

Elusive Justice

False Advocacy

*A Case Study of Social Rights
for Limited Conservatees
Reveals a Larger Problem of
Defective Legal Representation*

Exhibit A

Thomas F. Coleman, J.D.
Executive Director
Disability and Guardianship Project
Spectrum Institute

www.spectruminstitute.org/elusive

June 1, 2015

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Exhibit A

Marsden Materials

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Disability and Guardianship Project
Disability and Abuse Project
9420 Reseda Blvd. #240
Northridge, CA 91324
(818) 230-5156 • www.spectruminstitute.org

Thomas F. Coleman
Attorney at Law

June 26, 2015

Hon Daniel Murphy
Superior Court
111 N. Hill Street
Los Angeles, CA 90012

NOT SENT TO JUDGE MURPHY IN VIEW OF HIS
TENTATIVE RULING OF JUNE 10, 2015 SENT TO
THE PARTIES ON JUNE 16, 2015 BY POSTAL MAIL
(See Exhibit F for copy of the Tentative Ruling, Analysis
of the Tentative Ruling, and reasons for not sending
this letter and attachments to Judge Murphy.)

Re: Conservatorship of Gregory Demer, SP006273
Statement of Concern – Rule 7.10 (c) California Rules of Court

Dear Judge Murphy:

I am writing to alert you to the fact that substantial evidence exists that Mr. Gregory Demer has not been receiving effective assistance of counsel from his court-appointed attorney. Available evidence shows that his attorney has violated ethics, professional standards, and constitutional mandates. It further shows that she has had a conflict of interest throughout the time she has represented Mr. Demer.

Judge Maria Stratton, Presiding Judge of the Probate Division, has instructed attorneys that if we observe ethical violations by a PVP attorney we should advise the judge presiding in the case and report them to her as presiding judge. I have observed evidence of ethical violations by Mr. Demer's attorney, on numerous instances, from 2013 to the present. I am therefore alerting you to the existence of such evidence and of my willingness to present such evidence at an in-camera Marsden hearing. (People v. Marsden (1970) 2 Cal.3d 118; Conservatorship of David L. (2008) 164 Cal.App.4th 701, 712; People v. Hill (2013) 219Cal.4th 646; also see Rule 8.47, California Rules of Court)

I have been monitoring the proceedings in this case for two years. I have read transcripts of oral proceedings and have reviewed documents filed with the court throughout this period of time. I wrote to Judge Roy Paul on August 4, 2013 (letter in court file) to advise him that the Disability and Abuse Project had initiated a case study of social rights and had selected Mr. Demer's case as the one we would monitor. Judge Paul shared my letter with then presiding judge Mitchell Beckloff.

I wrote a letter to you on April 16, 2014. I alerted you at that time of possible Marsden problems that I could see developing in the case. Now that time has progressed, that possibility has become a reality.

Most Marsden situations that I have read about in appellate opinions have involved requests for a new attorney by a client because of things the attorney has said, done, or not done, outside of the

9420 Reseda Blvd., #240, Northridge, CA 91324 • (818) 230-5156 • tomcoleman@earthlink.net

Thomas F. Coleman

Letter to Hon. Daniel Murphy

June 26, 2015

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courtroom. The Marsden hearing brings to the attention of the judge things about which the judge had no prior knowledge. The judge then decides whether, through actions or omissions of the attorney, the client has been denied effective assistance of counsel. If the judge finds that effective assistance has been or is being denied, the attorney is discharged and a new attorney is appointed.

Mr. Demer's case is rather unique in that the violations of ethics and professional standards have either occurred in the courtroom, with full knowledge of the court, or have been apparent from the PVP report filed by the court-appointed attorney. By observing this conduct and reading the PVP report, and then allowing the attorney to continue to represent Mr. Demer, the court has either endorsed the conduct or ratified it. As a result, the court has already taken a position, whether explicit or implicit, that the attorney has not violated ethics or professional standards. Those issues, therefore, have already been implicitly decided by the court. The same issues that will arise in the Marsden hearing have been prejudged by the court.

Mr. Demer is entitled to have the Marsden hearing presided over by an impartial tribunal. It would appear that transfer of his case, at least for purposes of a Marsden hearing, would be prudent. Since there is no party to the case who would raise the issue of a Marsden hearing recusal, it rests upon the court to consider the issue on its own motion.

The court is well aware of Code of Civil Procedure Section 170.1 which states: "(a) A judge shall be disqualified if any one or more of the following are true: . . . (6) (A) For any reason: (I) The judge believes his or her recusal would further the interests of justice. (ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial. (iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." (Also see: California Judges Benchguides, "Disqualification of Judges" [Revised 2010])

I am sending a copy of this letter, and the enclosed materials, to Judge Maria Stratton, pursuant to her instructions to attorneys who observe ethics violations of PVP attorneys to notify her as presiding judge of the probate division of the Los Angeles County Superior Court.

Very truly yours,



Thomas F. Coleman
Attorney at Law

Declaration of Thomas F. Coleman
Regarding Performance of PVP Counsel

I, Thomas F. Coleman, declare:

1. Mr. Gregory Demer is a limited conservatee in case number SP 006273.
2. The court is aware that he is a person diagnosed with autism spectrum disorder. His condition impairs his ability to mentally process complex concepts and impairs his ability to communicate.
3. Mr. Demer has been represented by a court-appointed attorney in this case. The attorney was appointed in response to Mr. Demer's written request for an attorney. He wanted an attorney to defend his social rights after a petition was filed by the conservators to transfer authority to make social decisions from Mr. Demer to the conservators. (See Request for Attorney, Exhibit A)
4. When the petition to remove his social rights was pending, Mr. Demer instructed his court-appointed attorney, in open court, to protect his right to say no to his father. (See Reporter's Transcript, p. 37, Exhibit B)
5. The conservators petitioned for full transfer of the right to make all social decisions from Mr. Demer to the conservators. However, they later filed an amended petition which modified their request so that social decision-making authority would be shared between the conservator and the conservatee.
6. The court took Mr. Demer and his attorney into chambers where the only persons present were Mr. Demer, his attorney, the judge, and the court reporter. Mr. Demer was examined by his own attorney. The questions did not focus on capacity to make social decisions. Rather, they focused on whether he had ever enjoyed being with his father. Mr. Demer was never placed under oath. Other parties were not allowed to observe the questioning as it occurred or to pose additional questions.
7. When the judge, Mr. Demer, and his attorney came back to the courtroom, the judge indicated that he would be making his tentative decision. Before he could do so, however, Mr. Demer announced his own decision – that he would remain independent and that he would say “no” to his father. The judge politely bypassed that statement, and then announced his intended decision.
8. The judge said he would reject the amended petition's request for shared decision making. Instead, the judge said he would remove all social rights from Mr. Demer and give the conservators full authority to make all social decisions. Mr. Demer's attorney stated that she agreed with the decision. The attorney for Westside Regional Center stated that WRC continued to object to the removal of Mr. Demer's social rights. Mr. Demer's father agreed with the tentative decision. Mr. Demer's mother sought clarifications but did not support or object to the decision. She knew that whatever she said would carry little weight since she lacked standing to appeal any order adverse to her son's rights.

9. The court-appointed attorney stated that she agreed with the decision of the judge. She did not object to the order on any grounds. She did not point out to the court that her client had never been sworn as a witness or that the court's order was not based on any evidence or sworn testimony by any witness.

10. There was no legal argument presented by anyone. There was no discussion about Mr. Demer's constitutional rights or rights under the Lanterman Act. There was no exploration about the presumption of capacity to make social decisions, the burden of proof on the petitioners to prove lack of capacity by clear and convincing evidence, or the requirement that lesser restrictive alternatives to total removal of social rights be explored and tried first.

11. The record contains no evidence that Mr. Demer was ever advised of his right to object to the petition and to demand an evidentiary hearing. The record does not reflect a waiver of the right to a hearing by Mr. Demer.

12. The court investigator signed a report on February 13, 2014. She interviewed Mr. Demer on February 11, 2014. She stated that she informed Mr. Demer of his rights, although she did not indicate which rights those were. She also said that she explained the purpose of the visit and the hearing date. The investigator said that Mr. Demer presented as distracted and focused at the same time. He appeared preoccupied with going to the airport to pick up his mother. As a result, the investigator was "unsure if the conservatee understood his basic rights or the purpose of the visit." (The court can take judicial notice of the investigator's report which is on file with the court.)

