexual abuse. ([Center for Disease Control and Prevention, 2009](#))

The findings of these studies are for the generic population. But what are the rates of abuse for people with developmental disabilities?

Dr. Baladerian refers to a study by her Canadian colleague, Dr. Dick Sobsey, whose research found that people with developmental disabilities (adults and children) are 4 to 10 times more likely to be victims of abuse than the generic population.

Other studies cited by The Arc of the United States confirm these high rates of abuse for children with disabilities, especially children with developmental disabilities. ([Davis, Abuse of Children with Intellectual Disabilities.](#))

The data on perpetrators is also very instructive.

Perpetrators of abuse are generally not strangers. Most often, they are people close to the victim.

In the generic population, more than 80 percent of child abusers were parents. ([Office for Victims of Crime, United States Department of Justice, 2009](#)) According to Dr. Baladerian, victims with developmental disabilities are most likely to be abused by household members.

This data alone should cause a paradigm shift in the Limited Conservatorship System, which currently assumes that proposed conservatees, as a class, are being treated well at home, and that proposed conservators, as a class, are treating their children well. Those assumptions are based on wishful thinking, not statistical probabilities.

I am not suggesting that judges, attorneys, and investigators should automatically view each parent or relative who wants to be a conservator as a likely abuser. But I am suggesting that the system should interact with a prospective conservator in a procedural context of caution and verification.

Perhaps 20 percent of generic children are victims of child abuse. Children with developmental disabilities are at least 3.4 times more likely to be victims than the generic child population. Do the math. A large majority of prospective limited conservatees may have been victims of sexual abuse.

Add to that the other forms of abuse, such as physical or emotional abuse. Then, just to be conservative, subtract a few percentage points. We still end up with 60 percent or more of prospective limited conservatees who may have been victims of abuse.

When we add the perpetrator statistics to our new understanding of child abuse dynamics, we should be stopped in our tracks. As a class, on the whole, and statistically speaking, a majority of would be conservators may have perpetrated abuse against the people whose life they are seeking to control in adulthood. Although this information is hard to digest, it requires a paradigm shift in the way the Limited Conservatorship System currently operates.

Questions begin to arise as to what changes should occur in policies and practices as a result of the paradigm shift from assuming that probably all is well to assuming that all may not be well. What should judges, attorneys, investigators, and service providers do differently with this newly acquired information about the likelihood that people with developmental disabilities have been abused?

A trauma-informed approach to the administration of justice in probate courts would require a complete review of all policies and practices, from top to bottom, from start to finish, in the Limited Conservatorship System. That is beyond the scope of this essay. But some aspects of the system that are crying out for attention do come to mind.

Let's look at form GC-314, the "Confidential Conservator Screening Form." This form must be completed by any person seeking to be appointed as a conservator. It must be filed with the petition.

A cursory review of this form suggests that it was originally designed to screen potential conservators for elderly conservatees in which cases the conservator is likely to be taking charge of the finances of the conservatee. So it contains questions asking if the proposed conservator has filed for bankruptcy protection. It also asks about arrests of the proposed conservator for theft, fraud, or taking of property.

Limited conservatorships are generally restricted to conservatorships of the person, not of the estate, of an adult with a developmental disability. So questions that pertain to the ability of a proposed conservator to manage finances have little relevance.

What is not asked by the screening form is very instructive. Proposed conservators are asked if they have ever been arrested for or charged with elder abuse or neglect. But they are not asked about arrests or prosecutions for dependent adult abuse or child abuse! They are also not asked if anyone in the household has been arrested for such offenses.

Proposed conservators are asked if they are required to register as a sex offender. But they are not asked

if anyone else in the household is a registered sex offender. So the mother of a proposed conservatee can honestly answer "no" to this question, even though her husband, who lives in the home, is a registered sex offender. Since he is not seeking to be a conservator, this information is not provided to the court on form GC-314.

The form does ask if the proposed conservator has anyone living in the home who has a probation or parole officer assigned to him or her. A parent could answer "no" even though she has two adult sons living there who have a long history of felony convictions for drugs and violent crimes, but they are not currently on probation or parole.

Although the form does ask limited questions about bankruptcy proceedings and criminal proceedings, it asks nothing about juvenile court proceedings. So proposed conservators do not have to reveal that they have had a child taken away by the Juvenile Dependency Court (Children's Court). Nor do they have to reveal that they have had two children processed through Juvenile Delinquency Court – one for drug sales and the other for prostitution – and both of them spent time at the Youth Authority. Both children are now living in the same home with the parents and the proposed conservatee.

Since court investigators no longer conduct interviews, review records, and submit reports to the Probate Court in limited conservatorship cases, I have no idea of how these so-called "screening" forms are used. Presumably they are reviewed by the judge. Perhaps by the PVP attorney.

It would appear that this is a declaration system that relies on the proposed conservator to tell the truth. But even if the truth is told, critical information is missing due to the failure to ask the right questions, and to ask the questions of all people living in the household. Does the court run a criminal background check? Are the names of household members checked against the sex registration database? Are these names checked against the databases of Child Protective Services or Adult Protective Services? These questions are worthy of answers.

A so-called “protection” system that eliminates the use of court investigators to screen and evaluate petitions for limited conservatorships must be a system that assumes that child abuse or dependent adult abuse cases are rare, rather than probable.

A system that uses reports of court-appointed attorneys in lieu of reports of court investigators must be a system that has closed its eyes to statistics regarding the prevalence of abuse against people with developmental disabilities. Only a system in a state of disbelief could expect court-appointed attorneys to screen out potentially abusive conservators, and yet not train such attorneys about the prevalence and dynamics of abuse.

Only a system in denial could expect these attorneys to be the front line of defense against the appointment of dangerous conservators, and yet not train them with the special skills needed to interview people with developmental disabilities. Only such a system would fail to emphasize the importance of talking personally and privately with all relatives of the first degree in order to find any dissenting views in the family about how wonderful the proposed conservator is.

A trauma-informed conservatorship system would not only require court investigators in every new case, it would also train them properly and thoroughly so they would have a better chance of identifying risky applicants. Such a system would also require court-appointed attorneys to acquire interviewing skills appropriate to the task, to interview proposed conservatees in a private setting away from their parents, to review all Regional Center records and not just the three-page report prepared for the court, and to run a criminal background check on everyone who lives in the household.

In a trauma-informed conservatorship system, the staff and volunteers at Bet Tzedek Legal Services would not assume that parents who come to the Self Help Clinic are wonderful people who should have all “seven powers” granted to them. They should be aware that a significant portion of those who attend the clinic either are or will be perpetrators of abuse.

If those who operate the training programs of the County Bar Association were trauma-informed educators, they would act differently when they select topics and speakers for PVP training programs.

Trauma-informed training coordinators would provide more seminars because of the need to include much more information than is currently transmitted during the few training programs that are offered now. They would include speakers on the dynamics of each type of disability and how to interview people who have each type of disability.

Seminars would include a presentation on the prevalence of abuse against people with developmental disabilities and who the likely perpetrators are. They would also include requirements of the Americans with Disabilities Act and what the courts and attorneys must do to accommodate the special needs of clients with disabilities.

Court-appointed attorneys would be informed that most cases of child abuse or dependent adult abuse are not reported. In many cases, the victim is too embarrassed, or too afraid of consequences, or thinks they will not be believed.

The fact that no report has been made to Child Protective Services or Adult Protective Services does not mean that abuse has not occurred. Such knowledge would inform the actions of the attorneys, prompting them to do more thorough investigations and not to be distracted by smooth-talking and friendly-appearing proposed conservators. A trauma-informed PVP training session would advise court-appointed attorneys not to be fooled by pleasant appearances. Too much is at stake.

Many other changes in the Limited Conservatorship System would be required if the probate court shifts paradigms from the current model that assumes benevolence to one that is trauma informed. Such a trauma-informed justice system would operate with more caution and scrutiny. Thousands of people with developmental disabilities would then have a greater degree of protection from the probate court.

Lanterman Developmental Disabilities Services Act

California Welfare and Institutions Code

Statement of Rights

4502. Persons with developmental disabilities have the same legal rights and responsibilities guaranteed all other individuals by the United States Constitution and laws and the Constitution and laws of the State of California.

No otherwise qualified person by reason of having a developmental disability shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

It is the intent of the Legislature that persons with developmental disabilities shall have rights including, but not limited to, the following: (a) A right to treatment and habilitation services and supports in the least restrictive environment. Treatment and habilitation services and supports should foster the developmental potential of the person and be directed toward the achievement of the most independent, productive, and normal lives possible. Such services shall protect the personal liberty of the individual and shall be provided with the least restrictive conditions necessary to achieve the purposes of the treatment, services, or supports. (b) A right to dignity, privacy, and humane care. To the maximum extent possible, treatment, services, and supports shall be provided in natural community settings. (c) A right to participate in an appropriate program of publicly supported education, regardless of degree of disability. (d) A right to prompt

medical care and treatment. (e) A right to religious freedom and practice. (f) A right to social interaction and participation in community activities. (g) A right to physical exercise and recreational opportunities. (h) A right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect. (i) A right to be free from hazardous procedures. (j) A right to make choices in their own lives, including, but not limited to, where and with whom they live, their relationships with people in their community, the way they spend their time, including education, employment, and leisure, the pursuit of their personal future, and program planning and implementation.

4502.1. The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private agencies shall provide consumers with opportunities to exercise decisionmaking skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.

Spectrum Institute
Disability and Abuse Project
www.disabilityandabuse.org

Searching for Clues: Putting Together Pieces of the Limited Conservatorship Puzzle by Examining Court Records

by Thomas F. Coleman

All I wanted to know is how the Limited Conservatorship System operates in Los Angeles County. So I asked the Presiding Judge of the Probate Court. Then I asked the Supervising Probate Attorney.

How many new cases are filed each year? How many attorneys are on the eligible list for court appointments to represent conservatees? How many open cases are there? What is the case load per judge and per investigator and is the ratio increasing or decreasing?

The response to both requests has been silence. So on March 27, 2014, I submitted a formal request for public access to judicial administrative records under Rule 10.500 of the California Rules of Court.

Rule 10.500 was enacted in 2011 in response to a law passed by the Legislature the prior year. That law directed the judiciary to establish rules for public access to its administrative and financial records. The rule is the court's equivalent to the legislatively enacted "Public Records Act" and the "Legislative Open Records Act."

While I am waiting for a response, I am writing up this summary of what I have discovered during the past two months by searching court dockets online. I have also reviewed the "probate notes" in cases created by the Probate Attorney's Office.

By digging into these records, case by case, taking notes, and observing patterns, I have learned quite a bit about the operations of the Limited Conservatorship System in Los Angeles County.

For example, I learned that more than 1,000 new petitions for limited conservatorship are filed each year in Los Angeles. This was confirmed by an interview with an attorney at Bet Tzedek Legal

Services. I was told they helped parents file 1,000 petitions in 2012. Since some cases are filed by parents with attorneys, and others by parents without the help of Bet Tzedek, it is reasonable to conclude that 1,200 new petitions may be filed each year.

