A Strategic Guide

for Court-Appointed Attorneys in Limited Conservatorship Cases

What You Don't Know Can Hurt You – and Your Client Too!

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Preface

I am grateful that the cases of Roy, Craig, and Nicky were brought to my attention when their family members reached out to me because of serious deficiencies they were experiencing in the Limited Conservatorship System, including, and especially, inadequate representation by court-appointed attorneys.

Through the process of trying to help these young men, and consoling the family members who watched the process in utter frustration, I observed – through their eyes, so to speak – how the system can fail the people whose rights it is supposed to protect. By empathizing with them, I experienced how it must feel when something "shocks the conscience" of the court.

It was this empathy that prompted me to study the Limited Conservatorship System, learn the roles of various participants, and document the policies and practices of attorneys, judges, court investigators, and Regional Center staff, in hundreds of cases in Los Angeles County. The deviation between constitutional and ethical ideals and what was occurring in practice was very disturbing.

My experiences with these three cases, and the systemic analysis that was prompted by them, was shared with concerned parties at two roundtable conferences earlier this year. Requests for reform were directed to officials in all three branches of government and to agencies at the federal, state, and local levels of government. Some movement toward reform is beginning to occur.

This Strategic Guide, and the recommendations it offers, have been prepared for the education of the most important participants in the Limited Conservatorship System, the people in whose hands the futures of limited conservatees rests – the attorneys who are appointed to represent them.

Although my observations have often been quite direct, and my criticisms very strong, I realize that most of these attorneys have good intentions and want to do a good job in representing their clients, just as the other participants want to perform their roles properly. Keeping that in mind, I will end this dedication with the words of a famous American jurist:

"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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“I am only one; but still I am one. I cannot do everything; but still I can do something; and because I cannot do everything, I will not refuse to do the something that I can do.”

– Edward Everett Hale
(1822 - 1909)

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by Thomas F. Coleman

This guide is intended to help court-appointed attorneys fulfill their constitutional and statutory duties, and adhere to professional and ethical standards, as they represent clients in limited conservatorship proceedings.

What many other states call adult guardianships, California refers to as conservatorships. There are various types of conservatorships, each of which is used in different circumstances.

Mental health conservatorships are used for adults who have a serious mental illness and as a result are a danger to themselves or others. In contrast, general conservatorships are used for seniors or other adults who, due to old age, dementia, a physical illness, or an accident, are unable to make major life decisions on their own. This guide is not intended for lawyers who represent clients in those two types of cases.

Limited conservatorships are a third type of adult guardianship. These protective proceedings are used for adults who have intellectual or developmental disabilities which impair their ability to make decisions in one or more major areas of life. This guide is designed for attorneys who are appointed to represent clients in such proceedings.

The California Legislature created the Limited Conservatorship System in 1980. This was during an era when the rights of people with disabilities was beginning to emerge on the political scene in a significant way.

While general conservatorships were viewed as being appropriate for seniors who, due to dementia or other chronic illnesses had lost the ability to make many or most major life decisions, young people with intellectual or developmental disabilities were being viewed differently. Unlike seniors in their 80s or 90s, many adults with developmental disabilities were just starting out in life. They had many years, perhaps many decades, to live.

For many adults with developmental disabilities, they needed help in making major life decisions, but they did not need someone to take control of their entire life. Perhaps they needed help with financial or medical decisions, but they were otherwise capable of semi-independent living. Others needed more help than that, but did not need to have all choices taken away from them.

The Legislature decided to create a Limited Conservatorship System for people with intellectual or developmental disabilities. This would be a system that provided some level of protection while at the same time affording, indeed promoting, as much independence as possible.

Regional Centers were also created to coordinate services for people with developmental disabilities and to assist caregivers, service providers, and parents, in helping these adults whether they lived independently, with their parents, in group homes, or other assisted living residences.

Parents or guardians made decisions for their loved ones with developmental disabilities when they were minors. But when they were about to turn 18, parents were advised to consider petitioning the Probate Court to be appointed as a limited conservator so that their decision-making authority could continue.

Once such a petition is filed, the court is required to appoint an attorney to represent the proposed limited conservatee. This guide is for such attorneys.

A Proceeding with Only One Attorney

A limited conservatorship proceeding is initiated when a parent, relative, or other interested person files a petition asking the Probate Court to appoint a conservator for the adult in question.

In Los Angeles County, the overwhelming majority of these petitions – nearly 90 percent of them – are filed "in pro per" which means that the petitioner does not have an attorney. Since these petitioners lack knowledge of the law, most of them seek help to fill out the required paperwork – and there is lots of paperwork – from a Self Help Clinic operated by Bet Tzedek Legal Services under a contract with the Superior Court.

Bet Tzedek does not represent the petitioners. It merely helps them fill out the paperwork. Bet Tzedek does not screen the cases to see if a conservatorship is appropriate. It views its role as helping petitioners get the court to grant the petition. Bet Tzedek says it has a 90 percent "success" rate, with success being defined as an order granting the petition.

"Success" is a matter of perspective. For example, for a high functioning adult with autism, success might be defined as having the judge deny the petition. Limited conservatorships are not always appropriate, especially if less restrictive alternatives are available to help the adult in question have independence and protection.

In most limited conservatorship proceedings, the only parties to the case are the petitioners and the proposed conservatee. Since nearly 90 percent of petitioners do not have an attorney, and since all proposed conservatees do have a court-appointed attorney, when the judge calls a case on the court's docket for a hearing, only one attorney usually steps forward – the court-appointed PVP attorney.

Because most cases involve only one attorney, there is a high level of responsibility placed on that lawyer. He or she has a disproportionate effect on the outcome of the case. The power of court-appointed attorneys should not be discounted or minimized.

Understanding Various Roles

In order to provide proper representation, attorneys for conservatees should understand how their role differs from other individuals and agencies involved in the litigation. In addition to the PVP attorney, there is the judge, court investigator, court examiner, petitioner (with or without an attorney), Regional Center, and sometimes an objector. More will be said about objectors later.

Court rules also allow for the court to appoint a guardian-ad-litem, although that rarely happens. The court also has discretion to appoint a "best interests" attorney to evaluate and advocate for the best interests of the proposed conservatee. A few years ago, the Presiding Judge of the Probate Court in Los Angeles authorized the routine appointment of a "best interests" attorney – in addition to the primary attorney for the conservatee – but that practice was discontinued when budget shortfalls required cutbacks.

Even though guardians-ad-litem and "best interests" attorneys are no longer appointed by judges, the fact that they are authorized by law helps to contrast the role of the one-and-only attorney now appointed by the court to represent conservatees in limited conservatorship proceedings. A guardian-ad-litem is supposed to safeguard the best interests of the conservatee. A best interests attorney advocates from the same perspective. Since the only attorney for the conservatee has a different role, it should be clear that such attorneys should be advocating from a perspective other than what is in the client's best interests. More will be said on that later.

Probate examiners work for the Superior Court. They are often called "probate attorneys." Their role is to examine the paperwork, make sure it is complete, and monitor the proceedings to make sure all statutory requirements have been met prior to the judge entering an order.

Court investigators also work for the Superior Court. Under the direction of the Supervising Judge of the Probate Court and the Chief Investigator, they are appointed by judges to investigate cases after a petition is filed. The scope of their investigations is

governed by various sections of the Probate Code. They are also supposed to conduct an annual review as well as biennial reviews on an ongoing basis and report their findings to the court. Probate investigators should be neutral and objective in their investigations, evaluations, and recommendations.

Unfortunately, due to budget limitations, court investigators were not appointed in many cases in Los Angeles during the past few years. A recent training of PVP attorneys explained that the court expected them to act as de-facto investigators and that the court would use their report as a substitute for an investigator's report.

Having court-appointed attorneys serve a dual role of an advocate for their client and as a substitute court investigator poses serious ethical and constitutional problems. This practice creates a potential conflict of interest, may cause breaches in attorney-client confidentiality, and undermines the client's constitutionally protected right to effective assistance of counsel. Conservatees deserve an advocate with undivided loyalty to the client.

Fortunately, it appears that the staff of Probate Investigations has been increased. Hopefully, court investigators will be appointed in all limited conservatorship cases in the future and PVP attorneys will never again be asked to perform this function.

To prevent breaches of professional standards and ethical requirements, as well as protecting the client's right to have an attorney free of a potential conflict of interest, court-appointed attorneys should insist on the appointment of court investigators in *all* cases. They should decline to act as a de-facto investigator for the court and refuse to proceed with a case if they are asked to assume an investigative role for the court.

Regional Centers have a statutory role in limited conservatorship cases. Usually when they are minors, people with intellectual and developmental disabilities are enrolled in a Regional Center by their parents or guardian.

A Regional Center finds vendors to perform various services that are needed for their clients, coordinates such services, provides counseling to parents, and conducts annual reviews of the cases they are coordinating.

When a client is about to turn 18, a Regional Center case worker will discuss with the parents the possibility of them filing a petition for a limited conservatorship. Parents are advised that once their child turns 18, they will lose the right to make legal decisions for medical, financial, educational, and other aspects of life, such as marital, sexual, and social relationships. If parents believe their child is unable to make decisions on such issues, they are advised to file a limited conservatorship petition.

If such a petition is filed, the Regional Center has a statutory duty to file a report with the Probate Court to share its assessment of whether its client can make decisions in some or all of these areas. The report recommends whether a conservatorship is needed and, if so, which of the "seven powers" should be transferred to the conservator and which, if any, should be retained by its client.

The judge should review the report and take into consideration the assessments and recommendations of the Regional Center prior to issuing an order granting or denying the petition for limited conservatorship. Unfortunately, in some cases in Los Angeles, the judges are entering orders despite the failure of the Regional Center to file a timely report. Court-appointed attorneys should not, but do, allow these late filings to occur.

Regional Center reports are an essential part of the limited conservatorship process. They should be reviewed by PVP attorneys before, not after, the granting of a petition for limited conservatorship. In fact, these reports should be scrutinized by PVP attorneys much more closely than they are now.

Attorneys should require Regional Centers to state the basis for their evaluations, the records and meetings that occurred in formulating them, and the criteria used for recommendations on all "seven powers." A hearing should not occur until such a detailed report is filed. Attorneys should use a contempt citation, if necessary, to secure timely compliance.

The Lanterman Act

The California Legislature enacted the Lanterman Developmental Disabilities Services Act, named after its author, in the 1960s. This historic legislation has been amended in subsequent years.

The Lanterman Act declares that the State of California "accepts responsibility for persons with developmental disabilities and an obligation to them which it must discharge." (Welfare and Institutions Code, Section 4501) The Act created a collection of new statutes establishing a set of services, supports, and entitlements for people with developmental disabilities and those who help care for them.

A court-appointed attorney who represents a client in a limited conservatorship proceeding cannot provide effective representation without understanding the Statement of Rights in the Lanterman Act. This is the very foundation for effective advocacy.

As a basic premise, the Legislature declared that people 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." (Welfare and Institutions Code, Section 4502) Such protections include freedom of speech and association under the First Amendment, as well as the right to equal protection, due process, and liberty under the Fourteenth Amendment. More will be said about constitutional rights later.

Statutory rights created by the Lanterman Act include the right to be treated "in the least restrictive environment" and 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 own personal future, and program planning and implementation." (Welfare and Institutions Code, Section 4502)

It was in this declaratory backdrop of constitutional and statutory rights that the Limited Conservatorship System was created in 1980.

The Limited Conservatorship System

"Since 1980, California has had a system of limited conservatorships for adults with developmental disabilities, which grew out of the disability rights and de-institutionalization movements of the 1970s." (CEB, California Conservatorship Practice, Section 22.1, at p. 1061 (2005))

The newly-created Limited Conservatorship System was designed to serve two purposes.

"First, it provides a protective proceeding for those individuals whose developmental disability impairs their ability to care for themselves or their property in some way but is not sufficiently severe to meet the rigid standards of Prob. Code § 1801(a)-(b) for creation of a general conservatorship. Second, in order to encourage maximum self-reliance and independence, it divests the limited conservatee of rights, and grants the limited conservator powers, only with respect to those activities in which the limited conservatee is unable to engage capably." (Id., at Section 22.2, p. 1061)

The rights of people with developmental disabilities found in the Lanterman Act were incorporated by the Legislature into the Limited Conservatorship System which is regulated by the Probate Code.