13. According to the February 2014 investigator's report, "The conservatee denied having visits with his father," although he readily acknowledged visiting with his mother. It was further reported that after Gregory had announced in court at a prior court appearance that he did not want to visit with his father, "the conservatee's father showed up for his first visit and Gregory refused to have a visit. It was reported that the conservatee would not open the door."

14. Mr. Demer was also interviewed by the investigator on January 16, 2012 – months before the petition for transfer of social rights had been filed with the court by the conservators. Therefore, the investigator did not discuss with Mr. Demer his rights in connection with that petition. However, without prompting, Mr. Demer advised the investigator that he wanted his father and stepmother "removed" – his way of objecting to the court's order forcing him to visit his father on every third weekend. He also spontaneously told the investigator that he objects to having to go to church when he visits his father, adding: "I want to be free from it." Mr. Demer told the investigator that he found his father to be "annoying and scary." He said he wants to be free from his father on Sundays. Based on what she heard and observed, the investigator recommended that the PVP attorney should explore modification of the visitation order with the father. (The investigator's report, November 30, 2012, is on file with the court.)

15. The court investigator did not appear in court at the proceeding to determine social rights on April 28, 2014.. The judge made no reference to the court investigator's report.

16. The court found that despite being a “very bright and articulate individual,” that Mr. Demer does not have the maturity to make social decisions.

17. The attorney for the petitioning conservators remained silent and did not take a position on the judge’s tentative ruling to reject their amended petition and instead to remove all social rights.

18. Days after the hearing, Mr. Demer expressed his objections to the court’s ruling in a hand written statement in which he asked for help. (See Written Objection, Exhibit C) He lacked the ability to appeal from that order on his own, and his attorney would not do so since she was satisfied with the removal of her client’s social rights.

19. Mr. Demer has recently expressed that he wants his social rights restored and that he wants a new attorney. He has asked me to help him obtain a new attorney. (See Written Request, Exhibit D)

20. Mr. Demer has known for several years of his right to have the assistance of an attorney. He was made aware of this in 2012 by a court investigator. When she asked if he wanted to speak with an attorney, he replied “yes.” The investigator recommended that a PVP attorney explore Mr. Demer’s desire to have visitation with his father “removed.” (The court may take judicial notice of this report which is in the court file in this case.)

21. When the court learns of a request for a new attorney, it should schedule and conduct a “Marsden hearing.” Present at such an in-camera hearing are the client, the court-appointed attorney, the judge, and court staff. Other litigants and their attorneys are made aware that such a proceeding is being held, but they are not privy to the evidence presented during the hearing. Although Marsden hearings were developed for criminal proceedings, they are also required in conservatorship cases.

22. At a Marsden hearing, the client must demonstrate that the current attorney has been performing in a deficient manner. Without such a showing, the court is not required to appoint new counsel.

23. I have been following the proceedings in Mr. Demer’s case for two years, especially regarding the dispute over the retention of his social rights. I have reviewed the pleadings, reporter’s transcripts, and exhibits filed with the court on this issue. I have carefully studied and analyzed the performance of Mr. Demer’s current attorney.

24. Due to his disability, Mr. Demer is not in a position to present evidence and argument during a Marsden hearing regarding the ineffective assistance of this attorney. He will need accommodations under the Americans with Disabilities Act and modifications of court policies and practices under Section 504 of the Rehabilitation Act, so that he will have access to justice at this hearing.

25. I have researched the law regarding the duties of courts to provide ADA accommodations to litigants who have developmental disabilities. This duty must be performed, even without request, when the court becomes aware that the nature of the disability precludes the litigant from asking for an ADA accommodation. Mr. Demer has such a disability. Although a temporary attorney may not be appointed to represent him at a Marsden hearing, someone must be allowed to provide relevant

information to the court. Other litigants in the case may not do so because of conflicts of interest.

26. I am in possession of information, documents, and other evidence to show that Mr. Demer's current attorney has engaged in a pattern of conduct that has violated ethical rules, professional standards, and constitutional requirements. I am willing to present such evidence to the court, and answer questions about it, at an in-camera Marsden hearing.

27. By asking me to help him obtain a new attorney, and since the procedure for him to obtain a new attorney is through a Marsden hearing, Mr. Demer has, in effect, designated me as his "Marsden support person" Should I attend such a hearing to present information about the attorney's deficiencies, I would be doing so as an informational and communication agent, not as his temporary attorney.

28. I have researched the law (statutes, court rules, case law) applicable to situations when a person with a mental disability, and who has a court-appointed attorney, expresses a desire for a new attorney. I am willing to share the results of this research, in the form of a legal memorandum, with the court, should the court schedule a Marsden hearing and recognize me as Mr. Demer's informational support person for ADA accommodation purposes at that hearing.

29. It would be prudent to address the Marsden issue prior to the status conference currently scheduled for July 8. Perhaps the status conference should be continued until a later date.

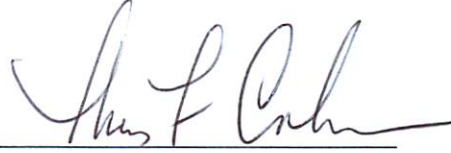
30. Mr. Demer's request for new counsel creates a conflict of interest for his current attorney, who would have a strong motive to avoid a Marsden hearing in order to prevent an exploration and evaluation of her past performance. Any communications between this attorney and Mr. Demer, any court appearance by the attorney for Mr. Demer, and any verbal ex parte communications with the court prior to a Marsden hearing, would be tainted by this conflict of interest. Likewise, since he wants his social rights restored, his conservators and their attorneys should avoid discussion with Mr. Demer on this topic pending resolution of the Marsden issue, also due to a conflict of interest.

31. This declaration and the accompanying exhibits are being submitted to the court pursuant to the instructions of the Honorable Maria Stratton, Presiding Judge of the Probate Court. At a recent seminar for attorneys, she advised those in attendance that if they become aware of any violations of ethics or professional standards of a PVP attorney, the matter should be reported to the judge who is presiding in the case. (See p. 9 of Transcript, Exhibit E)

32. I recorded the presentations at that seminar and had a transcript of the remarks of the speakers prepared. That transcript includes the remarks of Judge Stratton. A copy of the transcript, which accurately reflects those remarks, is attached as Exhibit E.

33. I attended the mandatory PVP training sponsored by the Los Angeles County Bar Association on May 9, 2019. Judge Maria Stratton made a presentation at that training program. She spoke about the duties of court-appointed counsel who represent conservatees and proposed conservatees. I recorded the presentation on a digital voice recorder and later transcribed the presentation into a written transcript. Exhibit F is a true and correct transcript of Judge Stratton's presentation.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Los Angeles, California on June 1, 2015.

A handwritten signature in cursive script, appearing to read "Thomas F. Coleman", written in black ink. The signature is positioned above a horizontal line.

Thomas F. Coleman

8-8-13

Honorable Roy Paul
Superior Court
111 North Hill Street
Dept 29
Los Angeles, CA 90066

Dear Judge,

They tried to take away my
social rights I need an attorney
Please appoint 1 for me.

Thanks.

Greg Demer (B)

SP006273

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 29

HON. ROY PAUL, JUDGE

IN RE:

GREGORY R. DEMER CONSERVATORSHIP) NO. SP006273
)
)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

OCTOBER 4, 2013

APPEARANCES:

FOR LINDA DEMER: RODARTE LAW OFFICE
BY: DANIEL D. RODARTE, ESQ.
1036 EL MEDIO AVENUE
PACIFIC PALISADES, CALIFORNIA 90272

FOR JOSEPH L. DEMER: JOSEPH L. DEMER
(IN PROPRIA PERSONA)
3201 EARLMAR DRIVE
LOS ANGELES, CALIFORNIA 90064

PVP COUNSEL: LEANNE E. MAILLIAN, ESQ.
16530 VENTURA BOULEVARD
SUITE 404
ENCINO, CALIFORNIA 91436

FOR THE CO-
CONSERVATORS LEE ANN
HITCHMAN AND BRUCE A.
HITCHMAN: LAW OFFICE OF CYNTHIA R. POLLOCK
BY: CYNTHIA R. POLLOCK, ESQ.
109 WEST TORRANCE BOULEVARD
PIER PLAZA, SUITE 101
REDONDO BEACH, CALIFORNIA 90277

FOR THE WESTSIDE
REGIONAL CENTER: ENRIGHT & OCHELTREE, LLP
BY: JULIE A. OCHELTREE, ESQ.
13400 RIVERSIDE DRIVE
SUITE 207
SHERMAN OAKS, CALIFORNIA 91423

ALSO PRESENT: GREGORY DEMER
LINDA DEMER
LEE ANN HITCHMAN
BRUCE A. HITCHMAN

COPY

PAULA B. RENTERIA, CSR NO. 9374
OFFICIAL REPORTER

1 INTERESTS ARE.

2 AND THAT'S ONE OF THE THINGS, WE HAVEN'T GOTTEN ANY
3 SUBSTANTIVE ISSUE, BUT I'M GOING TO ASK YOU TO MAYBE MEET
4 AND CONFER AND SEE IF YOU CAN SOMEWHAT WRAP THIS INTO A
5 PACKAGE THAT WE CAN ALL AGREE UPON.