About 90 percent of new petitions are filed by parents who are not represented by an attorney. Since the court does not provide educational seminars for petitioners, and since Bet Tzedek does not provide legal advice to them, about 90 percent of new petitions are filed without any assurance that petitioners understand the duties of a conservator or the rights of a conservatee prior to filing the petition.

Cases are run through the system with assembly line efficiency and speed. Probate investigator reports – which are required by law – are routinely waived. In a considerable number of cases, judges grant petitions even though the Regional Center report – also required by law – has not been filed.

In 85 cases that I examined for the month of October 2013, nearly 100 percent of the petitions were granted without a contested hearing. Attorneys for proposed conservatees are not demanding trials on the issue of conservatorship, nor are they demanding hearings on any of the rights that are being taken away from their clients, like voting rights.

I reviewed all of the cases filed in the downtown courthouse in 2012. Appointments of attorneys to represent proposed conservatees (PVP appointments) were not made on a fair rotational basis. A few attorneys received 30 or 40 appointments, while many received only 2 or 3.

The limited search I was able to conduct suggests that the primary attribute of the system appears to be efficiency rather than carefully monitored justice.

Reviewing Court Documents

The process described above involved a review of online summaries of cases in limited conservatorship cases: docket entries showing who the parties and attorneys were, what documents were filed, and what proceedings occurred. There were also probate attorney notes in some cases.

In order to do additional verification of the patterns that appeared from my online review, I decided to pay a visit to the downtown courthouse so that I could read documents actually filed with the court.

Primarily I read PVP attorney reports and orders granting petitions for limited conservatorship. In all, I reviewed these documents in 61 cases filed between August 22, 2012 and December 27, 2012 in the downtown court.

I was looking into several areas that had bothered me when I previously had done the online reviews: (1) the lack of investigations and reports by the Probate Investigator's Office; (2) the granting of petitions without the judge having had the benefit of reading the Regional Center report; (3) PVP attorneys advising the court that their client does not have the ability to complete an affidavit of voter registration; (4) the routine granting of all "seven powers" to petitioners.

What I found in the on-site review of actual documents in the court files confirmed what my online research suggested was happening.

Petitioners are routinely asking for all seven powers. This is probably due to the process used at the Bet Tzedek Self Help Clinic.

In all but a few cases, PVP attorneys recommended that the court restrict the rights of their clients in all seven areas and grant all seven powers to petitioners. In a few cases, the attorneys recommended that their clients retain decisionmaking authority on social and sexual matters.

In all but four cases, PVP attorneys advised the court

in writing that their clients were not able to complete the affidavit for voter registration. This nearly always resulted in a court order disqualifying the conservatee from voting. In two cases, the court disregarded the attorney's advisement and declined to take away the conservatee's right to vote.

In one case where voting rights were removed, the conservatee was a senior in a private high school and was set to graduate in 2014. In another case, the conservatee lost his voting rights even though he was in school, could read, and was employed.

In one case, the PVP attorney stated that the client was able to complete an affidavit for voter registration. Despite the fact there was no evidence to the contrary noted in the records, and there was no hearing on the issue, the court disqualified the conservatee from voting. Perhaps this happened in error while no one was paying attention. In any event, the client lost his right to vote.

It was not uncommon for the court to grant a petition, without a Probate Investigator's Report and even though the Regional Center report had not been filed. With the Regional Center report absent, the approval of the petition was primarily based on the allegations of the petition and the PVP report.

In many files I saw specific notations that the PVP report would be used in lieu of the Probate Investigator's report.

Social and sexual rights came up in a few cases. In one case, both the Regional Center and the PVP attorney recommended that the conservatee retain those rights. Without conducting a contested evidentiary hearing, the court ignored or rejected those recommendations. It granted all seven powers to the petitioners.

In one case, the conservatee wanted to make decisions on residence, social, sexual, and marriage issues. The PVP attorney did not make a recommendation on this. An evidentiary hearing was not conducted. The client ultimately lost these rights pursuant to a stipulation by the PVP attorney.

Response to Rule 10.500 Request

After I had written the summary found above, I received a terse response from the Superior Court to my Rule 10.500 request.

The administrator who replied to the request implies in her letter that most of the information I am seeking is not contained in court records and is not obtainable from a single database.

The bottom line is that the court is not making any records available for inspection.

The most minimal information was disclosed in the response.

For example, I was informed that a little more than 2,000 conservatorship cases are filed each year in the Superior Court of Los Angeles County. That includes general and limited conservatorships. It appears that the court system does not keep separate statistics on limited conservatorships.

No reply was given to the request for information on how many open conservatorship cases there are in Los Angeles.

I noticed how carefully worded the answer was on how many court investigators are employed by the court. My research online suggested that the court had only 10 investigators. The response to my request implies there are 18, but the answer may be a play on words.

The wording of my request for information was: "The number of court investigators currently employed to investigate conservatorship cases (general and limited)."

The reply was: "The number of positions assigned to perform Probate Investigations is 18."

Considering the nature of my request, the reply appears to be stating that there are 18 investigators. That is not so. The truth is that the number 18 includes administrative assistants.

The reality is that the court employs only 9 full time investigators and one part time investigator. That is the truth. Why could the court not just give me an accurate answer?

Like most of the other facts about the Limited Conservatorship System and the Probate Court, I have to find out the truth the hard way – independent and laborious research.

I found the answer in a guardianship practice book published in 2014 by the Continuing Education of the Bar. The co-author of this book is Leonard Thomas Adamiak, Supervising probate Investigator for the Los Angeles Superior Court.

His biographical profile states: "He currently supervises a staff of 10 full-time investigators, one part-time investigator, and seven office assistants."

The Disability and Abuse Project is engaging in a good faith inquiry into the operations of the Limited Conservatorship System. We are seeking cooperation from the various participants and agencies that play a role in operating the system.

The Superior Court should welcome such an inquiry. Judicial officers and court staff should want to know if there are any deficiencies so they can be corrected.

Cooperation by the court would have involved granting our Project interviews with the Supervising Probate Attorney, and the Supervising Probate Investigator. Instead, those avenues of inquiry have been blocked.

Cooperation would have involved answering the many questions posed in the Rule 10.500 request. I asked 31 questions. The reply directly answered two of them and danced around three more. The answer to the question about the number of probate investigators was misleading.

I can only conclude that the Superior Court will not be cooperating with our investigation of the Limited Conservatorship System. The transparency mentioned in Rule 10.500 is an illusion at best.

To: Central Civil Operations Administration
Administrative Records Request

From: Thomas F. Coleman

Re: Requests per Rule 10.500

Date: March 27, 2014

I am submitting several requests pursuant to Rule 10.500 of the California Rules of Court. This rule governs public access to judicial administrative records.

The rule itself states that it should be "broadly construed to further the public's right to access." It applies to public access to judicial administrative records, including budget and management information. The rule allows for inspection and copying of relevant records.

Although the rule does not require the party requesting access to records to specify the reason for such a request, I want to explain the reason anyway. I am in the process of doing research into the limited conservatorship system operated by the Probate Court. I am coordinating several conferences that will examine that system and hopefully come up with recommendations about how it can be improved. It is therefore necessary for me to gather relevant information on how the system operates, who the various participants are, what the budget is for operating it, what training is provided for participants, what the case load is, etc. I want to compare budget and staffing information over a time line of several years in order to see how budgets and staffing are increasing or decreasing and how case loads of judges and investigators are increasing or decreasing. I also want to determine if there is ever any appellate review of limited conservatorship proceedings, and if so, whether the number of appeals is increasing or decreasing.

Mostly I need information rather than actual documents. I need answers to various questions about procedures, operations, budgets, investigations, and staffing. I have asked some questions of the Presiding Judge of the Probate Court but have not received any answers. I have also sought information from the Supervising Probate Attorney but also have not received a response. I asked for assistance from a Justice Deputy for a County Supervisor, seeking informal assistance to get this information, but so far this approach has not yielded any information. Therefore, I am making these formal requests under Rule 10.500.

A simple approach that would satisfy my needs would be for me to sit down with someone in the Probate Court to interview them. At this stage, I really do not need copies of documents. I need answers to questions and perhaps to inspect records that are relevant to those questions and answers. I look forward to your reply, whether it is to set up an interview, or to give me access to digital records on computer or printed records in administrative files.

Thank you for processing these requests for information and inspection of records.

Thomas F. Coleman, c/o Dr. Nora J. Baladerian, 2100 Sawtelle #204, Los Angeles, CA 90025
(818) 482-4485 / tomcoleman@earthlink.net

Request #1: Information about PVP Attorneys

The first request is for information about the operations of the system for training, selecting, appointing, and paying PVP attorneys who represent conservatees or proposed conservatees in limited conservatorship cases. This request is for information and access to records that disclose such information. The information requested is for all of Los Angeles County.

- 1. The number of attorneys and the names of such PVP attorneys on the current list approved for appointments in limited conservatorship cases.**
- 2. The name and position of the person or persons who add such attorneys to the approved list mentioned in #1.**
- 3. The name and position of the person or persons who recommends that specific attorneys be appointed to represent conservatees or proposed conservatees in specific limited conservatorship cases.**
- 4. The case numbers of limited conservatorship cases in which PVP attorneys were appointed in 2013, 2012, and 2011.**
- 5. The total amount of money ordered by the court to be paid to PVP attorneys in limited conservatorship cases in budget years 2012-2013, 2011-2012, and 2010-2011 (for fees and expenses).**
- 6. The projected amount of money for PVP attorneys in limited conservatorship cases in budget year 2014-2015.**
- 7. The number of trainings that were conducted for PVP attorneys for limited conservatorship cases (approved by the court and/or conducted by the County Bar Association) in 2013, 2012, and 2011.**
- 8. Educational materials and lists of presenters at such trainings in 2013, 2012, and 2011, including the names of presenters, their organizational affiliations, and the topics covered by their presentations.**
- 9. The number of appeals filed by PVP attorneys in limited conservatorship cases in 2013, 2012, and 2011.**

Request #2: Judicial Case Load in Conservatorship and Limited Conservatorship Cases

The second request is for information about the case load of courtrooms and judges who process conservatorship and limited conservatorship cases. It is intended to see how the ratio of cases per judge or courtroom is increasing or decreasing. This request is for information and access to records that disclose such information. The information requested is for all of Los Angeles County.

1. The number of initial limited conservatorship petitions filed in 2013, 2012, 2011, and 2007.
2. The case numbers of the initial filings mentioned in #1.
3. The number of initial general conservatorship cases filed in 2013, 2012, 2011, and 2007.
4. The case numbers of the initial filings mentioned in #3.
5. The number of open general conservatorship cases (no matter when they were initially filed and which remain open because the conservatee is still alive).
6. The number of open limited conservatorship cases (no matter when they were initially filed and which remain open because the conservatee is still alive).
7. The number of courtrooms currently hearing general conservatorship cases; the number of such courtrooms in 2012 and 2011.
8. The number of judges currently hearing general conservatorship cases; the number of such judges in 2012 and 2011.
9. The number of courtrooms currently hearing limited conservatorship cases; the number of such courtrooms in 2012 and 2011.
10. The number of judges currently hearing limited conservatorship cases; the number of such judges in 2012 and 2011.