"A limited conservatorship may be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence of the individual, and shall be ordered only to the extent necessitated by the individual's proven mental and adaptive limitations. The conservatee of the limited conservator shall not be presumed to be incompetent and shall retain all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator. The intent of the Legislature, as expressed in Section 4501 of the Welfare and Institutions Code, that developmentally disabled citizens of this state receive services resulting in more independent, productive, and normal lives is the underlying mandate of this division in its application." (Probate Code, Section 1801)

Many attorneys who are appointed by the court to represent people with developmental disabilities in limited conservatorship proceedings are not familiar with the history of the Limited Conservatorship System, its philosophy, and its connection with the Lanterman Act.

Having such knowledge should be a condition of an attorney's application being accepted by the court for placement on the Probate Volunteer Panel. This information should also be included in mandatory PVP trainings. More importantly, PVP attorneys should utilize this information as they conduct factual investigations, make strategic decisions, and formulate legal arguments in cases on which they are appointed.

Trauma Informed Justice

The Statement of Rights contained in the Lanterman Act specifies that people with developmental disabilities have a "right to be free from harm, including unnecessary physical restraint, or isolation, excessive medication, abuse, or neglect."

The right to freedom from abuse is one that cannot be emphasized enough or repeated often enough, since children and adults with developmental disabilities are victimized at a much higher rate than people in the general population. (Abuse of People with Disabilities: Victims and Their Families Speak Out, A Report on the 2012 National Survey on Abuse of People with Disabilities, Disability and Abuse Project of Spectrum Institute (2013))

Mandatory PVP trainings should periodically include a presentation on abuse of people with developmental disabilities, including the settings in which such abuse occurs, who the likely perpetrators may be, and how to conduct forensic interviews of victims with developmental disabilities.

Court-appointed attorneys need to know that by the time a child with a developmental disability reaches the age of 18, he or she has likely been a victim of abuse, perhaps multiple times or on an ongoing basis.

It is sad to say, but true, that perpetrators are usually family or household members or those within the victim's network of support, such as service providers, transportation personnel, or people who work at the victim's school.

Previous PVP trainings that have been conducted, and which have been reviewed by the Disability and Abuse Project, have been silent on this issue. Forms used by the court to obtain background information on potential conservators are not adequate to determine whether they or members of their household are potential abusers or have a history of abuse.

Court-appointed attorneys should not assume that the people seeking to be named conservators for their client – usually parents or relatives – are saints. Nor should every proposed conservator be viewed as an abuser. But caution and scrutiny should be used by attorneys who evaluate whether the proposed conservators are really the best persons to be given such major authority and control over the lives of their client, perhaps continuing for years or decades.

Attorneys should not merely rely on the court investigator's report to identify someone who may be a bad choice for a conservator. They should include appropriate questions about potential past abuse in the interview of their client. They should also speak with grandparents and siblings of their client to make sure the proposed conservators do not have a history of abuse or neglect with any members of the family.

The way the Limited Conservatorship System has operated in the past, the issue of abuse has not been discussed as a general issue. Abuse has only been addressed when a specific complaint has been made to the court or its staff. The system, and its participants – including PVP attorneys – have assumed that abuse of people with developmental disabilities is a rare exception. Unfortunately, the opposite is true.

The Probate Court should be administering "trauma informed justice" in order to minimize the risk of abuse to conservatees. To shift from the current system to one providing trauma informed justice, many changes will need to be made. (Trauma Informed Justice: A Necessary Paradigm Shift for the Limited Conservatorship System.)

Implementing the Right to Counsel

The Probate Code specifies that when a limited conservatorship petition is filed, the proposed conservatee is entitled to have an attorney to represent him or her in the proceeding.

"In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee." (Probate Code, Section 1471)

"Implicit in the mandatory appointment of counsel is the duty of counsel to perform in an effective and professional manner." (Conservatorship of Benvenuto (1986) 180 Cal.App.3d 1030, 1037, fn. 6) An attorney appointed to represent a conservatee must vigorously advocate on the client's behalf. (Conservatorship of John L. (2010) 48 Cal.4th 131)

Once a statutory right to counsel has been conferred, "a proposed conservatee has an interest in it which is protected by the due process clause of the Constitution." (Conservatorship of David L. (2008) 164 Cal.App.4th 701, 710)

These statutory and judicial precedents confirm that adults who are being subjected to a limited conservatorship proceeding not only have a statutory right to appointed counsel, but have a corresponding constitutional right under the due process clause of the United States Constitution to receive effective assistance of counsel.

Legal commentators have highlighted some of the minimal actions that should be taken by court-appointed attorneys representing conservatees.

"The Rules of Professional Conduct published by the State Bar of California outline the legal counsel's role during the conservatorship process. An attorney should communicate with the conservatee, keeping him or her reasonably informed about the procedure and its meaning, transmit the proposed conservatee's desires to the court, and, most importantly, abstain from advancing any interest adverse to his or her client." (Anders et al, "Conservatorship Reform in California: Three Cost Effective Recommendations," Goldman School of Public Policy, University of California, Berkeley, (2009) p. 9)

"In general, the attorney must work to ensure that the court only grants a conservatorship when it is the least restrictive means of caring for the conservatee and when the burden of proof has been met. In this respect, the California probate code establishes that 'the standard of proof for the appointment of a conservator pursuant to this section shall be clear and convincing evidence.' If these standards are upheld by attorneys during the proceedings, they will be advancing their client's interest and ensuring due process of law." (Id., pp. 9-10)

Having established that conservatees have a right to effective assistance of counsel, questions arise as to how that right must be implemented.

As soon as the attorney is appointed to a case, the attorney should find out from the Regional Center and the parents the types of physical and developmental disabilities the client has. If the attorney is not thoroughly familiar with the effects of those disabilities on communication skills, cognitive abilities, and their emotional effects on mood and judgment, the attorney should conduct appropriate research into those issues.

An attorney cannot provide effective representation to a conservatee without knowing the client's physical and psychological abilities and disabilities. Once such knowledge is obtained, the attorney must decide, perhaps in consultation with the Regional Center or other experts, how to provide reasonable accommodations to the client and to use communication methods and interviewing skills that are likely to elicit the most information from the client and likely to help the client understand the issues and the proceedings. Attorneys should not assume or make prejudgments about the ability of the client to think, make choices, or communicate.

The attorney for a proposed conservatee should investigate the accuracy of the factual allegations in the petition, interview the client as to the circumstances of his or her life, ascertain the client's

position about the need for a conservatorship and his or her preference about who should become the conservator, review the records of the Regional Center, discuss the issues with the case worker, and review the report of the court investigator.

In cases where it is arguable that less restrictive alternatives are more appropriate than a conservatorship, or that the client may have capacity to make some decisions (perhaps with assistance), the attorney should ask the court to appoint an expert, such as a psychologist, to evaluate the client's capacities. A psychologist should also be appointed if there is any evidence, even a hint, that the client may have been a victim of abuse or neglect in the past.

The issues mentioned above are specific to particular cases. However, other issues are more general and apply to the nature of advocacy itself.

For example, should appointed counsel advocate for the "stated wishes" of the client, assuming the client can articulate his or her wishes on issues involved in the proceeding? Or should counsel consider the client's wishes but ultimately advocate for what counsel believes is in the client's best interests? And then there is the thorny problem of the type of advocacy that should occur if the client cannot communicate his or her wishes to the attorney.

There are no published appellate decisions in California that directly decide whether an attorney representing a proposed conservatee may advocate for what the attorney believes is in the client's best interests even though such a position is contrary to the client's stated wishes.

The only decision that comes close to discussing this issue involved a conservatee who had been in a coma for several years. The conservator wanted to "pull the plug" and let the conservatee die, arguing that it was in the conservatee's best interests. An independent attorney was appointed for the conservatee.

After researching the facts, the court-appointed attorney agreed with the conservator that his client would have wanted to end life sustaining measures under these circumstances. The attorney advocated that ending such treatment was in his client's best interests.

The attorney who represented the conservatee on appeal argued that the lower court attorney had not provided the client with effective assistance by engaging in best-interests advocacy. He said the attorney should have argued for the right to life.

The Court of Appeal ruled that best interests advocacy is permissible when a client is in a persistently vegetative state. (Conservatorship of Drabik (1988) 200 Cal.App.3d 185) Explaining its decision, the court wrote:

"There is no authority in California law for requiring a permanently unconscious conservatee's attorney to oppose a petition that the attorney believes to be in the conservatee's best interests. When an incompetent conservatee is still able to communicate with his attorney it is unclear whether the attorney must advocate the client's stated preferences -- however unreasonable -- or independently determine and advocate the client's best interests. (See Johnstone, Cal. Conservatorships 2d (Cont.Ed.Bar 1983) § 1.62, at p. 42.) When the client is permanently unconscious, however, the attorney must be guided by his own understanding of the client's best interests. There is simply nothing else the attorney can do." (Drabik, supra, p. 212)

The California Supreme Court has discussed the decision in Drabik and observed, in dicta, that its holding on best-interests advocacy is specifically limited to situations where the client is in a coma. (Conservatorship of Wendland (2001) 26 Cal.4th 519, 537.) Whether best-interests advocacy is permissible was not at issue in Wendland.

Because there is no direct precedent from the California appellate courts about best-interests advocacy for limited conservatees who are not in a coma, we must look elsewhere for guidance on this issue. Fortunately, there is ample secondary authority to provide such guidance.

There are opinions by several Ethics Committees supporting the principle that an attorney may not take actions that are contrary to the stated wishes of

the client, even if the attorney thinks that such a course of action is unwise. These opinions rely on rules of professional conduct that require client confidentiality, zealous advocacy, and the avoidance of conflicts of interests. (California Standing Committee on Professional Responsibility (COPRAC) Opinion 1989-112; San Diego Bar Association (Ethics Opinion 1978-1); Los Angeles Bar Association (Ethics Opinion 1988-450).

Before discussing other types of secondary authority, it should be noted that court-appointed attorneys in conservatorship cases seem to be operating in a culture of "paternalistic advocacy." Perhaps it is because they see their clients as helpless, or because best-interests advocacy is what most court-appointed attorneys have been doing for years, or because that is what they believe the judges want, or because they have not been instructed otherwise in mandatory PVP trainings. But regardless of the reasons, paternalistic advocacy is the pattern and practice of court-appointed attorneys – at least in California.

Research has shown that ineffective advocacy is common, perhaps rampant, among court-appointed attorneys who represent clients in conservatorship proceedings in California. University of San Diego Law Professor Grant H. Morris conducted two studies – one in 1975 and another in 2007 – that analyzed the performance of attorneys for proposed conservatees in the Mental Health Court.

Both studies showed that court-appointed attorneys mostly went through the motions. Their hearts were really not into it. Zealous advocacy for a client was rare. (Morris, "Let's Do the Time Warp Again: Assessing the Competence of Counsel in Mental Health Proceedings," San Diego Law Review, Vol. 46, No. 2, 2009.)

In the Abstract of his article, Professor Morris said: "Thirty years ago, I wrote an article on mental health conservatorships in California and the role of counsel for persons for whom a conservatorship has been proposed. Data was gathered on the performance of attorneys in court hearings conducted in San Diego County Superior Court. The data revealed that lawyers representing proposed conservatees were inactive and ineffective in representing their clients' interests. The lawyers did not consider themselves advocates in an adversary process in which conservatorship was to be avoided." (Id.)

He added: "The data reveal that the quality of legal representation for proposed conservatees has not improved significantly. Stated simply, paternalism persists." (Id.)

I am sorry to say that my own review of dozens of limited conservatorship cases in Los Angeles County, my in-depth analysis of attorney performance in several specific cases, and my evaluation of the policies and practices of the Probate Court in Los Angeles County, cause me to conclude that paternalistic advocacy is the norm for limited conservatorship cases in this jurisdiction.

The problem of ineffective advocacy stems in part from court policies and practices. There are several areas that may dilute what should be the attorney's sole responsibility, namely, to provide effective advocacy to protect the rights of the client.

