



A Call to Disability Rights California
to Join the Emerging and Growing
Conservatorship Reform Movement

From Spectrum Institute

October 3, 2019



Disability and Guardianship Project Disability and Abuse Project

555 S. Sunrise Way, Suite 205 • Palm Springs, CA 92264
(818) 230-5156 • www.spectruminstitute.org

October 3, 2019

Ms. Jennifer Restle, President
Mr. Charles Erlich, Chair
Disability Rights California
1831 K Street
Sacramento, CA 95811

Re: A Call to Join the Conservatorship Reform Movement

Dear Ms. Restle and Mr. Erlich:

For many years there have been ongoing complaints regarding overreach and abuses by the probate conservatorship system in California. That system, which adversely affects seniors and people with developmental disabilities, has been stubbornly resistant to change.

There are currently more than 43,000 adults with developmental disabilities who are living under an order of conservatorship. There may be an additional 20,000 seniors and other adults whose lives have been taken over by court-appointed conservators. As many as 5,000 new probate conservatorship petitions are filed each year in the state. Many of these proposed conservatees do not even receive the services of an attorney. When attorneys are appointed, many of the lawyers surrender their clients' rights or actively advocate against them.

Spectrum Institute has taken up the cause of conservatorship reform. We want to reduce the risk of financial exploitation and physical and emotional abuse that is all too often perpetrated by conservators. We also want to ensure that people with disabilities have meaningful participation in the proceedings, and that less restrictive alternatives are actively investigated and used when feasible.

We have engaged in a variety of activities to further these goals, often inviting Disability Rights California to lend its support. Unfortunately, DRC has chosen not to become involved in this field of advocacy – either on behalf of the class of people who are adversely affected or for specific individuals whose rights are being violated in probate conservatorship proceedings.

We would like to meet with you to explore how DRC can become involved in the conservatorship reform movement in a significant manner. Please let us know when such a meeting can occur.

Respectfully,

Thomas F. Coleman
Disability and Guardianship Project
tomcoleman@spectruminstitute.org

Nora J. Baladerian, Ph.D.
Disability and Abuse Project
nora@disability-abuse.com

Disability Rights California Can Become a Leading Advocate for Access to Justice in Conservatorship Proceedings

by Thomas F. Coleman

Disability Rights California is the “protection and advocacy” agency in California. As such, the California Legislature has given DRC authority to “[p]ursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people with disabilities.” (Welfare and Institutions Code Section 4902(a)(2))

The State of California provides millions of dollars per year to DRC to perform advocacy functions for people with disabilities. That state funding is over and above the considerable money DRC receives from the federal government and other sources.

In addition to central staff, which includes a team of lawyers, DRC has clients’ rights advocates in each of the regional centers throughout the state. DRC’s Office of Clients’ Rights Advocacy (OCRA) has a memorandum of understanding with all 21 regional centers that requires it to “comply with all applicable state, federal, departmental and regional center laws, contracts, and MOU’s governing the protection of clients’ rights.”

Such laws include the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, California’s Lanterman Developmental Disabilities Services Act, and California Government Code Section 11135. Each of these statutes applies to adults with intellectual and developmental disabilities who receive court orders requiring them to participate in probate conservatorship proceedings. These laws guarantee people with disabilities meaningful participation and effective communication in such court proceedings.

The MOU between OCRA and each regional center specifies that clients’ rights advocates will be available for consultation to regional center clients and staff regarding conservatorship matters. Also

mentioned in the MOU’s is a role for clients’ rights advocates to investigate and process complaints for violations of Title 17 of the California Code of Regulations.

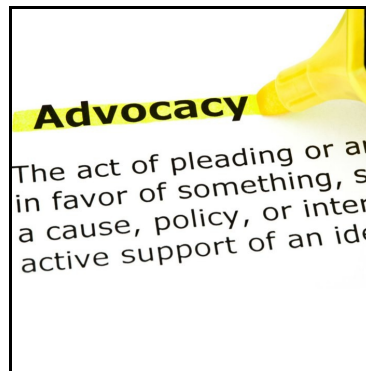
Title 17 includes a section on “access rights.” (17 CCR Sec. 50510) This includes a right to advocacy services to protect and assert the civil, legal, and service rights to which any person with developmental disabilities is entitled. It also includes a right of access to the courts to contest a conservatorship, its terms, and/or the person appointed as a conservator.