6 AND, IF NOT, THEN WE'RE GOING TO HAVE TO --

7 MR. GREGORY DEMER: NEVER MIND, YOUR HONOR, I WANT TO
8 HAVE MY FRIENDS PROTECTED SO I HAVE THE RIGHT TO SAY NO TO
9 DAD, AND I'LL DO IT BY MYSELF, YOUR HONOR.

10 NO, I DON'T WANT TO SEE YOU, DAD. I DON'T WANT TO
11 GO FLYING WITH YOU ANYMORE AND I DON'T WANT TO GO TO
12 CATALINA ISLAND WITH YOU AND I DON'T WANT TO BE WITH YOU. I
13 WANT TO WALK OFF FROM YOU. AND I WANT TO USE MY LEGS AND GO
14 SEE MY MOM AND I DON'T WANT TO SEE -- DAD, I DON'T WANT TO
15 SEE YOU ANYMORE.

16 YOUR HONOR, I DON'T WANT TO SEE MY DAD AND GO
17 FLYING WITH HIM ANYMORE AND I DON'T WANT TO SEE MY DAD AND
18 GO TO CATALINA ISLAND WITH HIM ANYMORE.

19 THE COURT: OKAY. THANK YOU.

20 IF I CAN ASK YOU TO ALL TALK FOR A FEW MINUTES AND
21 LET ME FINISH THE OTHER 60 MATTERS ON CALENDAR.

22 MS. MAILLIAN: CERTAINLY, YOUR HONOR.

23 THE COURT: THANK YOU.

24 MS. POLLOCK: THANK YOU, YOUR HONOR.

25
26 (RECESS TAKEN.)

27
28 (UNRELATED MATTERS WERE HEARD.)

1 THE COURT: OKAY. WE CAN ASK THE DEMERS TO STEP IN.

2 MR. GREGORY DEMER: YOUR HONOR, I WOULD LIKE MY FRIENDS
3 PROTECTED.

4 THE COURT: WE HAVE CERTAIN RULES AND PROCEDURES, AND SO
5 I HAVE TO HANDLE THE PROCEDURAL THINGS BEFORE WE GET TO
6 WHATEVER WE'RE GOING TO ADDRESS, SO I ASKED THE PARTIES TO
7 GO OUTSIDE AND SEE IF WE COULD REACH ANY UNDERSTANDINGS.

8 AND I WOULD LIKE TO SEE, THROUGH COURT-APPOINTED
9 COUNSEL, YOUR ATTORNEY, HAVE YOU MADE ANY PROGRESS?

10 MS. MAILLIAN: UNFORTUNATELY, YOUR HONOR, WE MADE SOME
11 PROGRESS, BUT NOT ON ANY SUBSTANTIVE MATTERS, MORE ON
12 PROCEDURAL MATTERS.

13 WE HAVE THREE MATTERS PENDING BEFORE THE COURT
14 RIGHT NOW: 1011, 1012 AND 3001.

15 1011 AND 3001 RELATE TO THE MOTION TO VACATE, OR
16 PETITION TO VACATE, AND THE OPPOSITION.

17 DR. JOSEPH DEMER HAS INDICATED THAT HE WOULD LIKE
18 THE COURT TO MAKE A DECISION ON THOSE TWO MATTERS TODAY,
19 WHATEVER THAT DECISION MAY BE. AND HE WAS UNWILLING TO
20 CONSIDER ANYTHING ELSE. HE CAN BEST EXPLAIN TO YOU HIS
21 RATIONALE FOR THAT.

22 ON 1012, WHICH IS THE PETITION WITH REGARD TO
23 SOCIAL AND SEXUAL CONTACT, COUNSEL FOR THE CONSERVATORS HAS
24 EXPRESSED A DESIRE, AND EVERYBODY IS IN AGREEMENT, THAT THE
25 HEARING ON THAT BE SET OUT FOR SEVERAL MONTHS SO THAT WE CAN
26 DO SOME MORE WORK ON THOSE ISSUES AND EVERYBODY CAN
27 HOPEFULLY COMPLETE THEIR INVESTIGATION AND REACH SOME SORT
28 OF ACCORD OR PERHAPS FIND THAT THE ISSUE IS OFF CALENDAR

1 VERY SHORT TURNAROUND AND GET IT SET FOR A HEARING. IT
2 TAKES PRIORITY.

3 MS. MAILLIAN: BECAUSE AT THIS POINT, YOUR HONOR, THERE
4 IS AN ISSUE OF WHAT MR. DEMER'S WISHES ARE. HE WOULD LIKE
5 THE COURT TO HEAR HIM EXPRESS HIS WISHES TODAY. AND WE ARE
6 IN THE MIDDLE OF A TRANSITION RIGHT NOW, WHICH, IF THAT
7 TRANSITION CONTINUES, AND I THINK EVERYBODY IS IN AGREEMENT
8 ON THAT, MAY CHANGE THE -- WHAT -- EVERYTHING BEING SAID
9 TODAY MAY VERY WELL CHANGE AS A RESULT OF THAT TRANSITION.

10 THE COURT: CAN YOU DESCRIBE MORE FULLY WHAT THAT
11 TRANSITION IS AND HOW IT MIGHT AFFECT WHAT IS PENDING BEFORE
12 THE COURT.

13 MS. MAILLIAN: YES, YOUR HONOR.

14 RIGHT NOW MR. DEMER'S CAREGIVER IS AN ORGANIZATION
15 KNOWN AS MY LIFE. THESE ARE THE PEOPLE THAT MR. DEMER IS
16 REFERRING TO AS HIS FRIENDS, AND HE WILL TELL THE COURT THAT
17 HE WANTS TO PROTECT HIS FRIENDS.

18 THE COURT ORDER IN 2009 CALLED FOR MY LIFE TO BE
19 REPLACED BY ANOTHER ORGANIZATION. AT THAT POINT IT WAS
20 UNNAMED, I BELIEVE. AND THAT ORGANIZATION, THEY'RE JUST
21 NOW -- THEY STARTED THE TRANSITION ON MONDAY.

22 THE COURT: AND WHAT WAS THE DELAY IN THE TRANSITION?

23 MS. MAILLIAN: I CANNOT SPEAK TO THAT, YOUR HONOR. I
24 WAS NOT INVOLVED.

25 MS. POLLOCK: I CAN.

26 MS. MAILLIAN: I THINK MS. POLLOCK WOULD BE ABLE TO
27 ANSWER THAT.

28 THE COURT: I'LL ASK MS. POLLOCK. I WANT A NEUTRAL,

1 SETTING, THAT MEANS I'M GOING TO BE SETTING IT FOR TRIAL,
2 AND IT IS ABSOLUTELY MY DESIRE YOU ATTEMPT TO ALL GET ON THE
3 SAME PAGE, EVEN IF YOU DISAGREE. AND IF YOU CAN'T GET ON
4 THE SAME PAGE, AT LEAST LET'S DEFINE WHAT YOUR DIFFERENCES
5 ARE SO THAT I'M REAL CLEAR. AND IF YOU'RE GOING TO DEFINE
6 WHAT THOSE ARE, DEFINE EXACTLY HOW THE MOST SUCCINCT WAY YOU
7 CAN PRESENT THAT, SO THAT YOU DON'T IN EFFECT LOSE THE COURT
8 AS YOU PRESENT A WEALTH OF MATERIAL THAT MAY NOT BE RELEVANT
9 TO THE SOLE ISSUE THAT'S BEFORE ME, BECAUSE I WANT THIS
10 SOMEWHAT FOCUSED. I DON'T WANT IT TO CONTINUE TO BE A NOVEL
11 AND A THESIS ON ALL OF WHAT YOU THINK SHOULD HAPPEN. IT'S
12 REALLY GOING TO BE A RULING AS TO WHAT I GRANT AND UPON WHAT
13 I GRANT THAT. AND I DO GIVE -- AND I WILL BE ABLE TO
14 CONSIDER WHAT WEIGHT TO GIVE THE CONSERVATEE, WHO'S GOING TO
15 TELL ME RIGHT NOW WHAT HE WANTS ME TO CONSIDER.