The court has promulgated a rule that gives court-appointed attorneys a "secondary duty" which is "to assist the court in the resolution of the matter to be decided." (Rule 10.85, Los Angeles Superior Court) This role is more appropriately given to a mediator. Court-appointed attorneys should decline to serve as a mediator or referee or case settler. Assuming such a role creates a conflict of interest for such attorneys. This court rule should be rescinded by the court.

An extremely disturbing practice in Los Angeles is the requirement that PVP attorneys file a report with the court, sending copies to all other parties, detailing their factual findings and legal recommendations, even if they are adverse to their clients.

"After the PVP attorney evaluates the issues, he or she must report observations and recommendations to the court about what is in the best interest of the client. PVP attorneys are provided with sample reports in their training manuals. For limited conservatorships, there is an online form for PVP attorney reports on the court's Web site." (Awakuni, "Serving the Community as a Volunteer PVP Attorney," Los Angeles Lawyer (December 2006))

The requirement to file such a report causes attorneys to violate professional standards and ethical requirements. The duties of loyalty and confidentiality are being compromised when attorneys file a PVP Counsel's Report for Developmentally Disabled Adults with the court.

It is not so much that these reports are filed as a public record, for the whole world to see, although that is bad enough. Even if the reports were filed as confidential documents, the fact that they are given to the court and to other parties to the case is an ethical and constitutional problem. The matter contained in such PVP reports contains attorney work product, personal details about the client's life, and discloses information that may be highly adverse to the possibility of the client retaining some or many of his or her rights.

It is one thing for a court investigator to assess a client's abilities or incapacities and to report findings and make recommendations to the court. That is an acceptable practice. It is also permissible for a court-appointed expert to give an objective opinion regarding the client's abilities or lack thereof.

Certainly a petitioner (usually a parent) can state in a public document his or her opinions about whether the proposed conservatee is able to make medical, financial, or other decisions. But for a court to require an appointed attorney to "snitch" on a client and to disclose information adverse to the retention of various rights is unacceptable and patently unconstitutional.

About 1,200 PVP Reports are filed with the Los Angeles Superior Court each year. I find it utterly amazing that none of the PVP attorneys who have handled these cases over the years has objected to filing reports sharing their work-product or their opinions about their client's deficiencies.

Attorneys seem to be routinely doing what others before them have done and following instructions from the court or told to them in PVP trainings – without thinking about the ethical and constitutional ramifications. The time is long overdue for PVP attorneys to decline to file reports that disclose attorney work-product or share opinions or make recommendations that undermine the retention of rights by their clients. That is not to say that PVP attorneys must object to all requests in the petition, even when the client cannot express a view on those requests or even when it appears that such requests are reasonable. More will be said on this issue later.

A "general order" issued by the Presiding Judge of the Probate Court in Los Angeles on May 2, 2014 poses another problem. It sets 12 hours as the presumptive maximum amount of time that an attorney may spend on any given case. In cases where payment will be made by the county, counsel must accept payment of $125 per hour.

This order sends a strong signal to attorneys to keep their fee requests to a minimum. A review of a large sample of limited conservatorship cases shows that, on average, court-appointed attorneys are being paid about $750 per case. At $125 per hour, attorneys are devoting about 6 hours to each case. Assuming that travel time and court time constitute at least 3 to 4 hours combined, attorneys are spending less than 3 hours to read documents, make phone calls, interview clients and perform all other functions. That is patently insufficient for any attorney aspiring to provide effective assistance of counsel to a client.

Another practice of the court has undermined the possibility of effective advocacy. There has been an ongoing practice in Los Angeles County not to appoint court investigators in limited conservatorship cases, at least not in initial proceedings. Court-appointed attorneys have been specifically instructed that their reports will serve as a substitute for investigator reports.

In effect, PVP attorneys were given a third role – in addition to primary role of advocate and the secondary role of mediator – of de-facto court investigator. This practice may have ended, although that has not been confirmed. But whether it continues or has ended, having court-appointed attorneys serve as court investigators has created a conflict of interest and adversely affected the client's right to confidentiality and loyalty from his or her attorney and the client's right to effective advocacy.

Yet another practice of the Superior Court may be

having an adverse impact on an attorney's role as a conscientious and zealous advocate for a limited conservatee. That is the current process of appointing and compensating PVP attorneys.

Under the current system, judges who hear the limited conservatorship cases appoint attorneys to specific cases and set the amount of compensation for such attorneys in these cases. This system may be creating an appearance of a conflict of interest.

Attorneys should be zealous advocates for their clients. They should put in the number of hours that are necessary to investigate facts, research the law, prepare pleadings, and conduct hearings. However, the attorneys know that the judges have heavy caseloads and tight budgets and therefore must move cases through the system at a rather rapid pace.

Attorneys may perceive that if they put in too many hours, contest too many issues in too many cases, and cost the system too much time and money, they may not receive many future appointments to limited conservatorship cases. The fact is that in these cases there are almost no contested hearings and virtually no appeals – ever. Any judicial system that lacks contested hearings and appeals should cause concern and raise eyebrows. It appears that the Limited Conservatorship System is an assembly line.

Cost control is a reasonable concern of any system, including a system for paying court-appointed attorneys. Eliminating *unnecessary* costs is not the issue. The problem is the systemic pressures on attorneys that cause them not to give each and every case the individualized attention it deserves.

Judges who hear these limited conservatorship cases should not be appointing the attorneys who represent clients in their courtroom. Nor should these judges be the ones who are deciding how much to pay these attorneys. Putting the judge who will be making rulings in a given case in the position of deciding how much to pay an attorney in the case or how many cases the attorney will be appointed on in the future, creates the appearance of a conflict of interest.

Does the attorney file objections or make motions that takes up scarce court time? Does the attorney put in extra hours to do a thorough job and cost the system extra money? Will strong advocacy upset the judge? If the judge does not like such aggressive advocacy – especially if it occurs in many cases – will the attorney receive fewer appointments in future cases? Attorneys should not be concerned about such matters. But under the current system of appointments and payments they may be – and this could have an adverse effect on the client's right to a thorough factual investigation, novel constitutional research, and a contested hearing.

Judges used to appoint attorneys and pay attorneys in Children's Court. Not any more. Two specialized lawfirms now represent children and parents in these cases. Recruitment, training, and payment of the attorneys are handled by these firms. Attorneys are free to litigate as they wish, without concern that their livelihood will be adversely affected if the judge gets upset with their advocacy methods.

Judges used to recruit, train, appoint, and pay "conflict attorneys" in criminal cases in Superior Court. Not any more. When the Public Defender and Alternative Public Defender are not available in a criminal case, there is a panel of attorneys from which an attorney is selected to represent a criminal defendant. The attorneys for this panel are recruited, trained, and compensated by the Los Angeles County Bar Association.

In other counties, such as Santa Barbara, conservatees and limited conservatees are represented by the Public Defender's Office. The same is true for mental health conservatorships in Los Angeles County. Those attorneys are recruited, trained, and paid by the Public Defender's Office. This relieves judges in conservatorship cases from such financial and administrative duties.

Even though some PVP attorneys may be satisfied with the current method of appointing and paying court-appointed attorneys in limited conservatorship proceedings in Los Angeles County, the time has come for this system to be replaced with something better.

Having disclosed some of these systemic problems

with limited conservatorship proceedings in Los Angeles County, we should refocus our attention to the standards for advocacy that should guide court-appointed attorneys in individual cases.

A limited conservatorship petition, if granted, will deprive the conservatee of liberty. A conservatee may no longer have a say about where to live, whether to attend school, or who to socialize with. These are freedoms we all take for granted. Their loss due to a court order should not occur without due process of law.

Part of that due process is the right of the proposed conservatee to have an attorney to help defend against the unwarranted loss of liberty. That due process right to an attorney is implemented by Probate Code section 1471 which requires the court to appoint an attorney to "represent the proposed limited conservatee" when a limited conservatorship proceeding is initiated.

Section 1471 does not say that a court shall appoint an attorney to represent the "best interests" of the conservatee. It says the attorney should represent the proposed conservatee. An attorney is representing a person, not a notion of "best interests."

Before the petition is filed, an adult with a developmental disability has the legal authority to make any and all decisions in every aspect of his or her life. Parents lost such authority when their child turned 18 and became an adult. A petition for a limited conservatorship asks the court to change the status quo and to restrict personal rights and transfer authority to make decisions to others.

The petitioners are presumably acting in what they believe to be the best interests of their adult son or daughter. A court investigator will conduct an objective investigation and make recommendations for what he or she believes is in the best interests of the proposed conservatee. Ultimately, the judge will make binding decisions based on what the judge finds to be in the best interests of the conservatee.

Everyone is making arguments or decisions based on a "best interests" perspective. The last thing the legal system needs, or for that matter that a proposed conservatee needs, is another person to jump on the best interests bandwagon. Proposed conservatees need an advocate to protect their rights.

Proposed conservatees need an attorney to make the petitioner and the court investigator demonstrate, with *clear and convincing proof*, that: (1) a conservatorship is necessary; (2) lesser restrictive alternatives have been explored and will not work; (3) the proposed conservatee is unable to make decisions, even with help, in any of the areas where authority will be transferred to the conservator; and (4) the person seeking such authority is the best person to be appointed conservator.

Clear and convincing proof requires a finding of high probability, based on evidence so clear as to leave no substantial doubt, sufficiently strong to command the unhesitating assent of every reasonable mind. (Conservatorship of Wendland (26 Cal.4th 519, 552.) That's a very high standard.

By the way that cases are rapidly processed through the Probate Court in Los Angeles – with contested hearings a rare exception – it appears that this standard of proof is seldom used.

Defending the rights of a conservatee does not require an attorney to raise frivolous arguments. Effective assistance of counsel requires only that a thorough investigation is done and that arguably meritorious issues are presented.

There is a difference between not objecting to a reasonable request made in a petition – one that is supported by clear and convincing evidence – and stipulating to such a request. An attorney who believes that the undisputed facts warrant the granting a petition need not file a baseless objection.

The attorney can be an effective advocate and still submit the matter to the court for decision on the petition, Regional Center report, and court investigator's report. However, the attorney may be violating ethical duties of loyalty and confidentiality by submitting a report to the court disclosing factual information gathered by the attorney which is adverse to the retention of rights by the client.

Effective advocacy also requires the attorney for the proposed conservatee to make judgments about which of the "seven powers" the client should retain.

Precedents from other jurisdictions support the principle that attorneys for conservatees must advocate for the "stated wishes" of their client, even if they believe this is not in their best interests.

A leading decision on this issue was issued by the Connecticut Supreme Court in Gross v. Rell (2012) 40 A.3d 240. In that case, a conservatee sued his court-appointed attorney in federal court for legal malpractice committed in a conservatorship proceeding in state court. The federal Court of Appeal referred an issue to the state Supreme Court for resolution.

The plaintiff argued that the attorney was not entitled to quasi-judicial immunity because the role of a appointed attorney in a conservatorship proceeding is to argue for the expressed wishes of clients, not to determine their best interests. The defendant argued that attorneys for proposed conservatees are entitled to quasi-judicial immunity because their primary function is to assist the court to ascertain the best interests of clients. The Connecticut Supreme Court agreed with the plaintiff.

The court's analysis referred to Rule 1.14(a) of the Rules of Professional Conduct which states: "When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."

The court noted that in a normal lawyer-client relationship, a lawyer must zealously assert the client's position under the rules of the adversary system. The court reasoned that even though a decision to advocate for the client's wishes rather than the client's best interests may be difficult for an attorney personally, most courts and legal commentators who have grappled with this issue favor advocacy. The best interest approach would usurp the function of the judge and the jury. Thus the court concluded that the function of a court-appointed attorney is not to help the court determine the best interests of the proposed conservatee.

In reaching its conclusion, the Connecticut Supreme Court cited Matter of MR (1994) 638 A.2d 1274, an decision by the New Jersey Supreme Court.

The factual context was explained by the New Jersey court as follows: "This case raises the challenging question of the extent to which a generally-incompetent developmentally-disabled person may determine where she is to live. Our concern is with balancing the right of self-determination of developmentally-disabled people with traditional judicial concerns for their best interests. Although our decision nominally considers only the allocation of the burden of proof, beneath that allocation lie significant policy choices about the rights of developmentally-disabled people to make decisions for themselves and the role of courts in the decisionmaking process."