Request #3: Investigators Case Load in Conservatorship and Limited Conservatorship Cases

The third request is for information about the case load of employees who investigate conservatorship and limited conservatorship cases. It is intended to see how the ratio of cases per investigator is increasing or decreasing. This request is for information and access to records that disclose such information. The information requested is for all of Los Angeles County

- 1. The number of probate court investigators currently employed to investigate conservatorship cases (general and limited).**
- 2. The number of such investigators in 2012, 2011, and 2007.**
- 3. The budget for the Probate Investigators Office for budget years 2012-2013, and 2011-2012.**
- 4. The projected or proposed budget for the Probate Investigators Office for 2014-2015.**
- 5. The number of initial investigations done by probate investigators and filed with the court (general and limited) in 2013, 2012, 2011, and 2007.**
- 6. The number of biennial investigations done by probate investigators and filed with the court (general and limited) in 2013, 2012, and 2011.**

Request #4: Policies and Procedures for Abuse Investigations

The fourth request is for information about the policies and procedures for investigating and processing cases in which an allegation of abuse comes to the attention of anyone in the Probate Court (judge, investigator, or others). This request is for information and access to records that disclose such information. The information requested is for all of Los Angeles County

- 1. Policy memos or manuals used by the Probate Court or its staff on the investigation of allegations of abuse against a conservatee or limited conservatee.**
- 2. Policy memos or manuals used by the Probate Court of its staff on the investigation of allegations of abuse by a conservator or limited conservator.**
- 3. Memoranda of Understanding (or any correspondence or other documents) regarding reporting (of allegations of abuse) by Adult Protective Services or law enforcement to the Probate Court or vice versa when the alleged victim is a conservatee or limited conservatee.**
- 4. Training materials of probate investigators regarding reporting (of allegations of abuse) by Adult Protective Services or law enforcement to the Probate Court or vice versa when the alleged victim is a conservatee or limited conservatee.**
- 5. Training materials of probate investigators regarding policies and procedures for investigations of abuse when the alleged victim is a conservatee or limited conservatee.**
- 6. Job descriptions for probate investigators (of any level or grade).**



SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK

111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014

Superior Court of California County of Los Angeles

April 11, 2014

Thomas F. Coleman
c/o Dr. Nora J. Baladerian
2100 Sawtelle, #204
Los Angeles, CA 90025

Re: Requests per Rule 10.500

Dear Mr. Coleman:

The following is written in response to your inquiry dated March 27, 2014 for *per Rule 10.500*. Most of what you seek is information not documents covered by the Rule, and is not included in any regularly prepared report or from extractable fields in a single data base. I am providing the information that I do have available and I hope it is helpful.

Request #1: Information about PVP Attorneys

Applications are submitted on an annual basis, reviewed for completeness and added to the list.

As to the request for training materials, I refer you to the response you received from Judge Michael I. Levanas on January 23, 2014:

The private attorney who coordinates that process is Jonathan Rosenbloom. You might contact him with any questions about continuing education and the PVP panel that you may have. Our Local Rule 4.123 sets forth the requirements and application information for the panel. You might also want to look at California Rules of Court, Rule 7.1101 concerning qualifications and continuing education requirements.

Judge Levanas provided you with additional information regarding the training and application process in his e-mail dated January 30, 2014.

Request #2: Judicial Caseload in Conservatorship and Limited Conservatorship Cases

The following is the total number of filings for conservatorship (including limited conservatorships) received in each of the following years.

- 2011 – 2,020
- 2012 – 2,046
- 2013 – 2,068

As you are probably aware, the court centralized its probate operations in 2013. Prior to centralization, probate matters were heard in nine courthouses. Post centralization, probate is heard in only two courthouses: The Stanley Mosk Courthouse and the Michael D. Antonovich Courthouse. In the Stanley Mosk Courthouse, probate matters are calendared in four courtrooms; there are two judicial officers assigned to each of the four courtrooms.

Request #3: Investigators' Case Load in Conservatorship and Limited Conservatorship Cases

The number of positions assigned to perform Probate Investigations is 18. The Probate Investigators perform investigations in both conservatorship and guardianship matters.

Request #4: Policy and Procedures for Abuse Investigations

Allegations of abuse of a conservatee are reported to Adult Protective Services, as mandated by law. The job description for a Probate Investigator is available on the court's website (www.LASuperiorCourt.org) under *Employment*, see *Job Descriptions*.

Sincerely,

A handwritten signature in blue ink, appearing to read "Margaret Little".

Margaret Little, Ph.D.
Senior Administrator
Family Law & Probate Administration

ML:rma

Ten is Not Enough: Probate Investigators Cannot Comply with Legislative Mandates

by Thomas C. Coleman

Just how many court investigators does the Los Angeles County Probate Court actually have? The answer depends on who you ask.

In March 2014, I submitted an administrative records request to the Los Angeles Superior Court pursuant to Rule 10.500. Among the many requests for information, I asked for “the number of probate court investigators currently employed to investigate conservatorship cases (general and limited).”

The following month I received an official reply from the Superior Court. Court staff replied: “The number of positions assigned to perform Probate Investigations is 18.”

Considering the wording of the question, any reasonable person reading the answer would normally conclude that the court has 18 investigators. Other information indicates that the actual number of currently employed investigators is less than half that number.

Information contained in a biographical summary of the court’s chief investigator, Leonard Thomas Adamiak, says that he “supervises a staff of 10 full-time investigators.” The biographical information is contained in a book titled “California Guardianship Practice” published in 2014. So that’s very recent.

Assuming that the number is still 10, I am wondering if 10 investigators are sufficient to comply with the legislative mandates imposed on the court by the Legislature. The math tells the story.

The Probate Code states that court personnel “shall” conduct investigations in all new petitions for conservatorship, limited conservatorship, and guardianship. An investigation “shall” also be done at the end of the first year of conservatorship or

guardianship. Another investigation “shall” also be done once every two years thereafter.

In each of these situations, investigators must meet with the conservatee or ward face to face. They must also interview the actual or could-be conservators or guardians. For new filings, they “shall” also interview all relatives of the first degree, which means parents or siblings. That’s a lot of work.

A few minutes of calculations shows, quite clearly, that 10 investigators cannot possibly fulfill these statutory duties.

To make these calculations, one needs to know the number of new filings each year, the number of cases subject to annual review each year, and the number of cases that should have a biennial review each year.

Based on information provided from an annual report of the Superior Court, there are about 2,000 new conservatorship cases filed each year in Los Angeles. There are another 2,000 new guardianship cases. So that’s 4,000 new cases per year that need to be investigated.

Annual review mandates are easy to calculate. Each year, the prior year’s new filings require an annual review. That means investigators are required to investigate another 4,000 cases each year.

Calculating the number of “open” conservatorship and guardianship cases is more difficult.

A conservatorship case remains “open” until the conservatee dies. An educated guess would be that general conservatorships for seniors – let’s say, for example, they are started when they are 80 years old – might remain open for seven years or so.

Limited conservatorships for adults with developmental disabilities, might start when they are 18 and remain open until they are 68. That's 50 years. Some would live longer, others less. So let's be conservative and say the average length of a limited conservatorship is 40 years.

Guardianships stay "open" for a shorter period of time. They expire when the ward turns 18. Let's assume the average guardianship starts when the child turns 11. That would mean, on average, a guardianship case stays "open" for 7 years.

These numbers are needed to determine the number of biennial reviews that must be done each year. Per the statutory mandate, half of the number of "open" cases would need to be investigated each year.

How many "open" cases does the Los Angeles Probate Court have for general conservatorships, limited conservatorships, and guardianships? I asked. The answer I received does not make sense.

The court stated that the number of guardianship cases subject to annual reviews or biennial reviews "is not available in any document or report." To me, that means the court may have the information but they are not going to turn it over to me so easily. They are going to make me work for the information. I will have to ask the right question.

In response to my question about the number of "open" conservatorship cases subject to annual or biennial review, the court said that it had an "active inventory" of 7,643 limited conservatorships, 2,093 dementia cases, and 3,341 other conservatorships.

I find it hard to believe that there are fewer than 8,000 "open" limited conservatorship cases. Some 1,200 new cases are filed each year. Cases remain open until the conservatee dies, which could be 40 years. Something does not add up.

Let's assume that the number of new filings has risen each year over the past few decades. Limited conservatorships were created by the Legislature around 1980.

Perhaps new filings for limited conservatorships averaged 900 new cases per year for the last 10 years. Perhaps 600 per year for the 10 years before that, and 400 per year for the prior decade. Using those averages, there should be about 19,000 "open" limited conservatorship cases.

But the court says there are only 7,643 in "active inventory." That makes me believe that the court must have an "inactive" inventory. Perhaps people have moved and did not give a forwarding address. Perhaps the court does not have the time to track them down using various government databases. So these cases may be given an "inactive" status.

In any event, I will use the court's answers for my calculations to determine the number of investigations that each of the eight investigators would have to do on each "field day" in order to satisfy statutory mandates.

By "field day," I mean work days during which an investigator would go out into the field, or make phone calls, to investigate new cases, annual reviews, and biennial reviews. Assuming that one day per week would be devoted to staying in the office and writing reports, there would only be four days per week devoted to investigations in the field.

One must subtract court holidays, vacation and sick days, court appearance days, and training days. By my calculations, each investigator would have 171 "field days" per year.

I calculate that each investigator would have to conduct 1,400 investigations during those 171 days. That would be, on average, 8 investigations per investigator per field day.

Here is how I reach the 1400 investigations per year per investigator:

- 2,000 new filings (conservatorship)
- 2,000 new filings (guardianship)
- 2,000 annual reviews (conservatorship)
- 2,000 annual reviews (guardianship)
- 6,000 biennial reviews (conservatorship)
- 14,000 total reviews

The 14,000 number does not include biennial guardianship reviews because the court did not supply an answer to my question regarding “open” guardianship cases. So 14,000 investigations per year is a conservative number.

Let’s do the math. If 10 investigators must conduct 14,000 investigations per year, that is 1,400 investigations per investigator.

If each investigator were to do 8 field investigations on each of four available work days per week, each of them would have to write and submit 32 reports to the court on the report-writing day each week.

There is no way that 10 investigators could handle this type of a case load.

So what does the court do? What is the answer to this dilemma?

The way out of this predicament is that the court has stopped using court investigators in new filings for limited conservatorships. Biennial reviews in these cases are done less frequently.

A presenter at the recent training for court-appointed attorneys came right out and told the audience that court investigators are no longer used in screening new petitions for limited conservatorships. “Your report will be used as a substitute for the court investigator,” the attorneys were told.

There are many problems with using the reports of court-appointed attorneys “in lieu of” reports from probate investigators. First, these attorneys are not trained investigators.

Second, it is a conflict of interest and breach of professional standards regarding confidentiality of work product, for attorneys to be acting as advocates and defenders of clients and also as de-facto investigators for the court.

Third, a general order of the court places a presumptive limit on the number of hours an attorney may devote to any given case. Ten hours is the maxi-

mum, without prior court approval.