The Lanterman Act says that no person with a developmental disability shall be denied the benefits of or be subjected to discrimination under any program or activity which receives public funds. (Welfare and Institutions Code Sec. 4502) Conservatorship proceedings are activities of the courts. Courts receive public funds. It is therefore a violation of the Lanterman Act when people with developmental disabilities are denied access to justice in such proceedings.

DRC has a multi-year contract with the Department of Developmental Services. Under the contract, DRC has a duty to provide clients’ rights advocacy services responsive to the access needs of persons with disabilities. For tens of thousands of adults with developmental disabilities, there is a need for access to justice in conservatorship proceedings.

The contract specifies that DRC shall protect and assert the rights of people with developmental disabilities under Title 17 of the California Code of Regulations. Of course, this would include “access rights” in conservatorship proceedings as described in Section 50510.

In addition to investigating and taking action to resolve complaints initiated by regional center



clients or their representatives, DRC also has authority to initiate action on behalf of clients who are unable to register complaints on their own behalf. This includes clients engaged in civil proceedings. Conservatorships are civil proceedings.

Based on these statutory and contractual [grants of authority](#), it is clear that Disability Rights California should be playing a major role in advocacy for individual regional center clients whose rights are being violated in conservatorship proceedings. Such rights violations may be premised on the policies and practices of the courts, or on the failures of regional centers, court investigators, or court-appointed attorneys to protect the rights of conservatees and proposed conservatees under state and federal laws – including disability rights laws.

DRC does not have to wait for specific complaints to be presented to it. Because of the nature and extent of their disabilities, most regional center clients would not know that their rights are being violated by judges, attorneys, or other participants in conservatorship proceedings.

If DRC waits for individual complaints, the legal system will perpetually deny access to justice to regional center clients because these clients generally lack the ability to complain. Therefore, to fulfill the advocacy role mandated by statute and by contract, DRC should be pro-active. It should identify systemic deficiencies. It should shine a light on policies and practices that deprive regional center clients of the access rights to which they are entitled in conservatorship proceedings.

These deficiencies have been brought to the attention of DRC over the past several years. Individual injustices in cases such as Mickey Parisio (2012) and Gregory Demer (2013) have been presented to DRC. Unfortunately, DRC did not advocate for these individuals in their time of need.

The problem of systemic injustices and the need for class-based reform have also been brought to the attention of DRC over the years. DRC was invited to participate in a roundtable conference on conservatorship reform (2014) but did not send a representative. An invitation to a voting rights conference

(2014) yielded the same result. It was asked to support a voting rights reform bill (2014) but did not. To its credit, DRC promoted a voting rights reform bill the following year.

DRC has not participated in conservatorship reform outreach efforts over the last several years to the California Supreme Court, Judicial Council, and Department of Developmental Services. It has not weighed in on complaints to the United States Department of Justice under the Americans with Disabilities Act.

That was then. This is now. It is time for optimism and inclusion. There is room at the conservatorship reform table for Disability Rights California.

DRC has the legal mandate, funding, and contractual obligations that should prompt the organization to take a leadership role in advocating for access to justice for people with developmental disabilities in conservatorship proceedings.

The staff of DRC does not have to start from scratch. DRC attorneys can immerse themselves in the [hundreds of documents](#) that have been published in the past several years about the need for conservatorship reform in California.

Advocacy for conservatorship reform will continue, with or without DRC, but the chances of success will be much improved if DRC's leadership puts this matter on the organization's agenda and makes access to justice in conservatorships a priority.

Come on in. The water may be a little chilly, but as seasoned advocates for disability rights, DRC staff have plenty of experience being in uncomfortable situations. All they need to test the conservatorship waters is approval from DRC's board of directors so they can add their skills to this reform movement.