The attorney for the conservatee originally argued for the stated wishes of the client to live with her father. Later, however, the attorney equivocated and argued that the household of either parent would be adequate. The softened advocacy was challenged on appeal as not providing effective assistance to the conservatee because it did not advocate her wishes.

The Supreme Court contrasted the role of an attorney for a proposed conservatee and the role of a guardian ad litem. "The representative attorney is a zealous advocate for the wishes of the client. The guardian *ad litem* evaluates for himself or herself what is in the best interests of his or her client-ward and then represent[s] the client-ward in accordance with that judgment."

The court expressed other views that are relevant here:"An adversarial role for the attorney recognizes that even if the client's incompetency is uncontested, the client may want to contest other issues, such as the identity of the guardian or, as here, the client's place of residence. *Agenda for Reform, supra,* 13 *Mental & Physical Disability L. Rep.* at 284. With proper advice and assistance, the developmentally-disabled client may be able to participate in such a decision. *See id.* at 285 (commenting on Recommendation II-C and quoting American Bar Association

Model Rules of Professional Conduct (1983), *Rule* 1.14, *Client Under a Disability*). From this perspective, the role of an attorney for a developmentally-disabled person is like that of an attorney representing any other client."

The court added: "Advocacy that is diluted by excessive concern for the client's best interests would raise troubling questions for attorneys in an adversarial system. An attorney proceeds without well-defined standards if he or she forsakes a client's instructions for the attorney's perception of the client's best interests. Lawrence A. Frolik, *Plenary Guardianship: An Analysis, A Critique and A Proposal for Reform,* 23 *Ariz.L.Rev.* 599, 635 (1981). Further, 'if counsel has already concluded that his client needs 'help,' he is more likely to provide only procedural formality, rather than vigorous representation. *Id.* at 634-35; *see also* Maria M. Das-Neves, *Note, The Role of Counsel in Guardianship Proceedings of the Elderly,* 4 *Geo. J. Legal Ethics* 855, 863 (1991) (stating that '[i]f the attorney is directed to consider the client's ability to make a considered judgment on his or her own behalf, the attorney essentially abdicates his or her advocate's role and leaves the client unprotected from the petitioner's allegations'). Finally, the attorney who undertakes to act according to a best-interest standard may be forced to make decisions concerning the client's mental capacity that the attorney is unqualified to make. Frolik, *supra,* 23 *Ariz.L.Rev.* at 635."

In the case of Matter of Pauline Mason (1997) 305 N.J. Super 120, a more recent decision by a lower court in New Jersey amplified on the distinction between legal rights advocacy and best interest advocacy.

The court stated: "The court-appointed attorney thus acts as an 'advocate' for the interests of his client and the GAL acts as the 'eyes of the court' to further the 'best interest'" of the alleged incompetent. Court-appointed counsel is an independent legal advocate for the alleged incompetent and takes an active part in the hearings and proceedings, while the GAL is an independent fact finder and an investigator for the court. The court-appointed attorney, subject to the aforementioned concerns, thus subjectively represents the client's intentions, while the GAL objectively evaluates the best interests of the alleged incompetent."

Although it was in the context of a juvenile delinquency case, a decision of the Illinois Supreme Court is also instructive on the issues under discussion here. The court ruled that it is unconstitutional for an attorney for a juvenile to serve in dual roles for the client. In that case, the attorney was acting both as defense attorney and as guardian ad litem.

The court concluded that an attorney who is defending the rights of a client cannot dilute that advocacy role by taking on a secondary role of promoting the best interests of the client. (People v. Austin M. (2012) 975 N.E.2d 22.) The court concluded that there is a per se conflict of interest when an attorney serves in dual capacities such as this.

Hopefully, at this point it should be amply clear that a PVP attorney may not serve more than one role in a case and that one-and-only role is a vigorous advocate who advances the wishes of the client. If the client cannot state his or her wishes the role is to defend the client's rights by requiring the petitioner and the court investigator to produce, by clear and convincing evidence, the four elements outlined on page 11 of this article.

It is not the role of a PVP attorney to help the court resolve the case or to be the "eyes and ears of the court." It is also not the attorney's role to promote the perceived best interests of the client. The best interests perspective should be left to the petitioner, the court investigator, and a guardian ad litem, with the final best interests decision made by the judge.

PVP attorneys need not be obstructionists or raise frivolous arguments or make baseless motions. However, they should also not disclose information that is adverse to the interests of their clients, nor should they surrender the rights of their client through "cooperative" stipulations.

On the other hand, objections should sometimes be made, contested hearings should sometimes be held, and yes, appeals should sometimes be filed.

Confidentiality and Loyalty

The previous section discussed the obligations of an attorney to his or her client through the constitutional lens of the right to effective assistance of counsel. This section discusses some of the same issues from a slightly different perspective – that of ethical and professional standards.

The concepts of confidentiality and loyalty are at the core of any attorney-client relationship. Take those away and a lawyer does not have a professional relationship with the client.

Rule 3-100 of the California Rules of Professional Conduct declares that a lawyer may not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without first receiving the informed consent of the client.

A comment that accompanies Rule 3-100 explains that: "Client-lawyer confidentiality encompasses the attorney-client privilege, the work-product doctrine and ethical standards of confidentiality. The principle of client-lawyer confidentiality applies to information relating to the representation, whatever its source, and encompasses matters communicated in confidence by the client, and therefore protected by the attorney-client privilege, matters protected by the work product doctrine, and matters protected under ethical standards of confidentiality, all as established in law, rule and policy. (See In the Matter of Johnson (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rper. 179; Goldstein v. Lees (1975) 46 Cal.App.3d 614, 621 [120 Cal. Rper. 253].) The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a member may be called as a witness or be otherwise compelled to produce evidence concerning a client. A member's ethical duty of confidentiality is not so limited in its scope of protection for the client-lawyer relationship of trust and prevents a member from revealing the client's confidential information even when not confronted with such compulsion. Thus, a member may not reveal such information except with the consent of the client or as authorized or required by the State Bar Act, these rules, or other law."

The only exception to the rule against disclosure – one that permits it to prevent a criminal act that is likely to result in imminent bodily harm or death to someone – would not apply to a normal limited conservatorship proceeding.

Included in the attorney-client relationship is the duty of undivided loyalty and fidelity to the client. (Allow v. State Bar (1971) 3 Cal.3d 924.) The duty of loyalty encompasses a commitment to the client, preservation of confidential information of the client, and avoiding a conflict of interest that might impair the representation or undermine a relationship of trust.

It is a violation of the duty of loyalty for an attorney to advance a position that is adverse or antagonistic to the client. (Day v. Rosenthal 1985) 170 Cal.App.3d 1125, 1143.)

Although the factual basis for the opinion involved a different, but related context, the State Bar of California has issued an ethics opinion that clearly advises attorneys they may not use any information – communications to them, observations by them, or evidence gathered by them – to initiate a conservatorship proceeding unless the client consents. (Formal Opinion No. 1989-112)

The ethics opinion assumed that the client's statements and behavior patterns caused the attorney, and would cause a reasonable attorney, to believe that the client needed a conservatorship. Nonetheless, the opinion concluded that the attorney may not take action to initiate or advance a conservatorship proceeding against the client. To do so would violate the attorney's duties of confidentiality and loyalty to the client.

The opinion states: "What the attorney has seen or heard during the course of the relationship with the client may be a client 'secret.' (See State Bar Formal Opinion 1987-93 which states '. . . the attorney-client relationship involves not just the casual assistance of a member of the bar, but an intimate process of consultation and planning which culminates in a state of trust and confidence between a client and his attorney.') Here, it is assumed that the attorney has spent considerable time in the client's

presence, observing his behavior and coming to the conclusion that he can no longer properly care for himself."

The reasoning continues: "It is also assumed that information imparted to the attorney by the client during the course of their relationship of confidence, while not necessarily a protected 'communication' (see Evidence Code, section 952), would be embarrassing or detrimental to the client if divulged by the attorney to third parties, and as such qualifies as a 'secret.' (State Bar Formal Opinions 1988-96 and 1987-93.)"

It concludes: "By instituting conservatorship proceedings, the attorney will not only be disclosing such client secrets to the court, but also to any necessary third parties (including family members) called upon to act in the conservatorship role. An attorney is absolutely prohibited from divulging the client's secrets gained during the attorney-client relationship, and from acting in any manner whereby the attorney is forced to use such secrets to the client's disadvantage. (*Stockton Theatres v. Palermo* (1953) 121 Cal.App.2d 616 [264 P.2d 74].) The Committee thus concludes that the attorney may not divulge what the attorney has observed of the client's behavior."

The policies and practices of the Los Angeles Superior Court, in connection with the duties and obligations expected of PVP attorneys who represent proposed conservatees, cause the attorneys to violate their duties of confidentiality and loyalty.

The court rule that gives the attorney a "secondary duty" to help the court resolve the case creates an actual or potential conflict of interest and therefore violates the duty of loyalty to the client. The attorney should have one duty only and that is to defend the rights of the client – without regard to whether it interferes with the court's administrative and financial desire to resolve cases without contested hearings.

The instructions to attorneys to use the standard PVP Report form and to file it with the court and serve it on all parties to the case also cause the attorney to violate professional standards. This form asks the attorney to share confidential information with the court and other parties. It also requires the attorney to share information developed as attorney work product, and to disclose the attorney's professional opinions about the client's abilities or incapacities – information that may be used by the court to take existing rights away from the client.

I may have already said it, but I have to say it again – I cannot believe that attorneys would willingly accept these instructions and file these reports – public documents at that – without hesitation and grave concern about the ethical violations this involves. I am astonished that one or more of the hundreds of attorneys who have accepted PVP appointments have not filed constitutional objections to the use of this form. I guess the practice has gone on so long and been accepted by so many attorneys and judges, that new PVP attorneys who enter the system are mesmerized by a group delusion of propriety.

It is time for the Judicial Council to put a halt to the practices described in this section on confidentiality and loyalty. Court appointed attorneys should do their research, conduct their interviews, observe the actions of their clients, and make their assessments about the client's abilities or incapacities in connection with the seven powers and on this issue of voter registration. But they should not divulge information that would be used in a manner adverse to their clients or in a way that might cause their clients to lose their rights.

The information the attorneys gather, and the opinions they form – even if they are not favorable to their clients – can be used by the attorneys in formulating strategic decisions on how best to advocate for the client. But adverse information should not be shared with the court and with other parties. Doing so would violate the requirements of confidentiality and loyalty.

As I state elsewhere in this article, PVP attorneys do not have to file frivolous motions or make baseless objections or become obstructionists in limited conservatorship proceedings. But they also should not consider themselves "the eyes and ears of the court" or feel that they have a secondary duty to help

the court resolve the case.

Attorneys for proposed conservatees have one duty only, and that is to their client. That duty is not served by acting as a de-facto guardian at litem and advocating for the best interests of the client. They should advocate for the client's stated wishes. If the client cannot state his or her wishes, then they should advocate for the client's rights.

Client's rights is a broad concept. It includes the right to be free from abuse, the right to be safe, and the right to informed medical care. Attorneys should look at the entire panoply of rights and defend them as a whole. Sometimes those rights are best defended by not opposing a petition and instead submitting the matter to the court for decision on the existing pleadings, including the petition, medical capacity declaration, Regional Center report, and court investigator's report.

Advocacy that is effective, and consistent with the duties of loyalty and confidentiality, is not served by filing a PVP report in which the attorney puts information adverse to some or all of the client's rights on the table, in an open forum, so that the information can be used by the court to take away various rights of the client.

To safeguard the duty of confidentiality and loyalty to the client – duties that would be compromised by filing a report that contains information that undermines one or more of the client's rights – a court-appointed attorney should not file a report at all. Attorneys for defendants in civil, criminal, juvenile, and family law cases do not file reports where they affirmatively disclose factual information adverse to their clients. Attorneys in limited conservatorship cases should not either – despite the fact that a PVP Attorney Report has been a customary, indeed a mandatory, practice forever. That can change.