Fourth, there is also implied pressure on the attorneys to keep the number of hours to a minimum. The court is trying to keep costs down. Therefore, attorneys may reasonably conclude that they are more likely to get future appointments on cases if they keep their billing down.

Data from a review of court records in 128 limited conservatorship cases in 2012 shows that the average billing of court-appointed attorneys is \$750 per case. At \$125 per hour, which is what the court allows, these attorneys are spending about six hours per case.

Nearly half of that time is billed for court appearances. Some for travel time. Perhaps three hours or less are spent in conducting an investigation.

For the sake of argument, let’s dismiss constitutional requirements that an attorney must be an advocate working for the client and not for the court. Let’s ignore the violations of confidentiality of information being gathered and disseminated and the breach of loyalty to the client occurring when court-appointed attorneys act as de-facto court investigators. Professional standards and ethics are simply being ignored.

Even if we pretend these ethical and constitutional violations do not exist, there is still a problem with the court using the reports of court-appointed attorneys as substitutes for reports of trained probate investigators. What the attorneys are doing are not real investigations.

A proper investigation would require eight hours or more: a private meeting with the conservatee, interviews and background checks of the conservators, phone calls to relatives, and a review of records of the Regional Center, school, and day program.

The premise of this commentary is supported by the facts. Ten is not enough. The number of court investigators would need to be 24, at the very least, to satisfy statutory mandates.

**To: Central Civil Operations Administration
Administrative Records Request**

**From: Thomas F. Coleman
c/o Baladerian
2100 Sawtelle, #204
Los Angeles, CA 90025
(818) 482-4485**

Re: Request per rule 10.500

Date: April 22, 2014

Request 1: Access to Records – Open Cases – Subject to Annual Reviews

Please provide me access to records, and/or copies of records, in possession of or under the control of the Superior Court (memos, letters, reports, data sheets, etc.) which show:

a. The number of “open” conservatorship cases which are subject to annual review by court investigators for the current fiscal year and/or the current calendar year. By open, I refer to probate code conservatorship cases (general and limited) in which a conservator has been appointed and the conservatee or limited conservatee is still living.)

b. The number of “open” guardianship cases which are subject to annual review by court investigators for the current fiscal year and/or the current calendar year. By open, I refer to probate code guardianship cases in which a guardian has been appointed and the ward is still living and has not turned 18 years of age yet.

Request 2: Access to Records – Open Cases – Subject to Biennial Reviews

Please provide me access to records, and/or copies of records, in possession of or under the control of the Superior Court (memos, letters, reports, data sheets, etc.) which show:

a. The number of “open” conservatorship cases which are subject to biennial review by court investigators for the current fiscal year and/or the current calendar year. By open, I refer to probate code conservatorship cases (general and limited) in which a conservator has been appointed and the conservatee or limited conservatee is still living.)

b. The number of “open” guardianship cases which are subject to biennial review by court investigators for the current fiscal year and/or the current calendar year. By open, I refer to probate code guardianship cases in which a guardian has been appointed and the ward is still living and has not turned 18 years of age yet.



SHERRI R. CARTER
EXECUTIVE OFFICER / CLERK

111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014

Superior Court of California
County of Los Angeles

April 30, 2014

Thomas F. Coleman
c/o Dr. Nora J. Baladerian
2100 Sawtelle, #204
Los Angeles, CA 90025

Re: Requests per Rule 10.500

Dear Mr. Coleman:

The following is written in response to your inquiry dated April 24, 2014 for per Rule 10.500.

On April 26, 2014, we had the following conservatorship cases in active inventory:

Conservatorship – Limited 7,643
Conservatorship – Dementia 2,093
Conservatorship – Other 3,341

The Probate Code mandates first annual, annual and biennial reviews, based on the type of conservatorship ordered by the court.

The information regarding guardianship cases "Subject to Annual Reviews" or "Biennial Reviews" is not available in any document or report.

Sincerely,

A handwritten signature in black ink, appearing to read "Margaret Little", is written over a horizontal line.

Margaret Little, Ph.D.
Senior Administrator
Family Law & Probate Administration

ML:rma

A Presentation on Self-Help Clinics Reinforces the Need for *Major* Reform of the Limited Conservatorship System

by Thomas F. Coleman

I attended a presentation at the Beverly Hills Bar Association on March 31, 2014. The Speaker was Josh Passman of Bet Tzedek Legal Services. The presentation described the operations of their Self-Help Conservatorship Clinic.

Before the presentation began, I was able to converse with Josh about some basic facts concerning what I call the Limited Conservatorship System, about Bet Tzedek, and about the Self-Help Clinic.

Bet Tzedek helps parents or family members to file the necessary paperwork to obtain a limited conservatorship for their adult child who has a developmental disability. This is done through the organization's Self Help Legal Clinic.

With the help of Bet Tzedek, about 1,000 such petitions are filed each year with the Los Angeles County Superior Court. Since some petitions are filed without help from the Clinic – by people with attorneys and people who just do it on their own – it seems safe to conclude that at least 1,200 new petitions for limited conservatorship are filed with the court each year with or without the Clinic.

The Self Help Legal Clinic operates under a contract with the court. Some of its funding comes through a grant from the Equal Access Fund of the State Bar Association of California. Bet Tzedek received a grant of \$85,000 in 2013.

Parents find out about the Clinic from a variety of sources: Regional Centers, other parents, online searches, etc. Clinics are operated three mornings a week at the downtown courthouse and one day a week in three branch courts. Walk-in clients are assisted on an individual basis.

The Clinic has a group workshop at the Bet Tzedek

headquarters two afternoons a month. Parents are given advance appointments to attend these sessions.

Parents get a one-page information gathering sheet prior to attending the group workshop. Only basic information is requested: name of petitioner, name of proposed conservatee, address, social security number, etc. They are told to bring this sheet to the workshop.

It appears that parents are not given any other written materials or educational instruction prior to attending the group workshop. They do not receive advance information on the duties of a conservator or the rights of a conservatee.

At no time – prior to, during, or after the workshop – are parents given information about voting rights of an adult with developmental disabilities or criteria for deciding whether the voting rights of the proposed conservatee should be taken away.

Parents do not receive any information about criteria for deciding whether to ask the court to grant the conservator any or all of the “seven powers” or to allow the proposed conservatee the right to make his or her own decisions in these areas.

The “seven powers” include the authority to make decisions *for* the conservatee in: (1) deciding residence; (2) having access to confidential records; (3) consenting or withhold consent to marriage; (4) controlling finances; (5) consenting to medical treatment; (6) controlling social and sexual contacts; and (7) making educational decisions.

If parents have an attorney to represent them in the proceeding, the attorney would have an obligation to explain each of these “seven powers.” The attorney would also have an obligation to explain that limited

conservatorships are intended for the conservatee to keep as many rights as possible so that he or she can live as independently as possible. Since the Clinic does not provide legal representation, none of this is explained to the parents during the workshop.

It appears the form used at the Clinic automatically asks that all “seven powers” be given to the conservator. The form does not seem to give the parent the option to check yes or no to individual powers.

The petition mentions the issue of voting. There is a place for the parent to specify whether the proposed conservatee is or is not able to complete an affidavit of voter registration. During the presentation that I attended, the power point slide on this issue had checked the “is not able” box on the form.

When I raised a question about how the workshop helps the parent decide whether to check off the “is able” or “is not able” box on voter registration, the answer was that it does not explain this. Parents are left to their own devices to make this decision.

Along with the petition, parents are instructed to fill out and file a proposed Order Appointing Court Investigator. The law specifies that in each case, a Probate Investigator (who works for the court) must investigate the case and conduct a face-to-face interview with the proposed conservatee.

The Legislature intended for the court to receive information about the proposed conservatee from multiple sources. This helps the court to verify the accuracy of information and the need to give any or all of the “seven powers” to the conservator.

A medical doctor or psychologist should file a capacity declaration with the court. The Regional Center should file an assessment of capacities on the “seven powers.” A court investigator should also file a report, as should an attorney appointed to represent the proposed conservatee.

My review of a large sample of court dockets suggests that the court sometimes bypasses the Probate Investigator’s report by having the parties to the case

waive that report and allow the PVP attorney report to be used as a substitute. When I asked Josh Passman about that practice, he said that he was not aware of it, but that he had heard of the courts allowing the Regional Center report to be used as a substitute.

One item that is not included in the group workshop is the issue of ADA accommodation requests under the Americans with Disabilities Act.

The Superior Court has a form (MC-410) called “Request for Accommodations by Persons with Disabilities.” This form can be used to inform the court that a party to a case has a disability, what that disability is, and how the court can accommodate the disability. It can be submitted by the person with a disability or by someone on his or her behalf, such as a parent.

The ADA requires the court, and attorneys representing clients, to give reasonable accommodations to litigants and clients with disabilities, both in and out of the courtroom. This does not just apply to physical disabilities. It also applies to cognitive and communication disabilities.

The request is intended to be confidential. Once the court knows the nature of the disability and the type of accommodation being requested, the court’s ADA compliance officer should respond by granting or denying the request.

Parents are told at the workshop that their adult child will receive a court-appointed attorney. They learn that the “PVP attorney” will come to their home and is supposed to interview their child. They are also told that in most cases their child will be required to appear in court and to answer questions presented to them by the judge.

All limited conservatees have developmental disabilities. These may involve cognitive or communication functions. Many conservatees are nonverbal. Some experience emotional disruptions to attention span or speech functions. Many use Augmentative and Alternative Communication (AAC) technology.

It would certainly be appropriate for someone to explain the details of ADA accommodation to parents and to assist them in preparing an appropriate request to be filed when the petition and other paperwork is submitted to the court.

During the presentation, an unexpected issue came up that raised my eyebrow and caused me concern – waivers of court fees.

A fee of \$435 is supposed to be paid by the petitioner when he or she files a petition for limited conservatorship. A Request to Waive Court Fees can be filed by the petitioner if he or she is getting public benefits, is a low-income person, or does not have enough income to pay for basic household needs and the court fees.

When a person with a developmental disability turns 18, he or she will be eligible to receive public benefits (Medi-Cal, Food Stamps, or SSI) based on their own income. Most of them, therefore, do or will receive public benefits.

Public benefits for the parents of a proposed conservatee are another matter. If they are low income, they may receive such benefits. If they are middle-income, they may or may not. If they are in the higher end of the income scale, they will not.

The workshop advises parents on how to fill out the fee waiver form in a manner that virtually guarantees that they will not have to pay filing fees or court costs – even if they have a high income household. Parents are informed they can check yes to the public benefits question if their child gets benefits.

When they print their name at the bottom of the fee waiver request, they are told to insert the words “based on income of proposed conservatee.”

When I heard this at the presentation, a bell rang in my memory. I recalled wondering why so many fee waivers were granted in limited conservatorship cases. In a sample of 85 cases for the month of October 2013, fee waivers were granted in nearly all cases in which the petitioner filed the case without

an attorney. Most of these were probably filed with the help of the Self Help Legal Clinic.