16 MR. RODARTE: YOUR HONOR, WOULD IT HELPFUL FOR THE COURT
17 TO RECEIVE A STATUS CONFERENCE REPORT FROM ANY OF THE
18 PARTIES?

19 THE COURT: THAT'S PROBABLY THE BEST THING TO DO, TO
20 GIVE ME A STATUS REPORT AND KIND OF PROCEDURALLY SET OUT
21 WHAT YOU WANT TO DO AND GIVE ME AN IDEA IF THERE'S ANYTHING
22 STILL REMAINING AND FOCUS THE COURT ON ISSUES.

23 MR. RODARTE: TEN DAYS PRIOR?

24 THE COURT: TEN DAYS PRIOR. COURTESY COPY HERE,
25 PERSONALLY DELIVERED TO THE COURT, MARK "COURTESY COPY"
26 THAT'S CONFORMED SO IT'S GOT THE STAMP ON IT, AND THE
27 ORIGINAL TO BE FILED AND SCANNED IN THE CLERK'S OFFICE.

28 MR. GREGORY DEMER: IF YOU PLEASE, YOUR HONOR --

1 THE COURT: HOLD ON FOR ONE MORE SECOND.

2 MS. POLLOCK: I'M SORRY, GREG. IT'S MY FAULT. I
3 APOLOGIZE.

4 WE HAVE A PETITION FOR FEES SET FOR OCTOBER 31ST.
5 IS IT POSSIBLE TO JUST PUT THAT ALSO OVER?

6 THE COURT: WE'LL CONTINUE THAT TO THE SAME DATE.

7 MS. POLLOCK: THANK YOU, YOUR HONOR.

8 THE COURT: I NORMALLY CAN'T ADVANCE AND VACATE.

9 MS. POLLOCK: THANK YOU, YOUR HONOR.

10 THE COURT: OKAY. AND SETTING ASIDE ALL THE FEE ISSUES
11 AND ALL THAT -- AND THAT'S ONE OF THE THINGS THAT'S KIND OF
12 SURPRISING AT THE END OF THESE THINGS WHEN YOU SEE HOW MUCH
13 ALL THIS COSTS AND YOU ADD ALL YOUR FEES TOGETHER AND THEN
14 YOU ALL ASK FOR MONEY FROM WHERE, FROM WHAT SOURCE. AND
15 THAT WILL BE INTERESTING TO SEE AT THE END. BUT HOPEFULLY
16 YOU CAN START TO RESOLVE THOSE ISSUES, AS WELL.

17 MAY WE NOW HEAR FROM MR. DEMER?

18 MR. GREGORY DEMER: OKAY. YOUR HONOR, I HAVE MY RIGHT
19 TO SAY NO TO DAD AND I WANT TO HAVE MY FRIENDS PROTECTED AND
20 I NEED MS. MAILLIAN TO PROTECT ME SO I WOULD LIKE TO HAVE MY
21 FRIENDS PROTECTED AND LEAD THEM TO SAFETY.

22 AND ON THURSDAY, OCTOBER 31ST, IF YOU PLEASE, YOUR
23 HONOR, I WANT A HALLOWEEN PARTY ON FRIDAY, OCTOBER 25TH. ON
24 THURSDAY OCTOBER 31ST, I WOULD LIKE TO HAVE HALLOWEEN AT
25 MOM'S HOUSE, IF YOU PLEASE, I WOULD LIKE TO LEAD MY FRIENDS
26 TO SAFETY.

27 I WANT TO HAVE FUN WITH CAROL, BECAUSE I WANT TO
28 SEE HER ON SATURDAY, AT TRADER JOE'S, CVS, AND GO TO SMART &

1 FINAL SO I CAN GO TO THE BANK AND CASH MY CHECKS AND HAVE
2 EXTRA MONEY SO I CAN GO TO THE EL CAPITAN THEATRE IN
3 HOLLYWOOD WITH SMARS AND RSVP FOR IT. AND I WOULD LIKE TO
4 GO TO THE MOVIE AND SEE THE LITTLE MERMAID IN 3D WITH SMARS
5 AND MY FRIENDS AND WITH MS. LOVELACE. OKAY?

6 YOUR HONOR, I HAVE THE RIGHT TO SPEAK UP FOR
7 MYSELF, SO I CAN TELL MY FRIENDS THAT I WANT TO HAVE FUN AND
8 I WANT LINDA COTTERMAN PROTECTED AND I DON'T WANT MY FRIENDS
9 CHANGED. I WANT THEM WITH ME.

10 AND IF YOU PLEASE, YOUR HONOR, I HAVE THE RIGHT TO
11 SPEAK UP FOR MYSELF AND SAY NO.

12 SO I CAN TELL DAD I DON'T WANT TO GO FLYING, I
13 DON'T WANT TO GO TO CATALINA ISLAND, AND I DON'T WANT TO SEE
14 MELISSA AND JULIA, BECAUSE I WANT TO SPEAK UP FOR MYSELF.
15 SO, I DON'T WANT TO GO IN THE SMALL PLANE. I WANT TO GO ON
16 A BIG PLANE, A SOUTHWEST AIRLINE 737, WITH MOM, SO I CAN BE
17 ALL SET FOR FEBRUARY, WHEN I FLY ON.

18 I WOULD LIKE TO HAVE EVERYTHING SAFE AND KEPT SO I
19 CAN HAVE MORE MONEY WHEN I GO TO THE BANK WITH CAROL. AND I
20 WOULD LIKE TO SPEAK UP FOR MYSELF AND HAVE ME AS THE
21 NEIGHBOR OF THE APARTMENT ONCE MORE.

22 THE COURT: OKAY. I'VE HEARD WHAT YOU SAID AND I
23 APPRECIATE HEARING FROM YOU AND I --

24 MR. GREGORY DEMER: YES, I REALLY APPRECIATE IT.

25 SO I WILL LET YOU UNDERSTAND THAT I WANT TO HAVE
26 FUN WITH CAROL AND BECAUSE I WANT TO GO TO -- I WANT TO GO
27 TO TRADER JOE'S, CVS AND SMART & FINAL AND GO TO THE BANK SO
28 I CAN EAT LUNCH AT MY PLACE, GO TO THE 99 CENT STORE AND

1 THEN GO TO THE THRIFT SHOP AND BUY TWO VIDEOS AND HAVE THREE
2 FREE SO I CAN PAY FOR THEM AND USE MY MONEY. OKAY?

3 THE COURT: YES, SIR.

4 WITH THAT, I'LL ASK THE CONSERVATORS TO CONSIDER
5 THE REQUEST OF MR. DEMER. AND WE WILL BE IN RECESS UNTIL
6 THE FEBRUARY DATE.

7 I AGAIN WANT TO EXPRESS MY APPRECIATION FOR YOUR
8 COOPERATION AND PROFESSIONALISM. AND LET'S ALL SEE IF WE
9 CAN'T DE-ESCALATE THIS IN SOME FASHION SO THAT WE DON'T NEED
10 FURTHER APPELLATE INTERVENTION.

11 I NEVER MIND THEM BECAUSE THEY EDUCATE ME AND I
12 WORK VERY HARD SO THAT THEY APPRECIATE WHAT WE HAVE HERE AS
13 A RECORD.

14 SO I THINK WE'VE GOT A CLEAR RECORD BECAUSE I THINK
15 WE'VE CLEANED THINGS UP, AND I THINK WE'RE REALLY READY TO
16 PROCEED TO THE NEXT CHAPTER.

17 THANK YOU AND WE'LL SEE YOU BACK.

18 MR. DEMER: THANK YOU, YOUR HONOR.

19 MS. MAILLIAN: THANK YOU, YOUR HONOR.

20 MR. GREGORY DEMER: THANKS, YOUR HONOR. YOU DID A GREAT
21 JOB PROTECTING ME. SAY YOU DID GREAT PROTECTING YOUR
22 FRIENDS.

23 THE COURT: THANK YOU.

24
25 (PROCEEDINGS WERE CONCLUDED.)
26
27
28

I just don't like
being with
Dad and Melissa.

