

The Power of Many

Class Action Complaint for People with Developmental Disabilities Filed with the U. S. Department of Justice

A class action complaint filed with the United States Department of Justice alleges that the Los Angeles Superior Court has been violating the federal civil rights of thousands of adults with intellectual and developmental disabilities. A class action turns one, or a few, into many.

The complaint cites Title II of the Americans with Disabilities Act as the source of federal jurisdiction and asks the Justice Department to investigate the policies and practices of the Superior Court in limited conservatorship proceedings. It is through such proceedings that the court assumes control over the lives of adults with developmental disabilities, allegedly on the ground that they lack the capacity to make such decisions for themselves.

Spectrum Institute, a nonprofit research and educational organization, has been studying the limited conservatorship system statewide for two years. Special emphasis has been given to the manner in which these cases have been processed by the Los Angeles Superior Court.

“The limited conservatorship system is in complete disarray,” said attorney Thomas F. Coleman, author of the many reports documenting failures in policy and practice by those who participate in these proceedings. “Our research shows that the rights of conservatees are being systematically violated,” Coleman said. “The primary problem is the failure of court-appointed attorneys to advocate for their clients and defend their rights – with the court being responsible for this failure due to a lack of quality assurance controls over attorney qualifications, training, and performance.”

According to Dr. Nora J. Baladerian, a clinical psychologist who specializes in therapy, education, and advocacy for people with developmental disabilities, the problems have existed for years but without monitoring or oversight they were allowed to continue. “The cases of Stephen Lopate and Gregory Demer were a wake-up call to those of us who assumed the judicial system was obeying the law,” Baladerian said. “Wow, were our assumptions completely misplaced.”

Jim Stream, executive director of The Arc of Riverside, held the same assumptions as Dr. Baladerian. “Our Disability and Abuse Project was focused on abuse of people with developmental disabilities,” Stream said. “When we discovered that the civil rights of our folks were being abused by judges and court-appointed attorneys, we created a companion project known as the Disability and Guardianship Project.”

Stream has enlisted the support of The Arc of California, an association of agencies such as his, that provide services to and advocacy for people with intellectual and developmental disabilities. “We fully support the movement to reform the limited conservatorship system,” said Tony Anderson, executive director of the organization. “Whether they are in limited conservatorships or not, people with developmental disabilities are entitled to have their rights respected and protected.” ♦♦♦



Disability and Guardianship Project

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Highlights from Class Action DOJ Complaint

The complaint alleges that the Los Angeles Superior Court is responsible for the failure to ensure that the attorneys it appoints to represent people with developmental disabilities in limited conservatorship cases are properly trained, follow ethical duties, adhere to performance standards, and generally provide their clients access to justice.

The Americans with Disabilities Act gives courts an affirmative duty to take whatever steps are necessary to enable litigants with disabilities to have meaningful participation in their cases. When court appointed attorneys fail to provide effective assistance to clients with disabilities, and when the court allows this to happen, the court is in violation of Title II of the ADA and Section 504 of the Rehabilitation Act of 1973.

These are some failures alleged in the complaint to the Department of Justice:

- ✓ Failure of the court to train attorneys on the basics of developmental disabilities
- ✓ Failure of the court to train attorneys on how to comply with the ADA
- ✓ Failure of the court to adopt performance standards for court-appointed attorneys
- ✓ Imposing a conflict of interest on attorneys through Rule 4.125 – secondary duty
- ✓ Failure of attorneys to develop an ADA plan to provide effective communications with clients
- ✓ Failure of attorneys to have qualified professionals appointed to assess capacities of clients
- ✓ Disclosures by attorneys of confidential communications from clients
- ✓ Disloyalty of attorneys who promote the loss of rights by their clients
- ✓ Failure of attorneys to investigate all lesser restrictive alternatives
- ✓ Failure of attorneys to use Regional Center IPP process for capacity assessments
- ✓ Failure of attorneys to provide effective assistance to clients as required by due process

ADA Case Study

Example of ADA Violations in a Limited Conservatorship Case

A petition for limited conservatorship was filed on August 22, 2012. The court appointed an attorney to represent the proposed conservatee on September 14, 2012. The petition was granted on April 14, 2014. The following actions of the court-appointed attorney violated the Americans with Disabilities Act by denying someone with a developmental disability access to justice and depriving him of meaningful participation in the case.

1. **No ADA Plan.** The attorney failed to develop an ADA plan for the client to determine the best way to have meaningful communications with the client and maximize his participation in the case.

2. **No IPP Review.** The attorney failed to request an Individual Program Plan (IPP) Review with the regional center and to have a professional appointed to determine the capacities of the client in the seven decision-making areas in question. An IPP review also would have examined if there were lesser restrictive alternatives in any of those seven areas.

3. **Home Visit.** When the attorney visited the home of his client, the attorney directed his entire conversation with the mother of his client, even though the client was present and even though a communication facilitator was present and available to assist the client in communicating with the attorney. When the attorney left the home, the client asked his mother if the attorney thought he was deaf since he never attempted to speak directly with him.

4. **School Visit.** When the attorney visited his client at the client's school, the attorney refused to allow the client to use assisted communication technology (facilitated communication). Instead, the attorney used yes/no flash cards and told the client to answer his questions by pointing to one of the cards. Even though the flash card system was failing to produce consistent answers, the attorney refused to change to the client's preferred method of communication.

5. **Voting Rights.** When the mother asked the attorney if her son could retain the right to vote, since he had indicated a desire to vote, the attorney replied that the retention of voting rights would be inconsistent with the purpose of a conservatorship. The attorney later informed the court that his client was unable to complete an affidavit of voter registration even though the attorney never attempted to have his client fill out such an application, with or without assistance. The attorney was unfamiliar with federal voting rights laws, including ADA accommodation requirements.

6. **Violation of Confidentiality.** The client signed MC-410, an ADA accommodation request form asking that he be allowed to use facilitated communication in his case, both in and out of court. When the attorney received this form from the client, sent to the attorney by Thomas F. Coleman who the client had asked to help him as a support person, the attorney did not forward the form to the court as required by law. Instead, the attorney sent the form to the attorneys for the other parties. Form MC-410 is a confidential form that is intended as a communication between court personnel and the person making the ADA request.

7. **Disloyalty to Client.** The attorney filed a report with the court recommending that decision-making authority be taken away from the client in all seven areas in question, including the right to make social decisions. The attorney knew that the client wanted to retain the right to make social decisions. He also knew that the regional center has recommended that the client retain authority over social decisions. Ultimately, when confronted with evidence of his client's capacity to make such decisions, the attorney changed his mind. However, the attorney still recommended that his client be required to have regular "Skype" visits with his father, despite knowing that his client feared his father, did not want to communicate with him, and his therapist recommended against mandatory communications.