When I first noticed this pattern, I could not believe that nearly all parents of proposed conservatees had low incomes. Now I know that they do not.

The parents who come to the workshops and the walk-in clinic are helped regardless of household income. Some are poor, but others are middle income or higher. They can get around the need to pay a filing fee by declaring financial hardship, not based on the income of the petitioner, but based on the income of the proposed conservatee.

The morning after the presentation, I began to wonder if this fee waiver maneuver was legal. What do court rules and state statutes have to say about eligibility for waiver of court fees and costs?

Rule 3.50 of the California Rules of Court states that fees can be waived “based on the applicant’s financial condition.” (Emphasis added.) Rule 3.51 says the court clerk must give the fee waiver application form to anyone who asks if “he or she is unable to pay any court fee or cost.” These rules suggest that fee waivers should be based on the financial condition of the person asking for the waiver. In this case, that is the parent (petitioner), not the child who will become the conservatee.

The Legislature has declared public policy on equal access to justice – who should pay fees and when they should be waived. Government Code Section 68630 says “[t]hose who can afford to pay court fees should do so.” That makes sense. Those who use the courts should help fund the courts, if possible.

Government Code Sec. 68631 tells courts to grant a fee waiver “if an applicant meets the standards of eligibility.” Again, Section 68632 refers to “an applicant’s financial condition.” (Emphasis added.)

With these statutes and court rules in mind, and with the courts in a financial crunch due to a restricted state budget, it does not make sense that a parent with a household income of \$100,000 would have

court fees waived in a limited conservatorship proceeding. Something seems amiss.

Clearly, telling the parents to insert the words “based on income of proposed conservatee” puts the court clerk on notice that the fee waiver request is totally unrelated to the income or assets of the petitioner or applicant for the fee waiver. It is also clear that the court clerk is routinely granting the requests.

The clerk would not be doing this without instructions from someone in authority, such as the chief clerk and/or the presiding judge.

If this fee waiver is occurring in most of the 1,000 petitions filed with the help of Bet Tzedek, then the Los Angeles County Superior Court could be losing hundreds of thousands of dollars per year in revenue.

Perhaps I am making an issue of something that is perfectly legal. I could have overlooked another relevant statute or court rule. Maybe a policy decision has been made that this fee waiver process complies with court rules and state statutes.

But this could be an informal practice that has developed without the knowledge of the Administrative Office of the Courts or the California Legislature. In any event, it is certainly a fiscal process that deserves closer attention.

Preliminary Recommendations

Based on what I learned at the presentation on the Self Help Legal Clinic, along with observations from reviewing scores of court dockets, analysis of statutory and case law, and various interviews, several ideas have emerged as to how the Limited Conservatorship System can be improved.

First, parents need to be educated about the duties of conservators and the rights of conservatees. This education should occur, prior to filing a petition for limited conservatorship, perhaps at a mandatory seminar for proposed conservators held at a Regional Center. Such a seminar would also explain the voting rights of adults with developmental

disabilities, guidelines on the “seven powers,” and the duty of judges and attorneys to provide ADA accommodations to proposed conservatees.

If parents seek assistance through a Self Help Legal Clinic, they should have to attend the seminar (perhaps a three hour training) prior to attending the group workshop. Parents are assuming a major responsibility and fundamental rights of the adult child are at stake. These cases should not be processed on such a fast moving assembly line.

After the parents attend a seminar on limited conservatorships, they should give the Regional Center a written notice of their intent to seek a limited conservatorship. This should trigger the duty of the Regional Center to conduct an assessment of the clients capacities and prepare a report and recommendations on which of the “seven powers” should be taken from the client. The parents should be required to read the Regional Center report prior to filing a petition with the court.

If a parent has an attorney, perhaps the seminar should not be mandatory. However, all proposed conservators, whether they have an attorney or file the petition “pro per,” should be required to submit an acknowledgment of rights and duties with the court *when they file the petition*. The form should affirm that they have received and read the Conservatorship Handbook, the Duties of a Conservator form, and the Rights of Conservatees form.

The Regional Center report would be filed with the court prior to the appointment of a PVP attorney for the proposed conservatee. A court investigator report would be filed in all cases (and not be waived). The court would then have the variety of sources of information contemplated by the Legislature prior to the hearing on the petition.

Nothing that I have said diminishes the importance of the Self Help Legal Clinic or its vital role in helping parents. We sincerely hope that Bet Tzedek will support our effort to reform the Limited Conservatorship System, with the cooperation of relevant agencies and concerned individuals.

PVP Training on Limited Conservatorships – Part I

by Thomas F. Coleman

The Disability and Abuse Project has been researching the extent of training received by PVP attorneys in Los Angeles on legal and medical issues involved in limited conservatorships.

The only training program we discovered is one that is sponsored by the Los Angeles County Bar Association. This training is authorized by the Probate Court for attorneys who want to be placed on the limited conservatorship PVP appointment list or who want to stay on that list.

When I initially asked the Probate Court for information about attorney training programs, the Presiding Judge directed me to Jonathan Rosenbloom, a volunteer attorney with the Los Angeles County Bar Association who coordinates the bar association's training programs.

Jonathan informed me that one PVP training program on limited conservatorships was conducted in 2013. A general PVP training program will be conducted on April 26, 2014, but it only contains about 45 minutes of information about representing clients in limited conservatorship cases.

The 2013 training occurred on January 24, 2013, at the downtown courthouse. It lasted for two hours.

During this brief training program, five attorneys made presentations. The main presentation was made by Steven Beltran. Short presentations by the other four attorneys followed.

Bertha Sanchez Hayden familiarized attorneys with some new local court forms on various technical procedural issues.

Steven Awakuni discussed an example of a court order granting a petition and specifying which of the "seven powers" would be given exclusively to the conservators, which exclusively to the conservatee,

and which would be shared powers. He also discussed a section of a practice guide published by the Continuing Education of the Bar, advising attorneys that they must submit an attachment to any proposed order and that such attachment must specify which of the "seven powers" will be taken away from the limited conservatee.

Jeffrey Shuwarger discussed "dual diagnosis" issues when a person is diagnosed with a mental disorder (LPS Conservatorships) and a developmental disability (Limited Conservatorships).

Jeffrey Marvan discussed PVP attorney interactions with the client and the family. He also stressed the importance of the attorney understanding that the purpose of a limited conservatorship is to promote as much self-reliance and independence for the conservatee as possible. This portion of the presentation was helpful. However, two portions of his presentation were troubling.

He said that a secondary role of the PVP attorney is to help the petitioners (usually parents) get their case handled efficiently.

He encouraged the PVP attorney to "help petitioner fill out the Order Appointing Conservator, Duties and Liabilities, Letters, and Care Plan." Of course, having a licensed attorney advise a party to the case and help them complete legal forms is a form of legal representation.

Another area of his presentation focused on contested cases. One item is that area stated: "PVP as a mediator."

Marvan's presentation suggested three possible roles for the PVP attorney: an advocate for the client; assisting the petitioner in preparing essential legal forms; and as a mediator in a contested proceeding.

An attorney cannot represent a proposed conservator and a proposed conservatee. This presents a classic conflict of interest. So I question the assertion that PVP attorneys play a “dual role” in a limited conservatorship case.

As for the possible third role as a mediator, that would also conflict with the role as an advocate for the proposed limited conservatee.

A PVP attorney should have only one role: to advocate for and give advice to the proposed conservatee.

From my review of the materials provided by Jonathan, it appears that the presentation by Steven Beltran was more extensive than the others. His talk was titled: ‘PVP Attorney Considerations for Persons with Special Needs.’

He addressed: the general definition of special needs; the entitlement of people with developmental disabilities to Regional Center services; government benefits available to Regional Center clients; guardianships; general conservatorships; special education and individual education plans; special needs trusts; and estate planning.

A small portion of his presentation focused on limited conservatorships. He listed the “seven powers” involved in these proceedings. He also discussed the role of the Regional Center in preparing a report with recommendations as to which of the “seven powers” the conservatee should retain.

Nowhere in the training program were any of the following topics addressed:

- * constitutional rights of limited conservatees and how to protect those rights;
- * voting rights of limited conservatees and federal laws protecting voting rights of people with disabilities;
- * Americans with Disabilities Act and ADA accommodation requirements for the Probate Court and for PVP attorneys;

- * criteria for assessing client capacities on each of the “seven powers” or how to challenge assessments which are not scientifically valid or not supported by substantial evidence;
- * how to conduct a forensic interview of a client with a developmental disability.

There was also no presentation about ethical rules and professional standards governing the confidentiality of client communications to the PVP attorney and the confidentiality of information gathered by an attorney on behalf of his or her client.

Also not discussed in the training program were these important topics:

- * how to understand, interpret, and use a “capacity declaration” submitted by a medical doctor or psychologist;
- * understanding the various types of intellectual and developmental disabilities and their impact on daily living and capacity for decisions (Autism Spectrum Disorder, Cerebral Palsy, Fragile X Syndrome, Down Syndrome, Epilepsy, Fetal Alcohol Syndrome, and Intellectual Disabilities (formerly called Mental Retardation), among others.);
- understanding various communication methods and behavioral characteristics.

Nor did any speaker address these issues:

- * limits on time allocated to a case and when to ask for more;
- * standards for ineffective assistance of counsel (IAC) as applied to a limited conservatorship case; the right of a client to a “Marsden” hearing to ask for a new attorney or complain about an attorney’s performance;
- * appellate rights of clients, including habeas corpus to challenge an order due to IAC.

The only presenters at this training were these five attorneys. There were no presenters from a Regional Center. Not included in the program were presentations by disability rights advocates, social workers, psychologists, or medical professionals.

PVP Training on Limited Conservatorships – Part II

by Thomas F. Coleman

Part I of the PVP training essay focused on my review of materials used in the training of court-appointed attorneys in 2013. After completing that essay, I attended a PVP training conducted by the Los Angeles County Bar Association on April 26, 2014.

While much of the content of the training was harmless procedural or technical information, some aspects of the presentations were critical to effective advocacy. Unfortunately, some of the “practice tips” by attorneys were contrary to rules of professional conduct and ethics, while some of the comments by judges were incorrect or harmful to appropriate advocacy.

An opening presentation by Michael Levanas, Presiding Judge of the Probate Court, was very helpful in its early stages. He emphasized how the job of a PVP attorney was so important because the proposed conservatee faces the prospect of having his or her liberty taken away and losing various rights. Even though the probate court is a “protection” court, it is dealing with major encroachments on a person’s freedom.

Judge Levanas also got it right when he reminded attorneys that a probate judge cannot make good decisions without the help of competent PVP attorneys. “How we do our job is largely in your hands,” he stated.

The first substantive topic of the seminar – The Role of the PVP Attorney – was the focus of extensive remarks by Judge Levanas. He spent a great deal of time discussing whether a PVP attorney should advocate for the “stated wishes” of the client or for what the attorney personally believes to be the “best interests” of the client.

Unfortunately, at the end of his presentation, the attorneys were left with the impression that they

could choose to do either, and that they could not get into trouble with the Supreme Court or the State Bar regardless of the choice of advocacy they made.