Any individual attorney can simply decline to file a PVP Attorney Report with the court. If it is given to the court, it must be given to the other parties as well. (Conservatorship of Schaeffer (2002) 98 Cal,.app.4th 159.) Such a report may not be filed with the court ex-parte. Everyone gets the report or no one gets the report. As explained throughout this article, constitutional principles of due process and effective assistance of counsel, and ethical mandates of confidentiality and loyalty, dictate that no one should get so see the work product of the PVP attorney, including the attorney's impressions and opinions which were gathered partly from obtaining confidential information for the client.

Until the court policy on mandatory filing of PVP Attorney Reports is changed, attorneys could file a Motion to be Relieved from Filing a PVP Attorney Report. If the motion is granted, the problem is solved. If the motion is denied, the attorney can file the report under seal as a confidential document and can seek a writ from an appellate court to prohibit the court from using the report or sharing it with other parties. The ethical and constitutional issues can be raised in the writ proceeding. Make sure to include the motion and/or the writ in your fee claim.

The lack of a PVP report will not jeopardize the court's ability to make decisions in a limited conservatorship case. The court will know – by the attorney's action in making objections or not, in demanding a contested hearing or not, what position the attorney is advancing for the client. The court will also know, if the attorney says "I submit the matter for decision on the existing pleadings" that the attorney has not found an arguably meritorious issue to raise to contest the matters in those pleadings. (Cf. People v. Wende (1979) 25 Cal.3d 436)

In many cases, it is not so much the result that is reached, but the methods used in the process, that cause concern. Many proposed conservatees are better off, and the full range of their rights are best protected and respected by the granting of a conservatorship. In many cases, that is not true and a contested hearing on one or more issues is warranted. But whether a petition is granted or denied, or granted in part and denied in part, what always matters is that constitutional rights and ethical standards were not violated in the process.

The current practice of filing PVP reports that disclose confidential information and that share attorney opinions that are used to take away client rights must stop. These unconstitutional and unethical practices cannot be stopped quickly enough. If

the Los Angeles Superior Court does not take immediate action on this, the California Judicial Council should.

In the meantime, the Board of Governors of the State Bar of California should create a State Bar Task Force on Limited Conservatorships to investigate these objectionable practices.

Providing Reasonable ADA Accommodations

The Americans with Disabilities Act (ADA) was enacted in 1988. It requires businesses to provide reasonable accommodations to clients with disabilities. The Act also requires state and local government agencies to make reasonable modifications of policies and practices to ensure equal services to people with disabilities.

To its credit, the Los Angeles Superior Court has made a modest attempt to comply with the requirements of the ADA. Form MC410 is available on the court's website for litigants and witnesses who wish to request ADA accommodations.

Unfortunately, most PVP attorneys are probably unaware of the requirements of the ADA or the need for them to provide accommodations to a client – both in and out of the courtroom – in order to deliver effective advocacy for the client.

A training for PVP attorneys who handle limited conservatorship cases will include the issue of disability accommodation in the September 2014 seminar. Despite the fact that all limited conservatorship cases in the past have involved a person with a disability, this may be the first time that the ADA has been included in any PVP training.

The lack of awareness of ADA requirements in the context of court cases came to my attention a few months ago. One case involved a 19-year old man with autism. He was mostly non-verbal

When the PVP attorney visited the home and learned that his client was autistic and nonverbal, he apparently made assumptions that the client could not communicate and would not understand anything about the proceedings. What the attorney did not know was that the client could communicate through a qwerty communication board and that he also had a talking I-Pad. What he also did not know was that the client's IQ was in the normal range.

After the attorney made a snap judgment about the client's incapacities based on his momentary first-glance visual assessment, the attorney communicated solely with the client's mother. The client was present in the same room, but the attorney spoke only with the mother.

After the attorney left the house, the client asked his mother if the attorney thought he was Deaf. "Why do you think that," the mother responded. "Because he never spoke to me the entire time he was here," the client replied.

The case had complications because the client's father, divorced from the mother for several years, posed various objections. As a result, there were several court proceedings.

In the first proceeding, the judge asked the PVP attorney for a quick assessment of the client. The attorney told the judge that the client could not communicate and would not understand the proceedings. Neither of these statements was true.

The attorney later found out that the client could communicate with a talking I-Pad. However, due to neurological problems, his mother had to touch the client's arms and provide some physical resistance. This process, sometimes used for nonverbal people with autism, is known as facilitated communication or FC.

FC was this client's best method of communicating and his mother, someone trusted by the client, was the client's chosen facilitator. The attorney was informed of both of these facts.

The attorney arranged to interview the client at the client's school. At this point, I had become involved in the case and the client had signed a document telling the attorney that he wanted me to attend the interview as a support person. The attorney reluctantly agreed.

The attorney refused to allow the mother to attend the interview to provide the client with FC support. In fact, the attorney refused to allow the teacher's aide to provide such support. There would be no FC. The attorney decided to use flash cards that said "yes" and "no" and to pose a series of questions that called for yes or no responses.

The attorney was obviously not aware of the client's rights to reasonable accommodation under the American's with Disabilities Act. He was also clearly not aware that asking yes and no questions to people with various types of developmental disabilities will not produce reliable answers. Questions that allow for open ended answers are preferred and will yield the most reliable information.

I witnessed the question-and-answer session at a table in the school yard. It was frustrating for everyone involved – participants and witnesses alike. The client would be asked a question and would often point to yes and when asked again would point to no. After a few minutes of this nonsensical process, the attorney finally gave up.

I later filled out a form for the client (MC 410), had the client sign it, and sent it to the attorney. The form stated that the client wanted reasonable accommodations by the attorney and by the court, both in and out of the courtroom. I told the attorney that I could submit it to the court for the client but that he was the attorney and that he should submit it.

What the attorney did was astonishing. Instead of submitting the form to the court, he sent it to the attorney for the objecting father. This was clearly in violation of the law, which states that the request is confidential and is strictly a matter between the party requesting the accommodation and the court.

The attorney was eventually pressured into going to the office of the client's therapist so that he could witness the client using FC, with his mother acting as the support person as the client used his talking I-Pad. The therapist had been communicating with the client on a weekly basis for about two years with FC as the communication technique.

Finally, the attorney had a moment of awakening. He could see that the client was intelligent and that the client could communicate. This new awareness helped the attorney to understand that the client could make his own social decisions and that the client did not want to visit with the father. Visitation was the primary contested issue in the case.

This is not the only case where an ADA violation came to my attention. Another case in which visitation with the father was the issue involved the PVP attorney and the judge both refusing a reasonable accommodation request.

This client was being forced, pursuant to a court order, to visit with his father on every third weekend. The client, a 26 year-old man with autism, had protested on many occasions. He was intelligent, shared an apartment with another adult with a disability and a live-in service provider, and held a part-time job. Despite his high-functioning abilities, however, he had emotional difficulties, especially in times of stress.

Everyone knows that courtrooms produce stress in people, especially in the litigants. This case produced even more stress, since the father was very intelligent and combative. The father had created nightmares for anyone who crossed his path, including caregivers, attorneys, and the Regional Center.

At one hearing, the PVP attorney – who disagreed with the wishes of her own client not to visit with his father and who was treating her client as a hostile witness – was asked by the judge to go into chambers to question her client outside of the presence of the other participants. The mother explained to the court that her son should be allowed to have his personal aide go into chambers as a support person. His presence there would help reduce the stress on her son. The judge refused. There would be no ADA accommodation.

These two examples, coupled with the fact that prior PVP training sessions have not mentioned the ADA and its requirements for attorneys and judges, cause me to conclude that there is an information void that needs to be filled.

A 30-minute presentation on ADA accommodations at a PVP training session is a start, but hardly sufficient to fill this void.

Attorneys need to be educated about each of the types of physical and developmental disabilities they may encounter as they represent clients in limited conservatorship proceedings. An entire 3-hour training session could be devoted to explaining, in detail, each of these cognitive and communication disabilities, how they affect the client's perception and reasoning process, and what an attorney should do to make sure that a person with one or more of these disabilities receives equal justice. Many clients have multiple disabilities.

In addition to physical disabilities that affect cognition and communication, there is a wide range of developmental and intellectual disabilities that attorneys should learn about. These include: autism spectrum disorders, attention deficit hyperactivity disorder, cerebral palsy, bipolar disorder, dyslexia, dysgraphia, Down syndrome, Williams syndrome, Rett syndrome, and fetal alcohol syndrome disorder.

Learning about the client's physical and developmental disabilities is not only important so the attorney can provide reasonable ADA accommodations as required by law, having such knowledge is essential for the attorney to comply with the statutory and constitutional entitlement of the client to effective assistance of counsel.

Getting into the details of these various disabilities and how an attorney should best deal with them, are matters that are beyond the scope of this article. These are topics that cannot be adequately covered in a 30-minute segment of a 3-hour training session that covers a wide range of other complicated topics.

The Probate Court should hire an expert to design a training session to provide detailed information on each type of developmental disability and how such disabilities affect cognition and communication. Once this information has been shared with attorneys in the morning session, an afternoon session would focus on techniques for interviewing people with developmental disabilities.

The morning session would include self advocates and experts familiar with each type of disability. The afternoon session would have a presenter skilled in forensic interviewing of people with developmental disabilities. These speakers should be hired under a contract with the court to insure that sufficient time is devoted by them to the preparation of their presentation. Using volunteers for this function is not acceptable. It is too important to delegate to volunteers. This is a professional job.

A PVP attorney has an obligation to acquire the necessary information about the disability of his or her clients in each and every case. Sharing information about a variety of disabilities and their effects on people is not just a matter for which the court and the bar association are responsible during a training session. Each attorney has a duty to independently acquire such information too.

At the start of each case, an attorney should contact the Regional Center to obtain a full set of documents pertaining to the client. Merely passively waiting for a two or three page Regional Center report just prior to the hearing is not sufficient.

Regional Centers have a wealth of information about their clients – most of which is relevant to the clients abilities and deficits. The documents also provide a timeline showing progress or decline in these capacities.

The Regional Center conducts an annual review of each client. The attorney should request copies of the annual reviews for three years. There are also IPPs and IEPs that an attorney can obtain from the client's case worker.

An IEP or Individualized Education Program is a written report that describes the client's present levels of performance, learning goals, school placement, and services. (34 Code of Federal Regulations (C.F.R.) Sec. 300.320)

An IPP or Individual Program Plan is a written agreement between a Regional Center and the client that set goals for the client and provides services that will help the client reach his or her goals.

The Regional Center file also contains reports from service providers, such as therapists, that can provide an attorney with additional insights into the client's abilities or incapacities.

These documents should be utilized by attorneys in each case to help evaluate the client. They will also assist the attorney to analyze the strengths and weaknesses of the evaluations and recommendations the Regional Center provides the court about the client's abilities in regard to the seven powers.

Conducting Interviews

An attorney representing a proposed limited conservatee should conduct several interviews prior to the hearing on the petition. Among the people who should be interviewed are: the client, petitioners, proposed conservators, relatives of the client, Regional Center case worker, teacher, employer, day program manager, and court investigator.

To maximize the effectiveness of these interviews, as much factual research as possible should be done before meeting with the persons to be interviewed. In addition to the petition and confidential questionnaires, the Regional Center documents mentioned above should all be read and considered.

The attorney should keep in mind the legal and factual issues that must be answered in each case: (1) What are the client's abilities and incapacities on each of the seven powers; (2) Have alternatives less restrictive than a conservatorship been considered, and if so, why won't they work; (3) Can the client make decisions, even with help, in any of the seven areas in question; (4) Does the client want a conservatorship or not; (5) Are the persons who want to be named conservators the best choice, are they qualified, and how does the client feel about them versus someone else being conservator; (6) Has a thorough investigation been done of the proposed conservators and all members of their household to minimize the risk of abuse to the conservatee; (7) Should the petition be granted in full or should it be modified or denied; and (8) Should an objection be raised and a hearing requested on any issue, such as voting rights, social rights, or sexual rights.

The attorney should be mindful that conservatorships are supposed to be a last resort, not a first choice. Limited powers should be given to the conservator if a petition is granted. As many rights as possible should be retained by the client. A petition should be granted only if there is clear and convincing evidence of the need for a conservatorship, that rights are not being improperly taken away, and that the person to serve as conservator is the best person.