I don't like the judge's
decision. I have the right
to say no. help me
Greg Demer 5-29-14

Dear Tom, I
I will have my rights
with myself
Please help me
get a new attorney

5-4-15

Greg Demor

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Thinking Of Becoming A PVP? Probate Volunteer Panel Attorneys: Progress Now and Future Objectives

03/12/2015

Presented by: Trusts and Estates Section

Program Information:

The Trusts & Estates Section presents its upcoming luncheon featuring the Honorable Maria E. Stratton, Steven P. Beltran, and Andrea Van Leesten. The panelists will discuss the duties of Probate Volunteer Panel counsel versus those of a guardian ad litem, the nature of zealous advocacy in the PVP context, and how PVPs are selected and held accountable.

The PVP system is an integral, critical part of Probate Court operations. Don't miss this discussion of how it's working and where it's headed.

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Excerpts from Panel Presentation

(Part 1) Judge Maria Stratton:

Good afternoon it's a pleasure to be here today. I just want to give a shout out to those who are PVP lawyers now. The court really appreciates what you do for your clients. Can everybody hear me? OK, I'll shout. I just want to give a shout out to all of the PVP lawyers now. The court so appreciates what you do for your clients and the services that you provide to the court through your great advocacy you provide to your clients. We so appreciate it. Thank you for everything that you do for us.

With respect to those of you who are on the volunteer mediation panel, I just want to say thank you to you as well. I always say that if I took twenty random attorneys and sent them to the middle east, we would have everything solved in about two hours because I think you're all just great in what you do, especially in respect with the negotiating and active listening and with respect to each other but also in respect your clients. So thank you to all of your mediators as well.

I have been asked to give an overview of the PVP program and I have been given seven topics the last of which is double secret probation lists. So before we get to that really interesting topic, I will give you a little statistic which may be relevant to those of you on the PVP panel or those of you who are thinking of joining the PVP panel. In the fiscal year of 2013 and 2014, which goes from July 1st to last June 30th, we had 2,149 conservatorships cases filed and about half of those cases involved limited conservatorships which generally get PVP counsel appointed on those cases. We also had 1,705 guardianship cases filed and most of those cases minors counsel is appointed of the PVP panel list. This was about a 400 case increase over the previous year and it seems that the number of conservatorships grows each year because doctors get better at keeping us all alive longer and we get more conservatorships. So you can see that there is just about 4,000 cases each year that generally require PVP counsel.

Some of you may be wondering: "So then why is it that I only get one appointment a year if there are 4,000 cases a year that require PVP counsel." That is a good question and is something we are looking into. If you know now, it is not hard to get into PVP panel. You can look on the website or you can call Suzie Wong and she will e-mail you an application. We don't have a panel now who looks at the applications to determine if you are worthy or not. We figure if you meet the training requirements, you are in.

So how do you get appointed to particular cases? As you know the department has gone through a real budget crunch in the past couple years and we have been contracting some of our services. In Probate, Probate took a particularly huge hit. Because you know, we centralized all the Probate conservatorship and guardianship cases downtown, and, for a while, we only had three judges doing the work for the whole county. This year, we have been lucky enough to go up to six courtrooms plus commissioner Penny who is kind of floating as a settlement/substitute judge while people are gone, [we are] hoping next year we will be able to get her a courtroom as well. Because of the contraction of the Probate department, we lost a lot of Probate attorneys and Probate examiners who were basically administering the appointment of counsel. They were instructed to, just when an appointment order was made, go down through e-mail and go down to the next three people on the list, and the first one to take it is appointed. Those of you who have the court's number on your speed-dial are getting more

appointments than the rest and that doesn't seem fair. And now that we are in the process of trying to expand our services or at least not contract them any longer this year, we will be looking at that to see if there is a fair way to even out these appointments. I actually get a list every month of payments that go out to PVP counsel and minors counsel, and once a lawyer hits \$100,000 in payments, the presumption is that lawyers are not supposed to be making their main livelihood based on these appointments. I don't know if anyone really does stop appointing because I don't disseminate this list to the rest of the judges, and so they don't really know that someone has hit that \$100,000 mark. And generally people don't hit that mark until November or June of that fiscal year. We are hoping we are able to equalize the way the appointments are made.

How are lawyers removed from the panel? We have no formal removal procedure. You'll note that on the application it does say that PVP counsel serves at the pleasure of the poor. That was put in to make clear that you really shouldn't have any expectation to be put on cases or certain types of cases. When you do go on the panel you do serve at the pleasure of the poor. We occasionally get complaints from clients. And each judge has the discretion to deal with the complaints. We really don't have problems with complaints about PVP counsel. Certainly not to the extent that criminal judges have. I don't know if its just the population we are dealing with or that you are all just really great. I'd like to think that it is that latter. So as a consequence, since we don't have a lot of complaints, we don't have a formal complaint procedure.

Compensation as you know is set by court rules, and you may not know this but your compensation comes out of the county funds. Judges salary comes out of state funds. Compensation for counsel comes out of county funds. The county rate is \$125/hr. If you are paid by the state, you are paid \$250/hr. It may be raised this year, but there is no guarantee at all. Double secret probation list. There are no such lists any longer, but each judge has discretion of who to appoint. In 99% of the cases, the order of appointment is made by the Probate examiners and the judge never even sees who is appointed. In some situations, the judge might appoint a particular person to a particular case, because maybe the judge knows that that person has expertise, maybe dependency law and history of dependency proceedings going on. Maybe that lawyer has a certain skill at negotiating and the case requires a lot of negotiating. While about 99% of appointments are done without the individual knowing because it is set by the examiners, there are those particular cases where the judge says to the clerk, "Put so-and-so on this case." There are also particular judicial assistants who have more experience maybe than particular judges. I know when I started, I had a very experienced assistant who would say to consider so-and-so on the case because they have [a specific] type of talent, skill and experience. That occasionally happens.

If the judge has a bad experience with a PVP lawyer, the judge also has the discretion to say to the Probate examiner, "Don't put this lawyer in anymore of my cases." That is really done by a judge-by-judge basis. If the judge does act, that does not mean that the PVP lawyer is precluded from getting cases from the other bench officers. We don't even discuss that. It's not like we are in the back hallway saying, "You know who just did what today." People are pretty discreet. If people have an issue with somebody, they leave it between them and the lawyer. So I am happy to say that there are no secret probation lists, we really don't do that. We are very appreciative of what you do, even if we are giving you a hard time.

Probate Volunteer Panel Luncheon
Headed by Probate Division Presiding Judge Maria Stratton
March 12, 2015 (Part Two)

Steve Beltran: [I see] the core of the familiar faces and a lot of new faces and its nice to have the opportunity. The materials are a part of the packet you've got. Just as a segue to what we do, there are general conservatorships, which are typically for the elderly cases that we have, and limited conservatorships, which apply to developmentally disabled people, such as epilepsy or retardation, similar situations or mutations. And their services are typically outlined within the Lanterman Act which is Section 4500 in the Welfare Code. That is why I include this information for you, because it gives an outline and scope of what we do. If you get an appointment, you will be dealing with any one of those. Guardianship is another descriptive type of case that you would have. The materials that I provided you also gives you Section Code 1471 which provides that a court shall appoint counsel for most conservatees alleged to lack legal capacity and is unable to obtain counsel and asks the court for appointment whether or not that person lacks capacity. Now that's one of the records that you worked under.

What plays against 1471 is the local rule, 4.125, which is Exhibit 2 in your cases in the materials that I provided you, which broadly states that PVP counsel's primary duty is to promote the interests of his or her clients in accordance with ethical laws and ethical standards. That's very broad. PVP's secondary duty is to assist the court in the resolution of the matter to be decided, so PVP must give practical to ensure that the client is afforded opportunity to address the court directly. In practice, that comes out to the primary duty is to do what the client states that they want you to do.

We've had this discussion with Judge Stratton, which she states that she wants you to advocate your client's position. When we talk in the hypothetical, you can see how it is stated, what your clients says and what you might consider is their best interest is dealt with. Because the other extreme of this stated position is where your client is not able to give their position. There is a case that is referenced here that the conservatorship of Drabik (1988) 200 Cal. App.3d 185 which ruled that the best interest advocacy of the client is the attorney for the conservatee is permissible when the client is in a persistently vegetative state. Those are the extremes. If the client tells you '*I want this and I want that*' what can you say? You can go contrary to that state of opinion. And then in the mid-ground where your client may state a position but it is being unduly influenced, or your suspect it unduly influenced, and is merely parroting what their parents may be saying to them.