To be fair, Judge Levanas did explain that his personal preference was for an attorney to advocate for the “stated wishes” of the client. However, he went on to say that if the attorney disagrees with the client’s wishes, then the attorney should tell the court the client’s wishes as well as the attorney’s own opinion of what is in the client’s best interests.

Giving such advice to attorneys does not make them better advocates for clients. In fact, from the perspective of the rights of a client, and from the perspective of the wishes of a client, it makes them worse advocates. Court-appointed lawyers are supposed to be advocates for the client, not advocates for their own opinions.

When an attorney tells the court that they disagree with the client’s stated wishes, and explains why they disagree, the attorney is sharing information adverse to the existing rights of the client. Would it be permissible for a criminal defense attorney to tell the court that his client pleads not guilty, but that the attorney personally believes that the client is guilty? Obviously, that is a rhetorical question.

The centerpiece of the “you get to choose the type of advocacy” message of Judge Levanas, was his citation of the case of *Conservatorship of Drabik* (1988) 200 Cal.App.3d 185.

Approximately five times during his discussion of “stated wishes” versus “best interest” advocacy, Judge Levanas said that the *Drabik* decision was a ruling by the California Supreme Court. He said that the Supreme Court ruled that, in cases where a conservatee can communicate, but has questionable capacity, it is “unclear” whether an attorney should advocate for the client’s wishes or his best interests.

More than once he said that since attorneys can only get into trouble if they do something that is disapproved by the Supreme Court or the State Bar, and since the Supreme Court said that the type of advocacy for clients with questionable capacity is “unclear,” attorneys can decide for themselves the type of advocacy they will provide to a client.

There are two major problems with what Judge Levanas said. First, *Drabik* was not a ruling by the California Supreme Court. It was a decision by an intermediate appellate court.

Second, and just as important, the opinion of the Court of Appeal in *Drabik* did not *decide* or *rule* on the type of advocacy that attorneys must provide to a client with questionable capacity.

The decision before the Court of Appeal in *Drabik* involved a man in a coma. So the actual ruling in *Drabik* is limited to conservatees in a coma – conservatees who cannot communicate. In such a situation, the court did *rule* that an attorney can advocate for the best interests of the client, since it is impossible to discern what the client wants.

That was the only situation briefed by the parties, argued to the court, and ruled on by the judges. The discussion by the court of other scenarios was just that: a discussion. One without the benefit of briefing or argument. It has no more precedential value than an interesting law review article written by a jurist. It is called “dicta.”

Judge Levanas did mention a ruling by the Supreme Court of Connecticut declaring that attorneys for a conservatee must advocate for the client’s stated wishes and may not advocate for what the attorney believes to be the client’s best interests. But he undercut the usefulness of that information in several ways. He did not mention the citation or name of the case. He also emphasized that despite the direct pronouncement of the court on the issue, it was an out of state ruling, and that our Supreme Court says that the answer is “unclear” and so attorneys are free to decide for themselves.

Later in the program, an attorney and a different judge specifically discussed the role of PVP attorneys in limited conservatorship cases. This was one of two panels that focused exclusively on conservatorships for adults with developmental disabilities, whereas the rest of them were geared toward conservatorship proceedings in general.

The judge on this panel reminded attorneys that the court investigators are not doing investigations and reports in limited conservatorships, at least not in initial filings. Therefore, the PVP attorney report will be used “in lieu of” a court investigators report.

This point was reiterated by the attorney on this panel. She said that prior to starting a PVP investigation, attorneys should ask themselves “What would a Probate Investigator do?”

“You are a substitute for the Probate Investigator,” she said. “The court is relying on you to do what the Probate Investigator does.”

While what she said may be true, in practice, it is also contrary to rules of professional conduct for attorneys, ethical principles, and constitutional standards for effective assistance of counsel.

An attorney cannot be a de-facto court investigator and an effective advocate at the same time. An investigator should be neutral and objective, and takes direction from the court. Communications to an investigator are not privileged. The work product of an investigator will be shared with the court regardless of whether the information is harmful or helpful to what the conservatee wants.

Under the requirements of the Sixth Amendment to the United States Constitution, attorneys must be diligent and conscientious advocates for their clients. Communications to attorneys are privileged. The work product of attorneys is confidential and may not be disclosed to the court or anyone else without the informed consent of the client. An attorney may not disclose information that could harm the interests of the client.

Telling PVP attorneys to do what a Probate Investigator would do is basically advising attorneys to violate Rule 3-100 of the Rules of Professional Conduct of the State Bar of California.

That rule prohibits an attorney from disclosing confidential information without prior informed consent of the client. That rule is not limited to communications from the client to the attorney. It includes the attorney's work product. Work product is any information, from any source, obtained by the attorney during the course of the attorney-client relationship.

An attorney-client relationship is established between a PVP attorney and a proposed conservatee from the moment the court enters an order appointing the attorney to represent the proposed conservatee. It continues until the court enters an order relieving the attorney as counsel of record.

Business and Professions Code Section 6068 (e)(1) mandates that attorneys preserve the secrets of the client. "Secrets" are not limited to attorney-client communications, but include attorney work product.

Confidentiality applies regardless of the nature or source of the information gathered by the attorney. It applies to anything that might be detrimental to the client.

Thus, any information a PVP attorney gathers from reading records, interviewing people, or from any other source, is confidential and may not be disclosed without the informed consent of the client.

Although two or three presenters vaguely mentioned the notion of "confidentiality," none of them discussed Rule 3-100 or Section 6068. These provisions, as applied to limited conservatorship proceedings, would result in radical changes in the way PVP attorneys are expected to perform.

No more could PVP attorneys act as de-facto court investigators and blab everything they learn to the court and the other parties (and the public) in their PVP reports. No longer could PVP attorneys use

information they gather to assist the court in taking rights away from their clients.

Another aspect of the seminar disturbed me greatly. This had to do with the voting rights of proposed conservatees.

A judge mentioned that the issue of voting rights arises in limited conservatorship cases. He said the test for voting rights being retained by a conservatee is whether he or she is capable of completing an affidavit of voter registration.

The judge gave an example of a mother who told the judge: "That's not a problem. I can fill out the form for him." Having said that, the judge began to laugh, adding: "That's not the way it works." Following his lead, the audience began to laugh. The judge then moved on to another topic.

I did not find the story amusing or educational. Not only was it misleading, it was detrimental to effective advocacy by PVP attorneys. The "take away" from the judge's remarks was that if limited conservatees cannot fill out the forms themselves, they should be disqualified from voting.

The judge must be unaware of federal voting rights laws that restrict the authority of states from limiting the voting rights of people with disabilities.

People with a disabilities may have someone else help them fill out a voter registration application or help them fill out a ballot in an election. Also, states may not use any test or device to make someone show they can read or write or show they can interpret or understand any matter. So it would be a violation of federal law for a probate court make someone prove they can understand and complete a voter registration application on their own.

Another problem with this seminar is that not once did any speaker mention what probate courts and attorneys must do to comply with the Americans with Disabilities Act – in court or out of court – in a limited conservatorship proceeding. Not one word on reasonable accommodations under the ADA.

Voting Rights of People with Developmental Disabilities: Correcting Flaws in the Limited Conservatorship System

by Thomas F. Coleman

People think of voting as a fundamental constitutional right. However, the right to vote is not found anywhere in the United States Constitution.

The California Constitution, on the other hand, does specifically declare: “Any United States citizen 18 years of age and resident in this state may vote.” (Cal. Const. Art. 2, Sec. 2.)

The California Constitution also states: “The Legislature shall prohibit improper practices that affect elections and shall provide for the disqualification of electors while mentally incompetent or imprisoned or on parole for the conviction of a felony.” (Cal. Const. Art. 2, Sec. 4.)

The Legislature has passed statutes on competency for voting. Mental incompetency is mentioned in the Elections Code and in the Probate Code.

Elections Code Section 2208 states: “A person shall be deemed mentally incompetent, and therefore disqualified from voting if, during the course of any of the proceedings set forth below, the court finds that the person is not capable of completing an affidavit of voter registration in accordance with Section 2150 and [if the following applies]: (1) a conservator of the person or the person and estate is appointed pursuant to Division 4 (commencing with Section 1400) of the Probate Code.”

Probate Code Section 1823 (b) (3) states: “The proposed conservatee may be disqualified from voting if not capable of completing an affidavit of voter registration.”

Probate Code Section 1910 says that if the judge determines that the conservatee is not capable of completing the affidavit, “the court shall by order disqualify the conservatee from voting.”

If these were the only laws involved in determining the voting rights of people with developmental disabilities, the analysis would end here. However, that is not the case. Federal law is also involved.

Because of the “supremacy” provision of the United States Constitution, state statutes and state constitutions are superseded by federal statutes that govern any particular subject matter. Congress has passed several statutes that apply to voting. Some of them pertain to voting rights for people with disabilities.

The National Voter Registration Act permits, but does not mandate, states to remove voters from registration rolls based on “mental incapacity.” (42 U.S.C. Sec. 1973gg-6(a)(b)(3).) However, another provision of the Act requires that such provisions must be in compliance with the Voting Rights Act of 1965. (42 U.S.C. Sec. 1973gg-6(b)(1).)

Section 208 of the Voting Rights Act allows people who can’t read or write, or who have any disability, to receive assistance in voting from any person of their choice. (42 U.S.C. Sec. 1973aa-6.)

Also relevant to the rights of people with developmental disabilities is Section 201 of the Voting Rights Act. That section declares that “No person shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.” (42 U.S.C. Sec. 1973aa.)

The term “test or device” means any requirement that a person as a prerequisite for voting “demonstrate the ability to read, write, understand, or interpret any matter.” (42 U.S.C. Sec. 1973aa.)

California’s requirement that conservatees shall be

disqualified from voting if they cannot complete an affidavit for voter registration is a “test or device” as defined by federal law. The Voting Rights Act allows people with disabilities to have help in completing the registration form. It also prohibits states from requiring them to show an understanding of the contents of the voter registration form.

With these federal statutes in mind, and knowing that the California Constitution and state statutes are superceded by these federal statutes, it would appear that California’s requirement concerning the ability of a voter to complete the registration application is a “test or device” prohibited by federal law.

Although there is no state or federal court case declaring this California requirement to be invalid because it violates federal law, a federal district court has declared a Maine statute to be invalid because it conflicted with federal law. (*Doe v. Rowe*, 156 F. Supp. 2d 35 (2001).) The Maine statute stated that persons under guardianship due to a mental illness were ineligible to vote.

Furthermore, assuming for the sake of argument that California’s statute is not unconstitutional, the court would be required to find, by clear and convincing evidence, that the conservatee cannot complete the voter registration application with the help of another person. Who is going to prove that? And how? What standard would apply as to how much help the other person can give?

The loss of voting rights for limited conservatees is not academic. Evidence suggests that it may happen quite frequently – perhaps in a majority of cases.

Let’s look at how the voting rights issue arises in limited conservatorship cases in Los Angeles.

Consider the real-life case of Roy L. (a fictitious name for an actual case that came to the attention of the Disability and Abuse Project in 2013).