Thomas F. Coleman is the legal director of Spectrum Institute. tomcoleman@spectruminstitute.org
Website: www.pursuitofjusticefilm.com

A Role for OCRA in Conservatorships

Through its Office of Clients' Rights Advocacy (OCRA), Disability Rights California can help to ensure that the rights of regional center clients are respected in probate conservatorship proceedings.

Right to Counsel. A CRA (clients' rights advocate) can send a letter to the superior courts in the area of the regional center where he or she is imbedded, insisting that the courts appoint counsel to represent clients in each and every conservatorship proceeding. It should make no difference whether the case is designated as a general or limited conservatorship. If a CRA becomes aware that counsel has not been appointed for any client in such a proceeding, DRC can file a complaint with the Department of Fair Employment and Housing alleging a violation of Government Code Section 11135. DRC has standing to file such complaints and DFEH is reading and willing to process such cases when individual complaints are filed. <http://spectruminstitute.org/Sacramento/>

IPP Review. A CRA can notify the regional center where he or she is imbedded that it should initiate an Individual Program Plan review, with the assistance of a qualified professional, to determine: (1) whether a conservatorship is necessary or whether there are less restrictive alternatives that are viable; and (2) if less restrictive alternatives are viable, to develop a supported decision-making plan to present to the court; and (3) if a conservatorship is necessary, who should be appointed as conservator and what the terms and conditions of the conservatorship should be. If the regional center fails to initiate an IPP review, DRC can file a complaint with the Department of Developmental Services. <http://spectruminstitute.org/ipp-by-pvp.pdf>

Effective Representation. Clients are entitled to effective advocacy services in a conservatorship proceedings. However, clients usually are unable to determine whether they are receiving such services. Therefore, a CRA can monitor the services for them. The CRA can inquire into the training of court-appointed attorneys in the superior courts in the area serviced by the regional center. If the quality of the training appears to be deficient, DRC can file a complaint with DFEH for a violation of Government Code Section 11135. If a CRA becomes aware that an appointed attorney is engaging in unethical practices or performing deficiently, DRC can file a complaint against the attorney with the State Bar. <http://disabilityandabuse.org/strategic-guide.pdf>

CRA's are in a unique position to protect the rights of regional center clients in conservatorship proceedings. For example, the CRA associated with Alta Regional Center could have played a significant role to advocate for clients there who were being denied attorneys or whose attorneys were inadequately trained. <http://www.disabilityandabuse.org/alta-letter.pdf>

Spectrum Institute can provide a training for the staff of OCRA to acquaint them of the due process, Lanterman, and ADA rights of regional center clients in probate conservatorship proceedings. Performing the functions described above would be consistent with the mandate and role of OCRA. <http://www.disabilityrightsca.org/what-we-do/programs/office-of-clients-rights-advocacy-ocra>



Disability Rights California has been missing out on many opportunities to provide leadership or participate in an emerging and growing conservatorship reform movement in California.

* In 2012, Spectrum Institute was alerted to alleged ongoing abuse of a man with intellectual disabilities by his conservatee parents. We investigated and alerted law enforcement. We also contacted DRC to request its intervention and assistance. Law enforcement and the probate court failed to protect him. A few weeks later the victim was dead. DRC never responded to the request for assistance.

* In 2012, a probate judge and a court-appointed attorney violated the First Amendment rights of a young autistic man who was mandated to have ongoing visitation with his father who forced him to attend church services against his will. DRC was asked to take action to protect this young man's constitutional rights. An appeal was filed by the mother. Spectrum Institute filed an amicus curiae letter with the Supreme Court and followed up with other interventions in the superior court. DRC declined to assist this conservatee in any way.

* In 2014, Spectrum Institute convened a conservatorship reform roundtable to address systemic problems with the probate conservatorship system that were adversely affecting thousands of adults with cognitive and communication disabilities who are the targets of legal proceedings that place their fundamental rights in jeopardy. DRC was invited to this conference but did not attend.