There are many cases for example with regional center clients, where the client will have all seven powers taken under the conservatorship but then issues come up without visitation or all seven powers, and that's what you need to know as a PVP. 2351.5 of the probate code describes all seven powers of the regional power of the limited conservatorship. And your client may be saying things, and your client may be under a limited conservatorship as an example, and be saying things to you but are coming from, as you suspect, their parents coaching or direction of what they should be doing. And this happens, and a clear example is that limited

conservatorships end up being an extension of a family. Now you have an adult developmentally disabled person whose visitation and all seven powers are at issue because both parents are seeking to be conservators and the adult may be living with one parent and is saying things that they want, but you don't know who is generating that. So those are the extremes that you need to look at. If you are not able to do other than represent the state of position of your client then it is in your authority to ask the state for the appointment of a best interest attorney. That is important when you are in that position where the client is stating to you what they want. You are clear and they are clear with you about what their position is. In some cases you may ask for their position to disclose confidentiality. Because that is a very important element for you to gather the information you need and to inform the court. That's just the outline of this level that is required of you as a PVP counsel under the probate code and local rules.

William L. Winslow: Lets go to a hypothetical. The tension between the advocacy and the fact that sometimes your client may ask you to take positions that are manifesting cranky or not practical, or you have the feeling that they are being pushed around one way or another. It's right behind the last ring divider in your materials. Why don't we start out by throwing out some issues to the panel that are raised.

Andrea G. Van Leesten: I think that it is always important that when you meet your client, you must always watch and observe. Who is your client? Who is your client? What conditions is your client in? And question your client. And most importantly, you need to listen to what your client is telling you. When Beth Winslow was planning this, we sat in the hallway, asking our colleagues as they came along and we asked them, what kind of things did they think were important. And one of our colleagues said that, for PVPs, the first person or the first story that you read begins to bias you, or rather, encourage the direction that you look to. And sometimes it is not your client. So, as a PVP, I am urging you to watch and observe your client. See what their limitations are. Try to imagine them as a young person, what would they be like? Question them. Question them. And listen to their answers. Watch the environment. Watch the people around you. Write and report. And more importantly, maintain your ethics. I did supply the last part of the handout which is the state bar rules on professional conduct for trusts and estates attorneys. And the dilemma that we are all going to get into is, best interest and who is your client. Defending your client. A couple of things I learned from Judge Stratton was in other counties that she happens to be a formal public defender, you protect and defend your client at all costs. And in so many, I know that we have come across. I have another wonderful colleague, whose name I should not mention, say that when you reveal all of your client's confidences or papers that they don't want other's to know, and put them in your report they become available in the public and you can find them and you can copy those reports and that can be deadly. So again, I want you all to think about your ethics. Especially as you look at the hypothetical. Because she says a couple of things, should we believe her because she told us that.

William L. Winslow: Now in relation to Steve, who is a good lawyer. I asked him, if you could say one thing to a PVP lawyer, you have two minutes to make one point. He said, resist the

temptation to take the first version of the facts that you hear as the frame around which you're going to organize the other information. And I thought it was a good point, which is why I am repeating it here. I also think it speaks to humans generally. It's hard to not take in new data based on what you hear first. That's why in general proceedings and in other places, who starts and who goes last is generally important.

Judge Maria Stratton: Well, I come from a public defense background, my attitude from a PVP counsel background is to advocate for what your client wants no matter how crazy it is. I spent three and a half years in a mental health ward, and you see a lot of clients asking for a lot of irrational things in a lot of their cases with a straight face, and they do. So as PVP counsel, I think you need to be prepared to make irrational requests to the court. Now, I know a lot of PVP counsel come in and say "well, you know, this is what should happen, Judge." Which is appreciated but we usually have a court investigator that goes back and tells us what the court investigator thinks should happen, which is on the same lines with what the PVP counselor says, since you are both rational human beings. But, I look to the court investigator to tell me what should happen, and I am looking to Debra's lawyer to tell me what Debra wants. How you get that information out of Debra and how you come to the conclusion of what Debra really wants depends on your skills as an attorney advocating for her. I think any judge at first appearance is going to look to PVP and say, have you talked to your client? Does your client want to be here? Because she has a right to be here. What does your client want to happen here? You might have to get up and say something that is against what you think really should happen. But if you determine what your client wants, the judge needs to know. That doesn't mean the judge is going to do it, but the judge needs to be able to leave that hearing knowing what your client wants, so that the judge knows what kind of proceedings to schedule next. Are we going to work out a trial? Are we going to work out a settlement? Are we going to try to send you to mediation? Are we going to have motions? Until the judge knows what your client wants, we are kind of at a standstill.

William L. Winslow: Well, I think that some of the judges, and some of the less experienced want guidance from the PVP and look to the PVP as the most authoritative view of the outcome.

Judge Maria Stratton: That's so true because that puts you in a bind, because some judges do just want to hear what you think is in the best interests of your client. They don't care about what your client wants. Because after all your client has been diagnosed with dementia. So how can it be proven what your client really wants?

William L. Winslow: It hasn't been proven that your client has dementia. What about asking your client, this is about being an ethical lawyer with your client. Say your client has told you something that you think may hurt his or her chances of your client getting what they want.

Judge Maria Stratton: These are discussions that you have to have with your client. If somebody walked into your office and said, "I am going to pay you \$100,000 flat fee to represent my interests in a conservatorship proceeding, you would maybe try to talk your client out of something stupid, but you took that case knowing up-front what your client wanted. I

don't see that this is any different except you are only getting paid \$125/hr. But you agreed to take the case, and so you are there to represent your client's interests. And that may upset some of the judges, because some of the judges may insist on hearing from you: "What do you think should happen, really?". You all have such great experience and it is really up to you to see how you are going to answer that question.

Steve Beltran: So should the PVP attorney then say, "Your honor, I am stating my client's position and if you want more information, perhaps you should appoint a best interest attorney?"

Judge Maria Stratton: You can say that. I'm telling you what my preference is, but I don't speak for the probate bench. There are going to be judges that pester you, I'm sure, "What do you really think, what do you *really* think?" and you know, I guess the answer is, when you took the case, what did you think you were taking it to do? And you can tell the judge that, "when I took the case, judge, I came in to tell you what I thought was in the client's best interest." Is that what you told the client when they walked in? And said this is a confidential communication, and I am not going to disclose anything unless you give me your permission? Is that what you told your client when you walked in with the client for the first interview? And said, "Hey I am here because the judge wants to know what's in your best interest?" or did you tell the client, "Hey, I am here because the judge wants you to be represented, and so I am here to find out what you really want." You really have to make it clear with your client what your role is. And if you told your client up-front, "Nothing you say is confidential to me, I am just here to make representation about what I think should really happen." And you made that really clear to your client, then, well that's a different situation. But if you go into your client and say, "The judge appointed me to be your attorney," then that means that you have an attorney-client relationship. And that means that what we say to each other is confidential and no one can force anything out of you. Talk to me under those circumstances. Then you set the parameters. But if you've done that, and if the judge says, "I want to know what you think," then you're right to say to the judge, "Look, I told the judge we were having a confidential communication, and I can't go back on that now just because you've asked me to. Maybe you need to take me off, and get somebody else that's going to do what you wanted, but I can't go back on that now." And maybe you will get some push back.

[multiple laughs at push back comment]

William L. Winslow: Andre, you've been at PVP since 2009, and last year you did not get one appointment.

Andrea G. Van Leesten: Here's the line I am supposed to read, I have had many appointments over the years but I did not get a single appointment, other than my reappointments, in 2014. But I constantly see the same individuals getting PVP appointments. I want to know, does the judge think this is a good thing in a concentration and why are we not using our old work horses? Are we giving our young work horses too much? are they too inexperienced? And lastly, who can I complain to if I am not looking at my computer? I am probably getting several appointments this very minute but I am not at my computer. Where am I? I am here, at the PVP.

Steve Beltran: Last year, I did get appointments. But they were all but one exclusively limited-conservatorship. Spanish-speaking only. That is a weird mix. But that is the typical kind of cases that I have been getting. And I have been qualified on that PVP panel for minor-counsel, dependency-work, conservatorships and special needs.