Roy, who has autism, is a client of a Regional Center. He lives with his mother in Los Angeles County. His father lives in another state. The

parents are divorced.

His mother realized that she needed to file for a limited conservatorship. She went to a group workshop for such parents. The workshop was conducted by Bet Tzedek Legal Services.

In the group setting, following instructions on how to fill out the necessary paperwork, the mother checked a box stating that Roy was not able to complete a voter registration form. At the time, she did not know that by making such a statement, she was setting in motion a process whereby Roy would be disqualified from voting. No one told her that.

The petition and other paperwork were filed with the Probate Court. The judge assigned an attorney to represent Roy.

Before the attorney came to the home to talk to her and to meet Roy, the mother had a conversation with Roy about voting. He indicated that in the next election for President, he wanted to vote for Hillary.

The mother wondered whether Roy would retain the right to vote, so she asked the court-appointed attorney about this and told him about Roy’s desire to vote. The attorney told her that the concept of Roy voting would be inconsistent with the entire purpose of a conservatorship.

When the attorney filed a report with the court about his opinions on Roy’s capacities, he stated that Roy was not able to complete an affidavit for voter registration. This was done despite his knowledge that Roy wanted to vote.

Several weeks later, when the mother came to our Project for help on another aspect of the case, she asked me about Roy having the right to vote. This prompted me to investigate the law, the result of which is the legal analysis which you have just read.

It appears to me that the attorney had not received any training about voting rights for people with developmental disabilities. It also seems that, by the way he dismissed the issue without giving it any

thought, he considered it of no importance.

The issue of voting comes up in every limited conservatorship case. Court investigators, to the extent they play a role in a case, are supposed to render an opinion as to whether the proposed conservatee can complete an affidavit of voter registration. The court-appointed attorney is asked to do the same. The judge then generally makes a factual finding and enters an order.

The form used by the judge in each case has a place on it where the judge can check a box before the sentence: "The conservatee is not capable of completing an affidavit of voter registration." There is also a place on the form where the court can check a box entering an order that: "The conservatee is disqualified from voting."

The issue of voting came to my attention during a presentation at the Beverly Hills Bar Association. An attorney who works for Bet Tzedek Legal Services, and who is the coordinator of the Self Help Conservatorship Clinic, used a slide show during his talk. The screen displayed forms that are used when parents attend workshops to fill out court forms.

Places on the form that are routinely checked off with an X were checked off on the forms appearing on the screen during the presentation. An X appeared in the box stating that the proposed conservatee was not capable of completing an affidavit for voter registration.

I recently examined a sample of 61 limited conservatorship cases at the downtown courthouse to determine which conservatees had their right to vote eliminated and which did not. I also examined what role the PVP attorney played in the voting rights determination.

The sample I reviewed included all limited conservatorship cases filed in the downtown court during the last four months of 2012.

Out of the 61 cases I examined, 54 limited conservatees had their right to vote taken away by

the court. In all but two of these cases, the order of the court was entered after the court reviewed a PVP report in which the attorney informed the court that the client was unable to complete an affidavit of voter registration. How the attorney reached such a conclusion is unknown.

Based on my experience with Roy's case, my attendance at the presentation by the Bet Tzedek attorney, and my sampling of cases in the downtown court, it is reasonable to conclude that as many as 90 percent of proposed limited conservatees in Los Angeles County are having their right to vote taken away in a routine manner.

Attorneys who represent conservatees may not be aware of relevant federal laws that protect the right to vote of people with developmental disabilities. This issue is not included in current training programs for such attorneys.

I also doubt whether court investigators have received training about the Voting Rights Act or other federal protections for voting rights. The judges are probably also in the dark on this issue.

Regional Centers are required to assess seven areas of capacity of the proposed conservatee to make decisions and file a report with the court regarding a counselor's opinion on these issues. Capacity to vote is not an area addressed by the Regional Center.

There are at least 100,000 limited conservatees in California – probably more like 150,000. Who knows how many of them have unnecessarily and improperly lost the right to vote?

Considering the way this issue seems to routinely be handled by those who operate the Limited Conservatorship System in Los Angeles County, and based on the results of the sample of cases that I examined, it is reasonable to conclude that retention of voting rights is an exception to the rule of disqualification.

Based on all of the above, these are my preliminary findings, and my recommendations on how to better protect the right to vote of limited conservatees.

Preliminary Findings

1. Voting is a fundamental right for everyone, including people with developmental disabilities.
2. California law uses a capacity “test or device” to determine whether a conservatee will be allowed to vote. The test is whether the conservatee is capable of completing the voter registration form.
3. California’s voting rights test for conservatees appears to violate federal voting rights laws.
4. Attorneys who are appointed by the court to represent proposed conservatees are not being educated by training programs of the Los Angeles County Bar Association about federal voting rights laws and the voting rights of people with developmental disabilities. These attorneys are not advocating in court for the right of their clients to retain the right to vote.
5. PVP attorneys are setting in motion the violation of the voting rights of their clients by submitting reports that advise the court about the ability of their clients to complete a voter registration affidavit. PVP attorneys could leave this statement blank when they submit their form. They could decline to take any action that would be adverse to the voting rights of their clients.
6. Regional Centers are not educating parents about the voting rights of their adult children with developmental disabilities. Regional Centers currently do not make recommendations to the Probate Court about the voting rights of proposed conservatees.
7. The Self Help Conservatorship Clinic operated by Bet Tzedek does not educate parents about the voting rights of proposed conservatees. It does not provide legal education about any aspect of the conservatorship process. It plays an important role in helping parents with the court process, but this role is strictly administrative (filling out forms) and does not get into criteria about capacity for voting.
8. Bet Tzedek could advise parents of the option of

leaving the line in the form about voting blank. They do not have to render an opinion about whether their child can or cannot complete a voter registration form. Petitioners can always take the position that because they have not been educated about federal voting rights laws and ADA accommodation laws, they decline to venture an opinion on this issue.

9. Parents are not given educational materials by the courts or from any other source about the voting rights of proposed conservatees.

10. Court investigators are rendering opinions as to whether a proposed conservatee is or is not capable of completing a voter registration form – without any apparent knowledge of federal voting rights laws or the right of conservatees to have someone help them fill out the form. Judges have apparently not been educated about the voting rights of limited conservatees or about the role of federal law in making determinations about qualifications to vote.

11. It is unknown how many of the 100,000 or more people with developmental disabilities who are currently under limited conservatorship in California have been disqualified to vote. There is a similar lack of information about the 30,000 or more who are limited conservatees in Los Angeles County.

12. Area Boards of the State Council on Developmental Disabilities have a legislative mandate to advocate for the civil rights of people with developmental disabilities. Protecting the voting rights of this population does not appear to be on the agenda of Area Boards at this time.

13. The Client’s Rights Advocates at Disability Rights California (operating under a contract with the State Department of Developmental Services) are not educating Regional Center clients about their voting rights. The Office of Client’s Rights is not monitoring the actions of the Probate Court which is taking away the voting rights of Regional Center clients in a routine manner. It appears that voting rights is not an issue monitored by the State Department of Developmental Services.

Preliminary Recommendations

1. The California Secretary of State should issue an opinion on the right of limited conservatees to vote, including their right to assistance from someone in filling out a voter registration form.

2. The California Department of Justice should update its handbook on The Rights of Persons with Disabilities (2003) to include a section on the voting rights of persons with intellectual and developmental disabilities, including limited conservatees.

3. The Association of Regional Center Agencies (ARCA) should create an educational booklet for parents, and a separate brochure for clients, about the voting rights of people with developmental disabilities. This booklet and this brochure should be distributed to parents and clients at all Regional Centers when the client turns 18.

4. The Department of Developmental Services should update its contract with Disability Rights California to require their Office of Clients Rights, and the Client's Rights Advocates (CRA), to monitor probate cases in which a petition for conservatorship, or a report filed by an attorney or investigator, states that the proposed conservatee is unable to complete an affidavit of voter registration.

5. Bar Association programs that train attorneys who represent limited conservatees should include information about the voting rights of people with developmental disabilities. Attorneys who represent such clients should strongly advocate that their clients retain voting rights.

6. Judges should not declare a limited conservatee disqualified to vote without clear and convincing evidence, at a hearing, to support a finding that the conservatee is unable, with assistance from a person of their choice, to complete a voter registration form. Any ruling should take into consideration the provisions of federal law that prohibit the state from requiring conservatees to show that they can read, write, or understand any matter, and the provision that gives them the right to have assistance in voting.



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This essay on voting rights was written in connection with a series of conferences focusing on the Limited Conservatorship System in California. The conferences are sponsored and directed by the Disability and Abuse Project of Spectrum Institute.

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V&TE

Legal Principles Governing Attempts to Restrict the Social Rights of Conservatees

The following constitutional and statutory principles are implicated in court orders, or directives from conservators, which restrict the social rights of conservatees.

1. State Action

The United States Constitution protects individuals from "state action" that infringes on their rights. A judicial order is a form of state action. A directive from a conservator is also a form of state action.

2. Fourteenth Amendment

The Fourteenth Amendment to the United States Constitution protects the "liberty" of United States residents. The Fourteenth Amendment is binding on the states.

The Fourteenth Amendment makes First Amendment protections applicable to the states. The liberty provision in the Due Process Clause of the Fourteenth Amendment protects freedom of choice in certain highly personal areas, including family relationships.

A conservatee has a constitutional right to decide which family members to associate with and which ones to avoid. The parent of an adult child does not have the right to enlist the power of the government to force or pressure an adult child to visit with the parent. The parent has no statutory right to visitation with an adult child, and even if such a statutory right were created, it would violate the federal constitutional rights of the adult child.

3. First Amendment

The First Amendment protects freedom of speech and association. Freedom of association includes the freedom not to associate. Freedom of speech includes the freedom from "forced listening."

A court order requiring visitation or a conservator's directive pressuring a conservatee to visit someone he or she does not want to visit is a form of state action violating the conservatees freedom not to associate and freedom from forced listening. Making a conservatee become a "captive audience" is unconstitutional.

4. Statutory Presumptions

California law presumes that a limited conservatee will retain his or her social rights unless they are affirmatively removed by a court order.

California law directs that the limited conservatorship system should encourage limited conservatees to be as independent as possible.

5. Burden of Proof

These constitutional principles and statutory presumptions require that the person seeking to restrict the social rights of a conservatee should have the burden of proof. Those seeking to protect these rights should be able to rely on these presumptions and the court should require the party seeking restrictions to proceed as the moving party.

The court should require evidentiary proof that such restrictions are: (1) factually necessary, (2) serve a compelling state interest, as opposed to a private interest or desire of a party; (3) are necessary to further the state interest; (4) are the least restrictive alternative. Due to the fundamental nature of the constitutional rights being restricted, the court should require clear and convincing evidence.

6. Other Requirements

Even if the court grants authority to a conservator to make social decisions for the conservatee, that authority should never involve the conservatee being required or pressured to visit with someone against his or her will.

Court orders or directives of conservators should only involve restrictions on visitations that are harmful to a conservatee, but never mandatory visitation. No one would argue that a court or a conservator could order conservatees to have sexual relations with someone against their will. The same should hold true of social relations.