It may very well be that the best way for a PVP attorney to protect the rights of the client – including the right to be safe, the right to live in the best environment, and the right to the best medical care and services, is not to oppose the petition. The most effective advocacy for someone with an extremely low IQ who cannot make informed decisions, even with help, would be to submit the matter for decision based on the petition and court investigator's report. Such a procedure does not violate duties of confidentiality or loyalty, as an affirmative stipulation might, but it creates a result that protects the client's rights even though a conservatorship will undoubtedly be granted with this procedure.

But before an attorney can reach the point of determining whether to file objections and demand a hearing on one or more issues, or whether not to contest the petition and to submit the matter to the court without recommendation, the attorney needs to conduct a thorough investigation. That includes conducting the various interviews mentioned above.

Interviewing the client is crucial. The attorney needs to know what the client thinks and feels about his or her rights being taken away. The attorney needs to know whether the client has the ability to make any choices at all. This information cannot be obtained merely by reading paperwork or interviewing parents or the case worker, although that is necessary. The client needs to be interviewed.

That raises the question as to how best to conduct an interview of a person with an intellectual or developmental disability – a person who may also have one or more physical disabilities too. We are talking about forensic interviewing of a person with cognitive or communication disabilities.

A review of many PVP fee claims in limited conservatorship cases shows that most attorneys do one visit to the client's home, where they interview the parents and sometimes, but not always, have a conversation with the client. The home visit lasts about two hours. That's it.

Seldom does the attorney interview paternal and maternal grandparents or siblings of the client, even on the phone. There may be a short phone conversation with the Regional Center case worker. There may be a short phone call to the court investigator. In total, the average case currently involves less than three hours of interviews.

The attorney should spend more time with the client, on more than one occasion, and in more than one setting. Before a client's interview occurs, the attorney should gather information from the parents, case worker, and perhaps the client's teacher about the client's preferred method of communication and the communication styles that work best with that client.

The attorney's first interaction with the client should be in his or her home. The client should not be surprised or caught off guard by the attorney's visit. The parents should inform their son or daughter that an attorney is coming to the house.

The primary purpose of the first visit should be to interview the parents. The client should be invited to be present for this interview. The attorney may engage in some side conversation with the client during the interview of the parents, primarily to build rapport with the client. When the attorney leaves the home, the client should feel that the attorney is a nice person who interacted in a comfortable manner with the parents. Conducting an interview of the client at this first visit may be too much too soon and could cause the client to clam up and fear the attorney. An attorney should build trust before doing the interview with the client.

The interview with the client should occur at a later date, preferably at the Regional Center and with the case worker present. The parents should give the client advance notice of this meeting and say "that nice man" or "that nice lady" who was at our home will be talking with them. The client probably remembers the case worker and if the client knows that the meeting will be at the Regional Center with the case worker present, the client should feel more at ease.

The parents should not be in the room when the client is interviewed. Part of the interview will focus on the parents or whoever the parents are asking to be appointed as conservators. The attorney needs to know if the client has any fear of the proposed conservators (usually the parents), if they have ever been hurt by either or both of the parents, etc. Questions will also be asked about whether the child has been hurt by anyone at all, whether it is a bus driver, janitor, teacher, etc.

This private interview of the child by the attorney may be the one and only time anyone has ever asked about abuse and it may be the first and last opportunity for the client to disclose such abuse if it has occurred. It would be devastating to the client if such questions were not asked and if the client were kept in a home with a perpetrator of abuse.

It is worth repeating at this point that a large majority of people with developmental disabilities have been victims of abuse by the time they reach the age of 18. Many are victims on multiple occasions, with a significant percent being victims on an ongoing basis. The abuse would have occurred while the victim was under the protection and control of his or her parents – even if the parents were not the perpetrators. It should also be noted that most perpetrators are parents, household members, or those who are in close contact with the victim on a daily basis.

Trauma-informed justice requires that an attorney ask questions about abuse during the first formal interview with the client (after a rapport-building encounter at the home) in a setting such as a Regional Center without the parents being present during the interview. Having the case worker present should help the client feel more comfortable.

In addition to the timing and location of the interview, the methods used to elicit information are also very important.

I am not aware of any training materials that have been prepared by the court or by the county bar association for PVP attorneys regarding the interviewing of clients with developmental disabilities. I am also not aware of any previous seminars for such attorneys that have included this topic, although it is possible that it was mentioned in passing.

Fortunately, the court now seems to be aware of this omission and has included a short presentation on such interviewing at a mandatory training session on September 13. Perhaps the court will offer, indeed require, a more thorough training session for attorneys next year. A proper training seminar on forensic interviewing of people with developmental disabilities would consume an entire day.

Dr. Nora Baladerian, a clinical psychologist with a practice in Los Angeles, has been conducting such seminars for many years. She has trained attorneys and law enforcement personnel as well as social workers and psychologists. She has specialized in the field of developmental disabilities for decades.

Although it focuses on abuse victims, one of Dr. Baladerian's training books would be helpful for attorneys who interview people with developmental disabilities on other issues as well. (Interviewing Skills to Use with Abuse Victims Who Have Developmental Disabilities, Disability and Abuse Project (2004))

There is also a DVD video and training guide she produced for the Office for Victims of Crime of the United States Department of Justice that would be helpful for PVP attorneys to view. (Victims with Disabilities: The Forensic Interview) The video and the guidebook explain techniques for interviewing people with communication and/or cognitive disabilities.

These resources are listed on the website of the Disability and Abuse Project and there is information on how to obtain them.

This "Strategic Guide" is not intended to impart comprehensive information about interviewing skills. That would be too much for a short article such as this. What is intended is to give the reader some tips and point him or her toward resources for more detailed information.

A few tips will be shared here. Building rapport with the client is critical. If possible, an attorney should not conduct an interview of the client the first time the attorney and client meet.

People with developmental disabilities often know there is a social stigma attached to having a disability. They may try to hide their disability by pretending to understand something even if they don't. The attorney should gently probe to make sure something is, in fact, understood.

Many people with developmental disabilities tend to be people pleasers, especially wanting to please those who are perceived to be in authority. They may say what they think the interviewer wants them to say.

Questions that require yes and no answers are not the best way to proceed. They may yield false or inconsistent results. Asking questions that allow for open ended answers is the best way to proceed. Allow clients to say things in their own way.

Be patient. Do not hint that you are running out of time. Do not put time pressure on the client.

Use simple language, but don't use "baby talk." Speak in a normal tone and with a normal volume. Be respectful and use age-appropriate interactions.

Reasonable ADA accommodations should be provided during any interview, of the client or other person, when the interviewee has a communication or cognitive disability. For example, some people use augmentative communication technologies, including facilitated communication devices and support persons.

The attorney should check with the appropriate person, in advance, to make sure that such supportive technologies are available on the site of the interview, including sign language interpreters for clients who may be Deaf.

Assessing the "Seven Powers"

Probate Code Section 2351.5 specifies that authority in several areas of decision making shall not be taken from the proposed conservatee and transferred to the conservator unless they are requested in the petition and ordered by the court.

The seven powers involve: (1) fixing the place of residence; (2) accessing medical records; (3) consenting to marriage; (4) entering into contracts; (5) granting or withholding medical consent; (6) controlling social and sexual contacts and relationships; and (7) making educational decisions.

A conservatorship proceeding begins with a presumption that the proposed conservatee has the capacity to make any and all decisions in his or her life, including in these seven areas. The petitioner has the burden of proof, by clear and convincing evidence, that any or all of these powers shall be taken from the conservatee.

In addition to the views of the petitioner, the court-investigator, and the proposed conservatee, the court will consider the assessment and recommendations of the Regional Center, which has a statutory duty to file a report with the court on these issues.

The attorney for the proposed conservatee has a duty to independently investigate the client's abilities in these areas, determine the client's wishes, and to advocate for the client in court.

My research of dozens of cases in Los Angeles County shows serious problems with the practices of attorneys as well as the Regional Centers with respect to the "seven powers."

Petitioners routinely ask for all seven powers to be granted to the conservators. That seems to be the result of the parents going to the Self Help Clinic. The Clinic does not educate or counsel parents about criteria that should be used to evaluate whether to ask for a particular power or to allow their son or daughter to retain authority in any given area.

In the overwhelming majority of cases, the PVP attorneys are stating in their report to the court that the client lacks the ability to make decisions in all seven areas.

Regional Center reports generally follow the same pattern, although some reports ask the court to allow the client to retain the right to make choices on marriage, social relationships, and sexual contacts.

In a significant number of cases, the court makes a decision without the PVP attorney or the court seeing the Regional Center report. That is because the hearing on the petition is held, and concluded, prior to that report being filed with the court.

The law contemplates a case-by-case, issue-by-issue, serious evaluation of each of the seven powers – by the court investigator, the court-appointed attorney, and the Regional Center. What seems to be happening is just the opposite. There is a routine practice of virtually all participants in the case asking the court to transfer all seven powers – with a result that in the overwhelming majority of cases that is what the court does.

Each Regional Center is a separate legal entity. What Westside Regional Center does has no bearing on what Lanterman Regional Center does. The policies of South Central Regional Center have no application to East Los Angeles Regional Center. Clients served by one Regional Center may get professional evaluations and individualized assessments on the seven powers, while clients served by another Regional Center may get short shrift on this score.

The court has not established guidelines or criteria for the Regional Centers in making these assessments of client capacities. There is no requirement that a licensed psychologist review and sign off on the preliminary assessment done by a case worker who may not have a college degree.

In a meeting I recently had with high-level staff at one Regional Center, I said that it appeared to me that evaluations are made on an ad-hoc basis and that there did not appear to be criteria for these assessments or training of staff on how to make them. Although no one verbally responded to my comment, I did notice a few heads moving up and

down in agreement.

I am unaware of any significant training of PVP attorneys in the past that focused, in any detail, on each of the seven powers, the criteria for proper assessments, and how to challenge the reports of court investigators or Regional Center case workers who make recommendations to the court.

The seven powers are at the core of a limited conservatorship proceeding – and yet I have not found manuals, guidelines, or training materials for attorneys, court investigators, or Regional Center staff on how the assessment should be made in each of the seven areas.

Proposed conservatees are constitutionally entitled to due process of law. They are also entitled to equal protection and uniform application of the law. These constitutional guarantees ring hollow when it comes to the practices of the Regional Centers, the court-appointed attorneys, and the court itself.

For clients with an IQ of 30 or less, perhaps it will usually be appropriate to transfer all seven powers. For those with an IQ of 70 or more, perhaps a conservatorship is inappropriate. For those in the middle range, careful assessments must be done regarding the client's abilities, with appropriate support, to make decisions in each of these areas.

Until such time as the deficiency of the system, with respect to the evaluation of the seven powers, is addressed by the Probate Court, the Judicial Council, the Department of Developmental Services (the agency that regulates Regional Centers), and the Legislature, the burden falls to individual attorneys to demand answers.

In a specific case, an attorney can ask the Regional Center to produce information on: (1) the credentials of the person making the recommendation; (2) the materials and information used by that person in formulating his or her opinions; (3) the criteria the Regional Center uses for each of the seven powers; (4) the training the Regional Center provides to staff on these criteria and evaluations, including the materials used and dates of such trainings. If this information is not provided voluntarily, the documents can be obtained by subpoena.

This is a major request to make of PVP attorneys in individual cases. But without this information, an attorney is merely shuffling papers and going through the motions of analyzing the Regional Center's evaluations and recommendations.

If the Office of the Public Defender represented proposed conservatees in all cases, instead of having dozens of individual attorneys providing such representation, the task mentioned above would be easier. The Public Defender could, as an institution, demand such information from each of the seven Regional Centers in Los Angeles County. One attorney could be assigned to evaluate these materials and produce a report that could be used by the handful of deputy public defenders who would be handling such cases.

But the Public Defender's office is not involved. No advocacy or executive branch agency is engaged in quality assurance. Instead, there are probably about 50 individual attorneys who handle limited conservatorship cases. Many are solo practitioners with little or no staff. Asking them to challenge "the system" is asking a lot.