* In 2014, Spectrum Institute convened a voting rights conference to address the problem of thousands of probate conservatees being stripped of their voting rights in violation of federal law. DRC was invited but did not attend. Following the conference, Spectrum Institute worked with the Secretary of State to initiate last-minute legislation (AB 1311) at the end of the legislative session to give greater voting rights protections to conservatees. DRC declined to support the bill, taking a "neutral" position on it. The bill was enacted into law without any assistance from DRC.

* In 2014, Spectrum Institute filed an ADA complaint with the Department of Justice alleging ongoing voting rights violations by the Los Angeles Superior Court against probate conservatees. DRC was asked to send a letter to the DOJ supporting our call for a federal investigation. DRC took no action. Ten months later, the DOJ opened a formal *statewide* investigation looking into voting rights violations by the entire judicial branch against probate conservatees. This investigation happened despite the lack of help from DRC.

* In 2015, Spectrum Institute filed another ADA complaint with the DOJ. This one alleged that the Los Angeles Superior Court was operating a legal services program in violation of the ADA. With knowledge of the court, appointed attorneys were not being properly educated, were violating ethical obligations to clients with cognitive disabilities, and were delivering deficient legal services to these clients. Some of the attorneys were actively advocating against their clients. DRC was asked to send a letter to the DOJ in support of this complaint. It did not. The complaint is still under review by the DOJ.

* In 2017, Spectrum Institute had communications and meetings with the Department of Developmental Services and the Health and Human Services agency asking DDS to provide oversight, guidance, and direction to regional centers in fulfilling their duties in limited conservatorship proceedings. We are unaware of any interest or involvement by DRC with the manner in which regional centers are failing to fulfill their statutory duties to clients in conservatorship proceedings.

* In 2018, Spectrum Institute filed a formal complaint with the Sacramento County Superior Court for failing to appoint attorneys to represent proposed conservatees in probate conservatorship proceedings. Many people with cognitive disabilities were being required to represent themselves – a task which they obviously could not do in an effective manner. Client's Rights Advocates employed by DRC were aware of this problem and yet DRC took no action to remedy it. DRC has engaged in no legal advocacy for the right to counsel for proposed conservatees.

* From 2014 through 2018, Spectrum Institute has written to government officials seeking systemic reforms to the probate conservatorship system, including the governor, lieutenant governor, secretary of state, legislative leaders, supreme court, judicial council, agency secretaries, and department directors. We are unaware of any such activities by DRC.

* In 2019, Spectrum Institute contacted the Executive Director of DRC with an invitation for the organization to become involved in the conservatorship reform movement. The response was one of disinterest in this area of advocacy. We shared our materials on abuse as well as supported decision-making and asked to see DRC materials on these topics. None were provided.

There has been an ongoing pattern of indifference by DRC to the plight of seniors and people with development disabilities whose rights are being violated in probate conservatorship proceedings.

There is a need for DRC to participate in the conservatorship reform movement. All of the activities described above were done on a volunteer basis. Imagine what a difference it would make if a legal advocacy organization with a \$26 million budget and large staff lent even a little support to this cause. What could DRC do? Coordinate efforts with Spectrum Institute. File administrative complaints or join complaints we file. Support our right-to-counsel bill. Work with us to promote conservatorship reforms through actions of the supreme court, judicial council, and state bar.

DRC's inaction on conservatorship reform is inconsistent with its principles and goals

Despite having advocacy principles, goals, and initiatives that call for DRC to promote systemic reforms in the probate conservatorship system and to advocate for and defend the rights of seniors and people with disabilities who are targeted by these proceedings, DRC has devoted virtually no resources to such endeavors.

Advocacy Principles

Our advocacy will be zealous, dedicated, effective, creative, innovative and daring.

We will take on issues of importance to the disability community even when the outcome is uncertain.

We will integrate a variety of advocacy approaches in all of our work, including self-advocacy, legal, non-legal, media, public policy, legislative and investigatory.

We value diversity. Our staff should reflect the ethnic, language, disability and demographic diversity of California: rural, age, sexual orientation, a range of different life experiences that reflect the disability community.