Judge Maria Stratton: I can't defend that. I don't think it's fair. I do know that we have a dearth of Spanish-speaking attorneys and they get a lot of work. I would say from my experience that 50% of the limited-conservatorships involve Spanish-speaking-only parents. That's huge. So if you are a Spanish-speaking attorney, that's probably where the bulk of your appointments are coming from. Because even though the conservatee is fluent in both languages, the conservatee's disabilities may prevent them from speaking to you. So it's important that the PVP counsel be able to communicate with the parents who are generally the caregivers. So if you are a Spanish-speaking attorney, you are probably getting those. I don't know why people aren't getting appointments, but it is certainly something that we will look into because I don't think it's fair. I do see the same people coming in on PVP appointments, and I don't know why. Someone has gotten to the probate examiners. [Laughs]

William L. Winslow: I think it makes people a little uneasy if it appears that someone's practice is dominated by PVP appointments. You can't help but wonder if that lawyer doesn't become somewhat inclined to please the judges. I don't know of a particular case that fits that description, I don't see that to be the case, by far, only a small sample.

Judge Maria Stratton: It's much easier being minor's counsel because then you are just doing best interest analysis. It's much easier and cleaner. It's really hard to be PVP counsel for the elderly and developmentally disabled, where you are trying to figure out what they want and are trying to advocate for them.

Steve Beltran: The bulk of the limited-conservatorship cases are very straightforward cases, they aren't very contested matters. What is happening more is where you see the extension of the custody battle issues coming into the context of limited conservatorships. Divorced parents fighting against each other for custody and visitation and sometimes to avoid paying support for the disabled child. A lot of those issues come up. The bulk of the one's that I see for limiteds for Spanish-speaking are very straightforward. There's a capacity-declaration, sets forth of limitations, the regional-senate report. A lot of times your client is not even communicative. The only thing that I guess you can argue, is best interest. But that means, that you have to do the homework to check out who these petitioners even are. Unfortunately these cases are money-generating for marginal-income families. So the ones that have the custody of that child are dependent on IHSS and other benefits they are going to get on behalf of that person they are taking care of. So you want to see the standard of care and what the history has been and what the interest is in that person. Why is someone who is not related, wanting to be a limited-conservator of a person who is severely debilitated. There are a lot of issues that come up.

William L. Winslow: Just an underlying issue about people speaking other languages besides English. I think there is a need across language groups-Mandarin, Korean, Persian, Armenian.

What I am asking you is to look around and talk to your colleagues. If you run into somebody that speaks a second language that is fairly commonly used in this county, which means that there are about ten of those, see what you can do about them serving once in a while as a PVP.

Judge Maria Stratton: And we will provide interpreters if you find yourself on a case that you can't communicate with your client. It is just a little hard. If you have someone in your firm that is bilingual, bring them in and it makes it easier.

William L. Winslow: Thank you. Just one last one about accountability. In Ventura county and some other counties, they do not use PVPs. The public defender represents the proposed conservatee. If the lawyer is in the probate court in Ventura and one public defender is constantly lazy and constantly disclosing client confidences or otherwise manifesting not doing the job, they can go to the pd's supervisor and say, "I have a complaint about Joe, Josephine. If you want him/her to hear it, I can make it in his or her presence, but I need you to know about it. To whom would I go to about this complaint in LA county? Is anyone really supervising the PVP's?"

Judge Maria Stratton: I would say go to the judge who is presiding on the case .

William L. Winslow: It looks like you are trying to get an advantage if you go to the judge and a potentially improper communication.

Judge Maria Stratton: I would say go to the supervising judge or report it to the bar. But your are right, if you are dealing with an agency lawyer you can go to the agency lawyer's supervisor, but you can't do that here because they are private lawyers. I am certainly open to taking complaints about people. If you feel like you can't talk to the judge because it's a pending case. I am willing to sit down with any of you and talk about something that is going on that is disturbing you ethically.

William L. Winslow: There are other complications with that approach, but I thought I would bring it up and I appreciate your willingness to help out on this. I think most of us have had a good experience with this program, but not 100% good.

Andrea G. Van Leesten: May I add one more thing? I think it is really important, especially for those who have been on PVP for a long time, I really think it is important that if you know younger attorneys, or attorneys who have not have had as much experience as you have, please mentor them. You can assist them. And just say, "Listen, I am available if you are on the panel and you want to talk to me about the kind of tools that I think you need to develop to become a good PVP attorney." I don't know how many of you have had an inadequately prepared PVP. I know that I did, and I know that I still have one on the case. He is such a great fellow. He is a great attorney and a nice person, and I spent a lot of time steering him in the right direction. And I am very optimistic that he will become a really great PVP attorney. All of you should really take up the demand if someone says that they need assistance or if you see that they need assistance.

William L. Winslow: I know that I run into cases where I feel that I don't know enough about a certain law or what have you. Where I am lucky is that being involved in bar stuff, I know lawyers all the time who help. Make some friends and have some people that you can reach out to. I can say, "I think I know what I am doing here, but right before I put that foot forward, incase it's going to land where it shouldn't, what do you think?" That's an invaluable resource. Make a friend. Be a friend with your fellow lawyers, especially in the bar activities. It's 1:30, so I think we should wrap it up. Thanks very much.

Duties of Appointed Counsel in Conservatorship Cases

Remarks of Honorable Maria Stratton
Presiding Judge of the Probate Division
of the Los Angeles County Superior Court

JUDGE STRATTON: I come from a public defender's background. Public defenders take what you're given and you roll with it. I kind of bring that background to you.

As I said in the beginning, we're really interested in robust representation for all the clients that you come to represent. I see that every day. I'm really amazed at how fast you all work and how you get those reports written in no time flat. It's really amazing . . . and the judgments that you all have, it's really wonderful.

My attitude is that you get appointed on a case, and you have what you have, and you roll with it. And you roll with it as an advocate.

I know there's kind of a tension between do I come in and tell the judge what I think is in my client's best interest, or do I come in and tell that judge this is what my client wants to do and this is the way we're going to proceed with the litigation. I'm an advocate and I know Rob [Wada] is too of the latter, that you come in and tell the judge this is what the client wants and this is how we are going to proceed with the litigation. While maybe in the background you are trying to persuade the client to do what you think is in their best interest – which is what you do in the criminal arena when your client is telling you “I want to you to trial.” And you're telling them “you're going to get 30 years if you go to trial and you're going to get two if you plead.” So in the background you're doing this but before the judge you're saying to the judge “we're going to trial” as much as it's killing you because you think the client should really take the deal.

It's a little bit similar here where you may have clients who are telling you “I want to do this, I want to do that” and in the back of your mind you're thinking “that is such a bad decision.” For many of them, the clients that you get, they are impaired – either intellectually impaired or they're impaired by the mental and medical and physical condition that has happened to them because they're elderly. So you do have a delicate balance because you're trying to talk them into taking your advice because as a lawyer you're their counselor, but as a lawyer you're also their advocate. So when they're telling you “I don't want this conservatorship, I'm fine, let's take it to trial,” that's what we as a judge need to know.

I'm here this morning to give you five tips, they are from me. I haven't discussed this with the other bench officers. They are things that I have to know from PVP counsel, and if I don't get them I may ask you for them in the course of your representation.

The first thing is, if you need more hours ask for them before you spend them. You don't need to know the paperwork behind all of this, but it's just better to ask before instead of asking for forgiveness later. Ask before, and don't be shy. You don't have to use everything you get. Ask for 10, ask for 15, but ask before.

The second thing I'm going to tell you is the judge really needs to know what your client wants, as crazy as your client may want it. The judge needs to know it. So if your client is telling you "I'm opposed to this conservatorship, I'm fine, I don't need any help," then the judge needs to know that. It's not going to be forgotten, it's going to be put in the [judge's] brain just like everything else, all the other facts, but it is a critical fact that the judge needs to know.

When people come in and they say in their PVP reports – and I've seen some like this – "Well, I think my client should have a conservatorship." Well, you know what, I appreciate your opinion but I need to know what your client wants first, before I know what you want. And maybe I shouldn't even really hear what you think if it's contrary to what your client wants.

Your client says "I want a trial" or "I want a hearing" or "I don't want this particular person as my conservator," the judge needs to know that. And maybe you shouldn't be saying, "and by the way judge, even though my client says she doesn't want a conservatorship, she is so demented she doesn't really know what she wants and she really need one." No, you can't say that. That's being disloyal to your client. Your client wants to fight it, so you're in that mode, you're in fight mode.