Regardless of the burden of the job, someone must challenge the routine manner in which assessments are being done, and the lack of criteria for, and training of, the people who are making the assessments. The client's rights to due process and equal protection require major changes in the system.

Without getting into the details of each of the seven powers, there are a few that deserve a closer look.

Although the statute lumps them together in one sentence, and although court forms do too, attorneys should treat social rights separately from sexual rights. These are two completely different issues. Each has it own set of concerns.

Sexuality is a big issue for any adult. Just try to tell someone that they will no longer have the right to engage in sex and see what reaction occurs. The reply might be rather harsh.

Many parents do not want to think about their son or daughter as a sexual person. This notion is especially bothersome to many parents whose child has a developmental disability.

And yet, a person with a developmental disability has a constitutional right to sexual intimacy once he or she becomes an adult. Freedom of choice includes the freedom to have sex, whether it is masturbation, kissing, touching, sexual intercourse, or other forms of consensual sex – whether homosexual or heterosexual.

Taking that choice away, in a conservatorship proceeding, could be subjecting an adult to a lifetime of abstinence. That's pretty strong stuff.

The idea behind restricting the sexual rights of a proposed conservatee is that doing so is necessary for their protection. They might make bad choices. They might be taken advantage of. They might catch a communicable disease. They might get pregnant.

These are concerns for any adult. People sometimes make bad choices. But fear of them making bad choices is not grounds to restrict the sexual rights of an adult. More must be shown than a generalized fear of harm.

Before a decision is made on whether to remove the right to make sexual choices from a proposed conservatee, various factors should be considered.

If the authority over sexual matters is transferred to the conservator, how will that authority be exercised by them? Answering that question requires the attorney to have a frank conversation with the proposed conservator about the client's sexual orientation and propensity for sexual activities – and the conservator's intentions on allowing or not allowing the client to engage in any form of sex.

Some parents believe that masturbation is a sin. They may intend to discourage or even prohibit the client from masturbating, even in private. If that is the case, perhaps a more liberal or enlightened conservator may be a better choice for a client who may want to masturbate periodically.

Other parents may feel that homosexuality is taboo in their culture. They may intend to prohibit their adult son or daughter, who shows homosexual propensities, from having a boyfriend or girlfriend of the same sex. They may have already taken steps to discourage or condemn their child's expression of homosexual desires. Again, under such circumstances, the anti-gay parent may be the wrong person to be appointed conservator.

Sexuality is probably something that most PVP attorneys never discuss with clients, parents or case workers. Since sexuality is a central feature of the life of any adult, and is one of the most cherished attributes of adulthood, it is something that should be discussed in every case – just as potential current or past abuse should always be investigated and discussed with the client.

There are teaching tools that parents or case workers can use to approach the topic of sexuality with clients. One such tool is a book titled "The Rules of Sex: For Those Who Have Never Been Told." The book is written by and for people with developmental disabilities. It is best used with the assistance of someone the client trusts and with whom the client is willing to discuss such personal matters.

If the court is inclined to transfer the power over sexual contacts to the conservator, the attorney may at least want to clarify, on the record, that solitary sexuality may not be prohibited by the conservator.

The issue of social decisions is another major issue that needs to be addressed in every case. Authority to make social decisions should be separated from that of sexual decisions.

Another attribute of adulthood – one that everyone cherishes when they turn 18 – is the right to make decisions on who to associate with, who to avoid, what movies to see, and what recreational activities to refuse. Freedom from parental control in social matters is one of the biggest aspects of the right of passage from childhood to adulthood.

The Lanterman Act says that people with developmental disabilities have the same constitutional and statutory rights as every other citizen. The Probate

Code incorporates the principles of the Lanterman Act into limited conservatorship proceedings.

The right to make social decisions should never be taken away from a conservatee without a specific and factually-based showing, by clear and convincing evidence, that the client has and will make social choices that will result in significant harm. Meeting this burden of proof would be rare.

Even if a court were to find that a client should not have the right to associate with a particular person or group of people due to demonstrated risk of harm, that would not form the basis for taking away the client's right to refuse to have contact with someone. While there may be risk of harm in having contact, not having contact poses no risk.

The problem of social rights came to my attention in two contentious limited conservatorship cases. Each involved a young man with autism. Each involved parents who were divorced. In each case, the client did not want to visit with the father.

In each case, the father had money and was domineering. The fathers would not take "no" for an answer. In each case, the mothers wanted their son's right to make social decisions respected. The PVP attorneys acted in a paternalistic manner, wanting their clients to bond with the fathers, and did not advocate for their clients' social rights, undermining their First Amendment rights in the process.

Craig was a high functioning 26-year-old with autism. He lived in an apartment with a roommate and a live-in service provider and had a part-time job. He feared his father and did not want to see him.

Craig's first court-appointed attorney ignored Craig's wishes and stipulated to an order that mandated visits with the father every third weekend. This stipulation was made by the attorney even though the court had not taken away Craig's social rights and therefore Craig should have had a right to say no to visits with the Dad.

The mother appealed the judge's order, arguing that her son's constitutional rights had been violated. Craig was not represented on appeal, since it was his own attorney who had agreed to the visitation order and therefore the attorney was not going to appeal from his own action. The Court of Appeal dismissed the appeal on the ground that the mother lacked "standing" to appeal since it was not her rights that were violated. Thus, a "catch 22" was created. The only one allowed to appeal is the conservatee, but the conservatee's attorney won't appeal to challenge his own action.

During the pendency of the appeal, the conservators (who were not the parents) noticed the inconsistency of having a "forced visitation" order for a conservatee who retained his social rights. So they decided to petition the court to transfer authority on social decisions from Craig to them as conservators. I got involved and helped Craig ask for a new attorney, hoping that he would get a lawyer who would advocate for Craig's First Amendment rights.

The court did appoint a new lawyer. Unfortunately, the new lawyer was worse than the first one. She ignored materials I sent to her on the First Amendment rights of conservatees. She ignored a series of documented statements by Craig, in a variety of settings – including in open court – that Craig did not want to visit with his Dad. She argued against her client's stated wishes, apparently promoting what she thought was in his "best interests" instead. Craig lost his social rights and is currently being forced to visit with his father every third weekend even though he does not want to do so. The system has acted in a paternalistic manner, with the judge ignoring Craig's First Amendment rights and his attorney acting as a guardian ad litem rather than as an advocate.

I did the best I could to convince Craig's PVP attorney to provide effective advocacy. I sent her an essay titled "Social Rights Advocacy for Adults with Autism: Forced Socialization is Never Acceptable." I also sent her an essay that contained a set of "Legal Principles Governing Attempts to Restrict the Social Rights of Conservatees." Both documents were either ignored or rejected.

In the second case, Roy was a 19-year-old man with autism. He was mostly nonverbal. For reasons I

will not go into here, he feared his father. The thought of visiting his father prompted serious emotional reactions that required therapy.

His court-appointed attorney is the one I mentioned earlier who did not want the client to use facilitated communication. At first, he wanted to stipulate to periodic visits with the father, including travel to the East Coast where the father lived.

After many conversations and sharing the documents listed above, in addition to intervention by Roy's therapist, the lawyer finally relented. He agreed to insist that Roy would retain his social rights, including the right not to visit with his father.

However, as soon as the court entered an order in which Roy retained his social rights, the lawyer suggested that Roy should visit with the father on Skype every week. This was not something that had been discussed with Roy or agreed to by Roy prior to the hearing. It came out of the blue.

The father's attorney agreed and the court indicated that Roy should visit with his father on Skype. These visits have been occurring every week, with the result that Roy's weekly therapy sessions are routinely consumed by emotional turmoil from the prior week's Skype session.

Having his social rights in theory has not translated into Roy being free of contact with his father.

A future training of attorneys should be devoted entirely to the constitutional rights of conservatees.

A segment in such a training should focus on the due process right of the client to effective assistance of counsel. Remedies for IAC would be among the issues in this segment: (1) the right to a "Marsden" hearing if the client or his parent complains about the substandard performance of the PVP attorney; (2) an appeal by a "next friend" of the conservatee to challenge ineffective assistance by the PVP attorney, (3) a writ petition challenging IAC and the deprivations of liberty resulting from attorney negligence; (4) a complaint with the State Bar regarding IAC; and (5) a civil suit for legal malpractice filed by the client or the conservator.

Another segment should focus on federal constitutional violations involved by orders disqualifying a conservatee from voting. More will be said about that in the next section.

A segment should address the constitutional rights of conservatees to sexual privacy and expression. The First Amendment issues of freedom of speech and freedom of association – especially in the context of forced visitation with a parent – should also be included in such a training session.

A Roundtable Conference on the "seven powers" – long overdue – is in the planning stage now.

Voting Rights

The issue of voting rights is being addressed in a meaningful way for the first time in the September 13 training. The issue was either not discussed at all, or mentioned only in passing, at prior trainings.

I assume the issue made the agenda this time because of a complaint against the Los Angeles Superior Court filed by the Disability and Abuse Project with the United States Department of Justice.

The complaint came out of a Voting Rights Conference that focused on California law, court rules, and practices of the Probate Court to take away voting rights from limited conservatees in approximately 90 percent of the cases processed through the Los Angeles Court.

The complaint alleged that judges and PVP attorneys were participating in a process that violated voting rights protections under federal law. One protection prohibits states from using a "literacy test" to determine eligibility of a person to vote. Another protection gives citizens the right to have assistance as they participate in the voting process.

The Probate Code directs judges to order conservatees disqualified from voting if they are unable to complete an affidavit of voter registration. Some judges and court-appointed attorney were interpreting this to mean that conservatees had to complete the form on their own. If they could not, then they would be disqualified from voting.

In response to the conference and the complaint, the Secretary of State sponsored a bill to clarify that conservatees can have someone assist them in filling out a voter registration form. AB 1311 has passed the Legislature and is on the Governor's desk.

Even if the bill is signed by the Governor, and conservatees are allowed to have someone help them to complete a voter registration form, issues will come up as to how much help is allowed. Also, there will be the question of what to do if someone questions the conservatee's ability to understand the penalty of perjury affirmation required in the form.

Regardless of whether assistance is allowed or not, the requirement that conservatees must be able to complete a voter registration form is still a "literacy test" contrary to federal law. A literacy test is any process that requires a person to demonstrate that he or she can read, write, interpret, or understand any matter. Such a process violates federal law.

Court appointed attorneys should challenge any order disqualifying a client from voting. They should argue it is a violation of the "literacy test" prohibition of federal law. An appeal should be filed if a disqualification order is entered.

Contested Hearings

Any judicial proceeding contemplates a significant number of contested hearings and a number of appeals from judicial orders. Contested hearings and appeals are inherent in any adversarial system.

Appeals play an important role in the development of a body of precedents that will shape the law and guide trial courts and attorneys in future cases. Appeals are not only expected, they are essential to the development of stare decisis.

There are large bodies of appellate case law in criminal law, family law, civil law, juvenile law, and probate law. Through the appellate process, the policies and practices of the trial court and the attorneys who practice in these fields are scrutinized. The rulings of the trial courts are either affirmed or reversed, teaching us all a lesson.

What has been happening in the Limited Conservatorship System is an aberration. In Los Angeles County, for example, more than 95 percent of the cases are resolved without a contested hearing. Appeals are virtually non-existent. As a result, there is no body of appellate case law that is developing to guide attorneys and judges in the trial court – and everyone knows it.

Probate judges know their decisions will not be challenged on appeal. Attorneys know the judges do not want contested hearings and so they fulfill their "secondary role" to help the court resolve cases.

Partly to blame for this is the paternalistic attitude of the participants. Proposed conservatees are viewed as helpless dependents, parents are viewed as benevolent overseers, and the transfer of all seven powers is viewed as a foregone conclusion. Add to that the budget constraints that everyone is constantly reminded of – and the corresponding request to put in as few hours as possible – and we have a system that has been turned into an efficient assembly line.

The fact that 50 or so attorneys are "competing" for appointments in 1,200 cases per year – and the fact that the judges they appear before are the ones who appoint them, pay them, and decide if they will be appointed in future cases – and we have a formula that encourages attorneys to be passive participants.

A presumptive upper limit of 12 hours per case is unacceptable. Let's do the math.