Our advocacy efforts will affirmatively address the needs of traditionally underserved and under-represented communities through partnership with such communities.

Our advocacy will be of high quality regardless of the type of service, the nature of the problem or who the client is. We will be honest, prepared, truthful and informed.

All staff is expected to contribute and their contributions will be valued and respected.

When representing individuals:

- We will do what the client wants – not what we or others think is best.
- We will be honest about our limitations, values, resources and the likely outcome.
- The client chooses the outcome and the method of achieving the outcome and the client's choices will be treated with respect.
- The client actively participates in every stage of the process.

Advocacy Plan Goals and Initiatives

Disability Rights California has identified the following areas in which we plan to have positive impact over the next five-year period:

Goal 1. Stop abuse, no matter where and when it occurs. Improve quality of care.

- Initiative 1: End abusive practices such as solitary confinement, pepper spray, and sexual abuse and neglect of individuals with disabilities in county jails, juvenile halls, and detention facilities.
- Initiative 2: End abuse, neglect and victimization of people with disabilities and improve response by abuse response system.

Goal 2. Stop discrimination, eliminate stigma, and protect civil rights.

- Initiative 1: Protect the civil rights of individuals with disabilities living in facilities.
- Initiative 3: Challenge disability discrimination by public entities and private service providers.

Goal 4. Respect the autonomy, preferences, and choices of people with disabilities so they can be equal, passionate, and full participants in society.

- Initiative 1: Protect the autonomy rights of individuals with disabilities.
- Initiative 2: Reduce the use of conservatorships.
- Initiative 3: Ensure individuals with disabilities can make choices and participate in society.

2018 AT A GLANCE

DISABILITY RIGHTS CALIFORNIA STATEMENT OF ACTIVITIES

Fiscal Year Ended Sept. 30, 2018

REVENUE AND SUPPORT

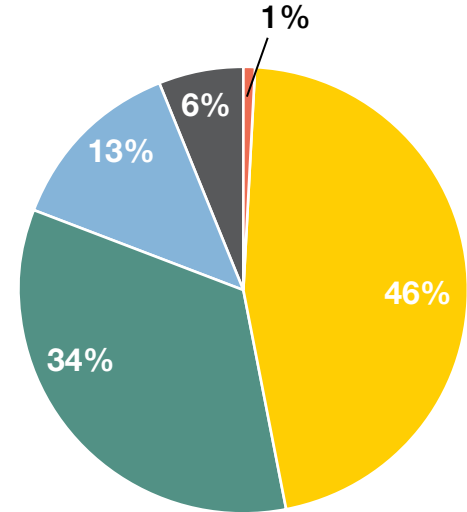
Federal Government	\$12,335,450
State of California	9,021,014
California State Bar	3,443,244
Program Income/ Attorney Fees	1,560,357
Miscellaneous Income and Interest Income	212,446
Donations	43,122
TOTAL REVENUE	\$26,615,633

EXPENSES

Program Services	\$23,267,287
General and Administrative	2,774,487
TOTAL EXPENSES	\$26,041,774

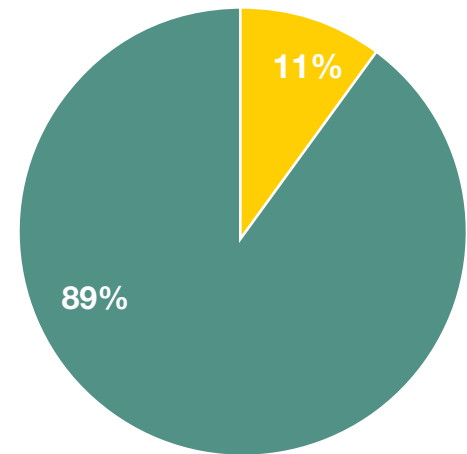
CHANGE IN NET ASSETS **\$573,859**

REVENUE AND SUPPORT



- Federal Government
- State of California
- California State Bar
- Program Income/
Attorney Fees
- Donations

EXPENSES



- Program Services
- General and Administrative