Now, that goes against a lot of people's grain. I get that. You are dealing with really awful situations most of the time. You are either in the middle of fighting siblings or people claiming they are there for the person when they are really there for the money, and your clients are really not getting it, but you are. You are between a rock and a hard place many times. I get that, and it's hard. It's particularly hard because all of you care about your clients otherwise you would not be volunteering to do this. But that's your role – as the advocate.

While ultimately the judge is going to take into account, perhaps, what the best interest of your client are, if the client's best interests aren't what the client wants, then you don't have any business telling me what your opinion about what the best interests are. I will get that from the court investigator's report, or I'll get that argument from the other side – the conservator or the conservator's counsel whose coming in to tell me why it's in the client's best interest to have a conservator and to have a particular conservator.

The court investigators are going out more on more cases and right now they are writing reports on every type of case except for public guardianship cases where the public guardian is the initial petitioner, and temporary conservatorship petitions. We're hoping at some point to expand that.

For the most part, you're going to have court investigator reports and that court investigator is writing it from the best interests point of view, not any other point of view. So as bench officers we need to hear your client's side of the story, because we're already getting the best interests side from the court investigators. You don't have to worry that we're not going to get it. That is the goal of the court investigator's report, to tell the judge what the court investigator recommends is in the best interest of the client.

I just urge you, when you're writing your PVP reports, the first thing you should put down is what your client wants – in no uncertain terms. Just put it out there. So that if your client read it, and could understand it, your client would say “yeah, that is exactly what I want, you did a good job as my lawyer, you represented me.” So that's kind of the second tip I have for you from the judge's perspective.

The third thing is – and this is part of my background from sitting in Department 95 for three years – the judge needs to be able to discern from your PVP report that you advised your client of all of your client's rights, including the right to be present. This is critical in conservatorship cases. And if you read conservatorship cases, whether they are general conservatorships or LPS conservatorships, the biggest issue that comes down the pike in most of these cases is presence – the right to be present – whether the lawyer can act without the client being present. The bench officer wants to know, did you advise your client of all your client's rights – the right to fight the conservatorship, the right to fight who should be the conservator, the right to fight what powers the conservator should have, the right to fight what disabilities are imposed on the conservatee. Your client needs to know all that and the judge needs to know you have told your client all of that – the most important right being the right to be present.

When I'm looking at a PVP report that's not one of those form ones that you check off – I hate those reports, generally, except that I love the little check off boxes because I can see that you have checked off the box that you have advised the client of all the rights. So I am feeling, oh good, that the client knows what's going on. If you're not using one of those forms, and you are using a template that you use, perhaps, put a little paragraph in for advisement of rights so that the judge knows that you've advised the client of all the rights. What would really be great is if you put in what rights you advised the client of. Maybe Jonathan can put together a paragraph that says what the rights are.

Not only that, but, did your client have a response to what you told them. You don't have to tell me what the response is if it would violate your attorney-client privilege, but I do need to know that the client seemed to understand, or said, thank you for that but I'm not interested in any of those rights, I'm fine with the conservatorship. Or, I don't want to be there, I hate going to court, I don't want to be with my family. Whatever it is, but, if you are able to say what your client's response was to the rights so that the court knows whether the client understood what was going on, that would be terrific. That's something that I look for, because if it's not clear that you've advised your client of the rights, then I have to ask you. Sometimes I have asked, particularly when they come in and say, “It's really not in my client's best interest to be here today.” So I have to ask, “Did you advise your client of his or her right to be present today?” Usually the answer is “yes.” So why wasn't that in your report? What did your client say in response to knowing that she had a right to be here today? Sometimes I hear “There was no response.” Well, that's an answer. Or “I hate my family.” OK, that's an answer. What ever the response is. In any event, I need to be able to discern that the client knew she had a right to be there and she decided to forego it, for whatever reason. The record has to be clear on that from the judge's point of view.

A lot of times when we get a PVP report that goes into great length about what would be in the client's best interest, oftentimes there is little discussion of what the client wants, or the client's statements or the client's reactions. It seems like it's more of a narrative of I've looked at all the

facts and this is what I think should happen. Some of the PVP reports don't even state whether they've visited the client or talked to the client. Maybe they will state these are the people I talked to and list them, but then I don't really know what the upshot of the discussion was. But that may well be because you feel its privileged information. That's fine. Just let me know it's privileged. Just let me know I have had discussions and I don't think it is appropriate to disclose them to the court what I heard or what was told to me. That's fine. I guess what I'm asking for is a little more detail, especially around the subject of rights, advisement of rights.

The last thing I'm going to say on these tips is when you look at the local rules, it says that PVP counsel has two goals. One, is to represent the interests of their client. The second says to assist the court in the resolution of the matter. To the extent that you can discuss with your client, well, I understand that you don't want a conservatorship, and you want to have a hearing on that. What about if we did this? To the extent that you can pose alternatives to a full blown conservatorship to your client that might be acceptable to your client that would be a good thing to know.

For example, I know that when I was in mental health court, there were actually four ways to resolve an LPS conservatorship. The lawyers would come in and say, the client agrees, go ahead and appoint, judge. I've advised them of their rights, powers, and disabilities, they're fine with it, go ahead, let's do it. That's the first way.

The second way is the client just submits on the paperwork. It's kind of like a no contest plea, right? So, the client's just submitting. That's the second way.

The third way is the client is doing a limited submission, which means the client is willing not to contest any of the facts you have before you in the paperwork, but the client wants to talk. And tell you why you shouldn't do what the paperwork is telling you to do. That's almost like guilty with an explanation. It's like, "I understand you may go ahead and do this judge, but I really want to tell you why you shouldn't. That's good. So then the client will talk and the client is able to give their side of the story.

The fourth way is a full blown hearing, with live witnesses and the whole thing.

I mention those because sometimes there is another option, which is, my client is okay with the conservatorship but the client really wants to make sure that she retains the right to vote. So she's okay with it if you don't do x, y, and z, or if you do do x, y, and z. So that's kind of turning the conservatorship into an even better least restrictive alternative, which is the other thing that you should be looking at for the second prong of your duties about trying to resolve the cases – is there a less restrictive alternative.

Would a power of attorney work? Or would supporting the conservatorship between two acceptable people work? Would extending the temporary conservatorship for six months work to give the client an opportunity to try it out? See if the client likes it or not, and then come back in six months and say "Whoa, I don't want this," or "Yeah, this wasn't as bad as I thought it would be."

So you ought to be very creative in coming up with ideas, but to the extent that you can propose different alternatives to your client, and see if that satisfied the one thing that's bothering your client

about this, that would be of great assistance to the court. I think that that's what the second prong of the two duties of PVP counsel is really talking about.

You're the only ones that really get to talk to your client directly in a confidential manner. I can talk to them from the bench, but that's not necessarily very helpful because who knows if they're going to tell me what they want because everyone else in their family is standing around. You get to talk to them privately. To the extent that you can use your time to go over possible alternatives that would be acceptable to your client, I think would be great for your client, great for your relationship with your client, because your client is going to see that you are trying to accommodate your client's interests. It is also great with respect to helping to resolve the conservatorship in the best way possible.

As I said, these are kind of my personal things that I would like to see in a PVP report. I think that if you did this for all the judges that they would be thrilled to have more information. Because the more information we have the better the decisions are all around.

QUESTION: (A question was posed about lawyer-client confidentiality and what if an attorney questions whether the client can give an informed waiver that would allow the attorney to include confidential information in the PVP report.)

JUDGE STRATTON: To me, if you don't feel you've got a knowing waiver from your client, the default position is that you don't reveal the conversation. That's my position. You go in with the attorney-client relationship – with the privilege that attaches – the minute you become their attorney. It attaches as a default position.

So if you have a conversation with a 75 year old client who is very impaired because of Alzheimers or dementia or just old age, and you start out with an attorney-client conversation with them, and then in the middle of the conversation you realize that they have no idea what I am talking about. I think you are able to impart your observation to the court that I advised them of all their rights and powers and disabilities and they seemed to not get it. But at that point, I would not go any further because you don't have a waiver. Right?

I mean, if you think about it, if you had a client who wasn't impaired, you wouldn't be talking about the interview you had with them unless they gave you a waiver. So, their disability really doesn't act as a default waiver. I would just be concerned because there would be ethical implications of assuming a waiver just because the client had no understanding of why you were there.



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9420 Reseda Blvd, #240, Northridge, CA 91324 • (818) 230-51456
www.spectruminstitute.org / tomcoleman@spectruminstitute.org