Reading Regional Center documents would take at least 2 hours. The first home visit to meet the client and interview the parents would be at least 4 hours including travel time. Phone calls to interview maternal and paternal grandparents would consume another 2 hours. The visit to the Regional Center, including the interview of the client, would take 4 hours including travel time. Interviewing adult siblings could involve another hour. Speaking with a court investigator and a teacher, reading the investigator's report and reading the Regional Center report and the confidential questionnaires of the proposed conservators would take another 3 hours. One court appearance and travel to and from court would take another 4 hours. Under this scenario,

even without legal research and without any additional hearings, an attorney would spent a minimum of 20 hours on a case.

Even if the rate of $125 per hour is accepted, the lawyer's fee for performing these services would be $2,500. If we add to that an objection to one of the seven powers, entailing a written motion and another hearing, the fee could easily go up to $3,500. Contrast this with the current system where the average fee claim is for about $750.

Why the court is requiring PVP attorneys to limit their hours to 12, or why attorneys only charge for about 6 hours in the average case is a mystery. The money to pay PVP attorneys does not come out of the court's budget. The money comes from the County of Los Angeles.

Attorneys should be allowed to do what is necessary to provide effective assistance of counsel as required by due process. The courts should grant awards for such fees without hesitation. The county should pay these awards to fulfill its statutory mandate. Apparently, this is not happening because PVP attorneys are not organized and have no leverage. Perhaps it is time for PVP attorneys to form their own professional association – one where members can network information, share opinions, invite guest speakers, track legislation affecting limited conservatorships, and even hire an agent to negotiate fee schedules with the court and monitor proceedings of the Judicial Council that affect the members and their clients.

Appeals

Appeals in limited conservatorship proceedings are rare. As a result, the Justices on the Court of Appeals and the Supreme Court have been deprived of an opportunity to review the practices occurring in the Probate Courts and to render opinions on which ones are acceptable and which ones are not.

There is a dearth of precedent in this area of the law. This is not because the law is well settled or that everyone in the system is performing exceptionally well. From my analysis, just the opposite it true. Things are not well in "limited conservatorship land" but the appellate courts just never get to see what is happening in the trenches.

One of the reasons for a lack of appeals is the fact that most petitioners are not represented by attorneys. In Los Angeles County, about 90 percent of petitioners are "pro per."

Usually these petitioners get what they are asking for, so there is no reason for them to appeal – not that they would know how or have the financial resources to do so anyway. They get what they want because the attorneys appointed to represent the proposed limited conservatees do not contest the petition and rarely contest any of the specific requests in the petition.

Court-appointed attorneys are generally surrendering rights rather than defending them. They file reports, as a matter of public record, in which they disclose their opinions and observations concluding that their clients are unable to make choices in most, if not all, of the seven areas in question. They generally make disclosures that they know will result in their client losing his or her right to vote.

The overwhelming majority of cases are taken out of the potential pool of appealable cases. Rights have been stipulated away. There can be no appeal in these cases.

There is the theoretical possibility that a client could appeal an order of voter disqualification, or an order removing social or sexual rights. But that possibility becomes an impossibility when the realities of the system are acknowledged.

Developmentally disabled clients are unaware of the right to appeal. Many of them might not understand this concept even if someone explained it to them. For those who might understand, the problem is that no one speaks to them about it.

Their attorney is usually relieved as counsel as soon as the court enters an order granting the petition. The order granting fees usually contains a provision clarifying that the attorney is relieved as counsel. Once an attorney is off the case, the attorney has no authority to file a notice of appeal.

But in uncontested cases, the attorney would not have a reason to appeal anyway. The client might be able to raise ineffective assistance of counsel as a ground on appeal, but the attorney surely would not want to assist the client in initiating such an appeal. Plus, the attorney would have a conflict of interest in doing so.

There are no court rules or PVP guidelines that instruct attorneys to advise a client of the right to appeal and the time limitations for doing so. The end result is that after the order is entered and the attorney is relieved as counsel, there is not a chance that a client will file a notice of appeal.

In cases where two divorced parents have raised contested issues, and each is represented by counsel, there is a possibility of an appeal. But the appeal must be limited to issues that have adversely affected the parent directly. The parents may not use the appellate process to complain about the violation of the rights of their adult son or daughter who is a limited conservatee. The possibility was removed by a recent appellate case. (Conservatorship of Gregory D. (2013) 214 Cal.App.4th 62)

Until such time as the Legislature decides to grant vicarious standing to a parent to appeal from the denial of the rights of their adult child, or until such time as someone uses the concept of "next friend" appeals to fill this procedural void, limited conservatees are out of luck if their attorney surrenders their rights or does a sub-standard job.

I find it simply maddening to know that PVP attorneys are not aggressively defending the social rights, sexual rights, and voting rights of their clients. They are not contesting requests by parents to remove social and sexual rights and insisting that the court hold a hearing at which the petitioners would have the burden of proof to show, by clear and convincing evidence that the client lacks capacity in these areas. If such objections were raised more frequently, the parents would likely remove these requests and an appeal would not be necessary.

But if the court were to remove these rights, or to disqualify the client from voting, the attorney should help the client file a timely notice of appeal. A statement would be included that the client cannot afford to retain an attorney and that the client wants the Court of Appeal to appoint an attorney.

In the event that "the powers that be" realize that the Limited Conservatorship System is badly broken, and court rules and judicial expectations about PVP attorneys begin to change, I could envision a mandatory training for PVP attorneys regarding their role in creating a record in the trial court that preserves issues for appeal.

A training seminar should bring in attorneys well versed in litigation strategies and who would coach PVP attorneys on filing motions and raising objections regarding the inadequacy of petitions, or to question the conclusions and recommendations in court investigator or Regional Center reports. The seminar would discuss various experts the attorney could ask the court to appoint who would help them better evaluate the clients abilities. If attorneys stopped being "the eyes and ears of the court" and took on the role of defender of rights, a seminar on such trial strategies would be necessary.

Attorneys who are retained by professional conservators know how to file motions and make objections. They even file appeals. When one or both of the parents have money – which is tapped into by the court to pay the attorneys for professional conservators – creative and endless advocacy is not uncommon.

When conservators or petitioners who have money or access to money want a particular result, they get plenty of effective advocacy. But for limited conservatees and proposed conservatees who lack the ability or the funds to hire a private attorney – effective advocacy is a rare commodity.

I am beginning to see merit in changing from a system of court appointments from a panel of private attorneys – who lack the resources to "take on the system" – to the involvement of an institutional lawfirm such as the Public Defender. Such an agency can appoint attorneys to its "limited conservatorship division" if a head deputy feels the attorney is truly qualified for this speciality.

There would be an internal chain of command that could be used by anyone who feels the attorney is performing below par to question the attorney's performance. The agency could institute various quality assurance mechanisms – something that is currently lacking in the court-run PVP appointment system.

The Public Defender's Office would have only a handful of attorneys to train – a team of lawyers who would be representing clients with developmental disabilities day in and day out. These attorneys would not have a financial or institutional bias against making motions or filing appeals.

The lack of appeals in limited conservatorship cases raises a host of issues – and is the topic of another article in another forum at another time. But for now, suffice it to say that the utter lack of appeals has caught my attention and hopefully will get the attention of those who supervise and administer the system of justice in California.

Conclusion

This is a huge amount of information, some of which may be viewed as provocative, to share with PVP attorneys at one time.

This information has been developed through hundreds of hours of research, interviews, consultations, and conferences over the course of the past eight months. I immersed myself in the Limited Conservatorship System and acquainted myself with its policies, practices, and participants.

My initial observations and suggestions were shared with the Presiding Judge of the Probate Court in Los Angeles in February 2014. (Adults with Developmental Disabilities Deserve Better: The Appointed-Attorney System Should be Reformed." I never received a response to the various options for reform that I suggested in that paper.

My research and consultations continued and, after a full-day conference with a wide range of various experts, a more comprehensive report was sent to the Chief Justice of California, the Attorney General, the Department of Developmental Services, and the Presiding Judge of the Probate Court in Los Angeles. (Justice Denied: How California's Limited Conservatorship System is Failing to Protect the Right of People with Developmental Disabilities.)

The Chief Justice referred the *Justice Denied* report to Justice Harry Hull, Chair of the Judicial Council's Committee on Rules and Projects. Justice Hull sent the report to members of the Probate and Mental Health Advisory Committee. Los Angeles Superior Court Judge Mitchell Beckloff chairs the Advisory Committee. I am advised that the Advisory Committee is currently reviewing a proposal for the Judicial Council to create a Task Force on Limited Conservatorships for a statewide study of the Limited Conservatorship System.

This article is being sent to the Chief Justice, the Judicial Council, the Probate and Mental Health Advisory Committee, the Board of Governors of the California State Bar, and the Board of Trustees of the Los Angeles County Bar Association.

The Chairpersons of the Assembly Judiciary Committee and the of the Senate Judiciary Committee will also receive copies of this article.

It is also being sent to the Los Angeles Public Defender. That office should consider accepting appointments in limited conservatorship cases.

I have finally said what no one has been willing to say. "There's an elephant in the room." There. It's done. The secret is out. The Limited Conservatorship System is badly broken, and the expectations placed on members of the Probate Volunteer Panel are unreasonable, unethical, and unconstitutional.

Systemic changes can only be made by those who create and operate the systems – the Legislature, the Judicial Council, the Administrative Office of the Courts, the State Bar of California, and the Presiding Judge of the Probate Court in each county.

But when it comes to representation in an individual case, the power to make changes is with the attorney who has been appointed to the case – even without systemic change occurring first. Attorneys can ask questions in training sessions, write letters to the

Presiding Judge, ask for ethics opinions from a bar association, file written motions and make verbal objections in court, and yes, even file appeals.

I recall that in the mid-1970s when I was defending gay men in misdemeanor cases – lewd conduct cases where they had been entrapped by vice officers – the system was fatally flawed. I did not wait for the system to change itself. I worked to change the system – case by case and project by project.

The statutes were unconstitutionally vague and the Legislature would not revise them. The statutes were enforced in a discriminatory manner by the police and the Police Commission and City Council allowed that to happen. Appellate courts had routinely affirmed convictions and upheld the constitutionality of the statutes.

Defense attorneys had developed lucrative practices where they plea bargained nearly every case and never challenged the system. Trial court judges were so ensnared by the homophobic status quo that they flippantly imposed conditions of probation telling misdemeanor defendants – in open court – not to associate with known homosexuals as a condition of probation. There were almost no contested trials, almost never an appeal.

It was into this unjust system that I was initiated as a lawyer. I had seen it from the sidelines as a law student, but now it was my turn, as a new lawyer, to go along with the status quo and make money from the assembly line of plea bargaining, or to stand up and challenge the system. I chose the latter.

I filed constitutional objections, appeals and writs, conducted trials, wrote letters, generated publicity, and did everything I could to change the system. It took years – but by working with a few like-minded colleagues, things changed. The law was declared unconstitutional by the Supreme Court. The judges stopped imposing the conditions of probation. The Police Commission and the City Attorney put an end to the discriminatory enforcement of the law.

The class for which we advocated, and the individuals that came in contact with the criminal justice system, finally could receive justice.

The same transformation can occur in the Limited Conservatorship System. A few attorneys can make the system reform itself.

They don't have to wait for judges and legislators to create systemic change on a large scale. They can change their own practices in the cases they handle. If they do, the pieces of the "justice puzzle" will then begin to fall into place.

Disability & Abuse Project

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Activities of the Disability and Abuse Project are coordinated 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 Director.

Dr. Nora J. Baladerian has decades of experience as a clinical psychologist, educator, and advocate. Jim Stream has extensive experience in agency management and delivery of services to people with disabilities. He is also an advocate. Thomas F. Coleman has nearly 40 years of experience as a legal advocate involving civil, criminal, and constitutional law.

The Project has dozens of consultants who are educators, researchers, advocates, psychologists, law enforcement personnel, and service providers.

What this team has in common is a passion for justice, a strong desire to bring national attention to the problem of disability and abuse, and a commitment to convince governmental agencies and nonprofit organizations to address this problem more effectively. Conservatorship is now on its agenda.

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.