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Social Rights Advocacy for Adults with Autism

Forced Socialization of Conservatees is Never Acceptable

by Thomas F. Coleman

Adults with autism or other developmental disabilities often become the subject of a limited conservatorship proceeding. These adults may need legal protections and oversight to assist them in navigating through a complex and complicated world.

A parent may initiate a petition for limited conservatorship, asking the court to appoint them, or someone else, to make certain decisions on behalf of their adult child who has a developmental disability. The other parent, if there is one, has the right to participate in the court proceeding. The adult child has the right to have an attorney to represent his or her interests, independently of the parents.

Sometimes in the course of these proceedings, the issue of visitation becomes a point of contention. Who the conservatee or proposed conservatee will visit, how often, and under what conditions, are issues that may be hotly contested.

California law presumes that limited conservatees have the right to make decisions about whom to visit and under what conditions. It is only in extreme circumstances that a court will strip the conservatee of social decision-making rights and give authority to a conservator to make such decisions.

Parents of an adult with autism or other developmental disabilities may have their own agenda when it comes to visitation issues. That agenda may or may not be in the best interest of their adult child. That is why it is so important for conservatees to have their own independent attorney.

California law allows a judge to appoint an attorney to represent the interests of a conservatee. If the conservatee requests an attorney, the court *must* appoint such an attorney. When a request is made, the appointment of an attorney for the conservatee is no longer optional; it is mandatory.

Once an attorney is appointed, California law makes it clear that the conservatee has the right to *effective*

assistance of counsel. This requires the attorney to perform reasonably competent services as a diligent and conscientious advocate.

If the attorney for the conservatee does not perform in such a manner, the conservatee is entitled to complain to the court and ask for another attorney. Once such a complaint is made, the court must conduct a hearing, outside of the presence of the other parties, to allow the conservatee to privately explain what his attorney's failings have been. (*People v. Hill*, California Court of Appeal, Fourth District, Div. Two, Case E054823, filed 9-11-13.)

The conservatee may also file a complaint with the state bar association or sue the attorney for malpractice. However, the meaningful exercise of the right to complain may require assistance by a friend-of-the-court or a court-appointed-special-advocate (CASA) since a conservatee has, by definition, limited abilities to be a self-advocate. (As it now stands, the CASA system is only used in dependency court for minors and not in probate courts.)

The First Amendment to the United States Constitution protects the freedom of speech of all persons, people with developmental disabilities included. The due process clause of the Fourteenth Amendment protects the freedom of association. Comparable clauses in the California Constitution protect these rights as well.

The right of an adult with a developmental disability to make social decisions falls under the protection of these constitutional provisions. Courts may not restrict such rights without affording a conservatee procedural due process of law, which means there must be a hearing to determine whether the facts warrant such a restriction.

Even then, a court may only restrict such rights if there is a compelling need to do so, and even then, may only use the least restrictive means necessary to accomplish the compelling objectives.

These procedural and substantive constitutional rights are meaningless if the attorney appointed to represent the conservatee stipulates away those rights or does not demand a hearing. Constitutional rights are worthless if they are thrown away or abandoned by a conservatee's attorney.

In order to provide *effective* assistance, competent counsel representing a conservatee must investigate the facts, interview his or her client, and allow the client to participate in strategic decisions.

Investigating the facts would include obtaining and reviewing all documents pertaining to the client's level of competency, such as educational records. Interviewing the client's therapist and the Regional Center case worker would be necessary. To understand the client's abilities, the attorney should visit the residence, place of work, school, and interview people who regularly interact with the client.

If the client has a communication disability, the attorney should investigate how the client communicates with others at school or home. The attorney should avail himself or herself of any adaptive technology that is available to assist the attorney and client to communicate with each other.

Failure to use available adaptive communication technology would be a violation of the client's rights under the Americans with Disabilities Act and could subject the attorney to discipline or liability. It could also be the basis for a complaint to the judge who appointed the attorney, or for an appeal.

An attorney for a conservatee should never tell the court that his or her client lacks capacity to make decisions or lacks the ability to communicate if, in fact, this is not the case. If such a representation is inadvertently made to the court, it should be corrected as soon as possible.

A diligent and conscientious advocate would always oppose any order or proposed settlement that fails to respect the client's right to say yes or no to any specific visitation scheduled for any given date.

If a visitation schedule is presented for the sake of orderliness, the attorney for the conservatee should create a record, preferably in open court, that the

client has been informed of the right to reject all visitation or to say yes or no to some visits. When a visitation date arrives, the client should know that there is a right to reject such visitation, even at the last minute. If a visit is in progress, the client should know there is a right to terminate the visit and to ask to be returned home in a reasonably timely manner.

It is only if a conservatee is informed of these rights, on the record, that the conservatee's constitutional rights to freedom of speech and freedom of association are truly being protected.

Forced social contacts should be no more permissible than would be forced sexual encounters. Any adult, conservatee or not, has the right to veto a sexual relationship or to terminate one that started off as voluntary. No one, not even a judge, has the right to force or indirectly pressure a conservatee to have a sexual encounter against his or her will. Forced social contacts should be off limits as well.

Any stipulation or agreement that attempts to override a conservatee's *ongoing* authority to reject or terminate any specific visit or social interaction should be deemed void in violation of public policy.

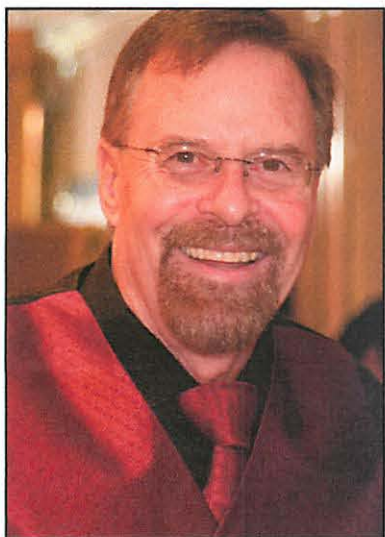
Conservatees are entitled to have an attorney acting as a diligent and conscientious advocate, which requires an investigation of the facts, communications with the client, using appropriate adaptive communication technology, and vigorous protection of the client's social decision-making rights.

The weakest link in the constitutional chain that safeguards due process and freedom of association for adults with autism or other developmental disabilities is the right to competent counsel. This link needs to be monitored and strengthened.



Thomas F. Coleman is Legal Director of the Disability and Abuse Project of Spectrum Institute. This essay is part of a series of commentaries being written for its Social Rights Protection Program.

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Thomas F. Coleman

*People with Disabilities Have Been
Part of His Advocacy for Decades*

Thomas F. Coleman has been advocating for the rights of people with disabilities since he met Dr. Nora J. Baladerian in 1980. That was the year when Coleman became the Executive Director of the Governor's Commission on Personal Privacy.

Coleman wanted the Commission to focus on the privacy rights of a wide array of constituencies, one of which was people with disabilities. On his recommendation, Dr. Baladerian became a Commissioner and Chaired its Committee on Disability.

The Commission's Report, issued in 1982, contained recommendations to clarify and strengthen the rights of people with disabilities. One of its proposals was that "disability" be added to California's hate crime laws. That happened in 1984.

Coleman's next project involving disability issues was his work as a Commissioner on the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence. In addition to focusing on violence motivated by racial prejudice and homophobia, the Commission's work – spanning several years from 1983 to 1989 – also included violence against people with disabilities.

The next phase of Coleman's work with disability issues involved family diversity. Coleman was the principal consultant to the Los Angeles City Task Force on Family Diversity. He directed this 38-member Task Force from 1986 to 1988. He wrote its final report, which included a major chapter on Families with Members Who Have Disabilities. Recommendations were made on how the city could improve the quality of life for all families, including people with disabilities.

A few years later, he and Dr. Baladerian created a Disability, Abuse, and Personal Rights Project, which was organized under the auspices of their nonprofit organization, Spectrum Institute.

Coleman's advocacy shifted to other issues for

several years, focusing on widely divergent subjects such as promoting the rights of single people, to fighting the abuse of troubled teenagers by boot camps and boarding schools.

Several years ago, Coleman began working again with Dr. Baladerian, devoting more of his time to the disability and abuse issues which she has championed for decades. As he learned more about these issues, he dedicated more of his time and talent to abuse of people with disabilities.

A few years ago, Coleman and Dr. Baladerian instituted a new Disability and Abuse Project, which recently conducted the largest national survey ever done on abuse and disability.

Although most of the work of the Project involves research and advocacy on policy, Coleman has become involved in several individual cases. One challenged a plea bargain as too lenient to serve justice for the sexual assault victims. Another sought to reduce the 100 year sentence of an 18 year old man with a developmental disability as disproportionately harsh. The other three involved adults whose rights were not being protected by the conservatorship system.

The most recent campaign is an ambitious Conservatorship Reform Project, which seeks to better protect the rights of adults with developmental disabilities who become conservatees.

Disability & Abuse Project

When disability and abuse intersect, we take action.



Nora Baladerian, Ph.D., is a licensed psychologist in Los Angeles, California, practicing both clinical and forensic psychology.

Since 1971, long before the crime victimization field as a whole focused attention on the needs of persons with disabilities, she has specialized in working with individuals with developmental disabilities.

With an expertise in serving crime victims with disabilities and people charged with victimless sex crimes, she has successfully rallied victim/witness organization leaders, crime victims' rights advocates, social service professionals, forensic psychologists, law enforcement, attorneys, members of the judiciary, and others to take up the cause of ensuring that the needs of society's most vulnerable are not overlooked or otherwise forgotten.

In 1986, as a proactive way both to bring together the growing number of those dedicated to this work and promoting greater cross- disciplinary dialog, she began convening national conferences on abuse of individuals with disabilities, hosting the 10th in 2005 with The Arc of Riverside County, and the First Online Professional Conference of its kind that same year.

In 2008, the Attorney General of the United States (see photo above) presented her with the National Crime Victims Service Award in recognition of her pioneering efforts on behalf of persons with disabilities and in advancement of the mission of the Office for Victims of Crime of the U.S. Department of Justice.

[Resumé of Dr. Baladerian](#)



When disability and abuse intersect, we take action.

Executive Committee



Tom Coleman, Jim Stream, and Nora Baladerian

Activities of the Disability and Abuse Project are coordinated and directed by an Executive Committee. Dr. Nora J. Baladerian is the Project Director, Jim Stream is the Principal Consultant, and Thomas F. Coleman is the Legal Advisor and Website Editor. Nora has decades of experience as a clinical psychologist, educator, and advocate. Jim has extensive experience in agency management and delivery of services to people with disabilities. He is also an advocate. Tom has nearly 40 years of experience as a legal advocate involving civil, criminal, and constitutional law. What they have in common is a passion for justice, a strong desire to bring national attention to the ongoing problem of disability and abuse, and a commitment to convince governmental agencies and nonprofit organizations to address this problem more effectively.

For more information about Nora J. Baladerian, [click here](#). For more information about Thomas F. Coleman, [click here](#). For more information about Jim Stream and The Arc of Riverside County, [click here](#).